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Maritime delimitation and environmental protection of fragile seas



International jurisprudence approach

- wide agreement on the delimitation procedure proposed by the ICJ consisting of three distinct phases starting with the construction of a provisional equidistant line (1st phase), then trying to adjust it on the basis of the relevant circumstances in order to render the final result equitable for both parties (2nd phase), thus arriving at the verification test (3rd phase)
- deep-rooted idea of bilateralism in the definition of maritime boundaries
- general preference for geographical criteria pertaining to coasts and areas to be delimited
- circumstances other than geographical usually excluded with the aim of ensuring juridical certainty to delimitations

Geographical and Non-Geographical factors

Geographical factors:

- Length and morphology of the coastline
- Proportionality between the length of the coastline and the extension of the area
- Presence of islands
- Presence of ice and other geological or geomorphological factors of the CS

Non-Geographical factors :

Economic factors, behaviour of the Parties, historical rights (such as fishing rights) navigational needs, security needs and environmental factors.

Economic factors can be divided into:

- relating to the **existence of natural resources, such as oil, gas and fishing** (economic factors in the strict sense)
- factors relating to socio-economic aspects, such as the **economic dependence of a State on natural resources** (the economic well-being of a nation).

ICJ Judgment - Case of the Gulf of Maine – 1984

- Important step in the evolution of jurisprudence
- Possibility of invoking the objection of “catastrophic repercussions” in the second phase of adjustment of the line of equidistance (the objection of the Gulf of Maine case)
- Following this decision, in at least three cases, two of them relating to semi-enclosed seas, the ICJ and other tribunals have adopted solutions which differ slightly from the classic delimitation scheme, trying to respond to appeals for the protection of local communities’ fishing rights

Eritrea - Yemen Award of the Arbitral Tribunal on delimitation – 1999Continuation of the traditional fishing regime....

- The delimitation line was not modified to accord with the fishing interests of either of the two Parties
- The tribunal did, however, stress the obligation of the Parties and of the Yemen to ensure the continuation of the **traditional fishing regime**, as decided in the previous arbitral decision on sovereignty (1998)
- In particular, the theory, **based on Islamic law**, of the ‘continuation of the fishing regime traditionally existing in the area’ was confirmed in the arbitral decision on delimitation (1999)

Barbados / Trinidad and Tobago

Award of the Arbitral Tribunal 2006

- The circumstances relating to the fishing resources **could not have any impact on the definition of the boundary line.**
- The tribunal could not concern itself with fishing rights, since these were *ultra petita*
- The tribunal decided to delimit following only geographical criteria, and so adopted the criterion of equidistance.
- But at the same time imposed on the Parties «**Trinidad and Tobago and Barbados are under a duty to agree upon the measures necessary to co-ordinate and ensure the conservation and development of flyingfish stocks, and to negotiate in good faith and conclude an agreement that will accord fisher folk of Barbados access to fisheries within the Exclusive Economic Zone of Trinidad and Tobago, subject to the limitations and conditions of that agreement and to the right and duty of Trinidad and Tobago to conserve and manage the living resources of waters within its jurisdiction**».

Environmental factor

- The environmental factor, understood as the conservation of the marine environment under consideration for delimitation, has not been taken into account by jurisprudence,
- Legal basis of the powers of the coastal State within the continental shelf and the EEZ (artt 56, 58 etc)
- Not exclusive powers of the coastal States
- Concurrent powers of third States in environmental protection
- Rights of third States in the EEZ (freedom of navigations and other peaceful uses of the sea)
- Resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ (art.59) references to equity and to “the respective importance of the interests involved to the parties as well as to the international community as a whole”

Bilateral delimitation agreements Joint development zones / resources or environmental protection

References to this criterion, or to the presence of natural resources, are diffused in bilateral agreements on delimitation

- joint management of a marine area straddling the maritime zones of two or more States
- cooperation in environmental protection

Some examples of bilateral agreements established in some regional seas:

The Senegal/Guinea Bissau joint development zone bilateral Management and Cooperation Agreement signed on 14 October 1993,

