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Islands and Exclusive Economic Zones in Southeast Europe
International Law Solutions

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Introduction

According to Garrett Hardin[1] the unrestricted access to a resource ultimately leads to over exploitation to the detrimental of its potential users. The freedom to do as one pleases causes, inevitably the tragedy of the commons. Only by the management of the resources, defined as commons, could the certain “freedoms” be protected and the resources sustained throughout the years.

In the past century, and almost until the 60’s, the natural resources that were beyond the jurisdiction of a state (e.g. the maritime resources in the sea beyond the territorial waters) were not under any regulation status provided by the international law, concerning the rights for their exploitation. This regulation gap was filled by several bilateral or multilateral agreements for the management of the profits of these resources (commons regimes). However, these regimes did not, usually, guarantee an equitable and sustainable distribution of profits[2].

One of the recent problems that the coastal states of South East Europe have to anticipate is the delimitation of their maritime borders and maritime zones beyond them, according to their rights derived by the United Nation Convention on the Law of the Sea (UNCLOS). The aim of this thesis is to elaborate on the role of the islands in the delimitation of the Exclusive Economic Zone (EEZ). There will be a thorough analysis on how islands affect the delimitation process. The main question to be answered is:

“Do the islands of the coastal states of Southeast Europe have the right of an Exclusive Economic Zone? What are the limitations and the special circumstances that should be taken into account?”

The delimitation of maritime boundaries in general and specifically the EEZ delimitation is very important for the coastal states because of the exploitation of the subsoil and the fishery. Also, recently, states are showing great interest in the protection of the environment and the preservation of the maritime ecosystem. The importance of the Exclusive Economic Zone is demonstrated by the unusually large number of disputes between states that have been submitted to the International courts.

[1] Garrett Hardin, The Tragedy of the Commons, 162 Science 1243-1248 (1968).
[2] Law of the sea in dialogue, Holger Hestermeyer, Nele Matz-Luck, Anja Seibert-Fohr, (p.99)

The United Nation Convention on the Law of the Sea (UNCLOS) of 1982 is the main international law document that regulates the rights of the establishment of maritime economic zones. These zones are:

a. The continental shelf:

"The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."[3]

b. The exclusive economic zone:

"In which the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds"[4].

The basic difference between the continental shelf and the exclusive economic zone is that the former is an exclusive right of the coastal state and it does not depend on occupation or any express proclamation[5], whereas the EEZ has to be proclaimed by the coastal state and its width should be a product of agreement in case of opposite or adjacent states.

In the First chapter there will be a reference of the theoretical context of the International law of the sea regarding the status of the islands and an extensive analysis of the article 121 of the UNCLOS. We will focus on the multiple interpretations of the definitions of the term "rock" and the characteristics that distinguish rocks from islands. Also there will be a definition of the basic international law of the sea notions such as the Exclusive Economic Zone (EEZ) and the baselines used for the delimitation.

[3] UNCLOS Article 76
[4] UNCLOS: Article 56
[5] UNCLOS: Article 77

In the second chapter there will be an analysis on the delimitation of EEZ in South East Europe in general and all the problems that emerged. There will be a thorough analysis on the delimitation issues in the Adriatic Sea and then we will specifically focus on the dispute between Greece and Turkey regarding the continental shelf and the possibility of an EEZ delimitation. Also we will examine the attempt of EEZ delimitation between Greece and Albania which ended in rejection by the Albanian Parliament. Finally, there will be a reference on the delimitation disputes of Montenegro and Bosnia and Herzegovina.

In the third chapter there will be an analysis of International Courts' modus operandi on the matters of maritime zones delimitation disputes by the examination of three cases of International Courts' awards that involve islands and are of particular interest for understanding the delimitation process.

Finally there will be the conclusive revision in which it will be argued that islands do have the right on EEZ regardless their size and their distance from the mainland.

Chapter 1

The relations between islands and the Exclusive Economic Zone (EEZ).

The maritime relations of the Coastal States throughout the centuries were, mostly, regulated by customary rules or bilateral and multilateral legal acts among them. These agreements were only applicable in a limited geographical region and served very specific scopes. Only in the last 60 years the international jurisprudence started to familiarize with the elaboration upon the preparation and signing of international Treaties for the regulation of the uniformity of maritime law in a global level. The United Nations during the half of the twentieth century proceeded in the proclamation of a number of international treaties in order to adjust the maritime law. In the first UN Conference on Law of the Sea in Geneva in 1958, four treaties were signed and became into force:

a. Convention on the Territorial Sea and Contiguous Zone.

b. Convention on the Continental Shelf

c. Convention on the High Seas

d. Convention on Fishing and Conservation of Living Resources of the High Seas.

The most important development on the regulation of the law of the sea was achieved in the third UN Conference on Law of the Sea in 1982 in Montego Bay (Jamaica). The majority of the participating members consigned the United Nation Conference on the Law of the Sea agreement (UNCLOS) which regulates the relations of the states regarding the maritime issues. In order to define the concept of the “Exclusive Economic Zone (EEZ)” and the legal meaning of the “Island” we will use the articles of the UNCLOS.

i. Legal definition of Island

According to article 121 of the UNCLOS[6]:

"*An island is a naturally formed area of land, surrounded by water, which is above water at high tide… the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."*

From the definition of the island as it is written in the article 121 of UNCLOS, an island is a piece of land surrounded by water that is always above water (at high tide). This geographic formation has the lawful right to all maritime zones. Namely, the Territorial Sea, the Contiguous Zone, the Continental Shelf and the Exclusive Economic Zone. However, the islands that cannot be inhabited or sustain economic life on their own, have not the right to establish continental shelf or exclusive economic zone. In all the other cases, the establishment of maritime zones is the same as of that of the coastal states, based upon the same principles of the UNCLOS. In addition to this, the islands can be used as base points for the straight baselines in the delimitation of the territorial sea[7]. This is a customary rule and it is binding even for the states that are not consigned in the UNCLOS.

However, there is a great debate on what is called an island. For example, Great Britain is an island, the state of Malta is also an island, even the Continent of Australia is an island too, etc. Also, islands are all the islands, individually, of an archipelagic state regardless of their size. The size is a characteristic which is neither absolutely clarified nor defined precisely in the article 121 of UNCLOS[8]. Instead, the size is, probably defined in comparison with the term "rock" that cannot sustain human inhabitation or their own economic life, consequently they do not have the right to establish continental shelf or EEZ. This discrimination defines the legal status of the rock in comparison with an island, and specifically that the rocks have the right of territorial sea and contiguous zone.

[6] UNCLOS: Article 121
[7] UNCLOS: Article 7
[8] Definitions for the Law of the Sea, George K. Walker- Martinus Nijhoff (2011)(p.53)

More analytically, paragraph 3 of article 121 of the UNCLOS raises many interpretation problems because it does not specify in geographical terms the meaning of "rock" and also, it does not explain the phrase: "*which cannot sustain human habitation or economic life of their own".* As regards the issue of the difference between islands and rocks, during the International Law of the Sea convention, many opinions and trends were presented, in favor of including geographical definitions for islands, islets and rocks (without implementing size criteria) but in the end they were not adopted[9]. In the end, a single definition of the island was adopted, but some unimportant island formations are excluded from the extended maritime zones recognized by the international law. So, we can assume that there is a conflict between articles 121 (paragraph 3) and article 13 (paragraph 1) of the UNCLOS in which it is written that a reef that is situated totally or partially inside the territorial waters measured from the mainland, can be used as a base line for the establishment of the territorial sea zone and, thus, all the other maritime zones. This means that rocks are less influential in the determination of the outer limits of the EEZ and the continental shelf, than the reefs. However, according with the ICJ award in the case of Qatar and Bahrain maritime delimitation (16 March 2001), it is obvious that the contradictory rights of two states are eliminating each other and the reefs are not taken into account in the final delimitation agreement[10].

As regards the sustainability of habitation, the legal recognition of further rights on an island characterized as "rock" lies upon its ability to provide support of human habitation or economic life. In that case, islands, have the right of establishment and sovereignty in all maritime zones. Here we can refer to the example of France that claims rights of EEZ in the French Colonies at the pacific and Indian ocean etc.

The main question to elaborate about the sustainability of human habitation is whether the existence of drinking water, fertile soil and natural resources is enough for a "rock" to be considered a potentially inhabited island. In addition to this, there is also the problem of the natural or artificial ability of an island to sustain a permanent population. This means that an island should provide on its own the

[9]The trouble with islands: The definition and the role of islands and rocks in maritime boundary delimitation, Clive Schofield, Maritime Boundary Dispute Settlement Processes and the Law of the Sea, Seoung-Young Hong and Jan M. Van Dyke, Martinus Nijhoff, (2009)

[10] Dispute settlement in the UN Convention on the Law of the Sea, Natalie Klein, Cambridge University Press (2005) (p.269)

necessary supplies without any external provisions? The existence of a remote lighthouse with a lighthouse keeper is enough for an island to be considered inhabited?

As regards the support of economic life there are also a lot of different interpretations and there is also a conflict with the first criterion, raising questions about the exact prerequisites which can justify an islands' ability to support economic life. For example, the establishment of a lighthouse or any other navigational instrument is considered enough? The gathering of natural resources or its touristic value that are probably factors for inhabitation are cases that are covered by article 121 of UNCLOS? All the above questions remain until now unanswered, and render unable the gathering of solid criteria for characterizing an island as a "rock" or vice versa.

The importance of the islands and the rocks is crucial for the delimitation of maritime zones between states with opposite or adjacent coasts. Firstly because both islands and rocks are taken into account in the methodology of the drawing of the straight base lines from which all the maritime zones of a coastal state are measured. Secondly, because they create, between each other or with the mainland straights that, when they are characterized as International Navigation Straights, a special status of navigation through them is created. Another special situation is created for the archipelagic states where all the islands can be enclosed with a solid circular base line.

ii. The definition of the exclusive economic zone

The creation of the concept of the Exclusive Economic Zone under the prism of maritime law is the result of a number of unilateral declarations of certain powerful coastal states that wanted to extend their jurisdiction beyond their territorial water boundaries in order to exploit the resources of the water and the subsoil. In September 1945 the United States President H. Truman proclaimed a protected fishery zone beyond the country's territorial waters. This was the beginning of a series of similar declarations from the other Latin American countries. These proclamation were not standardized, each state was fortifying its maritime rights in a different way. Also, the first conference on the Law of the Sea (Geneva 1958) did not manage to regulate several aspects of this new model of sea exploitation.

The Latin American countries, namely, Chile, Peru and Ecuador did not have, practically, a continental shelf in the Pacific Ocean, however, they wanted a zone of sea to exploit exclusively. During the 60's and after a second convention of the Law of the sea, that did not succeed in defining the territorial sea width, a number of South American countries and some African and Asian as well proclaimed maritime zones, by different names, (fishery zone, economic zone, etc) for exclusive exploitation.

Firstly, the term Exclusive Economic Zone was adopted by Kenya in 1972 in an African-Asian Legal Board Meeting. The results of this meeting were brought in the UN. Finally, in the third Convention on the Law of the Sea in 1982, among other important issues, the Exclusive Economic Zone was defined and regulated.

The sovereign rights of a state in the EEZ are different from the sovereignty in the territorial waters[11]. Although in the territorial waters the state imposes every aspect of its authority and only allows the innocent passage of ships of other countries, inside the Exclusive Economic Zone the state has certain jurisdiction and exclusive rights of fishing or other commercial activities. The EEZ can extend up to 200nm from the baseline (figure 1).

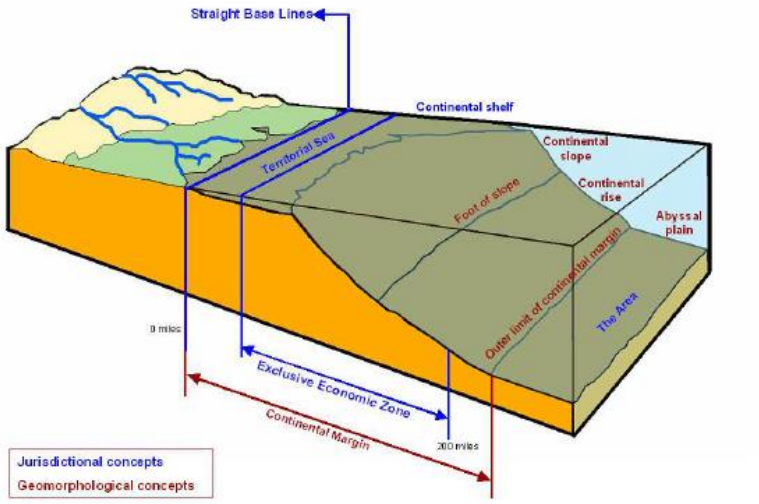


Figure 1, continental shelf and exclusive economic zone schematics

[11] UNCLOS, Article 56 para.1

It must be emphasized that there is no prescription on whether a coastal state should declare an exclusive economic zone. In the Mediterranean Sea only 11 from the 25 Mediterranean countries have declared an EEZ or fishery zone, namely, France, Spain, Italy, Syria, Libya, Cyprus, Lebanon, Israel, Egypt, Morocco, and Tunisia[12]. Also Bulgaria, Romania, Turkey, Russia, Ukraine declared an EEZ in the Black Sea. Until now, no country in the Adriatic Sea has declared an EEZ. The reason for the reluctance of the Mediterranean coastal states to declare EEZ's are basically political and economic and less legal[13]. Two of the basic reasons are the fact that a potential EEZ delimitation may cause problems in the freedom of navigation and secondly there will be a limitation in the fishery activity of the coastal state. There are Mediterranean States like Italy that are deploying their fishery activities in a very large area in the Mediterranean Sea.

In the case that two or more neighboring coastal states claim a maritime area which is not spacious enough for each one of them (EEZ of 200nm), they apply the rules of article 74 UNCLOS, which suggests the delimitation by agreement on the basis of International Law. If no agreement is reached in a reasonable period of time the states are encouraged to enter into provisional arrangements for practical reasons, until a final decision is achieved by the UN mechanisms such as the International Court of Justice (ICJ) or the International Tribunal on the Law of the Sea (ITLOS). Only in limited occasions did the coastal states seek for a judicial delimitation decision and the result was a single multi-purpose maritime boundary. Examples of such litigation are: the Qatar and Bahrain dispute over the delimitation of the EEZ and continental Shelf in 1991, the Guinea and Guinea Bissau case over the delimitation of territorial waters and EEZ in 1983 and the Canada and France case over the area surrounding St. Pierre and Migelon islands in 1989. There were also cases where the delimitation decision was not achieved by a single boundary line. Such a case was the Denmark v. Norway case, over the delimitation of an area between Greenland and Jan Mayer Island.

