



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

Website: www.icj-cij.org Twitter Account: @CIJ_ICJ

Press Release

Unofficial

No. 2017/5
2 February 2017

The Court finds that it may proceed with the maritime delimitation between Somalia and Kenya in the Indian Ocean

THE HAGUE, 2 February 2017. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today delivered its Judgment on the preliminary objections raised by Kenya in the case concerning Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), in which it finds that it may proceed with the maritime delimitation between Somalia and Kenya in the Indian Ocean.

I. FACTUAL BACKGROUND

The Court notes that Somalia and Kenya, adjacent States on the coast of East Africa, are parties to the United Nations Convention on the Law of the Sea (UNCLOS). Under Article 76, paragraph 8, of UNCLOS, a State party to the Convention intending to establish the outer limits of its continental shelf beyond 200 nautical miles shall submit information on such limits to the Commission on the Limits of the Continental Shelf (CLCS). The role of the CLCS is to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf beyond 200 nautical miles. With regard to disputed maritime areas, the CLCS requires the prior consent of all the States concerned before it will consider submissions regarding such areas.

The Court recalls that on 7 April 2009, the Parties signed a Memorandum of Understanding (MOU), agreeing to grant to each other no-objection in respect of submissions made to the CLCS on the outer limits of the continental shelf beyond 200 nautical miles. Paragraph 6 of the MOU further provides that: “[t]he delimitation of maritime boundaries in the areas under dispute . . . shall be agreed between the two coastal States . . . after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations . . .”. In the following years, both Parties raised and withdrew objections to the consideration of each other’s submissions by the CLCS. Those submissions are now under consideration.

On 28 August 2014, Somalia instituted proceedings against Kenya before the Court, requesting the latter to determine, on the basis of international law, the complete course of the single maritime boundary dividing all the maritime areas appertaining to Somalia and to Kenya in the Indian Ocean, including the continental shelf beyond 200 nautical miles. As basis for the Court’s jurisdiction, Somalia invoked the declarations recognizing the Court’s jurisdiction as compulsory made by the two States. Kenya, however, raised two preliminary objections: one concerning the jurisdiction of the Court, the other the admissibility of the Application.

II. THE FIRST PRELIMINARY OBJECTION: THE JURISDICTION OF THE COURT

In its first preliminary objection, Kenya argues that the Court lacks jurisdiction to entertain the present case as a result of one of the reservations to its declaration accepting the compulsory jurisdiction of the Court, which excludes disputes in regard to which the parties have agreed “to have recourse to some other method or methods of settlement”. It asserts that the MOU constitutes an agreement to have recourse to another method of settlement. It adds that the relevant provisions of UNCLOS on dispute settlement also amount to an agreement on the method of settlement.

A. The Memorandum of Understanding

The Court first considers whether the MOU falls within the scope of Kenya’s reservation. Having examined the legal status of that instrument under international law, it concludes that it is a valid treaty which entered into force upon signature and which is binding on the Parties under international law. The Court then proceeds to interpret the MOU.

The Court begins by observing that the object and purpose of the MOU was to constitute a no-objection agreement, enabling the CLCS to make recommendations notwithstanding the existence of a dispute between the Parties regarding the delimitation of the continental shelf. It then examines paragraph 6 of the MOU, in order to establish whether it contains an agreed dispute settlement method. The Court notes that the provision in question relates solely to the continental shelf, and not to the whole maritime boundary between the Parties, which suggests that it did not create a dispute settlement procedure for the determination of that boundary. It also observes that the text of the sixth paragraph reflects that of Article 83, paragraph 1, of UNCLOS, suggesting that the Parties intended to acknowledge the usual course that delimitation would take under that Article, namely engaging in negotiations with a view to reaching agreement, and not to prescribe a method of dispute settlement. It further points out that the Parties accept that the sixth paragraph did not prevent them from undertaking such negotiations, or reaching certain agreements, prior to obtaining the recommendations of the CLCS. Finally, it notes that the MOU repeatedly makes clear that the process leading to the delineation of the outer limits of the continental shelf beyond 200 nautical miles is to be without prejudice to the delimitation of the maritime boundary between the Parties, implying that delimitation could be undertaken independently of a recommendation of the CLCS. The Court concludes from the foregoing that the MOU does not constitute an agreement by the Parties “to have recourse to some other method or methods of settlement”. Therefore, it does not fall within the scope of Kenya’s reservation to its declaration recognizing the Court’s jurisdiction.

