

# Maritime Boundary Delimitation

Under the United Nations Convention on  
the Law of the Sea and in practice



# Outline

- Introduction
- Maritime boundary delimitation
- Joint development agreements
- Other available approaches



# IMPORTANT

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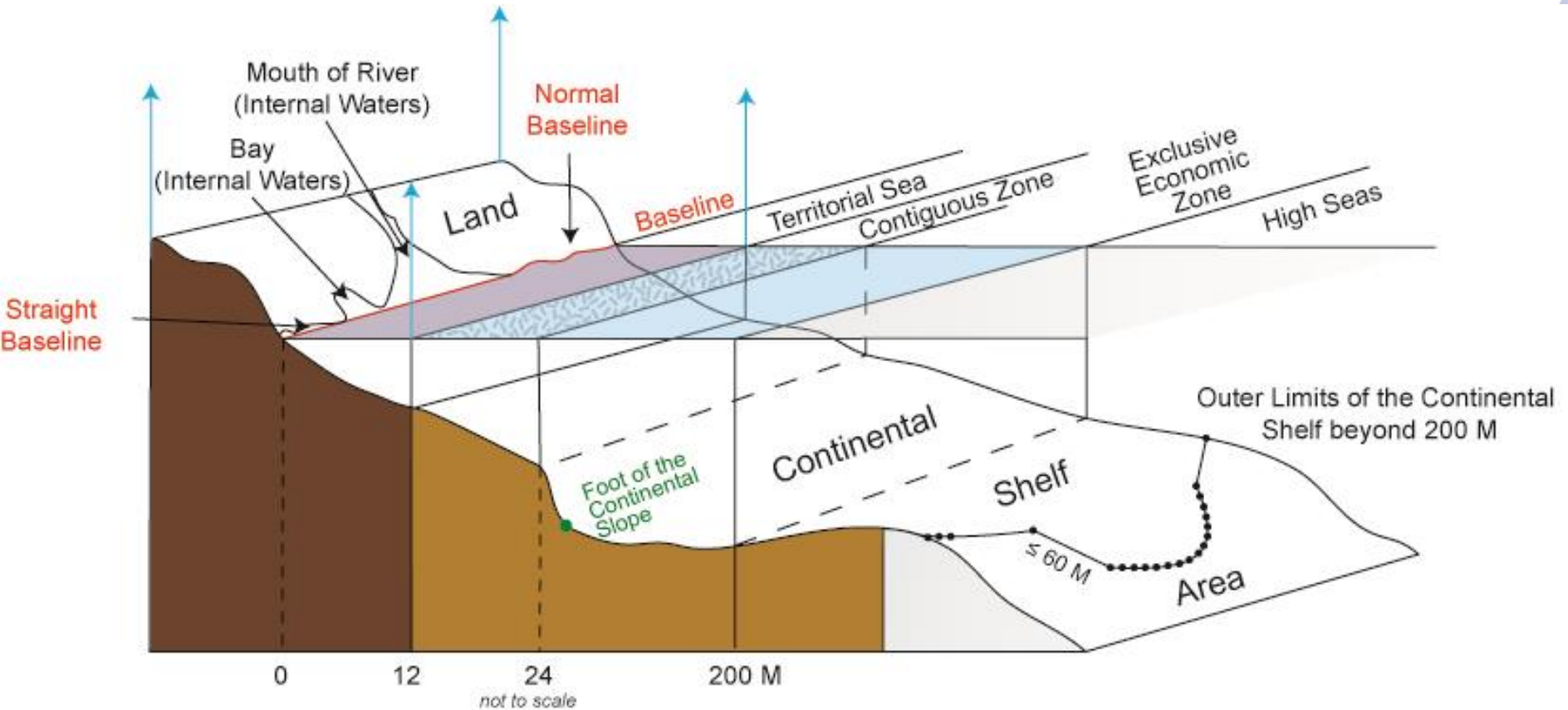
# Introduction

- International law
- International law of the sea
- 1982 UN Convention on the Law of the Sea
  - “Constitution for the Oceans”
  - With regard to maritime zones: it reflects customary law (i.e. rules are binding on all States, and not only on the states parties)

# Maritime zones (introduction)

- States have three fundamental components:
  - territory;
  - population;
  - government exercising its exclusive power over such territory and population.
- The power of a State over its territory – referred to as ‘territorial sovereignty’ – covers not only its land but also certain areas of the sea adjacent to it.
- Basic principle: land dominates the sea (if there’s a coastline)

# Maritime Zones Overview



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# **Overlapping claims & maritime boundary delimitation**



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# Overlapping claims

- Compared to the past: new rules, customary, reflected in UNCLOS
  - TS from 3/4/6 M to 12 M
  - New concept: 200M EEZ
- Consequence: states have become “closer” to each other -> more overlapping claims = increased need for boundary delimitation



# Impact of overlapping claims

- Adverse impact on:
  - relationship between parties
  - maritime security
  - Access to resources in the contested area:
    - Over-exploitation of living resources
    - Difficulty in accessing non-living resources
      - Deterrent for investments

# Maritime boundary delimitation

- Solution for overlapping claims;
- State driven process
- By peaceful means
  - Basic principle of the Charter of the United Nations
- Important element of the practice of States in the modern law of the sea;
- Politically sensitive, legally and technically complex process;
- General principles providing tools to deal with diverse situations.



# Delimitation of maritime boundaries

Delimitation is based on consent of the States concerned (Gulf of Maine ICJ Case):

Consequences:

1) Freedom to:

- adopt whatever delimitation line they can agree on (political, economical geographic and other factors)
- choose whatever mechanism they can agree on (negotiation, mediation, conciliation, arbitration, judicial settlement)

2) Unilateral delimitations are not binding on third States (Fisheries ICJ Case)

# Delimitation of maritime boundaries

- In practice:
  - Treaties often prevail over judicial/arbitral mechanism
  - Opportunity
  - Often single maritime boundary for all zones
  - Equitable principles
- Extensive State practice.
- State practice provides useful examples of ‘delimitation methods’ but it is not ‘binding’ (lack of ‘opinio juris’).

