

12 OCTOBER 2021

JUDGMENT

MARITIME DELIMITATION IN THE INDIAN OCEAN

(SOMALIA *v.* KENYA)



DÉLIMITATION MARITIME DANS L'OCÉAN INDIEN

(SOMALIE *c.* KENYA)

12 OCTOBRE 2021

ARRÊT

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INTERNATIONAL COURT OF JUSTICE

YEAR 2021

**2021
12 October
General List
No. 161**

12 October 2021

MARITIME DELIMITATION IN THE INDIAN OCEAN

(SOMALIA v. KENYA)

Geographical and historical background — Somalia and Kenya adjacent States on coast of East Africa — 1927/1933 treaty arrangement between Italy and United Kingdom concerning boundaries of their territories in East Africa — Somalia and Kenya gaining independence in 1960 and 1963, respectively — Both States parties to United Nations Convention on the Law of the Sea (UNCLOS) — Both States having filed submissions with Commission on the Limits of the Continental Shelf (CLCS) to obtain recommendations on outer limits of continental shelf beyond 200 nautical miles — CLCS yet to issue recommendations.

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Overview of the positions of the Parties — Somalia arguing for unadjusted equidistance line through all maritime areas — Kenya contending maritime boundary already agreed as Somalia acquiesced to boundary following parallel of latitude.

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Whether Somalia acquiesced to maritime boundary following parallel of latitude.

Maritime delimitation to be effected by agreement or recourse to third party possessing competence — Agreement on maritime boundary usually in written form but other forms possible — Essential question being existence of shared understanding between States concerning boundary — High threshold for proof that maritime boundary established by acquiescence or tacit agreement — Court to examine whether compelling evidence that Kenya's claim to maritime boundary maintained consistently, consequently calling for response from Somalia, and clearly and consistently accepted by Somalia.

Whether claim of Kenya to a boundary at the parallel of latitude maintained consistently — Kenyan proclamations of 1979 and 2005 asserting boundary along parallel of latitude — Legislation of Kenya referring to boundary on median or equidistance line — Notes Verbales of Kenya in 2007 and 2008 asking Somalia to confirm agreement to boundary at parallel of latitude — 2009 Submission of Kenya to CLCS and 2009 Memorandum of Understanding (MOU) between both States recognizing existence of disputed maritime boundaries — 2014 negotiations between Parties and diplomatic correspondence of Kenya in 2014-2015 also suggesting boundary not yet agreed — No compelling evidence that claim of Kenya to boundary at parallel of latitude maintained consistently and consequently called for response from Somalia.

Whether Somalia clearly and consistently accepted claim of Kenya to a boundary at the parallel of latitude — Position of Parties during Third United Nations Conference on the Law of the Sea not indicating rejection by Somalia of equidistance as possible method of achieving equitable solution — No indication that Somalia accepted claim of Kenya during bilateral negotiations in 1980-1981 — Somalia's Maritime Law of 1988 providing for boundary in territorial sea following "a straight line towards the sea from the land as indicated on the enclosed charts" — Phrase unclear and not possible to determine its meaning without charts mentioned — 2009 MOU and Somalia's 2009 submission of preliminary information to the CLCS, 2009 letter to UN Secretary-General and 2014 objection to the consideration by CLCS of Kenya's submission all referring to unsettled maritime boundary dispute — Context of civil war depriving Somalia of fully operational government and administration between 1991 and 2005 to be taken into account — No clear and consistent acceptance by Somalia of maritime boundary at parallel of latitude.

Practice of Parties between 1979 and 2014 concerning naval patrols, fisheries, marine scientific research and oil concessions also not showing clear and consistent acceptance by Somalia of maritime boundary at parallel of latitude.

No compelling evidence that Somalia acquiesced to maritime boundary claimed by Kenya — Consequently no agreed maritime boundary between Parties at parallel of latitude.

Maritime delimitation.

Applicable Law — UNCLOS.

Starting-point of maritime boundary — Concordant views of the Parties — Land boundary terminus defined in 1927/1933 treaty arrangement constituting starting-point of maritime boundary.

Delimitation of territorial sea — Article 15 UNCLOS — Identification of base points appropriate to geography of coasts — Disproportionate effect of tiny features — Court selecting base points solely on solid land on mainland coasts — Median line constructed constituting boundary in territorial sea.

Delimitation of exclusive economic zone and continental shelf within 200 nautical miles — Articles 74 and 83 UNCLOS — Three-stage methodology developed by Court — No reason to use other methodology in present case.

