

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING DELIMITATION
OF THE MARITIME BOUNDARY
IN THE GULF OF MAINE AREA

(CANADA/UNITED STATES OF AMERICA)

ORDER OF 20 JANUARY 1982

CONSTITUTION OF CHAMBER

1982

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA DÉLIMITATION
DE LA FRONTIÈRE MARITIME
DANS LA RÉGION DU GOLFE DU MAINE

(CANADA/ÉTATS-UNIS D'AMÉRIQUE)

ORDONNANCE DU 20 JANVIER 1982

CONSTITUTION DE CHAMBRE

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CASE CONCERNING DELIMITATION
OF THE MARITIME BOUNDARY IN
THE GULF OF MAINE AREA

(CANADA/UNITED STATES OF AMERICA)

ORDER

CONSTITUTION OF CHAMBER

Present : *Acting President* ELIAS ; *Judges* FORSTER, GROS, LACHS, MOROZOV, NAGENDRA SINGH, RUDA, MOSLER, ODA, AGO, SETTE-CAMARA, EL-KHANI, SCHWEBEL ; *Registrar* TORRES BERNÁRDEZ.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 26, paragraph 2, 31 and 48 of the Statute of the Court, and to Articles 17 and 18 of the Rules of Court,

Makes the following Order :

1. Whereas by a joint letter dated 25 November 1981, filed in the Registry of the Court the same day, the Ambassador of Canada to the Netherlands and the Ambassador of the United States of America to the Netherlands transmitted to the Registrar a certified copy of a Special Agreement dated 29 March 1979, and subsequently modified, by which Canada and the United States of America agreed to submit to a Chamber of the Court, to be constituted pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court, a question as to the course of the single maritime boundary that divides the continental shelf and fisheries zone of the two Parties in the Gulf of Maine area ;

2. Whereas the said Special Agreement provided for its entry into force on the date of entry into force of a Treaty between the Parties to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, signed on 29 March 1979 ; and whereas the Ambassadors of Canada and the United States of America also enclosed with their letter to the Registrar certified copies of the said Treaty and of the procès-verbal of the exchange of instruments of ratification thereof, which took place at Ottawa on 20 November 1981 ;

3. Whereas in the said letter, the two Ambassadors stated that Mr. Leonard H. Legault had been appointed Agent of Canada for the purposes of the case, and that Mr. Davis R. Robinson had been appointed Agent of the United States for the purposes of the case ;

4. Whereas the Special Agreement provides in Article I for the submission of the dispute to "a Chamber of the International Court of Justice, composed of five persons, to be constituted after consultation with the Parties, pursuant to Article 26 (2) and Article 31 of the Statute of the Court and in accordance with this Special Agreement" ;

5. Whereas the Parties have been duly consulted as to the composition of the proposed Chamber of the Court in accordance with Article 26, paragraph 2, of the Statute and Article 17, paragraph 2, of the Rules of Court ;

6. Whereas in the said letter dated 25 November 1981 the two Ambassadors notified the Court that, since the Court did not include upon the bench a judge of Canadian nationality, the Government of Canada intended to choose a judge *ad hoc* to sit in the case pursuant to Article 31, paragraph 2, of the Statute of the Court ;

7. Whereas the following letter was on 18 December 1981 transmitted to the Agents of the two Parties by the Acting President of the Court :

"With reference to the meeting held in my office on Tuesday 15 December 1981 for the purpose of the consultation to ascertain the views of the Parties, pursuant to Article 17, paragraph 2, of the Rules of Court, concerning the composition of the Chamber the formation of which has been requested to hear the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, I have to inform you that at a meeting held by the Court on Wednesday 16 December 1981 I duly reported the ascertained views of the Parties to the Court.

In the course of that meeting the Court proceeded to an examination of the Special Agreement notified to the Court on 25 November 1981 by the Governments of Canada and the United States of America, and the other documents enclosed with the notification. Views were exchanged between the Members of the Court and certain issues were raised by some of them concerning problems which in their view might create difficulties, particularly because of possible incompatibilities with the Statute and the Rules of Court. Following the dis-

cussion, it was decided that I should invite the Agents of both Parties to submit in writing to the Court supplementary explanations or clarifications on the following points :

1. How in Article III of the Treaty of 29 March 1979 the reference to the filling of vacancies on the Chamber 'in a manner acceptable to the Parties' can be reconciled with the provisions of Article 26 of the Statute and of Article 17, paragraph 3 (last sentence), and Article 18, paragraph 1, of the Rules of Court.

