

**The 7<sup>th</sup> LOSI – KORDI Conference  
Securing the Ocean for the Next Generation**

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**THE EFFECT OF FISHERIES  
INTERESTS ON  
MARITIME DELIMITATION**

**Leonardo Bernard**

Research Associate, Centre for International Law (CIL)  
National University of Singapore

## Historic Waters

- **Bouchez:** Waters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and **over a substantial period of time, exercises sovereign rights with the acquiesces of the community of States.**
- **ICJ in *El Salvador/Honduras (1992)*:** Waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title.

## Historic Rights

- ICJ in *Tunisia/Libya (1982)*: Long-established fishing activities and the continuous exercise of this exploitation that are recognized by other States.
- Difference from Historic Waters:
  - Historic Rights claim does not amount to sovereignty claim (*Fisheries Jurisdiction Case, Qatar/Bahrain*)

## The Grisbadarna Arbitration 1908

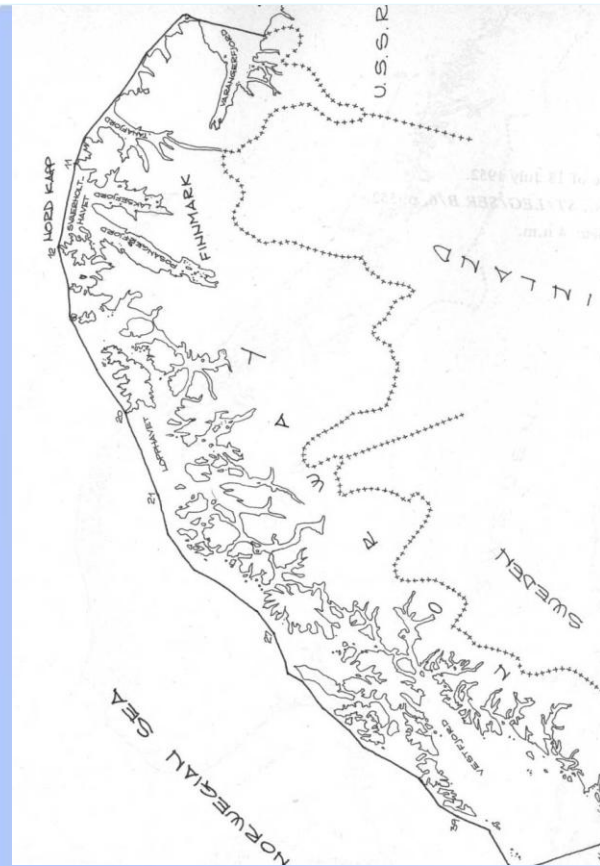
- The PCA delimited a line perpendicular to the general direction of the coast, which was slightly modified to give the important Grisbadarna fishing bank to Sweden.
- Swedes fishermen has been conducted lobster fishing in Grisbadarna for much longer and much greater extent than Norwegian fishermen.
- Sweden had performed many acts, such as placing of beacons, survey of sea and installation of a lightship, without any protest from Norway.

# Grisbadarna Bank



Source: JB Scott (ed), *The Hague Court Reports* (1916)

# The Anglo-Norwegian Fisheries Case 1951



- Considerations of historic rights were used by the ICJ to support the use of straight baseline in Lofphavet basin, which extended over 44 miles.
- Norway had relied on “historic title clearly referable to the waters of Lofphavet, namely the exclusive privilege to fish and hunt whales granted at the end of the 17<sup>th</sup> century”.

Source: Francalanci, Romano, Scovazzi, eds, *Atlas of Straight Baselines* (1986)

## Fisheries Jurisdiction Case 1974

- Coastal States' preferential rights cannot imply the extinction of the concurrent rights of other States.
- ICJ found that the UK had established historic rights in certain fish stocks located in Iceland's exclusive fishing zone.
- Historic rights: fishery exploited **continuously** over a **lengthy period of time** (decades rather than years), and fishery must be of **economic importance** to State claiming historic rights.
- **ICJ**: most appropriate solution was negotiation → Interim Agreement between UK and Iceland regulating fishing by UK fishermen in Icelandic waters until November 1975.

