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THE PROBLEM OF THE DELIMITATION OF MARITIME BORDERS IN MOZAMBIQUE IN THE CONTEXT OF EXPLOITATION OF OFFSHORE NATURAL RESOURCES

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Abstract: This article aims to analyze the main problems of the process of delimitation of maritime borders in Mozambique, and its implications in the exploitation of resources at sea. The study started from the assumption that the lack of delimitation of maritime borders constitutes a factor that makes the efficient exploitation of living and non-living resources of the sea impossible, and presents a great potential for the outbreak of disputes and conflicts between States, in the context of resource discovery natural in the undelimited sea. The research was developed under a qualitative methodological approach, of an exploratory nature based on bibliographical and documentary consultation. The study allowed us to conclude that although agreements have already been signed for the delimitation of the northern border with the Republic of Tanzania and the Comoros Islands, the same for the border with the French Possessions. In the case of the border with the Republic of South Africa, important steps have already been taken, all that remains is to reach a consensus on the starting point of border measurements. Mozambique's main challenge is in the definition of the border with Madagascar and with the French Possessions, as there is still to be resolved a sovereignty dispute between them and France - old metropolitan - who claims ownership of these territories and their sea miles.

Keywords: Delimitation; maritime borders; sovereignty; natural resources.

INTRODUCTION

The present work reflects on the problematic of the delimitation of the maritime borders of Mozambique, in a context of discovery of natural resources.

The main objective of this study is to understand the status of Mozambique's maritime border delimitation with

neighboring countries, and its implications in the context of discovery and exploitation of resources at sea. To achieve this objective, the following specific objectives were defined: to describe the process of delimitation of Mozambique's maritime borders and to analyze the main challenges for completing the process of delimitation of Mozambique's maritime borders.

Mozambique is a country that has several natural resources in the sea and its subsoil. Recently, several oil and natural gas reservoirs were discovered at sea, whose exploration could contribute to boosting the country's economic development. However, in order for there to be an efficient exploitation of these resources, without harming the interests of other African states with which Mozambique shares sea waters, it is necessary that there is a clear definition of the border limits of each country. It so happens that in the case of Mozambique, until then, only the northern border has been duly delimited, which raises the following question: What implications could come from the lack of delimitation of maritime borders in the context of resource discovery?

The research is based on the assumption that the delimitation of borders is a factor that promotes peace, stability and harmonious relationships between neighboring countries, as well as enabling the efficient exploitation of living and non-living resources in the sea. In turn, the lack of delimitation of borders presents, from the outset, a great potential for the outbreak of disputes and conflicts between states, in the context of the discovery of natural resources in the undelimited seas.

The theme is currently relevant given the discoveries that the country has been registering of resources such as oil, mineral coal and natural gas in the maritime subsoil, which explored, would have a great contribution in the increase of tax revenues for

the State. Furthermore, demarcating borders is also a matter of State security, which is why it is of vital importance that the Mozambican State strives to achieve this feat.

THEORETICAL FRAMEWORK

Mozambique is a country located on the southeast coast of Africa. Its maritime coastline of about 2770km in length, with a continental shelf of 104 square km and 200 meters deep is rich in living and non-living resources. Among non-living resources, energy resources such as oil and natural gas stand out.

According to data from the National Sea Policy (POLMAR, 2017), the first discoveries of energy resources in Mozambique date back to 1904, when oil deposits were found in Inhaminga, Sofala province. Later, natural gas reserves were discovered in Pande (1961), in Búzi (1962), and in Temane (1967).

In 2010 new prospecting research culminated in the discovery of the largest natural gas reservoir in the Rovuma Basin in Cabo Delgado, with an estimated amount of 180 trillion feet, which places the country on the list of the 20 largest natural gas producers in the world. Oil was also discovered in the Rovuma Basin in quantities possible commercial exploitation (POLMAR, 2017). Another region considered to have high potential is the Zambezi offshore area, with the possibility of oil and natural gas. (Simango, 2013).

The exploitation of these resources began in 2004 with the exploitation of natural gas on land and at sea in Pande and Temane by the South African multinational Sasol, and since then other multinationals have dedicated themselves to the exploitation of this resource in the country, specifically Anadarko in the Rovuma, Petronas in the Zambezi Delta, Terraliance also in the Zambezi Delta and DNO in the Inhaminga Block (Hanlon, 2013).