Identification of relevant coasts and relevant area — Relevant coasts being those whose projections overlap — Court using 200 nautical miles radial projections to identify relevant coasts of Somalia and Kenya — Relevant area being that in which potential entitlements of parties overlap — Relevant area in present case constituted by overlap of 200-nautical-mile radial projections from land boundary terminus.

First stage — Construction of a provisional equidistance line — Identification of appropriate base points — Provisional equidistance line constructed from endpoint boundary in territorial sea to 200 nautical miles from starting-point of maritime boundary.

Second stage — Whether relevant circumstances calling for adjustment of provisional equidistance line — Current security situation in Somalia and in adjacent maritime spaces not justifying adjustment — No adjustment needed to ensure equitable access to fisheries resources — No de facto boundary justifying adjustment — Question whether use of equidistance line producing cut-off effect for Kenya as result of configuration of coastline — Need to consider broader geographical configuration — Cut-off of Kenya's maritime entitlements due to concavity of coastline from Somalia to Tanzania — Pemba island accentuating cut-off effect — Need to adjust the provisional equidistance line by shifting it north — Adjusted line following geodetic line with initial azimuth 114° until intersection with 200-nautical-mile limit from coast of Kenya.

Third stage — Verification of absence of significant disproportion between ratio lengths relevant coasts and ratio respective shares of Parties in relevant area — No significant disproportionality in present case — Adjusted line achieving equitable solution.

Question of delimitation of continental shelf beyond 200 nautical miles — Both Parties having filed submissions with CLCS and fulfilled obligations under Article 76 UNCLOS — Awaiting recommendations of CLCS to delineate outer limits of continental shelf — Lack of delineation of

outer limits not in and of itself impediment to delimitation of extended continental shelf between States with adjacent coasts — Essential step in delimitation being determination of existence of entitlements to extended continental shelf and overlap of such entitlements — Both Parties claiming continental shelf up to 350 nautical miles on basis of scientific evidence, claims of Parties overlapping — Neither Party questioning existence or extent of other Party entitlement to continental shelf beyond 200 nautical miles — Both Parties requesting Court to delimit maritime boundary up to outer limit of continental shelf — Court proceeding with delimitation — Court extending geodetic line used for delimitation of exclusive economic zone and continental shelf within 200 nautical miles — Maritime boundary continuing along line up to outer limits of continental shelves to be established on basis of future recommendations of CLCS or up to area where rights of third States potentially affected.

Possible grey area of limited size — Not necessary to pronounce on applicable legal régime in the present case.

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Alleged violations by Kenya of its international obligations — Not established that Kenya's maritime activities in disputed area not made in good faith — No violation of Somalia's sovereignty or sovereign rights and jurisdiction — No evidence that Kenya's activities jeopardized or hampered reaching of final agreement on delimitation — No violation of Article 74, paragraph 3, or Article 83, paragraph 3, of UNCLOS — Responsibility of Kenya not engaged.

JUDGMENT

Present: President DONOGHUE; Vice-President GEVORGIAN; Judges TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE; Judge ad hoc GUILLAUME; Registrar GAUTIER.

In the case concerning maritime delimitation in the Indian Ocean,

between

the Federal Republic of Somalia,

represented by

H.E. Mr. Mahdi Mohammed Gulaid, Deputy Prime Minister of the Federal Republic of Somalia,

as Agent;

H.E. Mr. Ali Said Faqi, Ambassador of the Federal Republic of Somalia to the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg,

as Co-Agent;

Mr. Mohamed Omar Ibrahim, Senior Adviser to the President of the Federal Republic of Somalia,

as Assistant Deputy Agent;

Mr. Paul S. Reichler, Attorney at Law, Foley Hoag LLP, member of the Bars of the United States Supreme Court and the District of Columbia,

Mr. Alain Pellet, Professor Emeritus of the University Paris Nanterre, former Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Philippe Sands, QC, Professor of International Law, University College London, Barrister, Matrix Chambers, London,

Ms Alina Miron, Professor of International Law, University of Angers,

Mr. Edward Craven, Barrister, Matrix Chambers, London,

as Counsel and Advocates;

Mr. Lawrence H. Martin, Attorney at Law, Foley Hoag LLP, member of the Bars of the United States Supreme Court, the District of Columbia and the Commonwealth of Massachusetts,

Mr. Yuri Parkhomenko, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

Mr. Nicholas M. Renzler, Attorney at Law, Foley Hoag LLP, member of the Bars of the United States Supreme Court, the District of Columbia and the State of New York,