# Negotiated agreements

- Delimitation by negotiated agreements is above all a political operation dependent first and foremost on the existence of political will between the States
- Such agreements provide:
  - ✓ Basis for friendly and good-neighbourly relations
  - ✓ More expeditious solution
  - ✓ Less expensive solution
  - ✓ Legal certainty based on political will of sovereign States



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# Applicable principles



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# Delimitation under UNCLOS

## Territorial Sea (art. 15)

Failing agreement to contrary:

- No State can extend its TS beyond the Median/equidistance line from nearest baseline points;
- Exception: historic title/other special circumstances

**Equidistance often represents the starting point for maritime boundary negotiations.**

# Delimitation under UNCLOS

## EEZ (art. 74)

### Continental Shelf (art. 83)

- Agreement achieving an equitable solution;
- Failing agreement:
  - Procedures under Part XV;
  - Pending agreement: provisional arrangements/obligation not to hamper



# Relevant Factors

In a negotiating process, States have wide latitude and flexibility in using as many factors as they deem appropriate for the construction of the line or lines they consider equitable and satisfactory:

- Geography
- Economy
- Political factors
- Security
- Environment



# Opposing coasts – equidistance

Data management

Area

Import

Baselines

MZs




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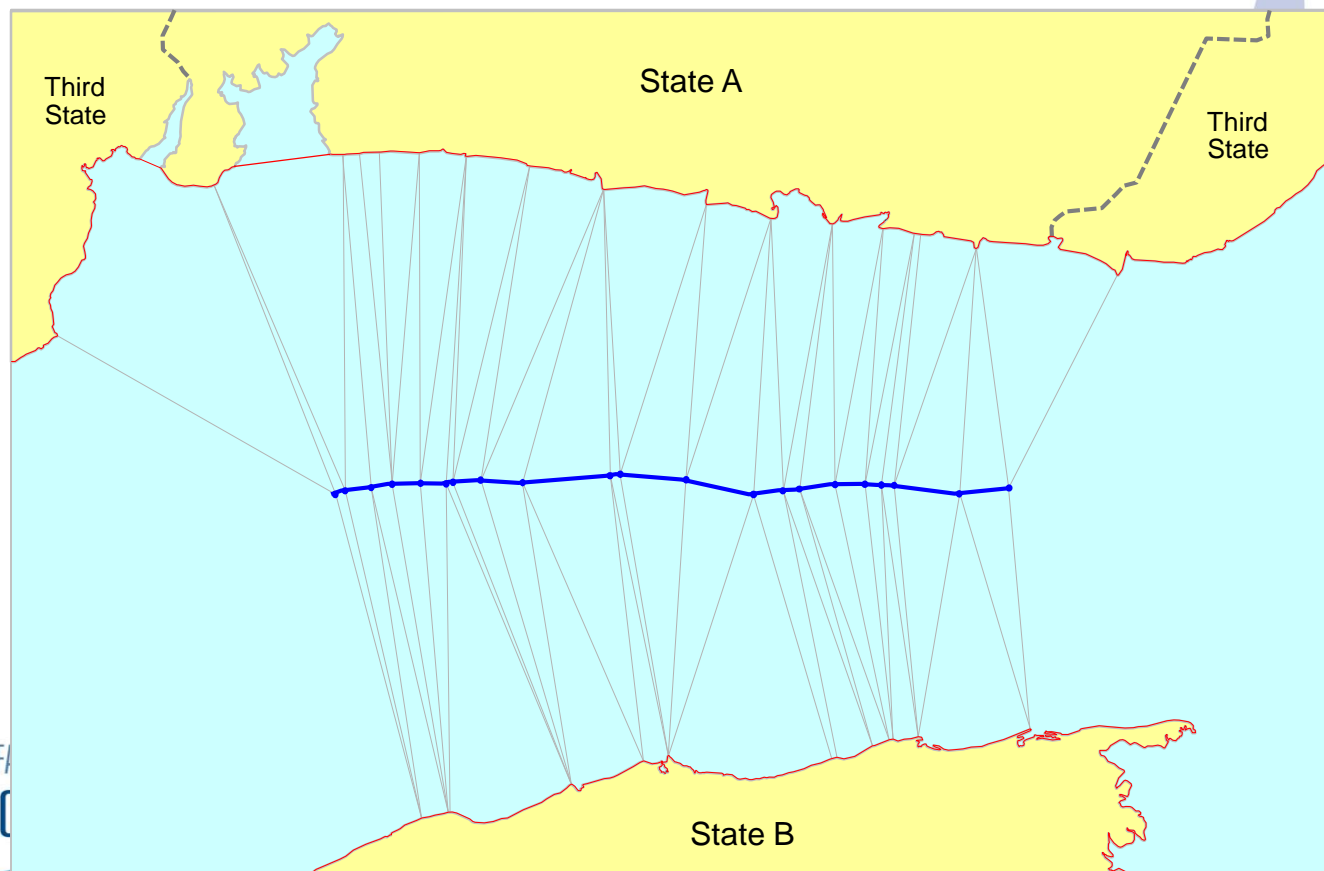
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Map

Data Visualization

Display

-  Land
-  Baselines:  
Normal  
Straight
-  Equidistance  
line



# Adjacent coast – equidistance line

Data management

Area

Import

Baselines

MZs

MBs

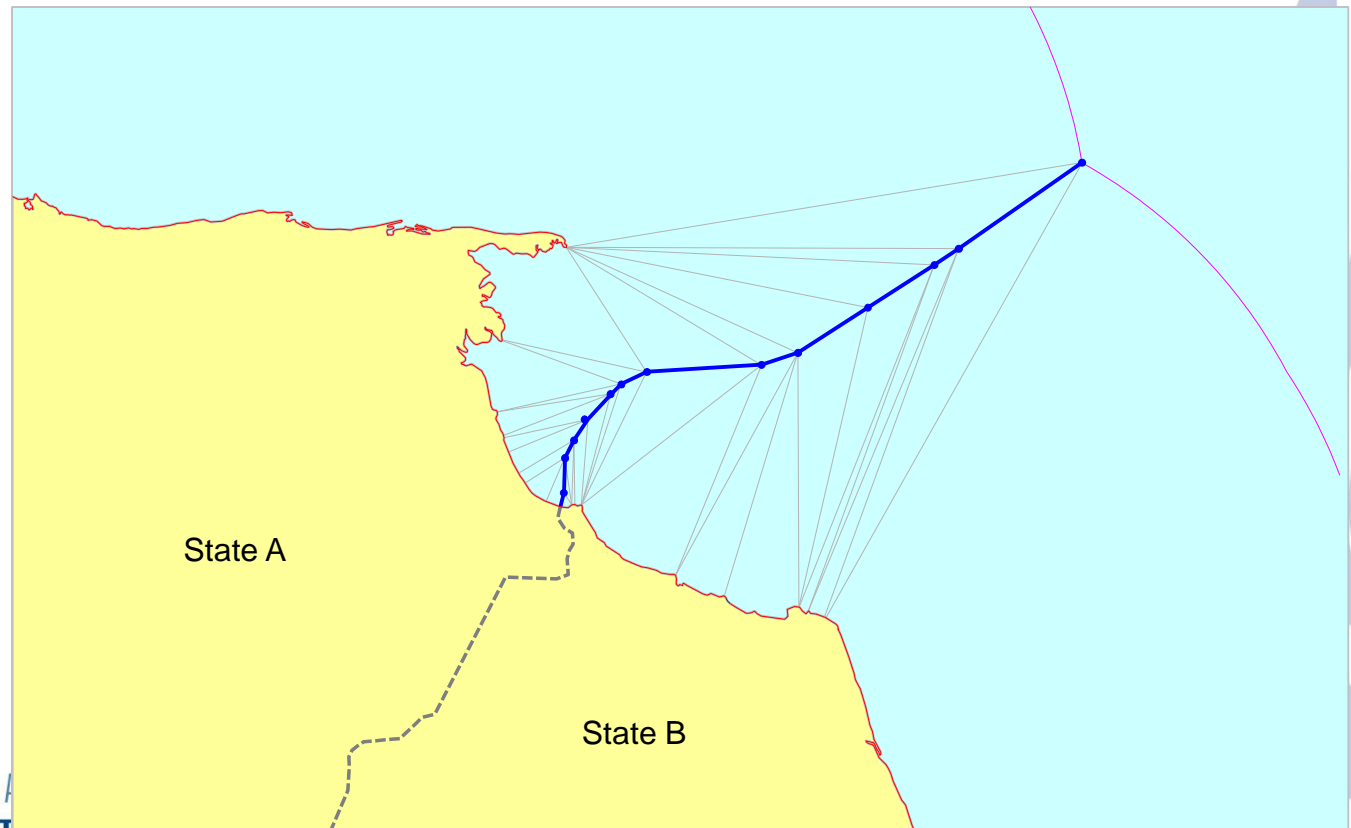
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Map

