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An in-depth analysis of maritime boundaries in Africa

Abstract

One of the aspects that most affects maritime security is undoubtedly the appropriate setting of boundaries between neighbouring states, considering that once these have been determined, each country knows the extent of their jurisdiction. This facilitates navigation for third states, as it removes the tension caused when two more states stake a claim to the same maritime space. At the same time, they know with certainty what rules to follow depending on the waters they are crossing. The introduction of the United Nations Convention on the Law of the Sea of 1982, with new spaces and extensions, has complicated the situation, particularly for Africa, the continent with the largest number of coastal countries. The aim of this paper is to explain what maritime boundaries have been definitively established in Africa (by agreement or by a judgment of an international court) and thus know for certain what regions enjoy stability in the matter and which, by exclusion, are still pending delimitation. Furthermore, knowing what maritime boundaries have been established and the delimitation criteria applied can constitute an important reference and aid for other African states with delimitations pending.

Keywords

Maritime Borders, Maritime boundaries, Africa, Maritime Security, Settlement of Disputes, Law of the Sea.

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Introduction

It is a well known fact that the adoption of the United Nations Convention on the Law of the Sea on 10 December 1982 created a tidal wave between neighbouring states in what had hitherto been more or less calm waters. The extension of the territorial sea to 12 nautical miles, on the one hand, and, most especially, the emergence of a new maritime space like the exclusive economic zone (EEZ), the limit of which was set at 200 nautical miles, together with the possibility of extending the outer limits of the continental shelf beyond this limit, sparked a flurry of overlapping maritime claims from states with common borders. In addition, the introduction of a new maritime status, the archipelagic state, significantly altered the baselines for calculating the maritime spaces of countries comprised solely of islands and/or archipelagos, which is the case of Cape Verde, São Tomé and Príncipe, Comoros and Seychelles, thus forcing a redefinition of the boundaries with neighbouring states¹.

The new maritime zones created by the Convention of 1982 have complicated the delineation of boundaries on the sea map, and this has not left the continent of Africa unaffected; far from it, considering that Africa is the continent with the largest number of coastal countries: 38, no less. In addition, there are the non-self-governing territories of the Western Sahara, those governed by the United Kingdom, and France's overseas territories.

Without a doubt, the proper delimitation of maritime boundaries between states is essential for several reasons – not least for maritime stability and security in the region. In this respect, numerous factors have to be taken into consideration and, in the case of Africa in particular, the economic and strategic implications.

From an economic perspective, particular account must be taken of the continent's oil, gas and mining deposits, such as phosphate and diamonds in southern Africa, primarily in Namibia. An additional consideration is the high quality of African oil and the continent's advantageous geopolitical position in relation to Europe and the U.S. Furthermore, the location of oil fields and natural resource deposits can result in considerable complications when states unilaterally determine and apportion exploration blocks that infringe upon areas of disputed ownership by a neighbouring state, bearing in mind that exploration blocks are delineated by strict lines, yet oil fields often overlap maritime boundaries, which is the case of the Gulf of Guinea².

1 It should be noted that, in international law, the term 'boundary' to which we refer means 'the line that marks the outer limit of a state's territory, in other words, the line that determines the spatial area within which a state exercises sovereignty to the exclusion of other states (...) nowadays this category encompasses spaces which are physically different, over which states also exercise sovereignty, such as airspace and maritime spaces. Accordingly, reference must now be made to the different types of boundaries: territorial, air, sea, river and lake' (see LÓPEZ MARTÍN, Ana Gemma. 'Frontera'. Román Reyes (Dir.). *Diccionario Crítico de Ciencias Sociales*, vol. II, 3.^a ed. Madrid and Mexico: Plaza & Valdés, 2009, pp. 1326-1327).

2 For more information, see SOARES DE OLIVEIRA, Ricardo. *Oil and Politics in the Gulf of Guinea*. London: Hurst Publishers 2007.

Similarly, we must highlight the wealth of natural resources in African waters. Fishing is the main driver of many economies, such as Angola, Namibia and Egypt. Not surprisingly, it is estimated that it contributes some 10 billion dollars to African economies each year. These multiple sources of wealth heighten the African countries' eagerness to attain economic sovereignty over these areas, consequently exacerbating disputes. Hence the importance of accurately defining the respective exclusive economic zones and continental shelves of bordering states.

And strategic reasons are no less important. As Gutiérrez Castillo has pointed out, «nowadays, international peace and security are not only considered in terms of military confrontation and conflict [...] there are new, complex problems that transcend borders and which can only be effectively addressed by defining these borders»³. The absence of defined boundaries can have a destabilising effect in the fight against the growing threat of maritime piracy, organised crime, illegal immigration and even terrorism. And this is a particularly important concern for Europe, given that the various types of criminal activities that reach the European continent usually come via African waters. To effectively combat these threats, interstate cooperation is required; however, this is difficult if states feel that their national interests and sovereignty are under threat, and if they are uncertain about the extent of their sovereignty and jurisdiction.

