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THE FUTURE OUTLOOK
FOR BOUNDARY DELIMITATIONS
IN AFRICA SOUTH OF THE SAHARA

by

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of the requirements for the Degree of
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ABSTRACT

The paper anticipates the problems likely to arise concerning maritime delimitations in Africa. It looks at the few boundaries already delimited, then seeks to identify the compelling reasons to establish maritime boundaries, such as the presence of an important transboundary resource (fish, oil, phosphates, polymetallic nodules). Excessive claims by African states are examined, as well as Africa's basic philosophy on delimitation and general configuration of the African coastline. 5 judicial decisions on maritime delimitation are studied for the clues they yield, and their possible application to situations in Africa. All in all, the African continent shows a greater diversity of boundary issues than anywhere else in the world. The carving up of the coast by rival colonial powers has resulted in an unusually high number of land-locked and geographically-disadvantaged states, and these are likely to exert pressure on the more advantaged coastal states. The main problem area identified is the Eastern Gulf of Guinea, with the overlap of five states' claims, position of several islands, and presence of oil. A "regional" solution applicable to all five states involved will need to be worked out.

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Introduction

To this date, only five maritime boundaries have been delimited on the African continent south of the Sahara. Four of these were negotiated by agreement. The fifth, between Guinea and Guinea-Bissau, was troublesome and engendered a dispute, eventually settled in 1985 by a Tribunal composed of three Judges of the International Court of Justice. The general tendency is to refrain from boundary delimitation, a complex, time-consuming and expensive procedure, unless a compelling reason forces the states out of their ocean flux.

This paper proposes to perform an exercise in "marine science fiction" by anticipating the problems likely to arise concerning the future delimitations of the 33 coastal states considered here (for the complete list of these states, see exhibit # 2). It first takes a brief look at the boundaries already delimited (chapter 1). It then seeks to identify the "compelling reasons" to establish a maritime boundary, such as the presence or anticipation of an important transboundary offshore resource (chapter 2). Chapter 3 examines other factors which play a role in delimitation, such as excessive claims by states ; chapter 4 looks to Africa's basic philosophy on delimitation, to the extent that Africa can indeed by viewed as a regional entity, with a shared outlook on the issue ; clues are provided in the commentaries by states and their various

formal proposals, such as those leading up to the relevant delimitation articles of the Law of the Sea Convention. Chapter 5 is concerned with geography and the general configuration of the African coastline. Several landmark judicial decisions on maritime delimitation are examined, in the hopes that these yield clues on how certain African situations could be handled, notwithstanding their geographical uniqueness. The conclusion sums up the main geographic areas identified in the course of this paper, and in which delimitation will pose the greatest challenge.

CHAPTER 1

BOUNDARIES ALREADY SETTLED

Introduction

Map # 1 indicates the five maritime boundaries already delimited. The two established in 1975 between Gambia and Senegal, and Kenya and Tanzania, follow a parallel of latitude, except in the immediate vicinity of the coast. Parallels of latitude produce inherently equitable results when applied to a coast which essentially assumes a North-South direction, since the method attributes to each state a maritime area that is almost exactly proportional to the length of its coastline. It has been applied on the West coast of South America, but obviously produces inequitable results when the general direction of the coast assumes an East-West direction.

The 1960 maritime boundary between Guinea-Bissau and Senegal

This was established (see Map # 2) prior to both states' independence, in an exchange of notes on 26 April between France and Portugal (1). The maritime boundary is presumed to be still in force, since boundaries devolve upon successor states under general international law. This rule has been codified in the Vienna Convention on the Succession of States in Respect of Treaties. The Organization of African Unity (OAU), established in 1964, also resolved that

its members should respect the boundaries existing upon the achievement of independence. Senegal gained independence on August 20, 1960, while Portuguese Guinea became the state of Guinea-Bissau on September 10, 1975.

The territorial sea boundary was defined in the Exchange of Notes as a 240-degree azimuth drawn from "the intersection of the extension of the land boundary and the low-water mark, represented for that purpose by the Cape Roxo light". The outer limit of this boundary was not specified. Senegal, after claiming 150, now claims a 12 nautical-mile limit and a 200 nautical-mile Exclusive Economic Zone. The boundary between the respective shelf areas is considered to be the extension of the territorial sea boundary.

This boundary is <u>not</u> based on the equidistance principle, and appears to be perpendicular to the general direction of the coast. Since the issue of equidistance will arise in the course of this paper, it is useful to explore the concept and its implications here. An <u>equidistance line</u> may be described as one which leaves to each of the parties concerned all those portions of maritime area that are nearer to a point of its own coast than they are to any point on the coast of the other party. The method tends to produce inherently equitable results when applied to a convex coast. But with a concave coast, it does not achieve a just and equitable apportionment of the shelf, since the

line is pulled inwards, in the direction of the concavity. If two such equidistance lines are drawn at different points on the concave coast, they will inevitably meet at a relatively short distance from the coast and cause the continental shelf area they enclose to adopt the form of a triangle. The effect of the triangle is to "cut off" the coastal state from the areas of the continental shelf situated beyond the triangle yet in front of its coast. This causes the state to be "shelf-locked".

The 1975 maritime boundary between Gambia and Senegal

On 4 June (2), the two governments signed an agreement delimiting their maritime boundaries (see Map # 3). Instruments of ratification were exchanged, and the Treaty entered into force on August 27, 1976. Gambia has an Atlantic ocean coastal front which is only 32 miles long, and the state is bordered on all its land sides by Senegal. As an enclave, it needed to negotiate both its northern and southern maritime boundary with the same state : Senegal.

The northern boundary followed the parallel of latitude 13 degrees 35'36" North to an undetermined outer limit. Senegal claims a 12 nautical-mile territorial sea and Gambia, a 200 nautical mile territorial sea. Neither appears to claim an Exclusive Economic Zone. The southern maritime boundary was more complex, consisting of three segments. The first ran in a southwesterly direction for 0.70 miles, then

turned to the northwest for a further 0.11 miles, finally extending West along the parallel of 13 degrees 03' 27" of North latitude. This negotiated method was deemed by both parties to result in an equitable solution. Whether the negotiated result, and near-shore variation reflected a recognition by Senegal of Gambia's limited size is impossible to say without internal information from the negotiations.

The 1975 maritime boundary between Kenya and Tanzania

On 17 December 1974, representatives of the Republic of Kenya sent a note to the United Republic of Tanzania proposing the terms of an agreed delimitation of the boundary between their respective territorial waters. The Tanzanian Government, on 9 July, accepted their terms. The agreement (3) constituted by this Exchange of Notes entered into force on that day.

The maritime boundary follows the latitude of 4 degrees 40' 52" of Latitude South, i.e. the latitude of Ras Jimbo Beacon, or terminal point of the land boundary between Kenya and Tanzania. But near shore in the Pemba Channel area (see map # 4), the boundary consists of three segments. The first runs in a southeasterly direction to point A, 12 nautical miles away. This segment is at an equal distance from two straight baselines connecting Ras Jimbo to Kisite Island (Kenya) and Ras Jimbo to Mwamba-Wamba Beacon (Tanzania).

Points B and C have been situated in areas where the 12-nautical mile arcs drawn from Mpunguti ya Juu lighthouse (Kenya) and Ras Kigomasha (Pemba Island, Tanzania) intersect. The diamond-shaped geometrical figure thus formed is at the origin of the artificially established point X. Segment A-B has been created by drawing an arc from this point. The resulting boundary, a mixture of delimitation methodologies, was satisfactory to both parties.

The 1980 maritime boundary between France (Reunion) and Mauritius

On 2 April, the two governments signed an agreement (4) delimiting their respective maritime possessions in the Indian Ocean. This entered into force on that date. The boundary is 364.8 nautical miles long and consists of seven turning points arranged in a northwest-southeast direction (see map # 5). It is basically a median line, which the two parties agreed constituted "an equitable system of delimitation".

Interestingly, the boundary does not extend as far as the island of Tromelin, a French island to the North, administered from Reunion. Tromelin is the object of a claim by Mauritius. The position of P1, the northernmost terminal point of the boundary, then becomes self-explanatory : it is equidistant from Saint-Denis (Reunion), Tromelin and Flat Island (Mauritius), and thus does not tackle the issue of

conflicting claims at all. Other claims in the area involve the French Eparses Islands in the Mozambique Channel, which Madagascar asserts are hers. This is controversial since France retains important interests in its dependencies and overseas territories, especially in the Indian Ocean where it maintains a permanent fleet. The Eparses generate a large Exclusive Economic Zone, with waters known to contain polymetallic nodules.

<u>The 1985 maritime delimitation case between Guinea and Guinea-Bissau</u>

This was the first time two African states south of the Sahara agreed to entrust an Arbitral Tribunal with delimiting their maritime boundary. The Award was made on 14 February and consisted of three segments (see map # 6).

The first follows a southwest direction along the Pilots Passage ; the second conforms to the parallel of 10 degrees 40' North, as far as 12 miles West of the Guinean island of Alcatraz ; the third is defined as the 236 degree azimuth continued to the outer limit of the maritime territories recognized under general international law.

The case hinged around the interpretation to be given to the final paragraph of Article 1 of a Convention of 12 May 1886 between France and Portugal which delimited their respective possessions in West Africa :

> Portugal will possess all the islands included between the meridian of Cape Roxo, the coast and the southern limit formed by a line following the thalweg of the Cajet River, and afterwards turning

> towards the south-west across Pilots Passage, where it reaches 10 degrees 40' North Latitude, and follows it as far as the Meridian of Cape Roxo (5).

Guinea-Bissau took the view that the only purpose of the "southern limit" was to designate the islands belonging to Portugal - a form of geographical shorthand which avoided the need to name all the islands. Guinea argued that this limit represented a general maritime boundary, turning to the Preparatory Work and general circumstances in which the 1886 Convention was concluded.

The Tribunal observed that in the term "the southern limit formed by", the word "limit" might signify "boundary", although this was not necessarily the case. It decided in the end to conclude that the 1886 Convention did not establish a maritime boundary. But it threw out equidistance as a method of delimitation ; since the coasts of the two countries were concave, the equidistance line claimed by Guinea-Bissau would cut off Guinea's maritime area in front of its coasts and tend to enclave it between the maritime areas appertaining to Guinea-Bissau and Sierra Leone.

The Tribunal used the "southern limit" from the terminal point of the land boundary to Alcatraz Island. But beyond Alcatraz, it passed from the short coastline to the long coastline, deciding to focus upon the entire West African region, and its generally convex shape. It concluded that an equitable delimitation established within this regional context - a novelty in arbitral law - would be adaptable to

the pattern of present or future delimitations in the region. Thus it drew a straight line from Almadies Point in Senegal to Cape Shilling in Sierra Leone. The straight line from point C to the southwest was perpendicular to the Almadies-Shilling line.

<u>Conclusion : "compelling reasons" for establishing maritime boundaries</u>

Why did the states involved in the five boundary delimitations outlined above feel the pressure to demarcate ? This is not always easy to assess, since the states in their official declarations rarely refer to the real reasons. Gambia and Senegal, in their 4 June 1975 agreement, speak of

> Being motivated by the principles of the Charter of the United Nations and the Charter of the Organization of African Unity;
> determined to establish and to maintain between them conditions favorable for the development of cooperation between the Republic of Senegal and the Republic of Gambia;
> desiring to settle peacefully the problem of maritime boundaries between states (6).

Other declarations are couched in similar official language. But in the Indian Ocean delimitation between France and Mauritius, one can easily surmise that France was anxious to establish the extent of both countries' agreement, even if it meant provisionally setting aside the Tromelin problem. Such an agreement would at least provide a legal framework

and set the tone for future discussions arising out of Mauritius's claim to the island.

The Guinea/Guinea-Bissau case stemmed directly from an overlap of offshore oil concessions : in 1979, Guinea entered into negotiations with Union Texas Petroleum Corporation, an American oil company. On 26 January 1980, Guinea granted Union Texas an offshore oil concession bounded on the North by the 1886 Treaty line of 10 degrees 40' North Latitude (see map # 7). Union Texas and its partner, Superior Oil Company, invested 11 million dollars in the offshore concession, and began geophysical exploration to prepare the assessment (7). Meanwhile, Guinea-Bissau was also developing its hydrocarbon potential. Esso conducted seismic surveys; further work was prepared by Digicon Geophysical Corporation (7). The exploratory work highlighted the discrepancies in maritime areas claimed by both states (8). Clearly, more exploration, let alone exploitation, could not take place until the boundary problem was resolved.

CHAPTER 2

RESOURCES AND MARITIME BOUNDARIES

Introduction

The two examples of the previous chapter serve as useful indicators of the clues we should be looking for. "Compelling reasons" to delimit include the presence of important, trans-boundary offshore resources, both living and non-living. We turn to these now. Four are especially important : fish, oil, phosphates and polymetallic nodules.

Fish

Both the Gulf of Maine case and Grisbadarna case between Norway and Sweden were maritime boundary disputes closely linked to the fish resource. The Gulf of Maine case focused on the Georges Bank. The Grisbadarna case of 1909 concerned a lobster bank. Relevant factors to explore in the African context are the upwelling areas along the coast.

The major oceanic currents which play a role in determining the upwelling areas of the Equatorial Atlantic Ocean, are depicted on Map # 8. Details of the seasonal and non-seasonal variations in direction and velocity of these currents are still not yet fully understood. Map # 9 shows the upwelling areas on the West Coast of Africa. Upwelling, the vertical transport of nutrient-rich deep water into the photic zone, is an oceanographic characteristic of

considerable biological importance. These zones are among the most productive offshore areas in terms of living resource potential. The phenomenon typically occurs along the western margins of continents, where surface currents are moving toward the Equator (Coriolis Effect). It grows directly out of the relationship existing between the direction of the current flow and the continental margin.

One area of strong upwelling occurs off the northwest African coast. The Ekman transport (9) tends to move the surface water away from the coast. Simultaneously, water surfaces upward from the depths near the shore to replace it. A relatively wide continental shelf stretching from Senegal to Sierra Leone, and large differences between mid-ocean and coastal temperatures contribute to the effect of the upwelling being felt several hundred kilometers off Cape Verde and Senegal, although there are considerable seasonal variations.

The region represents the sixth most productive of the world's 17 major fishing areas (10). Biological estimates indicate that the MSY is in the vicinity of 4 million tonnes (11). The fisheries here are especially complex, due to their migratory and multispecies nature, and fact that historically they have been exploited by many nations. The transboundary stock travels up and down the coast of Mauritania, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone and Liberia, with no regard for the political

boundaries established by man. It is a classic commons situation (12) : The fish as a public good are valued by everyone and beneficial to all West African countries concerned, yet probably no state is prepared to pay the cost of the upkeep and reproduction of the resource. Fishermen are free-riders, benefiting from the ocean for free. With the increase in the population of West African fishermen and industrialized fleets from European and Asian countries, competition for the living resources of the region will deplete these resources, and the time will come when the carrying capacity of the ocean will lead past the point of equilibrium.

The situation calls for regulation, management and cooperation between the states concerned. Foreign entry into the market may be barred. The countries may agree to get together and set up a joint fisheries commission to manage the transboundary stocks. The existing Eastern Central Atlantic Fisheries Commission (CECAF) could or does already play such a role. Reciprocal agreements link neighboring countries with similar interests and mobile fisheries. The agreements concern particular areas of coastal waters (one such agreement links Sierra Leone and Liberia) or certain species. These agreements usually contain provisions for cooperation between parties in various sectors connected with fisheries, such as port facilities and coordination of surveillance and control activities.

Fishery considerations, coupled with expanded marine jurisdiction from the territorial sea to the Exclusive Economic Zone , are highly relevant to delimitation. In these West African states, extension of national jurisdiction has had great significance. The new legal regime alters the rules of access to the resource. By creating Exclusive Economic Zones, the states have delimited areas in which the resources are available to them, and have created for themselves the option to evict intruders from the long term benefits of the fisheries. To this date, of the 33 coastal states of Africa south of the Sahara, 20 have declared Exclusive Economic Zones or Exclusive Fishery Zones. A further 8 have declared territorial seas in excess of 12 nautical miles (see Exhibit # 1), ranging from 20 to 200 nautical miles. This leaves out only three states : Equatorial Guinea, Ethiopia and the Sudan, with no Exclusive Economic Zone or "extended" territorial sea declaration. The issue will be further discussed in chapter 3, relating to excessive claims.

Other areas of upwelling appear on the southwest coast, off Angola, Namibia and South Africa. To the East, Somali coastal waters can also be observed to have areas of upwelling during the southwest monsoon. Two seasonal upwellings occurred in 1979 (13), closely related to a strong western boundary current. They were characterized by high concentrations of surface nutrients, but seemed

restricted to the Somali coast and thus appeared not to have a direct impact upon other states and maritime boundary delimitations in the region.

Oil and gas

In Africa, several offshore deposits of petroleum and natural gas extend across potential maritime boundaries. Oil, as fish, is a special resource which warrants both cooperation between states and delimitation.

a) Are there large offshore oil and gas reserves in Africa ?

Mitchell (14) implies that marine oil and gas could prove to be the most dynamic industry in Africa, and more specifically in West Africa in the near decades. Of course this would depend on the price fetched by oil on the world market. Africa presents a favorable outlook for the development of a geological setting lending itself to petroleum prospects. One of seven conditions for the presence of oil (15) requires an adequate thickness of sediments, 1000 meters or more, for the thermochemical conversion of the organic matter into petroleum under the effect of both heat (50 to 150 degrees C) and pressure. Pressure is also required to cause the migration of the organic matter to accumulation centers. Map # 10 (16) shows the thickness of sediment above basement on the west coast of Africa. The dotted pattern indicates the areas of more

than 1000 meters of sediment, 1000 meters being the break-off point used by seismic surveyors to separate areas of no promise from those that may show promise.

The distribution of the oil resource is closely related to the base of the continental shelf, a favorable setting for the genesis and accumulation of petroleum. Drainage from land and marine life fed by upwelling provide an abundant supply of organic matter : thus upwelling areas and their nutrient-rich waters obtained from the ocean depths are favorable both to fish and hydrocarbons. On the other hand, oil formation also requires restricted bottom circulation and a rapid sedimentation rate, in order to preserve the organic matter. Crustal mobility of the margin belts adjacent to the continent account for the thick accumulation of a variety of sediments, the gradual cooking of the organic matter under sedimentary overburden, the collection of the generated hydrocarbons in reservoir beds, and the development of abundant trapping features through folding, faulting, unconformities and stratigraphic changes.

Mitchell (17) shows that there is exploratory activity in the offshore areas of virtually every West African state (see Map # 11). Of course this does not necessarily imply the presence of oil. Cook (18) provides a hierarchy of designations for reserves by the oil and gas industry. In descending order of certainty, there are proved reserves (A), which can be calculated from information obtained from

drill holes closely enough spaced in a given field that there can be little doubt of the continuity between the holes and therefore, of the amount and recoverability of the gas or oil; probable reserves (B), calculated by extrapolation, based on geologic information and judgment, from drill holes that probably extend into other productive accumulations; possible reserves (C), found outside productive fields but within formations known to be productive; and speculative reserves (D), where the geologic makeup of the earth's crust is similar to that of regions that have yielded oil and gas. These may also include accumulations of too high a cost to warrant recovery under present conditions.

On the west coast, Nigeria and Gabon are already net oil exporters, while Cameroon, Ghana, Ivory Coast and Zaire are significant producers. Extensive exploration activities are progressing in Congo, Togo and Benin. The most promising areas (19) of exploration are the Senegal Basin, Bove Basin, areas off Sierra Leone, Liberia, Ivory Coast and Ghana, the Niger Delta (including West Cameroon) and Congo Basin (see Map # 11). The Ivory Coast alone is estimated to have reserves of 575 million tonnes (20), and Cameroon is poised to emerge as the dominating state on the west coast. The gas reserves of the Gulf of Guinea are probably among the largest in the world. Potential resources exist in Namibia,

and in the deltaic areas of the Congo and Niger rivers (21).

On the east coast, extensive exploratory activity has taken place in the northeast and in Mozambique, in the Ruvuma basin located on the north coast along the Tanzanian border. Prospection has also occurred in Kenya, Madagascar, Mauritius, South Africa, the Seychelles, Somalia and Tanzania (22). Mobil Oil was awarded a 30,000 square kilometer oil concession off the west coast of Madagascar (23), on the continental shelf in the Morandova sedimentary basin. Mauritius's Mascarene Plateau extends south from the Seychelles for a distance of about 1500 kilometers, and two wells have been drilled there (24). The survey in Mozambique comprised 15,200 kilometers of line, both onshore and off (25). The results indicate that the sediments in this area are on the order of 10,000 meters thick. Geochemical work is taking place in the Zambezi Delta and mouth of the Rovuma river. In South Africa, no productive fields have appeared as yet, but geophysical activity and drilling has taken place in the vicinity of the boundary with Southwest Africa and with Mozambique (26). In the Seychelles, Amoco has conducted geologic work and drilling and in 1981 held concessions covering 18,000 square kilometers (27). Somalia granted two permits in the northern coastal area along the Gulf of Aden. The blocks were partly on land and partly offshore. Tests have also been made in the proximity of the

boundary with Kenya (28). Finally, in Tanzania, the International Energy Development Corporation obtained an area of 11,942 square kilometers offshore in the Zanzibar Channel (29).

b)Boundary issues created by the presence of oil and gas

The offshore oil industry on the African continental shelf is still in its early stages. It is still far too early to assess the exact extent of the oil and gas reserves, but this does not preclude us from examining the problems raised by these mineral deposits, especially when they are of a trans-boundary nature. As liquids, oil and gas differ from hard mineral deposits such as polymetallic nodules, which the boundary separates into recognizable independent units. In fact, as a resource they are far more like fish : exploitable, wholly or in part, from either side of the boundary line. Oil deposits are characterized by a complicated equilibrium of rock pressure, gas pressure and underlying water pressure, so that extracting gas or petroleum at one point unavoidably changes conditions in the whole deposit (30). This creates an immediate risk of wasteful action, which cannot be resolved by applying traditional principles of sovereignty over natural resources and territorial integrity. The states concerned must both cooperate in the exploration and exploitation of these deposits, and simultaneously delimit their boundaries.

We saw in the previous chapter how the Guinea/Guinea-Bissau case stemmed directly from an overlap of offshore oil concessions granted to rival oil companies carving up the West African coast. Another possible future boundary delimitation case involves Zaire and the Cabinda territory of Angola. In Zaire, (see Map # 12), the Gulf group, active in carrying out exploration, has discovered a new field. The Esso group holds a large block comprising 99,000 square kilometers. Both groups produced significant amounts of oil in 1981 (31). However Zaire, with its short coastline, is clearly a geographically-disadvantaged state, and the "maritime boundary" appearing between the two territories on Map # 12 is presumably a concession line separating the activities of the oil companies established in Zaire from that operating in Cabinda, namely the Cabinda Gulf Oil Company, which has discovered several important fields such as Livuite, Kambala and Takula. This line is certainly not the result of an agreement between the two governments involved, and it would be useful, if such information were indeed available, to see whether the Zaire government, alerted to the situation, has opposed it or whether it has implicitly acquiesced. The line is detrimental to Zaire, since it cuts off a large section of the already limited natural prolongation of its land mass.

Oil deposits situated in areas claimed by two or more states appear not to be subject to clearly defined rules.