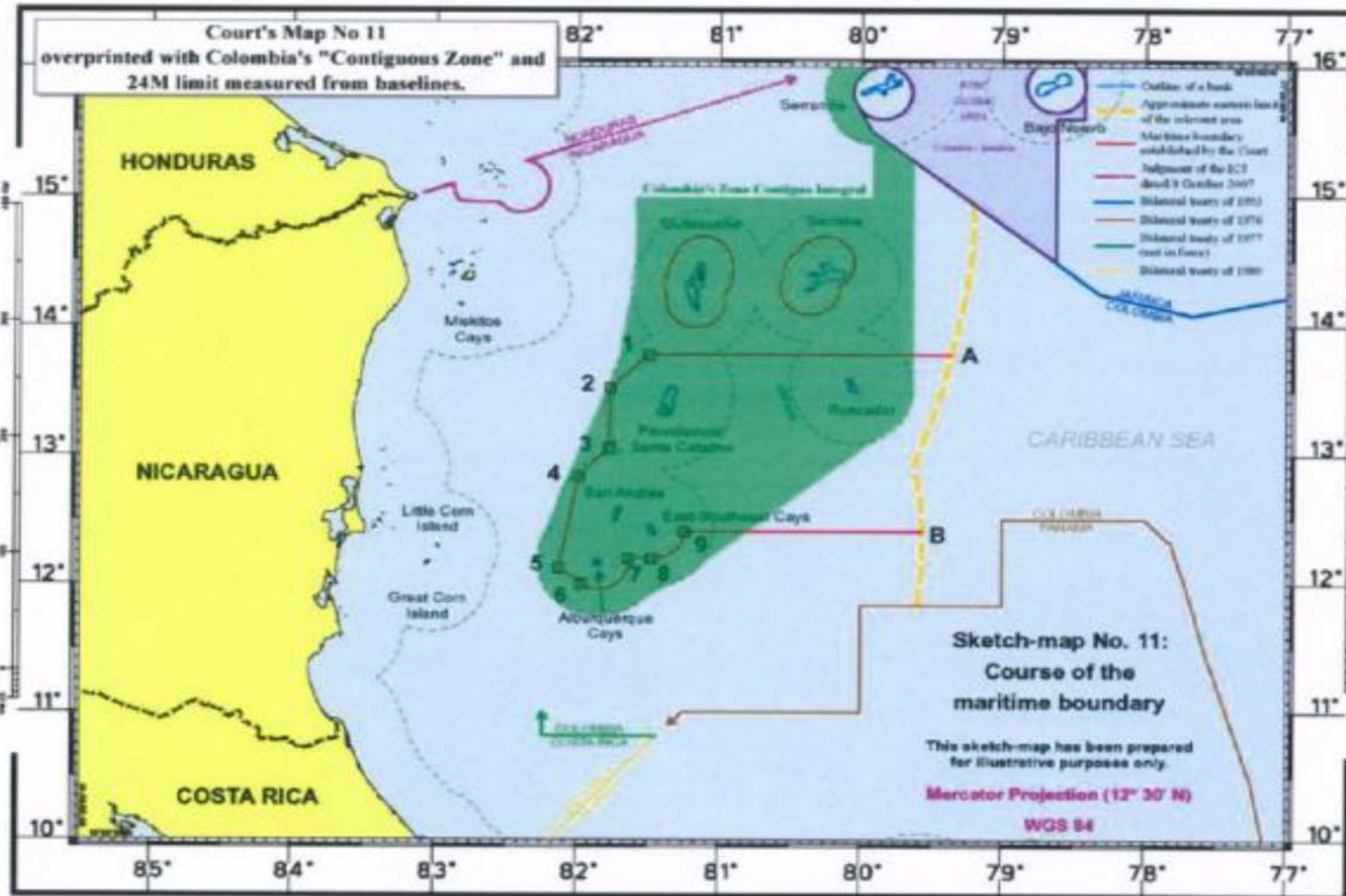
The Colombia and Jamaica joint development zone -12 November 1993 establishing a JDZ in the western Caribbean sea at the same time.

The Nigeria and Sao Tome and Principe joint development zone In the Gulf of Guinea, 21 February 2001. It entered into force in 2003.

