MARITIME BOUNDARIES DELIMITATION, MANAGEMENT AND DISPUTE RESOLUTION

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

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ABSTRACT

The Law of the Sea Convention (LOSC) establishes the jurisdictional regimes under which a coastal State can claim, manage, and utilize its ocean resources. With an increasing recognition of the need to administer competing resource use interests in the ocean and seabed, and the requirement to ensure sustainable exploitation of these resources, Mozambique has an ambitious program for the establishment of its maritime boundaries, including the outer limits of its extended Continental Shelf (CS).

Mozambique faces the problem of lack of delimitation and negotiation of the maritime boundaries, connected to the lack of a comprehensive framework for management of maritime issues, lack of appropriate technology to quantify, qualify, and exploit the resources that lie in the sea, and lack of means by which to exercise and guarantee its sovereign rights. These problems obstruct the Mozambican State, as a sovereign subject of international law of the sea (LOS), from being able to take independent initiatives in pursuit of her internal and external policy objectives.

The lack of delimitation of the maritime boundaries appears as a constraint for the State. Mozambique is not in a position to exercising all her rights and duties in accordance with LOSC with respect to jurisdiction and the exercise of sovereignty in these spaces. Moreover, delimiting boundaries alone is not sufficient to solve sovereignty concerns, since there is still a lack of knowledge and capacity to carry out management, research, and evaluation of resources; for example: fish stocks within the Exclusive Economic Zone (EEZ). Hence the question: what costs and benefits would result from the delimitation of Mozambique's maritime boundaries?

It is in the context of LOSC that this study intends to understand the Mozambican situation, and discuss the problems involved in the delimitation and negotiation of Mozambique maritime boundaries and the management of ocean issues. This research presents and analyzes options for delimitation, negotiation of maritime boundaries, and management of maritime issues and boundaries.

DISCLAIMER

The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations, the Nippon Foundation of Japan, the Center for Oceans Law and Policy University of Virginia School of Law, or that of the Government of Republic of Mozambique.

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TABLE OF CONTENTS

LIST OF TABLES AND MAPS

List of Tables

List of Maps[1]

[1] The Maps presented in this study are intended for information purposes only. The Maps are not represented as an official record of the Government of Mozambique, or any other State referenced here within.

ABBREVIATIONS AND ACRONYMS

CCMAF - Coordination Council of Sea and Boundaries

CLC - Commission on the Limits of the Continental Shelf

CONDES - National Council of Sustainable Development of Mozambique

CS - Continental Self

CTMF - Technical Council of Sea and Boundaries

CZ - Contiguous Zone

EEZ - Exclusive Economic Zone

FAO - Food and Agriculture Organization

HS - High Seas

ICP - Informal Consultative Process on Ocean and Law of the Sea

ICJ - International Court of Justice

IOC - Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO)

ICZM - Integrated Coastal Zone Management

IMO - International Maritime Organization

INAHINA - National Institute of Hydrography and Navigation

INAMAR - National Marine Institute

INP - National Institute of Petroleum

IOMAC - Indian Ocean Marine Affairs Cooperation

IO/s - International Organization/s

IR - International Relations

ISBA - International Seabed Authority

ITLOS - International Tribunal for the Law of the Sea

Km - Kilometer

LOS - Law of the Sea

LOSC - United Nation Convention on the Law of the Sea-1982/Law of the Sea Convention

m – Meter

NEMP - National Environmental Management Programme

MOZAL – Mozambique Aluminum

MICOA - Ministry of Environmental Affairs and Coordination

MINEC - Ministry of Foreign Affairs and Cooperation

N/P - Non Published

NLM - National Liberation Movement;

nm - nautical mile/s

OAU - Organization of African Unity

RA - Republic Assembly

RM - Republic of Mozambique

RSA - Republic of South Africa

RSP - Regional Seas Programme

SADC - Southern Africa Development Community

SAFMAR - National Service of Administration and Maritime Control

SPLOS – States Parties to the Law of the Sea Convention

TS - Territorial Sea

UN - United Nations

UNCED - United Nations Conference on Environmental Development

UNDESA - United Nations Department of International Economic and Social Affairs

UNEP - United Nations Environment Program

URT - United Republic of Tanzania

USA - United States of America

INTRODUCTION

Maritime delimitation remains an important topic: in boundary-making, sensitive questions of State sovereignty, sovereign rights, jurisdiction and title to valuable natural resources are all put into question[2]. Nowadays, the potential political and security risks of boundary disputes are high, and unresolved maritime boundaries between States may easily affect bilateral relations or even international peace and security. Such disputes may also hamper economic activities, such as exploitation of fishing sites, due to fear of action by the other States. Furthermore, unresolved maritime boundaries may also cause disputes over certain areas of jurisdiction between States if oil and/or gas discoveries are made in overlapping claimed areas. In the case of Mozambique, apart from the agreed maritime boundary with Tanzania, all other maritime boundaries with neighboring States (Comoros, Madagascar, French Possessions [subject of dispute between France/Madagascar and Comoros/France], and South Africa) are still pending.

The focus on Mozambique maritime boundary delimitation and management of ocean issues was motivated by many factors: prominent is Mozambique's intention to delimit its maritime boundaries, and the delay that the France/Comoros Archipelago and France/Madagascar disputes can cause in the delimitation negotiation process. While this conflict remains unresolved, Mozambique's maritime boundary with Madagascar remains undetermined. Furthermore, studying the maritime boundaries of Mozambique is not a easy task, given that there is virtually no data structured in a comprehensive manner, and that no one has ever researched or written about this matter in Mozambique. Thus, a number of questions need to be answered, largely because theoretical and practical analyses or studies have been few and far between.

Historically, customary international law has established the law that governed the ocean, as well as maritime zone delimitation. The first sporadic attempts to codify the LOS were undertaken by the League of Nations. Their 1930 conference convened in the Hague Haia attempted to deal with the Territorial Sea (TS), but an agreement could not be reached.

[2] David H. Anderson, Judge of International Tribunal for the Law of the Sea; See: "Foreword" in Atunes, Nuno Marques (2003), *Toward The Conceptualization of Maritime Delimitation: Legal and Technical Aspects of a Political Process*, Martinus Nijhoff Publishers, Leiden/Boston.

Following the Hague Haia Conference, there were three decisive moments in the process of codification of the LOS: The First, Second, and Third United Nations Conferences on the Law of the Sea (UNCLOS I, II and III: 1958, 1960 and 1973-82, respectively).

UNCLOS I, which was held in Geneva in 1958, led to the codification of four conventions that dealt with some areas of the LOS: Convention on the Territorial Sea and the Contiguous Zone; Convention on the Continental Shelf, Convention on the High Seas, and Convention on the Fishing and Conservation of the Living Resources of the High Seas.

In the view of many scholars, the four conventions adopted by UNCLOS I in Geneva, reflected the sectoral, limited approach to international law still in vogue at that time. UNCLOS I documented much of international customary law; however, an agreement could not be reached on a number of issues. One such fundamental issue was the breadth of the TS. They were negotiated and ratified by a small number of maritime States, without participation of most of the newly emerging developing States. UNCLOS II later convened in 1960 to solve the problems left open by the first conference, yet ended without results.

UNCLOS III convened from 1973 to 1982, and during a period of ten years held eleven sessions. By the end of conference, 164 States had participated, as well as 102 observers composed of International Organizations (IOs), National Liberation Movements and territories[3]. The negotiation of the UNCLOS that codified the LOS can be considered one of the greatest diplomatic events of humanity and in the history of International Relations (IR), due to the different interests involved and the difficulties experienced over ten years of complex negotiations.

In the end, on 30 April, 1982, the LOSC was adopted as a “package”, due to the close inter-relationship of many issues before the conference and the conflicting interests involved. Nonetheless, some maritime powers with an important role in the

[3] Mozambique took part in the negotiations of UNCLOS III. Before its independence, Mozambique it was represented by the national liberation movement (now a Political part), FRELIMO (Front of Mozambique Liberation) as observer, and after independence by various delegations composed of official representatives of the State.

implementation of LOSC, such as the United States of America (USA)[4] are not yet party to it.

With its new provisions, LOSC expanded the coastal State's resources and economic rights in a vastly expanded EEZ and Continental Shelf (CS), while also fully protecting sovereign rights in navigational freedom[5].

LOSC established the maritime spaces subject to jurisdiction of coastal States[6] and principles governing the delimitation of maritime boundaries. In particular, the maritime spaces which would be most often subject to boundary delimitation between two or more States are the TS (Article 15), the EEZ (Article 74) and the CS (Article 83). There is a difference in treatment to be found between Article 15, which gives prominence to a median line, and two other Articles 74 and 83, which stress the need to reach an equitable solution. The delimitation of maritime boundaries between two or more States occurs in a situation of overlapping maritime claims between those States[7]. Mozambique become a State Party of the LOSC by its approbation through the Resolution No. 21/96 of 26 November 1996[8], and is covered by the provisions of LOSC.

This study aims to 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. This study also reflects upon the current approach

[4] Within the USA in particular, the current administration favors ratification of the Convention, and there are prominent supporters for USA ratification of LOSC, including John Norton Moore & William L. Schachte Jr. *"The Senate Should Give Immediate Advice and Consent to the Law of the Sea Convention: Why Critics are Wrong?"* (2006, N/P Document).

[5] Moore (2006: 4, 5).

[6] All waters landward of the baseline are *internal waters*, over which the coastal State may exercise exclusive control, identical to the exercise on land. Directly seaward of the baseline lies the TS, over which the coastal State may exercise limited sovereignty but through which the innocent passage of foreign vessels must be allowed. Beyond the TS and extending 12 miles further seaward is the CZ over which the coastal State enjoys jurisdiction to enforce its customs, tax, and environment protection laws. The LOSC gives each coastal State the right to claim a 200 miles EEZ and 200 miles (or longer, if the physical geography so dictates) CS, See Introduction of Reisman & Gayl S. Westerman, *Straight Baselines in Maritime Boundary Delimitation, 1992, New York.*

[7] "Boundary" shall be understood as the physical limits of the State's geographic, territorial and, usually, national jurisdiction. Some authors use the term "border" to refer to boundary, although the word is sometimes used interchangeably with boundary, expression such as "border control", "border posts" or "border crossing", all denote elements of administrative control. See: Kendall Freeman, *The language of international Maritime Disputes*. www.kendallfreeman.com (Accessed 19 May 2006).

[8] Published in Official Journal No. 47, 1st Serial, 6° Supplement.

to management of maritime issues and permanent maritime boundaries. The study is divided into two parts:

The First Part entitled "**Delimitation of Mozambique Maritime Boundaries and the Extended Continental Shelf"** examines the concern of delimitation of Mozambique maritime boundaries including the extended CS. It presents strategies or options for successful maritime boundaries delimitation and evaluates the importance of delimitation of maritime boundaries for Mozambique. This part also examines the management of (permanent) maritime boundaries

The Second Part entitled "**Management of Maritime Issues in Mozambique"** reviews and analyzes the current approach of Mozambique ocean management framework, and identifies options that Mozambique could use to manage and administer her maritime issues. The second part has merely a functional objective. It seeks to provide a brief introductory account of aspects relevant to the understanding of the approach for marine management in Mozambique, focusing on the provisions of LOSC which pertain to fisheries, environmental and coastal management. Lastly, the conclusion provides recommendations for the Government.

"The world political map is undergoing a process of rapid change as former States disintegrate and new States emerge. At sea, boundary delimitation between coastal States is continuing unabated. These changes could pose a threat to a world peace if they are not wisely negotiated and careful managed."
(Gerald H. Blake
in Maritime Boundaries: World Boundary Volume 5)

PART I: DELIMITATION OF THE MOZAMBIQUE MARITIME BOUNDARIES AND THE EXTENDED CONTINENTAL SHELF

1. Mozambique Maritime Geographic Context

The Republic of Mozambique (RM) is located on the coast of Southeastern Africa, between the parallels of 10º 27' and 26º 52' South Latitude and meridians of 40º 51' and 30º 31' East Longitude.

The RM covers a total area of 799.380 square kilometers (km²) including 13 000 km² of inland waters (lakes and rivers). Mozambique is bordered to the north by Tanzania, to the west by Malawi, Zambia and Zimbabwe and to the South by South Africa and Swaziland. To the east, Mozambique is bounded by the Mozambique Channel in the India Ocean[9]. In the Mozambique Channel, RM has various neighbors, namely: the Comoros Archipelago (composed of the islands of Grande Comore, Mahéli and Anjouan) and the French possessions under dispute ("Mayotte Island", Glorioso Islands[10], Juan de Nova Island[11], Europa Island[12] and Bassas da India[13]), see Map 1[14].

[9] The Mozambique Channel is about 900 nm (nautical miles) in length running generally north-south, with a narrowest width of 320 nm. There are islands spaced regularly throughout its length. In the north mouth are the Comoros, the Aldabra Group of Seychelles, and the French Territory of Mayotte and Glorioso Islands. At the southern mouth lie Bassas da India and Europa Island ; Prescott, J. R. V. (1986: 1975); *The Maritime Political Boundaries of the World*, Methuen, London & New York.
[10] Glorioso Islands are located at 11º 30' S and 47º 20' E, in the northern Mozambique Channel about 160 km northwest of Madagascar.
[11] Juan de Nova Island is located at 17º 03' S and 42º 45' E, in the narrowest part of the Mozambique Channel and about one third of the way between Mozambique and Madagascar.
[12] Europa Island is located at 22º 20' S and 40º 22' E, about a third of the way from southern Madagascar to Southern of Mozambique.
[13] Bassas da India is located at 21º 27' S and 39º 45' E, in the Southern Mozambique Channel, about half way between Mozambique and Madagascar.
[14] See also Atlas Geográfico de Moçambique (1986: 31), Vol I. Maputo: INDE.

Map 1 – 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.

Legend:

The Land Boundaries of Mozambique

Island with sovereignty in dispute in Mozambique Channel

Mozambique has a coastline of 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 inlets, islands, and "archipelagos".

The adjacent sea of Mozambique has significant marine resources which are important to the population of Mozambique for socio-economic reasons. For example,

shrimp and prawns were the State's main export until the development of the one of the biggest aluminum industries in the world: Mozambique Aluminum (MOZAL).

Mozambique is a coastal State under LOSC, with a population of about 19, 888, 701[15], most of which depends upon agriculture and fisheries for its livelihood.

Other significant activities related to the sea include tourism and shipping. In fact, Mozambique has three of the main ports in the Southern Africa Development Region (SADC): Maputo, Beira and Nacala ports. These ports serve not only the RM, but also the landlocked countries of Zimbabwe, Malawi, Zambia. These ports have container facilities, and are the hubs in the regional multi-nodal transport system.

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

Mozambique gained its independence in 1975, after which many sectoral institutions were created with ocean related mandates. Largely as a consequence of the previous two decades of civil war and instability, the evolution of many issues related to the sea had been ignored.

Despite the civil war, which persisted beyond the end of UNCLOS III, Mozambique did not lose the opportunity to take part in the LOSC negotiations. The peace agreements of Mozambique were signed in Rome in 1992. The peace process did not represent a simple return to a situation of national reconciliation, but modified the institutional framework of the State.

With specific regard to maritime boundaries, an Inter-Ministerial Commission of Sea and Boundaries[16] was created in 1997 to address not only land boundaries issues, but also to coordinate the new tasks of the modern approach of the LOS. This Commission was based in the Ministry of Foreign Affairs and Cooperation (MINEC). The mandate of this Committee was restricted due to the issues involved and other technical aspects.

In the late 1990s and early 2000, the Government eventually recognized that the existing institutional structure was inadequate for the changing dynamic and challenges of sea matters, at both the national and international levels.

[15] National Institute of Statistic, 2006, www.govnet.gov.mz/Mozambique/ (Accessed 14 August 2006).
[16] Created in 1997 by the Decree No. 16/97, of 1 July.

The Inter-Ministerial Commission of Sea and Boundaries was consequently replaced by the National Institute for Maritime and Borders Affairs (IMAF)[17]. This can be considered the most significant decision made by the Chissano Administration concerning the LOS. In creating IMAF, the Government's decision was informed by the need to adapt to changes taking place in the international arena. More specifically, the need to adopt measures to establish more efficient mechanisms to protect and to preserve the environment and its resources and to improve coordination in defining national policies, strategies and actions regarding the use of the sea and the delimitation of maritime boundaries in order to maintain and strengthen existing friendly relations with neighboring States.

IMAF is an organ of technical coordination and execution of the State's actions on issues related to the sea and boundaries. IMAF is an autonomous body under the umbrella of MINEC.

In the domestic order of Mozambique, the adoption of LOSC brought new impetus to the ocean related matters. Before the LOSC, the State was largely guided by laws inherited in the colonial era and by customary law. According to 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[18].

Particularly, the Act of Sea establishes the maritime spaces of Mozambique, defining and specifying the requirements to be satisfied in order to perform maritime activities and navigation within the waters under Mozambique jurisdiction. This Act consists of eight chapters, each establishing the following:

- Chapter I "General Dispositions" - Involved sectors and areas where this law shall be applied;
- Chapter II "Maritime Spaces" - TS, EEZ and CS, calculated from the baselines in the table[19] and aspects of boundary delimitation with opposite and adjacent States;

[17] Created in 2001 by the Decree No. 18/2001 of 3 July.
[18] Published in the Official Journal of Republic of Mozambique.
[19] See Table on the Annex I.

- Chapter III “Water Public Domain” - Water jurisdiction, including marine and internal waters;
- Chapter IV “Vessels” - Vessels, including ownership, classification and registration, and maritime trade;
- Chapter V “Maritime Industry”;
- Chapter VI “Maritime Labor”;
- Chapter VII “Maritime Administration” - including powers over foreign vessels; and
- Chapter VIII “Final Provisions”.

A broad analysis of this Act revels that it has some gaps in terms of new provisions of LOSC, such as the definitions of the EEZ and the provisions related to environmental issues, and the delimitation of maritime boundaries. The articles addressing maritime boundaries will be analyzed later in this study.

However, in legal terms, Mozambique as a State Party of LOSC, has the sovereign right to establish its maritime spaces and/or delimit her maritime boundaries in the case of overlapping claims of maritime spaces.

The IMAF is the central institution of coordination of all aspects related to delimitation, reaffirmation, and negotiation of both maritime and land boundaries. However, the final approval and ratification of such actions is attributed to the Republic Assembly (RA), according to Article 179 (1) (b) of 2004 Republic Constitution. IMAF, in its duties, chairs the Technical Council of Sea and Boundaries (TCMF)[20] and reports to the Coordination Council of Sea and Boundaries (CCMAF)[21] which is chaired by the Primer Minister of the RM.

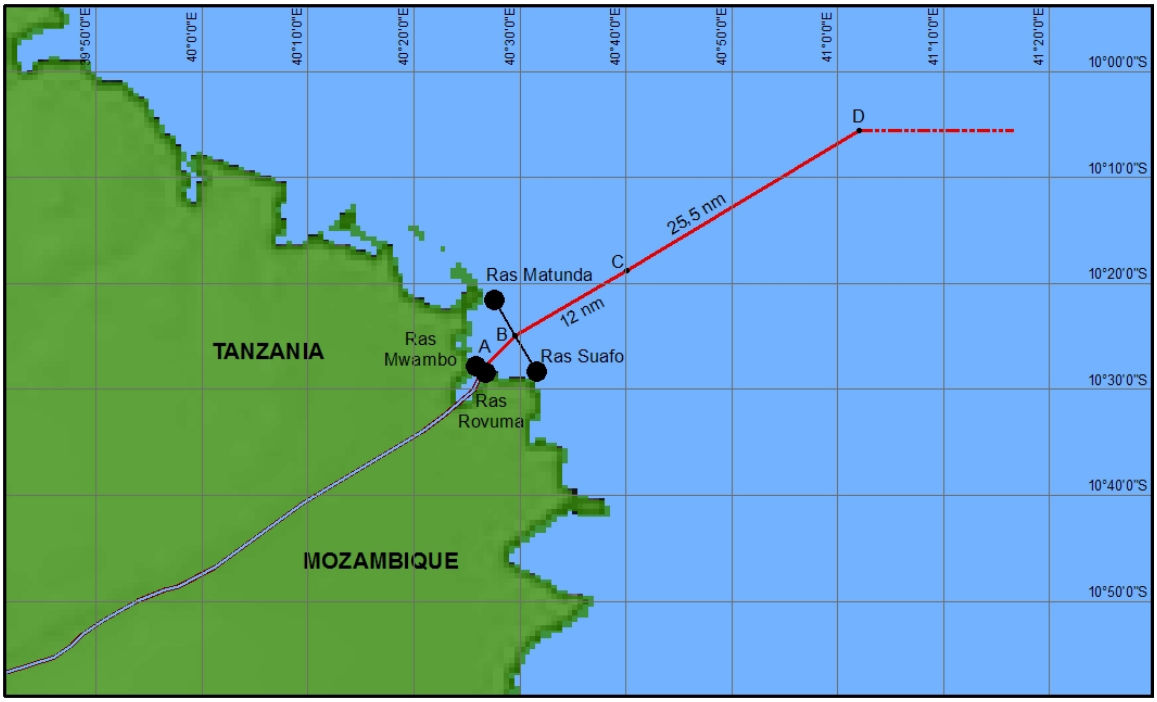
Further, for the establishment and delimitation of maritime boundaries in domestic order, IMAF is guided by the principles contained in the Act of Sea, referred to above.

[20] Sea Article 13 of IMAF Statutes.
[21] The Coordination Council of Sea and Boundaries is an organ of Council of Ministers of Mozambique, with its aim to coordinate multi-sectoral actions of sea and boundaries, and was established by the Presidential Decree No. 2/2001 of 3 July 2001.

Regarding existing boundary agreements, there is only one agreement with the United Republic of Tanzania (URT), concluded on 28 December, 1988 in Maputo[22]. In general, this agreement describes the agreed upon-land and maritime boundaries between the two States. The maritime boundary starts from the internal waters and extends out to the EEZ. The TS was delimited by the application of the equidistance method by drawing a median straight line from point "B" to a point "C" 12 nm away and located at latitude 10º 18' 46'' S and longitude 40 º 40' 07'' E.

For the delimitation of the EEZ, the two States used the equidistance principle by elongating the median line used for delimitation of the TS from point "C" to a point "D" 25.5 nm away and located at latitude 10º 05' 29'' S and longitude 41º 02' 01'' E. From point "D," the EEZ is delimited by application of the principle of equity, by a line running due east, along the parallel of point "D". The point of termination of this line will be established through exchange of notes between the URT and RM at a future date (See Map 2).

Map 2: Delimited Boundary Between Mozambique and Tanzania



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

[22] This agreement was ratified by the Peoples Assembly through Resolution No. 11/89 18 September 1989, Published in Official Journal No. 37, 1st Serial, 6° Supplement.

However, the delimitation of RM's boundary with Tanzania is not complete. To be concluded, the involvement of the Comoros is required in order to establish the tri-point between the three countries (Mozambique, Madagascar and Comoros Islands). It appears that an attempt to establish the tri-point failed due to a disagreement of Comoros with the Comoros on the use of the equity principle by Mozambique and Tanzania which was used to delimit their EEZ.

2.1. The Establishment of Baselines

The first step in determining the outer limits of any area of jurisdiction adjacent to a coastline is the establishment of a starting point from which all measurements will be made: the baselines[23]. The convention specifies the rules for drawing baselines. These rules distinguish between *normal* baselines (following the low water line along the coast) and *straight* baselines (which can be employed only in specified geographical situations)[24].

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[25], which is marked on large-scale charts officially recognized by the coastal State. It appears that the provisions of this Article are identical to those made by Article 3 of the 1958 Geneva Convention on TS and CZ. The low water line is an identifiable feature shown on a nautical chart at medium or large scales. The depiction of the low water line as a distinct feature depends largely upon the nature and seaward extend of the inter-tidal area. Where

[23] Riesman, W. Michael & Gayl S. Westerman (1992: XIV); *Straight Baselines in Maritime Boundary Delimitation*, St. Martin's Press, New York. These authors consider the question of baselines as an issue which has not been clarified and which lies at the heart of most current maritime boundary disputes.
[24] Roach, J. Ashley (1999: 1), *Drawing Straight Baselines: The Need for a Universal Norm*, International Studies Association; 1999 Annual Meeting Omni Shoreham Hotel, 2500 Calvert St. NW, Washington DC 20008, February 17, 1999.
[25] The low water line can be defined as the intersection of the plane of low water with the shore. The line along the coast, or beach, to which the sea recedes at low water (Office for Ocean Affairs and the Law of the Sea, UN: 1989: 58).

the tidal range is appreciable, the inter-tidal zone may extend for a considerable distance to the limit of the low water line and be exposed at low water[26].

The other rule of establishment the baselines is the straight baselines system. First legitimized by the International Court of Justice (ICJ), in 1951 through the Anglo/Norwegian Fisheries Case[27], it was codified and developed in the 1958 Conventions[28]. The straight baseline method has been adopted by many coastal States, often incorrectly[29]. Article 7 of the LOSC allows States to draw straight baselines in the following situations:

> 1. In the locations where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breath of territory sea is measured.
>
> 2. Where because of the presence of delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low water line and, notwithstanding subsequent regression of the low water line, the straight baselines shall remain effective until changed by the coastal State in accordance with LOSC.
>
> 3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
>
> 4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations, which are permanently above sea level, have been built on them, except in instances where the drawing of baselines to and from such elevations has received general international recognition.
>
> 5. Where the method of straight baselines is applicable under paragraph 1 of Article 7, account may be taken, in determining particular baselines, of economic interests peculiar to a region concerned, be the reality and the importance of which are clearly evidenced by long usage.

[26] Kapoor & Adam J. Kerr (1986: 30).
[27] Anglo-Norwegian Fisheries case (UK vs. Norway), 1951, ICJ, 116, Reisman & Gayl S. Westerman (1994: XV).
[28] Territorial Sea Convention Article 4; LOSC Article 7.
[29] Reisman & Gayl S. Westerman (1994: XV).

> 6. The system of straight baselines may not be applied by the State in such a manner as to cut off the territorial sea of another State from the HS or an EEZ.

Thus, normally, baselines may consist either of the low water line along the mainland and island coasts (the "normal baseline"), or of straight baselines (including across the mouth of rivers, delta and bay "closing lines").

For the use of straight baselines, the first assumption prescribed is "the deeply indented" nature of coastline and the presence of a "fringe of islands"[30] along the coast. This would indicate an intention to limit the use of straight baselines to only those coasts that are highly irregular in their configuration, and where the nature and geographic extent of the indentations make it impractical to use normal low water baselines[31].

The determination of baselines will immediately fix the outer edge of the State's internal waters, and then permit the mechanical determination of the outer edge of the TS, the CZ, the EEZ and the CS, since each is measured, at their respective uniform distance, seawards from the baselines.

In the case of archipelagic States, such as the Comoros, the establishment of baselines must follow the rules contained in Article 47 of LOSC entitled: "archipelagic baselines". It has been observed that "baseline claims can extend maritime jurisdiction significantly seaward in a manner that not prejudices navigation, overflight and other interests"[32]. Further, objective application of baseline rules contained in LOSC can help prevent excessive claims in the future and encourage Governments to revise existing claims to conform to the relevant universally agreed-upon criteria.

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30 The phrase "deeply indented and cut into" traveled intact from the 1951 Anglo-Norwegian Fisheries case Judgment to LOSC via the 1958 Convention and the phrase "a fringe of islands along the coast in its immediate vicinity" appears to be a widening of the phrase used in its Judgment: "or where it (a coast) is bordered by an archipelago such as the skjaergaard". See Division for Ocean Affairs and the Law of the Sea, UN (1989: 21); *Baselines*: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea, Office for Ocean Affairs and the Law of the Sea, New York. According to Kapoor & Adam J. Kerr (1986 : 34), the term "fridge of islands" implies a number of lying islands, islets, rocks, etc. spread out over some distance so as to form a continuous fringe along the coast. The mere presence of a few isolated islands would not, in this context, constitute a sufficiently solid fringe.

31 Kapoor & Adam J. Kerr (1986: 34).

32 Roach, J. Ashley (1999); *Drawing Straight Baselines: The Need for a Universal Norm*, International Studies Association; 1999 Annual Meeting Omni Shoreham Hotel, 2500 Calvert St. NW, Washington DC 20008, February 17, 1999.

The Mozambique baselines have already been established. In practical terms, the closing lines and the straight baselines which supplement the normal base line of Mozambique are defined according to Map 3.

The points specified in the Map 3 create five straight baselines systems, which, in two cases, connect offshore islands and reefs with the mainland and, in three cases, close bay-like coastal indentations. The table in Annex I illustrates the base points, which together constitute the baselines of the RM.

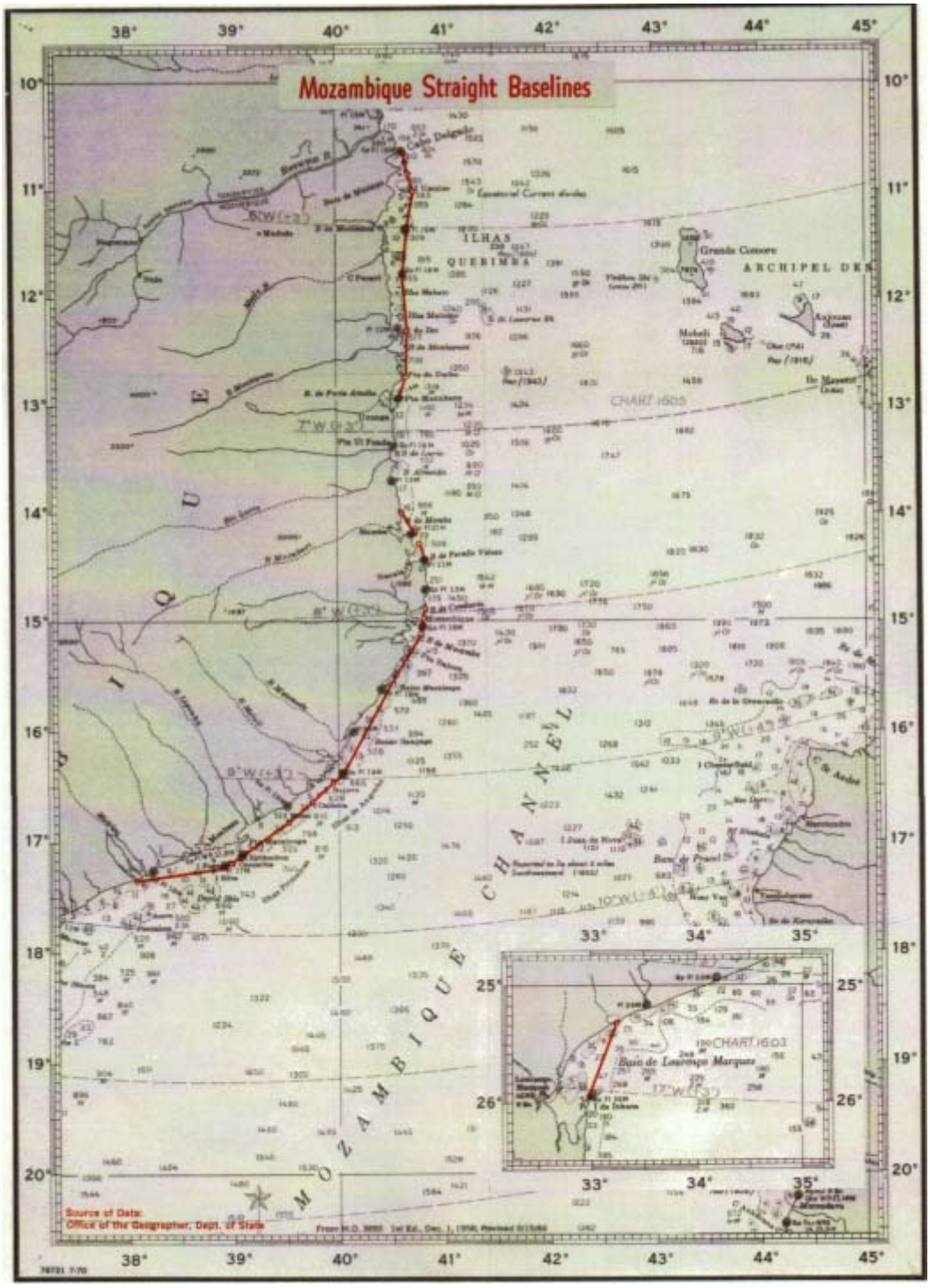
The straight baseline system of Mozambique consists of five sectors, three of which are restricted to “bay” closings. The longest segment measures approximately 60.4 nm in length, while the shortest is 2.8 nm. The average segment length is approximately 19.7 n m, and only two of the segments deviate from the general direction of the coast.

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 Guiné. 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 Guiné, 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. Thus, it is currently not know exactly which method/s were used in their establishment.

As regards straight baselines, the Mozambique practice is derived from Portuguese Law, for this reason, the baselines might be revised or updated to be in concordance with LOSC.

In Mozambique there is no record of any substantive technical and hydrographic survey report on the State’s maritime zones. However, a significant amount of data exists, some of which is in Portugal. The drawback with the existing data is that it needs to be interpreted into a useful format after which a determination can be made as to the extend to which this data will be useful.

Map 3: Baselines of Republic of Mozambique.



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

It is probable that the baselines of neighboring States have similar concerns. For example: the baselines of Madagascar which are presently in use were drawn in 1963[33], and some authors consider Madagascar in the category of State claims in violation of Article 7 of LOSC[34]. However, in delimitation of its maritime boundary, Mozambique ideally should examine the baselines of other States which are in conformity of LOSC.

According to Kapoor & Admam J. Kerr[35] it frequently happens that in case of opposite or adjacent States, one State has modern geodetic data available from recent surveys, whereas the other State has a series of charts, perhaps compiled from sketch surveys. In these circumstances, it would be greatly advantageous to complete a survey on the coastal area concerned before embarking upon a boundary delimitation, so as to ensure that neither State could gain an advantage in negotiations as a consequence of better geodetic data.

Considering the configuration of the Mozambique coast, a combination of methods for determining baselines will be necessary, and Article 14 of LOSC states that "the coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions". In other words, making use of the methods for drawing normal baselines, straight baselines, or closing lines as appropriate to the configuration of the coastline.

For Mozambique, the choice of a combination of methods shall be justified in the fact that, in the north and south of the State, the coast is not regular thus requiring straight baselines. In the central zone, where the coast is regular, normal baselines must be applied.

