

MARITIME DELIMITATION IN EASTERN MEDITERRANEAN

Open questions and prospects for solution

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Outline

- The United Nations Convention on the Law of the Sea (UNCLOS): Jurisdictional framework
- Jurisprudence
- Maritime zones and delimitation agreements in Eastern Mediterranean
- Application of UNCLOS principles in maritime disputes in Eastern Mediterranean
- How could we improve prospects of the area

UNCLOS: A Constitution for the Oceans

- 9-10 December 2012: Special session at the UN on the commemoration of the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- UNCLOS has been described as a monumental achievement of the international community, second to the Charter of the United Nations and a “Constitution for the Oceans” which would stand the test of time.

- By establishing the legal framework within which all activities in the oceans and seas must be carried out, UNCLOS promotes stability of the law as well as maintenance of international peace and security.
- It has, *inter alia*, replaced a plethora of conflicting claims by coastal States with *universally agreed limits* on the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf
- Unequivocally accepted that islands enjoy the same status and therefore generate the same maritime rights as any other land territory and has strengthened the peaceful settlement of disputes and the prevention of the use of force.

- The universal character of UNCLOS is evidenced primarily in its unprecedented, almost universal, participation- to date *166 States*, including the European Union, are bound by its provisions.
- Amongst the very few States that are not parties to UNCLOS, are three States in Eastern Mediterranean, namely, Israel, Syria and Turkey
- Given the fact that UNCLOS is a factor for stability, peace and progress in a difficult international context, it is important to preserve the Convention's integrity and its pre-eminent role as the legal framework for all ocean issues and ocean related activities by calling upon all States that have not done so, to become parties to the Convention.

- Nevertheless, as it has long been accepted by international jurisprudence most of UNCLOS provisions either embody or reflect customary international law, such as the maximum permissible breadth of the territorial sea (12 nm), the entitlement of islands to maritime zones, the right to establish an exclusive economic zone etc
- Thus, in the Preamble of the 2010 EEZ delimitation agreement between Cyprus and Israel, there is specific reference to UNCLOS and its provisions, despite the fact that Israel is not a party to the Convention.

Maritime zones

- Under both UNCLOS and customary international law, the maritime zones subject to national jurisdiction are the following, moving from the coast seaward:
 - a) *Internal waters* are the waters located on the landward side of the baseline from which the territorial sea is measured. They are subject to the territorial sovereignty of the coastal State
 - b) *The territorial sea* is also subject to the sovereignty of the coastal state, with the exception of the right of innocent passage for ships flying the flag of third states. The maximum permissible breadth of the territorial sea is 12 nautical miles from the baseline (Article 3 UNCLOS)

c) The *contiguous zone-archaeological zone* (article 33 and 303(2) UNCLOS). Maximum breadth of 24 nm from the baselines from which the territorial sea is measured.

d) The *exclusive economic zone (EEZ)*, which is subject to the specific legal regime established by the Convention.

The coastal state enjoys “sovereign rights” for the purpose of exploration and exploitation of the natural resources, whether living or non-living, and other activities for the economic exploration and exploitation of the zone, such production of energy from the water, currents, and winds, as well as “jurisdiction” with regard to artificial islands, installations and structures, marine scientific research, and protection and preservation of the marine environment.

- According to article 56(3) UNCLOS, the rights of the coastal State with respect to the seabed and subsoil of the EEZ shall be exercised in accordance with the provisions of UNCLOS dealing with the continental shelf.
- Third States enjoy the freedoms of navigation, overflight and laying of submarine cables and pipelines, as well as other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines and compatible with the other provisions of the Convention (article 58(1) UNCLOS).

