

Maritime Boundaries Delimitation and Dispute Resolution in Africa

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Abstract

Africa's borders are beset with many challenges ranging from religious and terrorist movements to cattle rustling, military conflicts to human trafficking. The challenges are endless, but whether the boundary disputes are terrestrial or maritime, they are mostly about security and prestige. Growing human population, political awareness and environmental challenges mean that the problems are likely to heighten, unless they are resolved. Despite the provisions of UNCLOS, Africa has several unresolved maritime boundary disputes. In this light, this article aims to examine the African situation, and discuss the challenges involved in the delimitation and management of maritime boundaries in Africa. This article presents the issues, causes, essence and the security imperative of maritime boundary disputes in Africa.

Keywords

Maritime Boundary Disputes, Africa, UNCLOS, Delimitation, Maritime, Boundaries, Border Disputes, Exclusive Economic Zone, Continental Shelf, High Seas

1. Introduction

The Geneva Conventions on the Territorial Sea and Contiguous Zone,¹ the Continental Shelf,² the High Seas³ and the United Nations Law of the Sea⁴ respectively are recognized as the global legal regime on the seas. The Conventions

¹The Convention on the Territorial Sea and Contiguous Zone of 1958 is an international treaty which entered into force on 10 September 1964, one of the four agreed upon at the first United Nations Convention on the Law of the Sea (UNCLOS). The Convention was ratified by 52 states.

²Convention on the Continental Shelf was signed on 29 April 1958, effective 10 June 1964. It established the rights of a sovereign state over the continental shelf surrounding it, if there be any.

³Convention on the High Seas, 1958, signed on April 9, 1958, effective 30 September 1962 is an international treaty relating to the high seas, otherwise known as international waters.

⁴The United Nations Convention on the Law of the Sea (UNCLOS), also called the Law of the Sea Convention, signed 10 December 1982, effective 16 November 1994.

contain provisions on the definition and recognition of what constitutes maritime boundaries, and zones, internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf and archipelagic waters. The Conventions further outline the rights and obligations of the States in managing and governing their marine activities and their exploitation of the resource.

Africa's maritime boundaries, in accordance with the relevant international regimes, encompass territorial waters, contiguous zones, continental shelf and exclusive economic zones. The appropriate delineation of maritime boundaries has a lot of strategic, economic and environmental implications. With this in mind, one has to understand why nations do everything in their powers to maintain and protect their maritime boundaries as conceding any part thereof might mean loss of economic resources and threat to the country's security, as well as lives and properties of citizens.

The practice of delimitation of maritime boundaries could be categorized into four: under the provisions of international laws; delimitation by agreement; national legislation and judicial decisions. If maritime boundaries are not appropriately delineated, they become a frequent source of conflict among states that could assume regional and even international dimensions. Hence, the UNCLOS provides freedom to the State Parties concerned to settle their dispute through negotiation or other diplomatic measures between them at any time, but should the parties fail to agree on settlement then a request should be made to the Court or Tribunal having jurisdiction over their issues (Article 92 UN Charter).

At the moment, the African continent is characterized by lots of maritime boundary disputes. And unless these are resolved through negotiation or other diplomatic measures and acceptable means, it will jeopardize the continent's short and long term implementation of maritime policies and strategies (Walker, 2015). African countries must treat and make a priority of boundary dispute resolution if imperative and integral maritime economic development must take place. Consequent upon this understanding, African Heads of State and Government have adopted and signed the African Charter on Maritime Security, Safety and Development, on Saturday, 15, 2016 at the Extraordinary Summit of Heads of State and Government, Lome, Togo. The African Charter on Maritime Security, Safety and Development aims to solidify Africa's commitment to an efficient and effective management of its oceans, seas and waterways so as to ensure sustainable, equitable and beneficial exploration of these critical resources (Zuma, 2016). In this light, this article first outlines the causes of maritime boundary disputes in Africa; and explores the concept of delimitation of maritime boundaries. These are followed by an overview of Africa's maritime boundary disputes; UNCLOS versus Africa's border boundaries; the security imperative; the role of the African Union in border dispute resolution; resolving maritime boundary disputes in Africa; then the conclusion.

2. Causes of Maritime Boundary Disputes in Africa

Natural resources are at the heart of maritime border disputes in African coastal region. The importance of maritime boundaries in Africa has become attractive

with the enlargement of national limits of maritime jurisdiction over the past six decades or so. A unit of sea may be worth more than a unit of unproductive land, particularly when it contains oil and gas on the subsoil or on the seabed. The resultant effect is to make boundary delimitation a major responsibility for the African coastal states, and relatively few of them have a full set of maritime boundaries. “The existence of overlapping claims may inadvertently lead to disputes, e.g., if fishermen from one side are arrested by the coastguard of the other side or if traces of oil are discovered in an area of overlapping claims” (Anderson, 2006).

According to David Anderson,⁵ 180 boundaries worldwide are agreed upon out of the over 400 boundaries currently identified. For Africa, only about 30 percent of its borders are demarcated and this naturally is raising tension between countries who seek to lay control of the continent’s natural resources, “influencing political and international relations triggering territorial disputes over maritime borders.”⁶

The reasons for Africa’s poor response to maritime boundary delimitation rests on the fact that to them it is not a priority, particularly in the absence of incursions by adjacent neighbours or any incidents or natural resources. Again, the process of border delimitation and ocean users presents a complex exercise involving different technical and/or legal interpretations which leaves room for undesired discretion (Sousa, 2014).⁷ In Africa, some maritime boundaries have remained indeterminate despite efforts to clarify them. This is explained by an array of factors, some of which illustrate regional problems (Charney & Alexander, 2005). The delineation of maritime boundaries has strategic, economic and environmental implications.

Among others, the Chatham House (Anderson, 2006) has outlined broad and fundamental causes of maritime boundary disputes, and this holds true for Africa: overlapping entitlements to maritime rights and jurisdiction.

The sea is an entity that is governed by international law with rights and obligations of States through different maritime jurisdictions. The oceans cannot be occupied as a parcel of land would be occupied and no State has the capacity to exercise full sovereignty over them outside the extant international treaties and conventions. In exercising control over navigation and maritime resources, there can be overlapping claims between the adjacent or opposite states for twelve mile territorial seas, 200 mile EEZs, and continental shelves, which may extend beyond 200 miles (Valencia, 2001).

In addition to the above, some observers believe that the increasing urge of African States to achieve a greater degree of control over its near-seas, which generally heightens the potential for conflict, relate to the following reasons: to

⁵Former Judge of the International Tribunal of the Law of the Sea (ITLOS) at Chatham House, on 14th February, 2006.

⁶The Ocean Data and Information Network for Africa (ODINAFRICA) *Status Report on African Maritime Border Disputes* (ODINAFRICA, 2014).

