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Spain and the Law of the Sea: 20 years under LOSC

Delimited maritime zones

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With a nearly 8,000-kilometer-long coastline, Spain borders on an open sea (the Atlantic Ocean) and a semi-enclosed sea (the Mediterranean). Regarding its geographical situation, it is surrounded by States with adjacent or opposite coasts which can extend their sovereignty and jurisdiction over the sea to the limits established by International Law. Thus, both Spain's ocean space and that of its neighboring countries are in a frontal, lateral, perpendicular or omnidirectional position, depending on the coastal features and their geographical location. Inevitably, as a result, these ocean spaces overlap and the need arises to define their boundaries through delimitation agreements.

Like its neighboring States,[1] Spain is a signatory of the 1982 United Nations Convention on the Law of the Sea[2] and, as such, it has claimed all internationally recognized ocean spaces. At the present time, it has internal waters (hereinafter IW), a territorial sea (hereinafter TS) of 12 nautical miles, and a zone contiguous to it that extends to 24 nautical miles[3]. Furthermore, it has unilaterally declared an Exclusive Economic Zone[4] (hereinafter EEZ) in the Atlantic without specifying its delimitation (1978) and the Mediterranean (2013), establishing in this case the relevant geographical coordinates. Prior to that, Spain had declared a Fishery Protection Zone in the Mediterranean (1997) of almost the same extension as the abovementioned EEZ. In this respect, it also has a Continental Shelf (hereinafter CS) around its whole coastline of a breadth in keeping with the provisions laid down in LOSC, considering that a nation's rights over this space are not contingent on any express declaration, according to Article 77 LOSC. These circumstances have led our country to claim an extended CS in the Atlantic Ocean.

There is no doubt that any geographical feature of the Earth's surface can be taken into account to delimit and demarcate boundaries: a mountain range, a large lake or, even, a desert... They all can be

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1 Ratifications of The United Nations Convention on the Law of the Sea of 10 December 1982: Algeria (11 June 1996), France (11 April 1996), Italy (13 January 1995), Morocco (31 May 2007), Portugal (3 November 1997) and Spain (15 January 1997). See National legislation - DOALOS/OLA - United Nations.

2 UN Convention on the Law of the Sea, 1833 UNTS 3 (adopted 10 December 1982, entered into force 16 November 1994) (LOSC hereinafter).

3 Royal Legislative Decree 2/2011 of September 5, approving the consolidated text of the State Ports and Merchant Marine Act (BOE No. 253, 20 October 2011).

4 Law 15/1978, 20 February 1978, on the Economic Zone (BOE No. 46, 23 February 1978).

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used as legal boundaries for the purpose of separating territories or reinforcing a State's national security. However, it is not like that when it comes to the sea, where the unity of the physical medium, made of a continuous, uniform and homogeneous mass, makes the delimitation of boundaries all the more difficult. From a technical viewpoint, the layout of boundaries is carried out through an operation comprising two main stages: (*a*) delimitation, a process to define spatial extensions in accordance with legal and political views, and (*b*) demarcation, a technical operation by virtue of which the prior delimitation of the land is materially executed. Consequently, it is safe to say that "to define a territory is to define its boundaries".

In light of the extension of its spaces and its geographical location, Spain has applied itself, together with its neighboring States, to the task of delimiting many spaces: with France, the territorial sea, the EEZ and the CS in the Bay of Biscay and in the Mediterranean Sea; with Portugal, the territorial sea, the EEZ and the CS in the mouth of the rivers Minho and Guadiana (continental zone), as well as the EEZ and the CS between Madeira and the Canary Islands; with Italy, the EEZ and the CS; and with Morocco, the territorial sea in the Strait of Gibraltar, the territorial sea and the CS in the Alboran Sea, and the EEZ and the CS along the Atlantic coast, both in the Gulf of Cádiz and in front of the Canary Islands[5]. This considerable potential for conflict contrasts with the few delimitation agreements reached until today, which still remain in force.

(A) SPAIN'S INTERNAL WATERS: THE LAYOUT OF THEIR OUTER LIMITS, THE CLOSING OF BAYS AND THE MOUTHS OF RIVERS.

LOSC defines the internal waters of a State as those on the landward side of the baseline that can be used to measure the breadth of the TS. They include not only the waters along the coastline, such as coastal lagoons, estuaries, gulfs, small bays, etc., but also those within certain man-made constructions, especially the ports. In the case of Spain, where the legislation is consistent with the provisions of the international standard, they are defined as those "located on the landward side of the baselines of the territorial sea", including the waters of "ports and any other waters permanently connected to the sea up to where the effect of tides becomes noticeable, as well as the navigable stretches of rivers up to where there are ports of general interest"[6].

