

TURKEY'S OFF-SHORE ACTIVITIES IN THE EASTERN MEDITERRANEAN & MARITIME BOUNDARY DELIMITATION IN INTERNATIONAL LAW

27 May 2019 - Brussels

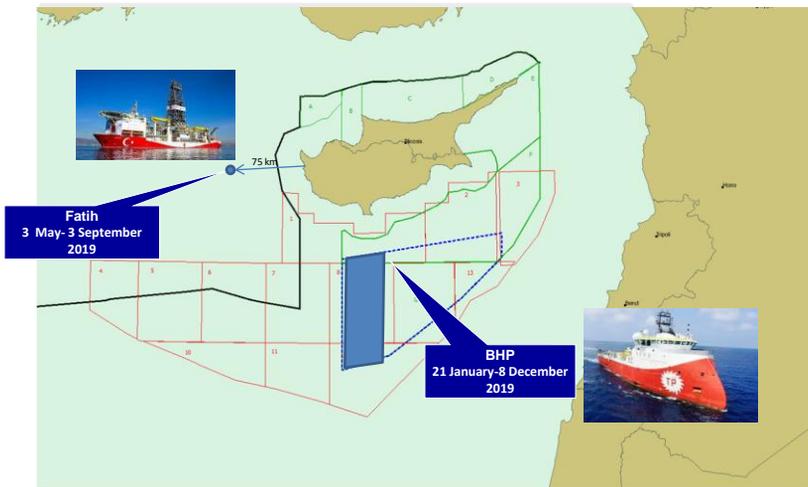


Çagatay Erciyes
Ambassador
Director General
for Bilateral Political &
Maritime-Aviation-Border Affairs
MFA -ANKARA

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Turkish Petroleum survey & drilling activities



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Turkish Flagged Drillship Fatih launched off-shore drilling operations on 3 May 2019



The drilling area (Finike-1) lies;

- 75 km (42 nm) off the west coast of the Island of Cyprus,
- entirely within the **TURKISH CONTINENTAL SHELF** registered with the UN
- within the licence areas granted to TP by the Turkish Government

TP licence areas were published in the Turkish Official Gazetta in 2009-2012

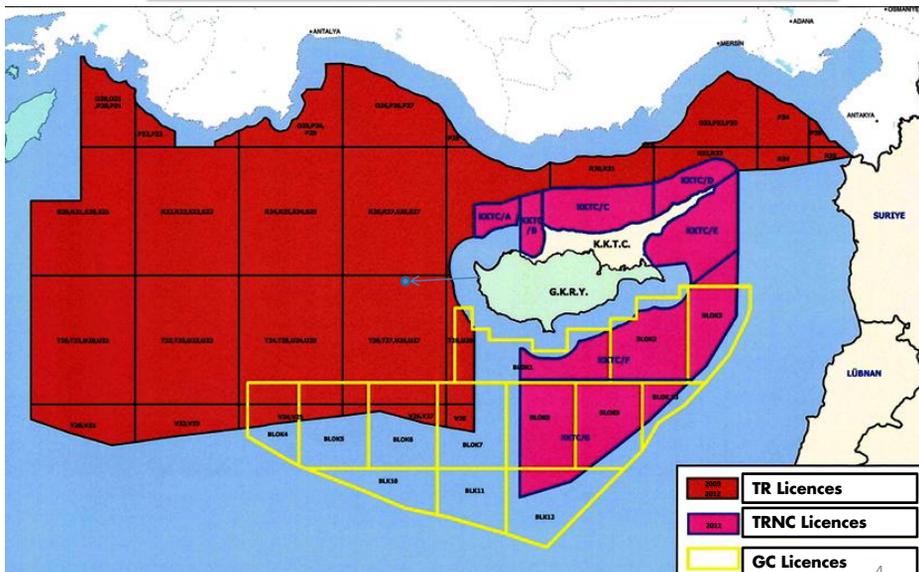
- The drilling area is **NOT** located within the TC & GC licence areas

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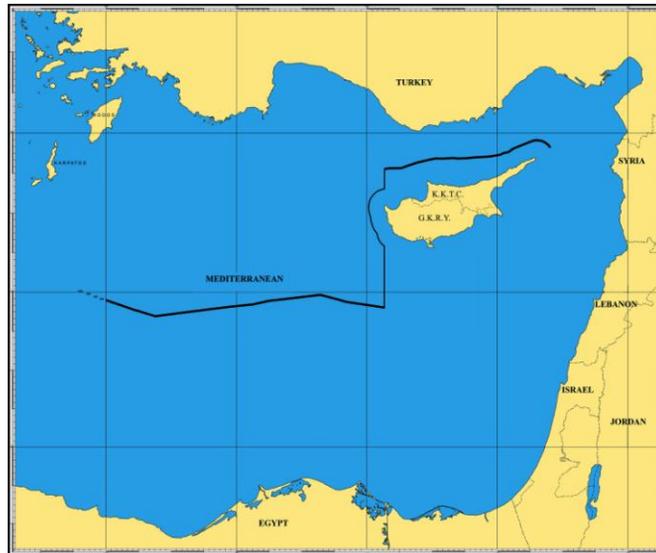
TURKEY & TRNC & GC OFF-SHORE LICENCE AREAS





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Turkey's Continental Shelf



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EU Statement - 4 May 2019

We express grave concern over Turkey's announced intention to carry out drilling activities within the exclusive economic zone of Cyprus.....illegal action.....