Mr. Benjamin Salas Kantor, Attorney at Law, Foley Hoag LLP, member of the Bar of the Supreme Court of the Republic of Chile,

Mr. Ysam Soualhi, Researcher, Centre Jean Bodin (CJB), University of Angers,

as Counsel;

H.E. Mr. Abukar Dahir Osman, Permanent Representative of the Federal Republic of Somalia to the United Nations,

Mr. Sulayman Mohamed Mohamoud, Attorney General of the Federal Republic of Somalia,

H.E. Mr. Yusuf Garaad Omar, Special Envoy of the President of the Federal Republic of Somalia for the Red Sea and the Gulf of Aden,

Mr. Osmani Elmi Guled, Solicitor General of the Federal Republic of Somalia,

Mr. Ahmed Ali Dahir, former Attorney General of the Federal Republic of Somalia,

Mr. Kamil Abdullahi Mohammed, Legal Adviser, Office of the Attorney General of the Federal Republic of Somalia,

Mr. Abdiqani Yasin Mohamed, Personal Assistant of the Deputy Prime Minister of the Federal Republic of Somalia,

as Advisers;

Mr. Scott Edmonds, Cartographer, International Mapping,

Ms Vickie Taylor, Cartographer, International Mapping,

as Technical Advisers,

and

the Republic of Kenya,

represented by

The Honourable Paul Kihara Kariuki, Attorney-General of the Republic of Kenya,

as Agent;

H.E. Mr. Lawrence Lenayapa, Ambassador of the Republic of Kenya to the Kingdom of the Netherlands,

as Co-Agent,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 August 2014, the Government of the Federal Republic of Somalia (hereinafter “Somalia”) filed in the Registry of the Court an Application instituting proceedings against the Republic of Kenya (hereinafter “Kenya”) concerning a dispute in relation to “the establishment of the single maritime boundary between Somalia and Kenya in the Indian Ocean delimiting the territorial sea, exclusive economic zone . . . and continental shelf, including the continental shelf beyond 200 nautical miles”.

In its Application, Somalia sought to found the jurisdiction of the Court on the declarations made, pursuant to Article 36, paragraph 2, of the Statute of the Court, by Somalia on 11 April 1963 and by Kenya on 19 April 1965.

2. In accordance with Article 40, paragraph 2, of the Statute, the Registrar immediately communicated the Application to the Government of Kenya. He also notified the Secretary-General of the United Nations of the filing of the Application by Somalia.

3. By a letter dated 14 November 2014, the Registrar informed all Member States of the United Nations of the filing of the Application.

4. In conformity with Article 40, paragraph 3, of the Statute, the Registrar later notified the Member States of the United Nations, through the Secretary-General, of the filing of the Application, by transmission of the printed bilingual text.

5. Since the Court included upon the Bench no judge of Kenyan nationality, Kenya proceeded to exercise its right conferred by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Gilbert Guillaume.

6. By an Order of 16 October 2014, the President of the Court fixed 13 July 2015 as the time-limit for the filing of the Memorial of Somalia and 27 May 2016 for the filing of the Counter-Memorial of Kenya. Somalia filed its Memorial within the time-limit so prescribed.

7. On 7 October 2015, within the time-limit set by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 (as amended on 1 February 2001), Kenya raised preliminary objections to the jurisdiction of the Court and to the admissibility of the Application. In an Order of 9 October 2015, the Court noted that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 (as amended on 1 February 2001), the proceedings on the merits were suspended. Consequently, taking account of Practice Direction V, it fixed, by the same Order, 5 February 2016 as the time-limit for the presentation by Somalia of a written statement of its observations and submissions on the preliminary objections raised by Kenya. Somalia filed such a statement within the time-limit so prescribed, and the case became ready for hearing in respect of the preliminary objections.

8. Pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS” or the “Convention”) the notifications provided for in Article 63, paragraph 1, of the Statute. In addition, the Registrar addressed to the European Union, which is also party to that Convention, the notification provided for in Article 43, paragraph 2, of the Rules of Court, and asked that organization whether or not it intended to furnish observations under that provision. In response, the Director-General of the Legal Service of the European Commission indicated that the European Commission, acting on behalf of the European Union, did not intend to submit observations in the case.

9. By a communication dated 21 January 2016, the Government of the Republic of Colombia, referring to Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, and having taken into account the objection raised by one Party, the Court decided that it would not be appropriate to grant that request. By a letter dated 17 March 2016, the Registrar duly communicated that decision to the Government of Colombia and to the Parties.