2. Attention was drawn to the last sentence of Article I of the Treaty of 29 March 1979 and to Article VI, paragraph 1 (a), of the Special Agreement, which refer to the notification of the name of the judge *ad hoc* as determining the constitution of the Chamber and the date from which the time-limit for the memorials to be submitted by the Parties be counted, while a Chamber is established by the Court, and the notification of the name of the judge *ad hoc* does not exhaust the requirements of Article 31 of the Statute and Article 35 of the Rules of Court.

3. What relationship exists, in the view of the two Governments, between Article II, paragraph 4, of the Special Agreement and Article 27 of the Statute of the Court ?

4. Is the effect of Article VII, paragraph 2, of the Special Agreement that the decision of the Chamber (which under Article 27 of the Statute 'shall be considered as rendered by the Court') will be subject to review by a 'third party', so that it will be the decision of the 'third party' and not the decision of the Court which will be regarded by the Parties as having binding force, contrary to Articles 59 and 60 of the Statute?

It would be of assistance to the Court if your reply to the present letter were to be available to it when it next meets around 13 January 1982 for further consideration of the Special Agreement as well as of my report of our meeting of 15 December."

8. Whereas on 8 January 1982 the following letter, dated 6 January 1982, was received from the Ambassadors at The Hague of the two Parties :

"The parties to the case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine area respectfully submit the following response to the four questions raised in your letter 67464 of December 18, 1981.

At the outset the parties wish to emphasize that they consulted informally with the late President Sir Humphrey Waldock during the negotiation of the Treaty of March 29, 1979 and the related Special Agreement, and incorporated suggestions made by Sir Humphrey in order to ensure that the Treaty and Special Agreement would be consistent in all respects with the Statute and Rules of the Court. These consultations with the Court have continued in a number of

meetings with you and the Registrar during the past year. The parties consider that the Treaty and the Special Agreement are fully consistent with the Statute and Rules of the Court, and reaffirm their request that the proposed Chamber be constituted prior to the commencement of the Terms of Office of those members of the Court elected in the triennial election in 1981.

The questions and the answers thereto are as follows:

1. 'How in Article III of the Treaty of 29 March 1979 the reference to the filling of vacancies on the Chamber "in a manner acceptable to the Parties" can be reconciled with the provisions of Article 26 of the Statute and of Article 17, paragraph 3 (last sentence), and Article 18, paragraph 1, of the Rules of Court.'

Article III of the Treaty is wholly consistent with the Statute and Rules of the Court. The parties have at all times expected that any vacancy on the Chamber would be filled in accordance with the Statute and the Rules. The procedures set forth in Articles 17 and 18 of the Rules provide for ascertaining the views of the parties and for a subsequent election by the Court in the case of a vacancy created by the absence of a member of the Court not a national of either party. Article III of the Treaty in no way interferes with the operation of these provisions. It simply specifies the circumstances under which the parties may exercise their right to terminate the Special Agreement and, pursuant to Article 88 of the Rules, to discontinue the proceedings before the Court.

The parties note that the right of termination, as discussed above, is provided for in the Treaty which was transmitted to the Court as background information. Unlike the Special Agreement, the Treaty was not notified to the Court pursuant to Article 40 of the Statute and thus does not call for any action by the Court. In respect of the operation of Article III of the Treaty, the parties contemplate that they would jointly request the election of a member of the Court to fill any vacancy that might arise among those Judges not nationals of either party and either party would have the option of terminating the Special Agreement if the result of the election was not in accordance with this joint request.

2. 'Attention was drawn to the last sentence of Article I of the Treaty of 29 March 1979 and to Article VI, paragraph 1 (a), of the Special Agreement, which refer to the notification of the name of the judge *ad hoc* as determining the constitution of the Chamber and the date from which the time-limit for the memorials to be

submitted by the parties be counted, while a Chamber is established by the Court, and the notification of the name of the judge *ad hoc* does not exhaust the requirements of Article 31 of the Statute and Article 35 of the Rules of Court.’