⁷Ines Sousa (2014) *Maritime Territorial Delimitation and Maritime Security in the Atlantic*. Atlantic Future Scientific Paper, European Union 7th Framework Programme, European commission Project Number 320091, pp. 10-11.

create buffer zones in time of conflict; to help achieve a broader goal of becoming a regional hegemon; major commercial trading routes pass through these waters, therefore control of a maritime zone is an economic boost; some of these maritime zones contain significant fishing grounds and potentially vast deposits of oil and gas areas; the maritime territorial claims have recently become matters of “intense nationalistic pride”.

3. The Delimitation of African Maritime Boundaries

The delimitation of maritime boundaries remains one of the most complex areas (Lucchini & Voelckel, 1996; Lagoni & Vignes, 2006) in international law which has attracted economic, political, security, national and other regional interests and often results in disputes⁸ (Kenya v. Somalia, 2016). The most comprehensive work on the maritime delimitation process is Charney, et al., 1993-2011,⁹ which has become the main reference work on the subject (Moudachiro, 2016). Maritime delimitation is multidimensional and multidisciplinary (McDorman, Beauchamp, & Johnston, 1983). Several writers have captured the essence of maritime delimitations (Rhea, 1982; Johnston, 1988; Marques Antunes, 2003; Kapoor & Kerr, 1986). It has been pointed out that unresolved delimitation issues are likely to lead to strained relationships between neighbouring states with possibility of disputes (Cameroon v. Nigeria, 2002). Delimitation involves related global questions concerning the development and use of the international waters. The essence and meaning of delimitation of maritime boundaries rests in the fact that it helps fix and identify the boundaries of the territorial sovereignty of a State and its spatial jurisdiction (Cameroon v. Nigeria, 2002). Having said this, it must be stated that the maritime zones of two states most usually meet and overlap and the line of separation has to be done in such a way as to distinguish the rights and obligations of the maritime States (Dundua, 2006-2007).

Among other reasons, international effort towards the delimitation of maritime boundaries led to the establishment of the most comprehensive convention on the Law of the Sea, popularly known as the United Nations Convention on the Law of the Sea 1982 (UNCLOS). This Convention, though suffering from some defects remains the most workable regime in the field. If only one method of delimitation had been prescribed under the Convention, it would have been inequitable and unfair. The UNCLOS however, provided that the States are free during the negotiation process to agree on any method which they consider to be equitable for them thus, UNCLOS call on states to effect delimitation through “agreements”, unfortunately only few African states found out the wisdom to do so (Moudachirou, 2016). But when there are overlaps between the legal owner-

⁸Kenya v. Somalia Maritime dispute. I.C.J. 2016. The International Court of Justice in The Hague has started hearings on the long-running dispute between Kenya and Somalia over their maritime border. At stake is a narrow triangle in the Indian Ocean. Determining who owns it may decide the fate of potentially lucrative oil and gas reserves.

⁹Charney, J. I. et al. *International Maritime Boundaries*. 6 Volumes. Dordrecht, The Netherlands: Martinus Nijhoff, 1993-2011.

ship rights of two or more States, States determine their maritime boundaries in accordance with UNCLOS, which establishes the breadth of certain maritime zones. There are two significant areas in delimitation of maritime boundaries—fixing external maritime boundaries by domestic legislation which must conform with the international law on law of the sea and the deep seabed beyond national jurisdiction. Here, the delimitation is solo and does not affect the legal rights of another State, provided that no wrongful acts are committed by virtue of such delimitation that lends itself to the violation of the interests of the international community.

The second area arises when a delimitation involves the division of maritime boundary where the legal title of two or more States overlap, that is neighbouring countries adjacent and opposite. This raises complex issues as it touches on the material rights of the coastal States regarding the ownership or appropriation of natural resources like oil, natural gas and others. Maritime boundaries may be drawn unilaterally or by written agreement, depending on the geographical location of the coastal states in proximity to the sea. An example, is where two neighbouring States lay claim to the same sea area the maritime boundaries should be demarcated by written agreement (*Cameroon v. Nigeria*, 2002). There is therefore, the need to bear in mind that where State sovereignty or jurisdiction is involved between adjacent or opposite states, demarcating maritime boundaries remains an important aspect of the exercise. In practice however, such agreement is not always easy to come by.

International legal doctrine and the case law of the International Court of Justice and international arbitrations have made pronouncements on what qualifies as the principles for maritime delimitations.¹⁰ The legal principles on maritime delimitation have undergone a consolidation in the cases of the International Court of Justice and Arbitral Tribunals (*Degan*, 2007). The principles include: Equidistance principle (*Lazare*, 2009); Equity and the equitable principle; Single maritime boundary; Proportionality principle; Relevant circumstances; Geographical circumstances; Non-geographical circumstances; Socio-economic circumstances; Special circumstances.

The application of the above principles to the delimitation process is aimed at ensuring fairness to all the parties involved. The core rule of general international law as it relates to the delimitation of maritime boundaries between neighbouring littoral States, states that delimitation should be in form of an agreement based on fair principles that take into consideration all relevant circumstances in order to produce justified outcomes. This principle has been applied severally by the ICJ.¹¹ Also, the case law points out that the core rule of delimitation originated from the principles enunciated in the Truman Proclamation of September

¹⁰*Qatar v. Bahrain* [1994] ICJ Rep. 112, 81 (ICJ 1999); *Cameroon v. Nigeria* [2002] ICJ 303.; *Guyana/Surinam, Award*, ICGJ 370 (PCA 2007).; *Guyana/Surinam, Award*, ICGJ 370 (PCA 2007).; *Barbados/Trinidad and Tobago* (2006) 45 ILM, 798; *Nicaragua v. Honduras*, [1992] ICJ Rep. 351, ICGJ 100 (ICJ 1992); *Nicaragua v. Colombia* [2012] ICJ Rep. 624; *Romania v. Ukraine* (2009) ICJ GL No. 132, ICGJ 6 (ICJ 2009).

¹¹See *Federal Republic of Germany v. Denmark* (1969) ICJ Rep. 3.

28, 1943.¹²

The ICJ stated the opinion that on negotiations, the Parties must negotiate with the intention of reaching an agreement and not just to assume that the negotiations is a mere formality or a kind of pre-conditions that will avail it of immediate application of certain delimitation method. Therefore, parties must engage in meaningful negotiations. The ICJ also confirmed the importance of the application of the principles mentioned above. Determining the legal grounds for the delimitation of African maritime boundaries following the above principles generally recognized in international law, should be the case rather than an exception.

African Union had set the end of 2017 as deadline for all African countries to delineate and demarcate their borders, but only 30 per cent of the entire 800,000 km borders on the continent have been demarcated¹³ (Oluoch, 2017). This shows that major, controversies and strains still persist. Since the African States started to gain independence from their former colonial masters, maritime borders have manifested as a constant decimal of conflicts and wars. Resolution of disputes on delimitation of maritime boundaries on the continent has followed the UNCLOS provisions and the International Court of Justice (ICJ) decisions. Despite this, the physical demarcation of most African maritime boundaries is nothing to cheer home about. The process is still poor despite the legal regime of the UNCLOS and established international rules and principles governing maritime boundaries delimitation.

