

Ghana and Cote D'Ivoire Boundary Dispute: The Customary Agreements that Dispel a Looming Interstate War

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Abstract

The application of customary laws between two disputant states is quite cumbersome if there is no written agreement. I explore how customary equidistance laws are used as a frame work to resolve a conflict between two disputant states. Customary equidistance laws are prominent in maritime boundaries. Ghana and Cote D'Ivoire have a long history of written agreement to safeguard their maritime boundaries. This customary agreement was observed by the two countries for five decades without any rancour. The Ivorian government only became alarmed when Ghana made a substantial oil discovery next to the equidistance line bordering the two nations. This oil findings led to a diplomatic row between Ghana and Cote D'Ivoire, which needed the intervention of a third neutral party. The International Tribunal for the of the Sea (ITLOS) acted as an arbitrator to resolve the impasse between Ghana and Cote D'Ivoire. Prior to ruling, ITLOS placed an embargo on Ghana from drilling new wells in the disputed area. The embargo was disruptive to oil companies in Ghana. In the year 2016, the revenue of oil companies in Ghana fell by 50 percent.

Key words: Customary laws, diplomatic row, disputed boundary, oil exploration, Ghana and cote D'Ivoire

1. Background of the boundary conflict

In 2007, Ghana made a significant discovery of crude oil next to the boundary with Cote D'Ivoire. The discovery has brought hope and investment opportunity to the business fraternity in Ghana. The country named the oil fields as 'Jubilee' fields to coincide with Ghana's 50th independent anniversary, Golden jubilee. The jubilee field is located 60 kilometres off the Ghanaian coast near Cote D'Ivoire. In 2013, the oil companies in Ghana further discovered large quantity of crude oil in Tano, closed to the Ivorian border. However, the exact position of the oil wells became of great interest to the Government of Cote D'Ivoire. The Ivorian government enquired if Ghana was drilling in the Ivorian territory. Several foreign and local companies were involved in the oil exploration exercise near the disputed area.

Oil production officially started on commercial scale in 2010 with high expectations to improve the quality life of Ghanaians, many of whom were living on under just two dollars a day prior to the discovery of oil (World Bank, 2015). The Ghanaian government introduced a compensation scheme to benefit the local residence from potential effects of oil drilling. However, oil activities near the border of Cote D'Ivoire was legally challenged by the Ivorian government. The Ivorian government claimed the oil was in their territory, and therefore disapproved the activities of oil companies in Ghana near its boundary. The Ivorian government officially reported Ghana to the international tribunal for the law of the Sea (ITLOS) in 2014. This move taken by the Ivorians did not go down well with the oil companies operating in Ghana. Subsequently, ITLOS responded to the Ivorian complaint, by putting provisional embargo on Ghana from drilling new oil wells in the disputed territory.

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While both Ghana and Cote D'Ivoire awaits the ruling of ITLOS, oil companies and business owners in the oil industry were in a dilemma, and keen on the ruling to decide on future investment.

The essence of ITLOS coming in as a mediator was to engage Ghana and Cote D'Ivoire to reach an agreement and to improve their relationship. Since both Ghana and Cote D'Ivoire seek international mediation to resolve the dispute, both parties promise to respect the international law and treaties both countries signed up to resolve the standoff. Mediation is assistance to two or more interacting parties (Gutterbrunner & Wagner, 2016). Nevertheless, this third party usually has no authority to impose an outcome. While the international mediation body was considering both arguments from Ghana and Cote D'Ivoire, Individuals running oil companies in the disputed area see this as an opportunity to bring a lasting solution to the disputed territory, while awaiting the court outcome. This phenomenon oil companies were going through can be nervy, and counterproductive regarding investment in the oil industry. The provisional embargo placed on Ghana by the ITLOS made oil companies to put all potential investment in the disputed territory on hold, until the court ruling was known.

2. The contested maritime boundaries and the legal framework

Ghana and Cote D'Ivoire had no official maritime boundary, until when the two countries got their independence from the British and the French respectively. The two countries felt it was time to create an official maritime boundary following series of clashes between fishermen of both countries. The creation of this maritime boundary was to de-escalate the tension between the two countries. Scholars such as Newman (2006), Scott (2013) posited that the primary functions of borders are to protect what is inside from outside. Nevertheless, various scholars believe that some state authorities may build a strong wall and fences between other states, to prevent outside influence (Hsiao, Tsai & lee, 2012). Kosslov and Scott (2013) argue that the creation of everyday borders is through political dialogue, and representatives of various institutions like the media and academic scholars. This bordering process must involve scholars with the technical knowhow to create the borders in social context. However, boundaries alone do not determine the state of an economy, it is the ability of state institutions to harness the resources within these boundaries that will generate economic growth.