Data Visualization

Display

- Land
- Baselines:  
Normal  
Straight
- EEZ (200M)
- Equidistant  
line



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# Adjacent coast – equidistance line giving full effect to islands

Data management

Area

Import

Baselines

MZs





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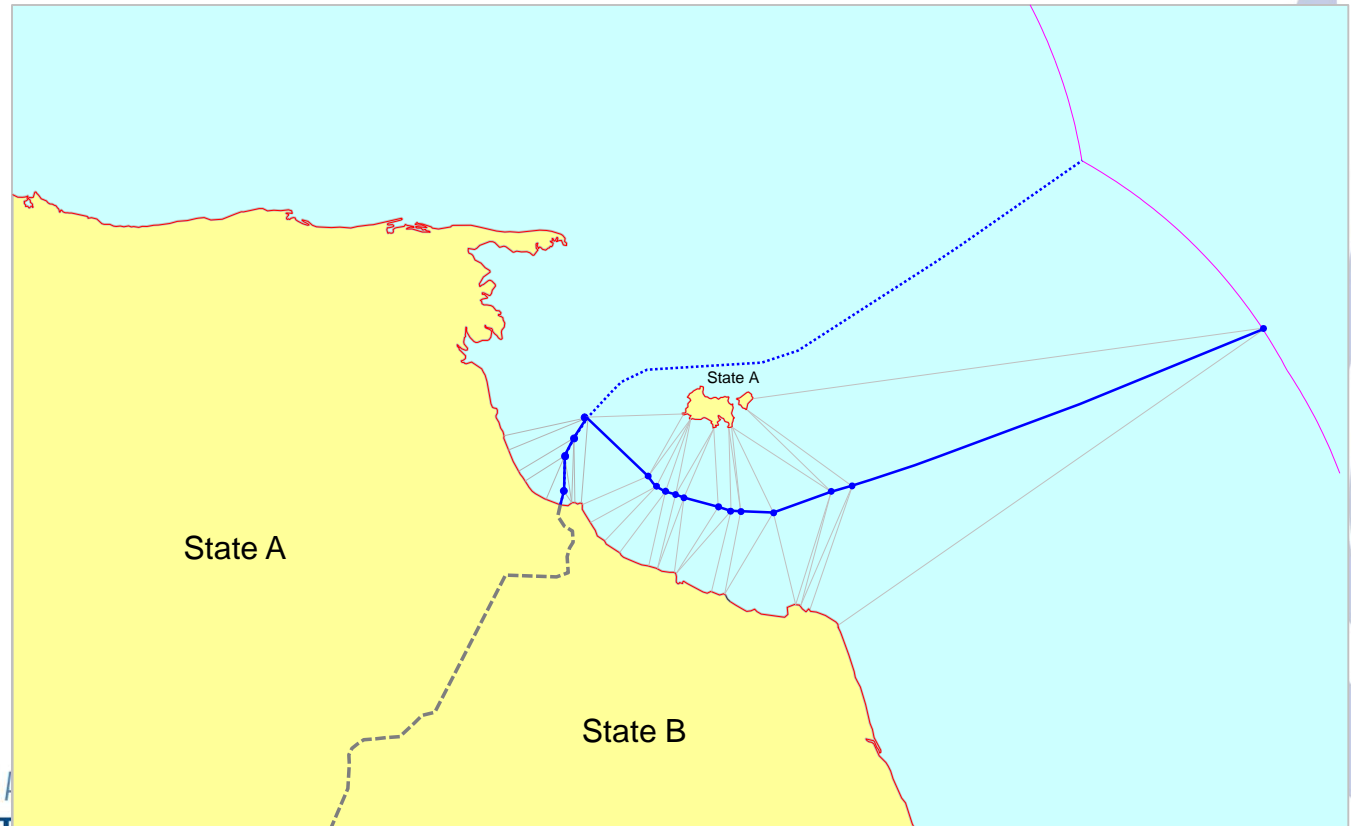
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Map

Data Visualization

Display

-  Land
-  Baselines:  
Normal  
Straight
-  EEZ (200M)
-  Equidistant  
line, giving  
full effect to  
islands



# Adjacent coast – equidistance line giving half-effect to islands

Data management

Area

Import

Baselines

MZs

MBs

ECS

Map

Data Visualization

Display

- Land
- Baselines:  
Normal  
Straight
- EEZ (200M)
- Equidistant  
line, giving  
half-effect to  
islands



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# Equiratio line (2:1)