The unity of the deposit has not often served as a guide for countries preparing delimitation agreements, nor has it been much used by arbitrators called in to resolve disputes. Perhaps one problem is timing : a state is not always aware that a deposit extends across its maritime boundary into a neighboring state's continental shelf. But when this is known, its duty would be to supply the neighboring state with the information, prior to exploitation. Actually, a few very rare delimitation agreements anticipate the possibility of a shared oil deposit. One such agreement is the exchange of notes in 1960 between France on behalf of Senegal and Portugal, on behalf of Guinea-Bissau, creating a general obligation to "favor, as appropriate, mutual cooperation between natural or juristic persons authorized to exercise rights on one side or the other" of the maritime boundary (32). This again raises the question of why that particular boundary was delimited at the time, if oil was not the principal catalyst.

A brief summary of this section on oil would need to highlight the "difficult areas" in connection with the resource. Disputed areas are becoming more numerous with the extension of national marine jurisdiction to 200 nautical miles. Most 200 nautical-mile Exclusive Economic Zone declarations bring these potential hydrocarbon areas of natural prolongation of the coastal states' land mass under the jurisdiction of the coastal states (see map # 13). Two

problems need to be addressed : the delimitation of the lateral boundaries between states in accordance with internationally agreed guidelines, and the question of the broad-margin states such as France, Madagascar, Mauritius, Namibia and Somalia, whose base-of-slope line is more than 200 nautical miles from shore (see map # 13). They could thus lose large potential petroleum-bearing areas. What would be their natural rights concerning these areas, which after all clearly constitute the natural prolongation of their land mass ? How could this affect boundary delimitations in the future ? Would these resources become a part of the international domain ? This legal uncertainty will eventually disappear with the coastal states enforcement of their claims in order to begin exploitation. The pressure will lead to agreements which will in turn effect the maturing of the law of delimitation.

Phosphates

This essential raw material for fertilizer has been discovered in several offshore areas of the African continent (see Map # 14). Since the consumption of phosphate is increasing at a rate of about 6.3% a year (33), it is clearly important to discover the potential reserves. Phosphorus in the form of P_2O_5 is found as a precipitate in nodules, as a thin crust on the continental shelf and on

banks at depths above 1000 meters. The exact process of formation is not yet clear but the deposits seems to be associated with upwelling ocean currents, such as the Benguela off southwestern Africa (see Map # 8). Deposits of phosphorite in nodules or bedded crusts may be found in water close to the edge of the continental shelf.

Morocco and South Africa are the two major African producers. The Morocoo deposits extend into Western Sahara, an area of uncertain political status. Other deposits are distributed mainly in Guinea, Ghana, and the deltaic areas of the Congo and Niger rivers (34). A further supply of phosphates by other states will depend on the cost of the technology needed to mine and extract the mineral and manufacture the fertilizer. The geologic distribution of phosphate rock is beginning to be understood with the result that a scientific base can be established for a worldwide assessment of major phosphate resources and a search for undiscovered ones.

Some deposits are transboundary, extending from Western Sahara to Mauritania, from Ghana to Togo and Benin, and Namibia to South Africa. Since it is highly unlikely that every African coastal state will have an economic phosphate deposit of substantial size, a shortage will occur which will increase the importance of the transboundary deposits, and possibly lead to boundary delimitations between states.

Polymetallic nodules

Among the most important sediments on the deep ocean floor in terms of future economic potential are the polymetallic nodules. The major components are MnO2 and Fe_2O_5; other economically significant concentrations include copper, cobalt and nickel. One large African deposit is situated in the Indian Ocean where good grade nodules have been identified, but remain essentially unexplored (see Map # 14). While most of the nodule deposits are in areas beyond national jurisdiction, some rich deposits are to be found within the jurisdiction of a number of islands such as Mauritius, and maybe France, in the Indian Ocean. It is possible, therefore, that the international seabed mining system applicable to deep seabed mining of polymetallic nodules might have to compete with national undertakings (35). This issue will be further discussed in chapter 4, dealing with Africa's basic philosophy and responses to the seabed mining regime proposed by the Law of the Sea conference, and its possible effects on boundary delimitation.

Conclusion

The control of resources is an essential element of political power. We have focused on those we judge to be the four most important ones, although the continental shelf

provides many others such as sand and gravel, calcium carbonate, coal, barite, diamonds, tin, sulphur, salt, scheelite, iron, sands and coral (36). It is a time of changing perceptions, evolving geopolitical resource strategies and the appearance of a new resource, the polymetallic nodules, potentially major if the appropriate technologies can be developed. For the Third World and the African continent in particular, access to these resources is essential and will allow the individual states to avoid exclusive reliance upon the land-based producers of the minerals in question. But in the process of gaining access, the states will need to take a position on delimitation.

CHAPTER 3

EXCESSIVE CLAIMS BY AFRICAN STATES

Introduction

The practice of a number of African states, whether newly independent or not, is marked by unilateral assertions of national jurisdiction over limits wider than the accepted and traditional norms defined in the most recent Law of the Sea convention. Conflicting areas of jurisdiction are appearing. A claim to one area may overlap and erode the other. Assertion of wider territorial limits may even extinguish the concept of the continental shelf (37). We need to look at a variety of "excessive claims" and their effect on boundary delimitations.

a) Straight baselines

Baselines are normally measured from the low-water line along the coast. But the Law of the Sea Convention provides for a number of derogations from the general rule, the most important of which is contained in Article 7 on straight baselines : where the coastline is deeply indented, or where there is a "fringe" of islands in close proximity to the coast, the baseline according to paragraph 1 may be drawn by joining appropriate points. In deltas or other areas of unstable coastline, the article permits the drawing of baselines along the furthest seaward extent of the low-water

line, and provides that this baseline will remain effective despite subsequent regression of the coast. Paragraph 3 requires that straight baselines must not depart to any appreciable extent from the general direction of the coast, and that the sea areas lying within the line must be sufficiently linked to the land domain to be subject to the regime of internal waters. Paragraph 5 contains an important provision : in determining appropriate points for drawing straight baselines under paragraph 1, account may be taken of economic interests peculiar to the region concerned, the reality and importance of which is clearly evidenced by long usage. Straight baselines may also reflect "relevant geographical peculiarities" such as reefs (article 6), bays (article 10), ports (article 11), roadsteads (article 12), and low-tide elevations (article 13) (38).

These provisions have the effect of including significant new maritime areas under the heading of "internal waters", and of pushing further seaward the outer limit of the territorial sea, contiguous zone and Exclusive Economic Zone. This is of importance to many African states intent on expanding outward as much as possible in order to include the more productive living and non-living resources. However, the straight baselines are sometimes drawn off coastlines which are neither deeply indented nor cut into, as required by article 7, nor have a fringe of islands along the coast in their immediate vicinity. Other baselines are

too long if measured against the yardstick of the 1935 Norwegian delimitation method approved by the International Court of Justice (39).

A comprehensive review of state practice with regard to the use of straight baselines in Africa will highlight some of the effects of these baselines on maritime boundary determinations. Opposite states seem particularly vulnerable if less than 400 nautical miles apart. What follows is an analysis of the practice of 8 states which declared straight baselines between 1963 and 1972, for reasons which were not always clear.

The first to do so was Madagascar. The government decreed on 23 February 1963 that the territorial sea of the state would be 12 nautical miles, measured from straight baselines for most of the coast. The 37 straight baselines totalled 1,577.3 nautical miles in length, with the average measuring 42.7 and the longest, 123.1. It was questionable whether the coast of Madagascar qualified for the use of a straight baseline regime since, except in the northwest and northeast coast where it could meet the definition of "deeply indented or cut into" or "fringed with islands", the coastline was relatively smooth. However, large areas of reef appeared to be widespread along the western coast. The result is an increased area of internal waters behind the reefs and, consequently, an extension of the territorial sea, pushed up to 50 nautical miles (40) in 1973, now back to 12 miles.

The government of Guinea created a peculiar single 120 nautical-mile closing baseline along its entire coast on 3 June 1964 (41). This was however revoked in time for the Guinea/Guinea-Bissau case of 1985. The decree also unilaterally established sea boundaries with what was then Portuguese Guinea to the north and the independent Sierra Leone to the south, following parallels of latitude. These parallels were to be Guinea's case in front of the Arbitral Tribunal of the Hague. The one straight line is unique, connecting the northernmost Guinean island to the most seaward southern island of Tamara. No terminal point is provided and the line could presumably extend beyond Tamara to a point in the ocean, on the unilateral sea boundary with Sierra Leone. If so, an additional 37 nautical miles would produce a total length of 157 nautical miles.

The coastline of Guinea could hardly be defined as "deeply indented and cut into", nor "fringed with islands", but the baselines did mark the limit of shoal waters for its entire length, with the exception of a bay-like indentation (Taboria), where the straight baseline was 14 nautical miles from shoal waters. It is admittedly difficult to determine what Guinea's rationale was in employing this straight baseline, which did not include Alcatraz Island and associated rocks and low-tide elevations situated outside. The net effect of the baseline on boundary delimitation was to be quite minimal.

Portugal decreed straight baselines in its three African colonies of Mozambique, Angola and Guinea (42) on 22 August 1966. Mozambique's straight baseline system (43) consisted of five sections, three of which were restricted to "bay" closings. One, the harbor of Lourenco Marques (44), did not meet the requirements of a legal bay. The longest segment measured approximately 60.4 nautical miles. Two segments deviated from the general direction of the coast by more than 15 degrees, but segments correctly reflected the presence of the numerous shoals and reefs. Possibly, the deviations from the norm resulted from positional difficulties rather than intent, and the effect on delimitation with opposite states such as Comoro, Madagascar and France (Reunion) appears limited.

Angola drew four segments (45), the total length of which was 46.8 nautical miles, out of a total natural coastline (including Cabinda) of more than 800 nautical miles. These baselines closed off natural indentations on an otherwise featureless shoreline , but did not always meet the semi-circularity requirement of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, which Portugal became a party to on 10 September 1964.

Guinea-Bissau (46), the third of the former Portuguese colonies, is a special case since 2/3 of its territory is completely masked from the open ocean by the several hundred islands of the Bijagos Archipelago. The straight baselines

joined the outermost points of the closing islands, which changed the main axis of the coast, hitherto aligned in a northwest/southeast direction (see Map # 15). The result was a shift of the equidistance line more to the south, to Guinea's detriment. The 11 straight baseline segments totalled 153.95 nautical miles in length, with the longest measuring 29 nautical miles. Some points used were in fact in the sea (47), which is unusual. Law number 3/78 of 19 May 1978 (when Guinea-Bissau became independent) amended this baseline system (48). In the Guinea/Guinea-Bissau case of 1985, Guinea-Bissau seemed poised to make a coastal archipelagic claim.

On 21 January, 1967, Mauritania decreed a straight baseline which measured approximately 89 nautical miles. The enclosed waters, while forming a major indentation of the Mauritanian coast, did not satisfy the semi-circular requirements of a bay (49). The baseline "straightened out" a hitherto more concave coastline. This could have an effect on lateral delimitations with the Western Sahara and Senegal if the equidistance method is used : the two equidistance lines drawn from the two land terminal points would normally have met at a shorter distance from the coast, thereby granting the two neighboring states a larger share of the maritime area.

On 16 April 1970, Mauritius (50) established the legislative basis for a system of straight baselines but did

not draw them on a chart. We can only surmise Mauritius's claims. The Act of Parliament occurred a full 10 years before the 1980 maritime boundary delimitation with France (Reunion), referred to in chapter 1. Mauritius is composed of several island territories, some situated up to 650 miles from the principal island (see Map # 16). To the north lie the two narrow Agalega Islands. Reefs and atolls are plentiful and could serve as low-tide elevations for the establishment of straight baselines, providing a permanent structure such as a lighthouse has been constructed on them, in accordance with the Convention on the Territorial Sea and Contiguous Zone which Mauritius became a party to a little later, on 5 October 1970. Mauritius cannot claim an oceanic archipelago, due to the isolation, small size and nature of its islands. Straight baselines can thus only apply to the individual island groups, and this limits the extent of a possible increase of internal waters, and effect on delimitation with neighboring states.

Senegal created a straight baseline system for approximately 2/3 of its coastline on 5 July 1972 (51). This was a conservative system, even though the coastline from which the system developed did not appear to be either deeply indented nor fringed with many islands. The river mouths (Senegal river, Salum, Jumbas, Casamance...) were closed in accordance with the provisions of the Convention on the Territorial Sea and Contiguous Zone signed by Senegal

on 25 April 1969. The effect of the few encroachments upon the territorial sea appeared to be minimal.

Of the 33 coastal states considered here, 8 have established straight baselines, come of which can be deemed excessive. More states appear later in this paper, with claims to excessive "archipelagic baselines" (see page 49). Other states, though their claims are less publicized, have established bay closing lines. Cameroon is one example, with a decree dated 25 June 1962. Djibouti claimed baselines closing the Gulf of Tadjoura on 9 January 1979. Ethiopia created undefined straight baselines around the Dahlac Archipelago on 25 September 1952. Both Somalia and the Ivory Coast produced enabling legislation for the establishment of straight baselines on 10 September 1972 and 17 November 1977, but appear not to have proceeded to the implementation phase. Kenya constructed a straight baseline system on 16 May 1972 and simultaneously claimed Ungwana Bay as an historic bay. The Seychelles gave itself the authority to designate historic waters on 1 August 1977 but has apparently not proceeded further along this front. Nor has the Sudan, authorizing the drawing of straight baselines under specified circumstances on 31 December 1970. Tanzania set up straight baselines on 24 August 1973 two years prior to its delimitation agreement with Kenya. We do not know what these are, but the maritime boundary agreement did

establish straight baselines for each country in the immediate vicinity of the boundary area, although some of these baselines did not appear to influence the course of the boundary (52).

In short, there are a number of unchallenged breaches of the spirit and letter of article 7 of the Law of the Sea Convention, which all the African states signed. This shows that the states do not feel compelled to make their maritime claims strictly conform with the rules of the Convention. Moreover, the abuse of these rules has not provoked a serious dispute, perhaps because in the present situation of flux, the state claiming excessive baselines typically is not able to strictly enforce its regulations in the additional maritime territory gained. In no African state south of the Sahara is there a potential "Libyan situation", where a militant state would use straight baselines as an instrument of offensive policy.

b) The territorial sea

There is an important divergence in state practice with regard to the seaward limits of the territorial sea in Africa south of the Sahara. Of the 33 states considered here, 14 have claimed territorial seas in excess of the norm of 12 nautical mile reflected in state practice in other regions, a norm which was confirmed by UNCLOS III. The complete list of these states and their claims appears in

Exhibit # 1. The claims are clearly related to concern over exclusive fishing rights (53). Since the African delegates adopted the positions of UNCLOS III, there is a discrepancy between the international and national levels, where the acts are inconsistent with the stipulations of the 1982 Convention. This reflects the emergence of a strong sense of nationalism in these developing states and their demand for control over activities in adjacent coastal waters.

But what of the lateral boundaries with neighboring states ? This is deemed of secondary importance. Judging from the paucity of lateral territorial sea delimitations in Africa south of the Sahara (see chapter 1), the developing states of Africa are more intent on expanding outward than laterally. This has much to do with wanting to consolidate their independence from Europe, at this stage in time.

c) The contiguous zone

In this area, contiguous to the territorial sea, the coastal state exercises certain limited and defined competences, mainly administrative and police functions, necessary to prevent and punish the infringement of its fiscal, sanitary, customs and immigration regulations. The concept appeared when the narrow territorial sea advocated by international law was considered insufficient to accomodate the growing interests and needs of coastal states (54). The state practice which

emerged became sufficiently developed to become codified in the Geneva Convention on the Territorial Sea and Contiguous Zone.

A number of African states promulgated contiguous zones in their municipal legislations in accordance with state practice. There was however no uniformity in these legislations. For example, section 3 of a 1969 amendment of Gambia's territorial sea and contiguous zone provided that

> the Gambia may in the zone of the high seas contiguous to the territorial sea of the Gambia and extending seaward to a line 18 nautical miles from the low-water mark exercise control necessary to prevent and punish the infringement of any law or right of the Gambia (55).

This was beyond the 12 miles advocated in article 24 of the Convention on the Territorial Sea and Continental Shelf. Djibouti established a 24 nautical-mile contiguous zone on 9 January 1979. Gabon passed enabling legislation for one on 12 January 1963 but never specified its limits. South Africa has a 12-mile contiguous zone for customs and sanitary purposes. Sudan established an 18 nautical-mile one in 1970. Other states, however, which include Nigeria and Cameroon, feel that the contiguous zone should be abandoned in the light of the emerging concept of the Exclusive Economic Zone. Senegal, in 1970, repealed its 1961 law concerning its 12 mile-contiguous zone, and the general tendency today is toward a zone serviceable within the Exclusive Economic Zone. Problems of delimitation linked to

this maritime area are thus usually subsumed under the Exclusive Economic Zone or continental shelf regime.

d) The Exclusive Economic Zone

The Exclusive Economic Zone is a recent zonal arrangement which emerged from UNCLOS III Within its Exclusive Economic Zone, the coastal state has sovereign rights over the natural resources of the seabed and subsoil and of the superjacent waters, as well as jurisdiction with regard to marine scientific research, marine environmental protection and preservation, and the establishment and use of artificial islands, installations and structures (56). Exhibit # 1 shows that out of the 33 states, 4 declared exclusive fishery zones : Gabon (150 n.m.), Senegal, South Africa and Zaire (all 200 n.m.). A further 15 declared 200 nautical mile Exclusive Economic Zones. Only Madagascar, with a 150 nautical-mile assertion, has claimed less. 7 states have declared territorial seas of 200 nautical miles. A further 7 have claimed territorial seas in excess of 12 nautical miles. Only 3 states have not made any "extended" claims (see page 15).

It is hardly surprising that so many African states have declared extended zones beyond the territorial sea since they were the ones, with the Asian states, to define and advocate such zones. They have oriented it toward development, the protection of the environment and the

interests of the developing states (57). The Exclusive Economic Zone concept tends to be closely identified with the territorial sea concept (58), and there is a feeling that it is simpler and more logical to claim a territorial sea of 200 nautical miles (59) rather than an EEZ. Only 11 African states conceived of their EEZ as being distinct from their territorial sea (60).

EEZs will require a large number of new maritime boundaries, in Africa as elsewhere. How does the "creeping jurisdiction" outlined above affect delimitations ? To some extent, it erodes the requirement of certainty and predictability of norms of international law, and again highlights the conflicting interests of the domestic and international levels. But the basic similarity of responses in African states forebodes well for future lateral boundary delimitations. After all, only one dispute was ever brought to a Tribunal : the Guinea/Guinea-Bissau case. Madagascar, through the effect of an "insufficient claim" of 150 nautical miles, even seems at a disadvantage in its future negotiations with opposite states. Other maritime delimitations likely to come into existence if all opposite and adjacent coastal countries declare 200 nautical-mile economic or fisheries zones would occur in the Mozambique Channel on the east coast and in the Red Sea. The states involved face one another across distances of less than 400 nautical miles, and share a common continental shelf.

e) The continental shelf

Under article 76 of UNCLOS III, the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance. The outer edge of the continental margin, in turn, is defined as comprising

> the submerged prolongation of the land mass of the coastal state, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof (61).

Under article 77, all coastal states are permitted to exercise sovereign rights over their continental shelves for the purpose of exploring and exploiting their natural resources. These include non-living resources, but sedentary species as well.

The continental shelf of Africa south of the Sahara tends to be narrow (see Map # 13), thus making the continent generally 'disadvantaged', except for offshore areas off the Gulf of Guinea, Namibia, Angola and South Africa on the west coast, and the maritime regions close to Reunion, Madagascar, Mauritius and Somalia on the east coast. It is to be expected that virtually all the African states

considered here will delimit their shelves by measuring 200 nautical miles from the baselines, making them co-extensive with their Exclusive Economic Zones. This is already true of four states, but the extent of the continental shelf is not specified at all (see Exhibit # 2) in 17 of the 33 states. Only 6 states became party to the 1958 Geneva Convention on the Continental Shelf. 4 were willing to adopt the convention's unprecise definition of the outer limit, "to a depth of 200 meters or to a distance that admits exploitation" : Ghana (1973), the Ivory Coast (1970), Liberia (1969) and the Sudan (1970). This 200-meter depth, however, was liable to fall within the territorial sea of some states, while in others, well beyond 200 miles. Distance that admitted "exploitation" depended on technological capability which varied in time, and would be restricted to those possessing it. Practice by the remaining states ranged from states making a claim without specifying an outer limit (Gambia) to a claim of 100 nautical miles (Benin in 1968), and 150 nautical miles (Madagascar in 1973).

Thus the claims generally tended to restraint, although the Law of the Sea negotiations (see chapter 4) did witness certain proposals on the part of the African states which argued for extended jurisdiction, to wit Mauritius, and seven other co-sponsors :

> The continental shelf of a coastal state extends beyond its territorial sea to a distance of 200

> nautical miles from the applicable baselines and throughout the natural prolongation of its land territory where such natural prolongation extends beyond 200 miles (62).

Mauritius, Madagascar and Senegal all adhered to this "natural prolongation" doctrine.

UNCLOS III provides a set of alternative criteria for determining the geographical limits of the legal shelf, should the physical continental margin extend beyond the 200 nautical mile limit as outlined for the 6 countries quoted above. Especially problematic will be the cases concerning the Gulf of Guinea, Reunion, Madagascar, Mauritius and Somalia, since these states share their continental shelf with others, and there is ample indication that the African continental shelf in these areas is rich in mineral deposits (63). The Red Sea is rich in brine which contains large quantities of heavy metals like iron, zinc, copper, lead, silver and gold.

With the increase in the importance of offshore resources, delimitation conflicts will arise. Agreements will be difficult to reach because of the absence of clear rules. Rich areas like the Gulf of Guinea, where many adjacent and opposite states share boundaries, are potential sources of conflict, although one would imagine the possibility of cooperation or peaceful dispute settlement, on a bilateral, regional or international basis.

The Geneva Convention on the Continental Shelf provides that the delimitation of the continental shelf of two adjacent states will be determined by agreement, but failing agreement, and unless another boundary is justified by special circumstances, the boundary line shall be the equidistance line measured from the same baselines as the territorial sea. Chapter 5 will examine the general configuration of the African coastline and problem areas identified when equidistance is hypothetically utilized to delimit boundaries.

f) Islands

Islands constitute the most seaward limit of the national baselines for many coastal states. As a consequence, these bits of territory will be the last significant points for the delimitation of a boundary based on equidistance. The greater the breadth of the shelf, the more important the island base points. Moreover, isolated mid-oceanic islands or even rocks can allocate thousands of square miles of seabed to states.

The 1958 Conventions and UNCLOS III do not provide many ground rules for delimitation (see article 15, UNCLOS III). Much is left to "special circumstances" invoked by the parties involved in boundary litigations in front of international tribunals. The decisions of the 1969 North Sea Cases (which mention "relevant circumstances"), the 1977

Anglo-French Channel case, the 1982 Tunisia-Libya case and 1985 Libya-Malta case (see chapter 5) have contributed to the development of the idea of "special circumstances", and legal concepts concerning islands and delimitations. These arbitrations came up with the "half-effect" idea, and looked at certain non-independent "enclaved" islands. Article 121 of UNCLOS III maintains that "rocks which cannot sustain human habitation or an economic life of their own shall have no EEZ or continental shelf".

