

DEVELOPING AN INTEGRATED OCEAN POLICY FOR MOZAMBIQUE

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PRESENTATION

- PART I: The context/ Background: Marine affairs
- PART II: Ocean Policy and Comparative Law
- PART III: Developing an Ocean Policy Model for Mozambique.

PART I: THE CONTEXT/ BACKGROUND INFORMATION

□ Mozambique is situated on the eastern coastal of southern Africa, between the latitude 10° 27 South and 26° 52 South and between longitude 30° 12 East and 40° 51 East. *North:* United Republic of Tanzania, *West:* Malawi, Zambia, Zimbabwe, *South:* South Africa and Swaziland.

ADMINISTRATIVE BORDERS RESPONSIBLE FOR MARITIME AFFAIRS.

- Marine maritime affairs, Marine affairs

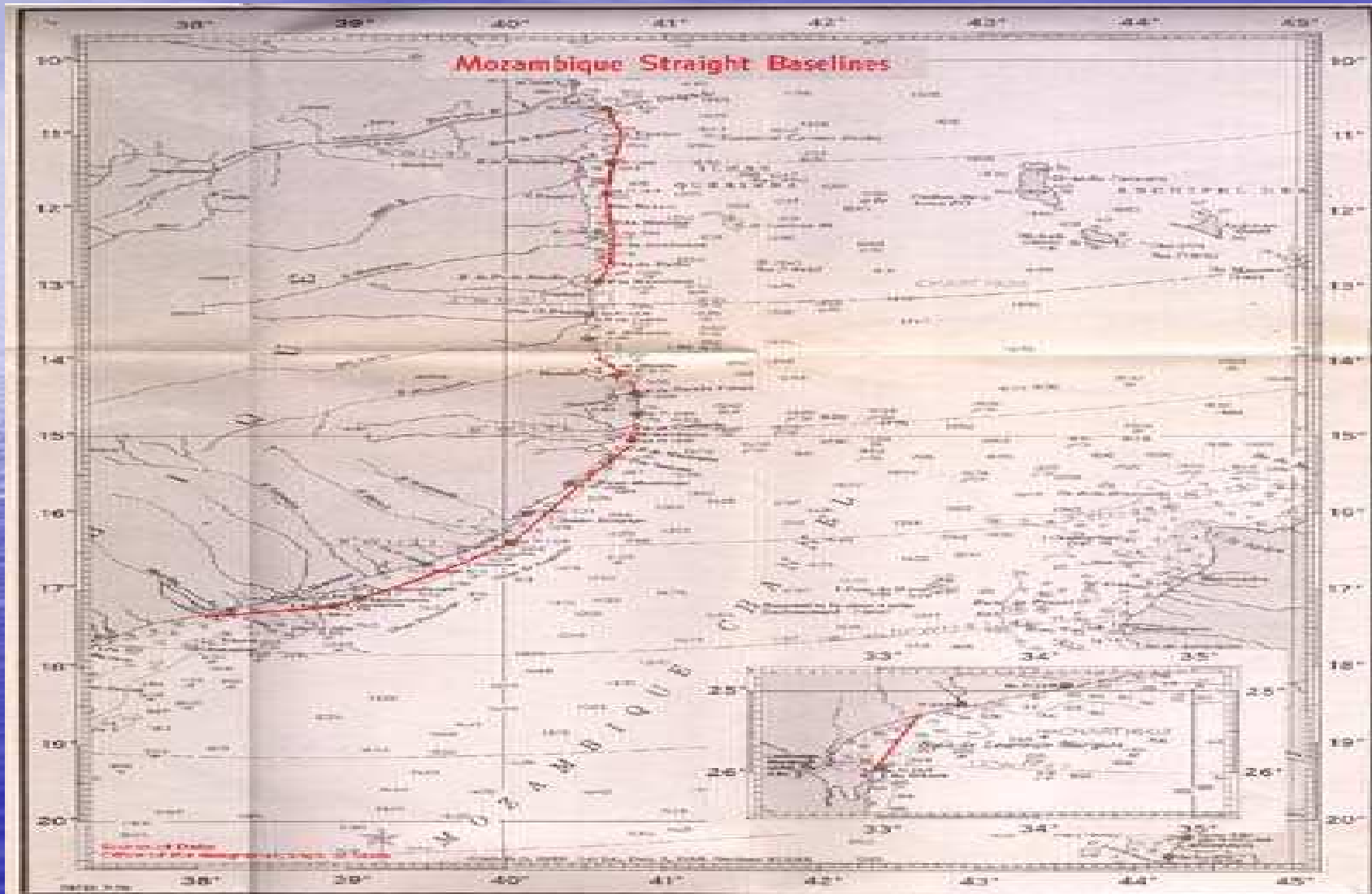
IMAF- National Institute for Sea and Borders Affairs is an executive and technical body of the Government which coordinates day to day issues for the parent Ministry of Foreign Affairs and cooperation.