Data management

Area

Import

Baselines

MZs

MBs

ECS

Map

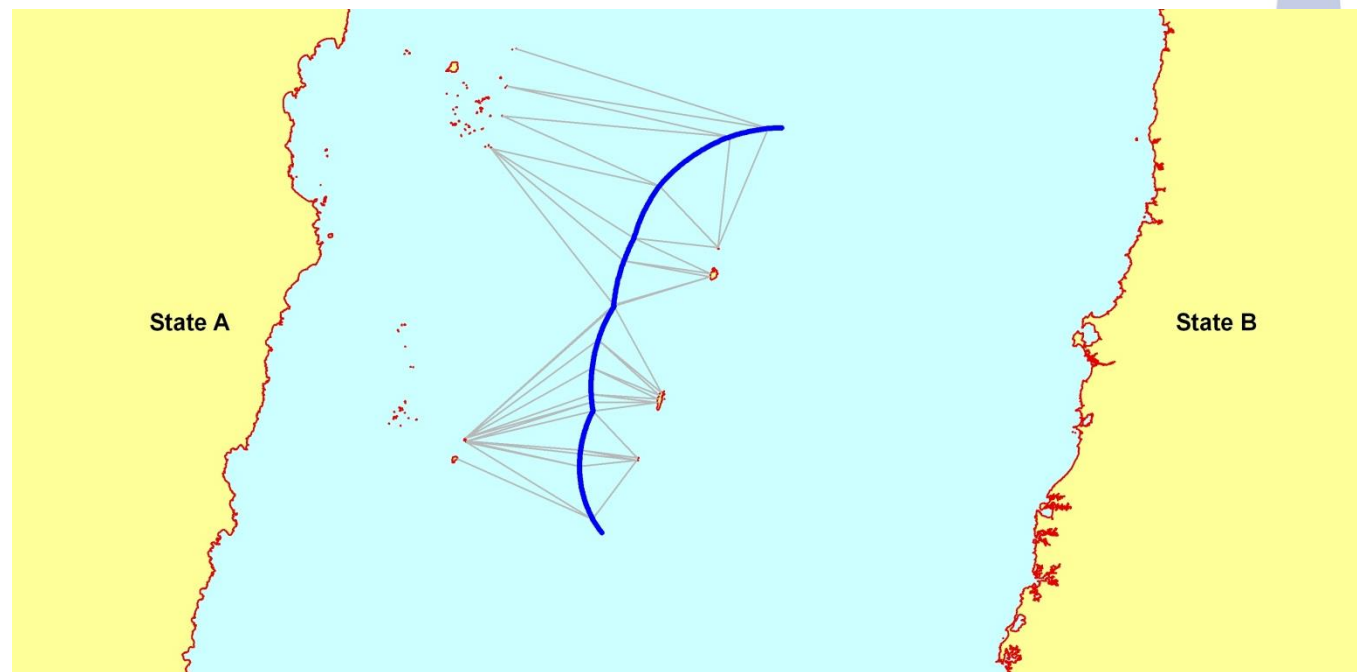
Data Visualization

Display

Land

Baselines:  
Normal  
Straight

Equiratio line



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# Opposing coasts – equidistance line, semi-enclave

Data management

Area

Import

Baselines

MZs




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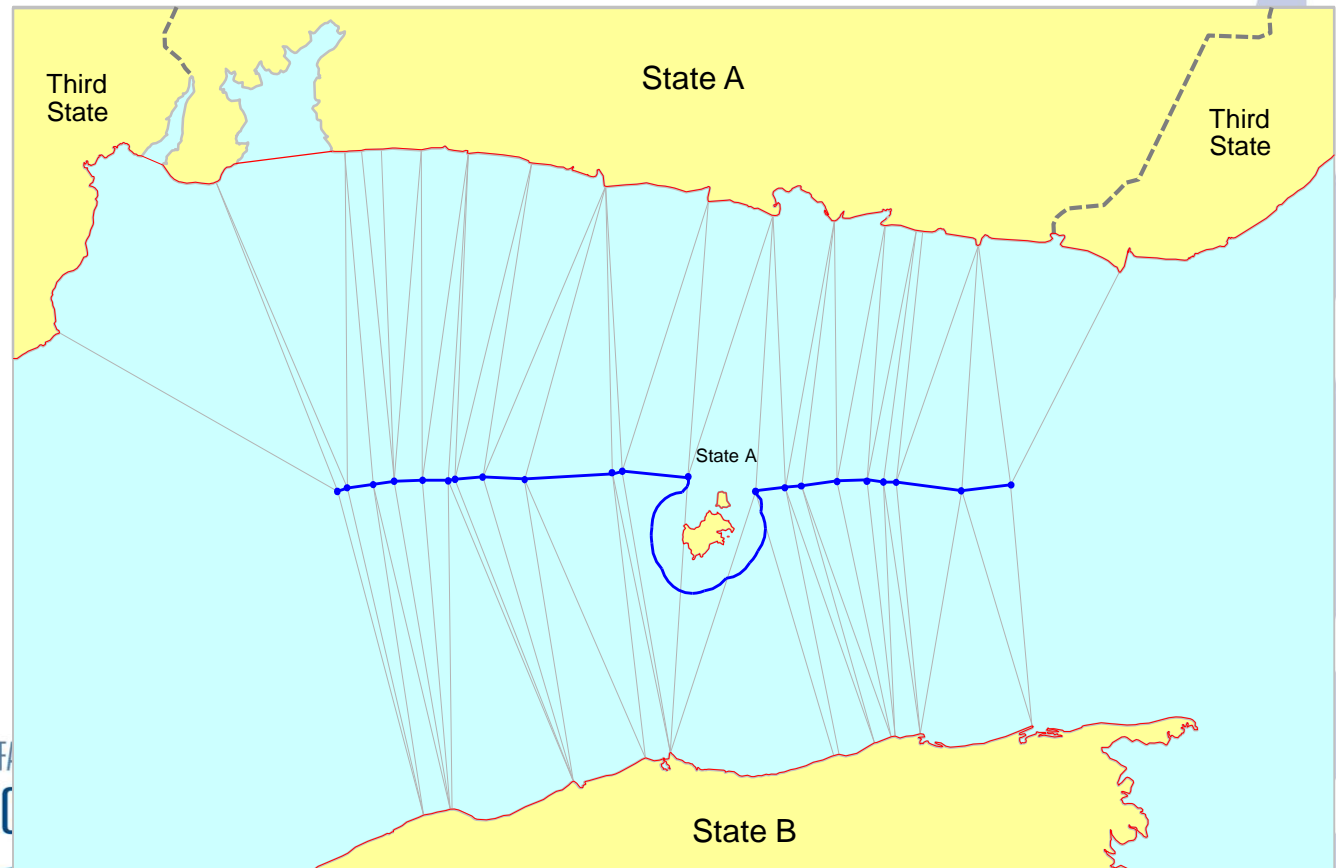
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Map