The independent insular states of Africa are listed in Exhibit # 3. The second list in that exhibit refers to the states which include islands in their land territory. The issue here is the extent to which islands, large or small, can confer full national sovereign rights over the surrounding seabed and resources contained therein, and be used in maritime boundary delimitations by African states making island claims. To turn briefly to the already demarcated boundaries referred to in chapter 1, the Bijagos Archipelago appears to have played no role whatsoever in the 1960 Agreement between France and Portugal (later Senegal and Guinea-Bissau). The West African coast abruptly changes direction at the level of their common land boundary, and the line they agreed upon was not based on the equidistance principle. This would have taken into account the Bijagos Islands.

The Kenya-Tanzania agreement established baselines and boundary segments using island locations, rocks and reefs to delimit the areas closest to land. But further out to sea, the boundary simply followed the parallel of latitude of the land terminus without paying attention to the large Tanzanian Pemba Island. On the other hand, the Reunion-Mauritius maritime boundary of 1980 follows the median line, but this is restricted to the area lying between the two main islands. Both territories are composed of more than one island, and a strict equidistance line between these would have been so tortuous and complex as to be almost meaningless. Thrown into the situation is a claim problem (see chapter 1). The disputed island of Tromelin (see Map # 16) could cause considerable diplomatic problems (64), especially if important resources are found to be located in its vicinity.

The French Eparses Islands claimed by Madagascar are a potentially even more serious delimitation problem affecting maritime areas between France, Mozambique, and Madagascar (see Map # 17). If the solution of the dispute were to follow the Channel islands case opposing France and Britain,, these could be left as 12-mile enclaves in the Mozambique Channel. Another category of islands are those situated in the middle of restricted water bodies such as semi-enclosed seas. Ethiopia's Dahlac Archipelago (see Map #

18) is positioned in the Red Sea in such a way as to displace the equidistance boundary with Saudi Arabia.

The Gulf of Guinea : islands interfering with delimitation

Fernando Po, belonging to Equatorial Guinea, lies off the coast of Cameroon (see map # 19), and the use of this island as a basepoint would severely restrict the extent of Cameroon's EEZ and continental shelf (65). The situation is further complicated by the concavity of the coastline in the Gulf of Guinea, the presence of the independent insular state of Sao Tome and Principe, and of several inhabited (Annobon, Corisco, Elobey Grande and Elobey Chico) and uninhabited islands belonging to Equatorial Guinea. Equidistance would clearly lead to an unsatisfactory and inequitable result.

D.E. Karl, a specialist on islands and author of a 1977 article, proposes a delimitation, reproduced on the same map, which is based on a "proportionality of coastline" criterion. Equatorial Guinea has a coast approximately 90 miles in length, Fernando Po adds 50 miles to that coast. The island thus accounts for a sizeable portion (30%) of the total length of Equatorial Guinea's coast. Sao Tome and Principe add up to 40 miles, whereas the mainland coastlines of Cameroon, Nigeria and Gabon are about 200, 500 and 475 miles in length respectively. In applying the criterion of proportionality, Karl allocates 15% of the maritime area to

Cameroon, 10% to Equatorial Guinea, 35% to Gabon, 37% to Nigeria and 3% to Sao Tome. His solution is depicted by the dotted line on the map. It by no means constitutes the only one.

Islands need to be objectively evaluated, so as not to cause an "unjustifiable difference of treatment" (66), or too great a distorting effect (67). Their location with respect to the area of delimitation, their distance from land, their relative size compared to the delimiting state, their population and relative political and strategic importance are all factors to be considered. Both 1958 Conventions and UNCLOS III recognize islands as unique geographical factors for the determination of national sovereignty and jurisdiction over the sea.

g) Archipelagic baselines

Part IV of UNCLOS III allows archipelagic states to draw straight baselines joining the outermost points of their outermost islands. Archipelagic states are defined in article 46 (b) as "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity or which historically have been regarded as such". The ratio of land to water must lie between 1:1 and 1:9, and the length of any individual

baseline should not exceed 100 nautical miles except for 3% of the total number of baselines, which may have a length up to 125 nautical miles. The drawing of the baselines must not depart to any appreciable extent from the general configuration of the archipelago.

The importance and advantage of this regime with respect to fisheries or other resources, lies in the fact that, within its archipelagic waters, the archipelagic state has more rights, and fewer obligations, than it does in the EEZ. The drawing of such baselines will also extend the seaward limits of the territorial sea, contiguous zone, EEZ and continental shelf regimes.

African states with archipelagic claims are Cape Verde (1975), Sao Tome and Principe (1978), and the Comoro Islands (1982). Sao Tome and Principe are described in the Limits in the Seas series (68). Located in the Gulf of Guinea, they are the two largest islands of a state also comprising several smaller islands. The state's baseline system, amended in 1982, appears to meet the objective criteria set forth in article 47. The longest segment is 99.53 miles, and the water to land area ratio is 4.03:1. But although article 53 of the Convention recognizes the rights of all ships and aircraft to "archipelagic sea lanes passage", Sao Tome and Principe has not designated any sea lanes or air routes.

An archipelagic system, according the article 47(5) of UNCLOS III, is supposed to be applied in a way which will

not cut off from the high seas or the Exclusive Economic Zone the territorial sea of another state.But Sao Tome's claim does affect several other states along the Gulf of Guinea, notably Cameroon, Equatorial Guinea and Gabon, and one might expect an interesting example of a delimitation practice to appear here in the near future, especially if there is fear on the part of maritime states for the navigational freedoms of vessels passing through the Gulf. The net effect of archipelagic claims is to further close off considerable areas of former high seas (69), and Sao Tome's claim could be judged to be excessive, in view of the Atlantic Ocean taking on the characteristic of a semi-enclosed sea in the Gulf of Guinea.

h) Coastal archipelagos

Excessive claims also include the establishment of straight baselines around coastal archipelagos, since the UNCLOS III provisions do not allow for such claims. Ethiopia drew straight baselines around the Dahlac Archipelago in 1952. Guinea-Bissau, in its arbitral case against Guinea in 1985, appeared to be moving toward making a similar coastal archipelagic claim, the result of which would have shifted a hypothetical equidistance line toward the south. The state maintained that its coastal islands were geographically linked to the land, separated from the continent by narrow sea channels, but often joined to it at low tide. The

Bijagos Islands (see Map # 15), the nearest of which were two nautical miles from the continent and the furthest, 37 miles, with no two islands further apart than 5 miles, should in its view be considered, if the 12-mile territorial sea rule was applied, as being in the same territorial waters as each other, and thus as being linked to those of the continent (70). The Arbitral Court of the Hague decided to take those islands into account, by allocating an extra 20% to the length of Guinea-Bissau's coastline. But it agreed with Guinea that the equidistance method should be thrown out, since the increase in the general concavity of the coast, brought about by taking into consideration the Bijagos Islands, precluded the use of the equidistance method.

i) Sensitive and unstable environments

Unique circumstances can be invoked as warranting a different legal regime, which can have an impact on delimitation. Article 7 of UNCLOS III specifies that where a coast is highly unstable because of the presence of a delta and other natural conditions, a straight baseline may be drawn along the furthest seaward extent of the low-water line and may be retained there if the low-water line moves landwards. "Other natural conditions" could include the volcanic coasts known by geomorphologists to erode rapidly. Reefs are sensitive environments easily eroded by wave

action, and surviving only within a small temperature range, with ideal temperature being about 80 degrees F. Coral cannot survive in silty or polluted waters. The lagoon, the reef and the islet which crowns the circular or oval coral reef obviously form a geographic and ecologic unit. Hence the lagoon should be a part of the internal waters of the island, and straight baselines should use the outer reefs as turning points.

No African country has as yet drawn straight baselines or made claims because it considered its coast to be highly unstable. The state of Mauritius comprises several island groups which are atolls (71). The reefs forming an important part of these atolls "dry" during certain tidal conditions. These drying points are never charted with great accuracy since the entire reef usually constitutes a hazard to navigation, but they could serve as low-tide elevations for the measurement of the territorial sea. Under section 5 (b) of UNCLOS III, these points can be basepoints for a straight baseline system. The Cargados Carajos shoals contain 40 such islands situated on the reef and constitute the most complex insular formation of Mauritius. A straight baseline system drawn in accordance with the provisions of UNCLOS III would slightly increase the area of Mauritius's territorial sea.

j) International straits

These are significant geographic features, simultaneously navigation channels of benefit to a number of states, and areas which present delimitation problems. The intensity and use of straits is likely to expand considerably in the future and the interests at stake are often irreconcilable.

Africa has two straits of international significance : the Strait of Bab el Mandeb, separating the continent from the Arabian peninsula, and the Mozambique Channel on the east coast. This channel is wide enough not to be affected by states' 12 mile territorial sea, although a 50-mile claim was put in by Madagascar in 1973. The Zanzibar Channel is less significant to navigation and out of the way of the direct route along the African coast (72). It is regarded by Tanzania as internal waters. Previous paragraphs in this chapter have dealt with the delimitation problems arising from the presence of islands in the vicinity or within these straits.

k) Semi-enclosed seas

In these seas, geographic conditions prevent states from adopting a 200-nautical mile EEZ. They represent comprehensive geographic units likely to provide the framework for future regional management arrangements (73). On page 45, we already mentioned the Eastern Gulf of Guinea's delimitation problem and states' competing claims.

The overlap of resources (oil) and "excessive" claims within a geographically restricted area make it meaningful to pass from the short coastline of each individual state to the long coastline, with a focus upon the entire Eastern Gulf of Guinea coast. An equitable delimitation could be carried out by following a direction which takes into account the general concave shape of the Gulf of Guinea coastline, and would be adaptable to the pattern of present or future delimitations in the region. This theme is further explored in chapter 5.

The southern Red Sea presents an analogous situation, although less complex (see Map # 18). In 1974, the Sudan signed an agreement with Saudi Arabia relating to the joint exploitation of the Red Sea seabed and subsoil resources (74). This could serve as a convenient starting point for a delimitation which ultimately needs to address the presence of the Ethiopian Dahlac Archipelago.

1) The land-locked and geographically disadvantaged states

In Africa, 14 land-locked states (75) may have rights to appropriate portions of any living resource surplus of the EEZs of the African coastal states under study. Many states are likely to focus on the Gulf of Guinea for access to the sea. Uganda, Rwanda, Burundi, Zambia and Zimbabwe face eastward to the Indian Ocean. Zambia and Zimbabwe also connect with the Atlantic Ocean. Malawi, Zimbabwe and

Botswana have access to South Africa. The strategy of these African land-locked states in terms of their attempts to open EEZs to exploitation by all states of the region will be further analysed in the next chapter. But the issue raises questions in terms of conditions of access and, possibly, delimitation. What constitutes a "neighboring" land-locked state ? Many land-locked states neighbor a single coastal state. For example, Uganda, Rwanda, Burundi, Zambia, Malawi and Zaire all neighbor Tanzania. Would accommodation of all these states in Tanzania's economic zone not place the latter into a "disadvantaged" position ? On the other hand, certain states rich in resources have no neighboring land-locked states at all, such as Madagascar.

Africa has the largest number of land-locked countries in the world. There is a Convention on the Transit Trade of Land-Locked States (76) signed by 12 African land-locked states and ratified by 10. Only 3 African coastal states are signatories of this convention : Nigeria, Cameroon and the Sudan. Nigeria alone has ratified it. This indicates the coastal states' hostility to the idea of access.

In addition to land-locked states, Africa has a number of "geographically-disadvantaged" states. This group of states will not derive substantial benefits from the establishment of EEZs due to geographical, geological, biological and environmental factors. Unlike the land-locked states, geographically-disadvantaged states have a coastline and

therefore access to the sea, but no equitable share of the resources of the EEZ. Sudan, the largest African state, borders the semi-enclosed Red Sea with only 27,000 square miles of EEZ (77). Zaire, another large African state, is hemmed in by Angola and its Cabinda enclave, which restrict its coastline to a small corridor around the mouth of the river Zaire. This river however has minerals and silt, which enrich the resources of the sea. Other states have sufficient coastlines for their area, but few resources in their EEZ.

Other criteria defining the concept of geographically-disadvantaged states are listed by L.M. Alexander (78) and include :

(i) "shelf-locked" states, possessing a continental shelf adjoining that of another state and thus lacking the advantages of a continental slope and rise, meaning that they have no prospects of finding hydrocarbon reserves on the outer part of their continental margin. Djibouti, Ethiopia, the Sudan and Zaire are examples of "shelf-locked" states.

(ii) states with a small continental margin and/or exclusive economic or fisheries zone. One such state is Cameroon.

All in all, Alexander identifies 7 "primary" and 5 "secondary" characteristics. The result ? An African continent presenting an "extreme case" of disadvantaged conditions. Of the 33 coastal states considered here, only

11 (79) escape designation as geographically-disadvantaged states, if barely : Guinea-Bissau, Sierra Leone and Liberia are only slightly above the length of coastline (200 nautical miles) set by the author as a cut-off point. Of particular importance to this study is the list of states dependent on the exploitation of the living resources of the economic zones of other regional states for satisfaction of their nutritional needs. They join the land-locked states as candidates for sharing in the surplus stocks of neighboring states under the provisions of article 70 of UNCLOS III. There are five such states in Africa : Cameroon, Ivory Coast, Kenya, Zaire and Ghana, and only 7 in the world.

What is the effect of these claims ? Landlocked and geographically-disadvantaged states have won recognition of their rights of access to the sea at the Law of the Sea conference, and won certain other privileges, particularly with respect to activities in the Area and on the continental margin beyond the 200 nautical mile limit, but it is still not certain how these states will participate in the sharing of the surplus of the living resources of the EEZs of nearby states, since the wording of the Convention is very vague. It may be years before a practical solution is worked out in Africa. In the meanwhile, delimitation cases might take these factors into account : would it not be fair for an Arbitral Tribunal to grant Tanzania, for instance, a larger share of maritime area, in view of the

fact that so many of its neighbors are geographically-disadvantaged or land-locked, and need to gain access to its maritime resources ? Tanzania is likely to use such an argument, but tribunals are not known to consider such factors in their awards, or at least they have not done so until now.

Conclusion

Africa is in a state of transition with respect to practice in areas of expanded coastal state jurisdiction. For the most part reaching their independence in the early 1960s, African states have tended to expand their claims to maritime territory. The divergence in state practice with respect to expanded maritime jurisdiction makes the identification of general patterns difficult. Some claims could be said to exceed accepted maritime rules on a world-wide basis and this will have an effect on delimitation. Territorial seas have extended beyond the standard 12 miles. This gradual expansion seaward was one of the compelling factors for convening U.N. conferences, and we shall be looking at Africa's important contribution to the negotiations of the Law of the Sea conference in the following chapter.

Focus also shifted to the resources of the seabed. The uneven distribution of these resources, and uneven allocation of offshore areas was cause for excessive claims

on the part of some states. But these, in turn, led to other inequities. The result of an equidistance line, for instance, can lead to more inequity the further out to sea. Increased problems of delimitation will arise between opposite and adjacent states. In an extensive area such as the Eastern Gulf of Guinea, settlement of boundaries will be a long and difficult process. Controversy surrounding the process of delimiting continental shelf boundaries according to "equitable principles" will increase, as will the number of overlapping areas. It will be necessary, in the two remaining chapters, to look at Africa's basic attitude and philosophy concerning delimitation, and the existing judicial decisions and arbitrations applicable to delimitations in Africa. This should help to identify a number of guiding "principles".

CHAPTER 4

A UNITED AFRICAN ATTITUDE ON DELIMITATION?

Introduction

The previous chapter looked at "excessive claims" and diversity of state practice by African countries south of the Sahara. Simultaneously, Africa is emerging as a distinct region : it plays a role in the international legal order, having contributed since decolonisation to important trends. Its preoccupations lie with the economic implications of law, a state's right to self-determination and permanent sovereignty over its resources, and the new international economic order. Africa's participation has helped to modify classical concepts and shape new ones. Developments which African states have helped to bring about, such as the Exclusive Economic Zone, preferential fishing rights and the deep seabed regime, are connected to the delimitation theme. The apparent paradox between concepts such as exclusive state rights and common sharing of resources will be analysed.

After the 1958 conferences

The shaping of a collective African attitude on delimitation will be viewed in a historical perspective. In the early 1960s, all in all 32 former colonial territories emerged into full nationhood in the world. At least 20 were

former African colonies, and they joined Ghana, Liberia, the Sudan, Guinea and Ethiopia, to become members of the United Nations. They were to wield considerable strength in the decision-making process of the U.N. and world community.

Although African countries show differences of perspective based on diverging cultures, colonial traditions, political ideologies and levels of economic development, there are nonetheless a number of objectives shared by them, and other lesser-developed states. The natural resources present must be developed, a difficult proposition where there is a lack of capital and technicians. Yet it is important to organize their exploitation, develop industrial research and transportation and communication facilities, market processed goods and harness energy resources. Other objectives and interests include the control of the use of the technological equipment and machinery necessary to extract resources from the seabed (transfer of technology).

Law is not created for its own sake, but to cater to the interests of the entities within the community in which it operates. After their independence, most of the new states rejected the rules embodied in the 1958 Geneva Convention on the Continental Shelf, the negotiations of which they had not participated in. Only 8 African states, two of them land-locked, ratified the four Geneva conventions, an insignificant number of ratifications in a continent of

about 50 states (80). Even those states that ratified soon discovered that the conventions did not reflect their interests. The provisions on continental shelf limits were rendered obsolete by technological advances. Senegal denounced the conventions because of the "technological gap between her and the treaty partners" (81).

The general African attitude was clearly expressed in a speech later made by the Tanzanian delegate at the Third United Nations Conference on the law of the sea in Caracas, 1974 :

> For several centuries certain concepts and dogmas had regulated relationships in the oceans. Efforts had been made from time to time to modernize the law, particularly at the 1958 and 1960 Geneva conferences. But those patchwork efforts had been insufficient. As a result of technological progress, and particularly of political developments over the previous 15 years, existing rules no longer meet the requirements of contemporary reality. Many states that had recently acquired independence had been confronted with rules that ran counter to their interests, and in some cases, had led to conflicts...(82)

Tanzanian President Nyerere's policy statement made on the eve of independence concerning succession to treaties stated that Tanzania was not bound by the treaties -- except those relating to land boundaries -- concluded during the colonial period, some of which had the effect of drastically limiting her sovereignty as an independent state. This "Nyerere doctrine" found expression in international law and was supported by a number of countries. It favored validly concluded bilateral treaties over customary law.

The Organization of African Unity (OAU)

The Charter of the OAU was signed on 25 May 1963 in Addis Ababa. Of the 32 independent sub-Saharan African nations at the time, all but 2 signed the Charter and since then, all African states except South Africa have joined the OAU upon gaining independence. The mandate of the international organization is extremely broad : The OAU is committed to the preservation of African unity and solidarity and the promotion of international cooperation. Although political tensions have caused serious rifts among OAU states, the organization played a major role in promoting the cohesion and strength of the African group at the Law of the Sea negotiations. To this day, it has had only a limited role in delimitation. In 1964, the OAU passed a resolution to respect the boundaries as they existed at independence, which included maritime boundaries as well. The only one at the time was the 1960 Guinea-Bissau/Senegal boundary. But the OAU's present limited role should not preclude a more significant one played in the future, especially if delimitation is linked to marine resource development (the OAU Charter recognizes in its preamble the responsibility of the African states to "harness the natural and human resources of the continent for the advancement of the African peoples in the field of human endeavor"). However, the OAU played no part in the resolution of the

Guinea/Guinea-Bissau case of 1985, which went to the World Court.

In 1973 and 1974, the OAU made a declaration on the issues of the law of the sea (83), in an effort to harmonize Africa's position before the forthcoming Law of the Sea negotiations. It spoke among other topics of the territorial sea and straits, the regime of islands, the Exclusive Economic Zone concept, regional arrangements, fishing activities and the international regime for the seabed and ocean floor and subsoil beyond the limits of national jurisdiction. This document is reproduced in Exhibit # 4.

As an institution shaping African policy, the OAU is intent on asserting wider claims, and is thus in line with, and has encouraged, the current state practice of African countries as outlined in chapter 3. The 1971 Resolution on fisheries, for example,

> urges the governments of the African countries to take all necessary steps to proceed rapidly to extend their sovereignty over the natural resources of the high seas adjacent to their territorial waters and in the limits of their continental shelf (84).

In fact, one OAU Resolution claimed 200 mile territorial seas with further 12 miles contiguous zones (85) ! This 1971 OAU Resolution on territorial waters

> endorses the recommendation... that the littoral states of Africa should <u>where possible</u> (emphasis added) extend their territorial waters up to a maximum limit of 200 nautical miles from the baseline of the territorial sea... (86)

This was to be followed by the internationally accepted contiguous zone of 12 nautical miles. The OAU further recommended that the 212-nautical mile zone thus established should be declared a non-pollution zone (86).

The resolutions and recommendations of the OAU have hardly been uniform. They have served, nevertheless, to catalyze the extension of sovereignty by coastal states over their adjacent marine resources. They underscored the need to harmonize African marine policies and to cooperate in presenting a united front in defence of African interests in the law of the sea.

The 1972 Yaounde Seminar

In 1971, the Asian African Legal Committee was convened in Colombo. Several African states led by Kenya presented a working document on the concept of the Exclusive Economic Zone, without however defining the EEZ's outer limit or precise role (87), except that the new zone was distinct from the territorial sea. Only in the Yaounde Conclusions was a first comprehensive attempt made by the African states to put together the areas of consensus and departure on the law of the sea. The proposals centered on the EEZ, and referred to "exclusive jurisdiction" for the purpose of control, regulation and exploitation of the living resources of the sea. At the same time, they recommended that states "extend their sovereignty" to cover all the resources of the

high seas adjacent to their territorial sea and this would include at least their continental shelf. The economic zone thus created would cover both living and non-living resources such as oil, gas and other minerals.

The conclusions of the African states regional seminar on the law of the sea at Yaounde are reproduced in their entirety in Exhibit # 5. Paragraphs 5, 6 and 7 especially deal with delimitation.

> (5)The limit of the economic zone shall be fixed in nautical miles in accordance with regional considerations taking duly into account the resources of the region and the rights and interests of the land-locked and near land-locked states, without prejudice to limits already adopted by some states within the region.
> (6) The limits between two or more states shall be fixed in conformity with the United Nationa1 Charter and that of the Organization of African Unity.
> (7) The African States shall mutually recognize their existing historic rights (88).

However, some states obviously disagreed with paragraph (5) since a proviso in the conclusions mentioned that they thought that general principles of international law should be referred to in order to fix maritime limits.

On historic rights and historic bays, the Conclusions had this to say :

> (1) That the "historic rights" acquired by certain neighboring African States in a part of the sea which may fall within the exclusive jurisdiction of another State would be recognized and safeguarded.
> (2) The impossibility for an African State to provide evidence of an uninterrupted claim over a historic bay should not constitute an obstacle to the recognition of the rights of that state over such a bay. (88).

This resolution was adopted without a reservation.

