

Schulich School of Law
Marine and Environmental Law Institute

UNCLOS Zones and Maritime Boundary Delimitation: Overview of Legal Principles

Phillip Saunders QC

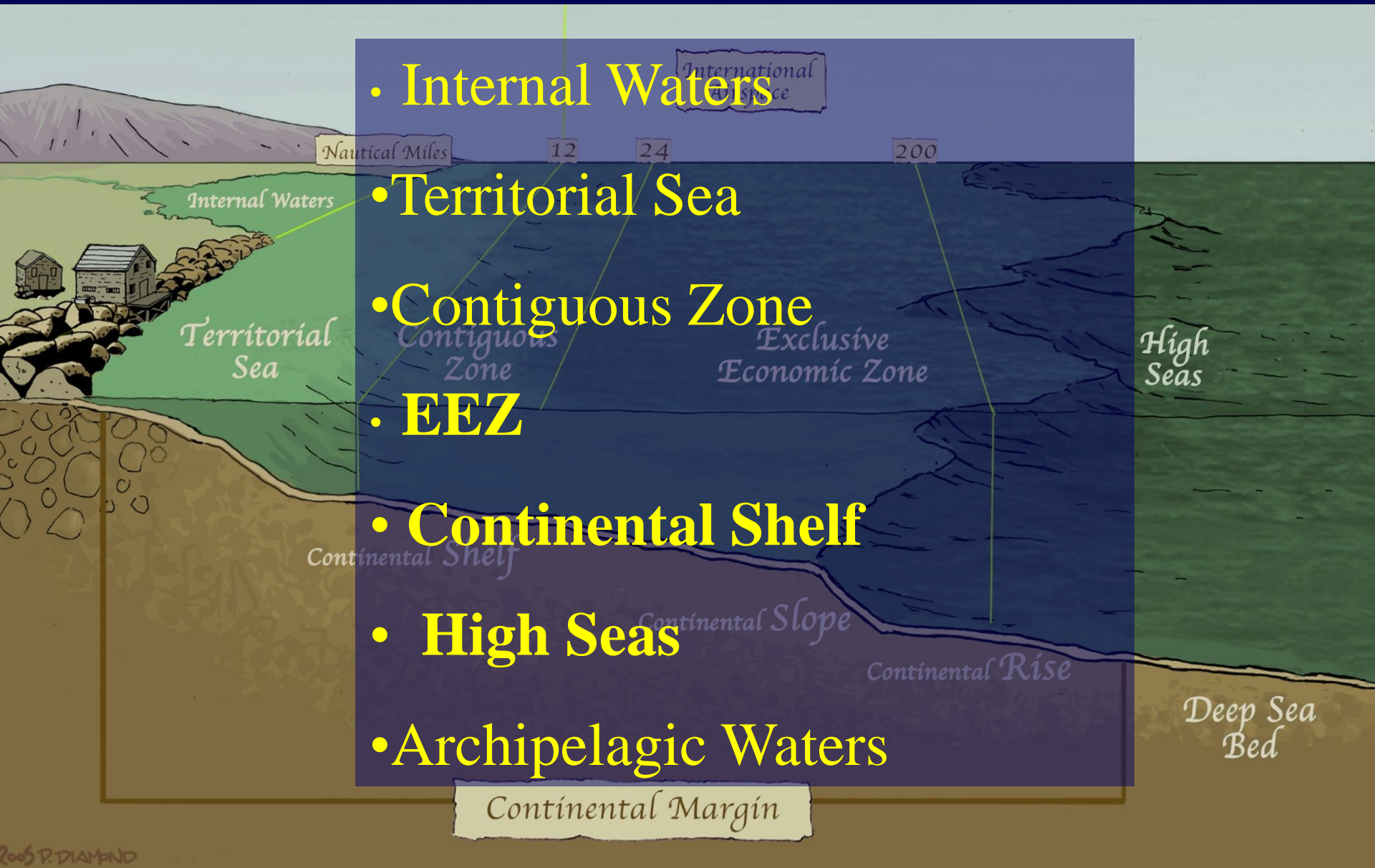
Hainan, November 2016

China-ASEAN Advanced Academy on Ocean
Law and Governance

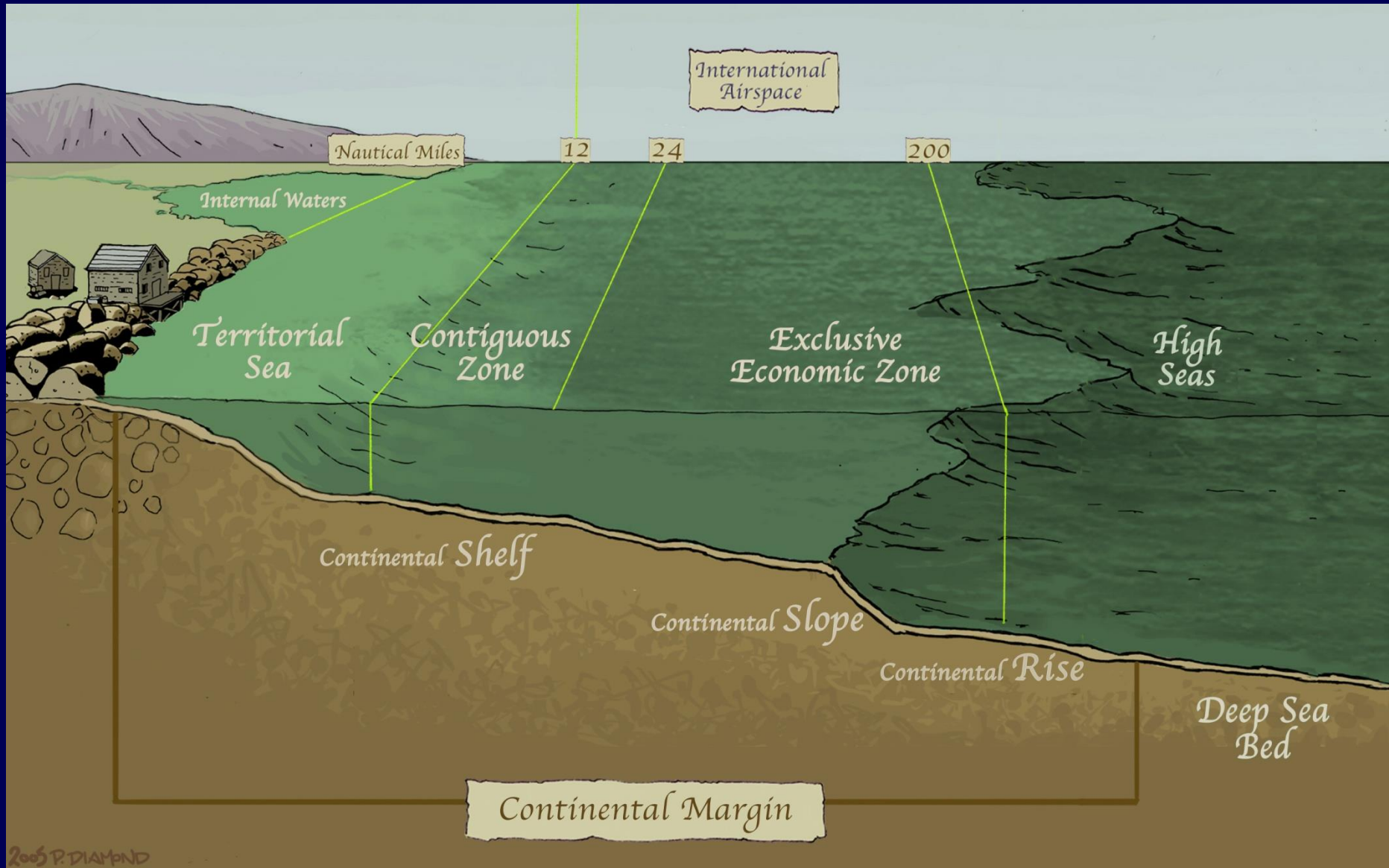
Zones of Jurisdiction

- 1982 Law of the Sea Treaty (LOS 1982)
 - Signed 1982, In force 1994
 - Implementation Agreement, 1994 (seabed)
 - Straddling Stocks & HMS Agreement - 1995
 - Key Zone Issues: territorial sea - 12 M; EEZ 200M, Continental Shelf (combined criteria)
 - Archipelagic Waters, International Straits

Jurisdictional Zones



Jurisdictional Zones



Internal Waters

- Basic Characteristics
 - Waters to landward of baselines from which territorial sea is measured
 - Art 8 LOS - includes ports, bays estuaries, historic claims. Note - straight baselines
 - Status: full sovereignty
 - Where straight baselines enclose new areas - innocent passage rights survive
 - Access rights for foreign ships?
 - Port state control – pollution prevention
 - Places of refuge?

Territorial Sea

- Breadth of Zone: Max 12 M
- Juridical Status – Art 2
 - Sovereignty – can exercise *except* as provided in international law
- Rights of other states
 - Innocent passage
- Rights and duties of coastal state

Innocent Passage

- Definition of Passage - Art 18 - LOS 1982
 - Through territorial sea to other waters (including Ports)
 - Submarines: on surface, flying flag
- Definition of Innocence - Art 19 LOS 1982
 - General: Non-innocent if prejudicial to peace, good order or security of coastal state
- Deemed Prejudicial (egs only):
 - Threat or use of force against coastal state
 - Exercise with weapons
 - Fishing

Rights and Duties of Coastal State

- Rights to limit innocent passage
 - Limit and suspend for military purposes
 - Publish in advance; non-discrimination
 - Charge for actual services
 - Apply other laws and regs (Art. 21)
 - navigation, conservation, fisheries, customs, fiscal etc
 - Pollution prevention and environ. Protection
 - BUT cannot extend to design, manning and equipment unless international rules applied
 - Sea lanes and traffic separation

Straits Used for International Navigation

- Customary Law:
 - High seas straits – freedom of navigation
 - Territorial sea – suspendable innocent passage
 - If “international strait” – maybe non-suspendable
- UNCLOS III
 - New urgency – 12 + 12 problem
 - New compromise – Art. 37:
 - “Transit passage” in “straits used for international navigation”

Transit Passage

- Where?
 - Straits used for international navigation
 - High seas-high seas; EEZ-EEZ; EEZ-High Seas
 - Some exceptions (eg wider than 24, convenient route)
- Rights?
 - Transit Passage (Art 38):
 - Navigation and Overflight
 - Normal Mode of navigation (submarines)

What Rights?

- Transit Passage (38):
 - Navigation and Overflight
 - Normal Mode of navigation (submarines)
 - Non-suspendable (44) – not to hamper
 - If not transit – could still have innocent passage

Contiguous Zone

- Early history -- smuggling, quarantine
- Now in LOS Art 33
 - Further 12 M beyond Terr sea
 - State may exercise control necessary to prevent and punish infringements of customs, fiscal sanitary regs which will occur or have occurred in territorial sea
 - Not to prevent or punish breaches in contiguous zone
- Not sovty, not pure high seas or EEZ

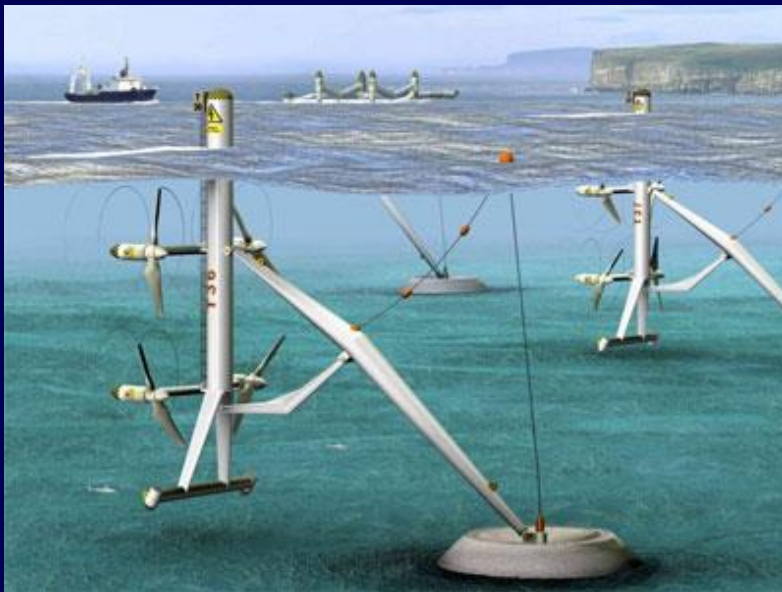
Exclusive Economic Zone (EEZ)

- 200 M from baselines
- Legal Status
 - Not “residual” territorial sea status
 - Is *sui generis*: a regime defined in all aspects by the Convention
 - Art. 56: coastal state has combination of “sovereign rights” and “jurisdiction”
 - Varies for different functions
 - Clearly NOT sovereignty

- Non-Living Resources
 - “Sovereign Rights” to explore, exploit, conserve and manage - water column, seabed and subsoil (LOS 1982, 56(1)(a))
 - As per deemed shelf jurisdiction - plus water
- Living Resources
 - “Sovereign Rights” to explore, exploit, conserve and manage living resources - water and



- Other Economic Uses/Resources
 - “Sovereign Rights” to control activities for economic exploration and exploitation
 - Waves, currents, winds, thermal energy conversion
 - Tourism activities?



- Artificial Islands and installations
 - Lower form: “jurisdiction as provided”
 - Construct, authorize and regulate artificial islands and installations/structures for any economic purposes
 - Extends to 500 m safety zones around structures
 - Due notice of presence, don’t interfere with essential sea lanes

- Marine Scientific Research
 - Again - jurisdiction as provided
 - Established “consent regime” for MSR in EEZ
 - Consent normally to be given for “pure research”
 - More easily refused for research tied to exploitation
 - Requirements to share results with coastal state

- Marine Environmental Protection
 - Rights as provided in Convention
 - So - **not unlimited**
- General obligation to protect and preserve marine environment (Art 192)
- Take measures to prevent and control vessel source pollution (192)

- Have control over many activities - eg:
 - Dumping of waste at sea
 - Pollution from seabed activities
 - Vessel source pollution
- BUT not absolute for vessels of foreign flags
- **Graduated powers** of enforcement and intervention in EEZ (Art 220): willfulness and seriousness of incident



Other States' Rights In EEZ (Art 40)

- Right to lay cables and pipelines (subject to routing consent as per continental shelf)
- Overflight
- **Navigation - with reference to high seas right**
- DUTY of other states to respect coastal state laws which conform to international law

Continental Shelf Historical Origins

- 1940s - Expanding Claims to Water Column, Seabed (Often Full Sovereign Claims)
- 1945: Truman Proclamation
 - Claim to Jurisdiction over shelf
 - Areas “contiguous” to coast
 - Natural resources of Shelf



Truman Proclamation

- No real definition of scope
 - But referred to areas “naturally appurtenant” to land mass
- Nature of claim:
 - Functional, not sovereignty
 - Limited to seabed, and control of resources

Timing of Truman Proclamation

- Responds to expansionism
 - Limited jurisdiction
 - No Threat to Navigation
- US Power Post-war
- New Technology



Post-Truman Proclamation

- Other States Join In
- Int'l Law Commission work on UNCLOS I
- Leads to Geneva Convention on Continental Shelf: 1958
 - Multilateral treaty - broad acceptance
- Accepted the Essence of Truman Claims

CSC 1958

- Continental Shelf Convention - Art. 1:

[shelf is] “..the seabed and subsoil of the submarine areas **adjacent to the coast**, but outside the area of the territorial sea, to a **depth of 200 metres, or beyond that limit, to a depth where the depth of the superadjacent waters admits exploitation** of the natural resources of the said areas...”

- And in Art. 2:

state has “sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources”

Post 1958

- 1969 - North Seas Cont'l Shelf Cases
 - Int'l Court of Justice (ICJ) **Accepted Shelf Jurisdiction** as per Art. 1 As **Customary Law**
 - Focus on “natural prolongation” of land mass
- 1982 Law of the Sea Convention (LOS 1982)
 - Accepted, confirmed shelf jurisdiction
 - BUT also largely **subsumed in EEZ** out to 200 M

Nature of Legal Entitlement

- General Status
 - Functional, not sovereign, claims
 - Rights exist *ab initio* and *ipso jure* (North Seas Cases 1969)
 - No need to claim or use (also in CSC 1958, LOS 1982)
 - Emphasized adjacency, natural prolongation as basis of title
 - Rights are Exclusive - Even If Not Exerted By State (Confirmed in LOS 1982)

Rights and Duties of Coastal State

- **Sovereign Rights** (not sovereignty) to explore and exploit natural resources of seabed and subsoil
- **Natural Resources Defined**(Art. 76, LOS 1982):
 - “..the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species...”

Rights and Duties of Coastal State

- Full Jurisdiction (Arts. 80, 60) over:
 - Installations
 - Structures
 - Artificial Islands
- Construct, Authorize and Regulate
 - Apply all Local Laws
- Safety Zones
 - 500 metres or as Approved By Int'l Standards

Other States' Interests

- Limitations - Rights of Other States
 - No General Jurisdiction Over Water Column, Airspace
 - Can Be Affected By Seabed Activities
- **BUT:** No “Unjustifiable Interference” With High Seas Rights - Navigation etc (Art. 78)

Other States' Interests

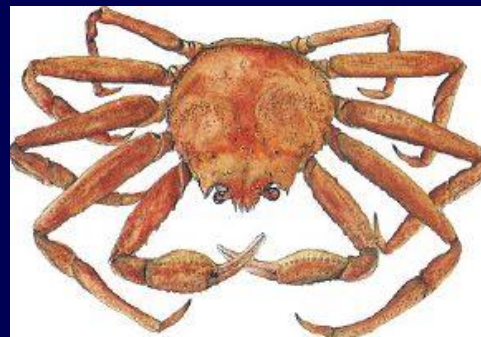
- Pipelines and Cables (Art. 79)
 - Other States Entitled To Lay, Maintain Pipelines and Cables
 - Can Regulate Re - Interference With Seabed Activities and Pollution Protection
 - For Pipelines - Coastal State Has Right to Consent to Routing

Specific Issues Beyond 200 M

- Sedentary Species: Defined as

“...organisms which, at the **harvestable** stage, either are **immobile on or under the seabed** or are unable to move except in constant physical contact with the seabed or the subsoil.”

Snow Crab



Outer Limits of Shelf

- Early Claims: Three General Approaches
 - No definition stated (define in practice)
 - Depth (often 200 m.) and/or “exploitability”)
 - Distance
- 1958 Convention - Article 1
 - Dual Approach
 - 200 m. depth **OR** where depth “admits of the exploitation of the natural resources of the area”

Outer Limits of Shelf

- North Seas Cases
 - Article 1 reflective Of Customary Law
 - Focus on Natural Prolongation, Adjacency
- Problems With CSC 1958 Approach
 - If “exploitability” Independent Criterion, No real Limit
 - Advancing Technology = Advancing Claims
 - Maintain “adjacency” as Pre-condition

Lead Up To UNCLOS III

- Acceptance of EEZ Meant Broad-Shelf States the Real Issue
- Technology Advancing - “Exploitability” Not Much Help As Criterion
- Internationalization Of Deep Seabed Meant Need for Defined Outer Limits
- **Compromise Negotiations Led To Current Article 76 Formula**

Article 76 Approach

Para. 1

- **CONT. SHELF COMPRISES SEA-BED AND SUBSOIL THROUGH THE "NATURAL PROLONGATION" OF STATE'S LAND TERRITORY**

A) TO OUTER EDGE OF CONTINENTAL MARGIN

OR

B) AT LEAST 200 NM. WHERE MARGIN IS SMALLER

Article 76

Para. 3

- Continental Margin Comprises the Shelf, Slope and Rise
- **BUT Does Not Include** The Deep Seabed or “Oceanic Ridges”

Article 76 Potential Maximum Limit

Para. 4

- To establish the “potential” outer limit beyond 200 M, Do one of the following (your choice):
 - Line delineated at outermost points where thickness of sedimentary rock is at least 1% of the shortest distance from that point to the foot of the cont'l. Slope (in max. 60 M straight segments)
- OR**
- Line connecting fixed points 60 M from foot of slope (max. 60 M segments to lines)

Article 76 Potential Maximum Limit

- “Foot of Slope” Defined:
 - In the “absence of evidence to the contrary”
 - “Point of maximum change in gradient at its base”

Article 76 - Limitations on Breadth

Para. 5

- Line Derived From Para. 4 Cannot Exceed:
 - Line 350 M from Baselines
- OR**
- Line Drawn 100 M from 2500 m isobath

BUT

Article 76 - Limitations

- If On Submarine Ridge - MUST Use 350 M limit, UNLESS
 - If “natural components” of margin
 - Plateaux, Rises, Caps, Banks and Spurs

