

# The Fate of the Agreement of 30 July 2007 in the Dispute Over the Delimitation of Maritime Boundaries between R.D.Congo and Angola: A Consideration based on the 1982 UNCLOS Forecast and the Principles of Maritime Delimitation Law

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**Abstract:** *The question of the "path of agreement" in the law of the sea is provided for in Articles 15, 74, 76 and 83 of UNCLOS 1982. In the dispute over the maritime boundaries to be defined between DRC and Angola, the question arises on the Agreement of 30 July 2007. While DR Congo refutes the fact that it would relate to the maritime delimitation, Angola maintains the contrary on the basis of Articles 76 and 83 CNDUM. To resolve such issues, the 1982 UNCLOS opened in Article 293 the path to "other rules of international law which are not inconsistent with it" to be included in the analysis which could lead to durable solution. The tripoint constituted by the provisions of the CNDUM, the Vienna Convention on the Law of Treaties of 1969 and the forecasts of the case-law are bases on which the final position to be adopted in the case under study can be justified.*

**Keywords:** Agreement of 30 July 2007 - Maritime Boundaries - R.D.Congo / Angola - United Nations Convention on the Law of the Sea of 1982 - Maritime Delimitation Law

## 1. Introduction

It is to be wondered if the prophecy<sup>1</sup> of Charles de Gaul for the seas and the oceans is not realized for sure. To such an interrogation, one will not be wrong to answer in the affirmative nothing to note, since quite a recent time, the intense jostling which is observed on sea between the States for the conquest of maritime spaces further in order for them to have complete control over the underwater resources lying offshore. In fact, in fact, there is no question for States to "comply with a requirement of nature that they claim (...) maritime rights at greater distances from their coasts", but, rather, they want to give such an act "expression to a political will, and purely political"<sup>2</sup>. It is, indeed, "the only human will that had chosen to rely on the physical reality of the continental shelf to define the rights of the coastal state on certain seabed"<sup>3</sup>. The fact being such, it has become a little useless to insist each time that it is a maritime dispute between States whose "coasts are facing each other" or which are "adjacent", "on the relationship the continental shelf delimitation and mineral resources, [because] it is, in fact, the imperatives of the development of these resources which constituted at the beginning the most powerful

stimulant to the enterprise of precise fixing of the limits to the jurisdiction of the coastal State on the seabed"<sup>4</sup>.

Indeed, the frantic race observed at sea for spaces and underwater natural resources has meant that states in more than one place have found themselves claiming the same rights in the same area. It was therefore necessary on the horizon, to operate of course, a consequent choice for the delimitation of the said spaces. Most of the sea limits being imprecise on almost the whole globe, with all that that entails as an issue, maritime delimitation questions had no choice but to occupy a very important place in the relations interstate. In fact, "the potentially most dangerous cross claims (...) are based on precise territorial claims"<sup>5</sup>. Speaking of stakes, very often, these claims are always in close interaction with aspects related to state policy and their economy, taking into account their geographical constraints. Beyond this, there are also aspects of geopolitics, geostrategic, cultural, diplomatic, security, cooperation, etc. to justify, as the case may be, the trajectory of a maritime boundary, the case may be in the negotiation phase or lodged with an ad hoc or permanent jurisdiction<sup>6</sup>.

In addition to the fact that a good number of the cases opposing the States have also received good answers at the level of the negotiations, we cannot fail to mention that the

<sup>1</sup> Charles De Gaulle had indicated that "the activity of men will turn more and more towards the pursuit of the exploitation of the sea and naturally, the ambitions of the states will seek to dominate the sea to control its resources".

<sup>2</sup>Weil, P., *perspective du droit de la délimitation maritime*, Paris, éd. Pédone, 1988, p.91.

<sup>3</sup>Ibid.

<sup>4</sup>Lucchini, L. et Voelckel, M., *Droit de la mer. Délimitation, Navigation et pêche*, Paris, éd. Pédone, Volume I, « La délimitation », Tome 2, 1996, p. 113.

<sup>5</sup>Dujardin, B., « Le contentieux de délimitation des droits territoriaux en mer », in *Politique maritime, la Revue maritime* n°484, CFM, pp 40-47, p.42.

<sup>6</sup> Only the International Court of Justice and the International Tribunal for the Law of the Sea are recognized for this fact.

"judicial acquis" put in place by the International Court of Justice and the International Criminal Court. Law of the Sea and the ad hoc Tribunals has established a strong, consistent and consistent legal structure that allows for the efficient resolution of any dispute related to territorial disputes at sea. This "Capital" and "Vital" Role According to Laurent Lucchini, it is determined by two factors: The first is related to the "classic and obvious reasons of legal certainty, valid both for the States themselves and for the various operators (...) who carry out their activities at sea (...)" . The second and more recent factor is "the diversification and extension of areas under the sovereignty or jurisdiction of the coastal State; it has the effect of radically transforming the notion of "neighborhood" at sea and, at the same time, greatly increasing the number of hypotheses in which the delimitations prove to be necessary"<sup>7</sup>. It is for the same fact that we believe that "these operations are all the more necessary (...) that they relate to sometimes considerable territorial challenges, accompanied by all the assets that the space thus gained implies in resources biological and / or mineral and in fleets mobility"<sup>8</sup>.

Within this margin, it should therefore be noted with the words of Paul Von Mühlendahl that "with regard to the particular nature of the task which a court is called upon to perform when carrying out a maritime delimitation ... Courts are more limited than States when they negotiate a maritime boundary, because they have to resolve a dispute on the basis of legal norms and they have to justify these choices by intellectual constructions and, over time, by case-law. The obligation to give reasons for decisions results in judgments and sentences of a length and a density without comparison with the delimitation treaties which are, as (...) very succinct. In addition, the task of the judge is certainly delicate, since it must decide only on the basis of the law whereas the States are free to find the compromises at their convenience without having to justify them"<sup>9</sup>. More clearly, the law of delimitation by the principles it has constructed, has been instituted "as a regulator of crises for the control of spaces and resources"<sup>10</sup>.

This advantage in no way obscures the fundamental principle that a maritime delimitation "must be effected by agreement". For only when the States involved in a dispute do not "reach an agreement, the delimitation is decided by a judicial or arbitral body with jurisdiction to that effect and rules under the principles and rules of international law applicable in the matter, unless, of course, the parties have left to this body the care to decide ex aequo et bono or have chosen to resort to another mode of solution of their dispute"<sup>11</sup>. Among the world's poles, the Gulf of Guinea constitutes,

without doubt, one of the sub-regions of the continent, and even of the world, where the question (...) arises in all its complexity »<sup>12</sup>. In this wake, there is the problem between R.D.Congo and Angola. It remains so far unanswered. The two States<sup>13</sup>, although they have indicated their intention to refer the dispute to the International Tribunal for the Law of the Sea, have stalled in their negotiations.<sup>14</sup>

In this area, as far as "the choice of the method is never neutral", as much we can also affirm is not random either, it orders "to identify the factor or factors playing the role of dispatcher"<sup>15</sup>. Faced with such a constraint, "it is therefore necessary to look closely at the geographical configuration of the coasts of the countries whose continental shelf is to be delimited, (...) since the land is the legal source of the power that a State can exercise in the maritime extensions, it is still necessary to establish what these extensions actually consist of"<sup>16</sup>. "Another element to be taken into account in the delimitation of continental shelf areas between adjacent States is the unit of deposit"<sup>17</sup>.

