

MARITIME BOUNDARIES IN THE GULF OF GUINEA
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Introduction

About three years ago the government of Nigeria asked my firm to assist with the delimitation of their Exclusive Economic Zone (EEZ). At that stage, in 1998, we were four years into the case which is still currently before the International Court of Justice concerning the land and maritime boundary between Nigeria and Cameroon. There had been a series of inconclusive negotiations with Equatorial Guinea and São Tomé e Príncipe (STP) both of which countries had a fairly mixed history as far as Nigeria was concerned.

Nigeria had EEZ legislation in place. They had proclaimed an EEZ in the 1970's, but it required precise delimitation.

The task was rapidly becoming more urgent as the multi-national oil companies increased their ability to explore and extract oil in ever deeper waters. The Gulf of Guinea was, and is, one of the richest off-shore oil producing regions in the world. Already there exists a plethora of off-shore wells within the first 100 miles off-shore. Now the prospects look very promising further out to sea as one approaches the 200 mile limit.

In all of this, of course, the delta of the River Niger and the Niger fan plays the key role and, as we shall see, may yet have a further role to play in extending the limits of Nigeria's Continental Shelf.

The first thing we had to say to the Nigerians, however, was that it was impossible for them to delimit their EEZ until they had sorted out their boundaries with their neighbours. The remainder of this talk will deal with the process of sorting out those boundaries, the progress which has been made, the tasks which remain to be done and the implications for Nigeria's outer limits.

Nigeria/Cameroon

Nigeria's eastern maritime boundary is *sub judice*. Cameroon took Nigeria before the World Court in March 1994 and challenged Nigeria's boundaries with Cameroon, limiting themselves at first to the Bakassi Peninsula in the South and the Maritime Boundary. Subsequently Cameroon enlarged the scope of their application to include the entire land boundary and Lake Chad. This is, in part, why the case has already been before the Court for 7 years, but now with the prospect of the hearing taking place early next year.

Following that hearing the Court will have to pronounce on the Nigeria/Cameroon Maritime Boundary: it will also have to pronounce on the boundary with Equatorial Guinea. Equatorial Guinea joined the action as an Intervener a couple of years ago.

Nigeria had told the Court from the outset that it would be impossible to delimit the Nigeria/Cameroon boundary bilaterally – the interests of Equatorial Guinea would also have to be taken into account. The Court gave implicit recognition to this submission of Nigeria in a Judgment which it handed down in 1998. Equatorial Guinea was not slow to follow this up by lodging its own application. A glance at the configuration of the three boundaries and the clear requirement for a tri-point meant that even Cameroon could not seriously object to Equatorial Guinea coming on board.

By way of brief illustration of the difficulties that exist over the maritime boundary there are, in effect, three competing lines. There is a line which strikes out into the middle of Nigeria's existing oil fields: this was the line Cameroon first put forward in the proceedings. There is a line which goes down the eastern side of Bakassi. That is Nigeria's claim line. The third line is the line which has been observed by the licensing authorities in all three countries and by the oil companies which may conveniently be termed the Oil Practice Line. This line represents the *de facto* division between Nigeria and Cameroon's offshore oil interests albeit there are areas of overlap even on that line.

The difficulty for Cameroon is that they are in a classic shelf-lock position which would be bad enough if it was just between Nigeria and Cameroon, but with the addition of Equatorial Guinea, Cameroon really is hemmed in. It remains to be seen whether the Court will have any sympathy with Cameroon's geographical disadvantages.

Equatorial Guinea

Whether by reason of the existence of the Nigeria/Cameroon case or the pressure being brought to bear by the oil companies or simply the right combination of leaders, the bilateral negotiations between Nigeria and Equatorial Guinea started making real progress about three years ago. In a little over two years the two countries had agreed a single maritime boundary.

The line stretches from a point slightly due south of the notional tripoint between Nigeria, Cameroon and Equatorial Guinea and has as its southern limit the median line between São Tomé and Equatorial Guinea, a line which was recently agreed by Treaty.

The line represents a compromise between the median line claim contained in Equatorial Guinea legislation and a line which could have been claimed by Nigeria which would, in effect, have taken into account proportionality – ie the differing lengths of the two coastlines. The negotiated line recognized existing oil interests and the historical pattern of licensing. The thinking behind the line was that the oil interests of both countries should remain largely unaffected.

The only real problem area was that presented by a known straddling oil field, the Ikanga/Zafiro field. Zafiro is Equatorial Guinea's largest and most valuable oil field. Nigeria's original proposal would have largely deprived Equatorial Guinea of that field. However, the

line which came to be drawn threatened largely to deprive Nigeria of a valuable extension to the Zafiro field called Ikanga which had already been discovered by Elf under a Nigerian licence.

It was therefore agreed that the two countries would enter into a unitization arrangement in order that both should gain the maximum benefit from this straddling field. Whilst the Treaty was to take effect upon signature, ratification is dependent upon agreement being reached on unitization.

The Treaty was signed in September 2000. One year on the Unitization Agreement still has not been finalized but is the subject of intense continuing negotiation and the two parties are hopeful that agreement will be reached very shortly.