- *Residual regime: Article 59.* “In cases where the Convention does not attribute rights or jurisdiction to the coastal State or other States within the EEZ and a conflict arise between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole”.
- Finally, the breadth of the exclusive economic zone cannot extend beyond 200 nm from the baselines from which the territorial sea is measured. The exclusive economic zone is established on the basis of an *express proclamation* by the coastal state concerned.

d) The *continental shelf* comprises the seabed and subsoil beyond the outer limit of the territorial sea. It is defined as “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” (Article 76, para. 1).

Thus, UNCLOS uses two criteria to define the outer limits of the continental shelf, the criterion of distance (200 nm, which is the minimum breadth of the continental shelf) and the geo-morphological criterion in cases where the shelf extends beyond 200 nm to the outer edge of the continental margin.

- This is well recognized by jurisprudence. As stated by the ICJ in its recent judgment of 19th November 2012 in the *Territorial and Maritime Dispute (Nicaragua-Colombia)* : “[the Court] has repeatedly made clear that geological and geomorphological considerations are not relevant to the delimitation of overlapping entitlements within 200 nm of the coasts of States.
- Thus, the Court does not believe that any weight should be given to Nicaragua’s contention that the Colombian islands are located on “Nicaragua’s continental shelf”. The reality is that the Nicaraguan mainland and fringing islands, and the Colombian islands, are located on the same continental shelf. This fact cannot, in and of itself, give one State’s entitlements priority over those of the other in respect of the area where their claims overlap”. [Par. 214].

- This is the case with Eastern Mediterranean and the Mediterranean in general, the breadth of which does not extend 400 (200+200) nm.
- So far as the rights of the coastal state over the continental shelf are concerned, the coastal state exercises sovereign rights for the purpose of exploring it and exploiting its natural resources (Article 77, para. 1)
The continental shelf does not depend on any express proclamation by the coastal state concerned, but the coastal state exercises its rights *ab initio* and *ipso facto* (Article 77, para. 3).

Relationship between the continental shelf and the EEZ

- As specifically stated by the International Court of Justice (I.C.J.) in the *Malta-Libya Continental Shelf Case* (1985), par. 34: «Although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the regime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf».
- Thus, hydrocarbon exploration and exploitation is based upon the sovereign rights of the coastal State over the continental shelf. No EEZ required

The legal regime of islands

- Article 121(2) UNCLOS. All islands have the same maritime zones as any other land territory, namely territorial sea, contiguous zone, EEZ and continental shelf.
- Article 121(3): "Rocks that cannot sustain human habitation or economic life of their own" shall have no EEZ or continental shelf.
- In the *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, 2001, the ICJ referred to article 121(2), as reflecting customary international law, and stated that "islands regardless of their size enjoy the same status and therefore generate the same maritime rights, as other land territory [par. 185].
- It did not, however, address article 121(3) UNCLOS

- In the *Territorial and Maritime Dispute (Nicaragua-Colombia)* 2012, the Court considered article 121(3) as forming part of an “indivisible regime”, all of which has the status of customary law.
- As specifically stated, by denying an EEZ and continental shelf to rocks which cannot sustain human habitation or economic life of their own, par. 3 provides an essential link between the long-established principle that islands regardless of their status generate the same rights as any other land territory and the more extensive maritime entitlements recognized in UNCLOS and which the Court has found to become part of customary law (such as the extended continental shelf up to 350 nm from the baseline)
- In other words, article 121(3) is the only exception to the rule

Delimitation of maritime zones

- Territorial sea: principle of equidistance/special circumstances (article 15 UNCLOS)
- Continental shelf/EEZ (compromise solution between two opposite schools of thought/groups of States during UNCLOS III, i.e. the principle of equidistance and the principle of equity)
- The Convention does not make specific reference to any of those principles, but states that “delimitation 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 a equitable solution” (article 74(1) EEZ and article 83(1) continental shelf respectively)