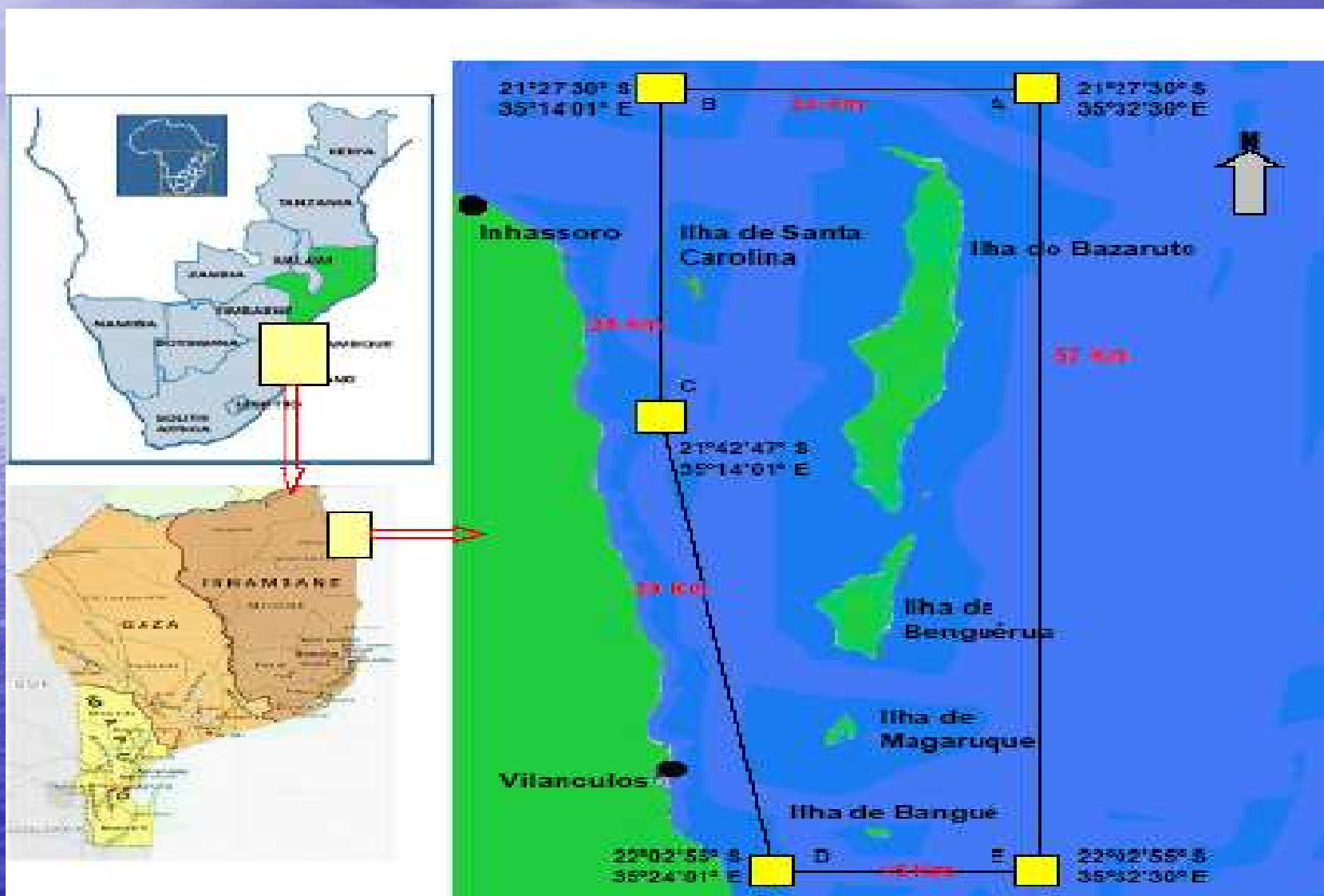
MARITIME ZONES CLAIMED BY MOZAMBIQUE

Internal water, Territorial Sea, Contiguous Zone, Exclusive Economic Zone./
Continental Shelf