The Kampala Declaration of 1974

In this document (see Exhibit # 6), the land-locked countries for the first time reflected their true position in proposals submitted by Uganda and Zambia. They attempted to guarantee for themselves a minimum right recognized under international law. Whereas OAU Declarations or the Yaounde Conclusions had only given land-locked and geographically-disadvantaged states the privilege to fish in the EEZ of adjoining coastal states (89), the Kampala Declaration went much further, claiming equal rights and jurisdiction with coastal states in respect of all resources beyond the territorial sea. This sparked off much opposition on the part of African coastal states. Ghana among others made it clear that the rights of land-locked states were restricted to the living resources and not to the non-living resources. The African land-locked states then resorted to another strategy, namely the establishment of regional EEZs open to exploitation by all states of the region (90), through regional agencies created for that purpose. This proposal obtained no support whatsoever from the coastal states, which shows the limits of just how far coastal states were prepared to go along with the "common heritage of mankind" concept.

<u>African states at the Law of the Sea negotiations</u>

Conventional law on the delimitation of maritime boundaries through the territorial sea did not change markedly from the 1958 Convention on the Territorial Sea and Contiguous Zone. But efforts were made at the Convention to clarify special circumstances, for example concerning islands : their size and position. The principles continued to place emphasis on negotiation between states, on historical title or other special circumstances and on the equidistance methodology. But the doctrine of the continental shelf and EEZ were merged, with the applicable delimitation articles substantially identical for the economic zone and continental shelf. The substantive language differences relating to opposite and adjacent states disappeared.

Draft articles (91) on the Exclusive Economic Zone were produced by the following African countries : Cameroon, Ghana, Ivory Coast, Kenya, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tanzania and Zaire. These states joined Algeria and Tunisia to propose in draft article 8 that

> nationals of developing land-locked states shall enjoy the <u>privilege</u> (emphasis added) to fish in Exclusive Economic Zones adjoining neighboring coastal states.

The parity given to land-locked states was the main original feature of these articles. They clearly showed that the

topic of land-locked states had been previously discussed, and the articles, drafted and prepared by the OAU. The African states involved in this proposal all claimed 12 mile territorial seas except Sierra Leone which claimed a 200-mile territorial sea.

Several African states' concern with petroleum is also evident in their draft articles on the economic zone. They stressed that the coastal state "shall have sovereignty over living and non-living resources" in the economic zone, meaning that they would regulate and control exploration and exploitation of non-living resources therein (92). This was hardly surprising with Africa becoming the scene of much offshore activity. The states signing these draft articles were encouraging oil companies to come in and help develop their offshore petroleum resources. Nigeria, already a major producer, demonstrated its concern with petroleum. Article 1, section 2 declared :

> A coastal state has the following rights and competences in its Exclusive Economic Zone :
> (i) sovereign rights for the purpose of exploring and exploiting the nonrenewable resources of the continental shelf, the seabed, and subsoil thereof...

And article 1, section 3 stated :

> A coastal state shall have the exclusive right to authorize and regulate... in the Exclusive Economic Zone... the construction, emplacement, operation and use of offshore artificial islands and other installations for purposes of the exploration and exploitation of the nonrenewable resources thereof.

Competing models on delimitation emerged from discussions taking place in the 7th and 8th sessions of the conference (93). One position on delimitation of sea boundaries between states with adjacent or opposite coasts based itself on rules allowing maximum flexibility in order to accommodate the greatest diversity of geographical situations : it wanted to leave the matter to be settled solely to the parties themselves by agreement. The other position resented this juridical vacuum which failed to provide definite rules on delimitation which courts and tribunals could rely on when assisting states in the settlement of their delimitation problems. Supporters of this position wanted to see in the treaty some clear legal norms on delimitation.

Two basic positions also appeared on the question of the proper standard for delimitation : should it be the "median or equidistance line", or a delimitation relying on "equitable principles" ? Proponents of the first group included 22 states. The second group comprised 29 states, inter alia Algeria, France and Kenya. The group of 22 questioned the role of equitable principles, judging them to be ambiguous. The group of 29, on the other hand, argued that the median line constituted only one of the methods of delimitation. Each delimitation should be based on equitable principles, as recognized in international practice and defined by international courts. As for the concept of

special circumstances, used by the proponents of the first group, it was too ambiguous.

Efforts were made in 1979 to reach a "neutral" text on delimitation. One such proposal was initiated by Mexico and Peru. The Ivory Coast submitted a new neutral formula, which it later withdrew. This seems to be the only official reaction registered on the part of a sub-Saharan African state. However, the North African states proved to be active, with Algeria supporting the equitable principles standard. Morocco presented the following informal proposal for paragraph 3 of articles 74 and 83 :

> Pending agreement or settlement, the states concerned shall, in a spirit of cooperation, freely enter into provisional arrangements. Accordingly, they shall refrain from activities or measures which may aggravate the situation or jeopardize the interests of the state, during the transitory period.
> Such arrangements, whether of mutual restraint or mutual accomodation, shall be without prejudice to the final solution on delimitation (94).

In the end, the states were not really able to move away from the two extreme positions. The issue of delimitation was clearly subject to conflicting national interests. This hindered the possible formulation of an objective legal standard divorced from those national interests. Supporters of the equitable principle and the median-equidistance standards were influenced by specific geographical situations and other factors which made them hang on to their respective positions. A case in point was Kenya : the

equidistance method could not be applied to its boundary with Tanzania, due to the general concavity of the Indian Ocean coast in the boundary vicinity. Moreover, the presence of Tanzania's Pemba Island would have complicated the issue. Instead, the two states reached an amicable solution satisfactory to both : a parallel of latitude, and near-shore variation consisting of a mixture of delimitation methodologies.

Conclusions

Many African states had been dissatisfied with the 1958 Convention. They feared that the technological advances of the western states would facilitate the plundering of the resources adjacent to their coasts. They thus made claims beyond the traditional 'accepted' narrow limit and tried to raise issues which had not been settled by the 1958 conventions. For instance, the archipelagic states did not want to see their waters designated as high seas. African states viewed the doctrine of the high seas as having a negative impact on their interests. This speeded their progression toward extensions of sovereignty and pushed their claims to territorial seas beyond and above the usual 12 miles. They wished to challenge the traditional dogmas, which many saw as propping the interests of the maritime and fishing nations, to Africa's disadvantage. the Law of the Sea conference was convened to deal with these

extensions of sovereignty, by African states and others. The working out of an "international solution" through this international conference was to have an effect on boundaries since these also resulted from conflicts between competing users of economic zones.

Delimitation issues changed in the period of time separating the 1958 Geneva conventions and UNCLOS III. "Special circumstances", in 1958, as a result of the comparatively insignificant breadth of the territorial sea, had a small spatial consequence, changing the course of the boundary only slightly. Now, with the the new Exclusive Economic Zone and continental shelf concept, even small deflections in the configuration of the coastline had spatial projections which increased the further away from the coast. But the Law of the Sea negotiators found it was too difficult to define rules of delimitation applicable to any situation, in view of the variety of geographical, hydrographical and other circumstances, as well as the impact of historical titles. Thus, delimitation in Africa was only made by way of bilateral agreements (see chapter 1), which utilized various methods of delimitation.

Despite their attempts to bring about a unified outlook, the African states cannot be said to have presented a unified front at the negotiations. The 33 coastal states did not represent a homogenous group. Some were strait states ; states bordering semi-enclosed seas and archipelagos ; some

were island states ; states with broad shelves and rich economic zones; others were endowed with narrow shelves and few resources. The four states (Mauritania, Mauritius, Senegal and Seychelles) claiming the edge of the continental margin and seeking to bring all the economically rich and productive offshore natural resources under their exclusive jurisdiction, were clearly less interested in encouraging the creation of an international machinery to regulate activities in the offshore areas beyond the limits of the coastal state jurisdiction. Their interests naturally differed from the great majority of land-locked, narrow shelf and shelf-locked states.

The 14 land-locked states had different interests from the coastal states, but again, their group could hardly claim to be homogenous. The seriousness of their problem differs depending on their location, their relationship with neighboring coastal and transit states, and the degree of reliance of their economies on the minerals to be mined from the seabed area.

In summary, and with these differences kept in mind, we need to return to the legal areas outlined in chapter 3. Interestingly, all African state considered in this paper signed UNCLOS III. Four states had ratified it by 1985 (95). Their contributions to the Law of the Sea negotiations reflected the problems of their continent, as they perceived them. Their "excessive" claims and views should thus not be

overlooked. They could significantly contribute to future trends of customary international law.

a) Straight baselines

This is an area where the African states did not express their views. Archipelagic baselines, on the other hand, were the object of proposals (see paragragh (g)).

b) The territorial sea

African states were divided on the limit of the territorial sea. A number were "territorialists", meaning that they identified the Exclusive Economic Zone with the territorial sea. The OAU failed to adopt a precise limit for the breadth of the territorial sea.

c) The contiguous zone

The majority of African states favored the adoption of a contiguous zone serviceable within the EEZ. A minority preferred to maintain the contiguous zone as distinct from the territorial sea and EEZ.

d) The EEZ

Africa further developed the concept of the EEZ such as it had been historically founded in Latin America. But variations appeared in state practice due to the

"territorialists" and diverse regional interests, particularly those of the land-locked states.

e) The continental shelf

The majority of African states, with the exception of the few wide-margin states, advocated the abandonment of the natural prolongation theory, and subsumed the continental shelf within the Exclusive Economic Zone. This had the advantage of simplifying delimitation matters. It also contributed to advancing the common heritage of mankind idea.

f) Islands

An OAU Declaration recognized the need for a proper determination of the regime of islands and enumerated various guidelines, inter alia their sizes, population, geology and the special interests of island states (96). 14 African states (97) sponsored, in UNCLOS III draft articles on the regime of islands, proposals which laid down important guidelines for the delimitation of islands, especially "enclaved" islands not situated in the proximity of the coasts of the state to which they belong.

g) Archipelagic baselines

The OAU endorsed the principle that, for the purpose of determining the territorial sea of archipelagic states, the

baselines should be drawn by connecting the outermost points of the outermost islands of the archipelago. Mauritius proposed that the waters enclosed by the baselines be characterized as "archipelagic waters" over which sovereignty was exercised regardless of the depth of these waters. This archipelago concept had the support of all African states and was reflected in the emerging UNCLOS III regime.

h) Coastal archipelagos

This theme was not approached by African states, and it is possible that only more state practice will turn it into a possible subject of discussion.

i) "Sensitive environments"

African states did not express their concern with the preservation of sensitive environments and reefs. These are numerous in Africa, since the continent presents the ideal geographic conditions (water temperature and clarity) for their survival and development.

j) International straits

In their proposals and statements at the Conference, the African states stressed the need to safeguard both the interests of the "strait" states and those of other users. Yet they were particularly protective of what they saw as

the vulnerability of the developing countries bordering these straits.

k) Semi-enclosed seas

Algeria was the only sponsor of a proposal to secure the right of access to and from the high seas for states bordering semi-enclosed seas (98).

l) Land-locked and geographically-disadvantaged states

African proposals at the Conference helped bring recognition of the rights of land-locked states : their right of access to the sea and exploitation of the resources of the EEZ. What remained unclear was how these proposals were to be implemented, in the absence of concrete treaties or bilateral commitments.

CHAPTER 5

THE GENERAL CONFIGURATION OF THE AFRICAN COASTLINE

Introduction

We now turn to the coast itself, or actual physical sphere where delimitation takes place. Given the wide variety of physical conditions and political interests existing throughout Africa and world-wide, the 1982 Convention was only able to provide broad guidelines on delimitation. This was hardly surprising. Even the purely geographic factors are too varied to warrant a single delimitation regime.

The African coastline is relatively straight, and the drawing of baselines thus does not pose unsurmountable problems except along unstable deltaic coasts, and areas fringed with islands, reefs and archipelagos. In the previous chapter, we outlined the two basic positions to appear on the question of the proper standard for delimitation, i.e. the pro and anti "equidistance method" factions. It would be convenient to look at a map of hypothetical equidistance (see Map # 20), and identify the "problem areas" appearing as a result of the configuration of the coast.

A study of this map yields the following observations :

(i) The concavity of the coast can produce an overlap of maritime areas. This is most prominent in the Gulf of Guinea.

(ii) The projected EEZs of some states become smaller the further the distance from the coast. This is an indication of the spatial projections of even small deflections in the configuration of the coastline. Examples are Gambia, Guinea, Kenya, the South African enclave within Namibia, and Benin.

(iii) The altogether disappearance of the Exclusive Economic Zone before it reaches 200 nautical miles can be noted in a number of states including Togo, Zaire, Cameroon and Congo.

(iv) "Opposite" states separated by less than 400 miles appear in a number of areas : in southeast Africa between Madagascar and Mozambique, in the Eastern Gulf of Guinea, on the West coast (Cape Verde Islands) and in the northeast, where Somalia, Djibouti, Ethiopia and the Sudan face the Saudi Arabian peninsula across the semi-enclosed southern Red Sea.

Since some of these "problem areas" are also potentially very rich in resources (see chapter 2), they might be hotly disputed in the near future. The four negotiated boundaries (see chapter 1) and Guinea/Guinea-Bissau boundary resulting from the 1985 Award provide a frame of reference that may or may not have relevance to differing geographic situations. Every maritime boundary situation is geographically unique : the coastal configuration ; the size, presence and location

of prominent features such as capes, bays, islands and low-tide elevations ; relative and absolute scales and distances; all these elements tend to be closely related, so thatonly a limited amount of extrapolation can take place. Geographical conditions do not reproduce themselves perfectly every time.

With these reservations well in mind, we may nonetheless venture a few guesses. Only one of the four negotiated boundaries was based on equidistance : between France (Reunion) and Mauritius. Two others were based on parallels of latitude : the 1975 Gambia/Senegal boundary and Kenya/Tanzania. The fourth, Guinea-Bissau/Senegal, was defined as a 240 degree azimuth not based on the equidistance principle. Parallels of latitude (see Map # 1) produce equitable results when applied to coasts which assume a north-south direction, as in the case of Gambia/Senegal. They could be applied to those regions lying between Mauritania and Senegal; Cabinda and South Africa; South Africa and Kenya. And longitude could be used on coasts presenting an east-west direction, as in the case of the Ivory Coast and Benin.

Parallels of latitude become problematic as soon as the coast changes direction. Kenya-Tanzania is an example in point : the coast inflects and increases its concavity in the exact vicinity of the boundary. This raises questions on what is likely to occur when Kenya and Somalia decide upon

their own maritime boundary. Kenya's Exclusive Economic Zone might then be forced into a triangular shape, as described in category (ii).

Negotiators for Senegal and Guinea-Bissau were obviously aware of and foresaw the danger when they worked out their boundary agreement in 1960. The coast changes direction after Almadies Point (Senegal) and the boundary takes that factor into account.

The equidistance method produces inherently equitable results when applied to a convex coast. It could successfully be employed in a number of areas, Sierra Leone/Liberia, and Liberia/Ivory Coast, for instance.

The Guinea/Guinea-Bissau case (1985)

This case, which took place before an Arbitral Tribunal of three judges in The Hague, has important implications for future African delimitations. It was a landmark decision : for the first time, two sub-Saharan states agreed to appear in front of a Tribunal for the purpose of delimiting their maritime boundary. The Court ruled that in the case of a concave coast, the equidistance method of delimitation was not appropriate because it would tend to exaggerate certain insignificant features of the coastline, thereby producing

> an amputation effect which would satisfy no equitable principle and which the Tribunal could not approve (99).

The Court included other states in its line of reasoning :

> When in fact, as is the case here, if Sierra Leone is taken into consideration, there are three adjacent states along a concave coastline, the equidistance method has the other drawback of resulting in the middle country being enclaved by the other two and thus prevented from extending its maritime boundary as far seaward as international law permits. In the present case, this is what would happen to Guinea, which is situated between Guinea-Bissau and Sierra Leone (100).

It went on to adopt a regional perspective : paragraph 92 of the Award stated that :

> in order for any delimitation to be made on an equitable and objective basis, it is necessary to ensure that, as far as possible, each state controls the maritime territories opposite its coasts and in their vicinity. First of all, therefore, it is necessary to define the coastline concerned with a view to delimitation. In this particular case, the coastline is continuous, although fairly irregular, from Cape Roxo in the north to the region of Sallatouk Point in the south. The parties have based their arguments on a coastline extending over this distance and have submitted no proof to the Tribunal of the need to take into account, for the purposes of the delimitation, a shorter stretch of coast. It is therefore the continuous coastline of Guinea-Bissau in the north and Guinea in the south that the Tribunal is called upon to consider, <u>although this does not prevent it from taking into account, if necessary, the coastlines of one or more neighboring countries</u> (emphasis added).

The Tribunal, in the following paragraph of the Award, stated that :

> A delimitation designed to obtain an equitable result <u>cannot ignore the other delimitations already made or still to be made in the region</u> (emphasis added).

Paragraph 103 :

> If they [Guinea and Guinea-Bissau] are considered together, it can be seen that the coastline of both countries is concave and this characteristic is accentuated if we consider the presence of Sierra Leone further south.

The Tribunal then points out the drawbacks of drawing an equidistance line in the present case :

> When in fact - as is the case here, if Sierra Leone is taken into consideration - there are three adjacent states along a concave coastline, the equidistance method has the other drawback of resulting in the middle country being enclaved by the other two and thus prevented from extending its maritime territory as far seaward as international law permits. In the present case, this is what would happen to Guinea, which is situated between Guinea-Bissau and Sierra Leone (101).

Paragraph 108 :

> A valid method for the Tribunal consists of taking a look at the whole of West Africa (emphasis added) and of seeking a solution which would take overall account of the shape of its coastline. This would mean no longer restricting considerations to a short coastline but to a long coastline. However, while the continuous coastline of the two Guineas - or of three countries when Sierra Leone is included - is generally concave, that of West Africa in general is undoubtedly convex. With this in mind, the Tribunal considers that the delimitation of maritime territories to be attributed to coastal states could be made following one of the directions which takes this circumstance into account. These directions would be approximately divergent. This idea, which in the present case would seem to offer an equitable result, automatically condemns the system of parallels of latitude defended by Guinea and of which the limit represented by latitude 10 degrees 40' north would have been just one example. However, it also condemns the equidistance method as seen by Guinea-Bissau. It leads towards a delimitation which is integrated into the present or future delimitations of the region as a whole.

Paragraph 109 :

> In order for the delimitation between the two Guineas to be suitable for equitable integration into the present delimitations of the West African region and into future delimitations it would be reasonable to imagine from a consideration of equitable principles and based on the most likely assumptions, it is necessary to look at how all these delimitations fit in with the general

> configuration of the West African coastline (emphasis added)...

A possible way for the Tribunal to find a solution likely to provide an equitable result would :

> ... consist of using the maritime facade and, for this purpose, selecting a straight line joining two coastal points on the continent (102).

This straight line

> would be a line joining Almadies Point (Senegal) and Cape Shilling (Sierra Leone) and would thus involve two other countries (103).

This system, in the Tribunal's eyes, was well suited to the circumstances it had chosen, i.e. the overall configuration of the West African coastline. The boundary (after first following the "southern limit" of the 1886 Convention as far as 12 miles west of Alcatraz) :

> would then go in a southwesterly direction, being grosso modo perpendicular to the line joining Almadies Point and Cape Shilling (103).

Notwithstanding possible legal problems arising out of exces de pouvoir (did the Award not wrongfully pre-judge Guinea's boundary with Sierra Leone ? Could it even comment on the Senegal/Guinea-Bissau boundary without making the slightest reference to the 1960 Agreement between both countries ?), the "regional perspective", which appears in judicial decisions for the first time here, could be applied to a number of African situations, notably in the Eastern Gulf of Guinea and Mozambique Channel. Here too, boundary agreements between states would need to take into account

"the present and future delimitations of the region as a whole" (104).

Both the Eastern Gulf of Guinea and Mozambique Channel include islands, and in the case of the Mozambique Channel, some of these are the object of rival claims (see Map # 17). The Guinea/Guinea-Bissau Award distinguished three different types of islands :

(i) coastal islands, separated from the continent by narrow sea channels, and often joined to the continent at low tide ;

(ii) the Bijagos Islands ;

(iii) the southerly islands lying in shallow waters such as the Guinean islands of Poilao, Samba, Sene and Alcatraz.

The Tribunal assessed the impact of these various categories of islands on the length of the coastline. It decided that the archipelagic Bijagos islands of Guinea-Bissau had to be taken into account in determining the length of Guinea-Bissau's coastline. This tended to equalize the lengths of the respective coastlines of both states in the eyes of the Tribunal. Its attitude provides clues on how to deal with the Gulf of Guinea islands which interfere with delimitation. The island specialist mentioned earlier, D.E. Karl, in Map # 19, proposed a delimitation based on the "proportionality of coastline" criterion, and this conforms to the Hague Tribunal's findings. The Tribunal had nothing, however, to say on the issue of island claims.

Four landmark judicial decisions on maritime boundaries, three by the International Court of Justice (ICJ) the other by an arbitration panel, have effected the maturing of the law on delimitation. The criteria for selecting "relevant circumstances" has flowed from these judgements rather than from the U.N. conventions. Even though the judgments need to be kept in context, the objective elements of their decisions will apply to the law of delimitation in similar, if not identical, geographic circumstances.

1) The 1969 North Sea continental shelf cases (Federal Republic of Germany/Denmark ; Federal Republic of Germany/Netherlands

This case bears a resemblance to the Eastern Gulf of Guinea situation, except that the coastline was more deeply concave, the countries more geographically opposite (see Map # 21), and the presence of islands was not an issue. But as in Africa, several delimitations were involved needing to deal with an overlap of claims, both "semi-enclosed" seas contained oil, and the coasts presented right-angled bends. Both sets of countries could presumably argue for "distributive justice", a just and equitable sharing of the space and natural resources contained therein. The conventions had provided no guidelines for the delimitation of three or more states on the same coast or in the same

vicinity, so nothing could be inferred from these international agreements.

The International Court of Justice took the position that the equidistance method did not constitute customary law. In this particular geographic situation, the application of equidistance as a principle of delimitation would be inequitable and distorting, due to the coastal configuration :

> (a) The slightest irregularity in a coastline is automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf... (105)

Consequently, it stated that delimitation was "to be effected by agreement in accordance with equitable principles" (106). These principles needed to take into account factors such as "physical and geological structure, and natural resources of the continental shelf area", and the "element of a reasonable degree of <u>proportionality</u>" between the coastal length of the states and the extent to which the continental shelf appertained to their coasts (106).

When determining the actual lengths of the coastlines, the Court left it to the parties to decide, but pointed out that one method "consists in drawing a straight baseline between the extreme points at either end of the coast concerned" (107). The North Sea opinion did contain one statement pertinent to the question of whether islands might

qualify as special circumstances for the purpose of the continental shelf delimitation between oposite states : it was appropriate in the eyes of the Court to ignore the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which could be eliminated by other means. In the Eastern Gulf of Guinea situation, of course, islands cannot be viewed as mere "incidental special features" (108) and the analogy can thus only be carried so far.

The Court concluded the North Sea case by stating that it considered that the international law of continental shelf delimitation did not involve any imperative rule ; it permitted the resort to various principles or methods, as appropriate, or a combination of the above, provided that by the application of equitable principles, a reasonable result would be achieved (109). There could never be any question of refashioning nature completely. The three states involved in the case had coastlines comparable in length, and had therefore been equally endowed by nature. But the configuration of the coastline of one state happened to be concave, and this created an inequity. This factor would need to be taken into account when delimitation took place. Likewise in the Eastern Gulf of Guinea. The coastal lengths of the five states involved are provided on page 46.

Another factor to be considered is the unity of the oil deposit. The same deposit lies on different sides of the

boundary line, and since it is possible to exploit a deposit from either side, the problem of wasteful exploitation immediately arises (see chapter 2). The Eastern Gulf of Guinea states might look at the way this problem was dealt with in the North Sea. Agreements involved joint plans for exploiting the natural resource.