In all cases, "the delimitation shall be by agreement in accordance with equitable principles and taking into account all relevant circumstances, so as to allocate, as far as possible, to each Party all the areas of the continental shelf which constitute the natural extension of its territory under the sea and do not encroach on the natural extension of the territory of the other"<sup>18</sup>. But in the case of DRC / Angola, which is the subject of this study, one of the big splinters to be solved is that of the fate to be given to July 30, 2007, as an important substantive means advanced by Angola. . Some delimitation decisions will help to guide the response to the concern it raises in order to draw a reasoning that can provide a response to the dispute between these states. For a good approach, we will first propose to outline the litigation itself, see the facts in their chronology in order to open up on the approach of the "way of agreement" in jurisprudence, through a few cases, which will lead to the fate to be given to the agreement under study in the conclusion.

## 2. Maritime situation between R.D.Congo and Angola and state claims

<sup>12</sup>Kamga, M.K., *Délimitation maritime sur la côte Atlantique africaine*, Bruxelles, éd. Bruylant, 2006, p.82.

<sup>13</sup>To be specific about DRC, see, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, Law of the Sea, Bulletin No. 85, United Nations, New York, 2015, " Declaration of States ", p. 16

<sup>14</sup>The President Félix Tshisekedi of R.D.Congo after his accession to the supreme magistracy made at least three trips to Angola without mentioning the question of negotiations or even any follow-up concerning a possible maritime delimitation between the two states.

<sup>15</sup>Cazala, J. « Retour sur les méthodes de délimitation juridictionnelle d'espaces maritimes mises en œuvre dans quelques affaires récentes », in *Annuaire français de droit international*, volume 54, 2008. pp. 411-427, p. 413.

<sup>16</sup>CIJ, affaires du plateau continental de la mer du nord (République fédérale d'Allemagne/Danemark; République fédérale d'Allemagne/Pays-Bas), arrêt du février 1969, p. 52, par.96

<sup>17</sup>Ibid., par 97.

<sup>18</sup>Ibid., p.54, (c) par. 101.

<sup>7</sup>Lucchini, L., « La délimitation des frontières maritimes dans la jurisprudence : vue d'ensemble » in, *International Law E-Books Online*, collection 2006, pp. 9-26, p.9.

<sup>8</sup>Ibid.

<sup>9</sup>Mühlendahl, P.V., *L'équidistance dans la délimitation des frontières maritimes. Etude de la jurisprudence internationale*, Paris, éd. Pédone, 2016, p. 126.

<sup>10</sup>Voir. Galletti, F., « Le droit de la mer, régulateur des crises pour le contrôle des espaces et des ressources : quel poids pour les Etats en développement ? », in *Monde en développement*, vol. 39-2011/2-n°154, 121-136

<sup>11</sup>Weil, P., Op.cit., p. 111.

## 2.1 Maritime situation between R.D.Congo and Angola

Both states are located in the Gulf of Guinea. With Angola, R.D.Congo shares two borders. One, at the northern point, is a land border that separates it from Cabinda, an enclave under Angolan sovereignty. At the southern point, with mainland Angola, it is the Congo River that separates them. These two states are all "coastal". Inside the continent they also share a long land border. The only difference is that R.D.Congo is, unlike Angola "a geographically disadvantaged state". It has access to the sea from a very small tongue of land of at least 40 km wedged between territories belonging to the same State in a structure having almost the shape of a semicircle cut by an axis slightly oblique. The rest of its territory occupies the interior of the continent. Its total area is estimated at 2,345,000 square kilometers, this is without counting the maritime space to be integrated after the delimitation is totally made between the two States. It shares borders with nine states, some of which are French-speaking and some English-speaking. Only Angola among this group is a Portuguese-speaking State. Angola is "a geographically advantaged state", it has too wide an opening to the sea that has at least 160 km<sup>19</sup> in almost straight shape. It is the only Lusophone State in Central Africa that is at the crossroads between two French-speaking and two English-speaking states with which it shares its land and sea borders.

## 2.2 The basis of the claims of both States

These two states did not have a single colonizing power. R.D.Congo went through a somewhat troubled political situation from AIC to the EIC under Leopold II. It was only after considerable difficulties that it was ceded to Belgium to make it a colony and had its independence in 1960. Angola did not experience troubled times as was the case of the DRC. By her only colonizer she lived a quiet domination until 1975 year of independence. These two both claim maritime areas against the backdrop of the new law of the sea.

With regard to rights at sea, the question of law relates precisely to the direction to be given to lines if ever delimitation was to be effected by judicial or by agreement. In this dispute, Angola states in particular that "when an agreement is in force between the States concerned, the questions relating to the delimitation of the continental shelf are settled in accordance with this agreement". In making such an argument, it refers to the Agreement of 30 July 2007 which is the only act in force between the two States. Contrary to this, the DRC is based on Article 77 of UNCLOS which considers that as a coastal State it has "sovereign rights over the continental shelf for the purpose of its exploration and exploitation of its natural resources "so that," ... no one can [undertake] [activities] without his express consent ". It also bases its approach on the interpretation of treaties signed between the two colonizers to determine the territorial title of each of them.

Mandatory delimitation in one direction as in another must respond favorably to the constraints of predictability,

stability and flexibility. To this end, it must avoid the effects of encroachment, the interruption of projections of the relevant coastal lines and a disproportionate result<sup>20</sup>. These conditions oblige that all the articles contained in the treaty invoked by Angola, intended to fix the frontiers between the two States, should, if possible, be interpreted in such a way that, by its full application, a precise, complete and definite boundary be obtained "<sup>21</sup>. To this end, therefore, the content of the agreement invoked by Angola "should not be presumed (...)" because "the establishment of a permanent maritime boundary is a matter of great importance"<sup>22</sup>. In the Libya / Chad case, the Court reiterated the same fact that, "according to customary international law which has found expression in Article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith according to the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. The interpretation must be based primarily on the text of the treaty itself. Additional means of interpretation such as the preparatory work and the circumstances in which the treaty has been concluded may be used in addition."<sup>23</sup> The law of the Treaties intervening in this way will therefore easily set the basis of the discussions in order to ultimately determine the fate of the agreement of July 30, 2007 in the dispute between these two states in relation to the determination of their maritime rights.

Such concern, indeed, invites to "(...) place itself in a posture such as its title, its preamble, or the whole of the text or events that preceded its conclusion that we manage to settle any possibility of nuisance which would have a negative impact on the delimitation expected. If there is no problem with this, and the text presents a clarity that leaves nothing to be desired, we will "be obliged to apply it as it is, without [it is] to ask whether other provisions could have been added to it or substituted with advantage "<sup>24</sup>or disadvantage.

