No. 36, Original

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN RESPONSE TO TEXAS' BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

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INTRODUCTION

This case involves the determination of the lateral boundary in the Gulf of Mexico between the States of Texas and Louisiana, and between the State of Texas and the United States.

In previous litigation between the States of Texas and Louisiana, this Court determined that the boundary between them in the Sabine River was the geographic middle of the river, rather than its western bank or the middle of its main channel. *Texas* v. *Louisiana,* 410 U.S. 702. This Court also held that Louisiana owned all islands in the eastern half of the river (410 U.S. at 712). But as to islands in the western half, this Court suggested that the United

States might have a claim of ownership; accordingly, the case was remanded to the Special Master for determination of that question.

On remand, the United States was permitted to intervene, and Louisiana moved to enlarge the reference to the Special Master to include the establishment of the lateral boundary in the Gulf of Mexico. *Texas* v. *Louisiana,* 413 U.S. 918. The Special Master's report recommending that the motion be granted was received, ordered filed, and adopted by this Court on October 15, 1973. *Texas* v. *Louisiana,* 414 U.S. 904.

On remand, under the enlarged reference, the Special Master was presented with three tasks: (1) to mark the geographic middle of the Sabine River; (2) to determine the ownership of islands lying in the western half of the river; and (3) to determine the lateral boundary in the Gulf of Mexico.

The interest of the United States extends only to the determination of the lateral boundary.[1] That interest arises because, under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.,* Texas' submerged lands grant extends up to 9 miles offshore while Louisiana's grant extends only 3 miles. Thus, the fixing of the lateral boundary will, between the 3-mile limit of the Louisiana grant and the 9-mile limit of the Texas grant, determine the respective rights of Texas and the United States in the natural resources of the sea-bed.

[1] At trial the United States asserted a claim of ownership to one island in the western half of the river. The Special Master found that the United States had not established title to the island (Report, pp. 15–21), and no exception has been filed concerning that finding.

The Special Master found that Texas and Louisiana have never had an established boundary in the Gulf of Mexico and he recommended that the boundary be fixed as a line running seaward from the midpoint at the mouth of the Sabine River, remaining at all points equidistant from the present coastlines of Texas and Louisiana (Report, pp. 21–48, 49). The United States agrees with these findings and recommendations, and, as we shall show, they are consistent with applicable principles of domestic and international law.

Texas, however, has filed exceptions to these findings, contending that there existed an historic lateral boundary between the States that differs from that recommended by the Special Master.[2]

While we respond to Texas' arguments in detail hereafter, we believe it important at the outset to discuss two general premises underlying Texas' position. These premises, which are based on characterizations of the Special Master's Report, are, in our view, fundamentally erroneous.

First, Texas asserts (Tex. Br., p. 2) that the Special Master held that "Texas and Louisiana have never had a Gulfward boundary between their areas of jurisdiction." In fact, however, the Special Master found that a lateral boundary had never been *established* (Report, p. 37). This finding is manifestly correct, and it is entirely consistent with Texas' conten-

[2] Louisiana has not filed exceptions to the Special Master's findings and recommendations concerning the offshore boundary. The City of Port Arthur, which had intervened in this action for purposes of the island claims, has asserted no interest in the offshore line.

tion that there was an historic "inchoate" boundary. The existence of an inchoate boundary does not resolve the lateral boundary issue, for, as the Special Master found (Report, p. 37), there is no basis for reconstruction of an historic boundary.

Texas' second erroneous premise (Tex. Br., pp. 2–3) is that the Special Master held that the lateral boundary was to be determined "solely by avulsive, man-made additions to the shoreline—the jetties." In fact, the Special Master found that the lateral boundary was to be constructed by use of the median line principle (Report, p. 30), that is, a line which is at all points equidistant from points on the coastlines of Texas and Louisiana, of which the Sabine Pass jetties form a part. The Special Master's finding that the jetties are part of the coastline is correct (see pp. 21–27, *infra*) and is *not* tantamount to a finding that the lateral boundary is to be constructed solely by reference to their existence.[3]

[3] Texas' suggestion (Tex. Br., p. 3, n. 1) that the Master's findings concerning the jetties rests "on the stated basis that under the law of prescription and acquiescence, Texas has lost its right to contend for any other line" is incorrect. The structure of the Special Master's Report shows that his reference to prescription and acquiescence occurred in the context of fixing the boundary between the States from 30° North Latitude into the Gulf of Mexico (Report, pp. 7, 13–15). To the extent the jetties are considered to extend the mouth of the Sabine River into the Gulf (Report, p. 15), prescription and acquiescence indicate that the boundary between the States to the terminus of the jetties is the geographic middle of the jetties. This is consistent with the Special Master's findings in his first report, supported by Texas, that acquiescence and prescription indicated that the river boundary was the geographic middle.

