



UNCLOS 82: Africa's contributions to the development of modern law of the sea 40 years later[☆]

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ABSTRACT

After being excluded from the development of early law of the sea due to colonialism, Africa has become quite active in the development of contemporary law of the sea ever since the various African States gained independence from colonial rule. Unfortunately, because many African states had not achieved independence during UNCLOS I and II, the outcomes of these Conferences did not include significant contributions from Africa. However, by the time of UNCLOS III, a significant number of African States had gained independence and had become active members of the international community. These African States were active in pushing for the convening of UNCLOS III to renegotiate the terms of modern law of the sea, and they made significant contributions during the Conference, particularly in the areas of the exclusive economic zone (EEZ), continental shelf (CS), and international seabed area (the Area), which were eventually incorporated into UNCLOS 82. This article will focus specifically on the Exclusive Economic Zone (EEZ) and Continental Shelf (CS) and will investigate whether African States have made significant contributions to the advancement of these two key functional economic maritime zones within national jurisdiction forty years after the adoption of UNCLOS.

1. Introduction

Despite the fact that Africa had significant ancient empires and kingdoms [1], the continent was barred from contributing to the development of International Law. These African empires and kingdoms were not regarded as members of the so-called international community of "civilised" States, but as objects rather than subjects of International Law [2]. Several authors have argued that the Eurocentric portrayal of pre-colonial Africa as a collection of "uncivilised" and "underdeveloped" peoples contradicts historical evidence, which shows a number of developed empires and kingdoms in Africa that had significant contacts and interactions with both European States and peoples from other continents [3]. Specifically, in the field of law of the sea, despite historical evidence of African peoples actively participating in marine activities long before the slave trade and colonialism, people from the continent were excluded from the creation of early law of the sea due to eurocentrism and colonialism [4].

Unfortunately, the outcomes of first and second United Nations Conference on the Law of the Sea (UNCLOS I and II) did not include

significant contributions from Africa because many African states had not achieved independence during these Conferences [5]. Thus, African States actively pushed for the convening of the third United National Conference on the Law of the Sea (UNCLOS III) to renegotiate the terms of modern sea law, and they made significant contributions during the Conference, which were eventually incorporated into the United Nations Convention on the Law of the Sea (UNCLOS) 82. Africa's colonial experience has skewed the international economic system against the continent, prompting these new but economically weaker states to seek to rebalance the international economic order through initiatives such as the new international economic order and the right to development [6]. As a result, unsurprisingly African States have approached the Law of the Sea with a strong economic motivation. Due to space constraints, this article will focus specifically on the Exclusive Economic Zone (EEZ) and Continental Shelf (CS), which are functional economic zones under national jurisdiction with the potential to have a significant impact on the economic progress of developing coastal States through activities such as offshore mining and fisheries, and, in the case of living resources in the EEZ, this could potentially have an economic impact on

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landlocked and geographically disadvantaged States in the region. It will investigate whether African States have made significant contributions to the advancement of State Practice in relation to these two key functional economic maritime zones forty years after UNCLOS 82 was adopted.

Following this introduction, this article delves into the African region's blue/ocean developmental approach to the law of the sea. Thereafter, it examines the region's contributions to the development of the EEZ and CS, two key functional maritime zones under UNCLOS 82. In evaluating the EEZ, the Combined Exclusive Maritime Zone of Africa (CEMZA), an innovative concept introduced by the 2050 Africa Integrated Maritime (AIM) Strategy adopted in 2014, is investigated to see if it can be related to the EEZ. The article then concludes with some closing remarks.

2. Africa and the Law of the Sea: a blue/ocean economy developmental approach?

A number of African States gained independence in the 1950s and 1960s, and by 1963 they had established the predecessor of the African Union (AU), the Organization of African Unity (OAU), a continental organisation whose mission, amongst other things, was to promote unity and solidarity among African States [7]. One of the most crucial things the OAU did was mobilise African States around the law of the sea and push for the UNCLOS III. While acknowledging the importance of the OAU (and its successor, the AU) in shaping Africa's engagement with the law of the sea, Nmehielle and Pasipanodya correctly point out that other regional intergovernmental institutions and bodies (and, I would add, certain key African States and prominent African individuals with expertise in the law of the sea) have also played important roles in developing the law of the sea as it affects Africa. [8] They further identify a very interesting point by stating that the engagement of African institutions:

'has been motivated by a simple but elusive goal. The enjoyment of the resources of the oceans surrounding the continent for the betterment of Africans. The OAU's initial efforts sought to achieve this goal by focusing primarily on securing African rights over marine resources. Early OAU resolutions declared the sovereignty of African States over fish and other marine resources and expressed the joint African position that the resources of the seabed are the common heritage of humankind, not to be exploited by whoever is wealthy enough to get there first. Moreover, the OAU worked to ensure that [the UNCLOS 82] would establish [EEZs] and recognise certain maritime rights for landlocked States.' [9].

This highlights a development-oriented approach to connecting with the seas and the maritime environment generally. During the extensive negotiations at the UNCLOS III, which led to the adoption of UNCLOS 82, this motivation was reflected in the African approach to the Conference captured in different instruments, including the 1974 Declaration of the OAU on the issues of the Law of the Sea, which indicated as one of its preambles that 'African countries have a right to exploit the marine resources around the African continent for the economic benefit of African peoples.' [10].

Forty years after the adoption of UNCLOS 82, there are currently 47 African States Parties out of the 168 total Parties to this Convention. The 1994 Implementation Agreement has 38 African States Parties out of a total of 151. There are 14 African States among the 92 States Parties to the 1995 Fish Stocks Implementation Agreement. Since then, Africa has adopted various instruments under the auspices of the AU that, while acknowledging the primacy of UNCLOS 82, views the engagement with maritime zones under the UNCLOS 82 through the lens of the Blue/Ocean Economy, using various AU initiatives such as the 2050 Africa's Integrated Maritime Strategy (AIMS) in 2014 [11], the Agenda 2063 in 2015, the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter) in 2016 [12], and the African Blue Economy Strategy 2019 [13]. The Lomé Charter defines the 'Blue/Ocean

Economy' as meaning the 'sustainable economic development of oceans using such techniques as regional development to integrate the use of seas and oceans, coasts, lakes, rivers, and underground water for economic purposes, including, but without being limited to fisheries, mining, energy, aquaculture and maritime transport, while protecting the sea to improve social well-being [14]. The AIMS emphasises this economic-centered developmental strategy for dealing with the African maritime domain (AMD) [15]. For instance, the AIMS points out the Strategy 'consists of the overarching, concerted and coherent long-term multi-layered plans of actions that will achieve the objectives of the AU to enhance maritime viability for a prosperous Africa' [16], having the vision of fostering 'increased wealth creation from Africa's oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner' [17]. Agenda 2063, a strategic framework for the continent's socioeconomic transformation over the next 50 years beginning in 2013, which has been described as charting 'a roadmap to create a coherent and development oriented maritime security strategy for the Continent [18]', was formally adopted by the AU in 2015 [19]. This long-term vision, comprised of seven aspirations, builds on and attempts to accelerate the implementation of continental programmes for growth and sustainable development [20]. It describes Africa's blue/ocean economy as a 'significant contributor to continental transformation and growth.' [21].

