

INTERNATIONAL COURT OF JUSTICE

APPLICATION
INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 28 August 2014

MARITIME DELIMITATION IN THE INDIAN OCEAN

(SOMALIA *v.* KENYA)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE
INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 28 août 2014

DÉLIMITATION MARITIME DANS L'OCÉAN INDIEN

(SOMALIE *c.* KENYA)

APPLICATION INSTITUTING PROCEEDINGS

To the Registrar, International Court of Justice.

The undersigned, being duly authorized by the Government of the Federal Republic of Somalia (“Somalia”), states as follows:

1. In accordance with Article 36, paragraphs 1 and 2, and Article 40 of the Statute of the Court, as well as Article 38 of the Rules, I have the honour to submit this Application instituting proceedings in the name of Somalia against the Republic of Kenya (“Kenya”).

2. This case concerns the establishment of the single maritime boundary between Somalia and Kenya in the Indian Ocean delimiting the territorial sea, exclusive economic zone (“EEZ”) and continental shelf, including the continental shelf beyond 200 nautical miles (“M”).

3. The law applicable to this dispute is the 1982 United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”), which Somalia and Kenya ratified in July and March 1989, respectively, and customary international law.

I. THE JURISDICTION OF THE COURT

4. Somalia submitted a declaration recognizing as compulsory *ipso facto*, on the basis of reciprocity, the jurisdiction of the Court on 11 April 1963. Kenya did the same on 19 April 1965. No condition or reservation to either declaration applies. The Court therefore has jurisdiction over this dispute pursuant to Article 36, paragraph 2, of its Statute.

5. The jurisdiction of the Court under Article 36, paragraph 2, of its Statute is underscored by Article 282 of UNCLOS, which provides:

“If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part [XV of UNCLOS], unless the parties to the dispute otherwise agree.”

II. BACKGROUND

6. Somalia and Kenya share a land boundary in East Africa that meets the Indian Ocean at a point located at approximately 1° 39' 43" S and 41° 33' 34" E. The coasts of the Parties in this area face generally south-southeast.

7. In anticipation of its July 1989 ratification of UNCLOS, the President of Somalia issued Law No. 5 dated 26 January 1989 approving the Somali Maritime

Law of 1988. Among other things, the 1988 Somali Maritime Law provided that the breadth of the territorial sea would be 12 M, claimed a 200 M EEZ and stated that the continental shelf of Somalia extends throughout the natural prolongation of its land territory to the outer edge of the continental margin. Law No. 5 further repealed any prior laws inconsistent with the Somali Maritime Law of 1988.

8. On 9 February 1989, Somalia further enacted Law No. 11 adopting UNCLOS and incorporating the Convention's provisions into internal law. The same date, Presidential Decree No. 14 was promulgated, entering Law No. 11 into effect.

9. On 30 June 2014, in conformity with UNCLOS, the President of Somalia issued a Proclamation claiming an EEZ extending to 200 M measured from normal baselines. The same day, Somalia deposited with the United Nations Division of Ocean Affairs and the Law of the Sea, a list of co-ordinates defining the outer limit of its EEZ.

10. Acting in accordance with Article 4 of Annex II of the Convention¹, Somalia submitted preliminary information indicative of the outer limits of the continental shelf beyond 200 M to the Commission on the Limits of the Continental Shelf ("CLCS") on 14 April 2009.

11. Somalia made its full submission concerning the outer limits of its continental shelf beyond 200 M to the CLCS on 21 July 2014. As detailed therein, the outer limits of the continental shelf of Somalia extend well beyond 200 M across the entirety of Somalia's Indian Ocean coast. In some places, the outer limit extends fully to 350 M². Somalia made its submission without prejudice to the question of maritime delimitation with neighbouring States, including Kenya.

12. For its part, Kenya claims a 12 M territorial sea pursuant to its 1972 Territorial Waters Act, as revised. Under its 1989 Maritime Zones Act and a Presidential Proclamation dated 9 June 2005, Kenya also claims a 200 M EEZ.

13. Kenya measures the breadth of its territorial sea and EEZ from a series of straight baselines covering the full length of its coast. These baselines were first declared in the 1972 Territorial Waters Act and have been amended from time to time. Somalia considers that Kenya's straight baselines do not conform to the requirements of UNCLOS, Article 7.