The Special Master did not rely on acquiescence and prescription in finding the jetties to be part of the coastline for pur-

SUMMARY OF ARGUMENT

The Special Master's findings are fully supported by the facts of this case and the applicable law. First, the Special Master was correct in finding that Texas and Louisiana have never had an established offshore lateral boundary. The statutes admitting each State to the Union contained elaborate boundary descriptions but neither included a segment extending offshore from the terminus of their mutual boundary at the mouth of the Sabine River.

Nor do the subsequent acts of either State legislature evidence any agreement on such a boundary. Both States have enacted separate offshore lateral boundaries which result in a large pie-shaped area of the continental shelf claimed by both. State maps and law enforcement practices indicate that even within each State there was no consistently accepted offshore line and there was certainly no agreement between them. Finding no existing boundary, the Special Master properly considered how such a boundary should be now constructed.

The lateral offshore boundary between Texas and Louisiana is a line which is at all times an equal distance from the present coastlines of the two States. There is little dispute about the use of the equidistance principle. Texas and the United States espoused it in this litigation and Louisiana has not taken exception to its use by the Special Master. The dispute, instead,

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poses of the lateral boundary in the Gulf of Mexico. As to that finding, the Special Master correctly relied on Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606 ("Geneva Convention") and other applicable principles. See Report, pp. 15, 21–48.

concerns the coastline to which the principle is to be applied.

Texas argues that had Congress considered the matter it would have applied the equidistance principle to establish this lateral boundary at the time of Texas' admission to the Union. But there is no way of knowing what line Congress would have drawn even if we were required to make that determination. The equidistance line is recognized in the 1958 Geneva Conventions on the Law of the Sea. It is clearly the law to be applied in determining lateral boundaries. However, the history of those Conventions and International Court of Justice opinions are just as clear that there was no recognized method of lateral boundary determination prior to the Conventions. Thus, there is no basis for assuming that equidistance principles would have been used by the Congress.

In any event, no line was drawn by Congress. The boundary is being described in this litigation for the first time. It must, therefore, be constructed with modern principles as they are applied to existing facts. The equidistance principle is admittedly the method to be used. An equidistant line, by definition, is a line measured from the baseline from which the territorial sea is measured. The territorial sea of the United States is measured from the existing low-water lines, whether found on natural or artificial structures, and the closing lines across inland waters, as this Court has often held.

The Special Master properly applied the equidistance principles to the baseline of the territorial

sea as it existed at the time of his determination. Modern coastlines have consistently been used for constructing equidistance boundaries in both domestic and international controversies and were properly used by the Special Master here.

ARGUMENT

I

THE SPECIAL MASTER WAS CORRECT IN FINDING THAT A LATERAL BOUNDARY SEPARATING THE JURISDICTIONS OF TEXAS AND LOUISIANA IN THE GULF OF MEXICO HAD NOT BEEN ESTABLISHED PRIOR TO THIS LITIGATION

A. HISTORIC BOUNDARY DESCRIPTIONS DO NOT INCLUDE A LATERAL OFFSHORE BOUNDARY

Texas alleges that it has had a lateral boundary in the Gulf of Mexico since 1836. At that time the seaward boundary of Texas, as an independent Republic, was described as follows:

> beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande * * *. [1 Laws, Republic of Texas, 133 (1838).]

This boundary was recognized by Congress when Texas was annexed in 1845, 5 Stat. 797, and again when Texas was permitted to extend her boundary to the middle of the Sabine. (The boundary had previously extended only to the west bank of the river.) Louisiana's Act of Admission includes similar language making it clear that the boundary began at the mouth of the Sabine. 2 Stat. 701, 702.

Texas had taken the position for purposes of this litigation that the foregoing language can be interpreted as describing a lateral boundary between the 9-mile area recognized for purposes of its Submerged Lands Act grant and Louisiana's similar 3-mile area.

The Special Master carefully considered the language of each document relied upon by Texas and concluded that they do not describe a lateral boundary in the Gulf (Report, pp. 36–37):

> The problem is getting from the mouth of the Sabine to a point three leagues out in the Gulf. * * * The quoted language from the 1836 Act of the Republic of Texas simply does not describe or delimit any lateral boundary line from the mouth of the Sabine gulfward. No meridian is chosen, no angle of departure from the coast is referred to, nor is any point in the Gulf three leagues from land specified. Given the total lack of relevant language in the statute, there is no indication of how or where a lateral boundary was to be constructed. Statutory interpretation cannot supply missing words of such importance.