Understandably, Ghana and Cote D'Ivoire were defending the oil resources in their respective territories from foreign intrusion. Due to lack of legal procedures in place, Ghana and Cote D'Ivoire relied on the legal framework of the United Nations Convention for the Law of the Sea (UNCLOS) to resolve the maritime boundary dispute between the two countries. The United Nations adopted the maritime law of the sea in 1958 and 1982 respectively. This law became a universal legal document on the sea, by all countries that signed up to the agreement (Hooydonk, 2014). Ghana adopted the principles of the law of the sea into national legislation. Shortly after the UN convention in 1982, the republic of Ghana then ratified the UN convention in 1983 into national law, when there was a prospect of oil exploration in the maritime zones (Ghana maritime Authority Act, 2002). This maritime act was in line with the provisions of the UNCLOS, which gives the republic of Ghana the responsibility to monitor, regulate and coordinate activities in the maritime industry in Ghana.

The area of contention between Ghana and Cote D'Ivoire is within the Economic Exclusive Zone (EEZ), where gas and petroleum products become a prominent feature (Walker, 2015). In accordance with the article 57 of the UN convention on law of the sea, the exclusive economic zone is an area adjacent to the territorial sea, which does not exceed 200 nautical miles from the baseline where the territorial sea is measured. By this provision other states besides the coastal state, may use the Ghana EEZ lawfully to lay submarine cables and pipelines, navigation and overflight (Li & Amer, 2013). Nevertheless, the oil findings made by Ghana in the disputed territory fall within the Exclusive economic zone. By the provision of Article 56 of the UN convention however, Ghana was granted the exclusive right to exploit and manage natural resources such as crude oil and energy within that periphery. According to article 59 of the UN convention, in case the convention does not make adequate provision in some aspects of the exclusive economic zone, coastal states may resolve disputes by taking the interest of all disputant parties into account (Butcher 2013; Okafor-Yarwood, 2015). Consequently, Article 87 of the UN convention states that all states have the freedom to use the high sea for navigation, overflight, laying marine cables, and the freedom to establish artificial islands according to international law (Korger 2017; UNCLOS, 2013).

In accordance with article 287 of the UN Convention, all states are free to choose one of the following bodies to settle disputes (a) the international tribunal for the law of the sea (ITLOS). (b) The international court of justice (ICJ), (c) an arbitral tribunal, and (d) a special tribunal (Ali & Tsameny 2013; Butcher 2013; Okafor-Yarwood, 2015). Ghana and Cote D'Ivoire opted for ITLOS as an arbitrator to resolve their boundary dispute.

3. Delimitation of the maritime boundaries

In dealing with the dispute between Ghana and Cote D'Ivoire, ITLOS used the provisional measure enshrined in article 290 of the UN convention to stop Ghana from drilling oil in the disputed area with Cote D'Ivoire. In the 1950's, both Ghana and Cote D'Ivoire generally agreed in principle to delimit the maritime boundary between the two countries in accordance with international law. After the agreement between Ghana and Cote D'Ivoire, both countries respected and acknowledged that the territorial sea boundary between the two countries commences from the boundary pillar (BP) 55 (See figure1)². Ghana refers to this line as 'Customary Equidistance Boundary' (CEB) (ITLOS, 2015). In 2013, Ghana made further significant discovery of oil at Tano, in the eastern frontier of the CEB. This development led to diplomatic row between Ghana and Cote D'Ivoire seeking a peaceful solution to the common maritime boundaries. Cote D'Ivoire denied there was an agreement in place between the two countries (Raymond, 2014). The Ivorian's then proposed to the ITLOS to redefine the boundary between the two countries by using the meridian line (see figure 1).