The Barbados and Guyana Co-operation Zone - The treaty between Barbados and Guyana which was signed on 2 December 2003 creating a “Co-operation Zone” and two different mechanisms to exercise civil and administrative joint jurisdiction over the living and non-living resources in this Zone.

Delimitation treaty between Norway and Russia regarding the Barents Sea and the Arctic Ocean was concluded on 15 September 2010.. The treaty ensures the continuation of the extensive and fruitful Norwegian-Russian fisheries cooperation with regards to living marine resources.

MICROBIAL COLONIES GROWING ON AGAR - 10-18-96

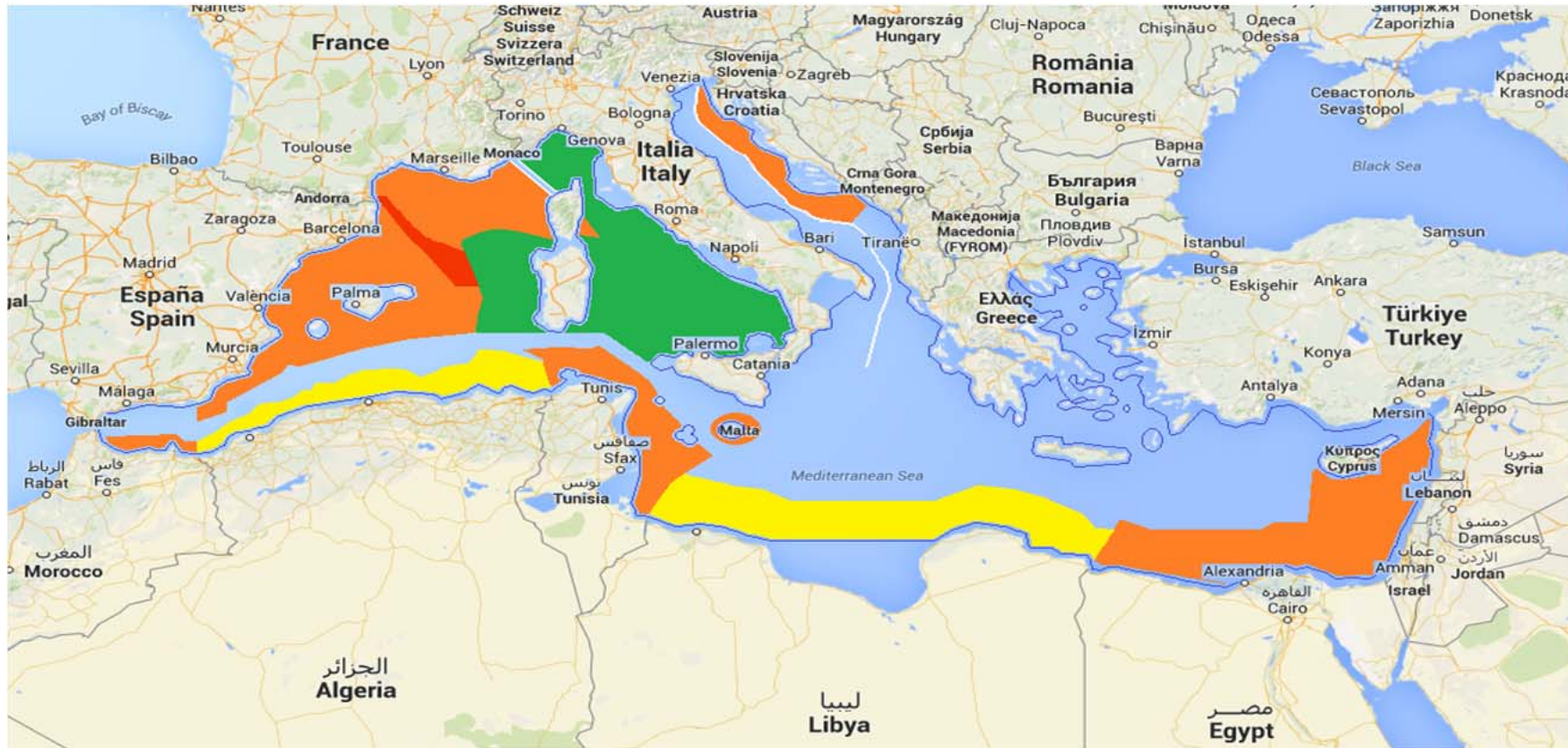


Conflicts in the Caribbean sea



The MEDITERRANEAN SEA

«JURISDICTIONNALISATION»

