

**DELIMITATION OF THE MOZAMBIQUE
MARITIME BOUNDARIES WITH NEIGHBORING
STATES (INCLUDING THE EXTENDED
CONTINENTAL SHELF) AND MANAGEMENT OF
OCEAN ISSUES**

Elisio B. Jamine

United Nations – The Nippon Fellowship Programme 2006/7

Mozambique



INTRODUCTION

➤ Main Objectives

- Analyze how LOSC establishes the issue of delimitation of maritime boundaries with respect to the Mozambican situation and to discuss the problems of the Mozambican maritime boundaries, their delimitation, negotiation, and options for possible conflict scenarios;
- Reflection upon the current approach to management of ocean issues in Mozambique

➤ Structure

- **Part I - Delimitation of Mozambique Maritime Boundaries and the Extended Continental Shelf**
- **Par II - Management of Ocean Issues in Mozambique**

Part I - Delimitation of Mozambique Maritime Boundaries and the Extended Continental Shelf

Mozambique Maritime Geographic Context

- The Republic of Mozambique (RM) is located on the coast of Southeastern Africa, between the parallels of $10^{\circ} 27'$ and $26^{\circ} 52'$ South Latitude and meridians of $40^{\circ} 51'$ and $30^{\circ} 31'$ East Longitude
- Coastline - approximately 2 700 km, from the Rovuma River in the north to Ponta D'ouro (Gold Point) in the South
- The coast of Mozambique is irregular in its configuration, and is characterized by rugged islets, islands, and “archipelagos”
- Land Boundaries
- Opposite and Adjacent States

Geographic location of Mozambique and Islands under dispute in Mozambique Channel (not to scale)



Source: Prepared by the Author and Drawn by Spatial Logic, 2006

Internal Jurisdiction and Legal Issues Related to Maritime Boundaries in Mozambique vs. Law of the Sea Convention (LOSC)

- LOSC - established the maritime spaces subject to jurisdiction of coastal States (TS, CZ, EEZ, CS).
- Mozambique become a State Party of the LOSC by its approbation through the Resolution No. 21/96 of November 26, 1996

Internal Jurisdiction and Legal Issues Related to Maritime Boundaries in Mozambique vs. Law of the Sea Convention (Cont...)

- Article (6)(2) of the new revised Republic Constitution, approved in 2004, the “*extension of the limit of territorial waters, the EEZ, the CZ and the rights of seabed of Mozambique, are established by law*”. The law referred to is Act 4/96 of 4 January 1996 approving the Act of Sea.
 - Maritime spaces - TS, EEZ and CS, calculated from the baselines

- Institutions
 - Presidential Decree No. 3/2001 of 3 July 2001 (Coordination Council of Sea and Boundaries)
 - Organ of Council of Ministers of Mozambique, with its aim to coordinate multi-sectoral actions of sea and boundaries
 - Decree No. 18/2001 of 3 July (IMAF) – Ministry of Foreign Affairs and Cooperation
 - Technical Council of Sea and Boundaries

Delimitation of Maritime Boundaries of the Exclusive Economic Zone and Continental Shelf: Law of the Sea Convention vs. Act of Sea

