

# AFRICA AND THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: DEVELOPMENTS AND CHALLENGES

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## Abstract

*With South Africa being the latest African coastal state to receive recommendations from the Commission on the Limits of the Continental Shelf on its submission to extend its continental shelf beyond 200 nautical miles from its mainland territory, this article provides a comprehensive view of the claims to an extended shelf by African coastal states. As such, it highlights the additional access to non-living resources that African coastal states may enjoy in the region, and thus, among other things, the economic benefits that may ensue. The article also raises the challenge of delimiting maritime boundaries between states with adjacent or opposite coasts in light of claims to an extended continental shelf and provides a synopsis of the nature of maritime boundary disputes on the continent.*

**Keywords:** African Union; continental shelf; delimitation; CLCS; SPLOS; LOSC; UN General-Secretary

## 1 Introduction

This article sheds light on the development of claims by Africa's coastal states to a continental shelf beyond 200 nautical miles (nm). In a broad sense, the article highlights the progress of African coastal states in claiming an extended continental shelf since the 1982 United Nations Convention on the Law of the Sea (LOSC)<sup>1</sup> came into effect, as well as the work ahead for the African Union (AU) and its member states where an extended shelf has been established. Specifically, the article highlights the challenge of delimiting maritime boundaries where claims to an extended shelf overlap with the ocean spaces of a state with an adjacent or opposite coast. In this regard, the article summarises the nature of maritime boundary disputes on the continent. It is important to highlight

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<sup>1</sup> 1833 UNTS 3, (1982) 21 ILM 1245. The LOSC under art 308 provides that on the 60th ratification, the Convention will come into effect a year later; the 60th ratification was by Guyana on 16 November 1993, which led to the LOSC coming into effect on 16 November 1994.

this issue because without clearly defined boundaries, those African coastal states that have claimed extended continental shelves cannot definitively claim their legal right to the resources therein as provided by the LOSC.

Indeed, most activities performed by a state take place within the territory of that state. A state's territory is not only crucial for its existence but also constitutes the dimension within which it deploys its major activities.<sup>2</sup> Territories are demarcated by boundaries to establish the extent of a state's sovereignty and thus the ambit within which its laws apply.<sup>3</sup> For coastal states, their sovereignty extends to certain legal zones in the seas washing their shores, where it has exclusive access to explore and exploit, inter alia, its non-living resources.<sup>4</sup> Such activities have the potential to contribute significantly to a coastal state's economy. For African coastal states, this access presents an additional opportunity to address many of their socio-economic challenges such as energy shortages.<sup>5</sup>

In terms of the LOSC, the continental shelf is among the legal zones over which a coastal state has the exclusive right to undertake exploitation activities.<sup>6</sup> According to article 76(1) of the LOSC, the continental shelf comprises the seabed and subsoil of

the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Where the margins of the continental shelf extend farther than 200 nm, a coastal state may extend its jurisdiction when recommendations to that effect have been made by the Commission on the Limits of the

<sup>2</sup> A Cassese *International Law* 2 ed (2005) 81.

<sup>3</sup> G Abraham 'Lines upon maps: Africa and the sanctity of African boundaries' (2007) 15 *African Journal of International and Comparative Law* 72.

<sup>4</sup> See for instance art 77(4) of the LOSC.

<sup>5</sup> B Kwiatkowska 'Ocean affairs and the law of the sea: Towards the 21st century' (1993) 17 *Marine Policy* 11; 'Energy in Africa: Overview' <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTAFRREGTOPENERGY/0,menuPK:717332~pagePK:51065911~piPK:64171006~theSitePK:717306,00.html> (accessed 3 December 2017).

<sup>6</sup> A coastal state's access to the continental shelf is not dependent on express proclamation. See art 77(3) of the LOSC. Other zones include a 12 nm territorial sea, a contiguous zone to a maximum breadth of 24 nm and an exclusive economic zone not extending farther than 200 nm. For the LOSC provisions applicable to the abovementioned zones, see arts 3, 33 and 57.

Continental Shelf (CLCS).<sup>7</sup> Considering that 36 of Africa's 39 coastal states (92%) have ratified the LOSC,<sup>8</sup> and as such, a significant portion of Africa's economic potential resides within its established ocean spaces,<sup>9</sup> claiming an extended continental shelf opens further economic opportunities for African coastal states.

On 17 March 2017, South Africa became the latest African coastal state to receive recommendations from the CLCS with regard to its claim for an extended continental shelf from its mainland territory.<sup>10</sup> Accordingly, South Africa's extended access to its ocean spaces significantly contributes towards unlocking the country's economic potential at sea, which will be crucial for addressing issues identified in its 2030 National Development Plan such as poverty, unemployment and inequality.<sup>11</sup> South Africa's desire to maximise its economic potential at sea reflects

<sup>7</sup> The CLCS is an independent group of experts whose function is to '(a) consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea; [and] (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to'. See art 76(8) and Annex II art 3(1) LOSC.

<sup>8</sup> These 36 states include: Algeria (1996), Angola (1990), Benin (1997), Cameroon (1985), Cape Verde (1987), Comoros (1994), Congo (2008), Côte d'Ivoire (1984), DRC (1989), Djibouti (1991), Egypt (1983), Equatorial Guinea (1997), Gabon (1998), Gambia (1984), Ghana (1983), Guinea (1985), Guinea-Bissau (1986), Kenya (1989), Liberia (2008), Madagascar (2001), Mauritania (1996), Mauritius (1994), Morocco (2007), Mozambique (1997), Namibia (1983), Nigeria (1986), São Tomé and Príncipe (1987), Senegal (1984), Seychelles (1991), Sierra Leone (1994), Somalia (1989), South Africa (1997), Sudan (1985), Tanzania (1985), Togo (1985) and Tunisia (1985). Eritrea, Libya and Western Sahara (UN non-self governing territory) have not ratified the LOSC. See 'Chronological Lists of Ratifications of, Accessions and Successions to the Convention and the Related Agreements (2 January 2015) [http://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea](http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea) (accessed 3 January 2018).

<sup>9</sup> See 'Table of Claims to Maritime Jurisdiction' (15 July 2011) [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table\\_summary\\_of\\_claims.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf) (accessed 3 November 2017).

<sup>10</sup> See 'CLCS/98' (17 April 2017) <http://undocs.org/CLCS/98> (accessed 4 December 2017).

<sup>11</sup> This is South Africa's reasoning for adopting 'Operation Phakisa'. Operation Phakisa is 'an initiative designed to fast track the implementation of solutions on critical development issues'. The initiative aims to achieve its objectives through six focus areas, namely, marine transport and manufacturing, offshore oil and gas exploration, aquaculture, marine protection services and ocean governance, small harbours and coastal and marine tourism. See 'Operation Phakisa' <http://www.operationphakisa.gov.za/Pages/Home.aspx>; <https://www.environment.gov.za/projectsprogrammes/operationphakisa/oceanseconomy> (accessed 6 January 2017).

Africa's aspirations as captured in Agenda 2063.<sup>12</sup> These ambitions include, among other things, a continent that is prosperous, and whose prosperity is 'based on inclusive growth and sustainable development'.<sup>13</sup> As far as ocean activities on the continent are concerned, the 2050 Africa's Integrated Maritime Strategy (2050 AIMS) is the roadmap crafted by African leaders to effectively utilise the continent's ocean spaces to contribute towards meeting its ambitions.<sup>14</sup> The strategy 'is an African-driven long-term and reasonably comprehensive vision crafted to better harness Africa's so-called "blue economy", with the vision of using this to promote development in the continent'.<sup>15</sup> The 2050 AIMS not only echoes the ambitions of African states when they contributed towards the negotiation and adoption of the LOSC, but also outlines the continent's current plans to maximise its economic potential in offshore industries such as mining, fisheries, ports and harbour management.<sup>16</sup> As far as the continental shelf is concerned, the 2050 AIMS indicates the importance of claiming an extended shelf where applicable.<sup>17</sup> Other than for exploitation purposes, successful claims will inform the work of the AU and its member states in some of the strategic actions outlined in the strategy such as maritime spatial planning.<sup>18</sup>

To this end, this article outlines and discusses the process for establishing an extended continental shelf and, with particular reference to the extended continental shelf claims of African states. The article then moves on to identify and describe maritime delimitation and the interaction between the disputes and the extended shelf claims. Finally, some concluding observations are offered.

<sup>12</sup> Agenda 2063 '[i]s a strategic framework for the socio-economic transformation of the continent over the next 50 years'. The Agenda lists seven aspirations, which speak to Africa's desire for shared prosperity and well-being. See 'About Agenda 2063' <https://au.int/en/agenda2063/about> (accessed 11 November 2017).

<sup>13</sup> *Ibid.*

<sup>14</sup> See '2050 Africa's Integrated Maritime Strategy' [http://cggrps.org/wp-content/uploads/2050-AIM-Strategy\\_EN.pdf](http://cggrps.org/wp-content/uploads/2050-AIM-Strategy_EN.pdf) (accessed 5 January 2018).

<sup>15</sup> E Egede 'Institutional gaps in the 2050 Africa's Integrated Maritime Strategy' (2016) 1 *Journal of Ocean Law and Governance in Africa* 2.

<sup>16</sup> See para 25 of the 2050 AIMS. See (n 14 above).

<sup>17</sup> See (n 14 above) para 59.

<sup>18</sup> *Id* para 81.

## 2 Establishing a Continental Shelf Beyond 200 nm

### 2.1 The Process in terms of the LOSC

In terms of article 76(8) of the LOSC, a coastal state intending to establish a continental shelf beyond 200 nm is to submit information to the CLCS as soon as possible, but no later than ten years from the date that state became a party to the LOSC.<sup>19</sup> In terms of article 4 of Annex II to the LOSC, this information should include the particulars of such limits, together with supporting scientific and technical data. Upon submission, the CLCS will then consider the data and other materials submitted and make recommendations to the coastal state for the establishment of the outer limits of its continental shelf beyond 200 nm.<sup>20</sup> It is on the basis of the recommendations that a coastal state may establish the outer limits of the continental shelf.<sup>21</sup> These recommendations must be made in accordance with the LOSC and the 'Statement of Understanding Concerning a Specific Method to be used in establishing the Outer Edge of the Continental Shelf'.<sup>22</sup> 'Recommendations approved by the Commission [...] shall not prejudice the position of States which are parties to land or maritime dispute[s]'.<sup>23</sup> It is important to note that the CLCS will not consider the merits of a submission where there is an objection based on boundary delimitation.<sup>24</sup>

Coastal states are directed 'to establish the outer limits of the continental shelf [...] in accordance with the appropriate national

<sup>19</sup> See art 76(8) LOSC read with art 4 of Annex II LOSC.