Also, the Lomé Charter mentions the promotion of 'a flourishing and sustainable Blue/Ocean Economy [22]' as one of its key objectives and devotes a chapter to elaborating on the development of the Blue/Ocean Economy [23]. In addition, the African Blue Economy Strategy highlights that its vision is to develop 'an inclusive and sustainable blue economy that significantly contributes to Africa's transformation and growth' and further points out that:

[t]he objective of the BE[Blue Economy] Strategy is to guide the development of an inclusive and sustainable blue economy that becomes a significant contributor to continental transformation and growth, through advancing knowledge on marine and aquatic biotechnology, environmental sustainability, the growth of an Africa-wide shipping industry, the development of sea, river and lake transport, the management of fishing activities on these aquatic spaces, and the exploitation and beneficiation of deep sea mineral and other resources. [24].

Africa's economic motivation for engaging with the AMD and its abundant resources is understandable, given the continent's constant need for wealth creation to aid in the promotion of much-needed development [25]. There is nothing inappropriate with this in and of itself, because the evolution of law of the sea has been largely driven by economic motivations [26]. The economic foundations of the law of the sea in general, particularly the UNCLOS 82, had been emphasised by Posner and Skyes [27]. It's worth noting that having a primary economic motivation for engaging with the sea does not really rule out other considerations, such as the need to protect the environment and maintain maritime security and order. The UNCLOS 82 tries to capture the interconnections between these varied objectives by adding substantial provisions that establish the need to protect the environment as well as maintain order and security in various maritime zones [28]. After all, in order to protect 'the goose that lays the golden eggs,' effective economic exploitation of the seas/oceans must be done responsibly and in an environmentally sustainable manner. Furthermore, there can be no effective exploitation of the seas in an insecure, unstable, and chaotic maritime domain. Africa's approach to engaging with the sea/ocean from a Blue Economy viewpoint, as represented in the many regional instruments implemented, is to seek economic benefits from the sea/ocean in an environmentally sustainable and secure maritime domain [29].

3. Exclusive economic zone and continental shelf – functional economic zones

The EEZ and the CS are functional maritime zones beyond and

adjacent to territorial seas where coastal States have sovereign rights to carry out the economic activity of exploring and exploiting for natural resources (in the case of the EEZ, both living and non-living resources), with rights and jurisdictions as established in Parts V and VI of UNCLOS 82 [30].

3.1. Africa and EEZ

Kenya proposed the notion of the EEZ to the Asian-African Legal Consultative Committee in 1971, then to the UN Sea-Bed Committee in 1972. The then-OAU stated the following economic ambition for the resources of this maritime zone to be used for the benefit of the African continent in the 1974 Declaration on the Law of the Sea:

That the African countries recognize, in order that the resources of the region may benefit all peoples therein, that the land-locked and other disadvantaged countries are entitled to share in the exploitation of living resources of neighbouring economic zones on an equal basis as nationals of coastal States on bases of African solidarity and under such regional or bilateral agreements as may be worked out. [31].

After the negotiations during the UNCLOS III the concept of the EEZ was integrated into UNCLOS 82 [32]. It should be noted that a number of African States have enacted legislation declaring EEZs that are substantially in accordance with UNCLOS, despite the fact that some of these laws were enacted before the Convention entered into force in 1994 [33]. This section will focus on the issues of landlocked and geographically disadvantaged countries, illegal, unreported, and unregulated fishing (IUUF), and the Combined Exclusive Maritime Zone of Africa (CEMZA) in connection to African EEZs.

3.1.1. EEZ and landlocked and geographically disadvantaged States

The UNCLOS 82 recognises the right of landlocked states and other geographically disadvantaged states to engage on an "equitable basis" in certain instances in the exploitation of living resources in neighbouring EEZs, in accordance with conservation measures of the coastal States [34]. The terms and modalities of this type of engagement shall be determined by the States involved through bilateral, subregional, or regional Agreements, taking into account factors such as the need to avoid negative consequences for coastal state fishing communities or industries, the extent to which the landlocked State is also entitled to participate in the exploitation of living resources in the EEZ of other coastal States under similar arrangements, the extent to which other landlocked and geographically disadvantaged States participate in the exploitation of living resources in such coastal State's EEZ in order to avoid undue burdening of one of the region's coastal states, as well as the nutritional needs of the respective states' populations [35]. The rights of landlocked states are limited to the excess of the allowable catch of living resources in the same subregion or region's EEZs as determined by coastal States [36]. Africa has 16 landlocked States [37], and some other African States may be considered 'geographically disadvantaged,' [38] so these provisions are important. Despite the desire expressed in the then-OAU's 1974 Declaration that African landlocked and other disadvantaged States be granted access to exploit living resources in neighbouring EEZs of coastal African States based on African solidarity, no African States have entered into any agreements to allow their neighbouring landlocked and geographically disadvantaged States to exploit living resources in their EEZs. Arguably, the fisheries industries of African coastal states are capable of meeting the entire allowable catch in accordance with the goal of optimum exploitation with no surplus for these landlocked and geographically disadvantaged States [39]. However, this is not the case because most coastal African states have underdeveloped fisheries industries and thus end up entering into various fisheries agreements with third parties outside the African continent, such as China, the European Union, and Russia. [40] Morin states that:

The reality is that the rights enshrined in Articles 69 and 70 of UNCLOS in favour of [African] land-locked or geographically

disadvantaged States have not been translated into practice. However, in the early 1980s, some African coastal States had shown a certain openness towards neighbouring land-locked or geographically disadvantaged States, but the cooperation envisaged for a while was not followed through. [41].

Interestingly, the AIMS does not specifically mention EEZs, but it does state that coordinated action by AU Member States, Regional Economic Communities/Regional Mechanisms (RECs/RMs), and Regional Fisheries Management Organizations (RFMOs) is required to ensure, among other things, that the provisions of UNCLOS Articles 62, 63, and 64 of Part V of UNCLOS 82 are encouraged and mostly met [42]. It also encourages all AU member states to claim their maritime zones and embrace and fulfil their UNCLOS obligations [43]. For some reason, the AIMS refers to African landlocked states as 'landly connected countries,' and lists one of its strategic objectives as protecting 'the right of access to sea and freedom of transit of goods for landly connected States' [44], without going into specifics. Vrancken and Swanepoel argue that using 'landly-connected States' rather than 'landlocked States,' which they consider to be a rather unflattering terminology, reflects an African policy approach that appears to adopt an integrated perspective of the AMD that seeks to minimise the dichotomy between oceans and seas on the one hand and internal waters on the other. Furthermore, they argue that the term, 'landly-connected States' simply emphasises that, despite not having coasts, these states are still connected to the sea, albeit in a different way than coastal and island States. [45].

While the Lomé Charter does not explicitly mention the EEZ, one of its objectives is to promote and protect 'the right of landlocked countries to access the sea in accordance with the provisions of this Charter, the legal instruments of the AU, and other regional and international instruments [46].' The 2019 African Blue Economy Strategy does not address landlocked states' access to the EEZ, but instead mentions the EEZ in passing in relation to maritime security, stating that '[t]he security of EEZs of Member States is of paramount importance to develop and guarantee the sustainability of their blue economy, which affects different maritime sectors.' [47].

In essence, 40 years after UNCLOS 82 was adopted, the provisions on the rights of landlocked and geographically disadvantaged States in African EEZs have remained on paper but have not been implemented.

3.1.2. Illegal, unreported, and unregulated fishing in EEZ

Due to the difficulty of patrolling and monitoring their extensive EEZs arising from a lack of resources, African coastal states face the challenge of effectively dealing with economic crimes committed within their EEZs, such as illegal, unreported, and unregulated fishing (IUUF), with the majority of the IUUF catch reported to be by non-African fleets from flag States in Asia and Europe [48]. These economic crimes in African states' EEZs have been identified as maritime security threats in various African instruments. [49] Ambassador Negm, the African Union's Legal Counsel, underscores that '...any threat to the security of Africa's fisheries is a fundamental threat to food security of the continent. Illegal, Unreported and Unregulated (IUU) fishing threatens not only food security but also financial revenues, resulting in job losses, poverty and other negative social impacts.' [50].