In addition to the chronology of the facts and the applicable law, this study will pass the agreement of July 30, 2007 to the deepened of the international law. Here, it will first visit the principle of "delimitation by agreement", enshrined in the UNCLOS of 1958 and 1982, despite the difference that characterizes them and the case law relating to the delimitation law and the second one the "treaty interpretation according to object and purpose" enshrined in the 1969 CVDT. These foundations will, with certainty, lead to a conclusion that meets the requirements of international

<sup>20</sup>Voir. RSA, Arbitrage entre la Barbade et la République de Trinité-et-Tobago, relatif à la délimitation de la zone économique exclusive et du plateau continental entre ces deux pays, R.S.A, Vol. XXVII, sentence arbitrale du 11 avril 2006, Recueil 2006, p. 838.

<sup>21</sup>CPIJ, arrêt du 21 novembre 1925, article 3, paragraphe 2, du traité de Lausanne (frontière entre Turquie/Irak), Rec., 1925, série B, p. 20; les italiques sont de la Cour

<sup>22</sup>CIJ, arrêt du 8 octobre 2007, affaire du différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), Rec. 2007.p. 735, par. 253.

<sup>23</sup>CIJ, arrêt du 3 février 1994, Affaire du différend territorial (Jamahiriya arabe libyenne/Tchad), Rec. 1994, pp.21-22, par. 41.

<sup>24</sup>CPJI, arrêt du 10 juillet 1924, affaire relative à l'acquisition de la nationalité polonaise(Allemagne/Pologne), Avis consultatif, Rec. 1924, série B, volume I, p.20

<sup>19</sup><https://www.indexmundi.com>



law. After that, there will be consequences to be drawn before arriving at the concluding proposition.

### 3. The problem of the agreement of 30 July 2007 in the dispute R.D.Congo / Angola

The ratification<sup>25</sup> of UNCLOS of 1982 was done for the Democratic Republic of the Congo on February 17, 1989 and for Angola on December 5, 1990. Between Angola and DR Congo, the initiative of a amicable settlement of maritime borders was born in the year 2000, hydrocarbons were at the heart of this need<sup>26</sup>. From that year, the debates continued until 2003 and gave rise to "an agreement deemed unbalanced by the Democratic Republic of Congo"<sup>27</sup>, it could not, to do this, be applied. In May 2007, the two states had resumed negotiations to give birth to the agreement of July 30, 2007. The latter on "the exploitation and production of hydrocarbons in a maritime area of interest common". This is an agreement based on the political will of the two states "to promote fruitful economic cooperation pending the outcome of the discussions on the route itself"<sup>28</sup> and so far it is the only agreement between the two States in force.

On the question, "The Government of the Democratic Republic of the Congo further declares, pursuant to article 298, paragraph 1 (a), of the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982, that it does not accept any of the procedures provided for in paragraph 287 (1) (c) in respect of disputes concerning the interpretation of Articles 15, 74, and 83 relating to the delimitation of zones or disputes involving historical bays or titles"<sup>29</sup>.

#### 3.1 Delimitation by agreement, a fundamental principle in maritime delimitation law

##### 3.1.1. Presentation of the physical framework of the maritime area

The "sea" in law is a "polyrégimes space"<sup>30</sup> composed of salt water in free and natural communication throughout the

<sup>25</sup>Voir. Division des affaires maritimes et du droit de la mer, Bureau des affaires juridiques, Droit de la mer, *Bulletin n° 85*, Nations Unies, New York, 2015, p.11.

<sup>26</sup>Il ne s'agit pas ici d'une particularité. Dans la plupart des questions de délimitation des frontières maritimes, les hydrocarbures sont souvent le nœud des disputes qui conduisent au partage des territoires en mer.

<sup>27</sup>Voir dans la Loi n° 07/004 du 16 novembre 2007 autorisant la ratification de l'Accord sur l'exploration et la production des hydrocarbures dans une zone maritime d'intérêt commun signé à Luanda, République d'Angola, le 30 juillet 2007 entre la République Démocratique du Congo et la République d'Angola, « Exposé des motifs ».

<sup>28</sup>Voir dans la Loi n° 07/004 du 16 novembre 2007 autorisant la ratification de l'Accord sur l'exploration et la production des hydrocarbures dans une zone maritime d'intérêt commun signé à Luanda, République d'Angola, le 30 juillet 2007 entre la République Démocratique du Congo et la République d'Angola, « Exposé des motifs ».

<sup>29</sup>Voir. Division des affaires maritimes et du droit de la mer, Bureau des affaires juridiques, Droit de la mer, *Bulletin n° 85*, Nations Unies, New York, 2015, p.16.

<sup>30</sup>Beurier, J-P., *Droits maritimes*, Paris, éd. Dalloz (2ème édition), 2008, p. 68.

globe<sup>31</sup>. The principles relating to the delimitation of maritime areas are, as the case may be, governed by the United Nations Convention on the Law of the Sea, known as Montego Bay, of 1982 and have been largely developed by the relevant case-law. With regard to the 1982 UNCLOS, it is a text that has certain positive characteristics and is considered as a whole and therefore cannot be subject to reservations. It includes many customs that were codified by the United Nations Convention on the Law of the Sea of 1958, and introduces new ones such as the exclusive economic zone or the territorial sea 12 miles away (...) "<sup>32</sup>.

If it is said of the law of the sea that it is "above all characterized by the coexistence of various rules"<sup>33</sup>, it is because of the integrating nature of the norms of stem origins that are found there: customary and conventional. With regard to the delimitation of the continental shelf in the UNCLOS of 1982, the only space relating to the present study, which is specifically provided for in Part VI, Article 76. The definition of this area appears in Article 77, which states: the rights of the coastal State on the continental shelf "and Article 83 specifies the modalities of its delimitation. Here, the "path of agreement" and the "equitable solution" stand out as pillars of its delimitation. Article 77 focuses on the nature and characteristics of the "coastal state's rights over the continental shelf". They are presented as "sovereign rights". This means that "the rights of the coastal State over the continental shelf zone which constitutes [the] natural prolongation of its territory under the sea ipso facto and ab initio exist by virtue of the sovereignty of the State in that territory by an extension of this sovereignty in the form of the exercise of sovereign rights for the purpose of exploring the seabed and the exploitation of its natural resources"<sup>34</sup>.

As "there is an inherent right, there is no need to exercise it to follow a particular legal process or perform special legal acts"<sup>35</sup> to achieve it. This is a logic that emerges from the principle that "it is the land that gives the coastal State a right over the waters that bathe its coasts"<sup>36</sup>. Hence, the character of these rights is determined, as can be seen, according to the finality and exclusivity that binds them. The purpose is linked to the exploration of the continental shelf and the exploitation of its natural resources; while exclusivity emerges from the fact that "even if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake such activities without his express consent".

<sup>31</sup>Voir. Daillier, P., Forteau, M., et Pellet, A. (Quoq. D.N.), *Droit international public*, Paris, éd. LGDJ, (8ème édition), 2009, p. 1284.

<sup>32</sup>Beurier, J-P., *Droits maritimes*, Paris, éd. Dalloz (2ème édition), 2008, p. 73

<sup>33</sup>Daillier, P., Forteau, M., et Pellet, A. (Quoq. D.N.), *Droit international public*, Paris, éd. LGDJ, (8ème édition), 2009, p. 1282.