Where the baselines of opposite States are less than 400 nm apart, as is the case of Mozambique with opposite States, EEZ and CS claims may overlap, and it will be necessary to delimit maritime boundaries in order to provide certainty of jurisdiction. Under Articles 74 and 83 of LOSC, the delimitation process shall be affected by

[33] The Government of the Republic of Madagascar decreed on 23 February, 1963 that the TS of the State would be 11 nm measured from the straight baselines for most of the coast. The decree, published in the Official Journal, No. 277, 9 March 1963, defined the straight baselines which are still in use.
[34] For more details see Reisman, W. Michael & Gayl S. Westerman (1992); *Straight Baselines in Maritime Boundary Delimitation*, St. Martin's Press, New York.
[35] Kapoor & Admam J. Kerr (1986 : 13).

agreement on the basis of international law as referred to in Article 38 of the Statutes of the International Court of Justice (ICJ) in order to achieve an equitable solution.

2.2. Charts and Geographical Coordinates

One of the issues which is necessary to tackle *a priori* is the question of charts and geographical coordinates, due to the fact that the scale of the chart on which the coastal State depicts its baselines, or derived limits, should be adequate for the user to determine the limits and the final promulgation of the boundaries.

In LOSC, there are three Articles concerning the promulgation of details of the TS, EEZ and CS boundaries: Article, 16, 75 and 84. Although worded differently, they all have the same objective: the use of charts or the requirement to provide a list of geographical coordinates as a definitive reference.

They specifically require that where the boundaries are defined by geographical co-ordinates the geodetic datum should be specified [36]. In delimitation between two or more States, it is necessary to know the relationship between the geodetic datum of the States concerned, because a boundary derived from the co-ordinates of base-points of two States using differing geodetic datum will not be on either of the datum or on any other definable datum.

LOSC stipulates that the coastal State shall give due publicity to such charts, or lists of geographical coordinates, and shall deposit a copy of each such chart, or list, with the Secretary General of the UN.

The view has been expressed that the term "chart" used throughout the LOSC means a nautical chart intended for use by mariners as an aid to navigation, since only nautical charts show all the relevant features such as low water lines, low tide elevations, drying

[36] Geodetic datum defines the basis of a co-ordinate system. A local or geodetic datum is normally referred to an origin whose coordinates are defined. The datum is associated with a specific reference ellipsoid which best fits the surface (geoid) of the area of interest. A global geodetic datum is now related to the center of the earth's mass, and its associated spheroid is the best fit to the known size and the whole earth. The geodetic datum is also known as the horizontal datum or horizontal reference datum. The position of a point common to two different surveys executed on different geodetic datum will be assigned two different sets of geographical co-ordinates. It is important, therefore, to know what geodetic datum has been used when a position is defined. Division for Ocean Affairs and the Law of the Sea, UN (1989: 55); *Baselines*: *An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, Office for Ocean Affairs and the Law of the Sea, New York.

reefs, etc[37]. The scale to be chosen for such charts will depend on the scales of the land maps available and complexity of low water line. In general it is recommended that the scale should be within the range 1:50,000 to 1:200,000[38]. Most of Mozambique's nautical charts were inherited from the colonial era, and a process of resurveying is taking place in order to update the charts[39].

As perniciously stated geodetic datum is the first technical requirement of any maritime boundary delimitation. A set of coordinates which does not reference any geodetic datum invites an uncertainty for the boundary line that can be hundreds of meters.

A second issue at hand concerns the use of charts. Nautical charts should not be used for defining the course of the line; they should simply have an illustrative purpose. Even if the boundary is short, and large-scale charts are used, the uncertainty associated with such a practice would still be inadequate for the positioning accuracy of the boundary[40].

A third aspect relate to the use of charts lies in *precision* of the geographic coordinates utilized to describe the boundary. Coordinates given to one decimal figure of second of arc. i.e., 3 meters or 10 feet, seems adequate for any conceivable purposes at sea. One second of arc, an accuracy of some 30 meters, would in effect probably be enough in most cases.

A fourth point has to do with the "straight lines" joining the turning points of the boundary line. They can be defined as either geodesics or loxodromes; and it should be explicitly stated which type of line is being used. For very short segments however, it is virtually irrelevant whether one or the other is used[41].

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[37] Law of the Sea. Baselines: *An examination of the relevant Provisions of the United Nations Conventions on the Law of the Sea*, p.1, United Nations, N.Y.1989, Commonwealth Secretariat (1993: 123).

[38] See: Division for Ocean Affairs and the Law of the Sea, UN (1989: 2); *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, Office for Ocean Affairs and the Law of the Sea, New York.

[39] National Institute of Hydrography and Navigation (INAHINA) is in process of updating hydrographic charts (Maputo and Quelimane charts have been done), but is experiencing problems with quality control and its capacity for mapping and chartering is limited.

[40] Assume the case of a TS boundary between adjacent States, i.e., a boundary that is 12 nm long. In the best case scenario, the description of the boundary line would require a chart with a scale of 1:25,000 (in most cases it would have to be a scale smaller than that; e.g., 1:30,000, 1:50,000). In this case, the uncertainty of the line would be roughly 25 meters.

[41] Atunes, Nuno S. Marques (2005 : 3385).

3. Delimitation of Maritime Boundaries of the Exclusive Economic Zone and Continental Shelf: Law of the Sea Convention vs. Act of Sea (4/96)

3.1. Legal Principles

Before focusing specifically on the boundary delimitation process, it is necessary to revisit the legal principles of maritime boundary delimitation established in Mozambique's domestic law by the Act of Sea and on the international level by LOSC.

It is recognized that the competence of the State to claim maritime zones beyond the TS derives from its sovereignty over the territory[42]. In this case, the sovereignty can be understood as a prerogative of the State to exercise exclusive jurisdiction over territory, and it is the geographical limit of the right to exercise sovereignty over part of territory which lies in a boundary delimitation.

The Mozambique legal framework for maritime zone establishment and maritime boundary delimitation is provided by the Act of Sea, cited above. This Act established 12 nm for the TS (Article 5), 24 nm for the CZ (Article 8), 200 nm for the EEZ (Article 9) and 200 nm for the CS (Article 13). It specified the principles for Mozambique to follow in delimitation and establishment of maritime boundary agreements. Article 5 of Act of Sea addresses delimitation of the TS:

> In the case where the Mozambican coast is adjacent to the coast of another State, unless otherwise agreed between Mozambique and that other State, the TS will be limited by the median line every point of which is equidistant from the nearest points on the baselines from which the breath of the TS of each State is measured[43].

This Article reiterates the median line principle for delimitation of the TS as it appears in LOSC, except that the Act of Sea article does not consider delimitation of TS with opposite coastal States, but its seems that the Article only addresses Mozambique and opposite coastal States.

[42] Churchill & Geir Ulfsyein (1992 : 38).
[43] Original language *"Nos casos em que a costa moçambicana esteja adjacente à costa do outro Estado, salvo acordo celebrado entre a República de Moçambique e esse Estado, o mar territorial será limitatdo pela linha mediana cujo os pontos sejam equidistantes dos pontos mais proximos das linhas de base a partir das quais é medida a largura do mar territorial de cada um dos Estados"*.(Article 5 of Act of Sea).

For delimitation of the EEZ, Article 10 of the Act of Sea states:

> In cases where the Mozambican coast is opposed or adjacent to the coast of another State, the delimitation of the EEZ will be effected by means of an agreement, or when agreement cannot be reached, in terms of international law, on equitable basis, and in the light of all relevant circumstances, taking into account the respective importance of the interests involved, and those of international community[44].

This Article does not conform to LOSC. Firstly it states that the delimitation shall be effected by agreement, and where there is no agreement, "will be based on equity" suggesting that equity is the second choice, to be resorted to only where agreement is not possible. In contrast, LOSC establishes that the delimitation of EEZ "shall be effected by agreement… in order to *achieve* an equitable solution"[45]. LOSC thus establishes an "equitable solution" as the final goal of delimitation, and if no agreement can be reached the States shall resort the procedures provided within Part XV of LOSC.

Article 14 (ns. 1-3) of the Act of Sea describes the delimitation of Mozambique CS in the following manner:

> 1. The delimitation of the continental shelf between the Republic of Mozambique and States with adjacent or on opposite coasts will be effected by agreement, according to international law[46];
>
> 2. If no agreement can be reached within a reasonable period of time, the States will resort to procedures recommended by international law[47]; and
>
> 3. The line of the outer edge of the CS and the delimitation lines drawn in conformity with numbers 1 and 2 of the present Article, will be indicated in charts of scale or adequate scales for the delimitation of this position;

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[44] Original language: *"Nos casos em que a costa moçambicana esteja oposta ou adjacent à costa de um outro Estado, a delimitação da zona económica exclusiva será feita mediante acordo, ou, não havendo acordo, nos termos do direito internacional, na base da equidade e a luz the todas as circunstancias pertinentes, tendo em conta a importância respectiva dos interesses em causa e para o conjunto da comunidade internacional"*. (Article 10 of Act of Sea).

[45] Emphasis added; LOSC Articles 74(1) and 83(1).

[46] Original language: *"A delimitação da plataforma continental entre a Republica de Moçambique e Estados com costas adjacentes ou situados do lado oposto à sua costa, será feita por acordo, nos termos de direito internacional*" (Article 14 No. 1, Act of Sea).

[47] Original language: *"Não chegando a acordo dentro do prazo razoável, recorrer-se-á aos procedimentos recomendados pelo direito intenationl"* (*ibid.*, No. 2).

> such charts could be replaced by lists of geographic coordinates of points which, particular, report its geodetic datum"[48].

This framework is not stated in a comprehensive manner, according to the modern LOS. Apart from its imprecision, this Article's particular provisions limit the State's claim of the continental margin beyond 200 nm. In contrast what we have in LOSC allows the State to claim the margin beyond 200 nm when there are certain geographical conditions.

Therefore, the process of delimitation of EEZ and CS provided by the Act of Sea are not identical. In contrast, the LOSC provisions dealing with the delimitation of the EEZ and the CS are identical. Thus, LOSC Article 74 (1) concerning the EEZ, and Article 83 (1) concerning the CS, state:

> 1. The delimitation of the [EEZ or CS, respectively] between the States with opposite or adjacent coasts shall be effected by agreement on the basis of International Law, as referred to in Article 38[49] of the Statute of the International Court of Justice, in order to achieve an equitable solution.
>
> 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for the Part XV of LOSC.
>
> 3. Pending Agreement, as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and during this transitional period not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

[48] Original language: *"A linha do limite exterior da plataforma continental e as linhas de delimitação traçadas de conformidade com os números 1 e 2 do presente artigo serão indicados em cartas de escala ou escalas adequadas para a delimitação da sua posição, podendo tais cartas serem substituídas por listas de coordenadas geográficas de pontos em que conste especialmente a sua origem geodésica"* (*ibid* No. 3).
[49] Article 38 of the ICJ Statutes state that, No. 1, the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. No. 2 this provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of EEZ (or CS) shall be determined in accordance with the provisions of that agreement.

For the EEZ and CS specifically, LOSC does not specify that maritime boundaries should be delimited according to a particular method. The only requirement is that such delimitation should achieve an "equitable solution" accepted by the parties.

The key to maritime delimitation in these two Articles is to take into account all possible relevant circumstances[50] in order to achieve an "equitable solution". An equitable solution could be influenced by any or all of the following considerations and circumstances:

- Political, strategic and historical considerations;
- Other geographic considerations;
- The use of islands, rocks, reefs and low tide elevations;
- Baseline considerations;
- Geological and geo-morphological considerations;
- Proportionality of the area to be delimited including coastal front considerations; and
- Different technical methods that could be employed[51].

Under LOSC, which allows the establishment of a 200 nm EEZ and a 200 nm CS (with possibility of prolongation up to 350 nm if 100 nm from the 2500 m isobath goes beyond that limit), Mozambique is confronted with overlapping claims of maritime spaces with adjacent and opposite States (with the exception of TS with the opposite States) and small islands under dispute: Madagascar, Comoros Islands, South Africa, Tanzania, Europa Island together with Bassas da India, Juan de Nova Island) as outlined above and depicted in Map 1.

The distances between Mozambique and opposite and adjacent States are provided below in Table 1.

[50] The concept of relevant or special circumstances did not appear in the LOSC, but its implications have certainly found expression in Articles 74 and 83 of the LOSC, which provide for boundary delimitation on the basis of international law in order to achieve an equitable solution, (Mahmoudi, 1990: 162).
[51] Prescott & Clive Schofield (2005: 210).

Table 1: Maritime distances between Mozambique and Neighboring coastal States

	From where the Territorial Sea is measured (limit of jurisdiction)	**Neighboring States**
Mozambique	• North Zone - 374 Km = 201, 944 nm • South Zone - 928 Km = 501, 080 nm	Madagascar
Mozambique	• 466 Km = 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	• Moz./Grande Comore-274 Km =147,948 nm • Moz./Mahéli-304 Km =164, 147 nm • Moz./Anjonan - 396 Km = 213, 823 nm • Moz./Magotte-452 Km = 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

Source: This data is intended as an overview and for background use only, as such, it does not represent an official acceptance by the Government of Mozambique, or by any other entity mentioned. (The distances were calculated by a geographer and cartographer of the National Institute of Hydrography and Navigation (INAHINA) for illustrative purpose. Distances were measured in straight line – measured in chart No. 40 120, Scale: 1: 2 000 000; Mozambique Channel, 19th Edition, 1984. In the presented data, 1 nm corresponds to 1852 m and 1852 m corresponds to 1, 852 km).

Table 1 suggests that there is a potential for overlapping maritime spaces. The distances between Mozambique and other coastal States (including the Islands under French possession) are less than 400 nm except in South Zone between Mozambique and Madagascar.

3.2. The Delimitation Method

It the delimitation of EEZ and CS, the general principle of equity should be applied in boundary agreements. This application of equitable principles should produce a division

that is deemed appropriate and fair by all parties. In applying general equitable concepts, the negotiated single boundary agreements are not based on a particular legal theory, such as equidistance, but may best be characterized as "developed on the basis of principles deemed by the parties to be equitable in view of the relevant circumstances"[52].

For example, in the delimitation of the EEZ, the possibility that circumstances regarding historic use and economic dependency might be relevant to delimitation, is the principal difference in the law relating to delimitation of boundaries in the two zones. The difference arises from the historic fishing rights and economic dependency on particular fish stocks, which might have been established in certain areas of the EEZ. These resources, unlike those of the CS, have been subjected to exploitation for centuries. The significance of historic rights in water columns is acknowledged in the boundary delimitation provision of the convention on the TS and CZ[53].

Thus, there are various methods that can be used for maritime boundary delimitation: Equidistance line (strict equidistance; simplified equidistance; modified equidistance), Enclaving, Lines of Bearing (Perpendiculars), Parallels and Meridians, "Natural" Boundaries, Historic and *De Facto* Boundaries[54] or other methods.

Historically, one of the favored methods of delimitation, particularly where the coasts are opposite to each other, has been mid-line or series of mid-lines. The equidistant line as defined in the 1958 and 1982 Conventions is a geometrically exact expression of that concept[55].

In State practice, a wide variety of solutions has been used in regard to drawing boundary lines. Frequently, the median line has been chosen as providing an equitable solution. In other cases, account has been taken of special circumstances leading to a great diversity of solutions in order to accommodate the relevant factors of each case. Sometimes equidistance is used for the delimitation of part of the boundary line, but other principles are applied for the delimitation of other parts of the same boundary. Thus, for example, equidistance may be utilized for the delimitation of the first part of the

[52] Moore, John Norton & Samuel Pyeatt, *Cases and Materials on Oceans Law and Policy*, Volume III, pp. 21-4, 21-5.
[53] Moore, John Norton & Samuel Pyeatt, *Ibid. at* p. 21-15.
[54] For more detailed description of the methods see: Prescott & Clive Schofield (2005: 224-235).
[55] Beazley, P. B. (1994: 7), *Technical aspects of Maritime Boundary Delimitation*, Volume 1 No. 2, International Research Unity Durham University, UK.

boundary, but abandoned in favor of proportionality when coastline configuration begins to produce an inequitable equidistance line[56].

In some situations, an equitable division may best be effected through the application of the equidistance method[57]. The reason for this relate to its mathematical precision, lack of ambiguity and its accordance with equity where the parties' coastlines are broadly comparable. In situations where the coastlines of the States concerned are not comparable, the equidistance method can be used as a starting point and then modified to meet the equitable solution. Equidistance has therefore proved an adaptable and flexible method of delimitation, particularly in situations with opposite coast. Nevertheless, as Legault & Hankey have observed: "the choice of means or methods for translating the relevant geographical and other circumstances into a precise line is, as ever, the most difficult issue in the LOS maritime boundary"[58].

Apart from the precise geometric in its application, the equidistance method is usually either modified or simplified to achieve an equitable solution. This method has its variations:

- Strict equidistance: This approach may be applicable in a situation where two coastlines of comparable length are opposite each other and there is an absence of any geographic features which would create a special circumstance consideration that requires modification to be affected to modify the equidistance median line;
- Simplified equidistance: The boundary can be simplified in two processes: either ignore some of the base-points on the coasts of both countries so as to create a less complex equidistance line, or, discard some of the turning points so that its course is smoothed. In all cases the simplification process is designed to guarantee that no State gains large areas at the expense of the other[59].
- Modified equidistance: In absence of outstanding geographical features, strict equidistance will result in an equal division of maritime spaces and thus an

[56] Moore, John Norton & Samuel Pyeatt, *Cases and Materials on Oceans Law and Policy,* Volume III, p. 21-5.
[57] *Ibid.*
[58] Legault & Hankey, (1993: 205), quoted by Carleton & Clive Schofield (2002: 31).
[59] Prescott & Gillian Triggs (2005: 3252).

> equitable delimitation between adjacent coasts. In the presence of such geographical features which commonly include promontories in a vicinity of the coastal terminus of the land boundary of the two States on the coast. Where such features do occur, a frequently adopted solution has been to apply equidistance line by either discounting certain base-points or by according them to reduce their effect. This method commonly results in a significantly greater alteration to strict equidistance than that in the case of simplified equidistance line method, which usually results in an unequal distribution of maritime spaces between the parties as compared with the division on the basis of strict equidistance[60]. The alternative solution to the problem of the disproportionate effect of particular geographical features from the equidistance method of maritime boundary delimitation is applied to the island or other feature concerned only partial effect.

Mozambique and its neighboring coastal States are all developing States (except France) for which marine resources are crucial, particularly for the survival of the population. The configuration of the coastlines of the States concerned do not suggests relevant circumstances; however in a deeply analysis of the situation of French possessions.

In the delimitation of Mozambique boundaries, the equidistance method is the one most applicable and can be the first choice, particularly for the EEZ[61]. Equidistance can provide a starting point for negotiations but may subsequently be modified or abandoned completely[62]. Equidistance represents a geometrically exact expression of the midline concept and it is far and away the most popular method of delimitation. However, the presence of islands between Mozambique and Madagascar present a complex dimension for boundary delimitation in the Mozambique Channel.

[60] Legault & Hankey (1993: 208), quoted by Prescott & Clive Schofield, *Ibid.*
[61] Note that questions of delimitation shall be affected by agreement on the basis of international law.
[62] One of the most common reasons for the modification or abandonment of an equidistance line is the desire to simplify the boundary or the delimitation process.

4. Disputes Affecting the Process of Delimitation of Mozambique Boundaries

The problems of drawing a maritime boundary in the Mozambique Channel are complicated by a number of factors:

- First, the Channel is used by larger tankers sailing from the Persian Gulf to Europe and North America;
- Secondly, Madagascar has claimed the French islands of Glorioso, Europa Island, Bassas da India and Juan de Nova;
- Thirdly, the decision of Mayotte to secede from the Comoros, because the citizens wished to preserve a special relationship with France, was unpopular with many African leaders;
- Finally, some of the best fishing grounds are located between Madagascar and Mayotte[63].

However, the key problems for delimitation of the Mozambique maritime boundaries in the face of these four dimensions are: the conflict between Madagascar and France, and the conflict between France and the Comoros. The presence of islands, islets, and rocks, also suggests that the delimitation process may require negotiations so as to achieve an equitable solution.

4.1. Conflict Between France and Madagascar

Madagascar and France are in dispute over the Bassas da India, Europa Island, the Glorioso Islands and Juan de Nova Island.

Although Madagascar gained independence from France in 1960, and the Comoros achieved independence in 1975, France retained control over a number of small island territories in the Mozambique Channel, namely Bassas da India, Europa Island, the Glorioso Islands and Juan de Nova Islands [64].

Small French garrisons maintain meteorological and radio stations on Europa Island, Glorioso and Juan de Nova Islands. Madagascar claims sovereignty over the islands on

[63] Prescott (1986: 175).
[64] Glorioso Island does not lie in Mozambique's area of claim.

the grounds of historic title and geographic proximity, and has sought support from the UN and the former Organization of Africa Unity (OAU). France bases its claim on first discovery and its history of occupation and administration.

In the case of Bassas da India and Juan de Nova, both States positions are questionable. Bassas da India was first recorded by Portuguese explorers in the early 16th century, and only in 1897 did it become a French possession, later being placed under the administration of commissioner residing in Reunion in 1968. Juan de Nova was discovered in 1501 by Jõao da Nova (Juan de Nova), a Galician admiral in service of Portugal. This suggests that Mozambique was supposed to claim Bassas da India and Juan de Nova due the fact that it was a Portuguese discovery and consequently Mozambique inherited all Portuguese possessions as part of Mozambique territory. Mozambique, however remains silent on its position regarding the islands.

The General Assembly of the UN has intervened in the conflict opposing France and Madagascar by passing two resolutions both entitled "Question of the Islands of Gleurieuses, Juan de Nova, Europa and Bassas da India"[65]. The first resolution invites the Government of France to initiate negotiations with the Government of Madagascar without further delay for the reintegration of the islands which were arbitrarily separated from Madagascar. The second resolution seems like a reiteration of the first: inviting the Government of France to initiate with the Government of Madagascar, "*as a matter of urgency*"[66] the negotiations provided for in resolution 34/91.

Regarding these two resolutions, the French Government believes that the consideration of this matter by UN General Assembly constitutes interference in its internal affairs and therefore contrary to the UN Charter[67].

This conflict is motivated by economic interests rather then "sovereignty matter", each State believing that having these islands will enable them to claim maritime spaces (as France did) such as the TS, EEZ and CS. Note that the question of sovereignty disputes is not directly resolved by the LOSC, but rather by international law. The LOS does not provide a basis for settling island sovereignty disputes. While LOSC provides

[65] Resolution 34/91 of 12 December 1979 (www.un.org/documents/ga/res/34/a34res91.pdf, Accessed 20 October 2006) and Resolution 35/123 of 11 December 1980 (http://www.un.org/documents/ga/res/35/a35r123e.pdf , Accessed 20 October 2006).
[66] Emphases added.
[67] Prescott (1986: 175).

for several bodies for adjudicating disputes, there is nothing in the body of LOSC that deals with sovereignty issues, even in international law there is no rule that prescribes sovereignty over islands on the basis of making a maritime claim. LOSC addresses the establishment of maritime jurisdictions zones. In fact, the application of LOSC is premised on the assumption that a particular State has undisputed title over the territory from which the maritime zone is claimed. The first attempt to resolve sovereignty disputes should be by bilateral negotiation. Failing this, several types of third party arbitration are available.

4.2. Conflict Between France and Comoros

France and Comoros are in a dispute over Mayotte island. In 1974, when the Comoros Islands were on the verge of independence from France, the population of one of the islands making up the Comoros Archipelago, Mayotte, voted strongly in favor of remaining under French jurisdiction.

Mayotte is 374 km² and has a population of about 170,000. Despite the referendum, the Comoros claims sovereignty over Mayotte and has been backed in its claim by the former OAU and the UN General Assembly, which declared the vote on Mayotte to be null and void[68]. France, however, maintains that the island will remain a Territorial Collectivity of France for as long as its population wishes for this to be the case. It is worth noting in the context of the dispute over Mayotte, that in recent times a movement has emerged on another island in the Comoros group, Nzwani (Ajouan), which has pressed for a return to French rule – resulting in numerous violent clashes between activists and Comorian Government authorities. France has, however, thus far declined the overtures of the separatists[69].

However, due to its geographic location the conflict over Mayotte does not suggest a deep influence on the maritime boundary of Mozambique. Only when it is considered as a part of the Comoros Islands and included in a system of straight baselines of the

[68] United Nations, General Assembly, Resolution 31/4 of 21 October 1976 *"Question of Comorian Island of Mayotte"* (http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/301/87/IMG/NR030187.pdf Accessed 11 July 2006).
[69] Prescott & Clive Schofield (2005: 282).

Comoros Archipelagos will a geographic relationship be established with the Mozambique claim.

The question of boundary delimitation with the French possession is a complex concern, and, in fact, many questions arise:

- How are these disputes affecting the process of delimitation of Mozambique's boundaries?
- Are the French possessions "islands" according to LOSC, and therefore entitled to have maritime spaces such as EEZ?
- How will the baselines be defined for those islands?, and
- With which State should Mozambique work with to delimit the boundaries with these islands?

The priory question which must be addressed is that of whom to negotiate with. However, Mozambique does not have the authority to determine which State with which to negotiate the boundaries of the possessions. Rather, the States in conflict must resort to other means recommended by international law.

Despite these disputes, and irrespective of which States prevail, Mozambique must be guided by the principles and methods established by LOSC and other relevant instruments of international law.

5. Delimitation of the Exclusive Economic Zone

The EEZ is one of the most important pillars of the LOSC. The EEZ concept has received rapid and widespread acceptance in State practice and is thus now considered by some scholars to be part of customary international law[70].

The rules which have been developed to govern the EEZ are stated in Article 55 to Article 75 of LOSC. The legal concept of the EEZ arose from the practice of States and from the negotiations of UNCLOS III, and has at no stage been tied to any physical characteristics of the sea or the seabed such as the case of the CS. It is defined simply as a

[70] See: Kwiatkowska, Barbara (1989: 27-37), *The Exclusive Economic Zone in the New Law of the Sea*, Publications on Ocean Development, Martinus Nijhoff Publishers, Dordrecht/Boston/London.

zone of maritime space. Under Article 57 of LOSC, the EEZ shall not extend beyond 200 nm from the baselines from which the breath of the TS is measured.

Since the provisions concerning the delimitation of EEZ are to be based on finding an "equitable solution", Mozambique cannot unilaterally define the outer limits of its EEZ. Due to the overlapping of maritime claims, delimitation negotiation with opposite and adjacent States is required.

Madagascar, Comoros Islands, and the French possessions all lie opposite Mozambique and therefore may generate overlapping EEZ claims. The lateral boundary of Mozambique will probably intersect with the TS, EEZ and CS boundaries of the adjacent States of South Africa and Tanzania (the boundary with Tanzania is still pending as outlined above).

5.1. Boundary Between Mozambique and Madagascar, and the Status of French Possessions

There are two possible scenarios for the delimitation of the EEZ between Mozambique and Madagascar.

In the first scenario, if the boundary were drawn as a line of equidistance according to the present pattern of ownership, Mozambique and Madagascar would share a common line of about 75 nm. This situation is caused by the sovereignty disputes over the islands in Mozambique Channel between the two States[71]. Elsewhere, the central part of the Mozambique Channel would fall to the various islands groups. This situation could be unsatisfactory to Madagascar, which claims Glorioso Island, Europa Island, Bassas da India and Juan de Nova. These islands have no permanent residents, but weather stations are located on them and their crews are rotated on a regular basis.

In the second scenario, if Mozambique delimits the boundary with Madagascar (while the islands are under Madagascar sovereignty), both countries should consider the islands as "relevant circumstances" to reach an equitable boundary and probably they will share a common line in the north, south and center, and the islands accorded a narrow TS.

[71] Colson & Robert W. Smith (2005: 3460).

This scenario is the least likely, but may arise if France were to relinquish claims on both islands.

5.1.1. Defining the Weight of Possessions

The "geographical circumstances" which might make delimitation and negotiations difficult for Mozambican boundaries arise from situations related to the French possessions, namely: Juan de Nova Island, Europa Island and Bassas da India. Note that in regard to the latter feature, there is uncertainty whether it is an island, atoll or rock.

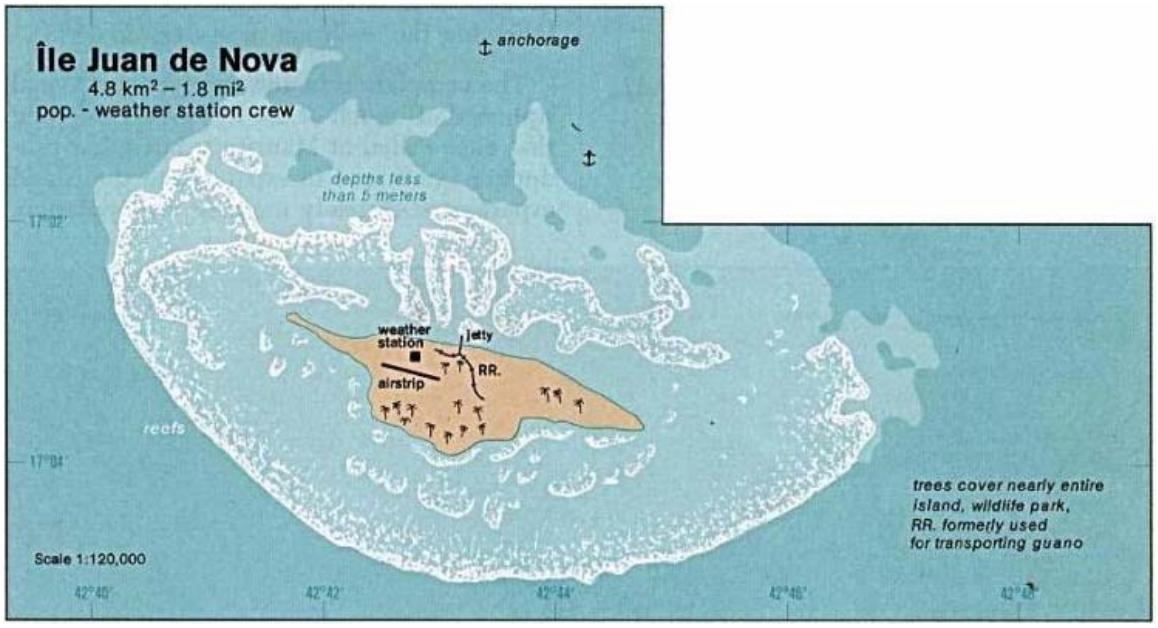
Juan de Nova Island is a low semicircular sandy island located near the center of a large circular coral platform. The south side of the reef is steep while on the north side there is a coral bank stretching about 7 nm[72]. A meteorological station was built in 1970 and there is small landing strip. Juan de Nova Island was previously a source of guano and phosphate and is 4.8 km² (See Map 4).

Europa Island is mainly composed of sand that supports bushes and some trees that reach 24 meters; its meteorological station was constructed in 1950 and there is a landing strip. The island is about 20.2 km² and heavily wooded. This island takes its name from the British ship Europa which visited it in 1774 (See Map 5).

Given the above enumerated characteristics of these features, it becomes necessary to establish their status within the LOSC definitions. It seems that the possessions fall in the category of naturally formed sandy islets above water at high tide, which cannot sustain human habitation or economic life on their own. Therewith they give rise to a problem, namely which maritime zones should these tiny, uninhabited coral sand islet features effect which lie beyond the TS of each State's main coast? Should islands under the sovereignty of far distant countries be able to have a full EEZ particularly where the EEZ would overlap with another State's coast-based claims?

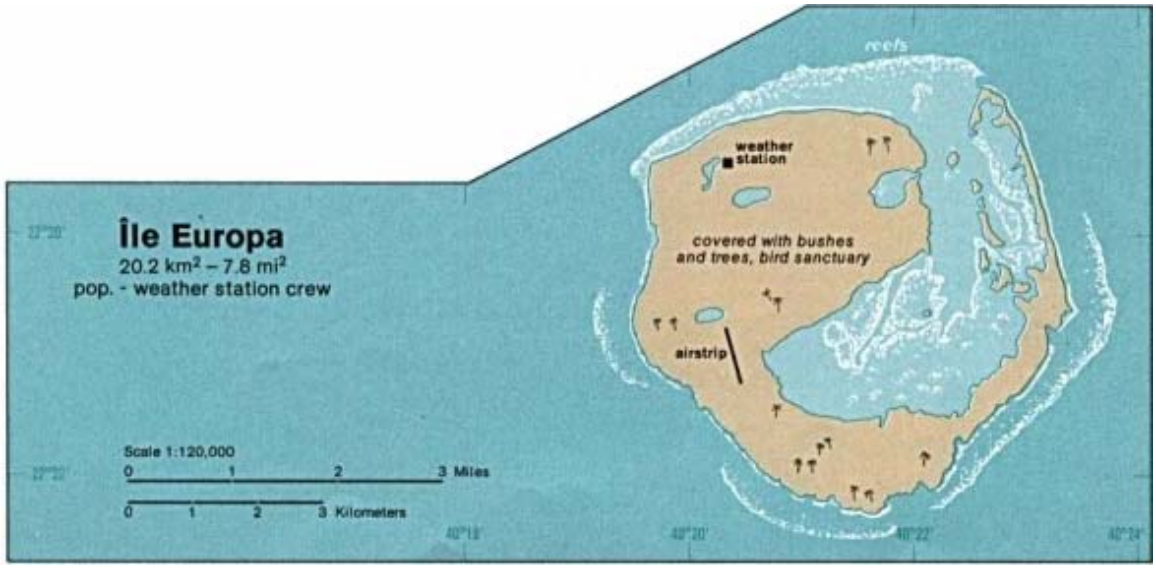
[72] The Hydrographer, 1971, 215; International Union for the Conservation of Nature and Nature Resources, 1988, 270, Prescott & Clive Schofield (2005: 468).

Map 4: French Possession Juan de Nova



Source: Central Intelligence Agency: India Ocean Atlas, 1976: 45.

Map 5: French Possession Europe Island



Source: Central Intelligence Agency: India Ocean Atlas, 1976: 45.

Article 121 of LOSC establishes the regime of islands. It indicates what constitutes an island and provides for the treatment of islands as any other land territory for the purpose of delimiting the TS, CZ, EEZ and CS. It also stipulates what geographical formations similar to islands do not generate an EEZ or CS. It seems that features such as

"islets" or "small islands" fall within the provisions of Article 121(3), which states that "rocks which cannot sustain human habitation or economic life of their own shall have no EEZ and CS". However, these features may generate a TS and CZ.