The outer limit of the Spanish internal waters is determined by the baselines from where the rest of the ocean spaces are measured[7]. They are mostly determined by straight baselines unilaterally drawn by the Government along the whole coastline by virtue of Royal Decree 2510/1977[8]. The baselines established along the peninsular coastline show a discontinuous pattern in the zone of

5 On this question, see the contribution in this volume by Orihuela Calatayud on "Pending delimitations".

6 Royal Legislative Decree 2/2011 of September 5, approving the consolidated text of the State Ports and Merchant Marine Act (BOE No. 253, 20 October 2011).

7 Art. 3 Law 10/1977, 4 January, on the Territorial Sea (BOE No. 7, 8 January 1977).

8 Royal Decree 2510/1977, 5 August 1977, on the drawing of straight baselines in development of Law 20/1967, of April 8, on the extension of Spanish jurisdictional waters to 12 miles, for fishing purposes (BOE No. 234, 30 September 1977); Law 20/1967, 8 April 1967, Extending the Jurisdictional Waters to Twelve Miles for Fishing Purposes (BOE No. 86, 11 April 2967).

Gibraltar between Point of Acebuche and Point Carbonera, where the spaces are measured on the basis of the low-tide line. A critical approach would lead us to say that not all the straight baselines drawn by Spain are in accordance with the provisions of International Law[9]. Nevertheless, no neighboring State has ever lodged a protest and no modification has been made, which could be due to the fact that the said drawn baselines neither divert from the overall direction of the coastline nor are they excessively long.

As to the closing of bays, we must bear in mind that Spain has two bays in coasts partially submitted to the sovereignty of other States: the bay of Hondarribia and the bay of Algeciras (bay of Gibraltar). The French-Spanish land border in the Cantabrian Sea coincides with the low course of the Bidasoa River's mouth, forming an indentation that may be qualified as a "bay" according to Article 10 LOSC and it is known as Bay of Hondarribia. Spain and France have closed this bay by common consent and established a water management regime. As a result, one part of the bay is now under Spanish jurisdiction, another part is under French jurisdiction, and a third part is under both countries' common jurisdiction. The straight baseline that closes its mouth joins the Cape Higuer on the Spanish coast and Tombeau Point (or *Pointe des Jumelles*) on the French coast. The closing baseline is 3,055 meters long and made up of three 1,018-meter-long segments that mark the outer limit of the aforesaid three parts of the bay. This water delimitation and management regime have stemmed from several delimitation agreements reached through official exchanges (on December 2, 1858[10], and January 31 and February 7, 1985[11]), as well as from the Joint Declaration of March 30, 1879[12]. It is important to point out in this connection that in the last few years both Governments have held regular meetings to adjust the closing of the Bidasoa River's mouth, near the Hondarribia airport, to the regulations of the European Union[13].

The situation is altogether different in the case of the Bay of Gibraltar, within which the British Overseas Territory of Gibraltar is located. The legal regime and lines of delimitation governing the waters of this bay and the strait of the same name are closely linked to the Spanish-British dispute regarding the territory of Gibraltar, as well as the interpretation of Article X of the Treaty of Utrecht of 1713[14]. The problem lies, among other issues, in the text of this Article. The United Kingdom

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9 Leanza, U., 'Le régime des baies et des golfes dans la Mer Méditerranée', in *Contemporary developments in international law: essays in honour of Budislav Vukas*, (Leiden, Boston, Brill Nijhoff, 2016), at 206-229.

10 *Exchange of letters constituting an agreement between France and Spain amending Annex V of the Convention of 28 December 1858 supplementary to the Treaty on delimitation of 2 December 1856 delimiting the frontier from the mouth of the Bidassoa to the point where the department of Basses-Pyrénées adjoins Aragon and Navarre*, Paris, 22 September 1987 and Madrid, 10 June 1988 (entry into force: 10 June 1988; registration date: 1 May 1989). See National legislation - DOALOS/OLA - United Nations.

11 *Exchange of letters constituting an agreement amending Annex V of the Convention of 28 December 1858 supplementary to the Treaty on delimitation of 2 December 1856 delimiting the frontier from the mouth of the Bidassoa to the point where the department of Basses-Pyrénées adjoins Aragon and Navarre*, Madrid, 31 January and 7 February 1985 (entry into force: 7 February 1985). See National legislation - DOALOS/OLA - United Nations.

12 *Gaceta de Madrid* of 22 April 1879.

13 Written reply issued by the Parliament of the Government of Spain on 19/6/2017 (entry number in the Register of the Congress of Deputies: 39472). Said reply was issued to the question asked by Doña Micaela Navarro Garzón and Don Felipe Sicilia Álvarez (GS) to the Parliamentary Committee of the Congress on 26/4/2017.