<sup>20</sup> See art 3(1)(a) of Annex II LOSC.

<sup>21</sup> 'The wording "on the basis" of seems to imply a closer relationship between the delineation of the outer limits of the continental shelf and the recommendations of the CLCS [...]. The wording "provides certainty and consistency for the international community, while preserving sufficient, although unspecified, flexibility for the coastal State". Within this framework, deviations seem to be permissible from the recommendations of the Commission, so long as the coastal State honours its obligations under article 76. Furthermore, there is nothing in UNCLOS that provides that the coastal State must fully comply with the recommendations of the CLCS [...]' B Magnusson *The Continental Shelf Beyond 200 Nautical Miles: Delineation, Delimitation and Dispute Settlement* (2015) 89.

<sup>22</sup> The Statement of Understanding Annex II of the Final Act (UN Doc A/CONF.62/121 and Corr 1 - 8) at 'Final Act of the United Nations Conference on the Law of the Sea' [http://www.un.org/depts/los/convention\\_agreements/texts/final\\_act\\_eng.pdf](http://www.un.org/depts/los/convention_agreements/texts/final_act_eng.pdf) (accessed 3 January 2018).

<sup>23</sup> UN Doc CLCS/40/Rev 1 at 'Rules of Procedure of the Commission on the Limits of the Continental Shelf' <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement> (accessed 3 January 2018).

<sup>24</sup> See para 5 of ANNEX I of the Rules of Procedure of the Commission on the Limits of the Continental Shelf.

procedures'.<sup>25</sup> A continental shelf beyond 200 nm that has been established by a coastal state on the basis of these recommendations is final and binding.<sup>26</sup> Unless it decides otherwise, the CLCS will make use of subcommissions to address the submissions of states parties.<sup>27</sup> The subsections below discuss the timeframe within which a coastal state must make its submission to the CLCS as well as submissions by African coastal states to the CLCS.

## 2.2 *Timeframe for Submissions*

On 29 May 2001, the states parties to the Law of the Sea Convention (SPLoS) decided,<sup>28</sup> vis-à-vis the ten-year period provided for in the Convention for the submitting a claim, that 13 May 1999 would be deemed to be ratification date for states Parties that ratified the LOSC before that date.<sup>29</sup> This is because, among other things, the CLCS adopted its Scientific and Technical Guidelines on that date and was thus only able to undertake its work from then.<sup>30</sup> Consequently, for many states, the latest date for submission would be 13 May 2009. For states that ratified the LOSC after 13 May 1999, the prescribed ten-year period would continue to apply.<sup>31</sup>

In Africa, the AU Assembly of Heads of State, through a decision,<sup>32</sup> advocated that African coastal states that ratified the LOSC before 13 May 1999 and wanted to extend their continental shelves beyond 200 nm, make their submissions to the CLCS before the period lapsed. Additionally, the Assembly encouraged '[m]ember States to submit to the United Nations [UN] General Assembly a recommendation for a

<sup>25</sup> 'In the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.' See arts 7 and 8 of Annex II LOSC.

<sup>26</sup> See art 76(8) LOSC.

<sup>27</sup> See arts 2(1) and 5 of Annex II LOSC.

<sup>28</sup> The SPLoS meetings are convened in accordance with art 319(2)(e) LOSC.

<sup>29</sup> UN Doc SPLoS/72 para [a] 'Decision Regarding the Date of Commencement of the Ten-year Period for Making Submissions to the Commission on the Limits of the Continental Shelf Set out in Article 4 of Annex II to the United Nations Convention on the Law of the Sea' <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/387/64/PDF/N0138764.pdf?OpenElement> (accessed 3 January 2018).

<sup>30</sup> UN Doc CLCS/11 and Corr 1 and 2 at 'Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/171/08/IMG/N9917108.pdf?OpenElement> (accessed 3 January 2018).

<sup>31</sup> See art 4 of Annex II LOSC.

<sup>32</sup> AU Doc Assembly/AU/Dec 179 (X) para 4 'Assembly of the African Union Tenth Ordinary Session' [http://www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_31\\_JANUARY\\_2\\_FEBRUARY\\_2008\\_AUC\\_TENTH\\_ORDINARY\\_SESSION\\_DECISIONS\\_AND\\_DECLARATIONS.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_31_JANUARY_2_FEBRUARY_2008_AUC_TENTH_ORDINARY_SESSION_DECISIONS_AND_DECLARATIONS.pdf) (accessed 3 January 2018).

postponement, by an additional period of ten years, the 12 May 2009 [deadline],<sup>33</sup> while striving to meet the set deadline'. This was owing to the scientific, technical and financial constraints experienced by states on the continent ahead of their submissions. This part of the AU decision echoes the concerns that were raised by the Kenyan delegation at the 64th plenary meeting of the UN General Assembly on 10 December 2007. The delegation requested that an extension of the ten-year period be considered for developing states.<sup>34</sup> It submitted, among other things, that although it is

committed to making its submission within the timeline, [it] believe[d] it should not be regarded as a deadline meant to penalize those States that ratified the Convention early. As a matter of principle, the rights of developing States over their continental shelves beyond 200 [nm] need to be safeguarded. To that end, and in view of the difficulties experienced in the preparation of submissions, States Parties should undertake a constant review of the ability of States to meet the timeline and make the necessary recommendations. They could include putting in place modalities for acceptance by the [CLCS] for late submissions on a case-by-case basis. Alternatively, a general extension for developing coastal States could be considered.<sup>35</sup>

Following the decision of the AU Assembly, the SPLOS, on 24 June 2008, decided to make available an alternative process for coastal states to meet the time requirement referred to in article 4 of Annex II of the LOSC.<sup>36</sup> The SPLOS decided that states parties that are unable to make submissions to the CLCS within the ten-year period might meet the time requirement by submitting to the UN Secretary-General, preliminary

<sup>33</sup> 12 May 2009 is a day earlier than the one set by the SPLOS.

<sup>34</sup> UN Doc A/62/PV.64 26 at 'General Assembly Sixty-Second Session: 64th Plenary Meeting' <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/633/93/PDF/N0763393.pdf?OpenElement> (accessed 3 January 2018).

<sup>35</sup> Benin, on behalf of the African Group at the 56th UN General Assembly plenary meeting in 2009 echoed Kenya's statements. Benin stated that the African Group is of the belief that 'several developing States have no chance of meeting the deadlines set by the Convention for delineating the continental shelf beyond the 200 [nm] mark'. As a result, the delegation held that 'in order to comply with the spirit and the letter of the Convention, the African Group encourages delegations to be proactive in seeking practical and realistic solutions to this important problem'. See *ibid* 9.

<sup>36</sup> The constraints experienced by developing states were also well articulated by the Kenyan delegation during the UN General Assembly's 64th plenary meeting. The delegation stated that, 'the implementation of Article 76 of the Convention continues to pose serious financial and technical challenges to coastal developing states. That is because the parameters that define whether a coastal state can extend its jurisdiction beyond 200 [nm] are based on a complex set of scientific rules. They require the collection, assembly and analysis of a body of relevant hydrographic, geological and

information indicative of the extended continental shelf.<sup>37</sup> This preliminary information is to be submitted together with a description of the status of preparation and the intended date of making a submission in accordance with article 76(8) of the LOSC, the Rules of Procedure<sup>38</sup> and the Scientific and Technical Guidelines of the CLCS.<sup>39</sup> Pending receipt of the submission, the SPLOS makes it clear that the Commission will not consider the preliminary information.<sup>40</sup> The decision 'comes out as an attempt to reach a compromise between States clamouring for a further extension of the deadline, and those not prepared to consider any such further extension'.<sup>41</sup> It also has the effect of reducing the number of submissions the Commission has to consider, consequently reducing its workload.<sup>42</sup>

Further, on 12 February 2009, the UN General Assembly welcomed the 2008 SPLOS decision, three months before the May 2009 deadline,<sup>43</sup> thus evidencing that the majority of states parties to the UN are mindful of the constraints experienced by states in meeting the period for making their submissions to the CLCS, and that it is in favour of providing, among other things, additional time to such states.<sup>44</sup> Affording states additional

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geophysical data, in accordance with the provisions outlined in the Scientific and Technical Guidelines. The complexity, scale and costs involved require substantial resources, notwithstanding the different geographical and geophysical circumstances of States'. See (n 29 above).

<sup>37</sup> UN Doc SPLOS/183 para [1(a)] at 'Decision Regarding the Workload of the Commission on the Limits of the Continental Shelf and the Ability of States, particularly Developing States, to fulfil the requirements of Article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a)' <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement> (accessed 3 January 2018).

<sup>38</sup> See (n 23 above).

<sup>39</sup> Preliminary information submitted is without prejudice to the submission in accordance with art 76 of the LOSC, the Rules of Procedure and the Scientific and Technical Guidelines of the CLCS. The UN Secretary-General shall inform the CLCS and notify member states of the receipt of the preliminary information in the aforementioned manner and make such information publicly available. See (n 30 above).

<sup>40</sup> See (n 30 above).

<sup>41</sup> E Egede 'Compliance with article 76 of the Law of the Sea Convention (LOSC) 1982: A burden for developing States?—An African Perspective' Paper presented at IHO/IAG Advisory Board on the Law of the Sea (ABLOS) Conference, Monaco 8 [http://iho.int/mtg\\_docs/com\\_wg/ABLOS/ABLOS\\_Conf6/S8P2-P.pdf](http://iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf6/S8P2-P.pdf) (accessed 5 January 2018).