<sup>34</sup>CIJ, arrêt du 20 février 1969, Affaires du plateau continental de la mer du nord (République fédérale d'Allemagne/Danemark; République fédérale d'Allemagne/Pays-Bas), Rec. 1969, p. 22, par. 19

<sup>35</sup>Ibid.

<sup>36</sup>CIJ, Affaire des pêcheries, Arrêt du 18 décembre 1951, CIJ, Recueil 1951, p.133.

### 3.1.2 From the principle of delimitation by "agreement" in international sea law

"The principle of delimitation by agreement is the first principle appeared in the law of maritime delimitation"<sup>37</sup>. This is a special seal that marks the entire maritime delimitation law, since it is required in this area that "any delimitation must be consensual between the States concerned, whether by the conclusion of a direct agreement"<sup>38</sup>, or possibly by a substitution path, but always having a consensual basis "<sup>39</sup>. The route of agreement is often taken for any maritime<sup>40</sup> delimitation as the "normal way"<sup>41</sup> because of the privilege<sup>42</sup> it enjoys by asserting it in "customary international law"<sup>43</sup> by its "general application"<sup>44</sup>, a view it reflects the "opinio juris" which, "from the beginning"<sup>45</sup>, "proves itself by way of induction on the basis of (...) a sufficiently substantial and convincing practice, and not by deduction from ideas pre-constituted"<sup>46</sup> so that all states" agree "<sup>47</sup>on its object in the maritime delimitation.

Contrary to UNCLOS Geneva 1958, where this principle governed only the Territorial Sea and the contiguous zone, in the UNCLOS of Montego Bay of 1982 it is found in its article 15 where, "unless otherwise agreed", it prohibits any delimitation of a territorial sea between States whose coasts are adjacent or face each other. In Articles 74 and 83 it

<sup>37</sup>Pellet, A., et Samson, B., « la délimitation des espaces maritimes », in *Traité de droit international de la mer*, Paris, éd. Pédone, 2017, pp. 565-623, p. 576.

<sup>38</sup>A l'issue de l'arrêt intervenu dans les affaires de la mer du Nord, en date du 28 janvier 1971, la RFA et les Pays-Bas ont prolongé par voie d'accord le segment établi en 1964. Voir Nations Unies, Les accords de délimitation des frontières maritimes 1970-1984, pp. 73-80. Dans cette région, on a enregistré une importante activité diplomatique pour la délimitation des frontières maritimes par « voie d'accord ». C'est notamment le protocole au traité du 28 janvier 1971 concernant la délimitation sous la mer du Nord entre le Danemark et le Royaume uni. Voir Nations unies, les accords de délimitation des frontières maritimes, 1989, pp. 81-82, Accord Grande Bretagne/ RFA, Nations Unies, 1989, pp. 83-85, Accord Grande Bretagne/Danemark, Nations Unies, 1989, pp. 63-65 et Accord Grande Bretagne/Norvège du 10 mars 1965, Nations Unies, pp. 44-46 etc.

<sup>39</sup>CIJ, arrêt du 12 octobre 1984, Affaire de la délimitation de la frontière maritime dans la région du golfe du Maine, arrêt du 12 octobre 1984, p.292, par. 89

<sup>40</sup>Dans l'affaire de la délimitation maritime dans la région du golfe du Maine, la Cour énonce des mécanismes de substitution au principe de la délimitation par voie d'accord en ce qu'elle considère que « la règle logiquement sous-jacente au principe que l'on vient de rappeler demande que tout accord ou toute autre solution équivalente se traduise par l'application de critères équitables, à savoir de critères empruntés à l'équité, mais qui - qu'on les qualifie de « principes » ou de « critères » » Voir. p.292, par. 89.

<sup>41</sup>Voir. Lucchini, L, et Voelckel, M., Droit de la mer, Paris éd. Pédone, t.2, vol. I, p.68

<sup>42</sup>Voir. Beer-Gabel, V.J., « Les accords de délimitation maritime, la pratique des Etats, in *Le processus de la délimitation maritime. Etude d'un cas fictif*, Paris, éd. Pédone, 2004, p.323.

<sup>43</sup>Voir. CIJ, arrêt du 12 octobre 1984, pp.292-293, par. 90

<sup>44</sup>Ibid., p. 299, par. 111.

<sup>45</sup>Voir. CIJ, arrêt du 20 février 1969, p. 46, par. 85.

<sup>46</sup>Ibid., p. 299, par. 111.

<sup>47</sup>Voir. CIJ, arrêt du 20 février 1969, p. 46, par. 85.

becomes more extensive not only in calling for any delimitation to be "effected by agreement", it gives strong precision by requiring that this be done "in accordance with international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to reach an equitable solution "and also insists that" when an agreement is in force between the States concerned, the issues relating to the delimitation of the continental shelf are settled in accordance with this agreement "to mark are strongly attached to that principle. The logic that dictates such a consecration has the effect of refuting any unilaterality<sup>48</sup> for a maritime delimitation that concerns a continental shelf; it also proposes to approach the delimitation not in with an idea of distribution, that is to say-to allocate shares of "fair and equitable" spaces. Instead, it would like the delimitation to be considered essentially as an operation which consists in demarcating the zones belonging to each State concerned<sup>49</sup>. This ultimately means that it is the division of the region that results from the delimitation and not the other way round<sup>50</sup>.

When we look more closely, outside the two bounds, that is to say, "the way of agreement" and "the equitable solution", the drafter of the Convention does not set the mechanism for that starting from the so-called "path of agreement" one is able to reach the "equitable solution". Rather, it is limited to making the only incitement that requires the states concerned to delimit to comply only with international law. If, to this point, the problem remains open, we can at least imply that if "no maritime delimitation between States whose coasts are adjacent or facing each other cannot be effected unilaterally", it must, however, strict observance of "equitable criteria and the use of practical methods to ensure, in view of the geographical configuration of the region and other relevant circumstances of the species"<sup>51</sup> the desired result, are not principles of law and therefore not obligatory. The interest of these principles is that they are only a "reasonable" coefficient which leads to a maritime delimitation according to the physical particularities of each case. They also shed light on any possibility of "disagreement"<sup>52</sup> so as to guarantee each State its right to the effective exercise of its sovereignty over the portion that will be allocated to it. They are in fact understood here as "grids of reference which allow to relativize all the factors of a species, with respect to each other, to place them in an equitable relation to each other and by an intellectual operation of synthesis, to integrate them harmoniously into a solution that is meant to be fair "<sup>53</sup>. There are, in fact, no legal limits to the considerations that States may consider in order to ensure that they will apply equitable procedures.<sup>54</sup>

<sup>48</sup>Voir. CIJ, arrêt du 12 octobre 1984, p. 299, par. 112

<sup>49</sup>Voir. CIJ, Tribunal arbitral, arrêt du 30 juin 1977, affaire de la délimitation du plateau continental entre le Royaume Uni, la République d'Irlande du Nord et la République française, Rec. 1977, p. 179, par. 78.

<sup>50</sup>Voir. CIJ, arrêt du 14 juin 1993, Affaire de la délimitation maritime dans la région située entre le Groenland et Jan Mayen (Danemark/Norvège), Rec.1993,p. 67, par. 64.

