



**Map 1: Maritime Boundaries in the Caribbean<sup>1</sup>**

# Maritime Boundary Delimitations in the Caribbean

March 2017

<sup>1</sup> Source: Wikipedia Commons. Verified using the Middle America and the Caribbean Regional Overview Map (Region 2) in International Maritime Boundaries, Vol. VII, by Coalter G. Lathrop (Editor). The American Society of International Law (Brill and Nijhoff: Leiden and Boston), 2016

## Introduction

The Caribbean Sea is a body of water located on the Atlantic side of Central America and is bordered by the Gulf of Mexico to the North West, Central America (Belize, Honduras, Guatemala, Nicaragua and Costa Rica) to the West, South America (Panama, Colombia, and Venezuela) to the South, the Lesser Antilles (includes Trinidad & Tobago, Granada, St. Vincent & The Grenadines, Barbados, St. Lucia, Dominica, ST. Kitts & Nevis, and Antigua & Barbuda) to the East, the Greater Antilles (Cuba, Jamaica, Haiti, the Dominican Republic, and Puerto Rico) to the North East, and the Bahamas and United States to the North.

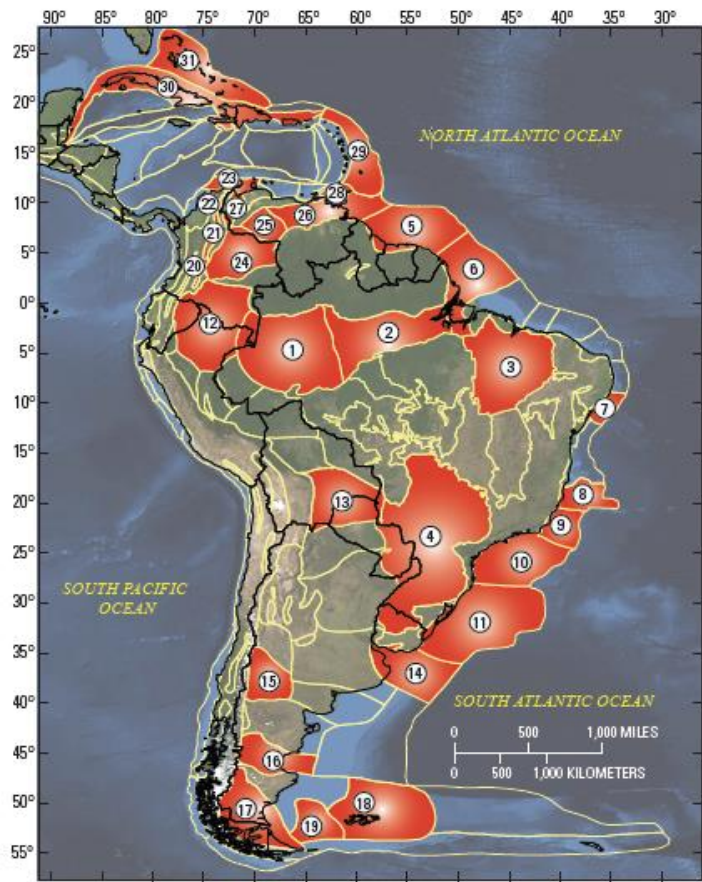
In addition, several former European colonial powers continue to exercise effective control over some of the islands of the Caribbean. The Netherlands is in control of the islands of Aruba, Curacao and Bonaire off the coast of Venezuela

and St. Maarten and St. Eustatius & Saba in the Lesser Antilles. France is in control of three islands in the Lesser Antilles (Martinique, Guadeloupe, and St. Martin); and the UK controls the islands of Montserrat, Anguilla and the Virgin Islands in the Lesser Antilles, and Turks & Caicos Islands and the Cayman Islands in the Greater Antilles.

Parts of the Virgin Islands are controlled by the U.S. as an extension of its effective control over Puerto Rico.

As shown by Map 1, many Caribbean countries have negotiated and signed maritime boundary delimitation agreements with their neighbouring States. For instance, Cuba's maritime boundaries with The Bahamas, The United States, Mexico, Nicaragua and Haiti have all been officially demarcated. A second example is that of the previously mentioned five Islands under the effective control of the Netherlands, which have all negotiated and finalized the demarcation of their maritime boundaries with neighbouring States, individually and / or as a block represented by the Netherlands.