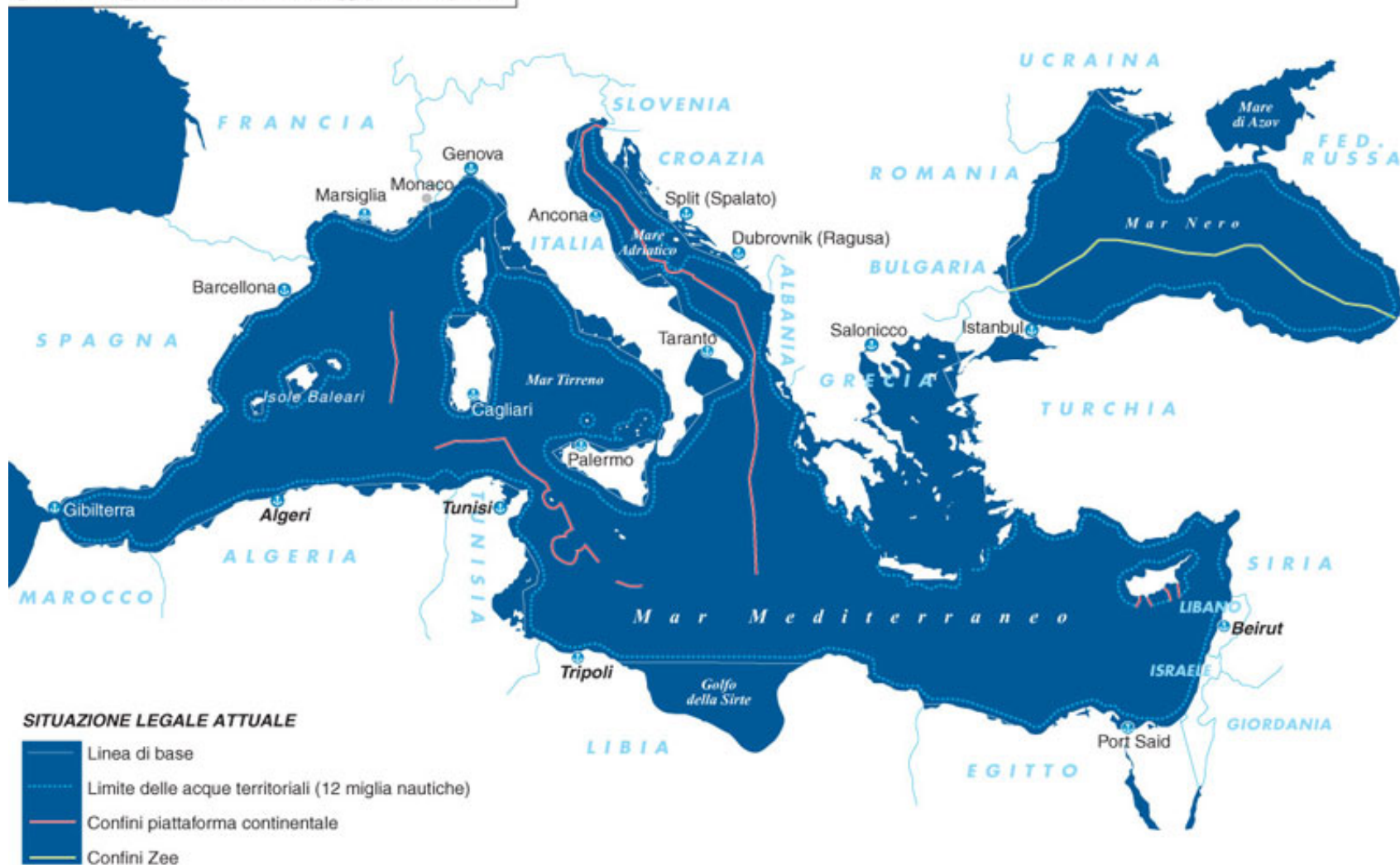


LEGEND

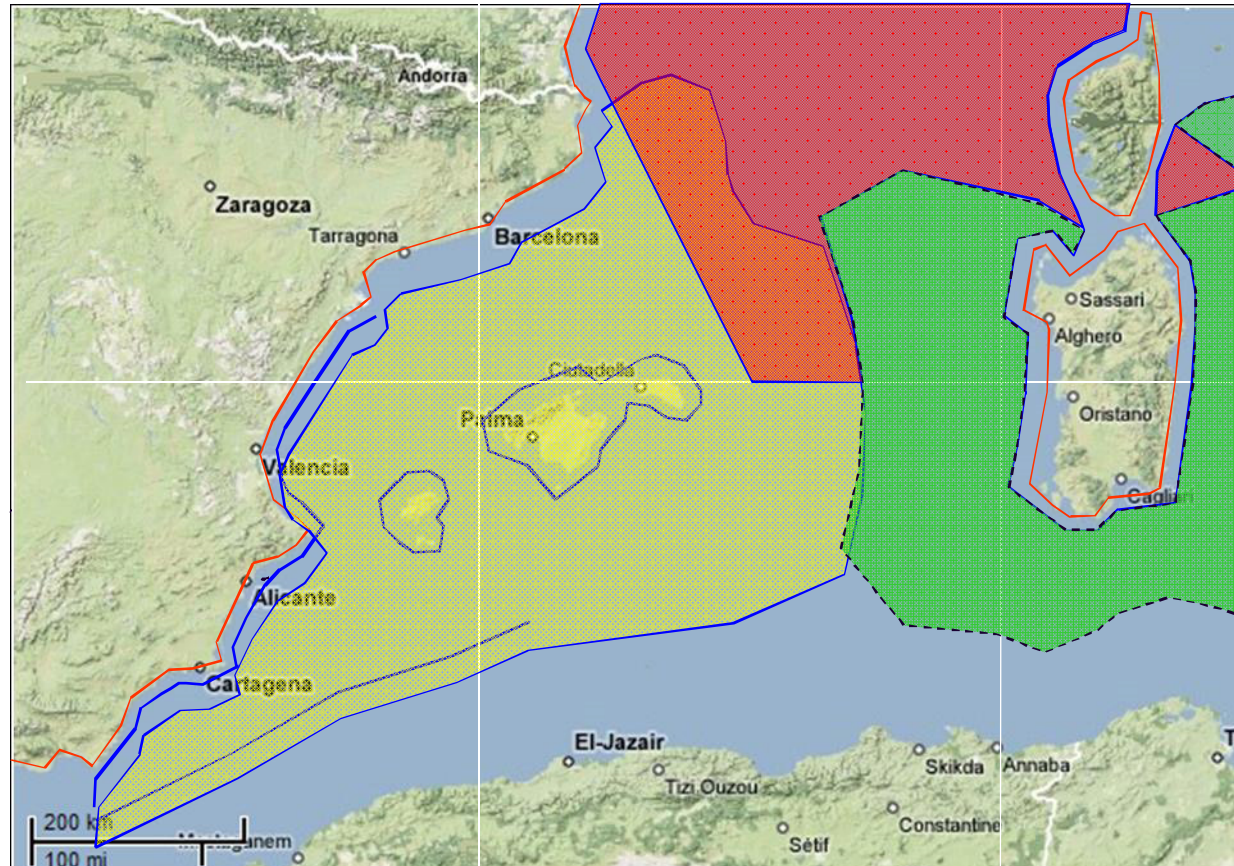
- : National baseline
- : Economic Exclusive Zone
- : Ecological Protection Zone
- : Fisheries Protection Zone
- : Maritime Zone Dispute

