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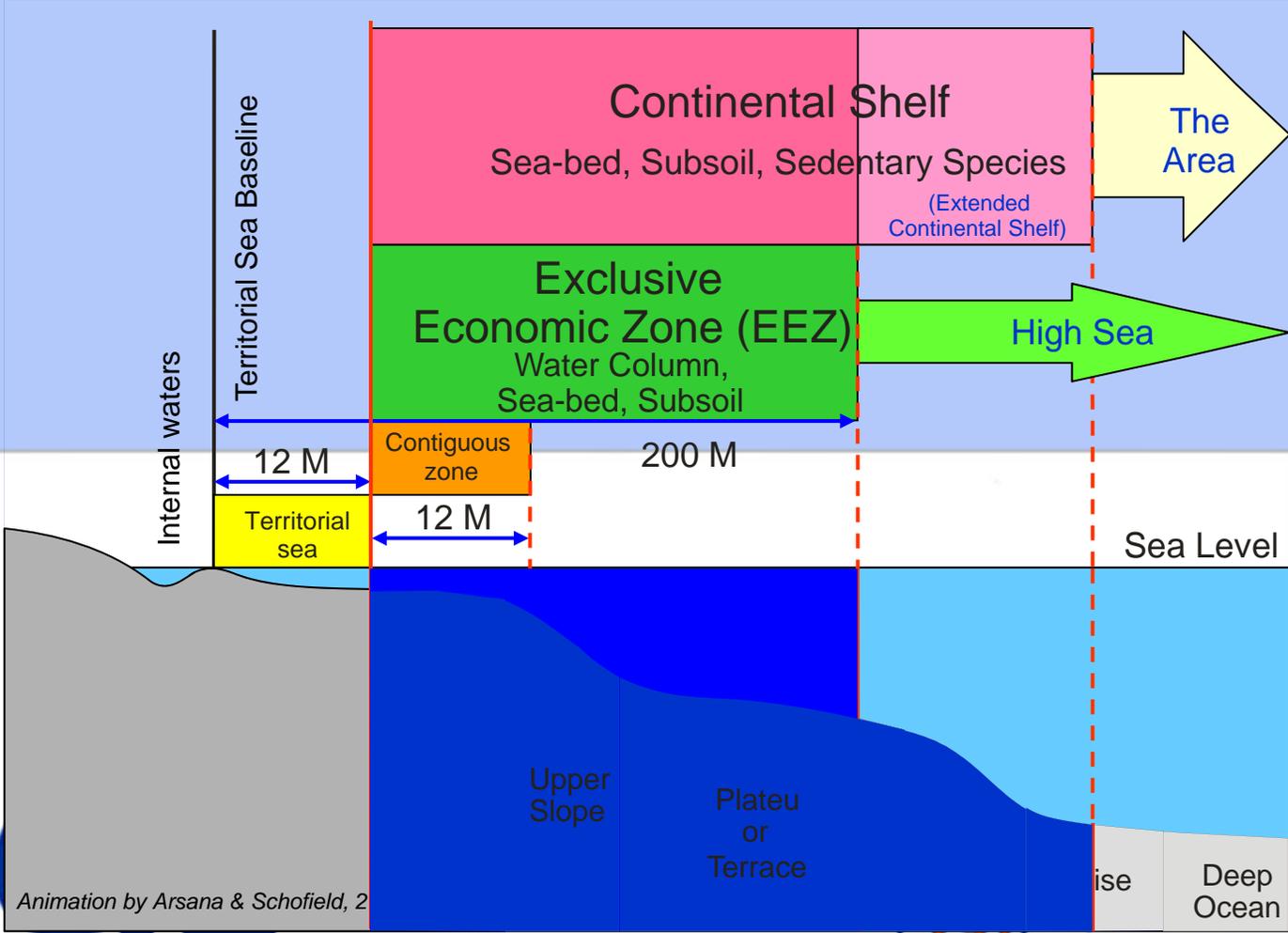
HISTORIC FISHING RIGHTS AND THE EEZ