<sup>42</sup> *Ibid.*

<sup>43</sup> UN Doc A/Res/63/111 4 at 'Resolution Adopted by the General Assembly on 5 December 2008' [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/63/111&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/111&Lang=E) (accessed 5 January 2018).

<sup>44</sup> The international community of states, through a number of international institutions, has expressed its willingness to provide financial as well as scientific and technical assistance for developing states in preparation for their submissions to the CLCS. Those that have expressed a willingness to provide financial assistance include, among others, the Commonwealth Secretariat. Those that have expressed a willingness to provide scientific and technical assistance include, among others, the

time also lessons the number of submissions the CLCS would have to deal with.

Concerning the workload of the CLCS, of the 79 submissions made to it thus far, with the first submission made on 20 December 2001<sup>45</sup> and the latest on 6 April 2018,<sup>46</sup> 50 (63%) were made before 13 May 2009 by those states that ratified the LOSC before 13 May 1999 – in line with the 2008 SPLOS decision.<sup>47</sup> To date, the CLCS has not provided recommendations for all 50 submissions.<sup>48</sup> In fact, out of the 50 submissions, subcommissions have been established for 42 submissions (84%)<sup>49</sup> while recommendations have been issued with respect to 29 submissions (58%).<sup>50</sup> This indicates the length and complexity of the process undertaken by the CLCS to adopt a recommendation. It also indicates the high workload ahead of the CLCS since just less than a half of submissions have already been allocated subcommissions.

What is unclear about the 2008 SPLOS decision is the period that coastal states are to make their submissions to the CLCS subsequent to submitting preliminary information to the UN Secretary-General. It has been submitted that in order to achieve certainty in the demarcation of 'the Area' as soon as possible, coastal states should, subsequent to submitting their preliminary information, make their submissions to the CLCS within a reasonable time.<sup>51</sup> This is because 'delineating the outer limits of the continental shelf has a direct relation to the geographic

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Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and UNEP Shelf Programme. See 'Commonwealth assists Solomon Islands, Seychelles Confirm Offshore Limits' <http://www.highbeam.com/doc/1G1-166835707.html> (accessed 5 January 2018); 'Law of the Sea' [http://ioc-unesco.org/index.php?option=com\\_content&view=article&id=322&Itemid=100039](http://ioc-unesco.org/index.php?option=com_content&view=article&id=322&Itemid=100039) (accessed 5 January 2018); 'UNEP Shelf Programme' <http://www.continentalshelf.org/> (accessed 5 January 2018).

<sup>45</sup> Russia made the first submission.

<sup>46</sup> The latest submission is by France in respect of the French Polynesia.

<sup>47</sup> Last submission by a state to ratify the LOSC before 13 May 1999 was by Namibia on 12 May 2009. See 'Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea' [http://www.un.org/Depts/los/clcs\\_new/commission\\_submissions.htm](http://www.un.org/Depts/los/clcs_new/commission_submissions.htm) (accessed 11 January 2018).

<sup>48</sup> Meaning that subcommissions and recommendations post 2009, have not been established and adopted.

<sup>49</sup> Or approximately 53% of the 79 submissions made to the CLCS thus far. The 78 submissions include Russia, Barbados and Argentina's revised submissions.

<sup>50</sup> Or approximately 37% of the 79 submissions made to the CLCS thus far.

<sup>51</sup> E Egede *African and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind* (2011) 51.

extent and resources of the Area', the resources within are the common heritage of mankind.<sup>52</sup>

When it comes to ascertaining what a reasonable time is, this proves to be challenging when considering that only 16 (or 34%) states out of the 47 submissions<sup>53</sup> of preliminary information have, within eight years, made submissions to the CLCS following their submissions to the UN Secretary-General.<sup>54</sup> Accordingly, 31 (66%) states have not made submissions to the CLCS subsequent to submissions to the UN Secretary-General.<sup>55</sup>

Considering the workload of the CLCS, accelerating the submissions made to it following the submission of preliminary information does not mean that the area will be accurately demarcated by virtue of submission. The CLCS will still have to engage in what has proven to be a lengthy process to adopt a recommendation, the basis upon which a submitting state will establish an extended continental shelf. This means that the area will exist as per usual until such a time as a coastal state establishes the outer limits of its extended continental shelf in accordance with the LOSC, which would consequently alter the geographical location of where the area begins.

### 3 Submissions by African Coastal States

#### 3.1 Submissions to the CLCS

The African coastal states that have made submissions to the CLCS to establish an extended continental shelf are Angola, Côte d'Ivoire, Ghana, Gabon, Kenya, Madagascar, Mauritius (in the region of Rodrigues Island), Mozambique, Nigeria, Namibia, Seychelles (concerning the Northern Plateau region), Somalia, South Africa (two submissions, one around the

<sup>52</sup> 'The "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.' See arts 1(1) and 136 LOSC; J Yu & W Ji-Lu 'The outer continental shelf of coastal States and the common heritage of mankind' (2011) 42 *Ocean Development and International Law* 328.

<sup>53</sup> These include more than one submission involving a state. For instance, Fiji is involved in three submissions. See 'Preliminary Information Indicative of the Outer Limits of the Continental Shelf beyond 200 Nautical Miles' [http://www.un.org/Depts/los/clcs\\_new/commission\\_preliminary.htm](http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm) (accessed 11 January 2018).

<sup>54</sup> These states are: Angola, Bahamas, Cuba, Gabon, Guyana, Mozambique, Oman, Somalia and Tanzania. Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone made joint submission to the CLCS (in respect of the areas in the Atlantic Ocean adjacent to the coast of West Africa).

<sup>55</sup> Also, 42 (89%) states involved in the 47 submissions of preliminary information made their submissions before the 13 May 2009 deadline, thus indicating those states benefiting from the 2008 SPLOS decision.

mainland and another around the Prince Edwards Islands) and Tanzania.<sup>56</sup> Three joint submissions have been made in accordance with the Rules of Procedure of the Commission. These submissions are by Mauritius and Seychelles in the Mascarene Plateau region; South Africa and France in the area of the Crozet Archipelago and the Prince Edward Islands; and Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone in respect of areas in the Atlantic Ocean adjacent to the coast of West Africa.<sup>57</sup> Of these submissions, subcommissions have been established for Côte d'Ivoire, Ghana, Kenya, Mauritius (in the region of Rodriguez Island), Nigeria, Seychelles (Northern Plateau region), South Africa, the joint submissions of Mauritius and Seychelles as well as the joint submissions of France and South Africa.<sup>58</sup> Only Ghana, South Africa (for its mainland territory) and the joint submission of Mauritius and Seychelles have received recommendations from the CLCS.<sup>59</sup> Mauritius and Seychelles are the only African coastal states to have made significant progress as far as taking measures to exploit the resources in the jointly claimed shelf area.<sup>60</sup> Between these two states, only Mauritius<sup>61</sup> has established this region in terms of its national procedures as directed to by the LOSC.<sup>62</sup> Seychelles has not followed such procedures. This may be owing to the unresolved dispute<sup>63</sup> over the region even though the states have undertaken to exercise joint sovereignty<sup>64</sup> and jointly manage activities over the region<sup>65</sup> for the time being. Similarly, Ghana has not established its continental shelf in terms of its procedures, which may be owing to a delimitation dispute with Nigeria Togo,<sup>66</sup> the resolution of

<sup>56</sup> See 'Submissions, ... to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982' (8 May 2018) [http://www.un.org/depts/los/clcs\\_new/commission\\_submissions.htm](http://www.un.org/depts/los/clcs_new/commission_submissions.htm) (accessed 20 May 2018).

<sup>57</sup> *Ibid.*

<sup>58</sup> See (n 56 above).

<sup>59</sup> Ghana, see UN Doc CLCS/85 item 9 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/547/71/PDF/N1454771.pdf?OpenElement>; Mauritius and Seychelles, see UN Doc CLCS/70 item 6 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/318/87/PDF/N1131887.pdf?OpenElement> (accessed 5 January 2018).

<sup>60</sup> The states have entered into Treaty Concerning the Joint Exercise of Sovereign Rights over the Continental Shelf in the Mascarene Plateau Region ('Joint Exercise of Sovereign Rights Treaty') (79 LOSB 25, 2013) and a Treaty Concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region ('Joint Management Treaty') (79 LOSB 41, 2013).

<sup>61</sup> See s 3 of the Maritime Zones (Coordinates of Outer Limits of the Extended Continental Shelf in the Mascarene Plateau Region) Regulations 2012 (GN No 92 of 2012).

<sup>62</sup> See (n 25 above).

<sup>63</sup> See art 3 Joint Exercise of Sovereign Rights Treaty.

<sup>64</sup> See art 1 Joint Exercise of Sovereign Rights Treaty.

<sup>65</sup> See art 3 Joint Management Treaty.

<sup>66</sup> See part 4.3 below.

which will clarify the ambit of Ghana's ocean spaces. South Africa is likely awaiting recommendations for its joint submission with France (in the area of the Crozet Archipelago and the Prince Edward Islands) before it follows national procedures for establishing its extended continental shelf. Although the joint submission is silent on delimitation, the states have indicated that their submission will not prejudice future delimitation between them in the continental shelf.<sup>67</sup>

All submissions by African coastal states were made within the ten-year period. Indeed, Ghana, Kenya, Mauritius,<sup>68</sup> Nigeria, Namibia, Seychelles<sup>69</sup> and South Africa<sup>70</sup> ratified the LOSC before 1999.<sup>71</sup> Madagascar, which is the only state to have ratified the LOSC, namely after 1999 on 22 August 2001, made its submission on 29 April 2011, thus meeting the period. The states that made their submissions to the CLCS subsequent to submitting preliminary information to the UN Secretary-General, thus also meeting the period, are Angola, Cape Verde, Gabon, Gambia, Guinea, Guinea-Bissau, Mauritania, Mozambique, Senegal, Sierra Leone, Somalia and Tanzania.