The definition and treatment of islands, rocks and islets in maritime boundary delimitation therefore becomes complex. A complex problem in maritime boundary delimitation between two or more States with opposite coasts has been the weight which should be given to islands in any concrete case[73]. Bowett recognized that while islands, rocks, reefs and low-tide elevations are a "frequent, complicating factor in delimitation" it is hazardous to generalize about tendencies in State practice. It was thus with some caution that he offered the following conclusions:

- Many islands are given separate entitlement and "full weight" as against mainland coasts;
- Where claims to entitlement overlap, the area to which an island may be entitled will depend primarily upon comparison of the coasts lengths abutting the claimed area. State practice also revels consideration of factors such the distance of the island from the claimant and the political status of the island as a dependent of the mainland State. The size of the population of the island and its capacity for economic self-sufficiency may be noted by courts. With the exception of the Anglo Norwegian Fisheries Case,[74] socio-economic factors tend to have a minor role in the final determination;
- Where the island shares an entitlement with a larger territorial unit (or mainland), State practice is widely diverse. In most cases, islands will have some effects on delimitation;
- An island will be given a full effect where it is integrated to the mainland as a whole;

[73] *Ibid*., p. 421, para. 68; Mahmoudi, Said (1990: 164); Delimitation of Maritime Zones Between Sweden and The Soviet Union: An Appraisal, Almqvist & Tryckri, Uppsala.
[74] 1951 ICJ Rep. 116; quoted by Prescott, Victor & Gillian Triggs (2005: 3245, 3246); *Islands and Rocks and their Role in Maritime Delimitation*; David A. Colson and Robert Smith (ed.), *International Maritime Boundaries*, Volume V, The American Society of International Law, Martinus Nijhoff Publishers; Leiden/Boston, 3245-3280.

- Islands may be given partial effect or "enclaved" if they are remote or not aligned with the general coast façade; and
- When used simply as a base-point in the construction of an equidistance line, they have no special status and are consider together with rocks, reefs and low tide elevations.

The States concerned should define which weight must be given to the French possessions, however this is not an easy task, considering the current disputes between France and Madagascar. However, the best scenario for Mozambique will be to give the possessions a "partial weight" or "enclaved" status, which can be applicable whether the islands belong to Madagascar or France.

There are two main reasons that support giving a partial weight to French possessions:

Firstly, the islands concerned are not part of France's mainland, and neither France nor Madagascar is dependent on the islands. Attributing full weight to the islands will consequently reduce the area of jurisdiction of Mozambique and Madagascar in favor of non-States uninhabited islets. There are no relevant arguments for granting the French possessions an EEZ.

Secondly, the islands are not close to the mainland of Madagascar, but are located about midway between Mozambique and Madagascar. In State practice, when islands are not located close to one State's mainland, they typically are not susceptible to receive "full weight".

Giving full weight to the islands will yield an inequitable delimitation result, considering that the islands are not States, are not inhabited, and cannot sustain economic life on their own, and that all the States concerned (except France), are developing States and deeply depend on the sea[75]. The sea of Mozambique in particular, is not only crucial for Mozambique but is also important for the Southern Africa Development Community

[75] In general, International tribunals have been reluctant to acknowledge the relevance of economic considerations, but they may play a hidden role in the minds if adjudicators, as they clearly do in minds of negotiators (Johnston & Mark J. Valencia: 1992 : 31).

(SADC) region through which landlocked States without direct access to the sea obtain access to, and depend upon the Mozambique sea[76].

With regards to the above, it has been observed that natural resources are "a leitmotif for concluding delimitation agreements", and that despite court's "formal rejection of economic factors in their decisions, [they] do in fact take such factors into account in the delimitation process"[77]. It is for them suggested that "delimitation should not be divorced from the interests of the world community in promoting the economic well-being of States which have so far been economically disadvantage in terms of their access to resources"[78].

There is doubt that islands (regardless of their size and position) are entitled to maritime spaces. The case of United Kingdom-France is one of the reference cases where the island in question was given a partial weight in the delimitation of their respective maritime areas in the English Channel and the Atlantic. A particular problem was posed by the presence of the Channel Islands which lay significantly closer to the French coast of Normandy. The solution adopted by the Court was to enclave the islands partially so that they received a band of TS in what was otherwise the French CS area. The use of such enclaves is found fairly frequently in State practice[79].

Another interesting example of self-locked island can include the Saint-Pierre et Miquelon Islands. Saint-Pierre et Miquelon is a department of France, situated a short

[76] The "dependence" of the Landlocked States on the Mozambique sea can be shown by the regional initiatives of cooperation among SADC countries. As one example, in 2001 the SADC adopted a regional fishing protocol recognizing the importance of fishing for the livelihood of the population, economic significance for the countries and providing employment. Considering the 14 States parties to the protocol are mostly landlocked States without access to the sea, and they depend on the seas of others in various dimensions. For more details see: Protocolo sobre as Pescas da Comunidade para o Desenvolvimento da Africa Austral, celebrado em Blantyre, aos 14 de Agosto de 2001.

[77] Barbara Kwiatkowska, "Economic and Environment Considerations in Maritime Boundary Delimitations", in Jonathan I. Charney and Lewis M. Alexander (eds.) International Maritime Boundaries, 1993, p.75, at pp. 103, 110, Atunes (2003: 314).

[78] Derek W. Bowett, "The Economic Factor in Maritime Delimitation Cases", in P. Ziccadi (ed.) *International Law at the Time of Its Codification: Essays in Honour of Roberto Ago,* 1987a, p. 45, p. 62. Proposing also a wide consideration of economic factors, cf. Sharma (1989) 123-150, Atunes, *ibid.*

[79] Bundy, 1995: 20. Other examples of the use of enclaves, or semi-enclaves, include: Abu Musa Island (Dubai/Sharjah); Alcatraz Island (Guiné/Guiné-Bissau); Pelagruza and Galijula Islands (Italy/former Yugoslavia); Lampedusa, Lampione, Pantelleira and Linosa Islands (Italy/Tunisia). See: Atunes, Nuno Marques (2003: 294); *Towards the Conceptualization of Maritime Delimitation: Legal and Technical Aspects of a Political Aspects*, Martinus Nijhoff Publishers, Publications on Ocean Development, Leiden/Boston.

distance from the south coast of Canada's province of Newfoundland and Labrador. Awarded to France in 1763 by the Treaty of Paris, the Islands are inhabited.

The Saint-Pierre et Miquelon maritime boundary was determined in 1992 by a special Court of Arbitration, in adjudication that had been requested to resolve a dispute between France and Canada concerning the partitioning of EEZ south of the islands. France claimed a polygonal zone that extended seaward from the islands to encompass a portion of the physiographic CS, slope and rise. Canada, for its part, maintained that the islands were entitled at most to a 12 nm TS.

In its decision, the Court awarded exclusive economic rights to France in the configuration that has been variously described as "a keyhole", in effect creating a French enclave that is surround entirely by the sovereign territory of Canada. The Court was also asked to consider France's contention that it was entitled to certain sovereign rights beyond 200nm, in keeping with the provisions of Article 76 of LOSC. However, the Court declined to consider the French case for an extended CS.

The islands of Saint-Pierre et Miquelon exemplify the situation of a shelf-locked Island, that is located on a wide continental margin, but with an EEZ that does not extend to the HS.

Normally, where islands belong to one State yet are closer to the mainland coast of the opposing State - that is, they fall on the "wrong side" of an equidistance line between mainland coasts concerned – the States may opt to ignore the islands altogether for the purposes of constructing an overall division between their mainland coastlines[80]. Taking this approach as a model would lead to the finding that the French possessions are located on the "wrong" side and/or are "enclaved" in Mozambique Channel.

Alternatively, in such circumstances, the islands concerned may be wholly or partially enclaved, usually being accorded no more than a restricted belt of jurisdiction, often no more than a TS. Occasionally, however, as in case of Italy-Tunisia, enclaved islands may be granted a 13 nm belt – 12 nm of TS plus a symbolic 1 nm of CS or EEZ jurisdiction in order to demonstrate that the feature concerned is a fully fledged island

[80] Prescott & Clive Schofield (2005: 227).

and not a mere rock[81]. Hence, enclaving the French possession would suggest they can receive a band of territorial waters.

5.1.1.1. Bassas da India

With respect to Bassas da India, and noted above, there is doubt whether Bassas da India is an island, a rock or a low tide elevation when considering the following description:

> Bassas da India is a coral atoll about 6 miles in diameter, enclosing a shallow lagoon; it rises steeply from ocean depths and mostly dries. The sea breaks heavily over the reef, which may be seen from aloft, in clear weather, from about 10 miles. In 1969 there was a stranded wreck on the south-western side of the reef.
>
> In 1966, HMS Jaguar reported that Bassas da India was completely covered from 3 hours before high water to 3 hours after high water, and that a narrow boat passage was found at low water on the northern side of the reef[82].

Another description states that:

> Bassas da India is a coral atoll, the reef of which mostly dries. The southeastern part of the reef dries 1.2 m. On the north point there is anchor. The reef encloses a shallow lagoon to which there is access through a narrow boat passage, visible at low water about 1 mile from the north point of the reef. The lagoon is encumbered with shoals and coral heads[83].

An encyclopedia of coral reefs notes that Bassas da India "…has no significant dry land" and is "…barely emergent at low tide"[84].

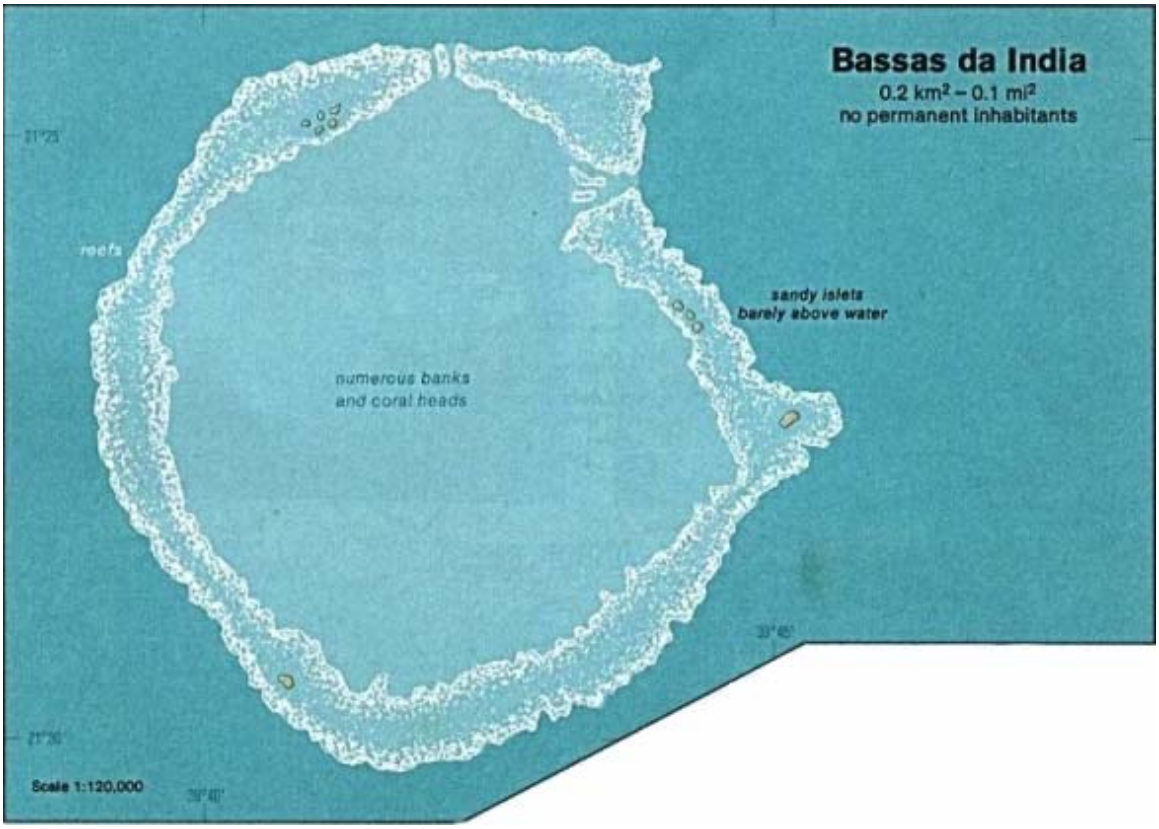
These descriptions all suggest that Bassas da India is a low tide elevation (See Map 6).

According to Article 13 (2) of LOSC, any low-tide elevation that is wholly situated at a distance exceeding the TS from the mainland or an island has no TS of its own. As

[81] Prescott & Clive Schofield (*ibid.*: 227,228).
[82] The Hydrographer, 1971 : 216, quoted by Prescott & Clive Schofield (2005 : 469).
[83] The Hydrographer, 2003, Prescott & Clive Schofield, *ibid.*
[84] International Union for Conservation of Natural Resources, 1988 : 268, Prescott & Clive Schofield, *ibid.*

no State (France or Madagascar) can claim territorial waters out to Bassas da India. Furthermore, Articles 57 and 76 (1) of LOSC would prevent Bassas da India from being used to claim an EEZ or any continental margin, and Article 121(3) states that: "rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or CS". It is therefore clear that Bassas da India cannot be considered the subject of boundary delimitation with Mozambique. However, it is appropriate to consider Bassas da India with "no effect" in the Mozambique boundaries delimitation context.

Map 6: French Possession Bassas da India



Source: Central Intelligence Agency: India Ocean Atlas, 1976: 45.

5.2. Boundary Between Mozambique and Comoros

The boundary between Comoros and Mozambique should be measured as an equidistant line starting from the 1989 agreed boundary between Tanzania and Mozambique in the north extending to the tri-junction with Madagascar in the South. The current

Mozambique base-points lie along the cost from Cabo Delgado in the north, along the Archipelago das Queribas for 110 nm, past Ponta Maunhane, Ponta Uifondo and Pinda to Cabo Conducia[85]. In contrast, the Comoros base-points are Ilha Maheli, Vailheu Reef, a low tide elevation and the north coast of Grande Comore Island. Such a line of equidistance would be equitable and therefore acceptable to the parties (See Map 8).

5.3. Boundary Between Mozambique and South Africa

Mozambique has only two adjacent neighboring coastal States with which it shares maritime boundaries. To the south, Mozambique shares a maritime boundary with South Africa, but the features of the coastline in this area are regular and there are no relevant circumstances which can influence the delimitation.

With respect to the land boundary between Mozambique and South Africa, it should be noted that it was previously established by agreement between Great Britain and Portugal in 1897. With the exception of some deviations, this land boundary is described as follows: the parallel of the confluence of the Rivers Pongolo and Maputo to the Indian Ocean situated about 26º 31' 12''.96. Furthermore, the last beacon of the land boundary is approximately 120 m high and about 400 m from the edge of the ocean[86]. The area between the last beacon of the land boundary and the ocean is dry land, and there is no agreement which specifies the intersection of the ocean and land. In such situations, questions can arise concerning where the line for the maritime boundary should be: a perpendicular line from the coast at the intersection of the land boundary and the coastline, or a continuation of the land boundary?

It has been argued that in relation to delimitations between adjacent States, the "line of bearing" is frequently used[87]. In effect, this represents a much simplified form of equidistance. Thus, where the States are adjacent to one another the coastlines are relatively un-complex such as the case of Mozambique, and South Africa, a line of bearing perpendicular to the general direction of the coast may represent simple and

[85] Hydrographer, 17, 225, 238, 242-3, 247-65.
[86] Wonnacott, R. T., *The Determination and Accuracy of Maritime Boundaries and Zones of South Africa*, ABLOS Conference, October 2001.
[87] Prescott & Clive Schofield (2005: 229).

equitable option. It may be recalled that in delimitation of lateral boundary both delimitation principles (median line Article 15, equitable principles under Articles 74 and 83), are properly considered, due to the fact that the overlapping areas are in the TS, EEZ and CS.

The preparation for delimitation of this boundary has already begun[88] with a survey being carried out in March 1993 by a joint team composed by the two State's surveyors. The mean low water mark points were agreed to be the starting base for determination of the maritime boundary, and the equidistance line was agreed as the method of delimitation as depicted in Map 7.

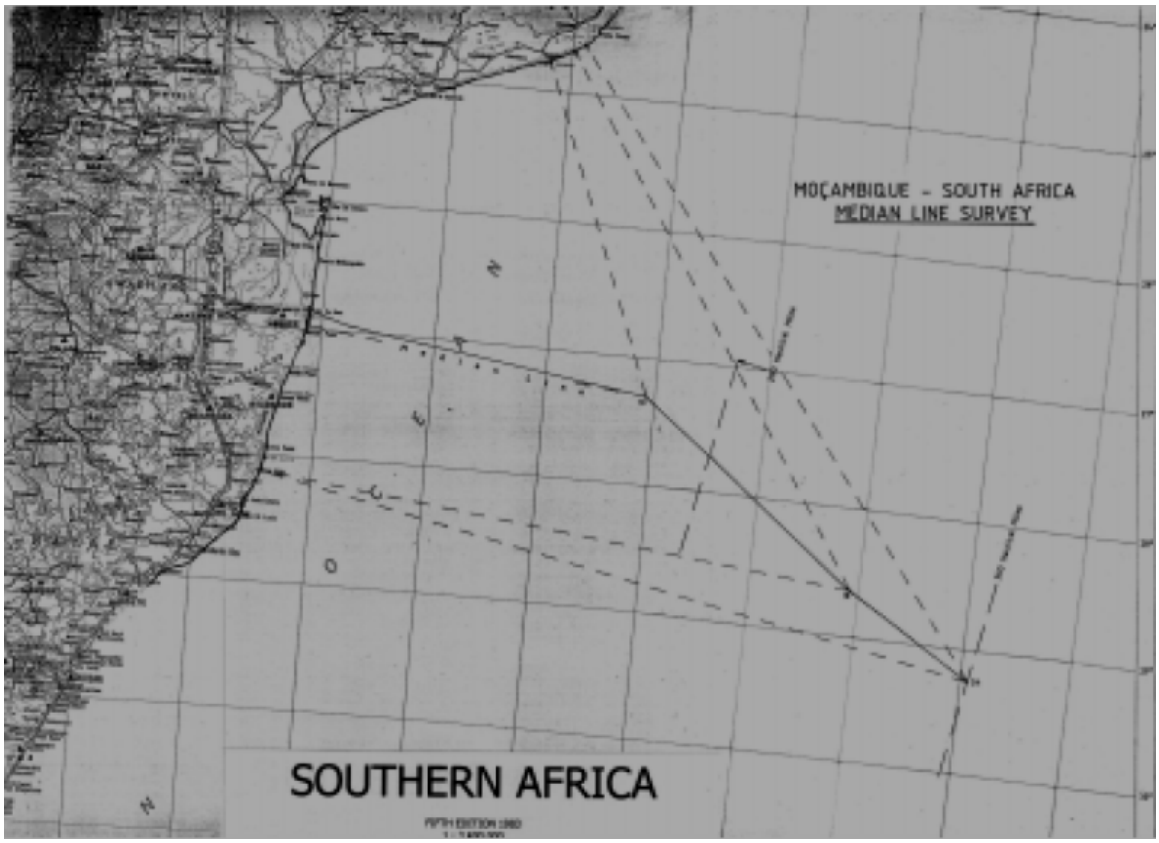
It seems that the maritime boundary between the two States is a straightforward case. The boundary will not begin from the last beacon of the land boundary, as the surveyors opted to define the low water mark points. This decision means that this boundary will not follow the land boundary, but will begin on the coast of the States at the low-water mark. This boundary seems to be equitable for the two States, but the intersection between the land and sea boundaries has yet to be defined as Mozambique is currently considering the case.

5.4. Tri-point Issues

Tri-point issues arise in maritime boundary delimitation where the maritime areas of three coastal States converge and overlap. Where the trilateral geographic relationship exists, so too does the potential for a tri-point at which three maritime boundaries intersect[89]. In the Mozambique boundary context, one tri-junction has been identified (Mozambique, Tanzania, Comoros). The bilateral agreement between Mozambique and Tanzania does not "tri-lateralize" the boundary and does not bind the Comoros Islands, and, it is necessary for the three States to define the interception point. This point will also define where the boundary between Mozambique and Comoros Islands will begin See Map 8.

[88] The process of delimitation of the boundary between Mozambique and South Africa is pending because of the political changes in two States and the processing of requisite data by Mozambique.
[89] See: Lathrop, Coalter G. (2005: 3305).

Map 7: Potential Boundary with Mozambique and South Africa



Source: Wonnacott, R. T., October, 2001.

The issue which arises is that where there is a geographical overlapping between three States, two parties to a bilateral boundary agreement cannot create boundary endpoint biding on the third State regardless of their endpoint technique. In this case the establishment of boundaries would necessarily involve joint action by all three States.

Therefore, the maritime boundary delimitation of Mozambique in the north zone will require agreement on the tri-points between all the three States.

6. Delimitation of the Extended Continental Shelf

The provisions of LOSC related to the CS are largely contained in Articles 76 to 85, Annex II (regarding the Commission on the Limits of the Continental Shelf - CLCS), and Annex II of the Final Act which contains a statement of understanding concerning

specific methods to be used in establishing the outer edge of the continental margin for the unique situation of the Bay of Bengal.

The "Truman Proclamation" of 1945 is commonly regarded as the starting point of the modern development of the legal concept of the CS. The proclamation asserted that "the Government of the United States regards the natural resources of the subsoil and seabed of the CS beneath the high seas but contiguous to the coasts of the USA as appertaining to the USA, subject to its jurisdiction and control"[90].

It was a simple assertion of jurisdiction and control over the shelf resources, based on the fact of the physical attachment, or contiguity of the CS, to the land mass of the coastal State. The question was whether the Truman Proclamation, and similar declarations made by other States, had given birth to an entirely new institution in customary international law[91].

The initial problem concerning those claims was their legal basis. One view was that the seabed areas beyond the territorial sea were *res nullius* and could therefore be acquired by "effective occupation"[92]. Another view was that coastal States had the CS rights *ipso facto* and *ad inito* since the CS was "continuity" or integral part of the territory under the sea[93].

Consequently, UNCLOS I and UNCLOS III provide that the rights of coastal States over the CS do not depend on "occupation, effective or notional, or any express proclamation"[94]. It has been firmly established that the rights of coastal States over the CS exist *ipso facto* and *ab initio*[95], in fact, the coastal State has sovereign rights over CS for purposes of exploring it and exploiting its natural resource.

---

[90] *The Truman Proclamation No.2667*, 10 Fed. Reg. 12303; (University of Cambridge, 1992: 3).

[91] See Kunz, 50 *AJIL* (1956) 828 at 829, No. 8 where he records 21 instances of declarations by the States to shelf entitlement made between 1942 and 1950, *ibid.* (1992: 7).

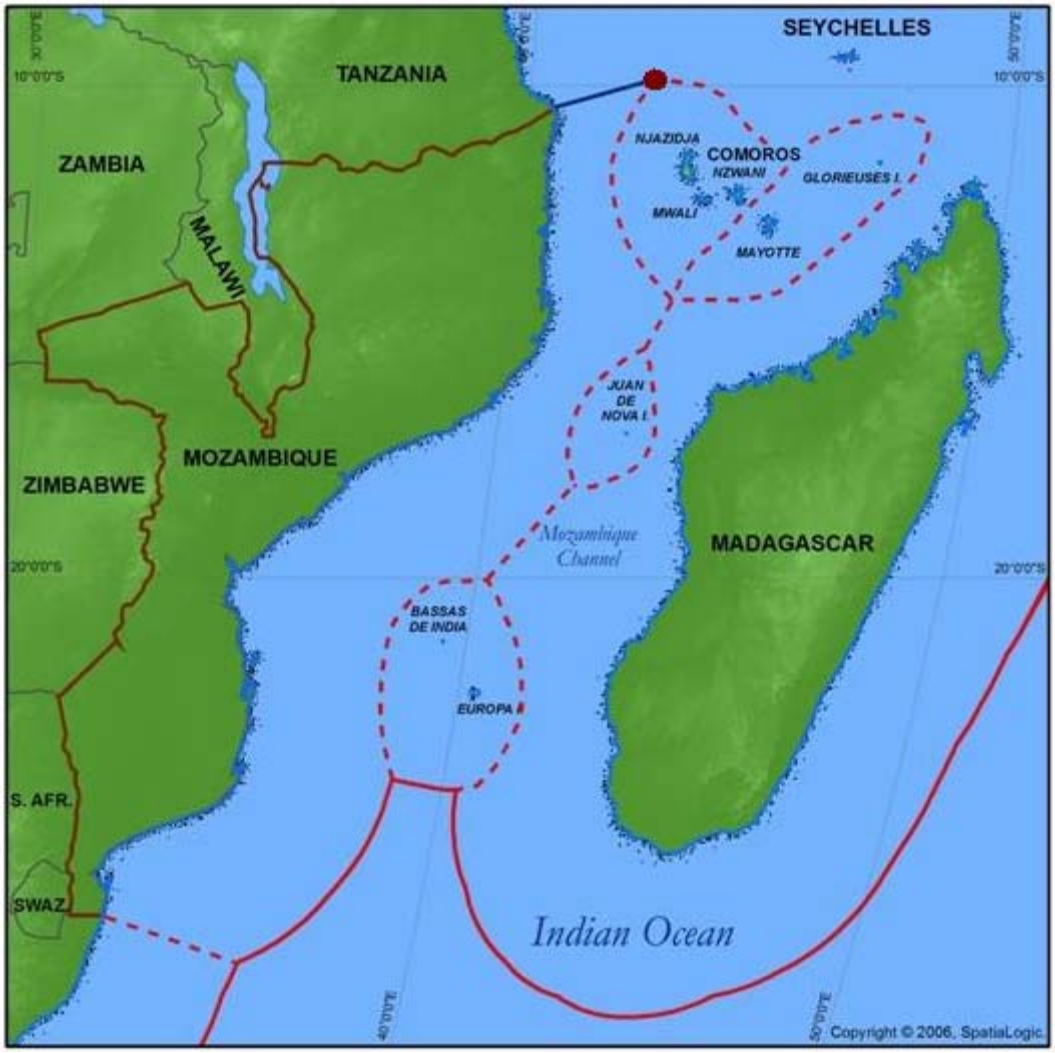
[92] See Vallat, 1946, p. 334. The division of submarine areas of the Gulf of Praia seemed to have depended on such an approach since at that time it was the UK's official view that the seabed beyond the territorial sea could be appropriated by occupation through claim and exploration. O'Connell, (1982), I, p.470; Acer (2003: 78).

[93] The Declaration used stated: "the Continental Shelf may be regarded as an extension of the land mass of the coastal notion, thus naturally appurtenant to it". The Peruvian Decree and the Declaration of Argentina referred to the area as forming "one morphological and geological unit with the continent". See also: Lauterpacht, (1950), pp. 423, 424, Acer (*ibid.*).

[94] Article 2(3) of the 1958 Convention and Article 77(3) of LOSC, see also Acer (2003: 79).

[95] In its 1969 ruling in the North Sea case, the ICJ noted that "the rights of the coastal State in the respect of the area of CS that constitute the natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by the virtue of its sovereignty over the land, and as an extension of it in an exercise of

Map 8: Potential Boundaries in the Mozambique Channel According Present Pattern (not scale)



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

Potential Boundary in Mozambique Channel
Boundary Between Mozambique/Tanzania
Identified Tri-point (Mozambique/Tanzania/Comoros Islands)

Under Article 76(1) of the LOSC, the CS of a coastal State is defined as:

> The seabed and subsoil of the submarine areas that extend beyond its TS 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

sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources" par. 39. See also par. 43; Acer, Yucel (2003: 79), *The AEGAN Maritime Disputes and International Law*, Ashgate, England.

> baselines from which the breath of the TS is measured where the outer edge of the continental margin does not extend to that distance.

Therefore, Article 76(3) states that:

> The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consist on the Seabed and subsoil of the shelf, slope and rise. It does not include the deep ocean floor with its oceanic ridges or it subsoil thereof[96].

Thus, coastal States have CS rights at least up to a distance of 200 nm from the coast. If the continental margin extends beyond this distance, CS rights will extend up to the edge of the continental margin in accordance with the provisions of LOSC, and as outlined below.

6.1. Outer Continental Shelf Beyond 200 Nautical Miles

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 from which the TS is measured:

> a) A line delineated in accordance with Article 76(7) by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 percent of the shortest distance from such points to the foot of the continental slope; or
>
> A line delineated in accordance with Article 76(7) by reference to the fixed points not more than 60 nm from the foot of the continental shelf.
>
> b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

[96] The deep ocean floor, with its ocean ridges, does not come under the sovereign rights of the coastal State, but falls under the common heritage of mankind regime, and the administration of the International Seabed Authority (ISBA), in accordance with Part XI of LOSC.

> Notwithstanding the provisions made by Article 76(5) regarding submarine ridges, the outer limit of the CS shall not exceed 350 nm from the baselines from which the breadth of the TS is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateau, rises, caps, banks and spurs.

This means that States wishing to claims margins wider than 200 nm may define the outer edge of the margin in one of two ways. The first method permits the State to draw its continental margin boundary between those points seawards of the foot of the continental slope where the thickness of rock is 1 percent of the shortest distance between such points and the foot of the continental slope. The foot of continental slope is assumed to be the point of maximum change in gradient of its base. The second method permits States to draw boundaries not more than 60 nm seaward of the foot of the continental slope. Whichever of those two methods is used, the State must ensure that the straight lines forming the boundary consists of segments not more than 60 nm long[97]. In the situation where the margin does not extend beyond the 200 nm States are not entitled to claim the CS beyond the 200 nm.

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, Map 9 illustrates the potential area of claim beyond 200 nm.

Certain authors have indicated that 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. The French possessions (Bassas da India, Europa Island and Juan de Nova) are located in the Mozambique Channel; therefore extended CS claims are severely restricted by the geography. To the north of Mozambique, the Comoros Islands (currently one of the island under French control), are also disadvantaged because they are surrounded by Mozambique, Madagascar Tanzania and the Seychelles.

[97] Prescott (2005: 76).

The above analysis suggests that as Mozambique formulates its extend CS claim it should consider the potential existence of other claims such as those of South Africa and Madagascar.

In areas where Mozambique has a CS beyond 200 nm, calculated from the TS baselines in accordance with Article 76, neighboring adjacent or opposite States with a similar claim will generate a potential CS boundary situation. Those potential boundaries will also have to be delimited in accordance with Article 83 of LOSC and are to be reached by agreement in order to achieve an equitable solution. Equity requires that all the relevant circumstances must be identified, assessed, and considered in the drawing of the final boundary lines.

Two substantive equitable principles are important in the delimitation of the CS: equidistance and proportionality. Customary international law requires that both principles be used together so as to assure that a delimitation of the CS is equitable. The method, which is in evolution, begins with the construction of an equidistance line from which the equity or inequity of the area gave determined by comparing the seabed areas allocated to each State with the lengths of their respective coastlines. If the ratios of seabed areas and coastline lengths are out of proportion, the equidistance line is open to question. Under such circumstances, the factors causing the disproportionality must be identified and assessed. When these factors are found to have an impact on the equidistance line that is out of proportion to their size or significance, they must be discounted in the construction of the final, or equitable boundary line. In the Mozambique case, geology and geomorphology will, however, have an important role in the delimitation of CS beyond 200 nm.

The information on the limits of the CS beyond 200 nm shall be submitted to the Commission on the Limits of the Continental Shelf (CLCS)[98] in accordance with Article 76(8) and Annex II of LOSC[99]. However, Article 9 of annex II states that, "the actions of

[98] According to paragraph Article 3 (1), of Annex II of LOSC, the CLCS has two main functions: The first function is to consider the data and other material submitted by the coastal States concerning the outer limits of the CS in areas where those limits extend beyond 200 nm, and to make recommendations in accordance with Article 76 of LOSC. The second function is to provide scientific and technical advice, if requested by the coastal State, during the preparation of data. The coastal State must defray the expenses in the provision of that advice.

[99] Annex II of LOSC elaborates the particulars of the CLCS as provided for in Article 76. The CLCS shall consist of 21 members, who shall be experts in the field of geology, geophysics, or hydrograph. They are to

the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts".

Map 9: Potential Continental Shelf Beyond 200 nautical miles (not to scale)

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

Legend:

- Area of Potential Claim of Continental Shelf Beyond 200 nm

be elected by States parties to LOSC from among their nationals. Thus, if a State is not party to LOSC, it may not have a national on the Commission.

Article 4 of Annex II requires that a submission to the CLCS must be supported by "*scientific and technical data"*[100] as soon as possible, but in any case "*within 10 years of the entry into force of the Convention"*[101] for that State. This paragraph in particular gives rise to many questions of interpretation such as: what happens if they do not? According to some authors, States Parties are under a legal obligation to comply with the provisions of the Convention, there is no sanction for failure to make a submission within that period. Article 77(3), provides that the rights of the coastal State over the CS do not depend on occupation, effective or notional, or any express proclamation. However, a coastal State that explores the CS or exploits its natural resources beyond 200 nm before its outer limits are final and binding faces a degree of uncertainty, in particular if there is an existing, or potential delimitation issue with a neighboring opposite or adjacent State[102].

One of the first aspects of the preparation of a submission to the CLCS is the Desktop Study[103]. The primary role of the Desktop Study is to provide a coastal State with a completed preliminary submission to the CLCS using offshore data currently available in the public domain. The required data can be classified into three main categories: *Bathymetric*, *Geographical* (magnetic, gravity, seismic) and *Geological* (rock compositions determined from drilling and/or grab samples). The Desktop Study will

[100] 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: *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (CLCS/3/Rev.2, 4 September 1998)*; Modus Operandi of the Commission* (CLCS/L.3, 12 September 1997)*; Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf* (CLCS/11, 13 May 1999); (CLCS/11/Add. 1, 3 September 1999).

[101] On request, the States Parties may review of the States that ratified early with a view to ameliorating the difficult in respect of the 10 year deadline. In recognition of the crucial role of the scientific and Technical Guidelines of the Commission adopted on the 13 May 1999, the Eleventh Meeting of SPLOS agreed that States having ratified the Convention before that date must make their submission within 10 years of the date, i.e. 13 May 2009, notwithstanding the individual date of entry into force of the LOSC for such States.

[102] Robert W. Smith and George Taft, *"Legal aspects of the Continental Shelf"*, in *Continental Shelf Limits – The Scientific and Legal Interface*, ed. Peter J. Cook *et al.*, Oxford University Press, 2000, pp. 21-22; Heidar, Thomas H. (2003), *Legal Aspects of Continental Shelf Limits*, in Nordquist, *at al* (ed.) (2004: 31) *Legal and Scientific Aspects of Continental Shelf Limits*, Martinus Nijhoff Publishers, Netherlands.

[103] A Desktop Study includes the operations (computations, analyses, interpretations) that will be carried out using computer software specifically designed to produce the required mathematical results from the use of existing public and non-domain datasets. These are specific existing data sets for (bathymetry, geology, morphology) and through a series of specific tasks and procedures. As specified under the CLCS Technical Guidelines, a quantitative first look will be produced. These results will give the coastal State a preliminary indication of what the new final outer limit may look like once an Article 76 claim has been implemented (Van de Poll, 2002, 2003).

collate all available information in the public domain and identify areas for further scientific studies and field surveys. In Mozambique, local expertise available will be very critical to follow the findings of the Desktop Study with further scientific studies as needed for the finalization of the extended CS submission.

