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Supporting Africa's Blue Economy

INTERNATIONAL SEABED AUTHORITY SEVEN VOLUNTARY COMMITMENTS TO SUPPORT THE IMPLEMENTATION OF SDG14 #OCEANACTION16374

**WORKSHOP FOR THE PROMOTION OF SUSTAINABLE DEVELOPMENT OF
AFRICA'S DEEP SEABED RESOURCES IN SUPPORT OF AFRICA'S BLUE ECONOMY**

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The Outer Limit of the Continental Shelf in Africa: Present Situation and Prospects

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Introduction

◆ Maritime zones under national jurisdiction, including the continental shelf

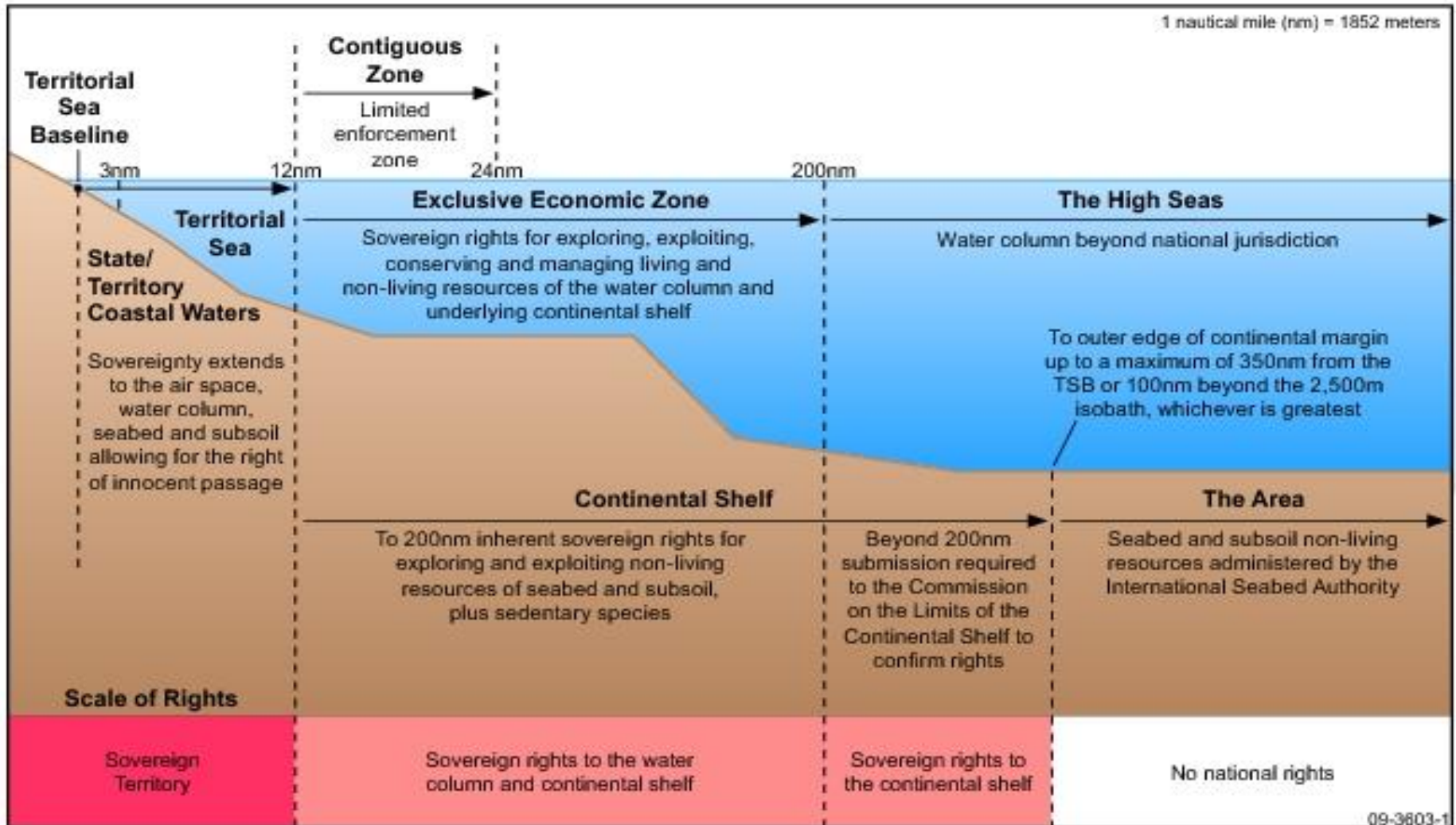


Figure 1: Offshore extent of the maritime zones recognized under international law

Introduction

- ◆ For geologists, "**continental shelf**" is that part of the continental margin which is between the shoreline and the shelf break or, where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 and 200 metres.
- ◆ Legal caveat with its roots in the history of notion of the continental shelf, as it appeared in the 1958 Convention: either "**the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the Territorial Sea to a depth of 200 metres,**" or, alternatively, "**to a depth beyond that limit where exploitation of resources was possible.**"
- ◆ The 1982 Convention marked a distinct shift away from the unsatisfactorily open-ended definition

Introduction

◆ Article 76 of the 1982 Convention offer a **complex series of formulae for the establishment establish the outer limit of its continental shelf:**

“1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

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4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

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6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

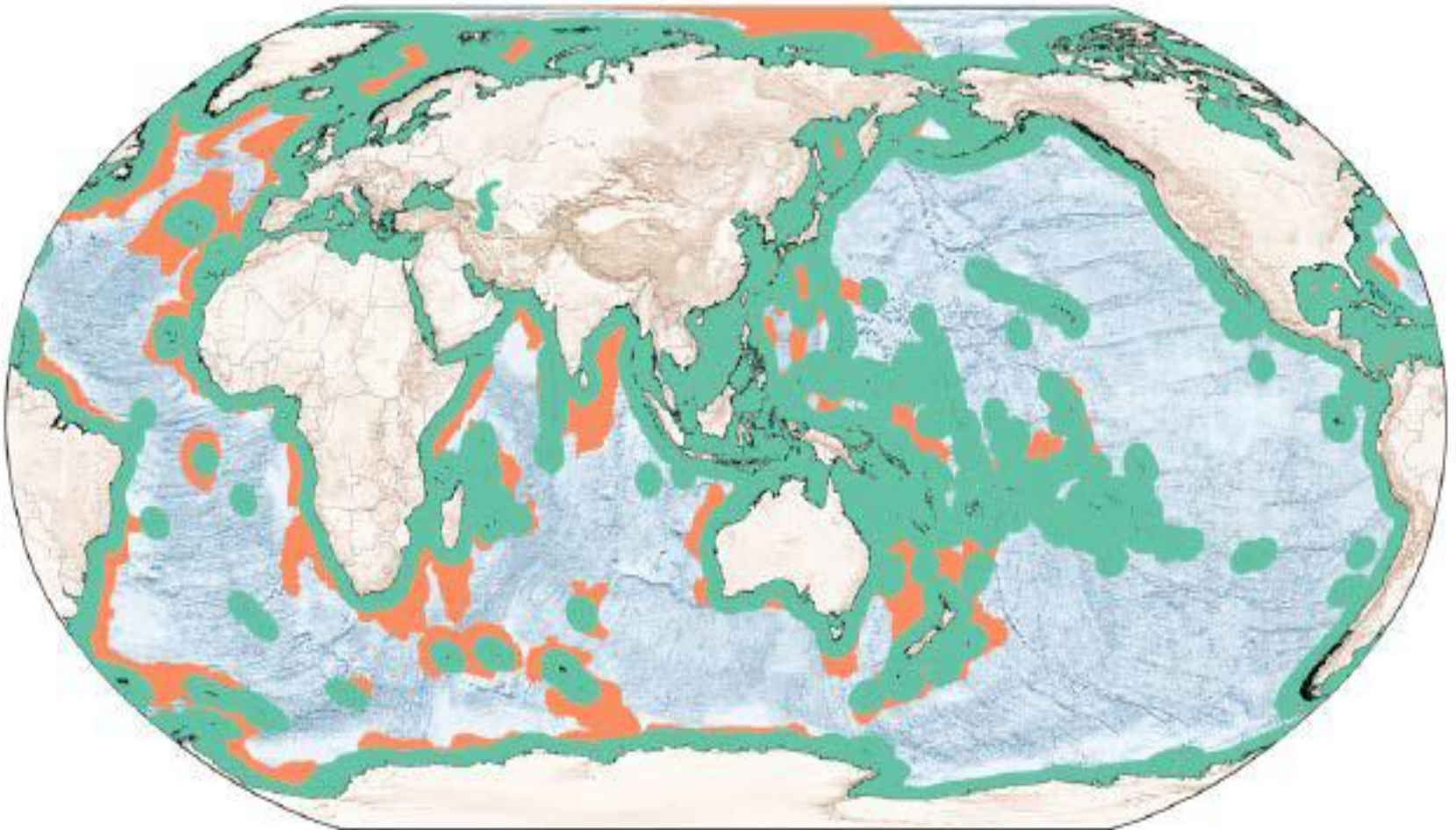
10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”

Introduction

- ◆ The notion of “outer limit of the continental shelf” refers then to a situation where a coastal claims an extended continental shelf in application of the provisions Article 76.
- ◆ In Africa, 53 States of the continent, only 15 are land locked states, this makes that many littoral States depend heavily on the maritime economy.
- ◆ In fact, any African coastal State that wishes to establish a extended continental shelf shall submit information before the Commission on the Limits of the Continental Shelf (the “Commission”) to demonstrate that the natural prolongation of its submerged land territory to the outer edge of the continental margin extends beyond 200 miles.
- ◆ If the State is able to pass this test and demonstrate its entitlement to an extended continental shelf, it may proceed with the delineation of the outer limits of the continental shelf in accordance with the set of rules defined in the above-mentioned Article 76, paragraphs 4 to 10.

