

(b) Relevant area

138. The Parties disagree as to the identification of the relevant area. Somalia proceeds in two steps, first drawing 200-nautical-mile envelopes of arcs from the Parties' baselines and identifying the area where those arcs intersect as the area of overlapping potential entitlements, excluding the area south of the agreed Kenya-Tanzania boundary. This produces a total relevant area of 213,863 sq km within 200 nautical miles. Somalia then adds to this area the maritime space beyond 200 nautical miles in which the potential entitlements of the Parties overlap. Although it accepts the role of potential entitlements for the determination of the relevant area, in fact, it limits the relevant area beyond 200 nautical miles in the north by the parallel of latitude drawn from the land boundary terminus. It appears that Somalia has done so on the basis of the claim submitted by Kenya to the CLCS. Somalia considers that this combined area constitutes the totality of the relevant area in the circumstances of the case, thus measuring approximately 319,542 sq km (see sketch-map No. 6 above).

139. Kenya rejects Somalia's approach to identifying the relevant area. According to Kenya, Somalia acts inconsistently when it applies one approach to define the relevant area within 200 nautical miles and a different approach to define the area beyond 200 nautical miles. For Kenya, the relevant area consists of the entire frontal projections of the Parties' relevant coasts out to 350 nautical miles. In the west, the relevant area is bounded by the coasts of the Parties from Ras Wasin in the south of Kenya, through the land boundary terminus to the Somali headland of Gees Warshikh in the north. The southern limit of the relevant area is bounded by the agreed boundary between Kenya and Tanzania. In the east, the relevant area is bounded by the continental shelf limits as submitted by Somalia to the CLCS dated 21 July 2014. To define the relevant area in the north, Kenya adopts a straight line perpendicular to the coast to connect the end of the relevant coast at Gees Warshikh to the continental shelf limit. The total relevant area thus defined measures 525,300 sq km (see sketch-map No. 7 above).

140. The Court cannot accept Somalia's approach to identifying the relevant area beyond 200 nautical miles since it is not in conformity with past pronouncements of the Court on what constitutes the relevant area. The Court has explained on a number of occasions that "[t]he relevant area comprises that part of the maritime space in which the potential entitlements of the parties overlap" (see *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, *Judgment, I.C.J. Reports 2018 (I)*, p. 184, para. 115; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment, I.C.J. Reports 2012 (II)*, p. 683, para. 159). The Court also recalls its observation that "the relevant area cannot extend beyond the area in which the entitlements of both Parties overlap" (*ibid.*, p. 685, para. 163). The fact that Kenya has limited its claim to the extended continental shelf submitted to the CLCS by the parallel of latitude does not mean that its potential entitlements cannot extend to the north of that parallel. Rather, that claim is based on Kenya's assertion that the parallel of latitude constitutes the maritime boundary between the two States, an assertion which the Court has found unproven and cannot accept.

141. The Court is of the view that, in the north, the relevant area extends as far as the overlap of the maritime projections of the coast of Kenya and the coast of Somalia. The Court considers it appropriate to use the overlap of the 200-nautical-mile radial projections from the land boundary terminus. As far as the southern limit of the relevant area is concerned, the Court notes that the Parties agree that the maritime space south of the boundary between Kenya and Tanzania is not part of the relevant area. The relevant area, as identified by the Court for the purpose of delimiting the exclusive economic zone and the continental shelf up to 200 nautical miles from the coasts, measures approximately 212,844 sq km (see sketch-map No. 8 above).

3. Provisional equidistance line

142. The Court must next construct the provisional equidistance line. To do so, it must identify the appropriate base points on the Parties' relevant coasts which will be used for that purpose.