2) The Anglo-French Arbitration (1977)

In the English Channel area, France and Great Britain are geographically opposite. This geography could apply to several African situations, including the Eastern Gulf of Guinea, the southern Red Sea and Mozambique Channel. As in the 1977 case, the governments could agree to use equidistance as the guiding methodology of delimitation. Some states may claim limited exceptions owing to special circumstances. Disputes may center on the status of the islands in the Red Sea (Dahlac Archipelago) or Mozambique Channel. The smaller coastal islands and islets might be ignored, but others may be given partial effect, if they constitute an element of distortion material enough to justify a condition of special circumstance (110). The islands of state A may become enclaves on the legal continental shelf of state B.

3) The Tunisia/Libya case (1982)

In this case, the International Court of Justice explored the method of delimiting a maritime boundary which was perpendicular to the general direction of the coast (see Map # 22). The situation somewhat resembled that of Nigeria and Cameroon, with a radical change in the direction of the West African coast, and presence of offshore oil, although the Eastern Gulf of Guinea region presents complexities which are lacking in the North African case. In the dispute, the International Court of Justice indicated five relevant circumstances needing to be taken into consideration with a view to achieving an equitable solution :

(i) The determination of the area relevant to the delimitation;

(ii) The general configuration of the coasts ;

(iii) The presence and location of islands ;

(iv) The course of the land boundary ;

(v) The establishment of a reasonable degree of proportionality between the extent of the continental shelf and length of the relevant part of the coast (111).

In considering the scope of the area relevant for the delimitation (see (i)), the Court noted that the presence of territories of other states must not be lost sight of. However, it recognized that it had "no jurisdiction to deal with such problems in the present case and must not prejudge their solution in the future". The findings of the

Guinea/Guinea-Bissau Tribunal radically contradicted the views of this Court.

It seemed doubtful that the criterion of proportionality (v) could be fully applied to the Eastern Gulf of Guinea because of alien islands situated in the vicinity. Thus the method of delimitation chosen by the Court, based on equitable principles and the conduct of the parties, could not easily be applied to this delimitation.

d) Libya-Malta (1985)

The geographical context of this case is reminiscent of Reunion/Mozambique, for instance, or Cape Verde/Senegal, or again Comoro/Mozambique, since the distance between the coasts of the parties is less than 400 miles. Malta argued for a median line, and although equidistance is a particularly equitable method in cases where the delimitation concerns states with opposite coasts, it could not be applied without an adjustment taking into account the respective coasts of the parties (112). There was considerable disparity in the lengths of these, since the Maltese coast is 24 miles long and the Libyan coast, 192 miles. This was judged by the Court to be a relevant circumstance, and consequently, the median line was shifted northward and Libya was attributed a greater area of the shelf.

Conclusion

It is difficult to assess the meaning and exact effect of these judicial decisions. Arbitral Tribunals have pointed at the particular geographic conditions where application of equidistance as a principle of delimitation would be inequitable. In determining equitable principles, they have explored geographical factors, including the "general configuration of the coasts". Asked to pronounce guiding principles and help clarify the law on delimitation, they have sometimes supplied criteria, but not always precise enough to be applied. Some contradictory statements even appear. The practice and law on maritime boundary delimitations are still in the early stages. African states, too, are new to the international scene. As more reach negotiated agreements or take their disputes to third parties, clarification of boundary principles and methodologies will take place, and this will aid other states in their delimitation process.

Conclusion

The African sub-Saharan states are increasingly aware of the wealth of their offshore resources. Despite their own lack of a tradition of fishing, they are prepared to fight to protect their substantial fish stocks and prime sites from foreign fishing operations. Despite the present oil crisis and slump in world prices, they want to avoid 'unequal' competition for access to this natural resource. They view as essential the investigation of ways to contain and/or resolve resource conflicts in their favor. The international legal system, in their eyes, is at their disposal as an efficient tool to promote their interests. African states seized the opportunity provided by the Law of the Sea Convention to make their claims known and effect changes in the world's political and economic structure, thus laying grounds for a new international economic order (113).

But this belligerency, reflected in "excessive claims" outward to territorial seas beyond the 12 mile limit, and the espousal of seemingly contradictory concepts such as exclusive state rights and common sharing of resources, did not similarly express itself in lateral claims. African states had to face up to the inequalities existing in their midst. Not all states had equal access to the sea, due to the whims of nature, history and politics. The land-locked

and geographically disadvantaged states co-existed with the Nigerian giant, and this highlighted the diversity of interests within the African continent.

As a result, African states only reluctantly delimited their lateral maritime boundaries with neighbors. The slate was almost entirely clean in the early 1960s (114), with only one delimited boundary. Only four more delimitations occurred in the following 25 years.

However, this slow pace is likely to accelerate. Petroleum and mineral resources are sorely needed both as a direct source of energy and as an indirect source for earning foreign exchange, essential for rapid development. Petroleum already provides a significant portion of some African states' foreign exchange earnings. These states, and others, will need to delimit their lateral boundaries, for exploration and exploitation of offshore oil to proceed.

Africa has attempted to create a regional order for itself, exemplified by the emphasis on the OAU as a forum for debate and dispute settlement. The Economic Community of West African States (ECOWAS) was formed by 16 countries to establish economic integration. It was hoped that this organization would evolve a "common outlook", possibly even create a "regional exclusive economic zone" as in the European Common Market, for the purpose of fisheries and oil management, which would avoid the need to delimit. But this has not taken place. The disparities of interests and of

levels of development are too great. Nigeria has been exploiting oil for a long time, and integration does not seem practical. The states will ultimately prefer to delimit first, before they create a collective maritime zone or cooperate in the exploitation of oil.

Despite its apparently uncomplicated coastline, characterized by few twists and turns, the African continent shows a greater diversity of boundary issues than anywhere else in the world. This is due to the high number and concentration of maritime boundaries, especially along the West African coast. As many as 17 adjacent coastal states border the littoral of the Gulf of Guinea, for a distance of 4800 kilometers. This gives each state an average coastline of only 282 kilometers, a low figure compared to the rest of the world. This situation was clearly brought about by the historical circumstances leading to the carving up of the continent by rival colonial powers. The result was an unusually high number of land-locked and geographically-disadvantaged states. These states are likely to exert much pressure in the future on the more advantaged coastal states.

The colonial legacy is also responsible for the high number of "enclaved" states or territories : Cabinda (Angola), Gambia, and the South African areas situated within Namibia (Walvis Bay, Luderitz, and a number of islands). If, as in the case of Namibia and South Africa,

the legal status of South Africa's presence in Namibia, and political future of Namibia, are uncertain, a serious problem arises from these two states' claims to areas of seas and seabed within 200 nautical miles of their territory according to the principle of equidistance. Other states have found satisfactory and original solutions to their enclave problems. Senegal and Gambia negotiated a boundary which deviated slightly from the coast, in order to prevent it from passing too close to the Gambian shore (see Map # 3).

The main "problem" area will definitely be the Eastern Gulf of Guinea. The overlap of the five states' claims, the presence of the independent insular state of Sao Tome and Principe, and important dependent islands belonging to Equatorial Guinea, the general configuration of the coastline, and presence of oil, all contribute to the complexity of this region. A boundary cannot be delimited between two states without taking into account the three others. A "regional solution" will need to be worked out for all five states. Since these have diverging historical backgrounds (two, Gabon and Cameroon, are former French colonies ; part of Cameroon was also administered by the Germans and the British ; Nigeria was a British colony ; Equatorial Guinea belonged to the Spanish, and Sao Tome and Principe, to Portugal), they will need to search for historical antecedents, and study how the respective spheres

of interest of the colonial powers were delineated at the time of the "scramble for Africa".

Land boundaries were inherited from colonial times. The OAU Resolution of 1964 wisely decided not to change any of boundaries existing at the time of independence. As a result, land boundary disputes have been few. Only one, opposing Burkina Faso and Mali, went to the World Court. Maritime boundaries will need to be worked out afresh. Their solution will require solidarity and cooperation. The only maritime boundary dispute to have gone to court involved two states who agreed at the close of the case to cooperate in the development of their offshore oil.

FOOTNOTES

(1) Limits in the Seas (1976) : Territorial Sea and continental shelf boundary : Guinea-Bissau/Senegal. No. 68, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(2) Limits in the Seas (1976) : Territorial Sea and continental shelf boundary : the Gambia-Senegal. No. 85, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(3) Limits in the Seas (1981) : Territorial waters boundary: Kenya-Tanzania. No. 92, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(4) Limits in the Seas (1982) : Maritime boundary : France (Reunion)-Mauritius. No. 95, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(5) Court of Arbitration (1985) : Delimitation of the maritime boundary between Guinea and Guinea-Bissau. Award of 14 February. Translation by M.-C. Aquarone and C. Urrutibehety. 89 pages.

(6) Limits in the Seas (1976) : Territorial sea and continental shelf boundary - the Gambia-Senegal. No. 85, U.S. Department of State, Bureau of intelligence and research, Office of the Geographer. p. 1.

(7) See McGrew, H.J. (1982) : Oil and gas developments in central and southern Africa in 1981. American Association of Petroleum Geologists Bulletin 66:11, p. 2257.

(8) For an illustration of Guinea-Bissau's maritime claim, see Map # 15.

(9) See Thurman, H.V. (1983) : Essentials of oceanography, p. 224.

(10) See Dalhousie Ocean Studies Program (1985) : The implementation of the new law of the sea in West Africa - prospects for the development and management of marine resources. June. Dalhousie University, Halifax, Nova Scotia, Canada. p. 10.

(11) Supra note (10), p. 11

(12) Hardin, G. (1968) : The tragedy of the commons. Science, 162, 1243-1248.

(13) Smith, S.L. and L.A. Codispoti (1980) : Southwest monsoon of 1979 - chemical and biological response of Somali coastal waters. Science 209, 1 August, p. 597.

(14) Supra note (10), p. 11.

(15) Hedburg, H.D. (1976) : Ocean boundaries and petroleum resources. In G. Gordon Pirie : Oceanography - contemporary readings in ocean sciences. Oxford University Press. p. 248.

(16) Supra note (15), p. 13.

(17) Supra note (10), p. 11.

(18) Cook, E. (1976) : Crude oil and natural gas. In : Man, Energy, Society. p. 98.

(19) Supra note (10), p. 11.

(20) Supra note (10), p. 13.

(21) Rembe, N.S. (1980) : Africa and the international law of the sea. The Hague, Sijthoff and Noordhoff. p. 104.

(22) Supra note (7), pages 2251, 2258-2263.

(23) Supra note (7), p. 2258-2259.

(24) Supra note (7), p. 2259.

(25) Supra note (7), p. 2259-2260.

(26) Supra note (7), p. 2261.

(27) Supra note (7), p. 2262.

(28) Supra note (7), p. 2262-2263.

(29) Supra note (7), p. 2251-2320.

(30) Lagoni, R. (1979) : Oil and gas deposits across national frontiers. American Journal of International Law 73, p. 217.

(31) Supra note (7), p. 2263.

(32) Supra note (1).

(33) Sheldon, R.P. (1982) : Phosphate rock. Scientific American, June, 246:6, p. 45.

(34) Supra note (21), p. 104.

(35) Adede, A.O. (1980) : Developing countries' expectations from and responses to the seabed mining regimes proposed by the law of the sea conference. In Kildow, J.T. (1980) : Deepsea mining. The MIT Press, Cambridge, Mass. p. 193.

(36) Earney, F.C.F. (1980) : Hard minerals and the continental margin. ***p. 9.

(37) Rembe, N.S. (1974) : Law of the Sea : conflicts over limits of national jurisdiction. Eastern Africa Law Review 7, p. 66.

(38) The United Nations Convention on the Law of the Sea, reproduced from U.N. Document A/CONF. 62/7 October 1982.

(39) Alexander, L.M. (1983) : Baseline delimitations and maritime boundaries. Virginia Journal of International Law 23:4, p. 518.

(40) Limits in the Seas (1985) : National claims to maritime jurisdictions. No. 36, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer, p. 110.

(41) Limits in the Seas (1972) : Straight baselines : Guinea. No. 40, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(42) The future Guinea-Bissau.

(43) Limits in the Seas (1970) : Straight baselines : Mozambique. No. 29, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(44) Renamed Maputo, after independence.

(45) Limits in the Seas (1970) : Straight baselines : Angola. No. 28, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(46) Limits in the Seas (1970) : Straight baselines : Portuguese Guinea. No. 30, U.S. Department of State, Bureau of Intelligence and Research, Office of theGeographer.

(47) Prescott, V (1986) : Delimitation of marine boundaries by baselines. Marine Policy Reports 8:3, p. 4.

(48) Supra note (40).

(49) Limits in the Seas (1970) : Straight baselines : Mauritania. No. 8, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(50) Limits in the Seas (1972) : Straight baselines : Mauritius. No. 41, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(51) Limits in the Seas (1973) : Straight baselines : Senegal. No. 54, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

(52) Supra note (9), p. 507.

(53) Alexander, L.M. (1983) : The ocean enclosure movement : inventory and prospect. San Diego Law Review 20:3, p. 572..

(54) Supra note (21), p. 112.

(55) Act No 6 of 1969.

(56) UNCLOS III, Article 56.

(57) Supra note 19, p.121.

(58) Juda, L. (1986) : The Exclusive Economic Zone : compatibility of national claims and the new United Nations Convention on the Law of the Sea. Ocean Development and International Law 16:1, 1-59..

(59) Supra note 21, p. 125.

(60) Supra note (58). These were France (Reunion), Ivory Coast, Madagascar, Mauritius, Mozambique, Nigeria, Sao Tome, Seychelles and Togo.

(61) UNCLOS III, Article 76 (4-6).

(62) Supra note (21), p. 109.

(63) Supra note (21), p. 104.

(64) Hodgson, R.D. (1973) : Islands : normal and special circumstances. 8th Annual Conference of the Law of the Sea Conference, p. 187.

(65) Karl, D. E. (1977) : Islands and the delimitation of the continental shelf : a framework for analysis. American Journal of International Law 71, p. 667.

(66) Supra note (65), p. 649.

(67) Supra note (65), p. 654.

(68) Limits in the Seas (1983) : Archipelagic straight baselines : Sao Tome and Principe. No. 98, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer, p. 16.

(69) Supra note (53), p. 16.

(70) Supra note 5, p. 65.

(71) Supra note 50.

(72) Supra note (21), p. 99.

(73) Alexander, L.M. (1977) : Regional arrangements in the oceans. American Journal of International Law 71, p. 92.

(74) Supra note (40), p. 61.

(75) These are Mali, Burkina, Niger, Chad, Central African Republic, Uganda, Rwanda, Burundi, Malawi, Zambia, Botswana, Zimbabwe, Swaziland and Lesotho.

(76) Supra note (21) p. 149.

(77) Supra note (21), p. 143-144.

(78) Alexander, L.M. (1981) : The 'disadvantaged' states and the law of the sea. Marine Policy, July, p. 187.

(79) These are : Angola, Reunion, Gabon, Guinea-Bissau, Liberia, Madagascar, Mozambique, Nigeria, Senegal, Seychelles, and Sierra Leone.

(80) These were : Kenya, Lesotho, Madagascar, Malawi, Mauritius, Nigeria, Sierra Leone and Uganda.

(81) Supra note (21), p. 91.

(82) Osieke, E. (1975) : The contribution of states from the Third World to the development of the law on the continental shelf and the law of the economic zone. Indian Journal of International Law 15, p. 324.

(83) Supra note (21), p. 220.

(84) Quoted in Rembe, N.S., supra note (37), p. 86.

(85) Supra note (37), p. 74.

(86) Organization of African Unity (1971) : Resolution on territorial waters. Educational, Scientific, Cultural and Health Commission Meeting in its second ordinary session from 29 November to 4 December 1971 in Cairo, Egypt. Reproduced in Rembe, N.S., supra note (21).

(87) Piazza, C. (1985) : Le Perou, les 200 milles et la convention sur le droit de la mer de 1982. Institut Universitaire de hautes etudes internationales.

(88) Organization of African Unity (1974) : Declaration of the OAU on the issues of the Law of the Sea. Reproduced in Rembe, N.S., supra note (21), p. 218.

(89) Supra note (21), p. 148.

(90) Supra note (21), p. 149.

(91) Mallon, L.G. (1974) : A multi-disciplinary analysis of the various proposals presented for the 1974 Law of the Sea conference on exclusive economic zones. Sea Grant technical bulletin # 28, University of Miami, Florida.

(92) Payne, R. J. (1977) : Transnational petroleum companies and new developments in sea law. Howard Law Journal 2, p. 452.

(93) Adede, A.O. (1979) : Toward the formulation of the rule of delimitation of sea boundaries between states with adjacent or opposite coasts. Virginia Journal of International Law 19, p. 207.

(94) Supra note (93), p. 243.

(95) These are Gambia, Ghana, Ivory Coast and Senegal.

(96) Supra note (21), p. 96.

(97) Algeria, Benin, Ivory Coast, Liberia, Madagascar, Mali, Mauritania, Morocco, Sierra Leone, Sudan, Tunisia, Burkina and Zambia.

(98) Supra note (21), p. 100.

(99) Supra note (5), para. 103.

(100) Supra note (5), para. 104.

(101) Supra note (5), para. 108.

(102) Supra note (5), para. 104.

(103) Supra note (5), para. 110.

(104) Supra note (5), para. 111.

(105) The International Court of Justice (1969) : The North Sea Continental Shelf case, Judgement, para. 89 (9).

(106) Supra note (105), para. 101.

(108) Supra note (105), para. 101 D(3).

(109) Supra note (105), para. 50.

(110) International Legal Materials (1979) : Arbitration between the United Kingdom and Northern Ireland and the French Republic on the delimitation of the continental shelf. Decision of June 30, 1977 and March 14, 1978. No. 18, page 397.

(111) ICJ Reports 1982, p. 79.

(112) International Court of Justice (1985) : Continental shelf (Libyan Arab Jamahiriya/Malta). Judgment of the Court, para. 65-73.

(113) Juda, L. (1979) : UNCLOS III and the new international economic order. Ocean Development and International Law 7, 221-256.

(114) The maritime boundary between Guinea-Bissau and Senegal was the only one to have been delimited. Supra note (1).

LIST OF EXHIBITS

(1) Exhibit 1 :
List of states having declared an EEZ
List of states having declared an exclusive fisheries zone
List of states having declared territorial seas in excess of 12 nautical miles

(2) Exhibit 2 : National claims to the continental shelf

(3) Exhibit 3 : The independent insular states of Africa - the list of states with islands.

(4) Exhibit 4 : Declaration of the Organization of African Unity on the issues of the law of the sea.

(5) Exhibit 5 : Conclusions of the African states Regional Seminar on the Law of the Sea, Yaounde 1972.

(6) Exhibit 6 : The Kampala Declaration (1974)

Exhibit 1

List of states having declared an EEZ :

Cape Verde (200)

Comoro Islands (200)

Djibouti (200)

France (200)

Guinea (200)

Guinea-Bissau (200)

Ivory Coast (200)

Kenya (200)

Madagascar (150)

Mauritania (200)

Mauritius (200)

Mozambique (200)

Nigeria (200)

Sao Tome (200)

Seychelles (200)

Togo (200)

The countries listed are 16 (out of 33)

List of states having declared an exclusive fisheries zone :

Gabon (150)

Senegal (200)

South Africa (200)

Zaire (200)

The countries listed are 4 (out of 33)

List of states having declared territorial seas in excess of 12 miles :

Angola (20)

Benin (200)

Cameroon (50)

Congo (200)

Gabon (100)

Gambia (200)

Ghana (200)

Liberia (200)

Mauritania (70)

Nigeria (30)

Sierra Leone (200)

Somalia (200)

Tanzania (50)

Togo (30)

The countries listed are 14 (out of 33)

Exhibit 2 :

National claims to the continental shelf.

1) Angola	Not specified
2) Benin	100 nautical mile limit of 1968. Superseded by territorial sea law of 1976.
3) Cameroon	Not specified
4) Cape Verde	Not specified
5) Comoro	Not specified
6) Congo	Not specified
7) Djibouti	Not specified
8) Equatorial Guinea	Not specified
9) Ethiopia	Not specified
10) France(Reunion)	Party to 1958 Convention on continental shelf.
(11) Gabon	Not specified
(12) Gambia	Claims right in 1966 to exercise control seaward of territorial sea with respect to seabed and subsoil but limit is not specified.
13) Ghana	1973 : 100 fathoms or to depth of exploitation.
14) Guinea	Not specified
15) Guinea-Bissau	Not specified
16) Ivory Coast	200 meters in 1970.
17) Kenya	Party to 1958 continental shelf Convention in 1969.
18) Liberia	200 meters or to depth of exploitation in 1969.
19) Madagascar	150 nautical miles (1973). Party to 1958 Convention on continental shelf in 1964.

20) Mauritania	Edge of continental margin or 200 nautical miles (1978).
21) Mauritius	Edge of continental margin or 200 nautical miles (1977).
22) Mozambique	Not specified
23) Nigeria	To depth of exploitation (1969). Party to 1958 convention on the continental shelf in 1971.
24) Sao Tome and Principe	Not specified
25) Senegal	Edge of continental margin or 200 nautical miles (1976).
26) Seychelles	Edge of continental margin or 200 nautical miles (1977).
27) Sierra Leone	Party to 1958 continental shelf convention (1966).
28) Somalia	Not specified
29) South Africa	200 meters or depth of exploitation (1963). Party to 1958 convention on the continental shelf (1964).
30) Sudan	200 meters or depth of exploitation (1970). Joint exploitation with Saudi Arabia (1974).
31) Tanzania	Not specified
32) Togo	Not specified
33) Zaire	Not specified

Exhibit 3

The independent insular states of Africa

1) Cape Verde

2) Comoro

3) Madagascar

4) Mauritius

5) Sao Tome and Principe

6) Seychelles

States with islands

1) Ethiopia

2) France (Reunion)

3) Guinea-Bissau

4) Kenya

5) Tanzania

Declaration of the Organization of African Unity on the Issues of the Law of the Sea [Document A/CONF.62/33, OAU Doc. CM/Res.289(XIX)]

The Council of Ministers of the Organization of African Unity, meeting in its Twenty-first Ordinary Session in Addis Ababa, Ethiopia, from 17 to 24 May 1973, and in its Twenty-third Ordinary Session in Mogadiscio, Somalia, from 6 to 11 June 1974.

Considering that in accordance with the charter of the Organization of African Unity, it is our responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in all spheres of human endeavour,

Recalling resolutions CM/Res. 245(XVII) and CM/Res. 250(XVII) of the Seventeenth Session of the Council of Ministers of OAU on the Permanent Sovereignty of African Countries over their natural resources,

Recalling the OAU Council of Ministers resolution CM/ Res.289(XIX) and decision No. CM/Dec. 236 (XX),

Aware that many African countries did not participate in the 1958 and 1960 Law of the Sea Conferences,

Recalling also resolution 2750 (XXV) and 3029 A (XXVII) of the United Nations General Assembly,

Aware that Africa, on the basis of solidarity, needs to harmonize her position on various issues before the forthcoming United Nations Conference on the Law of the Sea to be held at Carcas, Venezuela, in 1974, and to benefit therefrom,

Recognizing that the marine environment and the living and mineral resources therein are of vital importance to humanity and are not unlimited,

Noting that these marine resources are currently being exploited by only a few States for the economic benefit of their people.