US Statement - 5 May 2019

Turkish Drilling in Cypriot-Claimed Waters
.....offshore drilling operations in an area claimed by the Republic of Cyprus as its EEZ.....

French Statement - 7 May 2019

along the same line with the EU Statement

- Turkish MFA responded to these statements immediately
- FM Cavusoglu sent letters to HR Mogherini, EU members & P5 on 16 May



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Some EU countries are supporting GCs maritime boundary claim in accordance with their political expediencies or under the pretext of EU solidarity.

- Does EU have any competence in delimiting maritime boundaries?
- Can EU qualify Turkey's off-shore activities illegal under international law ?
- What is the EU position vis-a-vis overlapping maritime jurisdiction claims between its members?
- Can EU take the boundary claim of one side and try to impose it to the other?

The issue is about Maritime Boundary Delimitation in international law.



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What are the legal means of maritime boundary delimitation?

- Negotiation leading to treaty.
 - Conciliation
 - Arbitration.
- Adjudication at an international court or tribunal.
(UN Charter – Article 33)
- **Courts/tribunals have played a major role in maritime delimitations.**



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Treaty Provisions on Maritime Boundary Delimitation

UNCLOS

1982 UNCLOS - EEZ (art. 74) and CS (art. 83)

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.

→ **Agreement**

→ **Equitable Solution**

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

NO METHOD IS INDICATED
Equidistance — Median-Line

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into **provisional arrangements of a practical nature** and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

→ **Provisional Arrangements**

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

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WHAT ARE THE FACTORS TO ASSESS WHETHER A MARITIME DELIMITATION LINE IS **EQUITABLE** OR NOT?

A number of factors may be taken into account. In **bilateral negotiations**, there is no limit to the factors which States may take into account.

As for the Courts, not all factors may be taken into consideration.

Courts tend to take into consideration factors or circumstances which have a direct bearing or directly relevant to the delimitation.

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jurisprudence on Maritime Boundary Delimitation

SPECIAL/RELEVANT CIRCUMSTANCES

GEOGRAPHICAL CIRCUMSTANCES

- **Regional Geography** ✓
(including general characteristics and particular features of the region -ocean, enclosed, semi enclosed sea etc.)
- **Configuration of the Coasts** ✓
(including adjacency and oppositeness, direction, comparative lengths, concave or convex shape)
- **Basepoints** ✓
(including presence of ports, roadsteads, bays, river mouths, low-tide elevations, reefs)
- **The presence of islands and rocks** ✓
(including their size and position in the context of general geographic configuration)

NON-GEOGRAPHIC CIRCUMSTANCES

- **Geological and geomorphological factors** ?
- **Economic factors** ?
(Hydrocarbon resources, fisheries)
- **Navigation** ?
- **Socio-economic and demographic factors** X
- **Defence and security** ?
- **Environment** ?
- **Historical rights** ✓
- **Presence of Third States** ✓

OTHER FACTORS AFFECTING DELIMITATION

- * **Proportionality** ✓
- * **Proximity** ✓

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The Role of Islands in Maritime Boundary Delimitation

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Treatment of Islands in Maritime Boundary Delimitation



Article 121

Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, 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.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

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Treatment of Islands in Maritime Boundary Delimitation

ENTITLEMENT OF ISLANDS TO CS/EEZ AREAS AND THEIR EFFECT TO MARITIME BOUNDARY DELIMITATION ARE TWO DIFFERENT ISSUES.

Islands in delimitation may be given no weight in the construction of the relevant continental shelf or EEZ delimitation line.

The reason is not related to their entitlement or their potential capacity to create continental shelf or EEZ areas.

The reason is their distortive effect on equity.

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Treatment of Islands in Maritime Boundary Delimitation

In maritime boundary delimitation, islands may receive

- full effect
- partial effect (partial enclave)
- no effect (full enclave)

either through state practice or in international jurisprudence

In delimitation cases, involving islands competing with mainland coasts, equitable delimitation takes into account **non-encroachment, avoidance of cut-off effects of islands and the avoidance of disproportionate results.**

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Treatment of Islands in Maritime Boundary Delimitation

There has been a sustained trend in international jurisprudence towards awarding islands a reduced effect in maritime boundary delimitation.

This has proved to be especially the case where such islands are located at a considerable distance offshore and opposed to mainland coasts as they would create a disproportionate impact.

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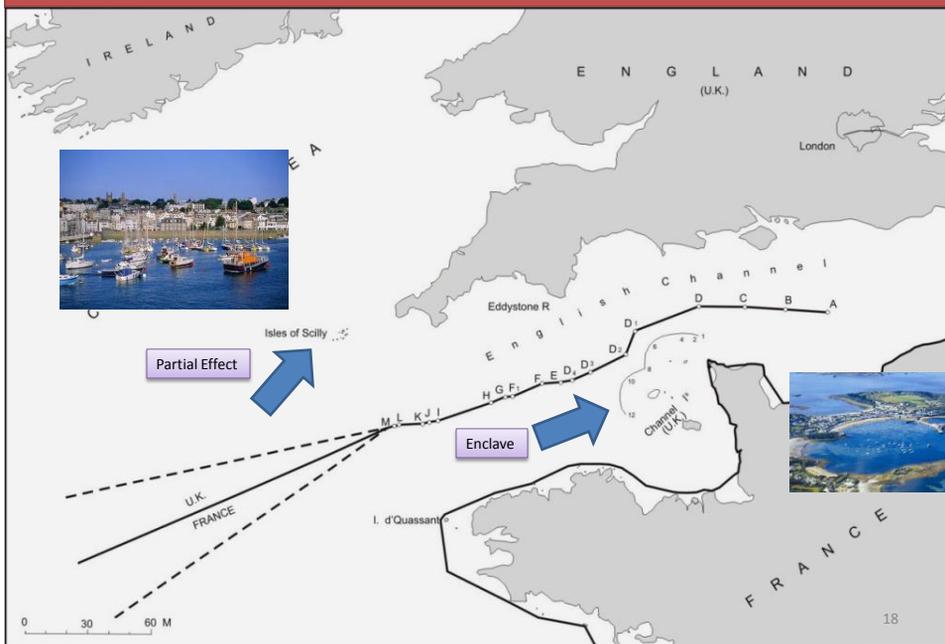
Islands in Maritime Boundary Delimitation