On March 27, 2013, the Sub-Regional Fisheries Commission (SRFC), a Regional Fisheries Organization (RFMO) representing West African States [51], asked the International Tribunal for the Law of the Sea (ITLOS) for an advisory opinion [52]. The first of the four questions submitted by the SRFC concerned the flag States' obligations in cases where IUUF activities take place within the EEZs of third-party states. While acknowledging that coastal States bear primary responsibility for addressing IUUF, the ITLOS emphasises that this does not relieve other states, including flag states, of their responsibilities in this regard [53]. It was noted that, while the issue of flag State responsibility for IUUF is not explicitly addressed in UNCLOS 82, such responsibility can be discerned in the specific obligations such States have under the Convention for the

conservation and management of marine living resources in the EEZ [54]. It also pointed out that such obligations on the flag States are usually amplified in the fisheries access Agreements between the coastal State and the respective flag States [55]. The obligation on the flag State, according to the Tribunal, is the ‘responsibility to ensure’, which is a ‘due diligence’ obligation based on ‘conduct’ and not ‘result’, that the flag State has taken adequate steps to ensure that vessels flying its flag do not carry out IUUF in the EEZs of coastal States [56].

The AIMS, listing IUUF as one of the threats in the AMD and citing the 2005 Rome Declaration on IUUF, urged that sanctions of sufficient gravity to deter IUUF be imposed to deprive offenders of the benefits from their illegal activities, including asset seizure, prosecution, and a tough stance for compensation [57]. It also encouraged member States to report any IUUF activity to the AU so it would take additional stringent deterrent actions through all available channels deemed appropriate [58]. Furthermore, AU Member States are urged to make every effort to discourage IUUF through measures such as effective licencing and control of vessels allowed to fish; real-time positional reporting by licenced vessels using appropriate technology; on-water patrols to monitor and intercept irresponsible fishing; implementation of technical regulations for the safety of non-convention fishing vessels; and the promotion of effective flag State implementation through the enforcement of RFMO measures [59]. The AIMS also states that the AU would work to seek compensation for ‘five decades’ of losses in the AMD as a result of IUUF and overfishing but does not specify who the restitution will be sought from. It also stated the intention of establishing a compensation fund to be used for the development of a sustainable fishing industry throughout Africa [60]. So far, no such compensation fund has been established. The AIM Strategy furthermore stipulates that it will include and implement a Common Fisheries Policy for the conservation, management, and exploitation of fish stocks in accordance with ecosystems and a precautionary approach across the entire CEMZA, when this rather novel zone is eventually established [61]. The Lomé Charter, providing an extensive definition of IUUF [62], required each State Party, within the context of its different national competences, to take adequate measures to effectively address IUUF operations, including legal actions aimed at prosecuting the perpetrators [63]. The African Blue Economy Strategy, on the other hand, urged AU Member States to work together to combat maritime criminality, including IUUF, by coordinating their monitoring, control, and surveillance operations and sharing information on a timely basis [64].

To prevent IUUF and other maritime crimes within their EEZs, African coastal States have arrested certain vessels under domestic law, thus contributing to the arrest and prompt release jurisprudence brought before the ITLOS under Article 292 of the Convention over the 40 years since its adoption [65]. However, IUUF continues in the EEZs of various African States.

3.1.3. EEZ and the Combined Exclusive Maritime Zone of Africa (CEMZA)

The 2050 AIM Strategy introduced a rather innovative concept, the CEMZA [66]. It is debatable whether the CEMZA is intended to combine the EEZs of African states. In relation to the CEMZA, the Strategy states:

Without prejudice to maritime zones as established by the UNCLOS for individual nations, the Combined Exclusive Maritime Zone of Africa (CEMZA) defines a common maritime zone of all AU Member States. It is to be a stable, secure and clean maritime zone in the view of developing and implementing common African maritime affairs policies for the management of African oceans, seas and inland waterways resources as well as for its multifaceted strategic benefits. The CEMZA will grant Africa enormous crosscutting geostrategic, economic, political, social and security benefits, as well as minimize the risks of all transnational threats including organized crime and terrorism in Africa [67].

The AU does not appear to intend for the CEMZA to replace current maritime zones established under International Law, including the EEZ, as it emphasises that the zone is without prejudice to the maritime zones established for individual States under UNCLOS 82. The CEMZA is

unlikely, at least in the short term, to detract from the UNCLOS 82 sovereignty/sovereign rights granted to individual coastal African States over their maritime zones, because this would necessitate extensive negotiations and is highly unlikely to be an acceptable option for these coastal states, which may be unwilling to relinquish these rights [68]. The Strategy envisions the formation of a special task force (S2TF) to prepare the technical file, including charts and other details, to determine the CEMZA’s precise boundaries [69]. It was expected that research would be conducted, and a research report submitted as far back as 2018, with the hope that this maritime zone would be established by 2030 [70]. However, so far, no task force has been formed, and no research report has been submitted, so the CEMZA’s precise geographical boundaries are unknown [71].

The 2050 AIM Strategy goes further to state:

The CEMZA, being a common African maritime space without barriers is a concept which aims at “Boosting intra-African Trade”, eliminating or simplifying administrative procedures in intra-AU maritime transport, the aim being to make it more attractive, more efficient and more competitive, and do more to protect the environment. The CEMZA will contribute to the integration of the internal market for intra-AU maritime transport and services. The AU shall further set out guiding principles for the development of a common information sharing environment for the CEMZA. This should allow for the convergence of existing and future monitoring and tracking systems used for maritime safety and security, protection of the marine environment, fisheries control, trade and economic interests, border control and other law enforcement and defence activities [72].

It goes on to say that once the CEMZA is established, a common fisheries policy based on ecosystems and precautionary approaches will govern the conservation, management, and exploitation of fish stocks [73]. Despite many stipulations in the AIM Strategy on the CEMZA, the precise ramifications of this unique maritime zone remain unclear [74]. It has been said that ‘[t]he establishment of the ...CEMZA and the AU’s vision of “a common African maritime space without barrier” sound positively utopian.’ [75] Some scholars, such as Vrancken and Surbun, have argued that it makes sense to think of the CEMZA as a ‘issues’ specific combined marine space that is meant to coexist with the maritime zones under UNCLOS 82, including the EEZ [76]. However, it is uncertain whether a merging of African EEZs could be a long-term prospect, especially since the then-OAU, referring to Africa’s EEZ, asked its Secretariat, in 1986, to ‘cooperate closely with all competent institutions in the field of exploration, exploitation, and utilisation of marine resources of Africa’s Exclusive Economic Zone with a view to undertaking joint efforts and avoiding duplication.’ [77] The question is whether deeper African integration will lead to the CEMZA becoming a combined EEZ of various African coastal states [78].

Intriguingly, the CEMZA is not explicitly mentioned in the Lomé Charter or the African Blue Economy Strategy, but it is assumed that these two instruments support this innovative African-inspired maritime zone because of their evident connection with the AIMS [79].

