



No. 35, Original.

**In the
Supreme Court of the United States.**

OCTOBER TERM, 1983.

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

STATE OF MAINE, ET AL.,
(RHODE ISLAND, NEW YORK),
DEFENDANTS.

**Answer and Reply Brief of the State of Rhode Island to the
Exception of the United States.**

DENNIS J. ROBERTS II,
Attorney General,
State of Rhode Island,
72 Pine Street,
Providence, Rhode Island 02903.
(401) 274-4400

J. PETER DOHERTY,
Special Assistant Attorney General,
RFD Hawkseye Farm,
Sharon Springs, New York 13459.
(518) 284-2147

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Answer of the State of Rhode Island.

The State of Rhode Island denies the exception of the United States to the Master's conclusion that Long Island should be treated as part of the mainland under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. Additionally, Rhode Island denies that the baseline urged by the United States is correct.

Respectfully submitted,
DENNIS J. ROBERTS II,
Attorney General

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Reply Brief of the State of Rhode Island.

Introduction.

In its various briefs and oral argument before the Special Master, the United States repeatedly asserted that an Article 7 juridical bay cannot be formed between coastal islands and the mainland. Report of the Special Master, pp. 23, 30-32, 31, fn. 20. In its brief before this Court, the United States finally abandons that position for one which acknowledges the Court's general language in *United States v. Louisiana*, 394 U.S. 11 (1969) and yet construes it in an exceedingly narrow fashion.

The Special Master astutely reached this conclusion:

Long Island is so integrally related to the mainland that it should be considered an extension of the mainland. If

there is ever a situation where a large coastal island will be considered a part of the mainland so the water enclosed between the island and the coast can be a juridical bay, this is it.

Report, p. 47.

If the general language of *Louisiana* has any validity beyond that case, this Court after reviewing the factual record before the Master will certainly agree with the Master's finding on this point.

Argument.

THE GEOGRAPHIC, PHYSICAL, SOCIAL AND ECONOMIC TIES BETWEEN LONG ISLAND AND THE MAINLAND AND THE USES OF THE ENCLOSED WATERS BY MARINERS ESTABLISH LONG ISLAND AS PART OF THE MAINLAND UNDER ARTICLE 7.

It is a geographic fact that Long Island is, indeed, an island. Under Article 7, however, that does not end the analysis.

In *United States v. Louisiana*, this Court considered whether or not islands can be used as headlands of bays. The Court states:

No language in Article 7 or elsewhere positively excludes all islands from the meaning of the 'natural entrance points' to a bay. Waters within an indentation which are 'landlocked' despite the bay's wide entrance surely would not lose that characteristic on account of an additional narrow opening to the sea. That the area of a bay is delimited by the 'low-water mark around the shore' does

not necessarily mean that the low-water mark must be continuous.

Moreover, there is nothing in the history of the Convention or of the international law of bays which establishes that a piece of land which is technically an island can never be the headland of a bay. Of course, the general understanding has been — and under the Convention certainly remains — that bays are indentations in the *mainland*, and that islands off the shore are not headlands but at the most create multiple mouths to the bay. In most instances and on most coasts it is no doubt true that islands would play only that restricted role in the delimitation of bays. But much of the Louisiana coast does not fit the usual mold. . . .

While there is little objective guidance on this question to be found in international law, *the question whether a particular island is to be treated as part of the mainland would depend on such factors as its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast*. We leave to the Special Master the task of determining in the first instance — in the light of these and any other relevant criteria and any evidence he finds it helpful to consider — whether the islands which Louisiana has designated as headlands of bays are so integrally related to the mainland that they are realistically parts of the ‘coast’ within the meaning of the Convention on the Territorial Sea and the Contiguous Zone.

United States v. Louisiana, *supra* at 61-66 (emphasis added) (footnotes omitted).

In Rhode Island's view other elements which help determine an island's relationship to the mainland are (a) the existence of man-made structures connecting the island to the mainland, (b) commercial and social interaction between the island and the mainland, (c) the origin and formation of the island and the contiguous mainland, (d) man-induced alterations of the intervening waters and (e) navigational use of the intervening waters.

Applying the Court's criteria and those suggested by Rhode Island to Long Island should easily lead this Court to the same conclusion reached by the Master. Ten bridges and sixteen train, utility and water tunnels connect Long Island to the mainland and parts of New York City. New York Exhibit 13. Long Island roughly parallels the mainland and encloses an area of water slightly smaller in area than the area of Long Island. Further, the ratio of the length of the channel formed by Long Island and the mainland to the distance between Long Island and the mainland is a large ten-to-one. White, Nov. 12, 1981, pp. 150-158. Thus viewed, Long Island encloses a body of water whose shape resembles a bay.¹

Additionally, Long Island Sound and Block Island Sound are not routes of international passage. As such, the waters are used as a bay. McDougal, Jan. 12, 1982, pp. 46-7; Neary, Nov. 13, 1981, C 88-C91. Long Island Sound is also part of the Hudson River estuary. Swanson, Nov. 11, 1981, pp. 3-106-3-109. Long Island and Block Island were formed by glacial action many centuries ago, and the depth of the intervening waters at the East River, and therefore the utility of those waters, was increased only after extensive work by the Army Corps of

¹ The United States belittles the Master's bay-like analysis as result oriented reasoning. At the same time, the United States recites the criteria of *Louisiana* and thereafter only argues that past decisions using the criteria have only looked favorably upon mudlumps and such. If nothing else, such analysis avoids the question.

Engineers in the last century. U.S. Exhibit 47. Finally, the East River is not a narrow opening to the sea. It passes into New York Harbor, an Article 7 bay recognized by the United States.

Certainly the geography of Long Island and its socio-economic relationship with the mainland is different from that of the Louisiana delta or the rock islands of Maine or Alaska. The application of generic criteria and judicial judgment to the facts at hand, however, render the resolution of this issue relatively simple. "Long Island is closely linked with the mainland; it is situated such that a body of water that resembles a bay is enclosed, and the enclosed body of water is used like a bay." Report, p. 47. To hold otherwise renders *Louisiana* meaningless.

Conclusion.

The Court should agree with the Master's finding that Long Island should be treated as part of the mainland forming an Article 7 juridical bay.

Respectfully submitted,

DENNIS J. ROBERTS II,
Attorney General,
State of Rhode Island,

72 Pine Street,

Providence, Rhode Island 02903.

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