14 "The Catholic King does hereby, for himself, his heirs and successors, yield to the Crown of Great Britain the full

understands it in its broadest sense, extending its sovereignty to the waters of the Bay of Gibraltar right in front of the British colony (2 nautical miles) and the waters surrounding the Rock of Gibraltar up to a length of 3 nautical miles. Spain, in turn, makes a literal interpretation of Article X and only recognizes Britain's sovereignty over the town and castle of Gibraltar, together with its port, denying any British offshore jurisdiction[15]. Moreover, to Spain, any negotiation about Gibraltar's sovereignty must be discussed on the basis of United Nations Resolutions, including the General Assembly Resolution 2353 (XI) of 19 December 1967. Taking into account all of the above, the Spanish government has preferred not to draw any straight baseline in the Bay of Gibraltar. This is not to be understood as recognition of British sovereignty over the waters beyond the port of Gibraltar, but as a legitimate choice to measure ocean spaces from low-tide marks[16].

Meanwhile, with regards to the closing of mouths of rivers, in the last two centuries Spain has reached several delimitation agreements with Portugal in the case of the rivers Minho and Guadiana[17]. On September 27, 1893, both countries exchanged notes to reach a delimitation agreement to close the mouth of the Guadiana. Said agreement was in accordance with paragraph A of Article 4 of the Regulations of Coastal and Fisheries Law Enforcement of 1893 and Declaration VI of the Final Protocol of the Treaty of Trade and Navigation, signed by both countries in March 1893[18]. This Agreement expired on September 5, 1913, and was not replaced by any other. Later on, in early February 1969, the International Commission on Boundaries between Spain and Portugal would reach an agreement to fix the limits of the lower Guadiana and its sea boundary, a solution set to become the basis of the Guarda Agreements of February 12, 1976 on TS, CZ and CS[19], which never came into force for lack of ratification by Portugal.

In addition to all these facts, it is important to remark that as far as the Spanish Government is concerned, the delimitations agreed upon with the neighboring country are no longer valid. So it has been stated in writing by the Congress of Deputies in response to the parliamentary question asked in April 2017 about the current status of Spain's ocean spaces. Likewise, in its official reply, the Government reported that on May 30, 2017 Spain and Portugal signed a new agreement to close the mouths of the rivers Minho and Guadiana and delimit their international stretches. Although ocean

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and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever. But that abuses and frauds may be avoided by importing any kind of goods, the Catholic King wills, and takes it to be understood, that the above-named propriety be yielded to Great Britain without any territorial jurisdiction and without any open communication by land with the country round about. [...] And in case it shall hereafter seem meet to the Crown of Great Britain to grant, sell or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed and concluded that the preference of having the sale shall always be given to the Crown of Spain before any others".

15 See. V.L. Gutiérrez Castillo, 'Le systeme de lignes de base établit par l'Espagne conformement à la norme internationale', *Annuaire du Droit de la Mer* (Pedone, Paris) 2008 at 123-143.

16 On this question, see the contribution in this volume by del Valle Gálvez on "Maritime zones around Gibraltar".

17 *Gaceta de Madrid* of 29 September 1893.

18 *Boletín Jurídico Administrativo. Anuario de Legislación y Jurisprudencia* 1893, at 606.

19 *Agreement between Portugal and Spain on the Delimitation of the Territorial Sea and Contiguous Zone, 12 February 1976 and Agreement between Portugal and Spain on the Continental Shelf*, 12 February 1976. See National legislation. See J.I. Charney and L.M. Alexander (ed.), *International Maritime Boundaries*, vol. II (Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993), at 1791.

spaces are not delimited in the said treaty, the closing lines of the mouths separate the internal waters of the TS, which lays the foundations for a future delimitation of the TS and the EEZ and the expansion of the CS beyond 200 NM.

(B) DELIMITATION OF THE SPANISH TERRITORIAL SEA: AGREEMENTS WITH FRANCE AND PORTUGAL

Just like all its neighboring States with opposite or adjacent coasts (France[20], Morocco[21], Italy[22] and Portugal[23]), Spain has fixed itself a TS with an extension of up to 12 nautical miles. The same goes to the CZ: Article 8(1) of the Revised Text of the Spanish Law of State and Merchant Navy Harbors defines the CZ under Spanish jurisdiction, extending it to 24 nautical miles measured from the baselines. Moreover, in accordance with the UNESCO Convention on the Protection of the Underwater Cultural Heritage, Member States (including Spain) will be able to regulate and authorize in the said zone all activities directed to underwater cultural heritage.

As to the neighboring States, only France[24] and Morocco[25] have formally claimed CZs so far. Despite a number of official statements declaring its intention to do so, Portugal is yet to claim such space[26]. Indeed, the Portuguese Government has implicitly stated its intention of establishing a CZ both in Decree No.67-A/97 to ratify LOSC and the 1994 Agreement, and a similar statement appeared in *Resoluçao da Assembleia da República* No. 60-B/97 of April 3[27]. However, despite such political declarations, the Portuguese law on ocean space planning avoids any reference to this topic[28]. So is the case of Italy, which has never claimed a CZ in its adjacent territorial sea.