10. Public hearings on the preliminary objections raised by Kenya were held from 19 to 23 September 2016. By its Judgment of 2 February 2017 (hereinafter the “2017 Judgment”), the Court rejected the preliminary objections raised by Kenya, and found that it had jurisdiction to entertain the Application filed by Somalia on 28 August 2014 and that the Application was admissible.

11. By an Order of 2 February 2017, the Court fixed 18 December 2017 as the time-limit for the filing of the Counter-Memorial of Kenya. That pleading was filed within the time-limit thus prescribed.

12. By an Order of 2 February 2018, the Court authorized the submission of a Reply by Somalia and a Rejoinder by Kenya, and fixed 18 June 2018 and 18 December 2018 as the respective time-limits for the filing of those pleadings. The Reply and Rejoinder were filed within the time-limits thus prescribed.

13. By letters dated 26 February 2019, the Parties were informed that the hearings on the merits would take place from 9 to 13 September 2019. By a letter dated 2 September 2019, received under cover of a Note Verbale dated 3 September 2019, Kenya requested the Court to postpone the hearings by 12 months. By a letter dated 4 September 2019, Somalia responded that it considered the request “manifestly unjustified, harmful to the judicial process and the peaceful resolution of a longstanding dispute, and highly prejudicial to [it]”. By letters dated 5 September 2019, the Parties were notified that the Court had decided to postpone the opening of the hearings to 4 November 2019.

By a letter dated 16 September 2019, Kenya requested the Court to reconsider its decision of 5 September 2019 and postpone the oral proceedings until September 2020. By a letter dated 19 September 2019, Somalia argued that there was no basis for the Court to reconsider its decision. By a letter dated 23 September 2019, Kenya reiterated its request. On 3 October 2019, the Vice-President of the Court, Acting President in the case, met the representatives of the Parties in order to ascertain their views with regard to the question of the postponement of the oral proceedings. By letters dated 16 October 2019, the Parties were informed that the Court had decided to postpone the opening of the hearings to 8 June 2020.

14. By a letter dated 23 April 2020, Kenya requested an indefinite postponement of the oral proceedings in light of the COVID-19 pandemic. By a letter dated 1 May 2020, Somalia opposed the further postponement of the oral proceedings. By letters dated 19 May 2020, the Parties were informed that the Court had decided to postpone the hearings to the week of 15 March 2021, and a detailed schedule for the hearings was provided to them.

15. By letters dated 23 December 2020, the Parties were informed that, in light of the restrictions in place across the globe as a result of the COVID-19 pandemic, the hearings due to open on 15 March 2021 would be held by video link. A modified detailed schedule was transmitted to them at the same time.

16. By a letter dated 28 January 2021, Kenya, referring to “serious difficulties in preparing for the hearing due to the ongoing global COVID-19 pandemic” and expressing concerns about proceeding with hearings by video link, requested “that the hearing be postponed until such a time

as the pandemic conditions would have subsided”. By a letter dated 3 February 2021, Somalia objected to this request. Further communications on the subject were exchanged between the Parties. By letters dated 12 February 2021, the Parties were informed that the Court had decided to maintain the hearings as scheduled, starting on 15 March 2021, in a hybrid format, with some judges attending the oral proceedings in person in the Great Hall of Justice and others participating remotely by video link, and with the representatives of the Parties to the case participating either in person or by video link.

17. On 5 March 2021, Kenya presented a request to produce “new documentation and evidence”. Enclosed with Kenya’s letter were Appendix 1, accompanied by two annexes, and Appendix 2, consisting of eight volumes with annexes. Kenya’s letter stated that Volume I of Appendix 2 explained “the nature and relevance of the new and additional evidence”. By a letter dated 9 March 2021, Somalia informed the Court that it did not object to the production of the materials that Kenya wished to submit, except for Volume I of Appendix 2. With respect to Volume I of Appendix 2, Somalia indicated, however, that it would withdraw its objection if it were given the opportunity to respond to it.

18. By letters dated 11 March 2021, the Parties were informed that, in light of the absence of an objection on the part of Somalia and pursuant to Article 56, paragraph 1, of the Rules of Court, the documents contained in Appendix 1 and in Volumes II to VIII of Appendix 2 could be produced and would form part of the case file. Having considered the views of the Parties and the particular circumstances of the case, the Court decided to authorize the production of Volume I of Appendix 2 (hereinafter “Appendix 2”) by Kenya, on the understanding that Somalia would have the opportunity to comment thereon during the hearings. In addition, the Court decided that if Somalia wished to comment in writing on the materials that were produced by Kenya and to submit documents in support of its comments, it should do so no later than 22 March 2021. Somalia commented on these materials during the hearings and filed written comments on 22 March 2021.