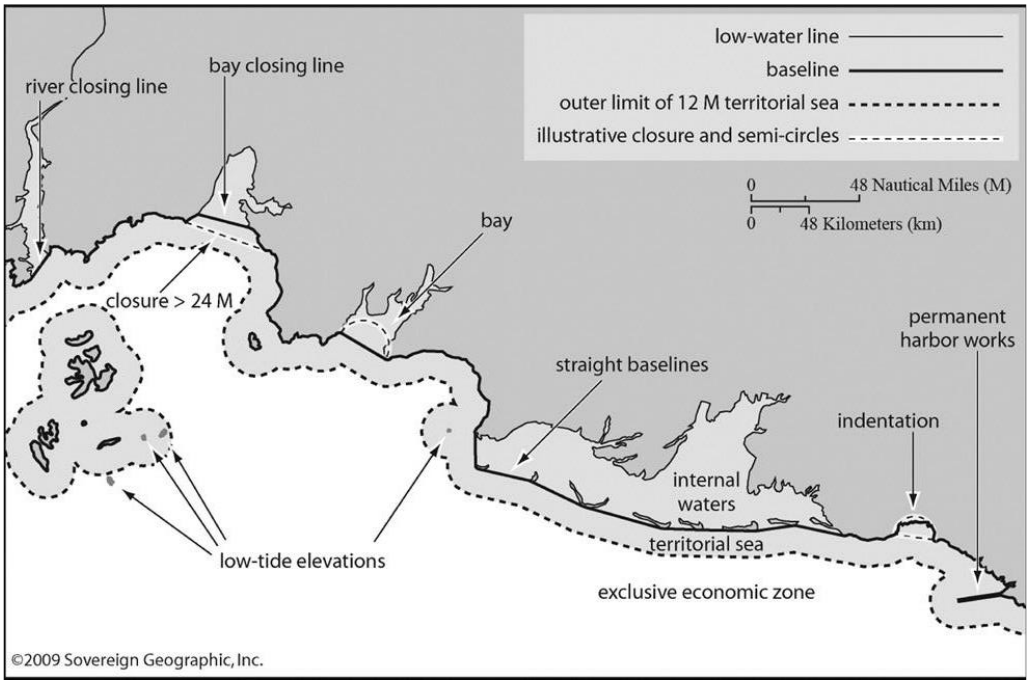
[12] http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf (Accessed 25/08/18)

[13] State practice in the aftermath of the UN convention on the Law of the Sea: The exclusive Economic Zone and the Mediterranean Sea, Budislav Vukas, Unresolved issues and new challenges to the Law of the Sea – Time before and time after, A. Strati. Maria Gavouneli, Nikolaos Skourtos- Martinus Nijhoff (2006)

iii. Definition of Baselines

The baseline is the most important notion in the law of the sea. It is the point of departure in order to measure the spatial extend of the zone in question[14]. The breadth of the territorial sea, contiguous zone and exclusive economic zone is measured from the baseline. Consequently, the baseline determines the area "beyond the limits of national jurisdiction"[15]. There are three kinds of baselines recognized by the Law of the Sea, the normal baselines, the straight baselines and the archipelagic baselines.

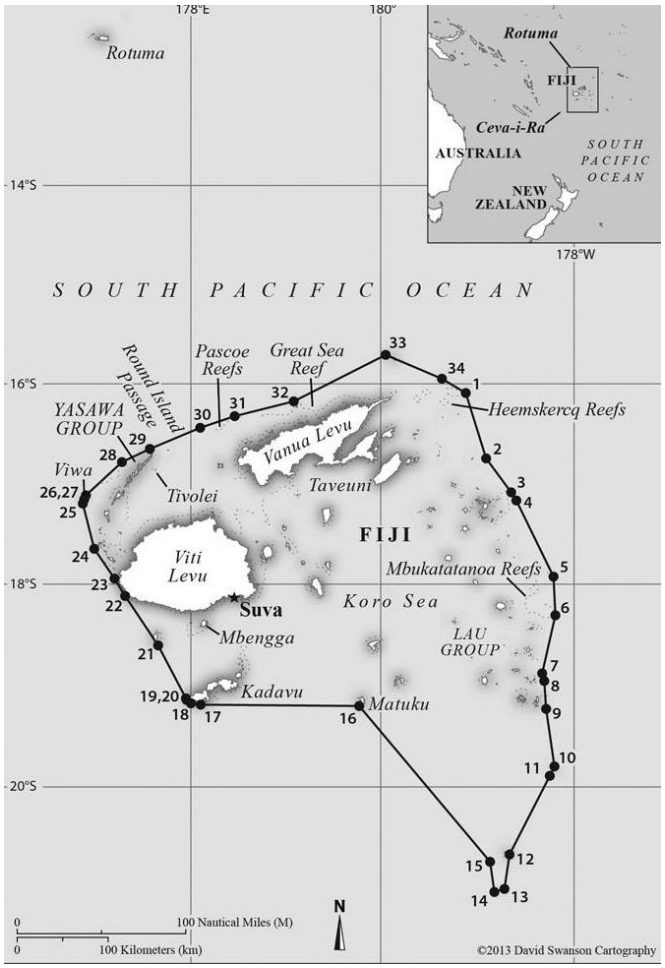
The basic rule which defines the normal baseline is that the low-tide water line along the coast, actually, marks the baseline. Although this is a simple rule, arises a number problems when it is applied in practice. For these reasons the International Court of Justice decided (in 1951) to adopt the straight baselines as a notion which was not contrary to international law[16]. Soon the straight baselines became a common state practice because they can be legally used to close off the mouths of bays or rivers (Figure 2).



[14]Cases and Materials on the Law of the Sea - Louis B. Sohn, John E. Noyes, Erik Franckx, Kristen G. Juras -Martinus Nijhoff (2014)
[15] UNCLOS Article 1(1)(1)
[16] UNCLOS Article 7

Figure 2, Straight Baselines.

Finally, the archipelagic baselines are circular baselines which enclose a number of islands that form a state, (archipelagic state). The length of such baselines shall not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles[17]. Also according to UNCLOS[18] the ratio of the water to the land of an archipelagic state should be from 1 to 1 up to 9 to 1 in order to be delimited by the archipelagic baselines (Figure 3). The Aegean Sea islands could be characterized as archipelago, however they do not form on their own a single state but they are part of the Greek state which consists of the mainland as well.



(Figure 3) Fiji delimitation baselines, example of archipelagic state.

[17] Cases and Materials on the Law of the Sea - Louis B. Sohn, John E. Noyes, Erik Franckx, Kristen G. Juras - Martinus Nijhoff (2014) (p.255).
[18] UNCLOS Article 47(1)

Chapter 2

The delimitation of the Exclusive Economic Zones in Southeast Europe.

i. The geopolitical complex of Southeast Mediterranean Sea and its geostrategical and geoeconomical importance.

The East Mediterranean Sea and especially its Southeastern part, is considered one of the most important geopolitical sub-systems. According to the Historian and geographer Fernand Braudel (1902 – 1985) in his book "The Mediterranean", this part of the sea is approached as a historical – geographical phenomenon and thus filled a gap between history and geography[19].

In order to produce a complete geographical image of the East Mediterranean Sea, we must underline some special geographic characteristics which amplify its geostrategic position:

- The two sea gates of East Mediterranean through which it is connected with other seas and consequently with other strategic spaces, the Dardanelles Straights and the Suez Channel. These gates transform East Mediterranean Sea into a communication and supply road which connects Europe with the Persian Gulf Oil and the Asian trade.

- The two peninsulas, the Balkan and the Italian, which, by penetrating inside the sea, they facilitate the access from, and to, the countries of northern Africa. Also, the two peninsulas separate the East Mediterranean into different spaces such as Adriatic, Ionian and Aegean Sea.

- The existence of three large islands such as Cyprus, Crete and Malta in the space between the European and African coasts which affects the communication lines inside the Mediterranean Sea.

The Balkan Peninsula is surrounded by water. From the east there is the Black Sea, and the Marmara Sea, in the Southeast part there is the Aegean Sea, in the

[19] Comments on Braudel Theory, by Kostas Vergos, Geopolitics of Nations and Globalization: for a History of Geography and a Geography of History, (Papazisi, edition, Athens 2004, pg 272 – 277).

Southwest the Ionian Sea and in the west there is the Adriatic Sea. The Black Sea is a semi-closed sea between Southeast Europe and Asia Minor, which is considered of great geopolitical importance because it is a rather crowded junction of transporting energy resources, by the use of its various ports (and mainly the Russian Port of Novorosisk) as stations of maritime transportations (figure 4). However, as a result of the problems that large cargo ships and tankers are facing during their transit through the Bosporus Straights and Dardanelles Straights, new solutions were discovered for the channeling of oil, through pipelines. Also there could be a cooperation between the ports of Varna and Costanzia and the port of Thessaloniki for the transportation of goods through railways in order to relieve the traffic through the aforementioned straights.

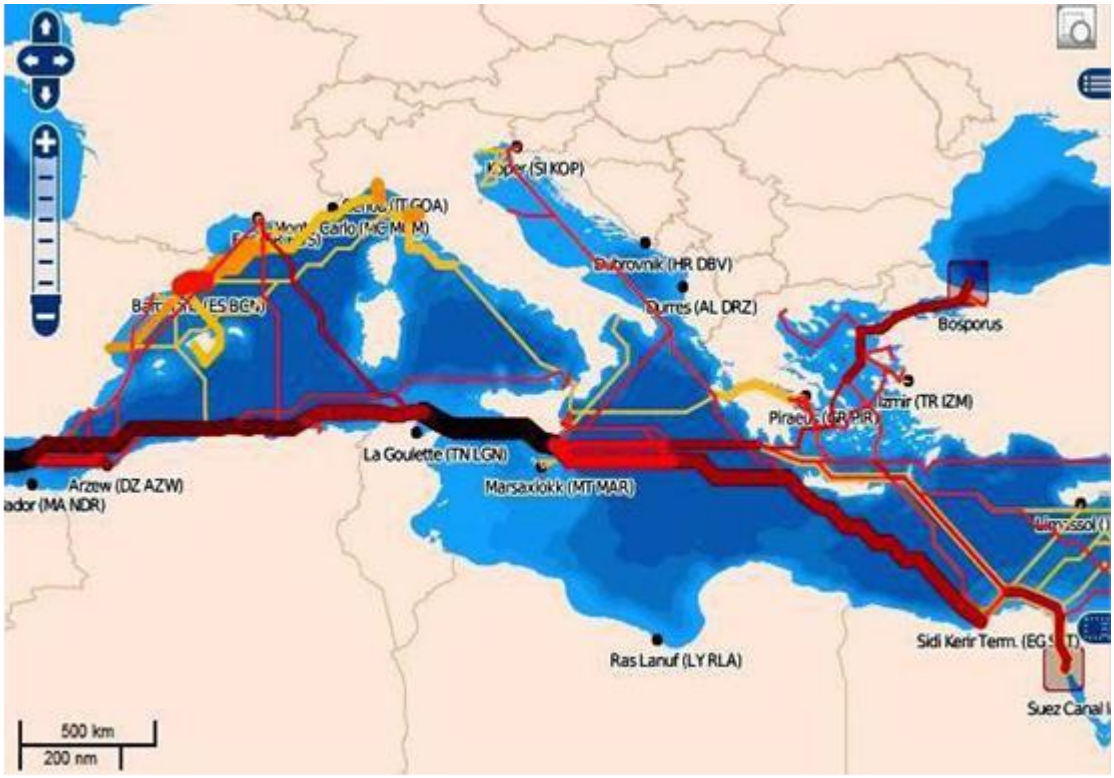


Figure 4, Major transport routes within the Mediterranean Sea[20] (source: www.rempec.org)

Currently, the East Mediterranean Sea has gained major significance regarding the geopolitics of energy. Europe imports energy mainly from North Africa, Middle East and Russia. The increasing demand of Europe for oil and natural gas could not

[20] Yellow lines refer solely to cargo and container ships, while the red mainly to tankers but also to all other types of ships.

be covered by its own resources. In 2017 Europe imported the 69% of its needs in crude oil and the 20% in natural gas[21]. EU, which is the leader in the war against the climatic change, announced that, by 2020, will be able to cover the 20% of its needs in energy by renewable energy sources. Consequently, the rest, 80% will still be covered from oil, natural gas and nuclear power. Thus, for several years, the energy will be transferred to Europe from Russia by pipelines. The control of the routes that these constructions will follow, is an object of conflict between USA and Russia, in order to increase their influence in the Eurasian region.

Currently, the only pipeline which is routed through sea, is the TAP (Trans Adriatic Pipeline). The TAP route is 878 kilometers from which the 550 km is through Greece, the 215 km is through Albania, the 105 km is submerged in the Adriatic Sea and 8 km through Italy. The TAP will be connected with the TANAP (Trans - Anatolian Gas Pipeline). TANAP brings natural gas from Azerbaijan and other areas of Caspian Sea, to Turkey (figure 5).

Figure 5, TANAP and TAP pipelines[22] (source: OIL and GAS Journal)

[21] Eurostat, EU imports of energy products - recent developments.
[22] Product pipeline completions lead planned construction lower (Christofer E. Smith)

The new discoveries of natural gas in southeast Mediterranean Sea urged Turkey, which has adopted the role of a hegemonic state in the region, to pursue the exploitation of energy resources of an enormous area in Southeast Mediterranean Sea by giving permissions for research in regions that belong to Cypriot EEZ. According to Turkish position, the Greek island of Megisti (Kastellorizo) does not have the right on an Exclusive Economic Zone beyond its territorial waters. As a result, the Turkish EEZ extends after the territorial waters, from the Turkish coast, and separates the Greek from the Cypriot EEZ (Figure 6). In general terms, the Turkish positions regarding the maritime delimitation in the Eastern Mediterranean Sea consist of the denial of any EEZ entitled to the islands, including Cyprus. That is why Turkey concluded a delimitation agreement with the "Turkish Republic of Northern Cyprus" ("TRNC") on 21 September 2011 ("the 'TRNC' Agreement"), concerning only the Continental shelf[23]. Based on this consideration, Turkey does not recognize any EEZ delimitation agreements between Cyprus and Egypt or Israel[24].

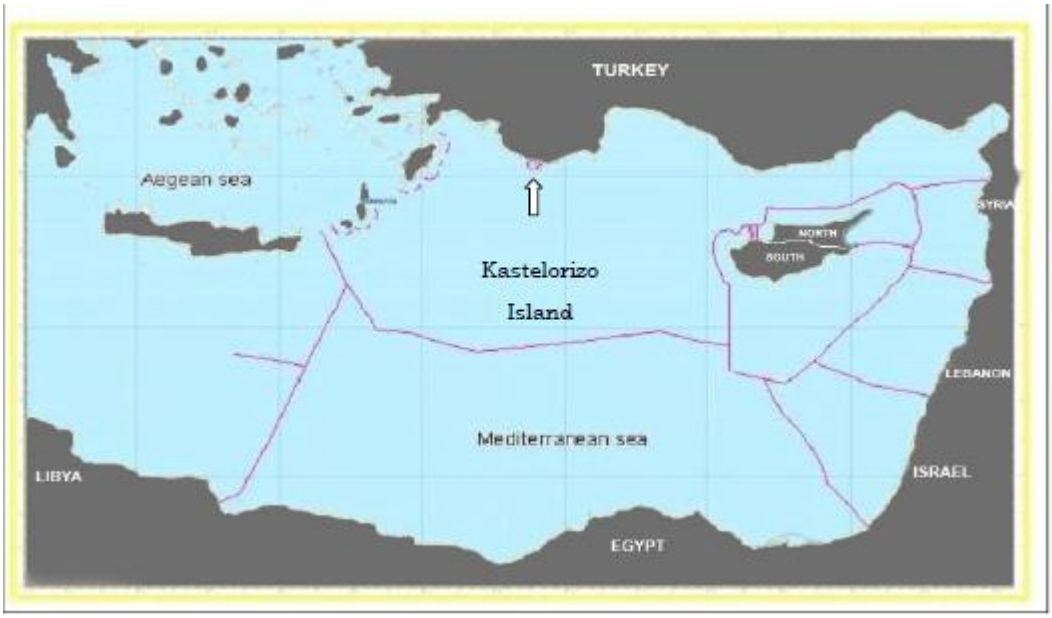


Figure 6: Turkey's view of the EEZ delimitation in the Eastern Mediterranean Sea

ii. Delimitation problems involving islands in the region:

[23] Turkish Republic of Northern Cyprus is a self-proclaimed entity only recognized by Turkey.
[24] Cyprus: Legal Aspects Of Conflicting Views On Cyprus' Exclusive Economic Zone 4 June 2015 Article by Anastasios Antoniou and Aquilina Demetriadi, Mondaq (accessed 30/08/18)

a. The Greek-Turkish dispute:

(1) The Greek – Turkish territorial sea

According to Turkey's position to the issue of the delimitation of the territorial waters in the Aegean Sea, the maritime boundaries between the two countries have to be delimited by agreement. Although the breadth of the territorial sea of both Greece and Turkey is 6 nautical miles in the Aegean, the coasts of the two countries are both adjacent and opposite, and for this reason they require boundary delimitation.