### **3.2 Submission of Preliminary Information to the UN Secretary-General**

A majority of African coastal states have utilised the alternative process of submitting preliminary information to the UN Secretary-General to meet the ten-year period for making submissions to the CLCS. For instance, 24 of Africa's 39 (62%) coastal states have submitted preliminary information in terms of the 2008 SPLOS decision.<sup>72</sup> This means that of the 47 submissions made by all states, just over half (or 51%) is by African coastal states, which constitutes the majority of submissions thus far, when compared to the 13 submissions (or 28%) of Asian-Pacific states and five (or 11%) of Latin American and Caribbean states as well as Western European states, respectively.<sup>73</sup> Submissions by African coastal states not only justify the reasoning behind the SPLOS 2008

<sup>67</sup> See part 4.5.1 below.

<sup>68</sup> In the region of Rodriguez Island and the joint submission with Seychelles in the Mascarene Plateau region.

<sup>69</sup> In the Northern Plateau region and the joint submission with Mauritius in the Mascarene Plateau region.

<sup>70</sup> This includes its joint submission with France in the area of the Crozet Archipelago and the Prince Edward Islands.

<sup>71</sup> Ghana (1983), Kenya (1989), Mauritius (1994), Nigeria (1986), Namibia (1983), Seychelles (1984) and South Africa (1997).

<sup>72</sup> See (n 37 above).

<sup>73</sup> *Ibid.* No eastern European states have made submissions thus far.

decision, but also indicates their intention to extend their jurisdiction farther seaward and assume the benefits that ensue.

The African coastal states included in the 24 submissions are Angola, Benin, Benin and Togo, Cameroon, Cape Verde, Comoros, Congo, Democratic Republic of the Congo (DRC), Equatorial Guinea, Gabon, Gambia, Guinea, Guinea-Bissau, Mauritania, Mauritius (in the Chagos Archipelago region), Morocco, Mozambique, São Tomé and Príncipe, Senegal, Seychelles (in the Aldabra Island region), Sierra Leone, Somalia, Togo and Tanzania.<sup>74</sup> As indicated above, Angola, Cape Verde, Gabon, Gambia, Guinea, Guinea-Bissau, Mauritania, Mozambique, Senegal, Sierra Leone, Somalia and Tanzania are among the states to have made submissions, within eight years to the CLCS subsequent to submitting preliminary information to the UN Secretary-General. The states that have not made subsequent submissions are Benin, Benin and Togo, Cameroon, Comoros, Congo, DRC, Equatorial Guinea, Mauritius (in the Chagos Archipelago region), Morocco, São Tomé and Príncipe, Seychelles (in the Aldabra Island region) and Togo. As mentioned earlier, owing to the SPLOS having not provided a timeframe in which submissions are to be made to the CLCS subsequent to submitting preliminary information to the UN Secretary-General, there exists no basis to assert that the subsequent submissions made to the CLCS were within a reasonable time, or that the states that have not made subsequent submissions are acting unreasonably by not submitting timeously.

With the exception of Comoros, the submission of preliminary information by the above states was within the ten-year period required to fulfil the time requirement for submissions to the CLCS.<sup>75</sup> Comoros is the only African coastal state, as well as the only state among the 47 states, to have submitted preliminary information after the ten-year time requirement. Comoros became a party to the LOSC on 21 June 1994 and submitted its preliminary information on 2 June 2009.<sup>76</sup> Despite this, neither the UN Secretary-General nor any other coastal state has opposed Comoros' late submission. Instead, the SPLOS published record of its submission on 16 June 2009.<sup>77</sup>

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<sup>74</sup> Ibid.

<sup>75</sup> These states indicated the extent of their preparations as well as their intended dates of making submissions. See submissions in (n 39 above).

<sup>76</sup> See (n 8 and n 39 above).

<sup>77</sup> UN Doc SPLOS/INF/22/Add 1 para 3 at 'Issues Related to the Workload of the Commission on the Limits of the Continental Shelf-Submissions to the Commission and Receipt of Preliminary Information: Note by the Secretariat' <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/389/93/PDF/N0938993.pdf?OpenElement> (accessed 21 September 2017).

Of the 36 African coastal states that have ratified the LOSC, 30 have submitted preliminary information and/or made a submission to the CLCS. Algeria, Djibouti, Egypt, Liberia, Sudan and Tunisia have not made submissions. Barring Liberia, none of the above six states may make such submissions because of the limited breadth of the continental shelf in the Mediterranean and Red Sea regions.<sup>78</sup> Further, the six states ratified the LOSC before 13 May 1999 meaning they would have had to submit no later than 13 May 2009.<sup>79</sup> In this regard, Liberia has until 25 September 2018 to make a submission to the CLCS or preliminary information to the UN Secretary-General as it ratified the LOSC on 25 September 2008.<sup>80</sup> Most African coastal states with broad continental shelves have submitted claims to extend their shelves.<sup>81</sup> As mentioned, considering the breadth of the continental shelf in the Mediterranean and Red Sea regions, Libya and Eritrea would not qualify to make such claims even if they ratified the LOSC.

Excluding the coastal states in the Mediterranean and Red Sea regions, many African coastal states have indicated to the CLCS and the UN Secretary-General that issues pertaining to un-delimited boundaries will not prejudice their submissions for an extended continental shelf.

## 4 Delimiting the Continental Shelf Beyond 200 nm

### 4.1 Introduction

Article 83 of the LOSC provides for delimiting the continental shelf between states with adjacent or opposite coasts. It is obvious therefore, that where a coastal state has established an extended continental shelf, article 83 will apply where there is an overlap.

In terms of article 83(1), 'delimitation [...] shall be effected by agreement on the basis of international law, as referred to in [a]rticle 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution'. Pending such agreement, the states concerned must, 'in a spirit of understanding and cooperation, [...] 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'.<sup>82</sup> Regarding the extended continental shelf, paragraph

<sup>78</sup> D Dzurek *Parting the Red Sea: Boundaries, Offshore Resources and Transit* (2001) 1. Indeed, no claims have been submitted by neighbouring states in the regions.

<sup>79</sup> See (n 8 above).

<sup>80</sup> *Ibid.*

<sup>81</sup> Western Sahara may claim an extended continental shelf when considering the claims of its neighbouring states. However, it has not ratified the LOSC and is listed in the UN List of Non-Self Governing Territories.

<sup>82</sup> See art 83(3) LOSC.

two in Annex I of the Rules of Procedure of the CLCS provides that the submitting state must inform the CLCS of a dispute in delimitation as well as make an undertaking that the submission will not prejudice the matter pertaining to delimitation between the disputing states.<sup>83</sup>

Indeed, article 83 is in accordance with article 33(1) of the UN Charter,<sup>84</sup> which provides for the peaceful resolution of disputes. In turn, the AU has echoed the UN Charter in its founding instrument,<sup>85</sup> and as far as the sea is concerned, the AU in its 2050 AIM Strategy has identified the resolution of delimitation disputes as a strategic action to be undertaken by its member states.<sup>86</sup>

African coastal states that have made submissions claiming an extended shelf have indicated whether there is a delimitation dispute, with others having concluded delimitation agreements within 200 nm, which will inform further delimitation in the extended continental-shelf region when the extended shelf is established. The subsections below outline the delimitation disputes and agreements that affect African coastal states' claims to an extended continental shelf in the Atlantic and eastern seaboard. Third party decisions are only referred to where they will inform the trajectory of the delimitation boundary beyond 200 nm. In other words, the following subsections do not discuss judicial decisions where a delimitation is finalised since, in such a case, there no longer remains a dispute.<sup>87</sup>

## **4.2 Delimitations in the North Atlantic Seaboard**

### **4.2.1 Delimitation between States that made a Joint Submission to the CLCS Over the Extended Continental Shelf in the Northwest Atlantic**

As mentioned above, Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone made a joint submission to the CLCS. The seven states indicated that they are mindful of delimitation disputes between some of them both within and beyond 200 nm as well

<sup>83</sup> Furthermore, para five of Annex I provides under subpara (a) that '[i]n cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute'.

<sup>84</sup> 1 UNTS 16.

<sup>85</sup> See art 4(e) of the Constitutive Act of the African Union 2158 UNTS 3.

<sup>86</sup> See (n 14 above) para 58.

<sup>87</sup> This was the case for instance in the maritime boundary dispute between Ghana and Côte d'Ivoire which was settled by the International Tribunal for the Law of the Sea. See Case no 23 *Dispute concerning delimitation of the maritime boundary between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana/ Côte D'Ivoire)*.

as delimitation issues with other states.<sup>88</sup> Notwithstanding the disputes, the states have requested, without prejudice to any other issues, that the CLCS make its recommendations as to the outer limits of the continental shelf in the area covered by their submission.<sup>89</sup> In the region, the states that have concluded delimitation agreements that will affect delimitation of the extended continental shelf are Cape Verde/Mauritania,<sup>90</sup> Cape Verde/Senegal,<sup>91</sup> Gambia/Senegal,<sup>92</sup> Guinea-Bissau/Senegal<sup>93</sup> and Mauritania/Morocco.<sup>94</sup> An arbitral tribunal delimited Guinea and Guinea-Bissau's adjacent maritime boundary.<sup>95</sup> Cape Verde/Gambia, Gambia/Guinea-Bissau, Guinea/Sierra Leone as well as Senegal/Mauritania have ongoing boundary disputes within 200 nm. These disputes are largely owing to the regions' complex geography.<sup>96</sup>

Moving south along the coast, Mauritania and Morocco agreed that the state frontier established between them will

be defined by a straight line running from the point at which the Atlantic coastline intersects the 24th parallel North to the point of intersection of the 23rd parallel North and the 13th median West; the intersection of that straight line with the present frontier of the Islamic Republic of

<sup>88</sup> 'Joint Submission to the Commission on the Limits of the Continental Shelf in respect of areas in the Atlantic Ocean adjacent to the coast of west Africa' (10 August 2015) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/wa775\\_14/wa7\\_es\\_en\\_sept2014.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/wa775_14/wa7_es_en_sept2014.pdf) (accessed 12 December 2017) 4.