19. By a letter dated 11 March 2021 and received in the Registry on 12 March 2021, the Agent of Kenya informed the Court that his Government would not be participating in the hearings in the case and indicated the reasons for that decision. The Agent requested the opportunity to address the Court orally before the commencement of the hearings and to submit a “position paper”, a copy of which was enclosed with his letter. By a letter dated 12 March 2021, Somalia objected to the two requests made by the Agent of Kenya. By letters dated 15 March 2021, the Parties were informed that the Court had decided not to grant either of the two requests made by Kenya.

20. By a letter dated 15 March 2021, the Co-Agent of Kenya stated that “while affirming that it [would] not participate in the hearings on the merits, Kenya wishe[d] to inform the Court that it nevertheless intend[ed] to utilize thirty minutes out of the time allocated to it on the 18th March, 2021, to orally address the Court”. Somalia responded by a letter of the same date, stating that it welcomed Kenya’s decision to participate in the hearings. By letters dated 16 March 2021, the Parties were informed that the Court was prepared to give Kenya the opportunity to address it on 18 March 2021 (during the session originally scheduled for Kenya’s oral pleadings), for the purpose of Kenya’s participation in the oral proceedings and the presentation of its contentions on the merits of the case. By a letter dated 17 March 2021, Kenya indicated that it would “not utilize the opportunity provided by the Court” to participate in the oral proceedings on 18 March 2021.

21. By a letter dated 18 March 2021, Kenya submitted four new documents “for the Court’s information and consideration”. By a letter dated 22 March 2021, Somalia argued that these documents were neither new nor critical and were of no probative value in support of Kenya’s arguments. By letters dated 23 March 2021, the Parties were informed that the Court had decided that these four new documents and Somalia’s observations thereon would be included in the case file.

22. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings. It also decided that the additional materials submitted by Kenya prior to and during the hearings and the written comments of Somalia thereon (see paragraphs 17, 18 and 21 above) would be made public.

23. Public hearings were held from 15 to 18 March 2021, at which the Court heard the oral arguments of:

For Somalia: H.E. Mr. Mahdi Mohammed Gulaid,
Mr. Alain Pellet,
Mr. Philippe Sands,
Ms Alina Miron,
Mr. Paul S. Reichler,
Mr. Edward Craven,
Mr. Mohamed Omar Ibrahim.

24. At the hearings, a Member of the Court put a question to Somalia, to which a reply was given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, Kenya was invited to submit any comments that it might wish to make on Somalia’s reply, but no such comments were made.

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25. In the Application, the following claims were presented by Somalia:

“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 [nautical miles].

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

26. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Somalia,

in the Memorial:

“On the basis of the facts and law set forth in this Memorial, Somalia respectfully requests the Court:

1. To determine the complete course of the maritime boundary between Somalia and Kenya in the Indian Ocean, including in the continental shelf beyond 200 [nautical miles], on the basis of international law.
2. To determine the maritime boundary between Somalia and Kenya in the Indian Ocean on the basis of the following geographical coordinates:

| Point No. | Latitude | Longitude |
|---------------------------------------|-----------------|------------------|
| 1 [land boundary terminus] | 1° 39' 44.07" S | 41° 33' 34.57" E |
| 2 | 1° 40' 05.92" S | 41° 34' 05.26" E |
| 3 | 1° 41' 11.45" S | 41° 34' 06.12" E |
| 4 | 1° 43' 09.34" S | 41° 36' 33.52" E |
| 5 | 1° 43' 53.72" S | 41° 37' 48.21" E |
| 6 | 1° 44' 09.28" S | 41° 38' 13.26" E |
| 7 (intersection with 12 M limit) | 1° 47' 54.60" S | 41° 43' 36.04" E |
| 8 | 2° 19' 01.09" S | 42° 28' 10.27" E |
| 9 | 2° 30' 56.65" S | 42° 46' 18.90" E |
| 10 (intersection with 200 M limit) | 3° 34' 57.05" S | 44° 18' 49.83" E |
| 11 (intersection with 350 M limit) | 5° 00' 25.71" S | 46° 22' 33.36" E |

3. To adjudge and declare that Kenya, by its conduct in the disputed area, has violated its international obligations to respect the sovereignty, and sovereign rights and jurisdiction of Somalia, and is responsible under international law to make full reparation to Somalia, including inter alia by making available to Somalia all seismic data acquired in areas that are determined by the Court to be subject to the sovereignty and/or sovereign rights and jurisdiction of Somalia, and to repair in full all damage that has been suffered by Somalia by the payment of appropriate compensation.