Some examples of jurisprudence and state practice where islands have received

a reduced effect or
been partially or wholly enclaved or
even completely ignored.

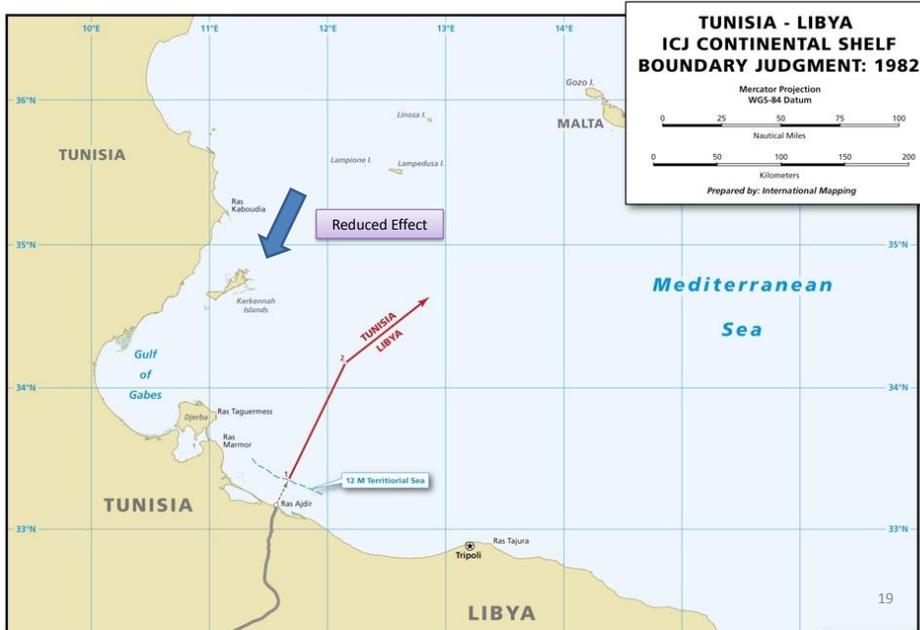
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Cases - 1977-78 UK-France

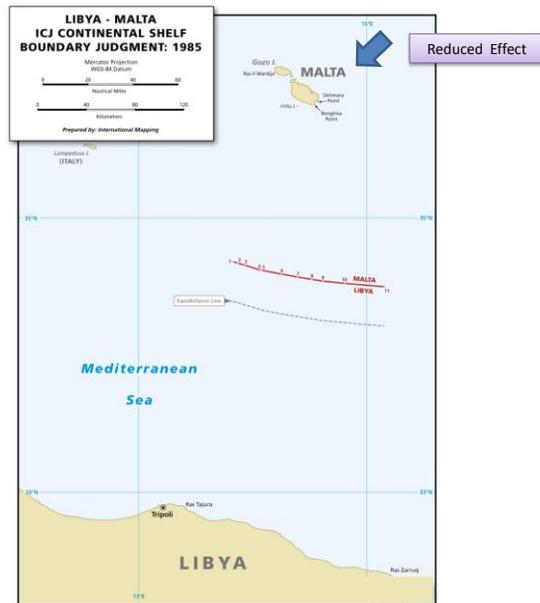


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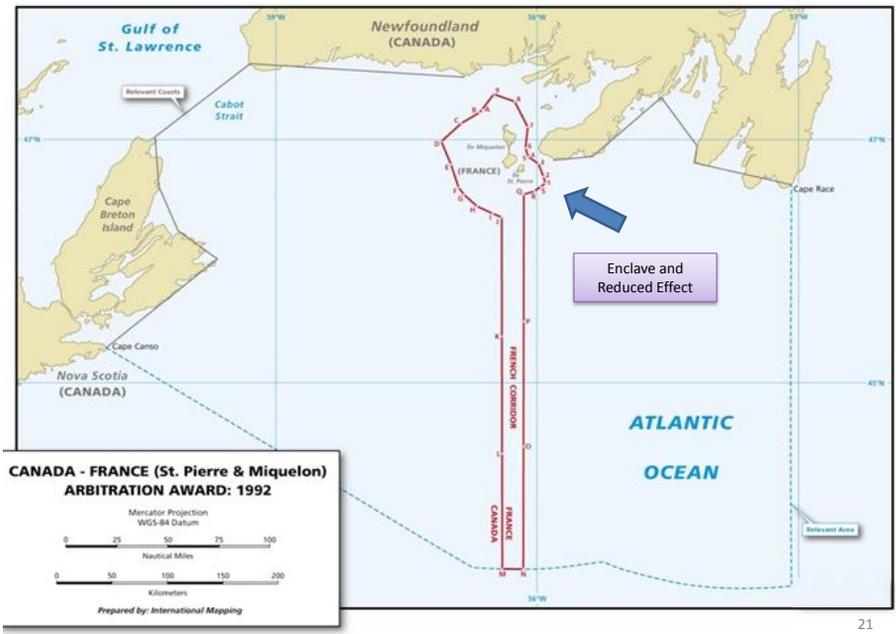
CASES – 1982 Tunisia-Libya