Texas essentially ignores this finding and cites as legal precedent for its position only decisions in which this Court construed language that described existing boundaries. *Wisconsin* v. *Michigan,* 295 U.S. 455; *New Mexico* v. *Texas,* 275 U.S. 279; *Minnesota* v. *Wisconsin,* 252 U.S. 273. In each instance the boundary was described. Although the descriptions varied in precision, each contained language that could be applied to facts on the face of the earth to reconstruct the in-

tended line.[4] No such language is contained in any of the boundary descriptions offered by Texas in the present case.

Texas' reliance on *United States* v. *Louisiana,* 363 U.S. 1, is misplaced. In that case the issue presented was simply the seaward limit of Texas' historic offshore boundary. That boundary—3 leagues—is defined in the relevant legislative materials. But, as shown above, the lateral boundary in the Gulf of Mexico is not so defined. Thus, the Special Master carefully reviewed all of the opinions in *United States* v. *Louisiana, supra,* and correctly concluded (Report, p. 39): "most if not all of the members of the Supreme Court, whether in concurrence or in dissent, recognized that lateral boundaries were not being determined when Texas was admitted into the Union."

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[4] The boundary language being interpreted in each case read as follows:

Wisconsin v. *Michigan*: "'* * * to a point in the middle of said lake [Michigan], and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river * * *'" and, "'* * * thence, down to the centre of the main channel of the same [Menomonie river], to the centre of the most usual ship channel of the Green Bay of Lake Michigan; thence, through the centre of the most usual ship channel of the said bay to the middle of Lake Michigan * * *.'" 295 U.S. at 457.

New Mexico v. *Texas*: "'* * * thence following the main channel of said river, as it existed on the ninth day of September, one thousand eight hundred and fifty * * *.'" 275 U.S. at 302.

Minnesota v. *Wisconsin:* "'Thence [with the northwesterly boundary of Michigan] down the main channel of the Montreal River to the middle of Lake Superior; thence [westwardly] through the centre of Lake Superior to the mouth of the St. Louis River; thence up the main channel of said river to the first rapids in the same, above the Indian village * * *.'" 252 U.S. at 275–276.

B. THE EXISTENCE OF A FIXED LATERAL OFFSHORE BOUNDARY HAS NOT BEEN INDICATED IN 140 YEARS OF PRACTICE

As shown above, historical materials describing the boundaries of Texas and Louisiana do not describe an offshore lateral boundary. Nor do the practices of Texas, Louisiana and the United States for the last 140 years suggest that there has been a fixed lateral boundary in the Gulf since 1836.

Although Texas insists that the 140 year old boundary begins at the midpoint of the mouth of the Sabine River, as it existed in 1836, and extends offshore such that it is always equidistant from the coastlines of Texas and Louisiana as they existed in 1836,[5] each of the States has unilaterally adopted statutory boundaries extending into the Gulf which have no relation to the line that Texas alleges to have existed for more than a century.[6] These lines are depicted on a chart which is attached to the Special Master's Report as Appendix A.

The United States agrees with the Special Master that these unilateral actions by the States, resulting in greatly divergent offshore claims, are of little aid in this case. If the two State legislatures had adopted the same line, their statutes might provide evidence of agreement and the existence of an established lateral boundary. But the statutory lines diverge so

[5] This date is sometimes referred to by Texas as 1845 or 1845/1848 but the argument remains the same.

[6] Acts 32 and 33 of the 1954 Regular Session of the Louisiana Legislature. Article 5415a, 15A Vernon's Annotated Texas Civil Statutes (1962).

greatly that, under these lines, each State claims a large area of the Gulf claimed by the other. Thus, the statutory lines are evidence only that no lateral boundary has been established. Indeed, the wide variance between Texas' statutory boundary (labeled 3 on the Master's map) and the line proposed in Texas' exceptions to the Master's findings (labeled 1 on the Master's map) shows conclusively that not even Texas has considered the boundary to be fixed since the time of its annexation by the United States.

Moreover, neither of the States has at any time relied on Texas' proposed line for any state purpose. Both States introduced numerous exhibits which show that fisheries enforcement was carried on in areas around the Sabine Pass jetties without any reference to a boundary based on either the 1836 or the 1845 coastline.[7]

The various maps introduced in hearings before the Special Master are consistent with this conclusion. Not one published map depicted the Texas/Louisiana boundary as extending into the Gulf along the line which Texas now contends is the long established boundary. To the contrary, all maps either continue the mid-river boundary to the end of the jetties or, as Texas emphasized in its Brief in Support of Exceptions, p. 32, end the boundary near the

[7] See Texas Exhibits III and III–1, and Louisiana Exhibits WWW and XXX, which indicate that each State has enforced its laws without regard to a boundary drawn from the 1836 or 1845 coastline.

northern end of the jetties. While Texas uses the latter fact to support its contention that it has not acquiesced in a boundary line running midway between the jetties, it is equally supportive of the Special Master's finding that there has been no established lateral boundary in the Gulf of Mexico.