EXISTING MARITIME BORDERS

3 - FRONTIERE ACQUATICHE

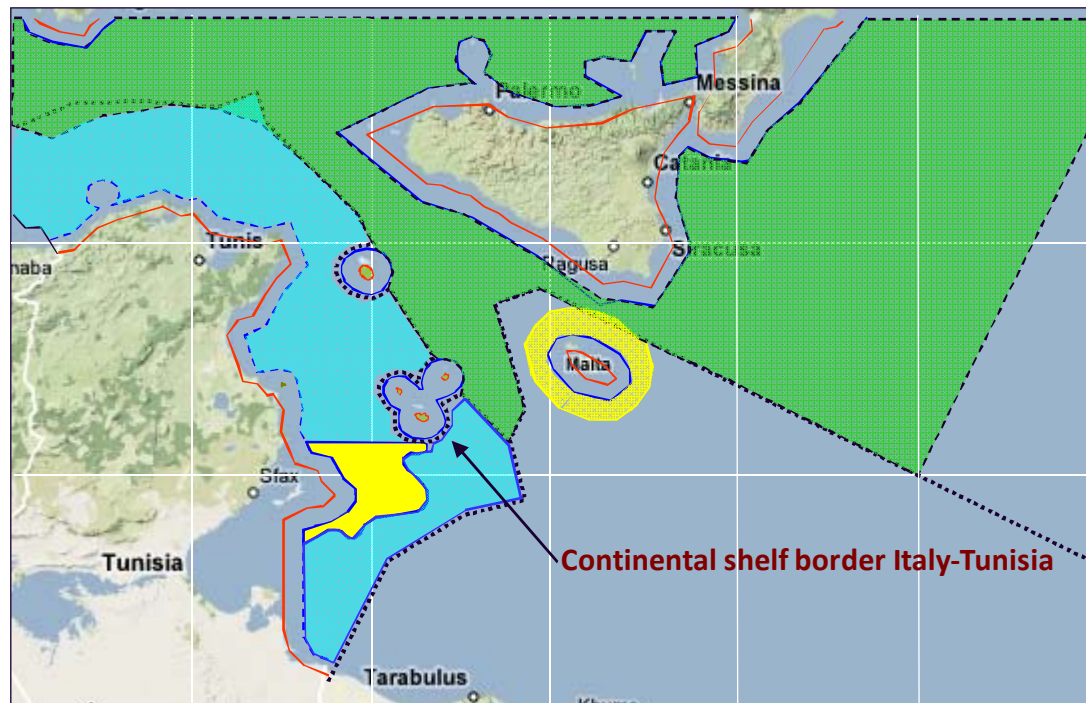


Mediterranean States delimitation conflicts



- French EEZ
- Spanish EEZ
- Italian EPZ

Mediterranean States delimitation conflicts



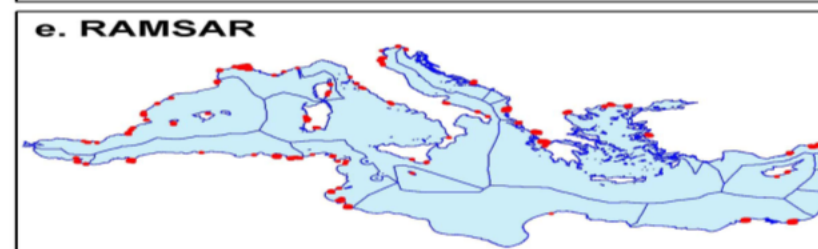
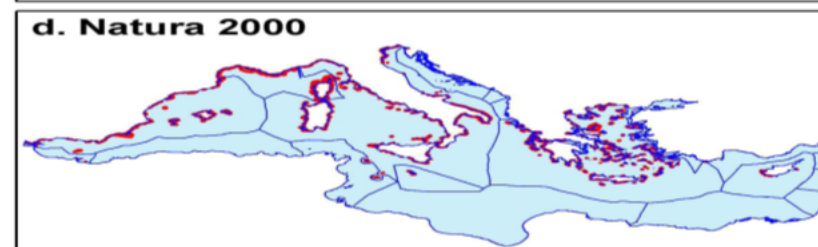
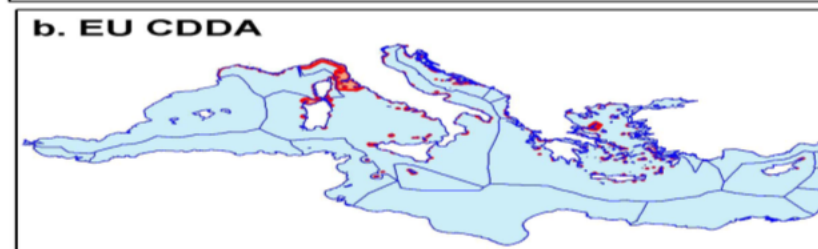
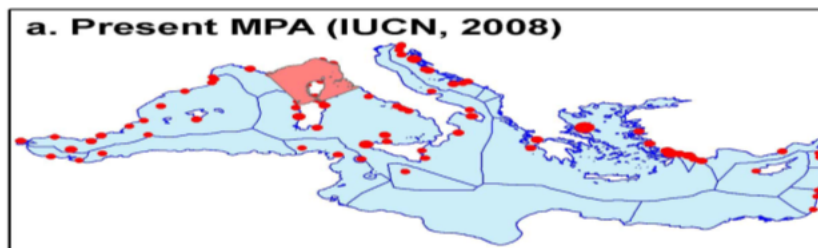
-  Fisheries Protection Zones
-  Italian Environmental Protection Zone

