IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 54, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF FLORIDA AND TEXAS,
Defendants

ANSWER OF THE STATE OF TEXAS AND MOTIONS FOR SEVERANCE AND APPOINTMENT OF A SPECIAL MASTER

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Attorney General of Texas

May 1972

INDEX

LIST OF AUTHORITIES

Cases:

Page

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ANSWER OF THE STATE OF TEXAS

The State of Texas, herein appearing through its Attorney General, in response to the Complaint filed by the United States of America, and without prejudice to its Motions for Severance and Appointment of a Special Master as hereinafter set forth, respectfully answers as follows:

I.

The Complaint filed by the United States of America fails to state a claim upon which the relief it seeks can be granted. It fails to state any existing or contemplated case or controversy between the United States and the State of Texas.

II.

In answer to each paragraph of the Complaint filed by the United States of America, the State of Texas respectfully avers:

1.

Article I relating to the jurisdiction of this Court requires no answer.

2.

Article II is denied. Texas, as an independent nation in 1836 established its seaward boundary in the Gulf of Mexico three marine leagues (nine marine miles) from shore.[1] Texas is prepared to show by testimony and opinions of international law experts, if given the opportunity to develop such evidence as hereinafter requested, that three leagues was considered in international law to be a reasonable distance for seaward boundaries in 1836 and thereafter. While an independent republic from 1836 to 1845, Texas established and exercised its right as an independent nation to control fishing by domestic and foreign vessels within its territorial waters and seaward boundary, which extended three leagues from shore. Texas was annexed to the United States under an international agreement between the two independent nations.[2] If permitted to do so, Texas is prepared to introduce evidence before a Master showing diplomatic correspondence, documents and contemporary construction which will conclusively show that this annexation agreement between the two independent nations was entered into with the under-

[1]LAWS, REPUBLIC OF TEXAS 133 (1836). This three-league boundary was recognized and followed by the United States in the Treaty of Guadalupe Hidalgo, which fixed the boundary between the United States and Mexico in 1848 (9 Stat. 922-43; 5 MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES [Dept. State, 1937] 207, and in the Gadsden Treaty between the United States and Mexico in 1853 (10 Stat. 1031-37, 6 MILLER, *id.* at 293). See *United States v. Texas*, 339 U.S. 707, 717 and *United States v. Louisiana, Tex. et al.*, 363 U.S. 1, 51-64.

[2]5 Stat. 797, March 1, 1845; 2 GAMMEL'S LAWS OF TEXAS 1225, June 23, 1845; *id.* at 1228, July 4, 1845.

standing and solemn promise of the United States that Texas' boundaries as established in 1836 would be upheld and defended. This was the intent and effect of the Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848, Article V of which provided: "The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande . . ." 9 Stat. 922.

This also was the intent and effect of the Submerged Lands Act of 1953, which quit-claimed and confirmed in the State of Texas all of the natural resources, including "without limiting the generality thereof . . . fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life" within "its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union . . ." not to exceed more than "three marine leagues into the Gulf of Mexico."[3]

The Submerged Lands Act specifically released and relinquished to Texas "(1) title to and ownership of the lands beneath navigable waters within the boundaries . . . and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law . . ."[4]

Ever since 1836, Texas has continuously had and exercised the right to control fishing within the waters encompassed by its three league boundary in the Gulf of Mexico.

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[3] 67 Stat. 29; 43 U.S.C.A. § 1301 (b) (e).

[4] *Id.*, § 1311(a).

3.

Article III is admitted insofar as it relates to the State of Texas and its right to control fishing by either foreign or domestic vessels within the above mentioned three league boundary of the Gulf of Mexico.

4.

Article IV is denied. During the 126 years that Texas has been a member of the Union there has never been any misunderstanding with the United States or harm to the foreign policy and conduct of foreign relations by the United States due to this State's regulation of fishing within its three league boundary in the Gulf of Mexico. Texas is prepared to show by international law experts and by testimony and documentary evidence that its laws and regulations regulating fishing, and especially the protection of its multi-million dollar shrimp industry, does not and has not been contrary to international law or any international agreement to which the United States is a party.