- Baselines
- Legal Principles and Method of Delimitation



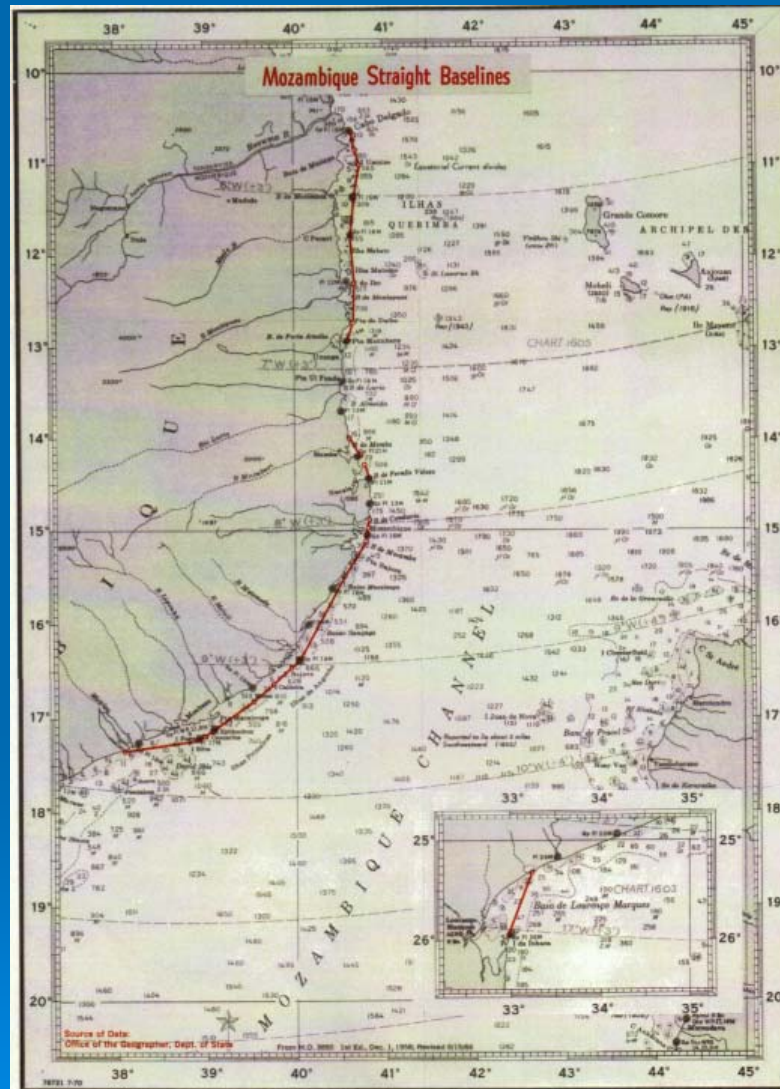
Baselines in the LOSC

- Article 5 of LOSC deals with the normal baseline, stating that the normal baseline for the measurement of maritime spaces is the low water line along the coast which is marked on large-scale charts officially recognized by the coastal State.
- Article 7 of the LOSC allows States to draw straight baselines in the specific situation (indented coastline, fringe of islands...)
- Combination of methods (Article 14)
- Archipelagic Baselines (Article 47 of LOSC) (Not the case of Mozambique!) – i. e. joining the outermost points of the outmost islands and drying reefs (...)

Mozambique Baselines (Conformity with UNCLOS?)

- It is noteworthy that, on 22 August 1966, the Government of Portugal published the Law No. 2130 on the TS of the State and the ultramarine provinces at the time, namely: Mozambique, Angola, and Guinea
- This law permitted the construction of bay-closing lines or straight baselines for Portugal and its ultramarine provinces
- On 13 June 1967, Decree No. 47 771 was issued by the Ministry of the Navy establishing the baselines of Mozambique, Angola and Guinea, from which the breath of TS was measured
- After the independence of Mozambique, the Government did not update or revise these baselines, and they were incorporated into the Act of Sea. The Decree n. 47 771, did not specify the method/s used for their establishment, and these baselines were drawn before LOSC

Baselines of the Republic of Mozambique



Source: U.S. Department of State, International Boundary Study, Limits in the Seas, 1970.

Legal Principles

- LOSC does not provide an explicit roadmap to delimitation but (important) contains the legal and key principles
 - Article 15 (TS)
 - EEZ/CS (Articles 74 and 83) – call in identical general terms for agreement to be reached on basis of international law in order to achieve an equitable solution
 - Relevant State practice (eg. series of relevant decisions of courts and tribunals)

Legal Principles (Cont...)

- What about Delimitation in the Act of Sea of Mozambique?
 - Article 5 (TS)
 - Article 10 (EEZ)
 - 14 (ns. 1-3)

Mozambique Maritime Boundary Delimitation

- Existing Agreements
 - Agreement with the United Republic of Tanzania (URT), concluded on 28 December, 1988 in Maputo
- Overlap maritime claims
 - Potential Delimitation Boundary Situation

Mozambique Maritime Boundary Delimitation (Cont...)

Delimited Boundary with Tanzania



Source: Prepared by the Author and Drawn by Spatial Logic, 2006

Mozambique Maritime Boundary Delimitation (Cont...)

