

Methods for Settling Boundary Disputes
Escaping from the Fetters of Zero-Sum Outcomes

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It should be interesting for an arbitration audience to not just look at an individual International Court of Justice (ICJ) case—such as the *Qatar-Bahrain* case presented here—but to develop a wider, deeper and more sophisticated understanding of the main methods of settling such boundary disputes and of their implications in terms of definitive solution and acceptance, cost, time and quality, and the range of benefits and costs that are likely to arise for the parties involved. I am therefore putting myself, not in the position of a litigator on behalf of a State, but rather in the position of a strategic adviser to a government party in a dispute. I will try, quite generally and in a preliminary way, to clarify to this government client what their options are, their alternatives.

In what situations does it make sense to try out which part of the dispute settlement method? It is essentially in the identification of strategies, of their risk-benefit and cost-benefit implications, of probabilities and likely outcomes so that the government client can make up its mind in a rational and informed way which allows it to assess the always very specific circumstances with established concepts and criteria.

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Here, I will look at the various dispute settlement methods. Litigation, the ICJ, is just one method. The other methods remaining are war (very traditional), bilateral negotiations, mediation and arbitration..

War used to be the traditional method of dispute settlement. It has become, not extinct, but less fashionable. Bilateral negotiation is the main form of settlement. I understand that 87 percent of border disputes get settled by bilateral negotiation.

Mediation as the form of dispute settlement has been recently used in the Belize-Guatemala and the Beagle Channel disputes. I am most interested in the current mediation for Belize and Guatemala and will discuss this in more detail further on. My interest has to do with my former advisory services (as the UN Inter-regional Adviser on Energy-Investment Policy) for governmental clients and my current international mediation practice. I wish to propose, and I am trying to develop a modern concept and practice guideline for professional application of mediation expertise to boundary disputes. My impression is that at present many, if not most, boundary disputes are settled in a mainly political way or, if litigated, very much in legal procedures which discourage the innovative search for optimal solutions.

Arbitration has been used in the Guinea-Bissau-Guinea and Eritrea-Yemen boundary cases. Litigation was chosen, mainly before the ICJ in The Hague, in recent cases opposing Namibia and Botswana, Bahrain and Qatar, Guinea-Bissau

This is an edited version of a short presentation. For a more extensive discussion of mediation in international disputes, see the author's comment in Oil-Gas-Energy Law Intelligence Newsletter, Volume 2 at: <<<http://www.gasandoil.com>>>.

and Guinea and, in 2002, Nigeria and Cameroon. (See *Annex*) An excellent study by Munkman in the 1970s provides a most helpful overview of earlier cases. For the government client, it is necessary to define the criteria by which to assess the usefulness of each option available. I have selected a few key criteria for this discussion. The first criterion is really the most important: the peace-making function of a dispute. To solve a dispute means coming to a decision but also means getting that decision accepted. Effectiveness in solving a dispute depends on the ability to reach a result and then gain acceptance by the parties directly involved and their constituencies. This is largely a matter of domestic politics; referenda, legislative ratification and developing a consensus of the domestic forces which count determines the chance of formal governmental acceptance. This is quite different from commercial arbitration, where you can, usually, though often at risk, cost and some uncertainty, enforce an award. Enforcing ICJ or arbitral awards against a sovereign State is, almost, impossible, though there are implications in terms of the forces of legitimacy, external pressure and using the external constraint in domestic politics. The ability to have a judgment—or a non-judicially achieved solution—that is politically accepted is the key criterion for success in all of these methods.

One should not, however, disregard the solution of doing nothing. Arguably, it is the most frequently chosen strategy and may, in many situations, be the most efficient one. There are many ways to paper over and camouflage the continuation of a boundary dispute, and there is great advantage in such camouflage.

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There are issues of efficiency, cost, time and effort. These are arguably less relevant here than in commercial arbitration. The question has, though, never been properly investigated. It could well be that recourse to formal, external ways of dispute settlement (including mediation) is often not practical due to resource constraints. The recently created WTO Legal Advisory Centre offers a way to help co-finance poor countries' litigation. The international community and the ICJ badly need such a mechanism. Justice is usually never had without money; the higher the quality of legal advice, the greater the chance of success. Market prices will tend to reflect approximately the quality of the legal advice. Poor countries face the same handicap in international litigation, arbitration and mediation as they face in WTO dispute procedures

There is a view that one cannot discuss the relative merit of one of the alternative methods of settling boundaries in the abstract, but only on the basis of the very specific situation. It is undoubtedly true that the relative weight and relevance of any particular criterion can only be identified in a specific situation. Nevertheless, both from an intellectual/academic perspective and from the practitioner's perspective, one needs to start with more general concepts and criteria for application to specific situations. Otherwise, all that remains is a morass of endless facets and facts and the loss of the sight of the forest by a focus only on an endless line of trees.