Turkey invokes the international law in order to delimit the territorial waters with Greece in the adjacent and opposite coasts, as, until now, claims that there is no maritime delimitation.

According to the Greek position the breadth of Greece's territorial sea was set at 6 nautical miles from the natural coastline in 1936 (Law 230/1936 as amended by Presidential Decree 187/1973). However, the limit of 10 nautical miles in the national airspace was maintained explicitly based on previous legislation (Decree of 6 September 1931 in conjunction with Law 5017/1931)[25]. Also, during the ratification (2321/1995) of the United Nations Convention on the Law of the Sea (UNCLOS), Greece stated that reserves the right to extend its territorial waters to 12 nautical miles.

On the other hand Turkey claims that the extension of territorial waters to 12 nautical miles will alter the balance of interests in the Aegean Sea to the detriment of Turkey. At present, Greek territorial waters cover the 40% of the Aegean Sea. In the case of the extension to 12 nautical miles the former ratio rises to 70%, whereas the Turkish territorial waters ratio remains less than 10%. Also the percentage of high seas in the Aegean drops from 51% to 19% (Figure 7).

[25] Hellenic Ministry of Foreign Affairs – Issues of Greek-Turkish relations

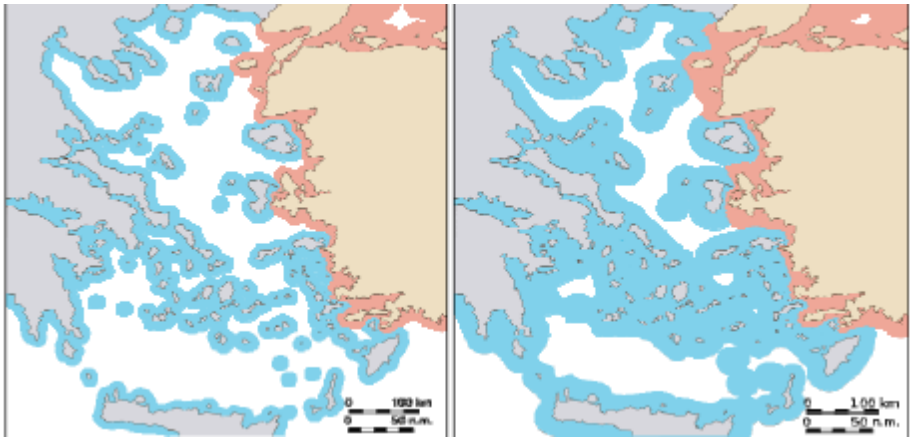


Figure 7: Greek and Turkish territorial sea coverage with 6 and 12 nautical miles respectively.

The Turkish National Assembly issued a resolution on 8 June 1995 granting the Turkish government full and perpetual competence to declare war (casus belli) (authorizing it to use military means against Greece), should Greece decide to extend its territorial waters over 6 nautical miles.

Greece claims that, according to international law (article 3 of UNCLOS), the right to extend its territory up to 12 nautical miles, is a sovereign and unilateral right and thus, cannot be subjected to any kind of restrictions or dispute by another country. Also, the majority of coastal states, internationally, have set their territorial waters to 12 nautical miles, Turkey, as well, did the same to its coasts in the Black sea and the Mediterranean since 1964.

In general terms, Turkey, considers Aegean a common sea where the freedoms of the high seas and air space should not be impaired. Also, the acquisition of new maritime areas should be based on mutual agreements so as to be fair for both sides.

Turkey is the only country that demands the demilitarization of the Greek islands (another country's islands) in the Eastern Aegean Sea. As regards the status of military establishments on the islands of the Eastern Aegean Sea, various international agreements apply. In particular:

The governing status of the islands of Limnos and Samothrace is agreed upon by the 1923 Lausanne Treaty on the Straits, which has been replaced by the 1936 Montreux Treaty. The status of the islands of Mytilene, Chios, Samos and Ikaria, is agreed upon by the 1923 Lausanne Peace Treaty; and the status of the Dodecanese islands is agreed upon by the 1947 Paris Peace Treaty.

The demilitarization of the Greek islands of Limnos and Samothrace and the demilitarization of the Dardanelles, the Sea of Marmara and the Bosporus, and the Turkish Imvros (Gokceada), Tenedos (Bozcaada) and Rabbit Islands (Tavcan), was originally stipulated in the 1923 Lausanne Treaty on the Straits. This was annulled by the 1936 Montreux Treaty, which, as is categorically stated in its preamble, replaced in its entirety the aforementioned Lausanne Treaty. Greece's right to militarize Limnos and Samothrace was recognized by Turkey, in accordance with the letter sent to the Greek Prime Minister on 6 May 1936 by the Turkish Ambassador in Athens at the time, Roussen Esref, upon instructions from his Government. The Turkish government reiterated this position when the then Turkish Minister for Foreign Affairs, Rustu Aras, in his address to the Turkish National Assembly on the occasion of the ratification of the Montreux Treaty, unreservedly recognized Greece's legal right to deploy troops on Limnos and Samothrace, with the following statement: "*The provisions pertaining to the islands of Limnos and Samothrace, which belong to our neighbor and friendly country Greece and were demilitarized in application of the 1923 Lausanne Treaty, were also abolished by the new Montreux Treaty, which gives us great pleasure*[26]".

As regards the islands of Mytilene, Chios, Samos and Ikaria, the Lausanne Peace Treaty makes no mention of these islands having been granted demilitarized status. The Greek government simply commits to not establishing naval bases or fortifications there in accordance with Article 13 of the Treaty. More specifically this article specifies that:

"*With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Ikaria:*

- *No naval base and no fortification will be established in the said islands.*
- *Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands.*
- *The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well*

[26] Gazette of the Minutes of the Turkish National Assembly, volume 12, July 31/1936, (page 309)

as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory."

As regards the status of the Islands of the South-Eastern Aegean, the Dodecanese islands were ceded to Greece in full sovereignty by the Paris Peace Treaty between Italy and the Allies in April 1947. This Treaty stipulated the demilitarization of these islands: "The above islands shall be demilitarized and shall remain so." There is a National Guard presence on the Dodecanese islands, which has been declared in accordance with CFE provisions[27]. As for the Turkish claims on the demilitarization of the Dodecanese, it should be noted that Turkey is not a signatory state to this Treaty, which therefore constitutes a "res inter alias acta" for Turkey; i.e., an issue pertaining to others. According to Article 34 of the Vienna Convention on the Law of Treaties, a treaty does not create obligations or rights for third countries.

It should also be noted that the demilitarized status of the Dodecanese islands was imposed after the decisive intervention of the Soviet Union according to the country's political intentions at the time. However, by the creation of the international Alliances of NATO and the Warsaw Pact, the demilitarized status of these islands lost its reason to exist as it is incompatible with the country's participation in the Alliance. For the same reasons, demilitarized status ceased to apply to the Italian islands of Panteleria, Lampedusa, Lampione and Linosa, as well as to West Germany on the one hand and Bulgaria, Romania, East Germany, Hungary and Finland on the other.

The real underlying causes for the conflict of the two states in the Aegean Sea are: the extension of the Greek territorial waters from 6 to 12 nautical miles, the remilitarization of the Eastern Aegean Islands, the 10 nautical miles air space and the obligation for submission of flight plans inside the Athens FIR .

(2) The delimitation of the continental shelf and the EEZ in the Aegean.

In November 1973, Turkish government decided to grant Turkish National Petroleum Company, a permission to conduct geological research within the Greek continental shelf in the Aegean Sea. Since then, Turkey, multiple times, defied

[27] The Conventional Armed Forces in Europe (CFE) Treaty

Greek sovereign rights in the Aegean. The aforementioned practice brought the two countries close to war (1974, 1976, 1987).

The positions of the two countries regarding the delimitation of the continental shelf and the EEZ in the Aegean could be analyzed as follows:

For Greece, the International Law, the Geneva convention for the continental shelf and the UNCLOS, gives the islands the right to full jurisdiction on their continental shelf. Also, the above mentioned conventions state that the delimitation of the continental shelf between two countries should follow the principle of equidistance[28]. The provisions of UNCLOS concerning the right of the islands to maritime zones (continental shelf and EEZ) have acquired a customary character, for this reason they apply, also, to Turkey which is not a party to UNCLOS. As regards the Turkey's positions on the matter, Greek islands do not have the right to full jurisdiction on continental shelf because they are elevations of the bottom of the continental shelf of the mainland of the Anatolian peninsula (Turkish territory). Thus, Turkey invokes the "special circumstances" criterion as a result of the consideration that the Aegean is a "semi-closed" sea[29]. Against the same backdrop, the dispute between Turkey and Greece is whether the islands close to the Turkish coast should be taken into account for the delimitation of the maritime economic zones. According to the Turkish positions, just like the Aegean, in the Eastern Mediterranean as well, the same rule, of the "geological criterion" should be followed, and the islands of Dodecanese and Megisti, should have no right on an EEZ (figure 3). This means that Turkey, would claim the right for a continental shelf and EEZ that would extend until the middle of the Aegean sea, and the islands should only keep their territorial waters (figure 8).

[28] Consequently, every island of the Aegean Sea has a right to continental shelf, of which the limits with Turkey should be defined by the principle of equidistance. Article 6(2) of The Geneva Convention for the Continental Shelf, 29 April 1958.

[29] By this way, Turkey relies upon the "geological criterion" of the definition of the Legal Continental Shelf, which was in effect before the UNCLOS in 1982. After the ratification and the international acceptance of the UNCLOS, the "geological criterion" is in effect only when the continental shelf exceeds 200 nautical miles.

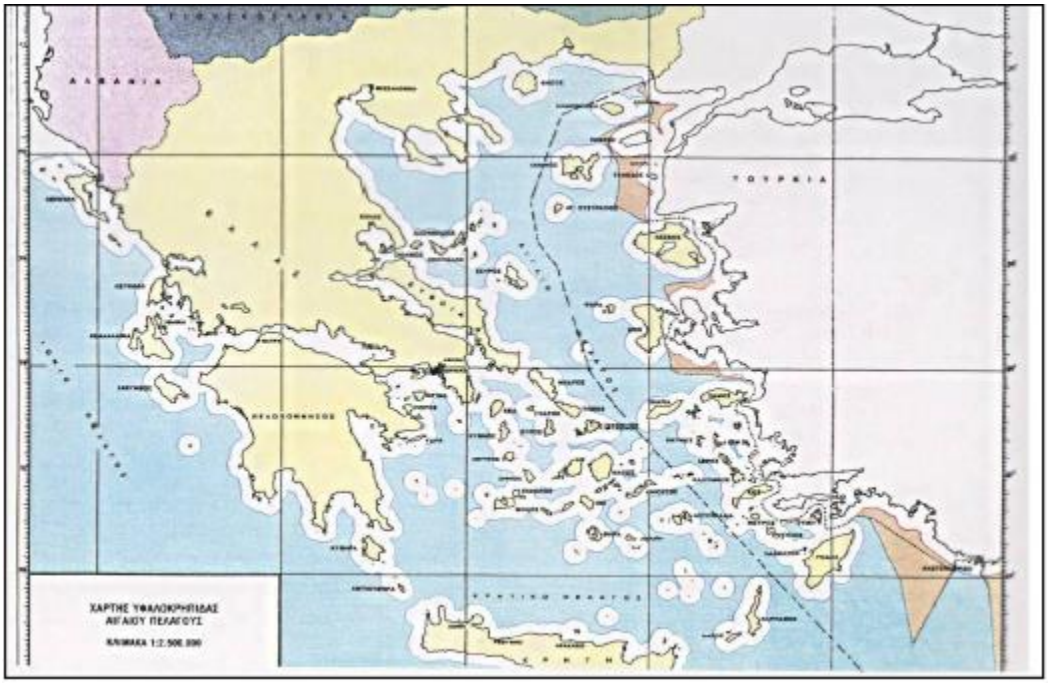


Figure 8, The Turkish continental shelf according to the Greek view (orange areas) and to the Turkish view (median line)

This issue was brought to the International Court of Justice (ICJ) by Greece in 1976. However, Turkey invoked, ICJ's lack of jurisdiction and refused to accept the court's examination. ICJ did not examine the issue for reasons of formality, due to lack of competence.

b. Boundary delimitation disputes in the Adriatic Sea

Before the disintegration of Yugoslavia the maritime boundary delimitation in the Adriatic was relatively advanced, in comparison with the situation in the rest of the Mediterranean Sea. The agreement between Italy and Yugoslavia on the continental shelf in 1968 resulted in the boundary delimitation of a large part of the Adriatic Sea. It entered into force in 1970, and it is the first Treaty for the delimitation of the continental shelf in the Mediterranean[30]. The boundary line has a total length of 353 nautical miles between the opposite coasts of the Adriatic Sea, from North to South. It connects 43 points across the line following the principle of equidistance (figure 9).

[30] The continental Shelf and the Exclusive Economic Zone, Donat Pharand, Umberto Leanza 1993

Figure 9, Continental Shelf delimitation Between Italy and Yugoslavia (1968)

In the north, the boundary line starts (point 1) 12 nautical miles from the nearest coast because the two states decided to leave aside the territorial sea in the Gulf of Trieste as the two countries were in dispute about the boundaries. Accordingly, in the south (point 43) the line stops in the triple point between Italy, Yugoslavia and Albania. Exceptions in the principle of equidistance are the cases of a few islands. In these cases the equidistance was disregarded. There are some islands almost in the middle of the Adriatic, namely Jabuca, Palagruza islands and Galijula that belonged to Yugoslavia (now to Croatia) and Pianosa that belongs to Italy. They were all given a reduced effect. Those island are all uninhabited and on Large Palagrusa and Galijula there is a lighthouse. E.g. point 33 is nearer to Pianosa than to any other Yugoslav land point, points 34 to 38 are closer to Palagrusa than to any Italian land point. The territorial sea delimitation between Italy and Yugoslavia in the gulf of Trieste was agreed by the Treaty of Osimo of 1975 (entered into force in

1977) which was basically a settlement of the land boundaries between the two countries. The boundary line connects five points, the fifth is the same as the first point of the 1968 continental shelf delimitation agreement (figure 10).