At the same time, as also shown by Map 1, many countries in the Caribbean still have not demarcated their maritime boundaries or reached an agreement with their neighbouring States on the exact demarcations of those boundaries. While the demarcation of maritime boundaries under



*Map 2: The Locations of 31 Geologic Provinces in the Caribbean Surveyed by the USGS*

international law of the sea could for the large part follow the simple principles of the equidistant / median line – particularly in enclosed or semi-enclosed seas such as the Caribbean – fixing the exact coordinates of every turning point on maritime boundary lines could prove to be a very complicated technical endeavour that requires the use of satellite mapping and other geological surveying tools.

In addition, in the absence of political and economic incentives, many countries hesitate to embark on such a length and technically-complicated process of maritime boundary demarcations with their neighbouring States.

In the case of the Caribbean, when and if such incentives have existed in the past, they typically included guaranteeing the access of various contestants to fisheries and other living maritime resources. At the same time, recent developments regarding the energy potential of the Caribbean provide yet another incentive for the demarcation of the region's outstanding maritime boundaries.

### **The Energy Potential of the Caribbean**

According to a May, 2012 Fact Sheet published by the U.S. Geological Survey (USGS), approximately 126 billion barrels of oil and 679 trillion cubic feet of natural gas are extractable in 31 geologic provinces in South America and the Caribbean.

This survey has indicated that geologic provinces numbered 28-31 in the Caribbean (as shown by Map 2 to the right), or The Tobago Trough (No.28), Barbados Accretionary Prism (No.29), North Cuba Basin of Greater Antilles Deformed Belt (No.30) and the Bahamas Platform (No.31) together contain an estimated total of 6.7 billion barrels of oil. This breaks down to 154 million barrels in province No.29, 4.7 billion barrels in province No.30 and 1.9 billion barrels in province No.31.<sup>2</sup> In addition, approximately 46.8 trillion cubic feet of natural gas are also believed to be in provinces 28-31: 15.7 trillion cubic feet in province No.28, 14.9 trillion cubic feet in province No.29, 9.6 trillion cubic feet in province No. 30 and 6.5 trillion cubic feet in province No.31.<sup>3</sup>

While provinces 30 & 31 have the highest oil potential (4.7 and 1.9 billion barrels, respectively); provinces 28 & 29 have the highest natural gas potential (15.7 and 14.9 trillion cubic feet, respectively). Province 30 has the highest combination of both oil and natural gas (4.7 billion barrels of oil and 9.6 trillion cubic feet).

For comparative purposes, in March-May, 2010 two other reports by the USGS have estimated that 1.7 billion barrels of recoverable oil and 122 trillion cubic feet of natural gas are found in the Levant Basin, while another 1.8 billion barrels of recoverable oil and 223 trillion cubic feet of natural gas are available under the Nile Delta Basin of the East Mediterranean.<sup>4</sup> Giving the

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<sup>2</sup> “Assessment of Undiscovered Conventional Oil and Gas Resources of South America and the Caribbean,” U.S. Geological Survey, Fact Sheet 2012-3046 (May, 2012)

<sup>3</sup> Ibid. Table 2, p.2

<sup>4</sup> “Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean,” US Geological Survey Fact Sheet 2010 – 3014 (March, 2010) <https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf> (last accessed 13/03/2017); “Assessment of Undiscovered Oil and Gas Resources of the Nile Delta Basin Province, Eastern Mediterranean,” US Geological Survey Fact Sheet 2010 – 3027 (May 2010) <https://pubs.usgs.gov/fs/2010/3027/pdf/FS10-3027.pdf> (last accessed 13/03/2017)

significant natural gas potential of this other region, those discoveries have led to what could be termed *the energy rush of the East Mediterranean* as they have transformed the East Mediterranean into potentially Europe's new energy corridor. Similarly, the energy resources of the Caribbean have the potential of turning it into a new energy corridor for Central and America and Caribbean states, thereby reducing their reliance on energy imports from North and South America. However, in order to reap the benefits of this tremendous wealth, currently outstanding maritime boundaries in the Caribbean must be delimited. In particular, while some of those resources could be found entirely within the territorial jurisdictions (land/maritime) of the relevant States, others could be best described as transboundary resources that require reaching joint development agreements for their effective development.