- Very important the reference to international law as referred to in Article 38 of the Statute of the ICJ
- "Equity" always functions *infra legem* (e.g. 1969 *North Sea Continental Shelf Case*)
- Implicit reference to customary international law where the vast majority of bilateral delimitation agreements have adopted the principle of equidistance/median line as the method of delimitation.
- The ICJ has accepted since the *Libya/Malta Continental Shelf Case (1985)* that "the equitable nature of the equidistance method is particularly pronounced in case where delimitation has to be effected between States with opposite coasts". Since then, equidistance has been re-established as the main method of maritime delimitation

- This is also evidenced by the three EEZ delimitation agreements in Eastern Mediterranean, namely
The agreement between Cyprus and Egypt (2003) which was the first delimitation agreement in the wider region of Eastern Mediterranean;
The agreement between Cyprus and Lebanon (2007) and
The agreement between Cyprus and Israel (2010)

Jurisprudence

- Methodology of delimitation (three stages)
- First stage: provisional median line between territories (including the island territories) of the Parties; in doing so the Court will use methods that are “geometrically objective” and “appropriate for the geography of the area”.
- Second stage: the Court considers where there are any relevant circumstances which may call for an adjustment or shifting of the provisional equidistance/median line so as to achieve an equitable result.
- Third stage (added in 2009 by the *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*): the Court conducts a disproportionality test so as to verify that the line as it stands does not lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line.

- This is not to suggest that these respective areas should be proportionate to coastal lengths- as the ICJ has emphasized in a number of occasions “the sharing out of the area is the consequence of delimitation, not vice versa”
- Definitely not a mathematical application. For example, in the *Territorial and Maritime Dispute (Nicaragua-Colombia)* case, the ratio of relevant coasts was approximately 1:8.2, whilst the application of the adjusted line had the effect of dividing the relevant area between the parties in a ratio approximately 1:3.44 in favour of Nicaragua. And this was considered an equitable result by the Court