CASES - 1985 Libya-Malta

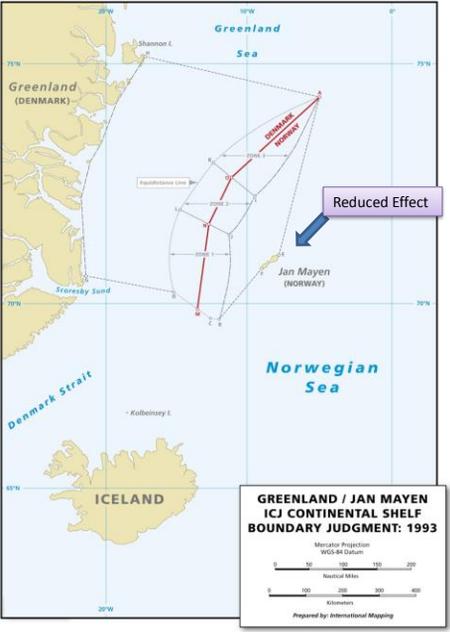


CASES – 1992 Canada-France (St Pierre and Miquelon)



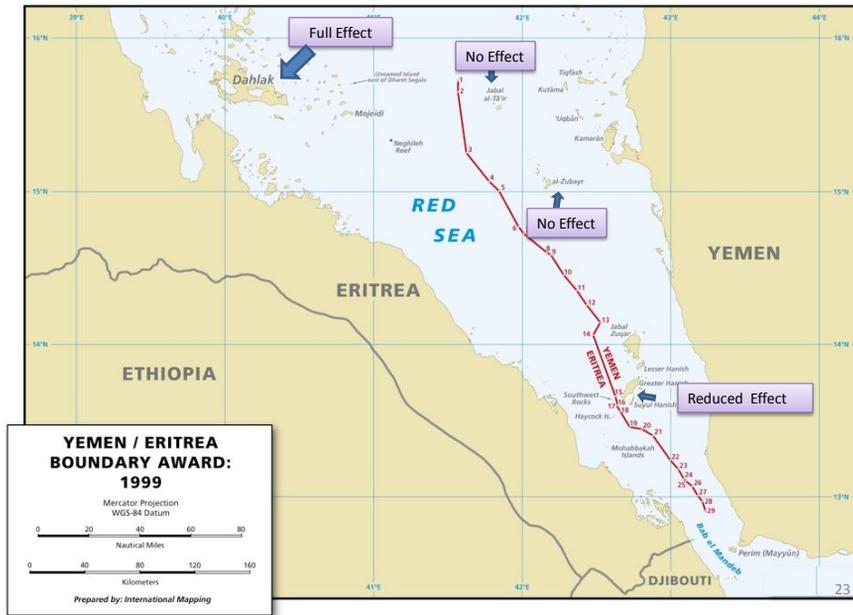
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CASES – 1993 Denmark-Norway (Jan Mayen)