 Tunisian EEZ

..... Use of the border agreed for the CS
also for the EEZ/EPZ = equitable solution?

Slovenia/ Croatia delimitation dispute





0 200 400 800 Nautical Miles

EEZ

Areas of special interest

High sea bottom diversity and/or important species/habitats

Accepted FRA

Oceana proposal

Below 1000m

Coastal area

GreenPeace proposed

Pelagos

Cres-Losinj

4 Pilot MPAs

Cetacean areas agreed 2007

Cetacean areas proposed 2006

Dolphin plan

Demersal

Pelagic

Importance

7

6

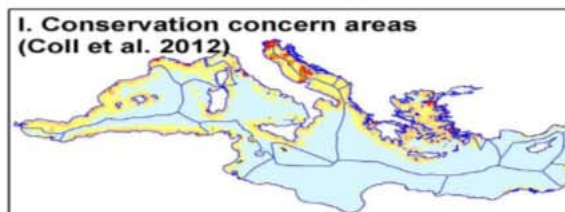
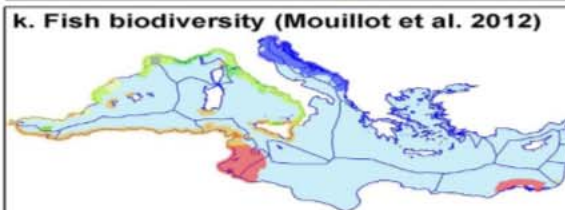
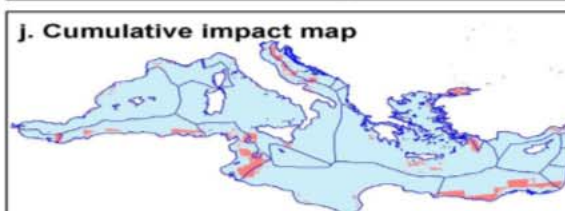
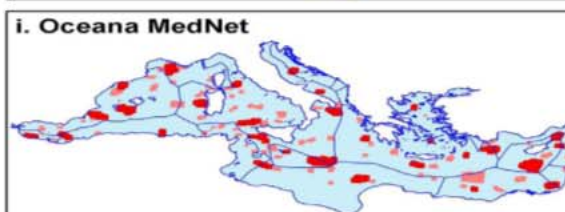
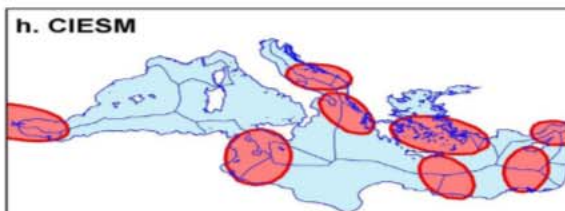
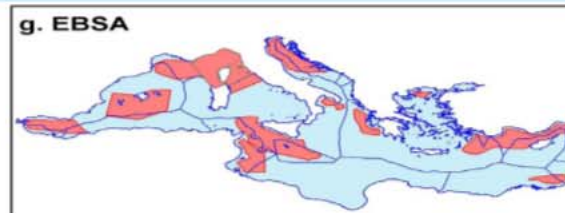
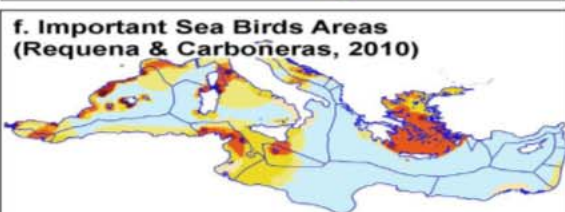
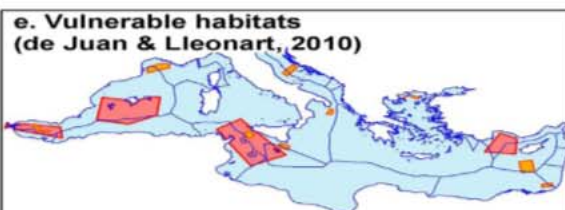
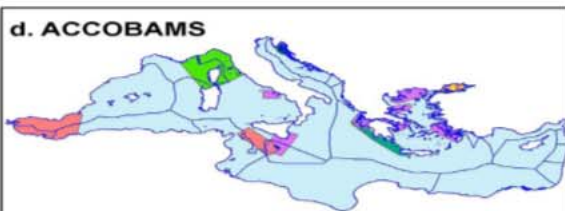
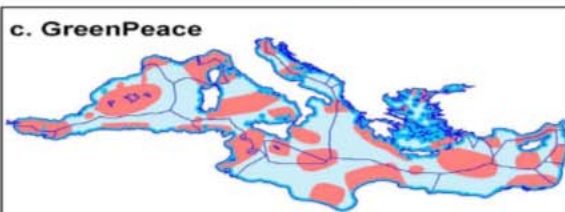
5