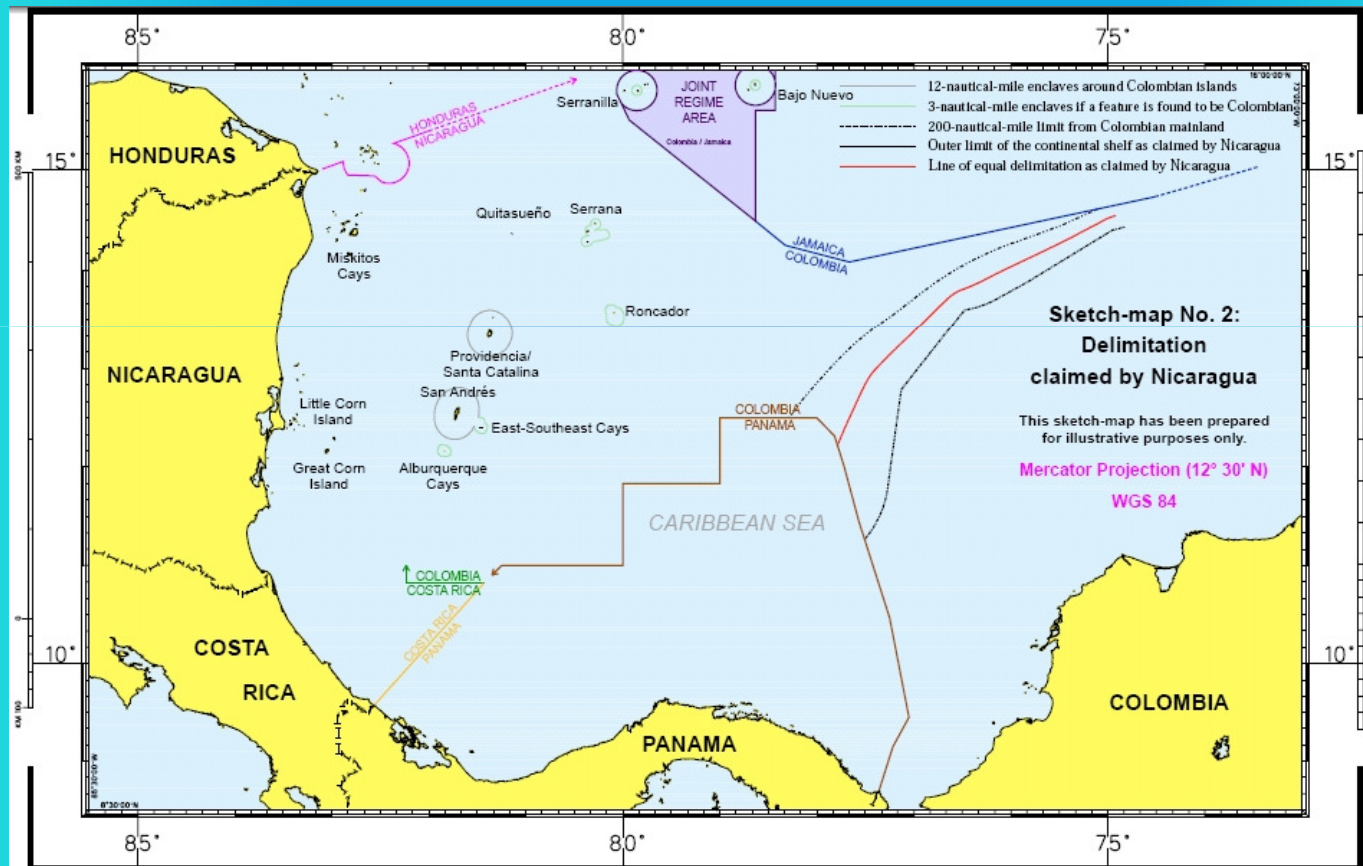
Islands and delimitation

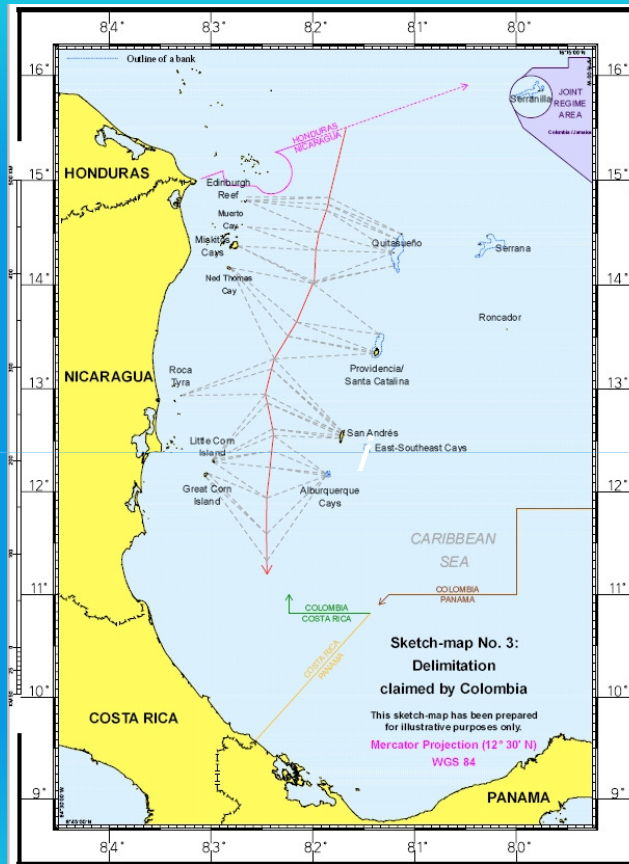
- It is true that in a number of cases which involved delimitation between States with adjacent coasts and an isolated island, didn't attribute full effect to those islands or even disregarded them.
- At the same time, however, jurisprudence has acknowledged the following: (on overview is to be found in the recent case of *Territorial and Maritime Dispute (Nicaragua-Colombia) 2012*)