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Baselines and Maritime Zones



Animation by Arsana & Schofield, 2010

Historic Waters

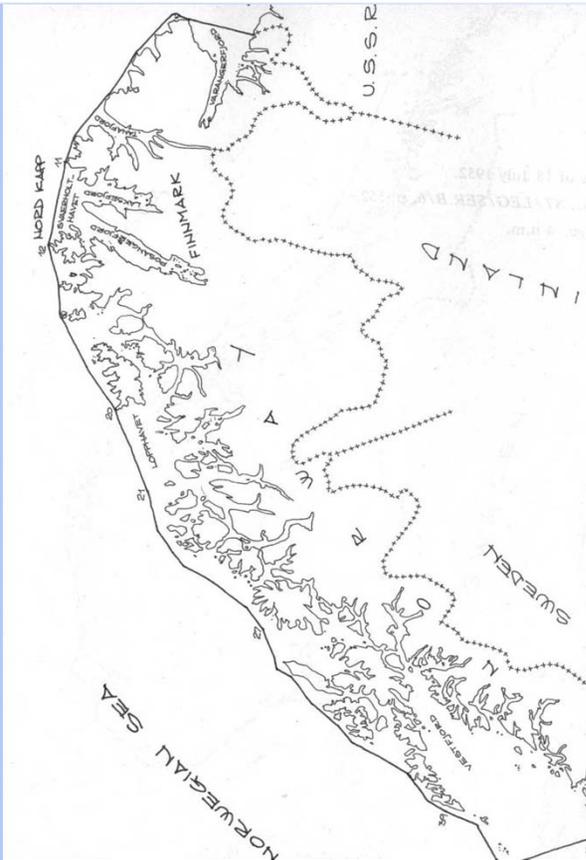
- **Bouchez:** Waters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and **over a substantial period of time, exercises sovereign rights with the acquiesces of the community of States.**
- **ICJ in *El Salvador/Honduras (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.

