Legal imperatives for the delimiting of African waters

1- Introduction:

The inland waters, oceans and seas of Africa are under pressure. Over the years, traditional marine activities such as shipping or fishing have intensified, while new ones have emerged, such as aquaculture or the exploitation of renewable energy on the high seas. However, the increase in the intensity of sea activities is taking place due to reasons of insecurity, various forms of illegal trade, the degradation of the marine environment, the decline in biodiversity and the increasing effects of climate change.

Accordingly, African countries provide a broad framework for the protection and sustainable utilizationof the African maritime space in order to create wealth, taking into account the interests of landlocked countries.

Water covers more than two-thirds of the Earth's surface and affects life everywhere. Africa is the second largest continent and the largest island with an area of 43 million km², covering one fifth of the total land area. The total length of its coasts, including the islands, is more than 26,000 nautical miles thirty-eight (38) African coastal or island countries.

International trade is very important to many African economies, because more than 90% of Africa's imports and exports are by sea, 90% of world trade and two-thirds of energy supplies are by sea.

Fish is a vital contribution to the food security and nutrition of more than 200 million Africans and provides income to more than 10 million people. In addition, the extensive and increasing use of oceans and seas by various sectors, as well as climate change, have increased pressure on the marine environment.

The African maritime domain is of great importance in terms of natural resources related to energy, commerce, industry, scientific and recreational activities. International trade by water affects people and industries across the entire continent, including landlocked countries.

2- Managing the Maritime Borders of Africa

Maritime border management refers to the role of governments and institutions with functional responsibility for border management. These include

immigration, customs, tax and other specialized bodies created at the national and regional levels to control and regulate the flow of people and goods across a country's borders to realize the national interest, but in particular economic development, security and peace. It also includes the maintenance of border beacons that define the physical boundaries of a country's territory within the provisions of international law and national laws in force in countries.

Maritime border management is always a collaborative process between a country and its neighbors therefore cannot be done unilaterally, and it is always better to do it jointly at the regional level. Maritime border management includes the following stakeholders: key government agencies, such as customs, immigration, police, armed forces, the Department of Agriculture (for quarantine purposes), law enforcement agencies, product regulatory agencies and a host of others; shipping companies; local authorities such as port authorities; maritime institutions and authorities; international business firms and individuals; Regional and international organizations such as the International Maritime Organization. However, the main problemin most cases is the lack of coordination between these stakeholders, who work independently and without using the network or exchanging information.

The management of maritime borders is an expression of the sovereignty of African states and neglect or failure to manage them properly can lead to a threat to sovereignty that is likely to undermine the domestic and international status of the country; In fact, the Montevideo Convention of 1933 listed four indicators of state sovereignty to include a specific territory.

Africa's maritime borders are easily infiltrated, leading to a significant rise in smugglers' activities, human trafficking, drugs, piracy, weapons and contraband, insurgencies, organized crime, trafficking in endangered species and security threats. A consideration of these issues reveals that maritime border security is essential.

Thus, managing maritime borders in Africa requires a joint management approach. Through co-management, exploration and exploitation of natural and biological resources that transcend or overlap borders can easily be resolved. The United Nations Convention on the Law of the Sea encourages such an approach through its provisions, Articles 74(3) and 83(3), which deal with the delimitation of the exclusive economic zone and the continental shelf.

It has been said that co-development can be set either in the absence of agreed boundaries or in addition to established boundaries. Where states fail to agree on border demarcation, this implies fundamental differences in attitude. This certainly raises a complex situation, which means that in this case, they may be willing to accept the idea of co-development, but only to the extent that they are willing to leave aside the complex issue of demarcation for future consideration. Of the most pressing economic or other practical interests, co-development is definitely very useful to African states during "the negotiations on borders, as well as after borders are demarcated". This is vital to ensuring peace and security within the continent.

3- <u>The inevitability of security</u>

Maritime security does not have a generally accepted meaning, but it does refer to threats such as interstate maritime conflicts, maritime terrorism, piracy, drug trafficking, arms proliferation between individuals and illegal goods, illegal fishing, environmental crimes, or maritime accidents and disasters. The issue of maritime security includes two main areas: regional and international cooperation for maritime security and development.