However, Africa appears to be rising up to the occasion and reality that the absence of properly delineated maritime boundaries is a threat to its peaceful co-existence and trade which are Africa's driving demographic and economic forces. African states have, therefore, taken several measures to address the question of delimitation of African maritime boundaries. They include the following measures:

- The principle of respect of existing borders in Africa on attainment of independence was adopted by the First Ordinary Session of Government of the Organization of African Unity, held in Cairo, Egypt in July 1964.¹⁴
- The 44th Ordinary Session of the Council of Ministers of the OAU (now AU), held in Addis Ababa, Ethiopia in July 1986, as well as the relevant provisions of the Peace and Security Council of the African Union which

¹²The rule states: "Having concern for the urgency of conserving and prudently utilizing natural resources, the Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States, subject to jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with *equitable principles*. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected." Proclamation 2667 of September 28, 1945. 10 Fed. Reg. 12, 305 (1945). Codified as Executive Order 9633 of September 28, 1945. (Proclamation of Harry S. Truman 1945 – 1953, XXXIII President of the United States.

¹³Oluoch, F. (2017). East Africa Yet to Resolve Border Dispute Ahead of Deadline. *The East African*. <http://www.theeastafrican.co.ke>.

¹⁴See Article 4(b) of the Constitutive Act of the African Union (AU).

adopted the principle of negotiated settlement of border disputes;

- The Assembly of Heads of State and Government, held in Durban, South Africa in July 2002, which provides for the delimitation and demarcation of African boundaries where such an exercise has not taken place. The Constitutive Act stipulating the will to accelerate and deepen the political and socio-economic integration of the continent and to provide it with a popular base;
- The 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union, held in Addis Ababa in January 2007, which adopted the declaration on encouraging the Commission to pursue its efforts of structural prevention of conflicts, especially through the implementation of the African Union Border Programme (AUBP) that is concerned with the establishment of its maritime boundaries, including the outer limits of the extended Continental Shelf (CS) of its Member States (Diarrah, 2013).

In addition, the 2009 Pan-African Conference on Maritime Boundaries and the Continental Shelf for the Implementation of the African Union Border Programme¹⁵ while noting and acknowledging the significant progress made by AU Member States in the delimitation of their maritime boundaries and efforts made towards the determination of the outer limits of the Continental Shelf by some Member States, and in order to consolidate the progress achieved thus far, agreed on far-reaching recommendations concerning: (a) expedited action by African States in the delimitation of their maritime boundaries where such an exercise has not yet taken place, adequate exchange of experience and expertise to aid the process, and the peaceful resolution of border disputes among states; (b) ensuring marine security, collaborative research and harmonization of state laws and policies, all in order to ensure better management and exploitation of marine resources, and; capacity building through training, exchange, experiences and research aimed at deepening the understanding of border-related issues on the continent. All these measures are largely in consonance with the rules and principles of maritime boundary delimitation as outlined and contained in UNCLOS (Cai, 2006) and the decisions of the International Court of Justice (ICJ). If faithfully implemented by the member States of African Union, they shall be veritable instruments of preventing maritime boundary disputes.

4. An Overview of Africa's Maritime Boundary Disputes

The increasing economic and political interdependence among African countries and the world at large has attracted interests on the management of the international waters beyond national jurisdictions, and this has heightened tensions and conflicts for countries in the continent. Some of these disputes are as a result of issues around definition of maritime boundaries, others arose from overlapping territorial claims and issues connected with contested sovereignty (Sousa, 2014).

The role of UNCLOS in all these is particularly relevant (Elferink, 2017). UNCLOS incorporates a mechanism, within the Commission on Limits of the

¹⁵Accra, Ghana, 9-10 November 2009. The Conference was attended by AU Member States and some Regional Economic Communities (RECs) together with major maritime institutions around the world.

Continental Shelf (CLCS), for resolving border disputes. This is mandatory in disputes between any signatories to the Convention, should direct settlement and negotiations not succeed.

By the UNCLOS, States have the options to choose how to settle disputes by any peaceful means (Sheehan, 2005). They may resort to bilateral direct negotiation or adopt any of the legal mechanisms contained in the UNCLOS. The effect is that countries may on the basis of Annex II provisions to the Convention, submit disputes to the International Tribunal for the Law of the Sea, to the International Court of Justice or appoint an arbitral tribunal. Countries may also be at liberty to appoint a special arbitral tribunal under Annex III provisions. While the system may not be perfect—e.g. it UNCLOS has no monitoring and enforcement mechanism—it remains a workable one.

Also noteworthy is the African Union¹⁶ encouraging settlement, negotiation and peaceful resolution of maritime disputes between AU member states. This no doubt is a very positive development. Peaceful settlements and negotiations of maritime boundaries disputes are much more likely to thrive in democratic settings than in non-democratic ones. This is true because democratic settings no matter how bad it might be, appears more acceptable and could easily make bilateral settlement of disputes more probable.

Elsewhere, the role of trade in the process of conflict resolution has been pointed out (Sousa, 2014). The process of settling territorial boundaries therefore, been shown to generate an increase in trade and in turn, trade has been shown to decrease the likelihood of conflict between states (Aslaug & Martin, 2013). From this perspective, the growing cooperation between African States on trade and economic relationships is a positive development that will increase the urge among states to amicably settle border dispute so that trade is not hampered.

Maritime border disputes however, remain a reality in Africa (Majinge, 2012). A report has predicted a rise in African Maritime boundary disputes. The report reviewed the UNCLOS status of African Exclusive Economic Zone (EEZ) and its Extended Continental Shelf (ECS), using declassified military information, satellite images and estimates of oil and gas reserves.¹⁷ Of the 100 maritime boundaries identified by the report, only 32 are resolved, leaving 68 unresolved or contested. Recent disputes involving Kenya and Somalia as well as Ghana and Ivory Coast have been sent to arbitration.

It has also been argued that there is a spike in border issues and resolutions in Africa, which never existed before (Roelf, 2014). Tensions abound in the north, south, east and west (Oduntan, 2015). Recent West African boundaries and border disputes include: land and maritime disputes between the Cameroon and Nigeria;¹⁸ Ghana/Cote d'Ivoire;¹⁹ territorial disputes on the land of Mbanie be-

¹⁶The Pan-African Conference on Maritime Boundaries and the Continental Shelf for the Implementation of the African Union Border Programme held in Accra, Ghana, 9-10 November, 2009.

¹⁷The report was co-authored by Robert Vande Poll, of the Dutch survey company Fugro N. V. & David Bishop, Galp Energy's Head of Strategic Business Development.

¹⁸[2002] ICJ 303.

¹⁹Ghana v. Cote d'Ivoire (2014). Case No. 23, ITLOS. Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean.

tween Gabon and Equatorial Guinea;²⁰ the frontier dispute between Burkina Faso and Niger Frontier disputes;²¹ and the Benin-Niger frontier dispute.