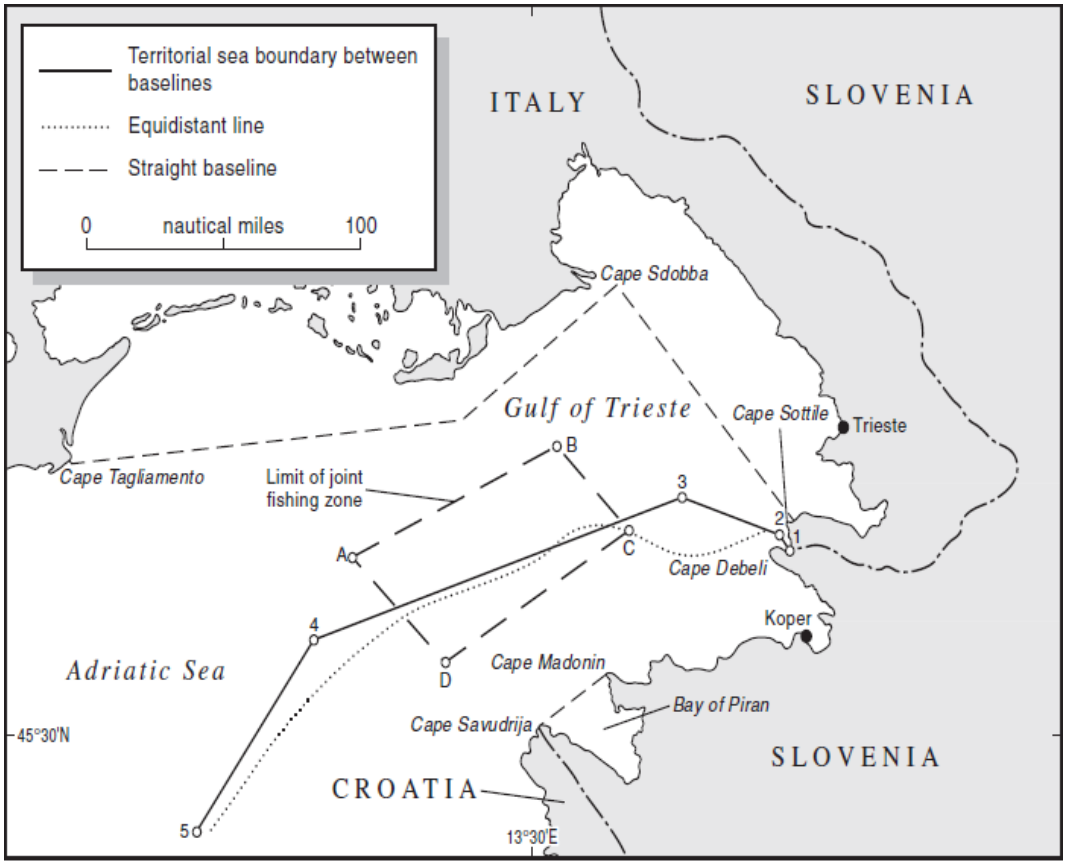


Figure 10: Gulf of Trieste maritime zone delimitation (1975 Osimo Treaty).

The two countries made an unusual agreement on the Gulf of Trieste which is characterized as the semi-effect of straight baselines. Because of the length and direction of Italian straight baselines the equidistance principle would have favored Italy. On the other hand, the equidistance from the coast would have favored Yugoslavia. Finally, the states agreed on an intermediate line between the lines produced applying the two aforementioned criteria (figure 10). On February 1983 Italy and Yugoslavia established, in a separate agreement, a joint fishing zone that is straddling the boundary line in the Gulf of Trieste because Italian Vessels were accused of fishing beyond the boundary limit[31] (figure 10).

[31] The Maritime boundaries in the Adriatic Sea, Gerald Henry Blake, Dusko Topalovic, (pg 17)

(1) The delimitation of the Albanian Continental Shelf and EEZ.

On December 1992, Albania and Italy made an agreement on the delimitation of the continental shelf in the Southern Adriatic and the Otranto Channel. As neither state has claimed an EEZ there was no agreement on an EEZ boundary delimitation. The defined boundary line consists of 17 points that extend in a length of 73 nautical miles (figure 11) in total. In the preamble of the Treaty is stated that "*the border division of the two zones of the continental shelf is determined on the basis of the principle of equidistance that is expressed by the medium line.*" The resulting boundary line is an equidistant line with some minor adjustments that are related to the application of straight baselines that close shallow bays in the Otranto Channel, and as the bays are relatively shallow, the effect on the delimitation is marginal (figure 11). Only the island of Sazan acted as a non-mainland basepoint for the delimitation line. Also, the two countries agreed not to extend the boundary limits beyond the specified points so as to be determined later with other agreements between the interested parties.

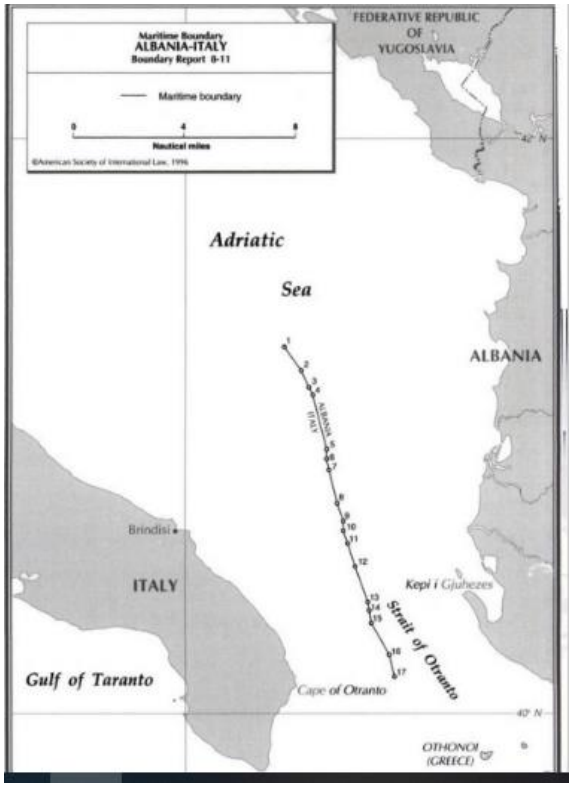


Figure 11, Continental Shelf delimitation agreement between Italy and Albania in the Channel of Otranto[32]

[32] International Maritime Boundaries Vol III, J. Charney, L. Alexander, The American Society of International Law

On April 27, 2009, Greek and Albanian governments signed the "Agreement for the delimitation of the Albanian – Greek continental shelf and maritime zones". This agreement was followed by objections by Albanian experts and academics who claimed that the agreement was damaging the national interest of the country. One year later the Albanian Socialist Party which was in opposition brought the agreement before the Constitutional Court. The Albanian Constitutional court declared that the agreement was incompatible with the Albanian constitution on 15 April 2010 due to "procedural and substantial violations of the Constitution and the UN Convention on the Law of the Sea[33]". The Constitutional Court's decision specifies that the Agreement is incompatible with the Albanian Constitution because: "*a) the failure of the Albanian delegation to have regular full powers from the President of the Republic for holding the negotiations and entering into the agreement; b) serious deficiencies in the content of the agreement; c) the failure to apply the basic principles of international law for the division of the maritime areas between the two countries for the purpose of reaching a fair and honourable result; d) not taking account of the islands as special circumstances in the delimitation of the maritime areas."*[34]

Besides the political deficiencies of the Albanian delegation, the Court's decision was based on specific factors regarding the delimitation rules defined by the UNCLOS. The general concept is that Albania should consider the "principle of equity" and the achievement of a fair result for both countries by following the example of other ICJ decisions regarding maritime zones delimitation. The main pillars of the case against the agreement were: a) the baseline drawing of the relative coasts of the two countries. It is stated that for Albania the territorial waters are measured from the low tide line of the relative coast, whereas in the Greek case there are straight baselines drawn. As a result, the bay of Corfu is enclosed (internal waters) and the islands in the north of Corfu are closed in common line and are all given full effect in the maritime zones calculation. b) The island of Barchetta is used as a base line point (it is considered a rock), and c) There are no "special circumstances" taken into consideration for the islands of Lazaretto, Othoni and

[33] The Political Discourse on the Albanian – Greek "Sea Agreement" dispute (Dorina Ndoj, 2015) , International Journal of Academic Research and Reflection

[34] Decision No 15 of the Albanian Constitutional Court, 15 April 2010.

Erikoussa. The Albanian court invokes ICJ decisions (e.g. the Serpent Island decision) where the islands were not given full effect regarding the Continental Shelf and the EEZ (Figure 12).

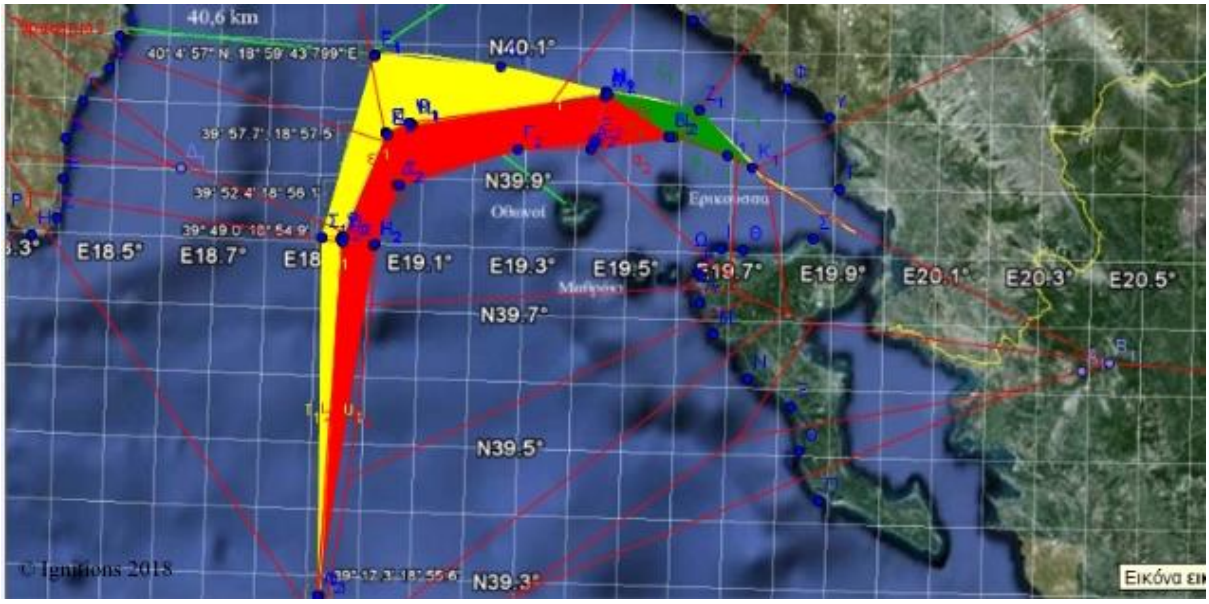


Figure 12, The Albanian EEZ delimitation, affected by Othoni and Erikusa.

The context of the agreement, according to the Greek point of view, is characterized as innovatory because it was introducing a “multi-purpose” boundary, delimiting the traditional maritime zones (territorial waters and continental shelf) and new jurisdiction zones (EEZ) as well[35] by a built – in mechanism for automatic extension to any future maritime zone might be proclaimed[36]

Setting aside the conspiratorial theories of external intervention (Turkey’s blockade on the matter) the possible reasons for the cancellation would be the status of the smaller islands of Othoni and Erikusa and whether they should be evaluated under “special circumstances”. In 1977 continental shelf delimitation agreement between Italy and Greece the island of Othoni was given half effect whereas in the current agreement with Albania, the aforementioned islands were given full effect and were considered equal to the coast of Albania. Also Barchetta rock is taken into account in the delimitation of the territorial waters and, by been given a full effect, it

[35] EEZ: ”Greece multiplied by four”- Greece of four seas, Dr John Valinakis, former Under Secretary of External Affairs

[36] Reconsidering the Marine Scientific Research in the Adriatic and Ionian Seas, Taking stock and looking ahead, Emanuella Doussis, Governance of the Adriatic and Ionian Marine Space, Andrea Caligiuri, 2016

served as a prominent indicator in determining the baseline of Greece[37] (figure 13). According to article 121 of the UNCLOS, rocks which cannot sustain human habitation or economic life on their own shall have no exclusive economic zone or continental shelf. Rock of Barchetta is not considered an island but a low tide elevation, thus cannot be taken into account in the delimitation of the territorial sea.

(Figure 13) The territorial sea delimitation between Greece and Albania in the straight between Albania and Corfu. The effect of the Barchetta island.

(2) The prospect of the delimitation of the Croatian EEZ.

In 1968, Italy and Federal Republic of Yugoslavia (FRY) agreed upon the delimitation of the continental shelf between them. After the dissolution of FRY Croatia, under the pressure of the "Croatian Party of Rights" in 2001, and the

[37] Maritime Delimitation Agreement between Albania and Greece and the reasons for its failure, Arber Ahmeti, (2015), International Association for Political Science Students

formation of a working group in 2003, announced that the existed boundary is valid as an EEZ as well. Croatia named this area as an “Area of Ecological Protection”. Also, the other adjacent states in the Adriatic Sea (Slovenia, Montenegro, Bosnia and Herzegovina) asserted, as well, their right in the delimitation of the EEZ. However, a final settlement is still pending, firstly because Slovenia and Bosnia – Herzegovina have very limited front in the Adriatic Sea, and secondly there is no official confirmation of the delimitation agreement between Croatia and Montenegro.

In addition to this, recently (June 2017), an arbitral tribunal (under the auspices of the Permanent Court of Arbitration) reached on a decision upon the delimitation of territorial waters between Croatia and Slovenia, in the Piran Bay. The decision denotes that there is no Exclusive Economic Zone delimited for Slovenia.

(3) Bosnia and Hercegovina maritime zones delimitation issues.

Bosnia – Hercegovina’s coast line is approximately 21 kilometers but because of the coast shape, (like the “Z” letter) the actual coastal front is about 10km[38] (figure 14). Since 1700 Bosnia had two exits to the Sea. The first was at Klek - Neum Bay and the second was at Sutorina (the Bay of Kotor). After the Second World War, when Bosnia – Hercegovina was part of the Federal State of Yugoslavia the control of the Bay of Kotor was transferred to Montenegro.

[38] Maritime briefing Vol I No 8: The Maritime Boundaries of the Adriatic Sea, Gerald H. Blake and Dusko Topalovic (p.34).

