The Estonian Straits

Exceptions to the Strait Regime of Innocent or Transit Passage

By

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The Significance of the Outer Limits of Maritime Zones

sea), whereas Estonia rejected this proposition in the Estonian-Latvian Border Commission in 1922.534

Since the restoration of independence of Estonia and Latvia in 1991, the coasts of the Gulf of Riga belong to two States. Thus, the Gulf no longer meets the terms of Article 10 of the LOSC on bays. Yet in the first half of the 1990s Latvia regarded the Gulf of Riga as a historic bay.535 Latvia’s interpretation of the Gulf of Riga as a historic bay was apparently founded on the ICJ’s judgment in the Gulf of Fonseca case, in which a Chamber of the Court found in the context of the concepts of joint sovereignty and historic bay that:

A State succession is one of the ways in which territorial sovereignty passes from one State to another; and there seems no reason in principle why a succession should not create a joint sovereignty where a single and undivided maritime area passes to two or more new States.536

On the basis of the uti possidetis juris principle,537 as recognised by the Court in 1986,538 the ICJ decided that the waters of the Gulf of Fonseca are held in a joint sovereignty of its three coastal States (“threelfold joint sovereignty”), excluding the 3-nm-wide belt of internal waters of the coastal States, over which each coastal State exercised its exclusive sovereignty.539

Analogously, it follows that the principle of State succession as applied in the Gulf of Fonseca case could have entitled Estonia and Latvia to declare the Gulf of Riga a historic bay upon their restoration of independence. On the other hand, the classification of the Gulf of Riga as a historic bay on the basis of the Soviet Union’s prior practice and legal framework would have been in contravention with the doctrine of State continuity as adopted by Estonia and

534 Eesti-Läti piirikomisjoni tegewuse tagajärjed. Postimees, 01.04.1922.
537 A similar conclusion had been reached in the study on historic bays as published by the United Nations Secretariat in 1962. See the United Nations Secretariat 1962, op. cit., p. 21.
Latvia. Estonia had declared on 8 October 1991 that it did not consider itself as a successor State to the Soviet Union.\(^{540}\) By recognising the Gulf of Riga as a historic bay, Estonia and Latvia could have indirectly declared themselves as successor States to the Soviet Union – not as continuators of the pre-1940 Estonian and Latvian republics.\(^{541}\) While Estonia, in principle, had not been against the legal concept of historic bay (and had even recognised it during the 1930 Hague Codification Conference)\(^{542}\) it rejected Latvia’s proposal to declare the Gulf of Riga a historic bay primarily on the grounds of State continuity with pre-1940 independent Estonia.\(^{543}\)

At the same time, Estonia also acknowledged the negative effect that joint sovereignty over the Gulf of Riga would have on its fishing industry.\(^{544}\) Prior to the interruption of Estonia’s and Latvia’s independence in 1940, the Gulf of Riga fell primarily under the regime of the high seas and, during Soviet rule, under the regime of the internal waters of the Soviet Union. Estonian and Latvian fishermen were able thus to catch fish in the entire maritime area of the Gulf of Riga. This favoured Latvian fishermen who carried out approximately two-thirds of the combined fishing effort in the Gulf of Riga prior to the restoration of Estonia’s and Latvia’s independence.\(^{545}\)

The Estonian foreign minister explained in Parliament that upon the establishment of a regime of joint sovereignty over the Gulf of Riga, Latvian fishing vessels would catch fish under their domestic legal framework that provides lesser protection for the fish stocks in maritime areas that reach even close to the Abruka archipelago.\(^{546}\) This, he remarked, could have caused irreversible damage to _inter alia_ the spawning grounds around Ruhnu Island.\(^{547}\)

It is also unclear whether the Gulf of Riga is situated wholly in the immediate vicinity of Estonian and Latvian coasts, which is a prerequisite for the application of the joint sovereignty of its coastal States. Distinct from the Gulf of Fonseca, which was recognised by the ICJ as a historic bay, the Gulf of Riga also includes extensive maritime areas that reach further than 12 nm to the sea.

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\(^{540}\) Oude Elferink. _Estonia: Law on the Boundaries of the Maritime Tract_, _op. cit._, p. 238.

\(^{541}\) See on the _uti possidetis_ principle in the context of the restitution of independence of the Baltic States in Mälksoo 2003, _op. cit._, p. 249.

\(^{542}\) Taska 1977, _op. cit._, p. 97.

\(^{543}\) See also Lindpere 2003, _op. cit._, p. 40.

\(^{544}\) Stenographic record of the First Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, _op. cit._


\(^{546}\) Stenographic record of the First Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, _op. cit._

\(^{547}\) Ibid.
as measured from the baselines. On the other hand, there are also examples of historic bays which cover more extensive maritime areas than the Gulf of Riga (e.g. Hudson Bay).

In its 1994 Maritime Code, Latvia declared the Gulf of Riga as enclosed joint internal waters of Estonia and Latvia in which their ships enjoy free navigation. Estonia did not approve this and sought to divide the maritime area of the Gulf of Riga between the two coastal States. Estonia had established its straight baselines in the Gulf of Riga under the 1993 Maritime Boundaries Act. Estonia thus vetoed Latvia's endeavours, since the preservation of the legal status of a historic bay necessitates that in the case of the disintegration of the bay's coastal State (in this case the Soviet Union), each of the new coastal States needs to recognise the continuous historical status of the bay.

In light of Estonia's rejection of the concept of the Gulf of Riga as a historic bay and the delimitation of the maritime boundary in the Gulf of Riga,

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548 See supra Section 6 of Chapter 3 in Part 2.