WHEREFORE, the State of Texas requests that a decree be entered denying the relief sought herein by the United States.

CRAWFORD C. MARTIN
Attorney General of Texas

MOTION FOR SEVERANCE

The State of Texas respectfully moves for a severance of the cause of action filed herein by the United States against the State of Texas from the cause filed herein against the State of Florida, and in support thereof respectfully avers:

1. As indicated above, the domestic law, history, international law, exercise of jurisdiction, and regulation

of fishing by Texas within the waters encompassed within its three league Gulfward boundary is different in many respects from that which is applicable to Florida. This will require the introduction of evidence before a Master which does not apply to Florida.

2. This action was originally commenced by the United States against Florida alone by a Complaint filed in the United States District Court for the Northern District of Florida on December 28, 1970, Cause No. 1672, in which it was alleged among other things that (a) Florida was attempting to prohibit certain Cuban fishing boats from fishing for shrimp "more than twelve geographical miles from any part of the coast line of the State . . ." and (b) that Florida is claiming the controverted area between Cape Romano and the Dry Tortugas to be an historical Bay from whose headlands it seeks to measure its coastline contrary to the position of the United States in international law. These issues, more fully developed in the affidavit accompanying the Complaint of December 28, 1970 and the Memorandum of Law filed by the United States on the same date, do not exist in the cause of action against Texas. Our State is not claiming any historical bays and has not sought to stop foreign vessels or crews from fishing beyond our three league (nine marine mile) boundary. It is obvious from the above mentioned Memorandum of December 28, 1970 and the Memorandum filed in support of the Complaint herein that these issues, especially the matter of where the Florida coastline is to be measured from, are not common to both States. Texas should not be burdened with the expense and time which will be involved in the development of that part of the evidence and law which is applicable only to Florida.

3. Since early 1970, United States officials have been

negotiating with Florida officials in an attempt to resolve the controversy, and Florida has had since December 28, 1970 to prepare its defense. On the other hand, not one single official of the United States Government ever notified any Texas official or offered the courtesy of a discussion or negotiation to avoid this suit against Texas. This State received its first notice that the United States claimed the existence of the possibility of a claim or controversy when the Motion for Leave to File Complaint was served on the Attorney General of Texas in December of 1971. Under these circumstances, Texas obviously needs and is entitled to more time than Florida in preparing its evidence and filing its brief.

4. Florida has not to our knowledge asked for the appointment of a Special Master, while Texas does with this answer insist that a Master should be appointed to hear the evidence referred to in our Answer and in the Motion filed herewith.

WHEREFORE, the State of Texas respectfully prays that this cause of action insofar as it applies to Texas be severed from the cause insofar as it applies to the State of Florida.

CRAWFORD C. MARTIN
Attorney General of Texas

MOTION FOR APPOINTMENT OF A SPECIAL MASTER

The State of Texas respectfully requests that the Court appoint a Special Master to hear the evidence referred to in its Answer and to make fact findings and recommendations to the Court after a full and complete hearing. In support thereof, Texas respectfully represents that it has an abundance of diplomatic cor-

respondence, documents, evidence of contemporary construction and international law which will prove:

1. The validity and reasonableness of its three league boundary in the Gulf of Mexico as of 1836 and during its existence as an independent Republic, under which it established territorial waters and jurisdiction over fishing in such area.

2. That the international agreement between the United States and the Republic of Texas for the annexation of Texas in 1845 was based upon the understanding and promise that the United States would respect and defend the boundaries of this State as established by the Republic of Texas; and that such has been the intent and effect of treaties entered into between the United States and Mexico and the Submerged Lands Act of 1953.

3. That Texas has continuously had and exercised the right to regulate fishing in the waters of the Gulf of Mexico within three leagues (nine marine miles) from its shore; that such exercise of National jurisdiction from 1836 through 1845 and State jurisdiction since 1846 has never been heretofore questioned or protested by the United States or any foreign nation and is not contrary to international law or any agreement between the United States and any foreign nation.