UNCLOS 1982

Article 10 – Bays

6. The foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.

The Anglo–Norwegian Fisheries Case 1951



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

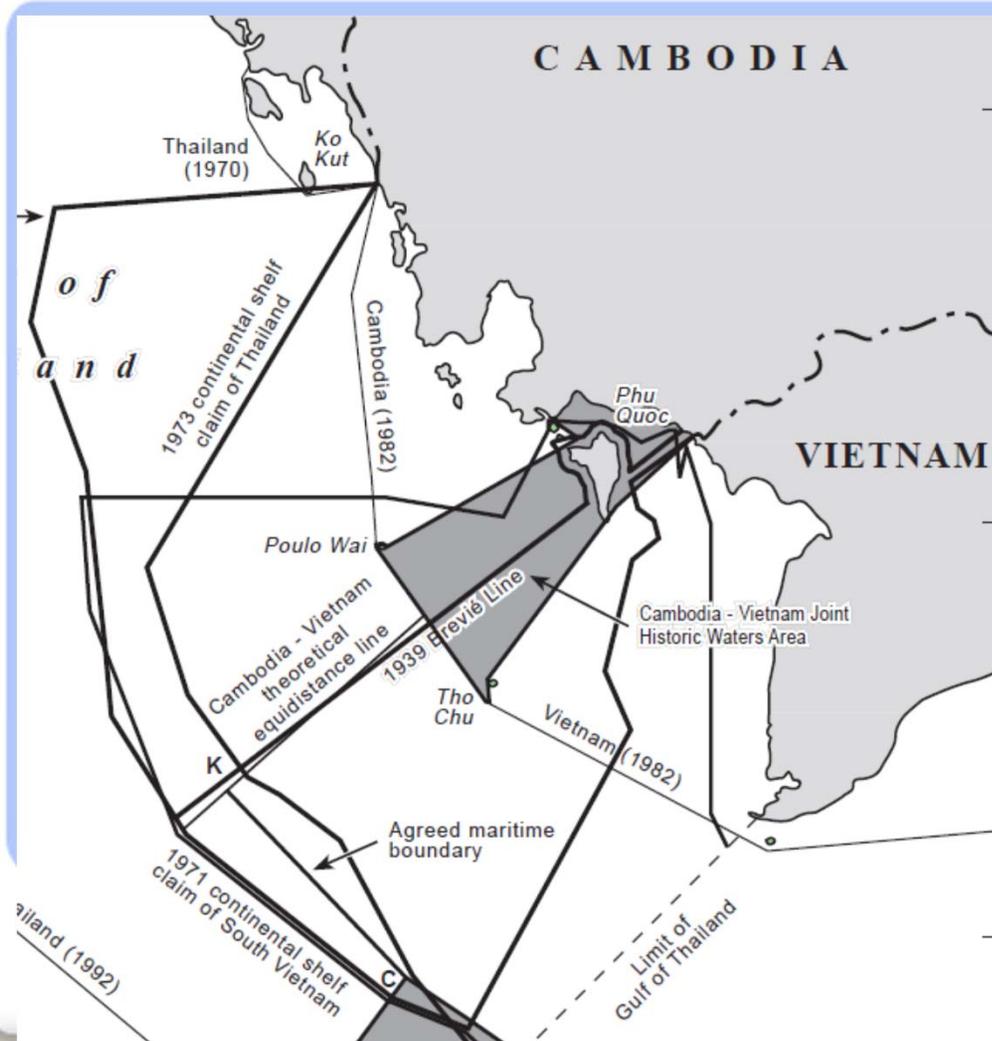
Source: Francalanci, Romano, Scovazzi, eds, *Atlas of Straight Baselines* (1986)

UNCLOS 1982

Article 15 – Delimitation of the Territorial Sea between States with Opposite or Adjacent Coasts

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. **The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.**

Cambodia and Vietnam



On 7 July 1982, Cambodia and Vietnam signed an agreement establishing part of the Gulf of Thailand as historic waters.

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*)

Fisheries Jurisdiction Case 1974

- Coastal States' preferential rights cannot imply the extinction of the concurrent rights of other States.
- 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 found that the UK had established historic rights in certain fish stocks located in Iceland's exclusive fishing zone.
- **ICJ**: most appropriate solution was negotiation → Interim Agreement between UK and Iceland regulating fishing by UK fishermen in Icelandic waters until November 1975.

Exclusive Economic Zone

No matter the economical situation, natural resources are hot. Since many of the easy accessible resources on the main land arc exhausted more and more afford is done for off-shore exploitation.