Introduction

- ◆ African countries fully participate in the **world movement to grasp extended continental shelf** (in orange)



Part I – The progress and current situation of extended continental shelf delineation in Africa

◆ In order to understand the progress of the delineation of extended continental shelf in Africa, necessity to analyse:

(A) the question of the deadline and the timing of the submissions of information on the proposed outer continental shelf limit to Commission;

(B) the first vague of Preliminary submissions in 2009, and

(C) the actual submissions some years later.

A – The question of the deadline and the timing of the submissions of information on the proposed outer continental shelf limit to Commission

- ◆ Original deadline: **10 years after its entry into force of the Convention** for any State Party.
- ◆ As the Convention entered into force on 16 November 1994, the ten-year deadline, was set as **16 November 2004**.
- ◆ However, many countries, **struggled to meet the deadline**.
- ◆ Moreover, the Commission was established only in 1997, did not adopt its Scientific and Technical Guidelines until 13 May 1999 → New deadline: **13 May 2009**
- ◆ States still struggled → possibility to submit “**preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission**” on 13 May 2009

B – African Preliminary Submissions before the expiration of the deadline on 13 May 2009

- ◆ Between the 14 April and the 12 May 2009, **21** African Coastal States sent mainly preliminary submissions to the Commission.
- ◆ Either **individually** or in **conjunction** with another State.
- ◆ In an alphabetical order: Angola, Benin, Benin/Togo (joint submission), Cameroon, Cabo Verde, Comoros, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Guinea, Guinea-Bissau, Mauritania, Mauritius, Mozambique, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia and Togo.

C – African Actual submissions and some recommendations by the Commission

- ◆ Around **25 African coastal States** have made formal submissions to the Commission.
- ◆ Submissions made either **individually** or in **conjunction with another State**.
- ◆ The Commission **has already made its recommendations** on five submissions, while **the rest are still pending**.

1 – The recommendations of the Commission on five submissions

- ◆ While the full text of the recommendations is kept confidential, the summaries of recommendations are duly made available to the public.
- ◆ The summaries give a rough idea of the deliberation of the submissions.
- ◆ The Commission chiefly examines : (i) whether it has the authority to consider the submission, (ii) the geological and geographical description of the region concerned, (iii) the natural prolongation of the land mass of the coastal State, and (iv) the determination of the location of the foot of the continental slope, the outer edge of the continental margin, and the outer limits of the continental shelf.

a) The Commission's recommendation on the joint submission by Mauritius and Seychelles

- ◆ Submission on **1 December 2008**.
- ◆ Commission's recommendations on **30 March 2011**, by consensus.
- ◆ Commission **agreed with the determination of the proposed points establishing the outer edge of the continental margin in the Mascarene Plateau region and recommended that the delineation of the outer limits of the continental shelf of the two coastal States be established in accordance with article 76, paragraph 7, of the Convention by straight lines not exceeding 60 M in length, connecting fixed points, defined by precise coordinates of latitude and longitude.**

b) The Commission's recommendation on Ghana's submission

- ◆ Initial Submission on **28 April 2009**, additional data and information in **June 2013**, and a revised executive summary of the submission on **12 September 2013**.
- ◆ Commission's recommendations on **5 September 2014**.
- ◆ the Commission, *inter alia*, **agreed with the determination of the proposed fixed points**, establishing the outer edge of the continental margin of Ghana in the Gulf of Guinea, and then **recommended that the delineation of the outer limits of the continental shelf be conducted in accordance with article 76, paragraph 7, of the Convention**, by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude.

c) The Commission's recommendation on South Africa's submission

- ◆ Submission made on 5 May 2009.
- ◆ Commission's recommendation On 17 March 2017.
- ◆ The Commission (i) agreed with the determination of the fixed points establishing the outer edge of the continental margin in the West Coast of the South African mainland, and recommended that the delineation of the outer limits of the continental shelf in the West Coast of the South African mainland be conducted in accordance with paragraph 7 of article 76 of the Convention by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude;
- (ii) with a precise exception, the Commission agreed with the principles applied in establishing the outer limits of the continental shelf for the West Coast region, including the determination of the fixed formula points, and the construction of the straight lines connecting those points, and recommended that South Africa proceeds to establish the outer limits of the continental shelf in the West Coast region accordingly;
- (iii) the Commission agreed with the determination of the fixed points establishing the outer edge of the continental margin for the eastern margin of the Mozambique Ridge, and recommended that the delineation of the outer limits of the continental shelf for the Mozambique Ridge margin be conducted in accordance with paragraph 7 of article 76 of the Convention by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude.

d) The Commission's recommendation on the Seychelles' submission

◆ Submission on **7 May 2009**.

◆ Recommendation on **27 August 2018**.

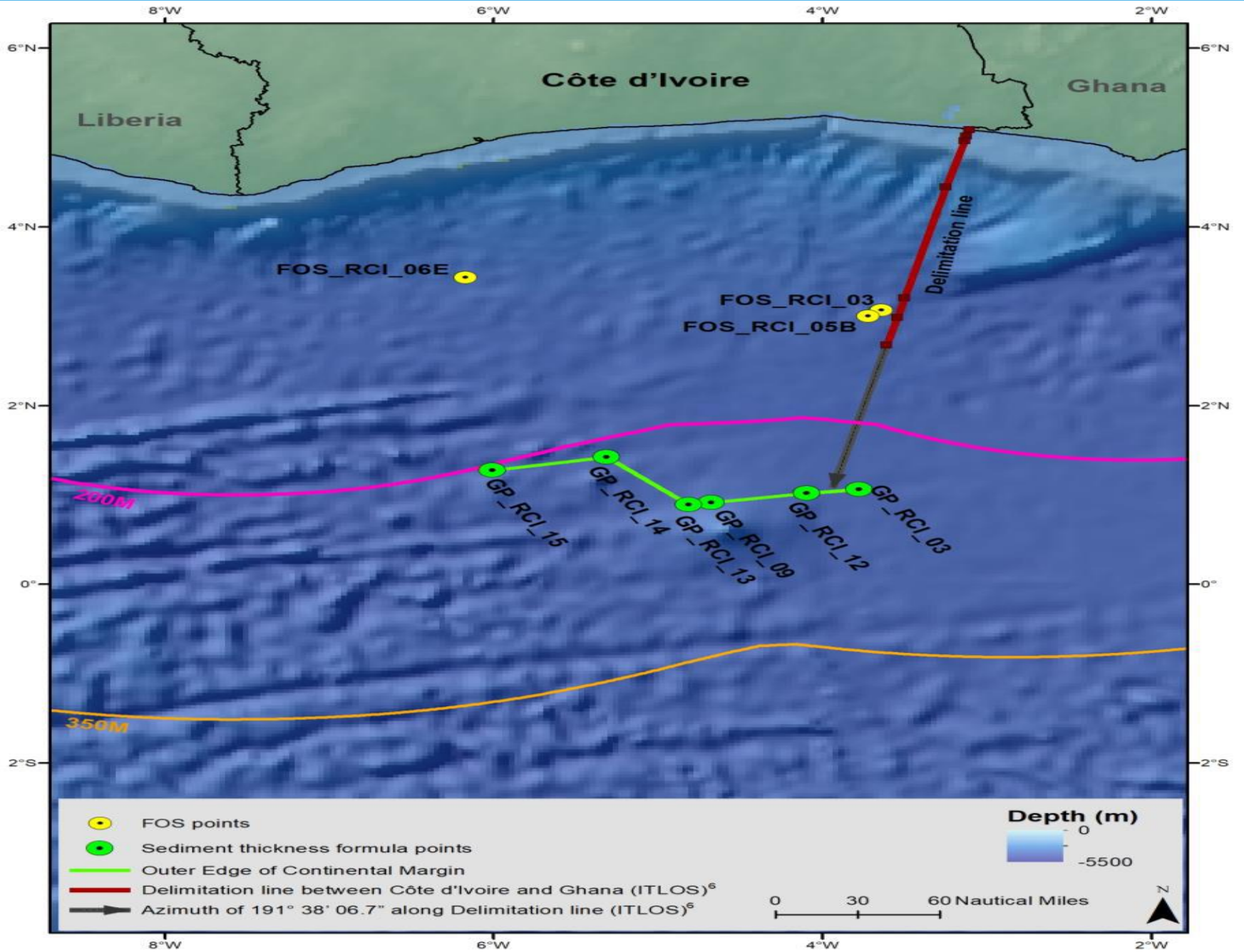
◆ The Commission, inter alia, **agreed with the determination of the proposed fixed points establishing the outer edge of the continental margin in the Northern Plateau Region, and then recommended that the delineation of the outer limits of the continental shelf in this region be conducted in accordance with paragraph 7 of article 76 of the Convention, by straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates of latitude and longitude.**

e) The Commission's recommendation on Cote d'Ivoire submission

◆ Submission on **8 May 2009** and amended information on **24 March 2016**.

◆ Commission's recommendations on **5 February 2020**.

◆ The Commission **recommended that the proposed fixed points be used as the basis for delineating the outer limits of the continental shelf in this region**, subject to the application of the relevant constraints.