1. Do you think your margin extends beyond 200 M?

2. If No - Take 200 M, Be Happy

3. If Yes - Play Again!

4. Establish Your Potential Outer Limits By EITHER

5. Line Defined With Ref. To Sedimentary Thickness

OR

6. Line 60 M from foot of slope

7. Check Straight Lines: 60 M maximum

8. On A Submarine Ridge?

11. No

9. Yes

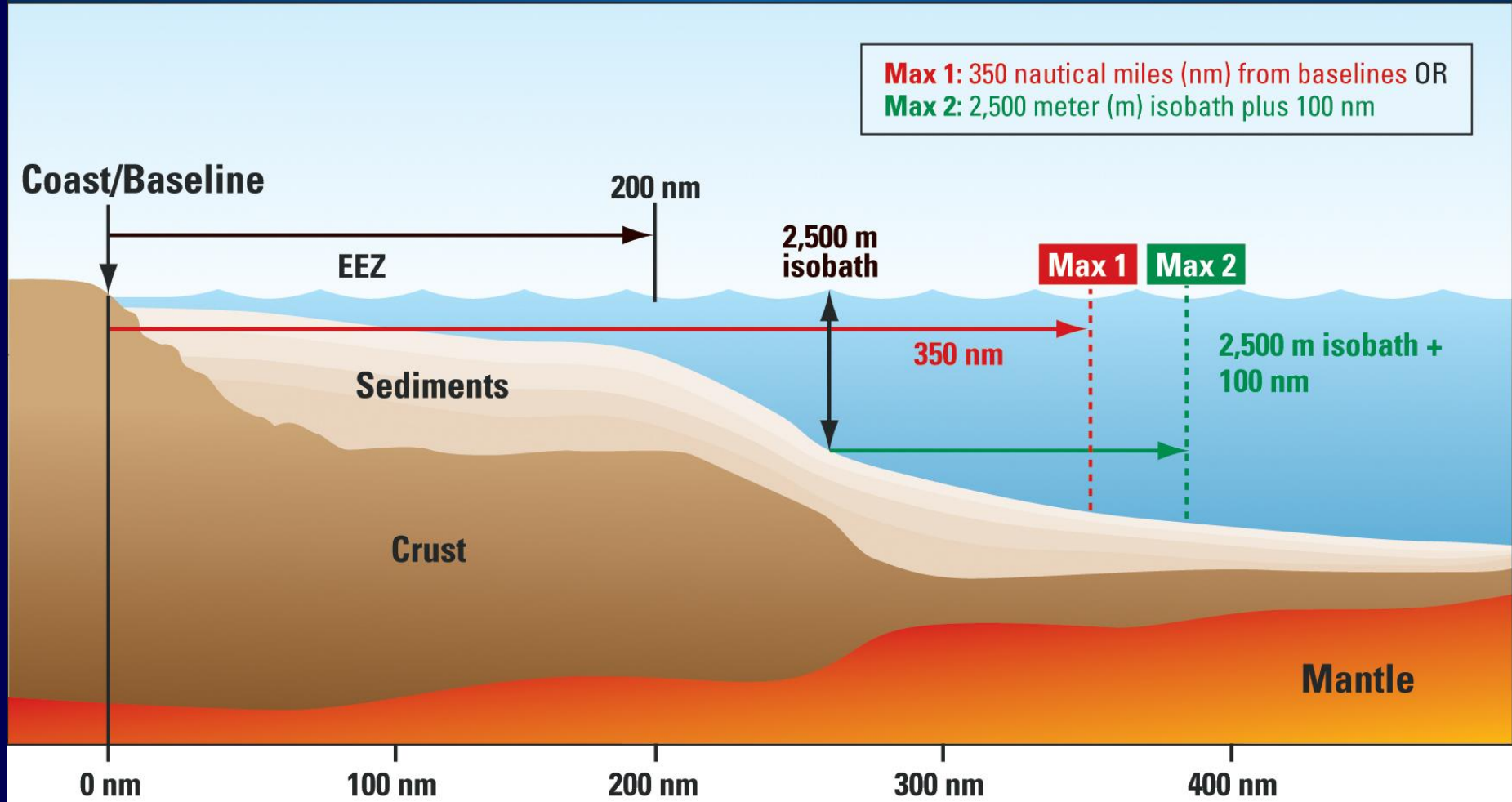
10. Use 350 M Limit

12. Limit By Either/Both of Two Methods

13. 350 M Line

14. Line 100 M from 2500 m isobath

Extended Continental Shelf Constraint Lines

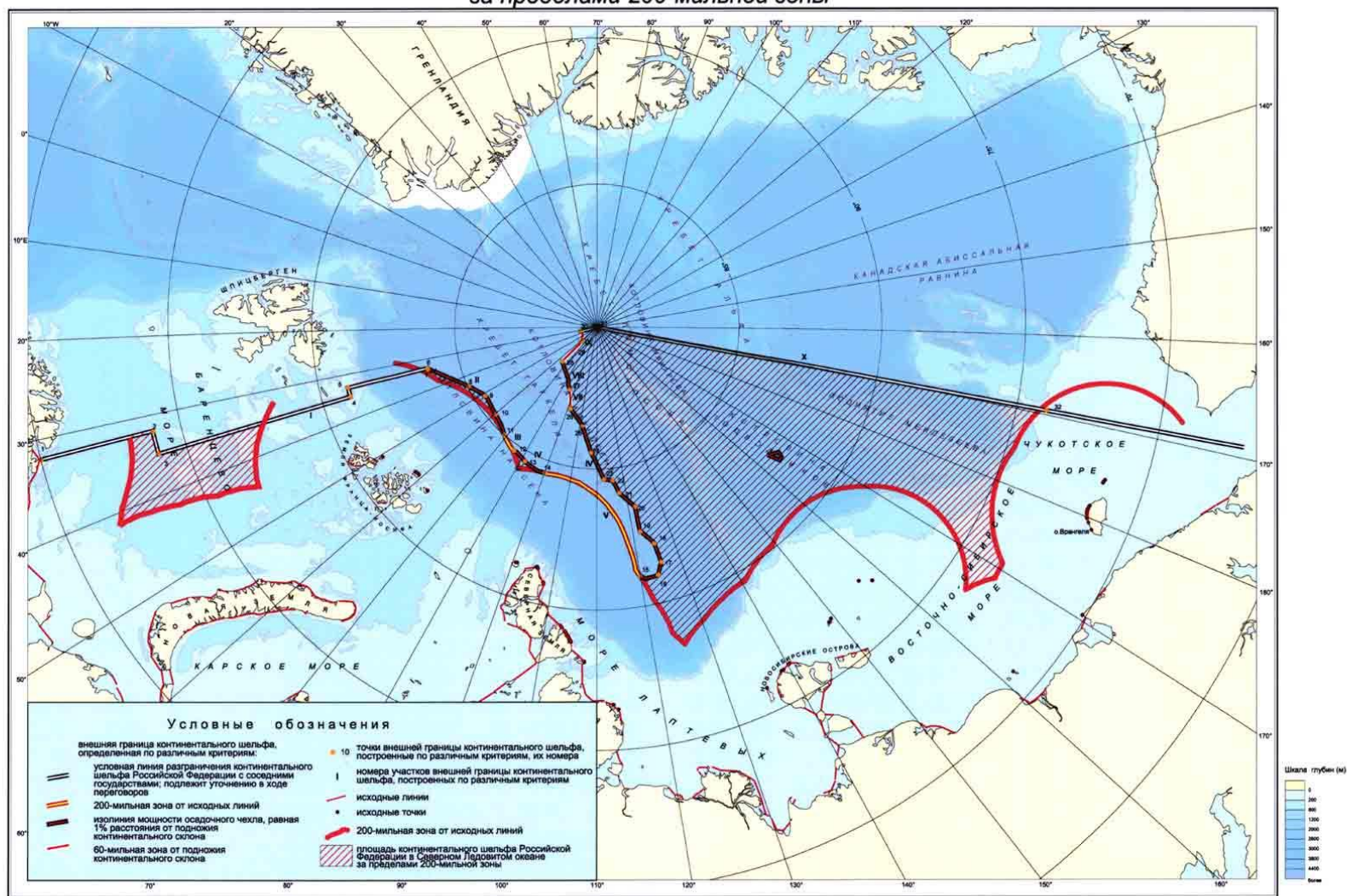


Source - NOAA

Commission On The Limits of The Continental Shelf

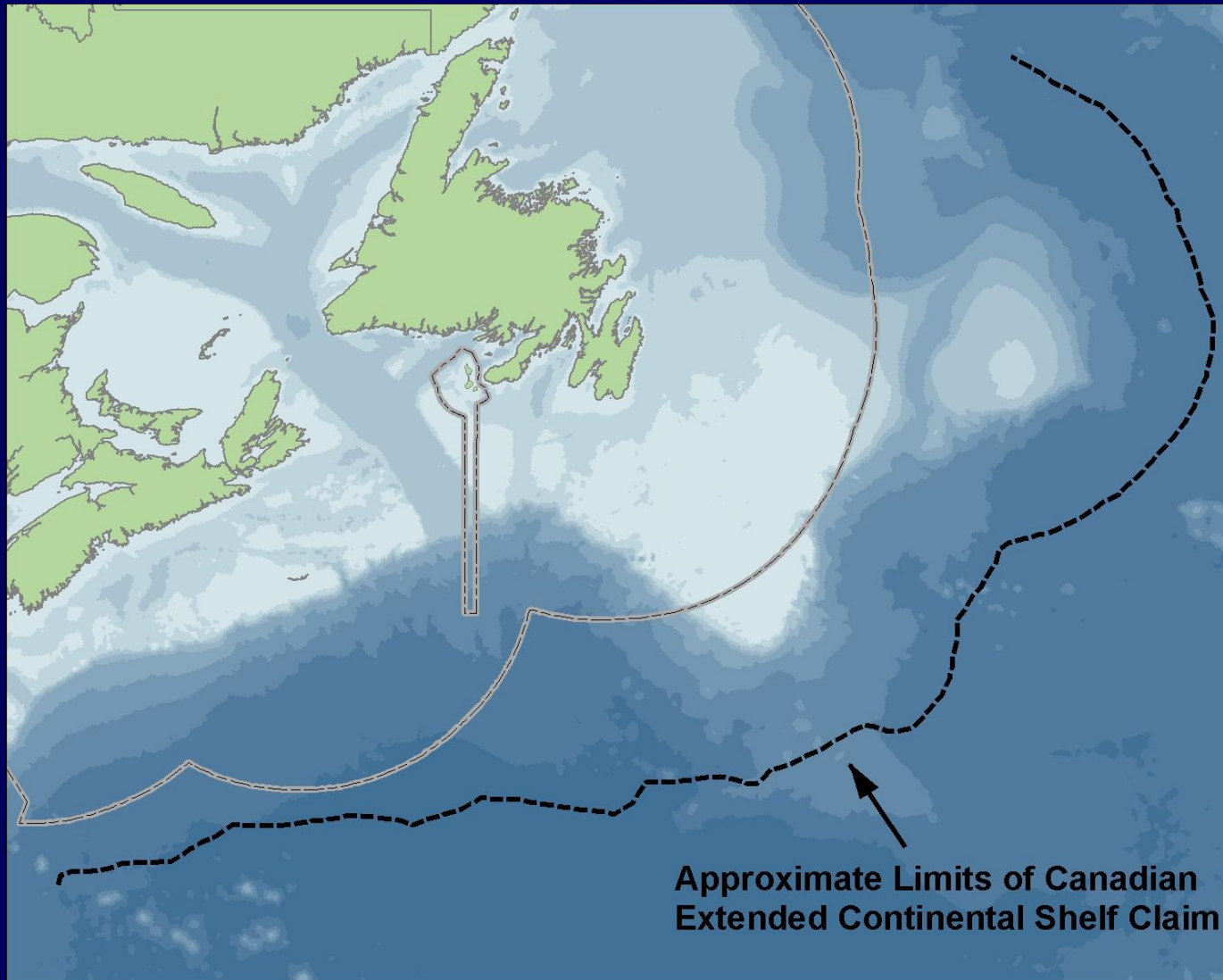
- Commission Established Under Annex II of LOS 1982
- Equitable Geographic Representation
- Receives Submissions on Proposed Limits of Continental Shelf
 - Full and partial claims
 - Makes Recommendations
 - Not a Court - But Only Limits Established in Line With Recommendations are “Final and Binding”

Площадь континентального шельфа Российской Федерации в Северном Ледовитом океане за пределами 200-мильной зоны



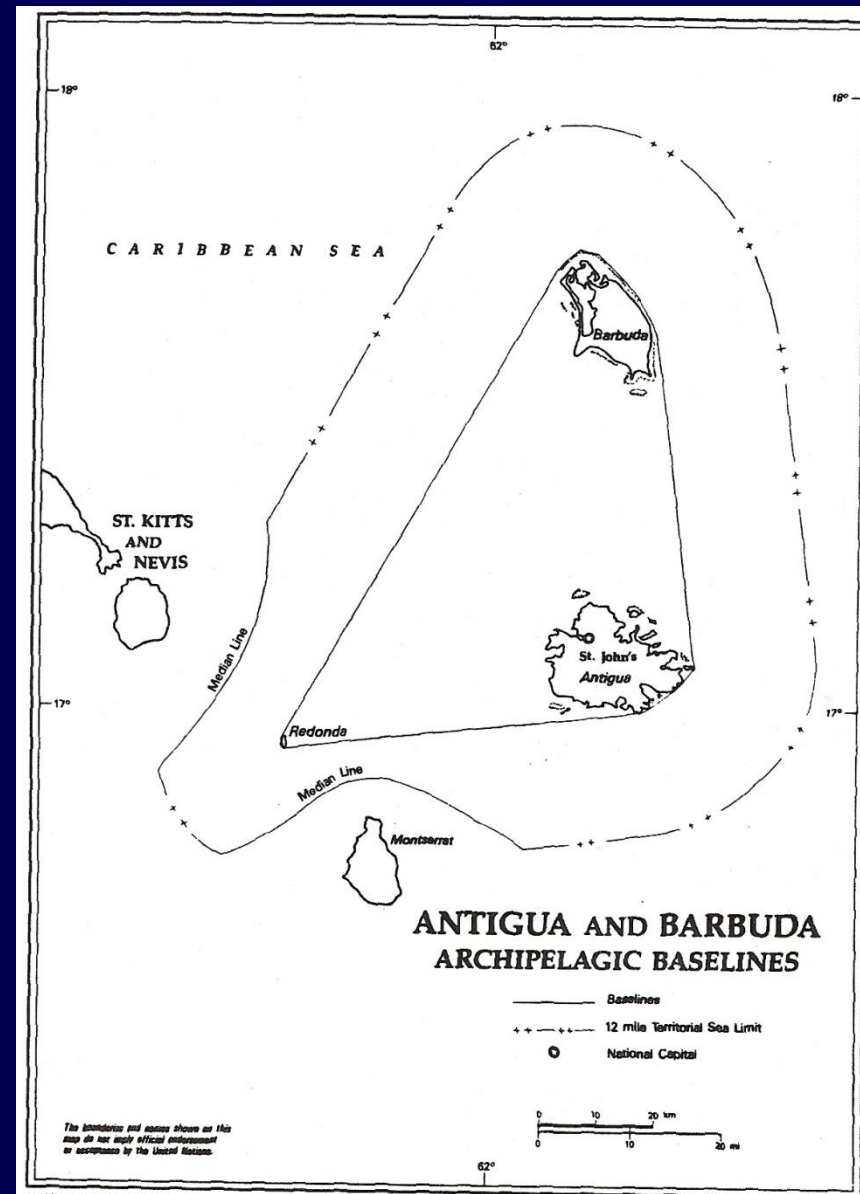
Масштаб 1 : 10 000 000

Impact of Broad Shelf Claim - East Coast Canada



Archipelagic Waters

- For archipelagic states – entirely composed of islands
- Can enclose waters of archipelagos with arch. baselines
 - Inside – effectively internal – except rights of sealane passage and/or innocent passage (must define lanes)
- Limits on baselines: length and land/water ratios
 - And – must reflect general confirmation of archipelago



High Seas

- Water column beyond national jurisdiction (+200 M– including over broad shelf)
- Default position – with exceptions – is **flag state jurisdiction**
 - Exceptions – piracy, broadcasting, other agreements
- Some obligations (protect and preserve marine environment, eg) but very general, and little enforceability by other states
- Major issue in fisheries, shipping
- Post-UNCLOS Developments

The Area

- The seabed and subsoil beyond national jurisdiction
- Common heritage of mankind
- Jurisdiction exercised by International Seabed Authority – complicated regime
 - ONLY non-living resources

DELIMITATION: OUTLINE

- Selection of Issues Only
- Terminology
- Baseline Issues
- Delimitation Principles and Common Issues

- In all of this – remember that maritime boundary is a **step** in dispute resolution
- Resource management, security, shipping, environmental protection - all of these issues must be dealt with both with and without a boundary

Terminology

- **Delineation** of limits – eg. territorial sea, EEZ
- **Determination** of outer limits of continental shelf
- **Delimitation** – process of setting boundary or boundaries where overlap in claims between and among states
- **Opposite and Adjacent Coasts**

Jurisdictional Zones

- Internal Waters

- Territorial Sea

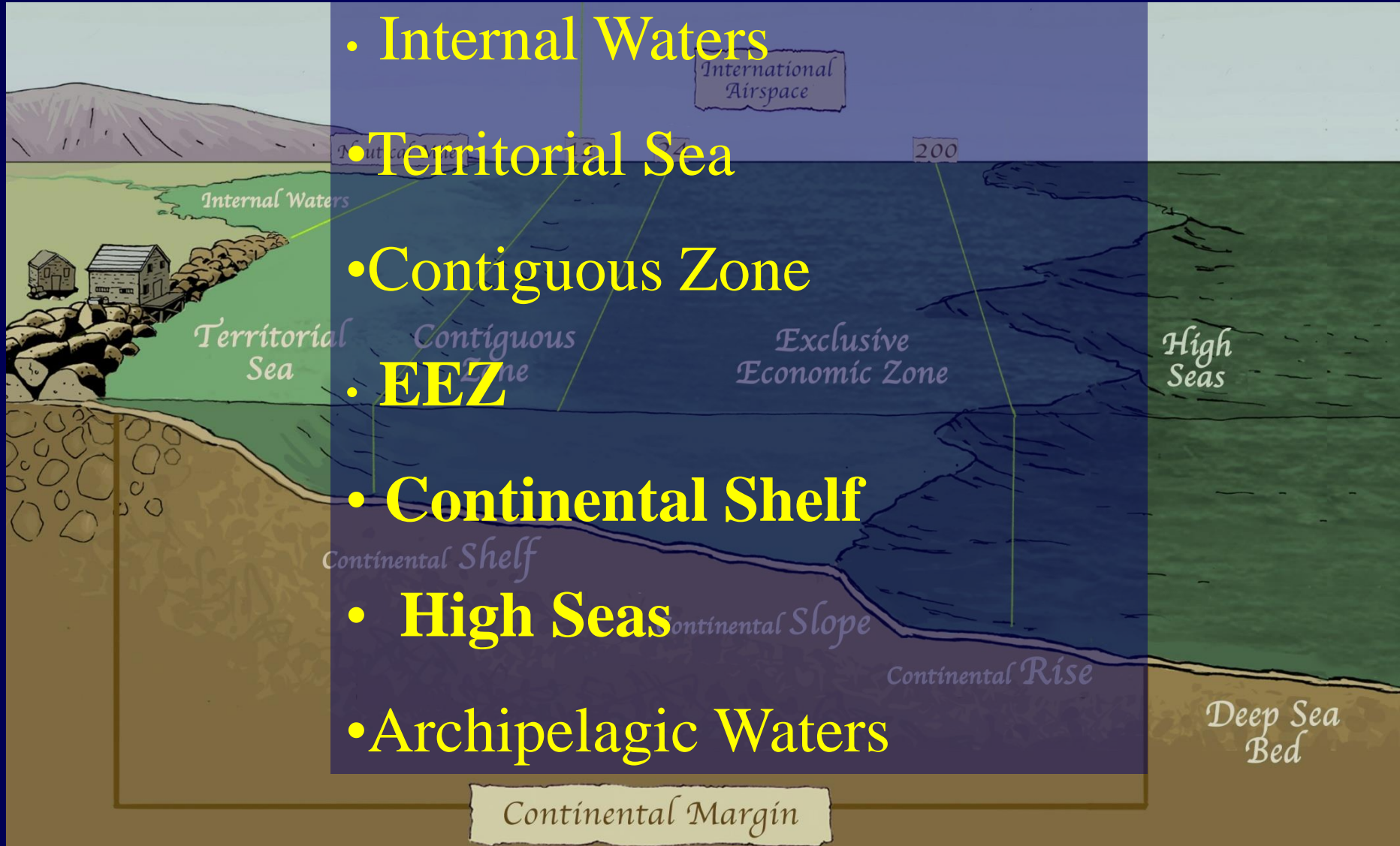
- Contiguous Zone

- EEZ

- Continental Shelf

- High Seas

- Archipelagic Waters

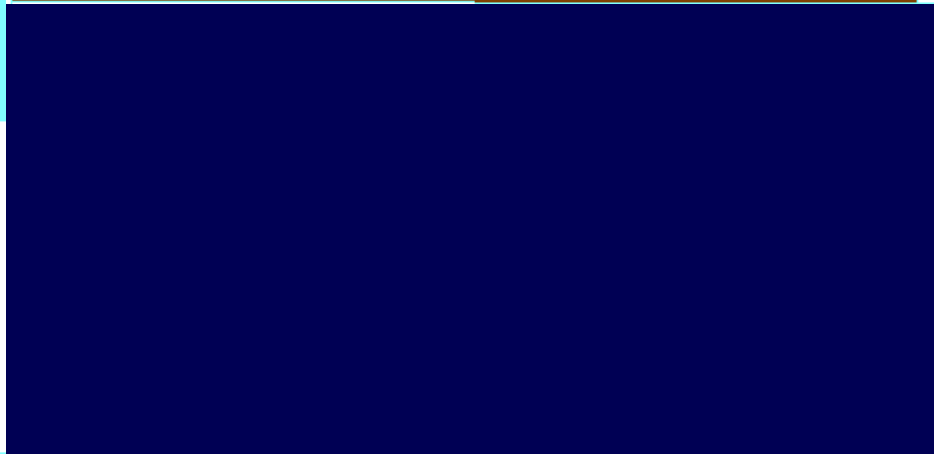
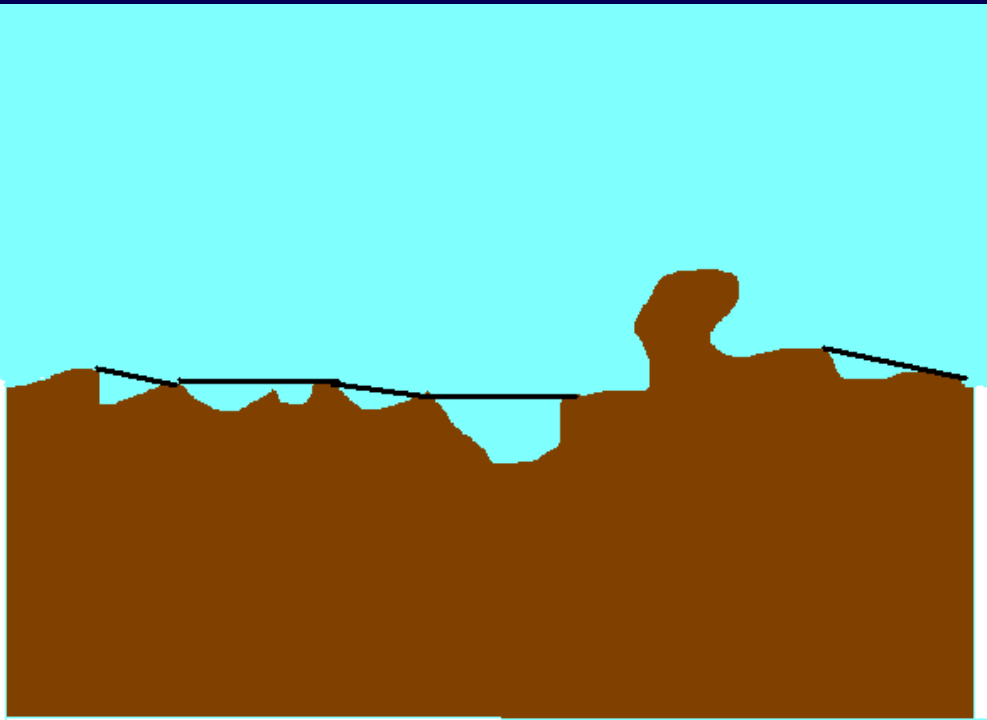
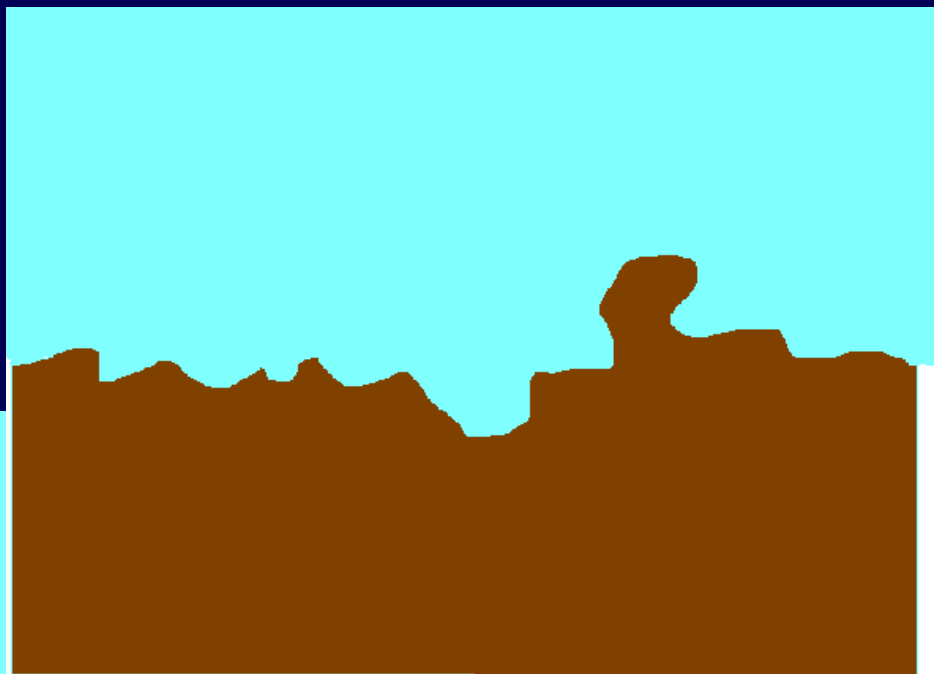


Coastal Baselines

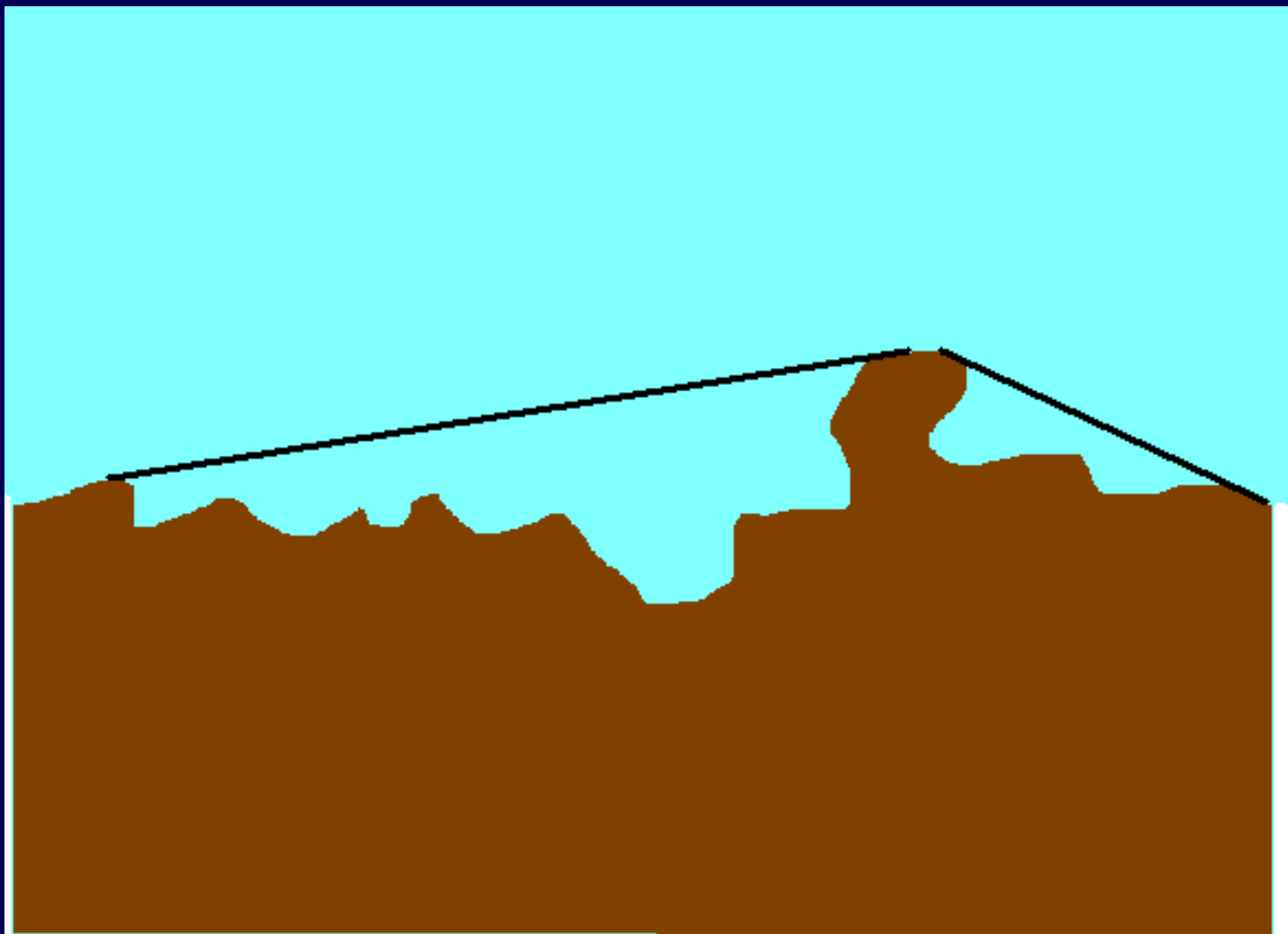
- Purpose – measure other zones from here
 - Inside – internal waters
 - **NOT** necessarily applied in delimitation
- LOS 1982 made real progress
 - Technical rules in Arts. 5-14: bays, rivers, harbour works etc
 - Default position is low water line on coast

- Common Problems
 - Small rocks, islets used as basepoint
 - Tendency to ignore, discount **in delimitation** even if valid basepoint (eg Libya/Malta, Qatar/Bahrain)
 - Straight baselines
 - LOS 1982 sets out some “rules”
 - Bays, harbours etc
 - Valid for Indented coastlines and fringing islands (Anglo/Norwegian Case, Article 7 – “general direction of the coastline)
 - Note - **archipelagic** baselines **special** case