3.2. Africa and CS

In its 1974 Declaration on the Law of the Sea, the OAU did not directly refer to the CS, instead focused on the EEZ [80]. The goal of the Declaration appears to be for the EEZ to supersede the concept of the CS, which existed prior to UNCLOS III as a principle of customary international law [81]. However, eventually, with the support of African States, the CS was incorporated into UNCLOS 82 on the condition that states claiming CS beyond 200 nautical miles make specified contributions or payments to the International Seabed Authority (ISA) from mineral production in this part of the CS for the benefit of mankind, with special consideration given to developing States [82]. The latter clause was later incorporated as Article 82 of UNCLOS. This section will focus on domestic CS legislation, CS beyond 200 nautical miles, the Article 82 requirement, and African States.

3.2.1. African States and domestic legislation on CS

Forty years after the adoption of the UNCLOS 82 inconsistencies exist in African states' CS legislation regarding the CS's outer limit. Indeed, some African states in their legislation unequivocally indicate that the outer limit of their CS is 200 nautical miles [83]. This is noteworthy because some of these African countries have submitted claims for CS beyond 200 nautical miles to the CLCS [84]. Other states, despite being signatories to the UNCLOS 82 in their legislation still define their CS as stated in Article 1 of the 1958 Geneva Convention on the Law of the Sea [85]. It is hoped that these African States will take concrete steps to update their legislation to conform with the UNCLOS 82 [86]. Some have since becoming parties to the Convention enacted legislation declaring that the CS's outer limits are the edge of the continental margin or 200 nautical miles where such outer edge does not extend to 200 nautical miles [87]. Others have simply declared their CS to be 'as defined in the Convention [UNCLOS 82], or as it may be defined by international convention from time to time.' [88].

3.2.2. African submissions to the CLCS

Although, the AU in 2008 expressed concerns that a number of African States with CS beyond 200 nautical miles would not be able to meet the deadline for submissions to the CLCS, it has not really provided these States with practical assistance with their submissions [89]. This is despite the fact that it emphasises the economic importance of the CS beyond 200 nautical miles by stating:

'the major geopolitical and strategic stakes linked to the African continental shelf and its abundant mineral wealth and biological resources, [...] constitute an important source of foreign currency earnings for the economic development of the continent.' [90].

When the AIMS was adopted it encouraged Member States to assert their respective maritime limits, including, where applicable, their CS beyond 200 nautical miles [91]. Unfortunately, this Strategy document did not specify how the AU would assist African States in making submissions with the CLCS [92]. Surprisingly, neither the Lomé Charter nor the Blue Economy Strategy mention the CS, including the CS beyond 200 nautical miles.

So far there have been twenty submissions from Africa regarding CS beyond 200 nautical miles that have been made to the CLCS [93]. These submissions are at various stages, a few have had recommendations from the CLCS [94], some others are at various stages of the CLCS consideration processes and a number of African States have only been able to submit their preliminary information indicative of the outer limits of CS beyond 200 nautical miles to the UN Secretary-General [95]. An intriguing submission by an African State that raises some complex issues on the UNCLOS 82 process of submission to the CLCS is with regard to the South African submission concerning the mainland of its territory. There was a lack of consensus among members of the CLCS on aspects of the draft recommendations by the sub-commission [96]. The Chair of the CLCS then proposed that the Commission's recommendations should be limited to those areas where a qualified majority of CLCS members had expressed a positive view. This proposal was accepted after extensive deliberations and the CLCS approved on 17 March 2017, without a vote, the submission made by the Republic of South Africa in respect of the area of the South African mainland on 5 May 2009, with amendments. The recommendations of the CLCS did not substantively address several areas covered by the South African submission [97]. It made recommendations on the outer limits of the continental shelf for certain portions of the areas defined in the West Coast and Mozambique Ridge. However, for the remaining portions of those areas and for Agulhas Plateau and Environs, the CLCS recommended that South Africa should investigate whether additional bathymetric and geophysical information might support a revised submission for the determination of extended CS in these areas [98]. South Africa then voiced some concerns in response to the CLCS's recommendations, pointing out that the CLCS did not provide any scientific justification for not endorsing some of the findings of the CLCS sub-commission, especially after extensive

deliberations the sub-commission had with the South African representatives [99]. Also, South Africa pointed out that the CLCS recommendation to make a revised submission, based on additional data and information, without clarity on the nature of such additional data would have a two-fold effect. First, South Africa, a developing country, would incur significant additional expenses, as well as face the challenge of making a revised submission. Second, a resubmission raised concerns about the implications of such revised submission on the CLCS workload and the place of such revised submission on the queue of original submissions to the Commission. In addition, South Africa expressed concerns that it was not given an opportunity to address the significant amendments made by the CLCS before the recommendations were issued. Furthermore, it took the view that the approval of the recommendations of the CLCS without either a consensus or a two-thirds majority vote was inconsistent with Article 6 of Annex II of the UNCLOS [100]. On the whole, while recognising the crucial role of the CLCS, South Africa stressed that it was vital for the CLCS to perform its role 'in a fair, transparent and science-based manner ... consistent with the Convention and established practices and rules of the Commission.' [101] The concerns raised by the South African government expose the inadequacy for developing States, especially those in Africa, of the so-called 'ping-pong' process between the CLCS and the submitting State, whereby the submitting State has to continue to make revised or new submissions until there is convergence between it and the CLCS [102]. This process is based on the supposition that submitting States have ample resources, as well as the capacity to continue with the back and forth 'ping pong' process, which could go on ad infinitum. As indicated by the South African government this would be rather problematic for some developing States, especially those from Africa [103].

3.2.3. Article 82 of UNCLOS 82 and Africa

Under UNCLOS 82, all States with CS beyond 200 nautical miles are required to make annual payments or contributions in kind at a specified rate to the International Seabed Authority (ISA) from exploitation of non-living resources in the CS beyond 200 nautical miles for distribution to the States Parties on the basis of an equitable sharing formula that takes into account the interests of developing countries, particularly the least developed and landlocked countries. These payments or in-kind contributions are made only after the first five years of production [104]. The ISA distribution will be especially beneficial to Africa, which has a large number of least developed and landlocked countries [105]. Developing States that are net importers of a mineral resource produced in their CS would be exempt from such payments or contributions to the ISA [106]. It is important to note that the mineral in this provision applies not only to the production in the CS beyond 200 nautical miles, but in any part of the CS, including that within 200 nautical miles. This simply emphasises that the CS is one and cannot be conceptually divided into "inner" and "outer" CS [107]. Thus, African States may claim an exemption to the obligation to make payments or contributions in kind if they can establish that they are net importers of a mineral in any part of their CS. So far, no African legislation has directly mentioned the Article 82 obligation; therefore, African States with CS beyond 200 nautical miles should incorporate this obligation into their domestic legislation.

4. Conclusion

After a long period of exclusion, and during the UNCLOS 1 and II a rather limited participation in law-making in the law of the sea, African States enthusiastically participated in UNCLOS III, albeit largely for economic reasons, which resulted in the adoption of UNCLOS 82. Since the adoption of UNCLOS 82, a number of African States have become parties to the treaty and its two implementing agreements. Africa has also adopted a number of regional instruments to promote the sustainable use of the sea/ocean around the African continent in order to promote economic development (the blue/ocean economy).

Evaluating two crucial maritime functional economic zones, the EEZ

and the CS, the article investigates Africa's potential progress. Although much has been done by African States to engage with the UNCLOS 82 and to develop a regional perspective of ocean law governance through the adoption of several regional instruments to supplement this key global treaty, there is still scope for a more concrete engagement with the EEZ to strengthen the African Blue/Ocean Economy, particularly with regard to landlocked States, IUUF, and the introduction of the CEMZA as an innovative maritime zone. Furthermore, more needs to be done in terms of the CS to ensure that African States' domestic laws comply with UNCLOS 82 requirements and to assist African States in making CLCS submissions.