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[20] *Law No. 71-1060 of 14 December 1971 regarding the delimitation of French territorial waters* (Art. 1): "*The territorial waters of France extend up to a limit of 12 nautical miles from the baselines.* The baselines are the low-water mark as well as straight baselines and closing lines of bays as determined by decree. The sovereignty of the French State extends to the airspace as well as to the seabed and subsoil thereof within the limits of its territorial waters". See National legislation - DOALOS/OLA - United Nations.

[21] *Dahir concerning Law No. 1-73-211 of 26 Muharram 1393 (2 March 1973) establishing the limits of the territorial waters* (Art. 1): "The territorial waters of Morocco shall extend to a limit established at 12 nautical miles from the baselines. The baselines shall be the low-water line together with the straight baselines and the closing lines of bays which shall be determined by decree. The sovereignty of the Moroccan State shall extend to the airspace over the territorial waters as well as to their bed and subsoil". See National legislation - DOALOS/OLA - United Nations.

[22] *Navigation Code of 30 March 1942, as amended by Law No. 359 of 14 August 1974.* See National legislation - DOALOS/OLA - United Nations.

[23] *Law No. 33/77 of 28 May 1977 regarding the juridical status of the Portuguese Territorial Sea and the Exclusive Economic Zone and Bases of Spatial Planning and Management of the National Maritime Space Law No. 17/2014, 14 February 2014.* Published in *Diário da Republica* (DR, Official Gazette of Portugal) of 10 April 2014.

[24] Art 44 of the *Customs Code amended by the Ordinance No. 2016-1687, 8 December 2016. Journal Officiel de la République Française* (JORF, *Official Gazette of the French Republic*) of 9 December 2016.

[25] *Law No. 1-81 of 18 December 1980, Promulgated by Dahir No. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts.* See National legislation - DOALOS/OLA - United Nations.

[26] *Law No. 33/77 of 28 May 1977 regarding the juridical status of the Portuguese Territorial Sea and the Exclusive Economic Zone and Decree-Law No. 495/85 of 29 November 1985.* See National legislation - DOALOS/OLA - United Nations.

[27] DR No. 238/1997, 14 October 1997.

[28] *Bases of Spatial Planning and Management of the National Maritime Space Law No.17/2014, 14 February 2014.* DR of 10 April 2014. See National legislation - DOALOS/OLA - United Nations.

The extension and outer limit of the Spanish TS is determined by Articles 3 and 4 of Law 10/77 of January 4 on the territorial sea. In this connection, Article 3 establishes that "The outer limit of the territorial sea shall be determined by a line drawn in such a way that the points constituting it are at a distance of 12 nautical miles from the nearest points of the baseline referred to in the preceding article". Since this space is measured from the baselines, today the Spanish TS can be said to form a belt of sea of 12 nautical miles that surrounds all Spanish coasts (peninsular, insular and archipelagic) interrupted by the territorial waters under jurisdiction of its neighboring States. For these cases, Article 4 of the foregoing Law 10/77 establishes that "Failing agreement to the contrary, the territorial sea shall not, in relation to neighboring countries and countries whose coasts are opposite to those of Spain, extend beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two countries is measured, such baselines being drawn in accordance with international law".

The solution proposed in the Spanish regulations for the delimitation of the territorial sea (that is, the use of the equidistance method) is also found in the codes of the neighboring countries, with the exception of Portugal. Theoretically speaking, this fact should facilitate the delimitation of the said space. However, because of geographical and economic reasons, together with the claims of sovereignty, make any agreement all the more difficult, which explains why TS boundaries have been agreed upon only for a part of the Atlantic coasts: with France on the Cantabrian Sea and with Portugal on the mouth of the river Miño. Nonetheless, the situation regarding the Mediterranean has been traditionally different on account of the claims lodged by Morocco over the Spanish territories along the African coasts and the French Government's refusal to accept the solutions about the Gulf of Lion put forward by Spain.

As far as the agreements on the Atlantic Ocean are concerned, it is worth pointing out that on 29 January 1974 Spain and France signed a Treaty for the delimitation of their respective territorial seas in the Bay of Biscay.[29] At the time of its signature, the extension of that space was different in both countries. France's TS stretched across 12 nautical miles[30], whereas Spain's did not exceed 6 nautical miles. Beyond that limit and up to 12 nautical miles, the Spanish State only had jurisdictional rights over fishing, customs, health and immigration related matters in an area called "contiguous zone"[31]. Consequently, the boundaries agreed upon by virtue of the aforesaid Treaty separated the French TS from the Spanish TS and CZ. This state of affairs has been overcome with the extension of the Spanish TS to 12 nautical miles and the subsequent ratification of LOSC by both countries. Therefore, nowadays the Spanish-French territorial sea is delimited by a boundary formed by two geodetic lines defined in Article 2 of the Treaty as follows: "(...) (a) The first geodetic line follows the meridian, passing through point M at the mid-point of a line AD joining Cape Higuer (Erdico point)

[29] Agreement between Spain and France concerning the Delimitation of the Continental Shelf in the Bay of Biscay (Golfe de Gascogne/Golfo de Vizcaya) (adopted 29 January 1974, entered into force 5 April 1975), 996 UNTS 351 (BOE No. 163, 9 July 1975).