* *

143. Somalia suggests that the base points should be identified by using appropriate software based on the relevant nautical charts. It submits that the software automatically selects those points that generate the equidistance line, that is a line every point of which is equidistant from the nearest points on the Parties' baselines from which the breadth of the territorial sea is measured. Having used the CARIS-LOTS software, based on US NGA Nautical Chart 61220, Somalia has identified two base points on its side of the land boundary terminus and two base points on the Kenyan side. It provides the following geographical co-ordinates for the base points on the Somali side, for base point S3 1° 39' 14.99" S and 41° 35' 15.68" E and for base point S4 1° 35' 37.21" S and 41° 38' 01.00" E. The two base points that Somalia identified on the Kenyan side have the following co-ordinates: base point K2 1° 43' 04.77" S and 41° 32' 37.18" E and base point K3 1° 46' 10.97" S and 41° 30' 45.14" E. It submits that these four base points control the entire course of the equidistance line up to 200 nautical miles from the coast.

144. Kenya contends, in Appendix 2, that Somalia failed to use the most reliable charted data. Kenya criticizes the reliance by Somalia on US NGA Nautical Chart 61220, arguing that it contains no new or independent charted data. Kenya draws the Court's attention to the fact that US NGA Nautical Chart 61220 indicates that its charted data are derived from the relevant British Admiralty or Italian charts. In Kenya's view, the appropriate chart to be used for the selection of base points is British Admiralty Chart 3362, which offers the best available charted data. Based on that chart and using the same CARIS-LOTS software, Kenya identifies the following base points for the construction of the provisional equidistance line:

Base points on Kenya's coast:

Base point	Co-ordinates
K4	1° 43' 12.2" S - 41° 32' 38.5" E
K5	1° 43' 39.0" S - 41° 32' 28.4" E
K6	1° 46' 26.3" S - 41° 30' 36.2" E

Base points on Somalia's coast:

Base point	Co-ordinates
S3	1° 38' 57.0" S - 41° 35' 21.9" E
S4	1° 35' 49.9" S - 41° 38' 1.8" E

Kenya admits that its proposed provisional equidistance line shows only slight differences from that proposed by Somalia.

145. Somalia also pointed out at the hearings that there was very little difference between the two equidistance lines constructed from the base points it had selected or from those selected by Kenya. It concluded that it would be content for the Court to use either US NGA Nautical Chart 61220 or British Admiralty Chart 3362, or any other chart that the Court might consider even more reliable.

* *

146. Taking into account the views of the Parties, the Court considers that it can rely on British Admiralty Chart 3362. It identifies the following base points as appropriate for the construction of the provisional equidistance line within 200 nautical miles of the coasts:

Base points on Somalia's coast:

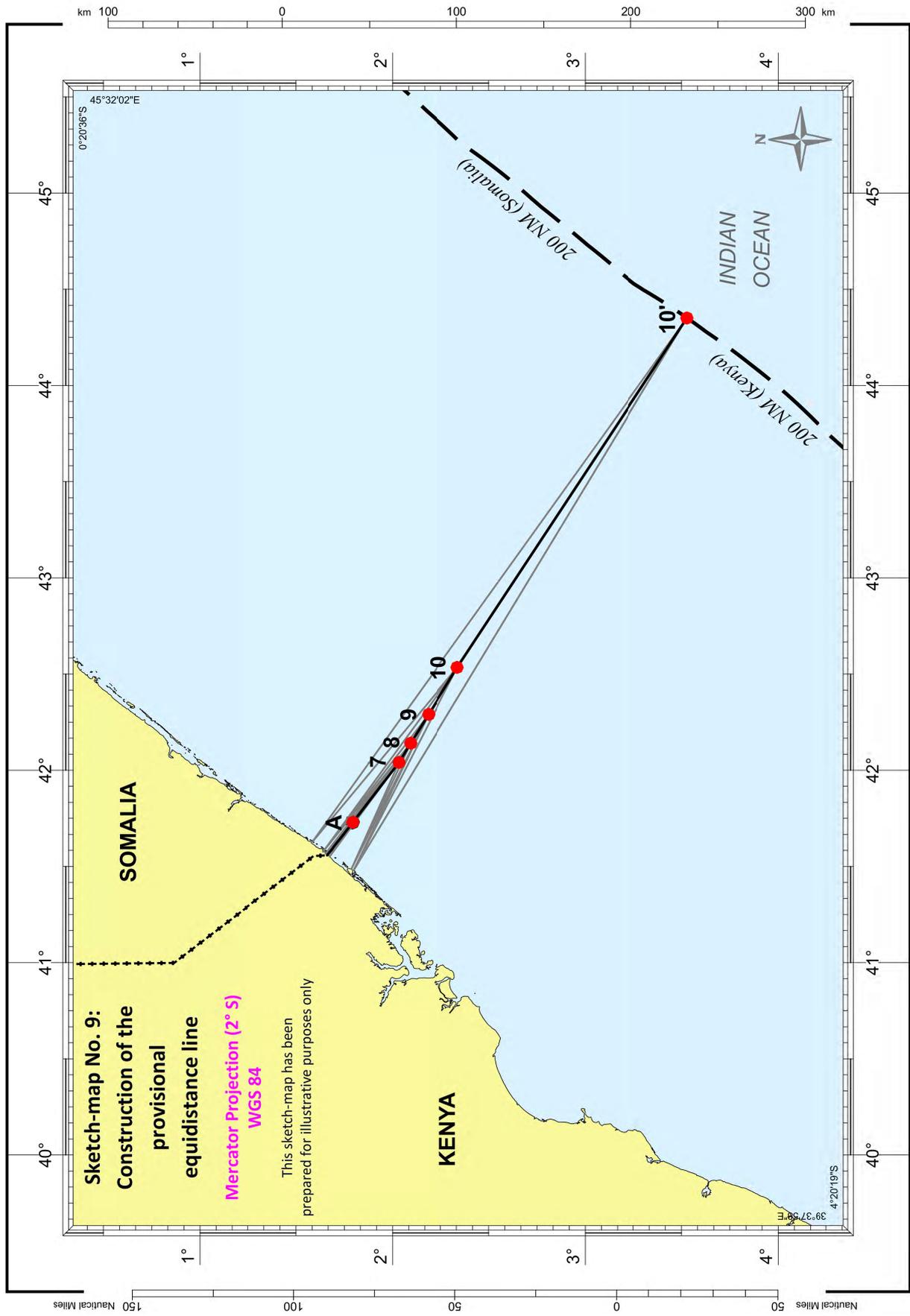
Base point	Co-ordinates
S4	1° 39' 09.2" S - 41° 34' 00.7" E
S5	1° 38' 24.0" S - 41° 34' 35.8" E
S6	1° 34' 50.2" S - 41° 37' 19.9" E

Base points on Kenya's coast:

Base point	Co-ordinates
K4	1° 40' 25.5" S - 41° 33' 02.9" E
K5	1° 47' 11.4" S - 41° 29' 10.5" E
K6	1° 47' 55.0" S - 41° 28' 49.4" E

The provisional equidistance line constructed on the basis of these base points begins from the endpoint of the maritime boundary in the territorial sea (Point A) and continues until it reaches 200 nautical miles from the starting-point of the maritime boundary, at a point (Point 10') with co-ordinates 3° 31' 41.4" S and 44° 21' 02.5" E (see sketch-map No. 9 below). The turning points between Point A and the 200-nautical-mile limit are the following:

Turning point	Co-ordinates
7	2° 01' 57.8" S - 42° 02' 26.7" E
8	2° 05' 37.1" S - 42° 08' 26.9" E
9	2° 11' 13.0" S - 42° 17' 25.5" E
10	2° 20' 12.3" S - 42° 32' 04.8" E



4. Whether there is a need to adjust the provisional equidistance line

147. The Court will next consider whether there are factors requiring the adjustment or shifting of the provisional equidistance line in order to achieve an equitable solution. Since the cases concerning the *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, such factors have been referred to in the jurisprudence of the Court as relevant circumstances (*Judgment, I.C.J. Reports 1969*, p. 53, para. 101).

* *

148. Somalia sees no reason for adjusting the provisional equidistance line. It maintains that the relevant circumstances that may justify the adjustment of the equidistance line in order to reach an equitable solution are essentially of a geographical nature. Somalia mentions three such circumstances in particular, namely: the cut-off effect of the provisional equidistance line, appreciated within the general geographical context; the cut-off effect of such a line due to concavity of the coast; and the presence of islands in the relevant maritime area. In Somalia's view, there are no such circumstances in the present case. Nor are there any other unusual or anomalous geographical circumstances since the coasts of the Parties are comparatively straight and unremarkable. It contends that the Kenya-Tanzania maritime boundary agreement is *res inter alios acta* for Somalia and that it cannot have any bearing on the delimitation in the present case. It adds that the effect of that boundary agreement can only consist of depriving Kenya of some of its entitlements beyond 200 nautical miles. Somalia concludes that the provisional equidistance line should remain intact since no adjustment is required or justified.