Data availability

No data was used for the research described in the article.

References

- [1] Such as the Kingdom of Benin, Kingdom of Kush, Carthaginian Empire, Ancient Egypt, Mali Empire, the Songhai Empire, the Great Zimbabwe, Zulu Kingdom etc. See Teslim Elias, *Africa and the Development of International Law*, 2nd edition (edited and revised by R. Akinjide), M. Nijhoff Publishers. (1988) 1; 1974, N. L. Wallace-Bruce, *Africa and International Law – the Emergence to Statehood*, (1985)23(4) *Journal of Modern African Studies*, pp.575–602; G.M. Bob-Milliar, *Africa's Contributions to World Civilization*, In: S.O. Olorunfoba, T. Falola (eds), *The Palgrave Handbook of Africa and the Changing Global Order*, Palgrave Macmillan. (2022).25–41.
- [2] N.L. Wallace-Bruce, *Africa and International Law – the Emergence to Statehood*, *J. Mod. Afr. Stud.* 4 (23) (1985) 582–583.
- [3] See for instance, Elias, *Africa and the Development of International Law*, op.cit. at chapter 1; James Thuo Gathii, "A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias", (2008) 21(2). *Leiden Journal of International Law*, p.317 at 319–338; Jeremy I. Levit, "African Origins of International Law: Myth or Reality?", (2015) 19. *UCLA J. Int'l L. Foreign Aff.*, pp.113–165 and Jakob, Zollmann "African International Legal Histories – International Law in Africa: Perspectives and Possibilities," (2018) 31(4). *Leiden Journal of International Law*, pp. 897–914.
- [4] See E. Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind* (2011, Springer) 1–7 who referred extensively to the authoritative UNESCO General History of African publication in support of this. A commentator stated: "In 3000 BC, a time where some lands didn't even know about the existence of other civilisations, the inhabitants of different coastal regions in Africa were already voyaging through the seas and following different routes that connected them with the other civilisations that were present at the time." See Think Africa Editorial Team, "African's inventions: the Earliest Sea-Faring Vessels," February 14, 2019, <https://thinkafrica.net/african-inventions-the-earliest-sea-faring-vessels/#:~:text=Nearly%2010%2C000%20years%20ago%2C%20the,sailors%20to%20explore%20wider%20regions> (last accessed on 21 July 2022).
- [5] E. Egede, *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*. (2011, Springer) 5–13.
- [6] A. Anghe, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press. (2005) 196–223; J. T. Gathii, *Africa and the Radical Origins of the Right to Development*, 1 *TWAIL Rev.* (2020) 28–50; B. Ibhawoh, *The Right to Development: The Politics and Polemics of Power and Resistance*, *Hum Rts Q.* 33 (2011) 76–104.
- [7] Article II of the OAU Charter.
- [8] V. Nmeehielle, T. Pasipanodya, African Union, PHG Vrancken and M. Tsamenyi (Eds.), *The Law of the Sea: The African Union and its Member States*, Juta Publishers. (2017) 36. Organisations such as ECOWAS, SADR, UNECA. African States such as Cameroon, Ghana, Kenya, Nigeria, Egypt Algeria, Tunisia etc and individuals such B. Engo, T. Elias, T. Mensah, J. L. Jesus, A. Wako etc.
- [9] *Ibid* at pp.36–37
- [10] Document A/CONF.62/33 of 19 July 1974, https://legal.un.org/diplomaticconferences/1973_los/docs/english/vol_3/a_conf62_33.pdf. (last accessed on 21 July 2022)
- [11] Refers to UNCLOS 82 in Paras.34, 37, 58, 59 and Annex B definition of the Combined Exclusive Maritime Zone.
- [12] UNCLOS 82 in Articles 1 and 8.
- [13] Interestingly this Strategy does not specifically refer to UNCLOS 82 though it acknowledged that African acknowledges a number of Conventions,. See page 10 of the Strategy.
- [14] Article 1.
- [15] The AMD in Annex B of the AIMS 'refers to all areas and resources of, on, under, relating to, adjacent to, or bordering on an African sea, ocean, or African lakes, intra-coastal and inland navigable waterways, including all African maritime-related activities, infrastructure, cargo, vessels and other means of conveyance. It also includes the air above the African seas, oceans, lakes, intra-coastal and inland navigable waterways and to the oceans' electromagnetic spectrum as well.' It is not clear how 'African maritime-related activities, infrastructure, cargo, vessels and other means of conveyance' could be included in the definition of AMD.
- [16] Para. 17 of AIMS.
- [17] Para.18 of AIMS.
- [18] A.N. Negm, A.U. AIM, *Strategy and the Fragmentation of IUU Fishing Regulations in Africa: the Case of West Africa*, *Int. Community Law Rev.* 22 (2020) 450, 449.
- [19] See Agenda 2063: The Africa we want (Popular version), September 2015, https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf.
- [20] For instance, Aspiration 1 of Agenda 2063 emphasises the importance of the blue/ocean economy to the development of the Continent by stating: Africa's Blue/ocean economy, which is three times the size of its landmass, shall be a major contributor to continental transformation and growth, through knowledge on marine and aquatic biotechnology, the growth of an Africa-wide shipping industry, the development of sea, river and lake transport and fishing; and exploitation and beneficiation of deep sea mineral and other resource.
- [21] *Ibid*.
- [22] Article 3(c).
- [23] See Chapter IV.
- [24] See Page 12.
- [25] Her excellency, Dr Nkosalami Zuma, the then Chairperson of the AU Commission in 2015 put it this way: 'Given the fact that the seas and oceans offer access to and distribution of energy resources and raw materials, Africa can no longer afford to ignore that potential.' Key Note Address, Her Excellency Dr Nkosazana Dlamini Zuma, Chairperson of the African Union Commission, for the Launch of the 2015–2025 Decade of African Seas and Oceans and the Celebration of the African Day of the Seas and Oceans on 25 July 2015, AU Headquarter, Addis Ababa, Ethiopia, https://au.int/sites/default/files/speeches/25437-sp-chairpersons_keynote_address_for_25_july_2015.pdf. (last accessed on 21 July 2022)
- [26] For example, in antiquity, the move by Portugal and Spain to assert their dominance over the seas, which resulted in the Treaty of Tordesillas 1494, was motivated primarily by the economic reason of access to wealth through the seas in newly discovered territories outside Europe. Hugo Grotius, an advocate for the Dutch East India Company, using the intellectual argument of *mare liberum* (freedom of the high seas) to challenge the Treaty of Tordesillas was based on the Dutch's economic interests in having access by sea to newly discovered territories previously monopolised by Portugal and Spain. Furthermore, President Truman's declaration on the CS, which eventually led to the emergence of the CS as a concept under customary international law, was motivated by the economic interest of the United States, as well as other coastal States, in having an exclusivity over the enormous resources located on their CS. T. Scovazzi, *The Frontier in the Historical Development of the International Law of the Sea*, R. Barnes and R. Long(eds), *Frontiers in International Environmental Law: Oceans and Climate Challenges Essays in Honour of David Freestone*. 217 (2021, Brill) 229–230.
- [27] E.A. Posner, A.O. Sykes, *Economic foundation of the law of the sea*, *Am. J. Int. Law.* 569 104 (4) (2010) 578–594.
- [28] Art.21(1), 22(1) and (2), 23, 25(1), 56(1)(b)(iii), 60(3), 79(1), 145, 146 and Part XII of UNCLOS.
- [29] The AIMS, for example, declares that its main vision is 'to foster increased wealth creation from Africa's oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner.' Para.18 of the AIMS. See also, the Lomé Charter, Arts. 2(a), 26 and 27.
- [30] Arts.56(1) and 77(1) of UNCLOS 82.
- [31] Para.9 of DOCUMENT A/CONF.62/33.
- [32] Part V of UNCLOS 82. See R.R Churchill and A.V Lowe, *The Law of the Sea*, 3rd ed. (1999) 160–180.
- [33] See Presidential Decree No. 18–96 of 2 Rajab A.H. 1439, corresponding to 20 March A.D. 2018, establishing an exclusive economic zone off the coast of Algeria; Arts. 7 and 8 of Law No. 21/92 of 28 August 1992; Arts. 15–17 of Decree no 2021–253 of 19 May 2021, Fixing the Coordinates of the Nautical Chart of the Republic of Benin; Arts 12 -16 of Law No. 60/IV/92 of 21 December 1992 of the Republic of Cape Verde; Arts. 6–9 of Law No. 82–005 relating to the delimitation of the maritime zones of the Islamic Federal Republic of the Comoros of 6 May 1982; Arts. 2 – 7 of Law No. 77–926 delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast of 17 November 1977; Act proclaiming an Exclusive Economic Zone along the Atlantic Coast of 4 November 1992 and Act. 7 of Law No. 09/002 of 7 May 2009 delimiting the maritime areas of the Democratic Republic of the Congo(DOALOS Law of the Sea Bulletin, 70, p.43); Arts.12–14 of Law No. 52/AN/78 concerning the territorial sea, the contiguous zone, the exclusive economic zone, the maritime frontiers and fishing of 9 January 1979 of Republic of Djibouti; Arts. 10 – 14 of Act No. 15/1984 of 12 November 1984 on the Territorial Sea and Exclusive Economic Zone of the Republic of Equatorial Guinea(1) and Act No.1/1999 of 6 March 1999 designating the median line as the maritime boundary of the Republic of Equatorial Guinea; Act No. 9/84 establishing an exclusive economic zone of 200 nautical miles of Gabon; Art.5 of Maritime Zones (Del Act No. 3/85 of 17 May 1985, on the Maritime Boundaries imitation) Law, 1986 of Ghana; Arts 2 and 3 of National Limits of Jurisdiction - Decree No. 336/PRG of 30 July 1980 and Decree No. D/2015/122/PRG/SGG of 19 June 2015, amending Decree D/2014/092/PRG/SGG of 11 April 2014, determining the geographic coordinates of points for delineating baselines and the outer limits of maritime zones under the sovereignty or jurisdiction of the Republic of Guinea and Annex to Decree No. D/2015/122/PRG/SGG of 19 June 2015, determining the geographic coordinates of points for delineating baselines and the outer limits of maritime zones under the sovereignty or jurisdiction of the Republic of Guinea; Arts.3 and 4 of Act No. 3/85