Baselines



□ Straight baselines: Bazaruto Archipelago National Park



Territorial Sea

Article 3 LOS Convention

□ “ Every States have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with this Convention”.

➤ Mozambique has claimed first by the decree law no.31/ 76 of 19 August 1976 and then by the law no.4/96 of 4 January 1996.

□ Article31:

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes **with the laws and regulations of the coastal State concerning passage** through the territorial sea or with the provisions of this Convention or other rules of international law.

Article 6(3) Law of the sea (Mozambique) “ when a foreign warship or other Government ship operated for non-commercial purposes non-compliance **with the Mozambique law related with the innocent passage** thought the territorial sea and...”.

- ❑ Misleading: Mozambique hasn't any specific law related with innocent passage, simply repeats the general context of article 31 of the LOS Convention.
- ❑ *Proposal: “when a foreign warship or other Government ship operated for non-commercial purposes for non-compliance with the Mozambique law, with the international principles of the innocent passage or other international law and cause loss and damage to the coastal State, the flag State shall bear international responsibility for any loss and damage resultant of it” .*
- ❑ Other aspects: The term innocent passage: While the LOS Convention in the article no.18 (2) has an exception of what is prescribed in the article no.18(1), the Law of the Sea of Mozambique omits that exception:

“2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation...or ...in danger or distress...”.

Contiguous Zone

Article 33(2) LOS Convention

It is an area that may not extend beyond 24 nautical miles from the baselines and its an enforcement to prevent or punish infringement of its customs, fiscal, immigration and sanitary laws.

- ❑ Exception in the Los Convention 303 (2) : “*Control of archeological and historical objects removed from seabed of the contiguous zone*”.
- ❑ Mozambique has claimed CZ under law no. 4/96 of 4 January. But, it was included also an extension for the marine environment prevention reasons which is not expressly provided by the LOS Convention.
 - *Consequence*: it’s not in conformity with the LOS Convention.
 - *Options*: Some States, such as South Africa have defined this area as culture zone. The issue related with marine environment prevention is stated in the EEZ (LOS Convention, article 56, 1, b, iii) and not in the CZ.

Exclusive Economic Zone

Article 55

Compromise: Between developed countries worried to lose their space of navigation and developing countries having a desire to gain control over the economic resources by the distance-water fleets of developed States.

Mozambique has claimed 200 nautical miles.

☐ Mozambique has claimed first by the decree law no.31/ 76 of 19 August 1976 and today set by the law no.4/96 of 4 January 1996.

Rights: sovereignty rights to exploration and exploitation, conservation and Management of the natural resources, living or non-living of seabed, subsoil and superjacent waters. Regulate the establishment and use of artificial islands, installation and structures, maritime scientific research and protection and preservation of marine environment.

Continental Shelf

Article 76 (1) LOS Convention

➤ definition: “comprises the sea-bed 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”.

➤ What do States can do? Extend claim to 200 nautical miles without any express proclamation, without overlapping.

Mozambican legal concept of Continental Shelf is stated in the article 13 (1), (2) of Law no. 4/96 of 4 January.

❑ *Current activity in Mozambique:*

Technical studies and collection of data in order to make a submission to the Commission on the Limits of the Continental Shelf, according with the article 76 (8) of the Los Convention. 2 Scenarios All / Partial. France/ Ireland/ Spain/ and United Kingdom of Great Britain and Northern of Ireland.



Malawi

Mozambique

ve

Vaziland

Grande Comore

Moheli

Glorioso Islands

Mayotte

Juan de Nova Island

Bassas da India

Europa Island

Madagascar

MARITIME BOUNDARIES

❑ **Reasons:** Certain political impasse between its neighbor States, Complexity of the physical geographical in Mozambique. Absence of the technical expertise and resources to contribute under take the survey.