(Distances between Mozambique and Neighbouring Coastal States/Islands – Not Official Record)

	From where the Territorial Sea is measured (limit of jurisdiction)	Neighboring States
Mozambique	N 201, 944 nm S 501, 080 nm	Madagascar
Mozambique	251, 620 nm	France Possessions: Europa Island (Bassas da India it lies about 60 nm northwest of Europa Island and Juan de Nova is narrowest part of Mozambique Channel about one third of the way between Mozambique and Madagascar)
Mozambique	MZ/Grande Comore - 147,948 nm MZ/Maheli - 164, 147 nm MZ/Anjonan - 213, 823 nm MZ/Magotte - 244, 060 nm	Comoros Islands
Mozambique	Mozambique has adjacent Coasts in the North with Tanzania and in the South with South Africa	Tanzania and South Africa

Delimitation Method

Which method is appropriate for Mozambique?



Disputes Affecting the Process of Delimitation of Mozambique Boundaries

- Conflict Between France and Madagascar (France Possessions)
 - Europa Island
 - Juan da Nova
 - Glorioso Island (out of the relevant area)
 - Bassas da India (Not an Island)
 - Does UN resolutions solved the conflict?

- Conflict Between France and Comoros
 - Mayotte

- Does LOSC solve the islands sovereignty dispute?

Delimitation of the Exclusive Economic Zone

- Boundary Between Mozambique and Madagascar, and the Status of French Possessions ()
 - Islands according Article 121 LOSC
 - Defining the Status of Possessions (Some State Practice)
 - *Anglo-France Case (Channel Islands)*
 - *Case France-Canada (Saint-Pierre et Miquelon)*
- Boundary Between Mozambique and Comoros
- Boundary Between Mozambique and South Africa
- Tri-point Issues

Potential Boundary Situation Considering Present Pattern of Ownership (not to scale)



Source: Prepared by the Author and Drawn by Spatial Logic, 2006

Delimitation of the Extended CS Beyond 200 nm

- The CS of the coastal State shall not extend beyond the limits prescribed by Article 76, however Article 76(4) to (6) allow the coastal State to extend its CS beyond the 200 nm limit whenever the margin extends beyond 200 nm from the baselines
- There is strong evidence suggesting that Mozambique has the potential to claim an extended CS beyond the 200 nm in the southeast. Although there currently does not exist a scientific description of Mozambique's physical CS
- In the Indian Ocean South and Southwest of Madagascar there are three States with potential extended CS claims: Mozambique, Madagascar, South Africa and the French possessions

Continental Shelf Beyond 200 nm (Cont...)

Potential Continental Shelf Beyond 200 nautical miles (not to scale)



Source: Prepared by the Author and Drawn by Spatial Logic, 2006

Continental Shelf Beyond 200 nm (Cont...)

- The analysis suggests that as Mozambique establishes its extend CS beyond 200nm should consider the potential existence of other claims such as those of South Africa and Madagascar
- The information on the limits of the CS beyond 200 nm shall be submitted to the CLCS (Article 76(8) and Annex II of LOSC). *This paragraph in particular gives rise to many questions of interpretation such as: what happens if they do not?*
- Article 4 of Annex II requires that a submission to the CLCS must be supported by “*scientific and technical data*” as soon as possible, but in any case “*within 10 years of the entry into force of the Convention*” (May 1999). The procedures for submission to the CLCS are to be supplemented by the “CLCS Technical Guidelines” and coastal States preparing to make a submission under Article 76 are advised to observe the CLCS’s Guidelines.

Continental Shelf Beyond 200 nm (Cont...)

- Current status of Mozambique
 - Lack Desktop Study
 - Lack Software
 - Lack of Technical Expertise
 - Lack (few?) Human resources
- Time is running out
 - Next Steps?

The Negotiation Process and Final Agreement

➤ Principles of Negotiation

- Good faith, in particular, is regarded as the main principle and feature of any international negotiation
- United Nations, General Assembly, Resolution 53/101 *Principles and guidelines for international negotiations*, 20 January 1999 (A/RES/53/101)
- Other relevant instruments to be considered

➤ Options for Strategies (preparation, planning and management of the negotiation)

- hard, soft, and principled

The Negotiation Process and Final Agreement (Cont...)

➤ Delimitation Agreement

- The form of final agreement must be in accordance with international rules
- In this regard, 1969 Vienna Convention of Law of Treaties is the framework instrument which codifies the rules on the conclusion and effects of treaties
- Apart from the 1969 Vienna Convention of Law of Treaties, parties to a negotiation should consider any effects of their own constitutional rules on treaties. (In Mozambique, the final acceptance of an agreement on this matter is subject to ratification by the Republic Assembly).