The main criterion relied upon here is the search for an "optimal" outcome. Optimality is defined, in reliance upon modern decision theory and financial analysis, as an outcome where there is either no solution that improves the

collective “utility”—that is, the quantifiable benefits of whatever sort for the two, or more, parties—or which improves at least the “utility” of one party. This is not the place to discuss the finer points of decision theory. It suffices to say that optimality as a criterion imposes a search not only for “compromise”—i.e. splitting the contested values and “assets” of whatever sort between the parties—but which looks for solutions which “create” additional value by innovatively going beyond the *petita* of the parties in a negotiation or litigation procedure. With optimal solutions, it is not only that the parties are better off, but that often it will be easier to gain political acceptance if there is more benefit to be gained (which can then be internally distributed to “buy” domestic support) than in the conventional compromise where each party in the end obtains less than it claims, and almost always less than its domestic constituencies expect and have been, unwisely, made to expect. This concept derives from decision theory, bargaining and game theory. It is key to the understanding of negotiations in any dispute settlement context.

Litigative methods tend to focus on a range of options between zero and 100. Courts and arbitration tribunals will almost invariably, and largely conditioned by the formal, strict and rigorous contemporary procedural rules, issue a determination of the division of the disputed assets in a range between zero and 100. There is even a formal principle which, if taken seriously, prevents courts and tribunals from taking the initiative to design a solution that improves the parties’ utility—*ne ultra petita*.

The concept of bargaining within a determined range of utility is called “distributive” or zero-sum bargaining, as distinguished from “collaborative”,

“integrative” or non-zero-sum bargaining. My thesis is that litigation, by its innate logic, its rules of procedure, conventions and psychology, unavoidably pushes towards zero-sum results; i.e. no value is added, but existing values are just distributed within the range defined by the parties’ claims. Parties’ claims need to narrow down the facts and issues to those which suits their arguments and litigation strategies. The litigation method suppresses all incentives to seek a solution that adds and creates value, and very strongly encourages a zero-sum approach (and sometimes even a negative-sum solution destroying existing value).

Let me try to give some illustration. International law has a very geographical, territory-focused approach. Its decisive criteria are not related, or not very much so, to the value of land but to land itself. That may reflect very much the post-Westphalian, very formalistic notions of State sovereignty. Here, clear and specific borders, specifically drawn, are of greatest importance. Diffuse and fuzzy notions of borders are more “thinkable” than we, being absolutely chained to 19th century notions of State territoriality, can easily appreciate. Most international law criteria applied, at least explicitly, in boundary litigation deal primarily with the geographical aspect—extension of land-boundaries, shape of coasts, offshore features—or they are related to the exercise of traditional powers of statehood that were born in the 19th century—the “effectivites”, licensing of offshore activities, military and other activities under the “colour” of the State.

These criteria have little if anything to do with the often dramatically different values of the land. Land values, though, can greatly differ. A hectare in the Scottish Highlands may be available for US\$ 1,000 but would cost perhaps 20-30

million Euros in the city of Geneva. Barren land or sea is virtually valueless, but the availability of underlying oil and gas deposits will suddenly multiply the value of land.

In international law, though, at least formally, such economic values are almost completely disregarded. The reason is probably the mental prison of the 19th-century and post-Westphalian obsession with territorial sovereignty; and perhaps also the fact that pre-20th-century thinking about land was largely influenced by the ownership of agricultural land—the normal property of the main diplomats of that time. I suggest that implicitly, outside the scope of formal reasoning, in confidential deliberations and perhaps even subconsciously, this is less so today. I assume that if one analyses most boundary dispute decisions, one will find that the value of the lands thus distributed is not utterly disregarded, even if it is not mentioned in formal criteria and explicit judicial reasoning. The suppression of the value of land, however, favouring as it does purely geographical and “effectivite”-oriented criteria, means that it is much more difficult not only to give to each party a fair share of the value of the “assets” available but also to think up creative solutions to improve the value of the assets for distribution, assigning territory to where it creates most value rather than where a geography-based rule prefers it.