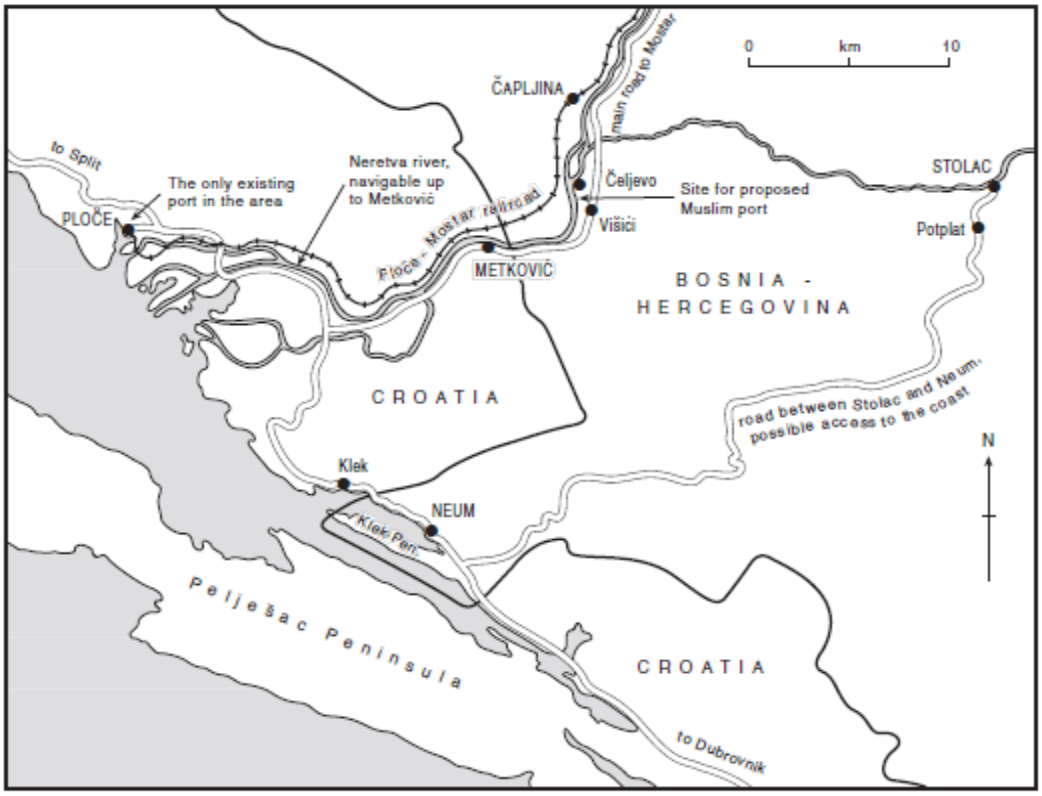


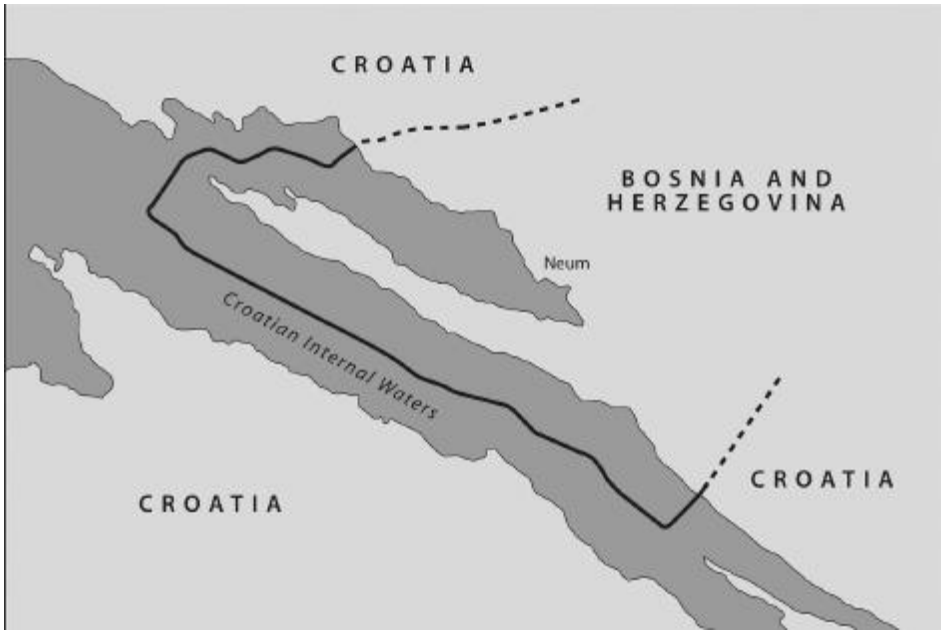
Figure 14, Location of Klek, Neum and Ploce

In Former Yugoslavia, the main port of Bosnia – Hercegovina was Ploce, until the dissolution of Yugoslavia and the war, while the Klek Bay did not have any functional importance. Ploce is located at the mouth of Neretva River at the Croatian territory. By 1966 a railway was constructed to connect Ploce – Mostar – Serajevo. After 1992 developments in Bosnia and especially during 1993 Peace trilateral negotiations between the Bosnian Parties (Croats, Serbs and Muslims) many proposals were discussed. Muslims wanted a port under their own sovereignty, as Neum was in the Croat controlled territory. They suggested a river port in Visici Seljevo. Finally, on 18 march 1994 in Washington guarantees were provided for the Muslim access to the sea by the "*Agreement on Federation of Croats and Muslims in Bosnia – Hercegovina*" by which Croatia would lease the Ploce port to the Muslim – Croat Federation for 99 years.

Also, a *"Provisional Agreement on the Establishment of Confederation between the Republic of Croatia and Bosnia - Hercegovina Federation"* was signed . In this agreement it is stated that Croatia will allow unrestricted access to the Adriatic for Bosnia - Hercegovina, and that the Federation will allow

Croatia unrestricted transit through the Neum strip. These agreements were confirmed by another bilateral agreement signed in Zagreb on 11 May 1996, which provided the legal framework for the aforementioned agreement.

In addition to this, on 30 July 1999, Croatia and Bosnia – Hercegovina signed the "Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina."(Figure 15) In article 4 of this Treaty there is a provisional maritime boundary delimitation over which there is a dispute between Bosnia and the county of Dubrovnik (Part of Croatia) regarding the Klek peninsula[39]. Specifically, the dispute is not about the whole peninsula but the tip of it and the two small uninhabited islands: Veliki Skolj and Mali Skolj that are located next to it. These are territories which Croatia claims sovereignty as they are considered of historical importance.



(Figure 15) Maritime boundaries according to Treaty on State Borders 30 July 1999 (not yet in Force)

We could assume that this agreement between Croatia and the Bosnian Parties could be the basis for a future agreement upon the Bosnian Exclusive Economic Zone.

(4) Montenegro maritime zones delimitation issues

[39] The border agreement between Croatia and Bosnia – Hercegovina: The first but not the last, Mladen Klemencic

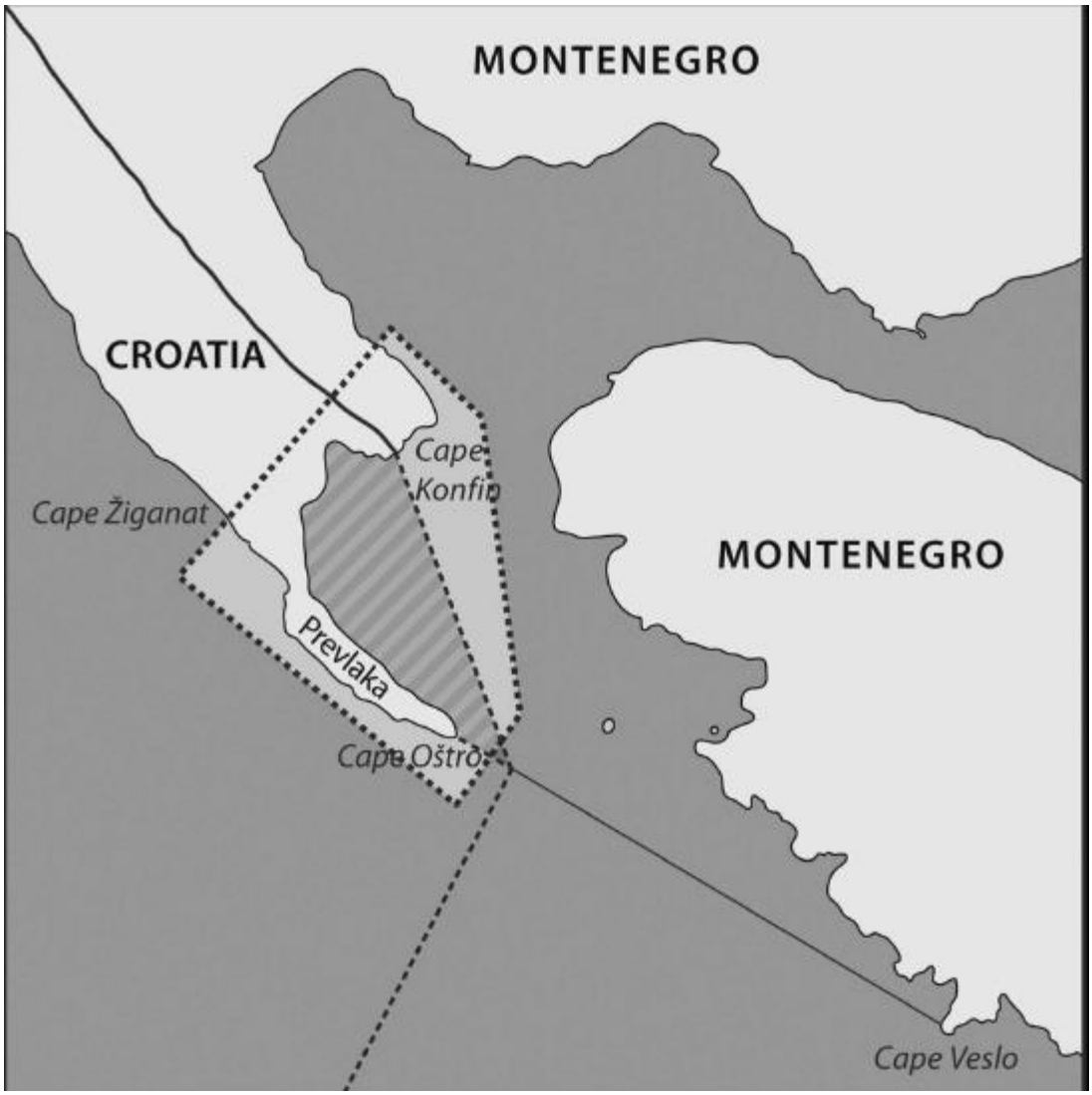
The primary territorial dispute between FRY (now Montenegro) and Croatia is upon the peninsula of Prevlaka. It is an area of major geopolitical importance inhabited mostly of Croatian population. This region is very important because the borders of two states are met (Croatia, Montenegro) and the peninsula is guarding the entrance of the Bay of Kotor, former base of the Yugoslav Navy. Also the Bosnian Serb Party of Bosnia and Hercegovina claimed an exit to the Adriatic Sea through the area between Cape Ostra and Molunat (North-East of the peninsula). The entrance of the Bay is 3 km wide. In the entrance there is also the Montenegrin islet of Mamula at a distance of 1.8 km. The fighting over the sovereignty of the Prevlaka peninsula seized after the 1992 agreement between the two states (FRY and Croatia). According to this agreement the peninsula was demilitarized and remained under UN surveillance until December 2002 by the signing of the "Protocol of Temporary Regime along the southern boundary". This protocol regulated the land borders as well as the maritime ones. As far as it concerns the maritime borders this agreement provided for a rather peculiar delimitation status and interim regime of cooperation between the two states[40]. The eastern part of the peninsula is enclosed by a straight baseline and thus, the waters west of this line retain the status of internal waters. Consequently, the breadth of the territorial sea is measured beyond this boundary line. This straight baseline starts from Cape Konfin and meets the extension of the peninsula up to 185m beyond the Ostro Cape creating a triangle. This area is referred to as the "zone" and it is under the Croatian jurisdiction.[41] The jurisdiction status of the waters in the "zone" is meticulously regulated by the provisional prohibition of the entrance of coastal police or naval forces and the prohibition of any commercial activities. The area is protected by a mixed coastal police crew, sailing in boats without flag. The delimitation in the western part is concluded by a boundary line of azimuth 206^{o}, 12 nautical miles towards the high seas (figure 16). The Island of Mamula is not taken into consideration in the delimitation process, however, in a future EEZ and continental shelf delimitation, it should be, probably, used as a baseline point.

iii. Coclusion

[40] The extension of coastal state jurisdiction in Enclosed or semi-enclosed Seas, A Mediterranean and Adriatic Perspective, Mitja Grbec (p.165)

[41] Protocol of Temporary Regime along the southern boundary, 10 December 2002.

According to the aforementioned facts regarding the delimitation of the maritime zones in the eastern Mediterranean Sea, and specifically in the Adriatic and the Aegean Sea the map is not complete yet. It is more than obvious that, because of the limited space in the Adriatic and the Aegean, the boundaries should obtain a multi-purpose character. Specifically, the continental shelf delimited boundaries should be EEZ ones too, in the majority of the cases. Additionally, the role of the islands in the delimitation process is extremely important as it adds or subtracts amounts of maritime territory of the respective states. The rules of the UNCLOS are relatively clear regarding the islands' effect on the delimitation.



(Figure 16) Disputed area and provisional delimitation in the Bay of Kotor according to the Agreement between Croatia and FRY, 10 December 2002.

Chapter 3

The International Courts' "modus operandi" on the delimitation of Maritime Zones

i. The latest International Courts' awards. Common methodology in maritime delimitation.

The extension of the coastal states jurisdiction by the declaration of an EEZ, globally reduced the high seas to 36% of the total maritime space, whereas, the 95% of the fishery is accumulated in the EEZ areas[42]. According to article 74(1) of the UNCLOS, the EEZ delimitation between states with adjacent or opposite coasts, is regulated following an agreement, aiming to achieve a fair solution. Also, according to article 74(2), in case that the interested parties are not able to reach an agreement, they must resort to conciliation for the settlement of the difference.

Given the overlap of the continental shelf and the EEZ, and the same sovereign rights that are recognized to the coastal state regarding the subsoil (continental shelf) and the water above (EEZ), the two maritime zones should coincide. By studying the cases concerning the EEZ delimitation and the discussed overlap of CS and EEZ, the ICJ awards and the clauses on CS delimitation are applied mutatis mutandis for the EEZ[43]. As regards the methods of delimitations of the two zones, there should be noted that the principle of equity that is provided by UNCLOS for the delimitation of overlapping continental shelves results in the median line being the main delimitation line. The role of deciding the methods of delimiting the maritime spaces is adopted by the jurisprudence of the ICJ and of the International Tribunal for the Law of the Sea (ITLOS). The two courts have established and applied the concept of the equidistance – special circumstances for the delimitation of the territorial sea, and of equitable principles – relevant circumstances for the continental shelf and EEZ. In order to determine whether the islands should enjoy full rights on both the maritime zones we should examine several decisions regarding contentious cases that provide useful guidelines on delimitation issues

[42] The Aegean dispute in the context of contemporary judicial decisions on maritime delimitation, P. Siousouras and G. Chrysochou, 2014.
[43] As above

internationally. Three of the most characteristic cases about maritime zones delimitation disputes that involve islands and their rights on CS and EEZ's are analyzed in this chapter.

a. The ICJ decision on the effect of Serpent Island (Romania vs Ukraine)

An issue of significant interest regarding the maritime zones delimitation is the ICJ award about the Ukranian island of Serpent which lies in a distance of approximately 35 nautical miles from the Romanian-Bulgarian borders and its position affects the median line between the two states. The dispute was about the delimitation of the Continental Shelf (CS) and the Exclusive Economic Zone (EEZ) between Romania and Bulgaria. Specifically, on September 2004 Romania appealed to the International Court of Justice against Ukraine for the delimitation of CS and EEZ between the two states. The island of Serpent was the epicenter of the boundary dispute, and the ICJ award was issued in 2009[44]. The island of Serpent belongs to Ukraine and is situated near the border with Romania. It is basically rocky and the nearest city in Romanian Coast is Sulin (45 km). The nearest city in Ukranian coast is Vylkove (50km). The island is inhabited by 100 residents, the majority of which belong to the military and are living there with their families guarding the borders. It is also noted that the maritime area around the island has attracted the economic interest because of the existence of oil and natural gas resources. The Ukranian arguments are that as long as the island is inhabited (the current residents have moved there the last 2 years), it has the right to continental shelf and EEZ according to UNCLOS.