## Data Visualization

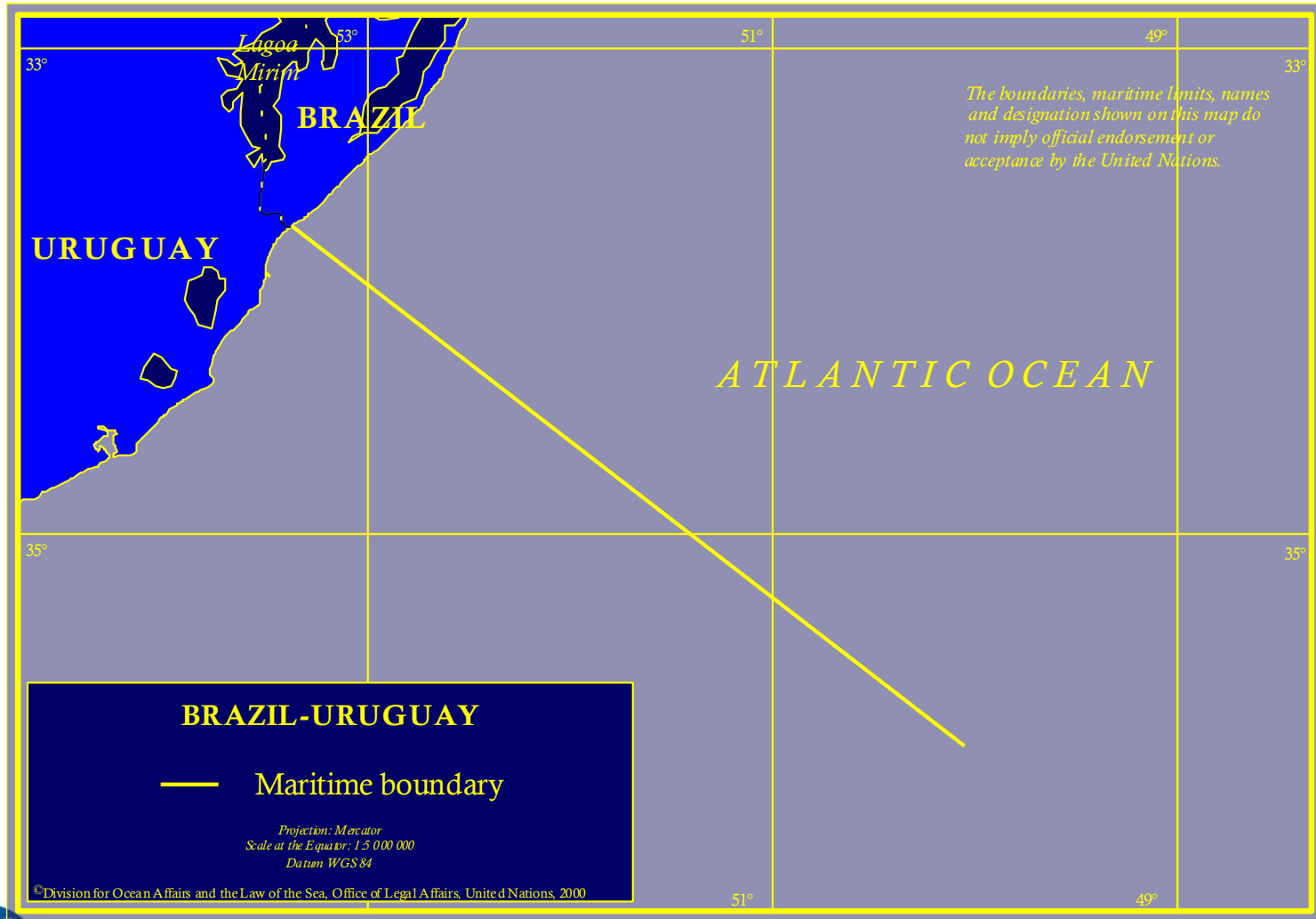
## Display

-  Land
-  Baselines:  
Normal  
Straight
-  Equidistant  
line:  
semi-enclave



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# Perpendicular lines



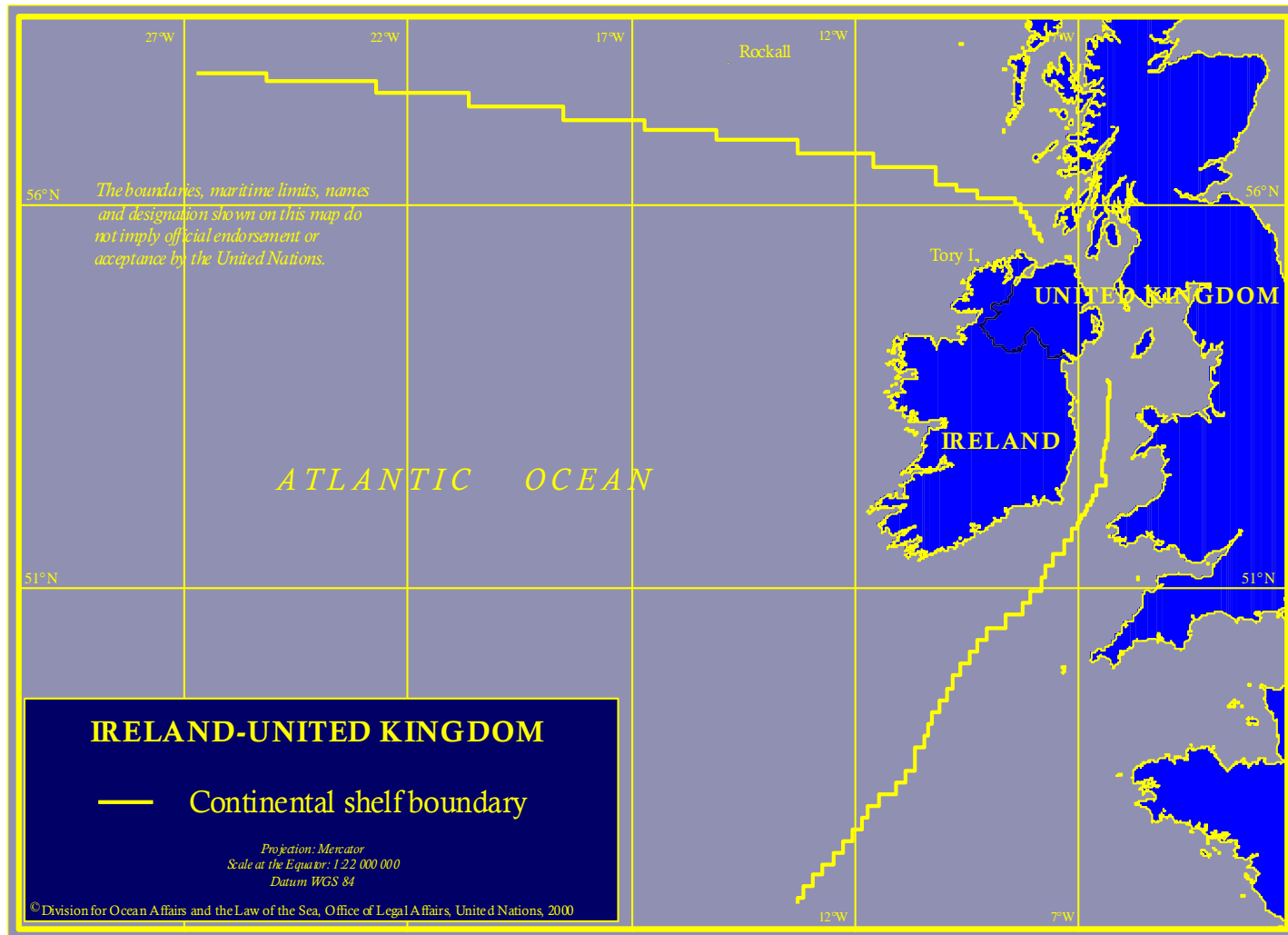
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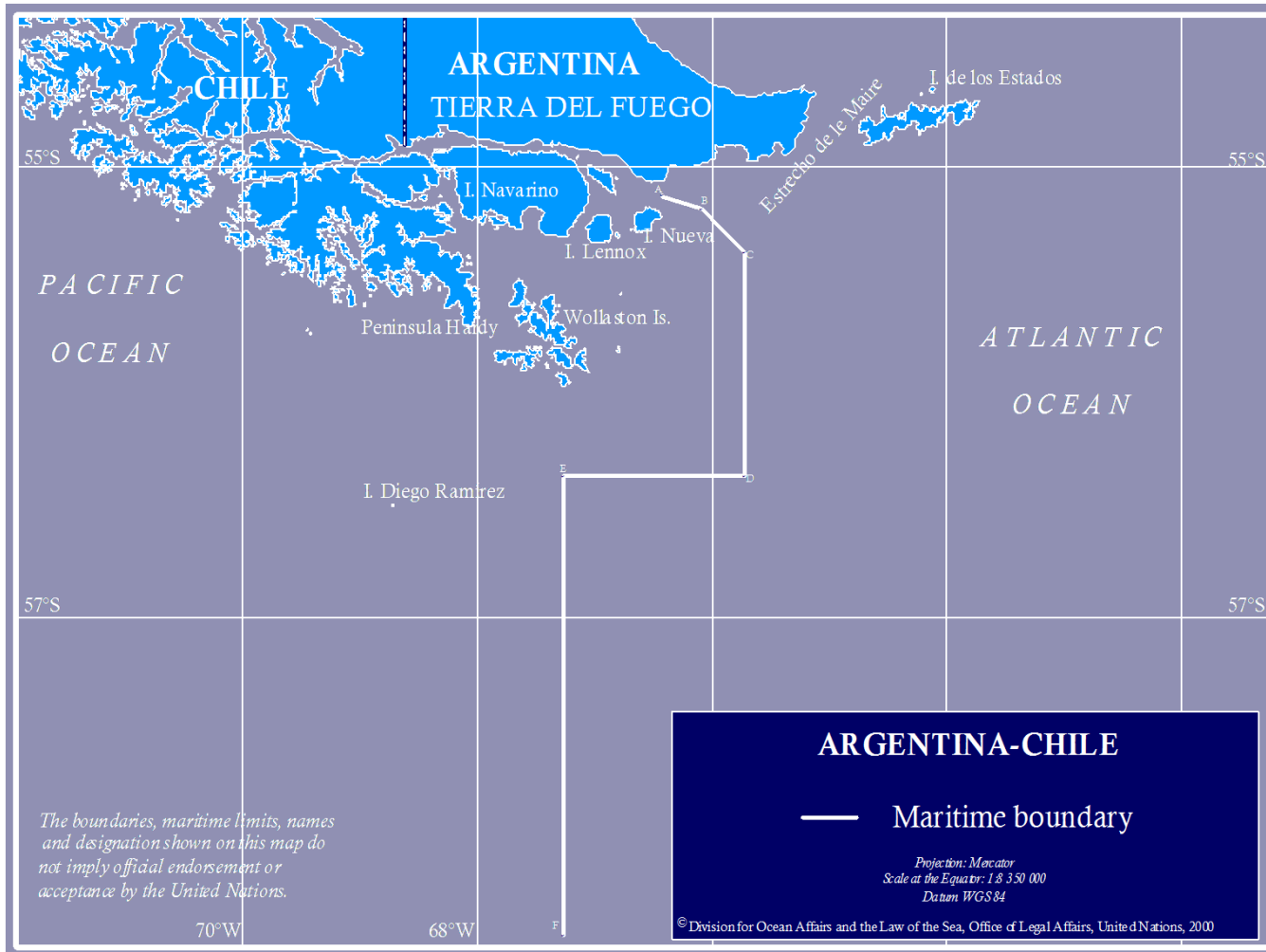
# Meridians and parallels