2 – 15 African submissions are still pending before the Commission

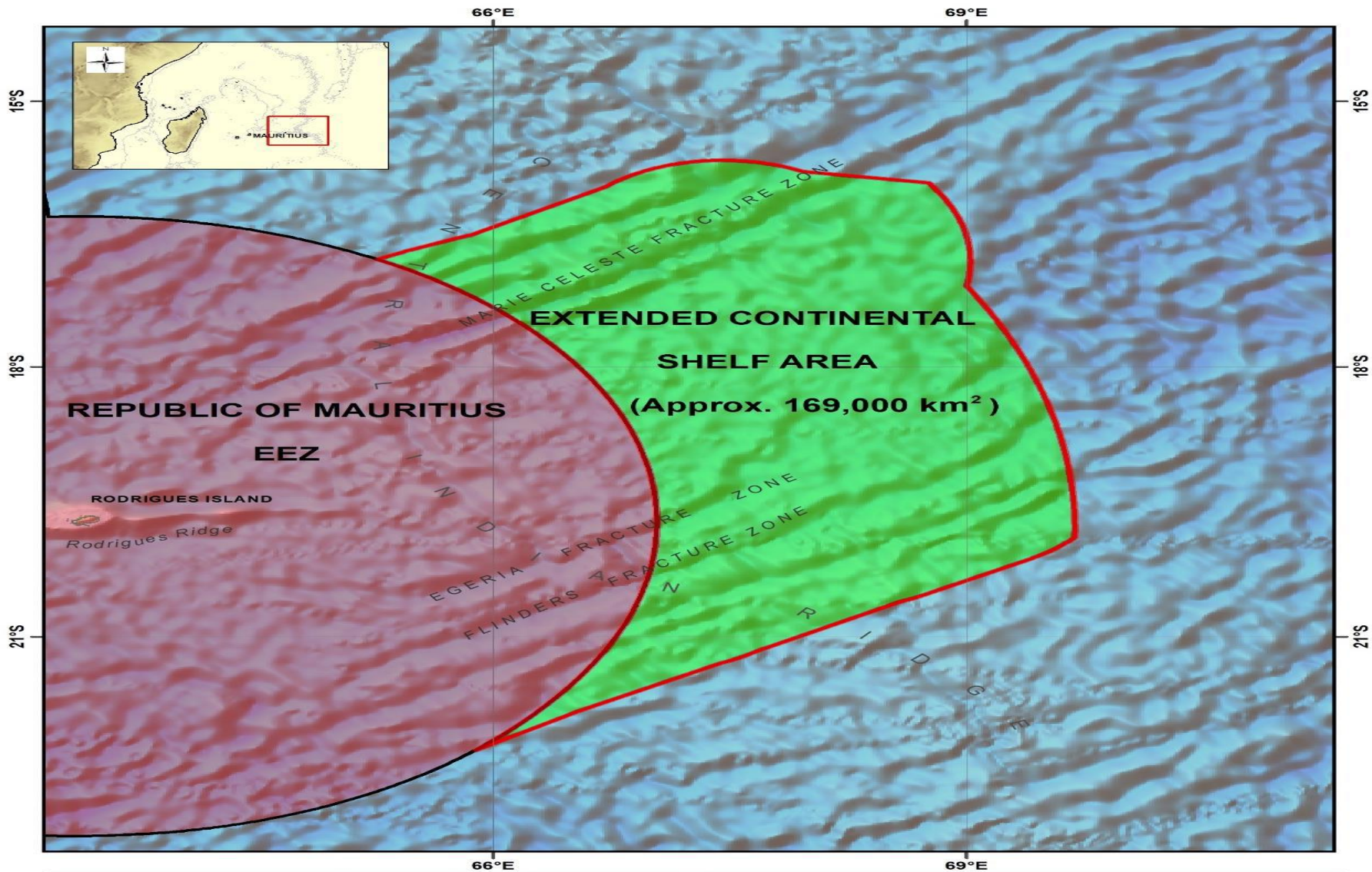
- ◆ **a) Joint Partial Submission by France and South Africa** regarding the area of the Crozet Archipelago and the Prince Edward Islands on 6 May 2009.
- ◆ Its consideration was included in the **agenda of August-September 2009**.
- ◆ In **March 2013**, the two countries submitted an addendum to their initial Executive Summary.

2 – 15 African submissions are still pending before the Commission

- ◆ **b) Submission by the Republic of Kenya on 6 May 2009**
- ◆ Its consideration was included in the **agenda of August-September 2009.**
- ◆ It should be noted that **Sri Lanka** and **Somalia** sent a Note verbale to the Commission in order to draw the latter attention on certain fact regarding their rights which might be affected by Kenya's claim.

2 – 15 African submissions are still pending before the Commission

- ◆ **c) Partial Submission by the Republic of Mauritius on 6 May 2009**, regarding on the outer limits of the continental shelf in the region of Rodrigues Island. On **8 October 2015**, a revised executive summary of the partial submission. On **3 March 2020**, an amendment to its partial submission.
- ◆ Its consideration was included in the agenda of **August-September 2009**.
- ◆ The area claimed appeared on the following maps



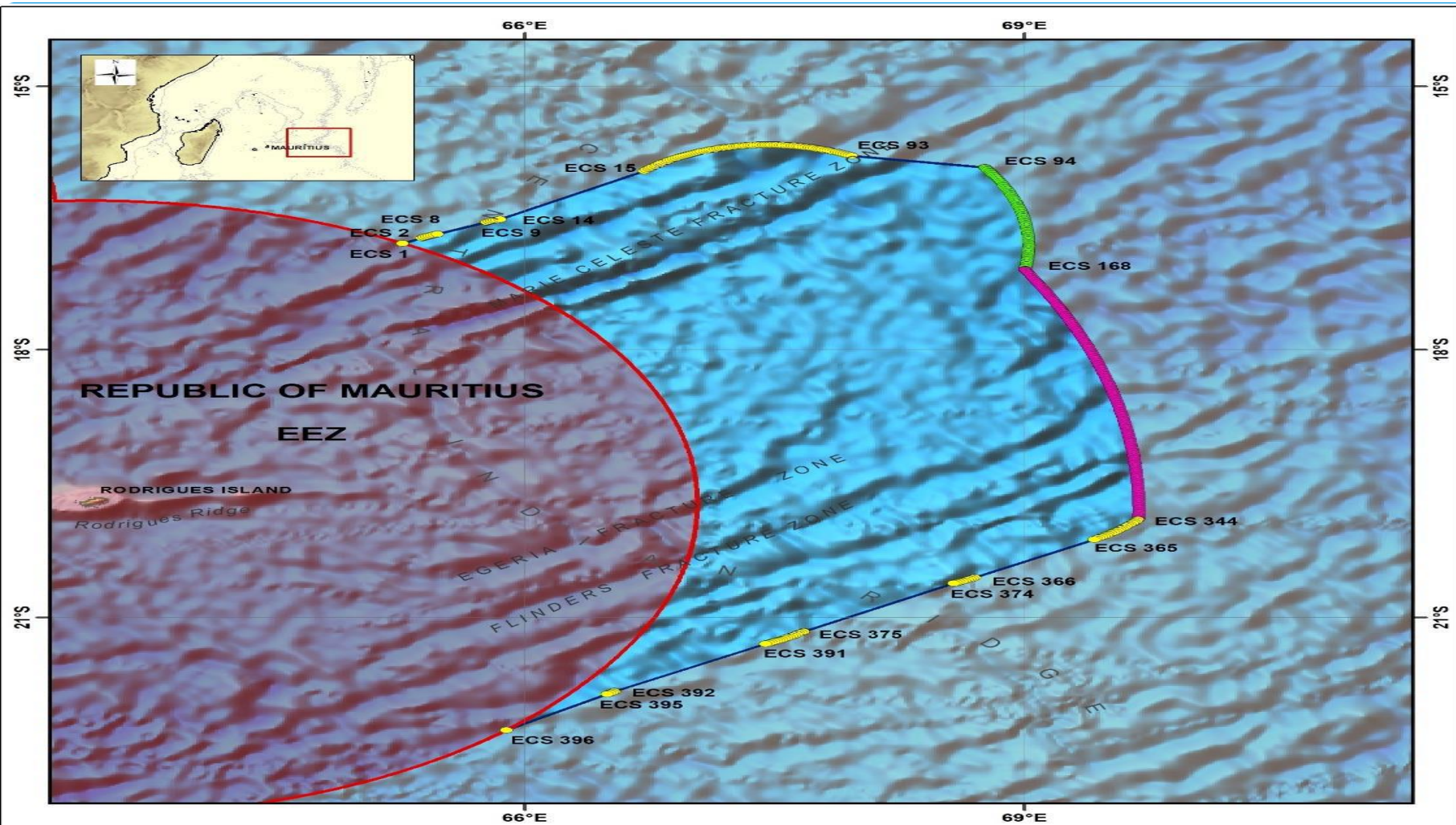
Mercator projection
WGS84 Datum
Central Meridian 0, Origin Latitude 0

Scale: 1:5,000,000
Kilometers



Legend

- Extended Continental Shelf Area
- Exclusive Economic Zone of the Republic of Mauritius



Mercator projection
WGS84 Datum
Central Meridian 0, Origin Latitude 0



Article 76 fixed points (outer limit)

- 60 M formula point (UNCLOS article 76, §4 (a)(ii))
- Depth constraint point (UNCLOS article 76, §5)

- Distance constraint point (UNCLOS article 76, §5)

Lines

- Outer limit of continental shelf beyond 200 M
- 200 M line computed from the basepoints of the Republic of Mauritius

2 – 15 African submissions are still pending before the Commission

- ◆ **d) Submission by Nigeria** on 7 May 2009. On 18 November 2016, an amendment to its submission.
- ◆ Its consideration was included in the agenda of **August-September 2009**.
- ◆ The area claimed appeared on the following maps.