[30] *Law No. 71-1060 of 14 December 1971 regarding the delimitation of French territorial waters*. See National legislation - DOALOS/OLA - United Nations.

[31] Decree of the Ministry of Finance No. 3281/1968 of 26 December 1968. BOE No. 17, *20 January 1969*. See National legislation - DOALOS/OLA - United Nations.

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in Spain to Sainte Anne or Tombeau point in France. This line extends from point M northwards to point P situated at a distance of six miles from point M. (b) The second geodetic line follows the arc of a great circle joining point P and point Q equidistant from the French and Spanish baselines and at a distance of 12 miles therefrom (...)"

A delimitation agreement was also reached with Portugal by virtue of the Treaty of Trade and Navigation of March 27, 1893 to separate the territorial waters in maritime zones adjacent to the river Minho[32]. This separation would be determined later on by the Spanish and Portuguese commissions in charge of the demarcation. The resulting boundary was fixed by a parallel line at 41° 51' 57" North[33]. As stated above, this agreement is not currently in force, according to a declaration made by the Spanish Government in the Parliament on June 19, 2017.

(C) OUTER LIMITS OF THE SPANISH EEZ AND CS: DELIMITATION AGREEMENTS WITH FRANCE AND ITALY

Spain regulated its EEZ through Act. No. 15/78 on the Economic Zone of February 20, 1978[34], recognizing an extension of 200 nautical miles measured from baselines. While at first the Spanish Government limited its extension to the Atlantic coasts, it claimed later on an EEZ in its Mediterranean coasts. The reason that Spain decided to establish this maritime space in the Mediterranean northwest, without including the Alboran Sea, was the growing importance of the exploitation of the Mediterranean Sea's resources. This proclamation was issued through Royal Decree 236/2013[35]. Before that date, France had unilaterally claimed another EEZ[36], which led Spain to make a formal protest[37]. It is worth mentioning in this regard that both countries have followed a similar process to establish their EEZ. In the 1970s, the French Government, just like Spain did, claimed this space in its Atlantic waters[38] and, forty years later, in its Mediterranean coasts[39]. Finally, with regard to the Canary archipelago, Article 1 of Act 15/1978 stipulates in its second paragraph that the outer limit of the Spanish EEZ shall be measured from the straight baselines that join the extreme points of the islands and islets constituting it, in such a way that the resulting perimeter will match the overall configuration of the archipelago.

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32 *Gaceta de Madrid* No. 272, 29 September 1893.

33 See E. Orihuela Calatayud, *España y la delimitación de sus espacios marinos* (Univ. de Murcia, Murcia), 1989, at. 172 and Ministerio de Defensa. Armada (ed.), *Manual de Derecho del Mar* vol. I (Ministerio de Defensa, Madrid, 2016) at. 33.

34 BOE No. 46, 23 February 1978.

35 Royal Decree 236/2013, 5 April 2013, establishing the Spanish Exclusive Economic Zone in the North-West Mediterranean (BOE No. 92, 17 April 2013).

36 *Decree No. 2012- 1148 of 12 October 2012, which establishes a French Exclusive Economic Zone in the Mediterranean* (JORF of 14 October 2012).

37 Ministry of Foreign Affairs and Cooperation No. 31661, note verbal. See National legislation - DOALOS/OLA - United Nations.

38 *Law* No. *71-1060 of 14 December 1971 regarding the delimitation of French territorial waters* (JORF of 30 December 1971).

Decree No. 2012-1148 of 12 October Establishing an Economic Zone off the Coast of the Territory of the Republic in the Mediterranean Sea (JORF of 14 October 2012).

Except for Italy, which has established an ecological protection zone[40], all the neighboring States have also claimed either an EEZ or a fishing zone. Thus Morocco, Portugal and France have claimed an EEZ up to 200 nautical miles, whereas Algeria opted for a *reserved fishing zone*[41] with a limited extension: from 32 nautical miles (between the western sea boundary and *Ras Ténès*) up to 52 nautical miles (from *Ras Ténès* to the eastern sea boundary). Portugal and Morocco[42] also established their own EEZs along their coasts, including the islands in the case of the former[43], which paved the way for a formal protest of the Spanish government on grounds that the Savage Islands (under Portuguese sovereignty) should not be entitled to such ocean space[44].