In East Africa, there are: conflict over the Ilemi Triangle between Sudan and Kenya;²² the Nadapal boundary dispute between Kenya and Sudan;²³ the dispute over Lake Malawi between Tanzania and Malawi;²⁴ the dispute over the Mingino Islands between Kenya and Uganda;²⁵ the Badme territory dispute between Eritrea and Ethiopia (Frank, 2015); and the border disputes between Sudan and South Sudan.²⁶

In Southern Africa, there is palpable anxiety between the Democratic Republic of Congo (DRC) and Angola over shifting of their common monuments. Namibia and South Africa are quarreling over the Orange River, and this has been described as one of the oldest boundary disputes in the world.²⁷ Botswana and Namibia are also having issues over the latter's exploitation of the Okavango River.²⁸ There are unresolved boundaries disputes of certain portions of the Namibia, Zimbabwe and Zambia borders.

North Africa has boundary disputes, such as the Moroccan claims over Spanish territories of Ceuta and Melilla.²⁹

For the central African countries, there is a dispute on the location of the boundary in the broad Congo River between the Republic of Congo and the DRC.³⁰ Uganda and the DRC are still disputing the Rukwanzi Island in Lake Albert³¹ and other areas on the Semliki River³² with hydrocarbon potential.

²⁰Equatorial Guinea and Gabon have agreed that a United Nations mediator should settle their territorial dispute over a handful of small islands that hold the key to potentially oil-rich offshore waters.

²¹*Burkina Faso v. Niger* 52 ILM 1215 (2013).

²²The disputed Ilemi Triangle is in East Africa; the land measures between 10,320 and 14,000 square kilometers. Kenya now has de facto control of the area.

²³Kenya-South Sudan (Nadapal boundary)-Nadapal is a border point, which is vital for trade between Kenya and South Sudan.

²⁴Lake Malawi, also known as Lake Nyasa is an African great lake located between Malawi, Mozambique and Tanzania.

²⁵The island had been claimed by the Ugandan government in 2008-2009 until 11 May, 2009 when Ugandan President Yoweri Museveni conceded that the island is Kenya's, but continue to point out that Kenyan fishermen were illegally fishing in Ugandan waters which lie about 500 meters to the West of Misingo.

²⁶Location—along the whole Sudan—South Sudan border. Agreement on borders and natural resources signed in September 26, 2012 where security and oil deals were reached.

²⁷For about 120 years, Orange River boundary has been subject of a dispute between South Africa and Namibia. South Africa claims, on the basis of the 1890 treaty, that the border runs along the north bank of the Orange River. Namibia claims that it follows the middle of the river. The Constitution of Namibia, 1990 explicitly claims the territory up to the middle of the river, while South Africa's Recognition of the Independence of Namibia Act denies any recognition of this claim.

²⁸The Okavango Delta in Botswana is an area famous internationally for its birds and wildlife and an important source of tourist revenue, but depends on the Okavango River which flows from Angola via Namibia.

²⁹The government of Morocco has requested from Spain the sovereignty of Ceuta and Melilla, of Perejil Island, and of some other smaller territories. Spain claimed that Ceuta and Melilla are integral parts of the Spanish State. Morocco denies these claims. The United Nations List of Non-self-Governing Territories does not include these Spanish territories.

³⁰The location of the boundary in the broad Congo River with the Republic of Congo is indefinite except in the Pool Malebo/Stanley Pool area.

³¹Uganda and DRC disputes Rukwanzi Island in Lake Albert and other areas on the Semliki River with hydrocarbon potential.

³²Ibid.

Again, despite these odds, the African States, except where it becomes impracticable, have a good culture of peaceful settlements and negotiations in resolving these boundary disputes, through various indigenous mechanisms. These include the Council of Elders³³ and the use of peace radios and peace newspapers by East Africa's intergovernmental Authority on Development³⁵ and by the Economic Community of West African States³⁵ (ECOWAS). Nevertheless, the dispute settlement mechanism in UNCLOS remains material and imperative in resolving maritime disputes in the African continent.

In addition, and without prejudice to the maritime zones as established by the UNCLOS regime for individual nations, Africa is to establish what is called the Combined Exclusive Maritime Zone for Africa (CEMZA) defined as a common maritime zone of all AU Member States. CEMZA is to be a stable, secure and clean maritime zone in the view of developing and implementing common African maritime affairs policies for the management of African oceans, seas and inland waterways resources as well as for its multifaceted strategic benefits. The CEMZA will grant Africa enormous cross-cutting geostrategic, economic, political, social and security benefits, as well as minimize the risks of all transnational threats including organized crime and terrorism in Africa.

What then is at stake in Africa's maritime boundary disputes? Generally, two states can either claim sovereignty over land or an Island or dispute over overlapping entitlements to maritime rights and jurisdiction. The delimitation of a maritime boundary has to be effected by agreement on the principles of international law, which at present is based on the provisions of the UNCLOS on the limits of national jurisdiction, baselines, and delimitation of the territorial sea, the EEZ and the continental shelf. Within the exclusive economic zone, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living of the waters superjacent to the seabed and of the seabed and its subsoil.

At this juncture, it is important to examine a few cases brought before the ICJ, and other settlement mechanisms, with respect to maritime border dispute in Africa.

a) The maritime boundary disputes between Djibouti/Eritrea on the one hand, and Guinea/Gabon on the other hand, are remarkable examples of resolution through mediation: while the former was resolved by the successful mediation of the Government of Qatar, the latter was resolved by the mediation of the United Nations.

b) Land and Maritime Boundary between Cameroon and Nigeria: Cameroon v. Nigeria: Equatorial Guinea Intervening.³⁶

In March 1994, Cameroon filed a case before the ICJ concerning the dispute

³³Sudan Tribune. Jieng Council of Elders Reject IGAD Proposal on South Sudan. *Sudan Tribune*, 11 July, 2015.

³⁵Inter-Governmental Authority on Development (IGAD) is an eight-country trade bloc in Africa. It includes governments from the Horn of Africa; Nile Valley and the African Great Lakes. Its headquarters are in Djibouti city.

³⁵The Economic Community of West African States (ECOWAS) is a regional organization of 15 West African countries established on 28 May, 1975. Its main goal is the promotion of economic integration among its members.

³⁶[2002] ICJ 303.

relating “essentially to the question of sovereignty over the Bakassi Peninsula”. In June 1994, Cameroon extended the subject of the dispute to include the question of sovereignty over Cameroonian territory in the area of Lake Chad and the frontier between Cameroon and Nigeria from Lake Chad to the sea. The ICJ delivered its judgment in the case on 10 October, 2002. The court, in summary, upheld the claim of Cameroon and held that the boundary is delimited by the Anglo-German agreement of 11 March 1913.

c) Burkina Faso/Niger

On 16 April 2013 the ICJ issued a judgment determining the course of the frontier between Burkina Faso and Niger. This decision has settled a decades-old dispute between Burkina Faso and Niger, with the governments of both West African nations expressing satisfaction with the outcome.

By virtue of a Special Agreement filed in May 2010, both nations agreed to submit to the ICJ a frontier dispute over a substantial section of their 650 km boundary between the astronomic marker of Tong-Tong (14°24'53.2"N, 00°12'51.7"E) in the north and the Boutou bend in the south (12°36'19.2"N, 01°52'06.9"E). Before approaching the ICJ, both nations have since 1964 tried to completely resolve the dispute between themselves, but to a large extent, their efforts failed. Faced with continuing tension in the area caused by incursions of security forces and customs officials on both sides, the states filed the Special Agreement submitting the dispute to the ICJ and promising to abide by the court's decision.