Convinced that African countries have a right to exploit the marine resources around the African continent for the economic benefit of African peoples,

Recognizing that the capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources are not unlimited,

Noting the potential of the sea for use for nonpeaceful purposes, and convinced that the submarine environment should be used exclusively for peaceful purposes,

Recognizing the position of archipelagic States,

Recognizing that Africa has many disadvantaged States including those that are land-locked or shelf-locked and those whose access to ocean space depends exclusively on passage through straits,

Noting the recent trends in the extension of coastal States' jurisdictions over the area adjacent to their coasts,

Having noted the positions and the views of other States and regions,

Declares:

A. *Territorial sea and straits*

1. Pending the successful negotiation and general adoption of a new regime to be established in these areas by the forthcoming United Nations Conference on the Law of the Sea, this position prejudices neither the present limits of the territorial sea of any State nor the existing rights of States;
2. That the African States endorse the right of access to and from the sea by the land-locked countries, and the inclusion of such a provision in the universal treaty to be negotiated at the Law of the Sea Conference;
3. That the African States in view of the importance of international navigation through straits used as such endorse the regime of innocent passage in principle but recognize the need for further precision of the regime;
4. That the African States endorse the principle that the base lines of any archipelagic State may be drawn by connecting the outermost points of the outermost islands of the archipelago for the purposes of determining the territorial sea of the archipelagic State.

B. *Regime of islands*

5. That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles taking account of all relevant factors and special circumstances including:
   (a) The size of islands
   (b) Their population or the absence thereof
   (c) Their contiguity to the principal territory
   (d) Their geological configuration
   (e) The special interest of island States and archipelagic States.

C. *Exclusive economic zone concept including exclusive fishery zone*

6. That the African States recognize the right of each coastal State to establish an exclusive economic zone beyond their territorial seas whose limits shall not exceed 200 nautical miles, measured from the baseline establishing their territorial seas;
7. That in such zones the coastal States shall exercize permanent sovereignty over all the living and mineral resources and shall manage the zone without undue interference with the other legitimate uses of the sea, namely, freedom of navigation, overflight and laying of cables and pipelines;
8. That the African countries consider that scientific research and the control of marine pollution in the economic zone shall be subject to the jurisdiction of the coastal States;
9. That the African countries recognize, in order that the resources of the region may benefit all peoples therein, that the land-locked and other disadvantaged countries are entitled to share in the exploitation of living resources of neighbouring economic zones on an equal basis as nationals of coastal States on bases of African solidarity and under such regional or bilateral agreements as may be worked out;
10. That nothing in the propositions set herein should be construed as recognizing rights of territories under colonial, foreign or racist domination to the foregoing.

D. *Regional arrangements*

11. That the African States in order to develop and manage the resources of the region take all possible measures, including co-operation in the conservation and management of the living resources and prevention and control of pollution to conserve the marine environment, to establish such regional institutions as may be necessary and settle dispute between them in accordance with regional arrangements.

E. *Fishing activities in the high seas*

12. That the African States recognize that fishing activities in the high seas have a direct effect on the fisheries within the territorial sea and in the economic zone. Consequently, such activities must be regulated especially having regard to the highly migratory and anadromous fish species. The African States therefore favour the setting up of an international sea fisheries regime or authority with sufficient powers to make States comply to widely accepted fisheries management principles or alternatively the strengthening of the existing Food and Agriculture Organization of the United Nations Fisheries Commissions or other fisheries regulatory bodies to enable them to formulate appropriate regulations applicable in all the areas of the high seas.

F. *Training and transfer of technology*

13. That the African States in order to benefit in exploration and exploitation of the resources of the sea-bed and subsoil thereof shall intensify national and regional efforts in the training and assistance of their personnel in all aspects of marine science and technology. Furthermore they shall urge the appropriate United Nations agencies and the technologically advanced countries to accelerate the process of transfer or marine science and technology, including the training of personnel.

G. *Scientific research*

14. All States regardless of their geographical situation have the right to carry out scientific research in the marine environment. The research must be for peaceful purposes and should not cause any harm to the marine environment.

Scientific research in the territorial sea or in the exclusive economic zone shall only be carried out with the consent of the coastal State concerned.

States agree to promote international co-operation in marine scientific research in areas beyond limits of national jurisdiction. Such scientific research shall be carried out in accordance with rules and procedures laid down by the international machinery.

H. *Preservation of the marine environment*

15. That the African States recognize that every State has a right to manage its resources pursuant to its environmental policies and has an obligation in the prevention and control of pollution of the marine environment.

16. Consequently, African States shall take all possible measures, individually or jointly, so that activities carried out under their jurisdiction or control do not cause pollution damage to other States and to the marine environment as a whole.

17. In formulating such measures, States shall take maximum account of the provisions of existing international or regional pollution control conventions and of relevant principles and recommendations proposed by competent international or regional organizations.

I. *International regime and international machinery for the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction*

18. That African States reaffirm their belief in the Declaration of Principles, embodied in resolution 2479 (XXV) of the United Nations General Assembly, and that in order to realize its objectives these principles shall be translated into treaty articles to govern the area.
19. In particular the African States reaffirm their belief in the principle of the common heritage of mankind, which principle should in no way be limited in its scope by restrictive interpretations.
20. That with regard to the International Seabed Area, African States affirm that until the establishment of the international regime and international machinery the applicable regime in the area is the Declaration of Principles, resolution 2749 (XXV) and the moratorium resolutions; and that in accordance with the provisions of the Declaration and the resolutions no State or person, natural or juridical, shall engage in any activities aimed at commercial exploitation of the area.
21. Without prejudice to paragraphs 1 and 6 above, the African States support a limit of the internation area determined by distance from appropriate baselines.
22. That the African States affirm that:

(a) The competence of the international machinery shall extend over the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

(b) The machinery shall possess full legal personality with functional privileges and immunities. It may have some working relationship with the United Nations system but it shall maintain considerable political and financial independence;

(c) The machinery shall be invested with strong and comprehensive powers. Among others it shall have the right to explore and exploit the area, to regulate the activities in the area, to hand equitable distribution of benefit and to minimize any adverse economic effects by the fluctuation of prices of raw materials resulting from activities carried out in the area; to distribute equitably among all developing countries the proceeds from any tax (fiscal imposition) levied in connexion with activities relating to the exploitation of the area; to protect the marine environment; to regulate and conduct scientific research and in this way to give full meaning to the concept of the common heritage of mankind;

(d) There shall be an assembly of all members which shall be the repository of all powers and a council of limited membership whose composition shall reflect the principle of equitable geographical distribution and shall exercize, in a democratic manner, most of the functions of the machinery. There shall also be a secretariat to service all the organs and a tribunal for the settlement of disputes. The Assembly and the Council would be competent to establish as appropriate subsidiary organs for specialized purposes.

Conclusions of the African States Regional Seminar on the Law of the Sea, YAOUNDE, 1972

After examining the reports, conclusions and recommendations of the various working groups, which were discussed and amended, the seminar adopted the following recommendations:

I.(a) *On the territorial sea, the contiguous zone and the high seas:*

(1) The African States have the right to determine the limits of their jurisdiction over the seas adjacent to their coasts in accordance with reasonable criteria which particularly take into account their own geographical, geological, biological and national security factors.

(2) The Territorial Sea should not extend beyond a limit of 12 nautical miles.

(3) The African States have equally the right to establish beyond the Territorial sea an Economic Zone over which they will have an exclusive jurisdiction for the purpose of control, regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples and their respective economies, and for the purpose of the prevention and control of pollution.

The establishment of such a zone shall be without prejudice to the following freedoms; freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines.

(4) The exploitation of the living resources within the economic zone should be open to all African States both land-locked and near land-locked, provided that the enterprizes of these States desiring to exploit these resources are effectively controlled by African capital and personnel. To be effective, the rights of land-locked States shall be complemented by the right of transit. These rights shall be embodied in multilateral or regional or bilateral agreements.

(5) The limit of the economic zone shall be fixed in nautical miles in accordance with regional considerations taking duly into account the resources of the region and the rights and interests of the land-locked and near land-locked States, without prejudice to limits already adopted by some States within the region.

(6) The limits between two or more States shall be fixed in conformity with the United National Charter and that of the Organization of African Unity.

(7) The African States shall mutually recognize their existing historic rights.

However certain participants expressed reservations as to a 12-mile limit for the territorial sea and as to fixing a precise limit.

On recommendation No. 5 others thought that the general principles of International Law should be referred to in order to fix maritime limits.

I.(b) *On "Historic Rights" and "Historic Bays":*

(1) That the "historic rights" acquired by certain neighbouring African States in a part of the sea which may fall within the exclusive jurisdiction of another State would be recognized and safeguarded.
(2) The impossibility for an African State to provide evidence of an uninterrupted claim over a historic bay should not constitute an obstacle to the recognition of the rights of that State over such a bay.

Adopted without reservation

II. *On the biological resources of the sea, fishing and maritime pollution:*

Recommendations
The Participants:
Recommended to African States to extend their sovereignty over all the resources of the high seas adjacent to their Territorial Sea within an economic zone to be established and which will include at least the continental shelf;
Call upon all African States to uphold the principle of this extension at the next International Conference on the Law of the Sea;
Suggest that African States should promote a new policy of co-operation for the development of fisheries so as to increase their participation in the exploitation of marine resources;
Recommend to African States to take all measures to fight pollution and in particular;
by establishing national laws to protect their countries from pollution;
by advocating in international organizations the conclusion of appropriate agreements on control measures against pollution.

Adopted without reservation

III. *On the continental shelf and the sea-bed:*
Recommendations
In the light of their discussions the Seminar approves the principle of setting up an international governing body to manage the common heritage outside the limits of national jurisdiction. It considers that this body must conform with the spirit of the resolution which provided for its creation and for this reason must be structured and operate in such a way that the developing countries should be the primary controllers and beneficiaries.
The Seminar recommends that the international body should carry out its wishes on the Seabed and subsoil for the benefit of the international community.
Therefore, it considers that its action will depend on the desire

of States to extend their limits of jurisdiction. The Seminar noted that it was important for this body to avoid being a simple administrative apparatus issuing licences and distributing royalities.

It considers that to be efficient the International body must seek the best ways and means to involve the business concerns of developing countries in exploiting the resources available in its zone of using these resources to promote the progress of mankind in the developing countries so as to correct the grave imbalance between the nations.

The Seminar considers that all these objectives can be achieved if the participation of developing countries in the planning, setting up, and operation of this body is assured without restriction.

Adopted unanimously:
The participants expressed the unanimous wish that these recommendations should be notified to all African States and to the OAU.

The Kampala Declaration [Document A/CONF.62/63]

The Conference of the Developing Land-locked and other Geographically Disadvantaged States, meeting in Kampala, Uganda, from 20 to 22 March 1974.

Having in mind the Third United Nations Conference on the Law of the Sea, inaugurated in New York on 3 December 1973, the second session of which is due to be held in Caracas, Venezuela, from 20 June to 29 August 1974,

Aware of the fact that the Conference is called upon to draw up a future comprehensive legal order for the sea and ocean space,

Believing that the Conference should strive, in drawing up the said order, to ensure the common interests of the international community, as a whole and to provide for the orderly and equitable development and enjoyment of ocean resources, with the participation of all nations, including the land-locked and other geographically disadvantaged States,

Emphasizing the necessity of taking into consideration the needs and interests of the developing countries, particularly those of the land-locked and other geographically disadvantaged States,

Calling once again the attention of all States to the vital role and importance of the exercize by land-locked States of their right of free access to and from the sea, and their right of free transit and other facilities in the process of their economic development, and recognizing that developing land-locked States are among the least developed of the developing countries,

Affirming that the peaceful uses of the sea and the development and enjoyment of its resources represent vital and crucial elements of trade, commerce and communications in the world, which in turn play a very significant role in the process of economic development of nations,

Recognizing the needs of the land-locked States for the availability, suitability and operating efficiency of the transportation system, and port and other facilities in the transit States, upon which facilities they depend for their international trade,

Recalling that numerous international legal instruments have recognized the rights of land-locked States of free access to and from the sea and other related matters,

Convinced that the viability of the legal order of the oceans depends upon the fulfilment of the needs and interests of all nations on the basis of equality and non-discrimination in attaining higher levels of economic prosperity for their peoples,

Declares that the future legal order of the oceans should embody in an appropriate form the following principles representing the essential rights and interests of the developing land-locked and other geographically disadvantaged States:

1. The right of land-locked States of free and unrestricted access to and from the sea is one of the cardinal rights recognized by international law.

2. The right of geographically disadvantaged States of free and unrestricted access to and from the high seas is one of the cardinal rights recognized by international law.

3. Transit States shall respect and facilitate the exercize of the right of free access to and from the sea by land-locked States and their right of free and unrestricted transit, and provide them with all other facilities necessary for traffic in transit without discrimination, by all means of transport and communication, through all the routes of access in the transit State.

4. Land-locked States and other geographically disadvantaged States shall have the right of free access to and from the area of the seabed, in order to enable them to participate in the exploration and exploitation of the area and its resources and to derive benefits therefrom.

5. In order that land-locked States shall exercize the right to sail ships under their own flag and to use ports, coastal States shall respect the right of land-locked States to use on an equal basis, facilities, equipment and all other installations in the ports.

6. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connexion with such traffic.

7. Land-locked and other geographically disadvantaged States shall be adequately and proportionately represented in all the organs of the international seabed machinery, the decisions of which shall be made with due regard to their special needs and problems.

8. In the exploitation of the resources of the sea and seabed and subsoil thereof, beyond the territorial sea, the following principles shall apply:

(a) The rights and interests of all States, whether coastal or land-locked, shall be taken into account.

(b) All rights which land-locked and other geographically disadvantaged States have with regard to such resources under existing international law shall be maintained.

(c) The international area that would be governed under the concept of the common heritage, within the meaning of United Nations General Assembly resolution 2467 A (XXIII), shall be so extensive and contain such resources, as to ensure viable economic exploitation.

9. With respect to the exercize of jurisdiction over resources in areas adjacent to the territorial sea, the land-locked States and other geographically disadvantaged States shall have equal rights with other States and without discrimination in the exercize of such jurisdiction, in accordance with international standards to be drawn up by the Third United Nations Conference on the Law of the Sea.

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(7) Map # 7 : Guinea-Bissau and Guinea oil concessions and key wells.

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(16) Map # 16 : Indian Ocean islands : Reunion and Mauritius.

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(18) Map # 18 : The Dahlak Archipelago and the southern Red Sea.

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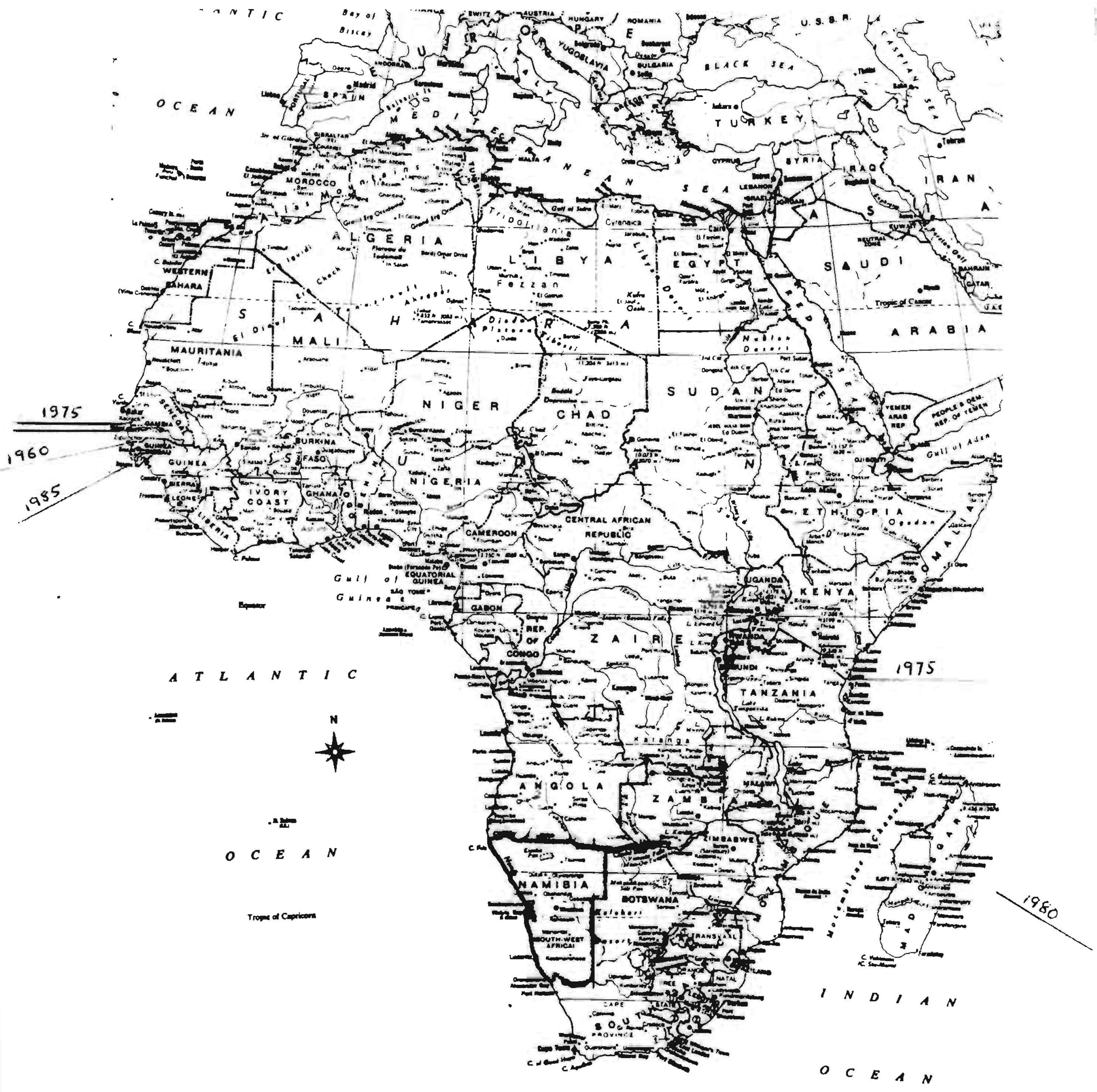
(21) Map # 21 : The North Sea continental shelf boundaries (1969).

(22) Map # 22 : The delimitation of the Tunisia/Libya boundary (1982).

Map # 1 : Africa and its five maritime boundaries

OCEAN
SPAIN
MOROCCO
ALGERIA
LIBYA
EGYPT
TURKEY
BLACK SEA
SYRIA
IRAQ
IRAN
SAUDI
ARABIA
Tropic of Cancer
WESTERN SAHARA
MAURITANIA
MALI
NIGER
CHAD
SUDAN
YEMEN ARAB REP
PEOPLE'S DEM. REP. OF YEMEN
Gulf of Aden
BURKINA FASO
GUINEA
SIERRA LEONE
LIBERIA
IVORY COAST
GHANA
NIGERIA
CENTRAL AFRICAN REPUBLIC
CAMEROON
ETHIOPIA
UGANDA
KENYA
EQUATORIAL GUINEA
GABON
Gulf of Guinea
Equator
REP. OF CONGO
ZAIRE
TANZANIA
ATLANTIC
OCEAN
N
ANGOLA
ZAMBIA
ZIMBABWE
NAMIBIA
BOTSWANA
SOUTH-WEST AFRICA
Tropic of Capricorn
INDIAN
OCEAN
1975
1960
1985
1975
1980

Map # 2 : The maritime boundary between Guinea-Bissau and Senegal

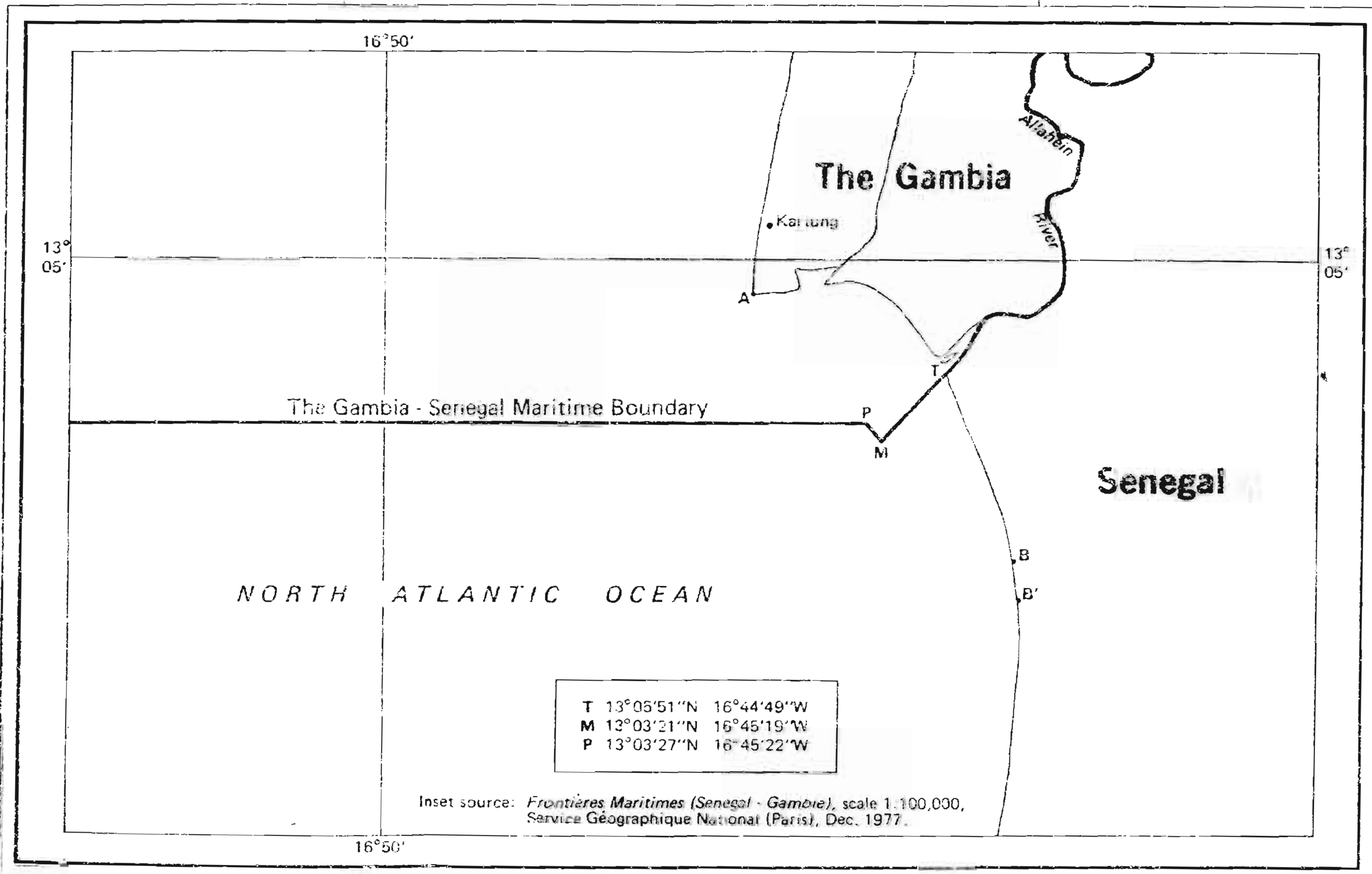
Source : Limits in the seas (1976) : Territorial sea and continental shelf boundary : Guinea-Bissau/Senegal. No. 68, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

egal

Map # 3 : The maritime boundary between Senegal and Gambia

Source : Limits in the seas (1976) : Territorial sea and continental shelf boundary : the Gambia-Senegal. No. 85, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

re Boundary
me Boundary
Cape Saint Mary
Barra
Banjul
Bijol Is.
Bald Cape
Gambia
The
Brikama
Area of Inset
Kartung
Senegal
Casamance
Pointe de Djogue
Cap Roxo
Varela
Cacheu
Rio Cacheu
Ponta de Bolor
Maritime Boundary


The Gambia - Senegal Maritime Boundary
The Gambia
Senegal
Allahein
River
Kartung
NORTH ATLANTIC OCEAN
A
T
P
M
B
B'
16°50'
13° 05'
T 13°05'51"N 16°44'49"W
M 13°03'21"N 16°45'19"W
P 13°03'27"N 16°45'22"W
Inset source: Frontières Maritimes (Senegal - Gambie), scale 1:100,000, Service Géographique National (Paris), Dec. 1977.
23°
22°

Map # 4 : The maritime boundary between Kenya and Tanzania (1975)

Source : Limits in the seas (1981) : Territorial waters boundary : Kenya/Tanzania. No. 92, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

39°15'E
39°30'E
39°45'E
Base: DMATC Series 1501 Air
Sheets SB 37-3 and SB 37-7
KENYA
100 fathoms
Ras Jimbo beacon
reefs
Mpungutiyajuu lighthouse*
Kisite*
island
(rock)
C
4°45'S
x
TANZANIA
A
B
Ras
Kigomasha
lighthouse
reefs
Mwambamwemba
beacon*
Pemba Channel
TANZANIA
5°00'S
reefs
*Treaty spellings
Pemba
Island
Fundo Island*
beacon
(rock)

Map # 5 : The maritime boundary between France (Reunion) and Mauritius (1980)

Source : Limits in the seas (1982) : Maritime boundary : France (Reunion)/Mauritius. No. 95, U.S. Department of State, Bureau of Intelligence and Research, Office of the Geographer.