In other words, prior to the establishment of an effective system for the exploration & exploitation of the energy resources of the Caribbean, the maritime boundaries between the relevant States must be delimited through bilateral and multilateral negotiations and agreements, the drafting of which could follow the example of similar agreements signed between i.e. States bordering the East Mediterranean, while also taking into consideration the unique circumstances of each individual case.

### **Energy – Related Activities of States bordering the Caribbean**

Based on a review of the periodic publications of the global energy-specialist website *interfaxenergy.com* relevant to the energy sector of Latin America and the Caribbean since the publication of the 2012 USGS (May, 2012 – Present), one could easily point out that the energy potential of the Caribbean remains largely underexplored and underexploited.

It appears that explorations for energy resources, and energy production thereof, have been mostly carried out off the coasts of Guyana, Trinidad & Tobago, Barbados, Venezuela, Colombia, Panama, Nicaragua, Jamaica, Honduras and Belize to the exclusion of all other regional players.

On the other hand, the large majority of Caribbean island States located in geologic provinces No.29-31 as per the USGS' May 2012 report still have not undergone any seismic tests, nor awarded any energy exploration licenses in their respective maritime jurisdictions.

Moreover, when energy exploration licences have indeed been awarded to the likes of *British Gas* and *ExxonMobile* off the coasts of Trinidad & Tobago, Venezuela and Guyana, existing maritime boundary disputes are hindering the full development of transboundary energy resources in those waters (geologic province No.28 on the May 2012 USGS report).<sup>5</sup>

The delay in carrying out energy explorations - related activities by the large majority of Caribbean island states could be due to a lack of resources at their disposal or due to a lack of awareness of the energy potential in the region. Either way, as the example of Trinidad & Tobago, Venezuela

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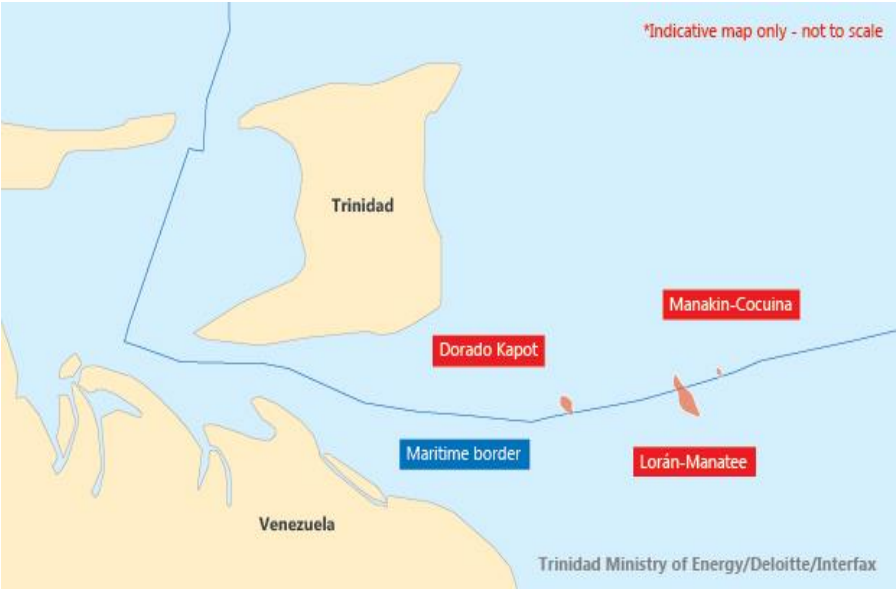
<sup>5</sup> See in particular Chris Noon, "Cross-border Caribbean Giants May go Untapped," *Interfax Energy* 26/02/2015 <http://interfaxenergy.com/gasdaily/article/15379/cross-border-caribbean-giants-may-go-untapped> (last accessed 13/03/2017); and Chris Noon, "Border Spat Blights Exxon's Guyanese Bonanza," *Interfax Energy* 12/07/2016 <http://interfaxenergy.com/gasdaily/article/21041/border-spat-blights-exxons-guyanese-bonanza> (last accessed 13/03/2017)

and Guyana shows, the negotiation and signing of maritime boundary agreements by those regional players that still have not done so is an essential step towards the effective utilisation of undiscovered energy resources in the Caribbean.

