

**Award by the Arbitral Tribunal on the Maritime Delimitation between Guinea and  
Guinea-Bissau,  
14 February 1985**

An award was made today, 14 February 1985, at the Peace Palace in The Hague, by the Arbitral Tribunal entrusted with delimiting the maritime boundary between Guinea and Guinea-Bissau. The Tribunal was composed of Judge Manfred Lachs, President, and Judges Kéba Mbaye and Mohammed Bedjaoui, Members.

It unanimously decided that the line delimiting the maritime territories of the two States shall follow, successively:

- (a) Pilots Passage, starting from the mouth of the Cajet;
- (b) the parallel of 10° 40' north as far as 12 miles west of the Guinean island of Alcatraz;
- (c) the bearing of 236° as far as the outer limit of the maritime territories recognized under general international law.

### Summary of the Award

#### Background to the case and the proceedings

In its Award, the Tribunal recalls that the neighbouring countries of Guinea and Guinea-Bissau, before gaining independence, were colonies of France and Portugal respectively. The final paragraph of Article 1 of a Convention of 12 May 1886 between France and Portugal for the delimitation of their respective possessions in West Africa states that:

"Portugal will possess all the islands included between the meridian of Cape Roxo, the coast and the southern limit formed by a line following the thalweg of the Cajet River, and afterwards turning towards the south-west across Pilots Passage, where it reaches

10° 40' north latitude, and follows it as far as the meridian of Cape Roxo."

The provision applied mainly to the islands of the Bijagos archipelago. Its implementation caused no difficulty until 1958. At that time, Portugal granted an oil concession. Like Guinea and Guinea-Bissau, which had now become independent, Portugal also proceeded to issue laws and decrees defining its territorial waters. The effect of these various definitions was that the maritime areas over which these countries claimed to exercise jurisdiction overlapped. Negotiations then took place during which, in January 1978, it transpired that a legal dispute existed between Guinea and Guinea-Bissau concerning the delimitation of their maritime territories.

On 18 February 1983, these two States decided to seek arbitration of the matter through an Arbitral Tribunal which was established on 14 October 1983 and is independent of the International Court of Justice, although its three Members are also Members of the latter Court. Memorials and Counter-Memorials were filed by each Party on 20 January and 8 June 1984, and eleven private sittings were held between 21 August and 15 September 1984. Neither the written pleadings nor the text of the oral arguments are to be made public.

#### Interpretation of the Franco-Portuguese Convention of 12 May 1886

The first question submitted to the Tribunal by the Parties was whether the above-mentioned Convention, at the period in question, fixed the maritime boundary between the French and Portuguese possessions in Guinea. Guinea-Bissau took the view that the only purpose of the "southern limit" was to designate the islands belonging to Portugal, whereas Guinea held that this limit also represented a general maritime boundary.

The Tribunal notes that the 1886 Convention remained in force between France and Portugal until the end of the

colonial period, and then became binding as between Guinea and Guinea-Bissau by virtue of the principle of *uti possidetis*. The land boundary between the two Parties, which was established by the Convention, is not in dispute. As regards their maritime boundary, they have agreed that the last paragraph of Article 1 (see texts above) is to be interpreted in accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties.

Applying the method of interpretation of the Vienna Convention, the Tribunal observes that, in the term "the southern limit formed by", the word "limit" may signify "boundary", although this is not necessarily the case. Thus its meaning in the context of the 1886 Convention is somewhat uncertain. However, it is clear from the facts submitted before the Tribunal that until the dispute arose in 1978 neither France, nor Portugal, nor Guinea, nor Guinea-Bissau, interpreted the last paragraph of Article 1 of the 1886 Convention as having established a maritime boundary.

This leads to the second question submitted to the Tribunal by the Parties: what significance is to be attached to the preparatory work (*travaux préparatoires*) of the 1886 Convention for the purpose of interpreting it?

In this connection the Tribunal recalls that, in the minutes of the negotiations of 1885-1886, there was no reference to the delimitation of territorial waters, except in a proposed draft text of the last paragraph of Article 1, which was submitted suddenly by France and was immediately withdrawn at the request of Portugal. As no explanation was given in the minutes for the submission and withdrawal of this draft, which in fact went considerably beyond the conceptions then generally held in the matter, the Tribunal considers that the two States which were signatories to the 1886 Convention did not intend to fix a general maritime boundary.

The Tribunal concludes, in the light of the preparatory work and of the circumstances prevailing at the time, that the 1886 Convention did not fix any maritime boundary between the French and Portuguese possessions in Guinea.