Again, I think that such considerations play a much greater role implicitly and subconsciously than the formal judicial reasoning would suggest. Judges and arbitrators, after all, are intelligent men, and sometimes now women, who, while bound by the rules of the discourse of the profession, do not completely ignore the consequences of their decisions. But what I find is that litigative methods

focus on legal argument on the division of a disputed area rather than on designing an optimal solution. There is in such procedures very little possibility to explore, in a collaborative fashion, which solutions might encourage settlement, and even less so to design results maximizing utility. Bargaining and, even more so, mediation methods can lead to zero-sum results, i.e. a mere splitting of the claims. This is the sign of a particularly frozen process, locked-in positions and sometimes incompetent, legalistic and un-creative mediators and negotiators. But, in general, negotiating and mediating procedures are comparatively much more open to the search for non-zero-sum outcomes. There is not, as in the litigation process, an immanent logic of zero-sum decisions. The non-litigation methods can therefore unlock additional benefits by creative design to maximize each party's utility.

In the modern way of litigation—an increasingly formal, procedure-oriented process—international courts and arbitral tribunals largely apply similar methods. The logic of litigation tends (certainly not always and exclusively, but primarily) to prevail over a curious and creative approach searching for optimality, rather than a rule- and legal argument-based division of clearly identified legal claims. There seems to be little incentive and possibility in arbitration or litigation before the International Court of Justice to look for a particular settlement which maximizes utility and liberates itself from the stifling chains of zero-sum approaches

The only method which favours co-operative, integrative bargaining, a non-zero-sum approach, tends to be mediation, where it is possible to search for, identify,

formulate and try to get the parties on board for a solution which is *ultra petita*, i.e. beyond what the parties want in a litigation. In this alternative method for dispute resolution, one should at least make a serious effort to identify the relative value of the various assets in dispute for each party (almost always different for each party) and even look at assets—and third-parties—outside the dispute to put onto the table and to give to each party more than they could expect to obtain under a zero-sum bargaining approach. This distinction of the primarily zero-sum perspective of litigative logic versus the “value-adding” quality of mediation procedures should not overlook the fact that there is an interaction between both methods.

Negotiation—and mediation is a form of intensely managed negotiation—typically fails before litigation starts. One can therefore argue that the zero-sum approach of litigation is the necessary consequence of failed negotiation. But that would be too simplistic. Litigation is often seen as the only alternative when normal, unassisted negotiation has failed. My advice to clients is that they should proceed to litigation very cautiously, in view of the suboptimality normally engendered by litigation. They should try all other options first: mediation, but also the generally ignored option of “doing nothing”. Even during and after litigation, they should always bear the option of “facilitated, assisted and externally managed” negotiation in mind as a natural, and often superior, strategy.

I will now look at the main options available for boundary disputes (excepting, here, war and pure bilateral negotiation).

ICJ cases tend to take a lot of time. That may be an advantage if political passions run high. There is an advantage in so far as limited third-party involvement can be arranged under certain conditions. Does such international litigation maximize the utility, i.e. the amount of value that can be distributed between the two parties? In principle, no. Litigation logic leads to both parties staking out mutually exclusive claims, saying: "Well, this is all ours." The court, at best, comes out with a compromise which may be politically acceptable. This assessment applies as well to arbitration.

Modern litigation is largely a zero-sum game. It may have been different in the tradition of the "political arbitration" of the past. The *Guyana-Venezuela* umpire shuttled back and forth between both parties to seek a politically acceptable compromise; perhaps he was even ready to go beyond the compromise and look for adding value. But such mediation-in-litigation styles are now discouraged (and this umpire's approach was later used to try to discredit the Arbitral Award of 1899). Modern arbitrators and judges, in particular in the common-law mold, are very scared of being seen to do more than simply decide between the claims. Any "meddling" and "peddling", i.e. pro-active approaches to add value and maximize utility, are easily used to set aside awards or judgments with allegations of partiality. Regrettably, passivity and reactivity have become synonyms for impartiality. The criticism of *exces de pouvoir* is now easily at hand, and recognizing and enforcing courts have not been self-confident enough to relegate such arguments to the dustbin of legal sophistry where they belong.