All these problems underlying the delimitation of the new maritime spaces have heightened the tension in already strained relations between neighbouring states. This is why, as pointed out earlier, if the boundaries are not properly defined, it can give rise to numerous disputes between states, which can take on not just regional, but also international dimensions. And this can have a disastrous effect on efforts to maintain maritime security and the development of countries.

While it is true that significant progress has been made in the delimitation of maritime boundaries in Africa over the past two decades, there are still numerous boundaries pending delimitation, which in some cases has led to major instability in the region⁴. The African Union had set the end of 2017 as the deadline for all states to delimit their boundaries; by that date, however, only 30% of boundaries had been delimited⁵. It is obvious, therefore, that there is still a great deal of work to be accomplished in this area.

3 GUTIÉRREZ CASTILLO, Víctor Luis. *El Magreb y sus fronteras en el mar. Conflictos de delimitación y propuestas de solución*. Barcelona: Huygens editorial 2009, pp. 22-23.

4 Aware of the importance of this issue and its consequences, the African heads of state and government adopted *the African Charter on Maritime Security, Safety and Development* during an extraordinary session of the Assembly of the African Union in Lome on 15 October 2016. Accordingly, the signatories committed to taking specific, measurable actions to promote the Africa-wide development of a sustainable 'blue economy', underpinned by good maritime security and efficient maritime law enforcement (IMO, *Annual Report 2016*, TC 67/3(a), 12 May 2017).

5 This was incorporated into the *African Union Border Programme* (AUBP), adopted at the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Addis Ababa in 2007, with the aim of establishing their maritime boundaries, including the outer limits of the

The aim of this study, therefore, is to present an overview of the current situation with regard to maritime boundaries that have been definitively established, either through mutual agreement following negotiations between neighbouring states or by a judgment of an international court. It is extremely important to analyse current boundary delimitation practices in order to identify not just the areas that enjoy stability in the matter, but, by exclusion, the regions with boundaries still pending delimitation. At the same time, it is important to find out the criteria used when setting boundaries, as this could be useful for African states with delimitations pending and could serve as a reference or support for future agreements. Therefore, we will also take a brief look at cases where a failure to delimit maritime boundaries has caused greater tension between the countries concerned.

When taking a closer look at Africa's maritime boundaries, we will use the 'geoscheme' devised by the United Nations for use in studies on Africa. Because the system is based solely on geographical factors, it is an objective criterion and, therefore, has no connotations that might condition what is intended to be an impartial analysis. According to the geoscheme, the macro-geographical region of Africa is divided into five subregions. In order to obtain a systematised overview of the boundary situation, we will begin our journey through the region in the West, before moving on to Central, Southern and East Africa, and concluding in North Africa.

An introduction to international law on the delimitation of boundaries between neighbouring states

Before moving on to our analysis, we believe it is necessary to take a brief look at the international rules governing the delimitation of maritime boundaries between neighbouring states. The aim is not so much to check that the boundaries already set comply with these rules but, rather, to ascertain what guidelines states with delimitations pending should follow. The latter will be accompanied by a reference to the mechanisms available for the resolution of disputes standing in the way of a delimitation agreement.

The *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS) is without a doubt our main legal reference when presenting the rules governing the delimitation of maritime boundaries between neighbouring countries. Although the Convention did not enter into force until 16 November 1994, it should be pointed out, in relation to the delimitation of spaces between neighbouring states, that the rules are based on customary law; a type of law supported by substantial international case law which, moreover, has inevitably influenced the provisions of the UNCLOS. Nevertheless, it should be borne in mind that, of the 38 African states with

extended continental shelf (see OKONKWO, Theodore. «Maritime Boundaries Delimitation and Dispute Resolution in Africa». *Beijing Law Review*, vol. 8. 2017, p. 61).

a coastline (including the French and British territories), only Libya is not a party to the Convention. Having said that, it should also be pointed out that, as indicated previously, the rules that apply to the existence and extension of the various maritime spaces and their delimitation criteria are generally consuetudinary, and Libya has never questioned them. Therefore, their binding nature is beyond question.

Rules applying to the delimitation of maritime boundaries. Equity as a goal

First and foremost, the delimitation of the territorial sea, exclusive economic zone (EEZ) and continental shelf shall be by negotiated agreement between states with opposite or adjacent coasts, as provided by Articles 15, 74 and 83 of the UNCLOS, respectively.

If the states fail to reach an agreement, delimitation shall be determined by the competent court or arbitration body in accordance with the relevant principles and rules of international law. When this is the case, the delimitation criteria laid down by international law is as follows:

With regard to the delimitation of the territorial sea, Article 15 provides that the boundary shall be set from «a 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».