The discovery and exploitation of natural resources at sea raises a big question, due to the fact that most of these resources are located in greater quantities on the high seas, which in the case of Mozambique is an area that is not properly delimited in relation to neighboring countries.

Due to the great potential for generating conflicts that this situation can create, the strategy used by the Mozambican government is to first delimit and then explore, which is why, so far, only areas close to its coast or areas that have already been delimited are being explored, without much potential for dispute with other countries, so there is still a large amount of resources to explore (Mondlane Jr, 2019).

From this fact arises a great need to define and delimit Mozambique's maritime borders in relation to neighboring countries, to allow the full exploitation of resources and prevent political and territorial conflicts. This creates, on the other hand, an opportunity for beneficial cooperation between states, which can generate conditions for the development of both countries (Pinon and Barbosa, 2019).

LEGAL ASPECTS OF THE DELIMITATION OF MARITIME BORDERS

The delimitation of borders is a phenomenon linked to the modern State, with the function of defining the distribution of areas between territorial States. It is a mechanism found to demarcate the space and territory over which the power of a political unit must be exercised, delimiting between the national space and the outside. Thus, the border represents the territorial strip on each side of the international limit of each State (Carneiro, 2016).

In the pre-colonial era, terrestrial limits were fixed through the criterion of occupation of a given space by ethnolinguistic groups.

Later, with the arrival of the colonizing powers, and mainly after the Berlin Conference between 1884 and 1885, a new model of limits and borders was installed according to the European model, based on the determination of the strategic potential of the zones (Roque, 2013 & Zeca, 2017).

In the post-independence period, African countries, encouraged by the Organization of African Unity (OAU), began the process of confirming colonial land borders and delimitation of maritime borders, despite efforts between States to sign agreements with neighboring States for this purpose, this process was not always peaceful, as there are economic interests - resources and strategic position, and geopolitical - territorial expansion, at stake (Zeca, 2017).

It is in this context that most of the maritime borders of coastal countries in Africa are not delimited, and there are pre-existing conflicts in the delimitation process involving issues of the occurrence of strategic resources such as oil and natural gas.

The delimitation of maritime boundaries is regulated by international standards provided for by the United Nations Convention on the Rights of the Sea (UNCLOS), which establishes the principles and rules to be applied in the definition of maritime boundaries, as well as establishes the limits of the maritime zones where coastal states exercise their sovereignty or jurisdiction¹.

In the division of sea waters, International Law establishes that “the coastal State has the right to 12 nautical miles² counted from its baseline, which constitutes its territorial sea

1. There are basically four maritime zones: the Territorial Sea (MT) which is adjacent sea zone, measured from the baseline to 12 miles; the Contiguous Zone (ZC) which is the maritime space located in the zone adjacent to the MT that extends up to a maximum limit of 24 miles measured from the baseline where the MT is measured; the Exclusive Economic Zone (ZEE) which is an area beyond and adjacent to the territorial sea, measuring up to 200 miles from the baseline; and the Continental Platform (PC) comprising the bed and subsoil of marine waters that extend beyond the territorial sea, throughout the natural extension of the terrestrial territory, to the outer edge of the continental margin - not being able to be located beyond 350 miles from the baseline (UNCLOS, Law of the Sea of the Republic of Mozambique).

2. 1 nautical mile equals 1,852 meters.

(MT), in which it exercises sovereignty and full control over the liquid mass and adjacent airspace, as well as over the bed and subsoil of this sea” (UNCLOS, art. 3 and 4).

The Territorial Sea is a maritime zone of exclusive sovereignty of the coastal State, in which the ships and vessels of third States have the right of innocent passage. The coastal state has sovereignty and total control over the liquid mass and underlying airspace, as well as the bed and subsoil of that sea, where energy resources such as oil and natural gas are located (Simango, 2013).