14. Kenya does not, to the knowledge of the Government of Somalia, currently have any legislation in force with respect to its continental shelf. Nevertheless, on 6 May 2009, Kenya made a submission on the continental shelf beyond 200 M to the CLCS. At paragraph 1-4 of the Executive Summary to its submission³, Kenya states:

"The Government of Kenya intends to proclaim the outer limits of the continental shelf following the making of recommendations by the Commission pursuant to paragraph 8 of Article 76. The proclaimed outer limits will be established on the basis of those recommendations."

¹ As supplemented by the decisions of the Eleventh (SPLOS/72) and Eighteenth (SPLOS/183) Meetings of the States Parties to the Convention regarding the ten-year period established by Article 4 of Annex II.

² The Executive Summary to Somalia's submission is available at: http://www.un.org/Depts/los/clcs_new/submissions_files/som74_14/Somalia_Executive_Summary_2014.pdf.

³ Available at: http://www.un.org/depts/los/clcs_new/submissions_files/ken35_09/ken2009_executivesummary.pdf.

15. Kenya's submission to the CLCS claims that the outer limit of its continental shelf lies fully 350 M from its coast.

III. THE DISPUTE

16. As adjacent coastal States facing generally south-southeast onto the Indian Ocean, the potential maritime entitlements of Somalia and Kenya overlap, including in the area beyond 200 M.

17. The Parties disagree about the location of the maritime boundary in the area where their maritime entitlements overlap. Diplomatic negotiations, in which their respective views have been fully exchanged, have failed to resolve this disagreement.

18. It is Somalia's position that the maritime boundary between the Parties in the territorial sea, EEZ and continental shelf should be determined in accordance with UNCLOS Articles 15, 74 and 83, respectively. In the territorial sea, the boundary should be a median line, as specified by Article 15, since there are no special circumstances that would justify departure from such a line. In the EEZ and continental shelf, the boundary should be established according to the three-step process that the Court has consistently employed in its application of Articles 74 and 83.

19. Kenya's current position on the maritime boundary is that it should be a straight line emanating from the Parties' land boundary terminus, and extending due east along the parallel of latitude on which the land boundary terminus sits, through the full extent of the territorial sea, EEZ and continental shelf, including the continental shelf beyond 200 M. This was not always Kenya's position. In its 1972 Territorial Waters Act, as revised, Kenya claimed as the territorial sea boundary with Somalia "a median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial waters" are measured.

20. Kenya's 1989 Maritime Zones Act reiterated the position stated in the 1972 Territorial Waters Act and provided that the territorial sea boundary shall be defined by means of an equidistant line. Specifically, paragraph 3 (4) of the 1989 Maritime Zones Act stated that Kenya's territorial waters "extend to every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial waters of each of [the] respective [S]tates is measured".

21. With respect to the maritime boundary in the EEZ, paragraph 4 (4) of Kenya's 1989 Maritime Zones Act provided that the "northern boundary of the exclusive economic zone with Somalia shall be delimited by notice in the Gazette by the Minister pursuant to an agreement between Kenya and Somalia on the basis of international law".

22. In 2005, by means of a Presidential Proclamation, Kenya changed tack and claimed a maritime boundary emanating from the land boundary terminus and following a parallel of latitude due east out to the limit of the EEZ. In particular, paragraph (1) (b) of the 2005 Proclamation provided that "the Exclusive Economic Zone of Kenya shall: . . . [i]n respect of its northern territorial waters boundary with [the] Somali Republic be on [an] eastern latitude south of Diua Damasciaca Island, being latitude 1° 39' 34" degrees south".

23. Kenya's 2005 boundary claim is reflected in its 2009 submission to the CLCS. As depicted in the sketch-maps included in the Executive Summary thereto, and indicated by the co-ordinates submitted herewith, Kenya claims an area of continental shelf beyond 200 M defined in the north by the same 1° 39' 34" parallel of latitude claimed in the 2005 Presidential Proclamation. A copy of the map appearing on page 9 of the Executive Summary to Kenya's submission is attached hereto as sketch-map No. 1.

24. The parallel boundary Kenya claims with Somalia departs substantially from a provisional equidistance line in both the territorial sea and the areas beyond 12 M. Whereas a provisional equidistance line broadly reflects the south-southeast facing orientation of the coasts in this area, Kenya's claim line cuts severely across the coastal projection of the southern Somali coast. A comparison of Kenya's current claim line and a provisional equidistance line is reflected in sketch-map No. 2.

25. Kenya has acted unilaterally on the basis of its purported parallel boundary with Somalia, including in the territorial sea, to exploit both the living and non-living resources on Somalia's side of a provisionally drawn equidistant line. It has, for example, offered a number of petroleum exploration blocks that extend up to the northern limit of the parallel boundary it claims.