In resolving the matter, the court noted that a 1927 Arrête (adopted by the Governor-General of French West Africa with a view to “fixing the boundaries of the Colonies of Upper Volta and Niger” before the independence of both states which were both part of French West Africa) and recognized by both states was the instrument to be applied for the delimitation of the boundary, but that where the 1927 Arrête did not suffice the course would be shown on the 1960 IGN map, applying also the principle of the intangibility of boundaries inherited from colonization. The ICJ went on to demarcate the boundary between Burkina Faso and Niger in four sections between the Tong-Tong astronomic marker and the Botou bend in the south.

Following the decision of the ICJ, representatives from both Burkina Faso and Niger have expressed satisfaction with the ruling.³⁷ This decision therefore demonstrates the importance of the ICJ in resolving boundary disputes in Africa and may result in an increase in referrals of such disputes to the court in the future.

5. Managing Africa's Maritime Boundaries

Maritime boundaries management refers to the role of governments and institutions with functional responsibility for border management. These include the immigration, customs and excise, and other specialized bodies set up at the national and regional levels to control and regulate the flow of people and goods

³⁷Niger's Justice Minister, Marou Amadou, has stated “I think that the court sliced up the territory fairly... We gain a little in the north, we lose a bit in the south. Both countries win out because there's no more border dispute.”

across a country's boundary in the national interest, but particularly economic development, security and peace. It also includes maintenance of boundary beacons that mark the physical limits of the country's territory within the provisions of international law and extant national laws of the countries (Jamine, 2006-2007).

Maritime boundary management is always a collaborative process between a country and its neighbours, thus cannot be done unilaterally, and is always better to be done jointly at the regional level. Maritime boundaries management cuts across the following stakeholders: key government agencies, such as the customs, immigration, police, armed forces, ministry of agriculture, (for quarantine purposes), drug enforcement agencies, products regulatory agencies, and a host of others; shipping companies; local authorities like Port authorities; maritime institutions and bodies; international business companies and individuals; regional and international organizations like the International Maritime Organization. A major problem, however, is the lack of co-ordination among these stakeholders in most cases, who operate independently and without net-working or exchanging information.

Maritime boundary management is an expression of sovereignty of the African States and neglect or default in properly managing them could result in threat to sovereignty which can likely undermine the countries domestic and international status; in fact, the Montevideo Convention, 1933 listed four indices of state sovereignty to include a defined territory.

Also, the maritime boundaries of Africa are very porous and poorly managed, thus leading to very high activities of smugglers, human trafficking, drugs, piracy, weapons, contrabands, insurgencies, organized crimes, trade in endangered species and security threats. Considering these issues reveals that maritime border security is a necessity.

Thus, managing maritime boundaries in Africa calls for a joint management approach. By means of a joint management, the exploration and exploitation of natural and biological resources that extend beyond a boundary or overlap could easily be resolved. UNCLOS encourages such an approach³⁸ by its provisions, Articles 74(3) and 83(3), which deal with the delimitation of the Exclusive Economic Zone and Continental Shelf.³⁹

It has been argued that joint development may be devised either in the absence of agreed boundaries or in addition to delimited boundaries (Bundy, 1994). Where the States fail to agree on the delimitation of boundaries, it implies substantial differences in positions. This definitely raises a complex situation, which means that in this case, they may be willing to consent to the idea of a Joint Development, but only to the extent that they are prepared to set aside the intricate issue of delimitation for future consideration in favour of more imme-

³⁸Articles 74(3) and 83(3).

³⁹It provides that: "Pending agreement as provided for in paragraph 1, the States concerned in spirit of understanding and cooperation shall make every effort to enter into provisional arrangements of a practical nature and during this transnational period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

diate economic or other practical interests. Joint development is of course very useful for African States while boundaries “are being negotiated, as well as after their delimitations”. This is vital for ensuring peace and security within the continent.

6. The Security Imperative

Maritime security has no generally accepted meaning, but they refer to threats such as maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods arms proliferation, illegal fishing, environmental crimes, or maritime accidents and disasters. The issue of maritime security involves two main areas: regional and international cooperation for maritime security and development.

For Africa, as in most parts of the developed nations, maritime security is very important due to the fact that the maritime space is the key driver of economic and social development. Thus, there is need to put in place an African strategy for the protection of its seas and oceans, to provide peace, security and stability, and to make African maritime space the key driver for sustainable economic development.

Thirty-eight African countries are coastal, and one-fifth of pirate attacks take place in the Gulf of Guinea, estimated trade loss cost through the Gulf of Eden is put at US \$25 billion; 90 percent of Africa’s imports and exports are conducted by sea; 4.1 percent estimated annual decrease in bulk goods shipped are due to maritime insecurity; US \$100 billion worth of oil has gone missing since 1960 and one attack per week on ships average number of pirate attacks in the Gulf of Guinea. Recently, the transatlantic drug trade has been flourishing. Contrabands are being smuggled to West Africa from Latin America and from there to Europe, Asia and the Middle East. In some African States, this trade is so prevalent and poses a big threat to government control and state economies.

Given the above alarming and disturbing statistics⁴⁰ and situation, Africa has to wake up and pursue more aggressive the development of adequate and effective maritime security policy and their faithful implementation.

Maritime security remains at the forefront of Africa’s agenda, but of course, this cannot be effectively addressed by an individual state but by a cohesive regional cooperation. We commend efforts such as the Djibouti and Gulf of Guinea Codes of Conduct, but still African States should commit resources in order to combat maritime threats profusely.

Whilst Africa remains a place of strategic importance for the international community, African States should become more responsible and responsive. There is need to promote regional cooperation and raise awareness of key maritime security challenges across Africa and take relevant action to combat the challenges.

This problem is partly a result of the inability and unwillingness of individual

⁴⁰African Union Extraordinary Summit on Maritime Security and Safety and Development in Africa, OCEANS, Lome, Togo, 2016.

African States to domesticate treaties relating to international maritime security which they voluntarily acceded to. Paradoxically, where the frameworks exist, fundamental weaknesses in the criminal administration justice system, from corruption to lack of independence of the judiciary tend to whittle down the best efforts of stakeholders trying to enforce compliance with rules to impose sanctions in the event of breaches. The poor implementation at the national level of the legal provisions rubs off at the regional level due to absence of integrated regional framework to address maritime security challenges.

There is however, a plus in that recently there has been several meetings and conferences⁴¹ which reflect growing regional awareness of the threats posed by the maritime environment (African Union, 2016). The African States should rise to the occasion and address the gap in legislation and policy on maritime security. Existing legal instrument should be updated or new ones created and integrated to flow in line with international best practices. States should harmonize their national legislations in ways that strengthen regional capacity to engage with maritime security challenges. This requires that States in the region work towards consolidating their separate and shared maritime security strategies within the framework of a reference document similar to a blue print on maritime security. Such blue print should promote effective state action at sea such as the effective policing of inland waterways, port security, vessel security and facility security.