In addition, Articles 74 and 83 provide that the delimitation of the exclusive economic zone and continental shelf «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 an equitable solution».

Note the different terminology used depending on whether it is the territorial sea, EEZ or continental shelf; while the principle of equidistance is cited in the first case, an equitable solution is cited in the second. This difference can be explained by the judgment delivered by the International Court of Justice (ICJ) on 20 February 1969 in the *North Sea Continental Shelf Case* between Denmark, the Netherlands and the Federal Republic of Germany, which set an important precedent in the delimitation of maritime spaces. When assessing the applicability of the equidistance principle in the delimitation of the continental shelf between the neighbouring states, the ICJ ruled that equidistance was not an obligatory rule of customary law and rejected the general principle or rule of equidistance. It stated that the delimitation principle laid down by international law since the Truman Declaration –the international treaty created to codify the rules of international law relating to continental shelves– provides that delimitation should be based on equitable principles and take account of all «relevant circumstances». It can be concluded from the ICJ's statement that the application of

the median line or equidistance delimitation principle is not always fair because there may be other circumstances that make it unduly onerous for one of the states concerned, in which case the equitable delimitation rule established by international law would not be observed.

It should be pointed out that, despite the difference in the terminology used, it is a fact that in international judicial and arbitral settlements of boundary delimitation disputes, the objective is always the same, i.e. to try to find an equitable solution for all parties. Thus, according to this practice, the delimitation process consists of two consecutive phases: firstly, provisional delimitation is calculated from a median line equidistant from the baselines of the neighbouring states. After this, it is assessed whether there are «relevant circumstances» that warrant an adjustment of the median line in order to ensure that the delimitation result is equitable. Hence, the arbitral tribunal concerning the maritime boundary between Barbados and the Republic of Trinidad and Tobago in 2006 asserted that, «The identification of the relevant circumstances becomes accordingly a necessary step in determining the approach to delimitation». Similarly, some years before, in 1977, the arbitral tribunal that delimited the continental shelf between France and the United Kingdom also upheld that the «combined equidistance/special circumstances rule» reflected the customary law of equitable principles and that these applied irrespective of whether the coasts were opposite or adjacent.

If the decision-making body deems that the equidistance principle is unfair and that relevant circumstances exist, the latter will be taken into account when adjusting the provisional boundary set on the basis of the median line. However, if such circumstances do not exist, the provisional equidistant median line becomes the definitive boundary.

At this point, the question that remains to be answered is which of these *pertinent, relevant or special circumstances* should be taken into account when adjusting the equidistant median line. As there are no substantive norms governing this aspect, to find an answer, we must look to the vast body of judicial and arbitral case law on maritime delimitation which, as Prosper Weil has pointed out, has itself «undertaken the direct definition of the law of maritime delimitation, giving it the appearance and name of general or customary international law». There is probably no other chapter of international law which has been written so exclusively and rapidly by the international courts’.

Pursuant to the aforementioned case law, the *circumstances that may be relevant* in determining equitable delimitation are varied and can be classified as geographical and non-geographical.

As far as the former are concerned, we find that some or all of the following *geographical factors* may be relevant, as they are not mutually exclusive:

- The natural prolongation of the coast or ocean front; this criterion must take into consideration the proportionality between the respective lengths of the bordering states.

- The geography of the area, taking account of specific aspects of the region such as whether it is a semi-enclosed sea or an ocean.
- The general configuration of the coast, taking into consideration the general direction of the coastline, whether it is adjacent or opposite and whether there is more than one state in front of it; of particular relevance is whether the coast is concave or convex and the degree of concavity or convexity.
- The respective baselines, including the presence of ports, bays, roadsteads, inlets, mouths of rivers, islands, reefs or low-tide elevations.
- The existence of islands and rocks between states and whether these belong to one of the states.
- In the case of continental shelf delimitation, factors such as geomorphology of the seabed and geology of the subsoil may also be relevant.

Varied circumstances include *non-geographical* factors, which might include the following:

- Economic factors. In the case of EEZs or continental shelves, the economic benefits of the states will occasionally be taken into consideration, depending on the resources; in this case, particular relevance is afforded to the location of oil and gas deposits and fishing grounds.
- The historical rights of a state to certain maritime areas since time immemorial and with the acquiescence of other states, to which the general rules of international law would not apply.
- Navigation, taking account of where navigation channels run in order to ensure navigation routes; this circumstance is particularly relevant for the delimitation of territorial seas.
- The states' socio-economic situation.
- Political and security factors.
- Environmental factors, such as the temperature and salinity of water columns; spawning of marine species, etc.
- The presence of third states, possibly with overlapping maritime claims.