- of 17 May 1985, on the Maritime Boundaries of Guinea-Bissau; Presidential Proclamation of 28 February 1979(1) and Proclamation by the President of the Republic of Kenya, 9 June 2005(DOALOS Law of the Sea Bulletin, 61, pp.96–97); Section 5 of Executive Order No. 48 - of 10 January 2013 - Extension of Executive Order No. 39 Delimiting the Maritime Zones of the Republic of Liberia; Declaration concerning the exclusive economic zone of the Great Socialist People's Libyan Arab Jamahiriya, 27 May 2009(DOALOS Law of the Sea Bulletin, 72, pp.78–79); Ordinance No. 85–013 determining the limits of the maritime zones (territorial sea, continental shelf and exclusive economic zone) of the Democratic Republic of Madagascar, 16 September 1985 as amended and ratified by Law No. 85–013 of 11 December 1985); Art.7 of National legislation - DOALOS/OLA - United Nations asdf Ordinance 88–120 of 31 August 1988 establishing the limits and the legal régime of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of the Islamic Republic of Mauritania; sections 14–17 of Maritime Zone Act 20051 Act No. 2 of 2005 of Mauritius (DOALOS Law of the Sea Bulletin, 62, pp52–60); Act No. 1–81 of 18 December 1980, Promulgated by Dahir No. 1–81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts; Law of the Sea No. 20/2019, of 8 November 2019 of Mozambique; Sections 4 and 5 of Territorial Sea and Exclusive Economic Zone of Namibia, Act No. 3 of 1990, 30 June 1990, as amended by the Territorial Sea and Exclusive Economic Zone of Namibia Amendment Act, 1991; Exclusive Economic Zone Decree No. 28 of 5 October 1978 of Nigeria; Arts 4 and 5 of Law No. 1/98 on delimitation of the territorial sea and the exclusive economic zone of Sao Tome and Principe of 11 March 1998; section 9 and 10 of Maritime Zones Act, 1999 (Act No. 2 of 1999), as amended by Maritime Zones (Amendment) Act 2009, Act No. 5 of 2009; sections 8–10 of The Maritime Zones (Establishment) Decree, 1996 of Sierra Leone; Proclamation by the President of the Federal Republic of Somalia, dated 30 June 2014; section 7 of Maritime Zones Act, No. 15 of 1994 of South Africa; Arts.5 and 6 of Act No. 2016–007 concerning maritime areas under national jurisdiction of 30 March 2016 of Togo; Act No. 50/2005 dated 27 June 2005 concerning the exclusive economic zone off the Tunisian coasts and sections 7–12 of Territorial Sea and Exclusive Economic Zone Act, 1989 of Tanzania.
- [34] Arts.69(1) and 70(1) of UNCLOS 82.
- [35] Arts 69(2) and 70(3) of UNCLOS 82.
- [36] Arts.69(3) and 70(4) of UNCLOS 82. See A. M. Sinjela, Land-locked states rights in the exclusive economic zone from the perspective of the UN convention on the law of the sea: An historical evaluation, (1989) 20, *Ocean Development and International Law*, p. 63 at 73–75 and E. Swanepoel, *The Law of the Sea and Landlocked States*, South African Institute of International Affairs (SAIIA), Policy 205, 8 (2020), highlight some difficulties in interpreting some of the provisions on the rights of the landlocked and geographical disadvantaged States access to the EEZ of coastal States in their region and subregion.
- [37] Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, South Sudan, Swaziland, Uganda, Zambia, and Zimbabwe.
- [38] See Art. 70 (2) of UNCLOS 82 for the definition of geographically disadvantaged States.
- [39] Art.62 of UNCLOS 82. Michel Morin, *Fisheries in Africa: Exclusive Economic Zones for which purpose? Coalition for Fair Fisheries Arrangements (CFFA) Policy Brief(May 2020)* at pp.7–8 takes the view that no African coastal State has sufficient capacity to exploit the living resources in their EEZ.
- [40] For Sustainable fisheries partnership agreements (SFPAs) between the EU and non-EU countries, including those from Africa, see https://ec.europa.eu/oceans-and-fisheries/fisheries/international-agreements/sustainable-fisheries-partnership-agreements-sfpas_en#ecl-inage-59. (last accessed on 21 July 2022)
- [41] Morin, *Ibid.* at p.7. The author in footnote 7 of his Policy brief states: "CARROZ, Jean and SAVINI, Michel, "Les accords de pêche conclus par les Etats africains riverains de l'Atlantique", *Annuaire français de droit international*, Paris. 1983 (29) 674–709. See in particular p. 682, note 25, where the authors, senior officials at FAO, cite two examples: The first, that of the member countries of the Economic Community of West Africa, where a convention providing for the establishment of a company dedicated to fishing and marketing of fishery products was under negotiation, the capital of which would have been subscribed by three land-locked States (Mali, Niger and Upper Volta) and three coastal States (Ivory Coast, Mauritania and Senegal). The second, that of the Gulf of Guinea States (Benin, Ivory Coast, Ghana, Nigeria and Togo), where negotiations were also under way between these States, two of which are geographically disadvantaged because of their very narrow coastlines (Benin and Togo). But these projects do not seem to have led to anything concrete, even temporarily."
- [42] Para.37 of AIMS.
- [43] Para.59 of AIMS.
- [44] Para.21(XII) and 25(XV) of AIMS.
- [45] Patrick H.G. Vrancken, Ernesta Swanepoel, in: P.H.G. Vrancken, M. Tsamenyi (Eds.), "Landlocked States", in *The Law of the Sea – The African Union and its Member States*, Juta, Cape Town, 2017, p. 730.
- [46] Art. 3(k) of the Lomé Charter.
- [47] African Blue Economy Strategy 2019, p.16.
- [48] As 2013 it was estimated that Africa had lost \$200 billion in five decades to IUUF. See I. Okafor-Yarwood, N. I. Kadagi, D. Belhadi and E. H. Allison, *Survival of the Richest, not the Fittest: How attempts to improve governance impact African small-scale marine fisheries*, (2022) *Marine Policy* Volume 135, January 2022, 104847.