<sup>51</sup>CIJ, arrêt du 12 octobre 1984, pp. 299-300,par.113.

<sup>52</sup>CPIJ, arrêt du 30 août 1924, Affaire des concessions Mavrommatis en Palestine, Série A/ n°2, Rec. 1924.

<sup>53</sup>Kamga. M., Op.cit., p. 38.

<sup>54</sup>CIJ, arrêt du 20 février 1969, p. 50, par. 93

As a principle established by the UNCLOS of 1982, it is understood through article 2 of the 1969 CVDT which founds an international agreement<sup>55</sup>: Its essential object is that of adopting specific rules, which creates rights and obligations applicable by international tribunals. Its operability is palpably obvious "either by the conclusion of a direct agreement, or possibly by a substitution route, but always having a consensual basis"<sup>56</sup>. The purpose of any "agreement" is none other than "to ensure coexistence and vital cooperation"<sup>57</sup> between States. It thus appears that any maritime boundary established unilaterally, thus "without regard to the views of the other State or States concerned"<sup>58</sup>, and cannot be opposable to anyone. What means otherwise that such a precaution carries undeniable, for the establishment of a beautiful border the obligation of "to negotiate (...) in good faith, with the real intention to arrive at a positive result"<sup>59</sup>.

In this case, a negotiation aimed at delimiting a maritime area must be undertaken "with a view to reaching an agreement and not simply to carrying out a formal negotiation as a kind of precondition for the automatic application of certain delimitation method for lack of agreement ". For this purpose, therefore, the parties must "behave in such a way that the negotiation has a meaning, which is not the case when one of them insists on his own position without considering any modification; the parties are required to act in such a way that, in the present case and taking into account all the circumstances, equitable principles are applied ". It should also be that "the continental shelf of any State must be the natural extension of its territory and must not encroach on what is the natural extension of the territory of another State"<sup>60</sup>. The rationale for these elements is that they allow "having a clear idea of what they can or should accept in a delimitation agreement"<sup>61</sup> because "the delimitation of maritime"<sup>62</sup> areas is a sensitive question "<sup>63</sup>. To properly measure the scope of this sensitivity, an agreement should be read through "its object and purpose" and case law has proposed which cases.

### 3.2 The object and purpose of a maritime delimitation agreement

To penetrate this aspect, some cases can be put to contribution: Guinea / Guinea-Bissau, Kenya / Somalia, Chile / Peru and Denmark / Norway<sup>64</sup>

From the Kenya / Somalia case one can understand that the goal and purpose of a treaty "must be considered as a whole"<sup>65</sup>, in addition that "the purpose of a treaty can be identified by its title"<sup>66</sup>. The judge in this case resorted to the "temporal restriction"<sup>67</sup> to place expressions such as "future delimitation" or "after", directly related to the "moment" of the delimitation to take place<sup>68</sup>. This, because in the Chile / Peru case, he himself noted an important aspect in this connection, which is that in a treaty, the terms used "should not suffer from any ambiguity". They must be "precise", "clear" and well "circumcised". To clarify this fact allusion to the expressions of the type "sovereignty" or "exclusive jurisdiction (...)" on the sea which bathes the coasts of his country up to 200 nautical miles at least from said dimensions" to signify that in presence of such it cannot be said that a delimitation has already or will have to be realized since "their fluidity" dilutes them with the "serious index" which really determines the scope of the maritime boundary between two States.

Still in the Chile / Peru case, there are other elements that appear and that particularize the maritime delimitation treaties. To put it briefly, they must be accompanied first and foremost by an "express reference to the delimitation of the maritime boundaries between the spaces generated by the continental coasts of the States Parties" and then, there must be added "Precise coordinates or cartographic documents"<sup>69</sup>. In addition to this, a maritime delimitation "agreement" must also meet the criteria recognized in any treaty: to be an "international agreement" of maritime delimitation that is "concluded in writing between States and tracing a boundary". It must also be governed by "international law within the meaning of the Vienna Convention on the Law of Treaties" and must "in any event" reflect "customary international law"<sup>70</sup>.

<sup>55</sup>The treaty here understood as "an international agreement concluded in writing between States and governed by international law, ... embodied in a single instrument or in two or more related instruments, and whatever its particular designation".

<sup>56</sup>CIJ, arrêt du 12 octobre 1984, p. 50 par. 89

<sup>57</sup>Ibid., par. 111.

<sup>58</sup>Ibid., par. 89

<sup>58</sup>Ibid., par. 89

<sup>59</sup>Ibidem

<sup>60</sup>CIJ, arrêt du 20 février 1969, par. 85.

<sup>61</sup>Pellet. A. et Samson. , « La délimitation des espaces maritimes » in, *Traité de droit international de la mer*, Paris, éd. Pédone, 2017, pp. 565-623, p. 577.

<sup>62</sup>La délimitation maritime entendue ici consiste, comme le conçoit le droit international, « à tracer la ligne exacte ou des lignes exactes de rencontre d'espaces où s'exercent respectivement les pouvoirs et droits souverains ». Voir.CIJ, arrêt du 19 décembre 1978, affaire du plateau continental de la mer Egée (Grèce/Turquie), Rec. 1978, p. 35, par. 85, CIJ, arrêt du 20 février 1969, p.50, par. 92 et CIJ, arrêt du 19 décembre 1978, p. 89, par. 77.

<sup>63</sup>TIDM, arrêt du 15 mars 2012, Différend relatif à la délimitation de la frontière maritime entre le Bangladesh et le Myanmar dans le golfe du Bengale, p. 39, par. 95.

<sup>64</sup>En complément on peut aussi voir CIJ, l'affaire des plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique) Exception préliminaire, arrêt, C.I.J., 1996, 812, par. 23. Aussi, CIJ, arrêt du 24 février 1982, Affaire du plateau continental (Tunisie/Jamahiriyah arabe libyenne), Rec. 1982, p. 21-22, par. 41 ; RSA, Sentence du 14 février 1985, Affaire de la délimitation de la frontière maritime entre la Guinée et la Guinée-Bissau, p.177, par. 72.

<sup>65</sup>CIJ, arrêt du 2 février 2017, Délimitation maritime dans l'océan indien (Somalie c. Kenya), Exceptions préliminaires, Recueil 2017, par. 70. Voir aussi. CIJ, arrêt du 17 mars 2016, p. 118, par. 39.

<sup>66</sup>Ibid. par. 80.

<sup>67</sup>CIJ, arrêt du 2 février 2017, Délimitation maritime dans l'océan indien (Somalie c. Kenya), Exceptions préliminaires, Recueil 2017, par. 70. Voir aussi. CIJ, arrêt du 17 mars 2016, p. 118, par. 39.

<sup>68</sup>Voir. CIJ, arrêt du 2 février 2017, par. 80.

<sup>69</sup>CIJ, arrêt du 27 janvier 2014, affaire du différend maritime (Pérou c. Chili), arrêt, Rec. 2014, par. 58, p.28.

<sup>70</sup>CIJ, arrêt du 10 octobre 2002, affaire de la frontière terrestre et maritime entre le Cameroun et le Nigéria (Cameroun c. Nigéria; Guinée équatoriale (intervenante)), Rec.2002 p. 429, par. 263.