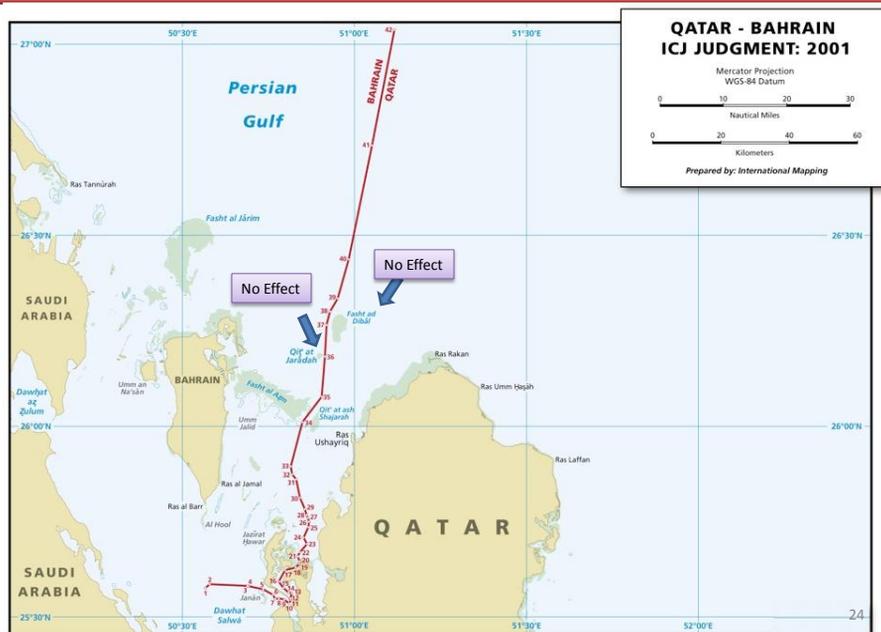


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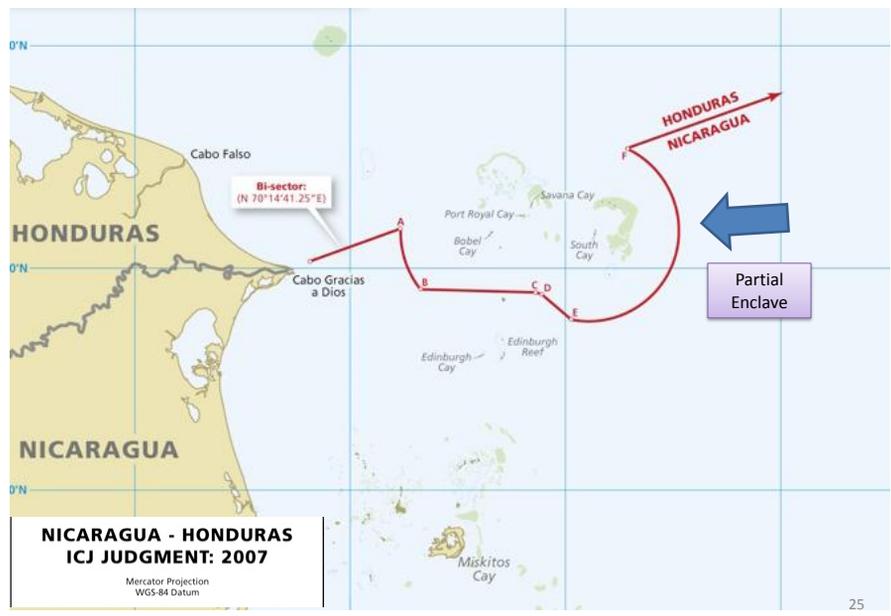
CASES – 1999 Yemen-Eritrea – Mixed