❑ *Mozambique/ Tanzania, location: North*

❑ *Mozambique /South Africa, location: South*

❑ *Mozambique/ Madagascar, location: Western*

❑ *Mozambique/ Comoros, location: North end of Mozambique channel half between Moz/Mad.*

➤ **1° Scenario:** Under French possessions Mozambique and Madagascar share a common boundary of 75 nautical miles.

➤ **2° Scenario :** Madagascar exercises sovereignty over the islands and both Sates take the presence of them into consideration in achieving equitable agreement on a common boundary in the north, center and south of the Channel.

➤ **3° Scenario:** Bring the islands under a new governance regime with a mandate of the United Nation and to draw boundary between Mozambique and Madagascar.

PART II: OCEANS POLICY AND COMPARATIVE LAW

The purpose of this part is to do brief examination in some States practices in Canada, United States of America, South Africa and Tanzania in view to understand recent trends in the application of this concept at a practical level.

□ The concept of integration

- *Nature*: Not a legal term. But a political concept which aims to Harmonize the different policy govern activities such as Maritime transportation, fishing, oil and gas, use of winds and tidal power, shipbuilding, tourism, marine resources.
- Decisions based on fragmented points of view are no more seen as any solution to address policies.
- *States practices*: The trend is to adopt national ocean policy take into account common principles and standards for the different sectors area.
- *Remark*: To managing ocean use it requires a wide plan because of many transnational issues, for example when it comes to resources use it may extend beyond national jurisdiction.

❑ How does the process start and evolves?

- Government, Create Commission, Identify problems, Produce recommendation, National ocean plan.

❑ Regional Initiatives

- Some national programmes ought to be developed beyond the national plan their have to be addressed at a regional and international level.
- Initiatives such as European Maritime Policy in Europe and Africa Union, SADC are example of the way to deal with the transnational issues. Ocean affairs are by excellence one area where the implementation of local plan must take into account regionally and globally.

❑ Some initiatives in Africa

- Unfortunately for many African States ocean policy are not in their supreme Agenda. Notwithstanding this are affecting by some ocean challenge. *Remark:* Nothing coming soon in Africa.

COMPARATIVE LAW AND POLICY

□ Canada

- *How does the process started?*
- Ministry of Fisheries and Ocean of Canada “piecemeal fragmented and scattered”.
- 1990: Developed integrated approach to manage ocean affairs.
- 1996: The parliamentarian enacted the Canada Ocean Act strategic for develop national ocean management.
- *Result:* Identification of three key elements: *Sustainable development, Precautionary approach , Integrated management.*
- *Main objective of the policy :*
 - Understand and protect the marine environment, Economic opportunities, Making Canada an international leader in maritime affairs.
 - *Framework:* Better coordination and management the policy.

Lesson: The management of Canada's maritime affairs is still fragmented with different ministers responsible for different aspects of the policy.

Solution/proposals: Government should give to DFO the responsible for all matters concern with management of Canada's ocean and urgent that Minister to exercise that role proactively.

❑ United States of America

- *How does the process started?*
- 1969: It was creating Stratton Commission.
- *Objectives:* Study the U.S coastal/ ocean problems.

- *Result:* Recommendations(some) on: The establishment of a new coordinated national ocean policy framework, the collection of cutting edge ocean science data which would then be translated into high-quality information for managers.

The implementation of lifelong ocean related education to create well-informed citizens with a strong stewardship ethic.

NOAA (National Oceanic Atmospheric Administration): Coastal Zone Management, Marine Mammal protection, Marine Research Protection Act, Sanctuaries Act.

➤ 1990: Second Commission (Chair by the retired Navy Admiral James Watkins).
Objectives: Develop recommendations for a comprehensive national ocean plan for USA. Results: It was produced over 200 recommendations.

➤ Key recommendations: The collection of sound science, the improvement of ocean related education for the future, Guide principles for the policy, Stewardship, sustainability, ocean-land-Atmosphere connections, ecosystem-based management, preservation of marine biodiversity, best available science and information, participation governance understands laws and clear decisions, multiple use management, preservation of marine biodiversity, adaptive management, understandable laws and clear decisions, participatory governance, timeless, accountability.

