The International Maritime Boundaries of Nigeria - Revisiting Joint Development of Natural Resources

By:

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There is renewed interest in the Nigeria- Sao Tome and Principle (STP) Joint Development Zone (JDZ). This is explored in a published chapter in the Nigerian Yearbook of International law (with co-authors). This chapter focused on the Nigeria-STP JDZ as an exemplar of a cooperative approach to maritime boundary delimitation and assesses the suitability of the particular JDZ model chosen. Therefore, this appears to be an excellent opportunity to explore the broader theme of maritime boundary zones of Nigerian vis-à-vis international maritime law. This essay argues that joint development in the spirit of a duty to cooperate within the Gulf of Guinea, will represent a Pan-African and sustainable vision, for the future exploration and exploitation of natural resources, including living resources such as Fisheries.

Nigeria is a coastal state. It has maritime boundaries with Cameroon, Benin, Equatorial Guinea, Sao Tome and Principe and Ghana within the larger Gulf of Guinea. The Gulf of Guinea is part of the Eastern tropical Atlantic Ocean off the West African coast covering approx. 6000 km. of coastlines and encompasses 17 countries. Although rich in oil, minerals and living natural resources, the area remains significantly under-developed as a result of land and maritime boundary disputes and insecurity. The Gulf of Guinea Commission (GGC) set up by treaty in 2001. The founding fathers included presidents from Nigeria, Angola, Gabon, Congo and Sao tome and Principe who represent the 5 countries which actually signed the treaty. Equatorial Guinea, Cameroun and Democratic Republic of Congo have since joined the GGC. There has been a recent revitalisation in the role of the commission and a memorandum of understanding with the African Union (AU) in July 2021, in the face of significant security threats in the region.

Nigeria is seen as a major hegemony in the region, because of its dominance in the energy trade. However, this means that some of its institutional deficiencies and uncertainties, may affect disproportionately regional institutional and cooperation frameworks within the region. The UN Convention on the Law of the Sea (UNCLOS) adopted in 1982 covers the international maritime legal framework. Nigeria, signed UNCLOS on 10 December 1982 and ratified the treaty on 14 August 1986. The Convention entered into force on 16 November 1994. As a result, Nigeria as a coastal state, is entitled to 12 nautical miles, territorial Sea (Article 3), a contiguous zone of 24 nautical miles (Article 33), an Exclusive Economic Zone up to 200 nautical miles from the baselines of where the territorial sea is measured (Article 57). The EEZ gives the Nigerian state, ‘ sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and wind’ (Article 56). Furthermore UNCLOS also entitles a coastal state like Nigeria to a continental shelf, not exceeding 350 nautical miles, where it has sovereign rights for the purpose of exploring and exploiting natural resources (Article 76 & 77). Chircop, Dzidzornu and Oguamanam note that Nigeria, only recently started to carry out actions to maximise its jurisdictional gains.

Three major areas are a necessary focus, for our analysis of Nigeria:

(a) Internal recognition of the maritime zones in national law, following the dualist principle.

(b) Maritime boundary delimitation and cooperation agreements. (especially following the detrimental ICJ judgement of *Cameroon v Nigeria* (2002), where Nigeria lost the Bakassi Peninsula).

(c) The re-focus on diversification, which could include fisheries and maritime transport but also requires maritime security.

Alongside these areas would be a spirit of cooperation, which is encouraged by UNCLOS Article 74(3) & Article 83(3). This would call for an effective use of unitisation and joint development.

(a) Internal Recognition of the Maritime Zones in National Law, Following the Dualist Principle.

