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INTERNATIONAL BOUNDARY STUDY

Series A

LIMITS IN THE SEAS

No. 44

STRAIGHT BASELINES: ARGENTINA

The Geographer
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STRAIGHT BASELINES: ARGENTINA

The Government of Argentina, by declaration and legislation, has created a system of straight baselines. The system, however, appears to relate more to claims based on the historic bay theory than to the articles of the Geneva Convention on the territorial sea, which apply to straight baselines. The system enclosed the estuary of the Rio de la Plata, which is shared geographically with Uruguay, and the gulfs of San Matias, Nuevo, and San Jorge. The Rio de la Plata estuary was included in the United Nations document (A/CONF.13/1) "Memorandum Concerning Historic Bays" prepared for the 1958 Geneva Conference on the law of the sea. The bases for the claims to historicity for the remaining bays are not known.

The joint declaration of Argentina and Uruguay of January 30, 1961 formalized the claims to the Rio de la Plata. It reads:

The governments of Uruguay and Argentina, with the proposition of establishing in a definite manner the external limits of the Rio de la Plata in consonance with international law and, especially, to fix the base line of demarcation of the territorial sea and its adjacent and contiguous zones.

Considering the statement contained in Art. 13 of the Convention on the Territorial Sea and the Contiguous Zone, as adopted by the Conference of the United Nations on Law of the Sea and signed by the governments of Uruguay and Argentina in Geneva (Switzerland) the 29th of April 1958, it is stated:

1. The external limits of the River Plate, dividing the waters of this river and those of the Atlantic Ocean, is the imaginary straight line that joins Punta del Este in Uruguay and Punta Rosa in Cape San Antonio, Argentina.

2. This dividing line will also be the basic line for establishing the respective bands of territorial sea and the contiguous and adjacent zone.

3. The legal system of the River Plate will continue to be, as it has been up to the present, that established in the Ramirez-Saenz Pena Protocol, signed in Montevideo the 5th of January 1910, and other international instruments that are still in force, and by laws and regulations of both countries in as much as they are applicable.

Signed and sealed, in duplicate, by both parties, in the city of Montevideo, Republic of Uruguay, this thirtieth day of January nineteen hundred and sixty-one.

In spite of the "historical bay" aspects, the declaration references Article 13 which states:

"If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks."

The Rio de la Plata does not conform with the normal concept of a river but of an estuary (See discussion, page 4.) Several nations have protested the action of the two states.

On December 29, 1966, the Argentine Government promulgated Law No. 17094 which states:

Exercising the powers conferred by Article 5 of the Statutes of the Argentine Revolution

THE PRESIDENT OF THE ARGENTINE NATION SANCTIONS AND PROMULGATES WITH THE FORCE OF LAW

Article 1. - The sovereignty of the Argentine Nation extends to the sea adjacent to its territory up to a distance of two hundred nautical miles measured from the line of the lowest tides, except in the cases of the San Matias, Nuevo and San Jorge gulfs wherein it shall be measured from the line which joins the capes that form their mouths.

Article 2. - The sovereignty of the Argentine Nation likewise extends to the seabed and the subsoil of the submarine areas adjacent to its territory to a depth of two hundred meters or, beyond this limit, to where the depth of the supra-adjacent waters permits the utilization of the natural resources of said areas.

Article 3. - The freedom of navigation and air navigation is not affected by the provisions of the present law.

Article 4. - The National Executive Power shall dictate within ninety days, counted from the date of promulgation of the present law, a regulation establishing the manner and terms in which the activities of exploration and exploitation of the natural resources of the sea may be conducted by foreign boats within the zone of two hundred nautical miles referred to in the present law.

Article 5. - (Purely of form.)

THE REASONS:

"To His Excellency the President of the Nation:

The Minister for Foreign Affairs and Worship has the honor to address Your Excellency in order to submit to your consideration the proposed Law on sovereignty in the Argentine sea, the text of which is attached.

It is of fundamental importance to delimit with precision the extension of the national territory and also to bear in mind that the laws are not sufficiently concrete insofar as the definition of the limits referred to are concerned. The present extractive activities of foreign ships in Argentine waters constitute a serious fact that cannot be ignored.

On the other hand the National Executive Power is firmly determined to carry on research work in steadily greater measure in all matters concerning the exploitation of mineral, plant and animal resources, with a view to greater utilization of Argentine waters.

Sovereignty must be an indivisible whole,

God be with Your Excellency."

December 29, 1966

ANALYSIS

The four bodies of water referred to in the legislation represent three distinct geographic features. The Rio de la Plata, as stated before, does not fulfill the geographic requirements for a river in spite of its generic designation in Spanish. The Rio is an estuary or a type of geographic gulf or bay as a consequence of its configuration and dimensions. The closing line delimited in the declaration measures approximately 120 nautical miles from Punta del Este to Cabo San Antonio. Were the water body to be considered a juridical bay or estuary, the closing line would exceed the maximum length permitted by the Convention. In contrast, the Convention does not prescribe a maximum limit for a river closing line. The Plata estuary, however, does not conform to the geomorphic concepts of a river. As a result, the provisions of the Convention's Article 7 on historic bays would presume to apply. The first six paragraphs, at least, pertain to bays which belong to a single state. The final paragraph on historic bays, presents a far more complicated situation.

Golfo Nuevo is a juridical bay within Article 7 of the Convention on the Territorial Sea.... The closing line measures approximately 9.5 nautical miles.

Golfo San Matias and Golfo San Jorge do not conform to the requirements of a juridical bay in that they can not be closed by 24 nautical mile closing lines. They both, however, would meet the semi-circle criterion and could qualify as oversized bays. The closing line for San Matias measures approximately 65 nautical miles while that for San Jorge, 123 nautical miles. Evidence to support its status as an historic bay has not been uncovered.

Within the framework of Article 4 of the Convention on the Territorial Sea, the four bays form nearly isolated, albeit pronounced, indentations along a generally smooth coast.