Moreover, contrary to the assertion of Texas (Tex. Br., p. 32), there is a Texas map in evidence which supports the Special Master's finding that Texas had acquiesced in a boundary running between the jetties. A line beginning at the southern end of the jetties was used when the State of Texas portrayed its statutory boundary on a map as part of a project to allocate areas of the continental shelf to its various coastal counties. La. Ex. NNN. According to Mr. Giles, co-author of the Texas statutory boundary, the map was constructed by drawing a line "south from the mouth of the Sabine." Tr., p. 296. The easternmost line on that map, running southeasterly from the river mouth, was an attempt to depict the Texas statutory line. Tr., pp. 303, 332.

Dr. Hodgson, a geographer, and Mr. Harrison, a surveyor, confirmed that each of these lines is depicted as beginning at the seaward end of the jetties. Tr., pp. 194, 197, 603. Thus, the only map exhibit of Texas' statutory boundary introduced in these proceedings indicates that the river boundary ends, and the offshore boundary begins, at the seaward end of the Sabine Pass jetties.

II

THE SPECIAL MASTER CORRECTLY FOUND THAT THE LATERAL BOUNDARY BETWEEN TEXAS AND LOUISIANA IN THE GULF OF MEXICO SHOULD BE A LINE EQUIDISTANT FROM THE PRESENT COASTLINE OF THOSE STATES

A. IT CANNOT BE DETERMINED HOW CONGRESS WOULD HAVE CONSTRUCTED A LATERAL BOUNDARY IN THE 1840'S

Texas and the United States have agreed throughout this litigation that the lateral boundary should be constructed by the median line, or equidistant, principle. The principle results in a line which is at all times the same distance from the nearest points on the coastlines of the adjacent States. Disagreement arises, however, concerning what features are properly considered part of the coastline for purposes of construction of the line. The Special Master found, and the United States agrees, that this is a modern dispute to be resolved through the application of present law to present facts. Texas contends that the boundary descriptions discussed at pp. 7–10, *supra,* refer to an inchoate lateral boundary, or a boundary in contemplation of law, which should be constructed as Congress would have done in 1845 had it considered the matter.

Texas' 1836 boundary act described the dividing line between the Republic of Texas and the United States as the Sabine River. It also claimed a 3-league marginal sea. Texas suggests that connection of these

two segments constitutes an inchoate boundary. But the Special Master properly found that the Texas boundary description provides no clue as to how the connection is to be made. Texas, recognizing the absence of a usable description, argues that Congress would have constructed a median line from the 1845 coastlines of Texas and Louisiana. The fact that Congress did not do this should end the matter. But assuming that the Special Master were required to determine what Congress would have done had it considered the question, the United States submits it cannot be demonstrated that Congress would have adopted the median line principle.

Although the median line is clearly the principal method used today under the Geneva Conventions on the Territorial Sea and the Contiguous Zone and on the Continental Shelf,[8] neither this method nor any other principle for constructing lateral boundaries had evolved by the mid-nineteenth century. Texas' citation (Tex. Br., pp. 25–28) of a few examples of the mid-point principle being used in the 1800's to establish a boundary between opposite, not adjacent, States, does not establish that Congress would have employed the equidistant principle had it considered constructing a lateral boundary between Texas and Louisiana.[9]

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[8] Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606; Convention on the Continental Shelf, 15 U.S.T. 471.

[9] Only one example cited by Texas (Tex. Br., p. 24)—*The Grisbadarna* case—involved a lateral offshore boundary. Scott, Hague Court Reports, 121–140 (1916). That boundary had been

The median line principle is today set out in Article 12 of the Territorial Sea Convention and Article 6 of the Continental Shelf Convention.

The history of these Articles sheds an interesting light on Texas' apparent contention that an equidistant lateral boundary was fixed as of 1848. In 1947, the General Assembly of the United Nations established the International Law Commission. That Commission was assigned the task of preparing draft Articles which might become the basis for international law governing rights in the territorial sea, the high seas and the continental shelf. Among the many issues facing the Commission was the proper means of establishing lateral boundaries separating the territorial seas of adjacent coastal States. The Commission studied the matter and, finding no existing law or practice which was conclusive of the question, sought the advice of a Committee of Experts.[10] Four alternative methods of delimitation were proposed for the consideration and comments of the experts.[11] These

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fixed in a treaty between Sweden and Norway and is often used as an example of a boundary drawn at right angles to the general direction of the coast, an entirely different principle from that advocated by Texas here.