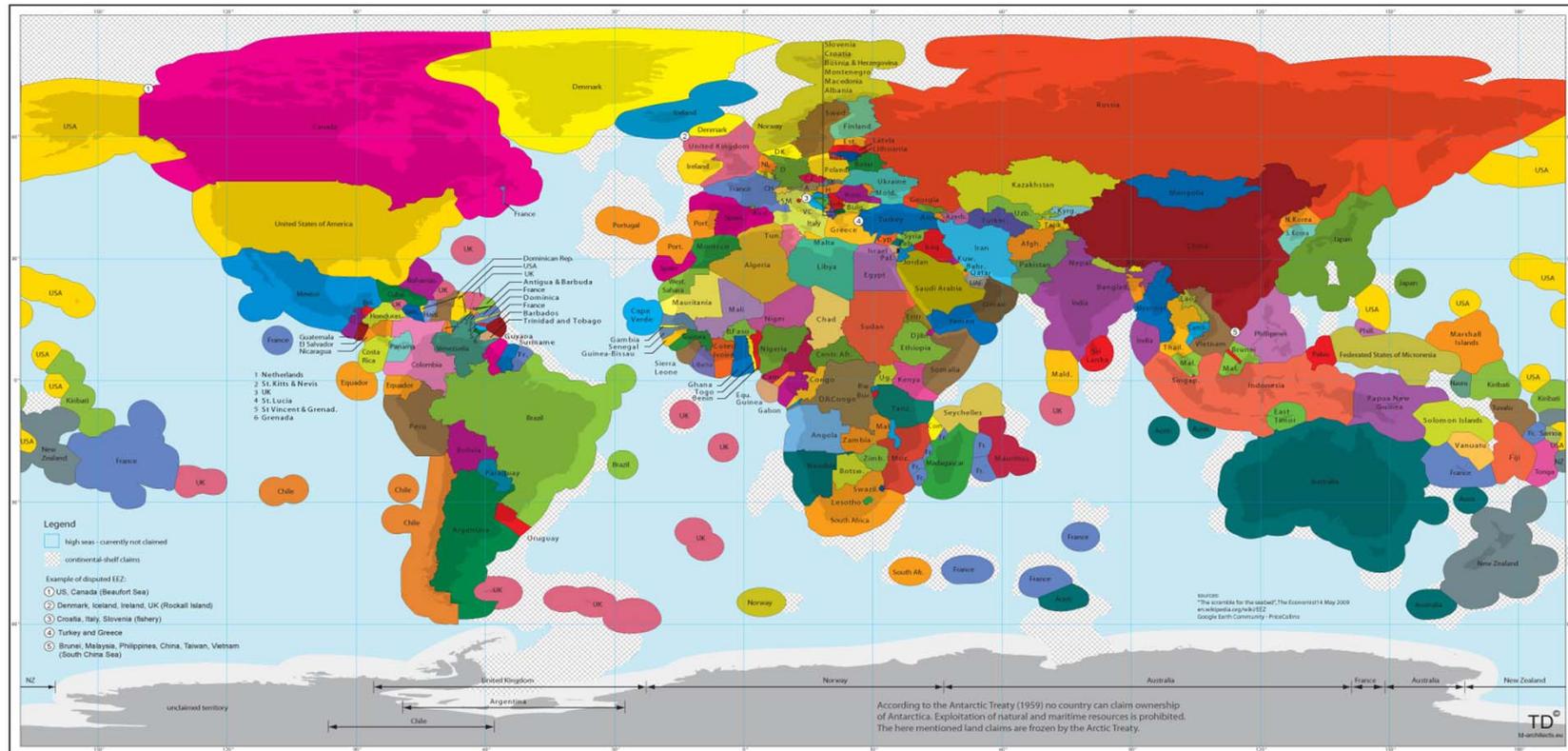
Today a countries marine economic area is defined by its Exclusive Economic Zone (EEZ), a 200 nautical miles (370 km) wide offset from the countries national coast line. This regulation, which was installed by the "UN Convention on the Law of the Sea" in

1982 grants a state special rights to explore natural (e.g. oil) and marine (e.g. fish) resources, including scientific research and energy production (e.g. wind-parks).

Practically this means that if a country owns a minuscule rock somewhere in the ocean, this rocks exploitable surface increases from almost zero on-shore to 430,000km² off-shores. In the case EEZ's overlap, it is up to the involved states to delineate the actual boundary: a rule which led in certain case to

decennia's of dispute. Yet there is more: underwater land to claim and more squabbles ahead, since the 200 nautical miles definition got supplemented by a clause which allows its expansion till the continental shelf. The first deadline for this so called 'continental shelf submissions' passed this year May and land (sea-bed) allocation will start soon. If underwater land grabbing goes on like this the 'Freedom of the Seas' might soon shrink to the 'Freedom of the Ponds'.