The last sentence of Article I of the Treaty states that ‘The Chamber . . . shall be deemed to have been constituted when the Registrar of the Court has been notified of the name or names of the judge or judges *ad hoc*’. The purpose and practical effect of this language is to establish a reference point for the calculation of the six-month period referred to in Article II of the Treaty. This does not affect the Court’s power to interpret and apply the Statute and the Rules with respect to the establishment of the Chamber, including Article 31 of the Statute and Article 35 of the Rules. Similarly, Article VI, paragraph 1 (*a*), of the Special Agreement reflects an agreement between the parties to request the Chamber to set a certain time-limit for the filing of the Memorials. Such an agreement between the parties is consistent with the Statute and the Rules and practice of the Court. The date of notification of the name of the Judge *ad hoc* was selected by the parties as a convenient formula to identify the time-limit to be requested. This clause does not interfere with the operation of the Statute and the Rules or, in particular, with the authority of the Court or the President to fix time-limits for the filing of Memorials pursuant to Articles 44 and 92 of the Rules or such other provisions as may be relevant.

3. ‘What relationship exists, in the view of the two Governments, between Article II, paragraph 4, of the Special Agreement and Article 27 of the Statute of the Court?’

These provisions of the Statute and the Special Agreement are both consistent and complementary. Under Article 27 of the Statute, the judgment to be given by the Chamber ‘shall be considered as rendered by the Court’. Article II, paragraph 4, of the Special Agreement provides that the decision of the Chamber rendered pursuant to the same Article – which according to the Statute must be considered a judgment of the International Court of Justice – shall be accepted as final and binding by the parties. The relationship of the two provisions, therefore, is clear and unequivocal : the decision of the Chamber under Article II of the Special Agreement shall be a final and binding decision of the International Court of Justice. Although Article II, paragraph 4, of the Special Agreement may not be necessary as a legal matter (since the Statute already makes the decision of the Chamber binding on the parties), this paragraph does serve to inform domestic constituencies that may not be familiar with the Statute of the Court.

4. 'Is the effect of Article VII, paragraph 2, of the Special Agreement that the decision of the Chamber (which under Article 27 of the Statute "shall be considered as rendered by the Court") will be subject to review by a "third party", so that it will be the decision of the "third party" and not the decision of the Court which will be regarded by the Parties as having binding force, contrary to Articles 59 and 60 of the Statute?'

The Special Agreement does not provide for any third party review of the decision of the Chamber of the International Court of Justice. As provided in Articles 27, 59 and 60 of the Statute, that decision is final and without appeal.

Article VII of the Special Agreement concerns an entirely different matter, namely, the possible future seaward extension of the boundary beyond the segment drawn by the Chamber. Article II of the Special Agreement defines an area within which the Chamber is asked to place the seaward limit of the boundary to be drawn under that Article. Article VII envisages the possibility of extending the boundary beyond that terminal point, either by agreement of the parties or by recourse to third party settlement procedures. Since the seaward extension would begin at the terminus of the line drawn by the Chamber and would not alter that line in any way, there is no inconsistency between Article VII of the Special Agreement and Articles 59 and 60 of the Statute."

9. Whereas the replies of the Parties to the request conveyed by the Acting President for explanations and clarifications, which must be read together with the Special Agreement for the purposes of this case, were considered by the Court in further deliberation ;

THE COURT,

by eleven votes to two,

IN FAVOUR : *Acting President* Elias ; *Judges* Forster, Gros, Lachs, Nagendra Singh, Ruda, Mosler, Oda, Ago, Sette-Camara, Schwebel ;

AGAINST : *Judges* Morozov and El-Khani ;

1. *Decides* to accede to the request of the Governments of Canada and the United States of America to form a special Chamber of five judges to deal with the present case ;

2. *Declares* that at an election held on 15 January 1982 the following Members of the Court were elected to the Chamber :

Judges GROS,
RUDA,
MOSLER,
AGO,
SCHWEBEL ;

3. *Notes* that the Acting President, in the exercise of his powers under Article 31, paragraph 4, of the Statute of the Court, has requested Judge Ruda to give place in due course to the judge *ad hoc* to be chosen by the Government of Canada, and that Judge Ruda has indicated his readiness to do so ;

4. *Declares* a Chamber to deal with this case to have been duly constituted by the present Order, with the composition indicated above.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of January, one thousand nine hundred and eighty-two, in three copies, one of which will be placed in the archives of the Court, and the others transmitted to the Government of Canada and to the Government of the United States of America, respectively.

(Signed) T. O. ELIAS,
Acting President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judge ODA appends a declaration to the Order of the Court.

Judges MOROZOV and EL-KHANI append dissenting opinions to the Order of the Court.

(Initialled) T. O. E.

(Initialled) S. T. B.