Soundings in meters
Base: DMAHTC 702, 1st edition, October 13, 1979

Mercator Projection
Scale 1:4,407,000 at 22°30'S

	South	East
P1	[illegible]	[illegible]
P2	[illegible]	[illegible]
P3	[illegible]	[illegible]
P4	[illegible]	[illegible]
P5	[illegible]	[illegible]
P6	[illegible]	[illegible]
P7	[illegible]	[illegible]

MASCARENE BASIN

P1 P2 P3 P4 P5 P6 P7

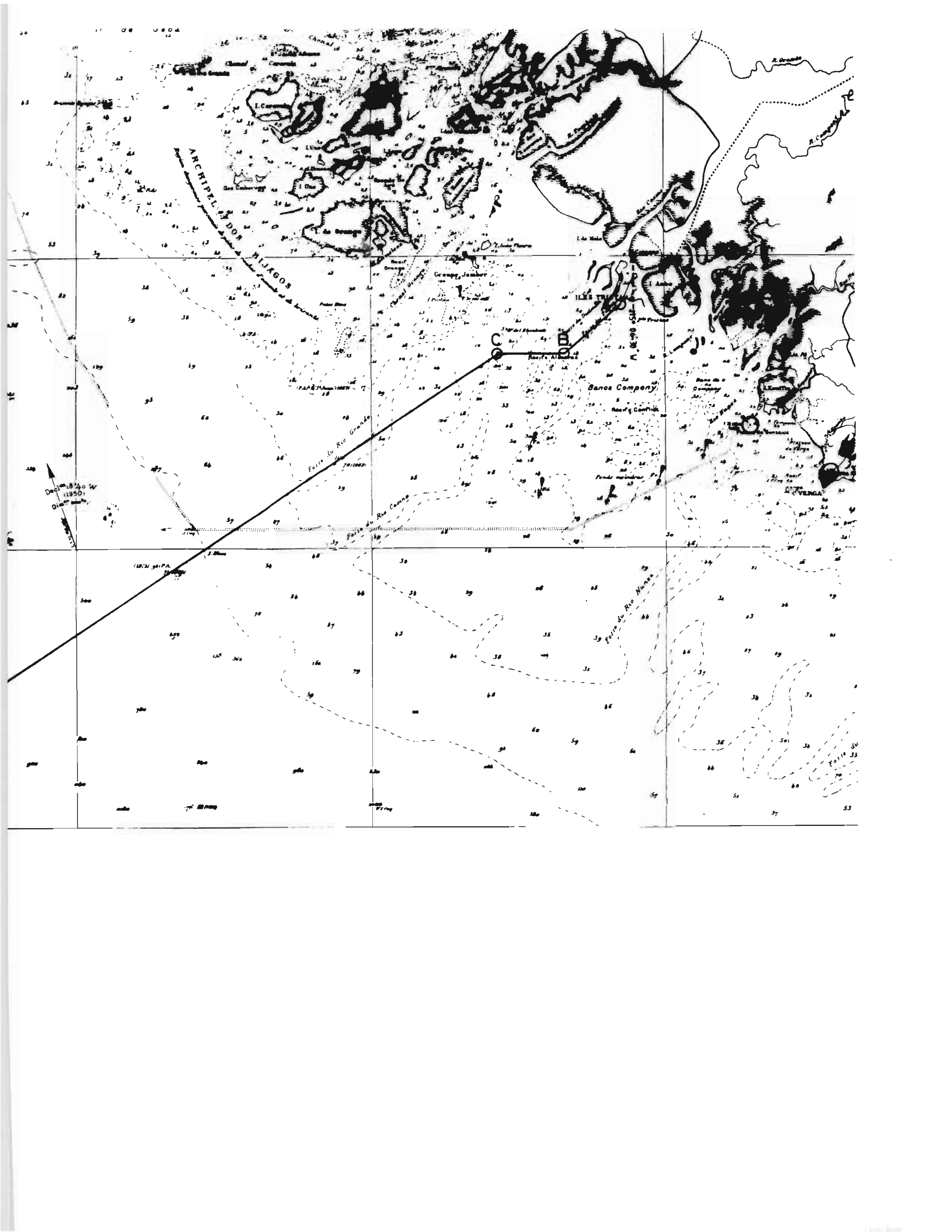
Mauritius

Reunion
(France)
Île de la Réunion

3M951 (547277) 12-81

Map # 6 : The delimitation of the maritime boundary between Guinea and Guinea-Bissau by the Arbitral Tribunal of The Hague (1985)

Source : Court of Arbitration (1985) : Delimitation of the maritime boundary between Guinea and Guinea-Bissau. Award of 14 February.



ARCHIPEL DOS BIJAGOS
Groupe Jamber
ILES TRISTAO
C
B
A
Recifs Alcatraz
Banco Company
Fosse du Rio Grande
Fosse du Rio Cacine
Fosse du Rio Nunez
Decl.on 18°40 W
(1950)
R. Grande
VERGA

Map # 7 : Guinea-Bissau and Guinea oil concessions and key wells.

Source : McGrew, H.J. (1981) : Oil and gas developments in central and southern Africa in 1981. American Association of Petroleum Geologists Bulletin, 66:11, 2251-2320.

SENEGAL, GAMBIA, GUINEA BISSAU & GUINEA

17° 15° 13°

MAURITANIA

SENEGAL

GAMBIA

SENEGAL

GUINEA BISSAU

GUINEA

CAYOR

GADIAGA-1

RARGNY-1

DAKAR

JAMMAH-1

BANJUL (BATHURST) > 7

FLORE DOME

PGO 6

CONAKRY

SA-1

200 M.

2000 M.

LEGEND

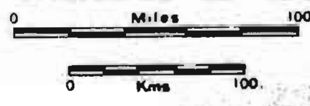
1981 TESTS	PRIOR 1981 TESTS
	ABANDONED DRY
NONE	ABANDONED OIL SHOWS
	ABANDONED GAS SHOWS

PERMITS

1 UNION TEXAS
2 HUSKY
3 ARACCA GROUP
4 CHEVRON
5 LABOW
6 SNEA, WINTERSHALL, M'BAYE
7 SNEA

RELINQUISHED IN 1981

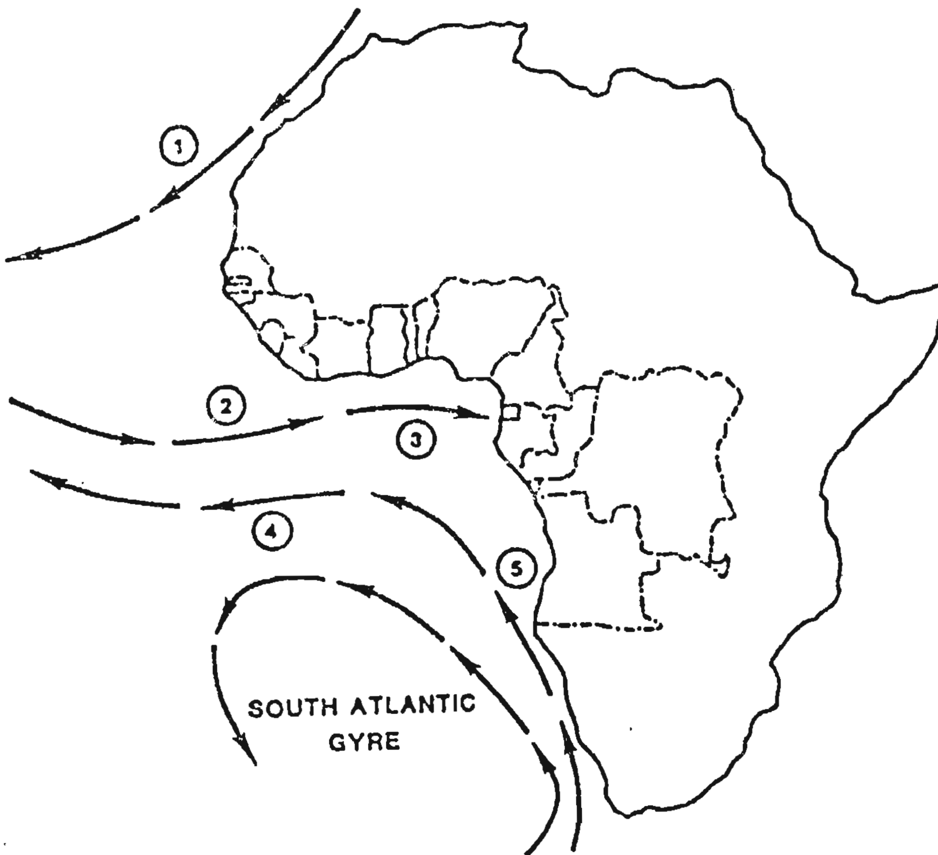
ACQUIRED IN 1981



Map # 8 : The major oceanic currents of the Equatorial Atlantic Ocean.

Source : Dalhousie Ocean Studies Program (1985) : The implementation of the new law of the sea in West Africa. Prospects for the development and management of marine resources. June, Dalhousie University, Halifax, Nova Scotia, Canada.

MAJOR OCEANIC CURRENTS

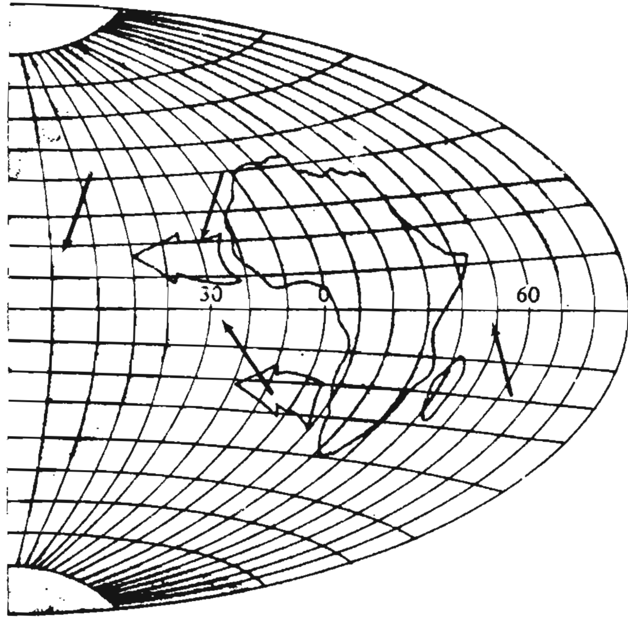


1	CANARY CURRENT	2	EQUATORIAL COUNTERCURRENT
3	GUINEA CURRENT	4	SOUTH EQUATORIAL CURRENT
5	BENGUELA CURRENT		

SOURCE: IMCO/UNEP "The Status of Oil Pollution and Oil Pollution Control in the West and Central Africa Region". UNEP Regional Seas Reports and Studies, No. 4, UNEP 1982.

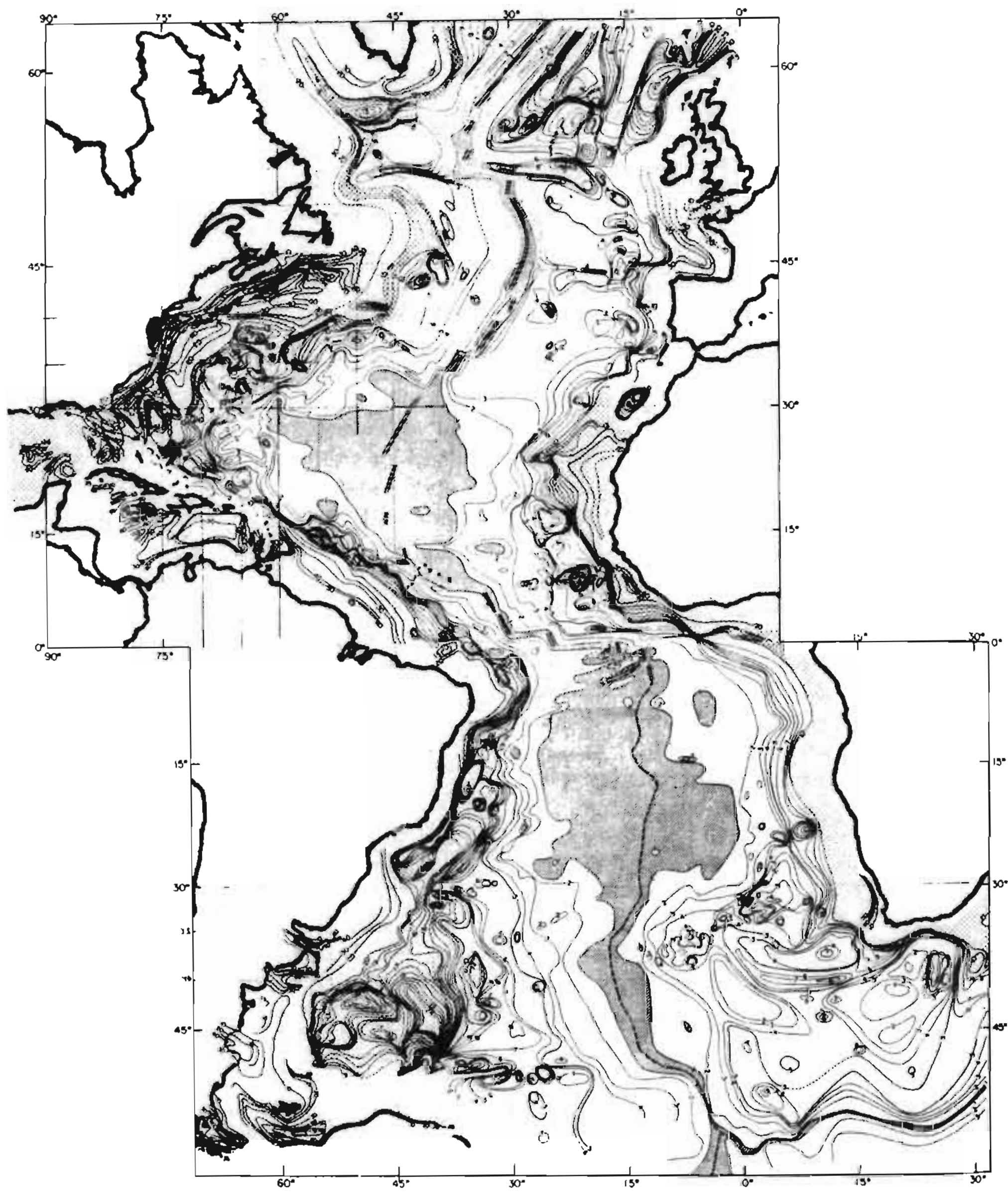
Map # 9 : The upwelling areas on the West Coast of Africa.

Source : Thurman, H.V. (1983) : Essentials in oceanography, page 225.


30
0
60

Map # 10 : Thickness of sediment above basement, on the West Coast of Africa.

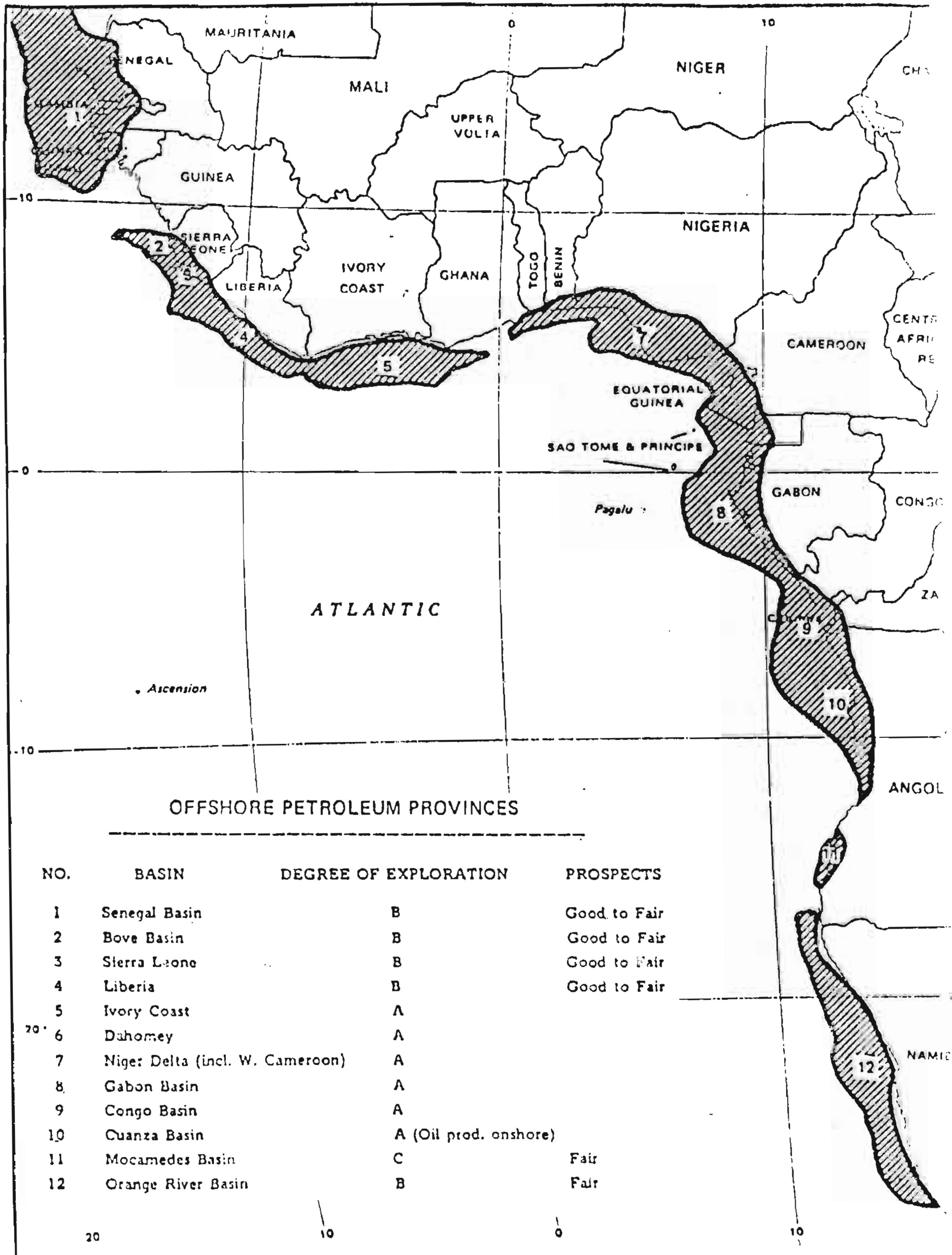
Source : Hedburg, H.D. (1976) : Ocean boundaries and petroleum resources. In : G. Gordon Pirie : Oceanography - contemporary readings in ocean sciences. Oxford University Press, p. 250.


90°
75°
60°
45°
30°
15°
0°
60°
45°
30°
15°
0°
15°
30°
45°
15°
30°
45°
60°
45°
30°
15°
0°
15°
30°

Map # 11 : Offshore petroleum exploratory activity in West Africa.

Source : Dalhousie Ocean Studies Program (1985)

OFFSHORE EXPLORATORY ACTIVITY



OFFSHORE PETROLEUM PROVINCES

NO.	BASIN	DEGREE OF EXPLORATION	PROSPECTS
1	Senegal Basin	B	Good to Fair
2	Bove Basin	B	Good to Fair
3	Sierra Leone	B	Good to Fair
4	Liberia	B	Good to Fair
5	Ivory Coast	A	
6	Dahomey	A	
7	Niger Delta (incl. W. Cameroon)	A	
8	Gabon Basin	A	
9	Congo Basin	A	
10	Cuanza Basin	A (Oil prod. onshore)	
11	Mocamedes Basin	C	Fair
12	Orange River Basin	B	Fair

Sources : World Oil, Oil and Gas journal and The World Energy Conferer

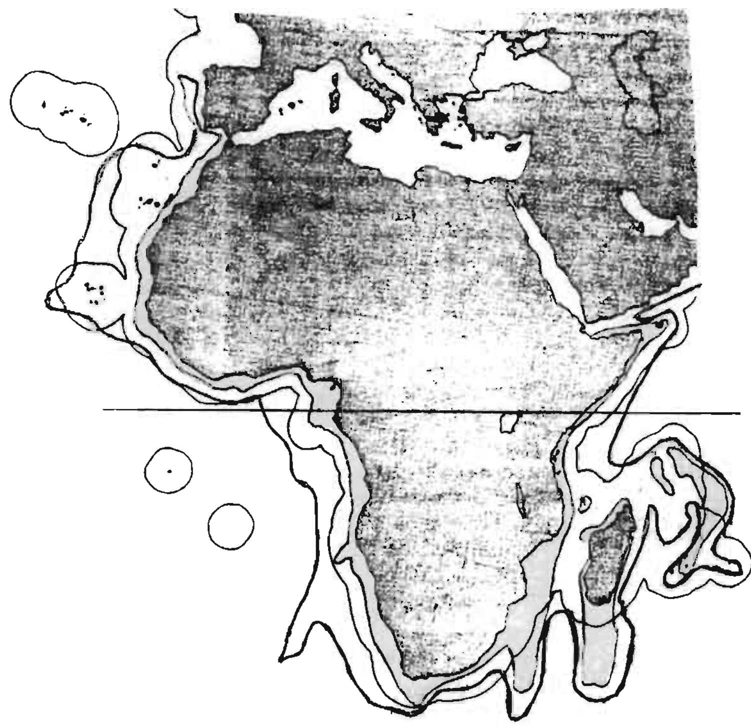
Map # 12 : Angola-Cabinda and Republic of Zaire concessions and key wells.