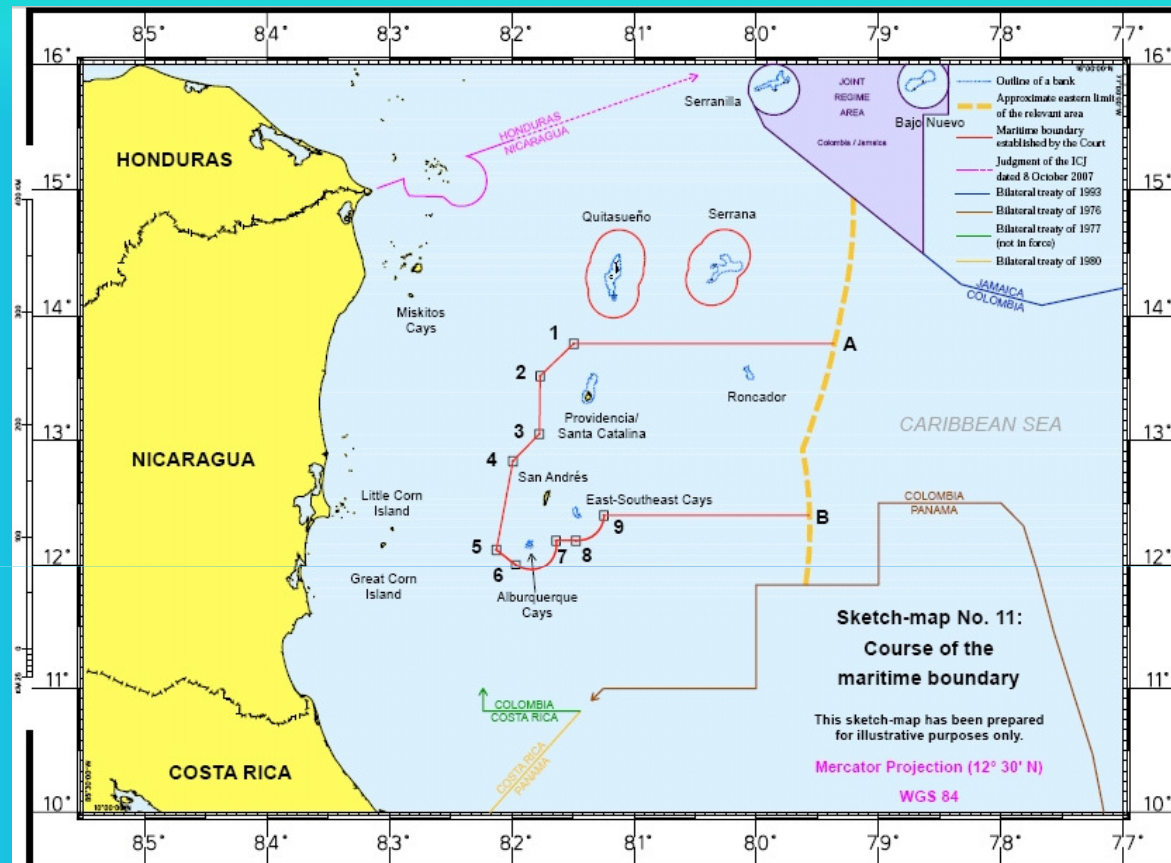
- Supremacy of the territorial sea over the continental shelf/EEZ. “The Court has never restricted the right of a State to establish a territorial sea of 12 nm around an island on the basis of an overlap with the continental shelf and the EEZ entitlements of another State [par. 178].
- The usual methodology of delimitation applies also in the cases where islands are involved. “[This] does not justify disregarding the entire methodology and substituting an approach in which the starting point is the construction of enclaves for each island, rather than the construction of a provisional line” [par. 195].