# Historic Rights in the UNCLOS Negotiations

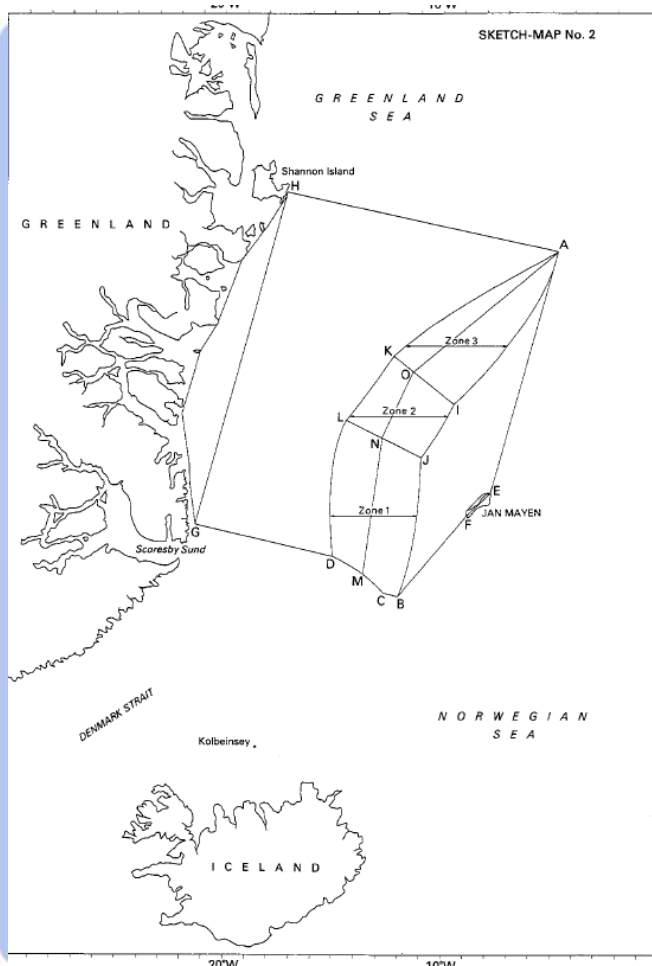
- Strong support for EEZ to replace the freedom of fishing beyond the territorial sea and open access to the high seas fisheries up to 200nm.
- Japan and the Soviet Union proposed granting preferential rights to coastal States, rather than exclusive rights (*Fisheries Jurisdiction Case*).
- Australia and NZ proposed to recognize historic rights of developed distant-water fishing States, but such rights will be phased out.
- In the end the view of those who wanted a strong economic zone prevailed.



## What Happened to Historic Rights?

- Absorbed into EEZ:
  - *Tunisia/Libya 1982*: Tunisia's historic rights and titles are more nearly related to the EEZ.
- State practice still recognize historic rights in the drawing of maritime boundaries:
  - 1974 India/Sri Lanka Agreement.
  - Japan: Law on Provisional Measures relating to the Fishery Zone 1977.
  - 1978 Treaty concerning Sovereignty and Maritime Boundaries in the area between Australia and PNG.