B. Part XV of the United Nations Convention on the Law of the Sea

The Court next considers whether Part XV of UNCLOS (entitled “Settlement of disputes”) amounts to an agreement on a method of settlement for the maritime boundary dispute within the meaning of Kenya’s reservation. It focuses on Article 282 of the Convention in particular, which, while making no express reference to an agreement to the Court’s jurisdiction resulting from optional clause declarations, nevertheless provides that an agreement to submit a dispute to a specified procedure that applies in lieu of the procedures provided for in Section 2 of Part XV may not only be contained in a “general, regional or bilateral agreement”, but may also be reached “otherwise”. The Court is of the view that the phrase “or otherwise” in Article 282 encompasses agreement to the jurisdiction of the Court resulting from optional clause declarations. It concludes from this that under Article 282, the optional clause declarations of the Parties constitute an

agreement, reached “otherwise”, to settle in the Court disputes concerning the interpretation or application of UNCLOS, and that the procedure before the Court shall thus apply “in lieu” of procedures provided for in Section 2 of Part XV. Accordingly, this dispute does not, by virtue of Part XV of UNCLOS, fall outside the scope of Kenya’s optional clause declaration.

III. THE SECOND PRELIMINARY OBJECTION: THE ADMISSIBILITY OF SOMALIA’S APPLICATION

The Court recalls that, according to Kenya, the Application is inadmissible for two reasons. First, Kenya argues that the Parties had agreed in the MOU to delimit their boundary by negotiation only after the completion of the CLCS review of their submissions. Having previously found that the MOU did not contain such an agreement, the Court also rejects this aspect of Kenya’s second preliminary objection. Second, Kenya contends that Somalia’s withdrawal of its consent to the consideration by the CLCS of Kenya’s submission was in breach of the MOU. The Court is of the view that the violation by Somalia of a treaty at issue in the case does not per se affect the admissibility of its Application. In light of the foregoing, the Court finds that the preliminary objection to the admissibility of Somalia’s Application must be rejected.

IV. OPERATIVE CLAUSE

In its Judgment, which is final and without appeal, the Court

(1) (a) by thirteen votes to three,

Rejects the first preliminary objection raised by the Republic of Kenya in so far as it is based on the Memorandum of Understanding of 7 April 2009;

(b) by fifteen votes to one,

Rejects the first preliminary objection raised by the Republic of Kenya in so far as it is based on Part XV of the United Nations Convention on the Law of the Sea;

(2) by fifteen votes to one,

Rejects the second preliminary objection raised by the Republic of Kenya;

(3) by thirteen votes to three,

Finds that it has jurisdiction to entertain the Application filed by the Federal Republic of Somalia on 28 August 2014 and that the Application is admissible.

Composition of the Court

The Court was composed as follows: President Abraham; Vice-President Yusuf; Judges Owada, Tomka, Bennouna, Cañado Trindade, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian; Judge ad hoc Guillaume; Registrar Couvreur.

Vice-President YUSUF appends a declaration to the Judgment of the Court; Judge BENNOUNA appends a dissenting opinion to the Judgment of the Court; Judges GAJA and CRAWFORD append a joint declaration to the Judgment of the Court; Judge ROBINSON appends a dissenting opinion to the Judgment of the Court; Judge ad hoc GUILLAUME appends a dissenting opinion to the Judgment of the Court.

*

A summary of the Judgment appears in the document entitled “Summary No. 2017/1”. This press release and the summary and full text of the Judgment are available on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)
Mr. Boris Heim and Ms Joanne Moore, Information Officers (+31 (0)70 302 2337)
Mr. Avo Sevag Garabet, Associate Information Officer (+31 (0)70 302 2394)
Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)