On the other hand, Romania invoked as an argument that the Black Sea is a semi-closed sea and the delimitation should take into account special circumstances. In addition to this, Romania claims that although the island belongs to Ukraine it is separated from the Ukranian land and is an elevation of the bottom of the Romanian continental shelf[45]. According to the ICJ, the principles to be applied in this case are: articles 74 (paragraph 1) and 83 (paragraph 1). The international court followed the method that have prevailed in the international

[44] ICJ, Case Concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment , 3 February 2009, para. 1

[45] ICJ, Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine), Summary of Judgment of 3 February 2009, p. 20.

jurisprudence, which consists of one qualifying stage and three main stages for the final delimitation. The qualifying stage includes the tracing of the coasts that are relevant to the delimitation. These coasts are the opposite or the adjacent coasts of the states in dispute. It should be noted that the length of the of the relevant coasts is of major importance because it determines the ratio of the relevant surface of each one of them. This ratio will, finally, determine the relative maritime area which will be delimited as continental shelf or EEZ. After the qualifying stage, follows the aforementioned three stage methodology[46]. In the first stage the Court establishes a provisional median line using methods that are geometrically objective and appropriate to the geography of the area. In the second the Court examines thoroughly the possible existence of special circumstances, and the third and final stage includes the verification of the examination and the research for the most appropriate outcome, taking into consideration the proportionality criterion and the production of an equitable solution.

In the particular case of the Serpent island, the ratio of the coastal lengths between Romania and Ukraine is 1:2,8 and, the coast of Serpent Island is so short that it does not affect this ratio[47]. Regarding the provisional line, at the adjacent coasts an equidistance line was drawn and at the opposite coasts a median line respectively, as the delimitation method is the same for both. The Court made it clear that this line covers several zones of coincident jurisdiction. At the second stage the court considered whether there were factors that constitute special circumstances and the provisional equidistance line should be adjusted or shifted accordingly in order to achieve an equitable result. Finally at the third stage, the Court checked, if the line (which may or may not be adjusted) leads to an inequitable result because of any marked disproportion between the coastal length ratio and the relative maritime area delimited to each state.

The issue of the effect of the Serpent island in the delimitation procedure was rather complex. The Court did not proceed to a legal characterization of the island as an island or as a rock but it was referring to it as “a natural feature called Serpent’s Island”. In the former case it would have the right ot CS and EEZ and in the latter

[46] C. L. Rozakis, The Exclusive Economic Zone and the International Law, Papazisi publ. (2013)
[47] ICJ, Case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine), Summary of Judgment of 3 February 2009, para 77-105.

case it would have been entitled only to a territorial zone. The court, finally attributed ot it a territorial zone of 12nm without awarding any effect to the shift of the CS/EEZ single boundary line. It is very important to note that in the second stage, the court did not recognize any special circumstances that could justify the shifting of the single boundary line, neither the disproportion of the length of the relevant coasts nor the semi-closed Black Sea. In addition to this, neither the states' activities such as oil and gas concessions, fishing naval patrols, nor their security considerations justified for a shifting of the boundary line[48]. The International Court, also decided that the Serpent Island does not constitute a special circumstance that justifies the shifting of the provisional line because it does not serve as a base point for the construction of that line, since it does not constitute part of the general configuration of the coast[49] (figure 17).

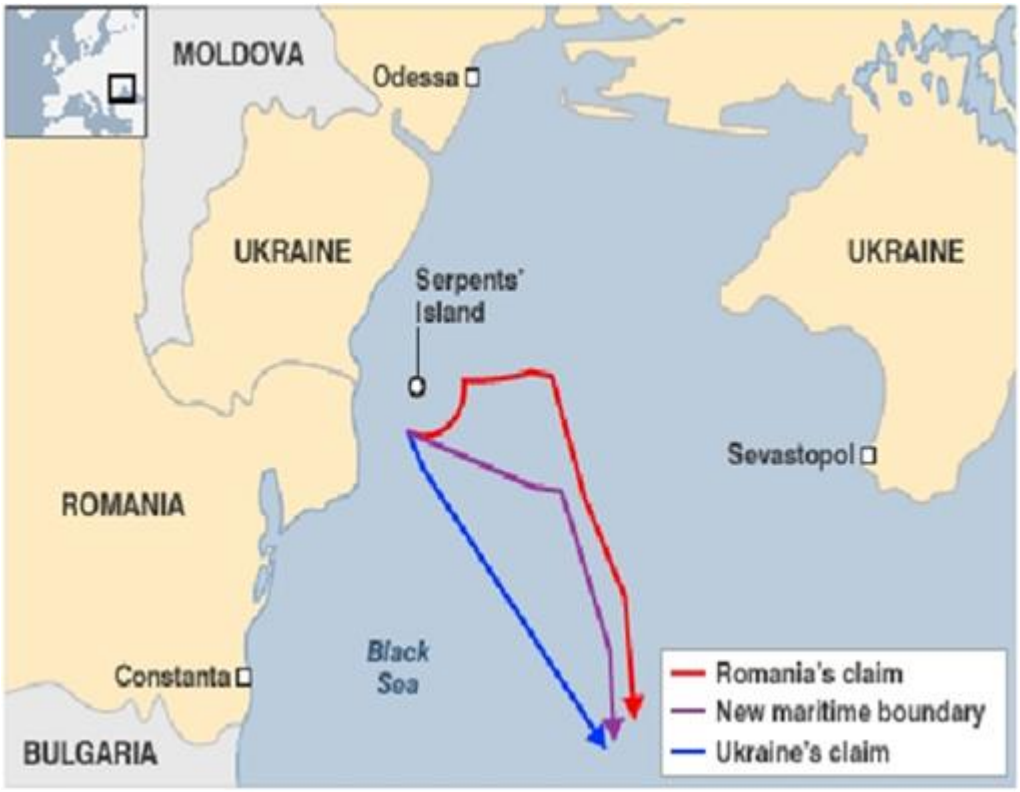


Figure 17, The ICJ decision on Serpent Island case. Source: Infognomon, Web forum for issues related to international relations, foreign and defense policy, ICJ: ICJ Decision for the Maritime Delimitation Ukraine and Romania (in Greek), [online]

[48] Maritime Delimitation in the Black Sea (Romania v. Ukraine), ICJ Decision No. 2009/9, 3 February 2009, para 155-204

[49] Maritime Delimitation in the Black Sea (Romania v. Ukraine), ICJ Decision No. 2009/9, 3 February 2009, para 179-88

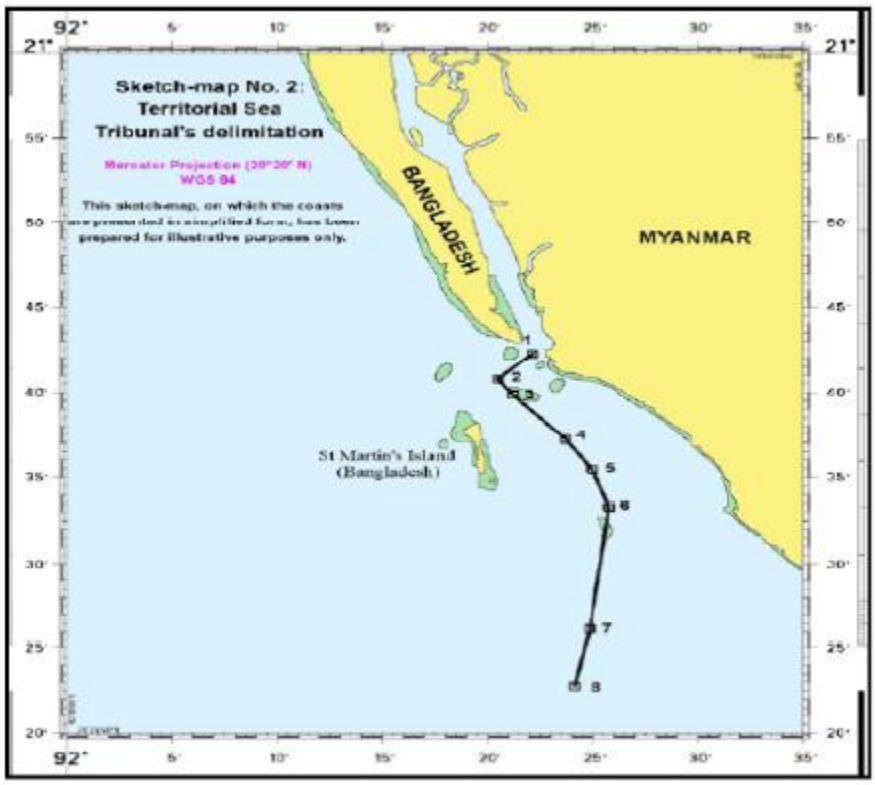
b. The ITLOS decision on the Bay of Bengal case (Bangladesh vs Myanmar)

The international tribunal for the law of the Sea (ITLOS) issued its first judgement in March 2012 on the case of the delimitation of the territorial sea between the states of Bangladesh and Myanmar in the Bay of Bengal. In this case, ITLOS, established a single maritime boundary which delimited the territorial seas, the Continental Shelves and the Exclusive Economic Zones of the two States. Another major characteristic of this decision is the denotation made by the Tribunal over the prevalence of one maritime zone on another. More specifically, in this case the territorial sea will prevail upon the EEZ:"…the Tribunal recognizes that Bangladesh has the right to a 12 nautical miles territorial sea around St Martin's Island in the area where such territorial sea no longer overlaps with Myanmar's territorial sea. A conclusion to the contrary would result in giving more weight to the sovereign rights and jurisdiction of Myanmar in its exclusive economic zone and continental shelf than to the sovereignty of Bangladesh over its territorial sea…[50]" And that a state may exercise rights in an overlapping area that does not pose impediments to the other state's rights[51].

The method of the delimitation is same as the one that was followed on the Serpent Island case by the ICJ. Accordingly ITLOS procedure followed three stages. At first, the territorial sea between the two states was delimited by the use of the equidistance line principle (article 15 of the UNCLOS). The first, provisional equidistance line became the final boundary, as the ITLOS did not recognize any special circumstances that could justify otherwise. Also St Martin's Island of Bangladesh was granted full effect and the boundary line was plotted accordingly (figure 18).

[50] Dispute concerning delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, (Bangladesh/Myanmar), Case No 16, Judgment, ITLOS, 14 March 2012, para. 169

[51] As in the case of the EEZ, water column overlapping the continental shelf.

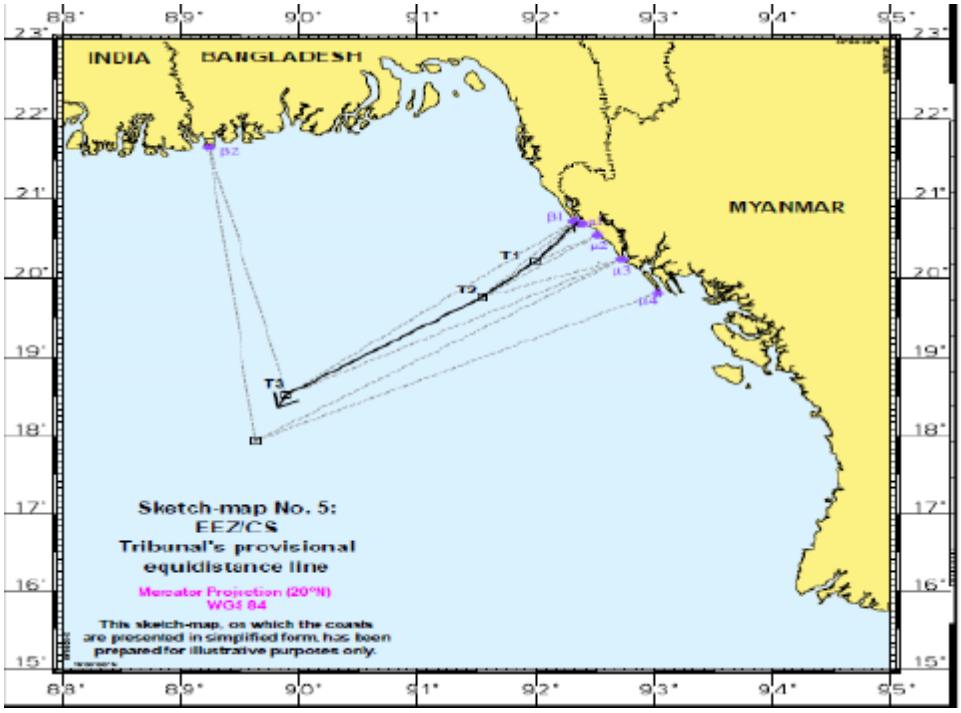


(Figure 18, ITLOS territorial Sea delimitation)

As in the previous case (Serpent Island), ICJ recognizes full territorial sea rights (12nm)[52] to the islands and favors the equidistance line in the territorial sea delimitation. Regarding the delimitation of the Continental Shelf and the EEZ within 200nm, ITLOS, adopted the three stage method and based its decision on the UNCLOS, the customary law and the respective case-law (judicial decisions)[53]. At first it drew an equidistance line and checked its equitability, the existence of special circumstances and finally assessed it on the basis of the proportionality criterion. The produced provisional line was a modified equidistance line (figure 19) because of the selection of certain baseline points to be used.

[52] The Aegean dispute in the context of contemporary judicial decisions on maritime delimitation, P. Siousouras and G. Chrysochou, 2014.