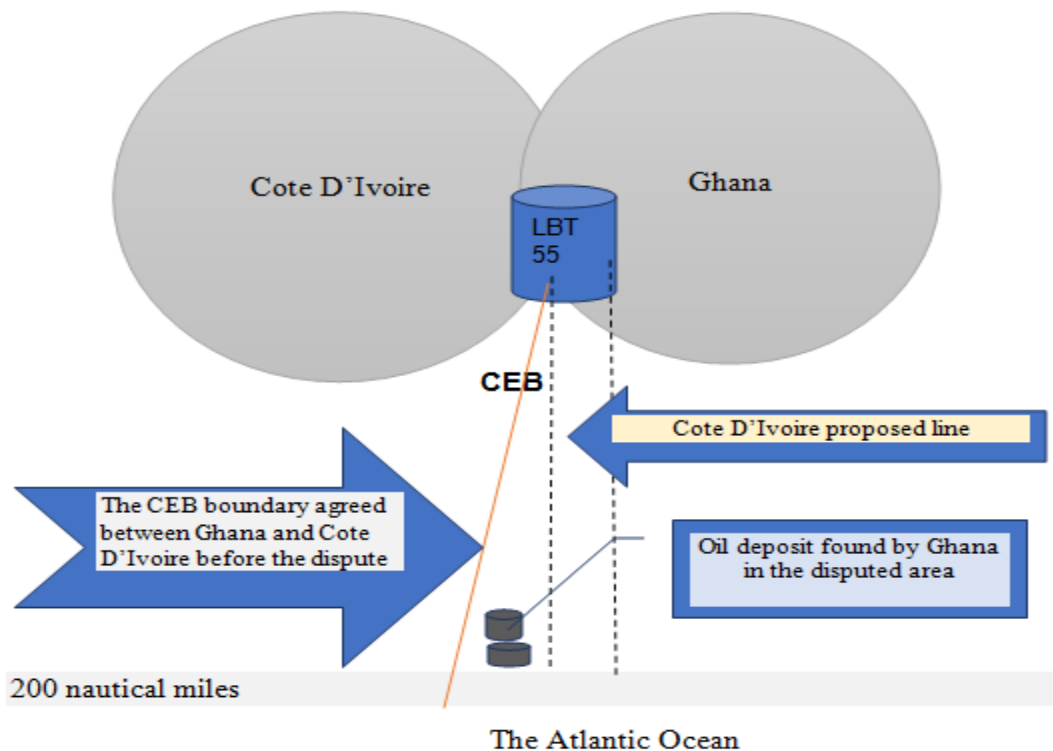


Figure 1 showing customary equidistance boundary (CEB) and the disputed boundary between Ghana and Cote D'Ivoire

The new proposal meant Cote D'Ivoire completely laid a claim over the entire oil findings made by Ghana in the disputed area. The Ivorian proposal therefore brought the originally agreed equidistance boundary by the two countries into dispute. Ghana referred to the historic agreement as customary because the two countries became accustomed to the agreement for a long period. The equidistance principle is a legal concept which requires coastal countries with shared maritime boundaries to observe a median line measured from the shore. There have been misgivings about the customary equidistance laws by the International Court of Justice (ICJ). The ICJ considered the customary equidistance laws inequitable to generate the desired results.

²The pillar BP 55 is a physical marker that shows where the land boundary ends between Ghana and Cote D'Ivoire. It also serves as a base where all the measurement of the maritime boundary commences.

In 1982, the ICJ completely removed the customary equidistance law from Article 74 and 83 of the convention, but only remained in Article 15 of the convention (UNCLOS, 2019).

In applying the principle of customary equidistance line, the ICJ encountered few challenges to resolve boundary disputes in Africa. For example, the ICJ had difficulties in resolving the oil rich Bakassi peninsula between Nigeria and Cameroon. This method was separating families who are Nigerians and living in the disputed territory of Cameroon. When the ICJ finally issued its ruling in favour of Cameroon, the Nigerian military government and the residents of Nigerian descent contested the ruling (Kah, 2014). Though the customary equidistance lost its popularity with the ICJ, many states such as Ghana and Cote D'Ivoire, adopted the customary equidistance method as appropriate in their bilateral agreement. The two countries thought it was convenient to use the equidistance line, because the disputed boundary is offshore and does not involve human settlement, hence, the issue of separating family ties does not arise. However, either Ghana or Cote D'Ivoire could modify the agreement according to the ICJ interpretation. What is significant about this agreement was that the document was written and signed by the leaders of the two countries. There was no provision for one party to alter the agreement although either party could initiate the process. It was on this basis the Ivorians were proposing a bisector or meridian approach to redefine the boundary between the two countries. The reaction of the Ivorians was partially in denial of any agreement with Ghana to justify their claim over the disputed territory. Because the agreement between the two countries was a written one, the Ivorian government had little room to justify there was no agreement in place.