Mozambique intends to establish the outer limit of its CS. Due the technical and financial limitations, assistance is needed for: hydrographic field survey to acquire data for baselines and the construction of maps and charts; interpretation of existing data to facilitate the identification of base-points; hardware/software to support the data; and training/building capacity[104].

Why should Mozambique claim an extended CS beyond 200 nm? Simply put, it is of critical importance for future national development of Mozambique resources, as the continental margin of Mozambique potentially holds valuable resources. This potential is highlighted by the following description of geophysical investigations of the Madagascar and Mozambique continental margins:

> "The Mozambique Basin of southern Africa covers an area of approximately 500, 000 km², encompassing both the onshore coastal plain of southern and central Mozambique and roughly equal area offshore in the Indian Ocean. In broad terms, the basin is situated on a passive rifted margin – formed as a result of Karoo megaplume impingement […] Hydrocarbon potential within Mozambique Basin is solidly established with respect to gas and condensate. The basin for instance hosts commercial production from the giant coastal-onshore Temane […] Pande […] gas fields, and is home to the onshore Buzi gas discovery located further north of the coast. With respect to oil, shows have been reported in some offshore wells, and so the potential exists for oil production from the basin"[105].

This suggests that the continental margin offers opportunities for developing its resources and for disposing of certain kinds of waste on a large scale. The continental margin possesses both non-living and living resources. While both are considered valuable, it is the potential for non-living resource extraction that is the main stimulus for the Mozambican Government to claim as much as the continental margin as possible and

[104] The Mozambique Government has requested assistance from the Commonwealth Secretariat and negotiations are underway to establish the scope of possible assistance.
[105] The AOA Geophysics Newsletter, 2002, www.AOAGeophysics.com (Accessed 23 June 2006).

to encourage States or private companies to explore for oil and gas, and to a much smaller extent minerals and to develop any significant discoveries[106].

Note that the exploration of the non-living resources of the CS beyond the 200 nm by the coastal State is subject to a contribution or payment to the International Seabed Authority (ISBA)[107]. Whether the effort required to determine the limit of the CS beyond 200 nm is considered justified depends on an assessment of the potential benefits to be gained from rights over the CS.

7. The Negotiation Process and Final Agreement

Once the desire for delimitation has been established, the relevant legislation put in place, and the political decision taken by the parties to seek a delimitation agreement, preparations for negotiations may get under way. It is worth pointing out that this phase is often crucial to a successful delimitation negotiation, and should not be underestimated, rushed or curtailed[108].

Maritime boundary delimitation negotiations are extremely complex and require a variety of specialized skills. The core requirements for a successful negotiation team are the presence of political, legal and technical components.

The proper groundwork for negotiation of the maritime boundaries delimitation agreement must include a report, prepared on the hydrographic and technical factors likely to affect the delimitation process by a component expert. The hydrographic and technical report should be undertaken within the scope of the relevant maritime legislation and should have appropriate regard given to it. Like the legislative framework, the terms of reference for the hydrographic and technical study must have due regard to the significant geographical factors which may influence the delimitation process[109]. In

[106] Cook & Chris M. Carleton (2000: 75).
[107] See: Article 82 of LOSC. LOSC contains an extensive Part XI regulating the seabed beyond the limits of national jurisdiction: "the Area". The Area and its resources are the common heritage of mankind. No State can claim or exercise sovereignty over a party of the area, nor can any State or natural or juridical person appropriate any part thereof. The Area is open to use exclusively for peaceful purposes, and all rights over the resources of the Area are vested in mankind as a whole, on whose behalf acts the ISBA (the International Organization established by LOSC Article 137).
[108] Prescott & Clive Schofield (2005: 308).
[109] Commonwealth Secretariat (1993: 174).

Mozambique, there is no relevant hydrographic and technical report, and data is still scattered throughout various institutions.

The Government of Mozambique has began its preparation for negotiations with neighboring States. Generally, the preparation is in its initial phase, except with South Africa, where the process of delimitation has already begun. Two technical teams for delimitation of maritime boundaries and the outer limit of CS were created. The teams are composed of different experts from different Mozambican institutions with relevant knowledge in the field. The teams are working under the umbrella of IMAF, however the specific duties of those teams need to be clarified, and provided with LOS capacity building opportunities. The teams have already begun to compile hydrographic and technical aspects in order to produce a technical report for maritime boundary purposes.

Hence, there are three key moments in boundary negotiations, before negotiations (a team must getting know each other; definition of the relevant area; getting to know the ground; calculate a median or equidistance line; open position), during the negotiations (presence; geodetic datum; exchange list of base points; present the case; prepare graphics; write a technical solution; fall back positions), and after the negotiations (technical content of the Treaty Document; graphic depiction and publicity)[110]. It is important to clarify the role of the teams for each phase and to define the specific roles of each team by clarifying when they must act, and when each acts ends.

7.1. Principles of Negotiation

The principles of maritime boundary negotiation are not different from other kinds of negotiation in diplomacy. Good faith, in particular, is regarded as the main principle and feature of any international negotiation. Apart from other international relevant instruments, the General Assembly of the UN adopted a Resolution containing the principles of international negotiation as described below:

- Negotiations should be conducted in good faith;

[110] For more detail see: Carleton & Clive Schofield (2002: 50-63).

- States should take due account of the importance of engaging, in an appropriate manner, in international negotiations the States whose vital interests are directly affected by the matter in question;
- The purpose and object of all negotiations must be fully compatible with the principles and norms of international law, including the provisions of the Charter;
- States should adhere to a mutually agreed framework for conducting negotiations;
- States should endeavour to maintain a constructive atmosphere during negotiations and to refrain from any conduct which might undermine the negotiations and their process;
- States should facilitate the pursuit or conclusion of negotiations by remaining focused throughout on the main objectives of the negotiations; and
- States should use their best endeavours to continue to work towards a mutual acceptable and just solution in the event of an impasse in negotiations[111].

The negotiation process should be guided by these principles and other relevant principles of international law which provide guidelines for an agreement accepted by the parties. It is emphasized that good faith must guide all negotiation phases and those negotiations must be conducted in a spirit of fairness and effectiveness.

7.2. Options for Strategies

A negotiation strategy ought to encompass the preparation, planning and management of the negotiation. Negotiation tactics consist of the step-by-step method and techniques chosen to implement the strategies. The Commonwealth Secretariat proposes three types of strategies which may be selected by the negotiators: the competitive bargain,

[111] United Nations, General Assembly, Resolution 53/101 *Principles and guidelines for international negotiations*, 20 January 1999 (A/RES/53/101), www.un.org/Depts/dhl/resguide/r53.htm (Accessed 11 July 2006).

cooperative, or individualistic[112]. The competitive bargaining approach permits the use of extreme negotiating positions (the strengths and weakness of the parties are canvassed and the negotiator seeks to maximize his position and to minimize that of his adversary). The cooperative approach emphasizes the merits of the negotiations for both sides, and seeks to foster a collaborative relationship between the negotiators.

A similar perspective on negotiation strategies is also proposed by certain authors who argue that there three approaches to negotiations: hard, soft, and principled negotiation. The hard negotiation is essentially extremely competitive bargaining; soft negotiation is extremely integrative bargaining (the negotiators want to avoid personal conflict and this make concessions readily in order to reach agreement: they want an amicable resolution), and "principled negotiation" is supposed to be somewhere in between, but closer to soft, certainly, than hard. It suggests that the negotiators look for mutual gains whenever possible. Further, they contend that principled shows how to obtain what you are entitled to and still be decent[113].

Competitive bargaining tactics are not appropriate for international negotiations such as maritime boundary negotiations, because they can drive the negotiations in to a zero sum situation, while the cooperative or principled approach can lead to an optimal situation for both parties. Taking into account the friendly relations between Mozambique and other States with which it shares boundaries, principled and cooperative approaches should be adopted in negotiations. Such approaches should lead to efficient and successful proceedings guiding an equitable solution for all parties.

7.3. Delimitation Agreement

The agreement is the final form of boundary delimitation negotiation. The form of final agreement must be in accordance with international rules. In this regard, 1969 Vienna

[112] Commonwealth Secretariat (1993: 199, 200), *Practical Steps in Negotiating Maritime Boundary Agreements: A Guide to Small States*. Prepared by Carl W. Dundas, Technical Assistance Group, Commonwealth Fund For Technical Cooperation, London.
[113] See: Fisher, Roger & William Ury (1991), *Getting to Yes: Negotiating and agreement Without giving in,* Century Business, UK.

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. This means that once a final agreement has been reached between the negotiation teams, that agreement will only have immediate effect in the territory of Mozambique after ratification by the Republic Assembly, that is the form of consent in domestic order.

8. Potential Disputes Settlement Scenarios

In situations where an agreement cannot be reached between Mozambique and other opposite and adjacent States, dispute must be resolved through peaceful means.

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, the weight to be accorded to French possessions, Geodetic compatibility, the methods of delimitation, and simply variations in the interpretation of LOSC. If these aspects are not taken into account, potential disagreements between the States could arise. How complex the settlement process will be depends very much on the diplomatic relations between the States involved. It is trite to note that States with "friendly" relations (as the situation of Mozambique) are likely to reach agreement more easily[114].

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

[114] Atunes (2003: 177).

indicated in Article 33, paragraph 1, of the Charter"[115]. 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.

States are free to choose one or more of these means by a written declaration to be made under Article 287 of LOSC and deposited with the UN Secretary General. If the parties to a dispute have not accepted the same settlement procedure, the dispute may be submitted only to arbitration in accordance with Annex VII, unless the parties agree otherwise.

This legal framework has been subsequently reaffirmed, and expanded upon, through several declarations and resolutions of the UN General Assembly. These documents reinforce the key principles of peaceful settlement of disputes; the non-use of force in IR; non-intervention in internal or external affairs of States; equal rights and the self-determination of peoples; the sovereignty equality of States to act in good faith[116]. This means that States are free to choose the method of dispute resolution. If they can settle disputes directly through negotiation or conciliation, whether bilaterally or regionally, they have right to do so. But if there is no such solution, they are obliged to choose one of the four possible fora outlined above. Not surprisingly, among the dispute settlement mechanisms available to States, diplomatic negotiation is the most frequently used. It is

[115] Paragraph 1 of article 33 of UN Charter states that: *"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice"*. In essence this paragraph emphasizes the peaceful means of conflict resolution.

[116] United Nations, (1992: 3-7), quoted by Prescott & Clive Schofield (2005: 5).

the simplest and the traditional procedure, and it is successful more often than not[117]. States non-party to LOSC, but members of the UN are also covered subject to the UN Charter which also calls for the settlement of disputes through peaceful means.

9. Managing Maritime Boundaries

A single line of jurisdiction between the States concerned is unlikely to be a permanent solution to administrative problems whose nature overlaps adjacent ocean areas. In these cases, additional arrangements must be found.

One such is the adoption of a "Joint Management" approach with regard to the exploration and exploitation of non-living and/or living resources which either extend across a boundary or lie in an area of overlapping claims.

Joint development arrangements are encouraged under LOSC both Article 74(3) and Article 83(3), which deal with the delimitation of the EEZ and CS respectively:

> 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. Such arrangements shall be without prejudice to the final delimitation.

Joint development may be devised either in the absence of agreed boundaries or in addition to delimited boundaries[118]. More difficult problems would seem to arise in the first category of cases than in the second, because the States concerned have been unable to agree on the delimitation of boundaries and their failure to agree implies that they have fundamentally different positions. In this sense, they can only agree to the idea of Joint Development to the extent that they are prepared to set aside the intricate issue of delimitation for future consideration in favor of more immediate economic or other practical interests.

[117] See Atunes (2003: 177,178).
[118] Miyoshi (1999: 6).

A good number of these arrangements have been made in connection with existing boundaries, while a few others have been devised in the context of a delimitation process, and still others originate in situations where delimitation is pending. Joint development might be useful for Mozambique and other States while boundaries are being negotiated, as well as after their delimitation.

Indeed, even if the Mozambique boundary is determined and agreed, that is not the end of the matter. There may still remain the need to put in place a utilization arrangement for possible future discovery of a new deposit lying astride the boundary, or to manage different trans-boundary problems. For example, Article 3 LOSC urges States sharing trans-boundary resources to seek agreement. Experience shows that the States concerned normally agree on a further procedure of utilization in anticipation of future discovery of new deposits astride the agreed boundary[119].

In other cases, Joint Development zones have been created. Specific examples of these include:

- Bhrain-Saudi Arabia – The "Joint Development Zone" falls under Saudi jurisdiction and Saudi Arabia is permitted to develop it, but must share the net income derived therefrom with Bhrain;
- France-Spain – A Joint Development Zone straddling the boundary in the Bay of Biscay is based on "equal distribution" of the resources discovered therein;
- Japan-Korea – Concessionaries of both parties are obliged to carry out joint exploration and exploitation and to share equally the natural resources;
- Iceland-Norway (Jan Mayen) – this agreement resulted from an international conciliation process. Iceland receives a 25% share of petroleum activities carried out in the Joint Economic Zone north of the delimitation line. Norway receives 25% interest south of the delimitation line[120].

These examples can serve as a model for Mozambique and other States of the region in the establishment Joint of Development Agreements. Such agreements may be appropriate in the case of Mozambique and its adjacent and opposite States, particularly

[119] See Ong (1995: 83-84) for southwest Asian examples; Miyoshi, *Ibid.*
[120] Bundy (1995: 38, 39).

so as to fester cooperation (as outlined below) considering that most of the States concerned are developing States and face many problems such as the lack of capacity to control and manage the resources, and a lack of marine technology. It is fundamental to note that Joint Development Agreements are not only confined to the place of boundary between the States, but also may be developed for a wider region established through specific agreements.

"(…) the problems of ocean space are
closely interrelated and need to be considered as a whole"
(Preamble of LOSC)

PART II- MANAGEMENT OF OCEAN ISSUES IN MOZAMBIQUE

1. Current Status of Mozambique Ocean Issues Management

The concept of ocean management is a relatively recent development. It has developed in response to a jurisdictional revolution in the LOS reflected in LOSC, the expansion of economic activities at sea, and increasing concern over conflicts of interest between the various uses of sea areas.

Ocean governance[121] 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) and other relevant conventions, agreements and programs[122]. These proceedings set out the objective of ocean governance, gave shape to the legal, institutional and technical tools for pursuing those objectives and, in a more general fashion, formulated the fundamental principles of ocean management[123]. It should be clearly stated that conceptually, throughout this part, coastal area management is considered to be an integral component of national ocean policy. Thus, when referring to "ocean/coastal governance" it should be understood to include a coastal policy input into the overall national ocean policy-making process[124].

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[121] Vallega (2001: 60).
[122] Chapter 17 of UNCED's Agenda 21 provides a detailed code of conduct and guidelines for setting up sustainable development inspired policies on coastal area management no global, regional and national levels. Ocean Governance can regrouped into three categories: 1) Legal (LOSC and relevant legal developments); 1) Institutional (Institutions established by LOSC); UNCED developments) 3 Levels of implementation (Local, National, Regional, and International). See: Bailet, François (2002), *Ocean Governance: Towards and Oceanic Circle,* DOALOS/UNITAR Briefing on Developments in Ocean Affairs and LOS - 20 years After the Conclusion of LOSC – UN-HQ, September 25&26, 2002, www.un.org/Depts/los/convention_20years/presentation_ocean_governance (Accessed 9 May 2006).
[123] Ocean management issues of great concern include shipping, offshore fisheries, mineral exploration and development, ocean dumping control, and ocean research. LOSC has stimulated many initiatives for national ocean management. These may in turn enhance integrated coastal management-type programs as oceans concerns are felt along the land/ocean interface. Clark (1996: 20).
[124] See Vallejo, Stella Maris, *New structures for decision-making in integrated ocean,* in Peter Bautista Payoyo (ed.), (1994: 71), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.

In developing a concept of ocean management,[125] it is necessary to recognize several different aspects or components of the term "ocean", those components are physical dimensions of the ocean space; management dimension (ocean space, ocean resources, and ocean users and/or activities); Government programs (agencies and policies); and jurisdictional dimension (TS, CZ, EEZ). Thus, ocean management involves the extension of control over ocean spaces, resources and activities, as well as over the individual Government and civil society efforts to exercise that control. However, any system of management only survives in the long term when a great deal of attention is paid to its administration[126].

In Mozambique, there are several national institutions (ministries, institutes) dealing entirely or partially with marine issues. A number of inter-institutional coordinating committees and institutions were created to address issues that transcend the mandate of any single institution. These organs were also given the responsibility to pursue coordination and linkage between sectors, programs and activities.

Currently, the administrative process of management of marine issues in Mozambique is still scattered in various ministries. The main institutions dealing with marine affairs in Mozambique are the Ministry of Foreign Affairs and Cooperation; Ministry of Interior; Ministry of Environmental Affairs and Coordination (MICOA); Ministry of Transport and Communications; Ministry of Defense; Ministry of Fisheries; Ministry of Transport and Communication; Ministry of Tourism; Ministry of Mineral Resources, and the various coastal urban municipalities. Within the ministries, there are specific units which each has a separate mandate and include coordinating committees to deal with specific tasks. These units include the IMAF; the National Marine Institute (INAMAR) recently created to assume the competences of the National Service of Administration and Maritime Control (SAFMAR); National Institute of Hydrography and

[125] According to the Websters Third New International Dictionary (1971) the word "management" is defined as: "(…) the executive function of planning, organizing, coordinating, directing, controlling and supervising any industrial or business project or activity with responsibility for results. Armstrong and Ryner define ocean management as " (…) deliberated effort to direct or control conditions and actions, without suggesting that such efforts are necessarily successful. Such efforts can either be supportive, in the sense of attempting to encourage, promote or assist some action or condition, or restrictive in the sense of attempting to prevent, diminish or discourage". See: Armstrong, John M. & Peter C. Ryner (1981: 2), *Ocean Management: a New Perspective*, Abb Arbor Science, US.

[126] Kay & Jacqueline Alder (1999: 69).

Navigation; the recently established Center of Coastal Zone Management; the National Council of Sustainable Development (CONDES); the National Institute of Petroleum (INP); and the Institute for Development of Small Scale Fishery and Technical School of Fisheries.

The vision behind the creation of these institutions was to make it easier to plan, organize, execute and control State duties concerning the sea in a systemic, open and participative approach. However, the practice shows that while each entity collects some information to execute its specific duties, the coordination between them is weak, and the exchange of information remains difficult.

One of the important steps taken by the Government to promote coordination is the creation of IMAF. Through its Technical Council,[127] IMAF pursues coordination and linkages between the institutions or sectors which deal with sea issues. In fact, the Technical Council is a *"coordination and consultation organ"*[128].

However, IMAF is not mandated to formulate and adopt policies or a national policy of sea issues. Nor does it have the power of direct management or intervention on sea issues such as tourism, environment or fisheries. The role of IMAF is limited, and doesn't transcend the powers of the ministries. The IMAF is an institution which coordinates, formulates and proposes policies related to the sea and boundaries to be adopted by the decision makers. Normally, IMAF reports to the Coordination Council of Sea and Boundaries, which is the highest-level organ of policy formulation and coordination on issues related to the sea and boundaries. The Coordination Council of Sea and Boundaries is an organ of the Ministers Council,[129] and composed of all relevant ministries with activities related to the sea. This means that, in terms of the modern LOS approach of policy formulation, there is an unquestionable conditions for pursue.

[127] Section II of the IMAF Statutes.
[128] Emphasis added. The Article 13 of IMAF statutes define the Technical Council of IMAF as a coordination and consultation organ of systems of sectorial actions regarding the sea and boundaries. It is composed of the representatives of the following institutions: Ministry of National Defense; Ministry of Interior; Ministry of Plan and Finance; Ministry of Justice; Ministry of Mineral Resources and Energy; Ministry of Agriculture and Rural Development; Ministry of Coordination and Environmental Action; Ministry of Tourism; Ministry of Fisheries, and Ministry of Higher Education, Science and Technology.
[129] The Ministers Council is the Government of the Republic of Mozambique, is composed by the President of Republic, Primer Minister and by Ministers.

In addition to many other concerns,[130] the major problem facing ocean management in Mozambique is lack of cohesiveness and coordination both vertically and horizontally between sectors, activities and programs. There's still a lack of "macro vision" of integrated of ocean issues, and there is still a lack of effective policy formulation/coordination through a more coherent definition of national priorities for the sea. This means that the LOS and ocean management issues are not sufficiently "politicized" resulting in and the management of ocean issues to be confined in sectoral institutions without effective coordination between them. Coastal/ocean related inputs to national development planning are generally received only from a few more traditional sectors, and such inputs are evaluated on a project-by-project basis without the examination of cross-sectoral and cross-resources implications[131].

It has been observed that rationally dividing vertical responsibilities for ocean management between levels of Government is often much more difficult than resolving horizontal differentiation problems. Political, administrative and budgetary clashes between levels of Government drive conflict, and often lead to confusion in allocation of responsibilities. Such vertical imbalances of power, money, and differences in political affiliation often dictate the overall shape of the ocean management approaches of a nation both horizontally and vertically. This is because horizontal differentiation will, to a large extent, be controlled by the relative degree of vertical power held by a particular level of Government. Thus, a lower level of Government will be unable to create a complex horizontal differentiation of its sectors, in contrast to a large and higher level of Government[132].

A central issue in the vertical distribution of management authority is the degree of centralization in decision-making – a fundamental management approach not restricted to the coast. One compromise usually struck is to attempt to delegate decision-making powers to the lowest level of decision making consistent with the scope of the problem,

[130] The lack of research capability in marine sciences; inadequate attention and low priority given to environmental concern in the extended areas of jurisdiction; difficulties in training people and retaining people skilled in ocean management; inadequate infrastructures; law enforcement and lack of coordination between Government institutions.
[131] Vallejo, 1988c, quoted by Vallejo, Stella Maris, *New structures for decision-making in integrated ocean*, in Peter Bautista Payoyo (ed.), (1994: 74), *Ocean Governance, Sustainable Development of the Seas*, United Nations University Press, Tokyo/New York/Paris.
[132] Kay & Jacqueline Alder (1999: 88).

but to constrain those decisions within a framework articulated by the next highest level. Centralism and localism each have advantages, as outlined in Table 2.

Table 2: Advantages and disadvantages of centralism and localism in coastal management

Advantages of centralism	Advantages of localism
Increased general perspective	Intimate knowledge of the problem
More objectivity	More localized outlook
More expert available	Greater likelihood of living with the effects of the decision, creating an incentive to be successful
Increased funds	
Greater political will	

Source: Adapted from Ketchum, 1972, Kay & Jacquile; Alder, 1999: 89.

It has been noted that the most salient problem in policy formulation, planning and implementation is the absence of any overall policy framework. Policy-making takes place at the sectoral level, is primarily reactive and is, therefore, formulated on a piecemeal basis without inter-agency consultation. As result, marine-related policies have conflicting (or at best unrelated) objectives, resulting in environment damage or simply ineffective implementation[133]. Consequently, decision-making procedures are highly fragmented, suffer from internal duplication and overlap, and reflect competition between agencies[134].

The vast majority of ocean planning and management programs in operation today attempt to link the efforts of Government with both the private sector and the local community. Community-based councils, commissions or round tables, including what is now generally called "stake-holders", i.e. all those whose livelihood depends on the management of ocean and coastal spaces and resources: municipal government as well as "civil society", scientific community, fisheries associations, shipping companies, offshore oil companies, coastal developers, tourism organizations, coastal engineers, port and harbour masters, non governments organizations, among others. Civil society and the private sector particularly influence the planning and management of ocean and coastal

[133] Vallejo, 1991b, quoted by Vallejo, Stella Maris, *New structures for decision-making in integrated ocean,* in Peter Bautista Payoyo (ed.), (1994: 74), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.
[134] Vallejo, Stella Maris, *New structures for decision-making in integrated ocean,* in Peter Bautista Payoyo (ed.), (1994: 74), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.

ecosystems and resources. Ideally, coastal and ocean management process must be based on "co-management"[135] between Government, local community and users groups.

Many international treaties and regional agreements have addressed the subject of ocean management in the last decades. Mozambique is a party to the LOSC and the UNCED, which are the main international frameworks guiding nations in governing the ocean. In modern LOS developments oceans issues are viewed as a whole and an integrated approach to ocean management must be established. At an institutional level, normal institutional arrangements are addressed. Traditional administrations, established usually on a strictly sectoral basis (for example: fisheries, the merchant navy) are confronted with difficulties in coping with new problems resulting from the multiple use of the oceans and their interactions. To deal with these difficulties, two trends can be identified: one is towards the establishment of sectoral administration dealing with ocean affairs as a whole; the establishment of Ministries of the Sea (as in France), falls in this category. The other trend is based on the use of the existing sectoral administrations operating under the body having the power to formulate a national policy in ocean affairs and to co-ordinate its implementation. This is the case, for example, of the Department for Ocean Development established in India[136].

Mozambique already has an institutional structure in place that can, with appropriate support, perform many or most of the functions in ocean policy formulation and implementation. Consequently, what is needed is the strengthening of decision-making,

[135] The concept of co-management is synonymous with the terms "cooperative management", "joint management", and "collaborative management". These terms are used to define:

- An institutional arrangement in which responsibility for resource management, conservation and/or economic development is shared between government and users;
- Management systems in which users and other interests take an active part in designing, implementing, and enforcing management regulations;
- A sharing of decision-making between government agencies and community based stokeholds;
- Management decisions (policy) based on shared information, on consultation with stokeholds, and on their participation;
- The integration of local level and State-level systems, and/or
- Institutional arrangements in which governments and other parties, such as aboriginal entities, local community groups, or industry sectors enter into formal agreements specifying their perspective rights, powers, and obligations with reference to, for example, environment conservation and resource development. National Round Table on the Environment and the Economy, *Sustainable Strategies for Oceans: A Co-management Guide*, 1998, Ottawa; Borgese (1998: 138).

[136] Ruivo, Mário, (1985, 251-256), *Institutional Arrangements for the New Ocean Regime*, in Richardson, Jacques G. (ed.) (1985: 254), *Managing the Ocean*, Lomond Publications, INC, Maryland.

coordination and communication process rather that creating new institutions. Secondly, strengthening the infrastructure for ocean development involves not only operational and structural adjustments, but the provision of necessary means: capital, technology, human resources, and managerial capabilities, so the institutional structure is capable of implementing effectively its mandate.

1.1. Coastal Management

Internationally, coastal management programs generally have developed in response to problems experienced in the use and allocation of coastal recourses[137]. It comes in force with the implementation of the USA Coastal Zone Management Act of 1972. The 1972 U.S. Act recognized that a sectoral management approach, focusing on individual resources such as fisheries, or activities such as transport, was not working. The purpose of such legislation was to address crucial coastal issues with a view to optimize the economic development of coastal areas[138]. This was to become a major preoccupation of post-modern legislation stimulating the design of management models that could be applied to the ocean on any scale from global to local[139]. This U.S. Act provided its coastal States with incentives to prepare and implement integrated plans focused on selected issues of national and local significance. Since then, the concept of coastal management has been refined and it has been applied to many different situations in States around the world.

One of the main aspects of coastal management is the definition of what we consider the boundary of the coastal area or zone. The definition of the coastal boundary is a challenge faced by all Sates developing and implementing coastal management programs. There is no accepted definition of the coastal zone, particularly in terms of how far inland the coastal zone reaches. Some scholars[140] argue that the coastal zone (or area) may include a narrowly defined area about the land-sea interface on the order of a few hundred meters to a few kilometers, or extend from the inland reaches of coastal

[137] Kay & Jacqueline Alder (1999: 16).
[138] Peet, 1992; Vallega (2001: 14).
[139] Vallega, *ibid.*
[140] Hildebrand & Norrera, quoted by Kay & Jacqueline Alder (1999: 4).

watersheds to the limits of national jurisdiction in the offshore. Its definition will depend on the particular set of issues and geographic factors which are relevant to each stretch of coast.

According to other authors, coastal area management involves the continuous management of the use of coastal lands and waters and their resources within some designated area, the boundaries of which are usually politically determined by legislation or by executive order[141].

The United Nations Department of International Economic and Social Affairs consider that four criteria are generally used for defining the coastal area: physical criteria; administrative boundaries; arbitrary distances; and selected environmental units[142].

In some States, the coastal area has been defined by a combination of these criteria considering that each criteria implies advantages and disadvantages and these must be weighed in the context of the particular State. In Mozambique, there is no precise definition of costal zone boundaries. However, a large extent of the definition of the coastal zone or area should be according to its purpose, taking in consideration the "interaction between land and sea".

In Mozambique, there is no specific law establishing coastal management boundaries. However, the Mozambique coast is made up of the land that is affected by being near to the sea and the sea that is affected by being near to the land; in these areas there are direct interactions between land and sea.

The Mozambique coast is a compound shoreline and can be divided into three main natural regions with one additional type of limited occurrence: Coral coast; Swamp Coast; Parabolic Dune Coast; and Delta Coast[143]. The coastal zone of Mozambique

[141] Janes & Westma (1993), *ibid.*

[142] United Nations Department of International Economic and Social Affairs, Ocean Economics and Technology Branch (1982: 10).

[143] I) Coral Coast – the northernmost section coast extending about 770 km from the Rovuma River in the North to the Primeiro/Segundo Archipelago in the South (17º 20') is essentially a coral reef coast. Corals also occur at intervals offshore from Bazaruto Island southward to south Africa. The Southern limit for shallow water fringing coral is reported from Inhaca Island at latitude 26º S; II) Swamp Coast- the central section of Mozambique of c. 978 km between Angoche (16º 14' S) and Bazaruto Island (21º 10' S), is classified as a swamp coast with simple linear to accurate beaches, swamps and estuaries. Twenty four rivers discharge into the Indian Ocean along this central section of the coast, each with an estuary supporting well established mangrove swamps; III) Parabolic dune coast – The third coastal region

embraces 10 of 11 existing provinces, namely: Maputo province, Maputo city, Cabo Delgado, Niassa, Nampula, Zambézia, Sofala, Gaza, and Inhambane. Forty of 128 districts and 10 of 23 cities in Mozambique are located in the coastal zone, which means that more than 70% of the Mozambique's population live in the coastal zone[144]. Population growth puts pressure on the coastal zone in the form of growing demand for land for housing and infrastructure, and dependence on living resources for food. Such pressure is mostly associated with the development of the urban centers along the coast, which creates various environmental pressures on the landscape through habitat transformation.

The coastal zone of Mozambique has great significance to the State, containing important resources that provide economic, recreational, aesthetic and conservation benefits. It is also a finite resource that requires careful planning and management to ensure that its value is sustained for the future. The value of the coast can be defined by three key elements:

- Economic Value - where a range of commercial, recreational and subsistence activities take place;
- Biophysical Value - where land, sea and air meet and inter-connect, and where reefs beaches, dunes, rocks headlands and wetlands support a rich collection of distinctly coastal plants and animals; and
- Social Value - a place for leisure, a place of spiritual value, a means of communication.

The coast can also be looked at in terms of the range of benefits it provides for human users and for potential uses of subsequent generations. In fact, coastal ecosystems (including the flows of energy, materials, nutrients and water that sustain coastal

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stretches from Bazaruto Island Southward to Ponta D'ouro on the South African Border is classified as a parabolic dune coast. This section of the coast is about 850 km long and is characterized by high parabolic dunes and north-trending capes and barrier lakes. These dunes are Pleistocene formations and reach considerable heights such as 114 meters at Inhaca Island and are considered to be the tallest vegetated dunes in the world; IV) Delta Coasts- there are only two sections of the Mozambique coast that can be classified as Delta i.e. the Zambezi and Save River deltas. For more details see: First Report on the Conservation of Biological Diversity in Mozambique of Ministry for Coordination of Environment Affairs (1997: 8).

[144] See: MICOA (1997: 45), *Strategy and Areas for Action for the Conservation of Biological Diversity in Mozambique (second draft),* Maputo.

ecosystems) generate a range of goods and services that provide direct and indirect benefits to human users in the coastal zone. Natural marine and coastal ecosystems represent tangible economic goods and provide valuable services, such as the treatment and assimilation of wastes, storm protection, production of food and raw materials, recreational amenities, genetic resources, and employment opportunities.

It is thus important to recognize that human activities have an impact on the coastal system (biophysical, social and economic) and does not exist in isolation from the coastal system, there are interactions between them. These facts reveal that management and coordination on an integrated basis is needed to maintain the balance between the range of coastal elements.

One of the main issues facing the coastal zone is erosion, which is a consequence of increased demand for a coastal service which has negative impacts on the ecosystem by reducing its ability to sustain the flow of services. For example, coastal dunes play a vital role in protecting the coastline against wind and waves. But we can see in highly attractive places, such as Ponta Douro, Ponta Malongane (District of Matutuine, Maputo Province), tourists companies aim to get as close as possible to the beach, often destroying dune vegetation to obtain a sea-view or to build tourism infrastructure. These actions ignore the coastal protection service provided by dune ecosystems. Inappropriately located structures are exposed to erosion and high risk from coastal processes such as storms. This kind of problem can not be solved in complete isolation by the Ministry of Tourism or the Ministry for Coordination of Environmental Affairs, rather, coordination between the relevant sectors is needed to include considerations for tourism, the environment, settlement and local community needs.

The Government recognizes that integrated management approaches greatly improve the conservation, sustainable use and management of natural resources. The Government has charged the Ministry for Coordination of Environmental Affairs to draw-up an integrated coastal management plan for Mozambique through the national coastal zone management programme. Currently, integrated coastal zone management is being undertaken by a multi-sectoral group co-ordinated by MICOA, however there is currently no legislation to enable Integrated Coastal Zone Management (ICZM).

Land use planning is considered the first step for integrated coastal management. Three considerations should be taken into consideration while elaborating such plans, namely: the geographical scope; the current situation of coastal natural resources and their potential use, including by the local communities; and the institutional and legislative frameworks for coastal management[145]. It is recalled that the legislative action needed (i.e. Integrated Coastal Zone Management Act) may be quite comprehensive, and must be formulated by the Council of Ministers, this to enable the establishment of the national goals for coastal management and the mechanisms of coordination across-sectors, because single Ministries are not capable of working beyond the limits of their specialization and competence.

The Government has recently established the Center for Coastal Zone Management in the Gaza province (based in the capital Xai-Xai). This institution is carrying out the tasks of the Unit for Coastal Zone Management of the Ministry of Coordination and Environmental Affairs. The Center's tasks includes the establishment of a system of approval of coastal zone development projects, for which environmental impact assessments is a key tool; supervision of the process of land use planning of the coastal districts and other coastal areas; and the establishment and supervision of the environment legislation enforcement system, based on training, operational capacity and use of the enforcement agents of the institutions involved, as well as local communities and human resources[146]. The establishment of this Center constitutes an opportunity to implement and lead the coordination of integrated coastal zone management programs and interaction with the local community, but it must be guided by an integrated coastal management program to effectively implement its mandate.