<sup>89</sup> *Ibid.*

<sup>90</sup> 'Treaty on the Delimitation of the Maritime Frontier between the Islamic Republic of Mauritania and the Republic of Cape Verde' 55 *LOS* 32, 2004.

<sup>91</sup> 'Treaty on the Delimitation of the Maritime Frontier between the Republic of Cape Verde and the Republic of Senegal' <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CPV-SEN1993MF.PDF> (accessed 27 November 2017).

<sup>92</sup> 'Treaty fixing the Maritime Boundaries between the Republic of the Gambia and the Republic of Senegal' <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GMB-SEN1975MB.PDF> (accessed 27 November 2017).

<sup>93</sup> Territorial sea and continental shelf boundary between Guinea-Bissau and Senegal (exchange of letters between Portugal and France) at 'Territorial Sea and Continental Shelf Boundary: Guinea-Bissau - Senegal' <https://www.state.gov/documents/organization/61447.pdf> (accessed 27 November 2017).

<sup>94</sup> 'Convention concerning the State Frontier line established between the Islamic Republic of Mauritania and the Kingdom of Morocco' <https://treaties.un.org/doc/publication/unts/volume%201035/volume-1035-i-15406-english.pdf> (accessed 27 November 2017).

<sup>95</sup> 'Award by the Arbitral Tribunal on the Maritime Delimitation between Guinea and Guinea-Bissau' <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GIN-GNB1985MD.PDF> (accessed 27 November 2017).

<sup>96</sup> Kamal Deen & Martin Tsamenyi 'Fault lines in maritime security: Analysis of maritime boundary uncertainties in the Gulf of Guinea' (2013) 22 *African Security Review* 98.

Mauritania constituting the southern-eastern limit of the frontier of the Kingdom of Morocco.<sup>97</sup>

Although this agreement should inform further delimitation beyond 200 nm, Morocco has informed the UN Secretary-General that it has reservations on the claims to an extended continental shelf by Mauritania<sup>98</sup> This is because Mauritania's claim overlaps with the areas of the extended shelf that Morocco intends on claiming. Morocco has invited the CLCS 'take this situation duly into account in considering the submissions for [...] Mauritania'.<sup>99</sup> This complicates further negotiations when considering that the states agreed to a continental shelf to be delimited by the 24th parallel north.<sup>100</sup>

Cape Verde and Mauritania delimited their overlapping exclusive economic zones (EEZs) and continental shelves by using a median line, 'the points of which are equidistant from the nearest points on the baselines of the two countries'.<sup>101</sup> In its preliminary information, Cape Verde indicated that within 200 nm from its archipelagic baselines, there is no unresolved issue of maritime delimitation with any of its neighbouring states. However, and similar to Mauritania, Cape Verde foresees that there may be potential overlap in areas beyond 200 nm between it, Mauritania, Senegal and Gambia.<sup>102</sup> The existing agreements with Mauritania and Senegal within 200 nm will serve as a basis for delimitation beyond 200 nm. The parties have agreed to adopt as the common starting point of their frontier line, the southernmost point which will constitute a tripartite frontier point for Cape Verde, Mauritania and Senegal.<sup>103</sup>

Cape Verde and Senegal have also delimited their overlapping EEZs and continental shelves by using the median line.<sup>104</sup> Similar to

<sup>97</sup> See art 1 Mauritania/Morocco Convention.

<sup>98</sup> As well as Spain, Portugal and Cape Verde. See 'Commination by the Mission of the Kingdom of Morocco to the United Nations' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/prt44\\_09/1513044E.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/prt44_09/1513044E.pdf) (accessed 27 November 2017).

<sup>99</sup> Ibid.

<sup>100</sup> See art 2 Mauritania/Morocco Convention.

<sup>101</sup> See art 1 Cape Verde/Mauritania Treaty. Cape Verde makes use of archipelagic baselines with Mauritania making use of normal baselines. The boundary extends approximately 160 nm in a north-south direction and is composed of 18 points. See 'Limits in the Seas – Cabo Verde: Archipelagic and other Maritime Claims and Boundaries' <https://www.state.gov/documents/organization/221365.pdf> (accessed 27 February 2017).

<sup>102</sup> 'Preliminary information indicative of the outer limits of the continental shelf and description of the status of preparation of making a submission to the Commission on the Limits of the Continental Shelf for the Republic of Cape Verde' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/cpv\\_2009\\_preliminary\\_information.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/cpv_2009_preliminary_information.pdf) (accessed 27 February 2017) para 6.

<sup>103</sup> See art 6 Cape Verde/Mauritania Treaty.

<sup>104</sup> See art 1 Cape Verde/Senegal Treaty.

the above agreement, this agreement is pivotal for further delimitation agreements beyond 200 nm, especially for Senegal as its waters are bordered by Mauritania and Cape Verde on the north and south of its coast respectively. Between the two states, Senegal has only concluded a delimitation agreement with Gambia where they have agreed that their adjacent waters are delimited by a boundary that 'commences from the point of intersection of the land boundary with the coast and follows the parallel of latitude 13° 35' 36" North'.<sup>105</sup> Indeed, the boundary will serve as a basis for the challenging task of delimitating the continental shelf beyond 200 nm between the states as well as Cape Verde.

The boundary delimiting the territorial sea boundary between Guinea-Bissau and Senegal is a 'straight-line 240° azimuth (assumed to be from true north) from "the intersection of the extension of the land boundary and the low-water mark, represented for that purpose of the Cape Roxo light"'.<sup>106</sup> The territorial sea boundary was delimited pursuant to an Exchange of Notes in 1960 between France and Portugal, the former colonial powers of Senegal and Guinea-Bissau respectively. The Notes were held to have the force of law between Guinea-Bissau and Senegal by an Arbitral Tribunal in 1989.<sup>107</sup> The Tribunal also found that the boundary delimiting the territorial sea also delimits the contiguous zone and continental shelf. The EEZ was not included as it was a new concept in the law of the sea at the time. However, considering that Guinea-Bissau and Senegal have claimed EEZs in terms of the LOSC,<sup>108</sup> the existing trajectory of the delimitation boundary includes their EEZs. This boundary may also extend to their extended continental shelves.

An Arbitral Tribunal delimited the maritime boundaries of Guinea-Bissau and Guinea in 1985. In terms of the Award

[t]he line delimiting the maritime areas appertaining respectively to the Republic of Guinea-Bissau and the Republic of Guinea: (a) begins at the intersection of the Cajet thalweg and the meridian longitude 15° 06' 30" West; (b) connects, by means of loxodromes, the following Points: A 10° 50' 00" Latitude North and 5° 09' 00" Longitude West; B 10° 40' 00"

<sup>105</sup> See art 1 Gambia/Senegal Treaty.

<sup>106</sup> See n 93 above 4.

<sup>107</sup> See *Case Concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)*, 1991 ICJ Reports 53 para 18.

<sup>108</sup> See art 3(1) of Guinea-Bissau's Act No 3/85 of 17 May 1985, on the Maritime Boundaries [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GNB\\_1985\\_Act3.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GNB_1985_Act3.pdf) (accessed 27 November 2017); art 2 of Senegal's Act 87-27 of 18 August 1987 'Establishing the Maritime Fishing Code' [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SEN\\_1987\\_Act.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/SEN_1987_Act.pdf) (accessed 24 November 2017).

Longitude North and 15° 20' 30" Latitude West; and 10° 40' 00" and 15° 34' 15" Latitude West.<sup>109</sup>

The line then 'follows a loxodrome on a bearing of 236° from Point C above to the outer limit of the maritime territories which are recognised under the general international law as appertaining to each State'.<sup>110</sup> At the time of the Award, these outer limits excluded those of the EEZ and extended continental shelf. However, the boundary may include the EEZ as both states have laid claim to it,<sup>111</sup> as well as the extended continental shelf – once established.

### **4.3 Gulf of Guinea<sup>112</sup>**

#### **4.3.1 Delimitation between Benin, Nigeria and Togo**

There also appears to be a differing position as to the direction of Benin<sup>113</sup> and Togo's adjacent seaward boundary. This is because both their claims slightly overlap in the same region thus indicating that both states have differing opinions on the trajectory of the maritime boundary from the land boundary. Benin's claim includes waters under Togo's jurisdiction and vice versa. Indeed, Togo indicates in its preliminary information that it is ready to enter into negotiations with its neighbours to enable the CLCS to make its recommendations without taking into account the contentious issues involving the states concerned.<sup>114</sup> This sentiment is also reflected in the joint submission of preliminary information with Benin.<sup>115</sup> As parties to the Economic Community of West African States (ECOWAS) agreement, Benin, Nigeria and Togo have undertaken to not raise any objection to

<sup>109</sup> See (n 95 above) 2.

<sup>110</sup> See (n 95 above) 'Operative Provisions of the Award'.

<sup>111</sup> See art 3(1) of Guinea-Bissau's Act No 3/85 of 17 May 1985, on the Maritime Boundaries; art 11 of Guinea's Decree No D/2015/122/PRG/SGG [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/Guinea\\_Decree\\_19\\_June\\_2015\\_English.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/Guinea_Decree_19_June_2015_English.pdf) (accessed 27 November 2017).

<sup>112</sup> As mentioned earlier, Liberia has until 2018 to make its submissions. Although maritime boundaries between Liberia and its neighbours Sierra Leone and Côte d'Ivoire are not delimited, an analysis of overlapping boundaries that may influence claims to an extended shelf is premature until such time as a submission is made by Liberia. It may well be that Liberia's submission is not within the overlapping region.

<sup>113</sup> 'Benin's Preliminary Information' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/ben\\_2009preliminaryinformation.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/ben_2009preliminaryinformation.pdf) (accessed 24 November 2017).

<sup>114</sup> 'Togo Preliminary Information' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/tgo\\_2009\\_preliminaryinfo.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/tgo_2009_preliminaryinfo.pdf) (accessed 24 November 2017) paras 5 & 6.