The point should be made that certain actions have been taken at the national, regional and global levels in tackling maritime security challenges (African Union, 2009).⁴² There are also other multilateral initiatives on maritime security—the United Nations Security Council (UNSC); the G8⁺⁺ Friends of the Gulf of Guinea Maritime Experts Group; the European Union; Interpol; the Atlantic Initiative and the African Union 2050 AIM Strategy. The 2050 AIM strategy provides an overall understanding of maritime security that encompasses the economic, social, environmental and security dimensions (Stockbruegger, 2014). Bilateral initiative has also come in tackling the challenges of maritime security in Africa. And several organizations have supported the African States in one way or the other to tackle maritime security challenges.⁴³ Yet, more remains to be done by both African nations (at the national and regional levels) and their international partners and several writers have equally identified with this cause (Bueger & Stockbruegger, 2011; Bueger, 2013; Vrey, 2013).

7. Resolving Maritime Boundary Disputes in Africa

For a nation state to be designated as secure, it should not only be able to protect its people, but it should also ensure the safety of its territories, particularly in this

⁴¹The African Union Extraordinary Summit on Maritime Security and Safety and Development in Africa, Lome, Togo 15, October, 2016.

⁴²See C. Ukeje & W. M. Ela, *African Approaches to Maritime Security—The Gulf of Guinea* (Friedrich-Ebert-Stiftung, 2013) pp. 24-50.

⁴³E.g. the Maritime Organization of West and Central Africa (MOWCA); the International Maritime Organization (IMO); ECOWAS; ECCAS; Regional Coordination Centre for the Maritime Security of Central Africa (CRESMAC); and the Gulf of Guinea Commission (GCC).

case, maritime boundaries (Okafor-Yarwood, 2015). For many African States, national security has become a very important issue that cannot be compromised, and curbing maritime boundary challenges remain one of the surest ways to strengthen the security imperatives. It has been argued and rightly too, that “deepening boundary uncertainties are inhibiting maritime security cooperation with potential for regional instability (Ali & Tsameny, 2013). And to effectively resolve maritime boundary dispute, African States must overcome existing “complex and under explored set of highly technical and political challenges.” The disputes in almost all the border cases have to do with discovery or prospects of discovery of oil or other natural resources in Africa which has led to the interest of States in laying claims to the maritime areas. This is aided by modern technology which has made it possible to explore and access resources within the deep seas, thus, improving the economic viability of such natural and biological resources. For instance, oil exploration blocks which are delineated by strict lines, often overlap maritime boundaries, and this has led to conflicts and even threat of war between the neighbouring states disputing ownership.⁴⁴ The response to such situations is usually threat of a conflict or war and this has complicated the development of oil industries in Africa. Conflict retards economic growth and chases away credible investors, and jeopardizes the fight against maritime crime and piracy. In developing the 2050 AIMS, it is recognized that African Maritime Domain (AMD) has vast potential for wealth creation coupled with the realization that AU Member States have common maritime challenges and opportunities and significant responsibilities for generating the desirable political will for implementing the strategy. AIMS integrates an annexed plan of Action for its implementation containing clearly defined vision with achievable goals, including specific desirable objectives, activities and milestones towards attaining the Strategic End State of increased wealth creation in a stable and secured AMD. AIMS widened the definition of state jurisdiction and sovereignty over the seas and oceans.

The broad and ambitious definition of what constitutes AMD⁴⁵ is loaded with all conceivable human activities occurring at, in, under or concerning the sea, including internal or inland waters, lakes and rivers. This extending the scope of maritime boundary definition of African maritime jurisdiction sharply contrasts with customary maritime customs and maritime legal regimes in other international climes, including UNCLOS. AIMS acknowledges the importance of delimited maritime boundaries as part of its vision, and states that through the AU Border Programme, in accordance with the UNCLOS, the AU shall make assertive call to peacefully solve existing maritime boundary issues between Member States including within bays, estuaries and inland waters (lakes and rivers) (Walker, 2015). Whatever the situation, the 2050 AIMS should ensure a viable

⁴⁴R. S. de Soares, *Oil and Politics in the Gulf of Guinea* (Hurst, 2008).

⁴⁵AMD is defined as “all areas and resources of, on, under, relating to, adjacent to, or bordering on an African sea, ocean, or African lakes, intra-coastal and inland navigable waterways, including all African maritime related activities, infrastructure, cargo, vessels, and other means of conveyance. It also includes the air above the African seas, oceans, lakes, intra-coastal and inland navigable waterways, and to the oceans’ electromagnetic spectrum as well.” AIMS, Annex B, p. 3.

regime for AMD boundary dispute resolution that is credible and sustainable.

Furthermore, in resolving maritime boundary disputes, a lot of interests are involved—political issues and economic interests, as well as other primordial factors. The political issues currently trending in maritime boundary disputes in Africa is traceable to the Berlin Conference of 1884-1885 meeting at which the major European powers negotiated and formalized claims to territory in Africa.⁴⁶ During this period, the colonialists paid little or no attention to precise maritime boundaries delimitation, thus, presently resulting in conflicts, as the Berlin Conference partition of Africa was purely arbitrary. Today, political interests ranging from the desire by African states to acquire more territories beyond the land as a means of political and economic power has resulted in several maritime boundary disputes. These interests are attributable to what has been described as due to “rising nationalism, population and environmental pressures” (Odotun, 2015).

There is also the economic aspect of Africa’s maritime boundary disputes, which is as a result of ownership of ocean resources. Africa’s maritime oceans have significant marine resources and rich deposits of oil and gas, which are important to the countries in the continent. Maritime boundary disputes have therefore become “increasingly exacerbated by a growing interest in exploring and exploiting natural resources (Walker, 2015). Access to the oceans by these countries means “a secure maritime domain” that guarantees unhindered rights over “the exploration for and discovery of oil,” which assures economic security and viability. This scenario has attracted several oil companies in Africa to open new oil fields, which in turn means more money and employment opportunities. These can destabilize any meaningful peaceful resolution effort, mostly if these political and economic interests are “irreconcilable.” Resolving maritime boundary disputes involves some cost of time and resources. It is tough and complicated. In all these, once there is the political will and determination, the maritime boundary dispute can always be resolved. Any decision or decisions arrived at in resolving maritime boundary disputes should balance all the interests involved in line with the 2050 AIMS and other existing maritime strategies. Boundaries to be resolved must also be clearly delimited and demarcated.

It has been argued that it would always be preferable in determining or adjusting maritime boundaries, to submit to technical review (Chatham House, 2006). Nevertheless, Timothy Walker has argued that technical issues are not easily resolved, given the situation that “watermarks and rivers shift location, making determination of a final and permanent location difficult” (Chatham House, 2006). Thus, despite its challenges technical review is still a viable option “to determining undisputed maritime boundaries and establishing peaceful relations”.