- Cut-off effect: Any adjustment or shifting of the provisional median line must not have the effect of cutting off a coastal State from the entitlements generated by islands.
- Otherwise, the effect would be to remedy one instance of cut-off by creating another [par. 216]

Territorial and Maritime Dispute (Nicaragua-Colombia) 2012







Maritime zones in Eastern Mediterranean

- Territorial sea
- Exclusive Economic Zone: (Syria, Israel, Cyprus, Lebanon, Egypt)
- Continental shelf: All states enjoy *ab initio* and *ipso facto* sovereign right over the continental shelf
- Greece: According to law 2289/1995 “on prospecting, exploration and exploitation of hydrocarbons and other provisions”, as modified by Law 4001/2011: “In the absence of a delimitation agreement with neighbouring States, whose coasts are opposite or adjacent to the coasts of the Hellenic Republic, the outer limit of the continental shelf and of the exclusive economic zone (once declared) is the median line, every point of which is equidistant from the nearest points on the baselines (both continental and insular) from which the breadth of the territorial sea is measured.”
- Consequently, once established, the outer limits of the EEZ will be the same with that of the continental shelf, namely the median line. This is in accordance with State practice, including the legislation of Cyprus, Italy, Spain and Malta.

Outer limits of the Greek continental shelf/future EEZ based on the principle of equidistance



Delimitation Agreements

- EEZ delimitation agreements between Cyprus and Egypt (2003), Cyprus and Lebanon (2007) and Cyprus and Israel (2010) respectively
- Principle of equidistance; resource deposit clause
- Article 1(d) of Cyprus-Egypt agreement: "At the request of either of the two Parties, any further improvement on the positional accuracy of the median line will be agreed upon by the two Parties using the same principles, when more accurate data are available"
- Other delimitation agreements in the region (Greece-Italy: continental shelf delimitation agreement 1977; Greece-Albania: maritime zones delimitation agreement 2009 (not yet in force); 1932 Italo-Turkish agreements, to which Greece is a successor State)

Application of UNCLOS principles to maritime disputes in Eastern Mediterranean

- Respect for international law and the right of every coastal State to establish the maritime zones that is entitled to the maximum permissible breadth
- Islands regardless of their size have the same maritime zones with any land territory
- Supremacy of the entitlement to territorial sea over the entitlement to the continental shelf/EEZ
- Title over the continental shelf is based exclusively upon distance; geology is not relevant within 200 nm from the coast
- Delimitation must be effected by agreement on the basis of international law. Equity always functions *infra legem*
- Enclaves do not result in principle to an equitable solution for islands

- No special rules for semi-enclosed seas
- The notion of “enclosed or semi-enclosed” seas, which was introduced by Part IX of UNCLOS and, therefore, constitutes progressive development of the law, is not related at all to maritime boundaries. Article 123 specifies clearly the obligations of States bordering such seas; co-operation is exclusively specified in matters related to the management and conservation of living resources, protection of the marine environment and marine scientific research.
- UNCLOS does not exclude semi-enclosed seas from its general provisions nor establishes an obligation on bordering States to seek regional consultation before delimiting their maritime zones.
- As stated in the Secretary-General’s Report on Oceans and the Law of the Sea in 2004 (A/59/62): “rights and obligations under UNCLOS should not be region-dependent and ... no additional conditions on the enjoyment by States Parties of rights provided by UNCLOS should be imposed” (par. 41).