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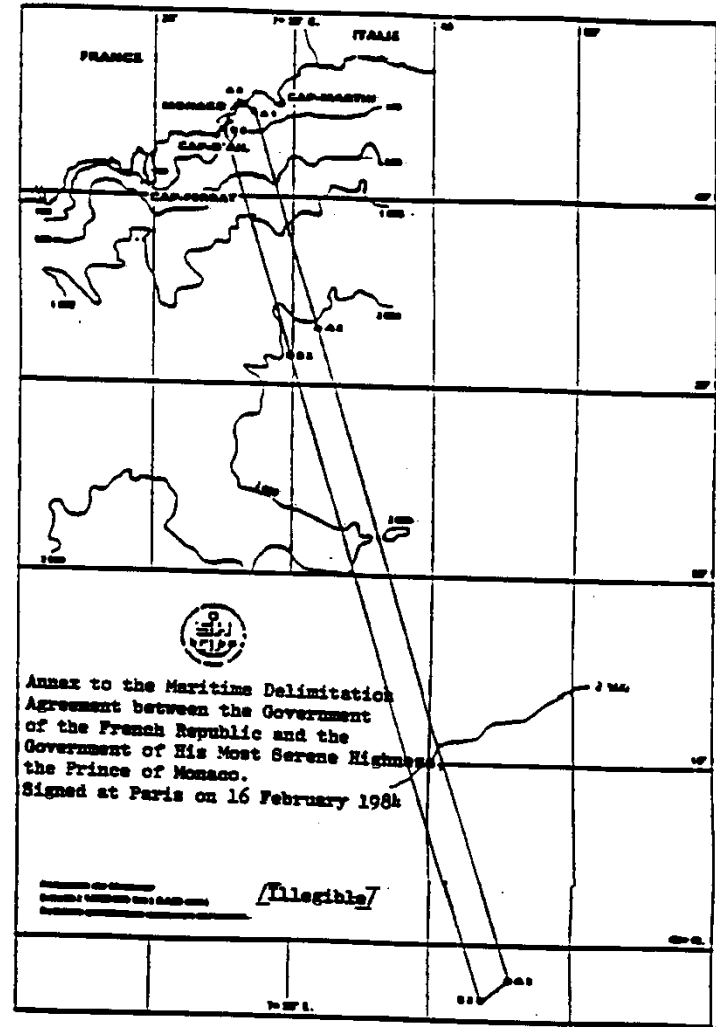
# Mostly meridians and parallels



# Parallel lines (Corridor)

Examples:

- Two Agreements concluded by France (France/Monaco (1984) and France/Dominica (1987));
- In the Gambia-Senegal (1975) Agreement.



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# Joint development agreements



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**A problem you  
may be  
familiar with...**

# Introduction

- Main interests of States regarding the delimitation of maritime zones beyond the territorial sea: economic benefits to be derived from the exploitation of resources
- Presence of these resources can be a driving force behind the negotiations and conclusion of a large number of maritime boundary delimitation agreements.
- Relevance of the location of resources in the areas to be delimited.