Thus the negotiated line which finally emerged between Nigeria and Equatorial Guinea is, as I said, a compromise line. It cut off the western extremities of some Equatorial Guinea blocks but it largely preserved the existing eastern extremities of Nigeria's' blocks. The so-called "notch" around Ikanga was drawn in such a way as to encompass the full extent of the Ikanga field on the Nigerian side.

Thus the negotiated line consists of a series of co-ordinates which took into account existing oil interests. It does not track the median line precisely nor does it have a complex formula based on proportionality.

It is however a geodetically correct line drawn by the UK Hydrographic Office with the assistance of Caris Lots Technology. The co-ordinates have been lodged with the United Nations and with the International Court of Justice.

The line will have an effect on Cameroon's claim line. Unfortunately I cannot yet say more than that. It will however be interesting to see what effect the Court will give to the negotiated line.

São Tomé e Príncipe

Nigeria's negotiations with STP began in earnest about two years ago. STP had claimed archipelagic status under Article 46 of UNCLOS and, following on from that, they had drawn themselves a 200 mile exclusion zone limited in the north-east by the median line negotiated with Equatorial Guinea and in the north west by what they perceived as the median line between STP and Nigeria.

Nigeria, on the other hand, under its 200 mile EEZ legislation, was claiming an area which overlapped very considerably with STP's zone.

It was clear to Nigeria that the limits of STP's claim should be reduced in order to take into account the huge disparity in the length of the respective coastlines of the two countries.

Negotiations began on this basis at the beginning of the year 2000 but it rapidly became apparent that the two sides were deadlocked. A dramatic intervention by the President of Nigeria, Olusegun Obasanjo, who paid a flying visit to São Tomé at the end of August last year resulted in the two sides agreeing that they would resolve their differences by creating a Joint Development Zone in the area of overlap.

The idea was of course to enable exploration and licensing to proceed in an area which was beginning to look increasingly prospective.

It was agreed that the proceeds of both living and non-living resources in the area should be shared between the two countries in a proportion of 60% to Nigeria and 40% to São Tomé.

A Treaty was concluded at the end of February 2001 and work started on drawing up the rules and regulations for a joint authority to operate the JDZ. That work continues now and it is hoped that it may be concluded by the end of this year.

As far as the actual drawing of the line marking the limits of the respective countries' claims was concerned, a certain amount of technical work had to be carried out. The south eastern limit of the JDZ in fact represents a line which gives one-third effect to the islands of STP. The charting in the area was reasonably accurate although there is a constant coastal drift effect along Nigeria's coastline. Some satellite imagery and ground-truthing was done in order to gain more accurate co-ordinates for baselines along Nigeria's coast and, once again, the UK Hydrographic Office drew the necessary lines with the assistance of the Caris Lots software. This has enabled the parties to produce a set of co-ordinates representing the outer limits of the JDZ, thus postponing the need for Nigeria and STP to define their common maritime boundary until after the time periods stipulated in the JDZ Treaty.

Benin

The line drawn with Equatorial Guinea and the northern limits of the STP JDZ have given Nigeria a considerable part of its EEZ delimitation. There is, however, still a line to be drawn to the west, between Nigeria and Benin. Negotiations on this line are well advanced and a median line – type solution looks likely.

There is, however, an interesting rider to this negotiation. The configuration of Nigeria's coastline to the east of the Nigeria/Benin line means that there is a stretch of the line which goes out to the full 200 miles where Nigeria and Ghana have a common maritime boundary. The extent to which this becomes a reality will depend on the final outcome of the Benin negotiations and on any action which Togo might take to prevent itself from being shut in rather as Germany was in the North Sea by Denmark and the Netherlands back in the 1960s.

Extension to Nigeria's Continental Shelf

It will be appreciated from what has been said thus far that Nigeria, for all that she has a considerable coastal frontage (some 800 kms in all) she actually has a remarkably small exposure at the limits of her projected EEZ to the high seas. The length of unrestricted EEZ boundary is probably only about 150 kms.

Nevertheless, that frontage gives onto an area of Continental Shelf which appears to have more than an even chance of being extended further out to sea under Article 73 of UNCLOS: The floor of the Continental Shelf at this point is thought still to reflect very much a reflection of the River Niger fan and preliminary indications are that there is likely to be thick sediment on the seabed which gives Nigeria a reasonable prospect of making a successful claim to an extended Continental Shelf.

If Nigeria was able to take the extension to its maximum limit, the potential for adding to her EEZ is considerable.

CONCLUSIONS

The story of the Gulf of Guinea in the last three years provides an object lesson in what can be achieved in maritime boundary making within a comparatively short space of time given friendly relations and positive political will on the part of the nations involved. Even the existence of a major dispute which is being resolved by third party means has not hindered progress towards an overall solution. There is no doubt that the task of all those concerned has been facilitated by the existence of UNCLOS. This is not so much in respect of the actual boundary making, which continues to be a matter of hard negotiation and reference to precedents given in relevant cases, but in setting out the relevant areas which can be claimed and the ground rules for dealing with baselines, islands, archipelagos and, to some extent, opposite and adjacent coasts.

The result will be to give the peoples of Nigeria, Equatorial Guinea and São Tomé e Príncipe in particular the economic benefits to be derived from certainty over maritime boundaries which enable commercial exploitation of the abundant maritime resources which exist in the area.

[Illustrations will accompany this presentation]