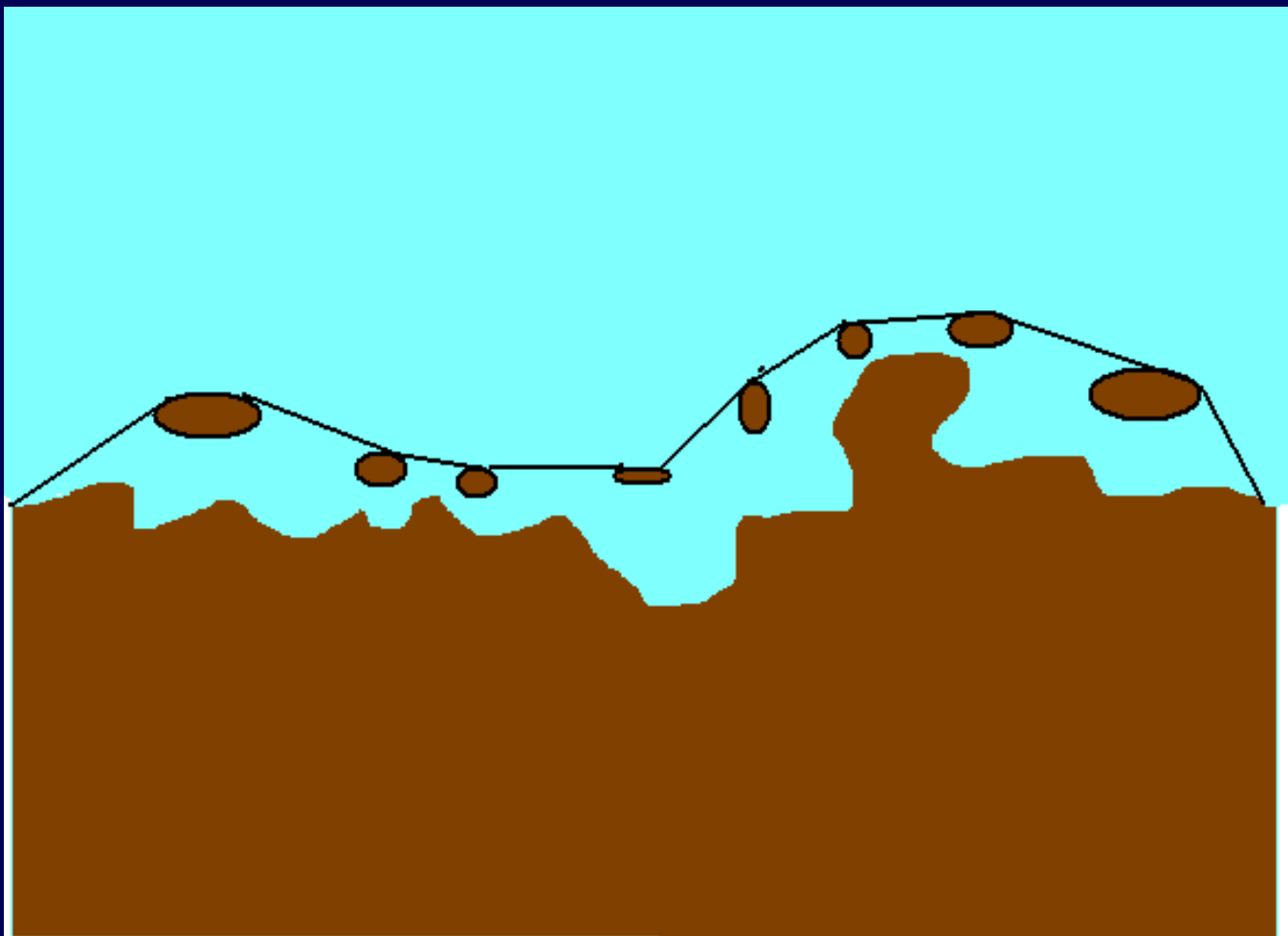
Baseline Problems 1



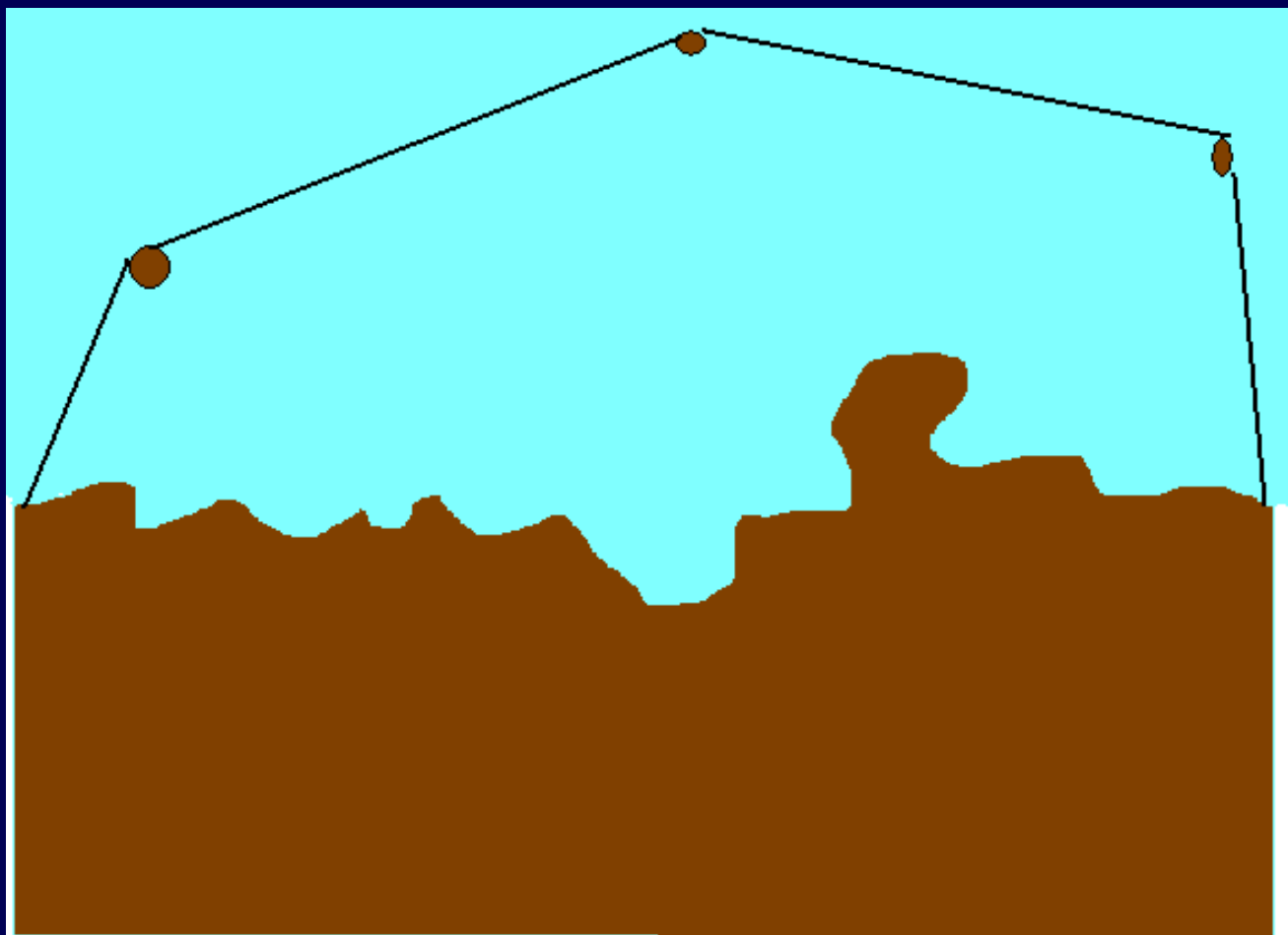
Baseline Problems 2



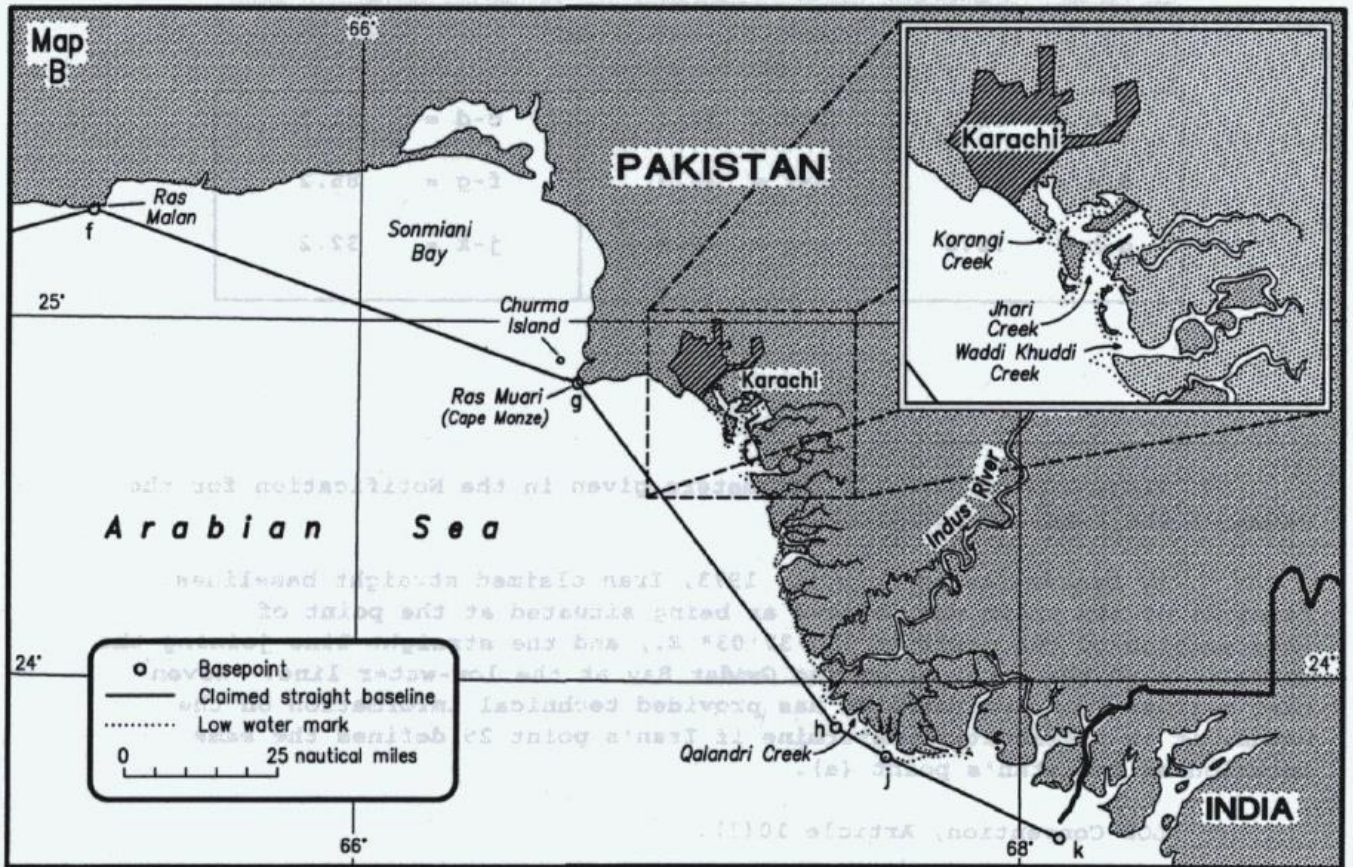
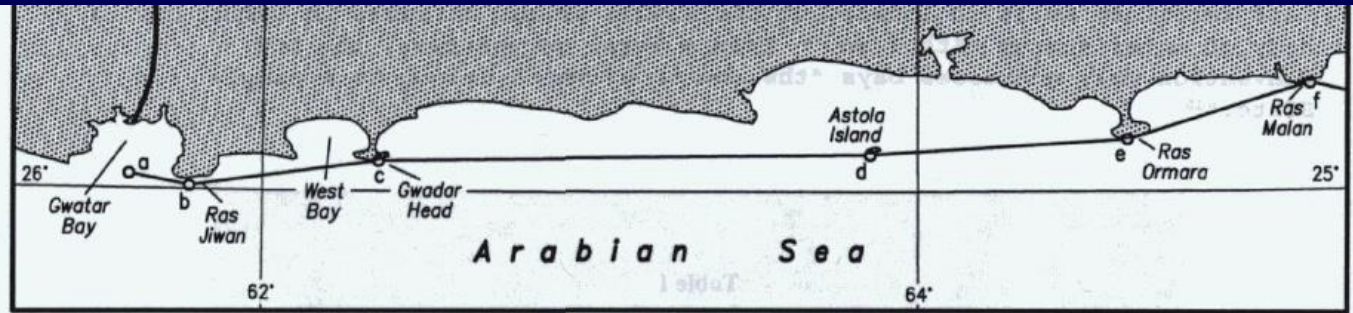
Baseline Problems 3



Baseline Problems 4

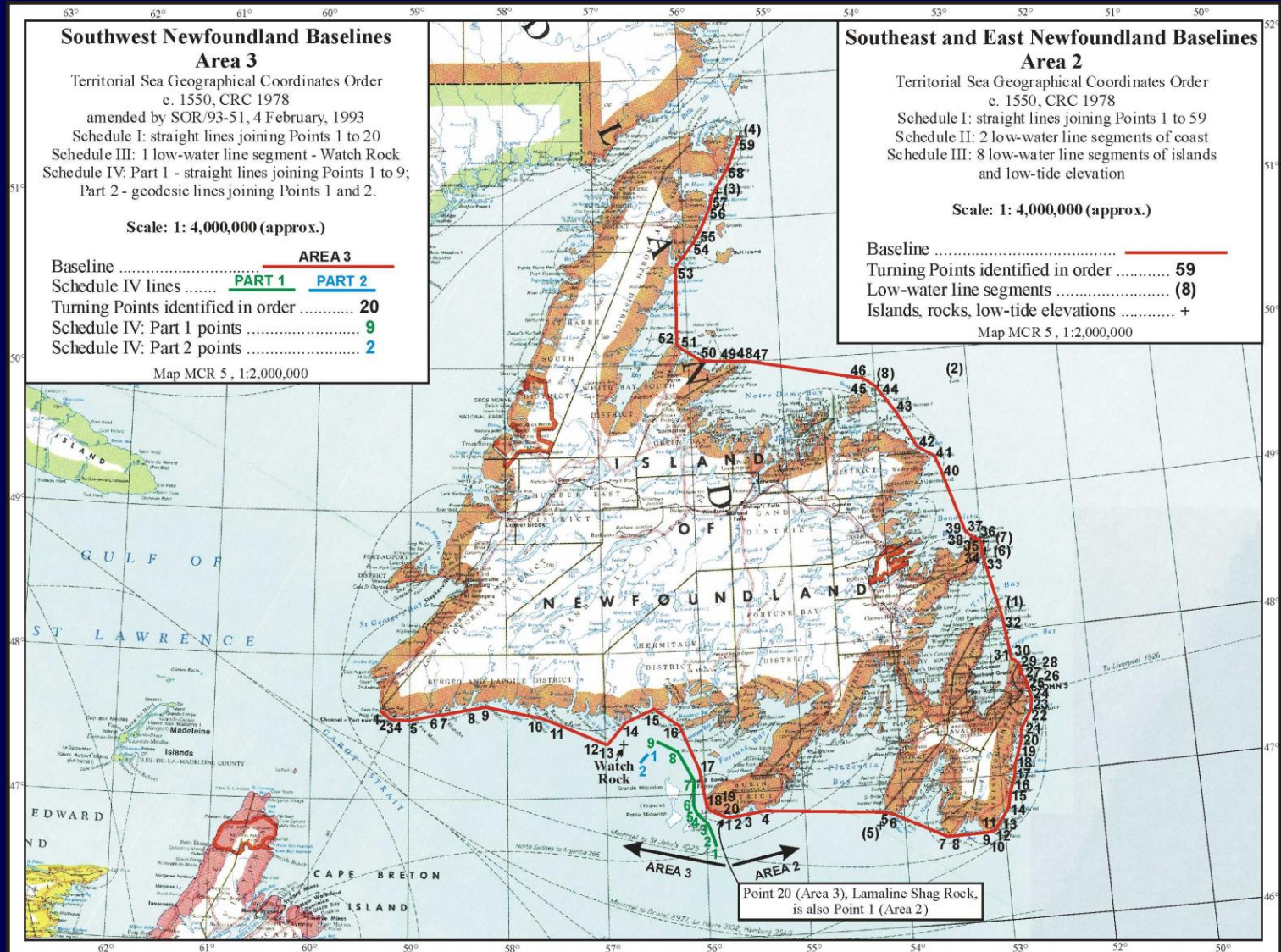



Pakistan Baseline



Names and boundary representation are not necessarily authoritative

Canadian Straight Baselines – Newfoundland/Labrador and Arctic



 Ligne de base droite canadienne



Particular Rules

- Bays – Article 10
 - “Well-marked” indentations in coast – not “mere curvature”
- Gulf of Sidra example
- Non-Compliant *Unless* Accepted As “Historic” Bay

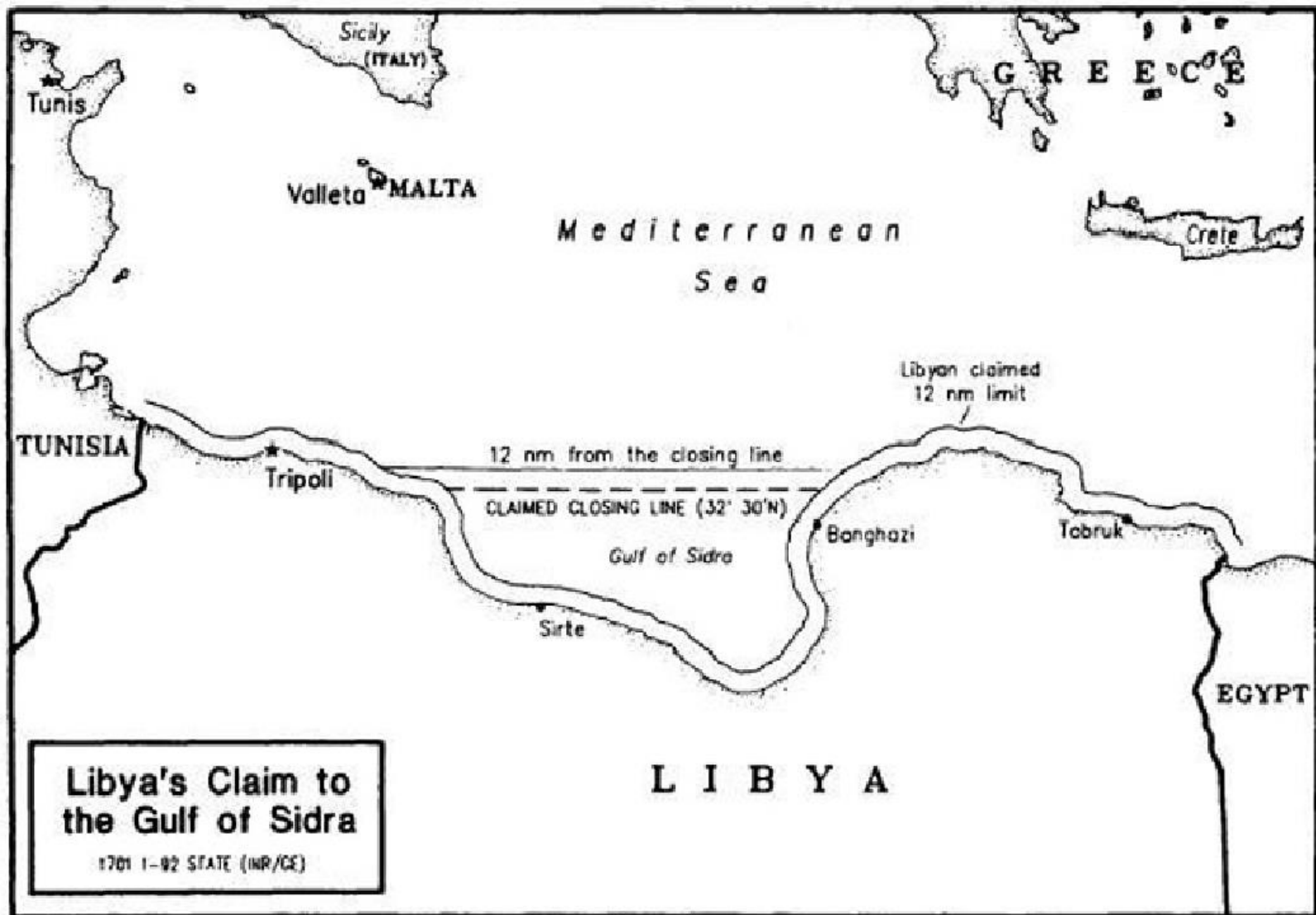
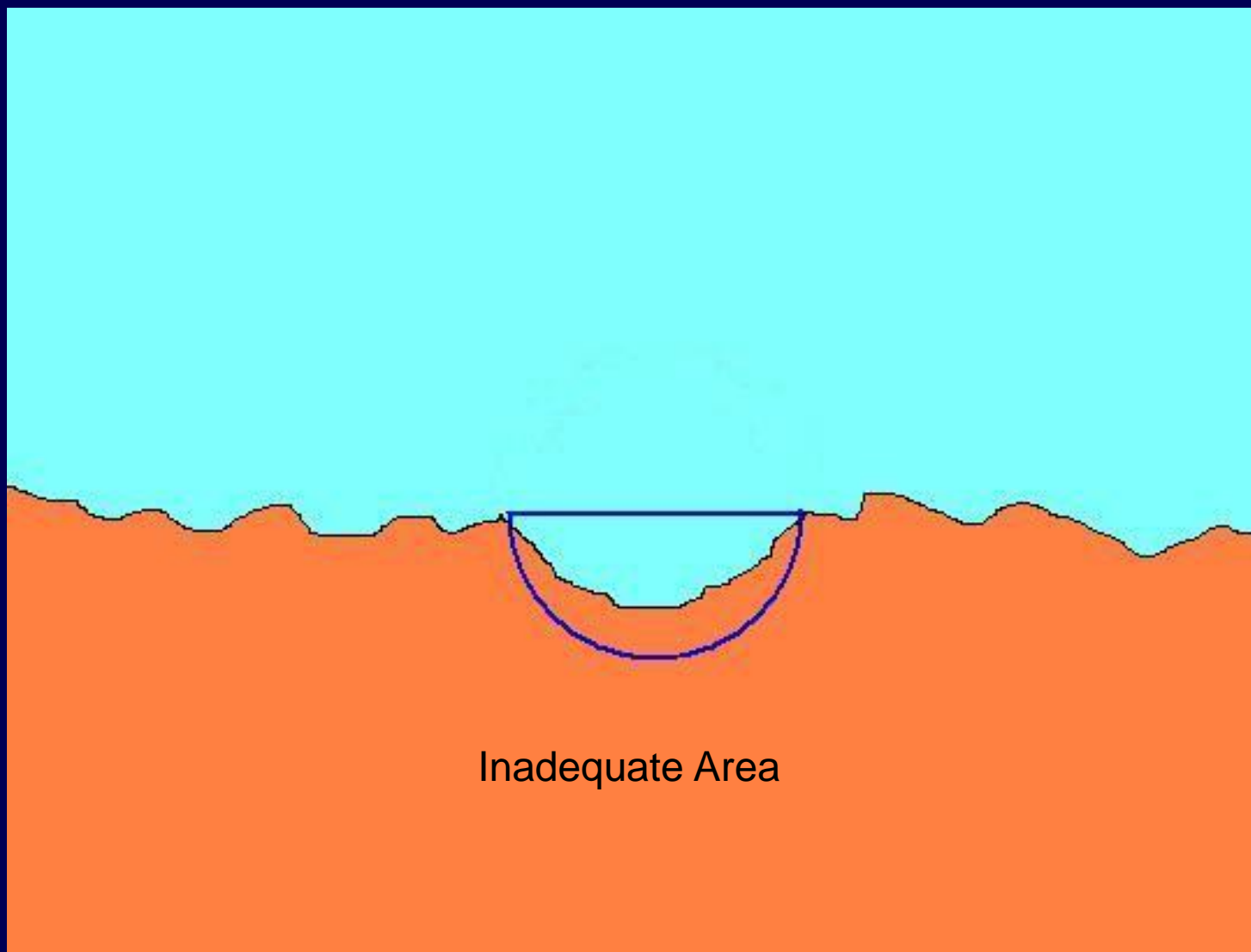
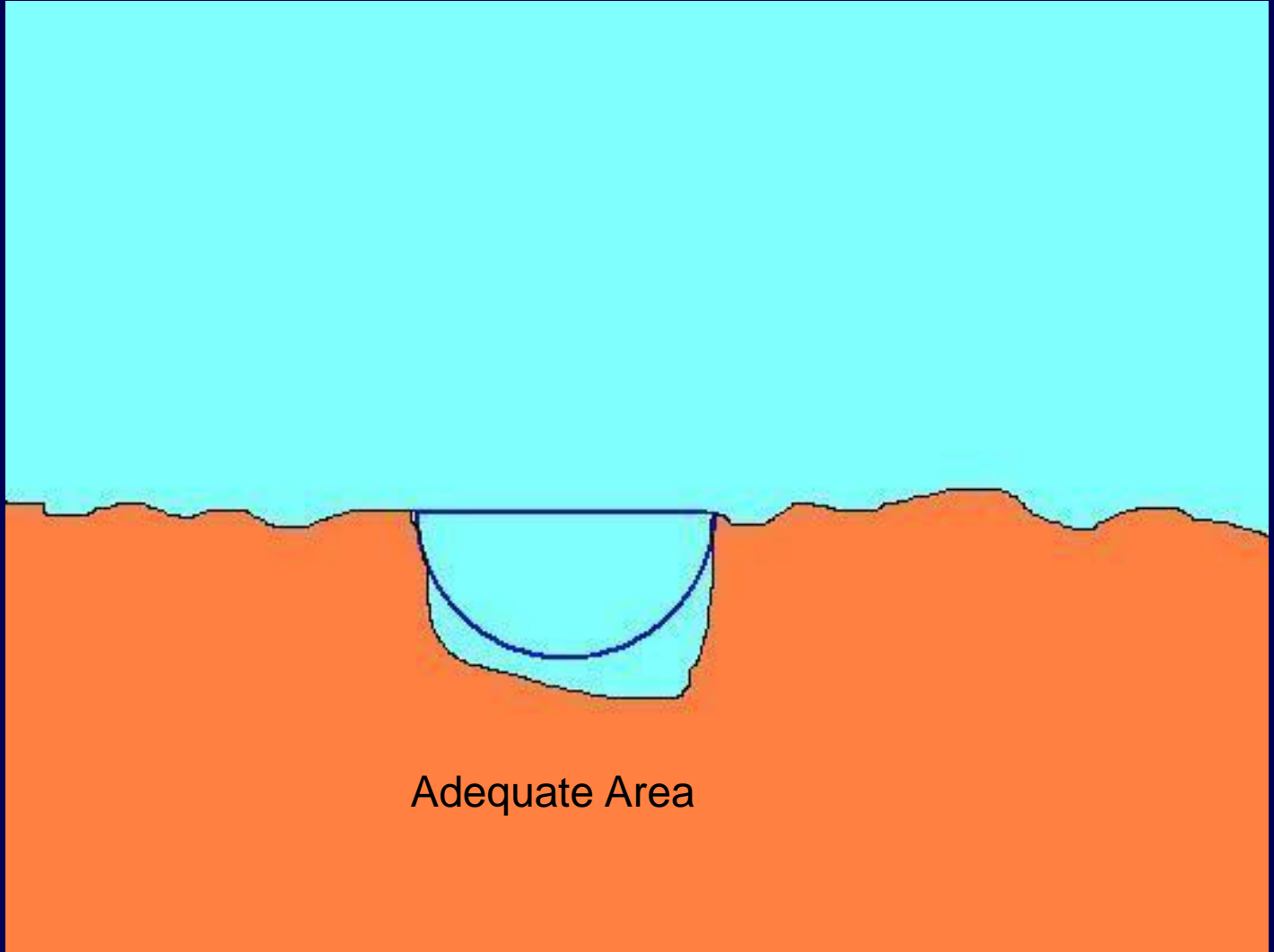


Figure 16. Gulf of Sidra: Libyan Baseline Claim
 Source: US State Department

In any event: legal bay must have area equal to or greater than semi-circle drawn with mouth of bay as diameter (Art. 10(2))

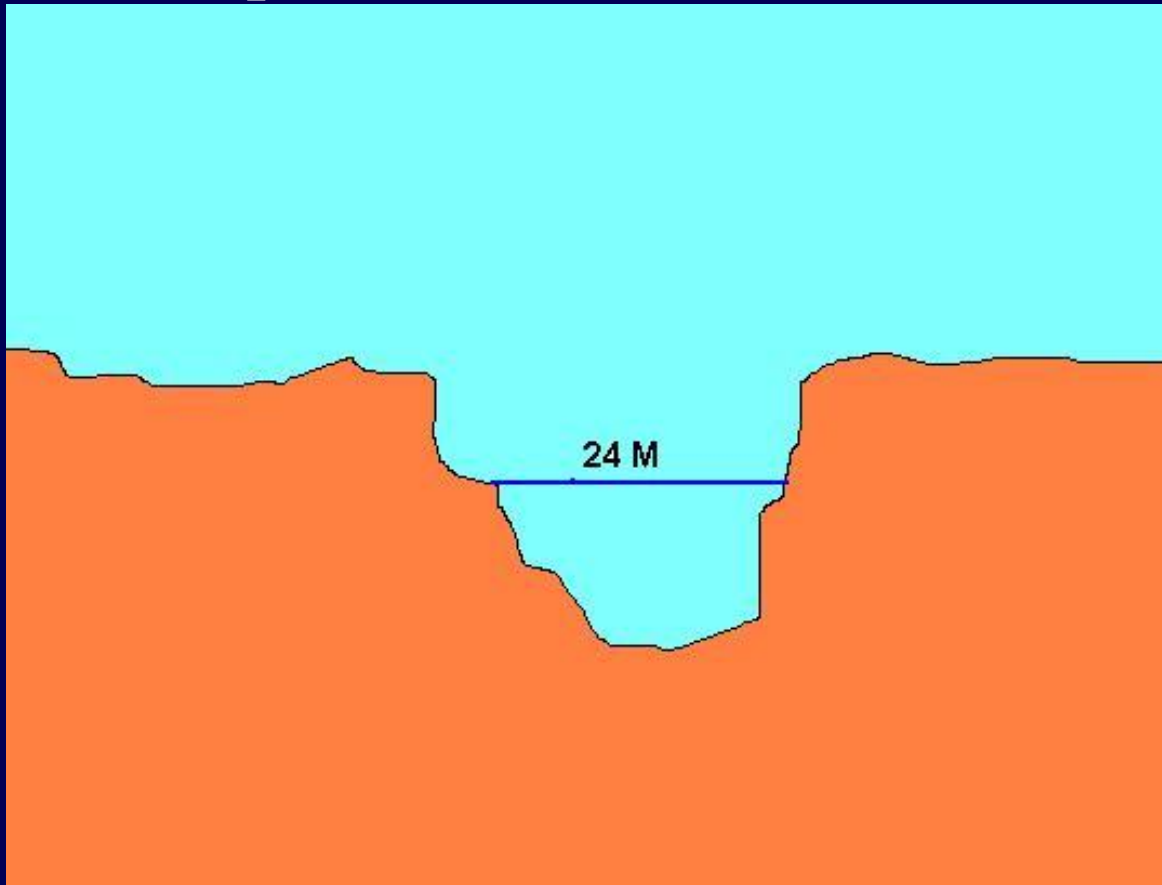




Adequate Area

Bays cont'd

- Where mouth of bay is less than 24 M, draw closing line at first points where it meets this limit



Bays cont'd

- These restrictions do not apply to “so-called ‘historic’ bays” (Art. 10(6))
 - Rely on long practice, acceptance by international community
 - Eg – St. Peter the Great Bay, Hudson Bay
- Also – general rules on **straight baselines** may still permit bay closure



Maritime Boundary Delimitation: Treaty Law

1958 Geneva Convention on Continental Shelf: Article 6

- First: obligation to settle **by agreement**.
- If not:
 - “In the absence of agreement, and **unless another boundary line is justified by special circumstances**, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines...”
- Shelf boundaries only

- So-called “Equidistance-Special Circumstances” Rule
 - **Seemed** to give primacy to equidistance (i.e. equidistance “unless justified by special circumstances”)
 - BUT Subsequent cases tended to discount this as rule of custom – or even treaty
 - Beginning with *North Sea Cases (1969)* and *Anglo-French Arbitration (1977)*

Territorial Sea

- 1958 Geneva Convention on Territorial Sea and Contiguous Zone

“Where the coasts of two States are opposite or adjacent to each other, **neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines** from which the breadth of the territorial seas of each of the two States is measured.”