Nigeria first passed legislation to recognise the Territorial Sea in 1967, this has been subsequently amended twice (1971, 1998). The current legislation is therefore the Territorial Waters (Amendment) Decree 1998 (now Act), which reduced the claimed territorial sea from 30 nautical miles to 12 nautical miles, as permitted by UNCLOS. Nigeria also legislated for an Exclusive Economic Zone in 1978, following emerging customary international law at the time. The result was the Exclusive Economic Zone Decree No. 28 of 5 October 1978 (now Act), which claimed a distance of 200 nautical miles. The Petroleum Decree No.51 of 1969 (now Act), also provides for a continental shelf which it defines as follows : “"Continental shelf" means the sea-bed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than two hundred metres (or, where its natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria.” In 2016, Nigeria made a submission on a Continental Shelf claim to the Commission on the Outer Limits of the Continental Shelf (CLCS). This was an amendment to a prior 2009 submission The 2016 submission has been followed by subsequent

internal Senate interest in seeking status of Nigeria's extended continental shelf. This has culminated in a Maritime Zones Bill, which seeks to repeal and consolidate national legislation on maritime zones. The current bill is titled Nigerian Maritime Zones (Enactment) Bill 2020. It is described as "a Bill for an Act to repeal the Exclusive Economic Zones Act Cap E17 LFN 2010 and the Territorial Waters Act Cap T5 LFN 2010 and enact the Maritime Zones Act to provide for the Maritime Zones of Nigeria..." This bill (SB49) was sponsored by George Thompson Sekibo (Senator). However its success is not guaranteed as key bills such as the Petroleum Industry Bill which successfully passed in 2021, was significantly altered and had failed in 2009, 2012 and 2018. Furthermore in 2019, a number of Maritime Bills failed to gain presidential assent. Nevertheless, a comparative study by Chircop, Dzidzornu and Oguamanam indicates that this type of legislation is necessary. They suggest that this: "while not necessarily being a constitutional law instrument, performs vital constitutive functions because it helps to define the extent of national territory and authority exercised at sea". There are comparative maritime zones legislations in South Africa and Ghana

(b) Maritime Boundary Delimitation and Cooperation Agreements

Nigeria and Cameroon: Nigeria has a judicially enforced demarcation line with Cameroon. The decision over the boundary delimitation effectively handed over the Bakassi peninsula to Cameroon, with significant implications for the Nigerian populations' resident in that area. The Cameroon- Nigeria Mixed Commission set up in 2002 at the request of the two states, facilitated the implementation of the demarcation decision but also has a mandate that could promote future cross- border cooperation. Nigeria in 2012 decided not to apply for a review of the ICJ decision for diplomatic reasons. Bonchuk notes that cross border cooperation in such an area with shared ethnic groups, historical background, contiguous territory and natural resources is critical to development. He cites areas of potential cooperation such as: "cooperation in the regulation of migration, environmental and resource management, establishment of common security through cross-border patrols, education and sports facilities, airports, roads and railways, exploitation and production of fish stock, animal breeding, and management of game reserves and river systems

for energy (e.g. the Akpokim water fall).” There is evidence that the presence of oil exacerbated the boundary conflict, however oil by its very nature is fluid and therefore likely to exist in cross-border locations, even with the delimitation. Also, fisheries which has been important to the livelihood of coastal regions in this area for centuries could be encouraged and formalised in a sustainable way. This ICJ case and decision was also instrumental in getting Nigeria to negotiate maritime boundary treaties with its other coastal neighbours.

Nigeria and Equatorial Guinea: Treaty between the Federal Republic of Nigeria and the Republic of Equatorial Guinea concerning their maritime boundary was signed on 23 September 2000, while the ICJ case was ongoing. In 1999, Equatorial Guinea was allowed to intervene had been allowed to intervene on the basis of Article 62 of the ICJ Statute, which recognised that Equatorial Guinea had a legal interest which could be affected by the decision. In recognition of potential cooperation and the existing cross-border, Ekanga/ Zafiro oil fields, Article 6 of the Treaty states: “Should the maritime boundary established by this Treaty run through any field of hydrocarbon deposits so that part of the field lies on the Nigerian side of the boundary and part lies on the Equatorial Guinea side, the Contracting Parties shall seek to reach appropriate unitisation arrangements for each such field.”. There had been a significant dispute on the ownership of the very productive offshore oil fields which straddle the maritime boundary line. An agreement for unitisation was subsequently signed on 2nd April 2002. This paved the way for the oil companies involved (holders of the licence) to jointly cooperate in the development of the oil fields. In a 2021 memorandum of understanding was signed, acknowledging the role of cooperation, as a key to unlocking the potential for the hydrocarbons sector of both countries.