1.2. Fisheries Management

In Mozambique, fishing is one of the most important economic activities not only for generating employment in the local labor force but also as a source of subsistence for the

[145] *Strategy and Areas for Action for the Conservation of Biological Diversity in Mozambique (second draft),* MICOA (1997: 58).
[146] See: Hoguane, António Mubango, *Marine Sciences and Oceanography in Mozambique*, www.aaas.org/international/africa/moz/hoguane.html (Accessed 20 October 2006).

population as well as a foreign currency source for the State. The main exploited marine living resources include: crustaceans (mainly prawns, shrimp, lobsters and crabs); pelagic and demersal fish; and shellfish and marine algae/seaweed (presently cultivated in Cabo Delgado province)[147]. Because of the importance of these resources for the State, institutions have been created and many programs have been established, to look manage the marine living resources of the State.

The Ministry of Fisheries is mandated to address fishery issues, and it has established four autonomous administrative institutions, created for implementation of specific duties: National Fisheries Research Institute, Institute for Development of Small Scale Fishery and Technical School Fisheries.

The fisheries management system in Mozambique consists of the Fisheries Administration Commission which is responsible for issues concerning fisheries management and administration, including the marine environmental preservation[148]. At the provincial and district levels there are co-management committees, with the same duties as the committee, but at the local level.

The fisheries legislation framework in Mozambique is composed of Acts and regulations/rules issued by the Council of Ministers, or by the ministerial decrees for certain specific issues. The main law established to govern the fishing activities is Act 3/90, the Fisheries Act [149].

This Act is the main legal instrument for the management of all fishery activity in Mozambique. It deals with the process of management of the fisheries by establishing the planning of fisheries activities, implementation of the licensing mechanism, adoption of measures for resource conservation, quality control for the export of fish products, monitoring and surveillance of fisheries activities. This law is implemented by specific decrees and ministerial decisions[150].

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[147] Lopes S. and H. Gervasio, *Co-management of artesenal fisheries in Mozambique: a case study of kwirikwidge Fishing Community in Angoche District, Nampula Province*.

[148] See: Ministerial Diploma No. 47/2002 10 March 2002, Published in Official Journal No. 15, 1st Serial. This Ministerial Decree, composed of 3 articles and one Annex, approves the Statute of the Fishery Management Commission, with the special function of supporting the Ministry for Fisheries in matters related to conservation and management of fishing resources. The annexed regulation rules on the Commission's competences, composition, agenda of meetings, and functions.

[149] Published in Official Journal No. 39, 1st Serial, 2° Supplement.

[150] Some of the relevant decrees and ministerial decisions which implement the Fisheries Act include: Decree No. 16/96 approving the regulation of marine fishing; Decree No. 37/90 enforcing the Fisheries

This framework established for the management of fisheries is full of *lacunas* in terms of compliance with the LOS. There are some uncertainties in the jurisdiction over the EEZ. Although the new provisions of LOSC established the EEZ and High Seas regimes, are not these strictly reflected in the Fisheries Act. The first regime is on the territorial waters, which is under the regime of coastal State. The second regime is on the EEZ, where the State might observe the provisions under Part V of LOSC, specially the conservation of the living resources (Article 61) and the utilization of the living resources (Article 62). The third regime is the HS.

LOSC does not provide States with guidance as to what basis exploitation of the TS or internal waters is to take place, leaving coastal States absolute and unfettered control over the management scheme they might wish to implement. Article 2 of LOSC provides that a coastal State has sovereignty over its TS, beyond its land territory and internal waters[151]. Thus, a coastal State is to determine for itself what management principles it might wish to apply within its TS and internal waters, as an exercise of its sovereignty. Beyond a general obligation to "protect and preserve the marine environment"[152], there is no attempt to circumscribe the right of the State to determine its own management, policies and procedures.

For the EEZ, Part V of LOSC permits States to assert their jurisdiction over economic activities in the waters and seabed within 200 nm of their coasts. However, together with the granting of jurisdictional competence there are also duties with respect to conservation and utilization which do circumscribe State action to some extent[153]. Thus, a coastal State's rights for the purpose of exploring and exploiting the natural

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Act; Ministerial decision of 29 February 1992 implementing Act No. 3/90 approving the Fisheries Act; Ministerial Decision No. 118/91 establishing a closed season and total allowable catch for shrimp fishing; Ministerial decision of 29 February 1992 on the application of sanctions established by Act No. 3/90 approving the Fisheries Act; Decision of 13 November 1991 establishing fishing vessel marking requirements; Decision of 18 February 1999 prohibiting catching, collecting and trading of ornamental fish and coral; Decision of 20 June 1990 providing for an industrial trawl fishing restriction beyond 3 nm from the coastline; Decision of 16 July 1991 provisionally empowering the Ministry of Agriculture to issue licenses for artisanal inland fishing; Ministerial decision No. 138/92 establishing minimum mesh size for trawl fishing for shrimps; Decree No. 35/2001, General aquaculture regulation.

[151] P. W. Birnie & A. E. Boyle, *International Law and Environment*, (Oxford: Claredon Press, 1994), p.30, Kaye (2001: 90).

[152] Article 192, LOSC.

[153] Kaye (2001: 92).

resources of the EEZ are recognized, but only in conjunction with rights for the purpose of conserving and managing those resources[154].

The main provisions with respect to conservation and management of living resources within EEZ in LOSC are Articles 61 and 62. Article 61(1) provides that it is for a coastal State to determine the allowable catch for the living resources in its EEZ. It is significant that this is the first duty for the State: it is clear that there is no attempt to dilute national control, or to provide a compulsory role for any international body[155]. Article 61(3) of LOSC further specifies what is encompassed by the objectives of the conservation measures that can be imposed by a coastal State in the calculation of its allowable catch. Populations of living resources are to be maintained at, or restored to the maximum yield, as qualified by relevant environmental and economic factors including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended minimum standards, whether sub-regional, regional or global.

With the best scientific evidence available, the coastal State can implement "proper conservation management measures"[156] to ensure living resources are not endangered by over-exploitation[157]. Article 62 of LOSC implies the notion that unused capacity in coastal State fisheries would be made available to other States "where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements (…), give other States access to the surplus of allowable catch".

These relevant provisions contained in LOSC do not appear in the Fisheries Act. The Fisheries Act does not differentiate the duties and rights of the State in maritime spaces, nor does it differentiate fishing in the TS, the EEZ and the HS areas. Also, it does not

[154] Pinto, Cristopher w. , *The United Nations Convention on the Law of the Sea: Sustainable Development and institutional implications,* in Peter Bautista Payoyo, (1994: 8), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.
[155] It should be noted that the strength of the coastal State provision was supported by developed States early in UNCLOS III once they realized that the adoption of the EEZ concept was inevitable. See: S. Oda, "Fisheries under the United Nations Convention and the Law of the Sea" (1983) 77 *American Journal of International Law* pp. 739-743; See also: Yturriaga, p.117, Kaye (2001: 99).
[156] Article 61(2), LOSC.
[157] In Mozambique there is little information on fish catch and the status of stocks in the EEZ due to the jurisdiction uncertainty and the lack of capacity for scientific research.

define the relevant area for fisheries activities (where the fishing or management begins and ends). However, the definition of the relevant area of fishing activities is dependent on delimitation of maritime boundaries which will clarify the areas of national jurisdiction.

Moreover, the Fisheries Act is not in conformity with the main law governing the ocean in Mozambique (Law 4/96). The Act doesn't recognize the Act 4/96 (the Act of Sea), for example: in ns. 1.1, and 1.3 of Article 1 the Fisheries Act establishes that the maritime waters and jurisdictional waters where the administration and management will take place are "(…) Territorial Sea and Exclusive Economic Zone as defined in the Act Decree No. 31/76, of 19 of August, and the inland waters beyond the baselines subject of influence of the tides". First of all, the Act Decree referred to by the Fisheries Act is not in force, the Act which establishes the maritime spaces and maritime waters of Mozambique is the Act of Sea. Second, the Fisheries Act provides for a definition of maritime waters which is not common in Sate practice and draws on some expressions which are make reference to unclear, such as *"(…) subject of influence of the tides"* [158]. The Fisheries Act does not make reference to the Act of Sea, as the Fisheries Act was adopted before the Act of Sea, but the gap is still there.

The problems affecting the fisheries management framework of fishing in Mozambique, which have been highlighted, have severely affected the management effectiveness of the State: without a proper framework it is very difficult to realize proper management of fisheries and establish the needed coordination with other sectors.

1.3. Marine Environment Management

The sea of Mozambique is vulnerable to pollution due to various factors: about 2700 km of coastline; the ports are used by oil tankers; increasing movement of oil tankers in the Mozambique Channel; fisheries activities; tourist activities; industrial taking place, and other factors.

[158] Article 1 (1) (1.1) of Fisheries Act.

The situation with respect to marine pollution is aggravated by the lack of management capacity of marine issues and real knowledge of maritime spaces within the State. The classic example which is the spilling of oil by Greece Vessel in 1992, the "KATINA P Case". The Katina P spilt approximately 500 tones of Heavy Fuel Oil (HFO) in Maputo Bay following hull failure. Although equipment was flown in from abroad, the majority of the clean-up work was undertaken using local manpower on the shorelines. The vessel eventually broke-up and sunk in the Mozambique Channel loosing the remainder of its cargo.

The KATINA P incident had many negative consequences for the Maputo Bay and resulted in material, economic and social damages. Mozambique was deprived, without legal and material means, not party to any international mechanisms for of response and compensation, without the necessary knowledge to prevent its impacts, and without preparation to minimize the economic, social and ecological damages.

After KATINA P, a lesson was learned and the Government began to address maritime issues, not only for maritime pollution, but for all elements of maritime environment. Today, the Government recognizes that careful environmental management is critical to current and future national welfare and to sustained economic growth. However, stocks of specialized response and prevention equipment are extremely limited and reliance would be placed resources in the event of serious incident.

In Mozambique the institution which deals with general environment management is the Ministry of Environmental Affairs and Coordination. MICOA has been tasked to promote and co-ordinate the implementation of environmental policies, and for this purpose the ministry has draw up the National Environmental Management Programme (NEMP). Based on the NEMP the Act of Environment was adopted.

The general legislative framework adopted for the environment is the Act No. 20/97 approving the Environment Act of 1 October 1997. This Act establishes protective requirements to be satisfied in order to exploit the environment and impact assessment conditions in order to avoid environmental disasters. It consists of 8 chapters and 34 Articles defining natural elements, as well as authorized relevant activities exploitation. It

also recognizes the responsibility of the Government to promote and implement the NEMP[159].

By establishing the Environment Act, and drawing up the NEMP, the Government of Mozambique clearly demonstrated that is fully committed to pursuing sustainable development and promoting the conservation of biological diversity.

This environmental framework is largely seen as one of the best achievements of the State's objectives in environmental protection and in terms of compliance with the general norms of environmental protection. The Environment Act provides an over-arching framework and key principles for the protection the environment and is implemented by many decrees[160] and supported by sectoral laws (land law, wildlife, fisheries, mining, energy, etc). However, the Environment Act is a "general law", it does not deal with the marine environment specifically. Most of the key aspects of the marine environment remain undefined and are not strictly reflected in the Act. There is one decree which touch the marine environment aspects the Decree "establishing various measures of protection of beaches, waters shores of ultramarine" (1973). This decree was established before the independence of Mozambique by the colonial Government, and consequently does not reflect the current reality of Mozambique or that of LOSC.

Under Part XII of LOSC, the marine environment is one of the key aspects of the modern LOS. States have the obligation to protect and preserve the marine environment[161]. Further, States shall take, individually or jointly as appropriate, all measures consistent with LOSC that are necessary to "prevent, reduce and control

[159] In order to ensure the effective coordination and integration of policies and activities related to environmental management, a NCSD was created by the Act. The NCSD is a consultative body directly linked to the Council of Ministers.

[160] Relevant decrees implementing the Environmental Act include: Decree No. 45/2004 of 29 September 2004, approving the regulation on the Environment Impact Assessment, revoking the Decree No. 76/98 of 29 December 1998, published in Republic Gazette No. 39, I Serial, Supplement; Decree No. 18/2004, of 2 June, approving the regulation of standards of environmental quality and emission of affluent, published in Republic Gazette No. 22, I Serial, Supplement; Decree No. 32/2003 of 20 August 2003, approving the regulation relative to the environmental audits, published in Republic Gazette No. 34, I Serial, Supplement; Decree 8/2003 of 18 February 2003 on the regulation of Bio-Medical Waste Management, published in Republic Gazette No. 7, I Serial, 2nd Supplement; Decree 39/2003 of 26 November 2003, approving the regulation on the licensing of industry activities, published in Republic Gazette No. 48, I Serial; Decree No. 26/2004 of 20 August 2004, approving environmental regulation for mining activity, published in Republic Gazette No.33, I Serial, 2nd Supplement; Decree No. 495/73 of 6 October 1973, Determining various measurements for water, beaches, margins, protection against pollution, published in Official Republic Gazette No. 123, I Serial, Supplement.

[161] Article 192 of LOSC.

pollution of the marine environment" from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection (Article 194).

LOSC envisions that the protection and preservation of the marine environment be regulated not only by international law, LOSC itself, and other international rules are not contrary to its principles but by national legislation as well. The right of States to adopt laws and regulations has been provided for in relation to all sources of pollution, but the relation of national to international law is determined in different ways:

1. In the case of land-based pollution[162] and pollution through the atmosphere[163], national laws and regulations should be adopted, taking into account internationally agreed rules, standards and recommended practices and procedures, which means that national legislation should not differ substantially from international law;

2. In relation to pollution from seabed activities subject to national jurisdiction, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction, such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedure[164], and in the Area, States only shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority[165]. The same formula has been employed in relation to dumping, where national laws and regulations shall be no less effective "than the global rules and standards"[166];

3. Regarding pollution from vessels, both the flag State and the coastal State are entrusted with the adoption of national legislation. Regarding vessels flying their flag, States shall adopt laws and regulations which shall at least have the same effect as generally accepted international rules and standards[167].

[162] Article 207(1) of LOSC.
[163] Article 212(1) of LOSC.
[164] Article 208 (1) (3) of LOSC.
[165] Article 209 (2) of LOSC.
[166] Article 210(6) of LOSC.
[167] Article 211(2) of LOSC.

With respect to the right of the coastal State to enact laws for the protection of waters of ports or internal waters, international law does not impose any restrictions. In relation to its TS, the coastal State is limited by its obligation not to hamper the innocent passage of foreign vessels[168]. The general rules for EEZ permits the coastal State to adopt rules and regulations "conforming and giving effect to generally accepted international rules standards"[169].

Moreover, States are responsible and liable for the protection and the preservation of the marine environment, and shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in regard to damage caused by the pollution of the marine environment by natural or jurisdictional persons under their jurisdiction[170].

2. Exploring Integrated Management

Integrated ocean management is not easy concept to explain as many scholars have expressed. Some experts define it as a decision-making process that relies on diverse types of information to determine how ocean and coastal resources or areas are best used and protected.

While others propose that integrated *Ocean* management includes both environmental protection and economic development. This wide spectrum approach, addressing coastal, terrestrial and marine uses, has been increasingly adopted within programs, whilst more limited approaches were largely abandoned. Meanwhile, the geographical coverage of management programs was extended seawards in a desire to tailor them to the extent of the national jurisdictional zone.

In Mozambique, from the legal point of view, there is no independent Ministry with the authority to formulate integrated ocean policy. Nor is there any unified code of laws in force regulating a national ocean policy. The legal framework is scattered throughout the Fisheries Act, the Environment Act, the Act of Sea, among others. There are only sectoral policies concerned with specific issues, i.e. fishing, tourism, environmental

[168] Article 211(4) of LOSC.
[169] Article 211(5) of LOSC.
[170] Article 235(1)(2) of LOSC.

protection. However, it is also apparent that there exists a coordination system established by practice which does in fact perform this integrating function. Current procedures for enforcing development control and costal management are not working effectively, and it is questionable whether legal and administrative controls are ever able to change inappropriate activities and behavior.

Furthermore, MICOA has stated that: "the Government has tasked several ministries to draw up and implement integrated management plans, including the integrated coastal zone management plan (…)"[171]. However this has not yielded an integrated approach at the national level: there continues to be various initiatives, planning exercises and policy processes taking place at all levels, and these are not well coordinated and integrated. The management process remains confined to sectoral areas.

It will be necessary to make changes in order to integrate ocean resources management in Mozambique, as is the experience of many others States, both developed and developing[172]. Integrated ocean policy requires the highest level of political direction and oversight in order to ensure its success[173].

To achieve comprehensive *Ocean* management, the State should first of all delimit its maritime boundaries in which to base management policy. Consequently all policies and legislation shall be accordingly for each jurisdictional area, and established in conformity with LOSC and relevant rules of international law.

With the appropriated administrative arrangements in place, there is a need to devise an institutional building strategy by which the following objectives are pursued:

- Ocean Affairs are elevated within the public policy agenda so marine-related policies may be discussed with a view to formulate an integrated national ocean policy;

[171] See: *Strategy and Areas for Action for the Conservation of Biological Diversity in Mozambique (second draft)*, MICOA (1997: 58).
[172] UN/DOALOS has conducted a number of studies and is keeping track of changes in the structuring of integrated coastal and ocean policy in all parts of the world. In a paper prepared for *Pacem in Maribus* (Lisbon, 1991) Stella Vallejo presents four case studies: the Netherlands, Brazil, Hawaii and Oregon (USA), for more details see: Borgese, Elisabeth Mann (1995), *Ocean Governance and the United Nations*, Revised Edition, Centre for Foreign Policy Studies, Dalhousie University, Halifax, N.S., pp. 155-160.
[173] Vallejo, Stella Maris, *New structures for decision-making in integrated ocean,* in Peter Bautista Payoyo (ed.), (1994: 89), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.

- Policy objectives and national priorities set forth in the national ocean policy are effectively integrated within national development planning; and
- All levels of Government, as well as all relevant parties, whether in the private or public arena, are involved in the formulation and execution of an integrated ocean development or EEZ plan[174].

Integrated ocean management must be seen as a long-term approach, beginning with institutional coordination both horizontally (across sectors) and vertically (local, political and national). This can be achieved at a relatively low cost and with minimal institutional structuring and "can be considered truly integrated only where integrity of the ecosystem, efficiency of the economy, and social equity are pursued contextually using coordinated approaches"[175].

Integrated coastal management is a process that requires creative partnerships between the Government, civil society and the private sector. To manage coastal ecosystems and resources for the benefit of current and future generations, such partnerships will need to be based on the integration of a range of considerations including policy, management, education and applied research.

3. Exploring the (Sub) Regional, International and/or Global Approach

Mozambique is party to the world's most significant treaties and Conventions on marine resources and environmental protection, navigation and safety at sea, and other aspects relevant to marine development. Thus, the national integrated approach must reflect on both regional and global levels, and adequate linkages between them must be established. It is important to appreciate the role of international organs in order to simultaneously analyze the comparative advantages.

[174] Vallejo, Stella Maris, *New structures for decision-making in integrated ocean,* in Peter Bautista Payoyo (ed.), (1994: 89), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.
[175] Vallega (2001: 127).

3.1. (Sub) Regional Context/Approach

In the Preamble of LOSC, it is acknowledged that "the problems of the ocean space are closely interrelated and need to be considered as a whole"[176]. Thus, problems in the ocean often cannot be solved by one State alone, since many States may be contributing to them. A case in point is the East Africa Region (Indian Ocean region)[177]. Most of the mainland States have been independent for more than thirty years, yet, none of these States has implemented a comprehensive ocean policy. Like other developing States, they face many ocean management problems. Increasing demand for food is resulting in a greater exploitation of fisheries resources, and in some cases leading to over-fishing. These States face significant ocean challenges, particularly related to the establishment and management of EEZs. The States' ocean and coastal zones are vulnerable to illegal and unreported fishing, and also to many sources of pollution, both land-and ocean-based.

Most of these States are poor and lack expertise, resources and infrastructure to institute effective ocean management and development programs. As a result, many have joined together in regional groups and institutions to address cooperatively the implementation of LOSC and other marine issues.

One of the cooperative initiatives undertaken in the Indian Ocean is the "Indian Ocean Marine Affairs Cooperation (IOMAC)"[178]. According to Hiran W. Jayewardene

[176] LOSC Preamble; See also: Ettiger *et al*, *Ocean Governance and the Global Picture*, in Payoyo, Peter Baptista (ed.) (1994: 247), *Ocean Governance: Sustainable Development of the Seas*, United Nations University Press, Tokyo/New York/Paris.

[177] The region includes the following States: Comoros, Kenya, Madagascar Mauritius, Mozambique, Reunion, Seychelles, Somalia, Tanzania and South Africa.

[178] The first conference was held in July 1985, starting with a consultive phase 15-20 July 1985 and concluded with a meeting of experts and officials followed by the ministerial level meeting 26-28 January 1987. Both phases of the conference were held in Colombo, Sri Lanka. The first meeting of the IOMAC Standing Committee was held in Colombo on 28 January 1987 upon conclusion of the conference, and has subsequently held seven other meetings, the last having held in July 1991. With the exception of the sixth meeting of the committee, held in Arusha, Tanzania in conjunction with the second conference (IOMAC II) all meetings of the Committee have been held in Colombo at the seat of the Secretariat. The second conference took place in Arusha, Tanzania (3-7 Setember 1990) Jayewardene, Hiran W., The Indian Ocean Marine Affairs Cooperation (IOMAC), in Payoyo, Peter Baptista (ed.) (1994: 225), *Ocean Governance: Sustainable Development of the Seas*, United Nations University Press, Tokyo/New York/Paris.

IOMAC[179] is the perhaps the only regional initiative of regional cooperation originated in the LOSC process[180].

As an exercise in the development of international organizations, IOMAC is characterized by a functional approach which preceded the process of formalization culminating in the adoption of the Arusha Agreement on the Organization for Indian Ocean Marine Affairs Cooperation of 1990[181]. This approach helped Governments and organizations participate, experience, and understand the nature and scope of such a framework for cooperation. This process of program development and institutional consolidation was principally supported by the United Nations Development Program (UNDP).

In July 1998, Mozambique hosted the pan-African conference on sustainable integrated coastal management. The conference was held in Maputo and is part of the ongoing region-wide effort to promote better coastal management. A consistent and key recommendation which emerged from these meetings and workshops is the need for each State to develop a national policy for integrated coastal management. Currently, several African States - Mozambique, Tanzania and South Africa - are undertaking national coastal policy initiatives. One such initiative is the establishment of the Center of Coastal Management in Xai-Xai city, province of Gaza.

In relation to marine environmental concerns there are ongoing efforts of cooperation undertaken by the East Africa region States (where Mozambique is a State Party), under United Nations Environment Program (UNEP) Regional Seas Programme. In 1982, the East African region States (also referred to as the western Indian Ocean-WIO), adopted

[179] The following States from the Indian Ocean region have participated in IOMAC II: Arab Republic, Australia, Bangladesh, Bhutan, Burundi, Comoros Islands, Djibouti, Egypt, Ethiopia, India, Indonesia, Iran, Iraq, Kenya, Kuwait, Madagascar, Malawi, Malaysia, Maldives, Mauritius, Mozambique, Myanmar, Nepal, Oman, Pakistan, Seychelles, Singapore, Somalia, Sri Lanka, Sudan, Thailand, Tanzania, Uganda, Yemen, People's Democratic Republic of Yemen, Zambia, and Zimbabwe.

[180] Jayewardene, Hiran W., The Indian Ocean Marine Affairs Cooperation (IOMAC), in Payoyo, Peter Baptista (ed.)(1994: 225), *Ocean Governance: Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.

[181] The Arusha Agreement has been signed by Indonesia, Iran, Kenya, Mauritius, Mozambique, Nepal, Pakistan, Sri Lanka, and Tanzania and ratified by Indonesia, Mauritius, Mozambique, Pakistan, and Sri Lanka. Thus some ratifications are needed in order to enter into force. However, the IOMAC Technical Cooperation Group has begun to be activated following the Arusha resolution, and a number of IOMAC activities, including the IOMAC-IOC Training programme are being implemented. For details see: Jayewardene, Hiran W., The Indian Ocean Marine Affairs Cooperation (IOMAC), in Payoyo, Peter Baptista (ed.) (1994: 227), *Ocean Governance: Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.

the Eastern Africa Action Plan, which entered into force in 1996, followed by the Convention for the Protection, Management and Development of the Marine and Coastal Environmental of the East Africa region adopted in 1985 and entered into force in 1996[182]. This convention has its associated protocols: Protocol Concerning Protected Areas and wild Fauna and Flora in Eastern African Region, adopted in 1985, entered into force in 1996, and Protocol Concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region, adopted in 1985, entered into force in 1996.

The main merit of regional treaties and cooperation is that they reflect the geographic scale where the main marine problems occur in terms of resources and marine ecosystems. The regional approach offer specific actions and facilitate information exchange on marine issues, and strategies and options for response.

LOSC is in force, and the region's States must decide how to adjust their national initiatives to be compatible with emerging international legal and technical obligations. Warming relations between the States of the region and the coming into force of LOSC provide an excellent opportunity to build a comprehensive ocean management approach for the region.

3.1.1. Peace and Maritime Security

Marine security and peace maintenance are additional areas in which Mozambique has clear responsibility and authority, they are areas where important interests and concerns have often gone unrecognized. On the other hand, marine security has not always been understood or supported by the State.

Nowadays, peace and security are not only viewed in terms of military conflicts. Terrorism acts and criminal activities such as piracy and armed robbery at sea, people

[182] The Convention for protection, Management and Development of the Marine and Coastal Environment of the Eastern Africa Region (Nairobi Convention) and its two protocols were signed in 1985 and have been in force since 30 May 1996. South Africa, which was not a signatory in 1985, acceded to the Nairobi Convention and associated Protocols on 16 May 2003. Thus, the Nairobi Convention has now achieved 100 percent ratification. The Nairobi Convention covers five mainland States (Somalia, Kenya, Tanzania, Mozambique and South Africa) and five island States (Seychelles, Comoros, Madagascar, Mauritius and Réunion - France).

smuggling and the illicit traffic of narcotics and other dangerous substances, can threaten the security of States and can cause loss of life at sea. The concurrent tensions in relation to natural resource exploitation at sea can also constitute threats to peace and security at sea, leading to maritime boundary disputes[183].

It is relevant to note that most of the challenges to marine security are regional and global in scope, are often connected, and have the potential to undermine human security. For example, during 2005, 264 acts of piracy and armed robbery against ships were reported to International Maritime Organization (IMO) to have occurred or to have been attempted. The areas most affected are: South China, Malacca Strait, West Africa, South American and the Caribbean, Indian Ocean and East Africa[184]. In the Indian Ocean region, piracy, armed robbery, and hijacking have been particularly prevalent in waters off the coast of Somalia, including those acts against two ships operated by the United Nations World Food Program which where carrying food aid to Somalia[185].

LOSC defines an exhaustive regulatory approach, which promotes the peaceful use of the sea and constitutes an important contribution for peace reinforcement, for security, for cooperation and for friendly relations among the States. One of the fundamental features of LOSC is the exigency for States to cooperate in the prevention of piracy acts and the illicit traffic of narcotics and psychotropic substances. Cooperation among States can take many forms, including the sharing of information or the undertaking of joint enforcement action. In addition to cooperation at all levels, what is required in order to prevent and combat the challenges to maritime security effectively is a comprehensive approach to security. Thus, the security domain in the region requires comprehensive and cohesive efforts among Mozambique and other States of the region to protect their

[183] Jamine, Elisio B. (2004: 53), *A Delimitação das Fronteiras Maritimas para a Jurisdição e Exercício da Soberania à Luz da Convenção das Nações Unidas sobre o Direito do Mar: O Caso de Moçambique (Tese), ISRI, Maputo.*

[184] For more details see: Ocean and Law of the Sea: *Report of the Secretary-General*, Sixty-first Session (A/61/63), 2006.

[185] These acts have been condoned by IMO. In its resolution A.979(24) on "Piracy and armed robbery against ships in waters of the coast of Somalia", the IMO Assembly condemns and deplores all acts of piracy and armed robbery against ships irrespective of where such acts occur or may occur and appeals to all parties, which may be able to assist, to take action, within the provisions of international law, to ensure that all acts or attempted acts of piracy and armed robbery against ships are terminated forthwith, any plans for committing such acts are abandoned and any hijacked ships are immediately and unconditionally released and that no harm is caused to the seafarers on board.

common interest at sea. But with the delimitation of maritime boundaries still unresolved, it becomes difficult to define within which areas such cooperation may occur.

3.2. International Context and Approach

The international community has recognized the need for global cooperation in ocean management through the establishment of new institutions and necessary frameworks for cooperation.

At the international level, it is emphasized that LOSC is the framework convention for ocean governance. LOSC establishes a framework which confers on the UN System a central role in ocean governance. LOSC has provided the global community with a new and more equitable system for regulating many aspects of ocean use and responsibility.

At the 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. In 1999, the General Assembly created, as a subsidiary body, the UN Open-ended Informal Consultative 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[186]; 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) [187], and the CLCS[188].

By extending the jurisdiction of the coastal States, LOSC extended the horizon of national ocean policy-making. LOSC also imposed new responsibilities on these States for the management of ocean issues, such as fisheries, environment protection and cooperation with neighboring States.

Moreover, as to institutional support for the implementing of LOSC's provisions, certain other international UN System bodies have a particular mandate in certain policy

[186] It's the organization through which States Parties to LOSC shall organize and control activities in the Area, in particular with a view to administering the resource of the Area.
[187] ITLOS was established by LOSC with jurisdiction over any dispute concerning the implementation or application of LOSC.
[188] The propose of the CLCS as referred is to facilitate the implementation of LOSC in respect of the outer limits of the CS beyond 200 nm from the baselines from which the breath of the TS is measured.

spaces, including: the Commission for Sustainable Development (CSD), which monitors the implementation of UNCED's recommendations, the IMO, UNEP, Food and Agriculture Organization (FAO), Intergovernmental Oceanographic Commission (IOC-UNESCO), among other international and regional bodies.

The LOSC has applied the expression of "the competent international organizations"[189] (or in the singular "organization" when referencing the IMO)[190] to designate as implementing bodies such as the FAO, IMO, the UNEP, and other international agencies.

Moreover, UNCED, which convened in Rio de Janeiro, Brazil, in 1992, produced a global action plan for sustainable development entitled "Agenda 21"[191]. All of Agenda 21's 40 chapters are applicable in one way or another to coastal and ocean issues, while one in particular (Chapter 17) is devoted exclusively to oceans. Chapter 17 of Agenda 21 defines objectives and activities in ocean development and management, including: integrated management and sustainable development of coastal and marine areas, including EEZ; sustainable use and conservation of marine living resources in high seas areas; sustainable use and conservation of marine resources in areas under national jurisdiction; the need to deal with critical uncertainties related to marine environmental issues and climate change; the strengthening of international and regional cooperation and coordination; and sustainable development of small island States. Chapter 17 has stimulated a wide range of initiatives from both decision-making centers and the scientific community[192]. The major UN bodies and related bodies, from the World Bank and IOC-UNESCO to UNEP, FAO, have all undertaken programs aimed at implementing the guidelines included in this chapter[193].

[189] Note that organizations not referred to in the LOSC either directly or by implication, also have roles of importance in the implementation of the LOSC provisions and in bringing about sustainable development of marine resources and may, through discharging such functions, and with time, the international community also recognizes such organizations as "competent international organizations" under LOSC. In such cases, the expression "competent international organizations", when used in the singular in LOSC, applies exclusively to IMO bearing in mind the global mandate of the organization as a specialized agency within the UN system established by the Convention on the International Maritime Organization.
[190] The use of the term "international organization" in the singular form (as in all provisions concerning pollution from ships) clearly indicates that this term refers to the IMO.
[191] United Nations Division for Sustainable Development, Agenda 21, http://www.un.org/esa/sustdev/documents/agenda21
[192] For details see Vallega (2001: 18).
[193] *Ibid.*

Following the conclusion of UNCLOS III, FAO occupied a central position in coordinating international discussions with regard to the management of fisheries[194]. FAO assisted in the operation of several international fisheries bodies and acted as a conduit for discourse between other international fisheries organizations, in addition to being the principal clearing house for the dissemination of fisheries data worldwide[195]. Consequently, fisheries management policy documents produced by FAO are significant, as they do not merely give an insight into the attitudes of member States, but they also have normative influence on State behavior[196]. FAO has adopted the Code of Conduct for Responsible Fisheries in 1995 (the "Code"). The Code is voluntary rather than mandatory, and aimed at everyone working in, and involved with fisheries and aquaculture, irrespective of whether they are located in inland areas or in the oceans. Due to the fact that the Code is voluntary, it is necessary to ensure that all people working in fisheries and aquaculture commit themselves to its principles and goals and take practical measures to implement them.

The Code consists of a collection of principles, goals and elements for action, and advocates that States should have clear and well-organized fishing policies in order to manage their fisheries. These policies should be developed with the cooperation of all groups that have an interest in fisheries, including the fishing industry, fish workers, environmental groups and other interested organizations.

Governments, in cooperation with their industries and fishing communities, have the responsibility to implement the Code. FAO's role is to technically support their activities but it does not have a direct responsibility for implementation because FAO does not have a responsibility for the development and implementation of national fishery policies. This is the sole responsibility of Governments.

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[194] FAO was established in 1945 as a specialized agency of the UN with a mandate to raise levels of nutrition and standards of living, to improve agricultural productivity, and to better the condition of rural populations. Today, FAO is one of the largest specialized agencies in the UN System and the lead agency not only focusing on agriculture, but also to forestry, fisheries and rural development. Since its inception, FAO has worked to alleviate poverty and hunger by promoting agricultural development, improved nutrition and the pursuit of food security, defined as the access of all people at all times to the food they need for an active and healthy life.

[195] See generally S. M. Garcia, "Ocean Fisheries Management: The FAO Programme" in P. Fabbri, *Ocean Management in Global Change,* (London: Elsevier Applied Science, 1992) p. 381; Kaye, 2001.

[196] *Ibid.*

The implementation of the Code will be most effectively achieved when Governments are able to incorporate its principles and goals into national fishery policies and legislation. To ensure that there is support for these policies and legislative changes, Governments should take steps to consult with industry and other groups to promote their support and voluntary compliance. In addition, Governments should encourage fishing communities and industry to develop codes of good practice that are consistent with, and support, the goals and purpose of the Code. These codes of good practice are another important way of promoting the implementation of the Code[197].