As to the CS, Spain abides by the surface area criterion, much like most of its neighboring States. Likewise, it is now taking steps to extend its CS beyond 200 nautical miles in three areas: The Bay of Biscay (upon agreement with France, UK and Ireland); in front of Galicia's western coastline (by common consent with Portugal); and to the west of the Canary Islands. As to the basis used for their definition, it must be pointed out that most States have ruled out the criteria on depth and/or exploitation possibilities of the Geneva Convention of 1958 in favor of surface area considerations. So it can be inferred following the inclusion of the EEZs in the legislations of neighboring countries, in which the rights of exploration and exploitation of the seabed and subsoil are recognized. This has been the case, for instance, of Morocco[45], Portugal[46] and France[47]. On the other hand, Italy and Algeria have chosen different solutions. Italy's legislation establishes that the limits of its CS are determined by either the depth criterion (200 meters of depth) or the exploitation criterion, its outer limit being fixed by delimitation agreements (already implemented)[48]. Algeria, in turn, has no specific legislation on this matter yet. However, despite the above facts, it is safe to say that these two countries could have also adopted the surface area criterion: they have both ratified and incorporated LOSC into their

[40] *Law No. 61 on the Establishment of an ecological protection zone beyond the outer limit of the territorial sea 8 February 2006* (*Gazzetta Ufficiale* No. 52, 3 Mars 2006) *and Presidential Decree No. 209 of 27 October 2011* (*Gazzetta Ufficiale* No. 293, 17 *December* 2011).

[41] *Legislative Decree No. 94-13 of 17 Dhu'lhijjah 1414, corresponding to 28 May 1994, establishing the general rules relating to fisheries, 22 June 1994*. See National legislation - DOALOS/OLA - United Nations.

[42] *Law No. 1-81 of 18 December 1980, Promulgated by Dahir No. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts.* Article 1 "Act no. 1-81 of 18 December 1980, Promulgated by Dahir no. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts". See National legislation - DOALOS/OLA - United Nations.

[43] *Law No. 33/77 of 28 May 1977 regarding the juridical status of the Portuguese Territorial Sean and the Exclusive Economic Zone* and Declaration LOSC "Portugal enjoys sovereign rights and jurisdiction over an exclusive economic zone of 200 nautical miles from the baselines from which the breath of the territorial sea is measured". See National legislation - DOALOS/OLA - United Nations.

[44] Communication from Spain dated 5 July 2013. See National legislation - DOALOS/OLA - United Nations.

[45] *Law No. 1-81 of 18 December 1980, Promulgated by Dahir No. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts*. See National legislation - DOALOS/OLA - United Nations.

[46] *Decree-Law No. 49-369 of 11 November 1969, Law No. 33/77 of 28 May 1977 regarding the juridical status of the Portuguese Territorial Sea and the Exclusive Economic Zone* and *Decree Law No. 119/78 of 1st June 1978*. See National legislation - DOALOS/OLA - United Nations.

[47] *Law No. 68-1181 of 30 December 1968 relating to the exploration of the Continental Shelf and to the exploitation of its natural resources* (JORF of 31 December 1968) and *Law No. 76-655 of 16 July 1976 relating to the Economic Zone off the coasts of the territory of the Republic* (JORF of 12 May 1977). See. R. Meese/ J.S. Ponroy, "L'ultime frontière de la France: le plateau continental au-delà de 200 milles", 7 *Annuaire du Droit de la Mer* (2002), at 93 *ff.*

[48] With Albania, Croatia, France, Greece, Slovenia, Spain, Tunisia and with Serbia and Montenegro.

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domestic legislations.

(1) Delimitation with France: delimitation of the CS in the Bay of Biscay

Pursuant to an Agreement signed on January 29, 1974[49], Spain and France have delimited their CS in the Bay of Biscay. In those days, the internal legislations of the two countries defined their respective continental shelf on the basis of depth rather than surface area. Understandably so, since the Geneva Convention on the Continental Shelf of April 29, 1958, which both States were party to, was in force at the time. Despite their statements and reservations about the said Convention, neither Spain nor France failed to implement its Article 6 (application of equidistance).

The boundary that resulted from this agreement, still in effect, is determined by two segments defined by means of different methods for delimitation. The first segment, pointed towards the northwest, is an extension of the Spanish-French TS boundary, whereas the second one, 160 nautical miles long, leans to the Spanish coast, which favors France's interests. The reason that this layout was preferred has to do with a number of special circumstances defended by the French delegation. Some of them were accepted by Spain, such as, for instance, that France's CS had a greater geological area and a longer coastline.