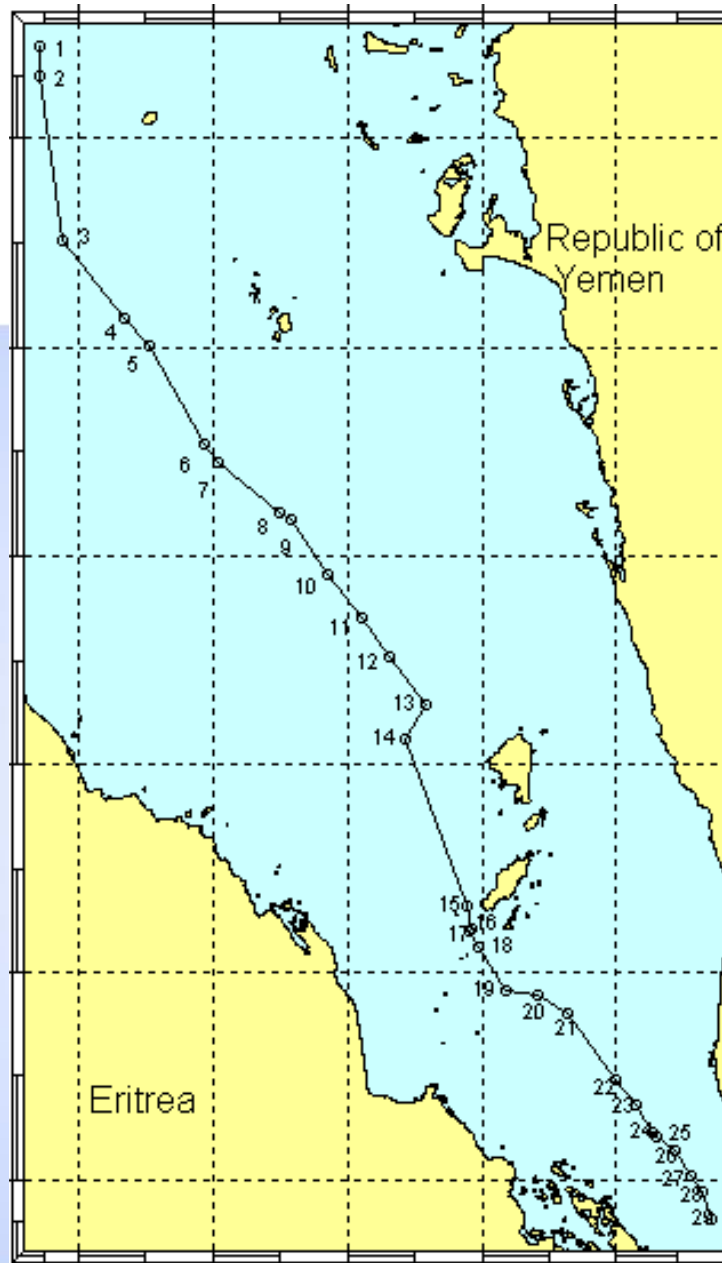
# Jan Mayen Case 1993



- Denmark and Norway stressed their dependence on the exploitation of the resources in the waters between Greenland and *Jan Mayen*, as well as emphasized the traditional character of different types of fishing carried out by the population concerned.
- ICJ found that the median line proposed by Norway was too far to the west for Denmark to be assured of an equitable access to the capelin stock.
- ICJ adjusted the median line eastwards.