- Does not apply where historic title or special circumstances requires otherwise

LOS 1982

EEZ Article 74

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be **effected by agreement on the basis of international law**, as referred to in Article 38 of the Statute of the International Court of Justice, **in order to achieve an equitable solution**.

Shelf – Article 83 – same wording

Territorial Sea – repeats 1958 – **median line dominates**

- Shelf & EEZ: Not much guidance – equity of **result** is key
- BUT: That is not all. To be effected on “basis of international law” – which includes *customary law*

Jurisprudence

- Widely litigated issue
 - Numerous tribunals: International Court of Justice and *ad hoc* tribunals
 - Note: important to remember that difficult cases tend to be litigated – otherwise negotiated: may skew the principles

Litigated Boundaries

North Sea Cases	Cont. Shelf	I.C.J.1969
Anglo -French	Cont. Shelf	Arbitration 1977
Tunisia-Libya	Cont. Shelf	I.C.J. 1982
Canada- US (<i>Gulf of Maine</i>)	Single Maritime Boundary (SMB)	I.C.J. Chamber 1984
Guinea – Guinea Bissau	Cont. Shelf and TS	Arbitration 1985
El Salvador-Honduras (Nicaragua Intervening)	Land Boundary, Islands, “Status of Waters”	I.C.J. 1992
Libya-Malta	Cont. Shelf.	I.C.J. 1986
Canada-France (<i>St. Pierre and Miguelon</i>)	“Single” Maritime Boundary	Arbitration 1992

Denmark-Norway (<i>Jan Mayen</i>)	SMB	I.C.J. 1993
Qatar-Bahrain	SMB – in sectors Sovereignty	I.C.J. 2001
Cameroon-Nigeria	Land and SMB	I.C.J. 2002
Eritrea-Yemen	Islands and SMB	Arbitration 1998, 1999
Barbados-Trinidad & Tobago	SMB	LOS Annex VII Arbitration 2006
Guyana-Suriname	SMB	LOS Annex VII 2006
Nicaragua – Colombia	Territory & SMB	I.C.J. 2007
Romania v Ukraine	SMB	I.C.J. 2009
Bangladesh v Myanmar	SMB (outer shelf)	ITLOS 2012
Nicaragua v Honduras	SMB (outer shelf?)	I.C.J. 2012

Bay of Bengal (India/Bangladesh)	SMB	Annex VII 2014
Delimitation in Indian Ocean, Kenya/Somalia	SMB	I.C.J. Pending
Nicaragua/Colombia	Cont. Shelf beyond 200	I.C.J. Pending
Ghana/Cote D'Ivoire	SMB, Preliminary Measures	Annex VII to ITLOS Chamber - Pending
Costa Rica/Nicaragua	SMB, Caribb. & Pacific	I.C.J. Pending

- **North Seas Cases (1969)**
- Fundamental approach: delimit **in accordance with equitable principles** and **taking account of relevant circumstances** to leave each party as much of **natural prolongation** as possible (was shelf boundary)
- 1958 not applied

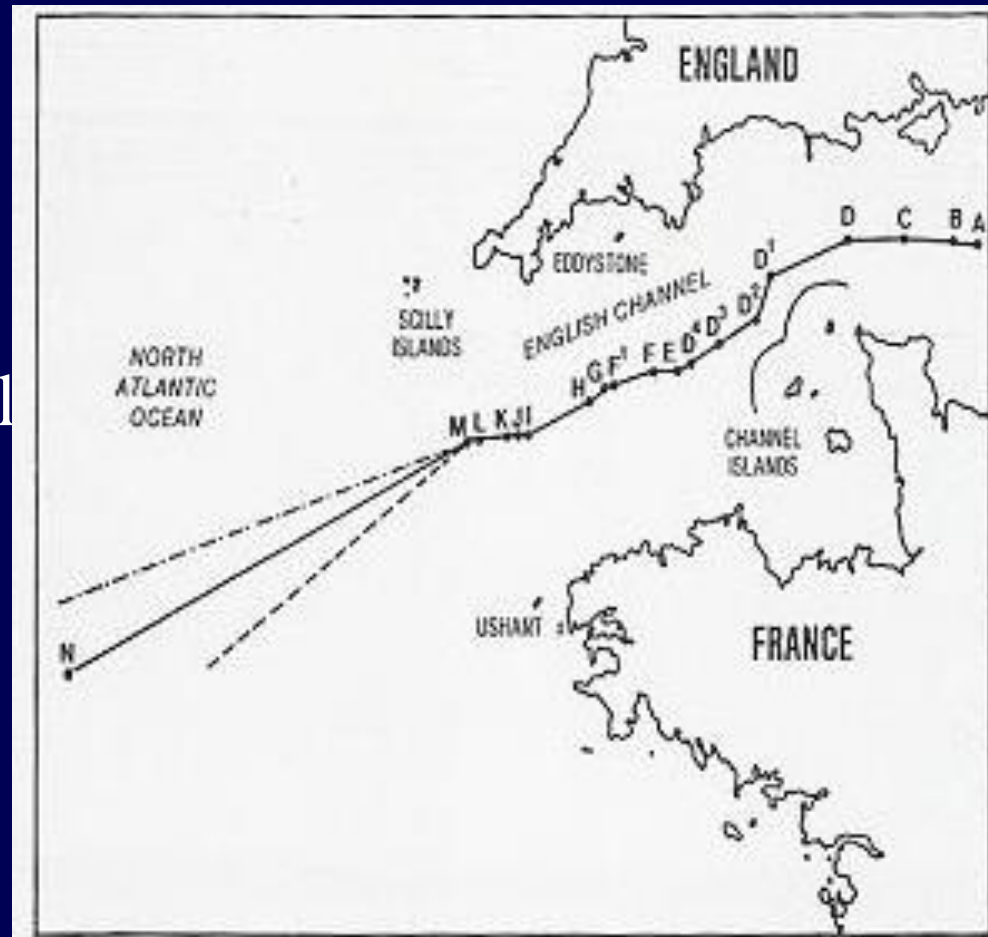


- **Anglo-French Arbitration 1978**

- Merger of equidistance-special circles and equitable principles/relevant circles.

- 1958 applicable

- Equity of result dominates (formally)



Gulf of Maine: 1984

- First litigated “Single” boundary (seabed, water)
- Stressed process:
 - Define relevant area and coasts
 - Determine equitable principles (eg. no “cut-off, zone blocking, proportionality)
 - Set equitable criteria (eg. equal division of maritime area)
 - Choose practical method
 - Check equity of result

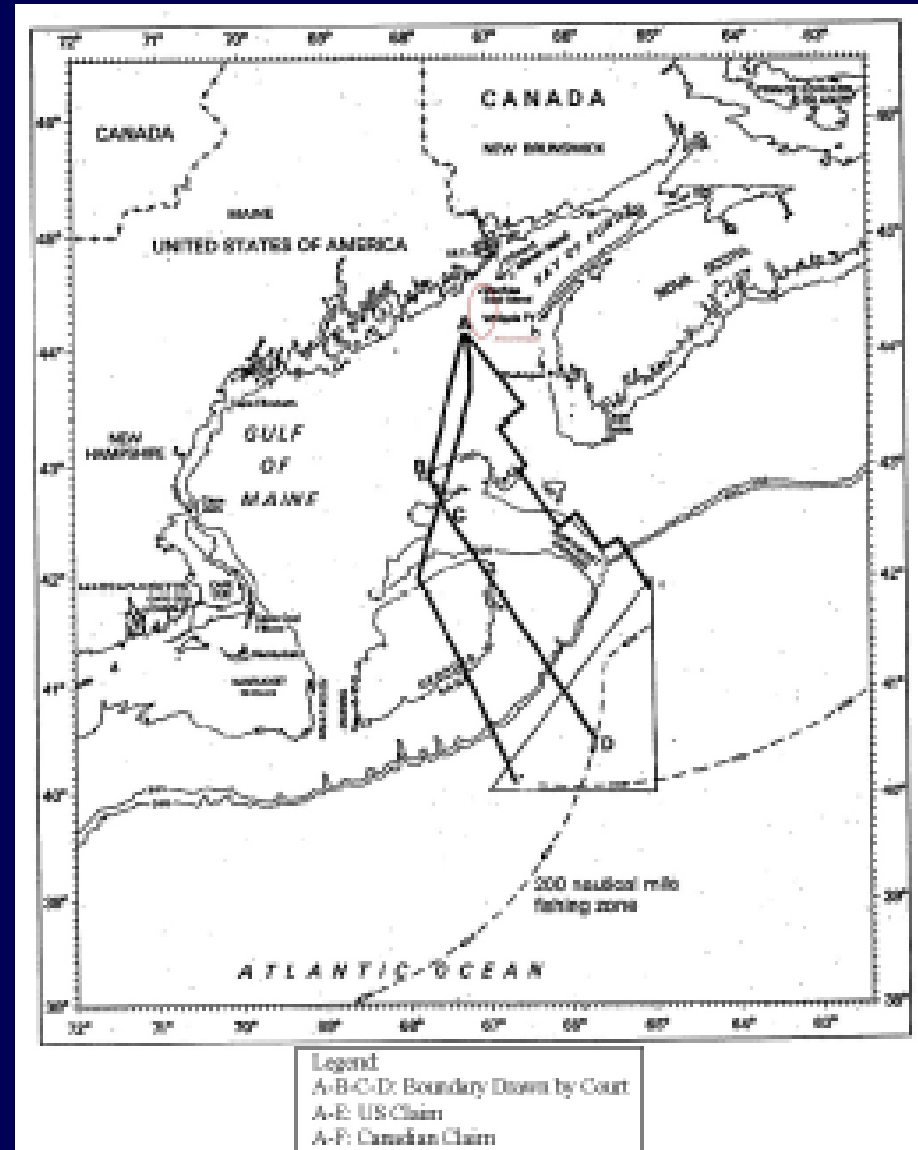
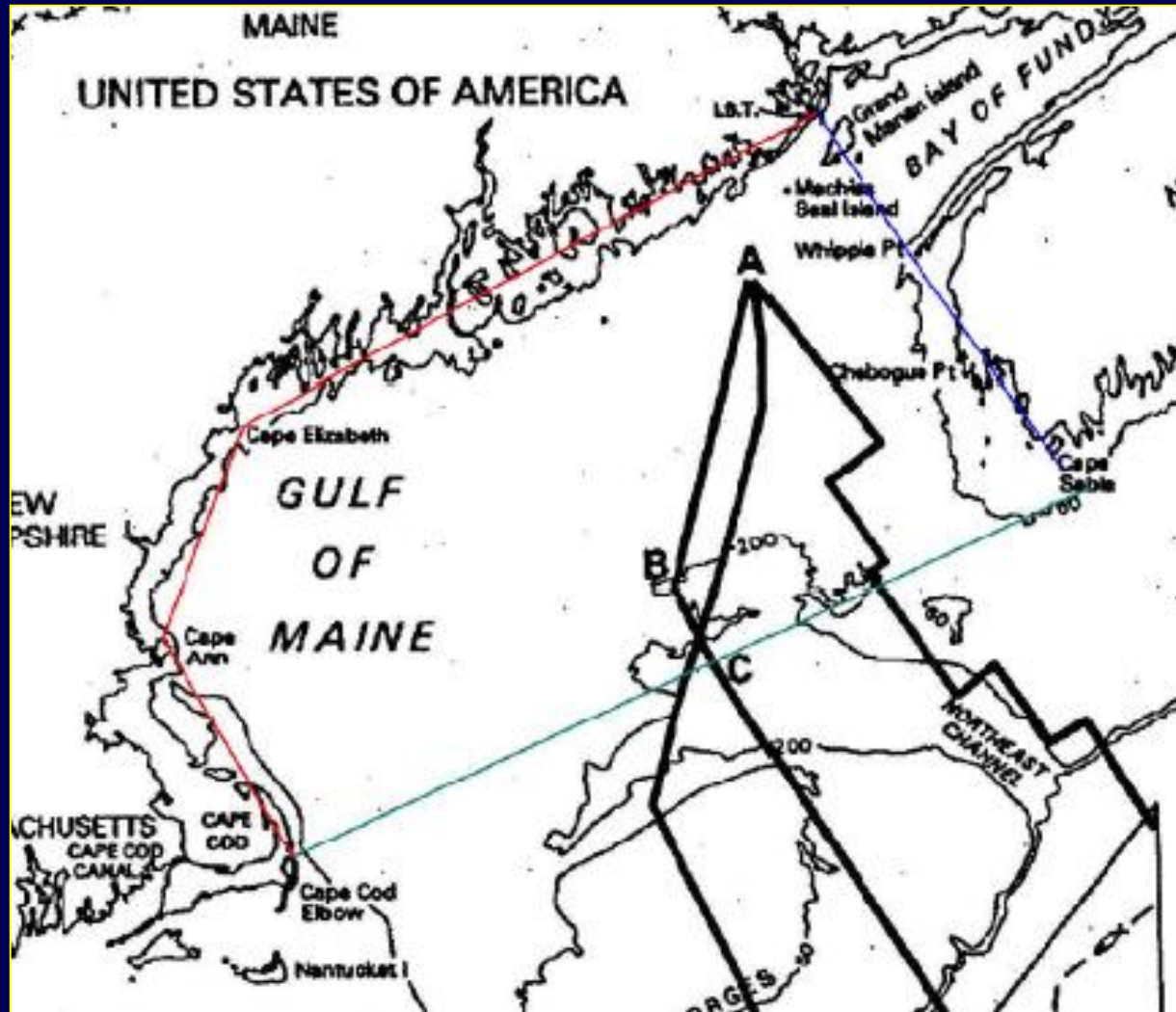
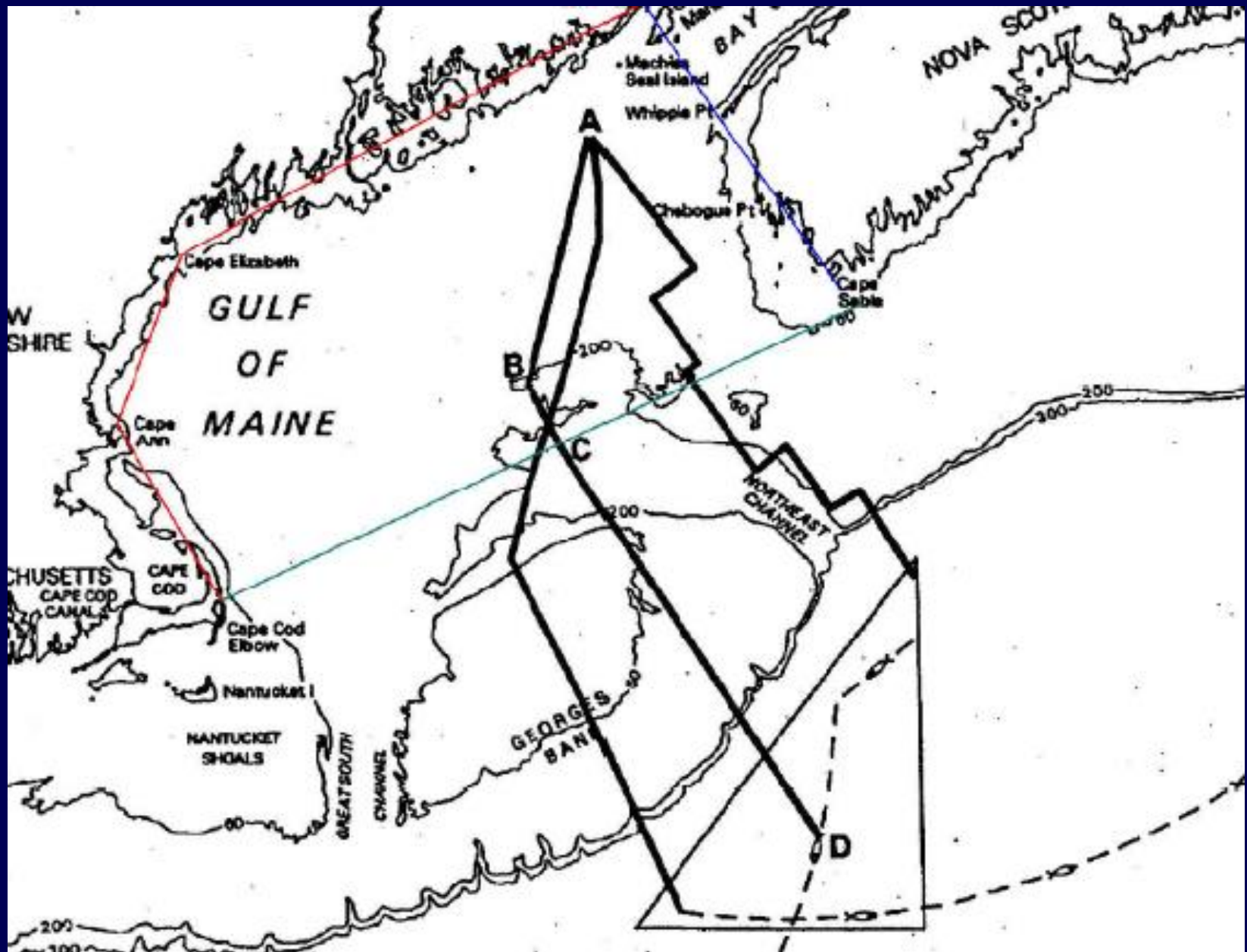


Figure 2. Gulf of Maine Boundary: Chamber of the ICJ (1984)

Relevant Coasts: Geographical Relationship





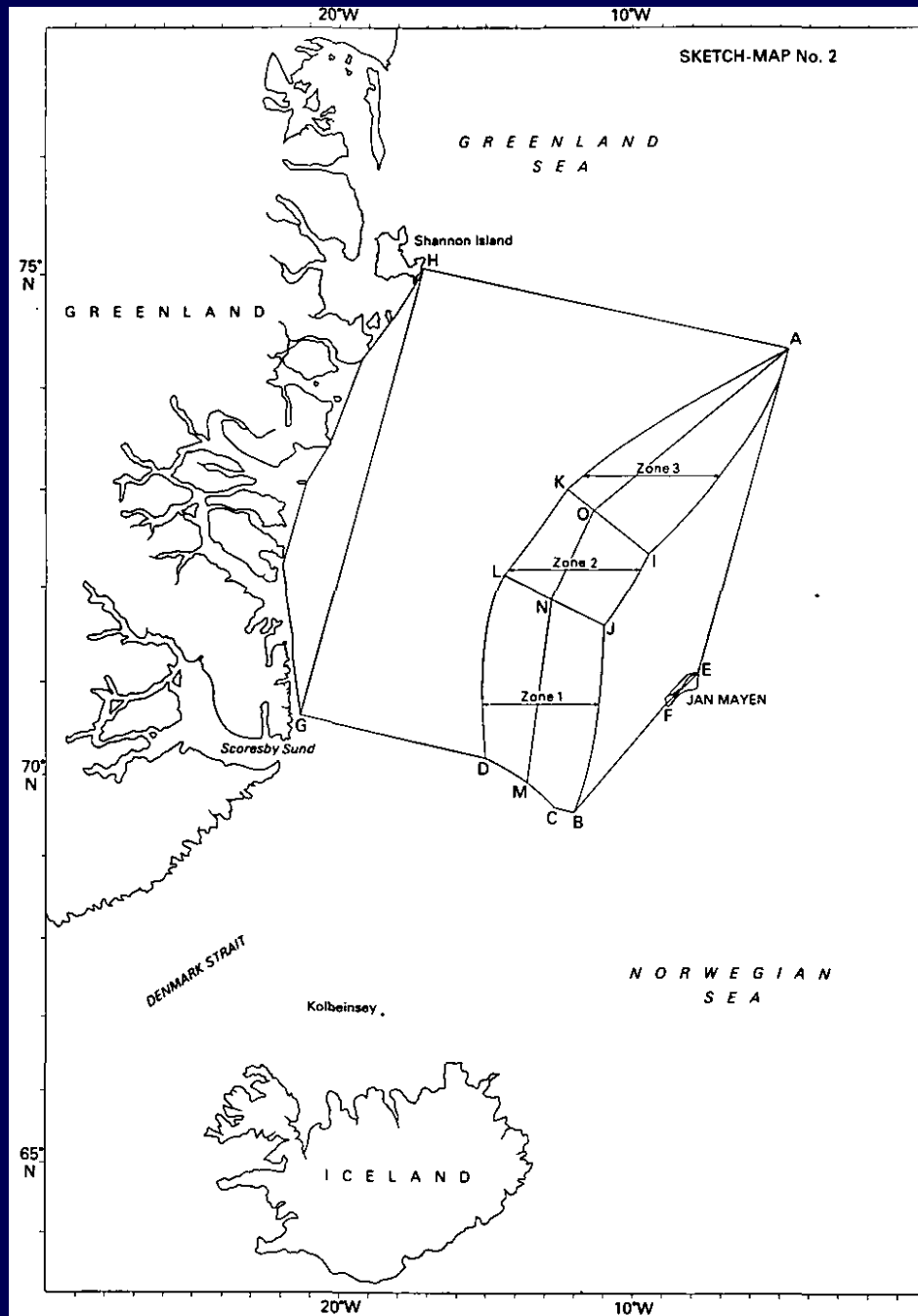
Outside Gulf – No real coastal relationship

Summary of Impact Up to 1990s

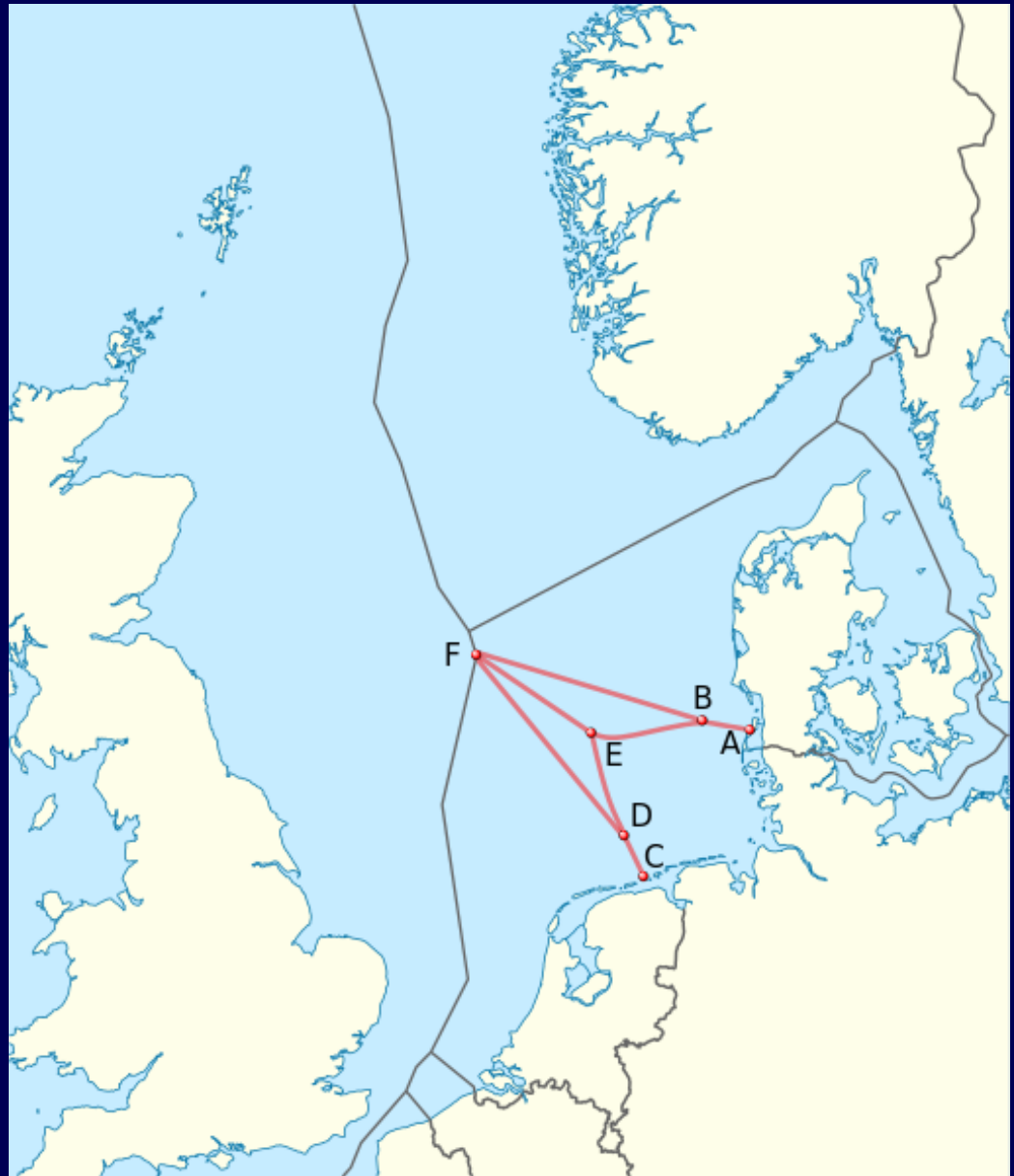
Definition of equitable principles (determined with “relevant circumstances”):

- Highly dependent upon **geography (subjective)**
 - **Proportionality** of coasts to maritime area (but – sometimes principle, sometimes “check”. Not necessarily mathematical exercise)
 - “Cut-Off”
 - **Zone blocking** – eg.
 - Relationship of coasts to each other is central circumstance – especially where **other boundaries**
- Mostly rejected factors such as land-mass, fisheries, population, economic impact etc.