The coastal state is also entitled to an Exclusive Economic Zone (ZEE) extending over 200 nautical miles, where it “enjoys the right of sovereignty for the purposes of exploration and exploitation, conservation and management of living and non-living natural resources of the waters underlying the bed of the sea, the seabed and its subsoil” (UNCLOS, art. 56 and 57). In this zone, the coastal state “sets the possible captures of these resources, being able, if it does not have enough capacity, to grant access to other states through agreements (UNCLOS, art. 62 n° 1).

Therefore, in the ZEE, the sovereignty of the coastal State is limited and only has as object the existing resources and the activities related to their use.

UNCLOS also grants coastal states the possibility of extending the limit from 200 to up to 350 nautical miles, where possible, on what is called the continental shelf, upon proof of the existence of a submarine “natural extension of the terrestrial territory”. In this area of the sea there is no exercise of sovereignty. There is freedom of navigation,

fishing, overflight, laying of submarine cables, construction of artificial islands and scientific research (UNCLOS, art. 87).

In the practice of border delimitation, however, these conditions are not always met, as there are times when the division of the EEZ between two states located face to face ends up with a convergence zone that does not allow both states to achieve the 200 miles foreseen.

In these cases, the UNCLOS establishes that the delimitation must take place through agreements between States, in accordance with International Law, in order to reach an equitable solution. If you do not reach an agreement, you can resort to procedures provided for by International Law, such as international arbitration.

In the case of the Republic of Mozambique, the law establishes that the delimitation of the borders of the Territorial Sea, in cases where the Mozambican coast is adjacent to the coast of another state, unless an agreement is signed between the Republic of Mozambique and that other state, the territorial sea it will be limited by the median line whose points are equidistant from the points closest to the baselines from which the width of the territorial sea of each of the states is measured (Law of the Sea, art. 5).

For the delimitation of the ZEE, the law establishes that it must be done by means of an agreement, or in the absence of an agreement under the terms of International Law, on the basis of equity and in the light of all pertinent circumstances, taking into account the respective importance of the interests in question and for the international community as a whole (Law of the Sea, art. 10).

Finally, the delimitation of the Continental Shelf made by agreement under the terms of International Law. If no agreement is reached

within a reasonable time, the procedures recommended by International Law are used (Law of the Sea, art. 14 n° 1 and 2).

METHODOLOGICAL PROCEDURES

The methodology used to carry out this study is markedly qualitative, based on reviewing texts and articles by authors who address the topic under analysis, and subsequent cross-referencing and debate of ideas.

In addition to the articles, a consultation was also made with legislation in the scope of national and international law, in order to bring the legal framework on the issue of border delimitation.

ANALYSIS AND DISCUSSION THE RESULTS

Mozambique shares the waters of its coastline of about 2770km with four countries, namely: South Africa to the south, United Republic of Tanzania and the Comoros Islands to the north, and Madagascar and the French Possessions in the Indian Ocean³ southeast (POLMAR, p. 8).

The delimitation of the borders of its Territorial Sea and Exclusive Economic Zone is a process that is still ongoing, with many advances and setbacks.

BORDER OF MOZAMBIQUE WITH THE REPUBLIC OF TANZANIA AND THE COMOROS ISLANDS

The agreement for the delimitation of the northern border with the Republic of Tanzania was reached in December 1988, with the limits on inland waters, territorial sea and the Exclusive Economic Zone having been set.

The delimitation of the border of internal waters between the two states was made by a straight line. The Territorial Sea was

3. The French Possessions we are referring to are the Isles Mayotte, Glorioso, Juan da Nova, Europa and Bassas da Índia.

defined taking into account the principle of equidistance, with each country having 12 nautical miles. The Exclusive Economic Zone was also defined using the principle of equidistance and equity, with both countries having 25.5 miles. However, the final agreement failed at this time because an agreement had not yet been reached with the Comoros Islands, as there was a crossing point between the waters of these three countries, yet to be defined (Jamine, 2007; Monjane Júnior, 2019).

In 2011, after several rounds of negotiations, the agreement on the common tripartite border point Mozambique - Comoros Islands - Tanzania was finally signed. The agreement with these two countries established the point at which the borders intersect and defined the limit of the maritime waters under the jurisdiction of each of the states.

On the same occasion, separate agreements were also signed between Mozambique and the two countries, defining the limits with the Comoros Islands, using the principle of equidistance, with the limits of the Exclusive Economic Zone and the Continental Shelf having been set, at approximately 281 miles in length. (Jamine, 2007; Monjane Junior, 2019).