(All points referenced are referred to WGS-84)”.

in the Reply:

“On the basis of the facts and law set forth in its Memorial and this Reply, Somalia respectfully requests the Court:

1. To reject Submissions 1 and 2 of Kenya’s Counter-Memorial.
2. To determine the complete course of the maritime boundary between Somalia and Kenya in the Indian Ocean, including in the continental shelf beyond 200 [nautical miles], on the basis of international law.
3. To determine the maritime boundary between Somalia and Kenya in the Indian Ocean on the basis of the following geographical coordinates:

| Point No. | Latitude | Longitude |
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| 5 | 1° 43' 53.72" S | 41° 37' 48.21" E |
| 6 | 1° 44' 09.28" S | 41° 38' 13.26" E |
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| 8 | 2° 19' 01.09" S | 42° 28' 10.27" E |
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| 11 (intersection with the 350 M limit) | 5° 00' 25.71" S | 46° 22' 33.36" E |

4. To adjudge and declare that Kenya, by its conduct in the disputed area, has violated its international obligations and is responsible under international law to make full reparation to Somalia, including inter alia by making available to Somalia all seismic, geologic, bathymetric and other technical data acquired in areas that are determined by the Court to be subject to the sovereignty and/or sovereign rights and jurisdiction of Somalia, and to repair in full all damage that has been suffered by Somalia by the payment of appropriate compensation.

(All points referenced are referred to WGS-84)”.

On behalf of the Government of Kenya,

in the Counter-Memorial:

“On the basis of the facts and law set forth in this Counter-Memorial, Kenya respectfully requests the Court to:

1. Dismiss the requests in paragraphs 2 and 3 of the Submissions at pages 147 and 148 of Somalia’s Memorial dated 13 July 2015.
2. Adjudge and declare that the maritime boundary between Somalia and Kenya in the Indian Ocean shall follow the parallel of latitude at 1° 39' 43.2" S, extending from Primary Beacon 29 (1° 39' 43.2" S) to the outer limit of the continental shelf.”

in the Rejoinder:

“On the basis of the facts and law set forth in this Rejoinder, Kenya respectfully requests the Court to:

1. Dismiss the requests in paragraphs 1, 3 and 4 of [the Submissions in] the Reply of Somalia.
2. Adjudge and declare that the maritime boundary between Somalia and Kenya in the Indian Ocean shall follow the parallel of latitude at 1° 39' 43.2" S, extending from Primary Beacon 29 (1° 39' 43.2" S) to the outer limit of the continental shelf.”

27. At the oral proceedings, the following submissions were presented on behalf of the Government of Somalia at the hearing of 18 March 2021:

“On the basis of its Memorial of 7 July 2015, its Reply of 18 June 2018, and its oral pleadings, Somalia respectfully requests the Court:

1. To reject Submissions 1 and 2 of Kenya’s Rejoinder of 18 December 2018.
2. To determine the complete course of the maritime boundary between Somalia and Kenya in the Indian Ocean, including in the continental shelf beyond 200 [nautical miles], on the basis of international law.
3. To determine the maritime boundary between Somalia and Kenya in the Indian Ocean on the basis of the following geographical coordinates (all points referenced are referred to WGS-84):

| Point No. | Latitude | Longitude |
|---------------------------------------|-----------------|------------------|
| 1 [land boundary terminus] | 1° 39' 44.07" S | 41° 33' 34.57" E |
| 2 | 1° 40' 05.92" S | 41° 34' 05.26" E |
| 3 | 1° 41' 11.45" S | 41° 34' 06.12" E |
| 4 | 1° 43' 09.34" S | 41° 36' 33.52" E |
| 5 | 1° 43' 53.72" S | 41° 37' 48.21" E |
| 6 | 1° 44' 09.28" S | 41° 38' 13.26" E |
| 7 (intersection with 12 M limit) | 1° 47' 54.60" S | 41° 43' 36.04" E |
| 8 | 2° 19' 01.09" S | 42° 28' 10.27" E |
| 9 | 2° 30' 56.65" S | 42° 46' 18.90" E |
| 10 (intersection with 200 M limit) | 3° 34' 57.05" S | 44° 18' 49.83" E |
| 11 (intersection with 350 M limit) | 5° 00' 25.71" S | 46° 22' 33.36" E |

4. To adjudge and declare that Kenya, by its conduct in the disputed area, has violated its international obligations and is responsible under international law to make full reparation to Somalia, including inter alia by making available to Somalia all seismic, geologic, bathymetric and other technical data acquired in areas that are determined by the Court to be subject to the sovereignty and/or sovereign rights and jurisdiction of Somalia.”