26. Relevant Kenyan petroleum blocks include Blocks L-5, L-21, L-22, L-23, L-24 and L-25 as depicted in sketch-map No. 3, attached to this Application. According to publicly available information, Kenya awarded Block L-5 to the American company Anadarko Petroleum Corporation in 2010 (though subsequent reports appear to indicate that Anadarko gave up its interest in late 2012 or early 2013). Blocks L-21, L-23 and L-24 — which lie entirely (in the case of L-21 and L-23) or predominantly (in the case of L-24) on the Somali side of a provisional equidistance line — were awarded to the Italian company Eni S.p.A. in 2012. Block L-22 was awarded to the French company Total S.A. the same year. (Based on the information currently available to the Government of Somalia, Block L-25 remains under negotiation.)

27. Notwithstanding the difficult state of its domestic affairs, Somalia has repeatedly protested Kenya's excessive and unjustifiable maritime claims. By means of a diplomatic Note addressed to the Secretary-General of the United Nations dated 4 February 2014, for example, Somalia objected to the CLC's consideration of Kenya's submission. In its Note, the Government of Somalia stated, *inter alia*: "Based on the exaggerated nature of Kenya's claim, its lack of legal foundation, and its severe prejudice to Somalia both within and beyond 200 M, Somalia formally objects to consideration of Kenya's submission by the Commission on the Limits of the Continental Shelf."

28. The CLCS took note of Somalia's objection in the statement by the Chair reporting on the progress of work at the 34th session of the CLCS (CLCS/83). Acting in accordance with paragraph 5 (a) of Annex I to its Rules of Procedure, which precludes the Commission from considering submissions when a maritime dispute exists, the CLCS determined that it "was not in a position to proceed with the establishment of a sub-commission [to consider Kenya's submission] at that time"⁴.

⁴ Commission on the Limits of the Continental Shelf, Thirty-Fourth Session, "Progress of Work in the Commission on the Limits of the Continental Shelf: Statement by the Chair", UN doc. No. CLCS/83 (31 March 2014), para. 18.

29. The Parties have met on numerous occasions to exchange views on the settlement of their dispute over the delimitation of their maritime boundary. None of these negotiation sessions have yielded agreement. Indeed, no meaningful progress toward an agreement has been achieved at any of them.

30. The most recent rounds of negotiations were held in Nairobi in March and July 2014. At these meetings, the two States presented very different proposals for the single maritime boundary to divide the maritime areas appertaining to each in the Indian Ocean. Kenya insisted on its claim that the maritime boundary should run due east along the parallel of latitude emanating from the Parties' land boundary terminus. Somalia, on the other hand, stated its view that the maritime boundary should instead follow an azimuth of approximately N. 131.5° E from the land boundary terminus out to the outer limit of the two States' maritime entitlements. In Somalia's view, the N. 131.5° E line reflects the dominant geographic realities prevailing between the Parties and constitutes an equitable solution.

31. At the end of the negotiations in July 2014, Kenya proposed to Somalia that the Parties meet one more time in an attempt to resolve their differences over the maritime boundary. It was agreed that these meetings would be held in Mogadishu on 25 and 26 August 2014. Although the Somali delegation was ready to meet on those dates, the Kenyan delegation, without providing either advance notification or subsequent explanation, failed to arrive and, as a consequence, the additional round of meetings that Kenya had requested were not held.

32. The inability of the Parties to narrow the differences between them, and the failure of the Kenyan delegation to attend the final meeting, have made manifest the need for judicial resolution of this dispute.

IV. THE GROUNDS UPON WHICH SOMALIA BASES ITS CLAIM

33. Somalia bases its claim on UNCLOS; specifically, Articles 15, 74 and 83, governing the delimitation of the territorial sea, continental shelf and EEZ. Also applicable is customary international law, as well as the general international law of maritime delimitation as applied by this Court and other international tribunals. This includes the now-standard three-step methodology pursuant to which courts and tribunals will (1) draw a provisional equidistance line; (2) determine whether there are "relevant circumstances" that render the provisionally-drawn equidistance line inequitable; and (3) test the proposed delimitation line to determine whether it results in any gross disproportion. Other rules of international law not incompatible with UNCLOS may also be pertinent.

34. In Somalia's view, the coasts relevant to the delimitation between Somalia and Kenya are generally unremarkable. There are therefore no special or relevant circumstances that could justify Kenya's claim line, or indeed any departure from equidistance in favour of Kenya.