AMENDED EXECUTIVE SUMMARY OF THE SUBMISSION OF THE FEDERAL REPUBLIC OF NIGERIA TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

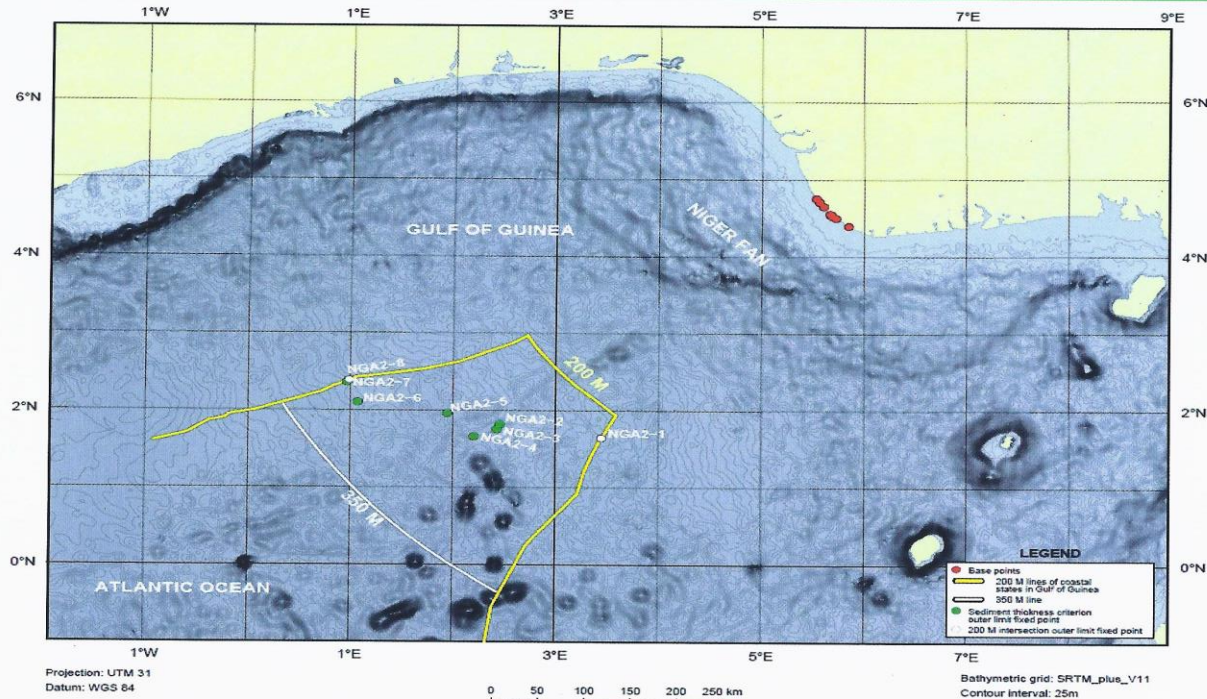


Figure 1. The six fixed points at which the sediment thickness is at least 1% of the shortest distance from such points to the FOS, and two fixed points established at the intersection of the formula line and the 200 M line of Ghana in the west and Sao Tome and Principe in the east. None of these fixed points exceed the 350 M distance constraint of Article 76, Paragraph 5. The fixed points are numbered according to Table 1.

AMENDED EXECUTIVE SUMMARY OF THE SUBMISSION OF THE FEDERAL REPUBLIC OF NIGERIA TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

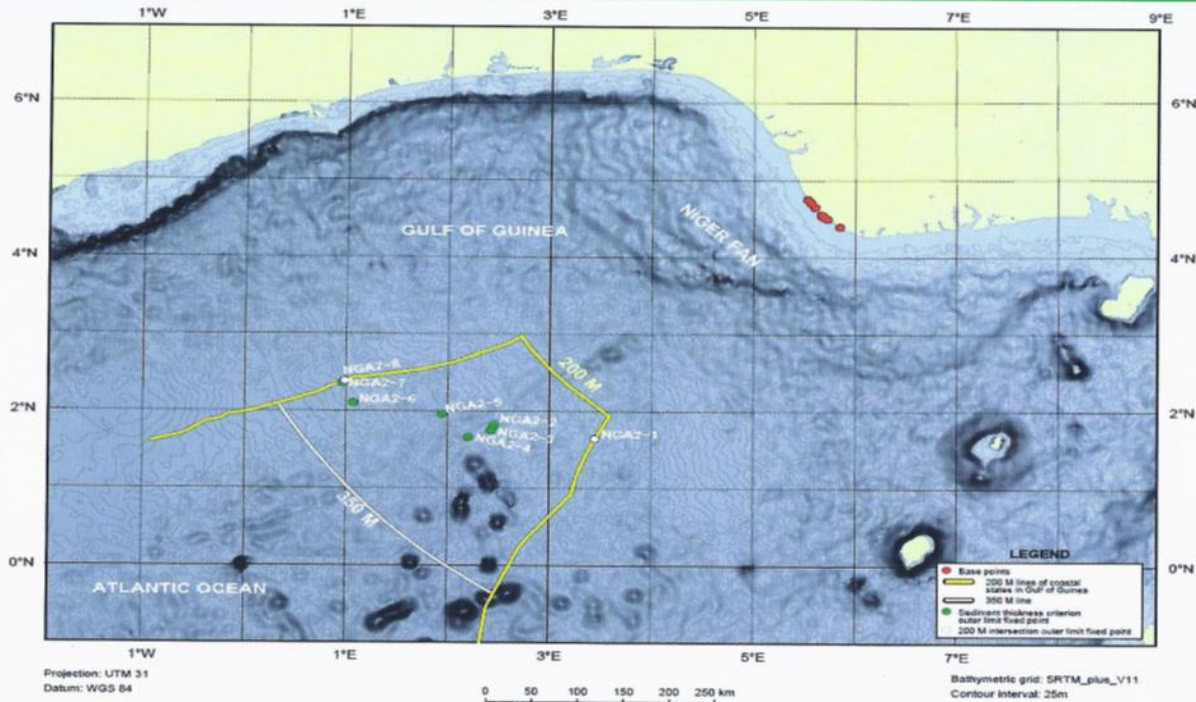


Figure 1. The six fixed points at which the sediment thickness is at least 1% of the shortest distance from such points to the FOS, and two fixed points established at the intersection of the formula line and the 200 M line of Ghana in the west and Sao Tome and Principe in the east. None of these fixed points exceed the 350 M distance constraint of Article 76, Paragraph 5. The fixed points are numbered according to Table 1.

2 – 15 African submissions are still pending before the Commission

◆ **e) Submission by Namibia on 12 May 2009.**

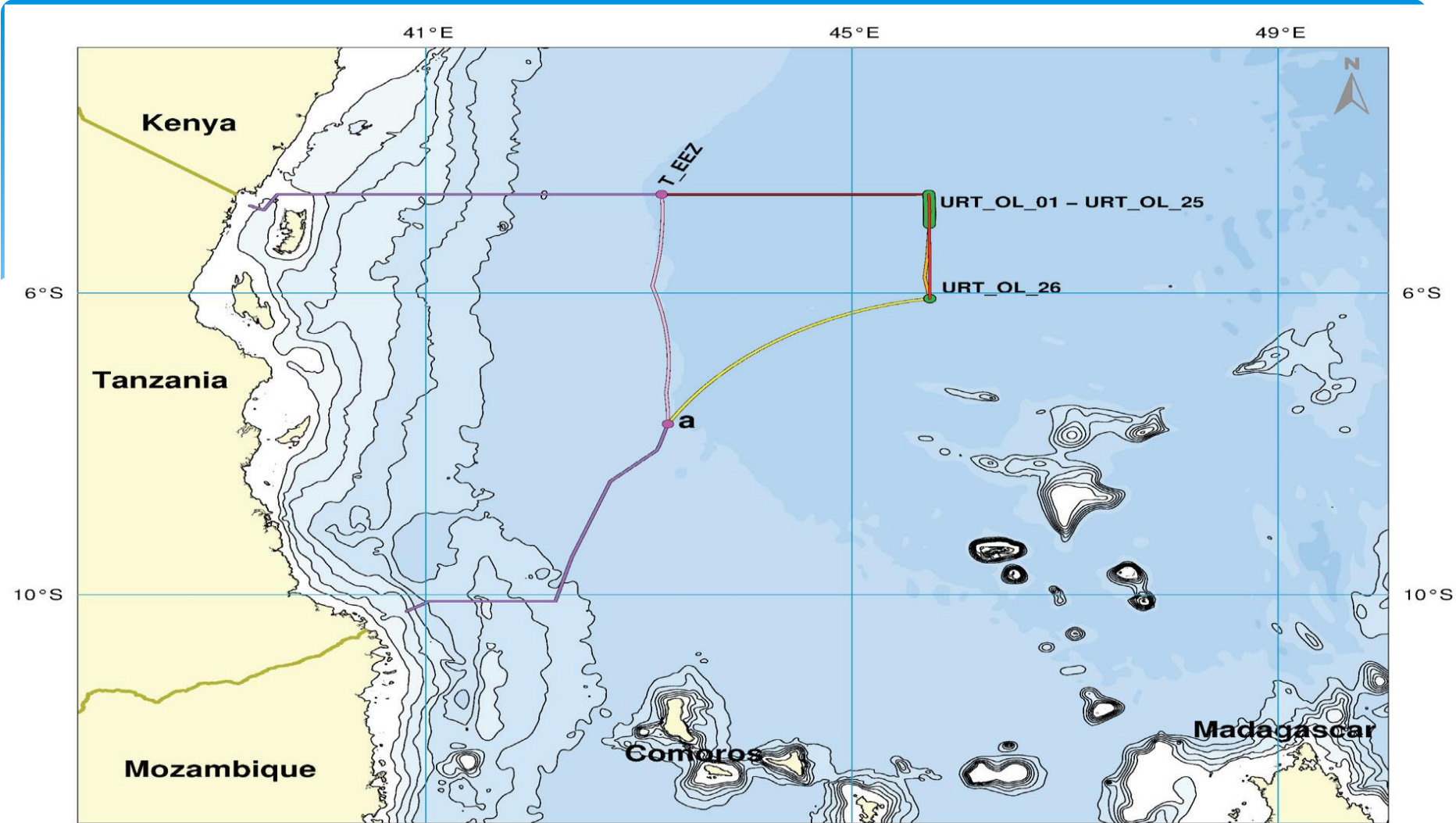
◆ Its consideration was included in the agenda of March-April 2010.