4

3

2

1



EBSA

CIESM

100 MedNet

30 Jewels

High impact

Overall richness > 242

Endemic richness > 33

IUCN richness > 34

Phylogenetic Diversity > -1.57

Functional Diversity > 1.64

Number of groups

4

3

2

1

0

0 200 400 800 Nautical Miles

Some remarks

- very vague rules
- excessively restrictive interpretations of jurisprudence and of a varied conventional practice
- appeals of the scientific community and of international organizations for a '**softening of interstate maritime borders**' or, indeed, 'ignoring such boundaries'.
- in semi enclosed and fragile seas call for bilateral or regional agreements aimed at the creation of cross border or inter-regional marine protected areas (ex. Marine Peace Parks)
- an agreement or a judgment on maritime delimitation may solve an interstate problem, but it will not necessarily provide a definitive solution in the interests of the communities involved.

Conclusions...or better....questions

- Would it possible and feasible to amplify the concept of equitable solution as far as allowing the collective interests of the international community to be considered, so overcoming the traditional idea of maritime delimitation a simple division of marine spaces?
- Since EEZs and continental shelves do not fall under the exclusive jurisdiction of States, but are zones where the interests and powers of more than one State coexist and overlap, including general interests of International Community (art.59 UNCLOS), in absence of agreement of the Parties on the maritime border, can an international court adopt predetermined delimitation schemes, in a deep-rooted idea of bilateralism in the definition of maritime boundaries of a semi enclosed/fragile sea?
- In the light of the weakness of the legal basis of coastal states powers over the EEZ and the CS, can a delimitation process disregard more general considerations or values such as the safeguarding of the ecosystem which must be protected in the interests of future generations?



Thank you!

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COST ACTION - NET work of experts on the legal aspects of **MAR**itime **SAF**ety and security – www.marsafenet.org



- **18** European Participating Countries
- **4** Non Cost Countries (Japan; New Zealand; Morocco; Russia)
- **70** Researchers involved