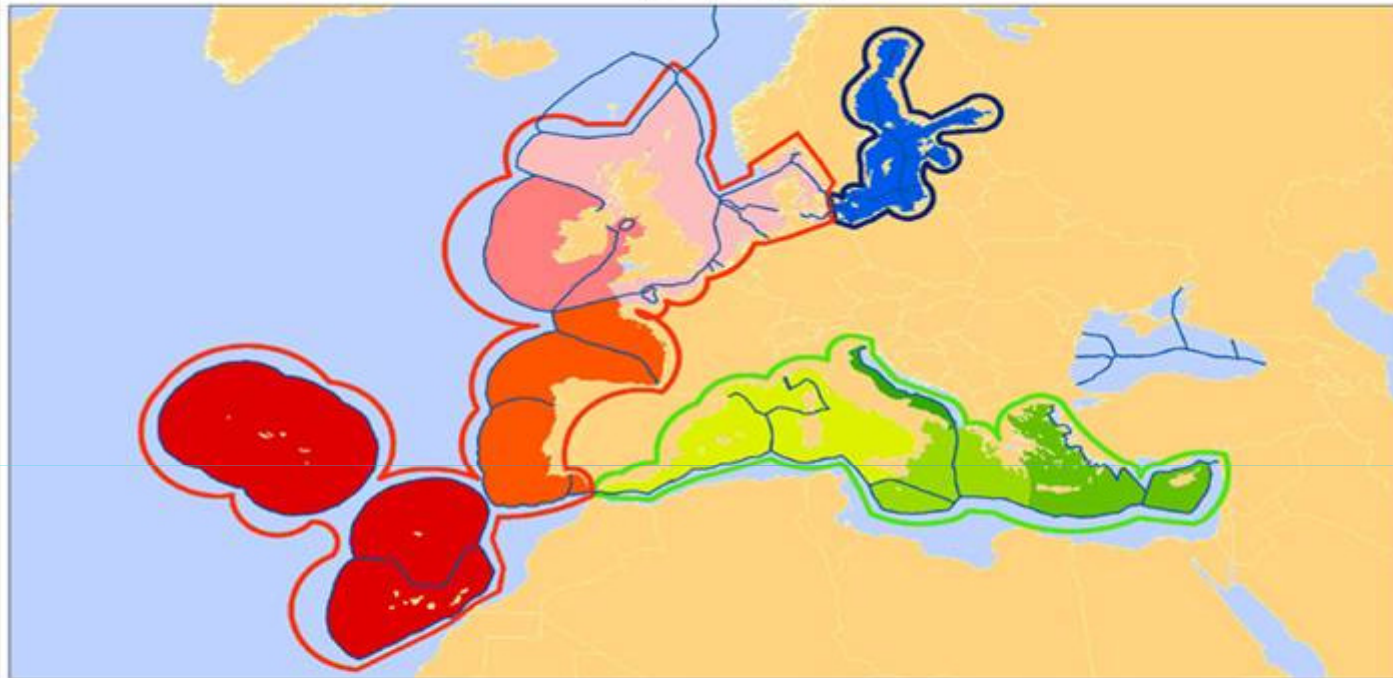
- Most importantly, States should avoid actions that are in violation of international law, such as the “granting” of hydrocarbon exploration and exploitation licenses by the Turkish Council of Ministers to TPAO in Eastern Mediterranean (2009 and 2012) in areas falling entirely or in part within Greek continental shelf.
- It suffices to state that “block 5033” lies in close proximity to the insular group of Castellorizo almost touching upon its current territorial sea 6 nm limit as well as to the island of Rhodes at a distance of 11.22 nm.
- It is obvious from the above analysis that these “permits” are in violation of international law and are, therefore, *null and void* (see, in this respect, the verbal note dated 20 February 2013 from the Permanent Mission of Greece to the UN addressed to the Secretary-General, www.un.org/los/)
- The same applies for the delimitation agreement that Turkey has signed with the so-called “Turkish Republic of Northern Cyprus” or the granting of exploration and exploitation licenses in areas falling within the EEZ of Cyprus.

How could we improve prospects of the area

- Respect for the rule of law and the public order of the oceans
- In the absence of a delimitation and/or pending delimitation, respect for the median line
- The necessity of respecting such a provisional limit is evidenced by the recent discovery of gas deposits in Eastern Mediterranean.