Jan Mayen Case – Proportionality of Coastlines to maritime Area



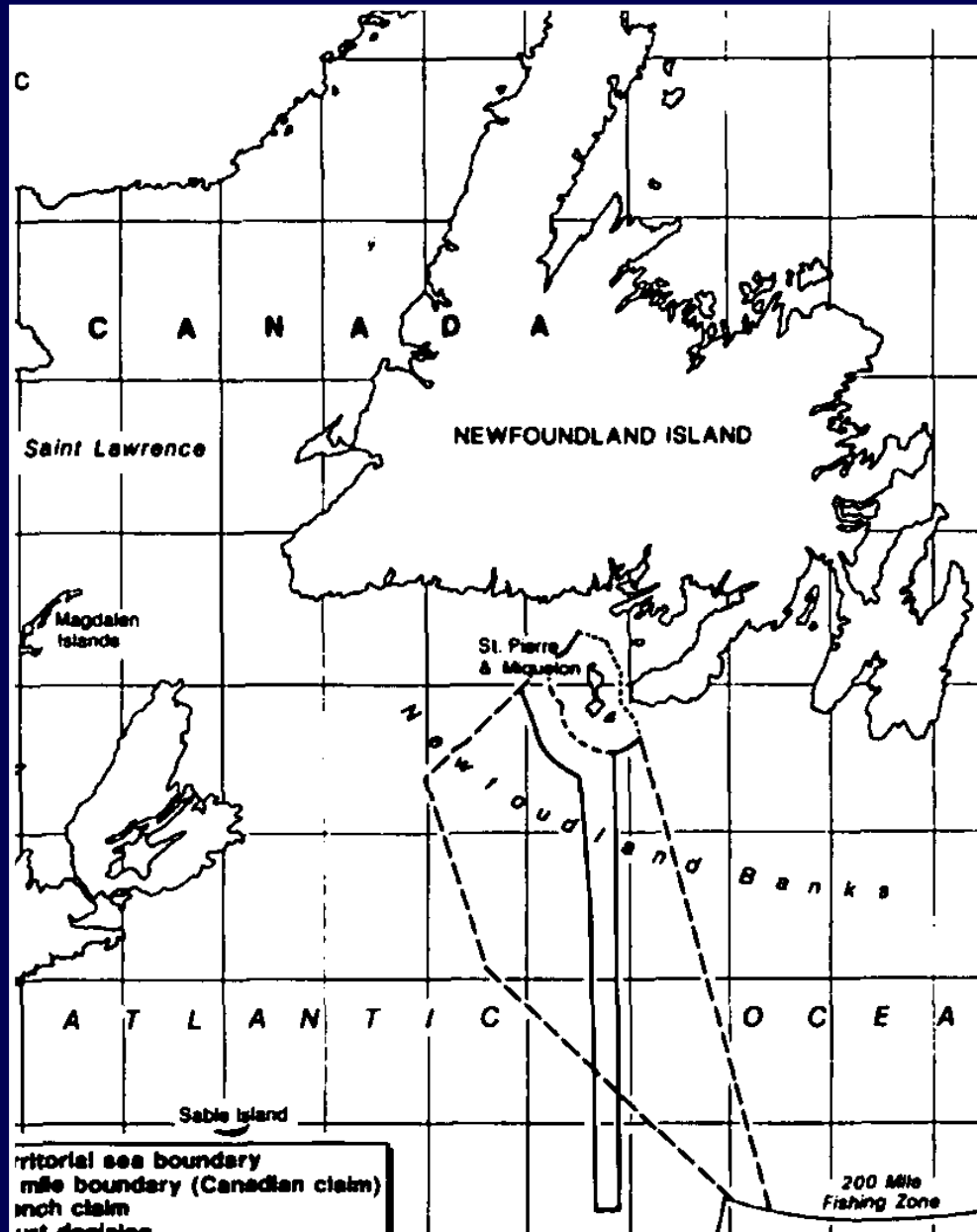
North Sea – Classic
Case of Zone Blocking



- List of relevant circumstances, equitable criteria not closed – cases are unique
- Corollary to this approach:
 - No one “practical method” of delimitation given any priority
 - Main contender for this status was equidistance or median line
 - BUT other methods commonly applied:
 - Perpendiculars to direction of coast
 - Azimuth or directional lines

- Problems with “pure” equitable approach
 - Highly subjective in treatment of geography and “relevant” coastlines and maritime areas
 - Can be extremely unpredictable
 - State practice - forms of equidistance much more common than in litigation
 - Litigation has the “hard” cases where diplomacy failed?

Canada – France – 1992: High point of Unpredictability



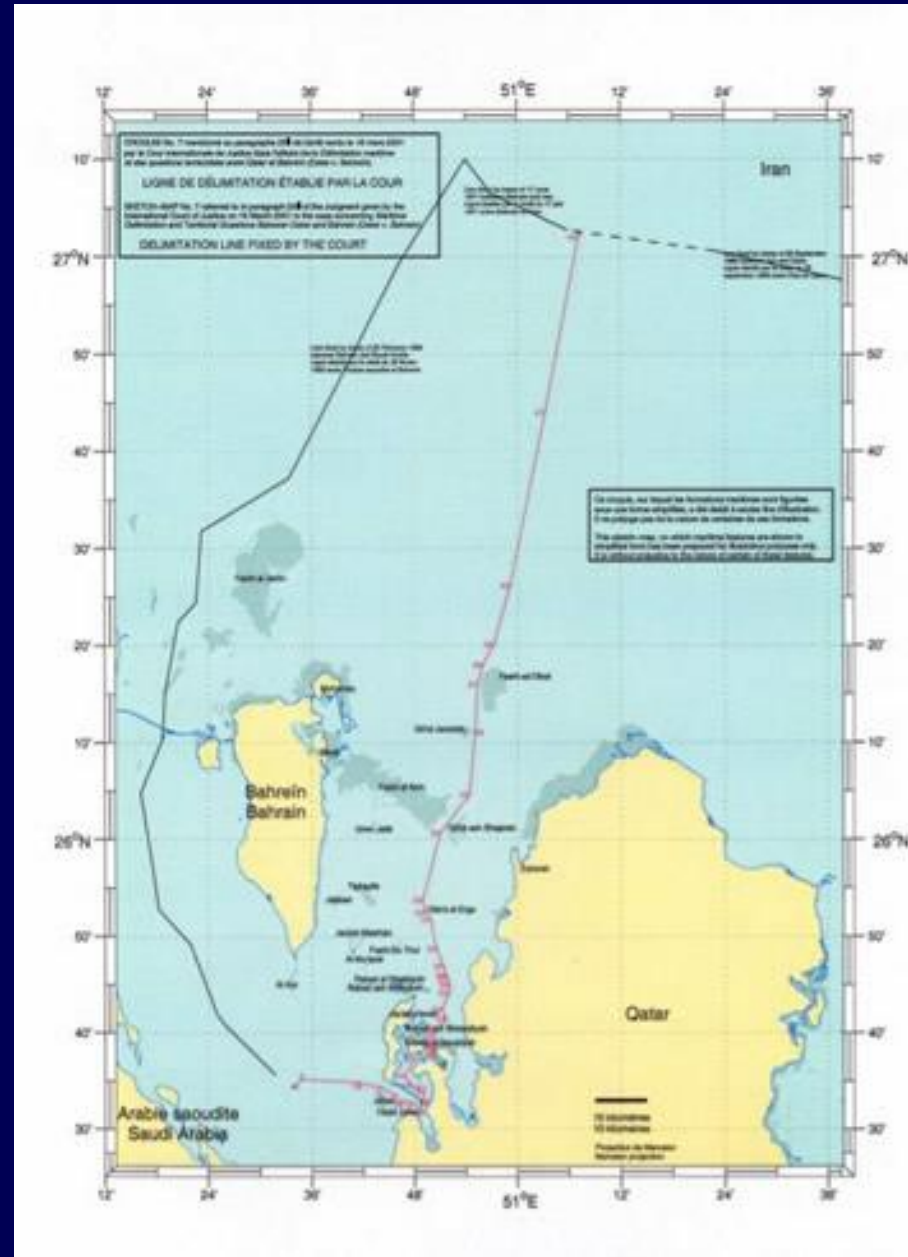
More Recent Cases

Eg. *Jan Mayen*, *Qatar/Bahrain*,
Cameroon/Nigeria, *Barbados/Trinidad and
Tobago*, *Romania v Ukraine (Black Sea)* etc

- Increasing relevance of equidistance as **starting point**
 - Always true of “opposite” boundaries & Terr. Sea.
- i.e. **presumption for equidistance** – in absence of special or relevant circumstances that would justify adjustment
- **HIGHLY** relevant in negotiation preparations

Qatar/Bahrain – ICJ (2001)

“The most logical and widely practised approach is first to draw **provisionally** an equidistance line and then to consider whether that line must be **adjusted** in the light of the existence of special circumstances.”



Application to EEZ?

Qatar/Bahrain was territorial sea for large part
– rules there favour equidistance anyway

- *BUT* – went on to say it was more broadly applicable approach
- Uses term “relevant circumstances” in relation to EEZ

Barbados – Trinidad and Tobago 2006

“The determination of the line of delimitation thus normally follows a **two-step approach**. First, a **provisional line of equidistance** is posited as a **hypothesis and a practical starting point**. While a convenient starting point, **equidistance alone will in many circumstances not ensure an equitable result** in the light of the specific peculiarities of each specific case.”

Similar approach in *Cameroon - Nigeria*

Summary

- Equitable principles **not** put aside
- BUT – in most cases – starting point will be equidistance or median line
- More predictable, as an initial consideration
- Burden of proof issues – Practically, need to find some way to **justify** moving away from equidistance

Current Delimitation Process

It is now accepted that the correct approach to maritime delimitation involves a **3 stage process** (see, eg.: *Cameroon v Nigeria* [ICJ 2002]; *Barbados v Trinidad & Tobago* 2006; *Romania v Ukraine (Black Sea Case)* [ICJ 2009]; *Bangladesh v Myanmar*, [ITLOS 2012], *Nicaragua v Colombia* [ICJ 2012])

1. Drawing of **provisional equidistance line**
 2. Identification of **relevant (special) circumstances** which **may** require shifting or adjustment of provisional line to produce equitable result
 3. **Assessment of line** to ensure no inequitable result by **disproportion** between ratio of coastal lengths and relevant maritime areas.
- This process provides **guidance for delimitation negotiations**

Proportionality at Stage 1 of Process

- Proportionality has no role to play in the drawing of the provisional equidistance line

*“The Court observes that the respective length of coasts **can play no role in identifying the equidistance line** which has been provisionally established. ... There is no principle of proportionality as such which bears on the initial establishment of the provisional equidistance line.” (Black Sea Case, para 163)*

- Only if “**compelling reasons**” make the provisional equidistance line “unfeasible” or inappropriate should another method be applied (*Nicaragua v Colombia*)

Proportionality at Stage 2 of the Process

- Proportionality may be a “relevant circumstance” at stage 2 of the process, but *only* where there is very “substantial” difference in the respective coastlines (*Cameroon v Nigeria*, para. 301, *Nicaragua v Colombia*)
- In the *Black Sea* case (para. 164), the ICJ held:

“Where disparities in the lengths of coasts are *particularly marked*, the Court may choose to treat that fact of geography as a relevant circumstance that would require some adjustments to the provisional equidistance line to be made.”

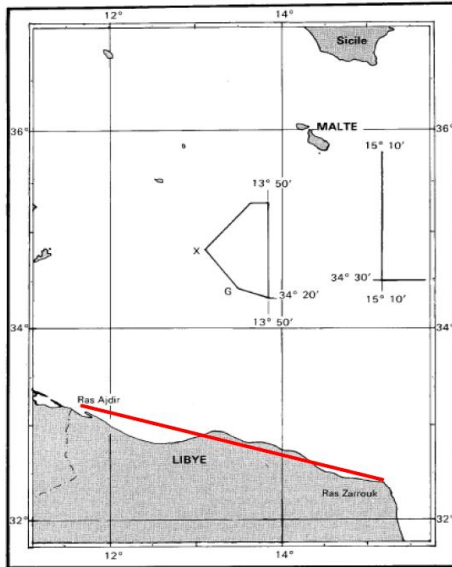
Relevant Circumstances: Disproportion

- Proportionality can only be considered as a “relevant circumstance” where the disproportion is extreme:

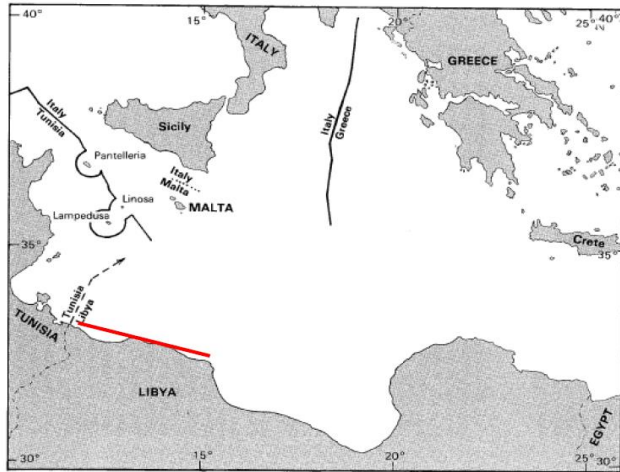
*“Where disparities in the lengths of coasts are **particularly marked**, the Court may choose to treat that fact of geography as a relevant circumstance that would require some adjustments to the provisional equidistance line to be made.” Black Sea Case, para 164*

- Applied only in cases of very significant coastal disparities :
 - *Libya/Malta*: 1 : 8
 - *Jan Mayen*: 1 : 9
 - *Barbados/Trinidad*: 1 : 8.2

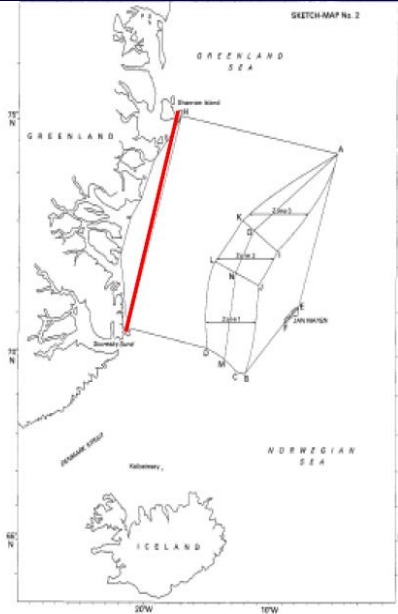
A. Relevant Coast of Libya – Per ICJ



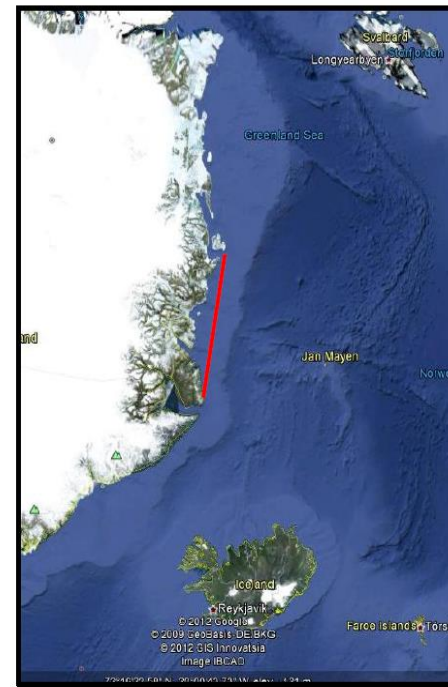
B. Relevant Coast in Regional Context



Libya/Malta
356 km



46



Jan Mayen:
504 km

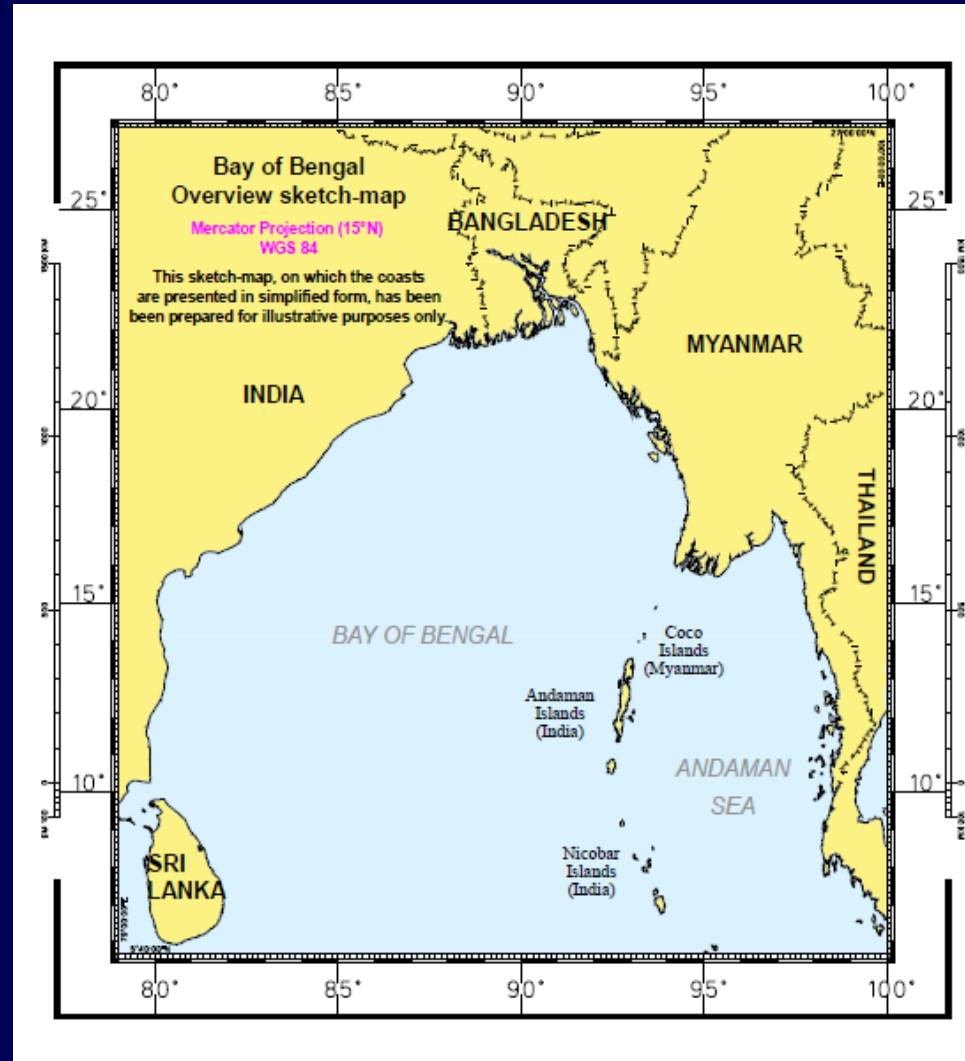
Proportionality at Stage 3 of the Process

- Proportionality is properly applied as a test of the equity of the result at stage 3 of the process
- As held by ITLOS in *Bangladesh v Myanmar* (para. 240) the test seeks “significant **disproportion**” before adjustment is required:

*“At the third and final stage in this process the Tribunal will check whether the line, as adjusted, results in any **significant disproportion** between the ratio of the respective coastal lengths and the ratio of the relevant maritime areas allocated to each Party”*

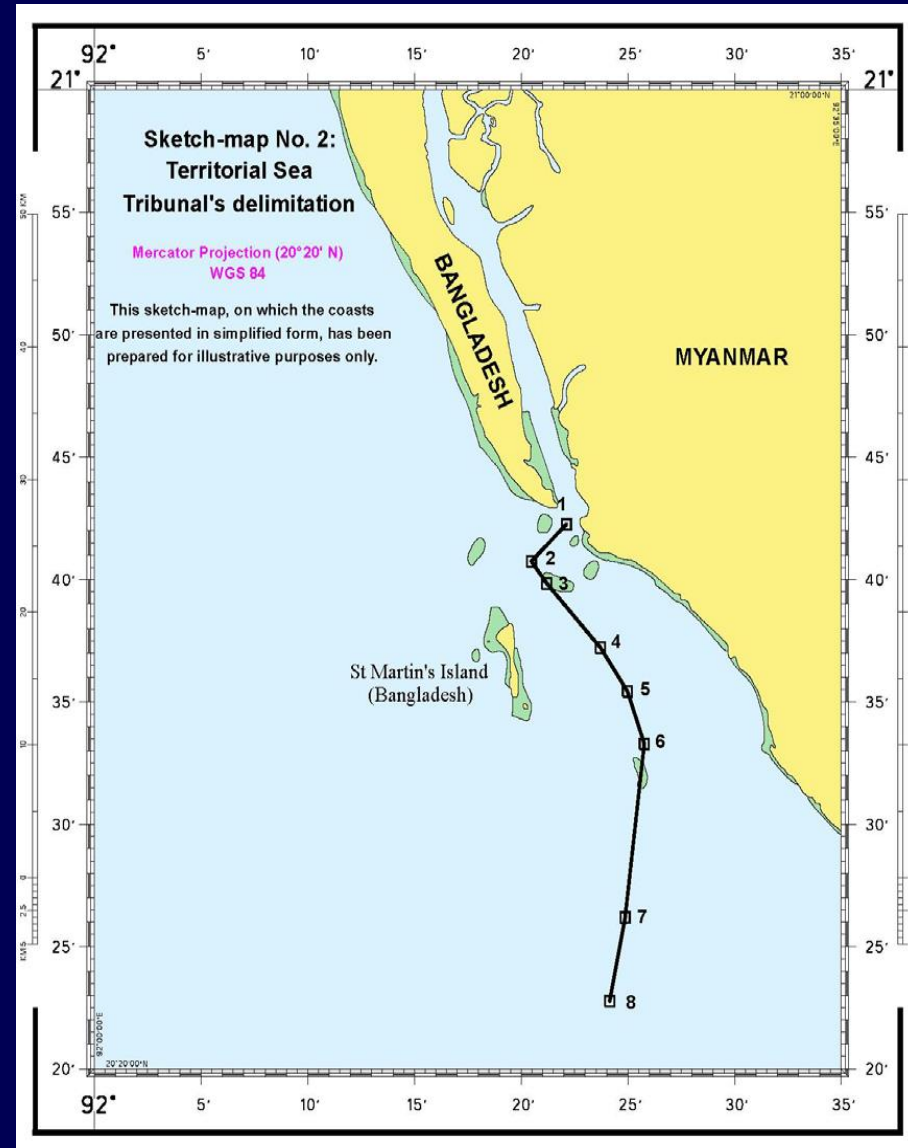
Application of Approach in *Bangladesh v Myanmar* ITLOS 2012

- Single Maritime Boundary
- Including outer shelf
- First ITLOS boundary decision
- Impact on India as third party



Territorial Sea

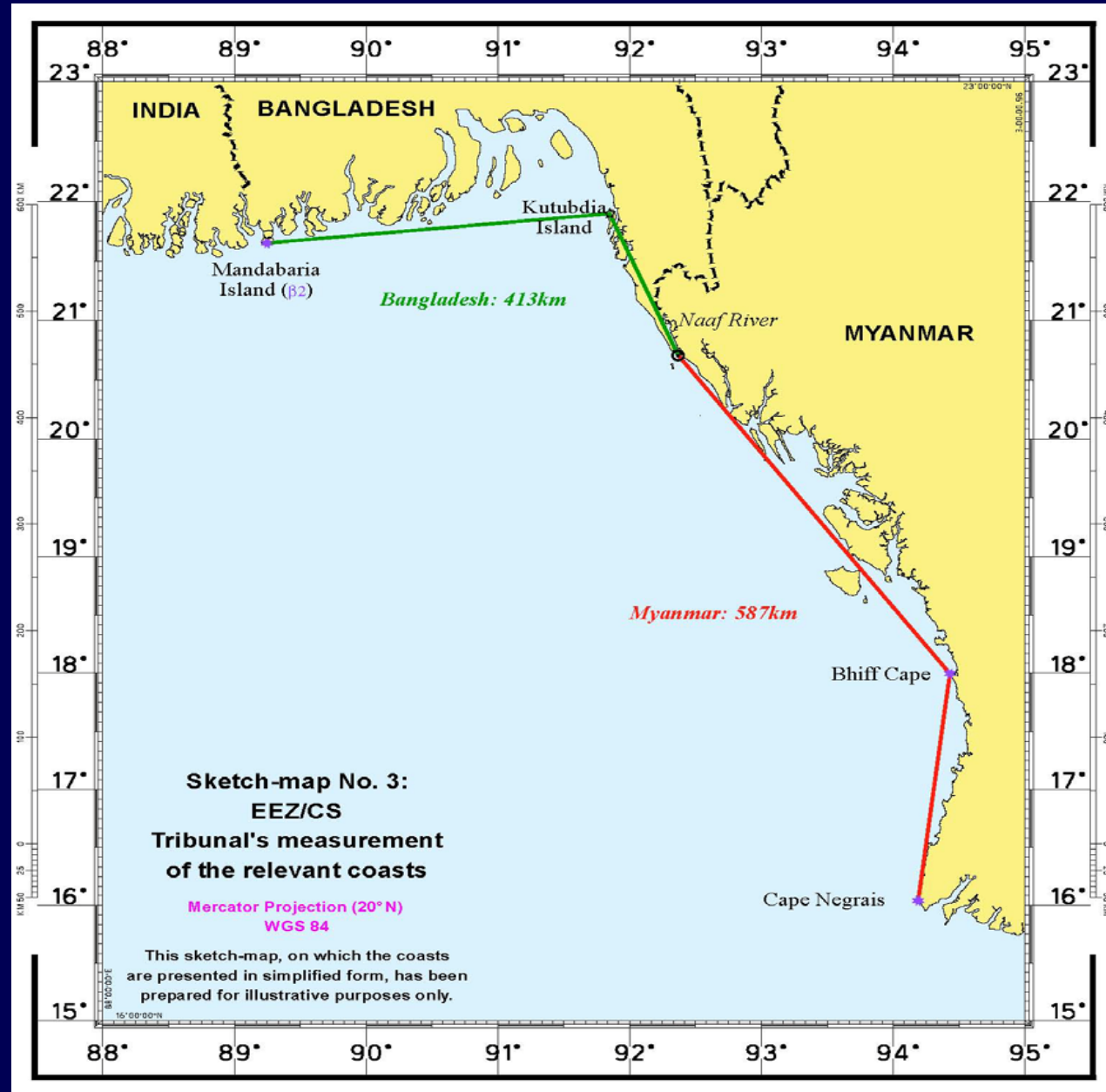
- Prior agreement and estoppel rejected
- UNCLOS Art 15 applied
- St. Martin's **not** special circumstance (as claimed by Myanmar)
- Equidistance line out to end of 12 nm overlap



Exclusive Economic Zone/Shelf to 200

- Applicable law: Arts. 74 & 83
 - “achieve an equitable solution”
 - But take into account customary law developments (i.e. equidistance/relevant circles)
- Definition of relevant coasts: essentially full coastal front of Bangladesh, Myanmar south to Cape Negrais

Myanmar: 587 km
Bangaldadesh: 413 km



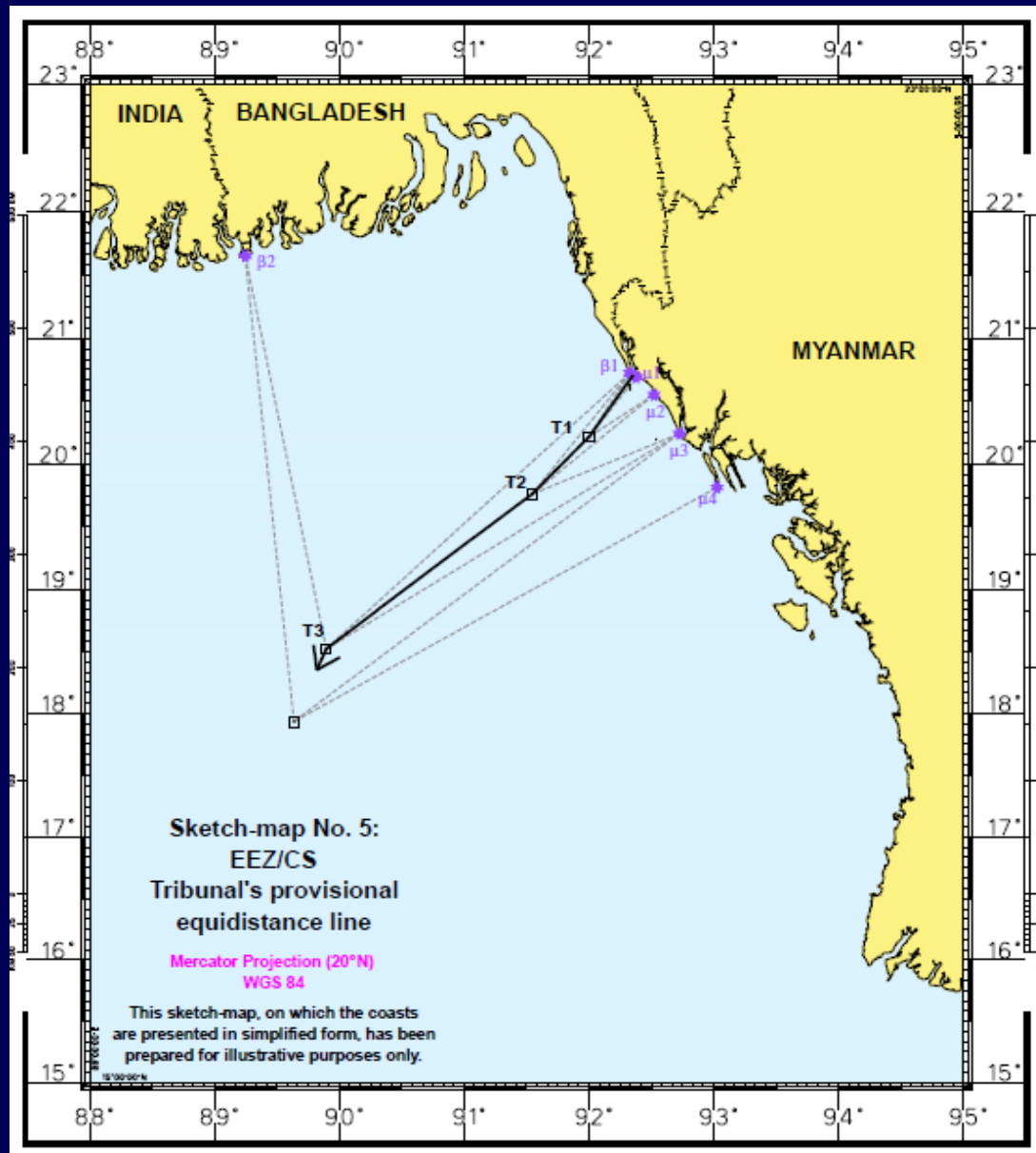
Approach to delimitation

- Adopted equidistance/relevant circles
- Following *Romania v Ukraine*, *Barbados v Trinidad & Tobago* etc
- Provisional equidist. line, adjust for relevant circles.