Therefore, the variety of specific situations means that the legal rule has to be relaxed in order to accommodate the important role afforded to equity, which allows the adaptation of the general rule in order to avoid unfair outcomes.

Mechanisms for the settlement of maritime boundary disputes

Now that we have examined maritime delimitation under international law, we believe it is necessary to take a brief look at the mechanisms this legal system provides for the settlement of maritime boundary disputes. This question is extremely opportune for delimitation projects which are still pending.

On this point, it is important to note that, as mentioned previously, 37 African coastal countries are parties to the UNCLOS, in addition to France and the UK,

which have sovereignty or jurisdiction over some African territories. The Convention expressly sets out the bodies competent to settle maritime disputes and, moreover, has a compulsory subsidiary mechanism in place such as arbitration. Therefore, in the absence of an agreement, such mechanisms shall be used to resolve disputes.

Nevertheless, we must refer, firstly, to Article 281 of the Convention, pursuant to which states may settle disputes in relation to the application of the UNCLOS using mechanisms other than those provided for in the Convention. Therefore, African neighbouring states are perfectly entitled to submit their maritime boundary disputes to mechanisms not provided for in the UNCLOS, such as those provided for by the African Union⁶, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) Tribunal and even bodies which have been set up by the African states themselves, such as the *The Elders* group. Nevertheless, it should be noted that, up until now, the African states have not availed themselves of these mechanisms to settle either maritime or land boundary disputes, and have shown a clear preference for international courts, such as the International Court of Justice, or an international arbitration tribunal. Indeed, such is the case, that Samuels has pointed out:

«African nations have demonstrated that resort to international tribunals can lead to meaningful resolution of existing boundary disputes. The continent's commitment to the ICJ is one of the enduring legacies that African states have offered over the past half-century [...] And, interestingly, the contributions to international boundary dispute law have come from across the continent».⁷

Considering, therefore, that the African states are unlikely to avail themselves of mechanisms other than those provided for in the UNCLOS, the procedures that apply are described in Part XV of the Convention, specifically in Article 287, which provides for the resolution of disputes relating to the law of the sea, and states as follows:

Choice of procedure.

- When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one

⁶ Such as the Court of Justice of the African Union. In this regard, the African Union (AU) has undertaken a number of initiatives, such as the African Union Border Programme (AUBP), the 2050 Africa's Integrated Maritime (AIM) Strategy and AGENDA 2063. Within these initiatives, what is known as the *Combined Exclusive Maritime Zone for Africa* (CEMZA) was established, defined as a common maritime zone of all AU Member States. For more information about these initiatives and African dispute settlement mechanisms, see OKONKWO, Theodore. «Maritime Boundaries...». *Op. cit.*; WALKER, Timothy. «Why Africa must resolve its maritime disputes». *Policy Brief* 80. Institute for Security Studies, October 2015.

⁷ See SAMUELS, Joel H. «Redrawing the Map: Lessons of Post-colonial Boundary Dispute Resolution in Africa» and LEVITT, Jeremy (ed.). *Africa. Mapping New Boundaries in International Law*. Hart Publishing, Oxford and Portland, 2008, p. 254.

or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- ⊕ the International Tribunal for the Law of the Sea established in accordance with Annex VI;
 - ⊕ the International Court of Justice;
 - ⊕ an arbitral tribunal constituted in accordance with Annex VII;
 - ⊕ a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.
- A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.
 - A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII.
 - If the parties to a dispute have accepted the same procedure for the settlement of the dispute, it may be submitted only to that procedure, unless the parties otherwise agree.
 - If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree.

Pursuant to the Convention, several jurisdictional bodies are competent to resolve maritime boundary disputes between African states: the International Tribunal for the Law of the Sea, the International Court of Justice, general arbitral tribunals and special arbitral tribunals (fisheries, marine environment, marine scientific research and navigation; Annex VIII). Moreover, in the event that a State Party does not accept the same procedure for the settlement of the dispute or has not made a declaration choosing one of the possible mechanism (or has not reached an agreement in this respect), the arbitration provided for in Annex VII shall apply. This is what is known as the «default choice». Therefore, the key to determining what procedure applies in each specific case can be found in the declarations on the choice of procedure made by each State Party upon acceding to the Convention⁸.

Therefore, when negotiation fails and African states with maritime boundary delimitation claims pending are unable to reach an agreement, either state may avail of the provisions of Article 287 and activate the relevant jurisdictional procedure indicated in the declaration made by the neighbouring state. Failing this, and as a last resort, the states can submit to arbitration to bring about the definitive establishment of their respective maritime boundaries.

⁸ The declarations made by each State Party upon ratifying or acceding to the UNCLOS can be consulted at: http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm.

