Practical Steps in the Negotiating Process

1. The Delimitation Process
2. Building and Preparing a Team
3. The Negotiations
4. Domestic Political Considerations
5. Elements of a Good Boundary Agreement
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Boundary delimitation

process

Boundaries should be established by agreement

Boundary treaty: permanent
Stumbling Blocks to Maritime Boundary Delimitation

- Political Will (Relations)
- Sovereignty Disputes
- Treaty interpretation
- Perceived geographic imbalance
Island Disputes

1. Dispute over the sovereignty of the island itself.

2. Dispute over the effect the island(s) may have on the delimitation of the adjacent maritime space.
JAPAN’S ISLAND DISPUTES

- KURILE ISLANDS
  “Northern Territories”
  (JAPAN-RUSSIA)

- LIANCOURT ROCKS
  (JAPAN- S. KOREA)

- SENKAKU ISLANDS
  (JAPAN-CHINA)
LIANCOURT ROCKS

(TAKESHIMA OR TOK DO)
Spratly Island
(occupied by Vietnam)
Thitu Island
(occupied by The Philippines)
Machias Seal Island
(United States)
Stumbling Blocks to Maritime Boundary Delimitation

- Sovereignty Disputes
- Treaty interpretation
- Perceived geographic imbalance
Beaufort Sea

U.S. -
Canada
Stumbling Blocks to Maritime Boundary Delimitation

- Sovereignty Disputes
- Treaty interpretation
- Perceived geographic imbalance
United States (American Samoa) - Niue

Equidistant line
Rockall
Boundary delimitation process

4 Stages

- Make boundary claim
- Active negotiations
- Interim arrangements
- Implementation
United States Extended Maritime Jurisdiction

THE UNITED STATES' 200 NAUTICAL MILE EXCLUSIVE ECONOMIC ZONE
As Specified by Presidential Proclamation, March 10, 1983
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Developing the Negotiating Position(s)

- Establish overall strategy (National Ocean Policy)
  - Boundary positions should be consistent
  - Should consider boundaries within overall foreign policy context
  - Should reflect identified national interests
Who identifies national interests?

- Cabinet level
- Inter-agency group, headed by high level officials
- Experts at working level

**Agencies:** Foreign Ministry, Defense, Transportation, Fisheries, Oil & Gas, Coast Guard, Customs, Enforcement
Identifying national interests

1. International relations with neighbors
2. Economic/commercial interests
   - Fisheries
   - Oil & Gas
   - Hard minerals/other
   - Transportation: surface, pipelines
   - Tourism
3. Military & strategic
The Negotiating Team

Head of Negotiating Team:

1. Picked by President/ PM/ Secretary of State
2. Legal Adviser of Foreign Ministry
3. Head of Country Bureau
4. Minister of one of the Agencies (Fish, Oil and Gas, MFA)
The Negotiating Team

Members of the Team

- Lawyers
- Technical experts
- Substantive experts (fisheries, oil & gas, enforcement)
Bases for Negotiations

International Law

- Law of the Sea Convention
- State Practice
- International Judgments (ICJ-Arbitrations)

Bilateral History
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Develop Working Relations With Neighbor

- Put actual negotiations on hold
- Work on joint fishery plan
- Jointly survey key coastal areas
- Conduct oil & gas study
United States - Mexico
“Western Gap”
Coastal GPS Survey Project
SUMMER 1998
Joint Survey Work
Isles Derniere (Raccoon Island) Louisiana
Raccoon Island
Taking positions with the PLGRs
Isle Dernieres (Raccoon Island) Comparing Surveyed Points to Chart
Arrecife Alacran
The search for Mexican basepoints

Submerged features

Rock (above water)
No boundary solution in sight: What then?

Interim measures

Other solutions:
- Joint Zones
- Partial delimitation
Interim (Provisional) Measures

Law of the Sea Convention-
articles 74 and 83

“...make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement.”
Beaufort Sea:
U.S. Oil Lease Sales
Escrow Accounts in Disputed Area
Fisheries Enforcement: Dixon Entrance

Interim Measures

> Enforce against nationals
> No third-party fishing
Other Possibilities

- Joint zones
- Partial delimitation ("gap")
- Limit jurisdiction for islands
- Put sovereignty disputes on hold
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Consultations ??

Questions to ask when developing the National boundary positions:

- Does the Constitution require that the treaty be ratified?
- If yes, by whom: a Senate or other ruling body?
- If yes, then politically, it would be wise to keep this body informed of negotiating process, and to seek advice.
- Advice from affected industries should be obtained.
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Elements of a Good Boundary

May be years later before a valid assessment can be made

Broad assessment:

→ **National perspective**: reflects the national interests that have been identified; can be ratified

→ **Bilateral perspective**: States remain amicable and on friendly terms as a result of negotiations
Elements of a Good Boundary

**Treaty Language**

- All users can apply treaty provisions in a consistent and identical manner
- Legal terminology is comprehensive and understandable
- Technical information is sufficient and applicable
The American Society of International Law

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