Several responsibilities are to be undertaken by UNEP[198] in connection with the protection and preservation of the marine environment[199].

The existing regimes which touch upon the sea include IMO Conventions[200]. The IMO *per si,* is a technical agency of UN, has become one the principal agency for international environment regulation. The international Convention for the Prevention of Pollution from Ships (1973), as modified by the protocol of 1978 (MARPOL 73/78), has received widespread acceptance. The IMO has developed a long-term strategy to ensure continued improvements in the ocean environment, not only by regulation but also by technical assistance[201].

IMO's main objective is to facilitate cooperation among States on technical matters affecting international shipping, in order to achieve the highest practicable standards of maritime safety and efficiency in navigation. It also has a special responsibility for safety

[197] See: FAO Corporate Document Repository, http://www.fao.org/DOCREP/003/X9066E/ (Accessed 29 November 2006).
[198] The Regional Seas Programme was launched in 1974 in the wake of the 1972 United Nations Conference on the on the Human Environment held in Stockholm, Sweden. UNEP has been a catalyst for the establishment of regional sea programmes, covering the Mediterranean, the Kuwait region, the Red Sea, the wider Caribbean, the Atlantic coast of West and Central Africa, the eastern African seaboard, the Pacific coast of South America, the islands of the South Pacific, the East Asian region and South Asian seas. The Regional Seas Programme (RSP) aims to address the accelerating degradation of the world's oceans and coastal areas through the sustainable management and use of the marine and coastal environments, by engaging neighboring countries in comprehensive and specific actions to protect there shared marine environment. Currently representatives of Regional Seas Conventions and Actions Plans Secretariats at their 5th Global Meeting in Nairobi, Kenya 26-28 November 2003 have agreed upon a new global strategy aim at strengthening the Regional Seas Programme at the global level.
[199] Pinto, Cristopher w., *The United Nations Convention on the Law of the Sea: Sustainable Development and Institutional Implications,* in Peter Bautista Payoyo, (1994: 8), *Ocean Governance, Sustainable Development of the Seas,* United Nations University Press, Tokyo/New York/Paris.
[200] Examples include: the London Dumping Convention and the Montreal Guidelines.
[201] Frankel (1995: 160).

of life at sea and the protection of the marine environment through the prevention of pollution caused by ships and other crafts[202].

IMO programs are directed toward achieving the protection of the ocean environment and, according to the Secretary General of the IMO, are oriented toward the following areas: prevention of marine pollution from shipping activities (that is, from operational discharges); marine pollution emergency response; management of waste disposal at sea; liability, compensation, and intervention issues; and baseline information[203]. The following facts indicate the wide acceptance and uncontested legitimacy of IMO's universal mandate in accordance with international law:

- 164 sovereign States representing all regions of the world are at present Parties to the IMO Convention and accordingly Members of IMO;
- All Members may participate in meetings of the IMO bodies responsible for drafting and adopting recommendations containing safety and anti-pollution rules and standards. These rules and standards are normally adopted by consensus[204];
- All States, whether or not they are Members of IMO or the United Nations, are invited to participate in the IMO conferences responsible for adopting new IMO conventions; and
- All IMO treaty instruments have so far been adopted by consensus.

Through the years, the emphasis of IMO has evolved from developing standards to replace multiplicity of national legislation to its current campaign to encourage quality shipping. This is reflected in the conventions that are in place which can be divided into following categories:

- Marine Safety;
- Marine Pollution;
- Liability and compensation; and

[202] Nandam, Satya N., *Existing Institutional Framework and Mechanisms*, in Peter Bautista Payoyo, (1994: 32), *Ocean Governance, Sustainable Development of the Seas*, United Nations University Press, Tokyo/New York/Paris.
[203] For more details see: Frankel (1995: 160).
[204] International Maritime Organization (2005), Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization, 4 Albert Embannkment, London SE1 7SR (LEG/MISC/4).

- Other subjects[205].

Effective integrated ocean management can be achieved by the harmonization between national, regional, and international bodies, organizations and institutions. At the global level, the role of the General Assembly in the making of a global oceans policy harmonizing regional, national, and local components. The integration of the policies of the UN specialized agencies and programs must be followed by the proper application at regional, national and local levels[206]. This helps to avoid unnecessary duplication and to develop the concepts, tools, and networks needed to facilitate the development and implementation of national programs[207].

4. Mozambique Integrated Policy of the Sea Needed

According to the United Nations Department of International Economic and Social Affairs[208], policy may be generally defined as a set of guiding principles or procedures designed to influence the actions and decisions of individuals or groups. Any management system has to follow the steps of establishing a policy and planning procedures and programs. If the system is to be an integrated one, then there has to be

[205] In total there are more than 40 conventions together with more than 800 codes and recommendations that have been produced through IMO, and it has been recorded that all of its major conventions have been adopted by States representing more that 90% of the world's tonnage.
[206] Local - Community Based Co-Management; Participation of Stakeholders (civil society, industry, etc); Citizens Programs (i.e. coastal watch). National - Effective linkages between local and national governance structures; Real cooperation between all government departments/ministries involved in oceans; Open to the real participation of stakeholders; A National approach could include: Wide participation in an effective decision making system linking government, scientists, industry and local communities; A political level consisting of a "Board of Ministers for the Ocean" (interdepartmental) which could be advised by a multi-stakeholder Advisory Council; A bureaucratic level consisting of a "Interdepartmental Commission for the Ocean" composed of senior department officials, and with thematic sub groups (working groups). Regional - As outlined supra; Strengthening of the Regional Seas and close coordination with the UNEP-GPA; Integration of thematic regional frameworks (i.e. pollution and security); Inclusion of Regional Development Banks (new and additional sources of funding!); Inclusion of Regional Governmental Organizations; Particular emphasis on the operational aspects; Assembly, with trans-sectoral and inter-disciplinary mandate, for the (sub-) Regional implementation of all relevant Conventions, Agreements, and Programs. Bailet, François (2002), *Ocean Governance: Towards and Oceanic Circle*, DOALOS/UNITAR Briefing on Developments in Ocean Affairs and LOS - 20 years After the Conclusion of LOSC – UN-HQ, September 25&26, 2002, www.un.org/Depts/los/convention_20years/presentation_ocean_governance (Accessed 9 May 2006).
[207] Hefny, Magdy (1998), *A Regional Perspective: Africa and the Law of the Sea Convention*, in Vidas, Davor & Willy Ostreng (ed.) (1998: 372), *Order for the Oceans at the Turn of the Century*, Kluwer Law International, The Hauge/London/Boston.
[208] UNDESA (1982: 1).

integrative mechanisms[209]. It has been written that the task of policy is to establish a common purpose through objectives to be achieved in order to realize that common purpose. Furthermore, it has been suggested that the following elements are required:

- A dynamic goal or vision of the desired condition of oceanic or coastal area for a period significantly longer than conventional economic planning horizons, say 25 or 50 years;
- The formulation of national objectives to which policies and management programs are directed;
- Guiding principles for exercising discretionary powers for planning, granting approvals, or making changes to the purpose or extension of resource use and access;
- A strategy, commitment and resources for the detailed day-to-day management involving several agencies and stakeholders;
- Clear and legally defined identification of authority, precedence and accountability; and
- Performance indicators and monitoring to enable objective assessments of the extent to which goals and objectives have been achieved[210].

In order to formulate an ocean policy, a common understanding of ocean systems needs to be developed, in particular, a maritime boundary needs to be defined, the components of the ocean system identified, and the main national goal/s must be clarified and/or identified.

The current status of ocean management in Mozambique has revealed that there are certain basic difficulties in thinking about and/or defining/identifying the “national goals” for an ocean policy. However, it seems that this task has been left to sectoral policies and laws. In terms of relevant sectoral policies linked/related to ocean/coastal issues, the Government has established four key policies:

The Government has adopted (1995) a set of guidelines for the development of tourism sector as outlined in two documents, the National Policy for Tourism (Resolution

[209] Borgese (1995: 105).
[210] Chua Thia-Eng 1993, Borgese (1995: 117).

No. 2/95 of 30 of May) and the Strategy for Tourism Development in Mozambique. A guiding principal of the policy is "the promotion of initiatives which ensure the maintenance of ecological integrity, preservation of the environment and the sustainable use of the natural resource so as to improve quality of life in local people". The National Policy for Tourism aims to clarify Government policies and priorities for tourism development, protect the strategic areas of tourism development, and re-affirms major tourist attractions.

In August 1995, the Government also adopted the National Policy for the Environment[211], with the key objectives: to secure the quality of life of Mozambican people; develop environmental conscience in the people, including the participation of the public in environmental management; secure the integration between socio-economic planning and environmental issues; ecology and ecosystem protection; and regional and international integration in finding solutions for environmental hazards. This policy recognizes that the major natural resources of the State are under pressure, and promotes the sustainable development and rational uses of natural resources throughout by introducing general principles and environmental practices, establishing appropriate policies and a legal framework for the protection of the environment.

Moreover, in October 1995 the National Policy for Land was adopted[212] with the objectives of improving food production; creating conditions for improvement of familiar sector agriculture; promotion of private investment; conservation of ecologically significant areas and natural resource management; and updating and improving the tax system.

In 1996, the Government of Mozambique adopted a Fisheries Policy[213] and implementation strategy which "seeks to maximize economic benefits whilst ensuring the sustainability of the resources". The objectives of the National Policy for Fisheries are to integrate fisheries activities into economic development of Mozambique, taking into account food security, sustainable economic growth, reduction of unemployment tax, and efforts for the reduction of levels of poverty.

[211] Resolution No. 5/95 of 03 of August.
[212] Resolution No. 10/95 of 17 of October 1995.
[213] Resolution No. 11/97 of 28 of May 1997.

However, there is no ocean policy and there is weak coordination between the adopted sectoral policies. Furthermore, the new provisions of the modern LOS are not strictly reflected. A national policy for integrated ocean management is needed. Indeed, the national ocean policy should provide broad guidelines under which the managing institutions define specific coastal boundaries, depending on their management goals. Once the policy has been formulated, it must be implemented at all levels (national, provincial, district and locally through the involvement of the private sector and civil society, and linked with the regional level). Integrated ocean policy requires the highest level of political direction and overall oversight in order to ensure its success, the Coordination Council can easily take responsibility for this task.

The Coordination Council, as the highest level body in ocean affairs, should provide the necessary leadership and the opportunity and the leverage for policy priority-setting and inter-agency coordination to a degree that previously has not been possible. This body would bring together governmental, stakeholders and non-governmental organizations involved in ocean/coastal affairs for supporting the future integrated ocean policy.

Furthermore, a legislative improvement is needed to support the integrated ocean policy. By ratifying LOSC the Government undertakes to fulfill the obligations, duties, and responsibilities stipulated therein, in addition to exercising incumbent rights or powers. As noted, the legal framework established for ocean management, particularly for fisheries, is not in conformity with the LOSC, as it only focuses on the costal issues, and there are no references or concrete provisions for the EEZ or CS. The optimum framework for support rational ocean/coastal management[214] occurs where the State's jurisdiction covers the (physical) continental margin as a whole. This may be found where the EEZ has been established and the (physical) continental margin extends out to 200 nm[215].

Clearly-defined maritime boundaries are essential for good relations among States and comprehensive/effective ocean management. The geographical area and the jurisdiction where this ocean management shall be applied must be determined. In this

[214] Sorensen & MacCreary 1990: 127-29, Vallega (2001: 79).
[215] Vallega (2001: 79).

respect, the provisions of the LOSC provide the basis upon which Mozambique has or should base the delimitation of its maritime areas of jurisdiction. Management policies, plans, programs, economic activities will not longer survive without clarification of the maritime areas of Mozambique. Therefore, it is important to note that the interest of the State in the ocean does not stop at the edge of the TS, any more than the interests of the State could stop at the edge of the CS. But, to establish a coherent, comprehensive and long term ocean management, the delimitation of maritime boundaries with adjacent and opposites States is needed.

CONCLUSION AND RECOMENDATIONS

LOSC is a true “constitution of the sea”, establishing a coherent, uniform and global rule of law governing the use of the oceans, including the key principles governing the establishment of maritime spaces and delimitation of maritime boundaries. As outlined in the present study, the TS should be delimited in accordance with Article 15, the EEZ in accordance with Article 74, and the CS in accordance with Articles 76 and 83. Apart from the legal dimension, it must recognize that LOSC is also an important instrument of international relations as it promotes peace and security in the world’s ocean.

What is evident from the present study is that delimiting maritime boundaries brings positive benefits to States, in bilateral and regional terms. Legal certainty means that economic activity can start in a comprehensive manner. Industry can be licensed to work right up to the boundary line. The enforcement of fisheries legislation is also possible right up to the line. Maritime boundary delimitation removes the problems caused by jurisdictional uncertainty and reduces the potential for disputes and conflict.

Conversely, the delimitation of the Mozambique’s maritime boundaries will settle the maritime boundaries between Mozambique with opposite and adjacent coastal States in those areas where there are no agreed-upon boundaries, and it will provide Mozambique with security of jurisdiction over the relevant ocean resources within those boundaries. Also, boundary delimitation will allow for a long-term approach for the management of maritime issues such as fisheries in the maritime spaces of national jurisdiction. Delimiting maritime boundaries of Mozambique will be an important feature in the future ocean management programs.

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. This situation will persist if the Government does not develop capabilities and view the sea as a matter for long-term development. The delimitation of maritime boundaries is a sovereign affair and must be undertaken with full due regard and preparation, including:

- **Legislation**

The current national maritime zone legislation is not in conformity with LOSC, does not include the new LOSC concepts such as the EEZ, nor does it take into account environmental provisions. Mozambique needs a domestic legal framework that will optimally serve the State's interests in ocean management and in the establishment of its maritime boundary with neighboring States. The elaboration of such a framework requires the consolidation of existing legislation into a new comprehensive Act of the Sea, which would then be reinforced with new provisions according to LOSC and taking into account the modern developments in the LOS. Note that the Act of the Sea should provide general policy guidance on each sectoral issue (i.e. the marine environment, regulatory arrangements for offshore living and non-living resources) but leave open the specific treatment of these issues for other relevant Acts.

- **Baselines**

The Mozambique baselines must be established in accordance with LOSC and all relevant generally accepted principles of international law. These should be defined by coordinates of latitude and longitude, describing the straight and normal baselines, and depicted on present day charts.

In the absence of any record of a comprehensive technical and hydrographic survey, a hydrographic survey of Mozambique's coastlines to determine the base-points is needed. This will enable the establishment of baselines from which the breath of the TS, CZ, EEZ, CS are measured.

The Government must also consider the baselines of neighboring States, as it must ensure that these are "mutually acceptable baselines" in order to avoid conflict. Once the exact definition of the baselines is agreed, delimitation can take place. The immediate benefits of this delimitation include:

- Enable a definitive delimitation of boundaries offshore;
- Compliance with LOSC; and

- Provide a legal framework for surveillance and enforcement activities and proper coordinates to guide such activities.

- **Maritime Boundary Delimitation Negotiation Process**

It is my viewpoint that the process for delimitation of maritime boundary (particularly for CS which is so delicate) is progressing too slowly, and that the Government should give much credit. The Government must prepare a Hydrographic and Technical Report, this report, aside from its importance in the negotiation process, will present all available relevant data concerning maritime boundaries of Mozambique. Such a report may include the following sections[216]:

- An Introduction;
- Charts and maps (considerations governing the use of charts or maps and use of lists of coordinates, geodetic datum, Doppler Satellite Observations);
- Territorial Sea (baselines for the Territorial Sea; Limit of the Territorial Sea; Boundaries in the Territorial Sea);
- Contiguous Zone (base-points for measurement; computing and listing of the coordinates of the outer limit; charts showing the outer limit);
- Exclusive Economic Zone boundaries with neighboring States (extent of the boundaries; delimitation between the States (the median line, half effect, proportionality, other methods; application of each method);
- Continental Shelf; and
- Summary of recommendations (list of appendices: the relevant local law, list of the relevant charts of the coast, list of large-scale charts available, provisional list of base-points affecting the outer limit of the EEZ, List of base-points which require a resurvey; list of figures: provisional TS median line, illustration of the method of constructing the outer limit, copy of available chart illustrating limits and areas, illustration of EEZ boundary terminations, application of proportionality/length of coastline in the relevant area and boundaries along meridians if appropriate).

[216] The Guidelines of Commonwealth Secretariat.

Furthermore, the Government must develop a computer program to serve as a source of technical information during the analysis, negotiation, and verification of maritime boundary agreements.

Concerning the applicable delimitation methods, the median line should be the first choice of the States concerned and could be modified in the event of any relevant circumstance. It is recommend that States attempt to reach an agreement before moving on to any other dispute settlement procedures.

- **Continental Shelf and Its Extension Beyond 200 Nautical miles**

Defining the limits of the legal CS is a much more complex matter. There are several factors which determine the extent of the CS and it will require considerable oceanographic, hydrographic, and geophysical work to accurately define its outer limits.

Mozambique is eligible to claim an extended CS beyond 200 nm and must present its submission to the CLCS upon the established deadline of 13 May 2009. In order to do this, Mozambique will need to have established its baselines, which should have been determined in a delimitation of its maritime zones. Mozambique must prove, beyond reasonable doubt, that the continental crust of the continental margin extends beyond 200 nm, thus proving natural prolongation. This will probably require high technology and highly qualified experts. This should be the priority task of the Government at this time, due to the fast approaching deadline. In fact, Mozambique has about two years to delimit its extended CS and present its submission to the CLCS. This process will require a lot of resources and investment. Taking into account funding and technology limitations, the Government may consider the possibility of preparing a joint submission with South Africa. This approach is particularly attractive considering South Africa's situation in terms of scientific capabilities and particularly since both States will share a CS boundary.

- **French Possessions**

The States concerned may have to agree what "weighting", if any, to give to the French possessions and whether to apply the technique of "enclaving" or "half effect" for the small and uninhabited islands, islets or rocks. The Government of Mozambique, who is not claiming these islands, only has interest in finding a solution to the conflict between Madagascar and France so that it may proceed appropriately with its own delimitations.

- **Capacity Building**

In Mozambique, there is a lack of skilled personnel in the diverse field of LOS. Hence, there is a need to train people in these fields. One of the State's top priorities is to delimit the CS, this requires a sound and profound knowledge of the specific matters. Capacity building is needed to provide experts with:

- The ability to interpret LOSC and the CLCS Guidelines to the advantage of the State. It is crucial that the experts have full competencies with respect to the following documents of the CLCS: *Rules of Procedure of the Commission on the Limits of the Continental Shelf (CLCS/3/Rev.2, 4 September 1998); Modus Operandi of the Commission (CLCS/L.3, 12 September 1997); Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf (CLCS/11, 13 May 1999); (CLCS/11/Add. 1, 3 September 1999).*
- Solid knowledge in boundary delimitation theory, State practice, and negotiation (including the analyze the effect of offshore islands, islets, rocks and cays on the delimitation process with special regard to their size, economic importance).
- Identify and evaluate the potential delimitation problems which may be encountered in the delimitation of Mozambique's maritime zones.

- The skills to elaborate and pursue a range of negotiated bilateral or multilateral solutions and the ability to negotiate effectively for an acceptable outcome.
- Technical knowledge regarding mapping and remote sensing, as well as scientific knowledge so that national priorities may be identified and can translated into tangible policy in accordance with LOSC.

Capacity building in support of the above will constitute an important foothold for the advancement of ocean policy and management in Mozambique.

Recommendations for the Management of Ocean Issues

There is need for changes in the current approach to national ocean management policy so as to allow for an inter-sectoral orientation in policies rather than a sectoral approach based on the interests of particular agencies. A future Mozambican ocean: policy must be multi-dimensional and should be elaborated taking into consideration the following recommendations:

- Establishment of a national integrated ocean management policy and supported research into the development strategy. Improved knowledge and information are essential as a basis for effective management. The need to establish a integrated ocean management policy must be integrated horizontally, across disciplines, departments, and specialized agencies, and between the public and private sectors, as well as vertically, across levels of governance, local, national, regional and global in a coherent system.

- 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, e.g. National Integrated Coastal Zone Management)

and harmonized with LOSC and other relevant international instruments (i.e. the Fisheries Act; the Environment Act).

- Strengthen regional and international cooperation for the development of management programs through existing regional and multilateral programs and through the expansion of existing programs, the development of new programs, in order to facilitate marine research and appropriate international funding for ocean research and management (i.e. from FAO, UNEP, etc.). Also, there is need for expanded regional cooperation and dialogue not only among States, but also among coastal communities, scientific organizations, and other public and private interest groups.

- There is the need to enhance comprehensive security, with its military, economic, and environment components.

- International experience has shown that it is more effective to use existing institutions wherever possible. Because of the inter-sectoral nature of marine management, improving co-ordination between actors and fostering strategic alliances between relevant Government agencies, the private sector and civil society is of central importance. Only where absolutely necessary have additional structures and procedures been established for more effective implementation.

As already stated, fragmented management and strong traditional tenure system characterize the current approach in ocean governance of Mozambique. Mozambique is a potential maritime State with a vast sea and plenty of natural resources, including high levels of biodiversity. It thus can not continue to opt for a segmented approach to ocean management ignoring the new already emerged approaches.

The problems currently faced in the management of ocean issues require the development and implementation of an integrated national ocean policy and management. The mobilization of the necessary political consensus to develop an integrated national ocean policy is one of the first challenges that Mozambique must face.

Effective integrated ocean management must simultaneously work at local-level, (sub) regional-level and international-level, and framework policy initiatives at the higher levels of local and national government, i.e. there is need to integrate “top-down” and “bottom-up”, that is: “vertical” and “horizontal” management. This approach creates dialogue that promotes a common vision, shared purpose and goals for a better ocean management.

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Annex I: Act of Sea (No. 4/96) (Selected Articles from the Original Version)

ASSEMBLEIA DA REPÚBLICA
Lei n° 4/96 de 4 de Janeiro

As actividades marítimas assumem urn lugar de relevo no contexto político, económico e social. Este facto justifica a necessidade de se adoptar um quadro legal que redefina os direitos de jurisdição sobre a faixa do mar ao longo da costa moçambicana e que disponha sobre as bases normativas para a regulamentaçäo da administração e das actividades marítimas no País.

Nestes termos, e ao abrigo do preceituado no n° 1 do Artigo 135 da Constituição, a Assembleia da República deterrnina:

Capítulo I
Disposições Gerais

Artigo 1
(Definições)

Para efeitos da presente lei:

a) *Águas interiores* - significa águas situadas no interior da linha do base a partir da qual se mede a largura do mar territorial;

b) *Autoridade Marítima* - significa urn órgão, oficial ou agente público, corn cornpetência para superintender, supervisar e controlar qualquer actividade marítima do ordem pública e da integridade territorial, de acordo com a legislação.

Artigo 2

(Ambito de Aplicação)

1. A presente lei aplica:

a) Ao mar e todas as nevegáveis e o respectivo leito e subsolo sujeitos à jurisdição marítima nos termos da lei aplicável, bem como ao domínio público adjacente a tais águas;

b) A todas as embarcações e outros objectos marítimos, incluindo cabos, ductos, instalações e estruturas marítimas sob jurisdição moçambicana;

c) A todas as embarcações nacionais, onde quer que se encontrem;

d) A todas as entidades, pessoas singulares ou colectivas de algum modo vinculadas com embarcações ou com navegação em Moçambique;

e) A todas as actividades marítimas que se realizem dentro dos limites da jurisdição moçambicana, sem prejuízo da legislação específica aplicável às actividades piscatórias e outras.

2. Salvo nos casos em que a lei disponha de outro modo, a presente lei não se aplica a embarcações e ao pessoal da Marinha de Guerra.

Artigo 3
(Política Marítima)

1. A política marítima da República de Moçambique terá como objectivos:

a) A manutenção da soberania e integridade marítimas nacionais;

b) O desenvolvimento e a melhoria da economia marítima nacional;

c) O desenvolvimento e a melhoria das condições sociais, ambientais e outras decorrentes das actividades marítimas.

2. Na formulação da política referida no n° deste artigo, cabe so Governo adoptar planos e normas para:

a) O exercício da soberania do Estado sobre as águas da sua jurisdição marítima, fluvial e lacustre em conformidade com a lei vigente e outras disposições internacionais aplicáveis;

b) A adopção de medidas necessárias à aplicação e execução de todas as convenções internacionais marítimas de que Moçambique seja parte;

c) A administração do tráfego marítimo nacional e internacional nas águas sob jurisdição da República de Moçambique;

d) O desenvolvimento da economia marítima moçambicana através do encorajamento da propriedade e operação de navios por cidadãos e empresas moçambicanas;

e) A promoção do desenvolvimento tecnológico e científico no sector marítimo.

Capítulo II
Zonas Marítimas

Artigo 4
(Mar Territorial)

1. O mar territorial da República de Moçambique compreende a faixa do mar adjacente, além do território e das águas interiores moçambicanas, limitada pela linha de base e pelo limite exterior definido nos números subsequentes ou pelas fronteiras marítimas bilaterais, conforme os casos.

2. A larguara do mar territorial é de 12 milhas marítimas, medidas a partir da linha de base.

3. O limite exterior do mar territorial é definido por uma linha em que cada um dos pontos fica a uma distância do ponto mais próximo da linha de base igual à largura do mar territorial.

4. As linhas de fecho e de base rectas que suplementam a linha de de base normal são definidas de acordo com as coordenadas seguintes:

Pontos	Latitude S	Longitude E
Cabo Delgado	10° 41' 24"	40° 38' 54"
Ilha Tecomagi	10° 45' 24"	40° 40' 22"
Ilha Rongui	10° 50' 08"	40° 41' 38"
Ilha Vamizi	11° 00' 50"	40° 43' 53"
Ilha Quero Niuni	11° 41' 30"	40° 39' 12"
Ilha Medjumbi	11° 49' 09"	40° 38' 09"
Ilha Querimba	12° 27' 09"	40° 38' 40"
Ponta do Diabo	12° 45' 48"	40° 38' 09"
Ponta Maunhane	12° 58' 32"	40° 36' 02"
Ponta Metampia	14° 01' 24"	40° 38' 42"
Ponta a N. da Ponta Cogune	14° 10' 39"	40° 44' 06"
Ponta a E. do baixo da Pinda	14° 13' 52"	40° 47' 49"
Ponta Relamzapo	14° 27' 43"	40° 50' 55"
Ilha Quitangonha	14° 51' 15"	40° 50' 04"
Ilha Injaca	15° 00' 12"	40° 48' 17"
Ilha de Goa	15° 03' 14"	40° 47' 33"
Ilha de Sena	15° 05' 12"	40° 46' 37"
Farol de Infusse	15° 29' 42"	40° 33' 54"
Ilha de Mafamede	16° 21' 38"	40° 02' 45"
Ilha Puga-Puga	16° 27' 36"	39° 57' 12"
Ilha Caldeira	16° 39' 12"	39° 43' 52"
Ilha de Moma	16° 49' 04"	39° 31' 52"
Ilha Epidendron	17° 05' 54"	39° 08' 12"
Ilha Casuarina	17° 07' 52"	39° 05' 28"
Ilha do Fogo	17° 14' 58"	38° 52' 47"
Ilha Quisungo	17° 19' 40"	38° 05' 15"
Ponto a N. E. da Ponta Pabjini	25° 17' 12"	33° 19' 20"
Cabo Inhaca	25° 58' 10"	32° 59' 40"

5. A soberania do Estado estende-se para além do território e das suas águas interiores ao mar territorial e ao espaço aéreo sobrejacente, bem como ao leito e subsolo do mar territorial, sendo exercida de acordo com as disposições da lei.

Artigo 5
(Delimitação das Fronteiras Marítimas no Mar Territorial)

Nos casos em que a costa moçambicana esteja adjacente à costa de outro Estado, salvo acordo celebrado entre a República de Moçambique e esse outro Estado, o mar territorial será limitado pela linha mediana cujos pontos sejam equidistantes dos pontos mais próximos das linhas de base a partir das quais é medida a largura do mar territorial de cada um dos Estados.

Artigo 6
(Navios de Guerra Estrangeiros e Outras Embarcações de Estado Estrangeiro não Empregados em Comércio)

1. Sem prejuízo do disposto nos n°s 2 e 3 do presente artigo, os navios de guerra estrangeiros e outras embarcações de Estado estrangeiro não empregados para fins comerciais, quando passem através do mar territorial, gozam de imunidade, nos termos do direito internacional.

2. Quando um navio de guerra estrangeiro ou outra embarcação de Estado estrangeiro não empregado em comércio não cumpra com a lei moçambicana ou não leve em conta qualquer pedido no sentido de observar a referida lei, exigir-se-á que tal navio ou embarcação saia imediatamente do mar territorial moçambicano.

3. Quando um navio de guerra estrangeiro ou outra embarcação de Estado estrangeiro não cumpra com a lei moçambicana relativa à passagem inofensiva através do mar territorial e cause perdas

ou danos ao Estado, caberá ao Estado de bandeira dessa embarcação a responsabilidade pela reparação dos danos causados.

Artigo 7
(Submarinos)

Os submarinos e outros veículos submersíveis devem, quando estejam no mar territorial moçambicano, navegar à superfície e arvorar a respectiva bandeira.

Artigo 8
(Zona Contígua ao Mar Territorial)

1. A zona contígua ao mar territorial é definida como a faixa do mar adjacente ao mar territorial, a qual se estende até 24 milhas marítimas medidas a partir da linha de base.

2. Na zona contígua ao mar territorial o Estado exerce o controlo necessário a:

a) Prevenção da violção das leis e regulamentos aduaneiros, fiscais de migração e sanitários de protecção e preservação do meio ambiente marinho, vigentes no território moçambicano;

b) Repressão das infracções às leis e regulamentos referidos na alínea anterior.

Artigo 9
(Zona Económica Exclusiva)

1. A zona económica exclusiva da República de Moçambique compreende a faixa do mar além e adjacente ao mar territorial que se estende até a uma distância de 200 milhas marítimas medidas a partir da linha de base a partir da qual se mede o mar territorial.

Artigo 10
(Delimitação das Fronteiras Marítimas na Zona Económica Exclusiva)

Nos casos em que a costa moçambicana esteja oposta ou adjacent à costa de um outro Estado, a delimitação da zona económica exclusiva será feita mediante acordo, ou, não havendo acordo, nos termos do direito internacional, na base da equidade e a luz the todas as circunstâncias pertinentes, tendo em conta a importância respectiva dos interesses em causa e para o conjunto da comunidade internacional.

Artigo 11
(Direitos Soberanos na Zona Económica Exclusiva)

1. Na zona económica exclusiva o Estado tem direitos soberanos para fins de exploração e aproveitamento, conservação e gestão dos recursos naturais vivos ou não vivos das águas sobrejacentes ao leito do mar, do leito do mar e subsolo, bem como no que se refere a outras actividades com vista à exploração e aproveitamento da zona para fins económicos, para a produção de energia a partir da água, das correntes e dos ventos.

2. A jurisdição do Estado sobre a zona económica exclusiva será exercida nos termos da presente lei, no que se refere a:

a) Estabelecimento e utilização de ilhas artificiais, instalações e estruturas;

b) Investigação científica marítima;

c) Protecção e preservação do meio ambiente marinho.

Artigo 12
(Direitos dos outros Estados na Zona Económica Exclusiva)

Na zona económica exclusiva todos os Estados quer costeiros, quer sem litoral, gozam, sem prejuízo das disposições da presente lei, de liberdades de navegação, sobrevôo e colocação de cabos e ductos submarinos, bem como de outros usos lícitos do mar relativos a tais liberdades.

Artigo 13
(Limites da Plataforma Continental)

1. A plataforma continental da República de Moçambique compreende o leito e o subsolo subjacentes às águas do mar, que se estendem além do mar territorial em toda a extensão do prolongamento natural terrestre, até uma distância de 200 milhas marítimas da linha de base ou até a bordo exterior da margem continental, nos casos em que este não atinja aquela distância.

2. A margem continental compreende o prolongamento submerso da massa terrestre to território da República de Moçambique e é constituído pelo leito e subsolo da plataforma continental e pelo talude e elevação continental, não abrangendo nem os grandes fundos oceánicos com as suas cristas oceânicas, nem o seu subsolo.

Artigo 14
(Delimitação das Fronteiras Marítimas na Plataforma Continental)

1. A delimitação da plataforma continental entre a Republica de Moçambique e Estados com costas adjacentes ou situados do lado oposto à sua costa, será feita por acordo, nos termos de direito internacional.

2. Não se chegando a acordo dentro do prazo razoável, recorrer-se-á aos procedimentos recomendados pelo direito internacional.

3. A linha do limite exterior da plataforma continental e as linhas de delimitação traçadas de conformidade com os números 1 e 2 do presente artigo serão indicados em cartas de escala ou escalas adequadas para a delimitação da sua posição, podendo tais cartas serem substituídas por listas de coordenadas geográficas de pontos em que conste especialmente a sua origem geodésica.

Artigo 15
(Direitos Soberanos na Plataforma Continental)

1. O Estado exerce direitos de soberania exclusivos na plataforma continental, para efeitos de exploração e aproveitamento dos seus recursos naturais e tais direitos são independentes da ocupação real ou fictícia da plataforma continental.

2.Os recuros naturais a que se referem as disposições do presente artigo compreendem os recursos minerais e outros recursos não vivos do leito do mar, isto é, aqueles que no período de

captura estão imóveis no leito do mar ou no seu subsolo ou só podem mover-se em constante contacto físico com o tal leito e subsolo.

(...)

Aprovada pela Assembleia da República.

Publique-se: O Presidente da República.

Annex II: Decree No. 18/2001 Establishing the National Institute for Maritime and Borders Affairs and its Statutes

CONSELHO DE MINISTROS
Decreto nº 18/2001 de 3 de Julho

As transformações políticas, económicas e sociais que têm operado no nosso País e no mundo, criaram um novo cenário no âmbito do mar e das fronteiras, para o qual o quadro legal estabelecido se mostra inadequado.

Impondo-se a suas alterações, com vista a elevar e reforçar o nível institucional, a racionalização e optimização de recursos, a harmonização técnico-metodológica e a complementaridade existente entre as funções de reafirmação e delimitação das fronteiras nacionais e gestão dos assuntos marítimos, ao abrigo do disposto no nº 1, alinea *e)* do artigo 153 da Constituição da República, o Conselho de Ministros decreta.

Artigo 1

1. É criado o Instituto Nacional do Mar e Fronteiras, abreviadamente designado IMAF, que se rege pelos estatutos em anexo, que constituem parte integrante do presente decreto.