Anomalies

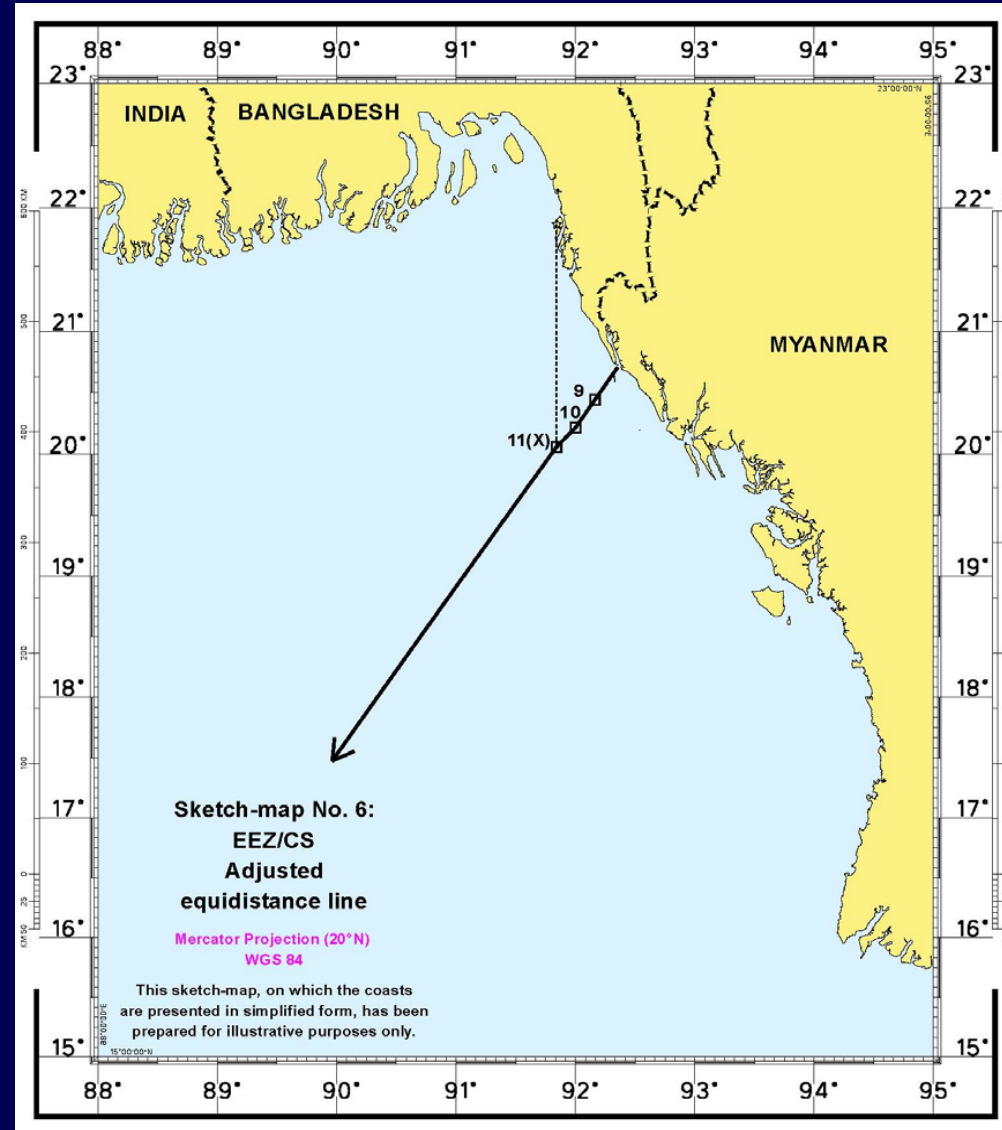
- Delimitation “method” vs ‘methodology’ or process?
- Removal of St Martin’s basepoints *before* drawing provisional line?

Provisional Equidistance Line



Relevant Circs. And Adjustment

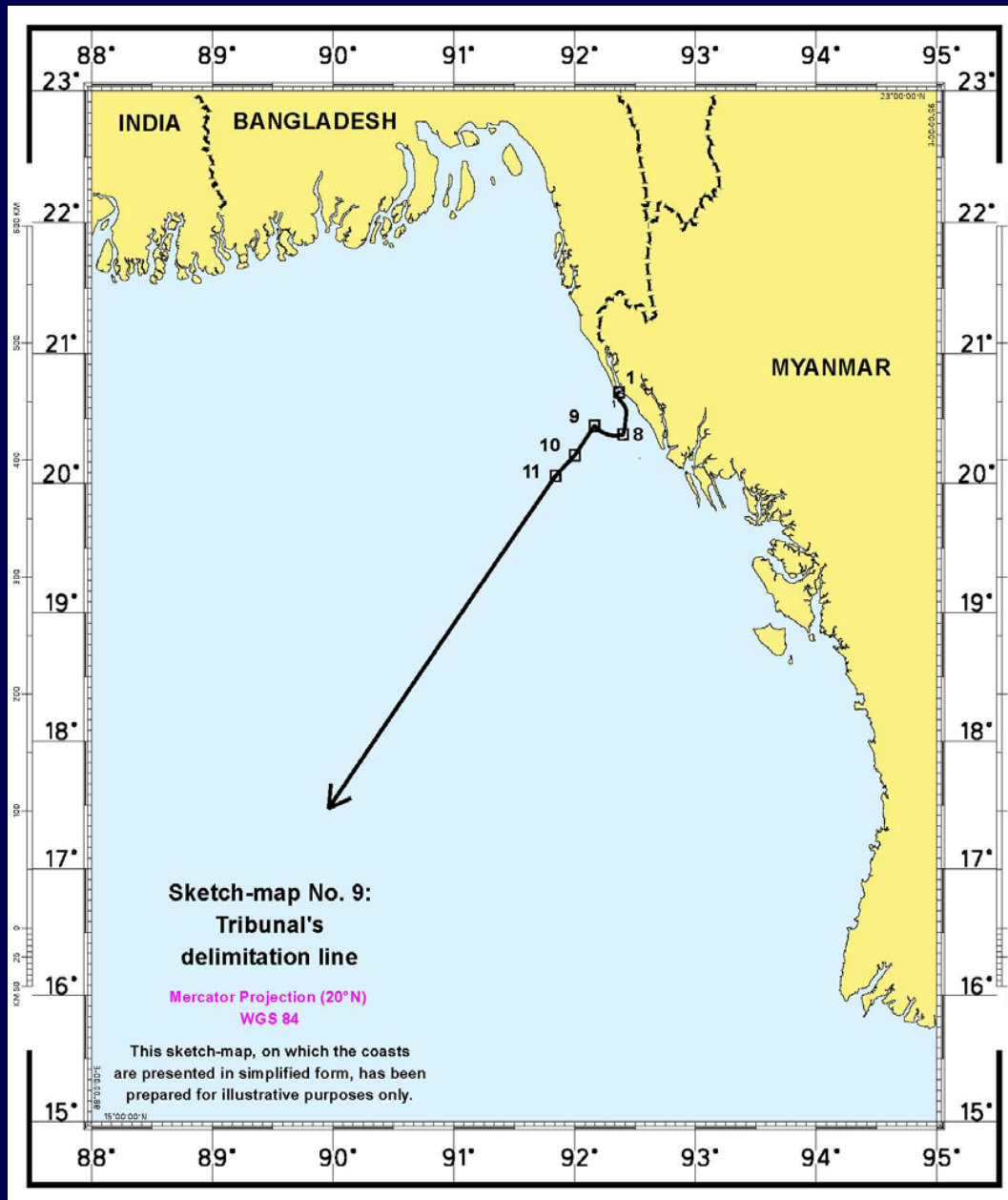
- Bangladesh: Bengal depositional system; St. Martin's, concavity and cutoff
- Tribunal: concavity, “pronounced “cut-off: effect
- Deflection of line to 215° from point x (where effect is marked)



Shelf Beyond 200 nm

Summary:

- Tribunal had jurisdiction to delimit and, if needed, rule on entitlement to shelf (was an issue)
- Both parties had entitlements throughout area
- Applied same approach as in EEZ: and found concavity & cut-off still had impact
- Continued 215 ° line **until areas where third party rights affected**
- **Contra ICJ approach??**



**Sketch-map No. 9:
Tribunal's
delimitation line**

Mercator Projection (20°N)
WGS 84

This sketch-map, on which the coasts
are presented in simplified form, has been
prepared for illustrative purposes only.

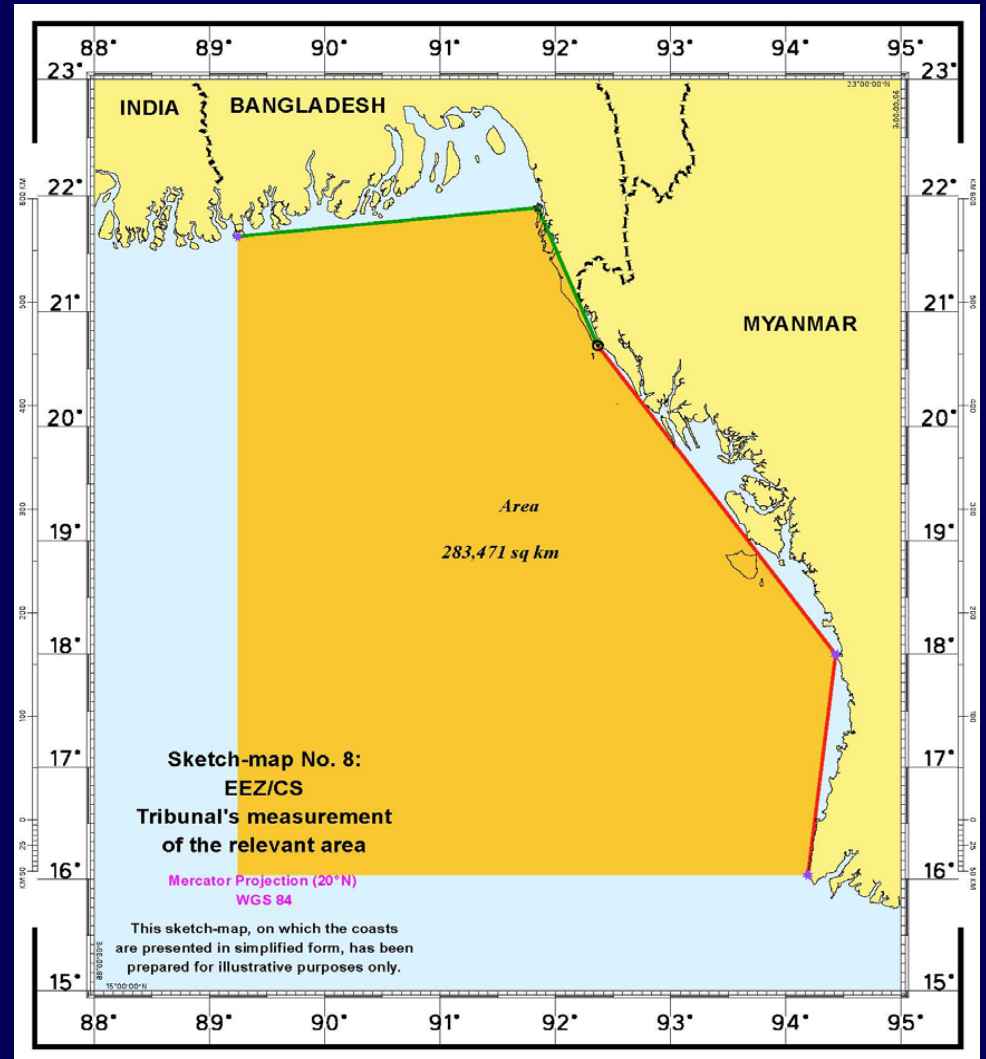
Test of Disproportionality

Coasts

1 : 1.42 favour of Myanmar

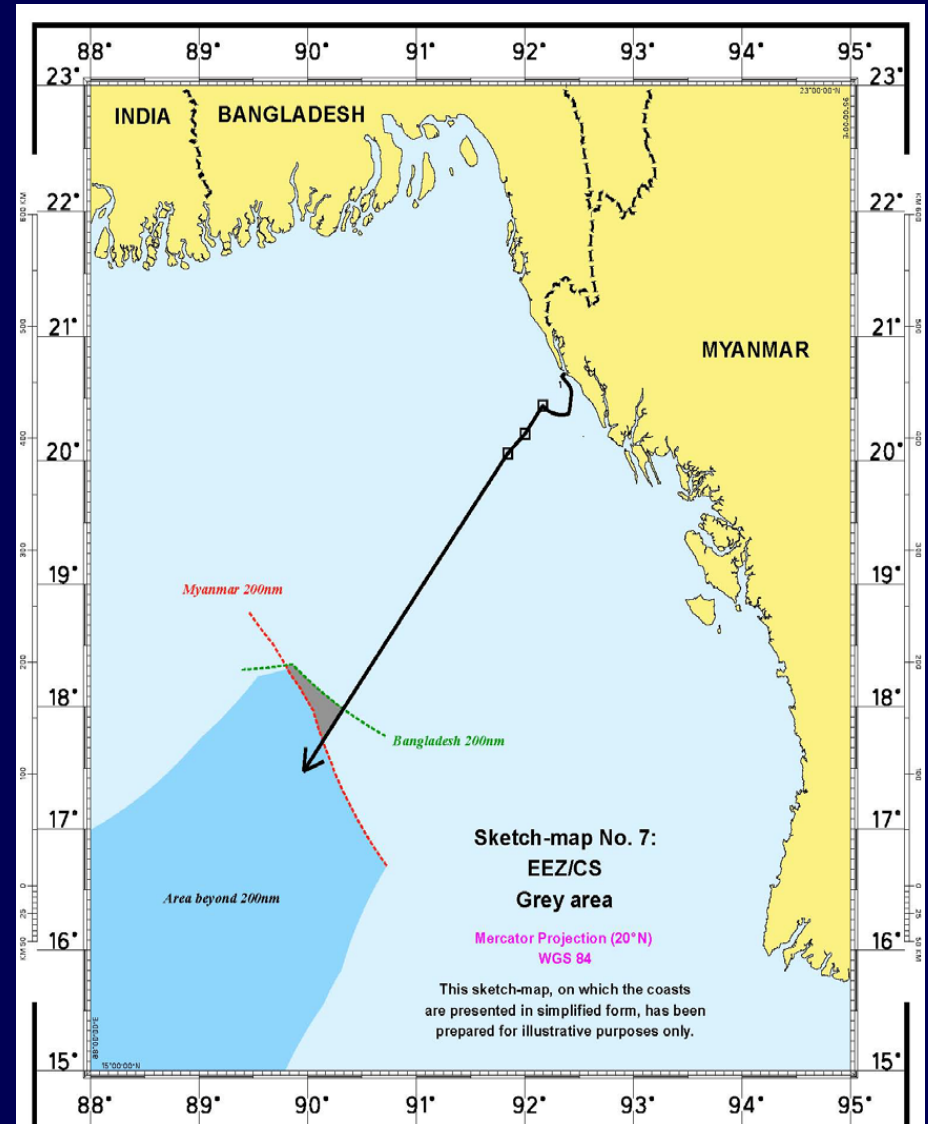
Area:

1 : 1.54 for Myanmar



Entitlement Issues: Grey Area

- Grey Area created outside Bangladesh 200
- Neither zone “trumps” the other
- Consequence of delimitation
- Does not remove Myanmar’s entitlement to water column
- For parties to deal with difficulties – cooperative measures
- Does **not** delimit both: EEZ would be unilateral (due regard)



Perpendiculars and Bisectors

- Simply bisect angle formed by general direction of coastline(s)
 - Where unidirectional – perpendicular
 - If two directions – bisector
- Advantages:
 - Reflects basis of equidistance
 - Filters out distortions in equidistance caused by particular features (eg. peninsulas, concavity)
 - Effect of such features is eliminated

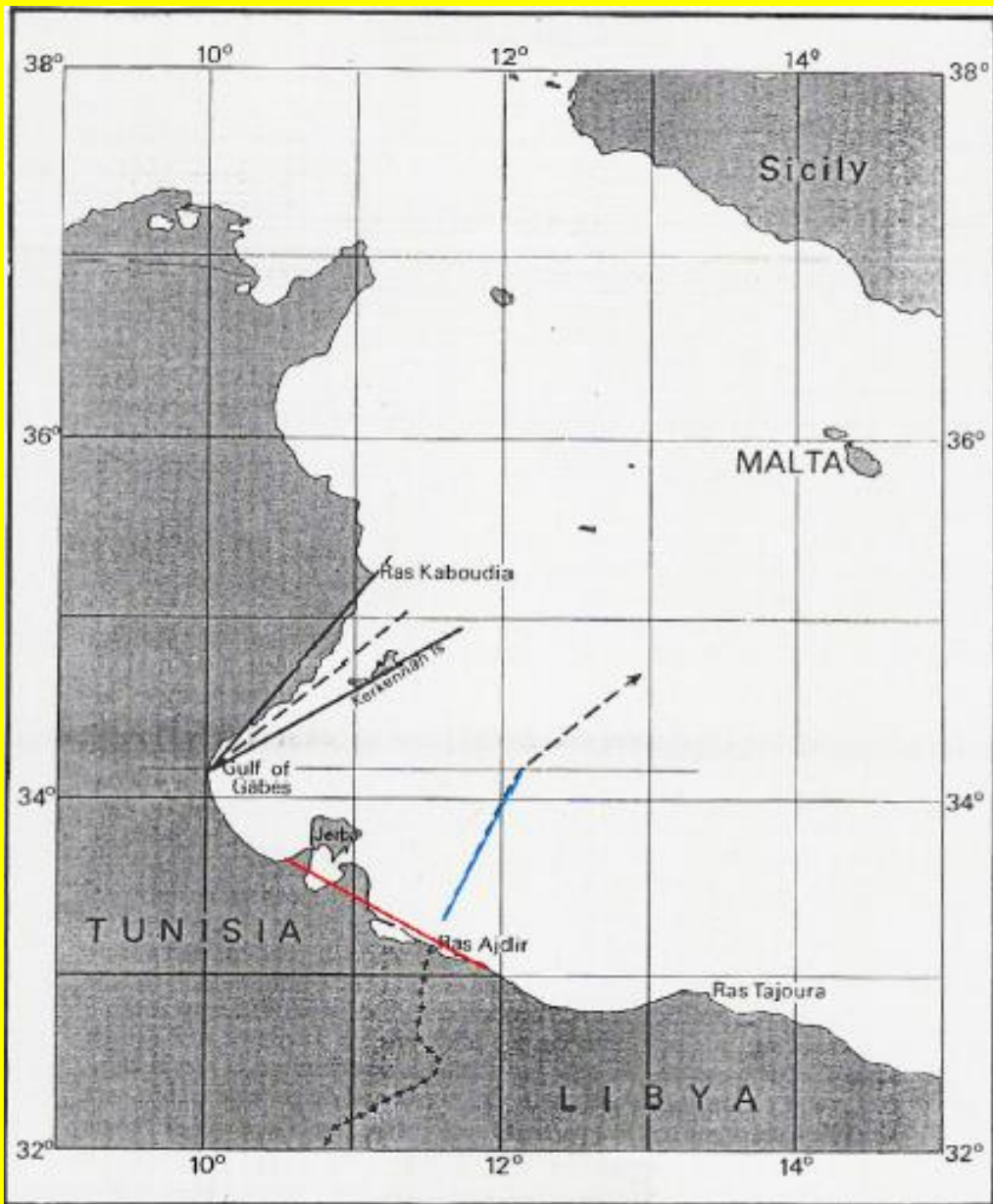
Guinea/Guinea-Bissau
1985

Long coastal Direction

Outer segment as
Perpendicular

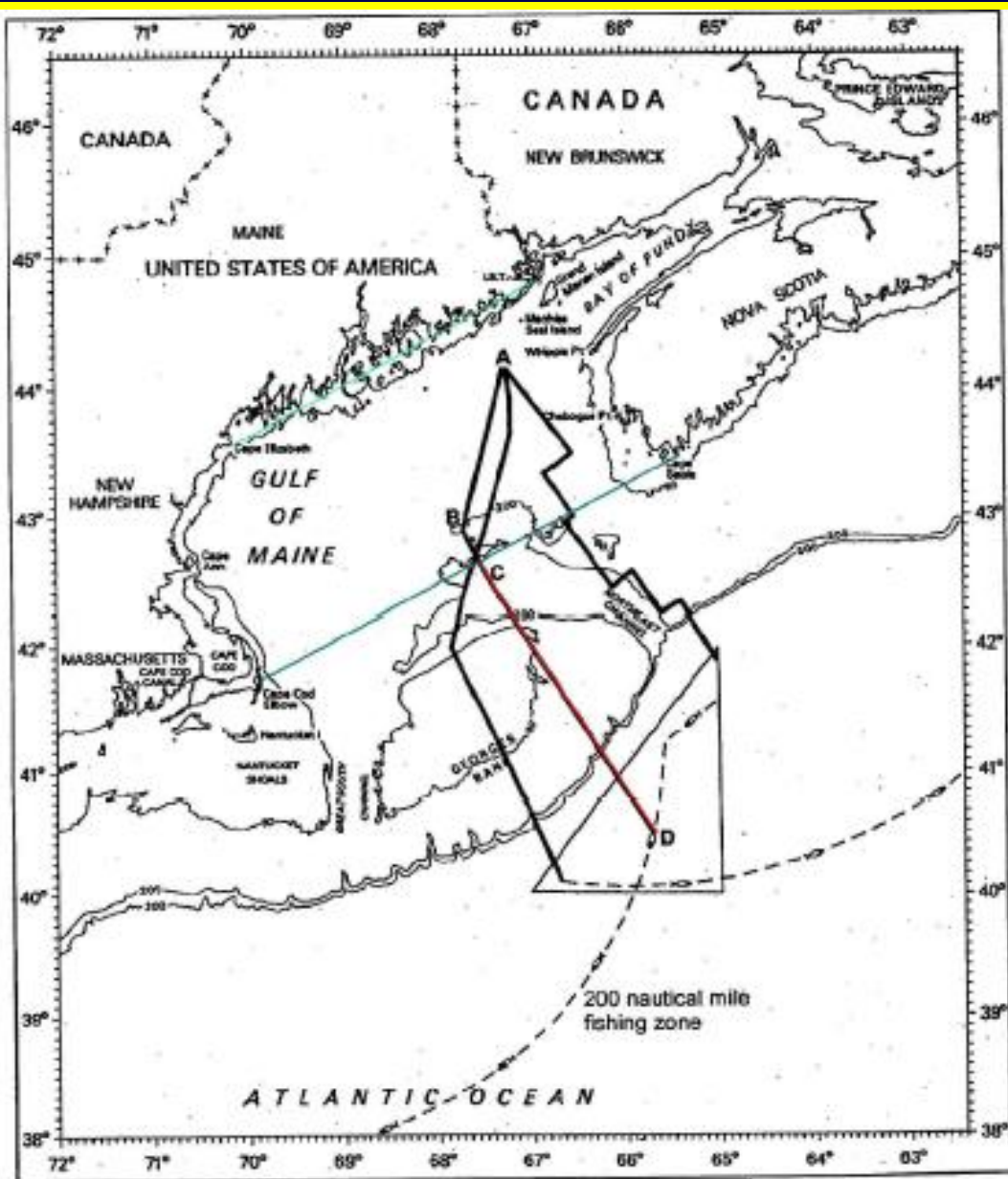


- Guinean claim based on 1886 treaty.
- - - - - Guinean adjusted equidistance claim.
- Guinea-Bissau equidistance claim.
- Boundary line drawn by the arbitration tribunal, 1985.