◆ **f) Submission by Mozambique on 7 July 2010**

◆ Its consideration was included in the agenda of March-April 2010.

2 – 15 African submissions are still pending before the Commission

- ◆ **g) Submission by of Madagascar** on 29 April 2011.
 - ◆ Its consideration was included in the agenda of August-September 2011.
- ◆ **h) Submission by Tanzania** on 18 January 2012
 - ◆ Its consideration was included in the agenda of **July-August 2012**.
 - ◆ The area claimed appeared on the following map.

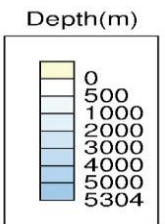


Projection: Mercator
 Datum: WGS 84
 Bathymetric grid: SRTM30 Plus v6
 Contour level: 500m
 Depth: Meters



- Border between states
- 200M EEZ limit of Tanzania
- 350M Constraint Line
- Outer limit points
- Tanzania/Seychelles Median Point

- Tanzania's Outer limits of ECS
- 200M EEZ limit of Seychelles
- Treaty lines with other States
- Tanzania Kenya Agreed Line



2 – 15 African submissions are still pending before the Commission

- ◆ **i) Submission by Gabon** on 10 April 2012.
- ◆ Its consideration was included in the agenda July-August 2012.
- ◆ **Angola** and **Congo** send Notes verbales to draw the attention of the Commission on their rights which might be affected by the Gabon's claim.

2 – 15 African submissions are still pending before the Commission

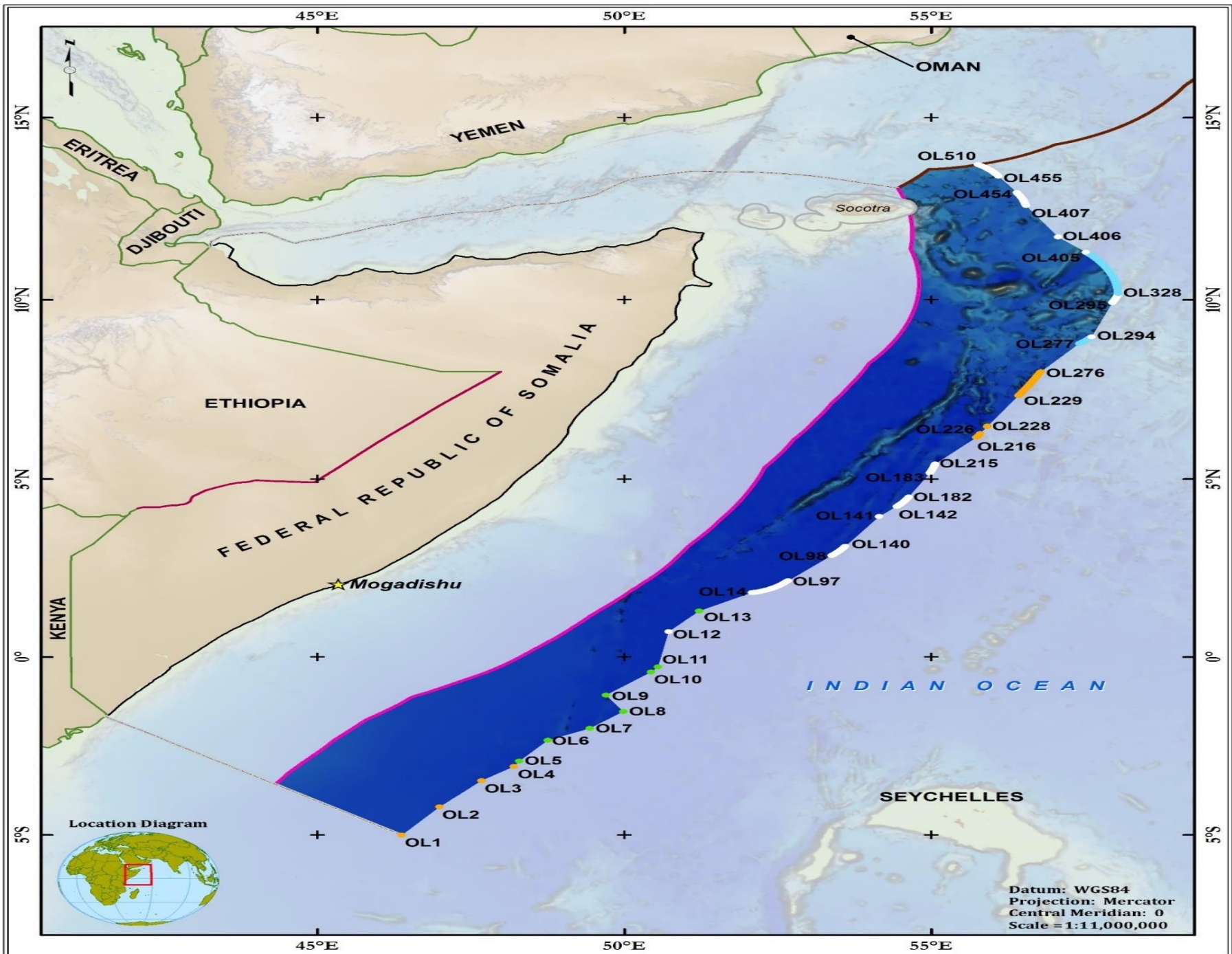
- ◆ **j) Submission by Angola** on 6 December 2013 .
- ◆ Its consideration was included in the agenda **July-August 2014**.
- ◆ **DRC, Congo** and **Gabon** send Notes verbales to draw the attention of the Commission on their rights which might be affected by the Angola's claim

2 – 15 African submissions are still pending before the Commission

- ◆ **k) Submission by Somalia** on **21 July 2014**; an amended executive summary of its submission transmitted on 16 July 2015
- ◆ Its consideration was included in the agenda in **2015**.
- ◆ **Tanzania, Yemen** and **Kenya** send Notes verbales to draw the attention of the Commission on their rights which might be affected by the Somalia's claim.

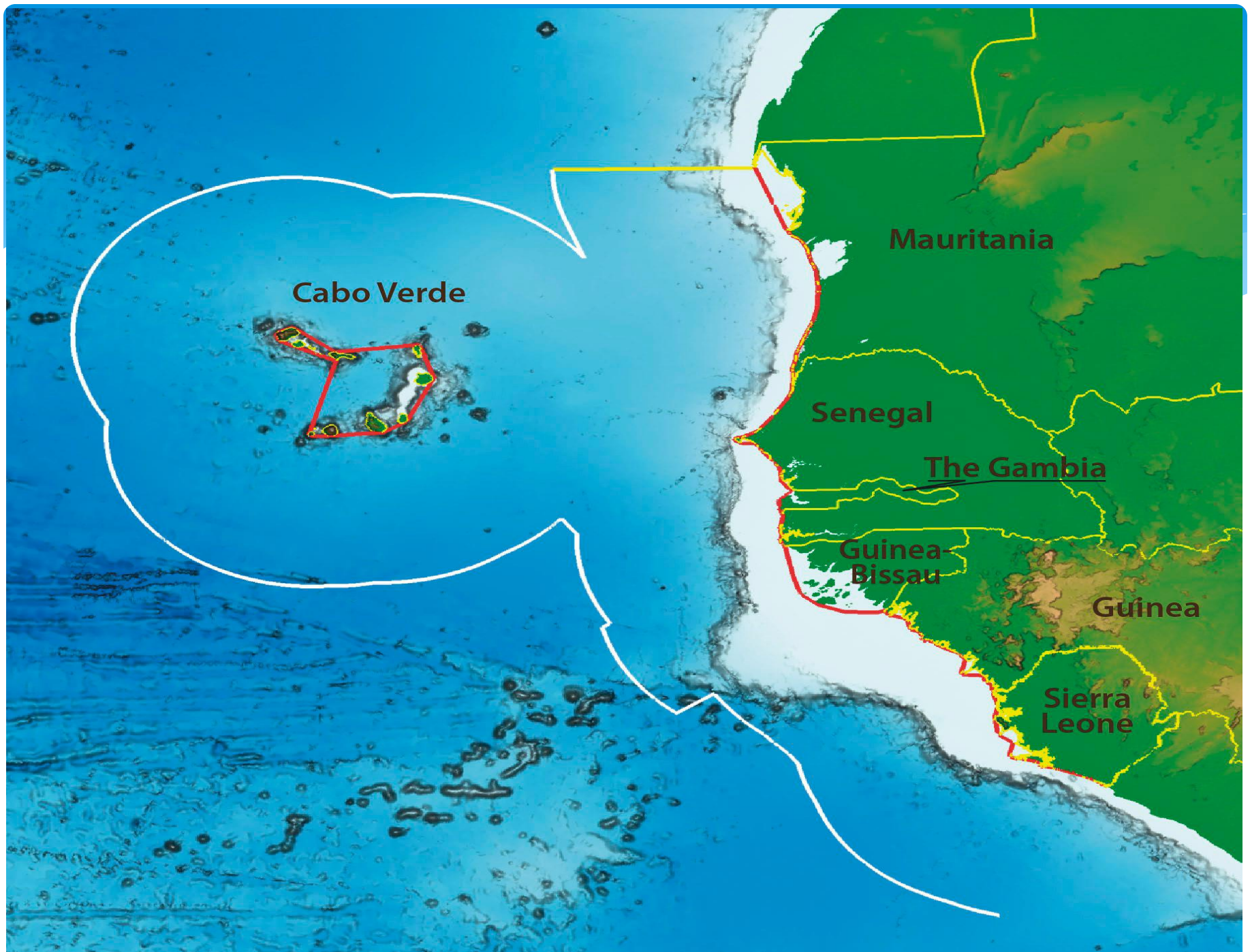
2 – 15 African submissions are still pending before the Commission