According to article 74 of the UNCLOS, Coastal states may resolve disputes through agreements. All states are encouraged to agree on common terms before taking any case to the international courts or tribunal. For example, in 1989 Australia and Indonesia signed an agreement to establish a three zone of cooperation. Zone A under the joint control between Australia and Indonesia. Zone B under Australian control, and zone C under Indonesian administration (Dolven, Kan & Manyin, 2013). In this Perth agreement, Australia exercises the right to explore and exploit petroleum in overlapping areas with Indonesia. However, the two countries must give each other a three months' notice before undertaking any exploration activities in the overlapping area of the treaty (Buthcher, 2013; UNCLOS, 2013). Ghana and Cote D'Ivoire do not have overlapping territory as Australia and Indonesia where they could share the common resources equitably. But there is a customary written agreement between the two countries in the last five decades to respect each other's territory. Similarly, Saudi Arabia and Bahrain signed a customary agreement in 1958 over oil fields. In this agreement, Saudi Arabia and Bahrain agreed to settle the problem of the Fasht, Bu Saafa oil field (Fanack, 2017; Report, 2012). Both the Saudi's and the Bahrainis did not use the meridian line principle, which the Ivorian government proposed to the ITLOS in their case against Ghana. Instead, Saudi Arabia and Bahrain agreed to use the zone principle around the oil deposit. In this agreement, Saudi Arabia took control of the oil fields, and agreed to share the oil revenue with Bahrain (Fanack, 2017). The UNCLOS did not intervene between the Saudis and the Bahrainis, it was the customary agreement that saved the squabble between the two kingdoms. A similar boundary dispute between Ghana and Cote D'Ivoire was recorded between Tanzania and Malawi. In 1890, the two countries observed the Heligoland treaty signed between the Germans and the British³, until early 2000 when the Tanzanian government disputed the boundary of the customary international law (Mahony, Clark, Bolwell, Simcock,

Potter & Meng, 2014). The Heligoland treaty gave the entire eastern shore of Lake Malawi to Malawi. In the mid 1990's, Tanzania did not recognize the Heligoland treaty by drawing a median line boundary in Lake Malawi. The Tanzanian government does not even rule out going to war over the disputed boundary with Malawi. Similarly, both Ghana and Cote D'Ivoire were at a breaking point when the Ivorians thought Ghana was stealing their oil under their watch.

International relations between Ghana and Cote D'Ivoire then reached a stalemate. Ghana and Cote D'Ivoire are sovereign states, and wanted to maintain the status quo hence, cooperation and coexistence is required to deal with each other. Military option is not an effective mediation instrument in international politics (Buchanan & Moore 2003; Noh, 2014). Ghana and Cote D'Ivoire did not want to resolve their boundary dispute through the barrel of a gun, by referring the matter to the UN.

³ The Anglo- German agreement of 1890 first gave Germans the strategic control over the Island of Zanzibar, which is part of Tanzania today. The Germans in return sacrifice part of Lake Nyasa or lake Malawi to the British. The Germans at that time needed to control the Island of Zanzibar for the use of their navy.

The UN on its part, mandated the ITLOS to step in to resolve the territorial dispute between Ghana and Cote D'Ivoire. The disputant parties first presented their cases to the ITLOS. Cote D'Ivoire claimed the boundary between Ghana and Cote D'Ivoire follows the 168.70 azimuth line⁴, from boundary pillar 55, which extends to the Ivorian continental shelf. Cote D'Ivoire disapproves the oil exploration activities undertaken by Ghana as illegal, and thus constitutes a violation of rights and sovereignty of the Ivoirians. Cote D'Ivoire claimed Ghana did not observe the provisional embargo of the UN because Ghana continued to exploit oil in the jubilee fields, which are separate from the disputed area. From the Ivorian interpretation of the ITLOS provisional ruling, Ghana was to suspend all oil exploitation in the area including the Jubilee fields. This culminated in their decision to request the ITLOS to stop Ghana from oil exploration entirely.

