

# **Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas**

A Mediterranean and Adriatic Perspective

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waters and/or territorial sea.<sup>102</sup> Overall there seems to be no valid reason why Ireland and the UK could not jointly ‘confirm’ that the waters within the two bays have the status of internal (or even historic) waters and retain the two bays closed within a straight baseline.

#### 4.4.1.1 *The Sea of Azov and the Strait of Kerch*

Another interesting example is that of the Sea of Azov and the Strait of Kerch, bordered nowadays by Russia and Ukraine but which during the time of the former USSR had the status of a ‘closed sea’, and were therefore internal (historic) or in the words of some Soviet commentators even ‘inland’ waters. With the Joint Statement of the President of Ukraine and the President of the Russian Federation on the Sea of Azov and Strait of Kerch, 24 December 2003<sup>103</sup> the two States ‘confirmed their common understanding’,<sup>104</sup> that:

... *historically* the Sea of Azov and the Strait of Kerch are *inland waters* of Ukraine and Russia, and settlement of matters related to the said area of water is realized by agreement between the Ukraine and Russia in accordance with international law ....<sup>105</sup>

The importance of the 2003 Joint Statement derives also from the fact that with the latter, the two States impliedly confirmed that there was not an automatic conversion of the ‘internal-historical waters’ within the Sea of Azov and the Strait of Kerch into ‘territorial seas’, at the time of the dissolution of the former USSR. This may be implied particularly from paragraph 1 of the Joint Statement providing that ‘... the Azov-Kerch area of water is *preserved* as an integral economic and natural complex used in the interests of both States’.<sup>106</sup> The latter wording seems to imply a condominium (joint sovereignty) of the two States over the ‘Azov Kerch area’. The joint statement furthermore regulates in broader terms co-operation between the two States which could also be termed as a sort of *de facto* ‘joint management’ of the shared waters. The latter includes:

... their common activity in the sphere of navigation, including its regulation and navigation and hydrographical provisions, fishing, protection of the marine environment, environmental safety ....<sup>107</sup>

The *sui generis* status of the Sea of Azov and the Strait of Kerch seem to be *inter alia* perfectly in line with the often cited decision of the ICJ and previously of the

<sup>102</sup> Cf fn 97, p. 461.

<sup>103</sup> LOS Bulletin, No. 54, 2004, p. 131.

<sup>104</sup> Ibid, Preamble.

<sup>105</sup> Ibid, Paragraph 2.

<sup>106</sup> Emphasis added.

<sup>107</sup> Preamble, para. 5.

Central American Court of Arbitration regarding the legal status of the Gulf of Fonseca.<sup>108</sup> It should nonetheless be noted that according to the 2003 Joint Statement ‘military ships under the flags of other States can enter the Sea of Azov and go through the Strait of Kerch only by invitation of Ukraine and Russia, *agreed with the other State*’.<sup>109</sup> This in turn seems to deny a type of a ‘right of innocent passage’ which exists in the Gulf of Fonseca.<sup>110</sup> Independently of that, it seems difficult to agree with Degan that ‘... with one commonly recognized exception [the Gulf of Fonseca], the coast of all historic bays belongs to a single State’.<sup>111</sup>

#### 4.4.1.2 Delimitation of historic waters (India-Sri Lanka and the Mozambique-Tanzania Agreement)

There are at least two other interesting cases which illustrate the practice of States applicable to border bays. The first is the 1974 Agreement on the Boundary in Historic Waters and Related Matters (Sri Lanka and India)<sup>112</sup> with which the two countries delimited the ‘historic waters’ between Palk Bay and Palk Strait in the Bay of Bengal. It is noteworthy that the latter acquired its ‘historic’ status during the times of the British dominion in the region, therefore prior to the independence of both States. That case, coupled with the 2003 Joint Statement by Russia and Ukraine, casts some serious doubt over the position of Croatia<sup>113</sup> that historic rights can arise only after a certain State acquires its independence. Degan for example stated that:

... these rights can only appear after such an event [achievement of independence] and after many years of peaceful exercise of exclusive jurisdiction by the respective State, without protests from other States ...<sup>114</sup>

The fact that *strictly speaking* there are no legal impediments for the riparian States of a certain border bay to delimit the ‘historic’ and eventually also ‘internal

<sup>108</sup> It was held by the ICJ in the ‘Land, Island and Maritime Frontier Dispute Case, (El Salvador/Honduras: Nicaragua Intervening)’ that the status of the waters of the Gulf of Fonseca is *sui generis* (co-ownership), although essentially that of internal waters through which however there exist the right of innocent passage. Cf fn 5, para. 412. See also C.M. Gutiérrez Fons, *The Legal Status of the Gulf of Fonseca: Is a condominium of the enclosed waters possible?*, LL.M. Thesis, Malta: IMO IMLI, 2004.

<sup>109</sup> Cf fn 103, para. 4.

<sup>110</sup> Cf fn 108.

<sup>111</sup> See Đ.V. Degan, ‘Consolidation of Legal Principles on Maritime Delimitation: Implications for the Dispute between Slovenia and Croatia in the North Adriatic’, CJIL, Vol. 6, No. 3, 2007, p. 601 at p. 626.

<sup>112</sup> See also J. Charney and L. Alexander (eds), *International Maritime Boundaries*, Vol. II, ASIL, Dordrecht, Boston, MA and London: Martinus Nijhoff Publishers, 1989, pp. 1409–1419.

<sup>113</sup> See section 4.7.2.1.

<sup>114</sup> Degan, op. cit., pp. 625–626, para. 134.