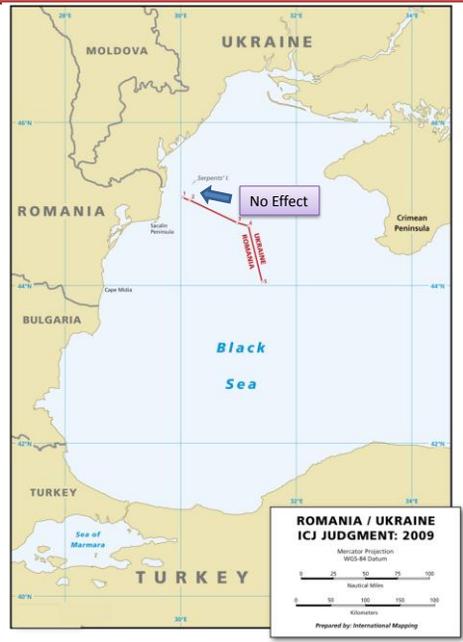
CASES – Qatar-Bahrain 2001



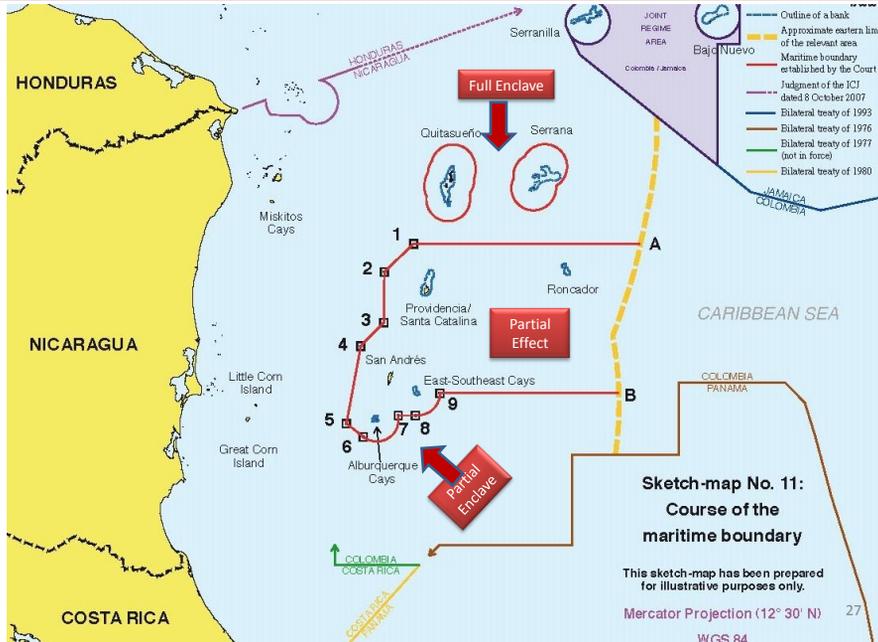
CASES – 2007 Nicaragua–Honduras



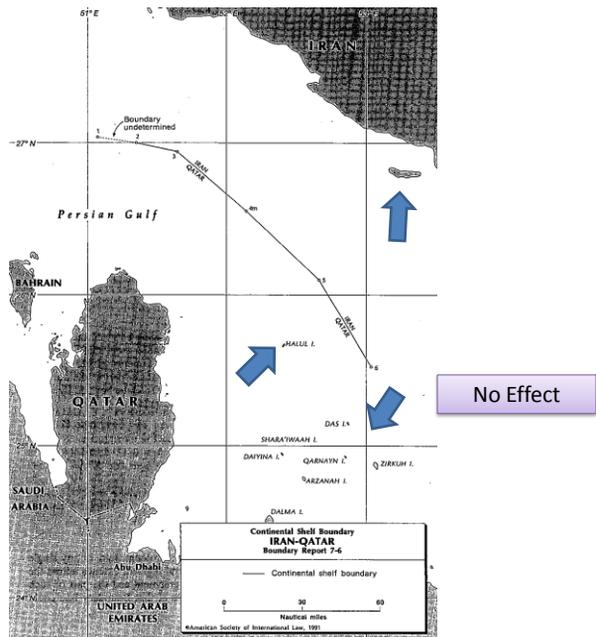
Cases – 2009 Romania-Ukraine



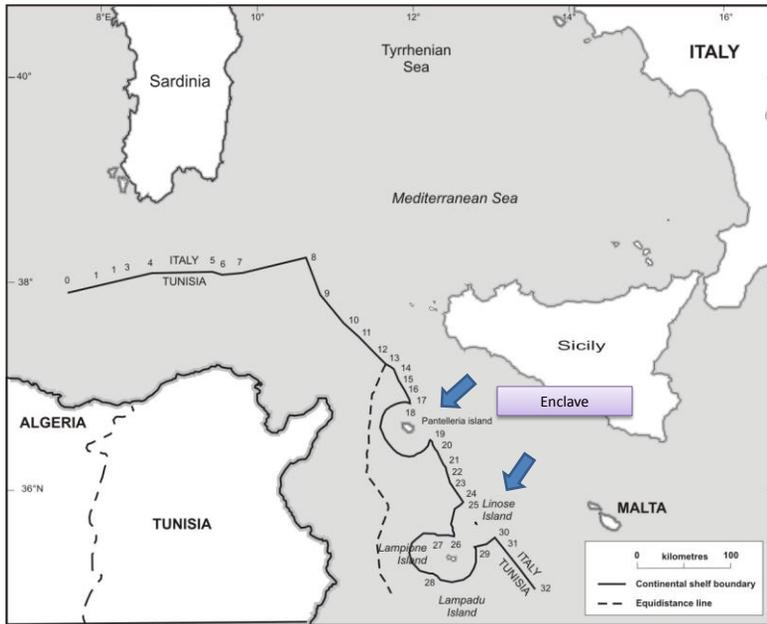
Cases – 2012 Nicaragua-Colombia



State Practice – 1969 Iran-Qatar Agreement

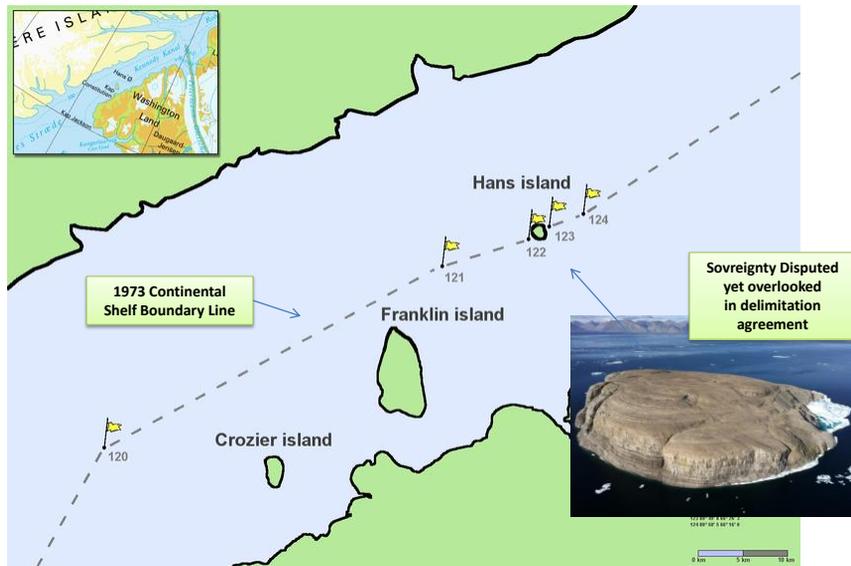


State Practice – 1971 Tunisia-Italy Agreement



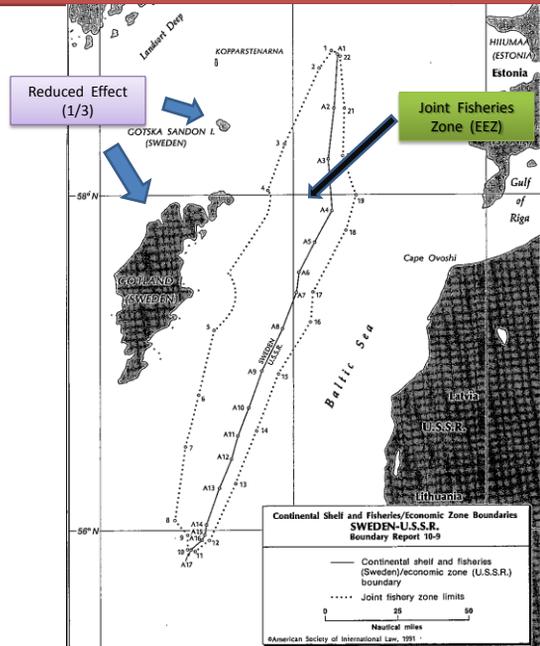
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State Practice – 1973 Canada-Denmark (Greenland)