*

149. Kenya, for its part, invokes five circumstances which, it considers, require the adjustment of the provisional equidistance line. In its view, any such adjustment should result in a boundary following the parallel of latitude. First, Kenya contends that the provisional equidistance line would lead to a severe reduction in its coastal projection constituting a significant, pronounced and unreasonable cut-off effect with respect to its maritime areas.

150. The second relevant circumstance requiring the adjustment of the provisional equidistance line is, according to Kenya, constituted by the regional practice of using parallels of latitude to define the maritime boundaries of States on the Eastern African coast.

151. Vital security interests of both the Parties and the international community at large are, in Kenya's view, another relevant circumstance that confirms the need to adjust the provisional equidistance line to the parallel of latitude. Kenya refers to the security threats of terrorism and piracy in support of its call for such an adjustment.

152. Kenya further argues that evidence of the Parties' long-standing and consistent conduct in relation to oil concessions, naval patrols, fishing and other activities reflects the existence of a *de facto* maritime boundary along the parallel of latitude and that this constitutes yet another relevant circumstance that requires the adjustment of the provisional equidistance line to the parallel of latitude.

153. Finally, Kenya contends that an unadjusted equidistance line would have devastating repercussions for the livelihoods and economic well-being of Kenya's fisherfolk who are said to depend on fisheries in coastal areas near the Kenya-Somalia boundary. As Kenya sees it, their equitable access to those natural resources therefore requires the adjustment of the provisional equidistance line to the parallel of latitude. Kenya presents this as the fifth relevant circumstance to be taken into account by the Court.

* * *

154. At this stage, the Court must "verify that the provisional equidistance line, drawn by the geometrical method from the determined base points on the coasts of the Parties is not, in light of the particular circumstances of the case, perceived as inequitable" (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, *Judgment*, *I.C.J. Reports 2009*, p. 112, para. 155). If it is, the Court should adjust the line in order to achieve an equitable solution as required by Articles 74 and 83 of the Convention.

155. As summarized above, Kenya perceives the provisional equidistance line as inequitable while Somalia does not see any plausible reason for adjusting the line and believes that it would constitute an equitable boundary.

156. The Court notes that Kenya, by invoking various factors which it considers as constituting relevant circumstances in the context of this case, has consistently sought a maritime boundary that would follow the parallel of latitude. The Court has already concluded that no maritime boundary between Somalia and Kenya following the parallel of latitude was established in the past. Nor has the Court accepted the methodology based on the parallel of latitude for establishing the maritime boundary between the Parties as advocated by Kenya. Kenya would now like to achieve the same result by a major shifting of the provisional equidistance line, changing its south-easterly direction to an exclusively easterly direction. The Court considers that such a shifting of the provisional equidistance line, as argued for by Kenya, would represent a radical adjustment while clearly not achieving an equitable solution. It would severely curtail Somalia's entitlements to the continental shelf and the exclusive economic zone generated by its coast adjacent to that of Kenya. A line thus adjusted would not allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment*, *I.C.J. Reports 2012 (II)*, p. 703, para. 215; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, *Judgment*, *I.C.J. Reports 2009*, p. 127, para. 201).