➤ *Remark:* Is notable the shift towards integrated decision-making and interagency cooperation at State and fundamental level of government.

➤ *However:* Reforms are modest and not address many of the recommendations of the commission on Ocean Policy.

□ South Africa

➤ *How does the process started?*

Ministry and Department of Environmental Affairs and Tourism which is responsible for ICZM, marine pollution control and sustainable use and conservation of marine living resources.

➤ *Support:* British Department for International Development.

1995: Establishment of a Committee (Green Paper).

Objective: A wide debate about national coastal plan which evolves all sectors of society.

➤ *Remark:* Even with the political changes in the Government the process about ocean affairs didn't stop.

➤ 1999: White paper, Recognizing the value of the coast, facilitating sustainable coastal development, promoting co-ordinate and integrated coastal management and introducing a new style of management for coastal development.

The policy is based on a shared vision for the coast to have equitable use of it, achieve social development, cultural values, Spiritual fulfillment and ecological integrity, and share responsibility for keeping the basic of ecosystem.

□ Principles of the policy:

➤ The coastal environment is a national asset, economic development, social equity, ecological integrity, holism, risk aversion and precaution, accountability and responsibility, duty of care, integration and participation, cooperative governance.

The action need an institutional and legal development, awareness, education and training, information and projects.

➤ *Result:* Feedback from the coastal stakeholders has been quiet positive. There has been progress in achieving four objectives of the coastal management policy program: meaningful public participation, the promotion of scientific research, the implementation of integrated management and the adoption of practical instruments for policy implementation.

□ Tanzania

➤ How does the process started?

➤ Tanzania National Environment Management Council with support of the University of Rhodes Islands Coastal Resources and USAID: Canada/ USA.

➤ Similar to United States of America, South Africa, Tanzania commenced with a Green paper.

➤ *Objectives:* Collective view of the sectors and stakeholders, a partnership approach to ensure sustainable use of ocean resources.

➤ *1999:* End of the work integrated national coastal Management strategy focused on sustainable development and linking resources with people.

➤ *Remark:* People will benefit if they work actively to protect and sustain the considerable resources in coastal environment.

➤ *Seven strategic were established to be achieved in year 2025:*

These strategic include better environment planning and integrated management, promotion of environment friendly approaches to development and use of the coastal ecosystem; building human and institutional capacity, and providing meaningful approaches for stakeholders to engage in the policy process.

❑ Resources: Fisheries, Tourism, Environment, Oil and Gas, Maritime Transportation



PART III: DEVELOPING A OCEAN POLICY MODEL FOR MOZAMBIQUE

➤ Review international trends with focus on some elements in a model for ocean governance for Mozambique. The paper will not provide all the precise elements in a national ocean/coastal policy but, at least identify some common threads in international best practices which can be applied in Mozambique. In Mozambique there is a record of address isolation problems in some provinces.

❑ Pilot's programmes along certain coastal zones

➤ Recognizing the ocean/coastal problems the Government of Mozambique has enacted the Decree no.5/2003 of 18 of February creating the Sustainable Development Center for Coastal Zone Management subordinated to the Ministry of Coordination for the Environment Affairs.

❑ Integrated Coastal Zone Management Different of National Ocean Plan

- Is mostly adopted by developing countries in opposite to National Ocean Plan is a national, complex but, dynamic process which take place holistically, where strength is given in sustainable use, development, and protection of the coastal and marine resources and it should contain continuous decision –making process involving integration of scales (local, regional and national), themes (land and sea) stakeholders (corporations, householders and Governments) and objectives (economic, environment and safety).
- National Ocean Plan is a wide process focus on the governance of the ocean/coastal as a whole, ICZM is included in this huge process is part of it.
- However, there is a risk of don't address all the necessary issues related with ocean affairs because of lack of inclusion of many issues by applying one and not another.

❑ Relevant elements for National Ocean Plan for Mozambique

➤ Certain general items are considered as important for the National Ocean Plan in Mozambique taking into account the process in other countries: Poverty, eradication, reinforcement of sovereignty and national marine integrity, protection of marine environment, combat the erosion, role of Mozambique in Maritime transportation in the region, natural calamities, enough education, role of local authority/communities, financial resources.