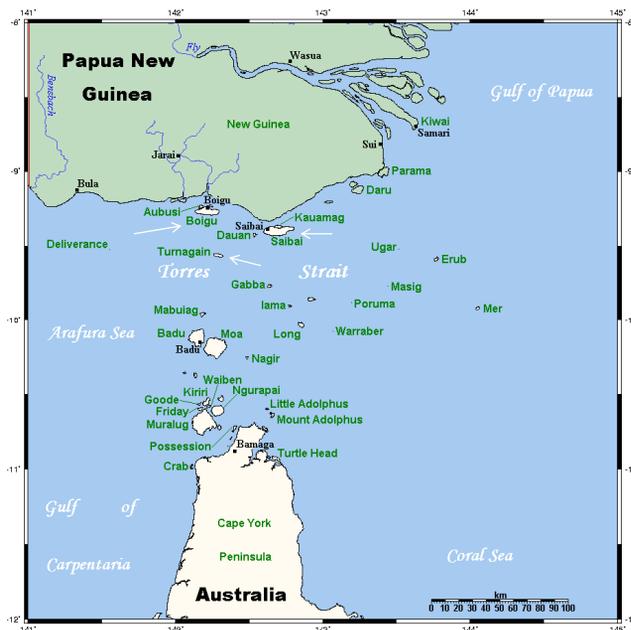
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State Practice – 1988 USSR-Sweden Agreement



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State Practice – 1978 Papua New Guinea and Australia



Australian Islands as close as few miles to Papua New Guinea lying on the “wrong side”

SOLUTION



1978 Torres Strait Treaty

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State Practice – 1978 Papua New Guinea and Australia



- ❖ TS and CS boundary established
- ❖ Territorial sea limit fixed for 3NM
- ❖ Islands lying on the wrong side encircled
- ❖ Agreed on joint fisheries management
- ❖ Established a Joint Protection Zone

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Treatment of Islands in Maritime Boundary Delimitation

According to international law, as supported by these examples, there is no automacity in claiming that islands generate full maritime jurisdiction areas.

Islands are ignored or given limited effect in maritime boundary delimitation if their location distorts equitable delimitation.

Based on international law, Turkey has made its position clear since 2004 and registered it in the UN.

Turkey is of the legal opinion that the Island of Cyprus in the west and the Greek Islands in the area including Castellorizo cannot generate full EEZ/CS under international law as they distort the equitable delimitation.

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**UNEQUITABLE CS/EEZ CLAIMS OF GREECE & GREEK CYPRIOTS
BASED ON THE ASSUMPTION THAT ALL ISLANDS GET FULL
EFFECT IN MARITIME BOUNDARY DELIMITATION**

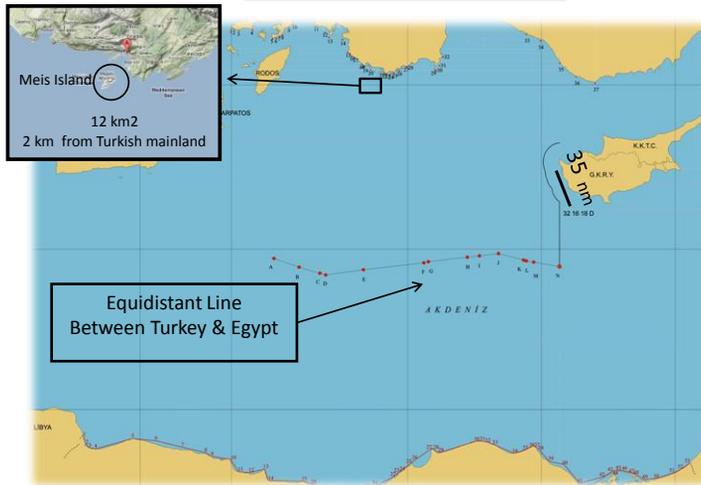


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TURKEY'S CS CLAIM



Coastal Lengths : TURKEY 1792 km EGYPT 1062 km (Total)
TURKEY 969 km EGYPT 850 km (West of Cyprus)

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TURKEY'S CS CLAIM

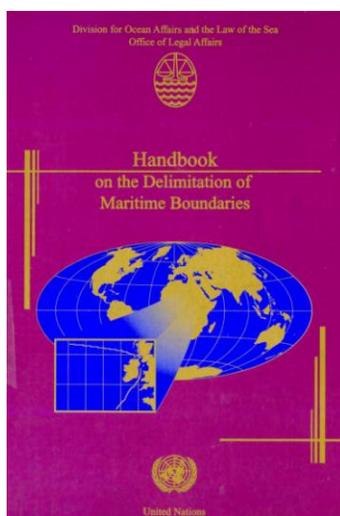
- Any delimitation exercise in the Eastern Mediterranean needs to take into account the legal rights and legitimate interests of Turkey.
- The Turkish continental shelf to the west of Island of Cyprus is starting from longitude 32°16'18"E, then following the equidistance line between Turkish and Egyptian coastlines,
- to a point to be determined to the west of 28°00'00"E, in accordance with the outcome of future delimitation agreements in the Aegean Sea and the Mediterranean among all relevant States taking into account all prevailing parameters and special circumstances.
- The delimitation of continental shelf in a semi-enclosed sea like the Mediterranean should be effected by AGREEMENT respecting rights and interests of the countries concerned under international law, both customary and case-law

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BILATERAL MBD AGREEMENT SHOULD NOT VIOLATE 3RD PARTIES RIGHTS



A MARITIME BOUNDARY DELIMITATION AGREEMENT BETWEEN THE TWO STATES SHOULD NOT VIOLATE THE RIGHTS AND INTERESTS OF A 3RD STATE

The delimitation line in the agreement should be ended before it reaches the area of overlapping potential claim of a third state.