<sup>115</sup> 'Benin and Togo's Joint Submission of Preliminary Information' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/ben\\_2009preliminaryinformation.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/ben_2009preliminaryinformation.pdf) (accessed 24 November 2017) 23.

submissions made to the Commission. Furthermore, and notwithstanding the states being parties to the ECOWAS agreement, Nigeria's submission to the CLCS appears to indicate a claim that may encroach on Benin and Togo's claims to maritime zones<sup>116</sup> within and beyond 200 nm.<sup>117</sup>

#### 4.4 Southeast Atlantic Ocean

##### 4.4.1 Delimitation between Angola and the DRC

Angola's submission to the CLCS<sup>118</sup> indicates a claim that overlaps with the maritime zones of the DRC.<sup>119</sup> The DRC has communicated to the UN Secretariat that it rejects any unilateral action undertaken by Angola to not only define maritime zones but also delimit the outer continental shelf.<sup>120</sup> The DRC has specifically requested that the CLCS refrain from considering Angola's submission until the states have settled their border dispute.<sup>121</sup>

Angola and the DRC's dispute originate from colonial treaties concluded between 1884 and 1891. These treaties involved Britain and Portugal in 1884, and then Portugal and the International Association of Congo.<sup>122</sup> The latter treaty was modified in 1891. The treaties demonstrate the borders of Portugal and Belgium only in the region of the Congo River, to which Portugal exercised sovereignty over both riverbanks. Currently, in terms of the above determination, the DRC is considered a geographically disadvantaged state in terms of article 70 of

<sup>116</sup> Benin claims territorial waters of 200 nm from the low-water mark with Togo claiming a protected economic maritime zone of 200 nm. See art 1 of Benin's Decree No 76-92 Extending the Territorial Waters of the People's Republic of Benin to 200 nautical miles [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BEN\\_1976\\_Decree.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/BEN_1976_Decree.pdf) (accessed 27 August 2017); art of Togo's 1977 Ordinance No 24 Delimiting the Territorial Waters and creating a Protected Economic Maritime Zone [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TGO\\_1977\\_Ordinance.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TGO_1977_Ordinance.pdf) (accessed 27 August 2017).

<sup>117</sup> 'A Submission of Data and Information on the Outer Limits of the Continental Shelf of the Republic of Nigeria' (2 December 2016) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/nga38\\_09/nga2009\\_executivesummary.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/nga38_09/nga2009_executivesummary.pdf) (accessed 27 August 2017)

<sup>118</sup> 'Continental Shelf Submission of Angola' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/ago69\\_2013/es\\_ago\\_en.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/ago69_2013/es_ago_en.pdf) (accessed 27 November 2017).

<sup>119</sup> 'DRC's Preliminary Information' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/cod2009informationpreliminaire1.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/cod2009informationpreliminaire1.pdf) (accessed 27 November 2017).

<sup>120</sup> See 'Permanent Mission of the Democratic Republic of the Congo to the United Nations' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/ago69\\_2013/cod\\_re\\_ago\\_oct\\_2015e.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/ago69_2013/cod_re_ago_oct_2015e.pdf) (accessed 29 November 2017).

<sup>121</sup> *Ibid.*

<sup>122</sup> D Moudachirou, 'Memorandum of understanding between Angola and DRC as a provisional arrangement for their maritime boundaries delimitation's dispute-Reality or myth?' (2015) 3 *Global Journal of Politics and Law Research* 96–103.

the LOSC, with Angola retaining the geographical advantage of its former colonial power.<sup>123</sup>

#### 4.4.2 Delimitation between Angola and Namibia

Angola and Namibia's submissions to the CLCS were informed by their 2002 delimitation agreement.<sup>124</sup> In terms of the agreement, Angola's southern land border runs along the Cunene River, 'the mouth of which also has "shifting natural features"'.<sup>125</sup> On this basis, the agreement sets 'the interception of the base line and parallel of 17° 15' latitude south' as the fixed starting point of the maritime boundary.<sup>126</sup> Accordingly, as indicated in their submissions, the extended shelf claims of Angola and Namibia do not overlap, meaning that their boundary over the extended shelf will follow the same trajectory provided, and to the extent to which the CLCS makes recommendations consistent with their submissions.

#### 4.4.3 Delimitation between Namibia and South Africa

South Africa has indicated in its submission to the CLCS that it had communicated to Namibia its intention to make a submission for an extended continental shelf 'and that such submission will be without prejudice to the rights of the two countries regarding any future finalisation or delimitation of the boundary between the two countries'.<sup>127</sup> Namibia echoed these sentiments in its submission to the CLCS.<sup>128</sup>

Unlike Angola and Namibia's agreement on the point of departure for delimiting its maritime boundary, the location of the Orange River border between Namibia and South Africa is the basis of their dispute on the delimitation of their maritime boundary. On the one hand, according to Namibia, the border is at the middle of the river. On the other hand, South Africa claims sovereignty up to the north bank of the river. South Africa's

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<sup>123</sup> Ibid.

<sup>124</sup> 'Treaty between the Government of the Republic of Angola and the Government of the Republic of Namibia Regarding the Delimitation and Demarcation of the Maritime Borders between the Republic of Angola and the Republic of Namibia' (Angola/Namibia Treaty) reproduced in D Colson & R Smith (eds) *International Maritime Boundaries* (2005) 3719–3726.

<sup>125</sup> Id 3719.

<sup>126</sup> See art 3 of the Angola/Namibia Treaty.

<sup>127</sup> 'Republic of South Africa Partial Submission to the Commission on the Limits of the Continental Shelf' (27 September 2017) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/zaf31\\_09/zaf2009executive\\_summary.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/zaf31_09/zaf2009executive_summary.pdf) (accessed 25 November 2017) 2.

<sup>128</sup> 'Continental Shelf Submission of Namibia' (20 August 2009) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/nam50\\_09/nam2009executivesummary.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/nam50_09/nam2009executivesummary.pdf) (accessed 25 November 2017) 3.

claim is based on an 1890 treaty between their former colonial powers, Germany and the United Kingdom.<sup>129</sup> Further, the matter is complicated

by the fact that the line defined in the treaty is not laid down on the ground by physical means. There was no pressing need to do so in view of the fact that there is limited human activity along the river in that area and that, until 1985, South Africa, “exercised complete administrative power on both sides of the [river]: south of it because that territory [was] administered as an integral part of the Republic”.<sup>130</sup>

The states’ position as to the location of the Orange River border has informed their submissions to the CLCS.<sup>131</sup> Although both states have shared the view that the obstacle to determining a maritime boundary is owing to the dispute over the Orange River boundary,<sup>132</sup> it has been suggested that the urgency to exploit marine resources has led the states to attend to maritime delimitation irrespective of their unresolved dispute of the Orange River border.<sup>133</sup>

## **4.5 Delimitations on Africa’s Eastern Seaboard**

### **4.5.1 Delimitation between France and South Africa (Prince Edward and Crozet Islands)**

France and South Africa have sovereignty over the Crozet Islands and Prince Edward Islands respectively – the latter comprising the Marion and Prince Edward Islands. The EEZs around the territories are too far apart to overlap,<sup>134</sup> thus the absence of a delimitation dispute to that extent. However, concerning the continental shelf, South Africa’s 1995 maritime-zone chart reflects a straight boundary line, which seems to be an equidistant line ‘but [...] appears to favour South Africa as much as 20 nautical miles near the southern terminus’.<sup>135</sup>

In the waters adjacent to France’s southern and Antarctic territories as well as Prince Edward Islands, South Africa and France, in 2008, agreed on a statement of intent on the extension of the continental shelf, the

<sup>129</sup> In terms of art 3 of the treaty, ‘a line commencing at the mouth of the Orange River, and ascending the north bank of that river to a point of its intersection by the 20th degree east longitude’ [published in *British and Foreign State Papers* Vol 1 LXXXII 35 and reproduced in (1978) 173 *Consolidated Treaty Series* 271–284].

<sup>130</sup> P Vrancken *South Africa and the Law of the Sea* (2011) 196.

<sup>131</sup> *Ibid.*

<sup>132</sup> L Moller ‘The outstanding Namibian maritime boundaries with Angola and South Africa’ (2003) *International Journal of Marine and Coastal Law* (2003) 249.

<sup>133</sup> See (n 130 above) 197.

<sup>134</sup> See (n 130 above) 204.

<sup>135</sup> V Prescott ‘Publication of Chart showing the limits of South Africa’s Maritime Claims’ (1999) 14 *International Journal of Marine and Coastal Law* 561.

surveillance of fisheries and scientific research. This agreement paved the way for

the States' joint submission to the CLCS, "on the understanding that [the] submission [would] not prejudice the future delimitation of the continental shelf between the two countries". The delimitation line is not described in the submission. The northern end point in the submission is however close to that on the South African 1995 chart. The southern end point of the delimitation line cannot be ascertained with as much precision, but the point at which the 350 nm line around the Prince Edward Islands and the 350 nm line around the Crozet Islands intersect in figure 2 of the submission appears also to be close to the southern end point of the delimitation line on the chart. Since then, France and South Africa made an additional submission pushing the limit of the outer continental shelf further north up to 34° 48' S in the area of the Discovery II ridge, to which both States would be entitled to claim a part on the basis of the equidistance principle.<sup>136</sup>

#### 4.5.2 Delimitation between Madagascar and South Africa

Madagascar and South Africa's maritime zones (within 200 nm) are also too far apart to overlap. This includes South Africa's Prince Edward Islands. However, South Africa and France's joint submission for an extended continental shelf reaches so far north it overlaps with the extended continental shelf claimed by Madagascar,<sup>137</sup> which stretches as far south as 40° 6'.<sup>138</sup> Aware of this possibility, in 2012, France, Madagascar and South Africa declared that their submissions 'and recommendations of the [CLCS] on any such overlapping claim will not prejudice any future boundary delimitation process' between them.<sup>139</sup> Madagascar and South Africa's maritime boundary is contingent on the delimitation between France and South Africa (Prince Edward and Crozet Islands), provided, and to the extent to which the CLCS makes recommendations consistent with their submissions.

<sup>136</sup> S Ntola & P Vrancken 'The delimitation of maritime boundaries on Africa's eastern seaboard' (2016) 1 *Journal of Ocean Law and Governance in Africa* 80.