**Precedence(s) of Energy-Related Arbitration in the Region**

In the absence of those agreements, the situation could, and has indeed progressed in the past into a conflict over resources that necessitated the intervention of regional and/or international courts. This is the case particularly in instances of a unilateral issuing of energy exploration / exploitation licenses by one State without consulting the other State(s) with which it is sharing a transboundary energy resource, or with whom it is contesting jurisdiction over a maritime zone.

One such scenario has indeed developed in 1998 off the coast of the North-Western corner of South America between Guyana and Surinam, when Guyana issued a concession to the Canadian exploration and development company *CGX Resources Inc.* in a maritime zone claimed by both countries, without consulting Surinam. As a reaction, Suriname demanded in 2000 the cessation of all seismic activities by *C.E. Thornton* oil rig and drill ship of the Canadian company, and it did not hesitate to deploy naval patrol boats to the area to enforce those demands. In turn, Guyana instituted arbitration proceedings against Suriname under the UN Convention on the Law of the Sea (UNCLOS).



In *Guyana v. Suriname* (2007), the Arbitral Tribunal of the Permanent Court of Arbitration unanimously ruled that Suriname’s action “constituted a threat of the use of force in violation of UNCLOS, the UN Charter and general international law in that it was more akin to a threat of military action than mere law enforcement activity.” The Tribunal held that Suriname should have resorted to diplomacy first. At the same time, the Tribunal ruled that both countries were in violation of their obligations under Articles 74(3) and 83(3) of UNCLOS to negotiate a temporary agreement until a final settlement for their contested maritime zone has been reached. Further, in the Tribunal’s view, Guyana should have kept Suriname informed about its seismic research



activities, while also seeking its cooperation in the development and management of the contested zone.<sup>6</sup>

The preceding example illustrates what States could be faced with in the absence of negotiated maritime boundary agreements. At the same time, States would not necessarily be the only affected parties if the situation in a contested maritime zone does indeed escalate into a dispute.

A second precedence in international arbitration has indeed further illustrated the impact of such a dispute on third parties operating in unsettled maritime zones, particularly oil and gas companies. This is the case of *RSM Production Corporation v. Grenada* (2011),<sup>7</sup> the facts of which “are largely composed of unusually aggressive attempts by RSM...to interject...[itself] into the sovereign attempts by Grenada to negotiate maritime delimitation with Trinidad and Tobago and Venezuela.”<sup>8</sup> Here, the Tribunal affirmed that “oil companies should not interfere in boundary disputes, particularly where they are unlikely to be able to contribute to resolution in any meaningful fashion.”<sup>9</sup>

### Fisheries and Other Natural Resources

If the achievement of equitable results is the main objective of negotiations related to maritime boundary demarcations, factors such as the proportional allocation of other natural resources i.e. fisheries in contested maritime zones have often also been taken into consideration by regional and international courts. This has been particularly underscored by the judgement of the International Court of Justice (ICJ) in 2012 regarding the delimitation of the continental shelf between Nicaragua and Colombia (*Nicaragua v. Colombia*).<sup>10</sup>



In a most recent judgment by the ICJ on the Caribbean region, the case of *Nicaragua v. Costa Rica* (2015), the Court has also considered the transboundary environmental impact of the actions of one party (Nicaragua) in its border area with neighbouring States (in this case, Costa Rica).<sup>11</sup>

<sup>6</sup> *In the Matter of an Arbitration Between Guyana and Suriname*, Permanent Court of Arbitration, Award of the Arbitral Tribunal (The Hague, September 17, 2007), para 445; as interpreted by Michael Blyschak, “Offshore Oil and Gas Projects Amid Maritime Border Disputes: Applicable Law,” *The Journal of World Energy & Business*, Oxford University Press 2013, p.18

<sup>7</sup> See *RSM Production Corporation v. Grenada*, International Centre for Settlement of Investment Disputes (ICSID), (April 28, 2011), Case No ARB/05/14 <http://www.italaw.com/sites/default/files/case-documents/ita0727.pdf>

<sup>8</sup> Blyschak, *supra* note 6, p.21

<sup>9</sup> *Ibid.*

<sup>10</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgement*, *I.C.J. Reports 2012*, p.624

<sup>11</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) & Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, *Judgement*, 16 December 2015