To these constraints presented above, the judge, in Guinea / Guinea Bissau, was obliged to respect in order to reach delimitation in the respect of the international law. In his approach he highlighted *Utipossideti juris*<sup>71</sup>. For this case, three important issues were raised in Article 2 of the Arbitration Agreement. If the first two were concerned about the scope of the convention signed in 1886 between France and Portugal in the maritime determination of the two States, the third, it sought the precision of the line in the delimitation between the maritime territories under each Parties. In the first phase, the judge had proceeded to "the interpretation of the 1886 convention in general". In the second, he dealt "in particular with the interpretation of this convention on the basis of its preparatory work, which is constituted (...) by the protocols containing the summary minutes of the negotiations leading to the signing of the convention and, in the form of annexes, by the full texts of some of the speeches delivered and by various other documents, to which [he has attached] some diplomatic or parliamentary texts"<sup>72</sup>.

Returning to the same bases, it will also be noted that these aspects led the Court in the Denmark / Norway case not to consider "the agreement of 8 December 1965" "the median line" as being the line defining the delimitation of the plateau between the two states in Greenland and Jan Mayen as well as Norway<sup>73</sup>. On the same basis, even when the judge wanted to read "the conduct of the parties" concerning the delimitation of the continental shelf and the fishing zone, he failed to reach another conclusion. To be fair, it did not consider that "a line of delimitation constituted by the median line is already" in place ", either as delimitation line of the continental shelf or as delimitation line of the fishing zone"<sup>74</sup>. After the application of this principle, it remains now to verify in relation to this reality the problem raised by the Agreement of 31 July 2007.

### 3.2.1 The agreement of July 30, 2007 at the press of international law

At this stage, it will be a question of reading the agreement of 31 July 2007 through the 1982 UNCLOS measure and the case law on maritime delimitation which enshrines and explains "delimitation by agreement" and through the 1969 CVDT that a treaty must be interpreted according to the "object and purpose".

#### 3.2.1.1. Principles to the problem

The transposition of the above principles into the case under study allows us to focus quite precisely on the problem raised by the Agreement of 30 July 2007.

To the happiness of the two states, the quarreled continental shelf is a true natural extension of the terrestrial base of their territories at sea; it does not call for debate. The question that remains, however, is the meaning of the negotiation which gave rise to the conclusion of that agreement and to the agreement itself.

<sup>71</sup>RSA, Sentence du 14 février 1985, par. 38.

<sup>72</sup>Ibid. par. 39

<sup>73</sup>Voir. CIJ, arrêt du 14 juin 1993, p.56, par. 40.

<sup>74</sup>Ibid.

Indeed, to take the agreement of 30 July 2007 as the basis of the delimitation invites us to consider also the easy scope of the "equitable solution" to be reached as the final result of the delimitation, counting on all the relevant circumstances of the species. In view of the vicissitudes of the "maritime zone", there emerges the possible risk of an orientation of the lines, which, possibly, would not differ from the Gambia / Senegal case. However, if for this case this trajectory was not a problem, it may not necessarily be the case for R.D.Congo and Angola. In the very short term, this choice can certainly also become a source of conflict because of the encroachment that can be seen in the maritime areas of the Republic of Congo and the Republic of Gabon at the farthest. Under this prism, it is difficult to admit that such a perspective would offer an obvious guarantee of achieving a real "equitable result"<sup>75</sup>.

Another fact is that Angola insists and uncompromisingly insists on its position. In spite of the real and visible difficulties that delimitation realized on the basis of the agreement of July 30, 2007, it does not intend to consider another possibility of delimitation outside the latter. However, as we have just seen, this rigidity stems from the difficulty of all the relevant circumstances of the case, which will prevent the application of equitable principles. This way of doing things finally raises questions about the nature of the act and even the negotiations that made it exist. Far from any subjectivity, reading the Angolan attitude tends to deliver a taste of hypocrisy. It seems that Angola did not hear them other than as a strategy that could lead to results it had already set before. To fit the terms of the ICJ, "as a kind of precondition for the automatic application of a certain method of delimitation". This is unmasked from the description it makes of its maritime territory in its submission and the terms used to justify it. It is, moreover, against this background that R.D.Congo considers that Angola "is unaware" of its rights, which is all the more so because the debate on it has not yet been exhausted. A final fact that is revealed in this same order is related to Angola's opposition to Gabonese submission claiming that it encroaches on "signed rights of another state" without specifically mentioning which state what is the agreement and what is the agreement? But everything suggests that it could not be otherwise if it is not that of July 30, 2007.

#### 3.2.1.2. Analysis of the agreement of July 30, 2007 in relation to its title and content

##### (a) In relation to the title and preamble of the Agreement

The Agreement of July 30, 2007 has a specific title: "Agreement on the exploitation and production of Hydrocarbons in the maritime area of common interest between the Democratic Republic of Congo and the Government of the Republic of Angola". This is an important factor. It helps to assert itself on the ambition of the two states by signing such an agreement that it would finally be unacceptable to assign another purpose to it while it is so clear from its title. Its object is even specified in the preamble. It seeks to strengthen by this means "the historical links of friendship, solidarity and neighborhood". It thus contributes to the promotion of "successful economic

<sup>75</sup>Nous sommes en présence ici d'une zone concave. Voir. CIJ, arrêt du 20 février 1969, p.17, par. 8

cooperation" by creating "favorable conditions for exploitation and production for the exploitation and production of hydrocarbons in an area of common interest".

#### (b) In relation to the content of the agreement

Article 1 of the Agreement establishes the geographical framework of the area of the exploitation area as follows: "the ZIC is located in the maritime area lying between the north of Block 1, the south of Block 14, the North of block 15 and the north of block 31 of Angolan oil concessions (...) ". The desire to exploit in common takes form in article three, which determines "the distribution of [the] interests of the parties" at the rate of 50% of production for each of them.

Apart from the fact that the Agreement places the ZIC in the "Angolan oil concessions", nowhere else is there any reference to any delimitation starting from the said treaty in clear and precise terms. At this point, we cannot attribute to the treaty a thought which it has not formulated expressly. It would be better to lean towards an invitation, translated by an "express consent" from Angola to R.D.Congo for joint exploitation in the "Angolan waters".

#### 3.2.2. Consequences to be drawn

Of the two aspects some consequences can be extracted, the most important of which is the one that shows the integrity of the rights of the two states in each maritime area. This is apparent from the "single article" of the Act "which authorizes the ratification of the agreement on exploration and exploitation in a maritime zone of common interest (...) between the Democratic Republic of Congo". It states that the creation of this area of exploitation is "without prejudice to the delimitation of maritime boundaries between the two countries". This consideration in no way contradicts the whole body of the Treaty, which does not in any of its provisions refer to any delimitation of maritime boundaries. Nor does it say that the said agreement would serve as a basis for future delimitation in the area disputed by the two States.