However, I suggest that, as with all general statements, this may be a trifle too general to properly describe reality. If one looks at the ICJ's recent awards (e.g. *Qatar-Bahrain* and *Nigeria-Cameroon*) and at some recent arbitral awards on boundaries (e.g. *Eritrea-Yemen*), then one will find indications that the learned judges are aware of the idea that each party should get something of value. There seems to be an understanding that law has to be applied to avoid unrealistic and, in terms of value, hugely unequal results. The full toolbox of legal arguments is always available to provide a reasoned justification for several outcomes. There are also indications that the judges, in particular those with a good feeling for political and economic reality, do appreciate that often collaboration would produce a win-win outcome. There are hints and hortatory admonitions. I still suggest, however, that if one compares such litigation with mediation, the walls hemming in pro-active judicial search for outcome optimality are still so high that they are insuperable in practice. The zero-sum approach mercilessly dominates litigation, even if some participants at times have glimpses at the paradise beyond its high walls.

I suggest that ICJ litigation works best when governments are definitively unable to settle, even within an intensely and externally managed process, when external acceptance is very difficult, and when all other means are exhausted. You will actually find that the three methods are often used consecutively. There can be mediation after an award or before an award, as we have seen in the *Qatar-Bahrain* case. There could also be mediation within a judicial or arbitral procedure. That seems not to be practised in international litigation, though it is now practised in domestic litigation. There is no reason why a judge/arbitrator could not suggest to the parties at a certain point in the proceedings that it

would be a good moment to try to explore less zero-sum approaches than litigation. The best moment may be when the main submissions have been made, the arguments exchanged and the facts presented. At this point, the judge and the parties can assess much better the likelihood of a judicial outcome as well as the limitations of a judicial decision as compared to the much richer potential for identifying added value through assisted negotiation.

While it seems that political acceptance may often be higher after proceedings before the ICJ, this is not always the case. In the 2002 decision by the ICJ in the Nigeria-Cameroon case, there is not yet political acceptance, although there is a prospect of mediated re-interpretation of the Award. A question to be asked here is if the availability of a two-tier judicial procedure (i.e. an appeal facility) could increase political acceptance. In the Guinea-Bissau v. Guinea boundary dispute, there was (*de facto* but not *de iure*) an appeal to the ICJ against the decision of a very unfortunate arbitration tribunal which seems to have settled the matter. The European Court of Justice as well as the WTO system for dispute settlement (now the most active international tribunal) have appeal procedures.. The ICJ and most arbitral tribunals, though, do not have an appeal process. It may be that in situations with very heavy domestic agitation an appeal could exhaust the parties to a greater extent, reduce the usual accusation of bias of the tribunal and therefore increase the chance of acceptance. One should think in this context also of the *de facto* appeal against ICSID [International Centre for Settlement of Investment Disputes] tribunal awards to the ICSID Annulment

³ See on the WTO Appeals Body C. Ehlermann, Journal of World Trade, 2002

Committee or the nudging towards legal quality available under the rules of some commercial arbitration bodies, notably the ICC Court of International Arbitration.

Contemporary arbitration does not appear to be that much different from ICJ litigation. It is largely litigation and is application of law. The elements of political arbitration that existed in the past—and it is disputed to what extent they did exist—seem to have gone underground. I suggest that there may be some rather clandestine survival of pro-active, mediation-like approaches. But, just as witchcraft and other pagan practices were eradicated and driven underground by Christian persecution, so the very formal and legalistic rules on judicial control of arbitration have driven practices that are perfectly legitimate from a commercial perspective out of the realm of legal reasoning and visibility.

The one advantage of arbitration is that the parties can choose their arbitrators. Much of the domestic rejection in Nigeria of the recent ICJ *Nigeria–Cameroon* Judgment made much of the presence of “post-colonial” judges deciding on the validity of colonial treaties. This result could have been avoided by choosing arbitration. This is what the parties did in the disastrous *Guinea-Bissau v. Guinea* case, but, at least in this case, its result was not clearly superior.