[10] Whiteman, *Digest of International Law*, Vol. 4, p. 326 (1965).

[11] For a survey of the history of these principles, including a discussion of state practice with respect to alternatives and information on which States supported which proposals, see Whiteman, *Digest of International Law*, Vol. 4, pp. 323–335 (1965). The United Nations document, quoted *id.* at pp. 326–327, indicates that the United States representative to the International Law Commission in 1952 favored the "perpendicular to the coastline" method, used in the *Grisbadarna* case, rather than the median line.

were: (1) the continuation in the seaward direction of the land frontier between the two adjacent coastal States concerned; (2) the drawing of a line perpendicular to the coast at the point of its intersection with this land frontier; (3) the drawing of a line perpendicular to the line of the general direction of the coast; and (4) the line equidistant from the two coasts. The Committee recommended the equidistant principle. In the Report of the International Law Commission to the General Assembly covering the work of its eighth session, the Commission proposed an article on delimitation of the territorial sea of two adjacent States which incorporated this position. *2 Yearbook of the International Law Commission* 253, 272, (1956). Following that article the Commission commented on the alternative methods which had been considered, explaining the drawbacks of each. *Ibid.*

The Commission recognized a relationship between lateral boundaries within the territorial sea and those over the continental shelf and considered it important to find a formula that could be applied to both.[12] Consequently, continental shelf policies may also provide a useful tool in evaluating the alternative boundary proposals put forth in this litigation.

The Truman Proclamation of September 28, 1945, is not only credited with being the first national claim to the continental shelf but is also often cited as evidence that no principles, other than equity, existed for establishing lateral boundaries in 1945. International

[12] See *1 Yearbook of the International Law Commission* 75, 77, 79 (1953).

Court of Justice, *Yearbook 1968–1969,* p. 104. In claiming the adjacent continental shelf for the United States, President Truman stated: "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles." Proclamation No. 2667, Sep. 28, 1945, 10 Fed. Reg. 12303.

In 1848 only "equitable apportionment" was recognized in international law for the delimitation of lateral boundaries. The International Court of Justice commented extensively on the matter in its decision in the *North Seas Continental Shelf Cases,* Judgment, I.C.J. Reports, 1969, p. 3. That litigation was instituted when the nations bordering on the North Sea could not agree on the division of the continental shelf beneath that body of water. Denmark and the Netherlands argued that the equidistant principle was an established principle of international law which dictated the means by which the shelf must be allocated in the absence of agreement. Citing the Truman Proclamation, and referring to other coastal State proclamations which had followed it using similar provisions for resolving lateral boundary disputes, the court concluded (*id.* at 33):

> It was in the International Law Commission of the United Nations that the question of delimitation as between adjacent States was first taken up seriously as part of a general juridical project; for outside the ranks of the hydrog-

> raphers and cartographers, questions of delimitation were not much thought about in earlier continental shelf doctrine.

The court found that, even in 1969, the equidistance principles had not achieved the status of a rule of customary international law. It held that no other single method of delimitation was in all circumstances obligatory; that delimitation was to be affected by agreement in accordance with equitable principles and taking account of all relevant circumstances. *Id.* at 46, *et seq.*

It is clear from these examples that States constructing a lateral boundary in the mid-1800's would not have been bound to the equidistant principle. Prior to 1958, at least, only agreement and "equitable principles" would have been used in the construction of such a boundary.

As noted by the Special Master (Report, p. 39), there is not sufficient evidence in this case to reconstruct enough of the 1845 coastline to construct a median line even if that were the proper approach. The Special Master properly declined Texas' invitation to guess at the location of the 1845 coastline, speculate concerning the principles that would have been applied in 1845, and construct a lateral boundary based on that conjecture. Rather, the Special Master, finding that the boundary has never been established, correctly proceeded to establish it by an application of existing law to existing facts.

B. THE GENEVA CONVENTIONS OF 1958 PROVIDE THE LATERAL BOUNDARY PRINCIPLES TO BE APPLIED HERE

The present law regarding the construction of lateral boundaries is found in the Geneva Law of the Sea Conventions of 1958. Article 12(1) of the Territorial Sea Convention provides that:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

Article 6 of the Continental Shelf Convention contains almost identical language.

These articles provide the law governing this case. It is a well established principle of domestic law that international law is applicable to boundary disputes between the individual States. *Wisconsin* v. *Michigan,* 295 U.S. 455; *New Jersey* v. *Delaware,* 291 U.S. 361; *Louisiana* v. *Mississippi,* 202 U.S. 1.