157. The Court will begin by considering those factors, relied on by Kenya, which are non-geographical in nature.

158. As far as the security interests of Kenya are concerned, the Court is fully aware of and does not underestimate the serious threats to security in the region. These threats are certainly of legitimate concern to the States in the region and to the international community at large. The Court notes the efforts of the international community, in particular the United Nations and the African Union, as well as of various countries, including Kenya, to assist Somalia in re-establishing peace and security after many years of internal conflicts. The Court observes that boundaries between States, including maritime boundaries, are aimed at providing permanency and stability. This being so, the Court believes that the current security situation in Somalia and in the maritime spaces adjacent to its coast is not of a permanent nature. The Court is therefore of the view that the current security situation does not justify the adjustment of the provisional equidistance line. Moreover, the Court recalls its statement in a previous case that legitimate security considerations may be a relevant circumstance “if a maritime delimitation was effected particularly near to the coast of a State” (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 706, para. 222). This is not the case here, as the provisional equidistance line does not pass near the coast of Kenya. The Court also recalls that “control over the exclusive economic zone and the continental shelf is not normally associated with security considerations and does not affect rights of navigation” (*ibid.*).

159. Access for Kenya’s fisherfolk to natural resources is another factor which Kenya brings to the attention of the Court when arguing for the adjustment of the line. Such a factor can be taken into account by the Court as a relevant circumstance in exceptional cases, in particular if the line would “likely . . . entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned” (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 342, para. 237; see also *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, pp. 71-72, paras. 75-76). In the *Gulf of Maine* case, the Chamber of the Court did not find that the delimitation line it constructed would have such consequences. On the basis of the evidence before it, the Court is not convinced that the provisional equidistance line would entail such harsh consequences for the population of Kenya in the present case. In any event, as it appears from a map provided by Kenya, 17 out of 19 fish landing sites are located near or at the Lamu Archipelago, and would therefore be unaffected by an equidistance line. Only two landing sites are close to the land boundary terminus. Moreover, in the present case, the Court has to consider the well-being of the populations on both sides of the delimitation line. In light of the foregoing, the Court cannot accept Kenya’s argument that the provisional equidistance line would deny Kenya equitable access to fisheries resources that are vital to its population.

160. The Court now turns to another argument put forward by Kenya. It contends that the evidence of the Parties’ long-standing and consistent conduct in relation to oil concessions, naval patrols, fishing and other activities reflects the existence of “a *de facto* maritime boundary” along the parallel of latitude which calls for the adjustment of the provisional equidistance line. In the past, summarizing its jurisprudence and that of various arbitral tribunals, the Court stated that:

“although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional equidistance line. Only if they are based on express or tacit agreement

between the parties may they be taken into account.” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, *Judgment, I.C.J. Reports 2002*, pp. 447-448, para. 304.)

The same is true for other types of conduct, such as naval patrols or fishing activities. The Court has already concluded that no maritime boundary along the parallel of latitude has been agreed by the Parties (see paragraphs 88 and 89 above). There is no *de facto* maritime boundary between Somalia and Kenya. The Court therefore cannot accept the argument of Kenya that, on the basis of the conduct of the Parties, the provisional equidistance line has to be adjusted so that it coincides with the alleged *de facto* maritime boundary.

161. The Court will now consider the two remaining arguments that, according to Kenya, call for the adjustment of the provisional equidistance line. Kenya submits that the application of an equidistance line would produce a significant cut-off effect with respect to its maritime areas. It also points out that the cut-off effect produced by the equidistance line is severely exacerbated past the 200-nautical-mile limit, essentially to the point that Kenya would be completely cut off from the outer limit of the continental shelf. Kenya further argues that the regional context and practice require the adjustment of the provisional equidistance line.

162. The Court and international tribunals have acknowledged that the use of an equidistance line can produce a cut-off effect, particularly where the coastline is characterized by concavity (e.g. *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, *Judgment, I.C.J. Reports 1969*, p. 17, para. 8, and p. 49, para. 89; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, *Award of 7 July 2014, RIAA, Vol. XXXII*, p. 123, para. 408). In 1985, the Court reaffirmed that an equidistance line “may yield a disproportionate result where a coast is . . . markedly concave or convex” (*Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment, I.C.J. Reports 1985*, p. 44, para. 56). The International Tribunal for the Law of the Sea, while stating that “in the delimitation of the exclusive economic zone and the continental shelf, concavity *per se* is not necessarily a relevant circumstance”, has also confirmed that

“when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result” (*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012*, p. 81, para. 292).