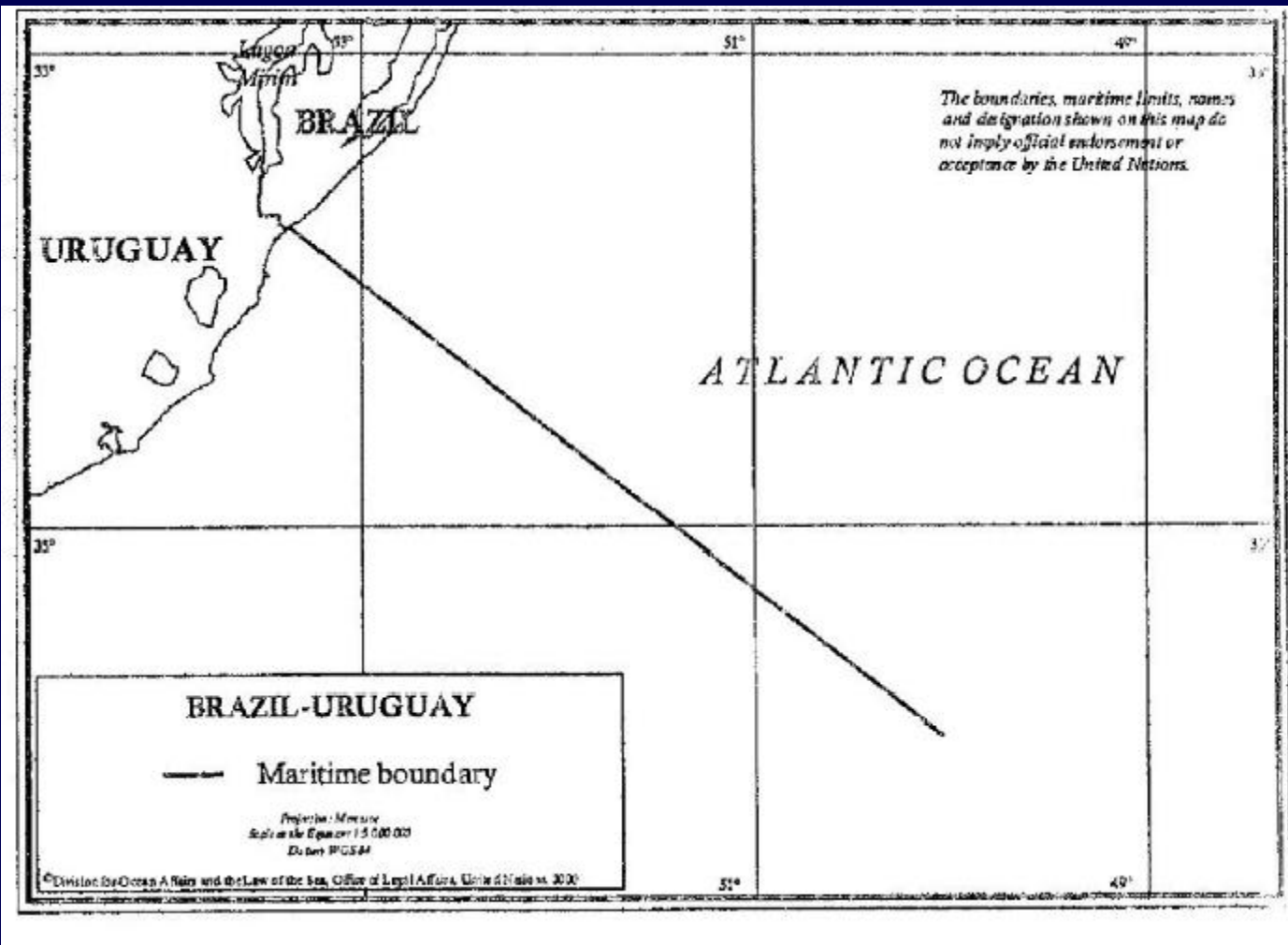
Legend:
 Blue Line: Segment Based on Practice and Perpendicular
 Red Line: Approximate Coastal Direction At Land Boundary

- Tunisia-Libya (1982)
- Coastal direction – remove effect of island
- Perpendicular coincided with colonial and oil practice



Legend:
 Red Line: Perpendicular to Closing Line
 Blue/Green Line: Closing Line
 Green Line: Coastal Direction: Inner Coast

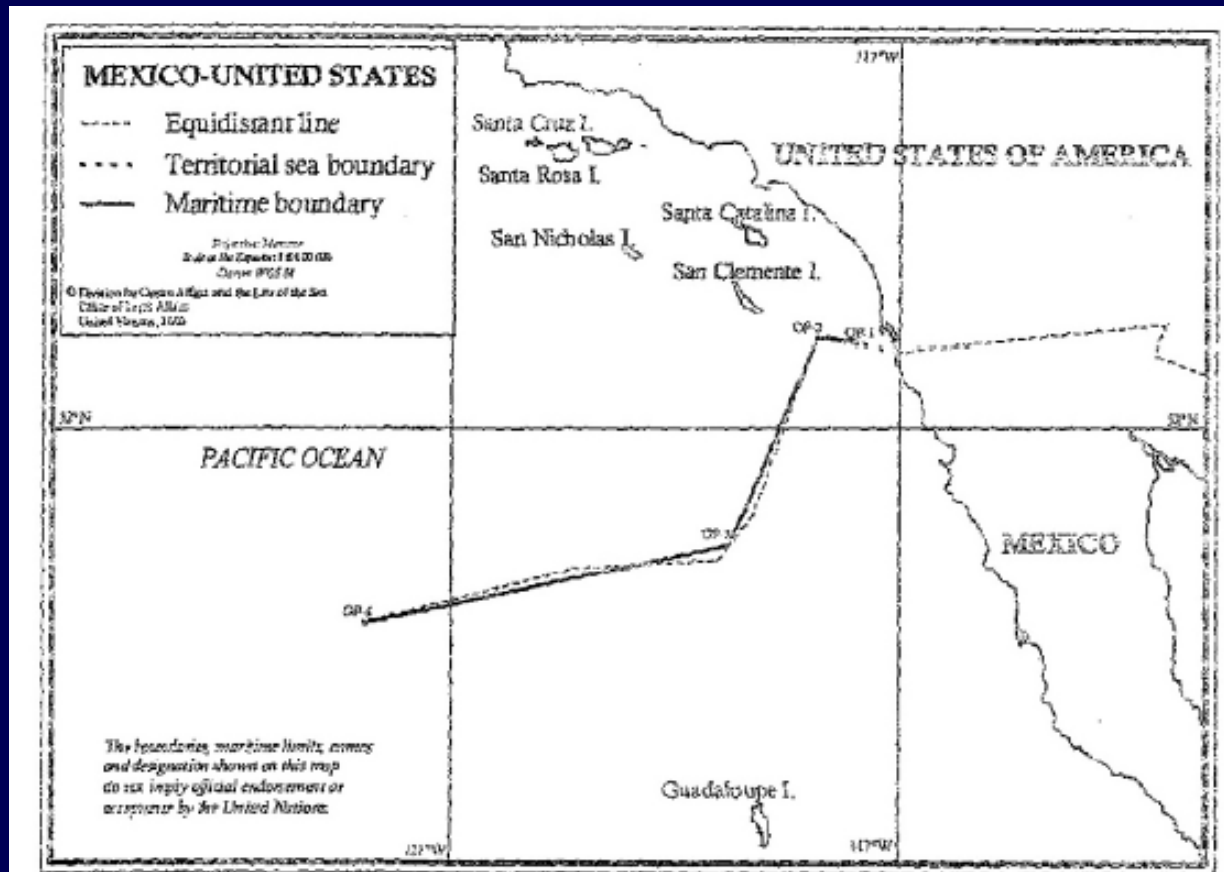
- Gulf of Maine 1982
- Perpendicular to “outer closing line”
- Segment C-D
- Also matching “backing” coast



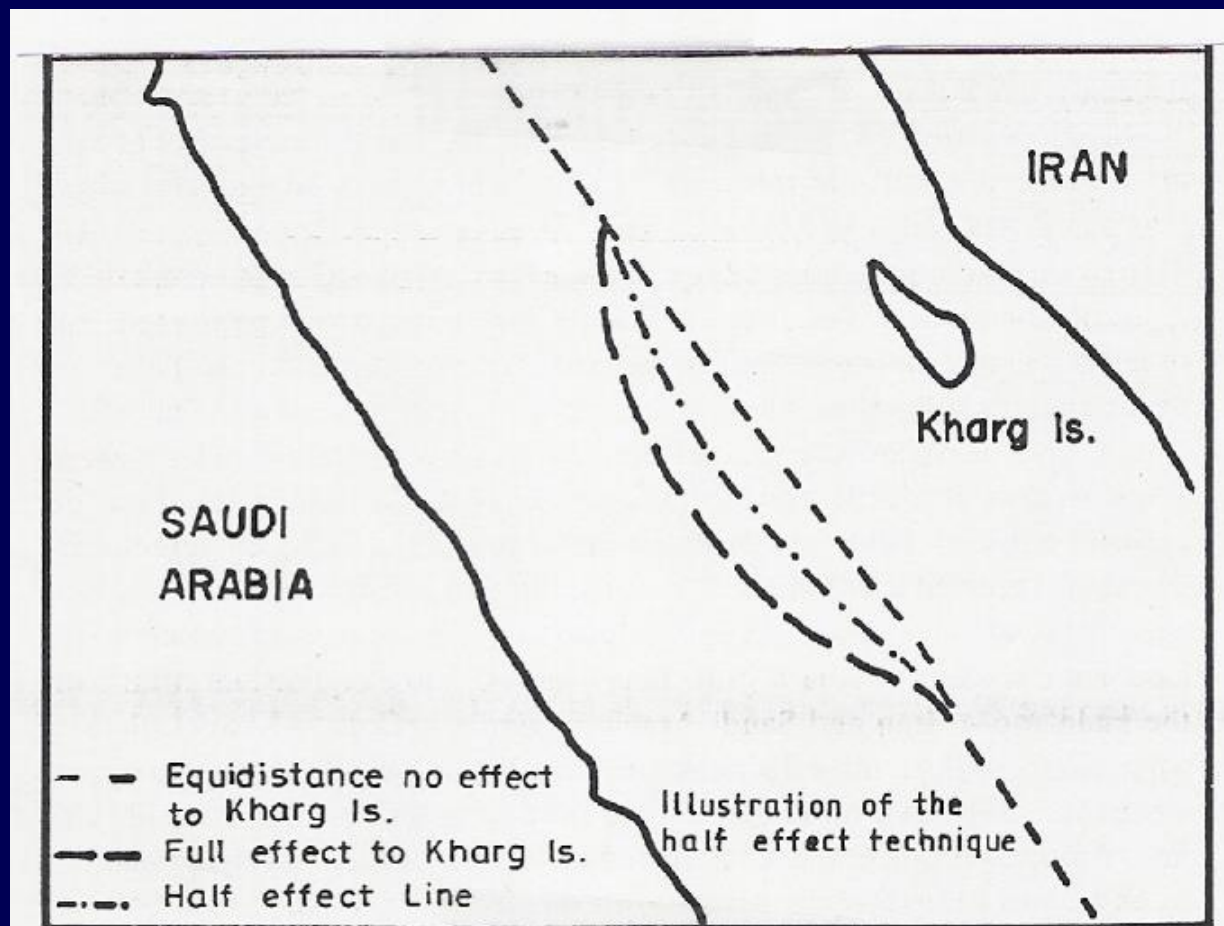
- Quasi-Perpendicular in **agreed** boundary
- Perhaps an azimuth line?
- Uruguay-Brazil

Sample of Issues Arising: Methods

- **Simplified Equidistance: US-Mexico**

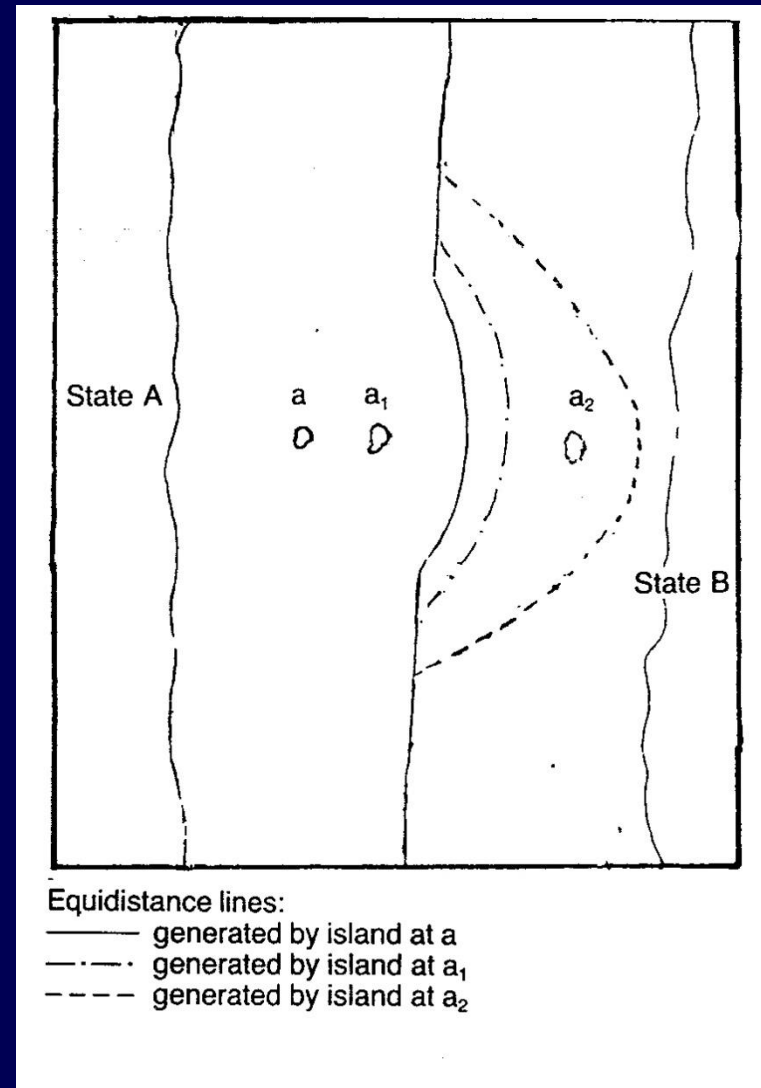


- **Modified Equidistance** – Saudi Arabia - Iran

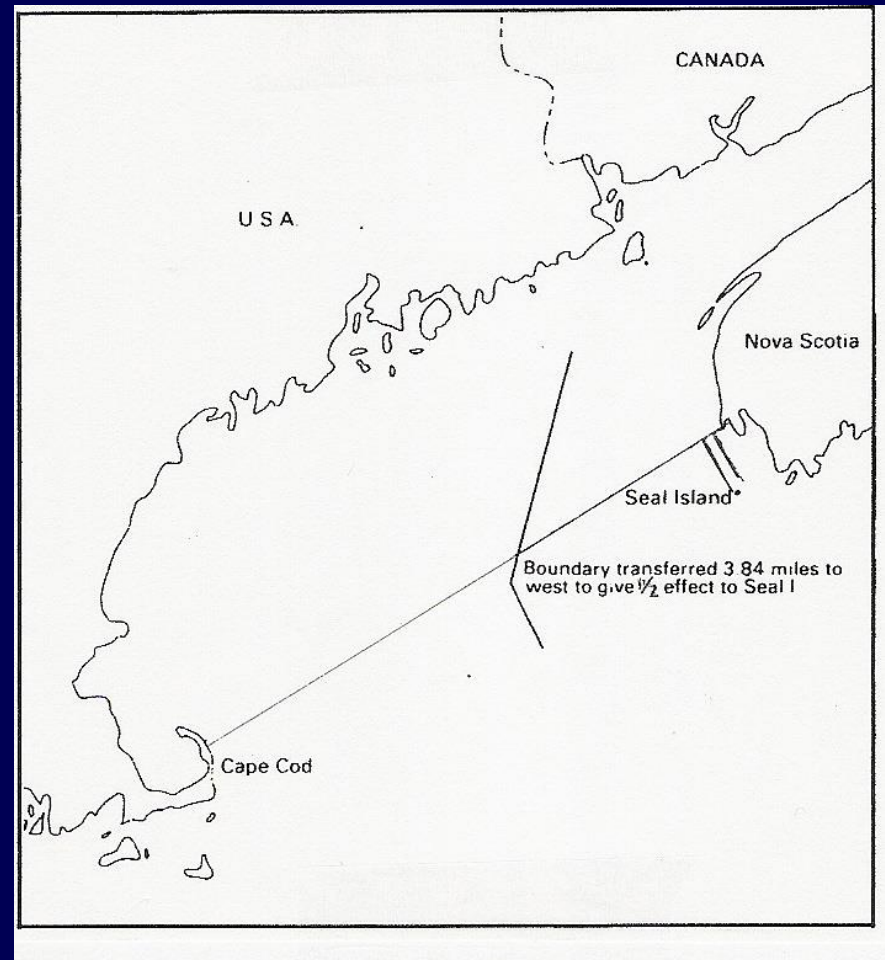
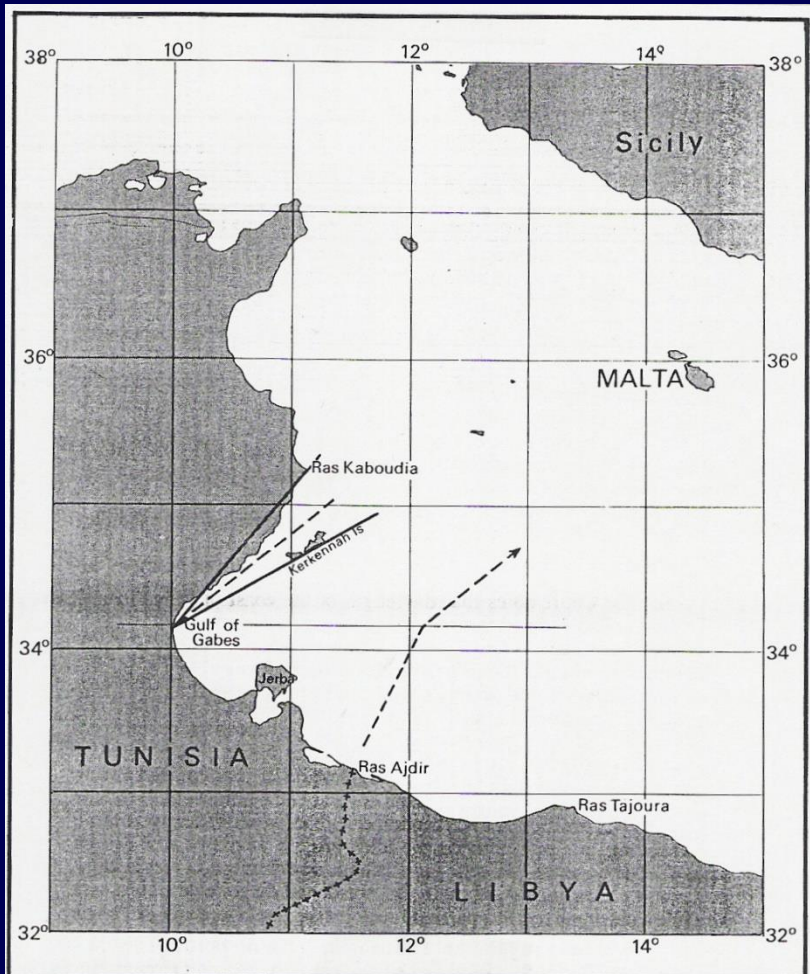


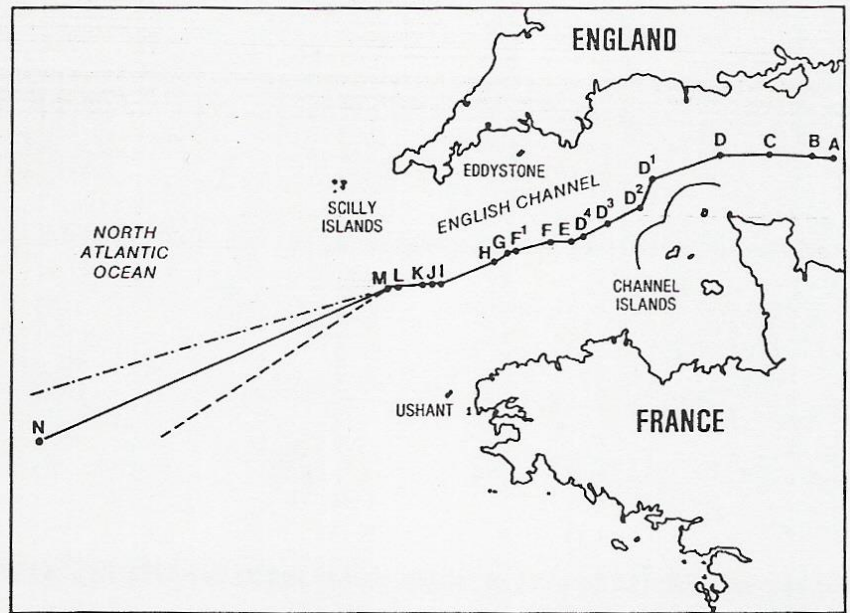
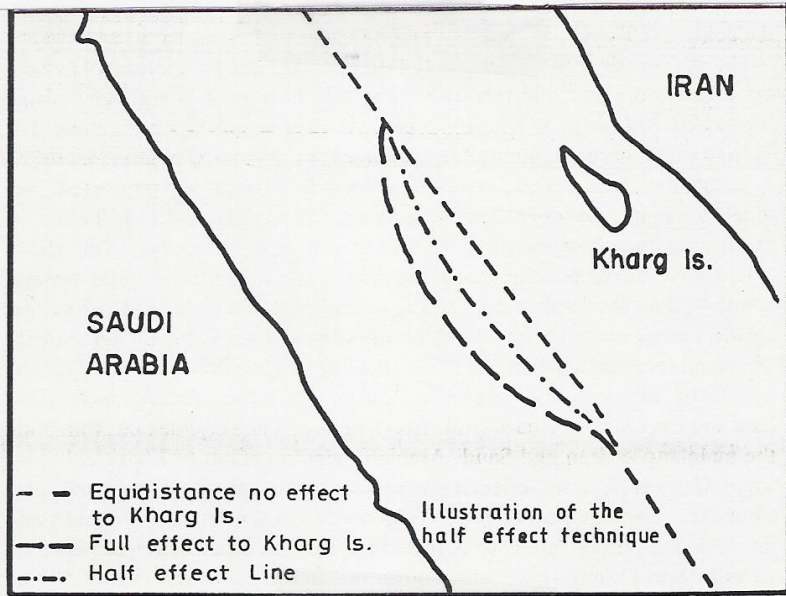
Common Special Circumstances

- Islands on “wrong” side of median line
- Distorting effect on boundary out of proportion with size, significance
- Same for peninsulas

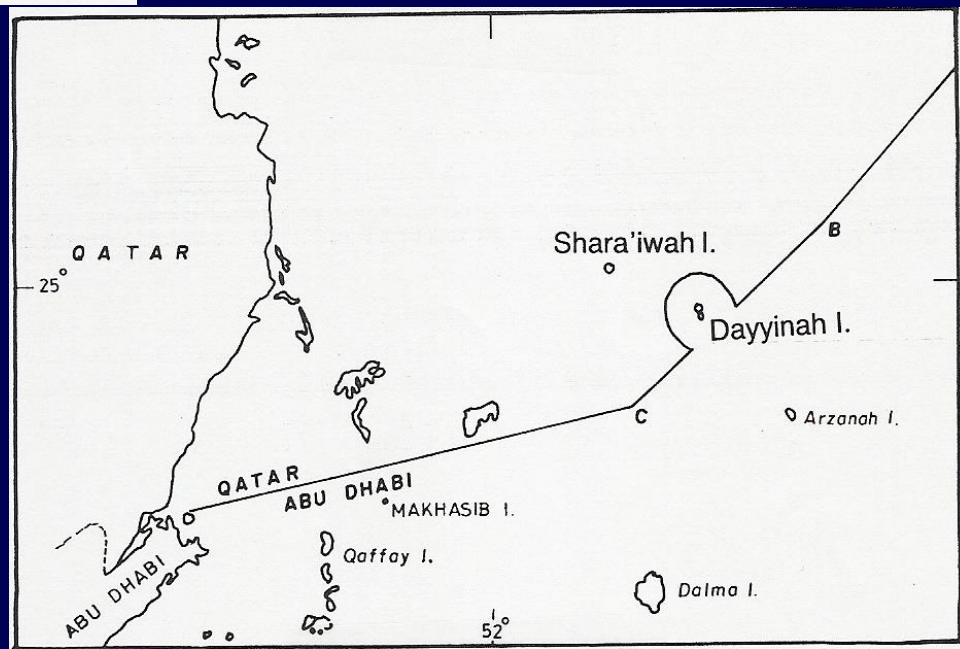
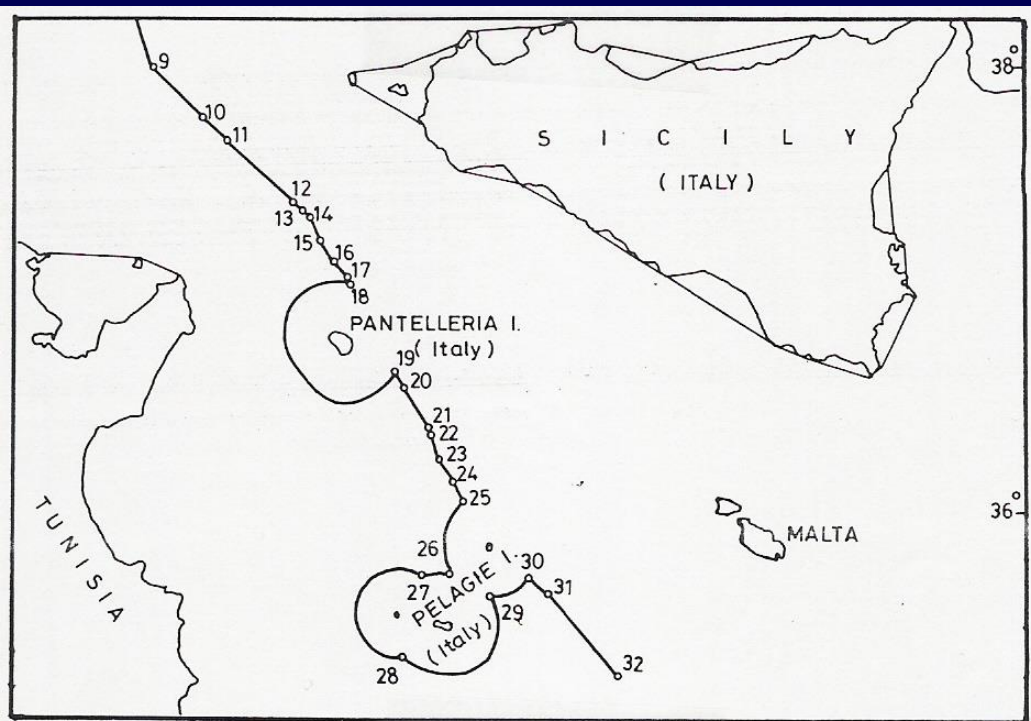


Possible Solutions



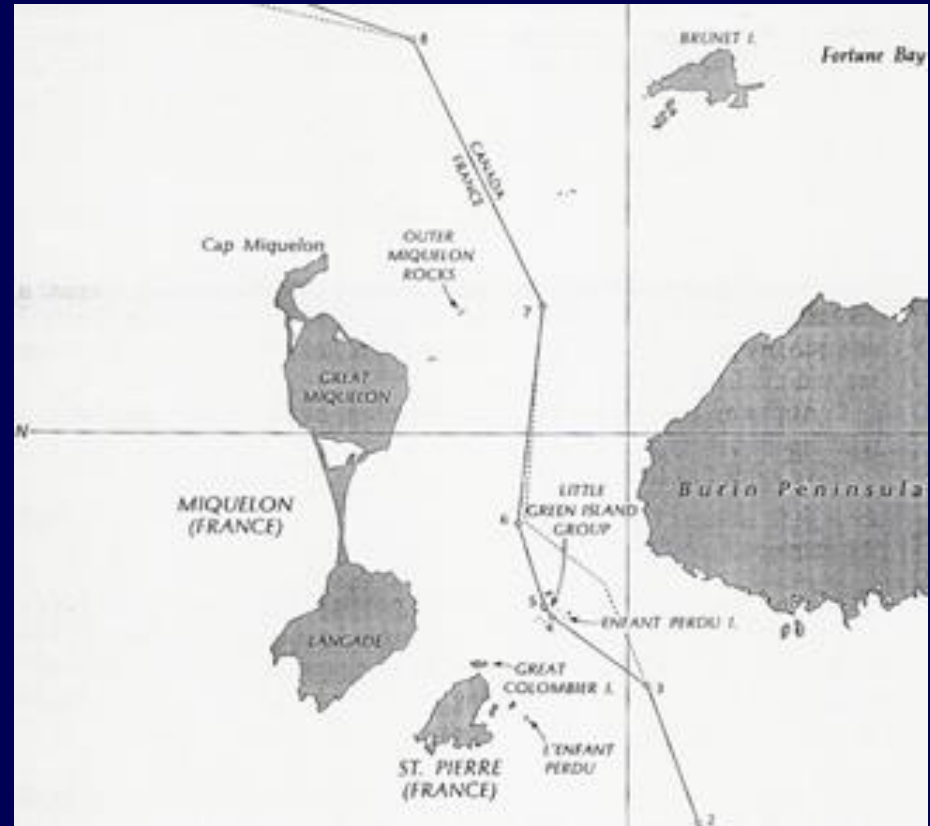


- French claim in the Atlantic Region.
- - - - UK claim in the Atlantic Region.
- Boundary segments drawn by the Court of Arbitration, 1977.
- 12-nautical mile territorial sea enclaves for the Channel Islands established by the Court of Arbitration, 1977.