Source : McGrew, H.J. (1981)

Miles 20
Kms 40
REPUBLIC OF CONGO
(CONGO BRAZZAVILLE)
C A B I N D A
LANDANA
REPUBLIC OF
ZAIRE
(FORMER CONGO KINSHASA)
MAKANGA-1
MALONGO S.
LIMBA
CABINDA
KAMBALA
120/1
LIVUITE
141-IX
MINE-IX
GCO
FIELD
MATAMBA - MAKANZI-1
ZADI-KONGO-1
RIVER ZAIRE (Congo)
ANGOLA
12°30'

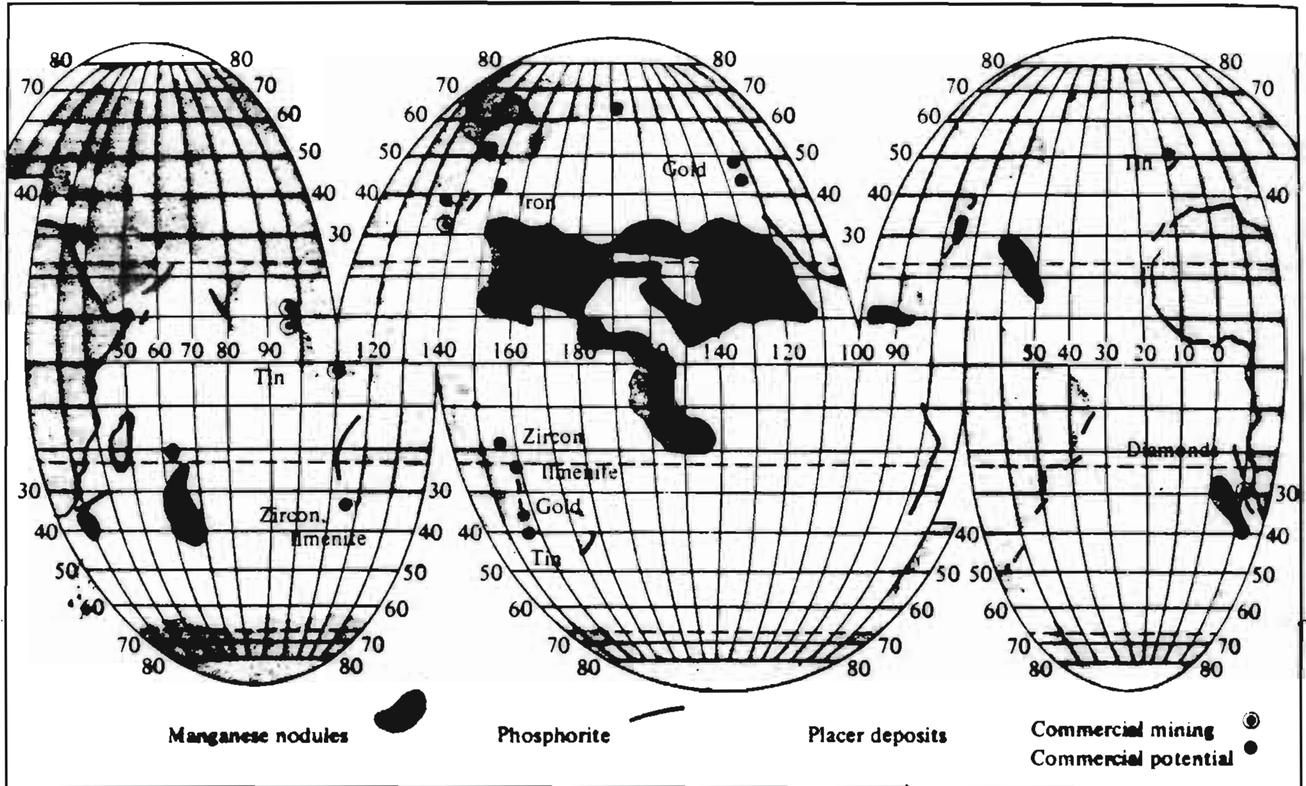
Map # 13 : Africa : the 200 nautical mile limit, the edge of the continental shelf and edge of continental margin.

Source : The Times Atlas of the Oceans.



Map # 14 : Manganese nodules and phosphate deposits in Africa.

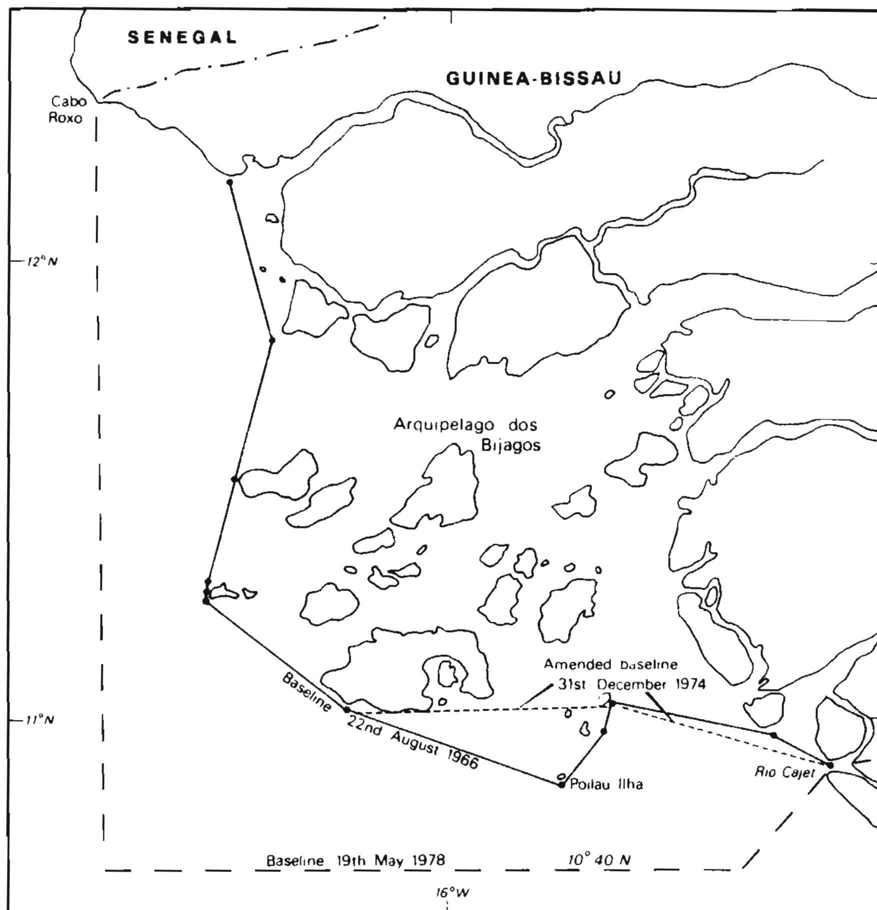
Source : Thurman, H.V. (1983) : Essentials of oceanography.



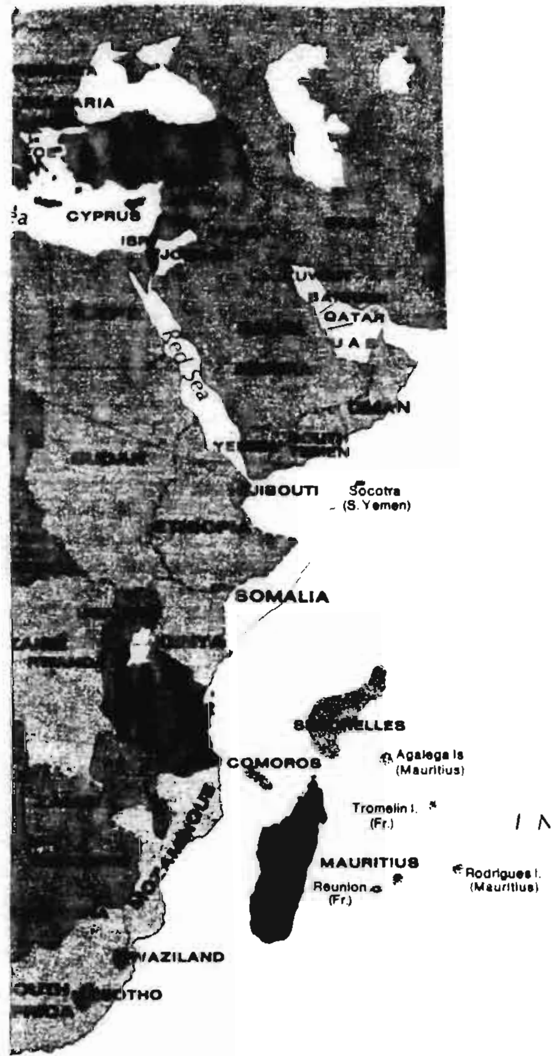
Gold
Iron
Tin
Tin
Zircon
Ilmenite
Gold
Tin
Zircon,
Ilmenite
Diamonds
Manganese nodules
Phosphorite
Placer deposits
Commercial mining
Commercial potential

Map # 15 : Guinea-Bissau's straight baselines.

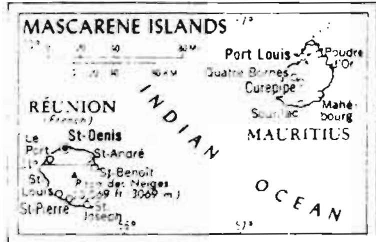
Source : Prescott, J.R.V. (1985) : The maritime political boundaries of the world.

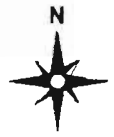

SENEGAL
GUINEA-BISSAU
Cabo
Roxo
12° N
11° N
Arquipelago dos
Bijagos
Amended baseline
31st December 1974
Baseline
22nd August 1966
Poilau Ilha
Rio Cajet
Baseline 19th May 1978
10° 40 N
16° W

Map # 16 : Indian Ocean islands : Reunion and Mauritius.


CYPRUS
QATAR
Red Sea
Socotra
(S. Yemen)
SOMALIA
COMOROS
Agalega Is
(Mauritius)
Tromelin I.
(Fr.)
MAURITIUS
Reunion
(Fr.)
Rodrigues I.
(Mauritius)

Map # 17 : Islands in the Mozambique Channel.


MASCARENE ISLANDS
RÉUNION
(French)
St-Denis
Le Port
St-André
St-Benoit
St Louis
St-Pierre
Port Louis
Poudre d'Or
Quatre Bornes
Curepipe
Mahébourg
MAURITIUS
INDIAN OCEAN


N

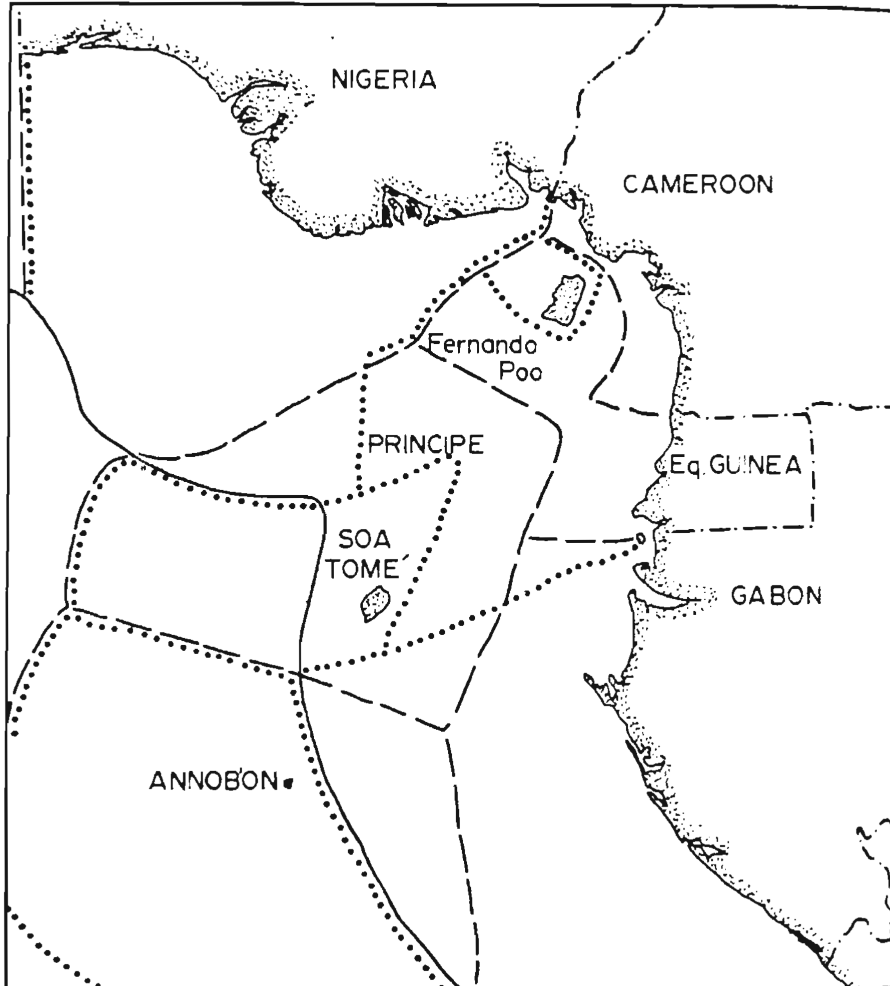
Map # 18 : The Dahlak Archipelago and the southern Red Sea.

Bilbeis
Great Bitter Lake
Medina
Imbaba
CAIRO
SUEZ
Jeb. Ataqa
Helwan
Jiddah
MECCA
Heliopolis
Gezira
CAIRO
El Giza
Old Cairo
PYRAMIDS
GIZA
1 : 250 000
P.t Sudan
Suakin
Al Qunfidhah
Farasan
Dahlak
Archip.
Huri Pen.
Hodeida
Sheikh Othman
ADEN
Arabian Sea
Socotra
The Brothers
Gulf of Aden
Obock
Tadjoura
Djibouti
Zeila
Berbera
Bargal
OCEAN
30
15
10

Map # 19 : Delimitation problems in the Gulf of Guinea : Nigeria, Cameroon, Equatorial Guinea, Gabon and Sao Tome and Principe.

Source : Karl, D.E. (1977) : Islands and the delimitation of the continental shelf : a framework for analysis. The American Journal of International Law 71, 670.

Proposed Delimitation: Cameroon–Equatorial Guinea–Gabon
Nigeria–Sao Tomé and Principe

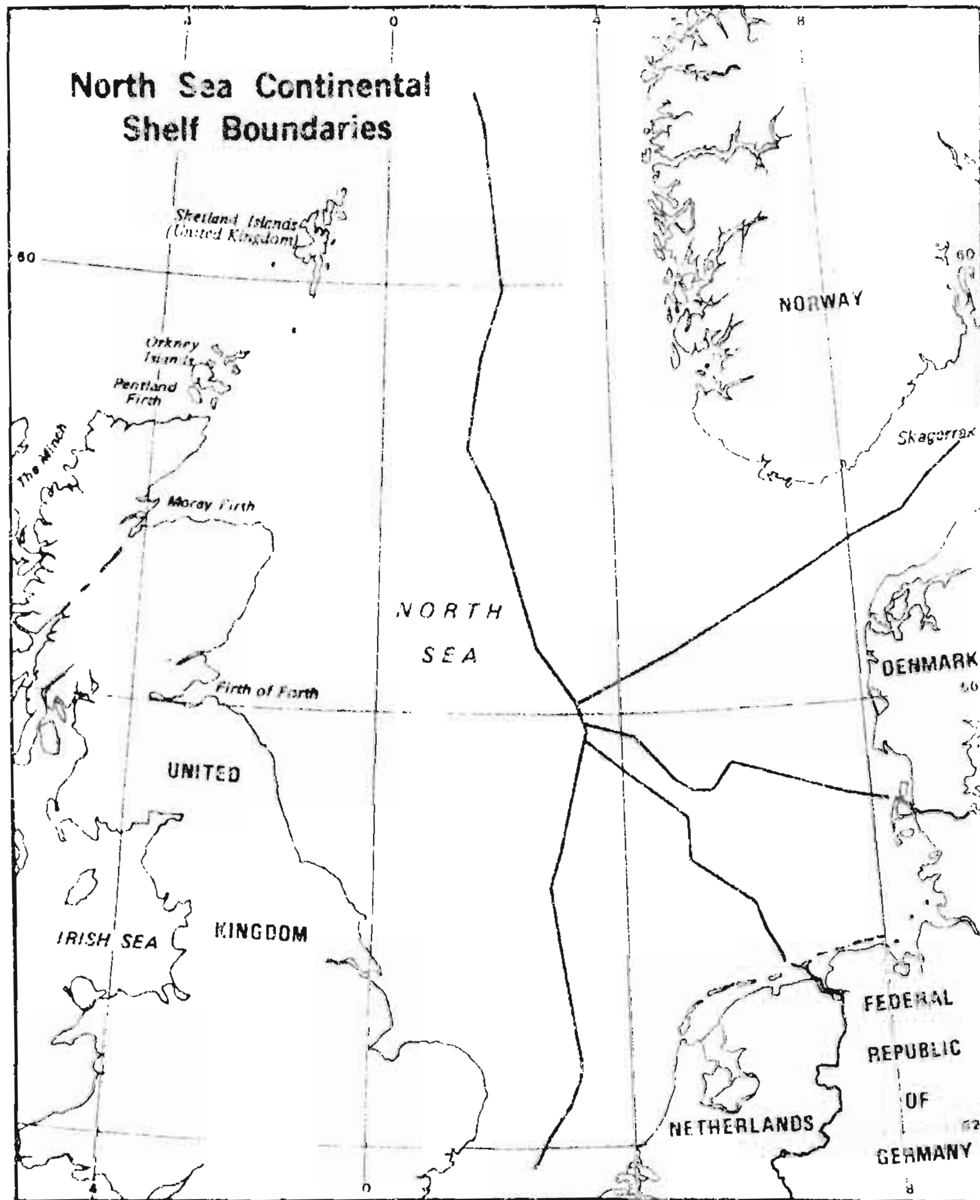


—— The equidistance line drawn using islands as basepoints
•••••• The boundary line suggested by the model.

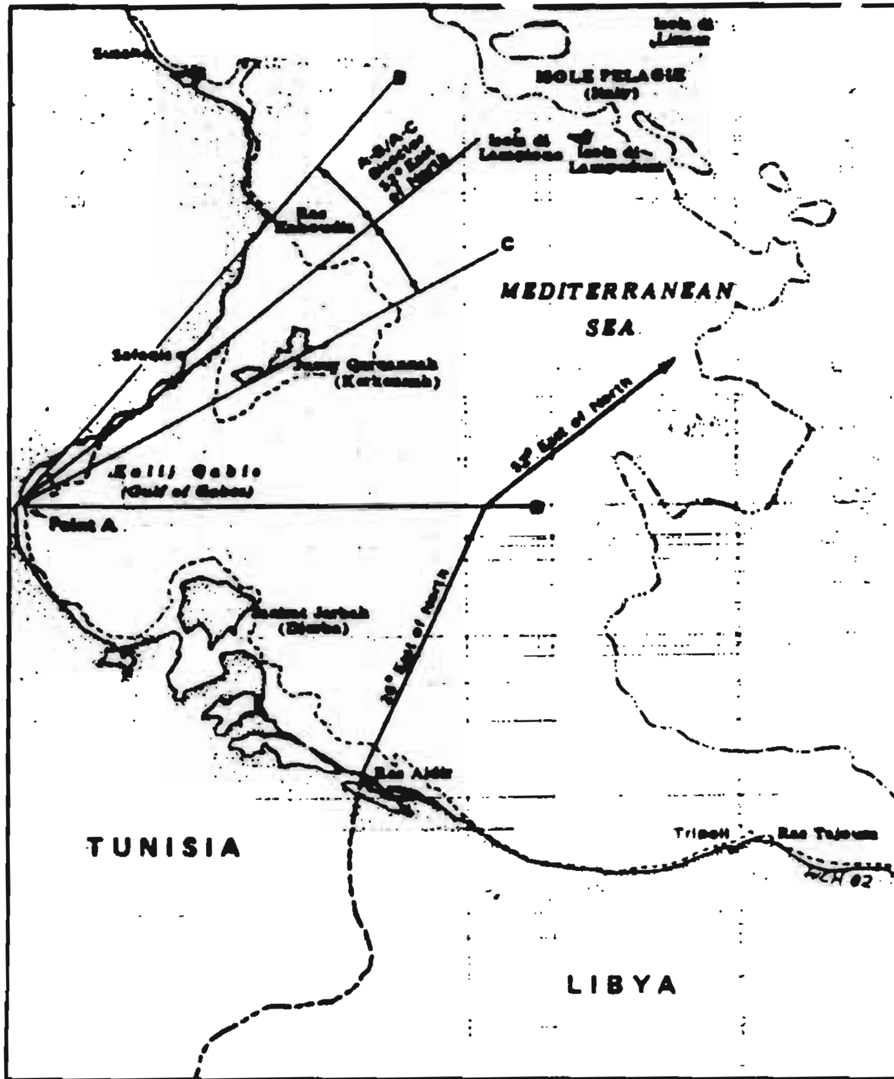
Map # 20 : The delimitation of African boundaries according to hypothetical equidistance.

MOROCCO
IRAQ
IRAN
SPAIN
ALGERIA
WESTERN SAHARA
LIBYA
EGYPT
SAUDI ARABIA
OMAN
MAURITANIA
MALI
NIGER
OMAN
SENEGAL
CHAD
SUDAN
YEMEN (SANA)
INDIA
THE GAMBIA
UPPER VOLTA
BENIN
YEMEN (ADEN)
GUINEA-BISSAU
GUINEA
NIGERIA
GUINEA-BISSAU
SIERRA LEONE
IVORY COAST
GHANA
CENTRAL AFRICAN EMPIRE
ETHIOPIA
SOMALIA
SIERRA LEONE
LIBERIA
TOGO
NIGERIA
EQUATORIA GUINEA
CAMEROON
SOMALIA
MALDIVES
GHANA
IVORY COAST
KENYA
ZAIRE
SAO TOME and PRINCIPE
GABON
CONGO
ANGOLA
KENYA
SEYCHELLES
EQUATORIAL GUINEA
TANZANIA
TANZANIA
ANGOLA
ANGOLA
ZAMBIA
SOUTHERN RHODESIA
MADAGASCAR
MAURITIUS
NAMIBIA
FR
BOTSWANA
MOZAMBIQUE
NAMIBIA
SWAZILAND
PORTUGAL
MADAGASCAR
SOUTH AFRICA
LESOTHO

Map # 21 : The North Sea continental shelf boundaries (1969).


North Sea Continental
Shelf Boundaries
Shetland Islands
(United Kingdom)
Orkney
Islands
Pentland
Firth
The Minch
Moray Firth
NORTH
SEA
Firth of Forth
UNITED
KINGDOM
IRISH SEA
NORWAY
Skagerrak
DENMARK
NETHERLANDS
FEDERAL
REPUBLIC
OF
GERMANY

Map # 22 : The delimitation of the Tunisia/Libya boundary (1982).



ISOLE PELAGIE
C
MEDITERRANEAN
SEA
Point A
TUNISIA
LIBYA

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