MARINE REGIONS

Directive on Marine Strategy
[SEC (2005) 1290]



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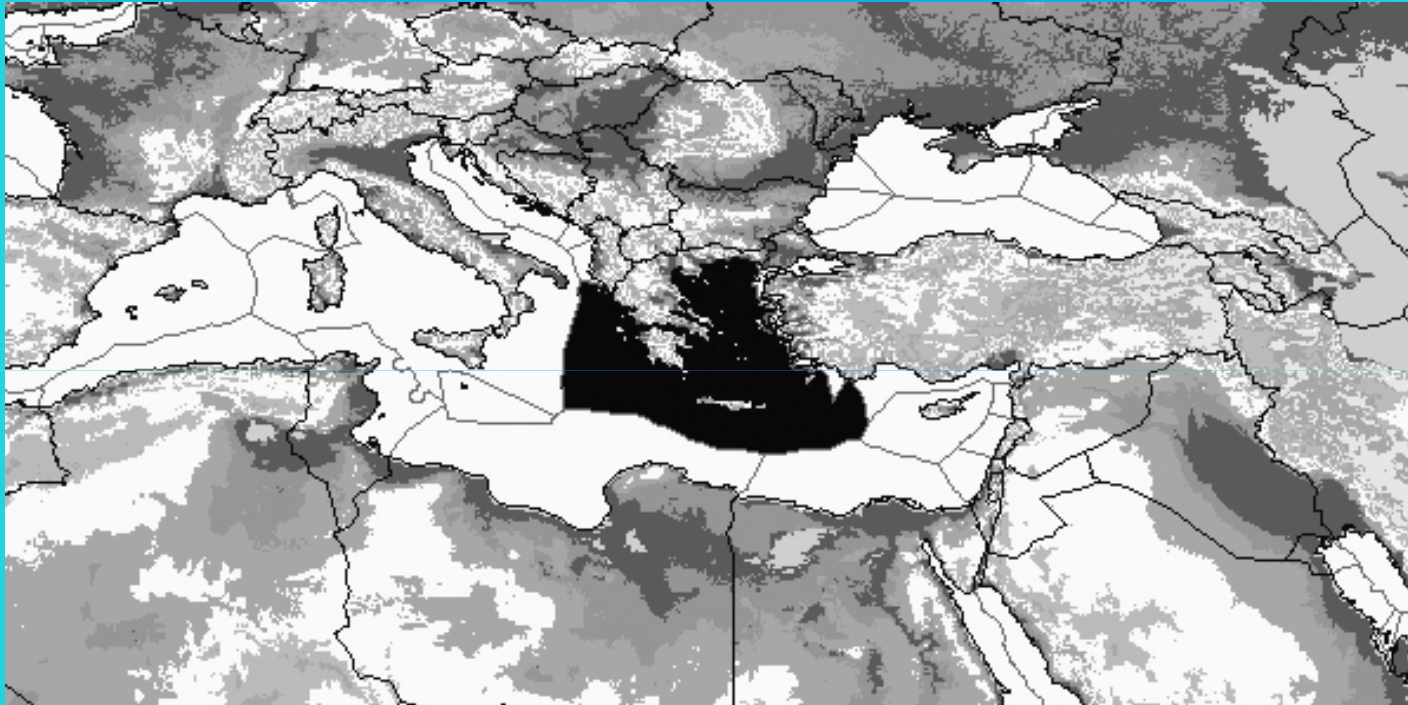
Marine Regions

- BALTIC SEA
- MEDITERRANEAN SEA
- NORTH EAST ATLANTIC OCEAN
- EEZ BOUNDARIES (agreed and theoretical)

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Marine Sub-regions

- Atlantic Ocean
- Bay of Biscay and Iberian Coast
- Celtic Sea
- Greater North Sea
- Adriatic Sea
- Aegean-Levantine Sea
- Ionian Sea
- Western Mediterranean Sea



Source: [www.vliz.be/VLIZ Maritime Boundaries Geodatabase](http://www.vliz.be/VLIZ_Maritime_Boundaries_Geodatabase)

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