One of the most interesting details of the aforesaid agreement is the establishment of a zone of around 50 square kilometers for joint exploration and exploitation that was closer to the Spanish coast than to the French. Located on the so-called *Gascony dome*, this zone is made up of several geodetic lines that join four points in coordinates defined by mutual consent. Its creation was a way to compensate Spain for the resulting boundary. The provisions governing the said zone of joint exploitation are stated in Annex II of the agreement, where it says that the contracting parties will engage in the exploitation of their resources with a view to their equitable distribution. In keeping with this intention, both States committed themselves, as per their Mining Regulations, to promoting agreements between companies willing to explore the zone[50]. Another noteworthy aspect is the willingness to solve by peaceful means any possible future conflict between the parties. Furthermore, Article 4 makes reference to potential problems in case new mineral deposits should be found beneath the boundary line, in which case the possibility of entering into new agreements should be considered. Finally, Article 8 of the said Spanish-French agreement stipulates: "In the event of the entry into force between the Contracting Parties of any multilateral treaty which modifies the Convention on the Continental Shelf done at Geneva on 29 April 1958 and which might affect the provisions of the present Convention, the Contracting Parties shall immediately hold consultations for the purpose of agreeing on such amendments to the present Convention as may prove necessary". Despite the provisions of this Article and the fact that Spain requested a revision in light of the delimitation of

[49] Agreement between Spain and France concerning the Delimitation of the Continental Shelf in the Bay of Biscay (Golfe de Gascogne/Golfo de Vizcaya) (adopted 29 January 1974, entered into force 5 April 1975), 996 UNTS 351 (BOE No. 163, 9 July 1975).

[50] See Annex II to the *Convention between the Government of the French Republic and the Government of the Spanish State on the delimitation of the continental shelves of the two States in the Bay of Biscay* (Golfe de Gascogne/Golfo de Vizcaya), 29 January 1974 (entry into force: 5 April 1975) (BOE No. 163, 9 July 1975).

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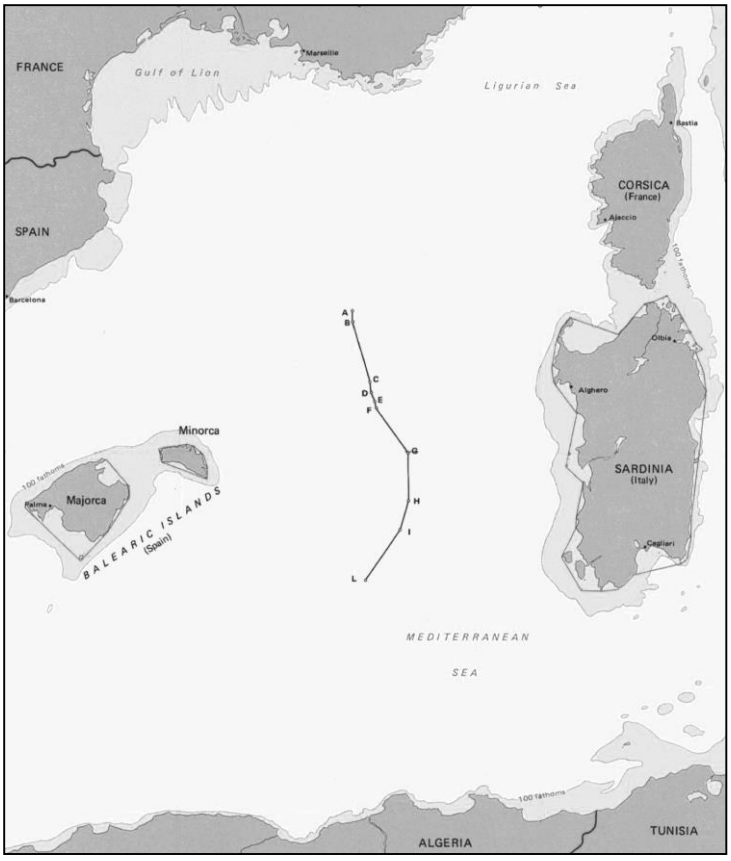
the FISU (France-Ireland-Spain-UK) Zone in connection with the Cantabrian Sea/Bay of Biscay/Gulf of Gascony/Celtic Sea), the Spanish-French agreement has never been modified.

(2) Delimitation with Italy: delimitation of the CS in the Mediterranean

Italy is the only State with which Spain has signed an agreement on delimitation in the Mediterranean Sea relating to the Spanish and Italian CS[51]. This agreement delimitated the continental shelves between the islands of Menorca and Sardinia. At the time of its signature, Italy, unlike Spain, was not a party to the Geneva Convention of the Continental Shelf of April 1958. Nevertheless, both the Spanish and the Italian legislation based the definition of their respective shelves on the depth factor. The absence of an international normative of a common conventional character stipulating the rights applicable to this case made it necessary to find a solution under Common Law[52].