<sup>137</sup> 'Submission to the Commission on the Limits of the Continental Shelf: South Africa and France' (4 April 2013) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/frazaf34\\_09/frazaf2009exec\\_sum\\_resume.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/frazaf34_09/frazaf2009exec_sum_resume.pdf) (accessed 20 November 2017) 2.

<sup>138</sup> *Ibid.*

<sup>139</sup> See para 2 of the 'Trilateral Declaration on the Limits of the Continental Shelf' 80 *LOS* 35, 2014.

### 4.5.3 Delimitation between France and Madagascar

France's Crozet Islands and Madagascar's maritime zones are also too far apart to overlap. However, France's joint submission with South Africa for an extended continental shelf reaches and overlaps the area claimed by Madagascar in its submission to the CLCS. As in the case of delimitation between Madagascar and South Africa, France and Madagascar's maritime boundary is contingent on the delimitation between France and South Africa, provided, and to the extent to which the CLCS makes recommendations consistent with their submissions.<sup>140</sup>

### 4.5.4 Delimitation between Mozambique and South Africa

The determination of Mozambique and South Africa land boundary, although less complicated than that of Namibia and South Africa, is the reason why there exists no delimitation boundary. As such, their claims to an extended continental shelf reflect their perspectives as to how the boundary ought to extend from the land territory. Despite this, the states have indicated that their submissions will not prejudice the delimitation of the continental shelf between them.<sup>141</sup>

The delay in adopting a delimitation agreement is owing to Mozambique 'still considering its position with regard to the specific point where the land boundary reaches the sea because of the 1987 demarcation by a joint commission accepted by the United Kingdom and Portugal ends at Oro Peak, a few hundred metres from the shore'.<sup>142</sup> Mozambique and South Africa have, in principle, agreed to the equidistance line as the method of delimitation, with the starting points for determination being the mean low water mark points on both coasts.<sup>143</sup>

### 4.5.6 Delimitation between Madagascar and Mozambique

Madagascar and Mozambique have informed the CLCS of their delimitation disputes, some of which are in the Mozambique

<sup>140</sup> See part 4.5.2 above.

<sup>141</sup> 'Submission to the Commission on the Limits of the Continental Shelf: South Africa (Partial Submission)' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/zaf31\\_09/zaf2009executive\\_summary.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/zaf31_09/zaf2009executive_summary.pdf) (accessed 24 November 2017) 5; 'Submission to the Commission on the Limits of the Continental Shelf: Mozambique' (7 July 2010) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/moz52\\_10/moz\\_2010\\_es.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/moz52_10/moz_2010_es.pdf) (accessed 7 December 2017) 3.

<sup>142</sup> As referred to in (n 130 above) 202.

<sup>143</sup> V Prescott & C Schofield *The Maritime Political Boundaries of the World 2* ed (2005) 466.

Channel.<sup>144</sup> In this region, overlapping zones have not been delimited. This is likely owing (to a large extent) to the outcome of a sovereignty dispute between France and Madagascar over Bassas da India, Europa Island and Juan de Nova Island.<sup>145</sup> Regardless of the sovereignty dispute between France and Madagascar,<sup>146</sup> the latter state and Mozambique will likely have to delimit their overlapping extended continental shelves south of Europa Island, should, and to the extent that the CLCS makes recommendations consistent with their respective submissions.

#### 4.5.7 Delimitation between Mauritius and Seychelles in the Mascarene Plateau Region

The Mascarene Plateau is located in southwest Indian Ocean to the east of Madagascar and beyond the EEZ of Mauritius and Seychelles.<sup>147</sup> Accordingly, as far as the seabed is concerned, the region comprises the continental shelf beyond 200 nm that Mauritius and Seychelles could have separately claimed, but rather jointly claimed as a 'provisional arrangement of a practical nature', which does not prejudice the delimitation of maritime boundaries between them.<sup>148</sup>

Following recommendations by the CLCS on Mauritius and Seychelles' joint submission on 30 March 2011,<sup>149</sup> the states adopted, on 13 March 2012, a provisional arrangement in the form of a Treaty Concerning the Joint Exercise of Sovereign Rights over the Continental Shelf in the Mascarene Plateau Region<sup>150</sup> and a Treaty Concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region.<sup>151</sup> In terms of the arrangement, the parties agreed to 'exercise

<sup>144</sup> 'Submission to the Commission on the Limits of the Continental Shelf: Madagascar' (25 May 2012) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/mgd56\\_11/MDG-DOC-002\\_EXECUTIVE\\_SUMMARY\\_Updated.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/mgd56_11/MDG-DOC-002_EXECUTIVE_SUMMARY_Updated.pdf) (accessed 23 November 2017).

<sup>145</sup> See S Kaye 'Indian Ocean maritime claims' (2010) 6 *Journal of the Indian Ocean Region* (2010) 467–468.

<sup>146</sup> For discussion on the length of the dispute, see C Bouchard & W Crumplin 'Indian Ocean region: The evolving context and rising significance of the African littoral' (2013) 9 *Journal of the Indian Ocean Region* 162–165.

<sup>147</sup> 'Joint Submission to the Commission on the Limits of the Continental Shelf Concerning the Mascarene Plateau (Executive Summary)' [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/musc08/sms\\_es\\_doc.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/musc08/sms_es_doc.pdf) (accessed 27 September 2017) paras 6.1, 6.2 and 6.4.

<sup>148</sup> See arts 3 and 2(b) of Joint Exercise of Sovereign Rights Treaty and Joint Management Treaty respectively.

<sup>149</sup> UN Doc CLCS/70 paras 12 & 13 at 'Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the Progress of work in the Commission' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/318/87/PDF/N1131887.pdf?OpenElement> (accessed 27 September 2017).

<sup>150</sup> See 79 *LOS* 25, 2012.

<sup>151</sup> See 79 *LOS* 41, 2012.

sovereign rights jointly for the purpose of exploring the continental shelf and its natural resources in the area', referred to as the 'Joint Zone'.<sup>152</sup>

The provisional arrangement adopted by the parties indicates that their boundary dispute is less likely to degenerate, thus encouraging the likelihood of a negotiated delimitation agreement in the future.<sup>153</sup> Indeed, although the dispute pertaining to delimitation in the extended continental-shelf region has not been resolved, Mauritius and Seychelles have made peaceful arrangements in line with the LOSC and other instruments of international law.

#### 4.5.8 Delimitations between Comoros and Madagascar, Mozambique, Seychelles and Tanzania

As indicated above, Comoros has submitted preliminary information indicative of an extended continental shelf to the UN Secretary-General. The basis of Comoros' claim is not yet clear when considering that the breadth of ocean space between it and its neighbouring coastal states is less than 200 nm.<sup>154</sup> In this regard, this uncertainty is further compounded by the sovereignty dispute between Comoros and France over Mayotte,<sup>155</sup> an island at the eastern extremity of the geographical archipelago of Comoros. A submission to the CLCS will provide clarity as to the location of the extended continental shelf that Comoros claims as well as where its claim overlaps with those of neighbouring states.

#### 4.5.9 Delimitation around Chagos Archipelago and the Maldives

The Chagos Archipelago is so isolated that the only delimitation issue that can arise relates to a possible overlap between the maritime zones around the Archipelago with those of the Maldives in the north. In fact, Mauritius' indicative extended continental-shelf area as described in the preliminary information, and located south of Diego Garcia, does not

<sup>152</sup> See art 1 Joint Exercise of Sovereign Rights Treaty. Arrangements are in accordance with art 83(3) LOSC.

<sup>153</sup> D Anderson 'Strategies for dispute resolution: Negotiating joint agreements' in Gerald *et al* (eds) *Boundaries and Energy: Problems and Prospects* (1998) 475.

<sup>154</sup> See E Jamine *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* (2006) 24; 'Comoros: Archipelagic and other Maritime Claims and Boundaries' <http://www.state.gov/documents/organization/224317.pdf> (accessed 16 December 2016) 6.

<sup>155</sup> 'Communication of the Permanent Mission of France to the UN Division for Ocean Affairs and the Law of the Sea' [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn82\\_2011\\_fra\\_re\\_com\\_e.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn82_2011_fra_re_com_e.pdf) (accessed 17 December 2017).

overlap with maritime zones of neighbouring states.<sup>156</sup> However, this is not certain until a submission is made to the Commission. Also, Mauritius and the United Kingdom are engaged in a sovereignty dispute over the Chagos.<sup>157</sup> Irrespective of the dispute, Mauritius informed the Secretary of the CLCS that it is in consultation with the United Kingdom ‘with a view to making a coordinated submission to the [CLCS]’.<sup>158</sup>

#### 4.5.10 Delimitation between Kenya and Tanzania

Kenya and Tanzania have agreed to a boundary that delimits their territorial seas,<sup>159</sup> EEZs and continental shelves (within 200 nm).<sup>160</sup> The latter agreement builds on the parties’ territorial sea agreement in that it extends the boundary line ‘eastwards to a point where it intersects the outermost limits of national jurisdiction as may be determined by international law’.<sup>161</sup> Indeed, the submissions of both states appear to extend the trajectory of the existing delimitation boundary, thus minimising the chances of a delimitation dispute between them should, and to the extent to which the CLCS makes recommendations consistent with their submissions.<sup>162</sup>

<sup>156</sup> Mauritius’ Preliminary Information in the Chagos Archipelago [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/mus\\_2009\\_preliminaryinfo.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/mus_2009_preliminaryinfo.pdf) (accessed 17 December 2017) 10.

<sup>157</sup> See award of the arbitral tribunal in the Chagos Marine Protected Area Arbitration (*Mauritius v United Kingdom*) as well as the dissenting opinion and other documents [http://archive.pca-cpa.org/showpagea579.html?pag\\_id=1429](http://archive.pca-cpa.org/showpagea579.html?pag_id=1429) (accessed 7 October 2016). Also see discussion of the arbitration in P Vrancken & S Ntola ‘Land sovereignty and the law of the sea convention: Chagos Marine Protected Area Arbitration (*Republic of Mauritius v United Kingdom*)’ (2014) 39 *South African Yearbook of International Law* 105–136.