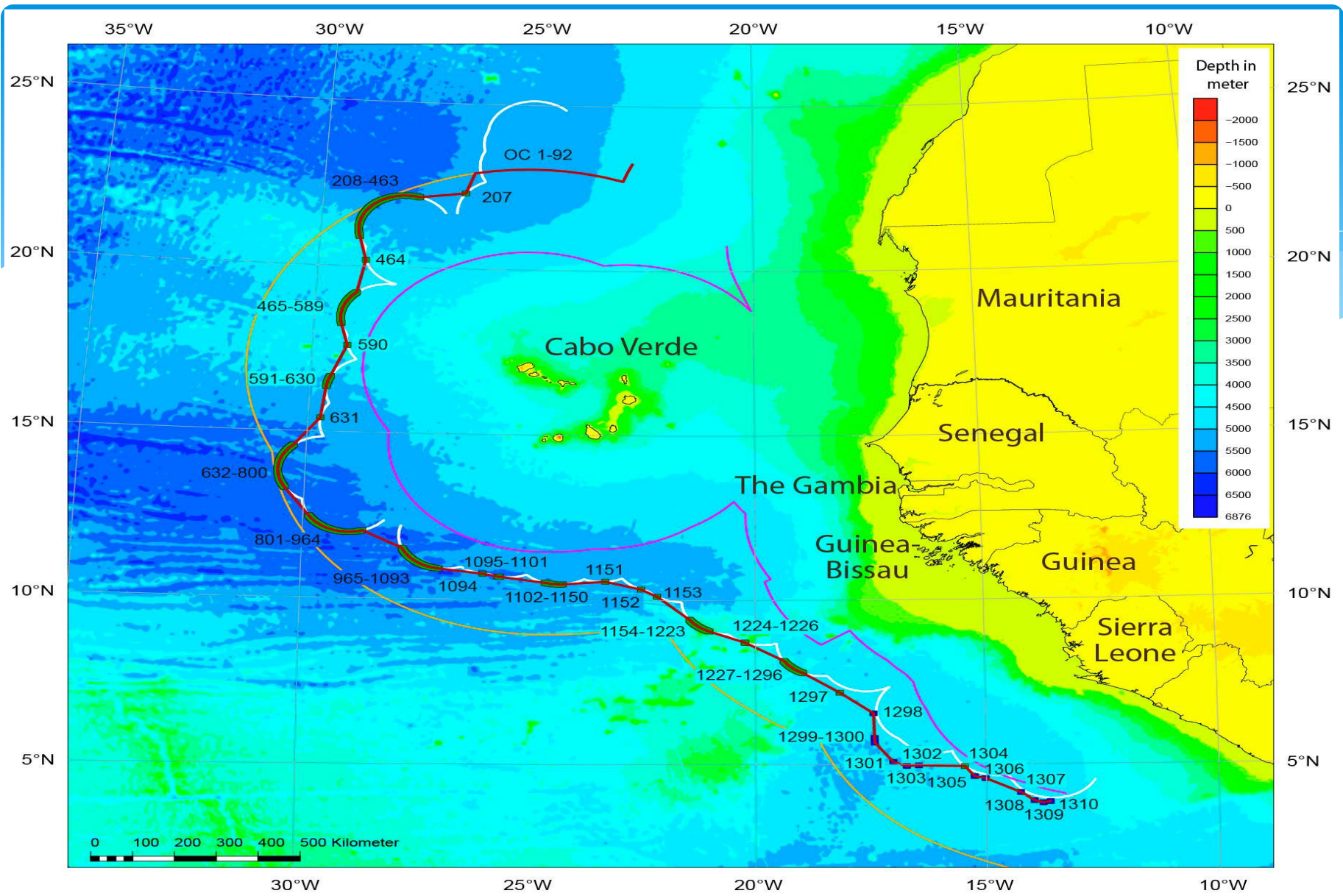
- ◆ **k) Submission by Somalia on 21 July 2014**; an amended executive summary of its submission transmitted on 16 July 2015
- ◆ Its consideration was included in the agenda in **2015**.
- ◆ **Tanzania, Yemen and Kenya** send Notes verbales to draw the attention of the Commission on their rights which might be affected by the Somalia's claim.
- ◆ The area claimed appeared on the following map.



2 – 15 African submissions are still pending before the Commission

- ◆ I) Joint Submission by Cabo Verde, The Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone, on 25 September 2014.
- ◆ Its consideration was included in the agenda in February-March 2015.
- ◆ Morocco sent a Note verbale by which it drew the Commission's attention on its rights which might be affected by the joint claim.
- ◆ The area claimed appeared on the following maps.