For Africa, as in most parts of developed countries, maritime security is extremely important due to the fact that maritime space is the main incentiveto achieve economic and social development. Thus, there is a need to develop an African strategy to protect the seas and oceans, provide peace, security and stability, and make the African maritime space the main incentiveto achieve sustainable economic development.

Recently, Drug trade through the Pacific Ocean has flourished. Smuggled goods are smuggled into West Africa from Latin America and from there to Europe, Asia and the Middle East. In some African countries this trade is very widespread and poses a significant threat to government control and the economies of the country, Africa should endeavor to developand implement an appropriate and effective maritime security policy.

Maritime security remains at the forefront of Africa's agenda, but of course, such an issue cannot be effectively addressed by a single country but by coherent regional cooperation. We commend efforts such as the Djibouti and Gulf of Guinea Code of Conduct, but African countries still have to allocate resources in order to combat maritime threats in abundance.

While Africa remains a place of strategic importance to the international community, African states must become more responsible and responsive. There is a need to strengthen regional cooperation, raise awareness of major maritime security challenges across Africa and take relevant actions to combat the challenges.

This problem is partly due to the inability and unwillingness of individual African states to localize treaties on international maritime security to which they have voluntarily joined. Paradoxically, where frameworks exist, fundamental weaknesses in the criminal administration justice system, from corruption to a lack of judicial independence, tend to undermine the best efforts of stakeholders trying to enforce compliance with the rules to impose sanctions if violations occur. The weak implementation of legal provisions at the national level is reflected at the regional level due to the lack of an integrated regional framework to address maritime security challenges.

However, an added advantage is that several meetings and conferences have recently taken places which reflect the growing regional awareness of the threats posed by the marine environment. African states should rise to the occasion and address the gap in maritime security legislation and policy. The existing legal instrument should be updated or new instruments created and merged to align with international best practices. Countries should align their national legislation in ways that enhance regional capacity to deal with maritime security challenges. This requires states in the region to enhance their separate and joint maritime security strategies and to enhance effective monitoring of inland waterways, port security, ship security, and facility security.

It should be noted that certain actions have been taken at the national, regional and global levels in the face of maritime security challenges (African Union, 2009), there are also other multilateral initiatives on maritime security - the United Nations Security Council (UNSC); Friends of the Gulf of Guinea Group of Experts G8++; European Union; Interpol. International Police; Atlantic Initiative and African Union Strategy 2050 AIM.

The AIM 2050 Strategy provides a comprehensive understanding of maritime security that includes the economic, social,and environmental dimensions. A bilateral initiative has also emerged in the face of maritime security challenges in Africa. Several organizations have supported African states in one way or

another. However, African states (at the national and regional levels) still have to deal with this issue equally.

4- <u>Threats and weaknesses:</u>

a- The African maritime community draws attention to a wide range of real and potential threats that could lead to mass casualties and catastrophic economic harm to African states. In addition to loss of revenue, it can fuel violence and insecurity. Including drug trafficking, corruption, illegal weapons purchase, youth corruption, democracy/the rule of lawdistortion, economy destabilization and distort societal life. With the increasing number and capacity of the threats to the maritime domain in Africa, there must be an African effort to address these factors at the national, regional and continental levels.

b- Among other things, threats and vulnerabilities in the African maritime domain include:

(1) Fisheries and Aquaculture:

In order to further deter fishing activities, penalties should be established "fairly severe to deprive offenders of the benefits arising from their illegal activities" according to the 2005 Rome Declaration on fishing; these penalties may include property seizure and prosecution with strict compensation. It encourages all Member States to report any illegal fishing activity to the African Union to take strict deterrent measures through all available channels it deems appropriate.

(2) Maritime Boundaries/delimitation:

The African Union shall, through the African Union's Boundary Program and in accordance with the United Nations Convention on the Law of the Sea (UNCLOS), firmly advocate for the peaceful resolution of existing maritime boundary issues between member states including gulfs, river mouths, and inland waters (lakes and rivers).