There is another option—the Joint Development Zones (JDZ) of which a good instance is the one between Sao Tome and Principe and Nigeria.⁴⁷ This method

⁴⁶Also called the Berlin West Africa Conference which marked the climax of the European competition for territory in Africa, a process commonly known as the SCRAMBLE FOR AFRICA.

⁴⁷de Soares (n 40).

of resolving maritime boundary disputes in Africa is also contained in the 2050 AIMS and known as the Combined Exclusive Maritime Zone of Africa (CEMZA). But for this to work, there must be proper delineation of boundaries or the creation of JDZs. Again there is the likelihood of other states not cooperating.

The JDZs usually is accompanied by a joint maritime development agreement. To understand how joint maritime development agreement could serve as a probable solution to resolving maritime boundary disputes, the maritime boundary dispute between Guinea-Bissau and Senegal and its resolution serves as a classical example. In 1974 Guinea-Bissau contested its boundary with Senegal. The disputed maritime boundary is of strategic and economic importance to both parties, because it is rich in variety of natural resources which they laid claims to. Although they attempted to resolve the matter through arbitration and a contest at the ICJ,⁴⁸ they later settled for a more amicable process.

Guinea-Bissau and Senegal (ICJ, 1991) resolved to enter an agreement as part of the negotiations for resolving the dispute amicably, and on 14th October 1998, both parties signed a “Management and Co-operation Agreement” in Dakar, aimed at providing among other things, the joint exploitation management and administration of both petroleum and fishing activities and seeks to provide a framework for cooperation and joint development between the two countries.⁴⁹ Thus, both nations set a unique precedent in the resolution of maritime boundary disputes through peaceful negotiation and settlement by signing a joint development agreement entailing joint development of oil and living marine resources, and also the delimitation of their common maritime boundaries.

This article argues that instead of spending years and expending scarce resources in seeking direct delimitation or rushing to the ICJ or ITLOS—which processes may be tedious, costly, time consuming and even further strain relations between states and exacerbate conflicts (Chatham House, 2006)—African countries should take a cue from the above examples of voluntarily negotiated joint development agreements. UNCLOS provisions and whatever may be the outcome in the ICJ definitely would not take the place of a peaceful settlement, negotiation and agreement.

Article 33 of the United Nations Charter supports the above submission. It provides for the peaceful settlement of disputes by means of the parties’ own choice, including negotiation. If negotiations fail, parties may resort to methods of dispute settlement such as the establishment of a complete boundary (Chatham House, 2006); a partial boundary or a joint area; conciliation and good offices (for example, of the African Union Secretary-General) and arbitration⁵⁰ or judicial settlement. Other arrangements for resolving maritime boundary disputes include, definite arrangements; provisional arrangements which compasses provisional boundaries, special areas and joint development of offshore hydrocar-

⁴⁸See K. A. McClarky (1987). Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary. *Maryland Journal of International Law*, 11, 93-121.

⁴⁹*Guinea-Bissau v. Senegal*, (1995). C.J. Rep. 423.

⁵⁰Ad hoc or according to Annex VII of the UNCLOS.

bons. Whichever option or options the parties may adopt, negotiated boundaries remain the best option, bearing in mind that UNCLOS does not determine the substantive rules for maritime delimitation, leaving the states to determine in accordance with international law what would be equitable in the particular circumstances (Sheehan, 2005).

8. The Challenges

This article argues that there is the urgent need to “mobilize a critical mass of concerted national, regional and global responses to the threats emanating from maritime insecurity...” (Ukeje & Ela, 2013). The first challenge is maritime insecurity. Anything that disrupts the peaceful and secure use of Africa’s waters, lakes and rivers and attacks the infrastructure of the waterways qualifies as insecurity. Maritime security therefore encompasses (Ukeje & Ela, 2013) a vast range of policy sectors, information services and user communities, including maritime safety for offshore oil and gas production, navy operations support (The Brenthurst Foundation, 2010).

Enhancing maritime security has become very vital if one considers the low priority given to it Africa’s governments and the poor management of Africa’s maritime domain which invariably constitutes threats to peace, security and development. According to reports, there is an increase in pirate attacks, rise in criminal activities associated with theft and illegal trade in crude oil, human trafficking, drugs, firearms, pharmaceuticals, illegal, unreported and unregulated (IUU) fishing, waste dumping, transboundary movement of hazardous wastes and pollution (Ukeje & Ela, 2013). Francis N. Ikome, has submitted that Africa’s current security challenges are predominantly governance-related (Ikome, 2012) and linked to intra-state conflicts, and the continent’s ill-defined national borders which constitute a potent source of instability.⁵¹ The enormous number of boundary disputes in Africa, particularly in the Great Lakes and the Horn of Africa, therefore, calls for concerns. African States and regional bodies should approach the matter with dynamism and establish stronger mechanisms to manage the disputes and security threats that arise across the continent’s many unresolved maritime boundary disputes. Africa needs to manage the maritime security challenges pro-actively at various levels continental, regional and bilateral, and must partner with those powers that affect the forces within its maritime space. Africa must take charge of its maritime security and this involves two main areas: regional and international cooperation and maritime security and development.⁵²

Another challenge is weak legal regime and poor implementation of existing legal framework. This problem is due to lack of capacity, ineptitude and corrup-

⁵¹Additionally, the rise in maritime security in its diverse manifestations is sustained by “acute fixation on an economy based on revenues from natural resources, particularly oil; negligence of threats emanating from the seas by the post-colonial state and absence of adequate, coherent and effective operational strategies to galvanize national, regional and international efforts.” (Ukeje& Ela, 2013)

⁵²Experts and Plenipotentiaries Meeting, Lome, Togo 15 October 2016. African Union Extraordinary Summit on Maritime Security and Safety and Development in Africa.

tion at the apex level of governments that connive with local and international criminal groups (Bueger, 2015). Existing laws are too weak and outdated to deter offenders and the punishments prescribed are too poor. The need therefore, arises for the states to strengthen existing national legislations and enact new ones. More so, it is very important that regional legal instruments on “maritime security and development issues” should be put in place. The issue of weak legal regime manifest in the very corrupt judicial sector in most African countries, inefficient “naval capabilities by which coastlines and the sea are patrolled and surveilled, to policing, intelligence and prosecution” (Bueger, 2015). The weak legal regime also persist as a result of complicity between the law enforcement agencies and the criminals involved in the maritime matters. Civil conflicts in Africa have further weakened the continent’s maritime, coastal and territorial law enforcement (Bueger, 2015). It is very evident that in Africa, there “is a lack of capacities to effectively police” the maritime borders (Bueger, 2015). In the event of detection and arrest, such criminal groups are usually not prosecuted or when they are taken to Court, they are let off the hook with minimal penalties. The factor of weak law enforcement hinges on the lower risk of getting caught and punished or even if caught the confidence of bribing one’s way out of the crime. Unfortunately, this concerns all levels of not only law enforcement but also implementing institutions.