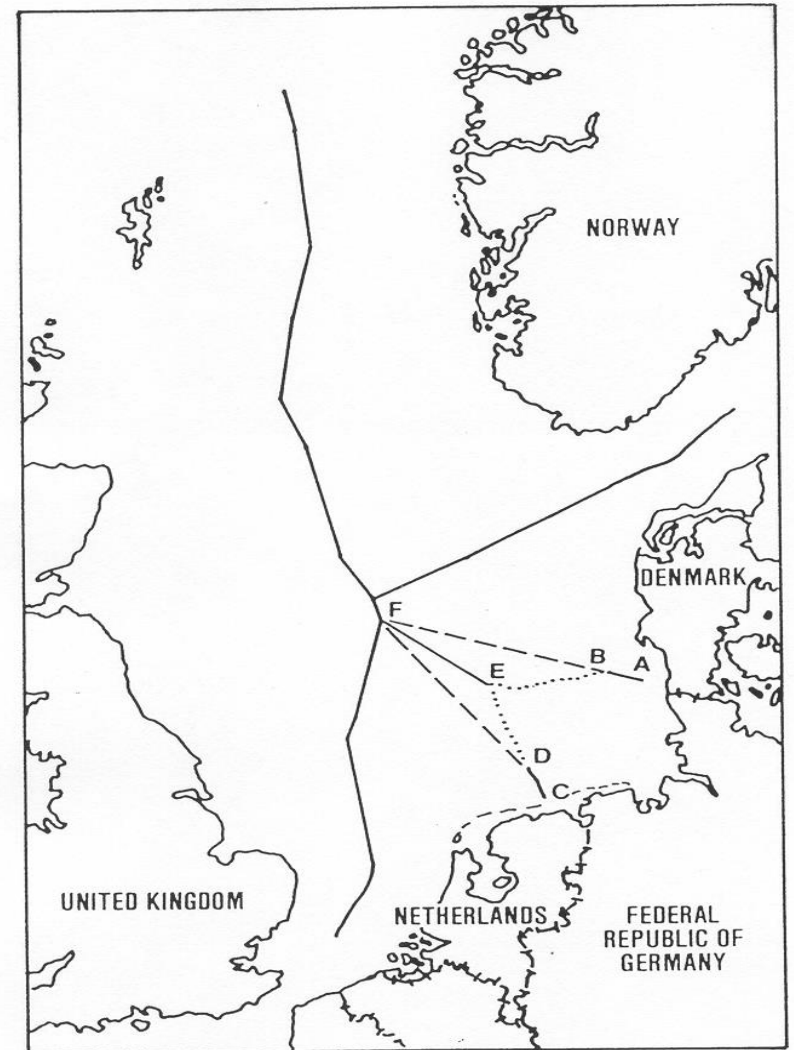


Other Options – Disregard as Basepoints

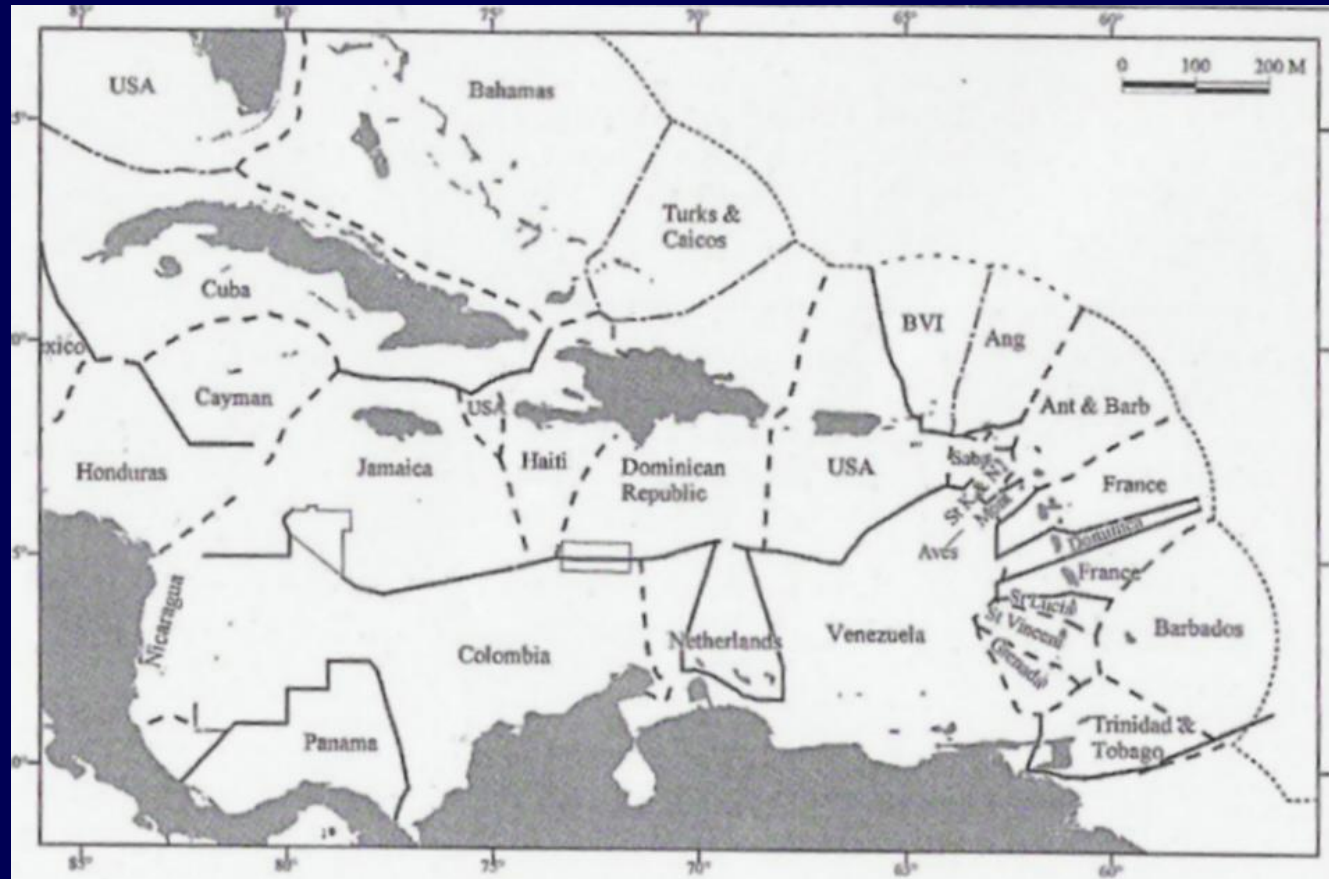
- Green Island in St. Pierre negotiated boundary
- Boundary runs along low-water mark of island
- See also Filfla Island – Libya-Malta – no effect



- Concavity of coastline



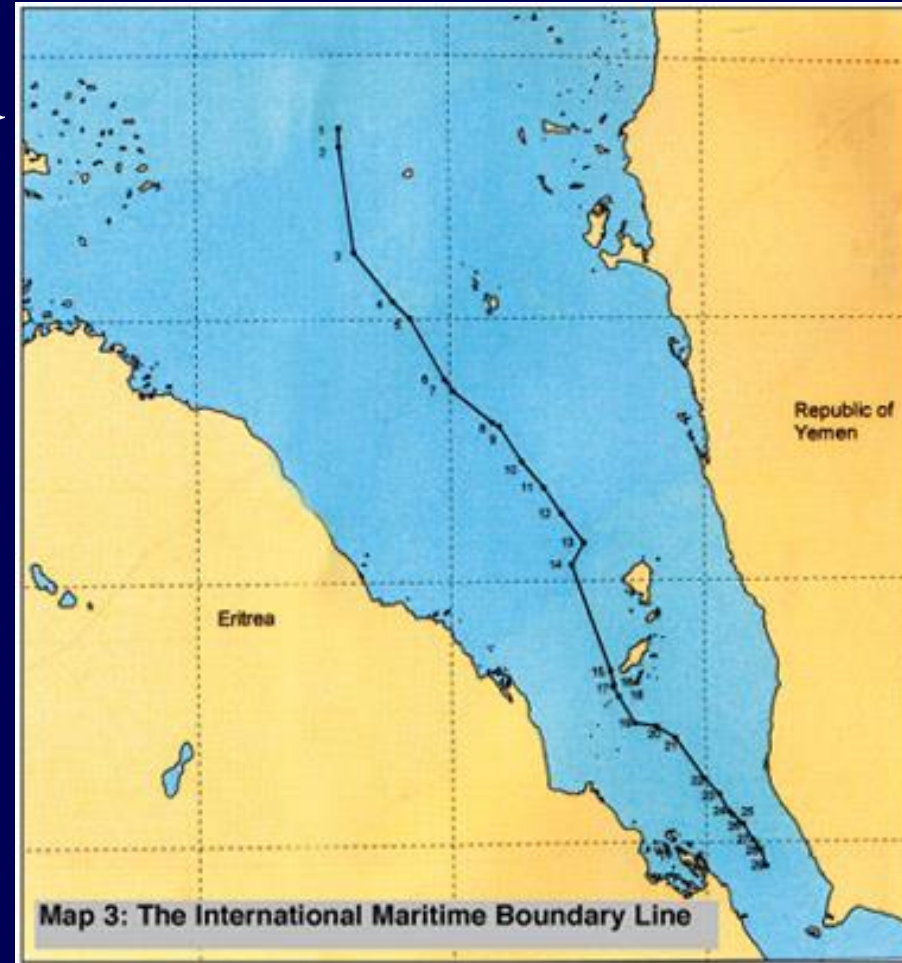
Geographic Disadvantage: Effect of Congested Areas and Semi-Enclosed Seas



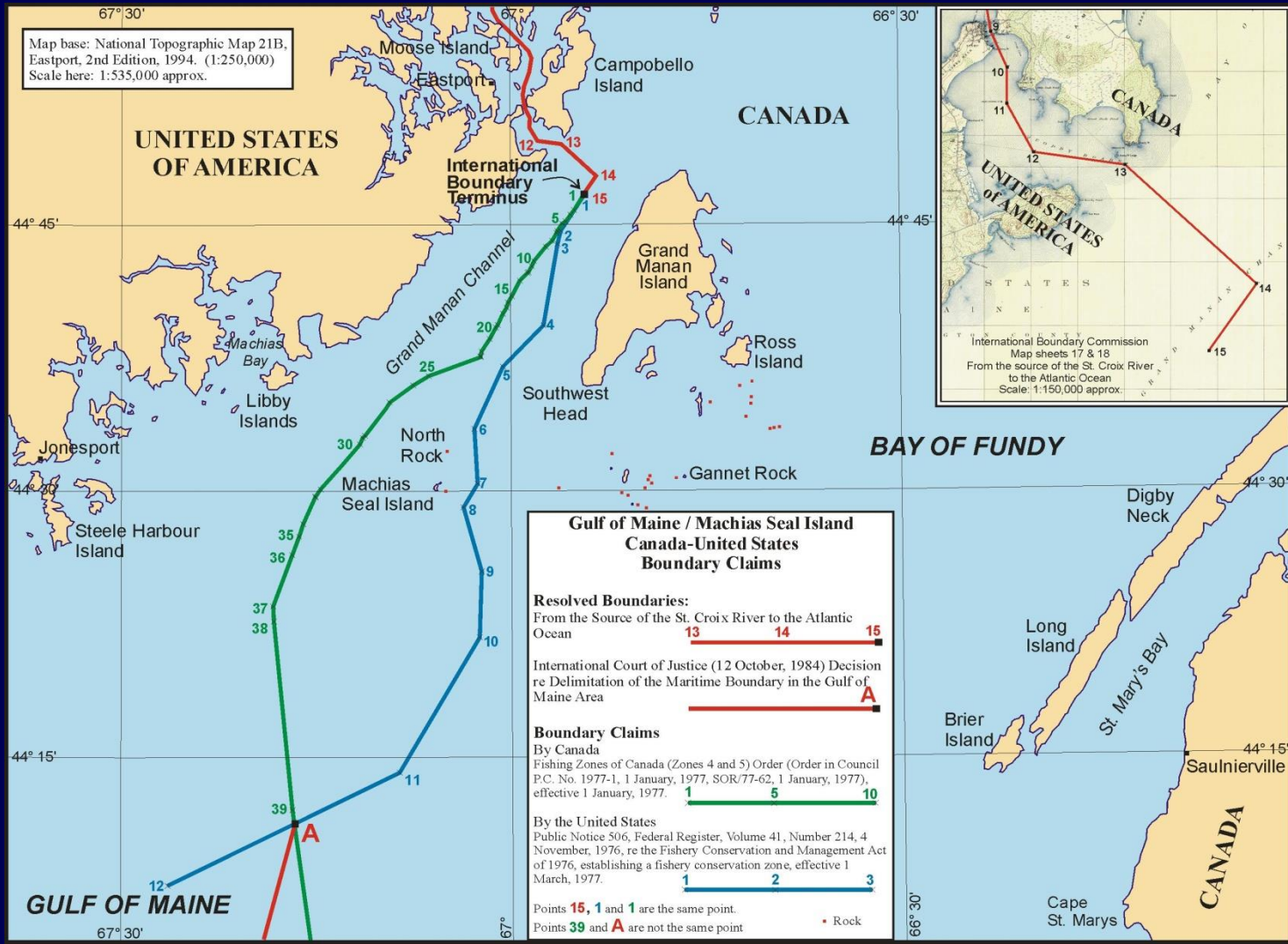
- | | | | |
|-----------|---------------------------|-----------|-----------------------|
| ————— | Agreed boundaries | ————— | Joint areas |
| - - - - - | Agreed (not approved) | | EEZ limits (200M) |
| - . - . - | Median lines (not agreed) | - . - . - | Fishery limits (200M) |

Residual Sovereignty Disputes

- How to put aside dispute over status of Island, land mass – and still proceed on boundary?
- Possible solutions: two stage arbitration (Eritrea-Yemen)
- “Set aside” Canada-US, Denmark



Machias Seal Island – Canada - US





Sector Approaches

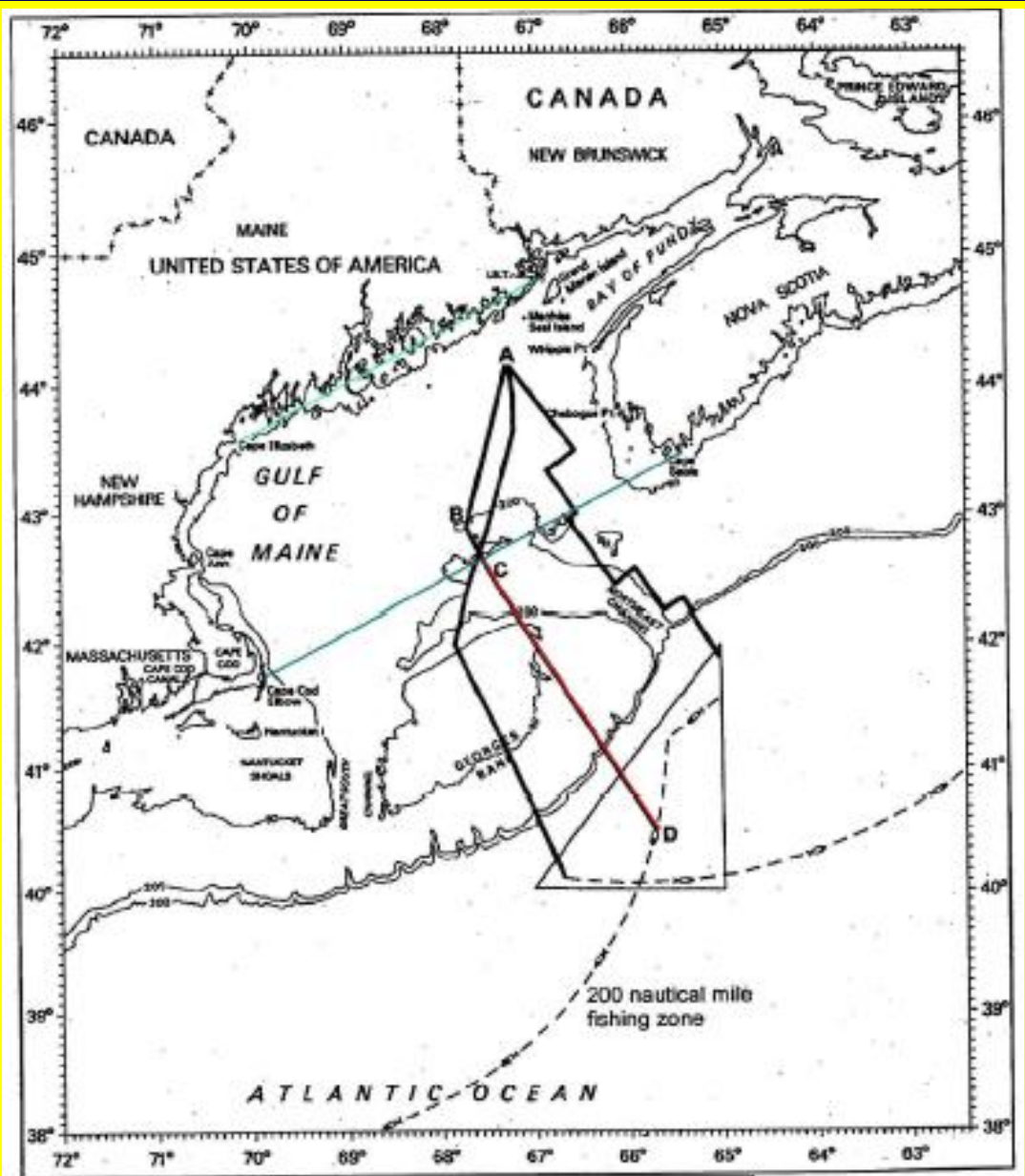
- Use of multiple methods appropriate where coastal relationship changes over course of boundary
- Common in practice, jurisprudence

Guinea/Guinea-Bissau



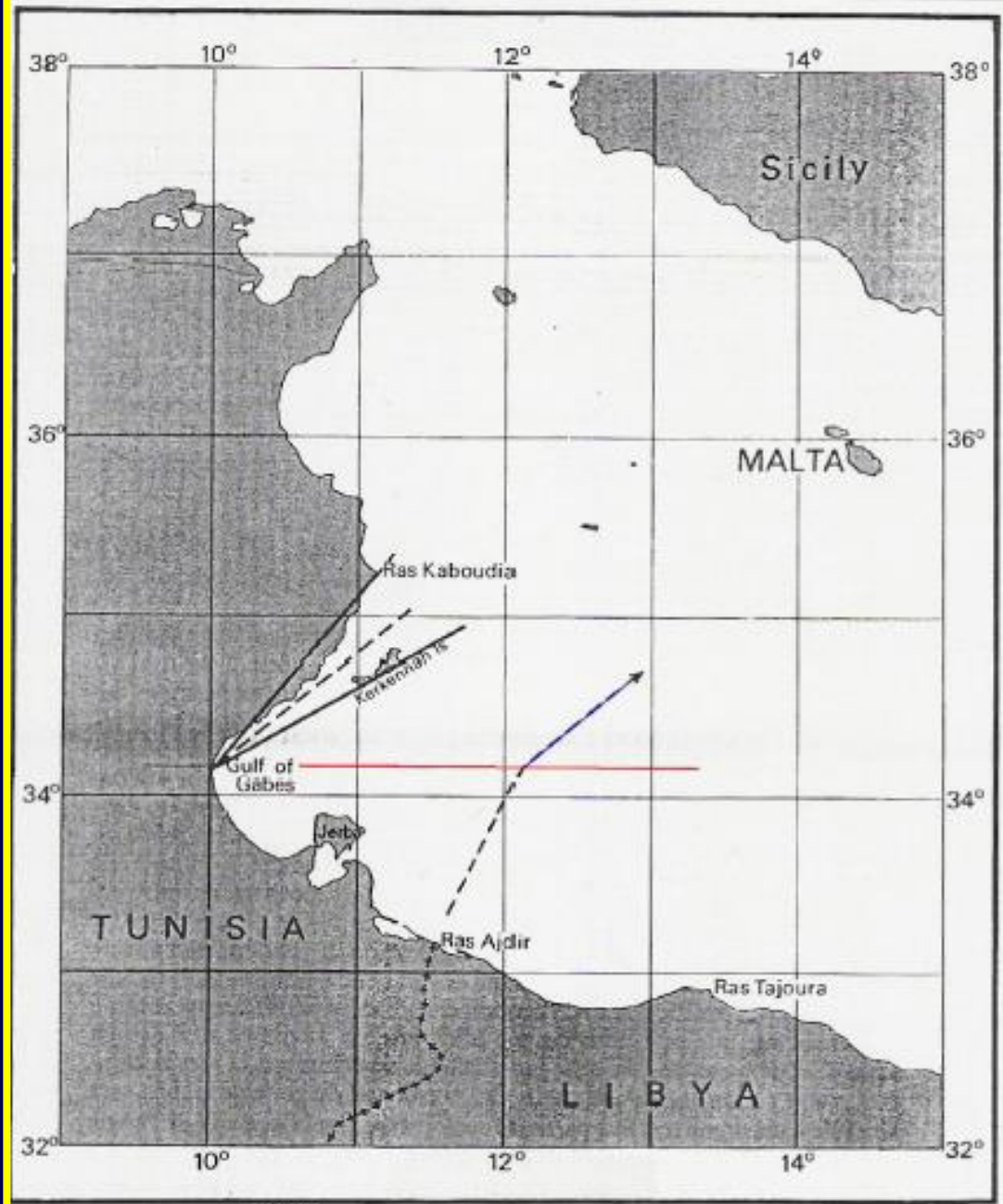
- Guinean claim based on 1886 treaty.
- - - - - Guinean adjusted equidistance claim.
- Guinea-Bissau equidistance claim.
- · - · - Boundary line drawn by the arbitration tribunal, 1985.

Gulf of Maine



Legend:
Red Line: Perpendicular to Closing Line
Blue/Green Line: Closing Line
Green Line: Coastal Direction: Inner Coast

Libya-Tunisia



Legend:

Red Line: Parallel From Western End of Gulf of Gabes

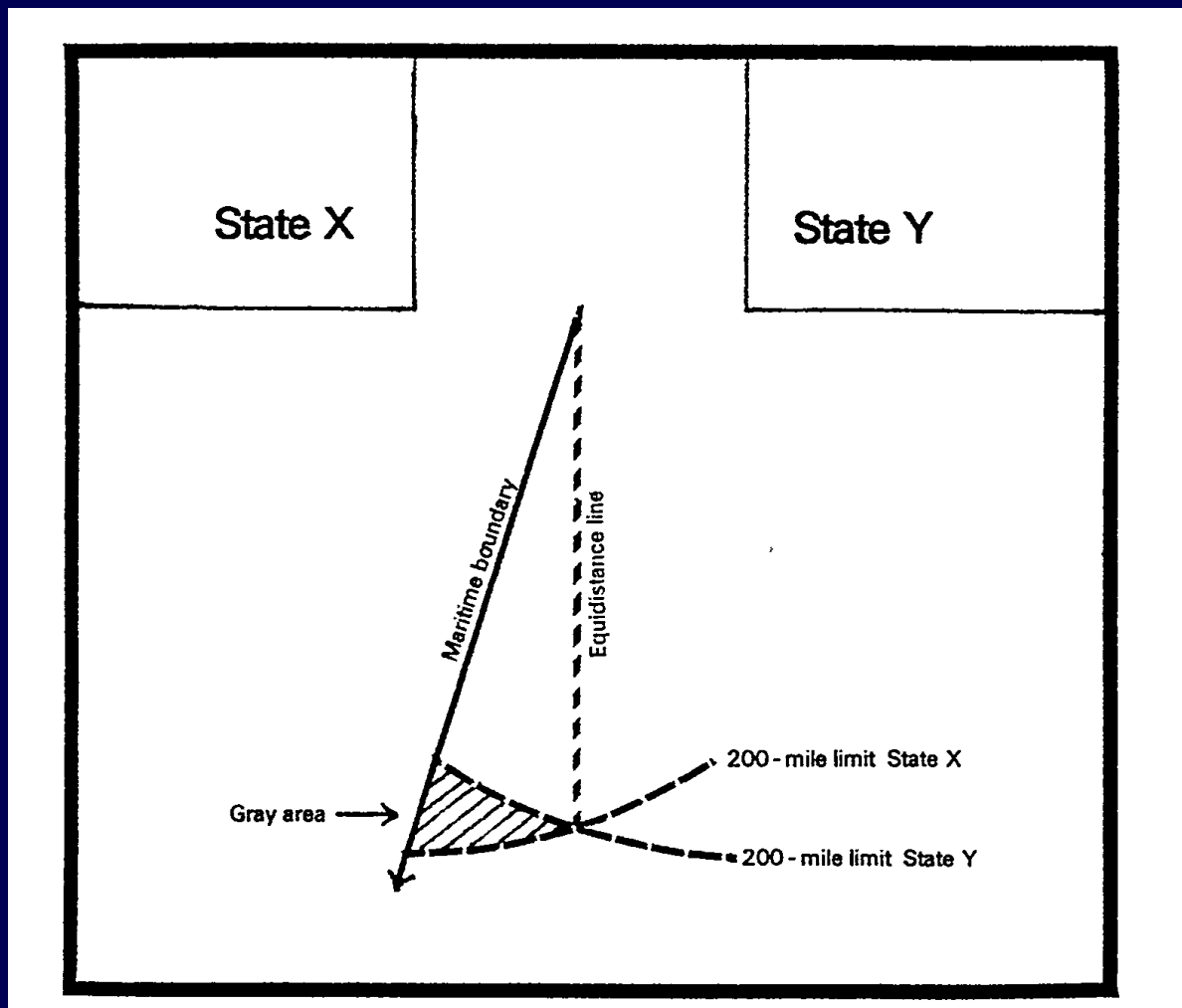
Blue Line: Boundary in Outer Segment: Angular Adjustment

Remaining Issues?

- Delimitation of outer continental shelf – beyond 200: ICJ vs ITLOS?
- Do different principles apply?
- Will natural prolongation re-emerge as a significant factor?

Outer Area Problem

(Hankey & Legault)



A map of the North Atlantic region showing the continental shelf and Exclusive Economic Zone (EEZ) boundaries. The landmasses of North America, Greenland, and the British Isles are shown in light green. The ocean floor is depicted with a bathymetric color scale from light blue (shallow) to dark blue (deep). A solid brown line represents the continental shelf edge, and a dashed black line represents the EEZ boundary. A red circle highlights a specific area where the shelf and EEZ boundaries are close together. A blue text box in the upper right contains the text 'Shelf versus EEZ overlap?' and '1992 Boundary with SPM?'. A black arrow in the lower right points to the dashed EEZ boundary line, with a text label below it.

Shelf versus EEZ overlap?
1992 Boundary with SPM?

**Approximate Limits of Canadian
Extended Continental Shelf Claim**