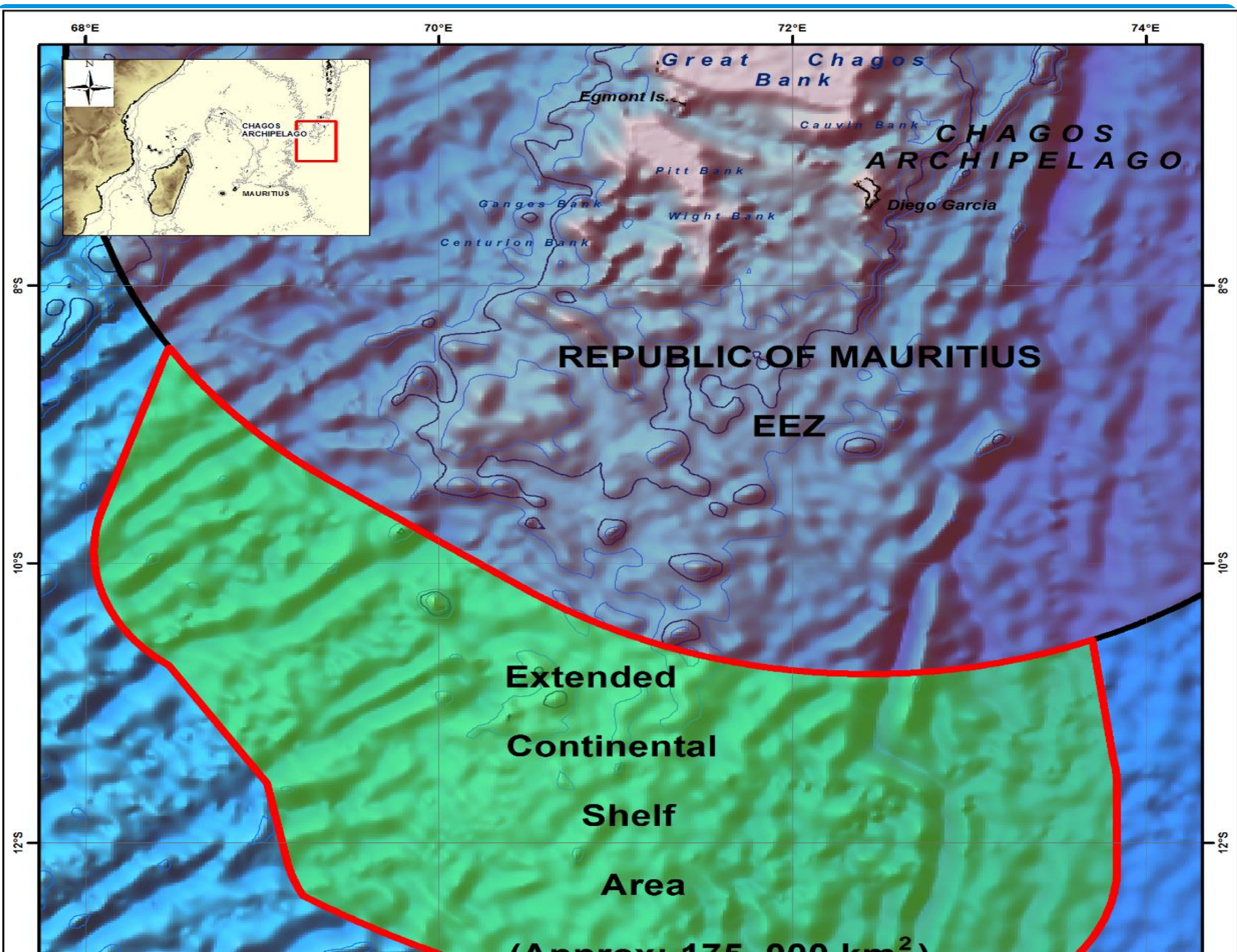


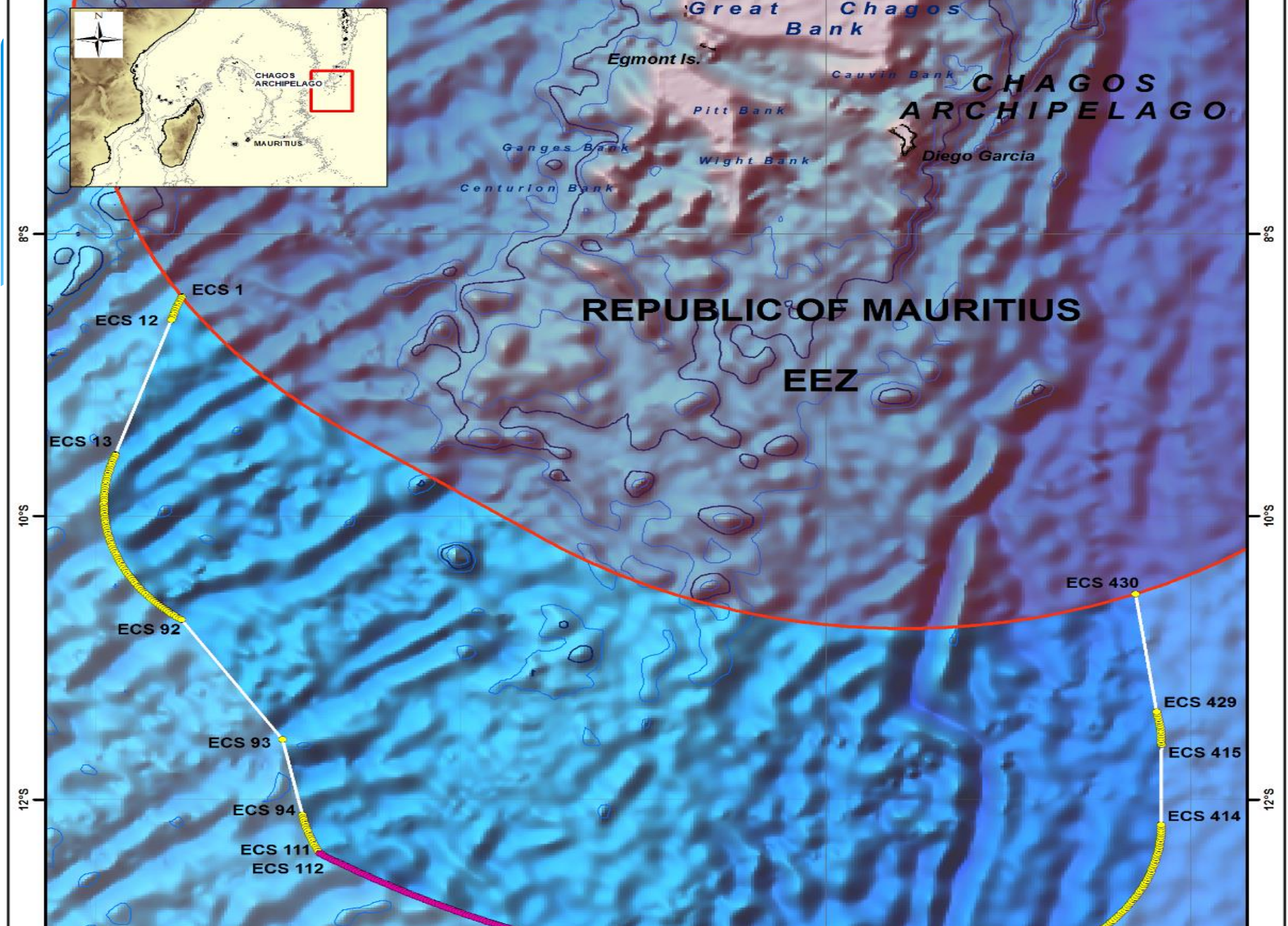


- Critical sediment points
- Critical 60 M points
- OC1 Outer constraints points
- Outer limits of the continental shelf
- 591-630 Outer limits point numbers
- 60 M arc from FOS points
- 200 M Exclusive economic zone
- 350 M Constraint line

2 – 15 African submissions are still pending before the Commission

- ◆ **m) Submission by Liberia** on 23 October 2018.
 - ◆ Its consideration was included in the agenda in **January-March 2019**.
- ◆ **n) Submission by Mauritius concerning the Southern Chagos Archipelago region** on 26 March 2019
 - ◆ Its consideration was included in the agenda in **July-August 2019**.
 - ◆ The area claimed appeared on the following maps.





◆ Before closing this first Part of our presentation, let's recall that after the recommendations of the Commission, **the outer limits established by the coastal State on the basis of such recommendations shall be final and binding.**

◆ The **chart and other relevant information** permanently describing the outer limits are then deposited with the UN Secretary-General, who is required **to give such due publicity.**

◆ After this brief exploration, what are the prospects and challenges facing African countries regarding the necessity to secure the resources of their extended continental shelf?

Part II – Securing the resources of the extended continental shelf: prospects and challenges

- ◆ Resources on the extensive extended continental shelf areas subject to submissions are of **increasing interest from a marine resource development perspective.**
- ◆ This is particularly the case as **offshore exploration and exploitation technologies have advanced significantly** in recent years.
- ◆ Key emerging seabed resource opportunities in extended continental shelf areas include energy resources such as **oil, gas, and gas hydrates** as well as **seabed minerals and marine genetic resources.**

Part II – Securing the resources of the extended continental shelf: prospects and challenges

- ◆ In order to secure those resources, African countries **should first proceed to any potential maritime delimitation** with any other relevant State(s) (A).
- ◆ They may also **explore the possibility of joint exploitation of the overlapping extended continental shelves**, especially when a joint submission has been made to the Commission (B).
- ◆ After securing their extended continental shelf and its resources, African States **should be prepare to make some payments and contributions with respect to the exploitation of their continental shelf beyond 200 nautical miles** (C).

A – The issue of overlapping claims and the necessity of maritime delimitation on the extended continental shelf

- ◆ Maritime delimitation involves the **establishment of a maritime boundary where the legal title of two or more adjacent and opposite States overlap.**
- ◆ Maritime delimitation **is beyond the competence of the Commission.**
- ◆ There is a **clear difference between the delineation of the outer limit of the continental shelf and the establishment of a maritime boundary** in case of overlapping extended continental shelves.

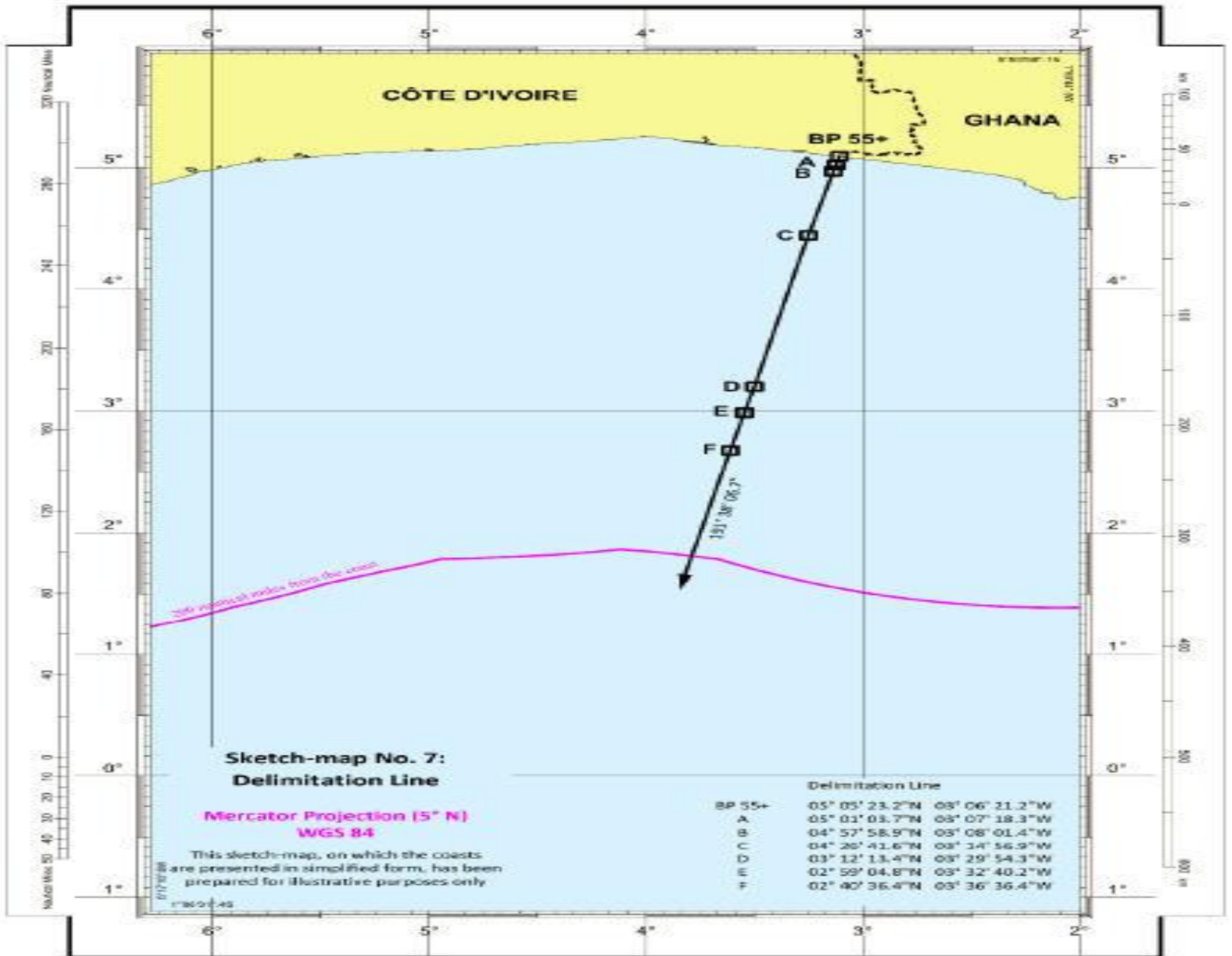
A – The issue of overlapping claims and the necessity of maritime delimitation on the extended continental shelf

- ◆ 1) The difference between the delineation of the outer limit of the continental shelf and the establishment of a maritime boundary in case of overlapping extended continental shelves

- ◆ The above has been clarified by ITLOS in *Bay of Bengal Judgment* where it stated: “There is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to delimitation of maritime boundaries. The function of settling disputes with respect to delimitation of maritime boundaries is entrusted to dispute settlement procedures under article 83 and Part XV of the Convention, which include international courts and tribunals”.

- ◆ The Commission is then only competent for recommendations on the validity of the national claims of extended continental shelf.