163. Somalia argues that, to the extent that there is any cut-off effect suffered by Kenya, it is solely the result of the agreed maritime boundary between Kenya and Tanzania. The Court considers that any cut-off effect as a result of the Kenya-Tanzania maritime boundary is not a relevant circumstance. The agreements between Kenya and Tanzania are *res inter alios acta* (*Arbitration between Barbados and the Republic of Trinidad and Tobago, Award of 11 April 2006, RIAA, Vol. XXVII*, p. 238, para. 346). They “cannot per se affect the maritime boundary” between Kenya and Somalia (*Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, *Judgment, I.C.J. Reports 2018 (I)*, p. 187, para. 123). However, the issue to be considered in the present case is whether the use of an equidistance line produces a cut-off effect for Kenya, not as a result of the agreed boundary between Kenya and Tanzania, but as a result of the configuration of the coastline.

164. If the examination of the coastline is limited only to the coasts of Kenya and Somalia, any concavity is not conspicuous. However, examining only the coastlines of the two States concerned to assess the extent of any cut-off effect resulting from the geographical configuration of the coastline may be an overly narrow approach. It is true that in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, the Court stated that the concavity of the coastline may be a relevant circumstance for the purposes of delimitation “when such concavity lies within the area to be delimited” (*Judgment, I.C.J. Reports 2002*, p. 445, para. 297). However, it is worth recalling the specific context of that case, and in particular the Court’s observation that “the concavity of Cameroon’s coastline is apparent primarily in the sector where it faces Bioko” (*ibid.*), an island that is subject to the sovereignty of a third State, namely Equatorial Guinea. Prior to making this statement, the Court had concluded that “[t]he part of the Cameroon coastline . . . fac[ing] Bioko . . . cannot therefore be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria” (*ibid.*, p. 443, para. 291). The Court’s statement thus should not be understood as excluding in all circumstances the consideration of the concavity of a coastline in a broader geographical configuration.

165. Examining the concavity of the coastline in a broader geographical configuration is consistent with the approach taken by this Court and international tribunals. In the two *North Sea Continental Shelf* cases, the Court examined the coasts of three States, with Germany in the middle. The Court described the cut-off effect as follows:

“in the case of a concave or recessing coast . . . the effect of the use of the equidistance method is to pull the line of the boundary inwards, in the direction of the concavity . . . ‘cutting off’ the coastal State from the further areas of the continental shelf outside of and beyond this triangle” (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 17, para. 8).

The Court expressed this view in the context of proceedings that had been joined, while the cases themselves remained separate. The Court noted that “although two separate delimitations [were] in question, they involve[d]— indeed actually g[a]ve rise to— a single situation” (*ibid.*, p. 19, para. 11). The Court emphasized that “[t]he fact that the question of either of these delimitations might have arisen and called for settlement separately in point of time, does not alter the character of the problem with which the Court is actually faced” (*ibid.*).

166. In both the *Bangladesh/Myanmar* and *Bangladesh v. India* cases, even though the issue was that of a boundary between the two respective States, the International Tribunal for the Law of the Sea, in the former case, and the Arbitral Tribunal, in the latter, each looked at the concavity of the coasts of the three States as a whole, with Bangladesh in the middle. In *Bangladesh v. India*, the Arbitral Tribunal quoted from the Judgment in the *North Sea Continental Shelf* cases, the Award in the *Guinea/Guinea-Bissau* case and the Judgment in the *Bangladesh/Myanmar* case to point out that when there are three adjacent States along a concave coastline, the equidistance method has the “drawback of resulting in the middle country being enclaved by the other two” (*Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award of 7 July 2014, RIAA, Vol. XXXII, pp. 123-124, paras. 413-416*).