### **Course of the delimitation line**

In a third question, the two Parties asked the Tribunal to determine the course of the single line delimiting their territorial waters, their exclusive economic zones and their continental shelves. Guinea-Bissau was seeking a delimitation according to an equidistance line, whereas Guinea argued in favour of applying the "southern limit" of the 1886 Convention, extending it as far as might be necessary.

On this point, the Parties took the view that international customary law is enshrined in the recent Convention of 1982 on the Law of the Sea, although the latter is not yet in force. The Tribunal observes that, according to Article 74, paragraph 1, and Article 83, paragraph 1 of this Convention, the aim of any delimitation process is to achieve an equitable solution having regard to the relevant circumstances. In order to ensure that the delimitation rests on an equitable and objective basis, every effort must be made to guarantee that each State controls the maritime areas situated in front of its coasts and in proximity to them.

The coastline in question is easy to define, since it comprises the whole of the coasts of the two countries from Cape Roxo, which marks the boundary of Guinea-Bissau with Senegal, as far as Point Sallatouk, where Sierra Leone begins. However, there is no maritime boundary which could be taken into account at either of these extreme points, since there is an ongoing dispute in relation to the first, and as far as the second is concerned, there is only a unilateral delimitation on the part of Guinea. Moreover, there are numerous islands, some of which are coastal, others belong to the Bijagos archipelago and others are scattered. In these circumstances, the most relevant factor is the general configuration and direction of the coastline, including the islands.

The Tribunal observes that, taken together, the coasts of the two countries, including islands, are concave, with the effect that the equidistance line - although this is a scientific concept and a relatively easy one to apply - would cut off Guinea's maritime area in front of its coasts and would tend to enclave it between the maritime areas belonging to Guinea-Bissau and Sierra Leone. As for the "southern limit", the Tribunal has concluded, in reply to the first question, that it did not establish a maritime boundary. However, it could be used from the extremity of the land boundary as far as the elevation of the Guinean island of Alcatraz, but seaward of Alcatraz it would produce a cut-off effect and might well lead to an enclavement, which, in this

case, would operate to the detriment of Guinea-Bissau.

For these reasons, the Tribunal passing from the short coastline to the long coastline, decided to focus upon the entire West African region. It concludes that an equitable delimitation in this case must be carried out by following a direction which takes overall account of the convex shape of the West African coastline and would be adaptable to the pattern of present or future delimitations in the region. After investigating various methods of taking account of the general configuration of the western coast of Africa, the Tribunal observes that a coastal front proceeding in a straight line from Almadies Point in Senegal to Cape Shilling in Sierra Leone would most faithfully reflect this situation.

Thus an equitable delimitation can be derived by first pursuing the "southern limit" (Pilots Passage and the parallel 10°40'N) to 12 miles west of Alcatraz, and then, to the south west, a straight line with a bearing of 236°, broadly perpendicular to the Almadies-Shilling line.

The Tribunal considers that an examination of the other circumstances invoked in this case by the Parties should not affect its decision. There is no possibility of invoking any feature based on the concept of natural prolongation of the land territory of each State, since the continental shelves of Guinea and Guinea-Bissau comprise a single whole, without sufficiently marked divisions. The rule of proportionality between the extent of maritime areas to be allocated and the length of the coastline does not permit either of the Parties to claim any additional advantage, since, when the general direction of the coasts of the two countries, including islands, is taken as a basis, they must be treated for delimitation purposes as both having the same length. Finally, economic factors are not of a sufficiently durable nature to be taken into account for delimitation purposes; the Tribunal merely emphasises that, in this respect, economic concerns should motivate the Parties to practice mutually beneficial co-operation with a view to attaining their right to development.

### Operative Provisions of the Award

Consequently, having given the foregoing replies to the first two questions submitted by the Parties, the Tribunal replies as follows to the third question:

"The line delimiting the maritime areas appertaining respectively to the Republic of Guinea-Bissau and the Republic of Guinea:

- "(a) begins at the intersection of the Cajet thalweg and the meridian longitude 15° 06' 30" West;
- "(b) connects, by means of loxodromes, the following Points:

	<u>Latitude North</u>	<u>Longitude West</u>
A	10° 50' 00"	5° 09' 00"
B	10° 40' 00"	15° 20' 30"
C	10° 40' 00"	15° 34' 15"

"(c) follows a loxodrome on a bearing of 236° from Point C above to the outer limit of the maritime territories which are recognized under general international law as appertaining to each State."