28. Since Kenya did not participate in the oral proceedings, no formal submissions were presented on behalf of its Government at the hearings.

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* *

29. The Court regrets Kenya’s decision not to participate in the oral proceedings held in March 2021. Nevertheless, the Court had extensive information about Kenya’s views, having received its Counter-Memorial and Rejoinder, as well as numerous volumes containing additional evidence and arguments it submitted to the Court in March 2021 (see paragraphs 17, 18 and 21 above).

30. The Court recalls that the oral proceedings were conducted in a hybrid format, in accordance with Article 59, paragraph 2, of the Rules of Court and on the basis of the Court's Guidelines for the Parties on the Organization of Hearings by Video Link, adopted on 13 July 2020 and communicated to the Parties on 12 February 2021. Prior to the opening of the hybrid hearings, the Parties were invited to participate in comprehensive technical tests, and Somalia did so. During the oral proceedings, a number of judges were present in the Great Hall of Justice, while others joined the proceedings via video link, allowing them to view and hear the speaker and see any demonstrative exhibits displayed. Each Party was permitted to have up to four representatives present in the Great Hall of Justice at any one time and was offered the use of an additional room in the Peace Palace from which members of the delegation were able to participate via video link. Members of the delegations were also given the opportunity to participate via video link from other locations of their choice.

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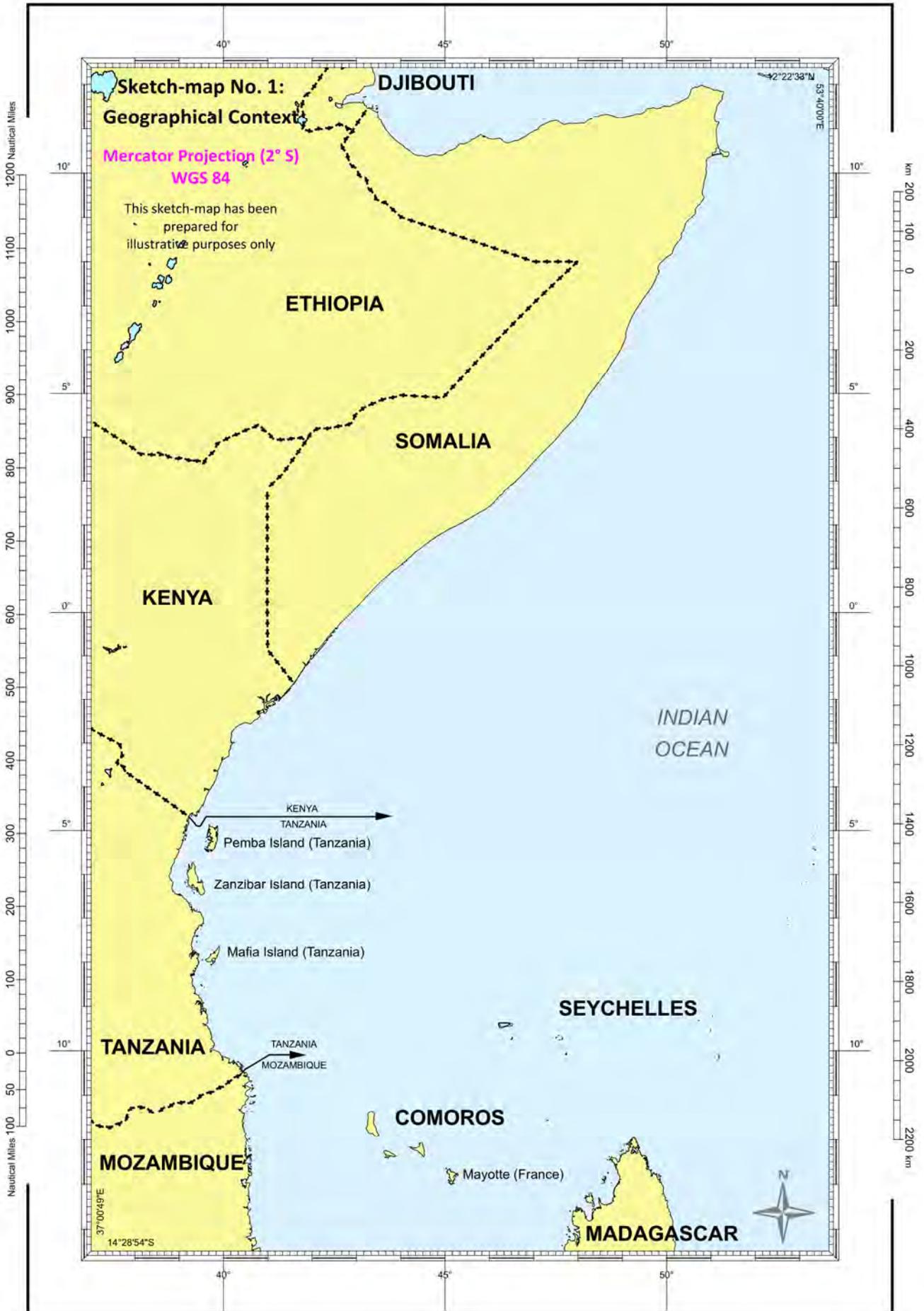
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I. GEOGRAPHICAL AND HISTORICAL BACKGROUND