167. In the present case, the potential cut-off of Kenya’s maritime entitlements should be assessed in a broader geographical configuration. This was also the approach adopted by the Arbitral Tribunal in the *Guinea/Guinea-Bissau* case. It took into consideration “the whole of

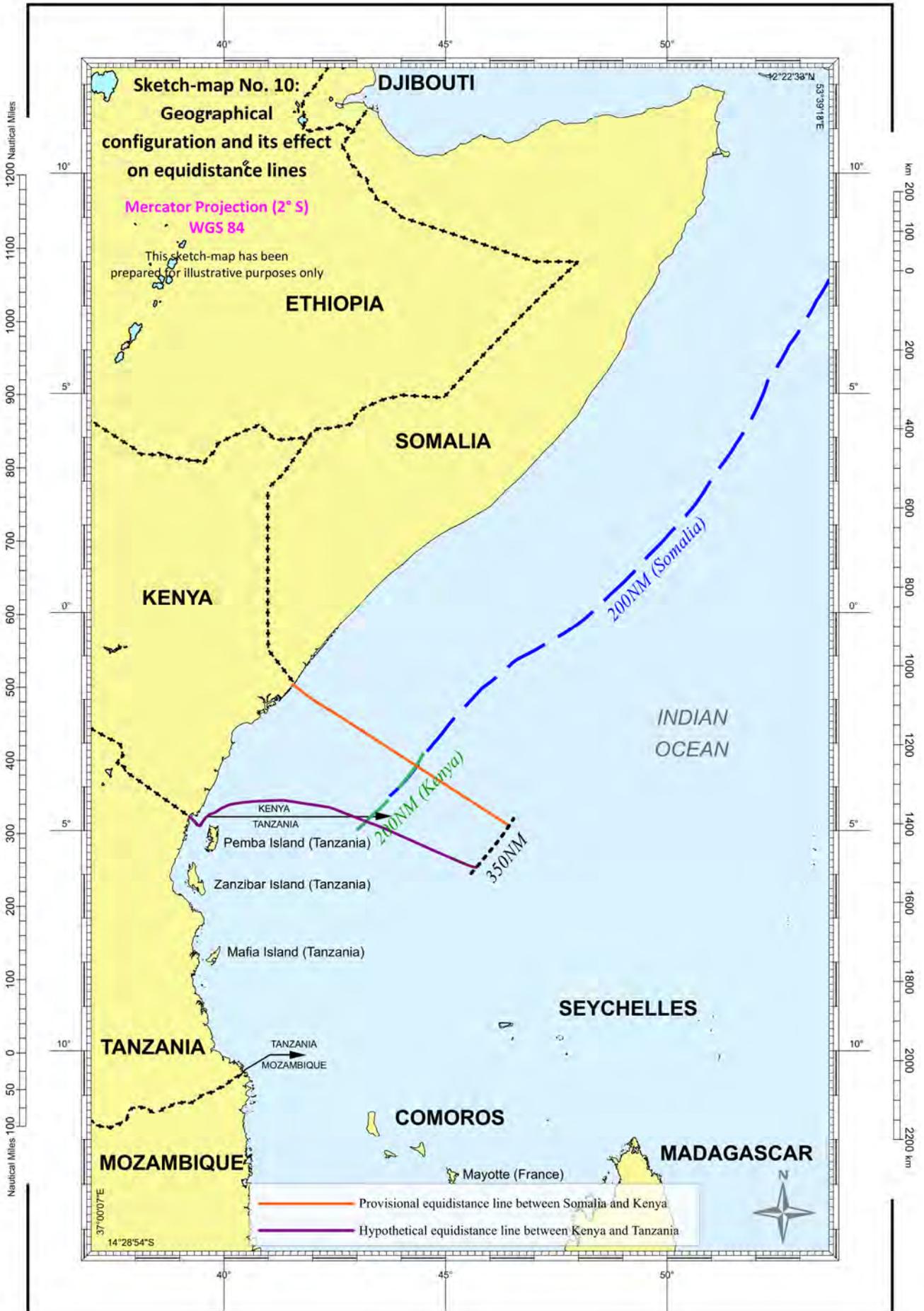
West Africa” in order to seek “a solution which would take overall account of the shape of its coastline”. It noted that “[t]his would mean no longer restricting consideration to a *short coastline* but to a *long coastline*” that included the coastline of Sierra Leone (*Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau, Award of 14 February 1985, International Law Reports*, Vol. 77, p. 683, para. 108, emphasis in the original). It expressed the view that “while the continuous coastline of the two Guineas — or of the three countries when Sierra Leone is included — is generally concave, that of West Africa in general is undoubtedly convex” (*ibid.*). The Tribunal observed that “[i]n order for the delimitation between the two Guineas to be suitable for equitable integration into the existing delimitations of the West African region . . . it is necessary to consider how all these delimitations fit in with the general configuration of the West African coastline” (*ibid.*, p. 684, para. 109). The Tribunal also noted that the overall concavity of the coastline of the two States was “accentuated” if it considered “the presence of Sierra Leone further south”, with Guinea situated in the middle between Guinea-Bissau and Sierra Leone (*ibid.*, pp. 681-682, paras. 103-104).