The resulting agreement, with the establishment of an equidistant line between the Spanish Balearic archipelago and the Italian island of Sardinia (see figure on the left). As to the zone subject to delimitation, both nations agreed that it would not include any area likely to be claimed by either France or Algeria. For this reason, Article 1 defines de coordinates of the points constituting the boundary between the two countries as extending not beyond 5 nautical miles from the triple Italy-Spain-France equidistance point in the north, nor beyond 8 nautical miles from the one connecting Algeria, Italy and Spain in the south. In such circumstances, the resulting boundary, still in force, is a 9-segment equidistant line of 137 nautical miles[53].

Now, despite the parties' will to prevent any damage to their neighboring States, the French

[51] Agreement on the delimitation of the continental shelf (with chart) (adopted 19 February 1974, entered into force 16 November 1978), 1120 UNTS 356 (BOE No. 290, 5 December 1978). For an Italian perspective, see G. Francalanci, "Problems of Management of Continental Shelf: Italian perspective", in D. Pharand and U. Leanza (ed.), *Le plateau continental et la zone économique exclusive. Délimitation et régime juridique*, (Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993), at 252.

[52] Orihuela Calatayud, *España y la delimitación...*, *supra* n. 33, at. 169.

[53] Charney and Alexander, *supra* n. 19, vol. II, at 1601 *ff*. T. Scovazzi, 'Delimation Agreement with Italy', in Pharand and Leanza, *Le plateau...*, *supra* n. 52, at 91; and J.L. Azacárraga Bustamante, "España suscribe, con Francia e Italia, dos convenios sobre delimitación de sus plataformas continentales", 1-3 *Revista Española de Derecho Internacional* (1975), at. 133.

Government issued a diplomatic note in May 1979 in protest against the Spanish-Italian boundary, stating that it was detrimental to French interests[54]. This protest stemmed from France's disagreement with the application of equidistance in the Mediterranean, the same position that the country has kept in the last few years concerning unilateral claims of jurisdictional zones in the region. It was the case, for instance, of the protest against the EEZ claimed by Spain and the ecological protection zone established by Italy.

If we form a critical opinion on the aforesaid agreement, we realize that Spain has benefited from the negotiated settlement, since the difference in extension between Menorca (754 km²) and Sardinia (23.813 km²) was not taken into account. The reason, according to the doctrine, is that the island of Menorca was not considered in itself for the delimitation, but regarded instead as part of the Balearic archipelago, which has an overall extension of 5.014 km².[55]

(D) CONCLUSION

Just like most of its neighboring States, Spain has claimed all ocean spaces recognized by the international normative. Therefore, that country can be said to be seeking delimitation agreements with three European nations (France, Italy and Portugal) and two African nations (Algeria and Morocco). Officially speaking, the Spanish Government considers that there is no conflict whatsoever with the United Kingdom about the said ocean spaces, since Spain does not recognize British sovereignty over the waters adjacent to the Rock of Gibraltar or the bay of Algeciras (Bay of Gibraltar), but only over the waters within the harbor of the British Overseas Territory. Despite the existing potential of delimitation-related conflicts, Spain has not reached any consensus with its neighbors about most of its maritime borders, so very few agreements on this respect have been signed so far.

Several agreements have been reached with France about the Cantabrian Sea. Both countries have closed the Bidasoa River's mouth and signed a specific Agreement (exchange of letters on December 2, 1858, and January 31 and February 7, 1985) establishing a zone of common or joint use, which is still in force. Other significant treaties on this matter are the Convention on the Delimitation of the Territorial Sea and Contiguous Zone in the Bay of Biscay (Gulf of Gascony) signed in Paris on January 29, 1974 and the agreement reached on the same date about the delimitation of the CS. All of them remain in effect.

Agreements have also been reached with Portugal concerning the Atlantic waters, although with more complicated results in this case because, according to the Spanish Government, the delimitation agreements signed by both countries in the past which could have settled this matter are no longer in force; for instance, the exchange of notes in 1893, expired in 1913, and the Guarda Agreements of 1976 that Portugal never ratified. In this connection, according to data provided by the Spanish Government in a parliament session, both countries signed a Treaty on May 30, 2017 establishing the

[54] A. Reynaud, *Le plateau continental de la France* (LGDJ, Paris, 1984), at 233.
[55] Charney and Alexander, *supra* n. 19, vol. II, at 1603.

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closing line of the mouths of rivers Mihno and Guadiana and defining its international reach. Even if the ocean space between the two States is not specified in the said Treaty, the closing lines of their river mouths divide the internal waters of the TS and, therefore –as stated in its preamble– they can be a starting point for future negotiations concerning the delimitation of the TS and EEZ as well as the extension of the CS beyond 200 nautical miles.

Finally, Italy has been the only State so far with which Spain has reached a delimitation agreement on the Mediterranean by virtue of the Convention on the Delimitation of the Continental Shelf, signed in Madrid on February 19, 1974. This Convention is not without controversy: it has been challenged by France on grounds that the resulting boundaries were detrimental to French interests in the region.

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