Maritime boundaries in West Africa

Now that we are conversant with the international regulatory framework governing the rules for maritime boundary delimitation and the procedures for addressing claims which are still pending, let us take an in-depth look at maritime boundaries in Africa, beginning, as stated earlier, with West Africa:

The West Africa subregion –sub-Saharan region– is comprised of 16 countries, 13 of which have coastlines: Benin, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Senegal, Sierra Leone, Togo and Mauritania, in addition to the island of St Helena (non-self-governing territory under the jurisdiction of the United Kingdom).

This subregion has six established international borders, three of which were settled by bilateral agreement and the other three by international court judgments. Therefore, there are eight maritime delimitation cases still pending in the region.

The maritime boundary between the republics of *Cape Verde and Senegal* was established by means of a *negotiated agreement* which culminated in the Cape Verde–Senegal Maritime Delimitation Treaty signed on 17 February 1993. The boundary was set at an equidistant line between the two territories, but adjusted slightly in the north to take account of relevant circumstances. The maritime boundary separating the exclusive economic zone and continental shelf of *Cape Verde and Mauritania* was established by a treaty signed in Praia on 19 September 2003, and is merely an extension of the border between Cape Verde and Senegal. In this case also, the boundary was set from a median line equidistant from the baselines of the two countries, but with a slight deviation in the south. In Banjul on 4 June 1975, *Gambia and Senegal* signed a treaty establishing their northern and southern maritime boundaries. The delineation was inspired by the North Sea continental shelf cases mentioned previously, and clearly diverges from the equidistance principle, as this would have seriously undermined the interests of Gambia.

The maritime boundary delimitation between *Guinea-Bissau and Senegal* was settled by arbitration after the two countries failed to reach an agreement in relation to the exchange of notes between France and Portugal on 26 April 1960. This established the territorial sea, the contiguous zone and the continental shelf between the two countries defining a straight line running at 240° starting from the intersection of the extension of the land boundary and the low-water mark. In its award of 31 July 1989, the arbitral tribunal found that the aforementioned exchange of notes had the force of law. On 14 October 1993 the two countries signed a Management and Cooperation Agreement for the joint development of EEZ resources situated between the 268° and 220° azimuths drawn from Cape Roxo, but excluding their respective territorial seas. Similarly, the maritime boundary dispute between *Guinea and Guinea-Bissau* also had to be submitted to arbitration in the absence of an agreement between the two countries. The arbitral tribunal award of 14 February 1985, aiming to find an equitable solution in keeping with

the spirit of Articles 74 and 83 of the UNCLOS, deviated from the equidistance principle.

The most recent international maritime boundary to be established is that of *Ghana and Côte d'Ivoire*. On 23 September 2017, the Special Chamber of the International Tribunal for the Law of the Sea rendered its judgment on the *Différend relatif à la délimitation de la frontière maritime entre la République du Ghana et la République de Côte d'Ivoire* (no. 23). The ruling unanimously established a single maritime boundary for the territorial sea, exclusive economic zone and continental shelf of the two countries within and beyond 200 nautical miles; in the first section, the median line is adjusted to take account of special circumstances, while after turning point F, the single maritime boundary follows the median line.

According to this data, boundaries have not yet been established between Mauritania and Senegal; Cape Verde and Gambia; Guinea and Sierra Leone; Sierra Leone and Liberia; Liberia and Côte d'Ivoire; Ghana and Togo; Togo and Benin; and Benin and Nigeria. On this point, it should be noted that Sierra Leone is keen to reach agreements because of the oil and gas prospects in its EEZ. The situation between Ghana, Togo and Benin is complicated considering their juxtaposition; if the equidistance principle is applied, it will put Togo at a serious disadvantage. In this respect, the agreement reached between Gambia and Senegal in 1975 may serve as an important precedent for these states.

Maritime boundaries in Central Africa

There are ten countries in this subregion, seven of which have coastlines: Democratic Republic of the Congo, Angola, Cameroon, Equatorial Guinea, Gabon, Republic of the Congo and São Tomé and Príncipe. Some of these countries obviously border Nigeria, which is the southernmost state in the West Africa subregion.

Five maritime boundaries have been established in the region, four by bilateral agreement and one by a ruling of the International Court of Justice. It is worth noting that the maritime boundaries of the Gulf of Guinea, one of the most coveted areas because of its abundant oil and gas resources, have been established in their entirety. This was largely achieved thanks to the initiative of Nigeria, which was particularly anxious to properly define its boundaries with its neighbours. Not surprisingly, Nigeria ranks ninth in the world in terms of oil reserves. Therefore, there are five maritime delimitation cases still pending in the region.