[53] Dispute concerning delimitation of the Maritime Boundary between Bangladesh and Myanmar in
the Bay of Bengal, (Bangladesh/Myanmar), Case No 16, Judgment, ITLOS, 14 March 2012, para. 183-184

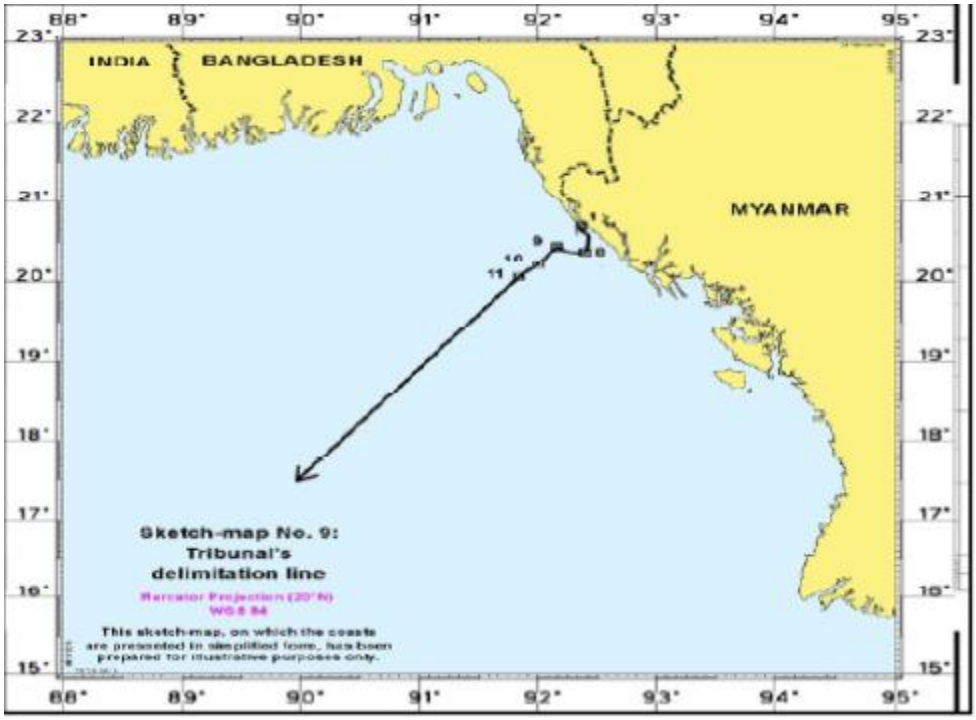


(Figure 19) The ITLOS provisional equidistance line for CS and EEZ

It is worth noting that the Tribunal did not use St Martin's Island as a base point (alike the Serpent Island case) because the island is in front of the coast of Myanmar and it produces a cut-off effect[54]. Also the Tribunal accepted the special circumstances on the concavity of Bangladesh's coast and the cut-off effect that it produced. As a result the boundary line was shifted taking the shape of a straight azimuth line (215º) starting from a base point near the coast (Figure 20). The most important observation here is that the Tribunal did not attribute any effect regarding Continental Shelf or EEZ to St Martin's Island asserting practical reasons, namely, the cut-off effect on the coast of Myanmar. Also, according to ICJ's judicial practice as well, the geomorphology of the seabed is relevant in the delimitation of the continental shelf only in the cases that extends beyond 200nm, consequently as the ITLOS denotes the delimitation of a single maritime boundary is to "be determined on the basis of geography and not geology or geomorphology"[55] .

[54] Dispute concerning delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, (Bangladesh/Myanmar), Case No 16, Judgment, ITLOS, 14 March 2012, para. 318-319

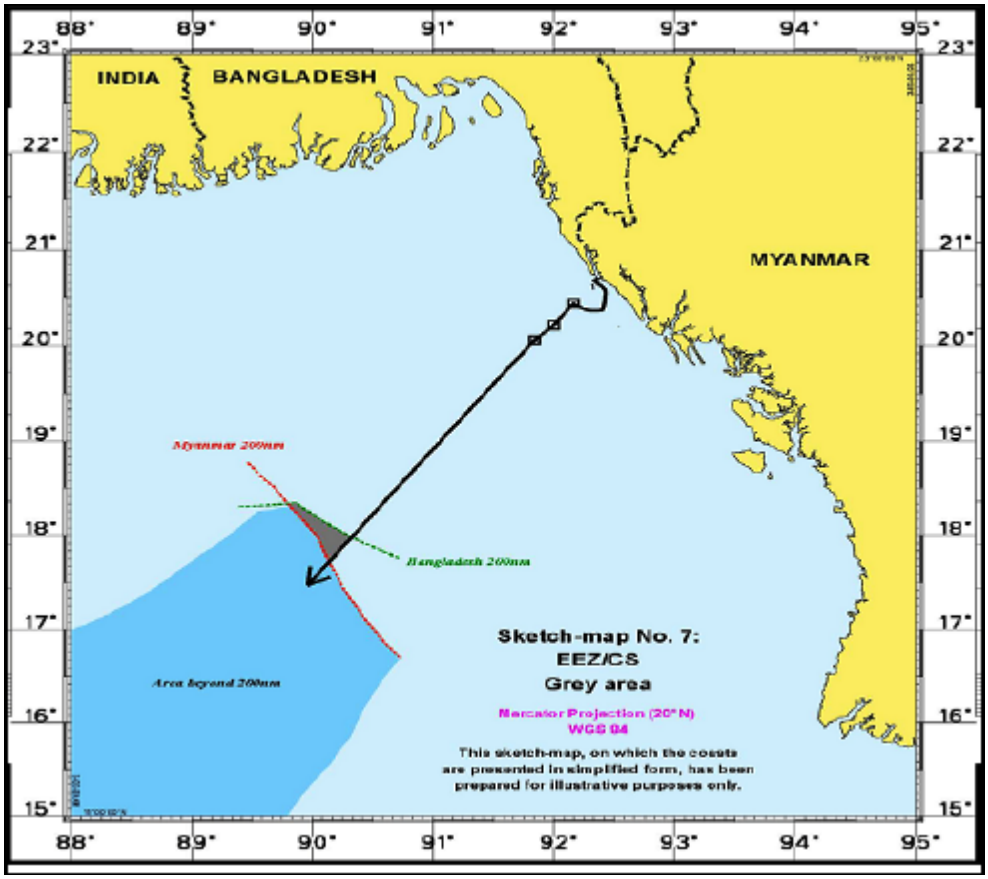
[55] Dispute concerning delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, (Bangladesh/Myanmar), Case No 16, Judgment, ITLOS, 14 March 2012, para. 322



(Figure 20) Final delimitation line for the EEZ/Continental Shelf

In this case, also, it was the first time that an International court had to delimit a continental shelf that exceeded 200nm. In general terms, the ITLOS, having the jurisdiction to delimit such an area, identified the continental margin with the natural prolongation (article 76 of the UNCLOS). It did not justify any relevant circumstances asserted by Bangladesh about the “most natural prolongation” and that “a significant geological discontinuity” is not relevant for determining entitlement . Consequently, there was no Continental Shelf entitlement beyond 200nm except for the,namely, “grey area”. According to ITLOS, which issued this law for general use in future cases (Figure 21):

> “*When, by reason of the employment of a delimitation method other than the equidistance line, the extended continental shelf of a state, as delimited by a boundary line, is beneath the EEZ of the other, the latter still exercises all its rights over the water column. In such a situation, each state, in exercising its rights and obligations, is under an obligation to have due regard to the rights and obligations of the other* ”



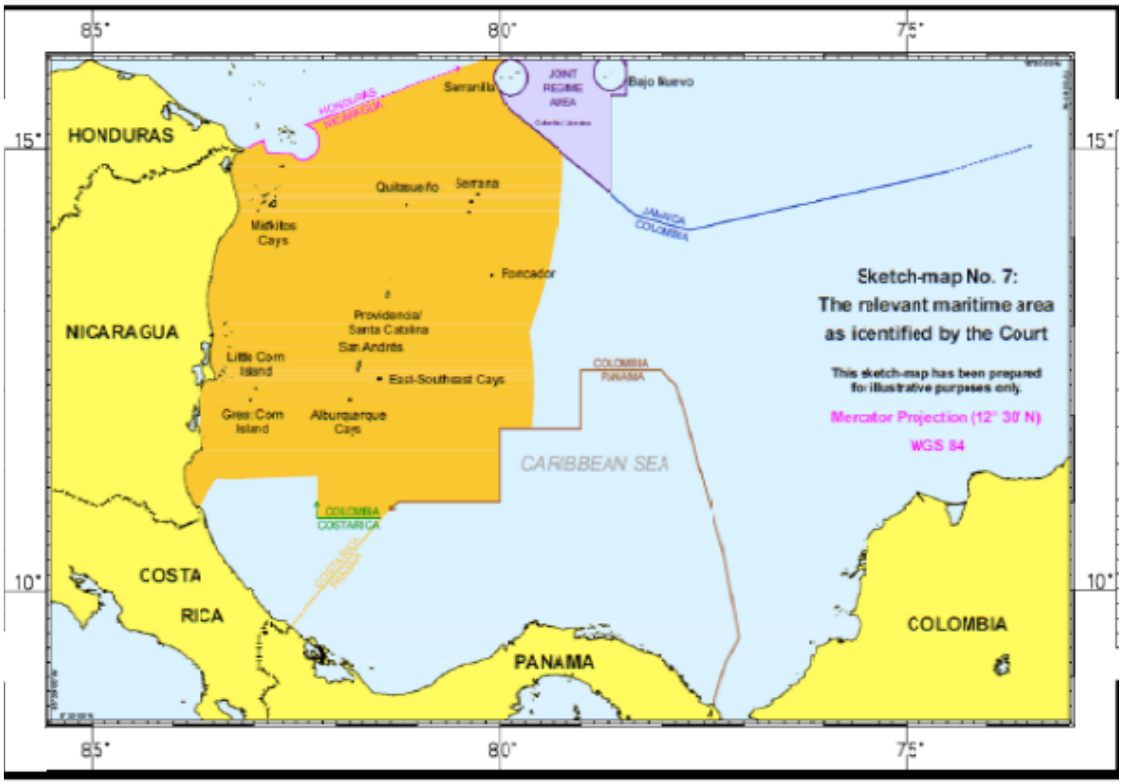
(Figure 21)The EEZ/Continental shelf “gray area”

c. The ICJ decision in the Nicaragua vs Colombia Case

In November 2012, ICJ, following the same judicial practice as in Black Sea (Serpent Island case) issued a decision upon the case of the delimitation of maritime zones between Colombia and Nicaragua[56] . The ICJ decision is about the simultaneous delimitation of Continental Shelf and EEZ of the two states. Nicaragua appealed to the International Court against Colombia on the matter of claiming sovereignty on certain islands, and consequently, the extension of its maritime boundary. However, the ICJ issued the decision that the disputed islands (namely: Albuquerque, Este Dudeste, Roncador, Serrana, Quiatasueno, Serranilla and Bajonuero) would belong to Colombia, and at the same time did not attribute to them the rights of Continental Shelf and EEZ, thus, it enclosed them into the EEZ of Nicaragua. However, the court granted them full effect on territorial waters (12nm). Regarding the matter of their legal characterization as “islands” or “rocks”, although, the court slightly referred to this matter by denoting that, according to article 121(3)

[56] Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgement, ICJ Reports (2012)

of the UNCLOS, the rocks do not have the right to a continental shelf or EEZ, did not precisely characterized these islands. Figure 22 shows the relevant maritime area as identified by the court.



(Figure 22) Relevant maritime area in the Nicaragua vs Colombia case as identified by the court.

Apart from that, according to court's judgement, the island of Quitasueño was not suitable to be used as a base point, and, additionally, those very small islands, "small features" should not have any effect in the construction of an equitable line, because, otherwise this line would have been distorted. For example, in case of island of Serrana, the court denoted that it was not necessary a legal determination of an island or a rock because it was in the range of 200nm from the island of Providencia (which legally had the status of an island and was situated east of Serrana) and consequently all the maritime zone that would have entitled to it, would have been overlapped by those of Providencia[57]. Although the continental shelves of Providencia and Serrana islands would overlap if they were both given 200nm of CS, the Court did not award Providencia with a full effect on CS because it should

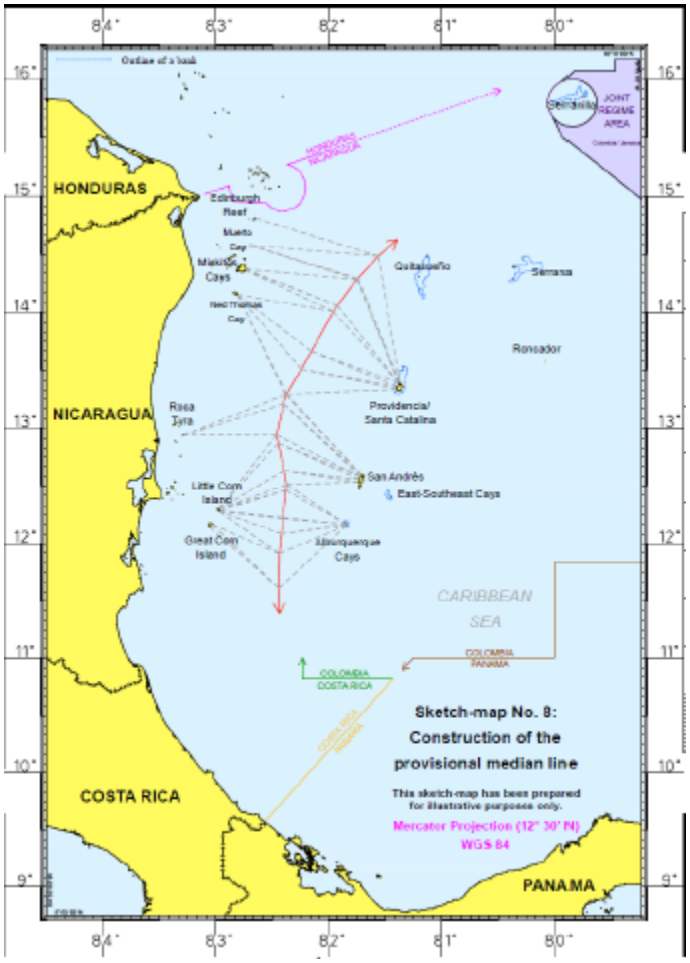
[57] Territorial and Maritime Dispute (Nicaragua v Colombia), Judgment, ICJ Reports (2012), para 180.

award the island (“feature”) of Serrana with the same rights. Thus, according to ICJ:” …its small size, remoteness and other characteristics mean that, in any event, the achievement of an equitable result requires that the boundary line follow the outer limit of the territorial sea around the island[58]”. In other words, although the court bases its decision in a previous case, that of Qatar vs Bahrain, at which it was denoted that islands regardless of their size have the same rights on the delimitation of maritime zones as the rest of the mainland[59], in this case the Court invokes the size and the “other characteristics” of the island of Serrana in order to refuse any other rights besides the territorial waters. However, at the same time it does not define whether this “feature” is island or a rock.

Regarding the methodology followed by the International Court, for the delimitation of the maritime zones, this follows the same mentality as in the cases that were previously analyzed, and they both suggest the delimitation of the overlapping continental shelves by the three stage method as it was previously noted.

At the first stage, the court chose the base points and drew a provisional boundary line between the coast of Nicaragua and the west coasts of the relative islands of Colombia that are situated opposite of the coast of Nicaragua. (figure 23)

[58] Territorial and Maritime Dispute (Nicaragua v Colombia), Judgment, ICJ Reports (2012), para. 238
[59] Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, ICJ Reports (2001).