Commenting on the importance of those agreements in the management of the national maritime space in an interview given to *Jornal Notícias*, the then Minister of Transport and Communication - Paulo Zucula, said that:

“The delimitation of borders with those countries, in addition to clarifying and reaffirming national sovereignty, facilitates better use of living and non-living resources existing in the sea, adoption of management

and inspection measures of maritime spaces under national jurisdiction and protection of the environment marine, also serves to preserve peace, stability and harmonious relationship between the subscribing countries. He stressed that the negotiation process was long and delicate, having taken about 20 years to conclude”⁴.

BORDER OF MOZAMBIQUE WITH THE REPUBLIC OF SOUTH AFRICA

In the case of the border with the Republic of South Africa, with which Mozambique shares both land and sea borders, the situation regarding the delimitation of maritime borders is a little more complex, with agreements still to be reached at the moment.

The first attempt to reach an agreement on maritime boundaries of these two countries took place in 1993, when a consensus was reached on the methods and points to be used in setting the borders, but the major obstacle is found in defining the point of intersection between land and sea borders (Monjane Junior, 2019).

The land borders of these two countries were inherited from the colonial period, resulting from the agreement between Portugal and Great Britain, and in some specific points of dispute such as the ownership of Maputo Bay resulting from the arbitration of French President Mac-Mahon⁵.

The point in question is found between the parallel of the confluence of the Pongolo and Maputo Rivers with the Indian Ocean. In addition, the last lighthouse on the land border is approximately 120m high and about 400m from the edge of the ocean. The area between the last lighthouse on the

4. Posted on the channelmacua.blogspot.com, day 28.03.2012

5. Maputo Bay was an area of dispute between Portugal and Great Britain, due to the clash between the Portuguese Map-Corde-Rosa project, which intended to unite its colonies in South Africa, with the British African Company project of Great Britain, which wanted to unite its colonial possessions from Cairo to Cape. The dispute was eventually resolved in 1872 when the two countries agreed to send President Frances Mac-Mahon to arbitration, which ruled in favor of Portugal. This delimitation ended up being also decisive for the establishment of the border with Swaziland in the southeast of Mozambique, where there was a triple border with Swaziland and South Africa (Roque, 2013).

land boundary and the ocean is dry land, and there is no agreement that specifies the intersection of ocean and land (Jamine, 2007). In such situations, questions may arise as to whether the maritime boundary line must be a perpendicular coastline at the intersection of the land boundary and the coastline, or a continuation of the land boundary. Most frequently, states used the rhumb line to delineate borders, which would be equivalent to using the principle of equidistance (Jamine, 2007)

The proposed agreement of the South African government is that the limit is not defined from the last mark of the boundary of the land, because the surveyors chose to define the low watermark points, as can be seen from the explanation given by Mussa Achimo -President of the Commission of Experts for the Determination and Delimitation of the Continental Shelf in Mozambique:

“South Africa has already provided the line and we checked whether the line could be that one or not, but the line does not exist in official terms. The other scenario is that we extend what is the extension of the continental masses of our country without considering the median line between the two countries. The idea of the dispute with South Africa is to maximize the area in conflict. Once this dispute is won, we can increase the area by more than half. So far, all scenarios are open. After the final documentation, we will have the exact indication”⁶.

This decision means that this limit will not follow the terrestrial limit, but will start on the coast of the States at the low water line. This is a proposal that is still being analyzed by the Mozambican government, and in case of agreement, there will be a green light for the continuation of the negotiations.

BORDER OF MOZAMBIQUE WITH MADAGASCAR AND WITH THE FRENCH POSSESSIONS IN THE INDIAN OCEAN

The most complex case in the process of delimitation of Mozambique's maritime borders is with Madagascar and with the French Possessions in the Indian Ocean⁷, with which Mozambique shares a border to the west.