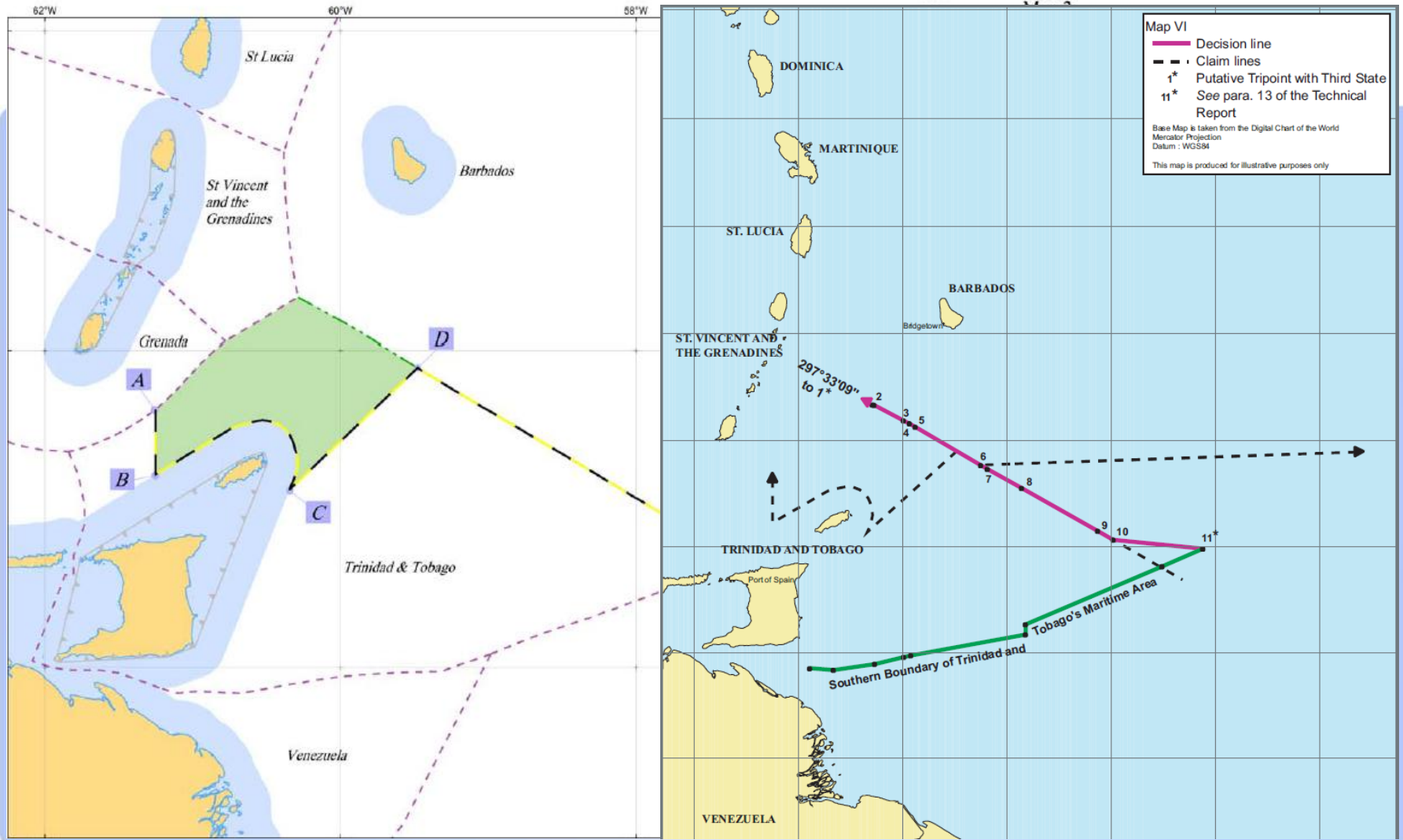
## Eritrea/Yemen Arbitration 1999

- Both parties claimed traditional fishing rights in the waters around the *Hanish* and *Zuqar* islands and the islands of *Jabal al-Tayr* and the *Zubayr* group, which are under the sovereignty of Yemen.
- The tribunal found that these factors 'constituted a local tradition entitled to the respect and protection of the law'.
- The tribunal recognized the existence of the traditional fishing regime for Eritrea's fishermen to continue have access and use of the waters around the islands, the islands themselves, as well as access to Yemen's port.



## Barbados / Trinidad and Tobago 2006

- Barbados: delimitation of EEZ should consider the history of Barbadians fishing in the waters off Tobago.
- Trinidad and Tobago: Barbados's fisherfolk only started fishing in the waters off Tobago in the late 1970s.
- The Tribunal: determining an international maritime boundary between two States on the basis of traditional fishing by nationals of one of those States can only be done in exceptional cases, but that this case was not one of them.



# Historic Rights $\neq$ Sovereignty

- They do not raise a legitimate claim to sovereignty or title to territory.
- Historic Rights may give a valid claim to continue the fishing activity within the waters in question.

## Historic Rights and EEZ

- Rights of coastal States in the EEZ are greater than the historic/traditional/preferential fishing rights accorded by customary international law.
- The concept of **historic rights** remains relevant only to the extent that it is among the factors to be taken into account in giving access to surplus fish.
- No obligation for Coastal States to recognize historic rights.



## **Fisheries = Special Circumstances**

- Fisheries interests may effect maritime delimitation.
- Claims to fishing rights only relevant to boundary delimitation in specific circumstances.

# Thank You

## Leonardo Bernard

Research Associate, Centre for International Law (CIL)

National University of Singapore

Email: [cillb@nus.edu.sg](mailto:cillb@nus.edu.sg)

Website: [www.cil.nus.edu.sg](http://www.cil.nus.edu.sg)