The maritime boundary between *Nigeria and Cameroon* was established following two treaties and a ruling by the International Court of Justice, each of which set a section of the boundary. The Yaoundé II Declaration of 4 April 1971 delimited the territorial sea between the two states up to what is known as «point 12» or the «compromise line» (British Admiralty Chart No. 3343). From «point 12» to «point G», the boundary follows the line adopted in the Declaration signed by the heads of state of Cameroon and Nigeria at Maroua on 1 June 1975, as corrected by the exchange of

letters between their heads of state of 12 June and 17 July 1975. The latter section is a negotiated line not determined by the equidistance principle, as it takes account of the geography, resources and human activity in the area. The maritime boundary beyond «point G» was submitted to the consideration of the International Coast of Justice. In its judgment of 10 October 2002, the Court effected the delimitation of the EEZ and continental shelf by a single line using the equidistance principle, as this was deemed to represent an equitable result in the absence of relevant circumstances that might warrant a modification of the course of the boundary.

While the case with Cameroon was being heard by the ICJ, *Nigeria* commenced negotiations with two other countries: Equatorial Guinea and São Tomé and Príncipe. The treaty with *Equatorial Guinea* was signed on 23 September 2000, establishing a single maritime boundary between the two states; rather than adopting an equidistant line between the two countries, the treaty takes into account the oil fields in the area. The treaty respects the exploration licenses for oil blocks granted by both states, thereby resolving the overlap and providing for unitisation agreements where there are straddling oil fields. On the other hand, a treaty with signed with *São Tomé and Príncipe* for the joint development of petroleum and other resources in respect of areas of the EEZ of the two states on 21 February 2001. The treaty proves far more advantageous for São Tomé and Príncipe because, despite being much smaller in size than Nigeria, it receives 40% of the revenues deriving from the resources, while Nigeria receives 60%.

For its part, *São Tomé and Príncipe* negotiated a treaty with *Equatorial Guinea* (signed on 26 June 1999), and *Gabon* (signed on 26 April 2001). In both cases, the maritime boundary was set using the equidistance principle.

Cameroon and Equatorial Guinea, on the other hand, have not only failed to delimit their common maritime boundary, but have lodged complaints in relation to their applications with the Commission on the Limits of the Continental Shelf, which further complicates the situation. The same has occurred with the boundary between the Democratic Republic of the Congo and Angola. The preliminary information presented by the former was rejected outright by Angola on the grounds that it does not respect international rules. Both states have overlapping oil concessions in the area. Gabon and Equatorial Guinea began negotiations with a view to establishing a common maritime boundary, but talks were suspended, not only on account of the abundant oil reserves in the offshore waters, but because of a dispute over the sovereignty of three islands in Corisco Bay where the Muni River flows into the sea, thus making it even more difficult to reach an agreement. Moreover, Gabon has been unsuccessful in reaching an agreement with the Republic of the Congo, and the latter with the Democratic Republic of the Congo.

The situation in Southern Africa

There are five countries in this subregion: Botswana, Lesotho, Namibia, Swaziland (or Eswatini) and South Africa. Only Namibia and South Africa have coastlines, and

neither country has delimited its maritime boundaries. This situation is further exacerbated by strong disputes over the sovereignty of the islands in the mouth of the Orange River and by the presence of oil and diamonds in the outer sea and river mouth, in addition to the area's potentially substantial oil deposits.

However, the boundary between *Namibia and Angola* has been set, after the countries signed an accord on the delimitation and demarcation of the maritime boundary up to 200 nautical miles on 4 June 2001. The boundary extends along a parallel of latitude that begins at the mouth of the Kunene River where the countries share a common border.

Similarly, *South Africa, France and Madagascar* signed a Trilateral Declaration on 26 June 2012 in relation to their applications to the Commission on the Limits of the Continental Shelf to extend their respective continental shelves, and empowered the Commission to consider any overlapping claims in their respective submissions.

The complex boundary map of East Africa

This subregion, made up of 18 countries, has ten coastal states: Eritrea, Djibouti, Somalia, Madagascar, Mauritius, Comoros, Seychelles, Kenya, Tanzania and Mozambique. In addition, there is the Chagos Archipelago (a British overseas territory – claimed by Mauritius as an integral part of its territory), the island of Mayotte, the island of Reunion and the so-called Scattered Islands (Banc du Géiser, Bassas da India, Europa Island, Glorioso Islands, Juan de Nova Island and Tromelin Island), all of which are French overseas territories.

It is worth noting the geographical peculiarity of this area, where four island and/or archipelagic states converge in the Indian Ocean, as well as France's island territories. As a result, we have two trilateral agreements in this tri-border area. In addition, there are eight bilateral maritime delimitation treaties, mainly based on the equidistance principle, and the maritime boundary dispute between Somalia and Kenya is in the final stages of resolution at the International Court of Justice. Furthermore, the boundary dispute between Eritrea and a state of another macro-geographical region, Yemen, has been resolved by international arbitration.