4. That the protection of Texas' multi-million dollar shrimp industry through closed spawning seasons can be accomplished only by the enforcement of the State's conservation laws or through co-operative efforts of the State and Nation; that such laws and enforcement thereof violates no international law, no agreement between the United States and any foreign nation, and no existing foreign policy of the United States.

It is true that some of the above evidence is subject to judicial notice, but not all of it. The State will offer testimony concerning its historical exercise of jurisdiction over fishing in the controverted area; the lack of Federal exercise of such jurisdiction; the absence of any protest by the United States or any foreign nation; and testimony of experts in international law which will conclusively contradict the contentions of the United States concerning the effect of international law on the matters at issue with respect to Texas.

Under the due process clause of the Constitution of the United States, Texas is entitled to a full hearing before the tribunal empowered to perform the judicial function. That includes the right to introduce evidence and have judicial findings based upon it. *Baltimore & O. Ry. v. United States,* 298 U.S. 349 (1936); *Oregon Ry. & Nav. Co. v. Fairchild,* 224 U.S. 510 (1912). The State of Texas now seeks appropriate procedure under which it may exercise this constitutional right, because it believes the introduction of evidence is necessary in order properly to oppose the claims of the United States and to present its defenses.

The appointment of a Special Master to hear and take the evidence and report to the Court his findings of fact and conclusions of law has been the accepted procedure of this Court in the past in most of the original actions similar in nature to the present one. In an original action now pending before the Court, *Texas v. Louisiana,* No. 36 Original, October Term, 1969, Louisiana's request for a Special Master to determine the water boundary between the two states was granted. Considerable evidence of an historical nature was offered in that case.[5]

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[5]Special Masters were appointed by this Court in *United States v. Florida,* No. 52 Original, October Term 1971;

A complete hearing about the disputed documents, usages, and applicable principles of international law from 1836 to date is essential in order for Texas to have its full and fair day in court, and the magnitude of the evidence is suitable only for development, compilation and findings by a Special Master. The propriety of appointment of a Special Master in the circumstances of the present case is evidenced by the order appointing a Special Master in *Oklahoma v. Texas,* 253 U.S. 465 at 471 (1920):

> It is further ordered that the parties be permitted to take and present testimony in respect of the governmental practice on the part of all governments and States, concerned at the time, bearing upon the construction and effect of said Treaty as to the second question above stated.

WHEREFORE, the State of Texas respectfully requests that the Court appoint a Special Master to conduct a full hearing on the merits and report his findings and recommendations to the Court.

CRAWFORD C. MARTIN
Attorney General of Texas

United States v. Louisiana et al., No. 10 Original. October Term 1958; *United States v. Wyoming,* 325 U.S. 833 (1945); *Colorado v. Kansas,* 316 U.S. 645 (1942); *Kansas v. Missouri,* 311 U.S. 614 (1940); *Missouri v. Iowa,* 304 U.S. 549 (1938); *Texas v. Florida,* 301 U.S. 671 (1937); *Arkansas v. Tennessee,* 301 U.S. 666 (1937); *Texas v. New Mexico,* 298 U.S. 644 (1936); *United States v. Oregon,* 283 U.S. 794 (1931); *United States v. Utah,* 283 U.S. 65, 72 (1931); *New Jersey v. Delaware,* 280 U.S. 529 (1930); *Louisiana v. Mississippi,* 278 U.S. 557 (1928); *Massachusetts v. New York,* 271 U.S. 65, 81 (1926); *Wisconsin v. Illinois,* 271 U.S. 650 (1926); *New Mexico v. Texas,* 266 U.S. 586 (1924); *Oklahoma v. Texas,* 258 U.S. 602 (1921); *Georgia v. South Carolina,* 253 U.S. 477 (1920). (The citation of the order of appointment has been given where available.)