Arbitration depends on the quality of the arbitrators. Being able to choose them means that there is an upscale benefit and a downside risk. The ICJ offers a “pre-selected”, already available, well-known and integrated, large team of

⁴ This is supposedly and formal not an appeal against the award, but looks very much functionally as the equivalent of the appeal on limited grounds found in the French „cassation“ and the German „Revision“.

judges (paid by the UN). *Ad hoc* arbitration tribunals, on the other hand, cannot rely on an established team with its own culture, esprit de corps and a habit of working together and through the usual personal and cultural differences. Tenured judges have to work with each other in a continuity of situations and therefore tend to work together better. Situations such as the *Guinea-Bissau v. Guinea* arbitration, where one arbitrator disappears and the—supposedly decisive—chairman presents an award he criticizes publicly, i.e. a situation that cannot inspire trust and acceptance, are therefore very unlikely.

If legal quality is a key criterion which may help to set a precedent and enhance the chances of acceptance, then the ICJ should win. Arbitral tribunals should, theoretically, be more attuned to the specific interests and arguments of both parties and perhaps be able and willing to carry out, **even if in an underground of underlying motivation**, some search for greater optimality. This is quite a speculative position, however, and hard evidence is missing.

Arbitration may be more acceptable if both governments want a settlement but face internal constraints, such as referenda, self-centred politicization or ratification, on formally agreeing on a solution. Arbitral tribunals should be more suitable for effectively endorsing with their own authority a pre-packaged deal discreetly submitted by both parties. The *Kuwait-Aminoil* Award of the early 1970s is an example where, reportedly, the Arbitral Tribunal in effect endorsed formally a settlement quietly prepared by both parties. Arbitration here works as a face-saving device for governments that are able to strike a deal but cannot be seen, in the domestic context, agreeing with each other. I am doubtful that this game can be played effectively with the ICJ.

I suggest that it could often be more difficult to get acceptance of arbitral awards than of ICJ judgements. There are a number of reasons. There is no two-tier arbitration which would increase the acceptance (excepting ICSID procedure, which cannot be used for boundary disputes). As arbitration tends to come, like ICJ litigation, with a zero-sum approach, but with less international authority, acceptance should be more difficult. Modern formality and rule-bound procedures leave less room for creative design of settlements. One can envisage situations, however, where well-designed arbitration has its advantages, such as in composition of an arbitral tribunal without judges whose nationality, reputation or culture would make them an easy object of criticism in the domestic political context. For example, a purely Islamic arbitration tribunal may in some cases be more acceptable in Islamic countries than the universalist composition of the ICJ.

Mediation worked well in the *Beagle Channel* case. It is currently operating in the *Belize-Guatemala* case. Its legal quality and precedential value, however, is the lowest. In fact, it would be very wrong to look at mediation with the eyes of a litigation lawyer. Mediation is probably least effective if carried out by lawyers with a litigation (rather than a negotiation) background. A litigator's reflexes are grounded in assessing, with legal expertise, the legal validity of arguments on the division of assets. He/she has great difficulties in, or even is probably incapable of, applying the creative, searching and lateral thinking process of consultation, communication and joint search for solutions, including the persuasion of third parties to enter into the negotiation that is necessary for mediation. In my experience, the worst risk for mediation is the presence of sharp lawyers with a legalistic instinct insisting on the legal righteousness of their

clients' case rather than the much more commercially oriented search for a new and optimal "business model" of collaboration. Mediation is, therefore, better carried out by trained negotiators—e.g. lawyer-negotiators, investment bank negotiators, politician-negotiators or even diplomat-negotiators—than by adversarial litigators or command-control habituated executives.

The main benefit of a well-run mediation is that this is the one method where it is possible and practical, indeed imperative, to escape explicitly, not just in hidden ways protected from the eyes of a litigator looking for a subsequent setting-aside argument, from the zero-sum bargaining approach. If one looks at the proposals of the mediators in the *Belize-Guatemala* case, one will see that they have not just said: "We will meet somewhere in the middle between the claims; let us split the difference." They said: "We will create joint zones. We will create common economic activities. We will even go to Honduras, an uninvolved third party, and ask them to give us something", which Honduras did because it was of interest to this third party. So what they have packaged together is what very smart negotiators would have done had they not been subject to negotiating blockages.

Mediation is therefore the one way to escape from the fetters of the logic of zero-sum decisions. It is, however, a method, which requires that both parties, or strong forces in both parties, do want to co-operate. As regards cost-time, mediation is probably superior to litigation. Third-party involvement is possible (Honduras in *Belize-Guatemala*), including their non-legal participation. With respect to the objective of maximizing reciprocal utility, mediation is significantly superior to litigative methods. There is no legal and procedural constraint in

mediation against looking outside the immediate, self-righteous and antagonistic claims, but there is indeed an imperative for any competent mediator to seek solutions *ultra petita*, such as was done in *Belize v. Guatemala*. This method of alternative dispute resolution can also work when other means have been exhausted, for example as a method of post-litigation negotiation.