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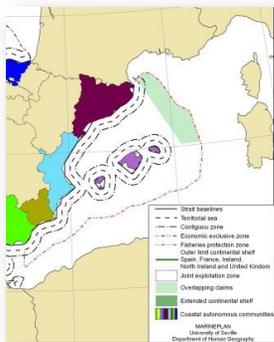
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- ❖ EU has no competence in delimiting maritime boundaries.
- ❖ EU has never taken a side in supporting the claim of one side in overlapping maritime claims

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**EU Comptence on MBD
???**



Spain-France



Slovenia-Croatia



Malta-Italy

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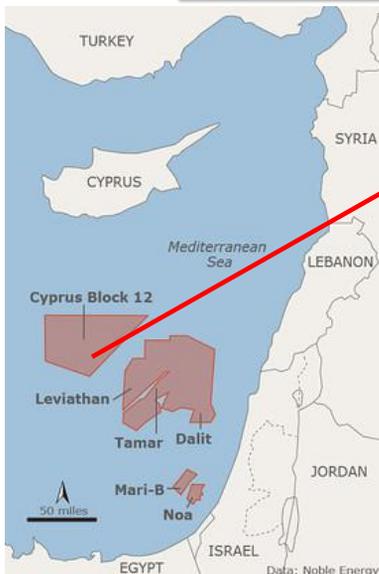
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- ✓ Maritime claims of EU members, violating the legitimate rights of 3rd countries cannot be portrayed as the external borders of the EU. That's indeed the gross violation of international law.
- ✓ Final maritime boundaries can only be determined through agreements (not violating 3rd parties' possible boundaries) or through litigation. Overlapping maritime claims prevail in the absence of a settlement.
- ✓ Greece's & GC maritime claims are maximalist. They are based on the entitlement of islands to EEZ/CS.
- ✓ Entitlement & Delimitation are not the same thing.
- ✓ Islands may be ignored or given reduced EEZ/CS if their presence distorts equitable delimitation. This is a fundamental international law principle.



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GC's OFF-SHORE DRILLING



GC's started off-shore drilling on 19 September 2011



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PROPOSAL OF THE TRNC PRESIDENT TO
UN SECRETARY –GENERAL
24 SEPTEMBER 2011

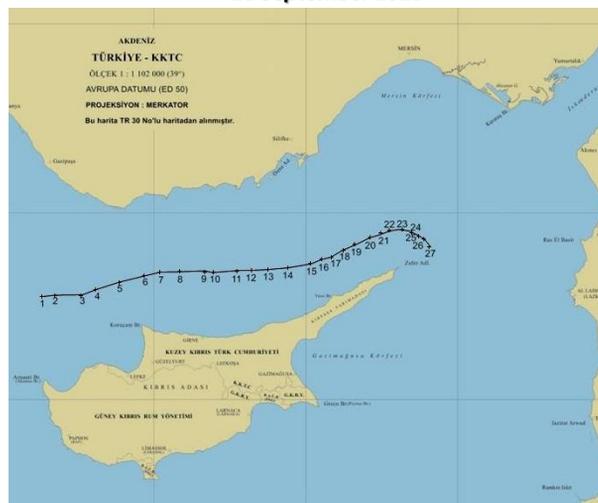
- off-shore activities of TCs & GCs be ceased simultaneously until the settlement
- OR both sides should determine jointly the future course of off-shore oil/gas activities, including revenue sharing and funding of a possible settlement.

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TURKEY-TRNC CS DELIMITATION AGREEMENT 21 September 2011

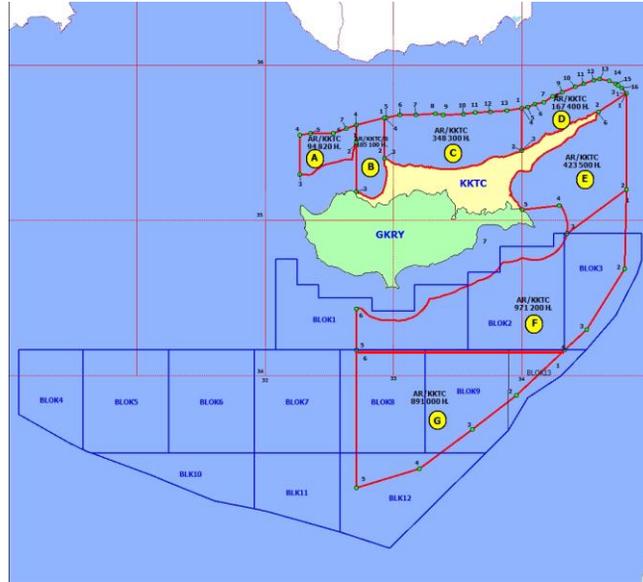


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TRNC ISSUED OFF-SHORE LICENCES on 22 September 2011



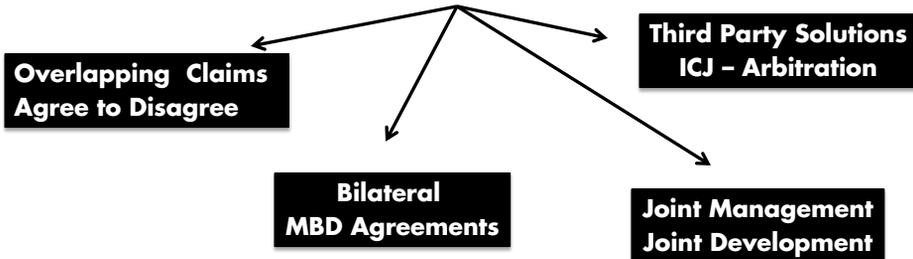
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THE WAY AHEAD



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Thank You



**Questions
???**