Ghana responded to the Ivorian claim by requesting the ITLOS to acknowledge there was an agreement signed between Ghana and Cote D'Ivoire over the equidistance maritime boundary within 200 miles. Ghana argued that, the maritime territory beyond 200 miles is equidistance subject to national jurisdiction. The land boundary terminus and starting point agreed between Ghana and Cote D'Ivoire is at boundary pillar BP55. The coastal boundary between Ghana and Cote D'Ivoire starts at BP 55, which connects the customary equidistance boundary. Ghana rejected the claim of the Ivorian's that, it had violated the provisional embargo as set out by the ITLOS (ITLOS, 2015).

The maritime boundary dispute between Ghana and Cote D'Ivoire was partly responsible for the decline of oil production in 2015 (PIAC, 2017). During the court proceedings, oil companies in Ghana spent millions of dollars as legal fees to partners. Tullow oil paid hundreds of million dollars in compensation for abrogating a contract with a subcontractor working in the disputed oil fields (Tullow, 2017). In 2016, the Ghana national Petroleum Company (GNPC) paid 2.82 million dollars towards legal cost of the boundary dispute (PIAC, 2017).

On 23 September 2017, ITLOS declared its ruling, which were in line with the existing customary equidistance agreement between Ghana and Cote D'Ivoire. The ruling acknowledged the equidistance boundary between Ghana and Cote D'Ivoire starts at BP55. The ruling thus, gave Ghana the permission to continue oil exploration in the disputed area unimpeded by Cote D'Ivoire. The international body unanimously agreed that, Ghana did not violate the sovereign rights of Cote D'Ivoire. The ITLOS therefore agreed that Ghana did not violate any of the articles of the UN convention (ITLOS, 2017). Following the ruling, a group of ITLOS representatives was to re-draw the boundary line between Ghana and Cote D'Ivoire in the last quarter of 2018, to avert similar occurrence in future. Although Ghana and Cote D'Ivoire accepted the ruling of the ITLOS, the Ghanaian authority will trade with caution to avoid a generational occurrence of this disruptive event. Given the same scenario in the Bakassi Peninsula between Nigeria and Cameroon that did not hold for long. It is too early to ascertain if the ruling is sustainable, and whether the ruling will have an impact on the exploration activities in the disputed boundary. No doubt, this ruling will appease the oil companies and business owners in the oil industry in Ghana.

4. Conclusions

When Ghana and Cote D'Ivoire signed the customary equidistance agreement, no one envisaged the Ivoirians would oppose the signed document in a foreseeable future. The Ivoirians perhaps acted upon the loop hole in the UNCLOS equidistance maritime laws. Since the ICJ removed the customary equidistance law from article 74 and 83, any state could use that as a benchmark to perpetuate an agenda that might lead to conflict with coexisting neighbouring states. In highlighting the success of the customary agreement in resolving boundary dispute, colonial legacy was key. I have made use of different customary law scenarios, which indicates that majority of the boundary treaties that were signed in Africa by the colonialist on behalf of the colonies are undermined in modern peace treaties. This stem from the fact that the colonialists partitioned the African boundaries without the prerequisite knowledge and understanding of the African culture and the terrain. But the customary agreements and treaties that were signed directly between independent states averted, if not all eliminated the potential threat of war.

⁴The Azimuth is the angular distance usually measured clockwise from the North point. For example, 0°. But the coordinates of Boundary pillar 55 starts from 05° North.

If there is no prehistoric written agreement between two disputant states, this may require the political institutions to work out a frame work that is transparent, unambiguous and acceptable to disputant parties. Ghana and Cote D'Ivoire did not go to war because, the customary agreement signed directly between the two countries prevented it. Nevertheless, the tenacity and enthusiasm of the two states' readiness to negotiate provided ITLOS the impetus to intervene. Both Ghana and Cote D'Ivoire had to give up part of their sovereignty for the UN as a third party to intervene, which was done exquisitely. Some boundaries in Africa are fiercely contested because, the political establishments in the disputant countries are inherently possessive. Hence, no boundary dispute can be resolved when all actors have equal power to override one another's decisions. The settlement of the dispute between Ghana and Cote D'Ivoire was an epitome of democracy, and diplomatic ingenuity for the rest of African countries to emulate.

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