- ◆ Maritime delimitation can only be made by diplomatic or judicial means



A – The issue of overlapping claims and the necessity of maritime delimitation on the extended continental shelf

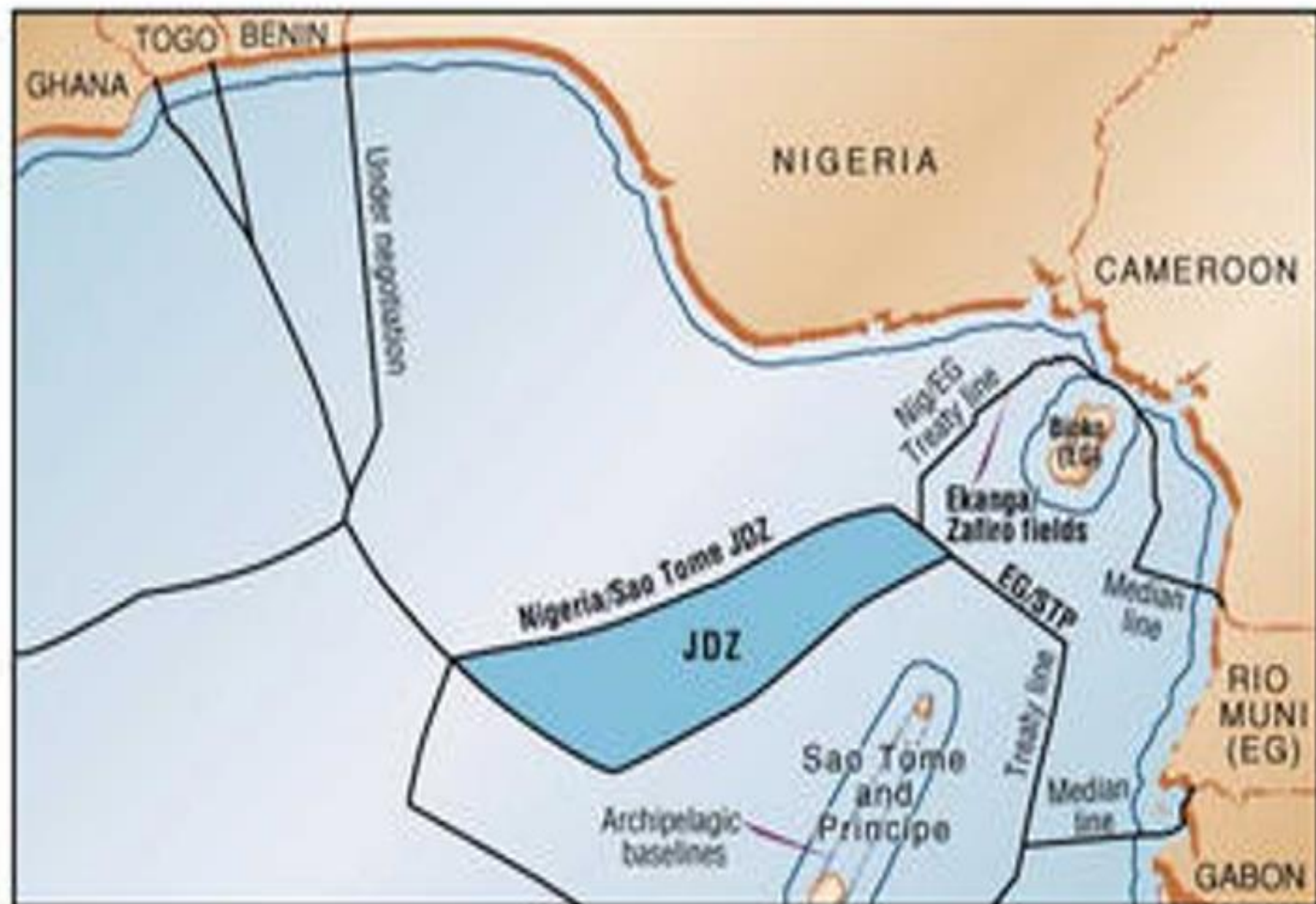
◆ States can follow the existing jurisprudence or State practice regarding maritime delimitation of the continental shelf within the distance of 200 nautical miles from the coastline.

◆ The applicable law in this regard can simply be transposed on the extended continental shelf, as the jurisprudence appear to suggest. **The judgment in the case between Ghana and Cote d'Ivoire before a special Chamber of the International Tribunal for the Law of the Sea by can serve as an example** : the Chamber indicated that the delimitation of the extended continental shelf would be in the continuity, by following the same direction, of the delimitation line within the 200 nautical miles, as it appear on this map.

B – The possibility of joint exploitation of the overlapping extended continental shelves

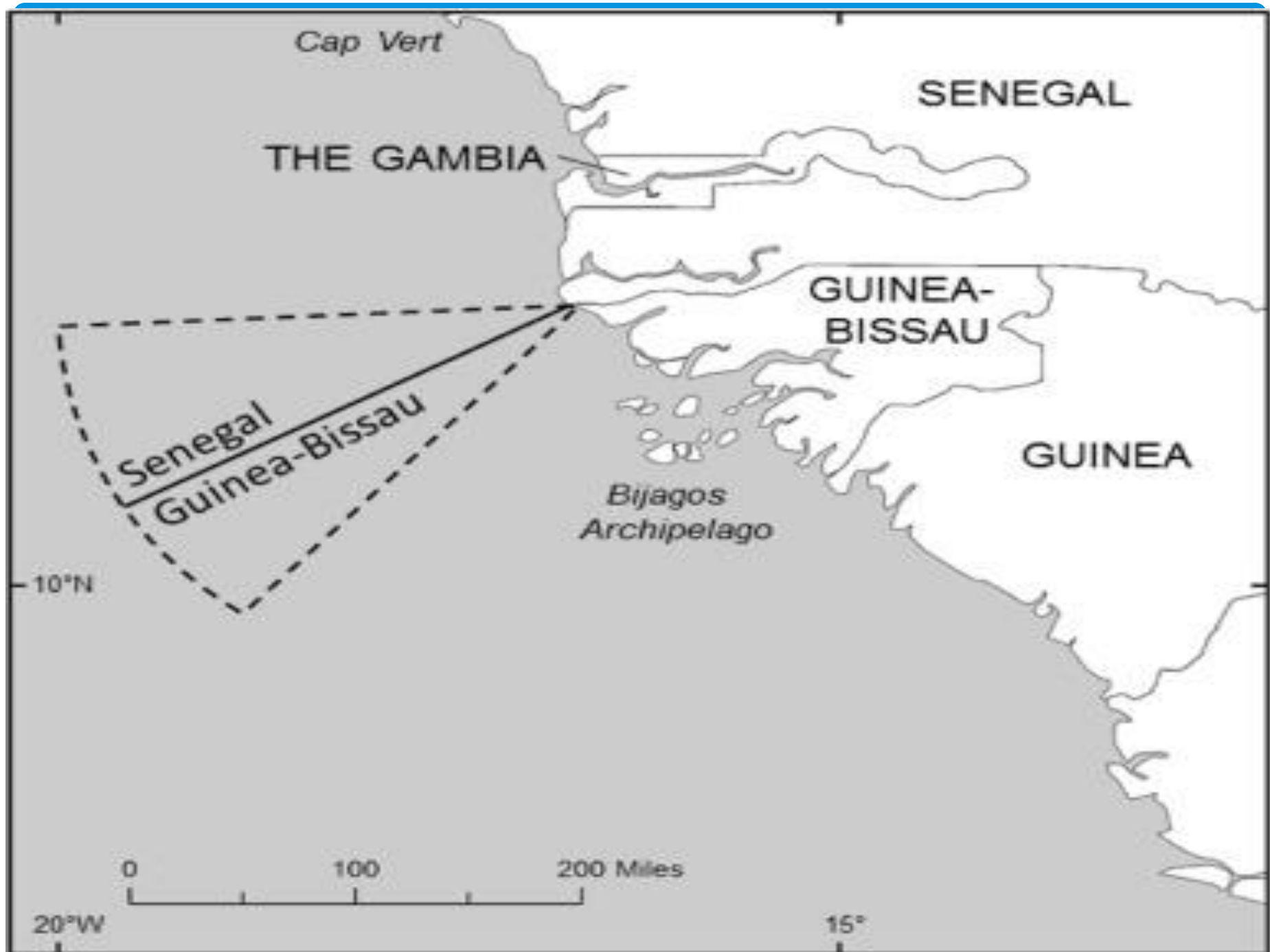
- ◆ In certain circumstances, if the States are not ready or are not willing to draw a maritime delimitation, **they might choose to exploit jointly, in part or in total, the area where their extended continental shelf overlap.**
- ◆ **Africa has already some useful examples of joint exploitation before or after the determination of a maritime boundary.**
- ◆ For the first instance, we have the **Nigeria/Sao Tome and Principe Joint development Zone**

Formation of gulf of Guinea EEZs



B – The possibility of joint exploitation of the overlapping extended continental shelves

- ◆ In 1974 Guinea-Bissau contested its boundary with Senegal. Although they attempted to resolve the matter through arbitration and a contest at the ICJ, they later settled for a more amicable process, by adopting a **Join Development Zone across the maritime boundary**.
- ◆ In fact, Guinea-Bissau and Senegal resolved to enter an agreement on 14th October 1998, both parties signed a **“Management and Co-operation Agreement”** in Dakar, aimed at providing among other things, the joint exploitation management and administration of both petroleum and fishing activities and seeks to provide a framework for cooperation and joint development between the two countries.



C – Payments and contributions with respect to the exploitation of extended continental shelf (Art.82)

“1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. The payments and contributions shall be made annually with respect to all production at a site after the first five years of production at that site. For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter. Production does not include resources used in connection with exploitation.

3. A developing State which is a net importer of a mineral resource produced from its continental shelf is exempt from making such payments or contributions in respect of that mineral resource.

4. The payments or contributions shall be made through the Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.”

C – Payments and contributions with respect to the exploitation of extended continental shelf (Art.82)

- ◆ This is a mechanism by which State with extended continental shelf make **a sort of compensation because of the extension of their jurisdiction to what is normally the Area, the Common heritage of mankind.**
- ◆ Thank you very much for your kind attention!