Potential Disputes Scenarios

- In the Mozambique Channel boundary delimitation process, the controversies which can arise could be related to:
 - baselines
 - methods of establishing the tri-junction points
 - resource discoveries,
 - (existing conflicts between Madagascar/France and Comoros/France)
 - Weight to be accorded to French possessions
 - Geodetic compatibility
 - Methods of delimitation, and
 - Simply variations in the interpretation of LOSC.

Potential Disputes Scenarios (Cont...)

- If one of these events, or other related problem arise, the States are required to apply Part XV of LOSC (“Settlement of Disputes”). In particular Article 279, which states that: “States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of United Nations and to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the UN Charter

- Then, where no settlement has been reached, Article 286 states that the dispute shall be submitted at the request of any party to the dispute to a court or tribunal having jurisdiction under the section. Article 287 defines tribunals as follows:
 - “The International Tribunal for the Law of the Sea (ITLOS) established in accordance with Annex VI;
 - The ICJ;
 - An arbitral tribunal constituted in accordance with Annex VII;
 - A special arbitral tribunal constituted in accordance with annex VIII for one or more of the categories disputes specified therein”.

Part II

Management of Ocean Issues In Mozambique

Current Status of Mozambique Ocean Issues Management

- Institutional/Framework
 - Institutional fragmentation (Ocean Issues still scattered)
 - Weak/Old/fragmented legislation
 - Fisheries Act
 - Act of Sea
 - Environmental Act
 - Weak (Lack) Coordination



Exploring Integrated Ocean Management

- Problems are interrelated need to be considered as a whole (Holistic Approach)
- Institution Integration (horizontal and Vertical)
- Management of conflicting uses and users of ocean space and resources




Exploring the Global Approach Ocean Governance

- Legal and Institutional (LOSC and relevant treaty developments)
 - Ocean management is currently supported by a complicated system of international conventions and national regulations founded on the recommendations of the LOSC and the United Nations Conference on Environment and Development (UNCED, 1992 – Rio Declaration) and other relevant conventions, agreements and regional programs.

- Role of General Assembly (highest level, the global and political), the UN General Assembly exercises a general oversight function over all matters related to ocean affairs and the LOS.
 - Subsidiary body, the UN Open-ended Informal Consultive Process on Ocean and Law of the Sea (ICP). The ICP works towards informing the General Assembly, along with the Secretary General Annual Report on ocean governance developments and approaches.
 - The institutional framework established by the LOSC include: the ISBA; the Meeting of States Parties (SPLOS); the regime for the Peaceful Settlement of Disputes and the International Tribunal for the Law of the Sea (ITLOS), and CLCS.
 - UN system bodies eg. IMO, FAO, IOC-UNESCO;

Global approach Implementation Level

- Local (Community Based Co-management- citizen programs, civil society)
 - National (Effective linkages local and national governance; cooperation and coordination among government institutions)
 - Regional (Implementation of all relevant conventions, agreements, and programs; strength regional sea programs)
 - Indian Ocean Marine Affairs Cooperation (IOMAC) – *Dead initiative?*
 - Western Indian Ocean-WIO (UNEP Regional Seas Programme) – Still survivor.
 - International
- 

CONCLUSION

- The present study demonstrates that the lack of maritime boundary delimitation and a comprehensive integrated ocean management limits the sovereignty of the State and renders the exclusive economic rights imaginary.

- Maritime Boundary Actions should consider
 - Legislation
 - Baselines
 - Maritime Boundary Delimitation Negotiation Process
 - Continental Shelf and Its Extension Beyond 200 Nautical miles
 - French Possessions
 - Capacity Building
 - Management

Conclusion (Cont...)

- Management
 - At present, the framework affecting marine management is fragmented and is administered by a variety of different Government institutions and agencies. This situation needs to be rationalized, coordinated and integrated. The legal framework for the use of ocean spaces needs to be revised or updated (in some cases established/adopted)
 - Strength regional cooperation
 - Comprehensive implementation of the LOSC and related agreements (include “politization”)
 - Establishment of a national integrated ocean policy is needed

THANK YOU!