Mozambique definitively established its northern boundary with *Tanzania* by an agreement signed on 28 December 1988; the boundary is a combination of an equidistant median line at the start, which then follows a parallel of latitude up to 200 nautical miles. Later on, on 5 December 2011, the two countries signed a new agreement that does not amend the boundary of the previous one, but merely revises the coordinates to adjust it to the World Geodetic System (WGS). Talks intended to define the *trijunction point with the Comoros* were conducted alongside negotiations to delimit the boundary between *Mozambique and the Comoros*, and between *the Comoros and Tanzania*; all of these agreements were signed on the same date. The agreement on the trijunction point, concluded at the same time as the previous ones, can be seen

as a formal «tidying up» of the delimitation process. However, it should be pointed out that it also served to strengthen cooperation between the parties while they were negotiating bilateral treaties within the framework of the African Union Border Programme.

The equidistance principle was also used to delimit the northern boundary of the EEZ and continental shelf between the *Comoros and Seychelles* on 17 February 2012; in this case, between the respective archipelagic baselines from the *trijunction point with Tanzania*, which was agreed on the same date. The southern boundary is more complicated because of Comoros' sovereignty claim to the island of Mayotte and Madagascar's claim to the Glorioso Islands, both under French sovereignty, and also because the maritime boundary delimitation agreement concluded between *Seychelles and France* on 19 February 2001 defined the boundary based on an equidistant median line, but using different base points to those used by the Comoros and Seychelles. Similarly, the equidistance principle was used to delimit the EEZ between *Mauritius and Seychelles*, agreed on 29 July 2008, insofar as it is considered an equitable solution under international law. The principle was also applied in 2002 in the agreement between *Tanzania and Seychelles* to establish a single boundary line for their EEZ and continental shelf, and in the 2005 agreement between *France and Madagascar* to delimit the maritime boundary between the island of Reunion and Madagascar. As a supplement to the 2008 agreement, on 13 March 2012 Mauritius and Seychelles signed a treaty concerning the joint exercise of sovereign rights over the continental shelf in the Mascarene Plateau region.

As in the case of Tanzania and Mozambique, the maritime boundary between *Tanzania and Kenya* is the result of combining the equidistance principle with modifications in certain sections to take account of relevant circumstances. This is reflected both in the agreement of 9 July 1976, setting the boundary between their respective territorial seas, and that of 23 June 2009 in relation to the EEZ and continental shelf.

Aside from all these treaties, there are two judicial proceedings under way in the region concerning the delimitation of maritime boundaries. The arbitration between *Eritrea and Yemen* concluded with the award dated 17 December 1999, whereby the boundary is established in the Red Sea in application of the equidistance principle. The case concerning the delimitation of the maritime boundary between *Somalia and Kenya* in the Indian Ocean is still at the written procedure stage, after Somalia filed a suit with the International Court of Justice on 28 August 2014. After the Court issues a ruling, the boundary will be established definitively, given that the ruling is binding on the parties, and this should bring some stability to a tumultuous region.

Despite the fact that many of the region's boundaries have been definitively established, there are still some cases pending, and their resolution will pose a challenge, primarily because of the region's complex geographical circumstances. Once you have rounded the Cape of Good Hope, the first international border you encounter is that of *South Africa and Mozambique*, which is pending delimitation, and the process may be hindered by the proximity of Madagascar. Indeed, the boundary between the latter two states is also pending delimitation and, in turn, is hindered by the French islands

which, as mentioned previously, are subject to various sovereignty claims by African states, such as Mayotte by Comoros, Glorioso Islands by Madagascar and Tromelin Island by Mauritius. In this regard, it is also worth highlighting the special nature of the *Chagos* Archipelago, a non-self-governing territory under the jurisdiction of the United Kingdom, but subject to sovereignty claims by Mauritius. Indeed, in its advisory opinion of 25 February 2019, the International Court of Justice stated that «the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence», going on to add that «the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible». Therefore, the boundary delimitation between Mauritius and Chagos should no longer be regarded as pending, since the latter can be considered an integral part of Mauritius' territory.

Similarly, the situation in what is known as the 'Horn of Africa' poses another challenge in relation to *Somalia's* boundaries with *Djibouti* and *Yemen*, not just because of the instability in the latter country but, most especially, following Circular M.Z.N. 106.2014 of 3 July 2014 whereby Somalia published the geographical coordinates defining its EEZ; these were fiercely disputed by the other two states, which do not recognise them and claim that they violate their respective maritime spaces.

Maritime boundaries in North Africa (Maghreb)

Finally, the northern subregion is made up of six countries, all of which have a coastline: Morocco, Algeria, Tunisia, Libya, Egypt and Sudan. In addition, it includes the non-self-governing territory of the Western Sahara.