# Obligation to cooperate/consult

- Customary international law: States have a general obligation to cooperate in the exploitation of their shared (transboundary) natural resources. E.g.:
- United Nations Charter of Economic Rights and Duties of States (art. 3):  
*In the exploitation of natural resources **shared** by two or more countries, each State must cooperate on the basis of a system of information and prior consultation in order to achieve optimum use of the resources without causing damage to the legitimate interests of others*

*Eritrea-Yemen Arbitration Award:*

*having regard to the maritime boundary established by this Award, the Parties are **bound to inform one another and to consult one another** on any oil and gas and other mineral resources that may be discovered that straddle the single maritime boundary between them or that lie in its immediate vicinity*



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# Shared resources

- if a maritime boundary between opposite or adjacent States intersects a particular deposit; or
- if deposits are found in areas of the seabed, which are subject to the overlapping claims of two or more States



# Scenarios

- Discovery of a oil and gas or other resources straddling a maritime boundary already in place;
- Knowledge of an existing oil and gas or other resources to be taken into account during the negotiation of a maritime boundary delimitation agreement or
- Precaution in case of future discoveries
- Desire/need to enter into provisional arrangements of a practical nature with respect to the resource which lays in the area of future possible delimitation.

# UNCLOS' premise

- Arts. 74(3); 83(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

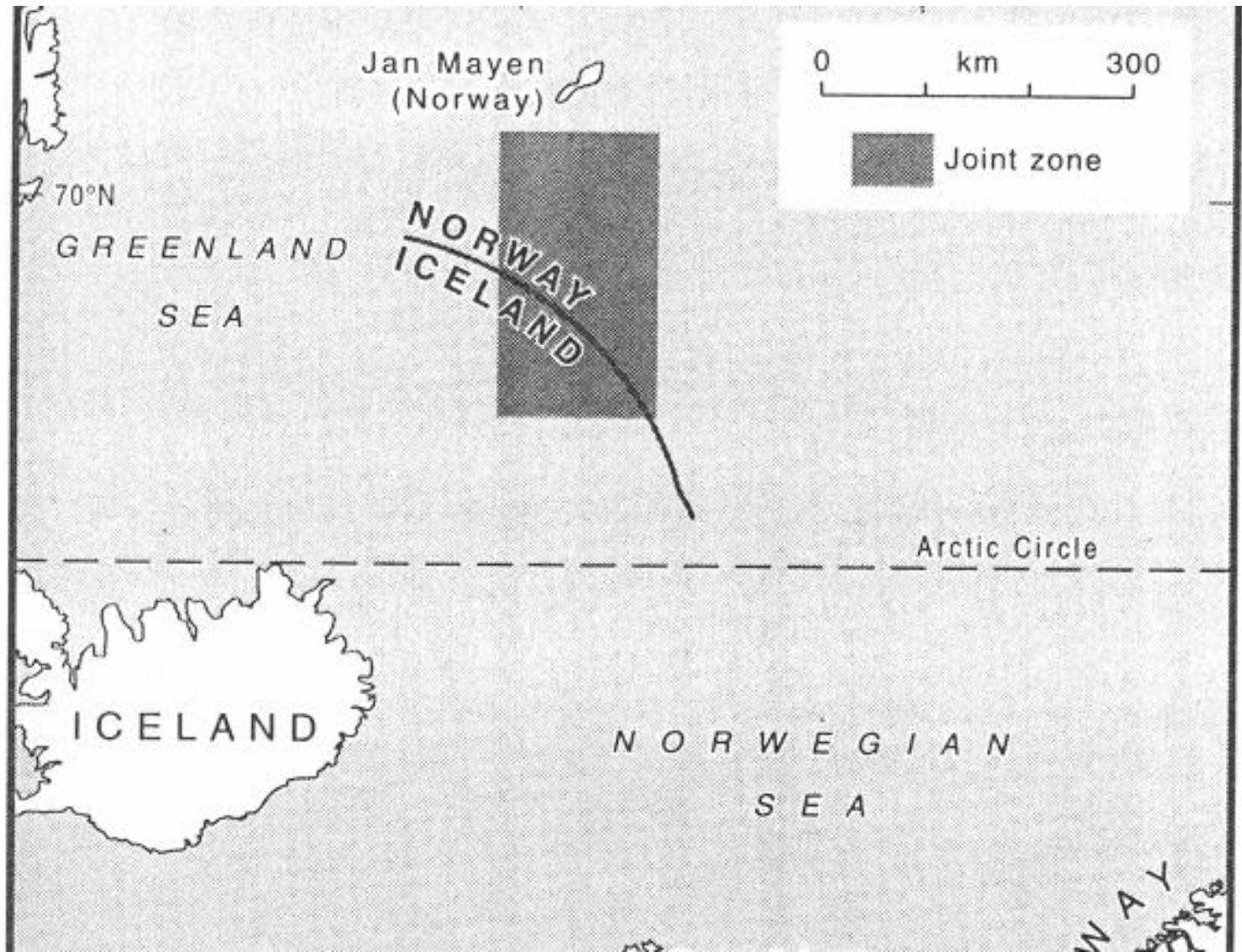
# Two scenarios

1. JDAs in conjunction with maritime boundary delimitation
2. JDAs as a provisional arrangement of a practical nature

## **JDAAs in conjunction with maritime boundary delimitation**

- Bahrain-Saudi Arabia (1958)
- Qatar-United Arab Emirates (Abu Dhabi) (1969)
- France-Spain (1974)
- Colombia - Dominican Republic (1978)
- Australia-Papua New Guinea (1978)
- Iceland-Norway in the North Atlantic (Jan Mayen Island) (1981)
- Faroes-UK (1999)