Moreover, this Court has recognized that the United States is a party to the Convention on the Territorial Sea and the Contiguous Zone and has specifically adopted it for purposes of defining the coastline and

the limit of inland waters of the United States under the Submerged Lands Act. *United States* v. *California,* 381 U.S. 139, 165. In so doing the Court noted (*ibid.*) that:

> the comprehensiveness of the Convention provides answers to many of the lesser problems related to coastlines which, absent the Convention, would be most troublesome.

The construction of offshore lateral boundaries is one such problem.[13]

Mr. Richard Young, Texas' expert on international law, acknowledged the Convention might be helpful in resolving the issue before the Master. Tr., p. 1072. Attorney General Hill of Texas concurred when commenting in his opening statement that (Tr., p. 808):

> I know this Court wants to write this report on something * * * meaningful, I would say that the Geneva Conference ought to have a very high place in our law and in this kind of determination.

1. *In the absence of a boundary agreement, the Geneva Conventions prescribe a median line boundary.*—The Conventions establish two fundamental principles: First, prior to agreement, neither of two adjacent States may extend its lateral offshore jurisdiction beyond a median line, and, second, that line is measured from the baseline from which the territorial sea is measured.

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[31] See Griffin, W. L., "Delimitation of Ocean Space Boundaries Between Adjacent Coastal States of the United States," Proceedings of the Third Annual Conference of the Law of the Sea Institute, University of Rhode Island, June 24–27, 1968, p. 150.

This litigation attests to the fact that there has been no agreement concerning the lateral boundary in the Gulf of Mexico. As shown earlier (p. 13, *supra*), there is no dispute as to the proper method for constructing a median line. The parties disagree only on what features of the coastline may be used as basepoints from which to measure that line.

2. *The median line is measured from the baseline from which the territorial sea is measured—including harborworks.*—Any feature which is part of the coastline for purposes of territorial sea measurement may be used for median line construction. Article 8 of the Convention provides that harborworks are part of the coastline for that purpose. Texas cites (Tex. Br., p. 45) a number of cases in support of its contention that a boundary may not be changed by artificial or avulsive changes in the coastline from which it is measured. However, each of these cases involves a river boundary, not an offshore boundary. Cases concerning state boundaries within rivers are simply not in point.[14]

[14] These cases are irrelevant to the present proceedings because they relate entirely to inland water boundaries—not seaward boundary questions. Because of the relationship of seaward boundaries not merely to the coastal States involved but to the international community which utilizes and depends upon the adjacent high seas, international law has specifically recognized different rules for the adjacent seas than for inland waters, including different rules for delimiting the boundaries of the States adjacent to those waters. Although this proposition is almost too obvious to warrant further argument, we call the Court's attention especially to the right of innocent passage in territorial waters and the effect of artificial structures on the boundary delimiting those waters—neither of which is applicable to inland waters, such as rivers and lakes, which separate two countries.

Under the Convention offshore boundaries are measured from the coastline. This Court has consistently held that the coastline changes with all natural accretion, erosion, reliction or subsidence as well as artificial changes. *Hughes* v. *Washington,* 389 U.S. 290; *United States* v. *California,* 381 U.S. 139. It also has recognized that boundaries based upon a coastline are affected by artificial structures under both international and domestic law. *Id.* at 176–177; *United States* v. *California,* 382 U.S. 448, 449; *United States* v. *Louisiana,* 382 U.S. 288, 290.

Even if it is assumed that there has been an "inchoate" offshore boundary between Texas and Louisiana since the mid-1800's, that boundary has changed as the coastline from which it is measured, whether natural or artificial, has changed. Such boundaries continue to change until fixed by agreement or, as in this case, by litigation.[15]

3. *The line recommended by the Special Master is consistent with international practice in lateral boundary construction.*—Under international practice lateral boundaries have not been considered fixed prior to agreement between the adjacent nations. The testimony of Dr. Robert Hodgson, the government's expert geographer, and international boundary studies

[15] Mr. Young, Texas' expert on international law, agreed that under the Convention lateral boundaries do not become fixed until agreed upon. When asked whether a median line boundary would move from day to day as the coastline moves, Mr. Young testified that "[U]ntil defined, it presumably would." Tr., p. 1076. Texas' statutory boundary and enforcement practice are evidence that not even the State recognized the line which it now alleges to have been fixed for so many years.

compiled by him (U.S. Ex. QQQ) concerning the practice of nations in negotiating offshore lateral boundaries, established that foreign States have not attempted to reconstruct historic coastlines for purposes of applying the Convention's median line principle but have in fact gone to great lengths to construct the most up to date charts possible for use in their negotiations. Tr., p. 560. Dr. Alexander, Texas' expert geographer, confirmed that position, stating that he could recall no instance in which historic coastlines had been used. Deposition of Dr. Alexander, Tex. Ex. LLL–1, 54.