2. O Instituto Nacional do Mar e Fronteiras é dirigido por um Presidente, coadjuvado por um Vice-Presidente.

Artigo 2

O IMAF é o órgão executivo e de coordenação técnica da acção do Estado sobre os assuntos do mar a fronteiras, dotado de personalidade jurídica e de autonomia administrativa, financeira e patrimonial e tem como objectivo:

a) Tratar de matérias relativas às políticas de fronteiras internacionais incluindo, as fronteiras terrestres, o espaço aéreo, as águas interiores, as águas territoriais, a zona contígua, a plataforma continental, a zona económica exclusiva da Republica de Moçambique e os fundos marinhos para além da jurisdição nacional;

b) Propor políticas, estratégias, planos e prioridades sobre as áreas definidas na alínea anterior.

Artigo 3

O IMAF fica sob tutela do Ministro dos Negócios Estrangeiros e Cooperação.

Artigo 4

O IMAF tem a sua sede em Maputo, podendo criar extinguir, sempre que se justificar, delegações ou outras formas de representação em qualquer parte do País, após a aprovação do Ministro dos Negócios Estrangeiros e Cooperação

Artigo 5

É extinta a Comissão Interministerial de Fronteiras, criada pelo Decreto nº 16/97, de 1 de Julho.

Aprovado pelo Conselho de Ministros.

Publique-se: O Primeiro Ministro.

Estatutos do Instituto Nacional do Mar e Fronteiras

Capítulo I
Natureza, Atribuições e Competências

Artigo 1
(Natureza)

1. O Instituto Nacional do Mar e Fronteiras, de ora em diante designado IMAF é o órgão executiva e de coordenação técnica da acção do Estado sobre os assuntos do mar e fronteiras.

2. O IMAF é uma instituição pública dotada de personalidade jurídica e autonomia administrativa, financeira e patrimonial.

3. O IMAF é tutelado pelo Ministro dos Negócios Estrangeiros e Cooperação.

4. O IMAF rege-se pelos presentes Estatutos, regulamentos e demais legislação aplicável.

Artigo 2
(Atribuições)

Constituem atribuições do IMAF:

a) A execução das actividades relativas a reafirmação e delimitação das Fronteiras Terrestres, Marítimas, Aéreas e Fluviais da República de Moçambique,

b) A execução das actividades relativas a delimitação da Plataforma Continental Nacional;

c) Recolha e processamento de informações, relatórios e peritagem de instituições nacionais, estrangeiras e internacionais especializadas em matérias do mar e fronteiras;

d) A elaboração de pareceres em matérias do mar e fronteiras;

e) A promoção de investigações e estudos de questões relativas ao mar e fronteiras;

f) A promoção da participação das instituições do Estado, bem como da sociedade em geral, nos assuntos dos mar e fronteiras;

g) A realização de acções de educação e informação pública sobre o mar e fronteiras

h) A criação e gestão de um Centro de Documentação e Informação sobre o mar e fronteiras

Artigo 3
(Competências)

Constituem competências do IMAF:

a) Coordenar a execução das acções do Estado sobre os assuntos do mar e fronteiras;

b) Propor políticas e estratégias sobre questões do mar e fronteiras;

c) Propor a definição de prioridades e planos de actividades sobre o mar e fronteiras;

d) Coordenar a execução e gestão dos Acordos e Convenções Internacionais sobre o mar e fronteiras;

e) Propor e proceder às negociações técnicas com as contrapartes, sobre assuntos do mar e fronteiras;

f) Propor a adopção ou actualização da legislação, bem como a adesão, ratificação ou denúncia de Tratados ou Convenções Internacionais sobre o mar e fronteiras;

g) Realizar acções necessárias e adequadas com vista à manutenção das fronteiras, em particular edifícios, vedações e marcos;

h) Propor e dar pareceres sobre a abertura ou encerramento de postos fronteiriços.

Artigo 4
(Âmbito e Jurisdição)

1. O IMAF exerce as suas actividades em todo o território nacional e tem a sua sede em Maputo, podendo, sempre que o exercício das suas actividades o justificar, criar ou extinguir delegações, agências ou qualquer outra forma de representação, em qualquer parte do País, por decisão do Ministro dos Negócios Estrangeiros e Cooperação, ouvido o Ministério do Plano e Finanças.

2. No âmbito das suas atribuições, o IMAF poderá ser membro de associações e organizações nacionais, estrangeiras ou internacionais afins.

Capítulo II
Organização

Artigo 5
(Órgão)

Constituem órgãos do IMAF, a Presidência, o Conselho Consultivo e o Conselho Técnico.

Artigo 6
(Estrutura)

O IMAF tem a seguinte estrutura:

a) Direcção do Mar;

b) Direcção de Fronteiras;

c) Direcção de Assuntos Jurídicos, Estudos e Informação

d) Departamento de Administração

Secção I

Da Presidência

Artigo 7
(Presidência)

1. A Presidência é constituida por um Presidente e um Vice- Presidente.

2. O Presidente e o Vice-Presidente são nomeados pelo Primeiro – Ministro.

3. Em caso de ausência ou impedimento, o Presidente é substituido pelo Vice-Presidente.

Artigo 8
(Competências do Presidente)

Compete ao Presidente do IMAF

a) Planificar, dirigir, e supervisar a actividade do IMAF;

b) Submeter propostas de programa, planos de trabalho, projectos de orçamento e relatórios do IMAF;

c) Propor a adopção ou actualização da legislação, bem como a adesão, ratificação ou denúncia de tratados ou convenções internacionais sobre o mar e fronteiras;

d) Representar o Governo, quer no País, quer no estrangeiro, ou em conferências internacionais em matérias ligadas ao mar e fronteiras, quando mandado ou delegado para o efeito;

e) Exercer as competências que lhe estão contidas por lei, bem como as que lhe forem delegadas,

f)Convocar e presidir às reuniões do Conselho Consultivo e do Conselho Técnico.

Artigo 9
(Competências do Vice-Presidente)

Compete ao Vice-Presidente:

a) Coadjuvar o Presidente no exercício das suas atribuições;

b)Seperintender as áreas do IMAF que lhe forem fixadas pelo Presidente.

Secção II
Colectivos

Subsecção
Conselho Consultivo

Artigo 10
(Composição)

O Conselho Consultivo tem a seguinte composição:

a) Presidente;

b) Vice-Presidente;

c) Directores;

d) Chefe de Departamento;

e) Outros técnicos do IMAF convidados pelo Presidente.

Artigo 11
(Competências)

O Conselho Consultivo tem as seguintes competências:

a) Pronunciar-se sobre o funcionamento do IMAF;

b) Avaliar o relacionamento do IMAF com outras instituições do Estado e parceiros de cooperação;

c) Propor a abertura e o enceramento de postos fronteiriços, ouvido o Conselho Técnico,

d) Pronunciar-se sobre a situação geral do mar e das fronteiras e sobre as propostas de abertura ou encerramento de postos fronteiriços.

Artigo 12
(Reuniões)

O Conselho Consultivo reúne-se ordinariamente uma vez por semana e, extraordinariamente sempre que o Presidente convoque.

Subsecção II
Conselho Técnico

Artigo 13
(Natureza)

O Conselho Técnico é um órgão de consulta e coordenação dos sistemas e acções sectoriais sobre o mar e as fronteiras, o qual tem por funções:

a) Pronunciar-se sobre os relatórios de actividades do Instituto bem como sobre o plano de actividades do ano seguinte,

b) Coordenar a execução dos sistemas e acções sectoriais sobre o mar e as fronteiras,

c) Pronunciar-se sobre quaisquer outros assuntos relevantes que lhe sejam colocados

Artigo 14
(Composição)

1. O Conselho Técnico é composto pelos membros do Conselho Consultivo do IMAF e pelos representantes dos Ministérios da Defesa Nacional, do Interior, dos Negócios Estrangeiros e Cooperação, do Plano e Finanças, da Justiça da Administração Estatal, dos Transportes e Comunicações, dos Recursos Minerais e Energia, da Agricultura e Densevolvimento Rural, da Coordenação da Acção Ambiental, do Turismo, das Pescas e do Ensino Superior, Ciências e Tecnologia.

2. Os representantes dos Ministérios serão nomeados pelo Ministro dos Negócios Estrangeiros e Cooperação, por indicação dos respectivos Ministros.

Artigo 15
(Funcionamento)

1. O Conselho Técnico reúne-se ordinariamente de três em três meses e extraordinariamente, sempre que os seus membros o solicitarem, ou quando convocados pelo Presidente.

2. Para objectivos específicos o Presidente poderá convidar peritos ou outras entidades a participar nas reuniões do Conselho Técnico.

3. Para a realização de tarefas específicas o Presidente pode convidar um membro do Conselho Técnico ou criar um grupo específico de trabalho.

4. A convocatória é feita por escrito com antecedência de setenta e duas horas e com a indicação da respectiva agenda.

Secção III
Funções das Estruturas

Artigo 16
(Direcção do Mar)

Compete à Direcção do Mar:

a) Elaborar propostas, coordenar e participar nas actividades sobre o mar;

b) Recolher e sistematizar todas as informações, práticas e decisões sobre assuntos relativos ao mar;

c) Elaborar propostas e participar nas negociações técnicas com as contrapartes, sobre assuntos do mar;

d) Participar nas conferências nacionais, regionais e internacionais, bem como noutros eventos ligados ao mar;

e)Promover investigações e estudos de questões relativas ao mar.

Artigo 17
(Direcção de Fronteiras)

Compete a Direcção de Fronteiras

a) Elaborar propostas, coordenar e participar nas actividades relativas a reafirmação e delimitação das fronteiras marítimas, aéreas e fluviais, bem como na delimitação das águas territoriais, zona contígua, plataforma continental e zona e conómica exclusiva;

b) Recolher e sistematizar todas as informações, práticas e decisões sobre assuntos relativos a fronteiras;

c) Elaborar propostas e participar nas negociações técnicas com as contrapartes, sobre assuntos de fronteiras;

d) Participar nas conferências nacionais, regionais e internacionais, bem como noutros eventos ligados as fronteiras;

e) Elaborar pareceres e apresentar propostas de medidas com vista a manutenção das fronteiras, em particular edifícios, vedações e marcos, abertura ou encerramento de postos fronteiriços;

f) Promover investigações e estudos de questões relativas às fronteiras.

Artigo 18
(Direcção de Assuntos Jurídicos, Estudos e Informação)

Compete a Direcção de Assuntos Jurídicos, Estudos e Informação:

a) Realizar estudos, pesquisas e análises de assuntos relativos ao mar e fronteiras;

b) Criar e gerir o Centro de Documentação e Informação sobre o mar e fronteiras;

c) Assegurar a recolha, edição e difusão de informação sobre o mar e fronteiras;

d) Elaborar planos e relatórios das actividades do IMAF;

e) Organizar o arquivo do IMAF;

f) Elaborar pareceres em matérias do mar e fronteiras;

g) Elaborar propostas de adopção ou actualização da legislação, bem como a adesão, ratificação ou denúncia de tratados ou convenções internacionais sobre o mar e fronteiras;

h) Recolher e estudar os tratados internacionais sobre o mar e fronteiras;

i) Realizar quaisquer tarefas no âmbito jurídico e de estudos que lhe forem confiadas pelo Presidente, no âmbito das atribuições do IMAF.

Artigo 19
(Departamento de Administração)

Compete ao Departamento de Administração:

a) Gerir os recursos humanos, financeiros e materiais a cargo e a responsabilidade do IMAF,

b) Garantir as condições logísticas para o funcionamento do IMAF;

c) Assegurara o sistema de comunicações do IMAF;

d) Assegurar o movimento do expediente;

e) Elaborar plano orçamental;

f) Manter actualizado o invetário do património;

g) Garantir os serviços de apoio do IMAF.

Artigo 20
(Delegações)

1. As delagações do IMAF serão chefiadas pelos delegados provinciais

Compete às delagações do IMAF

a) Coordenar e acompanhar as actividades do IMAF na área da sua jurisdição;

b) Estabelecer a ligação entre o IMAF e os Governos Provinciais e outras entidades locais no âmbito das atribuições do IMAF;

c) Exercer as demais funções que lhe forem atribuídas.

Capítulo III
Orçamento, Ralatório e Contas

Artigo 21
(Orçamento)

1. O orçamento anual do IMAF é aprovado por despacho conjunto dos Ministros dos Negócios Estrangeiros e Cooperação e do Plano e Finanças.

2. O relatório e contas anuais, deverão ser submetidos até 31 de Março do ano que respeitam, à aprovação do Tribunal Administrativo.

Capítulo IV
Gestão Financeira e Patrimonial

Artigo 22
(Património)

Constitui património do Instituto a universalidade de bens, direitos e outros valores doados pelo Estado, entidade pública ou privada e agências de cooperação.

Artigo 23
(Receitas)

Constituem receitas do IMAF:

a) As doações, subsídios ou quaisquer liberalidades atribuídas por quaisquer entidades públicas ou privadas, nacionais, internacionais ou estrangeiras;

b) O produto de venda de manuais, bolentins informativos ou outras publicações;

c) Os valores cobrados pela prestação de serviço;

d) As dotações atríbuidas pelo Estado;

e) Quaisquer outros rendimentos, bens ou direitos que provenham da sua actividade ou que por lei lhe sejam atribuídos.

Artigo 24
(Despesas)

Constituem despesas do IMAF:

a) Os encargos com o respectivo funcionamento e com o cumprimento das suas atribuições;

b) Os custos de aquisição, manutenção e conservação dos bens, equipamentos ou serviços que tenham de utilizar;

c) Os encargos com as deslocações e o alojamento, no País e no estrangeiro.

Artigo 25
(Normas de Gestão)

A gestão patrimonial e financeira do Instituto, incluindo a organização da contabilidade rege-se pelas norma aplícáveis a pessoas colectivas de direito público em vigor na República de Moçambique.

Capítulo V
Vinculação do Instituto

Artigo 26
(Vinculação)

O IMAF obriga-se:

a) Pela assinatura do Presidente; ou

b) Pela assinatura do Vice-Presidente, ou de um Director, nos limites do mandato conferido pelo Presidente.

Capítulo VI
Disposições Finais

Artigo 27
(Regulamento Interno e Quadro Pessoal)

1. O Presidente do IMAF, submeterá à aprovação, nos termos da lei e no prazo de seis meses a proposta do regulamento interno e do quadro pessoal.

2. Poderão ser contratados pelo IMAF, em regime de prestação de serviço, individualidades e técnicos nacionais ou estrangeiros de reconhecido mérito e especialização, estranhos ao IMAF, para a execução de estudos ou trabalhos especiais, sendo a respectiva remuneração fixada por comum acordo.

3. Aos membros do Conselho Técnico será concedido uma senha de presença para cada sessão de trabalho, num valor a ser fixado por despacho conjunto dos Ministros dos Negócios Estrangeiros e Cooperação e do Plano e Finanças.

Artigo 28
(Estatuto do Pessoal)

1. O pessoal do IMAF previsto no nº 1 do artigo anterior, rege-se pelas normas aplicáveis aos funcionários do Estado.

2. Exceptuam-se os casos mencionados no nº 2 do artigo anterior, para os quais são aplicáveis as normas do contrato individual de trabalho em vigor na República de Moçambique.

Annex III: Decree No. 2/2001 Establishing the Coordination Council of Sea and Boundaries

PRESIDÉNCIA DA REPÚBLICA
Decreto n.° 2/2001 de 3 de Julho

A importáncia económica e estratégica que o mar e as fronteiras representam para a República de Moçambique tanto como Estado de litoral, tanto como Estado de trânsito, impõe que o Estado, à luz do ordenamento jurídico interno e das convenções internacionais, adopte medidas que salvaguardem de maneira mais efectiva a soberania nacional e crie mecanismos mais eficazes de protecção e conservação do meio ambiente marinho e seus recursos e garantam o estreitamento e manutenção de relações amistosas com os países vizinhos e do mundo em geral, através do seu espaço aéreo, do mar e das fronteiras.

A natureza multisectorial e pluridisciplinar das actividades de gestão do espaço aéreo, do mar e das fronteiras, exige a adequação dos meacnismos e das estruturas de coordenação, por forma a melhorar a eficácia das entidades envolvidas na concepção, definição de políticas e estratégias e na realizção de acções sobre o espaço aéreo, o mar e as fronteiras.

Nestes termos, ao abrigo do disposto na alínea *c)* do artigo 121 da Constituição da República, decreto:

Artigo 1

É criado o Conselho Coordenador do Mar e Fronteiras, abreviadamente designado CCMAF.

Artigo 2

O Conselho Coordenador do Mar e Fronteiras é um órgão do Conselho de Ministros que tem por objectivo coordenar as acções multisectoriais sobre o mar e fronteiras.

Artigo 3

O Conselho Coordenador do Mar e Fronteiras é constituído pelos seguntes membros:

a) Primeiro-Ministro – Presidente;

b) Ministro dos Negócios Estrangeiros e Cooperação – Vice-Presidente;

c) Ministro da Defesa Nacional;

d) Ministro do Interior e para os Assuntos de Defesa e Segurança na Presidência da República;

e) Ministro do Plano e Finanças;

f) Ministro da Justiça;

g) Ministro da Administração Estatal;

h) Ministro dos Transportes e Comunicações;

i) Ministro dos Recursos Minerais e Energia;

j) Ministro da Agricultura e Desenvolvimento Rural;

k) Ministro para a Coordenação da Acção Ambiental;

l) Ministro do Turismo;

m) Ministro das Pescas;

n) Ministra do Ensino Superior Ciência e Tecnologia.

Artigo 4

O Presidente do Instituto Nacional do Mar e Fronteiras participa nas reuniões do Conselho Coordenador.

Artigo 5

Sempre que se mostre necessário, o Presidente do Conselho Coordenador pode convidar peritos, outras entidades públicas ou privadas, para participar nas reuniões do Conselho Coordenador do Mar e Fronteiras.

Artigo 6

Na prossecução dos seus objectivos, compete ao Conselho Coordenador do Mar e Fronteiras:

a) Coordenar as acções multisectoriais nos domínios do mar e fronteiras;

b) Propor políticas, projectos e estratégias de gestão do mar e fronteiras;

c) Adoptar medidas adequadas com vista à instalação e manutenção das infra-estruturas do mar e fronteiras;

d) Propor a abertura ou o encerramento dos Postos Fronteiriços;

e) Pronunciar-se sobre actividades relativas à afirmação e delimitação de fronteiras terrestres, marítimas, aéreas, lacustres e fluviais da República de Moçambique;

f) Pronunciar-se sobre as negociações internacionais, bem como sobre a participação da República de Moçambique nas conferências e outros eventos internacionais relativos ao mar e fronteiras;

g) Propor a adopção ou actualização da legislação, bem como a adesão, ratificação ou denúncia de tratados ou convenções internacionais sobre o mar e fronteiras.

Arigo 7

O Conselho Coordenador do Mar e Fronteiras reúne-se, ordinariamente, duas vezes por ano, podendo o respectivo Presidente convocar sessões extraordinárias sempre que as circunstâncias o exijam.

Artigo 8

O funcionamento permantente do Conselho Coordenador do Mar e Fronteiras e o Secretariado, serão garantidos pelo IMAF.

Publique-se: O Presidente da República.

Annex IV: Maritime Boundary Agreement Between Mozambique and Tanzania

Agreement between the Government of the United Republic of Tanzania and the Government of the People's Republic of Mozambique regarding the Tanzania/Mozambique Boundary 28 December 1988 (Published in two versions – English and Portuguese).

The Government of the United Republic of Tanzania and the Government of the People's Republic of Mozambique;

Mindful of the principles of International Law, in particular the principle of sovereign equality of States;

Mindful further of the aims and principles of the Charter of the Organization of African Unity;

Animated by the desire to draw closer the friendship, solidarity and good neighborliness existing between their two countries;

Convinced that the strengthening of their traditional relations will contribute to the consolidation of peace and security on the African Continent;

Desiring to conclude an agreement for the purpose of reaffirming the land boundary and delimiting the maritime boundary between their respective countries;

Inspired by the principles of the 1982 United Nations Convention on the Law of the Sea; and

Bearing in mind that the two Governments are signatories to the said Convention;

Have agreed as follows.

Article 1
Land Boundary

The land boundary line between the United Republic of Tanzania and the People's Republic of Mozambique follows the course of the Ruvuma River from a point hereinafter referred to as point “A”, located at latitude 10º 28' 04"S and longitude 40º 26' 19" E being a point at the mouth of the Ruvuma River which is equidistant from Ras Mwambo located at latitude 10º 27' 48" S and longitude 40º 25' 50"E, and Ras Ruvuma located at latitude 10º28'21"S, and longitude 40º 26' 48" E to the confluence of the River Msinje and thence runs westerly along the parallel of latitude to the shore of Lake Nyasa as established in the relevant agreements between Germany and Portugal and between Great Britain and Portugal to which the Governments of the United Republic of Tanzania and the People's Republic of Mozambique consider themselves bound.

Article 2
Maritime Boundary

Internal Waters:

The outer limit of the internal waters of the two countries is delimited by means of a straight line drawn across the mouth of the Ruvuma Bay from Ras Matunda, located at latitude 10° 21' 32" S and longitude 40º 27' 35" E to Cabo Suafo, located at latitude 10° 28' 14" S and longitude 40° 31'

33" E. All waters on the landward side of this line constitute the internal waters of the two countries. The internal waters are apportioned by means of a straight line drawn across the Ruvuma Bay from a point hereinafter referred to as point “B”, located at latitude 10° 24' 53" S and longitude 40º 29' 34" E which is the mid-point of the line demarcating the outer limit of such waters, that is to say, between Ras Matunda and Cabo Suafo to point “A”, the mid-point of the line drawn across the mouth of the Ruvuma River between Ras Mwambo and Ras Ruvuma. The waters bounded by points “A”, “B”; and Ras Matunda belong to the United Republic of Tanzania and the waters bounded by points “A”, “B” and Cabo Suafo belong to the People's Republic of Mozambique.

Article 3
Territorial Sea

The territorial sea boundary line boundary the two countries is delimited by application of the equidistance method by drawing a median straight line from point “B” to a point 12 nautical miles, located at latitude 10º 18' 46" S and longitude 40º 40' 07" E, hereinafter referred to as point “C”.

Article 4
Exclusive Economic Zone

The delimitation of the Exclusive Economic Zone between the two countries is delimited in conformity with the equidistance method by prolonging the median straight line used for the delimitation of the territorial sea from point “C” to a point 25.5 nautical miles, located at latitude 10º 05' 29" S and longitude 41º 02' 01" E, hereinafter referred to as point “D”. From this point, the Exclusive Economic Zone is delimited by application of the principle of equity, by a line running due east along the parallel of point “D”. The point to termination of this line will be established through exchange of notes between the United Republic of Tanzania and the People's Republic of Mozambique at a future date.

Article 5
Description of Maritime Boundary

The description of the maritime boundary line and the points through which it passes is as follows:

This line commences at the mouth of the Ruvuma River from point “A”, located at latitude 10º 28' 04" S and longitude 40º 26' 19" E, that is to say, the mid-point of the straight line drawn between Ras Mwambo, located at latitude 10º 27' 48" S, and longitude 40º 25' 50" E, and Ras Ruvuma, located at latitude 10º 28' 21" S, and longitude 40º 26' 48" E, and from point “A” the line runs across the Ruvuma Bay in a north easterly direction in a straight line to point “B”, located at latitude 10º 24' 53" S, and longitude 40º 29' 34" E, that is to say, the mid-point of the base line demarcating the out limit of the internal waters between Ras Matunda, located at latitude 10º 21' 32" S, and longitude 40º 27' 35" E and Cabo Suafo, located at latitude 10º 28' 14" S and longitude 40º 31' 33" E.

From point “B” the boundary line follows the median straight line derived by application of the equidistance method between Ras Matunda, located at latitude 10º 21' 32" S, and longitude 40º 27' 35" E, and Cabo Suafo, located at latitude 10º 28' 14" S, and longitude 40º 31' 33" E, and runs in a northeasterly direction in a straight line to point “C”, located at latitude 10º 18' 46" S, and longitude 40º 40' 07" E.

From there it follows the same median line as far as point “D” located at latitude 10º 05' 29" S, and longitude 40º 02' 01" E. Thence it runs due east along the parallel of point “D” to a point established pursuant to article IV.

Article 6
Schedule of Geographical Co-ordinates

The Schedule of geographical co-ordinates attached hereto as Annex “A”, including the hydrographic chart of 1: 200 000, number 42620-Manager (Channel of Mozambique - Mejumbe Island to Ruvuma Bay - 1986 publication) and the hydrographic chart of 1: 2 000 000 number 40120-Manager (channel of Mozambique - 1984 publication) attached hereto as Annex “B” AND “C” describing the co-ordinates of the boundary line as delimited, shall form as integral part of this Agreement.

Article 7
Co-operation

The two Governments shall co-operate with each other whenever necessary in order to maintain the existing marks and other such points of reference, including such marks or other points of reference as may from time to time be established.

Article 8
Ratification

This Agreement shall be subject to ratification and shall come into force on the date of exchange of instruments of ratification.

Done in Maputo on 28th December, 1988, in two original copies in the English and Portuguese language, both texts being equally authentic.

For and on behalf of the governments of the United Republic of Tanzania and the People's Republic of Mozambique.

Signed: Ministers for Foreign Affairs

Annex V: Decree No. 47 771 Approving the Baselines of Ultramarine Provinces

MINISTÉRIO DA MARINHA
Repartição do Gabinete
Decreto-Lei n.° 47 771 de 8 de Julho de 1967

Tornando-se necessário definir as linhas de fecho e de base rectas que, na costa continental europeia e nas costas das províncias da Guiné, Angola e Moçambique suplementam a linha de base estabelecida no n.° 2130, de 22 de Agosto de 1966.

Ao abrigo do disposto no n.° 2 da base acima referida; Unsando da faculdade conferida pela 1.ª parte do n.° 2 do Artigo 109 da Constituição, o Governo decreta e eu promulgo; para valer como lei, o seguinte:

Artigo 1

Na costa continental europeia e nas costas das províncias da Guiné, Angola e Moçambique a linha de base normal para a medição da largura do mar territorial, estabelecida na base I da Lei n.° 2130, é suplementada pelas linhas de fecho e de base rectas definidas pelos pontos cujas coordenadas geográficas constam dos quadros seguintes:

1) Linhas de fecho e de base rectas que, na costa continental europeia, suplementam a linha de base normal:

(...)

2) Linhas de fecho e de base rectas que na Guiné, suplementam a linha de base normal:

(...)

3) Linhas de fecho e de base rectas que, em Angola, suplementam a linha de base normal:

(...)

4) Linhas de fecho e de base rectas que, em Moçambique, suplementam a linha de base normal:

Pontos	**Latitude S**	**Longitude E**
Cabo Delgado	10° 41' 24"	40° 38' 54"
Ilha Tecomagi	10° 45' 24"	40° 40' 22"
Ilha Rongui	10° 50' 08"	40° 41' 38"
Ilha Vamizi	11° 00' 50"	40° 43' 53"
Ilha Quero Niuni	11° 41' 30"	40° 39' 12"
Ilha Medjumbi	11° 49' 09"	40° 38' 09"
Ilha Querimba	12° 27' 09"	40° 38' 40"
Ponta do Diabo	12° 45' 48"	40° 38' 09"
Ponta Maunhane	12° 58' 32"	40° 36' 02"
Ponta Metampia	14° 01' 24"	40° 38' 42"
Ponta a N. da Ponta Cogune	14° 10' 39"	40° 44' 06"
Ponta a E. do baixo da Pinda	14° 13' 52"	40° 47' 49"
Ponta Relamzapo	14° 27' 43"	40° 50' 55"
Ilha Quitangonha	14° 51' 15"	40° 50' 04"
Ilha Injaca	15° 00' 12"	40° 48' 17"
Ilha de Goa	15° 03' 14"	40° 47' 33"
Ilha de Sena	15° 05' 12"	40° 46' 37"

Farol de Infusse	15° 29' 42"	40° 33' 54"
Ilha de Mafamede	16° 21' 38"	40° 02' 45"
Ilha Puga-Puga	16° 27' 36"	39° 57' 12"
Ilha Caldeira	16° 39' 12"	39° 43' 52"
Ilha de Moma	16° 49' 04"	39° 31' 52"
Ilha Epidendron	17° 05' 54"	39° 08' 12"
Ilha Casuarina	17° 07' 52"	39° 05' 28"
Ilha do Fogo	17° 14' 58"	38° 52' 47"
Ilha Quisungo	17° 19' 40"	38° 05' 15"
Ponto a N. E. da Ponta Pabjini	25° 17' 12"	33° 19' 20"
Cabo Inhaca	25° 58' 10"	32° 59' 40"

Artigo 2

Além das referidas no artigo anterior, o Estado Português utiliza, como linha de base para a medição da largura do mar territorial, as linhas de fecho que resultam da aplicação do direito internacional à entrada de enseadas usadas para carga, descarga e ancoradouro de navios, às embocaduras dos rios e à entrada dos portos.

Artigo 3

O Estado Português definirá oportunamente, de acordo com o direito internacional, as linhas de fecho e de base rectas referentes às costas de outras parcelas do território nacional.

Publique-se e cumpra-se como nele se contém.
Para ser publicado no Boletim Oficial de todas as províncias ultramarinas.

Annex VI: Decree-Law No. 31/76 Defining the Rights of Peoples Republic of Mozambique

CONSELHO DE MINISTROS
Decreto-Lei n° 31/76 de 19 de Agosto

Torna-se imperiosa a definação, pela República Popular de Moçambique, dos direitos sobre os recursos económicos do mar adjacente às suas costas.

Ao fazê-lo, no entanto, a República Popular de Mçambique, coinsciente das suas responsabilidades internacionais e tendo em conta que está em curso a Conferência do Direito do Mar das Nações Unidas com vista a elaboração de uma Convenção, envitou tomar posição sobre matérias que possam considerar-se controversas, ou proceder a uma excessiva pormenorização de todos os aspectos sobre que importa legislar, contribuindo deste modo para a criação de um clima favorável ao estabelecimento dum entendimento internacional em matérias do direito do mar.

A República Popular de Moçambique não podia, contudo, deixar de adoptar, desde já, um minímo de medidas destinadas a salvagardar os legítimos direitos e interesses do povo moçambicano, defendendo os seus espaços marítimos da pilhagem e abusos a que tem sido sujeitos.

Nestes termos, ao abrigo do dispostos na alínea *c)* do Artigo 54 da Constituição, o Conselho de Ministros decreta:

Artigo 1

1. A largura do mar territorial da República Popular de Moçambique é de 12 milhas marítimas a partir de linhas de base.

2. A linha de base normal a partir da qual se mede a largura do mar territorial é definida pela linha de baixa-mar ao longo da costa, tal como vem indicada nas cartas marítimas oficialmente reconhecidas para esse fim pela República Popular de Moçambique.

3. A linha de base normal é suplementada pelas linhas de fecho e de base rectas, a traçar pela República Popular de Moçambique, de acordo com o direito internacional, entre pontos da sua costa, que serão definidas em portaria conjunta dos Ministros do Desenvolvimento e Planificação Económica e dos Transportes e Comunicações.

Artigo 2

Na zona contígua ao mar territorial, até às duzentas milhas maritímas da linha de base, a República Popular de Moçambique tem poderes soberanos relativamente a prospecção e exploração, conservação e administração dos recursos naturais, biológicos ou não biológicos, do fundo dos mares, do seu subsolo e das águas supra-jacentes.

Artigo 3

1. Quando não haja acordo em contrário, e quando exista sobreposição dos limites estabelecidos nos artigos anteriores com os estabelecidos por Estados cujas costas sejam opostas às da República Popular de Moçambique, os limites estabelecidos pela República Popular de Moçambique não irão além da linha equidistante dos pontos mais próximos das linhas de base a partir das quais é medida a largura do mar territorial e zona económica exclusiva de cada um dos dois Estados.

2. Se a linha equidistante referida no artigo anterior se situar aquém do limite das águas territoriais e zona económica exclusiva estabelecidos por Estados cujas costas sejam opostas às da República Poplular de Moçambique, a zona económica exclusiva fixada no presente diploma estabeler-se-á até aquele limite.

Aprovado em Conselho de Ministros.

Publique-se: O Presidente da República.

Annex VII: Fisheries Act (No. 3/90) (Selected Articles from the Original Version)

ASSEMBLEIA POPULAR
Lei n° 3/90 de 26 de Setembro

Constituíndo o sector de Pescas da República Popular de Moçambique uma importância manifesta para o desenvolvimento económico e social do país, impõe-se, como condição necessária para o seu ordenamento, que o diploma legal adaptado às novas realidades do país defina o quadro jurídico relativo ao planeamento e à gestão pesqueiras, à implementação do regime de licenças, à adopção de medidas de conservação dos recursos, à fiscalização da qualidade dos productos de pesca destinados à exportação e ao domínio da fiscalização das actividades de pesca.

Neste contexto, se procede agora à aprovação da Lei das Pescas. Este diploma tem o carácter de um texto-quadro definindo os parâmetros da acção da administração pesqueira e das actividades dos agentes económicos. Algumas das suas normas, em particular as que se referem à fiscalização, são imediatamente aplicáveis . Outras carecem de medidas regulamentares de execução a cuja adopção progressiva o Governo de Moçambique procederá sob impulsão da Secretaria do Estado das Pescas que vê, assim, clarificadas e confirmadas as responsabilidades que tem vindo a assumir.

Nestes termos, ao abrigo da alínea *a)* do artigo 44 da Constituição da República, a Assembleia Popular determina:

Título I
Disposições Preliminares

Artigo 1
(Definições)

1. Para os efeitos da presente lei e demais regulamentos, as expressões que se seguem significam:

1.1. *Águas marítimas* – O mar territorial e a zona económica exclusiva, tais como definidos no Decreto-Lei n° 37/76, de 19 de Agosto, e as águas marítimas interiores para aquém das linhas de base e sujeita à influência das marés.

1.2. *Águas interiores* – as águas que se encontram fora da acção das marés, nomeadamente os rios, os lagos e as lagoas sem ligação com o mar, com comunicação somente nas marés vivas, os canais e outras massas aquíferas e, de um modo geral, os depósitos de água susceptíveis de criação de espécies aquáticas.

13. *Águas jurisdicionais* – as águas marítimas e as águas interiores acima referidas.

1.4. *Artes de Pesca* – qualquer artefacto ou intrumento destinado à pesca:

1.5. *Pesca:*

a) As actividades de captura ou apanha de espécies aquáticas;

b) A procura, a tentativa de captura ou de apanha de espécies aquáticas;

c) Qualquer operação em relação com ou de preparação para a captura ou apanha de espécies aquáticas compreendendo nomeadamente a instalação ou a recolha de dispositivos para as atrair ou para a sua procura.

1.6. *Pescaria* – As operações de pesca e uma ou várias populações de espécies aquáticas sobre as quais são baseadas as referidas operações que, tendo em conta as características geográficas, económicas, sociais, científicas, técnicas ou recreativas, podem ser consideradas como constituíndo uma unidade para fins de aproveitamento, gestão e desenvolvimento.