There is also the issue of economic dislocation. Maritime crimes like piracy are in most cases economically motivated. Individuals or communities that engage in piracy are those that are economically marginalized and have been put at disadvantage by economic developments and globalization processes or are not allowed to participate in sources of wealth. A classic example is the upsurge in militancy activities—on land and water—in the oil-rich Niger Delta region of Nigeria where the people have benefited little or nothing from the exploitation of oil in their communities. Consequently, this has led to heavy loss of revenue to the Nigerian nation.

Other challenges are: poor preparedness of African States to acknowledge and confront the maritime challenges and threats facing them; over-dependence on oil which has brought in the powerful foreign companies who are often very difficult to regulate; and lack of capacity to assume and exercise sufficient regulation, control and protection of maritime infrastructure, deficiency in maritime governance vision, culture and sustainable policy. The unstable and fragile political regimes of many African littoral states compound the problems of managing their maritime domains. Maritime criminal and illegal operations are confined not only to the coastal states, but also the island states of the continent.

Out of 53 States of Africa, only 15 are land locked states and a little above 70 percent share seas waters around, this makes the many littoral states depend heavily on the maritime economy (Rao, 2014). Given this situation, any act, natural or human that disturbs the maritime waters and security has adverse consequences on the economy and livelihood of the African coastal inhabitants. According to Rao, the inability of African States to combat the threats regularly

posed by maritime non-state actors has resulted in the enormous naval militarization of the African waters by foreign naval forces, Western and non-Western (Rao, 2014). Thus does not augur well for manifestation of sovereignty by African nations. In most cases, these foreign naval powers are invited by some African States which feel threatened by a more powerful neighbouring African State to assist in protecting their maritime domain over disputes or threatened disputes over maritime boundaries that in most cases has to do with quarrels over natural resources deposits. They therefore unreasonably yield themselves into a highly dependent relationship with foreign powers.

With all these challenges, the African States have not gone to sleep, but are working in collaborative relationships to retain full sovereign control over their maritime domains and economies. Recent continental actions and approaches as reflected in the AU's Border Programme (AUBP) and the 2050 AIMS projects offer great hope that African States are indeed not oblivious or unaware of the numerous challenges existing within the Africa's Maritime Domain and are determined to accomplish a stable maritime regime in the continent.

9. Conclusion

African maritime boundary subject is an important problem for debate, and unless resolved is bound to cause great damage on the attempt to foster maritime security and sustainable economic development within the African States. Resolving African maritime boundary disputes has political and economic outcome for the nation states involved with a possibility of boosting regional partnership, collaboration and synergy towards regional and continental actions as profiled in AU Border Programme, the 2050 AIMS and the AU Agenda 2063.

This article has discussed the complex and complicated problems that come with seeking to resolve maritime boundary disputes within the African maritime domain by reviewing the causes of maritime disputes in Africa; delimitation of Africa's maritime boundaries; an overview of Africa's maritime boundary disputes; managing Africa's maritime boundaries; the security imperative, resolving maritime boundary disputes in Africa and the challenges. In doing so, this article submits that in order to efficiently and effectively exploit the natural and biological resources that are deposited within the seabed of Africa's maritime domains, there is a pressing and dire priority for the post-colonial maritime disputes in the continent to be resolved. It also postulates that before exploring other means of resolving maritime border disputes and delimiting boundaries, as exemplified in the cases of Guinea-Bissau and Senegal, joint development agreements and negotiations should be pursued as they appear to be better methods than seeking outright delimitation (including through the ICJ or ITLOS) which is very technical, arduous, expensive, time consuming and in certain cases, not easy to attain and may cause further conflict between states and create a strained relationships among them.

To address the issues raised in this article on the delimitation of maritime boundaries between African states, future research directions are suggested on

specific areas. First, the implementation of Article 82 of the UNCLOS requires states to make payments or contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles. The International Seabed Authority (ISA), set up by the UNCLOS regime, is significant in the implementation of Article 82. For Africa, Article 82 is of interest in articulating the delineation roles of the states in relation to the mineral resources on its continental shelf beyond 200 nautical miles. Africa has an interest in this subject as failure to implement Article 82 would weaken the advantage they have under UNCLOS. It therefore, behoves on African states to “determine pathways to the successful implementation of Article 82”. Article 82 remains “an important component” in maritime boundaries limitation and dispute resolution in Africa. This article argues that while the intent behind Article 82 is not in doubt, the language employed by the draftsman “leaves a number of important practical issues unresolved”. Therefore, there is urgent need for reforms if the Article 82 provisions should continue to be of any relevance, clear and unambiguous provisions are required as to how Article 82 will be implemented in the future as this will help “to provide greater certainty to the offshore industry and enable it to promote more activity on the outer continental shelf”.

The second area that requires future research direction is the delimitation of maritime and boundaries transboundary cooperation. There is lack of cooperation in the absence of agreement on the delimitation of maritime zones between neighbouring African states. Future research should focus on the specific issues of transboundary cooperation in relation to hydrocarbon resources and the preservation and protection of the environment.

Thirdly, the issue of baselines and outer limits are most likely to be affected due to climate change. Climate change definitely will affect the baselines already delineated in accordance with UNCLOS, thus, impacting on existing maritime limits, and eventually in some cases causing certain small island states to disappear. Future research must therefore seek to answer the questions: what would be the most appropriate response to those issues: reliance on the existing law on baselines and maritime zones or develop the law in the light of changing circumstances? (Elferink, 2017).

The fourth issue in need of further research is the provisions of Article 76 of the UNCLOS which establish the continental shelf. The UN Commission on the Limits of the Continental Shelf (CLCS) has been “grappling with how to deal with the impact” of UNCLOS Article 76 on land and maritime disputes and other provisions of the UNCLOS and international law. Elferink, also has identified “another issue that has become apparent”, and this relates to “how the functions” of CLCS “relate to the right of state parties to interpret and apply the convention”. These issues and other questions that are likely to arise in the implementation of Article 76 are matters for future research directions, which are beyond the scope of this article.

The development of the case law in relation to the delimitation of maritime boundaries between African neighbouring states is the fifth issue that deserves

mention. The ICJ and other arbitral tribunals have over the years intervened in maritime boundaries disputes between African neighbouring states. However, this judicial intervention has not helped matters as some of the ICJ decisions are most often times confusing and subject to diverse interpretations by the disputant parties. There are also inconsistencies and the resultant aftermath most times are chaos, tensions and conflicts. The ICJ decisions in some cases do not properly address the issue of delimitation of the continental shelf beyond 200 nautical miles. They create problems and impacts negatively on the relationships between the neighbouring African states or more that are parties to the dispute. Again, it is beyond the scope of this article to discuss the problematic issue of ICJ decisions.

This article concludes that there is avowed obligation on African states to cooperate in relation to maritime boundaries delimitation and dispute resolution within the continent. This is so, because certainty about the extent of maritime boundaries remains the panacea for “a stable and effective oceans regime”. Lack of such certainty has led to persistent disputes between neighbouring African states over access to the control and ownership of natural resources, thus, resulting in security challenges within the region, which are likely to adversely affect the marine environment and in certain cases result in open conflicts.

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