The most pertinent example of international practice is the recent agreement between the United States and Mexico that establishes lateral offshore boundaries in the Gulf of Mexico and the Pacific Ocean. U.S. Ex. SSS. Dr. Hodgson, who represented the United States in the negotiations leading to that agreement, testified that the United States and Mexico constructed new charts so that the baseline from which their median line was measured would be accurate to within a month of the time that the boundary was agreed upon. Tr. p. 565. This was done even though treaties between the United States and Mexico beginning in 1848 had referred to the offshore boundary and even though information on the location of the 1845 coastline near the Rio Grande was readily available to the parties. Tr., p. 566.

Notably, in the intervening years between the Treaty of Guadelupe-Hidalgo in 1848 (9 Stat. 922) and 1970, the mouth of the Rio Grande moved as much as a mile along the Gulf Coast. Nevertheless, the parties did not attempt to reconstruct a median line from the coast-

line as it existed at the time of the original and less precise treaty but instead constructed a line equidistant from the present coastlines of the two nations.[16]

Texas' entire theory of this case rests on the assumption that since Texas and Louisiana had territorial boundaries in the adjacent seas in 1845 there must have been a lateral boundary dividing their respective offshore areas[17] and that the specific location of that boundary was fixed at some time in the past. However, the evidence in this case establishes that Texas' theory is inconsistent with international law and practice, including the practice of the United States.

Dr. Hodgson testified that all of the countries which he considered in his international boundaries study had territorial sea claims prior to their negotiations on lateral boundaries. Nevertheless, he knew of none of these countries which insisted that a specific "inchoate" boundary line must always have existed and

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[16] As it turned out, the boundaries of Texas in the adjacent sea were diminished as a result of constructing the lateral boundary from the modern rather than the historic coastline. The State apparently made no objection either to the methods adopted or the outcome of the negotiations. See testimony of Dr. Hodgson, Tr., pp. 567–569.

[17] As this Court indicated in *United States* v. *Texas*, 339 U.S. 707, and *United States* v. *Louisiana*, 339 U.S. 699, neither Texas nor Louisiana possessed the adjacent seas as their territory or property. To the extent that those States had boundaries in the marginal sea, they could exercise certain police powers within those boundaries but only when the exercise of those powers did not conflict with the powers of the federal government, including its power over foreign affairs. *United States* v. *California*, 332 U.S. 19.

should be reconstructed as the permanent lateral boundary. Tr., p. 560.

International practice has, instead, been to construct a median line boundary from the present coastline regardless of any theory that there must have been some line separating the jurisdictions of adjacent coastal States in the past.

4. *The line recommended by the Special Master is consistent with practice among States of the United States.*—Various States of the United States have faced the situation found here and have agreed upon offshore boundaries extending seaward from the outer ends of the jetties. As noted by the Special Master, (Report, p. 31), Florida and Georgia have also a river boundary. That river also happens to have jetties at its mouth. Despite the fact that the jetties were constructed after the States were admitted to the Union, they have agreed that their river boundary extends to the seaward end of the jetties and that their offshore lateral boundary is determined with reference to the jetties.[18]

The States of Minnesota and Wisconsin adopted the same principle when they settled their common boundary in Lake Superior. That boundary was described in Wisconsin's Enabling Act as beginning at the Michigan/Wisconsin boundary in the lake and running "thence through the centre of Lake Superior to the mouth of the St. Louis River * * *." 9 Stat. 56. However, the boundary was not precisely fixed until

[18] This agreement has been approved by Congress. See 84 Stat. 1094.

a Compact was reached between Michigan, Wisconsin and Minnesota in 1948. Representatives of Minnesota and Wisconsin agreed upon a boundary made up of a series of straight lines, the turning points on which are equidistant from prominent points on the shorelines of the two States. By 1948 jetties had been built at the mouth of the St. Louis River, and these structures were used as part of the coastline from which the boundary was constructed. Minnesota and Wisconsin did not attempt to reconstruct their common boundary as it might have existed at some earlier time. They dealt with the coastline as it existed in 1948, which included the government jetties.[19]

The line recommended by the Special Master in his report is consistent with the requirements of the Geneva Conventions. Regardless of where the mouth of the Sabine is located, the line proposed is at all times an equal distance from the coastlines of Texas and Louisiana. The west jetty is manifestly a feature of the Texas coast. The east jetty is just as obviously a feature of the Louisiana coast, as this Court has previously held. *United States* v. *Louisiana,* 363 U.S. 1. The line runs squarely between those two jetties and then continues offshore so as to remain at equal distance from each. Because of the length of the jetties they are the only coastline features which affect an

[19] The final point on that boundary line is described as "the midpoint in a direct line at right angles to the central axis of the Superior entry between the tops of the eastern ends of the pierheads at the lakeward ends of the United States Government breakwaters * * *." 62 Stat. 1153.

offshore boundary of up to 9 miles and an equidistant line beginning at the midpoint of a line drawn between the tips of the jetties is a straight line perpendicular to that closing line.