The dispute with Madagascar is due to the existence of a convergence zone between the Exclusive Economic Zone of the two countries. Madagascar claims dimensions of 12 miles for its Territorial Sea, 24 miles for the Contiguous Zone, 200 miles for the Exclusive Economic Zone and 200 miles for the Continental Shelf. Added to the required 2 miles, they exceed the maritime distance that separates them, which is a maximum of 501,080 miles and a minimum of 201,944 miles, so there is a crossing point between the waters of the two countries whose limits must be negotiated (Monjane Junior, 2019).

Negotiations between Mozambique and Madagascar for the delimitation of this border have not yet started, as it depends on the solution of the dispute between Madagascar and France for sovereignty over the French Islands along the Indian Ocean, namely European Island, India Island and Juan da Nova (Jamine, 2007; Monjane Junior, 2019).

With the independence of Madagascar in 1960, the French Government decreed that the European Islands, Bassa da India and Juan da Nova, would pass under its direct authority, which created tension with the new independent State that lasts until today.

Although Madagascar's claims have the support of several countries and organizations, including the UN, which considers that the

6. Available in <https://expresso.pt/africa/mocambique-pede-mais-70-mil-km-de-territorio=f414863>

7. The French Possessions are a group of five islands, located next to the island of Madagascar, namely “Ilhas Europa”, Bassa da India, Juan da Nova, Glorioso and Mayotte, which, like Madagascar, were under French domination in the colonial period, and with the conquest independence, remain under French domination.

French government must negotiate with Madagascar with a view to reintegrating the arbitrarily separated islands of Madagascar, France considers this interference in internal affairs and as such contradicts the charter of the United Nations, although it is said that the dispute is motivated by economic interests and not by questions of sovereignty (Jamine, 2007).

France also disputes Mayote Island with the Comoros Islands. In this case, the decision was taken by the population itself, which on the eve of independence voted in favor of remaining under French jurisdiction. For its part, the Union of Comoros claims sovereignty over the island, and has the support of the United Nations and the former OUA. France, however, says that as long as the population so wishes, the island will remain under its jurisdiction (Jamine, 2007).

The case of this island due to its geographical location does not have a great influence on the border with Mozambique, while it belongs to France. In the event that jurisdiction passes to the Comoros Islands, it will be included in the system of straight baselines of the Comoros Archipelagos, a geographical relationship will be established with Mozambique's claim (Jamine, 2007).

Overall, the France claims around 123,700 square kilometers of ZEE for the island of Bassa da Indica, which is very disproportionate to the territory itself, which is around 0.2 square kilometers; 127,300 square kilometers of Europa Island which is only 28 square kilometers; and 61,050 square kilometers of Juan Nova Island which is only 4.4 square kilometers; and 43,614 square kilometers of Ilha Glorioso, which is only 7 square kilometers, which makes up more than half of the Mozambique Channel (Monjane Junior, 2019).

One aspect to be taken into account when evaluating nautical mile claims by

islands in the Indian Ocean has to do with the geographical characteristics of these islands, which fall into the category of sandy islets, naturally formed above water at high tide, which cannot sustain the human habitation or economic life on their own (article 121 of the UNCLOS), hence the question: what maritime zones must these uninhabited islands have? If they belong to a distant country, is it entitled to an Exclusive Economic Zone, especially when it overlaps the claims of another state?

The best scenario for Mozambique would be for the possessions to be given partial weight or enclave status, which could apply whether the island is assigned to France or Madagascar or the Union of the Comoros, as they are not part of the mainland of any of them and none of the two countries need them to survive, so there will be no reason to assign an Exclusive Economic Zone to the islets. On the other hand, due to the fact that the islets are located in the middle between Madagascar and Mozambique, it would be unfair to attribute the total weight to them (Jamine, 2007).

In addition to these cases of border definition, the ONU is also pending deliberation on the intention of extending the Continental Shelf of Mozambique, to around 321 miles. On July 7, 2010, Mozambique filed with the ONU General Secretariat the definitive proposal to extend the Continental Shelf beyond 200 miles (Sousa & Verissimo, 2015).

The decision on the extension of the continental shelves is also likely to be the subject of disputes as studies indicate that in the Indian Ocean to the south and southwest of Madagascar there are three states with potential claims for extending the platforms: Mozambique, Madagascar, South Africa and the French possessions.