Nigeria and Sao Tome and Principe (STP): The treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources, in respect of Areas of the Exclusive Economic Zone of the Two States was signed on 21 February 2001. It remains one of the best examples of cooperation between states in the Gulf of Guinea, despite the lack of discoveries of potential fields, allegations of corruption and inactivity. It covers living and non-living resources with the potential for fisheries. It utilises the joint development authority model and the states, share based on a 60% Nigeria and 40% STP formula. The example of

joint development could be followed by STP and Equatorial Guinea as collaborative development efforts could yield better results despite limitations.

Nigeria and Benin: *Treaty on the Maritime Boundary Delimitation between The Federal. Republic of Nigeria and The Republic of Benin was signed on the 4 August 2006* (see Annex 135 Benin- Nigeria). Although full treaty document is unpublished some indications of content and demarcation line can be gleaned from this document. Isyaku demonstrates a history of peaceful co-existence between Nigeria and Benin despite colonial histories. Benin's Seme oil field is located near the border line with Nigeria. There is currently a, 1950 km pipeline planned by the China National Petroleum Corporation to run from Agadem, Niger to Port Seme, traversing Nigeria.

Nigeria and Ghana: The Nigeria- Benin delimitation is viewed as a partial delimitation, because it becomes a 'Nigeria/ Benin/Ghana tripoint' (Annex135-Benin-Nigeria) around the 200 nautical miles point. Therefore with Ghana's submission for recognition of the outer limits of its continental shelf , Ghana is a maritime boundary nation to Nigeria. This has also driven a 2021 communique of cooperation between both countries, Navy personnel to combat Maritime Security issues.

(c) The Re-focus on Diversification:

Nigeria has embraced a diversification agenda, away from oil revenue dependency and inclusive of the marine environment . This has been termed the 'Blue Economy'. This move is driving cooperative approaches to tackle insecurity through 'the deep blue project' in the Gulf of Guinea, initiatives to enhance maritime transportation and the exploration of fisheries. Nationally there is a demand gap for fisheries in Nigeria. Marine fishing in international water could present a sustainable way to meet this demand. The necessary emphasis on maritime security is crucial because of the enabling environment for such investment and development. This is recognised in further cooperative security initiatives such as the ECOWAS Integrated Maritime Strategy which stress that "the trans-boundary nature of maritime resources such as rivers, lakes, seas, minerals, oil and other maritime ecosystems makes regional cooperation imperative due to common experiences with violent conflicts over the control, distribution and management of the associated resources.(8)". It

pushes for greater collaboration as key to unlocking a “a healthy, safe and prosperous African maritime domain” (32). The security of the Nigerian coast is vital to the success of this collaborative strategy.

A Potential Role for Unitisation and Joint Development?

Ahmad highlights the historical context of the current Gulf of Guinea agreements, as one where delimitation is necessary largely to foster cross-border cooperation and development. This ties in with the key pillars of the African Union Border programme adopted in June 2007. However, because negotiations and actions on cooperation are largely driven by potential shared natural resources (living and non-living), joint development is possible, even in the absence of a delimitation line as demonstrated by the Nigeria/STP JDZ, which chose a 60/40 division formula and a joint development authority. Nigeria-Equatorial Guinea cross-border unitisation also presents another cooperative example, even with a delimited line. Joint development is also possible across a delimited maritime boundary. This has been suggested for Nigeria and Cameroon. Nigeria, as a dominant player in the region is critical to cooperation and development of the region. Nigeria has shown good engagement with international law, although it could enhance the effectiveness of some of the engagement with clearer domestic legislation and the improvement of institutional capacity. Improving such institutional capacity so to effectively employ a renewed diversified focus on both living and non-living resources of the marine environment, will ensure that potential alternatives, such as joint development and unitisation are better exploited and utilised. This can be employed towards the sustainable development of natural resources, for the benefit Nigeria and its neighbours.

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