Only *Tunisia and Algeria* have negotiated and set their maritime boundary, as reflected in the Agreement on Provisional Arrangements for the Delimitation of the Maritime Boundaries signed on 11 February 2002. The agreement makes no reference whatsoever to the delimitation method used, and merely indicates the boundary coordinates. Nevertheless, it can be considered a combination of the equidistance principle, adjusted at certain points to accommodate relevant circumstances such as islands and various natural resources. On the other hand, the boundary of the continental shelf between *Tunisia and Libya* had to be determined by the International Court of Justice in its judgment of 24 February 1982. To achieve an equitable solution, the Court established a delimitation line made up of two segments, applying the median line principle to the first segment, but adjusting it to take account of relevant circumstances, such as the general characteristics of the region, the configuration of the coasts, the existence and position of the Kerkennah Islands and existing petroleum concessions, and the proportionality of the continental shelf areas and length of the relevant part of the coast in the second segment.

Of the three boundaries pending delimitation, the one likely to cause the most controversy is that of *Egypt and Sudan*, given that both countries have staked claims to

several areas of the border, such as Hala'ib Triangle and the area to the north of parallel 22, which precludes a negotiated settlement.

On the other hand, the boundaries with four neighbouring states from other macro-geographical regions have been successfully established. This is the case of the boundary between *Egypt and Saudi Arabia* (Agreement dated 8 April 2016) and between *Egypt and Cyprus* (Agreement on the delimitation of the EEZ dated 17 February 2003, applying the median line principle). In addition, the boundary between *Tunisia and Italy* concerning the continental shelf was delimited in an agreement signed on 20 August 1971. The solution is a balanced combination of the equidistance principle, adjusted to accommodate certain islands in the Strait of Sicily which belong to Italy but are closer to Tunisia than to Sicily. The delimitation of the continental shelf between *Libya and Malta* was determined by the International Court of Justice in its judgment of 3 June 1985. Delimitation was effected in accordance with equitable principles, taking account of all relevant circumstances in order to achieve an equitable result. The circumstances that the Court took into account when adjusting the equidistant line were the general configuration of the coasts of the respective states, their opposite position, the geographical context and the disparity in the lengths of their coasts.

However, no agreement has been signed concerning the delimitation of *Algeria's* maritime boundaries with *Italy* or *Spain*. Furthermore, Morocco's well known claims to certain Spanish territories on the African continent have led to a lack of clarity regarding the maritime boundaries between the two countries. This, however, does not lead to tension in practice and, except for occasional incidents, such as the seizure of Perejil Island by Moroccan soldiers on 11 July 2002 and the detention of the odd Spanish vessel close to Alboran Island, there appears to be de facto observance of the equidistant median line between the two territories.

What has proved more controversial is *Morocco's* maritime border in the Atlantic Ocean, due to the presence of the non-self-governing territory of the *Western Sahara* under the de facto jurisdiction of Morocco. This raises the thorny question of who is eligible to negotiate the boundaries of this territory with other neighbouring states. And this also affects the lack of clarity regarding Spain's maritime boundaries with respect to the Canary Islands, and the Canary Islands with respect to Mauritania. On this point, in our opinion, the agreement of 14 April 1976 between Morocco and Mauritania, establishing a –land and maritime– state frontier line between the two countries is inapplicable (and even null and void) where the continental shelf is concerned because it fails to take account of the wish of the Sahrawi people, and this is a blatant violation of the right to self-determination of peoples, which includes the right to permanent sovereignty over their natural resources. In our opinion, in light of the region's coastal geography –straight, with hardly any noteworthy geographical features– the application of the equidistance principle and the delimitation of the EEZ and continental shelf by a single line would appear to be the most logical means of achieving an equitable solution in accordance with international law.

Final overall assessment

The delimitation of maritime boundaries effected to date in Africa demonstrates strict compliance with international rules, and represents a huge contribution by the African states to the construction of rules and case law on maritime delimitation.

On this point, the efforts made by the majority of states to adjust their respective boundaries in an equitable manner are indeed laudable, and will no doubt serve as a reference for all those countries that have yet to do so. However, although a significant number of maritime boundaries have been set, many more have yet to be defined. This has led to a certain degree of tension in these areas, which is not conducive to the stability or development of the region. Moreover, this lack of definition has a negative impact on maritime security, an issue that not only affects African states, but indeed every state, and most especially European countries, considering that African waters are one of the main maritime gateways to Europe.

In this respect, we must stress the fact that the current international legal framework, consisting of the United Nations Convention on the Law of the Sea of 1982, facilitates the task of delimitation. And not just because this body of international rules is underpinned by extensive practical experience, in which most African states have played a part, thus demonstrating the undeniable consensus around it and suggesting that its application should pose no problem whatsoever but, rather, because this legal instrument, to which all African coastal states are a party, has a binding system for the settlement of maritime disputes, which any state can avail itself of for the establishment of an equitable and definitive maritime boundary with their neighbour in accordance with international law.

It is therefore merely a question of political will... or lack thereof.

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