<sup>158</sup> ‘Extended Continental Shelf in the Chagos Archipelago region’ [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/mus\\_2015\\_preliminaryinfo\\_nv.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/mus_2015_preliminaryinfo_nv.pdf) (accessed 13 December 2017).

<sup>159</sup> Exchange of Notes Constituting an Agreement on the Territorial Sea 1039 *UNTS* 147.

<sup>160</sup> Agreement between the United Republic of Tanzania and the Republic of Kenya on the Delimitation of the Maritime Boundary of the Exclusive Economic Zone and the Continental Shelf (70 *LOS* 54, 2009).

<sup>161</sup> *Ibid.*

<sup>162</sup> ‘Republic of Kenya’s submissions on the Continental Shelf Beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf’ (6 November 2014) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/ken35\\_09/ken2009\\_executivesummary.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf) (accessed 18 November 2017) 9; ‘United Republic of Tanzania Partial Submission on the Continental Shelf Beyond 200 Nautical Miles to the Commission on the Limits of the Continental Shelf’ (19 September 2012) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/tza59\\_12/Executive%20Summary\\_%20URT-DOC-001\\_18-01-2012.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/tza59_12/Executive%20Summary_%20URT-DOC-001_18-01-2012.pdf) (accessed 19 November 2017) 6.

#### 4.5.11 Delimitation between Tanzania and Seychelles

Tanzania informed the CLCS of a memorandum of understanding (MoU) it concluded with Seychelles, which spells 'out a no prejudice to each Submission in areas where there may be potential overlap'.<sup>163</sup> In communication advanced by Seychelles concerning Tanzania's submission,<sup>164</sup> it further informed the CLCS of an undertaking between the two states confirming their agreement to not object to the consideration of the CLCS to submissions made by either party. Further, Seychelles informed the CLCS that the region where such an overlap may occur is in the Aldabra Island region.<sup>165</sup> However, considering that Seychelles has only submitted preliminary information with regard to Aldabra Island,<sup>166</sup> an overlap between the claims of the states is not yet clear.

#### 4.5.12 Delimitation between Kenya and Somalia

Kenya and Somalia have overlapping claims to the maritime zones within and beyond 200 nm. Fundamentally, the states disagree on the location of the maritime boundary from the land boundary and have been unable to reach a negotiated agreement.<sup>167</sup> Indeed, the claims of Kenya and Somalia to an extended continental shelf reflect their conflicting positions on the location of the maritime boundary, within and beyond 200 nm.<sup>168</sup> Kenya's submission indicates a boundary that is parallel with the latitude line, meaning that from the location and direction of the land boundary, Kenya adjusted the boundary by approximately 45°. Somalia's submission indicates a boundary that follows the direction of the land boundary, having the effect of cutting off Kenya's maritime zones when considering the boundary between Kenya and Tanzania.<sup>169</sup> Owing to no agreement on a maritime boundary, Somalia submitted its delimitation dispute with Kenya to the International Court of Justice (ICJ) in 2014.<sup>170</sup> In its application, Somalia submitted that the court has jurisdiction over

<sup>163</sup> Tanzania's submission above 8.

<sup>164</sup> 'Communication of the Permanent Mission of the Republic of Seychelles to the UN Secretary-General' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/tza59\\_12/clcs59\\_syc.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/tza59_12/clcs59_syc.pdf) (accessed 19 December 2017).

<sup>165</sup> *Ibid.*

<sup>166</sup> 'Seychelles' Preliminary Information' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/syc2009preliminaryinfo.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/syc2009preliminaryinfo.pdf) (accessed 20 December 2017).

<sup>167</sup> See (n 162 above) 9; 'Continental Shelf Submission of the Federal Republic of Somalia' (31 July 2015) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/som74\\_14/Somalia\\_Executive\\_Summary\\_2014.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/som74_14/Somalia_Executive_Summary_2014.pdf) (accessed 4 November 2017) 6–9.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Judgment delivered on 2 February 2017.

the dispute in terms of article 36(2) of its Statute. Somalia leaned on its 1963 declaration 'recognising as compulsory *ipso facto*, on the basis of reciprocity, the jurisdiction of the Court',<sup>171</sup> together with Kenya's declaration of 1965.<sup>172</sup>

Kenya objects to the Court's jurisdiction and to the admissibility of the dispute because it considers Somalia's application contrary to the MoU concluded between the two states in 2009.<sup>173</sup> In terms of the MoU, an agreement to delimit the maritime zones and the continental shelf beyond 200 nm would be concluded following an examination and recommendations by the CLCS.<sup>174</sup> In the same year, Somalia informed the UN Secretary-General that members of its Transitional Federal Parliament had voted against the ratification of the memorandum, rendering it 'non-actionable'.<sup>175</sup> Somalia reiterated this in 2014,<sup>176</sup> following which, the CLCS decided that it 'was not in a position to proceed with the establishment of a sub commission' to deal with Kenya's submission.<sup>177</sup> In its judgment to this aspect of Kenya's preliminary objections, the ICJ concluded that it does not lack jurisdiction in the case before it.<sup>178</sup> Accordingly, the work of the CLCS in respect of Kenya and Somalia's submissions is contingent upon the outcome of the delimitation dispute before the ICJ.

#### 4.5.13 Delimitation between Somalia and Tanzania

Somalia and Tanzania are separated by Kenya and accordingly do not share a land boundary. However, as mentioned in the above subsection, Somalia's position regarding its maritime boundary with Kenya runs in a south-south-easterly direction on an equidistance basis. This position informs Somalia's submission for an extended continental shelf, and as such, Somalia claims it further than the boundary agreed to by Kenya

<sup>171</sup> *Ibid.* Somalia also leaned on art 282(5) of the LOSC to exclude any other procedure provided for in part XV of the Convention.

<sup>172</sup> Content of Kenyan declaration is at 'Jurisdiction' <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=KE> (accessed 14 December 2017). The content of the Somali declaration is at ICJ 'Jurisdiction' <http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3&code=SO> (accessed 14 December 2017).

<sup>173</sup> 70 *LOS* 52, 2009.

<sup>174</sup> *Id*

<sup>175</sup> 'Communication by Somalia to the UN Secretary-General (2009)' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/ken35\\_09/som\\_re\\_ken\\_mou35.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/ken35_09/som_re_ken_mou35.pdf) (accessed 4 November 2017).

<sup>176</sup> 'Communication by Somalia to the UN Secretary-General (2014)' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/ken35\\_09/som\\_re\\_ken\\_2014\\_02\\_04.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/ken35_09/som_re_ken_2014_02_04.pdf) (accessed 4 November 2017).

<sup>177</sup> UN Doc CLCS/83 at 'Progress of Work in the Commission on the Limits of the Continental Shelf' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/284/31/PDF/N1428431.pdf?OpenElement> (accessed 4 November 2017).

<sup>178</sup> *Maritime Delimitation in the Indian Ocean* (n 170 above), para 145.

and Tanzania, thus overlapping with Tanzania's claim to an extended continental shelf.<sup>179</sup> Delimitation between Somalia and Tanzania over these overlapping claims is contingent on the resolution of the dispute between Kenya and Somalia before the ICJ.

#### 4.5.14 Delimitation between Somalia and Yemen

On the south and west of Yemen's Socotra, the maritime zones of Somalia and Yemen overlap.<sup>180</sup> Compounded by these overlapping claims is the further overlapping of the states' respective claims to an extended continental shelf.<sup>181</sup> Somalia has expressed its willingness to enter into consultations with Yemen

with the view to reaching an agreement or understanding which would allow the Commission to consider and make recommendations on submissions by each of the two coastal States in the areas under dispute without prejudice to the final delimitation of the continental shelf to be concluded subsequently in the areas under dispute by the two States.<sup>182</sup>

Yemen, having noted this specific part of Somalia's submission, informed the UN secretariat that no such agreement or understanding has been concluded.<sup>183</sup> Although the CLCS has not made recommendations, reaching an agreement or understanding may prove challenging considering Yemen's internal difficulties.<sup>184</sup>

## 5 Conclusion

An overwhelming majority of African coastal states have undertaken the process to successfully establish a continental shelf beyond 200 nm. However, when considering the workload of the CLCS, it will likely be some time before most can establish an extended continental shelf and move on to exploiting the resources therein. For some states, exploiting seabed resources will be delayed owing to uncertainty as to the state(s) exercising jurisdiction over the area claimed. As such, delimitation is a minor obstacle for those states that have concluded delimitation

<sup>179</sup> See (n 164 above) 6–9.

<sup>180</sup> Id 10; 'Submissions to the Commission: Submission by the Republic of Yemen' (26 January 2017) [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/yem09/ROY\\_Executive\\_Summary\\_Amended.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/yem09/ROY_Executive_Summary_Amended.pdf) (accessed 4 March 2017).

<sup>181</sup> See (n 177 above) 9.

<sup>182</sup> *Ibid.*

<sup>183</sup> 'Communication by the Permanent Mission of the Republic of Yemen' [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/som74\\_14/2014\\_12\\_10\\_YEM\\_NV\\_UN\\_001\\_14.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/som74_14/2014_12_10_YEM_NV_UN_001_14.pdf) (accessed 4 November 2017).

<sup>184</sup> 'Yemen Crisis: Who is fighting whom?' <http://www.bbc.com/news/world-middle-east-29319423> (accessed 4 November 2017).

agreements over their overlapping waters within 200 nm, as this would generally entail that delimiting the extended continental shelf would be informed by the existing agreement. Delimitation becomes a major obstacle for those states without delimitation agreements, as they would first have to come to an agreement with regard to the delimiting boundary within 200 nm, and then move on to delimiting the continental shelf beyond 200 nm. Considering the duration of disputes in the latter instance, it may also be some time before the extended continental shelves in the African region are delimited.

The workload of the Commission should be approached as an opportunity for African coastal states to get ahead of the delimitation challenge that will arise following recommendations by the CLCS. Addressing this challenge in a manner that is in accordance with the LOSC speaks to the strengthening of peace, security and cooperation that was envisioned by the Convention's drafters.