- [49] See for e.g Para. 16(ii) of AIMS; Arts.3(a) and 4(a) of Lome Charter; p.16 of the African Blue Economy Strategy; Art.2(2) and (4) of the 2017 Revised Code of Conduct concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in the Western Indian Ocean and the Gulf of Aden Area (the Jeddah Amendment to the 2009 Djibouti Code) and the 2013 Code of Conduct concerning the Prevention and Repression of Piracy, Armed Robbery against Ships, and Illegal Maritime Activities in West and Central Africa(Yaounde Code of Conduct) respectively.
- [50] Ambassador Namira Negm, "AU AIM Strategy and the Fragmentation of IUU Fishing Regulations in Africa: the Case of West Africa", (2020) 22 *International Community Law Review*, p. 449 at 450. Okafor-Yarwood, Kadagi, Belhadi and Allison, "Survival of the Richest, not the Fittest: How attempts to improve governance impact African small-scale marine fisheries", op.cit. at p.1 also point out that: "[t]he The decline in fish stocks and catches [in Africa] is framed as resulting from weaknesses in fisheries governance, primarily "illegal, unreported and unregulated" (IUU) fishing, which poses a threat to a sustainable ocean economy.'
- [51] The SRFC is an institution tasked with strengthening cooperation and mechanisms for the sustainable governance of fisheries resources, as well as improving the sustainable management of fisheries in maritime areas under the jurisdiction of its Member States, namely Republic of Cabo Verde, Republic of the Gambia, Republic of Guinea, Republic of Guinea-Bissau, Islamic Republic of Mauritania, Republic of Senegal, Republic of Sierra Leone. See <http://spsrpf.org/en>. (last accessed on 21 July 2022)
- [52] Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the ITLOS), Case No.21, ITLOS Advisory Opinion of 2 April 2015, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf. (last accessed on 21 July 2022)
- [53] Paras.106 and 108 of AIMS.
- [54] Para.110, and 111 of AIMS.
- [55] Para.112 of AIMS.
- [56] Paras.129 -139 of AIMS.
- [57] Paras.16(ii) and 36 of AIMS.
- [58] Para.36 of AIMS.
- [59] Para.38 of AIMS.
- [60] Para.43 of AIMS.
- [61] Para.35 of AIMS. See discussion below on CEMZA.
- [62] Art.1(1) of the Lomé Charter.
- [63] Art.20(3) of the Lomé Charter.
- [64] African Blue Economy Strategy, p.16.
- [65] See for e.g. Paras. 64–85 of the MIV "SAIGA" (Saint Vincent and the Grenadines v. Guinea), Prompt release, Judgment, ITLOS Reports 1997, p.1.6; Paras.78–95 of the "Monte Confurco" (Seychelles v. France), Prompt Release, Judgment, ITLOS RePorts 2000, P.86; Paras.38- 102 of "Juno Trader" (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004, p. 17 and Paras. 64, 210–448 of M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014, p. 4.
- [66] Para.21(i) of the 2050 AIM Strategy.
- [67] See 2050 AIM Strategy - Annex B: Definitions.
- [68] See E. Egede, *Africa's Lomé Charter on Maritime Security: What are the Next Steps?*, Africa's Lomé Charter on maritime security: What are the next steps? - // SAFE SEAS// SAFE SEAS. (last accessed on 21 July 2022)
- [69] Para.29 of the 2050 AIM Strategy.
- [70] See 2050 AIM Strategy - Annex C: Plan of Action for Operationalization.
- [71] V. Surbun, *Africa's combined exclusive maritime zone concept*, *Inst. Secur. Stud. (2021)* 6.
- [72] Para.30 of the 2050 AIM Strategy.
- [73] Para.35 of the 2050 AIM Strategy.
- [74] See for instance, A Benkenstein, *Aligning Africa's Maritime Ambitions with Broader Indian Ocean Regionalism*, SAIIA Policy Insights, 25 September 2015 at p.4; T. Potgieter and T. Walker, *The 2050 African Integrated Maritime Strategy (AIMS): Content and Progress in F. Vrey and T. Madrup, Towards Good Order at Sea; African Experiences(Sun Media, 2015)* at p.110; See E. Egede, *Africa's Lomé Charter on Maritime Security: What are the Next Steps?*, Africa's Lomé Charter on maritime security: What are the next steps?; P. Vrancken, *The African Perspective on Global Ocean Governance*, D. Attard, D. Ong and D. Kritsiotis(eds.), *The IMLI Treatise on Global Ocean Governance* (Oxford University Press, 2018), p.223.
- [75] I. Chapsos, *Africa's plan to police violent seas is more hope than strategy*, *The Conversation*, February 21, 2014.
- [76] Covering a wide range of issues such as maritime safety and security, protection of the marine environment, common fisheries policy, trade and economic interests, border control and other law enforcement and defence activities.
- [77] Resolution on the Utilization of the Marine Resources of Africa's Exclusive Economic Zone, CM/Res.1033 (XLIII) of 25/02-/04/03/1986, Para.2, https://au.int/sites/default/files/decisions/32269-1986_cm_res_1015-1038_xliii_e.pdf. (last accessed on 21 July 2022)
- [78] M. Leshoel, "AFCFTA and Regional Integration in Africa: Is African Union Government a Dream Deferred or Denied?", (2020) *Journal of Contemporary African Studies*, <https://www.tandfonline.com/doi/full/10.1080/02589001.2020.1795091>.
- [79] Art.3(g) of the Lomé Charter and African Blue Economy Strategy, op.cit. at pp.1–2.0
- [80] Paras.6–9 of DOCUMENT A/CONF.62/33.
- [81] P. S. Ferreira, *The Role of African States in the Development of the Law of the Sea at the Third United Nations Conference, Ocean Development and International Law*. 89 (1979) 7 (1) 101–107; K. A. Baumert, *The Outer Limits of the Continental Shelf Under Customary International Law*, *American Journal of International Law*. (2017) 111 (4) 827–872.