CONCLUSIONS :

❑ Baselines

- Omission of the digital datum used for the normal baseline.
- Straight baselines are composed by 23 segments, two of them deviate from the general direction of the coast: segments 1-2 (21%), and segments 7-8 (18%). States practices 15%.
- Straight baselines are adopted in two regions, half north of the country and in the south. Close examination suggest that even in other parts along the coastline it can be applied namely:

➤ First, in the centre of the country by closing Beira Bay, with bay closing line as referred in the article 10 of the Los Convention.

➤ Second, in region opposite to Inhambane province where is located the Bazaruto National Park take into account what is prescribes in the article 7 n°1 of the LOS Convention.

❑ Re-analyzing of the juridical treatment of the Bazaruto Archipelago National Park because it was enacted a new status extending its previous limits without be accompanied of the conformity of this new status with the LOS Convention, i.e. it is not clear from where the baselines are measure, where the base point are located if the mainland or in the outer most limits of the islands which compounds the archipelago.

❑ **Contiguous Zone**

➤ Contrary to the LOS Convention it was expressly included as Mozambican duties in the Contiguous Zone the issues related with marine environment prevention. But, this issue is provided in the LOS Convention in the Exclusive Economic Zone.

❑ Ocean Policy

➤ Currently there is no any holistic plan for the Mozambican coastal zone management but certain sectors initiatives to mitigate the problems along the coast.

An ambitious plan for ocean/coastal affairs is needed in Mozambique, at this stage an ICZM forward to a National Ocean Plan.

RECOMMENDATION

❑ **Baselines**

The next legislation review should take this into account and expressly refer which Tidal Datum was used for drawing the normal baselines in Mozambique. This fact is useful for determine the precise location of the baselines.

❑ **Contiguous Zone**

➤ It is recommended to follow what is stated in the LOS Convention extending the duties for control of archaeological and historical objects removed from seabed of the contiguous zone following the example of South Africa in claiming maritime cultural zone of the republic.

❑ **Bilateral Maritime Boundaries**

Taking advantage that the African Union has established that by 2012 all African States should conclude their borders, this call should also be take into account by all Mozambican neighbors, for reinforce their actions so as to conclude maritime boundary delimitation process.

❑ Ocean Policy

• *Institutional* :

➤ Full Government commitment in developing integrated national coastal zone management is needed;

➤ Close assessment of the best way to address the ocean/coastal issues, taking into account two options:

First: Create a new organ/department with a strong leadership such as NOAA, the example of United States of America or the Tanzania National Environment Management Council in Tanzania or;

Second: Reinforce one of the existent organs with adequate needs, human and material resources, similar to the Canada Minister of Fisheries and Ocean of Canada, Ministry and Department of Environment Affairs and Tourism in South Africa.

In both cases, a legal instrument is needed for supporting the overarching ocean/coastal plan similar to Coastal Zone Management in United States of America;

- *Planning:*

The planification should include a framework in which the process will be developed; it is a guideline of compromise for developing problem-specific policy and institutional responses for carrying out a number of options broadly similar in most countries and under different circumstances.

Here a similar wide process such as a white paper undertaken in the United States of America, the European Union, South Africa and Tanzania should be considered as an example, which also includes by having a wide public consultation.

Reasonable time is also needed for carrying out the work with in this dimension.

- *Policy:*

The policy itself must be the culmination and materialization of all the contributions collected during the previous stages, it is a way to achieve the goal and not the end, integrated national coastal zone management is a continuous dynamic process that must be implemented over time and accompanied by regular monitoring.

As we are suggesting, integrated national coastal zone management is needed in Mozambique. The ideal would be a wide ocean policy but, it is recommended to follow the evolution and the capacity of the country, a national ocean plan requires a high level of scientific knowledge and consolidation of the institutions for example in terms of our understanding of nature depends largely on observations. What we are able to observe depends on the means we have to observe.

Good experiences of the pilot activities in certain regions of the country should be used for foster a national model with the necessary adaptation of the circumstances.

THANK YOU.