MAIN CHALLENGES FOR THE DELIMITATION OF MARITIME BORDERS IN MOZAMBIQUE

The process of delimitation of Mozambique's maritime borders with its neighbors is far from reaching a conclusion, and a major impasse can be seen in the negotiations due to the fact that the claims of each of the countries involved are the same. Even if disputes have to be arbitrated by international bodies, deliberations will not be easy as both Mozambique and its neighbors are developing states, where marine resources are indispensable for their survival. This way, the challenges of the process of delimitation of Mozambique's maritime borders are the following: (i) Resumption of negotiations to reach an agreement with South Africa, for the establishment of the southern border. In this regard, the most important thing is to reach consensus on the point of intersection between the land border and the maritime border of the two countries, in order to later establish the maritime limits of each one of them.; (ii) Beginning of negotiations with Madagascar to establish agreements for the delimitation of the Exclusive Economic Zone and the Continental Shelf of both countries; (iii) Negotiation with Madagascar or France or even the Comoros Islands on the delimitation of the waters between Mozambique and the Mayote, Glorioso, Bassa da India, Europea and Juan da Nova Islands. This is Mozambique's biggest challenge in the context of delimitation of maritime borders, the solution of which depends on the resolution of disputes between France and Madagascar/Comoros and has implications not only for the delimitation of the Exclusive Economic Zone,

The importance of delimitation that of maritime borders cannot be seen only as an economic issue, but also political and security. This is a political issue because it concerns the

relationships that are established between states, with respect to areas of their jurisdiction in the exercise of sovereignty. It is also a matter of national security as the lack of definition of borders makes the sea unprotected, and prone to criminal actions such as piracy, illegal fishing, illegal trafficking, entry of criminal organizations, among others.

It is in recognition of this importance that the Government of Mozambique, in its maritime policy, in the field of international cooperation, defined as its main objective "to make efforts to find the best negotiated solutions for the delimitation and establishment of all maritime borders, including the extension of the continental platform of the Indian Ocean". The priority given to negotiating and concluding agreements on the delimitation of maritime boundaries and concluding the process of declaring the extent of the Continental Shelf is high, and involves surveying and mapping shared seabed resources and establishing long-term agreements. term of management and monitoring of shared resources (POLMAR, pp. 47 and 103).

In this way, it is recommended that the process be resumed with the awareness that, just as in the past, the delimitation of borders was not a homogeneous process, but that reaching agreement on each section implies concessions by the parties involved until an agreement is reached. end, so it will also be in these cases. The most important thing is that in the delimitation process, all states involved take into account political, strategic, historical and geographic considerations in the negotiation about the use of the islands, definition of baselines and proportionality of the areas to be delimited, so that the agreements are fair and bring proportional benefits to each of the states.

CONCLUSION

In conclusion, we can mention that the delimitation of Mozambique's maritime borders is a process that began a few years after independence, with the aim of reaffirming the areas of sovereignty of each of the states involved, and guaranteeing harmonious coexistence between the peoples of these States. Since the beginning of this process, an agreement has been reached for the delimitation of the northern border, with the signing of agreements between Mozambique and Tanzania and the Comoros Islands, on the limit of the waters of the three states, and the same has been ratified by each of the countries.

The case of definition of the southern border with the Republic of South Africa, negotiations to reach the agreement have already begun, with agreements reached on the methods and instruments to be used in the delimitation. What is still under analysis is the definition of the point from which measurements will be taken to establish the borders, as this depends on the definition of the intersection point between the land and sea borders of the two states. From the South African side there has already been a proposal for a border measurement point, which is currently awaiting the Mozambican counterpart.

The most complex case, which also constitutes Mozambique's main challenge in the delimitation of maritime borders, is the case of the border to the west, with Madagascar and mainly with the French Possessions. It is a case in which it is still not clear with whom Mozambique will have to negotiate the borders as French possessions are in dispute between France, Madagascar and the Comoros Islands. Only after this dispute is resolved can negotiations begin on the boundaries of these countries' borders.

Despite the difficulties inherent in this

process, the Mozambican government must make efforts to define and delimit all its borders, given the current context of the discovery of the existence of various natural resources, mainly energy sources such as oil and natural gas in the sea, whose exploitation could contribute much to the fragile economy of the country.

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