5. *"Special circumstances," if any, in this case support the line recommended by the Special Master.*—In the alternative, Texas contends that the existence of the Sabine Pass jetties creates a "special circumstance" which requires that they be ignored in constructing a lateral boundary. Article 12 of the Territorial Sea Convention does provide that the median line principle need not be employed where special circumstances make it necessary to use other means. But the Special Master found, and the United States agrees, that if the jetties create a special circumstance, it is one which requires that they be considered in construction of a lateral boundary, not that they be ignored. Report, p. 45.

Texas and Louisiana have proposed boundaries which would intersect the jetties.[20] These proposed boundary lines would have the effect of making the seaward end of the eastern jetty part of Texas or the seaward end of the western jetty part of Louisiana, depending on which State's theory is being considered. In either case the effect would be to create a peninsula which is attached only to one State and yet

[20] One of Louisiana's alternative lines crossed the west jetty. However, that and other Louisiana proposals have apparently been abandoned in favor of the Special Master's recommended line, since Louisiana has filed no exception to his offshore findings and recommendations.

belongs to the other.[21] As Dr. Hodgson explained, one of the advantages of the equidistant principle is that it produces a boundary that does not intersect land forms as would occur under the lines proposed by the States in this litigation. Tr., pp. 588–589. Thus, adoption of the lines proposed to the Special Master by either Texas or Louisiana would be inconsistent with the underlying purpose of the equidistant principle.

Moreover, one of the special circumstances considered by the International Law Commission was the existence of navigation channels in the area of a lateral boundary. Texas' proposed boundary would encompass the entire navigation channel within Texas' jurisdiction. But the International Law Commission believed that where there is such a channel it should not be ignored as a relevant factor in locating the lateral boundary. The Special Master's proposed line assures that one-half of the Sabine channel between the jetties remains within the jurisdiction of each State.

Texas also suggests that a special circumstance exists here because Louisiana measures its Submerged Lands Act grant from the east jetty while Texas does not measure its grant from the west jetty.[22] The

[21] The fact that the peninsulas are artificially constructed is of no significance here. As we have shown above, manmade harbor-works are as much a part of a State's coastline as are natural features.

[22] Texas does not measure its grant from the jetty because it elected a 9-mile Submerged Lands Act grant measured from the historic coastline. Texas may, if it chooses, accept the standard 3-mile grant measured from the present coastline including the west jetty.

Special Master properly recognized (Report, p. 45) that the coastline used for Submerged Lands Act purposes is not necessarily the baseline from which the median line lateral boundary is constructed. The latter is the baseline of the territorial sea, and it is clear that the United States' territorial sea is measured from both jetties. U.S. Ex. NNN.

Texas emphasizes that witnesses for both sides agree that the construction of a median line using the east jetty and not the west jetty would result in an inequitable line. Tex. Br., pp. 39–41. But this is simply a straw man because no one has ever proposed such a line. The Special Master's recommended lateral boundary properly applies the same principles for Texas and Louisiana, being measured form the present coastline, including the jetties, of both States. The United States' expert did not testify that the Special Master's recommended line is inequitable.

The lateral boundary recommended by the Special Master is consistent with both domestic and international practice of the United States. It is measured from the same baseline that the States either use or could use in measuring their Submerged Lands Act grants [23] and that the United States uses in measuring its territorial sea. Dr. Alexander, testifying for the State of Texas, agreed that our national boundary is determined by reference to the jetties and that similar jetties, if they existed on our border with a foreign country, should be taken into account in constructing

[23] As noted by the Special Master, Texas does use its modern coastline for Submerged Lands Act purposes when it is landward of the historic coastline. Report, pp. 27–28.

an offshore lateral boundary. Tex. Ex. LLL–1, p. 50. Dr. Hodgson testified that he could see no reason for using different methods for determining lateral boundaries between our coastal States than those used to determine such boundaries internationally. Concurring with Dr. Alexander, he testified that he had never read the works of any authorities which suggested the use of different methods, and Texas has suggested no sound reason why a different method should be used. (Tr., pp. 745–746.)

Finally, the lateral boundary proposed by the Special Master is both practical and equitable. It is at all points equidistant from the coastlines of Texas and Louisiana, and it is a straight line for its entire length, precisely defined by reference to permanent points. It establishes a single, easily identifiable boundary for all purposes.

CONCLUSION

For the foregoing reasons, the State of Texas' exceptions to the Report of the Special Master should be overruled.

Respectfully submitted.

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