(Figure 23) The provisional median line of Nicaragua vs Colombia case
(ICJ report, para 76)

At the second stage, the court examined the special circumstances which might demanded the adjustment or shifting of the provisional equidistance line in order to achieve an equitable effect. As special circumstances, the Court noted the disproportionality between the lengths of the relative coasts of the two states (the ratio is 1:8,2) and the need to avoid any cut-off effects of the boundary line against the projections of the coasts of the two parties. Also the court denoted that any previous behavioral practices, previous agreements on access to the natural resources or previous delimitation agreements were irrelevant to the present case and did not constitute special circumstances. By examining the special circumstances that occurred, the court shifted the provisional line. The adjustment of the boundary line was made in the section between the west coast of the Colombian islands of Albuquerque, San Andres, Providencia and Santa Catalina. In

this section, due to special circumstances the base points of the Nicaraguan coast were considered three times more important than those of the Colombian islands, consequently, the median line became a weighted line shifted to the east as the mainland points, in other words, were multiplied by 3 whereas the base points of the islands were multiplied by 1. (figure 24).

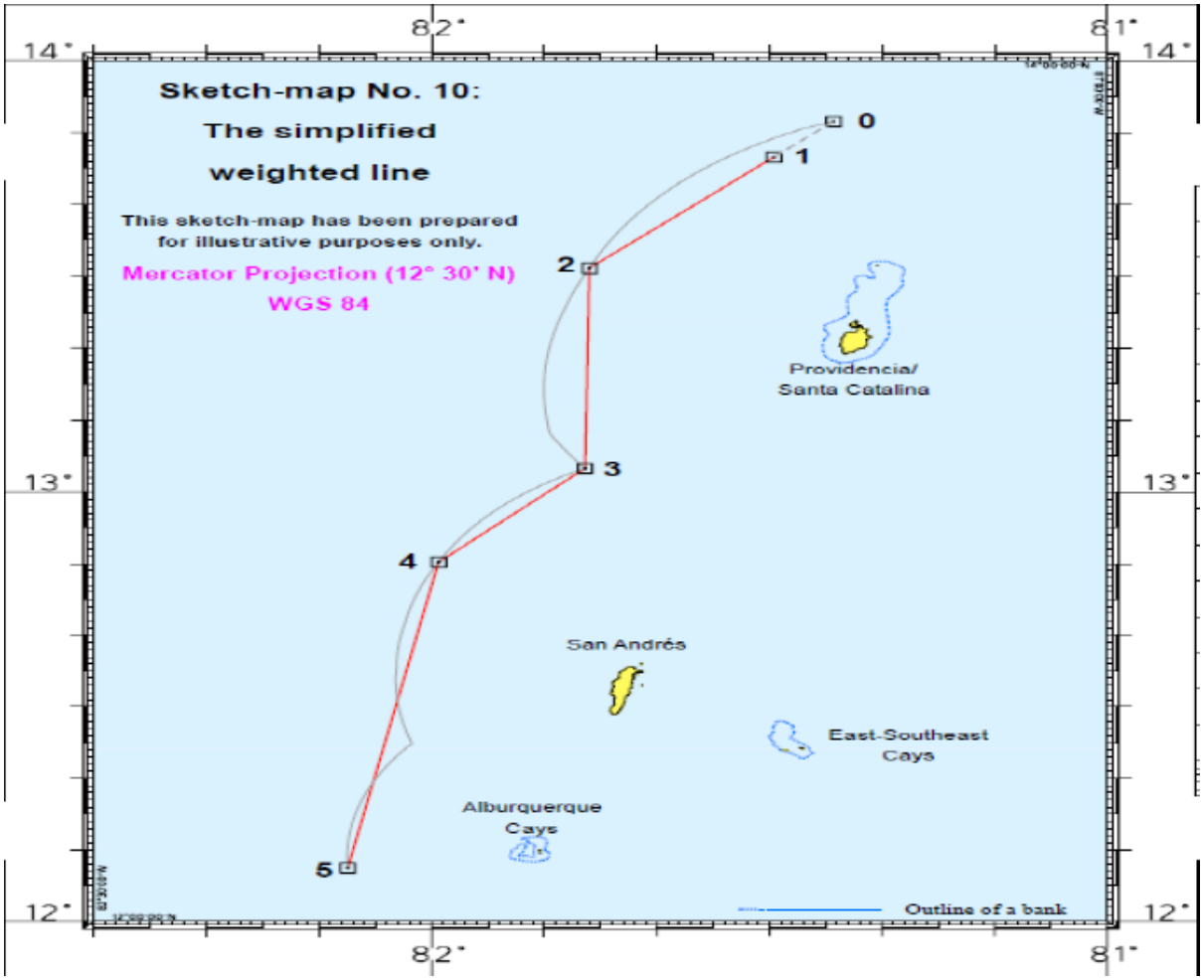


Figure 24, The weighted median line of the Nicaragua vs Colombia case.(para 87)

However, the Court denoted that this weighted line could not be extended nor to the North neither to the South because the final result would not be equitable. The reasons were that, firstly, Colombia would obtain significantly larger part of maritime area despite the fact that according the ratio Nicaraguan coasts are eight times larger in length than Colombia's. Secondly Nicaragua would be cut-off from the eastern maritime areas, beyond the Colombian islands. As a result, the ICJ decided that an equitable result could be achieved by delimiting the rest of the area (the

aforementioned north and south part) across the parallel lines that pass through the northern and the southern base point of the coast of Nicaragua as it is shown in the figure 25[60] .

Finally, by the decided delimitation the ratio of the maritime space between the two states was 1:3.44 in favor of Nicaragua whereas the ratio of the coast lines, as it was noted above, was 1:8.22. The ICJ concluded that, under the examined circumstances, the aforementioned disproportionality does not constitute an unfair result. This, relatively unexpected result, trapped the islands of Quitasueno and Serrana into their territorial seas and entitled Nicaragua with continental shelf and EEZ the areas outside of the parallel lines. As a result Colombia was granted with less maritime zone space that it initially claimed.

ii. Conclusion

The examined cases provided us with many details concerning the International court's delimitation methods and the general dispute settlements regarding the maritime space. Although we can identify the usage of the basic rules according to UNCLOS, ICJ and ITLOS are taking into account multiple factors which might bend the strict rules in favor of equity, common sense and peace. Unfortunately, it would be very subjective if we tried to settle the existing delimitation disputes in South East Europe by using the results of the already settled disputes.

[60] ICJ Decision para 205-238

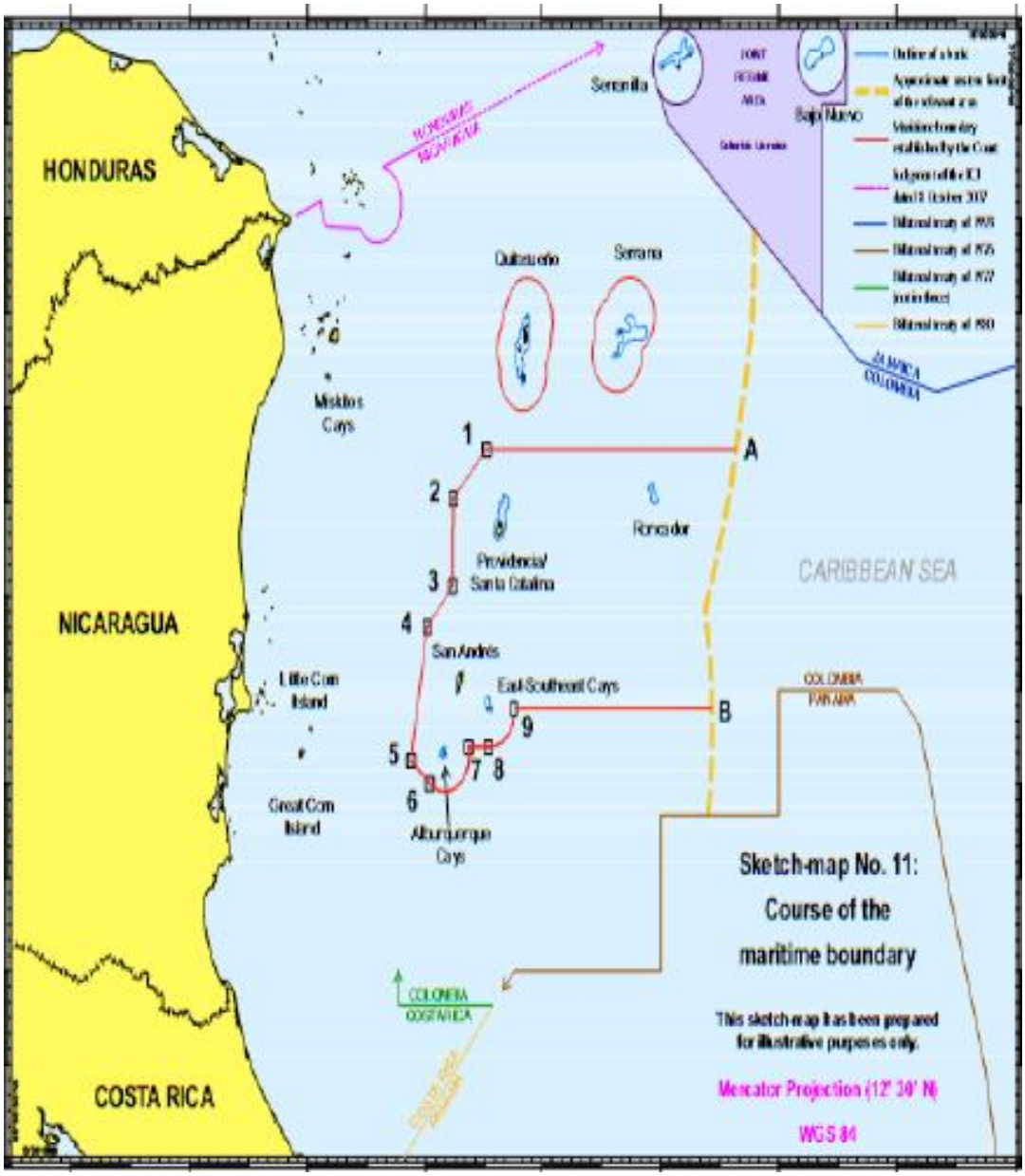


Figure25, Final Result of the maritime boundary line in the case of Nicaragua vs Colombia.

Chapter 4

Conclusion

The turbulent area of the Balkan Peninsula is trying, during the last decades, to be stabilized and to proceed with the political transition to democracy in order to cover the lost distance towards development. The final goal of all the South East European newly born states (which, however, curry old traditions and inherent insecurities) is to reach the economic prosperity and the political stability of their European neighbors. The states of this region, as we analyzed in the previous chapters, have hardly, recently established their borders on land. The maritime boundaries of the most Balkan states, especially in the Adriatic Sea were either inherited from the late Yugoslav State's agreements or they are not fully delimited yet. However, the need for economic resources as well as the influence from external political and private actors such as the so called "Super Powers" (USA, Russia) and large Oil companies, urged them to reconsider their rights upon the maritime resources by claiming continental shelves and exclusive economic zones.

In an attempt to justify their claims for larger maritime areas to exploit, the South East European states such as Turkey, Greece, Albania, Croatia, Montenegro and Bosnia and Hercegovina are invoking the Law of the Sea and the rules consigned in 1982 at the United Nations Convention on the Law of the Sea (UNCLOS). The most sensitive point of the Exclusive Economic Zone (EEZ) delimitation process especially in this, not spacious region, is the effect of the islands upon the maritime zones. The delimitation of the maritime boundaries based upon the UNCLOS rules is a global phenomenon. Many of the problematic cases were brought before the International Court of Justice (ICJ) and the International Tribunal on the Law of the Sea (ITLOS). As we saw in the previous analysis, the decisions of these institutions are not based solely upon the Law but are taking into account multiple factors such as equitable principles and relevant circumstances which cannot be standardized but are based on thorough examination of each case. That is why the parallelism between the three cases that we examined in chapter three and the disputes discussed in chapter four, concerning the impact of the islands on the Continental

Shelf/EEZ, set off some common points as well as significant particularities and differences. Nevertheless, the recent judicial practice favors the application of equitable principles rather than the rule of equidistance in the delimitation of the CS and EEZ. Thus, as regards the Aegean Sea case, the Greek claim for the application of the equidistance principle is more unlikely to be accepted. However, as it is mentioned in the examined cases, the process will certainly start by a provisional median line delimiting all maritime zones between Turkey and Greece. Also, in the examined cases, the islands had the characteristics of very small maritime features or rocks, such as Serpent Island. In the Greek case, islands such as Megisti (Kastellorizo) are significantly larger. In this sense Megisti which is very important regarding the delimitation of the Greek – Turkish EEZ in south east Mediterranean, is ten times larger than the Serpent Island and some of the disputed Colombian islands. Nevertheless, it is possible, in a hypothetical ICJ decision, that Kastellorizo may be considered to cause a cut off effect and therefore to be awarded with a reduced effect regarding the CS/EEZ. This may also be the case for the Ionian Islands Othoni and Erikusa, although these islands are much larger in terms of size and population, they are much closer to the main country, than the ones we examined in the solved cases (Serpent was inhabited by 100 residents) and they are inhabited since the antiquity. Furthermore, the geographic formation of the islands in the Aegean Sea could be considered archipelagic. Although Greece is not an Archipelagic State, the formation of the islands should be taken into consideration because it should maintain the political and economic unity with the mainland which lays in a very close distance leaving small spaces of open sea[61].

The ICJ decision on Serpent Island case in which the island, although its tiny size and population was awarded with 12nm of territorial waters, is an indication of ICJ method. Nonetheless, in the disputes we already examined, even the smallest islands have the right of 12nm of territorial waters. Also, they should be used as baselines for the construction of the provisional equidistance line and should be awarded with economic zones in a certain degree. In addition to this, regarding the ICJ's denial of EEZ to Serpent Island, it is not based on the reasoning that Black Sea is a semi-enclosed sea. The opposite would create a "res judicata" in favor of

[61] Kostas Oikonomidis. International Law and Greek Foreign Policy Issues (in Greek). Athens: Sakkoulas, 1998, p. 53.

the Turkish position, which does not recognize the right for CS or EEZ of the islands because of the alleged semi-enclosed character of the Aegean Sea. ICJ's decisions demonstrate that the right of the islands on economic zones is not affected by the semi-enclosed character of the seas.

The cases examined in chapter three, highlight the fact that the single maritime delimitation line of the EEZ and the Continental Shelf it is usually drawn somewhere in the middle of the claims of the two parties without being particularly inequitable for either of them.

Generally, the ICJ decisions upon the disputes regarding territorial sovereignty and economic zones are relatively few. For this reason we cannot foresee, with enough certainty, a future result in a new case. The International Courts, are implementing the international law regulations, however, the consideration of multiple factors such as political developments, special circumstances or war threats, may cause deviations from the strict rules. Perhaps this is the reason why there are multiple dispute cases that are not brought before the international courts, but instead, political methods are followed that result to bilateral agreements. The majority of the delimitations in the Adriatic Sea, which are examined in chapter two are products of political negotiations and arbitrations.

Every delimitation case has significant differences with each other. The Islands of Southeast Europe have the right to an Exclusive Economic Zone. However, its breadth is rather difficult to determine. Nonetheless, a final delimitation would be beneficial for the economic stability and future development of the Balkan states. Perhaps this is the key for their, very much, desired prosperity.

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