168. The potential cut-off of Kenya’s maritime entitlements cannot be properly observed by examining the coasts of Kenya and Somalia in isolation. When the mainland coasts of Somalia, Kenya and Tanzania are observed together, as a whole, the coastline is undoubtedly concave, even more so than the coastline of Guinea-Bissau, Guinea and Sierra Leone considered together, which the Arbitral Tribunal characterized as concave (see paragraph 167 above). Kenya faces a cut-off of its maritime entitlements as the middle State located between Somalia and Tanzania. The presence of Pemba Island, a large and populated island that appertains to Tanzania, accentuates this cut-off effect because of its influence on the course of a hypothetical equidistance line between Kenya and Tanzania (see sketch-map No. 10 below).

169. The provisional equidistance line between Somalia and Kenya progressively narrows the coastal projection of Kenya, substantially reducing its maritime entitlements within 200 nautical miles. This cut-off effect occurs as a result of the configuration of the coastline extending from Somalia to Tanzania, independently of the boundary line agreed between Kenya and Tanzania, which in fact mitigates that effect in the south, in the exclusive economic zone and on the continental shelf up to 200 nautical miles.

170. The Court recalls its jurisprudence and that of international tribunals according to which an adjustment of the provisional equidistance line is warranted if the cut-off effect is “serious” or “significant” (see *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, *Judgment, I.C.J. Reports 2018 (I)*, pp. 196-197, para. 156; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, *Judgment, ITLOS Reports 2017*, p. 120, para. 425; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, *Award of 7 July 2014, RIAA*, Vol. XXXII, p. 124, para. 417).

171. In the view of the Court, even though the cut-off effect in the present case is less pronounced than in some other cases, it is nonetheless still serious enough to warrant some adjustment to address the substantial narrowing of Kenya’s potential entitlements.



172. The Court has affirmed that “the achievement of an equitable solution requires that, so far as possible, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way” (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment*, *I.C.J. Reports 2012 (II)*, p. 703, para. 215). This is an important standard to be used in making an adjustment to the provisional equidistance line. The Court, however, bears in mind the following principles: “there is . . . no question of refashioning geography, or compensating for the inequalities of nature”, “equity does not necessarily imply equality” and “there can be no question of distributive justice” (*Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment*, *I.C.J. Reports 1985*, pp. 39-40, para. 46). In other words, an adjustment should not produce an unreasonable result for Somalia.

173. The adjustment of a provisional equidistance line must be assessed on a case-by-case basis. As the Arbitral Tribunal observed in the *Arbitration between Barbados and the Republic of Trinidad and Tobago*, “[t]here are no magic formulas” to be used for the adjustment of a provisional equidistance line (*Award of 11 April 2006*, *RIAA*, Vol. XXVII, p. 243, para. 373). Rather, it is a result of an overall appreciation of the relevant circumstances by the Court in seeking to achieve an equitable solution. In order to attenuate the cut-off effect described above, the Court considers it reasonable to adjust the provisional equidistance line.

174. In view of the above considerations, the Court believes that it is necessary to shift the line to the north so that, from Point A, it follows a geodetic line with an initial azimuth of 114°. This line would attenuate in a reasonable and mutually balanced way the cut-off effect produced by the unadjusted equidistance line due to the geographical configuration of the coasts of Somalia, Kenya and Tanzania. The resulting line would end at its intersection with the 200-nautical-mile limit from the coast of Kenya, at a point (Point B) with co-ordinates 3° 4' 21.3" S and 44° 35' 30.7" E (see sketch-map No. 11 below).