31. Somalia and Kenya are adjacent States on the coast of East Africa. Somalia is located in the Horn of Africa. It borders Kenya to the south-west, Ethiopia to the west and Djibouti to the north-west. Somalia's coastline faces the Gulf of Aden to the north and the Indian Ocean to the east. Kenya, for its part, shares a land boundary with Somalia to the north-east, Ethiopia to the north, South Sudan to the north-west, Uganda to the west and Tanzania to the south. Its coastline faces the Indian Ocean (see sketch-map No. 1 below).

32. On 15 July 1924, Italy and the United Kingdom concluded a treaty regulating certain questions concerning the boundaries of their respective territories in East Africa, including what Somalia describes as "the Italian colony of Jubaland", located in present-day Somalia, and the British colony of Kenya. By an Exchange of Notes dated 16 and 26 June 1925, the boundary between the Italian and British colonial territories was redefined in its southernmost section. Between 1925 and 1927, a joint British-Italian commission surveyed and demarcated the boundary. Following the completion of this exercise, the commission recorded its decisions in an Agreement signed by British and Italian representatives on 17 December 1927 (hereinafter the "1927 Agreement"). That Agreement was formally confirmed by an Exchange of Notes of 22 November 1933 between the British and Italian Governments. The Court will collectively refer to the 1927 Agreement and this Exchange of Notes as the "1927/1933 treaty arrangement". Somalia and Kenya gained their independence in 1960 and 1963, respectively.

33. Both Parties signed UNCLOS on 10 December 1982. Kenya and Somalia ratified it on 2 March 1989 and 24 July 1989, respectively, and the Convention entered into force for them on 16 November 1994.



34. Both Somalia and Kenya have filed submissions with the Commission on the Limits of the Continental Shelf (hereinafter the “CLCS” or the “Commission”) in order to obtain its recommendations on matters related to the establishment of the outer limits of their continental shelves beyond 200 nautical miles, in accordance with Article 76, paragraph 8, of UNCLOS. While they previously objected to the consideration by the Commission of each other’s submissions, these objections were subsequently withdrawn. As of the date of the present Judgment, the Commission has yet to issue its recommendations in respect of the Parties’ submissions.

II. OVERVIEW OF THE POSITIONS OF THE PARTIES

35. The Parties have adopted fundamentally different approaches to the delimitation of the maritime areas. Somalia argues that no maritime boundary exists between the two States and asks the Court to plot a boundary line using the equidistance/special circumstances method (for the delimitation of the territorial sea) and the equidistance/relevant circumstances method (for the maritime areas beyond the territorial sea). In its view, an unadjusted equidistance line throughout all maritime areas achieves the equitable result required by international law. Kenya, for its part, contends that there is already an agreed maritime boundary between the Parties, because Somalia has acquiesced to a boundary that follows the parallel of latitude at 1° 39' 43.2" S (hereinafter “the parallel of latitude”). Kenya further contends that the Parties have considered this to be an equitable delimitation, in light of both the geographical context and regional practice. Kenya submits that, even if the Court were to conclude that there is no maritime boundary in place, it should delimit the maritime areas following the parallel of latitude, and that, even if the Court were to employ the delimitation methodology suggested by Somalia, the outcome, following adjustment to reach an equitable result, would be a delimitation that follows the parallel of latitude (see sketch-map No. 2 below, depicting the maritime boundaries claimed by the Parties).