1.7. *Operações conexas de pesca* – As operações que se realizam com embarcações no decurso do processo produtivo de pesca e que concorrem para a concretização ou rentabilização da actividade de pesca propriamente dita, nomeadamente:

a) O transbordo de pescado ou de productos de pesca de uma embarcação para outra;

b) O armazenamento, processamento e transporte marítimo de quaisquer espécie aquáticas capturadas em águas jurisdicionais a bordo de embarcações até ao primeiro desembarque;

c) O abastecimento ou fornecimento de embarcações de pesca ou quaisquer outras actividades de apoio logístico à embarcação de pesca, quando realizadas no mar;

d) Tentativa de preparação para uma das operações previstas acima, quando realizadas no mar;

e) O transporte marítimo de pescadores de e para os lugares de pesca.

1.8. *Aquacultura marinha* – as actividades que têm por fim a reprodução, e ou o crescimento, a engorda, a manutenção e o melhoramento de espécies aquáticas para fins de produção sendo estas operações efectuadas em instalações alimentadas por águas marítimas.

1.9. *Aquacultura de água doce* – as actividades que têm por fim a a reprodução, e ou o crescimento, a egorda, a manutenção, e o melhoramento de espécies aquáticas para fins de produção sendo estas operações efectuadas em instalações alimentadas por águas interiores.

1.10. *Pessoa colectiva nacional* – pessoa colectiva com sede social em Moçambique, tendo a maior parte das suas actividades baseadas neste país e na qual:

a) A participação no capital social esteja interiramente nas mãos de cidadãos nacionais ou outras pessoas colectivas nacionais; ou

b) A participação de nacionais no capital social seja significativa e os benefícios que resultam para o país das suas actividades conduzam o Secretário do Estado das Pescas, através de despacho devidamente fundamentado e publicado, a conferir-lhe o estatuto de pessoa colectiva nacional para fins de aplicação da presente lei, de acordo com os critérios a definir por via regulamentar;

c) Apesar de não serem satisfeitos os requisitos das alíneas anteriores, tenha desenvolvido em Moçambique, de maneira contínua, actividades de exploração pesqueira desde antes da data da independência; ou

d) Não obstante não serem satisfeitos os critérios das alíneas anteriores, venham exercer actividades de exploração e de envolvimento pesqueiro e o Secretário de Estado das Pescas lhes tenha conferido mediante despacho devidamente fundamentado e publicado, o estatuto de pessoa colectiva nacional, de acordo com critérios a definir por via regulamentar.

1.11. *Embarcação de pesca* – toda aquela que esteja equipada ou seja utilizada para a pesca ou actividades conexas de pesca ou pesca de investigação científica ou axperimental.

1.12. *Embarcação de pesca moçambiqcana* – uma embarcação de pesca que seja:

a) Propriedade do Estado de Moçambique; ou

b) Propriedade de uma ou várias pessoas singulares nacionais ou fretada por uma ou várias pessoas singulares nacionais, após autorização da Secretaria e Estado das Pescas, com a condição de ter sido registada em Moçambique; ou

c) Propriedade de uma pessoa colectiva nacional ou fretada por uma pessoa colectiva nacional, após autorização da Secretaria de Estado das Pescas e com a condição de ter sido registada em Moçambique;

d) Propriedade de estrangeiros com domínio em Moçambique.

1.13. *Embarcação de pesca estrangeira* – aquela que não seja uma embarcação de pesca moçambicana.

1.14. *Armador* – pessoa colectiva ou pessoa singular proprietária da embarcação de pesca, ou a entidade operadora da operação de pesca.

1.15. *Recursos pesqueiros* – espécies aquáticas, animais ou vegetais, cujo meio de vida normal ou mais frequente é a água, e que são objecto de actividade da pesca ou de aquacultura.

1.16. *Pesca de subsistência* – a que é praticada com ou sem embarcação com meios artesanais elementares, constitui uma actividade secundária para as pessoas que a praticam, fornece bens alimentares para o consumo próprio e não produz excedentes significativos comercializáveis.

1.17. *Pesca de pequena escala* – a que abrange a pesca artesanal e a semi-industrial.

1.18. *Sistema de pesca* – conjunto constituído pelas artes de pesca, outros instrumentos, embarcações e métodos utilizados na actividade de pesca.

1.19. *Estabelecimento de processamento de productos* – qualquer local ou instalação na qual produtos da pesca são enlatados, secos, fumados, postos em salmoura, postos em gelo, congelados ou tratados de qualquer outra forma para serem vendidos a grosso ou a retalho.

Artigo 2
(Âmbito de Aplicação)

1. As disposições da presente lei são apliáveis às águas jurisdicionais de Moçambique, nos termos e condições nela definidos.

2. As embarcações de pesca moçambicanas pescando em águas internacionais ou de terceiros países, embora sujeitas às respectivas leis, estão igualmente sujeitas às disposições da presente lei, relativamente a infracções em que incorram, sejam estas do conhecimento ou não do terceiro país.

Artigo 3
(Tipos de Pesca)

1. Consoante a sua finalidade e meios empregues, a pesca classifica-se em:

a) Pesca de subsistência;

b) Pesca artesanal;

c) Pesca semi-industrial;

d) Pesca industrial;

e) Pesca de investigação científica e experimental;

f) Pesca recreativa e desportiva.

2. A definição dos diferentes tipos de pesca mencionados no presente artigo, exceptuada a pesca de subsistência, será feita por via regulamentar. A definição entre a pesca artesanal, semi-industrial e industrial será efectuada tomando em consideração, nomeadamente, as zonas de pescas, a complexidade das embarcações utilizadas, a sua autonomia, o tipo de artes de pesca empregues, assim como a evolução previsível das diferentes frotas de pesca.

Título II
Gestão e Ordenamento das Pescas

Capítulo I
Princípios Gerais

Artigo 4
(Domínio Público dos Recursos Pesqueiros)

Os recursos pesqueiros das águas jurisdicionais de Moçambique são do domínio público, cabendo ao Estado regulamentar as condições do seu uso e aproveitamento. A pesca, assim como as actividades conexas de pesca, carecem de autorização nos termos da presente lei e dos demais regulamentos.

Artigo 5
(Administração e Desenvolvimento das Pescas)

Compete ao Conselho de Ministros assegurar a administração e promever o desenvolvimento do sector pesqueiro, tendo em vista a utilização óptima e racional dos recursos pesqueiros. Compete-lhe, em particular, fazer aplicar a presente lei e demais regulamentos.

Artigo 6

(Organização da Administração Local das Pescas)

1. O Conselho de Ministros definirá orientações de política geral para o desenvolvimento do sector pesqueiro a nível provincial.

2. O Conselho de Ministros estabelecerá, no respeito das normas das normas relativas à organização da administração local das pescas e, se for o caso disso, promoverá a adopção de medidas de cooperação com outros órgãos da administração local das pescas e, se for caso disso, promoverá a adopção de medidas de cooperação com outros órgãos da administração local com vista a uma administração apropriada do sector pesqueiro.

Artigo 7
(Acordos Internacionais de Cooperação)

O Conselho de Ministros promoverá a negociação e a conclusão de acordos internacionais de cooperação, nomeadamente regionais, tendo em vista a:

a) Harmonização dos sistemas de ordenamento e gestão das pescarias, recolha e troca de estatísticas e dos procedimentos e condições de atribuição de licenças a embarcações de pesca nomeadamente estrangeiras, em particular no que diz respeito aos stocks compartilhados, e incluindo a adopção de medidas provisórias em relação a determinadas zonas;

b) Adopção de medidas coordenadas de fiscalização das actividades de embarcações de pesca estrangeira;

c) Execução de outras acções de interesse comum.

Artigo 8
(Planos de Desenvolvimento)

1. O Conselho de Ministros promoverá a preparação e a actualização de planos de desnvolvimento, e adoptará as medidas necessárias à sua aplicação. Estes planos tomarão em consideração numa medida apropriada a situação e os objectivos de desenvolvimento das principais pescarias.

2. Em toda a medida do possível os planos de desenvolvimento serão elaborados nos termos do processo que assegure a participação de organismos sociais, profissionais e económicos ligados à actividade de pesca.

Artigo 9
(Promoção da Pesca de Pequena Escala)

Tendo em conta a importância económica e social deste tipo de actividade, a Secretaria do Estado das Pescas terá como objectivo, incluído na política sectorial, empreender as necessárias acções para promover o desenvolvimento da pesca de pequena escala. Para o efeito, procederá à adopção de medidas apropriadas, se for caso disso, em cooperação com outros organismos competentes do Estado.

Artigo 10
(Fundos para o Fomento Pesqueiro)

Poderão ser criados fundos com o objectivo de fomentar a actividade pesqueira e de apoiar financeiramente as acções que visem o incremento e valorização da produção pesqueira nacional, com particular incidência nas formas de produção de pequena escala.

Artigo 11
(Conflitos de Pesca)

A Secretaria do Estado das Pescas promoverá a adopção de medidas necessárias para prevenir e resolver os conflitos entre pescadores no uso de artes ou sistemas de pesca diferentes. Estas medidas podem, nomeadamente incluir:

a) A definição das zonas reservadas para diferentes tipos de pesca;

b) A sinalização das artes de pesca;

c) A subscrição de seguros destinados a garantir a repartição dos danos eventualmente causados a pescadores;

d) O estabelecimento de comissões de inquérito ou de conciliação e a adopção de medidas de aplicação das recomendações adoptadas;

e) O estabelecimento de ajustes apropriados entre grupos de pescadores, nomeadamente industrias, semi-industriais e artesanais.

Artigo 12
(Aquacultura Marinha e de Água Doce)

1. A Secretaria de Estado das Pescas é a autoridade competente para definir orientações gerais para a política de gestão e desenvolvimento da aquacultura marinha e de água doce.

2. A criação e a exploração de estabelecimento de aquacultura marinha ficarão sujeitas a autorização prévia do Secretário de Estado das Pescas nos termos que vierem a ser definidos por via regulamentar.

3. A Secretaria do Estado das Pescas adoptará, em coordenação com o Ministério da Agricultura, as medidas que forem necessárias, para o desenvolvimento e enquadramento de aquacultura de água doce, nomeadamente:

a) Preparação de programas de investigação científica;

b) As normas e preceitos a respeitar na introdução de novas espécies;

c) As normas e preceitos a respeitar para o controlo das doenças das espécies;

d) As condições a que devem sujeitar-se a criação e exploração de estabelecimentos de aquacultura de água doce.

Artigo 13
(Pesca nas Águas Interiores)

1. A Secretaria de Estado das Pescas é a autoridade competente para a administração das pescas e a gestão das pescarias nas águas interiores.

2. A competência referida no número anterior poderá vir a ser delegada no Ministério da Agricultura, de acordo com orientações de política geral de desenvolvimento a definir conjuntamente com a Secretaria de Estado das Pescas.

3. A pesca nas águas interiores fica sujeita ao regime contido no Capítulo II deste Título e as condições estabelecidas no âmbito de regulamentação específica.

Artigo 14
(Pesca Recreativa e Desportiva)

A pesca recreativa deverá ser objecto de regulamentação própria.

Artigo 15
(Estabelecimento de Processamento de Productos de Pesca e de outras Actividades Complementares das Pescas)

1. Compete à Secretaria de Estado das Pescas, autorizar a constituição, instalação e licenciamentos de estabelecimento de produtos de pesca cujas condições e caracteristicas serão definidas em regulamento específico.

2. A autorização para a constituição, instalação e licenciamento de actividades productivas ou de serviços complementares à actividade de pesca ou de actividades conexas de pesca do âmbito da responsabilidade da Secretaria de Estado das Pescas reger-se-á pela lei geral aplicável às actividades industriais e comerciais.

(...)

Título III
Medidas de conservação

Artigo 35
(Medidas de conservação)

Compete a Secretária do Estado das Pescas, definir medidas de conservação dos recursos pesqueiros, nomeadamente:

a) Prescrever medidas de conservação e de gestão compreendendo entre outras, dimensões e, ou pesos mínimos das espécies, períodos de veda, áreas de acesso proibido ou limitado, dimensões mínimas das malhas, regulamantação das artes de pesca, limites máximos de capturas autorizadas por embarcação ou por pessoa em determinada pescaria ou zona, métodos de pesca proibidos e esquemas para a limitação do acesso e do esforço de pesca;

b) Proibir ou regulamentar o exercício da pesca de mamiféros marinhos e outras espécies internacionalmente protegidas assim como proteger espécies raras ou em perigo de extinção;

c) Adoptar quaisquer outras medidas de conservação necessárias à preservação dos recursos pesqueiros.

Artigo 36
(Proibição do uso de explosivos ou de substâncias tóxicas ou de pesca por electrocução)

É expressamente proibido:

a) Empregar ou tentar empregar no exercício da pesca, matérias explosivas ou substâncias tóxicas susceptíveis de enfraquecer, atordoar, excitar ou matar as espécies ou por qualquer outro modo as tornar mais fáceis de capturar ou ainda qualquer outro instrumento de pesca por electrocução;

b) Deter ou transportar a bordo de embarcações de pesca, matérias, substâncias e instrumentos referidos na alínea anterior.

(...)

Aprovada pela Assembleia Popular.

O Presidente da Assembleia Popular.

Publique-se: O Presidente da República.

Annex VIII: Environmental Act (No. 20/97)

ASSEMBLEIA DA REPÚBLICA
Lei no 20/97 de 1997 de 1 de Outubro

A Constituição do nosso País confere a todos os cidadãos o direito de viver num ambiente equilibrado, assim, como o dever de o defender. A materialização deste direito passa ncessariamente por uma gestão correcta do ambiente e dos seus componentes e pela criação de condições propícias à saúde e ao bem-estar das pessoas. ao desenvolvimento sócio-económico e cultural das comunidades e à preservação dos recursos naturais que as sustentam.

Nestes termos e ao abrigo do n° l do Artigo 135 da Constituição da República de Moçambique. a Assembleia da República determina:

Capítulo I
Disposições Gerais

Artigo 1
(Definições)

Para efeitos da presente Lei:

1. *Actividade* - é qualquer acção, de iniciativa pública ou privada, relacionada com a utilização ou a exploração de componentes ambientais, a aplicação de tecnologias ou processos produtivos, planos, programas, actos legislativos ou regulamentares, que afecta ou pode afectar o ambiente.

2. *Ambiente* - é o meio em que o Homem e outros seres vivem e interagem entre si e com o próprio meio, e inclui:

a) O ar, a luz, a terra e a água;

b) Os ecossistemas, a biodiversidade e as relações ecológicas;

c) Todas as matéria orgânica e inorgânica;

d) Todas as condições sócio-culturais e económicas que afectam vida das comunidades.

3. *Associações de Defesa do Ambiente* - São pessoas colectivas que têm como objecto a protecção, a conservação e a valorização dos componentes ambientais. Estas associações poderão ter àmbito internacional, nacional, regional ou local.

4. *Auditoria Ambiental* - é instrumento de gestão e de avaliação sistemática, documentada e objectiva do functionamento e organização de sistema de gestão e dos processos controlo e protecção do ambiente.

5. *Avaliação do Impacto Ambiental* - é um instrumento da gestão ambiental preventiva e consiste na identificação e análise prévia, qualitativa e quantitativa, dos efeitos ambientais benéficos e perniciosos de uma actividade proposta.

6. *Biodiversidade* - é a variedade e variabilidade entre os organismos vivos de todas as origens, incluindo, entre outros, os ecossistemas terrestres, marinhos e outros ecossistemas aquáticos, assim; como os complexos ecológicos dos quais fazem parte; compreende a diversidade dentro de cada espécie, entre as espécies e de ecossistemas.

7. *Componentes Ambientais* - são os diversos elementos que integram o ambiente e cuja interacção permite o seu equilíbrio, incluindo o ar, a água, o solo, o subsolo, a flora, a fauna e todas as condições socio-económicas e de saúde que afectam as comunidades; são também designados correntemente por recursos naturais.

8. *Degradação do Ambiente* - é a alteração adversa das características do ambiente, e inclui, entre outras, a poluição, a desertificação, a crosão e o deflorestamento.

9. *Deflorestamento* - é a destruição ou abate indiscriminado de matas e florestas sem a reposição devida.

10. *Desenvolvimento Sustentável* - é o desenvolvimento baseado numa gestão ambiental que satisfaz as necessidades da geração presente sem comprometer o equilíbrio do ambiente e a possibilidade de as gerações futuras satisfazerem também as suas necessidades.

11. *Desertificação* - é um processo de degradação do solo, natural ou provocado pela remoção da cobertura vegetal ou utilização predatoria que, devido a condições climáticas, acaba por transformalo num deserto.

12. *Ecossistema* - é um complexo dinàmico de comunidades vegetais, animais e de microorganismos, e o seu ambiente não vivo, que interage como uma unidade funcional.

13.*Erosão* - é o desprendimento da superficie do solo pela acção natural dos ventos ou das águas, que muitas vezes é intensificado por praticas humanas de retirada de vegetação.

14. *Estudo de Impacto Ambiental* - é a componente do processo de avaliação do impacto ambiental que analisa técnica e cientificamente as consequéncias da implantação de actividades de desenvolvimento sobre o ambiente.

15. *Gestão Ambiental* - é o maneio e a utilização racional e sustentável dos componentes ambientais, incluindo o seu reuso, recielagem, protecção e conservação.

16. *Impacto Ambiental* - é qualquer mudança do ambiente, para melhor ou para prior, especialmente efeitos no ar, na terra, na água e na saúde das pessoas, resultante de actividades humanas.

17.*Legislação Ambiental* - abrange todo e qualquer diploma legal que rege a gestão do ambiente.

18. *Legislação Sectorial* - são os diplomas legais que regem um compopnente ambiental específico.

19. *Padrões de Qualidade Ambiental* - São os níveis de admissíveís concentração de poluentes prescritos por lei para os componentes ambientais com vista a adequá-los a determinado fim.

20. *Peritagem Ambiental* - é a investigação realizada por um grupo integrado por especialistas de, idoneidade e reputação reconhecidas, com vista a avaliar a gravidade e custos dos danos causados ao ambiente.

21. *Poluição* - é a deposição no ambiente de substâncias ou resíduos, independentemente da sua forma, bem como a emissão de luz, som e outras formas de energia, de tal modo e em quantidade tal que o afecta negativamente.

22. *Qualidade do Ambiente* - é o equilíbrio e a sanidade do ambiente, incluindo a adequabilidade dos seus componentes às necessidades do homem e de outros seres vivos;

23. *Lixos Ou Resíduos Perigosos* - são substâncias ou objectos que se eliminam, que se tem a intenção de eliminar, ou que se é obrigado por lei a eliminar, e que contêm características de risco por serem inflamaveis, explosivas, corrosivas, toxicas, infecciosas ou radioactivas, ou por apresentarem qualquer outra característica que constitua périgo para a vida ou saúde do homem e de outros seres vivos para a qualidade do ambiente.

24. *Zonas Húmidas* - são áreas de pântano, brejo, turfeira ou água, natural ou artificial, permanente ou temporaria, parada ou corrente, doce, salobra ou salgada, incluindo as águas do mar cuja profundidade na mare baixa não excede seis metros, que sustentam a vida vegetal ou animal que requeira condições de saturação aquática do solo.

Artigo 2
(Objecto)

A presente lei tem como objecto a definição das bases legais para uma utilização e gestão correctas do ambiente e seus componentes, com vista à materialização de um sistema de desenvolvimento sustentável no pais.

Artigo 3
(Âmbito)

A presente lei aplica-se a todas as actividades públicas ou privadas que directa ou indirectamente possam influir nos componentes ambientais.

Artigo 4
(Princípios Fundamentais)

A gestão ambiental basea-se em princípios fundamentais, decorrentes do direito de todos os cidadãos a um ambiente ecologicamente equilibrado, propício a sua saúde e ao seu bem-estar físico e mental, nomeadamente:

1. Da utilização e gestão racionais dos componentes ambientais, com vista à promoção da melhoria da qualidade de vida dos cidadãos e à manutenção da biodiversidade e dos ecossistemas.

2. Do reconhecimento e valorização das tradições e do saber das comunidades locais que contribuam para a conservação e preservação dos recursos naturaís e do ambiente.

3. Da precaução, com base no qual a gestão do ambiente deverá priorizar o estabelecimento de sistemas de prevenção de actos lesivos ao ambiente, de modo a evitar a ocorrência de impactos ambientais negativos significativos ou irreversiveis, independentemente da existência de certeza científica sobre a ocorrência de tais impactos.

4. Da visão global e integrada do ambiente, como um conjunto de ecossistemas interdependentes, naturais e construidos, que devem ser geridos de maneira a manter o seu equilíbrio funcional sem exceder os seus limites intrinsecos.

5. Da ampla participação dos cidadãos, como aspecto crucial da execução da Programa Nacional de Gestão Ambiental.

6. Da igualdade, que garante oportunidades iguais de acesso e uso de recursos naturais a homens e mulheres.

7. Da responsabilização, com base no qual quem polui ou de qualquer outra forma degrada o ambiente, tem sempre a obrigação de reparar ou compensar os danos daí decorrentes.

8. Da cooperação internacional, para a obtenção de soluções harmoniosas dos problemas ambientais, reconhecidas que são as suas dimensões transfronteiriças e globais.

Capítulo II
Órgãos de Gestão Ambiental

Artigo 5
(Órgãos Centrais)

1. Cabe ao Governo elaborar e executar o Programa Nacional de Gestão Ambiental.

2. Com vista a garantir-se uma efectiva e correcta coordenação e integração dos princípios e das actividades de gestão ambiental no processo de desenvolvimento do pais é criado o Conselho Nacional de Desenvolvimento Sustentável.

3. O Conselho Nacional de Desenvolvimento Sustentável é um órgão consultivo do Conselho de Ministros, e servirá também como foro de auscultação da opinião pública sobre questões ambientais.

Artigo 6

1. São competências do Conselho Nacional de Desenvolvimento Sustentável:

a) Pronunciar-se sobre as políticas sectoriais relacionadas com a gestão de recursos naturais:

b) Emitir parecer sobre propostas de legislação complementar à Lei Quadro do Ambiente, incluindo as propostas criadoras ou de revisão de legislação sectorial relacionada com a gestão de recursos naturais do país;

c) Pronunciar-se sobre as propostas de ratificação de convenções internacionais relativas ao ambiente;

d) Elaborar propostas de criação de incentivos financeiros ou de outra natureza para estimular os agentes económicos para a adopção de procedimentos ambientalmente sãos na utilização quotidiana dos recursos do país.

e) Propor mecanismos de simplificação e agilização do processo de licenciamento de actividades relacionadas com o uso de recursos naturais;

f) Formular recomendações aos ministros das diversas areas de gestão de recursos naturais sobre aspectos relevantes das respectivas áreas;

g) Servir como foro de resolução de diferendos institucionais relacionados com a utilização e gestão de recursos naturaís;

h) Exercer as demais funçoes que lhe forem cometidas pela presente lei e pela demais legislação ambiental.

2. A composição e o funcionamento do Conselho Nacional de Desenvolvimento Sustentável serão regulados por decreto do Conselho de Ministros.

Artigo 7
(Ógãos Locais)

A nível local serão criados serviços responsáveis pela implementação da presente lei, os quais garantirão a coordenação da acção ambiental a esse nivel e a descentralização na sua execução, de modo a permitir um aproveitamento adequado das iniciativas e conhecimentos locais.

Artigo 8
(Participação Pública na Gestão do Ambiente)

É obrigação do governo criar mecanismos adequados para envolver os diversos sectores da sociedade civil, comunidades locais, em particular as associações de defesa do ambiente, na elaboração de políticas e legislação relativa à gestão dos recursos naturais do pais, assim como no desenvolvimento das actividades de implementação do Programa Nacional de Gestão Ambiental.

Capitulo III
Puluição do Ambiente

Artigo 9
(Proibição de poluir)

1. Não é permitida, no territorio nacional, a produção, o deposito no solo e no subsolo, o lançãmento para a água ou para a atmosfera, de quaisquer substâncias tóxicas e poluidoras, assim como a prática de actividades que acelerem a crosão, a desertificação, o deflorestamento, ou qualquer outra forma de degradação do ambiente, fora dos limites legalmente estabelecidos.

2. É expressamente proibida a importação para o território nacional de resíduos ou lixos perigosos, salvo o que vier estabelecido em legislação específica.

Artigo 10
(Padrões de Qualidade Ambiental)

1. O governo deverá estabelecer padrões de qualidade ambiental, de modo a assegurar umar utilização sustentável dos recursos do país.

2. Na definição dos padrões de qualidade ambiental, serão igualmente estabelecidas normas e prazos para a adequação dos processos agrícolas e industriais, às máquinas e aos meios de transporte, de dispositivos ou processos adequados para reter ou neutralizar substâncias poluidoras.

Capítulo IV
Medidas Especiais de Protecção do Ambiente

Artigo 11
(Protecção do Património Ambiental)

O governo deverá assegurar que o património ambiental, especialmente o histórico e cultural, seja objecto de medidas permanentes de defesa e valorização, com o envolvimento adequado das comunidades, em particular as associações de defesa do ambiente.

Artigo 12
(Protecção da Biodiversidade)

1. São proibidas todas as actividades que atentem contra a conservação, reprodução, qualidade e quantidade dos recursos biologicos, especialmente os ameaçados de extinção.

2. O governo assegurara que sejam tomadas medidas adequadas com vista à:

a) Manutenção e regeneração de espécies animais, recuperação de habitats danificados e criação de novos habitats, controlando-se especialmente as actividades ou o uso de substâncias susceptiveis de prejudicar as espécíes faunísticas e os seus habitats;

b) Protecção especial das espécies vegetais ameaçadas de extinção ou dos exemplares botânicos, isolados ou em grupo que, pelo seu potencial genético, porte, idade, raridade, valor científico e cultural, o exijam.

Artigo 13
(Áreas de Protecção Ambiental)

1. A fim de assegurar a protecção e preservação dos componentes ambientais, bem como a manutenção e melhoria de ecossistemas de reconhecido valor ecológico e sócio-económico, o governo estabelecerá áreas de protecção ambiental devidamente sinalizadas.

2. As áreas protegidas poderão ter âmbito nacional, regional, local ou ainda internacional, consoante os interesses que procuram salvaguardar e poderão abranger áreas terrestres, águas lacustres, fluviais ou marítimas e outras zonas naturais distintas.

3. As áreas de protecção ambiental serão submetidas a medidas de classificação, conservação e fiscalização, as quais devem ter sempre em consideração a necessidade de preservação da biodiversidade, assim como dos valores de ordem social, económica, cultural, científica e paisagística.

4. As medidas referidas no número anterior deverão incluir a indicação das actividades permitidas ou proibidas no interior das áreas protegidas e nos seus arredores, assim como a indicação do papel das comunidades locais na gestão destas áreas.

Artigo 14

(Implantação de infraestruturas)

1. É proibida a implantação de infraestruturas habitacionais ou para outro fim que, pela sua dimensão, natureza ou localização, provoquem um impacto negativo significativo sobre o ambiente, o mesmo se aplicando á deposição de lixos ou materiais usados.

2. A proibição inserida no número anterior aplica-se especialmente á zona costeira, às zonas ameaçadas de erosão ou desertificação, às zonas húmidas, às àreas de protecção ambiental e a outras zonas ecologicamente sensíveis.

3. Serão estabelecidas por regulamento as normas para a implantação de infraestruturas nas áreas referidas no número anterior. Será igualmente regulamentada a implantação de infraestruturas nas áreas que circundam as rodovias, as ferrovias, as barr...., os portos e aeroportos, entre outros, de modo a que se não prejudique seu funcionamento, a sua possibilidade de expansão, assim como a harmonia da paisagem.

Capítulo V
Prevenção de Danos Ambientais

Artigo 15
(Licenciamento Ambiental)

1. O licenciamento e o registo dans actividades que pela sua natureza, localização ou dimensão, sejam susceptíveis de provocar impactos significativos sobre o ambiente, serão feitos de acordo com o regime a estabelecer pelo governo, por regulamento específico.

2. A emissão da licença ambiental será baseada numa avaliação do impacto ambiental da proposta de actividade, e precederá a emissão de quaisquer outras licenças legalmente exigidas para cada caso.

Artigo 16
(Avaliação do Impacto Ambiental)

1. A avaliação do impacto ambiental terá como base um estudo de impacto ambiental a ser realizado por entidades credenciadas pelo governo.

2. Os moldes da avaliação do impacto ambiental para cada caso, assim como as demais formalidades, serão indicados em legislação especifica.

Artigo 17
(Conteúdo Mínimo do Estudo do impacto Ambiental)

O estudo do impacto ambiental, compreenderá, no mínimo, a informação seguinte:

a) Um resumo não técnico do projecto;

b) Descrição da actividade a desenvolver;

c) Situação ambiental do local de implantação da actividade;

d) Modificações que a actividade provocará nos diferentes componentes ambientais existentes no local;

e) Medidas previstas para suprimir ou redúzir os efeitos negativos da actividade sobre a qualidade do ambiente;

f) Sistemas previstos para o controle e monitorização da actividade.

Artigo 18
(Auditorias Ambientais)

1. Todas as actividades que à data dá entrada em vigor desta lei se encontrem em funcionamento sem a aplicação de tecnologias ou processos apropriados e, por consequência disso, resultam ou podem resultar em danos para o ambiente, serão objecto de auditorias ambientais.

2. Os custos decorrentes da reparação dos danos ambientais eventualmente constatados pela autditoria são da responsabilidade dos empreendedores.

Capítulo VI
Direitos e Deveres dos Cidadãos

Artigo 19
(Direito à informação)

Todas as pessoas têm a direito de acesso à informação relacionada com a gestão do ambiente do pais, sem prejuizo dos direitos de terceiros legalmente protegidos.

Artigo 20
(Direito à Educação)

Com vista a assegurar uma correcta gestão do ambiente e a necessaria participação das communidades, o governo deverá criar, em colaboração com os orgãos de comunicação social, mecanismos e programas para a educação ambiental formal e informal.

Artigo 21
(Direito de Acesso à Justiça)

1. Qualquer cidadão que considere terem sido violados os direitos que lhe são conferidos por esta lei, ou que considre que existe ameaça de violação dos mesmos, pode recorrer as instâneis jurisdicionais para obter a reposição dos seus direito ou a prevenção da sua violação.

2. Qualquer pessoa que, em consequência da vialação das disposições da legislação ambiental, sofra ofensas pessoais ou danos patrimoniais, incluindo a perda de colheitas ou de lucros, poderá processar judicialmente o autor dos danos ou da ofensa e exigir a respectiva reparação ou indemnização.

3. As acções legais referidas nos números 1 e 2 deste artigo seguirão os termos processuais adequados.

4. Compete ao Ministério Público a defesa dos valores ambientais protegidos por esta lei, sem prejuízo da legitimidade dos lesados para propor as acções referidas na presente lei.

Artigo 22
(Embargos)

Aqueles que se julguem ofendidos nos seus direitos a um ambiente ecologicamente equilibrado poderão requerer a suspensão imediata da actividade causadora da ofensa, seguindo-se, para tal efeito, o processo do embargo administrativo ou outros meios processuais adequados.

Artigo 23
(Obrigação de participação de infracções)

Qualquer pessoa que verifique infracções às disposições desta lei ou de qualquer outra legislação ambiental, ou que razoavelmente presuma que tais infracções estejam na iminência de ocorrer, tem a obrigação de informar as autoridades policiais ou outros agentes administrativos mais próximos sobre o facto.

Artigo 24
(Obrigação de utilização responsável dos recursos)

Todas as pessoas têm a obrigação de utilizar os recursos naturais de forma responsável e sustentável, onde quer que se encontrem e independentemente do fim, assim como o dever de encorajar as outras pessoas a proceder do mesmo modo.

Capítulo VII
Responsabilidades, Infracções e Sanções

Artigo 25
(Seguro de responsabilidade Civil)

Todas as pessoas que exerçam actividades que envolvam elevado risco de degradação do ambiente, e assim classificadas pela legislação sobre a avaliação do impacto ambiental, deverão segurar a sua responsabilidade civil.

Artigo 26
(Responsabilidade Objectiva)

1. Constituem-se na obrigação de pagar uma indemnização aos lesados todos aqueles que, independentemente de culpa e da observância dos preceitos legais, causarem danos significativos ao ambiente ou provocarem a paralisação temporária ou definitiva de actividades economicas, como resultado da prática de actividades especialmente perigosas.

2. Compete ao governo supervisar a avaliação da gravidade dos danos e a fixação do seu valor, que serão efectuadas por via de uma peritagem ambiental.

3. Sempre que as circunstâncias o exijam, o Estado tomará as medidas necessárias para prevenir, conter ou eliminar qualquer dano grave ao ambiente, gozando, contudo, do direito de regresso pelos custos suportados.

Artigo 27
(Crimes e Contravenções Ambientais)

As infracções de carácter criminal, bem como as contravenções, relativas ao ambiente, serão objecto de previsão em legislação específica.

Capítulo VIII
Fiscalização Ambiental

Artigo 28
(Agentes de Fiscalização Ambiental)

O Governo criara, em termos a regulamentar, um corpo de agentes de fiscalização ambiental competentes para velar pela implementação da legislação ambiental e para a tomada das providências necessárias para prevenir a violação das suas disposições.

Artigo 29
(Dever de Colaboração)

Todas as pessoas encarregues de uma actividade ou lugar sujeito à fiscalização deverão colaborar com os agentes de fiscalização na realização das suas actividades.

Artigo 30
(Participação das Comunidades)

Com vista a garantir a necessária participação das comunidades locais e a utilizar adequadamente os seus conhecimentos e recursos humanos, o governo, em coordenação com as autoridades locais, promoverá a criação de agentes de fiscalização comunitários.

Capítulo IX
Disposições Finais

Artigo 31
(Incentivos)

O governo criará incentivos económicos ou de outra natureza com vista a encorajar a utilização de technologias e processos produtivos ambientalmente sãos.

Artigo 32
(Legislação Sectorial)

1. A legislação existente que foge a gestão des componentes ambientais deverá ser ajustada às disposições da presente lei.

2. Na regulamentação da presente lei compete ao governo fixar os prazos para que os projectos já autorizados e os empreendimentos em curso que contrariem os dispositivos da presente lei sejam a esta ajustados.

Artigo 33
(Legislação Complementar)

1. Cabe ao governo adoptar as medidas regulamentares necessárias à efectivação da presente lei.

2. Na regulamentação à presente lei, compete ao governo fixar os prazos para que os projecto já autorizados e os empreendimentos em curso que contrariem os dispositivos da presente lei, sejam a esta ajustados.

Artigo 34
(Vigência)

A presente lei entra em vigor 60 dias após a sua publicação no Boletim da República.

Aprovada pela Assembleia da República.

Publique-se: O Presidente da República.