- [82] Egede, Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind, op.cit. 44–50.
- [83] See for example, article 17 of Cabo Verde's law No. 60/IV/92 of 21 December 1992; section 6(1) of Ghana's maritime zones (delimitation) law, 1986 and Section 11(1) of Sierra Leone's maritime zones (establishment) decree, 1996.
- [84] For example, Ghana made submissions to the CLCS regarding its outer CS and the CLCS delivered its recommendation accepting the extended CS of Ghana in September 2014.
- [85] See for example, Egypt's presidential decision No. 1051 of 1958 concerning the continental shelf; Section 2(k) of Sudan's territorial waters and continental shelf act 1970 and section 14(1) of Nigeria's petroleum act, cap.350, laws of the federation of Nigeria 1990.
- [86] Fortunately, Nigeria is already taking steps to update its legislation. See Section 14(1) and (2) of the Nigerian maritime zones (enactment) bill, 2020 (this bill is currently before the Nigerian national assembly and hopefully would be enacted soon).
- [87] See for instance, article 4 of Mauritania's ordinance 88–120 of 31 August 1988 establishing the limits and the legal regime of the EEZ and the CS of Mauritania; Section 18 of Mauritius's maritime zone act No.2 of 2005; Article 6 of Senegal's act No. 85–14 delimiting the continental shelf, 25 February 1985 and Section 11(1) and (2) of Seychelles' maritime zones act No. 2 of 1999, as amended by maritime zones (amendment) act No.5 of 2009.
- [88] See Section 6(1) of Namibia's territorial sea and exclusive economic zone of Namibia, act No. 3 of 1990, 30 June 1990, as amended by territorial sea and exclusive economic zone of Namibia amendment act, 1991. See also section 8(1) of maritime zones act, No. 15 of 1994.
- [89] Decision on Extension of the African Continental Shelf and Climate Change, Doc. EX.CL/391 (XII), Decisions and Declarations of the 10th Ordinary Session of the Assembly of the AU, 31 January–2 February 2008. See also Art. 4 of Annex II of the LOSC and Para. 81 of the Report of the Eleventh Meeting of the States Parties to the Law of the Sea Convention (SPLOS), SPLOS/73 of 14 June 2001. Also see Para 1 of SPLOS/183 of 24 June 2008 that allowed decided that coastal States may meet the deadline by submitting to the United Nations Secretary-General a preliminary information indicative of the extended continental shelf, along with a description of the status of preparation and the intended date of making the actual submission. However, SPLOS/183 was clear that pending the receipt of the actual submission the CLCS shall not consider such preliminary information.
- [90] Para.3 of Doc.EX.CL/391 (XII).
- [91] Para.59 of AIMS.
- [92] This author had in previous publications proposed that the African Union Border Programme (AUBP), a could serve as a platform to bring together all existing and past African members of the CLCS, as well as other African experts in relevant disciplines, such as geology, geophysics, hydrology and law of the sea, to provide expert advice to Africa coastal States regarding submissions to the CLCS. See Edwin Egede, "Institutional Gaps in the 2050 Africa's Integrated Maritime Strategy", (2016) *Journal of Ocean Law and Governance in Africa*, p.1 at 15–19 and Edwin Egede, "Commission on Outer Limits of the Continental Shelf and Africa" in Patrick Vrancken, Ifesinachi Okafor-Yarwood, Kamal-Deen Ali, Clara Brillembourg, Edwin Egede, Tafadzwa Pasipanodya and Martin Tsamenyi (eds), *The Law of the Sea — Contemporary Norms and Practice in Africa*, Vol.II (forthcoming 2023). An AU body formed with the primary goal of promoting peace, security, and stability in Africa through border delimitation and demarcation, cross-border cooperation, and capacity building. It serves as a forum for the resolution of border disputes as well as the promotion of regional and continental integration through cross-border cooperation.
- [93] Joint submission by the Republic of Mauritius and the Republic of Seychelles - in the region of the Mascarene Plateau; Ghana; South Africa - in respect of the mainland of the territory of the Republic of South Africa; Joint submission by France and South Africa - in the area of the Crozet Archipelago and the Prince Edward Islands; Kenya; Mauritius - in the region of Rodrigues Island; Nigeria; Seychelles - concerning the Northern Plateau Region; Côte d'Ivoire; Namibia; Mozambique; Madagascar; United Republic of Tanzania; Gabon; Angola; Somalia; Joint Submission by Cabo Verde, The Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone - in respect of areas in the Atlantic Ocean adjacent to the coast of West Africa; Joint Submission of the Republic of Benin and the Togolese Republic; Liberia; Mauritius - concerning the Southern Chagos Archipelago region and Mauritius - concerning the Northern Chagos Archipelago region. See https://www.un.org/depts/los/clcs_new/commission_submissions.htm. (last accessed on 21 July 2022)
- [94] See the joint submission by Mauritius and Seychelles regarding the region of the Mascarene Plateau, that of Ghana, as well as South Africa in respect of the mainland of its territory and Seychelles concerning the Northern Plateau region, have had recommendations from the CLCS. Ibid.
- [95] SPLOS/183 of 20 June 2008. For Preliminary Information submitted by African States see https://www.un.org/depts/los/clcs_new/commission_preliminary.htm. (last accessed on 21 July 2022)
- [96] Para.24, CLCS/98 of 17 April 2017.
- [97] Ibid. See also Paras. 84–101 of the Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Partial Submission made by the Republic of South Africa in respect of the area of the South African Mainland on 5 May 2009.
- [98] Paras.102–104, Ibid.
- [99] Note from the Government of the Republic of South Africa addressed to the Secretariat of the United Nations dated 13 September 2017, https://www.un.org/Depts/los/clcs_new/submissions_files/zaf31_09/2017_09_14_zaf_nv_un_030_17_00683.pdf. (last accessed on 21 July 2022)
- [100] Ibid at pp.1–2.
- [101] Ibid at p.2.
- [102] T. McDorman, *The Entry into force of the 1982 LOS Convention and Article 76 Outer Continental Shelf Regime*, *Int. J. Mar. Mar. Coast. Law* 10 (165) (1995) 178.
- [103] Somewhere else this author had recommended that with the South African situation there may be a need for an independent body to review the CLCS recommendations, if the submitting State so desires. See Egede, "Commission on Outer Limits of the Continental Shelf and Africa" in Vrancken et al, op.cit.
- [104] Article 82(1) and (2) of UNCLOS 82.
- [105] There are 32 African States on the UN list of least developed Countries and 16 African States on the UN list of landlocked Countries. See <https://unctad.org/topic/least-developed-countries/list> and <https://unctad.org/topic/landlocked-developing-countries/list-of-LLDCs> (last accessed on 21 July 2022) See Equitable sharing of financial and other economic benefits from deep-seabed mining, International Seabed Authority Technical Study No.31(2021), pp. 123–124, which lists the African regional grouping as second highest beneficiary (after Asian-pacific regional grouping) of the equitable sharing of the financial benefits that may be received from the outer CS.
- [106] Article 82(3) of UNCLOS 82.
- [107] See the Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/ Myanmar), Judgment, ITLOS Reports 2012, p. 4, paras.362–363 where the ITLOS citing the Arbitration between Barbados and Trinidad and Tobago decided that it had jurisdiction to delimit the CS in its entirety because there is 'in law only a single 'continental shelf' rather than an inner continental shelf and a separate extended or outer continental shelf' (Decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at pp. 208–209, para. 213). See footnote 59 of Malcolm Evans, *Maritime Boundary Delimitation* in Donald R. Rothwell, Alex G Oude Elferink, Karen N Scott and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea*, (Oxford University Press, 2015) pp.254 at 265 pointing to the Article 82(3) as not really supporting the conceptual distinction between the 'inner' and 'outer' CS.