Another fact emerges from the ample and abundant proof which emerges from the diplomatic notes exchanged between the two States. Above all, we can note those submitted by R.D.Congo to the United Nations to support the non-existence of any agreement relating to the delimitation of the maritime boundaries between the two States. On more than one occasion, the DRC has indicated that "it does not intend to obtain access to the high seas by the Agreement of 30 July 2007 (...) at the risk of encroaching on Republic of the Congo and the Republic of Gabon, but in accordance with paragraph 1 of the United Nations Convention on the Law of the Sea ". It can also be seen that in all the different articulations of the agreement, the latter is more concerned with the economic aspects, the distribution of dividends that would result from the exploitation of maritime resources and the methods of settling disputes that would interpretation or its application. Maritime boundary issues are totally absent.

We can also note another failure in this agreement, in its appendix, there is not attached a map that would explain the existing coordinates in its content as required by

international law. Considering the title and content of the Agreement of 30 July 2007, it cannot be believed that it cannot be profitable, at least until this stage, in the discussions on the delimitation of maritime borders between DRC and Angola for two reasons: Failure to be convincing evidence and due diligence.

#### 3.2.2.1. Failure to "convincingly prove"

The fact here is clarified by the attitude of Angola which has involved Gabon in this sequence. Indeed, when the Republic of Gabon submitted its bid to the United Nations for the extension of its continental shelf, it saw Angola opposing it arguing that it would infringe on "the agreement between him and another frontier State ". Such an attitude would at least cause astonishment since Gabon shares no border with R.D.Congo. Especially since in reality the Gabonese submission is not the subject of any dispute with another State<sup>76</sup>. In this case, in the event of a dispute against Gabon's right to extend its continental shelf, the preliminary and even fundamental question "will be that of the burden of proof. As the Court has stated on a number of occasions, it is for the party who puts forward a factual basis in support of its claim that it is incumbent to establish, (...) the burden of proof (...) »<sup>77</sup>.

Indeed, "once two States have agreed on their maritime boundary, the fact that one of them unilaterally denounces this agreement does not affect the validity of the border, which remains intact"<sup>78</sup>, because once concluded a boundary treaty "binds the parties and must be performed by them in good faith"<sup>79</sup>. In considering "the general purpose of the maritime boundary"<sup>80</sup>, "no rule of international law authorizes a State to unilaterally denounce an agreement establishing a land or maritime boundary (...)".

The opinion of a State judging a previously agreed "unfair" land or maritime boundary is all the less a valid reason for excluding that boundary [because.] a duly agreed frontier can only be modified by the consent of the parties to the border agreement. In short, the validity of a boundary agreement must be assessed in the light of the circumstances prevailing at the time of its conclusion. Otherwise, the stability of borders, an essential component of international relations, would be constantly threatened"<sup>81</sup>

Unfortunately for Angola, "the absence of writing renders proof of the agreement particularly difficult for the State

<sup>76</sup>Voir. République Garonnaise - Soumission de la République gabonaise pour l'extension du plateau continental au-delà des 200 milles aux termes de l'article 76 de la CNUDM, Document de synthèse, p.1.

<sup>77</sup>CIJ, arrêt du 3 février 2009, délimitation maritime en mer Noire (Roumanie c. Ukraine), Rec. 2009, p.86, par. 68 et TIDM, arrêt du 23 septembre 2017, différend relatif à la délimitation de la frontière maritime entre le Ghana et la Côte d'ivoire dans l'océan Atlantique (Ghana/Côte d'ivoire), Rec. 2017, p. 73, par. 221.

<sup>78</sup>CIJ, Pérou/Chili, contre-mémoire déposé par le gouvernement du Chili, volume I, [Traduction du Greffe], pp.205-206.

<sup>79</sup>Ibid., pp.205-206.

<sup>80</sup>CIJ, arrêt du 27 janvier 2014, p. 45, par. 111.

<sup>81</sup>CIJ, Pérou/ Chili, (2010), contre-mémoire déposé par le gouvernement du Chili, volume I, [Traduction du Greffe], pp.205-206.



invoking it"<sup>82</sup> It is in fact by this means that one can satisfy the "standard of proof" which affirms the perfect agreement of the wills of the parties to a maritime delimitation treaty. Instead, it has merely limited itself to arguing that the party targeted by Gabon "is on the prolongation of the exclusive economic zone of another State and, as such, impinges on international treaties which are in force between Angola and neighboring states"<sup>83</sup>. Referring to the Romania / Ukraine case, it states that "the wording of paragraphs 4 of Articles 74 and 83, which provides that, where an agreement is in force between the States concerned, the questions relating to the delimitation of the Exclusive Economic Zone and the Continental Shelf "are settled in accordance with this Agreement" [would like] to specify that "the word" agreement "contained therein (as well as in other provisions of the corresponding article) refers to the agreements respectively delimiting the zone exclusive economic system (Article 74) or the continental shelf (Article 83) referred to in paragraph 1 "<sup>84</sup>. But here, it is clearly visible that "there was no express or tacit (...) agreement (...) in the area (...) "<sup>85</sup>.

For the same reason, the Court in Ghana / Côte d'Ivoire was sharp on the fact that Ghana's 2007 instrument was brandished because it "does not any reference to any existing boundary or to its location". It should also be noted that none of the references contained therein refers to a boundary, especially since the said Agreement does not contain a legend indicating the existence of a frontier; the only indicative information contained refers to oil concessions<sup>86</sup> but nothing in relation to the exclusive economic zone or the continental shelf. Consequently, it cannot be relied on the existence of an Agreement in force between R.D.Congo and Angola delimiting between them the exclusive economic zone and the continental shelf, even "temporarily".

Although reproachful, however, it can be said that the conduct of R.D.Congo gives way to "the need to exercise restraint so as to maximize the chances of resolving disputes by peaceful means and avoiding conflict". She may be hoping to give advantage to the "spirit of understanding". However, it is an attitude that makes no sense, given the time factor, which passes, and its nonchalance does not help on the economic level. In the same condition, Angola uses its know-how and exploits the resources of the area so R.D.Congo cannot do otherwise than wait and be satisfied with a triangle that finds no explanation in law. With that, we cannot even say that it shows "prudence" in the expectation of a formal delimitation of their maritime boundary, in order to maintain good neighborhood relations<sup>87</sup> because once the area emptied of its resources, surely Angola will no longer pray to free her.

### 3.2.2.2. Breach of duty of care and diligence

Article 83 para. 3 of UNCLOS have put in place a procedure applicable in the event that a delimitation agreement has not occurred as is the case between R.D.Congo and Angola. This procedure is based on two obligations: "to do everything possible to conclude provisional arrangements of a practical nature" and "not to compromise or hinder the conclusion of a definitive agreement".

"The first of the two obligations under Article 83 (3) of the Convention constitutes an obligation of conduct, as evidenced by the words "do everything possible ". This is an obligation which "aims to promote practical interim regimes pending final delimitation"<sup>88</sup> and the second, "the obligation" not to compromise or hinder "is a fundamental duty restraint in the disputed area pending the conclusion of the said agreement "<sup>89</sup>. "The language used makes it clear that this is not an obligation to reach agreement on interim arrangements". It recalls, however, that "the parties concerned are required to act in good faith [because] this obligation is reinforced by the fact that these acts must be performed" in a spirit of understanding and cooperation ".