Member States shall be encouraged to claim external maritime boundaries, including their extended continental shelf where applicable. Member states should be urged to accept and implement all responsibilities arising from the establishment of marine areas as stipulated in the United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organization (IMO) Convention on the Protection of Life at Sea (SOLAS).

(3) Money Laundering and Trafficking in Illicit Weapons and Drugs:

To provide the legal framework aimed at combating arms and drug trafficking, and related crimes. The exchange of information among affected countries should be encouraged in order to disrupt human trafficking networks.

(4) Environmental Crimes:

African countries should develop a mechanism to detect and prosecute cases of dumping toxic waste in African maritime space, with strict compensation imposed. African countries and relevant partners should support the Joint Implementation Mechanism of the Nairobi 2 and Abidjan 3 Conventions in implementing the marine and coastal environment component,as well as other relevant agreements, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on Biological Diversity.

(5) Maritime Geography (Hydrography):

The African Union should firmly invite African countries to join the International Hydrographic Organization (IHO) in order to promote maritime safety, efficiency, protection and sustainable use of the marine environment. This will help create a global environment in which the coastal states of the African Union provide hydrographic data, appropriate and timely products and services, and ensure their widest possible use.

(6) Piracy and Armed Robbery at Sea:

Since 2008, the African Union has advocated a comprehensive approach to combating piracy and armed robbery at sea. The African Union fully supports the work of The Contact Group on Piracy off the Coast of Somalia (CGPCS), as well as all IMO initiatives to combat piracy and armed robbery against ships, including Best Management Practices (BMPs) for Ship Protection in High Risk Areas (HRA) and the Djibouti Code of Conduct (DCC) on the Suppression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and Gulf of Aden. Therefore, the African Union shall encourage Member States, consistent with available resources, relevant priorities and their respective national laws and applicable rules of international law, in cooperation with the International Maritime Organization, to share their assets so as to

cooperate to the fullest extent possible to suppress piracy and armed robbery against ships. This would be with the aim of achieving the following:

(a) Burden sharing.

(b) Tracking cash flows.

(c) Exchange and communicate relevant information.

(d) Interception of ships and/or aircraft suspected of involvement in piracy or armed theft against ships.

(e) Arrest and prosecution of people who commit or attempt to commit piracy or armed robbery against ships.

(f) Facilitate appropriate care, treatment and repatriation for seafarers, fishermen and other personnel on board ships and passengers who are victims of piracy or armed theft against ships, especially those who have been subjected to violence.

(7) **Maritime Terrorism:**

During the past decade, there have been significant developments in the regulation of international shipping, in particular through the introduction of the International Ship and Facility Security (ISPS) Code; Accordingly, AU member states that have not yet implemented the International Ship and Facility Security (ISPS) Code should move quickly to do so, and introduce other maritime and security measures into the African maritime space.

5- <u>Conclusion</u>

Strengthening maritime security becomes very vital if we consider threats related to maritime security (pirate attacks, criminal activities associated with theft and illicit trade in crude oil, human trafficking, drugs, firearms, illegal, unreported and unregulated fishing, dumping, transportation cross-border hazardous waste and pollution). The current security challenges in Africa are mostly related to governance, and the continent's undefined national borders are a powerful source of instability. African states and regional bodies must approach the issue with dynamism and establish stronger mechanisms to manage the conflicts and security threats that arise across the many unresolved maritime border disputes on the continent. Africa needs to proactively manage maritime security challenges at various continental, regional and bilateral levels, and Africa must take responsibility for its maritime security and this includes two main areas: regional and international cooperation, maritime security and development.

Of the 53 African countries, only 15 are landlocked, and just over 70 percent of African countries share the seas around them, making many coastal nations highly dependent on the maritime economy. Given this situation, any action, natural or human, that disturbs marine waters and maritime security has dire consequences for the economy and livelihoods of the African coastal populations. With all these challenges, African nations have not calmed down, but they are working in cooperative relationships to retain full sovereign control of their maritime domains and economies. Recent continental actions and approaches as outlined in the African Union Border Program (AUBP) and (Africa Integrated Maritime Strategy 2050) projects offer great hope that African nations are not in fact unaware or unaware of the many challenges that exist within Africa's maritime domain and are determined to achieve stability Maritime.

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