Text and Graphics Theo Deutinger



Source: Theo Deutinger

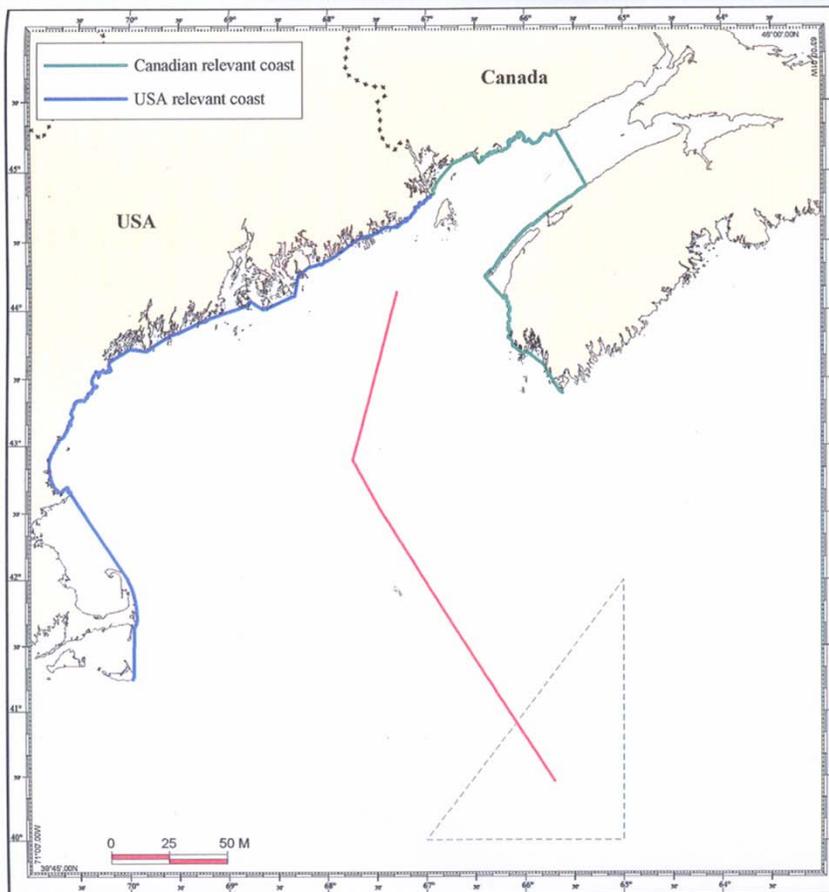
Historic Rights in the UNCLOS Negotiations

- 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?

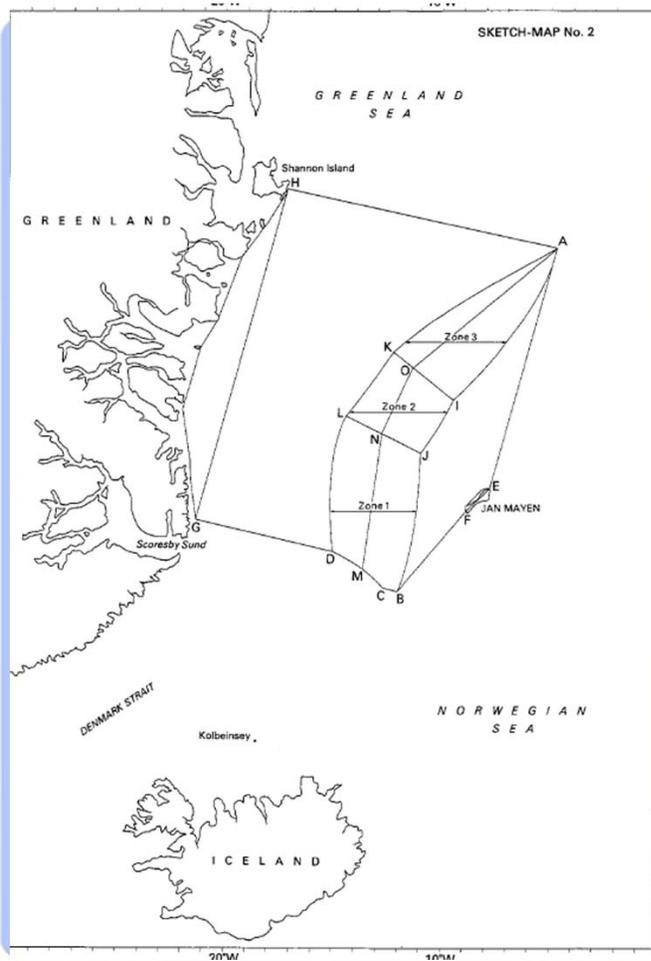
- Absorbed into EEZ:
 - *Tunisia/Libya 1982*: Tunisia's historic rights and titles are more nearly related to the EEZ.
- State practice still recognize historic rights in the drawing of maritime boundaries:
 - 1974 India/Sri Lanka Agreement.
 - Japan: Law on Provisional Measures relating to the Fishery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