35. To the contrary, the fact that the relevant coast of Somalia is disproportionately longer than that of Kenya renders a strict equidistance solution inequitable to Somalia. Any provisional delimitation line based on equidistance should therefore be adjusted in favour of Somalia.

V. DECISION REQUESTED

36. The Court is asked 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 in the continental shelf beyond 200 M.

37. Somalia further requests the Court to determine the precise geographical co-ordinates of the single maritime boundary in the Indian Ocean.

VI. RESERVATION OF RIGHTS

38. Somalia reserves its rights to supplement or amend the present Application.

*

The Government of Somalia has appointed the Minister of Foreign Affairs and Investment Promotion, H.E. Dr. Abdirahman Dualeh Beileh, as Agent for these proceedings. The Ambassador and Permanent Representative of Somalia to the United Nations, H.E. Dr. Elmi Ahmed Duale, has been appointed as Deputy Agent.

It is requested that all communications be notified to the Agent at the following address:

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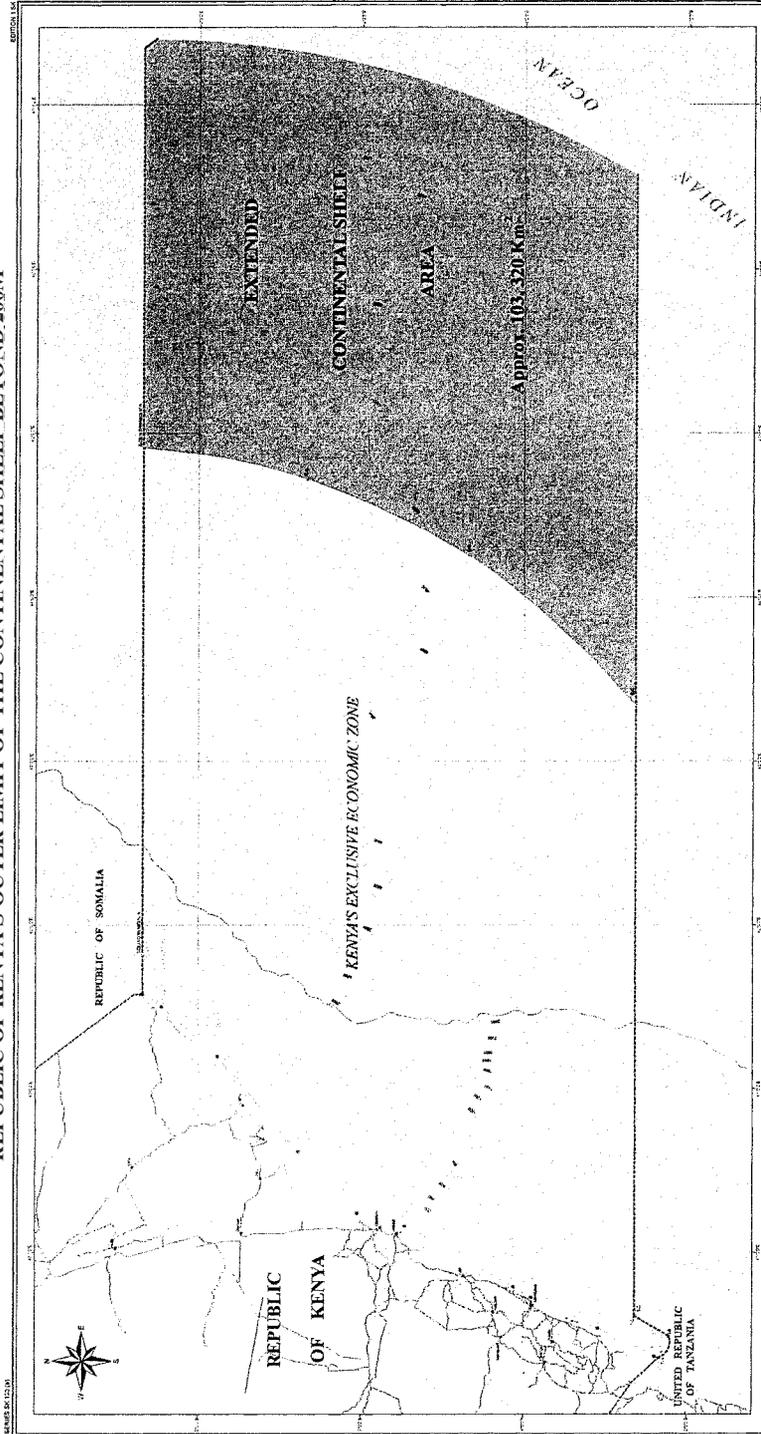
and to the Deputy Agent at the following address:

H.E. Dr. Elmi Ahmed Duale
Ambassador and Permanent Representative
Permanent Mission of the Somali Republic to the United Nations

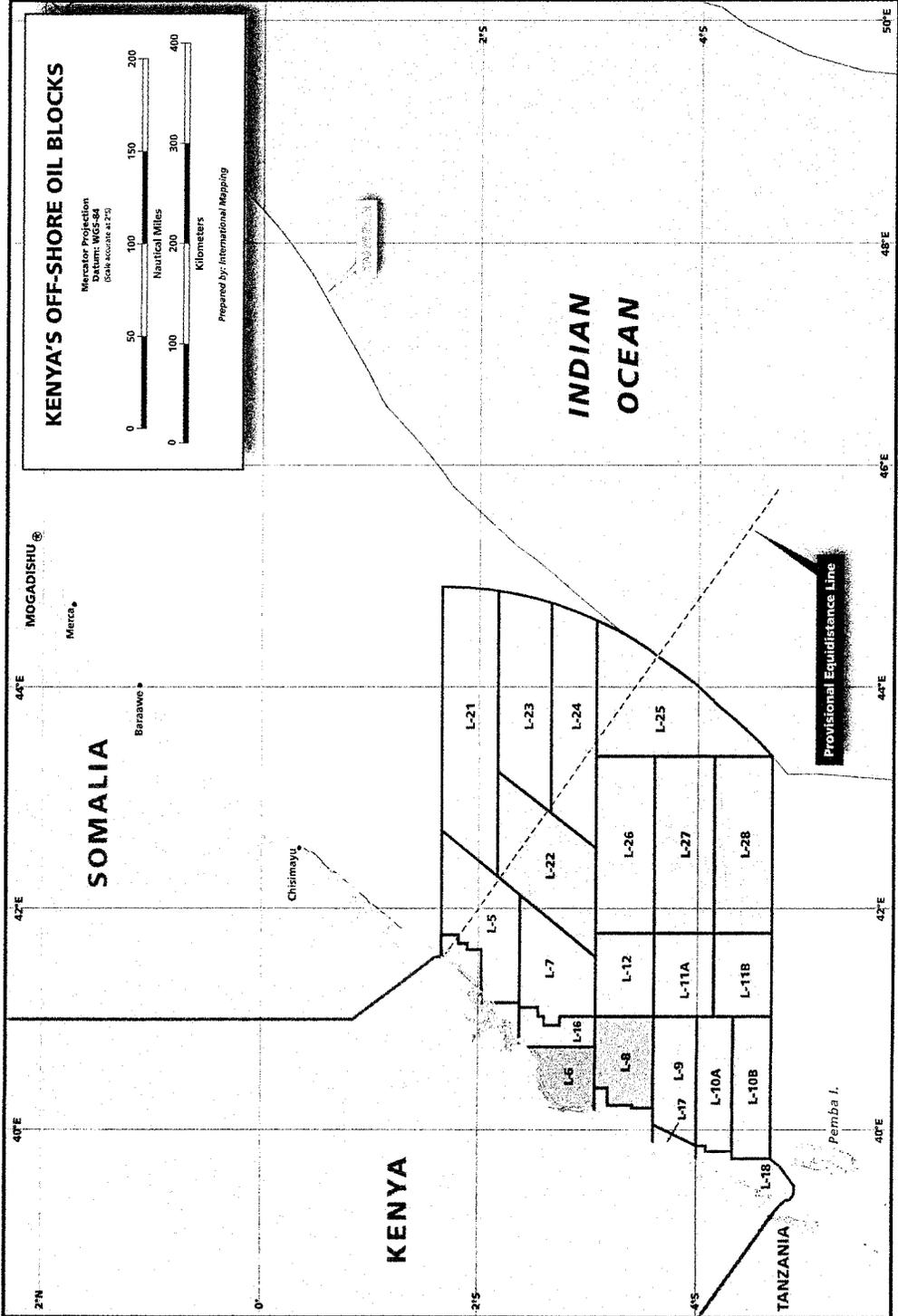
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(Signed) Dr. Abdirahman DUALEH BEILEH,
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REPUBLIC OF KENYA'S OUTER LIMIT OF THE CONTINENTAL SHELF BEYOND 200M



Sketch Map No. 1



Sketch Map No. 3