Acceptance of mediation is highest when both parties, or someone in authority in both parties, seriously want a resolution and want to avoid litigation. It is also highest when it is manifest that litigation would destroy valuable opportunities for jointly creating new value and leave each party with a low benefit and a high risk of litigation outcomes. The chance of gaining acceptance for mediation is probably lowest when an external authority—a “scapegoat”—is needed, because governments have to agree to mediation results and therefore bear a higher visible responsibility for mediation results than for litigation results. Mediation can help to unlock bargaining positions and the confrontation engendered by litigation.

Regarding immunity from political pressure, all three procedures provide for a face-saving way out. Arbitration depends on arbitrators, but pressure on the arbitrators can be high. In ICJ litigation, political pressure is possibly less, but judges can reflect fundamental political attitudes (once: East–West–South; now: Islam–West). In mediation, pressures are to be converted into a search for what is of benefit to each party; i.e. the mediator has to deal with pressure groups. The competent mediator will not reject pressure but will seek ways to integrate pressure groups into both contributors to a resolution and beneficiaries of such solution.

Let me therefore conclude with a constructive proposal. As with domestic litigation, arbitration rules, arbitration clauses and the rules of procedure of the ICJ should be modernized. Typically, these are slower to adapt to contemporary developments than is domestic litigation. Domestically, pressures on the workload of the courts tend to be greater, public expenditures are more in the public eye and experimentation with measures to reduce the caseload and design more welfare-efficient institutional arrangements start earlier. There should be, in analogy to modern court reform (e.g. the recent Woolf reforms in English commercial law) a power of the court/tribunal to order mediation before, during and at the end of the case. Mediation procedures can be combined with litigative solutions. For example, litigation could be suspended after arguments have been made and evidence taken. The court could discuss its legal assessment with the parties and give them a cooling-off period for trying out mediation with court- or party-appointed mediators.

I have more questions about boundary dispute litigation and conventional public international law criteria than can be investigated in this presentation. For example, I wonder if formal litigation about precise delimitation of territorial jurisdiction is not very much reflective of the specific spirit of 19th-century statism. Is it still appropriate for an era of globalization where sovereignty gets diluted in many ways? Why should such dilution not extend to the strong focus, or even obsession, of State apparatuses on very strict and formal boundaries? In the past, boundaries were more fuzzy: strictest at the heart of a power and gradually weaker as its power extended and, at the same time, weakened. Populations often had no clear-cut nationality. Would a more contemporary,

global-society concept not rather suggest such collaborative approaches as joint petroleum development, shared sovereignty or functionally divided jurisdiction, all in accordance with international rather than national principles, rules and guidelines)? If this were so, then the traditional methods of formal boundary determination would have to give way to methods that are more suited to facilitating the negotiation of shared sovereignties or of divided or collaborative regulatory jurisdictions than are conventional methods.

Finally, I would like to at least raise here the idea of a more “feminist” approach to international law. The justification of such an approach has been recently raised in an article by professors Chinkin and Charlesworth (in ICLQ). Recalling the distinctions the 19th-century savant Johann-Jakob Bachofen made about “matriarchal” and “patriarchal” modes of thinking, could it not be that the era of strict sovereignty, with its clear-cut borders and no duty to look beyond them and to collaborate, is rather an expression of patriarchal perspectives on international law, while more feminist, or feminine, perspectives would emphasize the sharing of border areas and activities rather than the rigorous separation of national borders, more collaborative ventures across borders and more sharing and collaboration in regulation rather than strict distinctions? In this sense, a more globalization-centred view with less attention to the rigour of national sovereignty in boundary delimitation might well be compatible with a feminist perspective on international law, and even with a more economic focus on maximizing benefits by breaking out of the strictures of the zero-sum straitjacket.

What about a more “feminist” concept—emphasizing co-operative/fuzzy solutions rather than clear-cut, formal, separate borders? Is this not inherent in joint petroleum development and other cross-border co-operative schemes, such as Kazakhstan and Russia, or Belize and Guatemala?