It is true that this obligation does not oblige the States "to obtain in each case the result". However, it invites them to "exercise caution and restraint in the area whose legal status is to be decided. This obligation [will] therefore be violated when a State lacks this prudence and moderation (...) "<sup>90</sup>. Its particularity is simply to impose the adoption of the necessary measures that may be regulatory or administrative and to implement them. It is even for this purpose that the Parties must therefore "exercise due diligence"<sup>91</sup> because "it is rather an obligation to put in place the appropriate means, to strive as much as possible and do everything possible to achieve this result"<sup>92</sup>. " By using the terminology of international law, this obligation can only be understood as an obligation "of conduct" and not "of result", and as an obligation of "due diligence"<sup>93</sup>.

In relation to the second obligation, it is obvious that it "does not mean the complete prohibition of the activities of the States concerned in the maritime zone in question". (...) But, at least, she believes that "when an interim arrangement exists, it is expected that activities will proceed in accordance with this arrangement" in the area to be delimited. Is it necessary to know that Article 83 (3) of the UNCLOS does not specify "actions that would compromise or hinder the conclusion of a definitive agreement"? However, "an essential criterion is whether the actions in question would endanger the process of concluding a definitive agreement or hinder the progress of negotiations towards that result. In other words, it is a notion related to

<sup>88</sup>TIDM, arrêt du 23 septembre 2017, Opinion individuelle de M. le juge Paik, p.2, par.3.

<sup>89</sup>Ibid.

<sup>90</sup>Ibid.,p.7, par.7.

<sup>91</sup>CIJ, arrêt du 20 avril 2010, affaire relative à des usines de pâte à papier sur le fleuve Uruguay (Argentine c. Uruguay), Rec. 2010, p.77, par. 187

<sup>92</sup>TIDM., Avis consultatif du 1er février 2011, Chambre pour le règlement des différends relatifs aux fonds marins du tribunal international du droit de la mer, Rec.2011, p. 38, par.110

<sup>93</sup>Ibid., p. 38, par.110

<sup>82</sup>TIDM, arrêt du 23 septembre 2017, p. 68, par. 205.

<sup>83</sup>Voir. République d'Angola, Note verbale du 07 juin 2012, p.1

<sup>84</sup>CIJ, Arrêt du 3 février 2009, p.87, par. 69.

<sup>85</sup>Tribunal arbitral, sentence du 11 April 2006, p.80, par.107.

<sup>86</sup>Voir. TIDM, arrêt du 23 septembre 2017, p. 75 par 226 et CIJ, arrêt du 3 février 2009, p.42, par. 126.

<sup>87</sup>Voir. TIDM, arrêt du 23 septembre 2017, p. 75, par 226 et CIJ, arrêt du 3 février 2009, p.43, par. 127.

the result. Consequently, all this amounts to saying that "actions" "depend to a large extent on the circumstances of each species"<sup>94</sup>.

However, as a whole, which may be in the middle of the variety of each case, it is necessary "for the purpose of determining whether the conduct of a State would have the effect of impairing or hindering the conclusion of a definitive agreement, (...) to consider factors such as: "the nature of these facts, the place and time they occurred and the manner in which they were performed". For these factors, "there is no single test or criterion to apply systematically in all situations". Thus, "a court that has to rule on the violation of Article 83, paragraph 3, of the Convention should take into account all these relevant factors and assess them in relation to the relations between the States concerned before taking its decision"<sup>95</sup>.

In the present case, to the disadvantage of Angola, it is found that it has notoriously missed these two obligations on the space to be delimited. His negative attitude, which will certainly give rise to reparations<sup>96</sup>, is shown by extensive exploration and exploitation in the disputed area. This is determined even by the description of its maritime territory, which inevitably absorbs the maritime territory to which R.D.Congo claims. It argues through its diplomatic acts that Angola "violates" and "ignores" its rights over its maritime area. In a rather indicative way, this transcendental attitude certainly asserts itself on its advantage in the region and which overrides the necessity of good neighborhood. Just as much, it seems clear that this is clearly "a lack of restraint" to the obligation of behavior of Angola. It may be noted that this one does not reserve to lead in the zone in dispute of important "highly invasive" activities, the quarreled space could well fall in the field claimed by R.D.Congo after a real delimitation.

#### 4. Conclusion

The elements reviewed demonstrate the absence of a border demarcation agreement between R.D.Congo and Angola. It is not necessary to fear that in the event of submission of this dispute to an international court that this would constitute a basis of delimitation. As much as the law of the sea and delimitation is explicit in fact, the law of the treaties would say the opposite. The limit of the agreement of July 30, 2007 can only be considered in relation to the exploitation of the Joint Interest Zone and not to a future delimitation. He is not even at the beginning of "a provisional arrangement of a practical nature".

<sup>94</sup>TIDM, arrêt du 23 septembre 2017, Opinion individuelle de m. Le juge Paik.p.3, par.6.

<sup>95</sup>Ibid., pp. 5-6, par. 10

<sup>96</sup>Ceci ressort de ce que Cour a dit que toutes les « questions (...) libellées en termes juridiques et soul[evant] des problèmes de droit international (...) sont, par leur nature même, susceptibles de recevoir une réponse fondée en droit ». Voir CIJ, Avis consultatif du 22 juillet 2010, Conformité au droit international de ladéclaration unilatérale d'indépendance relative au Kosovo, Rec. 2010, par. 25 et CIJ, avis du 16 octobre 1975, Sahara occidental, Rec. 1975, p.12, par. 15.

However, if that were the case, we can be sure that the choice of such an option, by the two States, before proceeding to any delimitation, does not respect the terms of Article 83 of the UNCLOS 1982. Indeed, "States may resort to one or more arrangements pending delimitation only if, in accordance with paragraph 2 of this article," they fail to reach agreement within a reasonable time ". However, until proven otherwise, it is difficult to find in the diplomatic annals of the two States bases that indicate difficulties in the delimitation of their continental shelves until the conclusion of the agreement of July 30, 2007. In doing so, none of the "(...) two governments, Angolan and Congolese, can not avail themselves of Article 83 which they have deliberately violated"<sup>97</sup>, and Angola will never be able to use this agreement to justify an orientation of the segments of the maritime borders to which it claims. The rights of the two States, under the law of the sea are therefore still intact and the DRC will have to do so not to lend its flanks fraudulent use of the agreement in which Angola tends to register because, basically, the agreement will have no impact in the delimitation to be made between the two states. In this case, therefore, Article 83 (3) of UNCLOS 1982 cannot be invoked by relying on the agreement of 30 July 2007. Only the delimitation agreement signed between Portugal and Belgium in 1885 will have advantage as the sole basis of their delimitation.

As inevitably it is a succession of States to the treaties concluded by different powers, the "way of agreement" allows only one way out: to apply the principle of *Uti possidetis juris*, ie the maintenance of the new State in the borders inherited from the colonial powers. Reasonably, these frontier treaties remain true bases of analysis if it is necessary to go in the direction of the right not to bring "harm as such: a) To a border established by a treaty; or (b) treaty obligations and rights relating to the regime of a boundary "<sup>98</sup>.

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<sup>98</sup>CVDT, article 11

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