Gulf of Maine Case 1984



- Canada and US asked the ICJ that historic fisheries activities should be taken into account in determining the single maritime boundary.
- The ICJ will only consider fisheries as relevant circumstances if the Court's provisional line likely entails '**catastrophic repercussions** for the livelihood and economic well-being of the population of the countries concerned'.

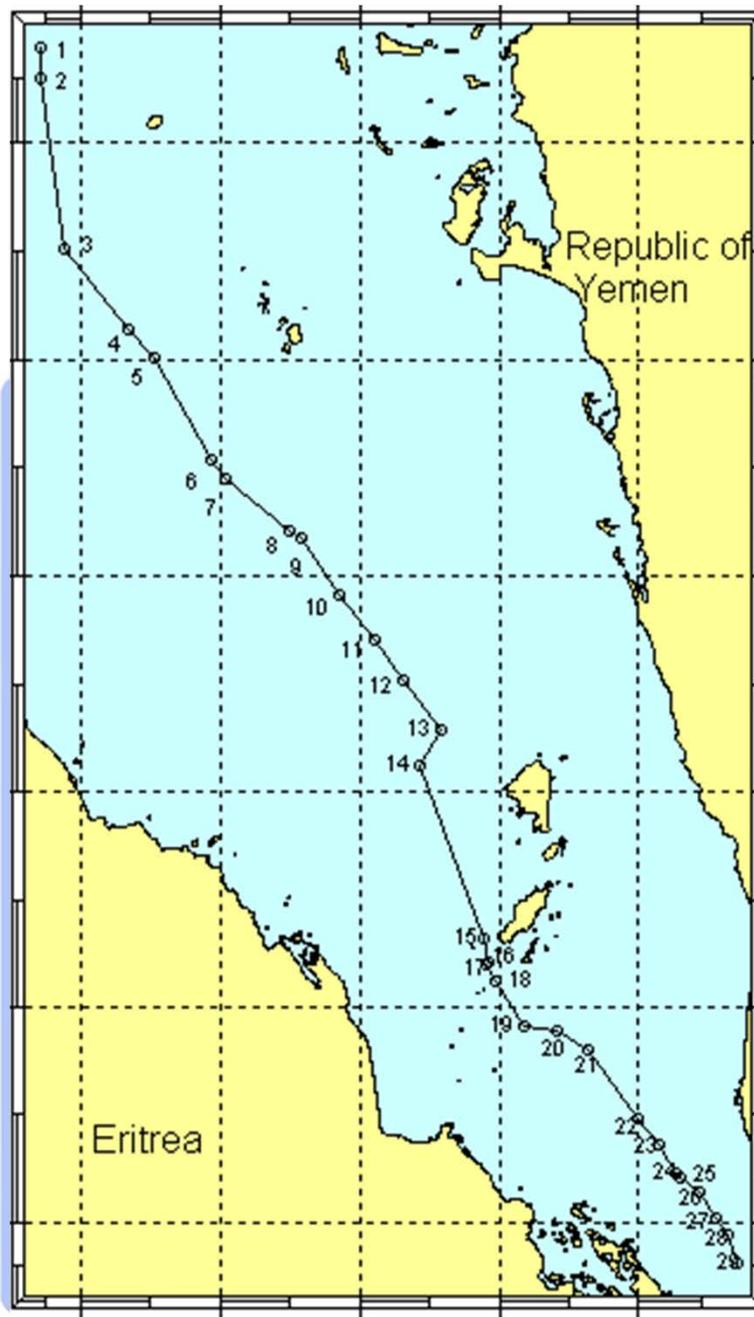
Jan Mayen Case 1993



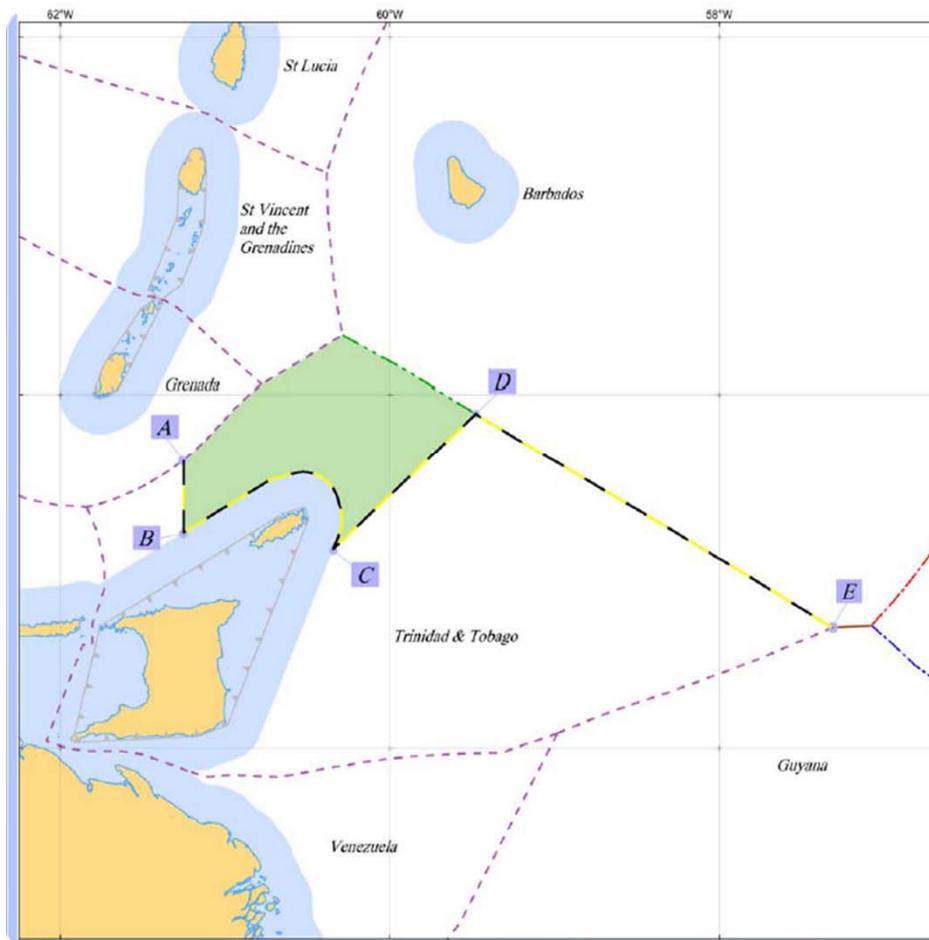
- Denmark and Norway emphasized the traditional character of different types of fishing carried out by the population concerned.
- ICJ found that the median line proposed by Norway was too far to the west for Denmark to be assured of an equitable access to the capelin stock.
- ICJ adjusted the median line eastwards.

Eritrea/Yemen Arbitration 1999

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



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 this case was not one of them.

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 (Article 62 UNCLOS)
- No obligation for Coastal States to recognize historic rights.

Thanks for your Attention

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