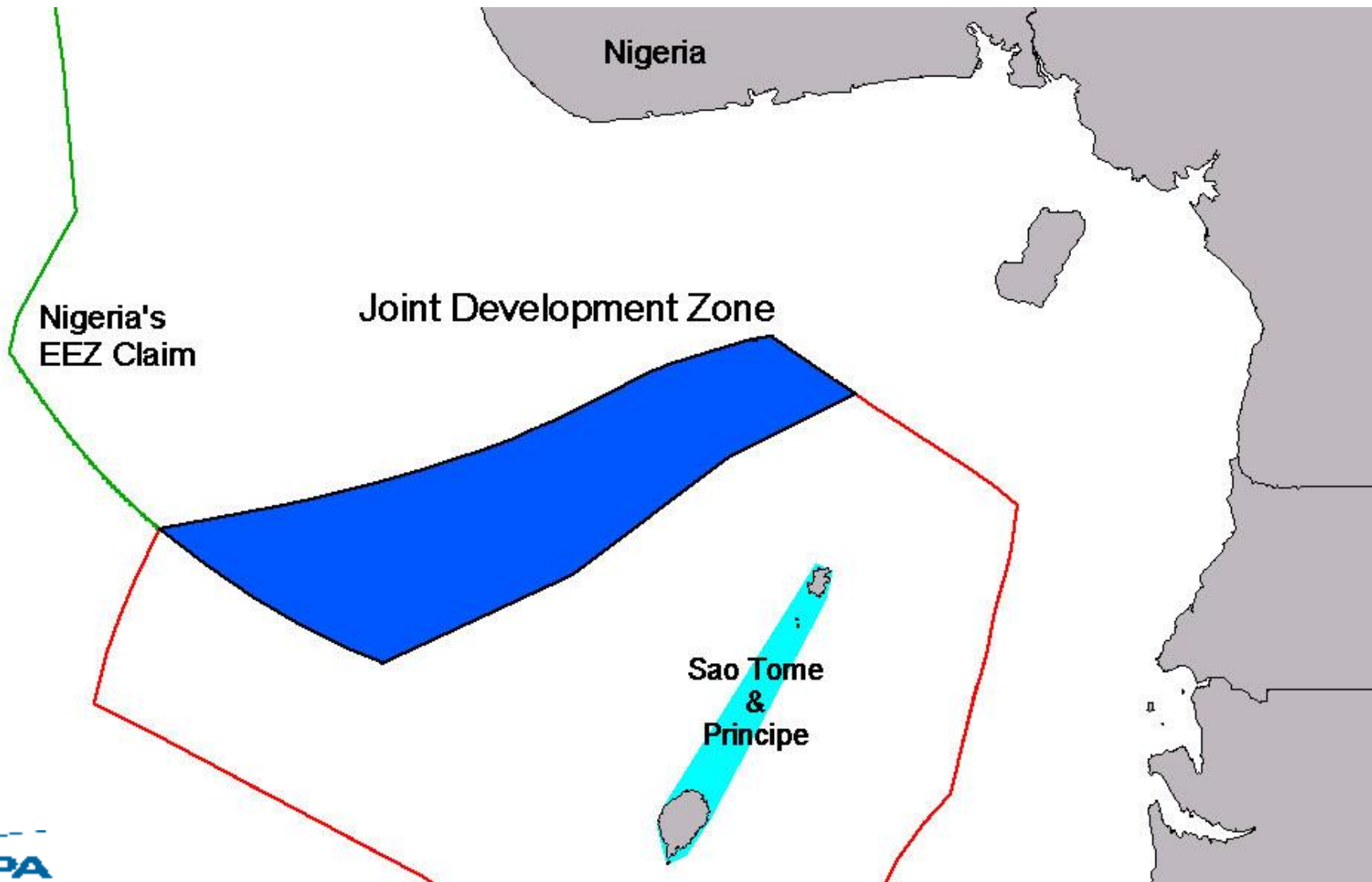
# Scenario 1: Iceland - Norway (1981)



# Joint Zones in lieu of delimitation

- Kuwait-Saudi Arabia (1965)
- Japan-South Korea (1974)
- Sudan-Saudi Arabia (1974)
- Australia-Indonesia (1989)
- Malaysia-Thailand (1990)
- Malaysia-Vietnam (1993)
- Sao Tome-Nigeria (2001)
- Australia-Timor Leste (2002, 2006 and 2017?)
- Barbados-Guyana (2003)
- China-Japan (2008)
- Mauritius-Seychelles (Mascarene Plateau c.s.-2012)

# Scenario 2: Sao Tomé-Nigeria (2001)



# Elements to be determined

- Extent and shape of the JDA area
- What resources/activities to be included
- Definition of parties' rights/obligations
- Definition of third parties' rights/obligations
- Institutional framework
- Revenue sharing criteria
- Temporal scope
- Whether the time invested in negotiating a JDA should rather be invested in negotiating final boundary delimitation



# Defining features

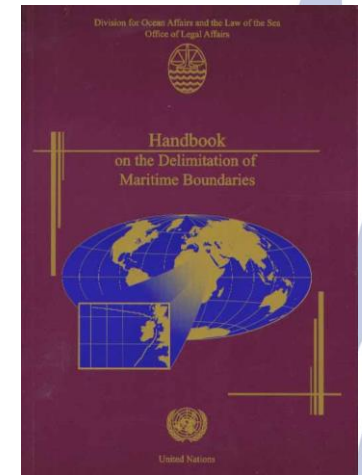
- Neutral, balanced and cooperative (no winners/losers)
- Flexible
- Pragmatic:
  - Opens access to resources/activities
  - Sidesteps sovereignty issues
- “Without prejudice” clauses effectively address concerns over compromising jurisdictional claims
- Ample State practice and examples to draw from

# Other provisional arrangements of a practical nature

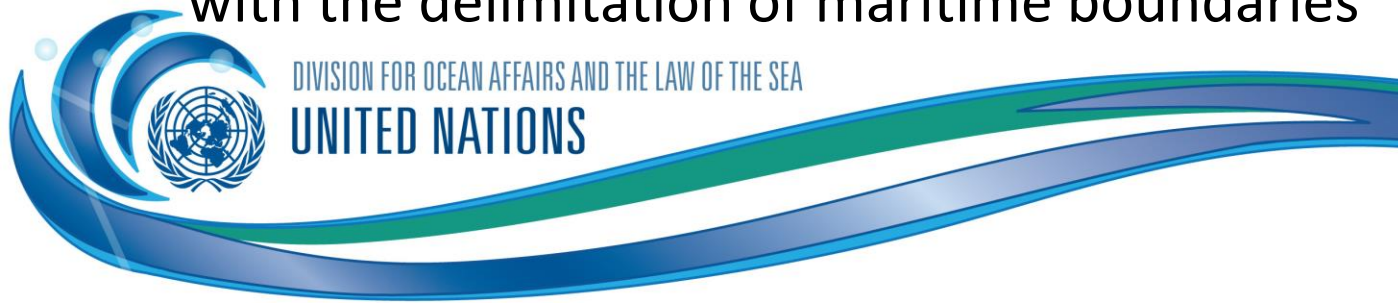
- Moratorium with regard to all uses of the area where claims overlap;
- Joint licensing of a consortium to explore the area;
- Unitisation of specific oil and gas fields within the disputed area

# Handbook on Maritime Delimitation

- Available at: [http://www.un-ilibrary.org/international-law-and-justice/handbook-on-the-delimitation-of-maritime-boundaries\\_cc72cd88-en](http://www.un-ilibrary.org/international-law-and-justice/handbook-on-the-delimitation-of-maritime-boundaries_cc72cd88-en)



- DOALOS maintains a database on its website with texts of national legislation on maritime zones and treaties dealing with the delimitation of maritime boundaries



# Conclusions

- Well-established criteria
- Boundary clarity is conducive to better relationships and generates economic benefits
- Consent of the parties is key
- Direct negotiations give more control than third party settlements
- Flexibility
  - With regard to process
  - With regard to substance
- Existing practice is not binding, but can provide interesting ideas to start from



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