

5. Disproportionality test

175. In the final stage, the Court will check whether the envisaged delimitation line leads to a significant disproportionality between the ratio of the lengths of the Parties' respective relevant coasts and the ratio of the size of the relevant areas apportioned by that line.

176. The relevant coast of Somalia is 733 km long and that of Kenya 511 km long (see paragraph 137 above). The ratio of the relevant coasts is 1:1.43 in favour of Somalia. The maritime boundary determined by the Court divides the relevant area within 200 nautical miles of the coast in such a way that approximately 120,455 sq km would appertain to Kenya and the remaining part measuring approximately 92,389 sq km would appertain to Somalia. The ratio between the maritime zones that would appertain respectively to Kenya and Somalia is 1:1.30 in favour of Kenya. A comparison of these two ratios does not reveal any significant or marked disproportionality.

177. The Court is thus satisfied that the adjusted line that it has established as the maritime boundary for the exclusive economic zones and the continental shelves of Somalia and Kenya within 200 nautical miles in the Indian Ocean, described in paragraph 174 above, achieves an equitable solution as required by Article 74, paragraph 1, and Article 83, paragraph 1, of the Convention.

E. Question of the delimitation of the continental shelf beyond 200 nautical miles

178. The Court finally turns to the question of the delimitation of the continental shelf beyond 200 nautical miles. It is recalled that both Parties have asked the Court to determine the complete course of the maritime boundary between them, including the continental shelf beyond 200 nautical miles (see paragraphs 26 and 27 above).

* * *

179. Somalia states that the Court has jurisdiction to delimit this maritime area. In this respect, Somalia argues that there is a clear distinction in the Convention between the Court's task, which consists of the delimitation of the continental shelf between the Parties under Article 83 of the Convention, and the role of the Commission on the Limits of the Continental Shelf, which is to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf under Article 76 of the Convention. Somalia stresses that both Kenya and Somalia have made full submissions to the Commission concerning the extent of their respective continental shelves beyond 200 nautical miles, and therefore that they have fulfilled their obligations under Article 76, paragraph 8, of the Convention. Somalia acknowledges that in its Judgment of 19 November 2012 (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 669, para. 129), the Court declined to exercise its jurisdiction over Nicaragua's claim for the delimitation of the extended continental shelf. However, Somalia contends that this was not because the Court considered that the making of a recommendation by the Commission had any priority over delimitation. Rather, in Somalia's view, the Court considered that, in the absence of a full submission to the Commission, Nicaragua had not established that it had an entitlement to a continental shelf beyond 200 nautical miles that overlapped with Colombia's entitlement.

180. Somalia further maintains that the Court's jurisdiction with respect to the delimitation of the continental shelf beyond 200 nautical miles is not affected by the absence of the delineation of the outer limits of the Parties' respective entitlements on the basis of the Commission's recommendations.

181. Somalia asserts that the Court has all the necessary information before it to carry out the delimitation in this maritime area, since the Parties have discharged the procedural obligation imposed upon them under Article 76, paragraph 8, of the Convention to provide the Commission with information on the limits of their continental shelves beyond 200 nautical miles. It adds that the "Parties' entitlements to a continental shelf beyond 200 [nautical miles are] not in dispute between them". It cites the Judgment of 14 March 2012 rendered by the International Tribunal for the Law of the Sea in the *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, where the Tribunal was satisfied with the information contained in the parties' submissions to the Commission (*Judgment, ITLOS Reports 2012*, p. 116, paras. 448-449). Thus, in Somalia's view, there is no legal or practical impediment to the Court's determination of the course of the Parties' maritime boundary while the Commission is engaged in the task of considering each Party's submission and making its recommendations for the purpose of delineating the outer limit of each Party's continental shelf.

182. Somalia argues that the legal principles applicable to delimitation of the continental shelf beyond 200 nautical miles are the same as those applicable to delimitation within 200 nautical miles. Somalia maintains that there is no relevant circumstance which could justify an adjustment of the provisional equidistance line beyond 200 nautical miles.

183. Any reduction in Kenya's overall maritime entitlements beyond 200 nautical miles, Somalia submits, "could only arise as a result of Kenya's bilateral agreement with Tanzania, by which Kenya voluntarily divested itself of a very large maritime area south of the negotiated parallel boundary". As Somalia sees it, Kenya "voluntarily shortened its own extended continental shelf entitlement by agreement with Tanzania". Somalia further relies on the Award in the *Arbitration between Barbados and the Republic of Trinidad and Tobago (Award of 11 April 2006, RIAA, Vol. XXVII, p. 238, para. 346)* for the proposition that, as a third party in relation to the agreement concluded between Kenya and Tanzania, it cannot be required to "compensate" for Kenya's choice. Therefore, Somalia requests the Court to refrain from making any adjustment of the provisional equidistance line beyond 200 nautical miles.

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184. In keeping with its view that Somalia has acquiesced in a maritime boundary following the parallel of latitude, Kenya contends that that boundary extends on this same course beyond 200 nautical miles to the outer limits of the continental shelf, as indicated in its 2009 Submission to the CLCS. The Court has already held (paragraph 89 above) that there is no agreed maritime boundary between the Parties at the parallel of latitude through acquiescence.

185. Kenya states that, if the Court were to reject its claim regarding Somalia's acquiescence to a maritime boundary along the parallel of latitude and apply the three-stage methodology, then several relevant circumstances would call for an adjustment of the provisional equidistance line in order to achieve an equitable solution (see paragraphs 149-153 above). Kenya argues that it would suffer from a very significant cut-off effect beyond 200 nautical miles if Somalia's claimed equidistance line were adopted as the maritime boundary. Such a line, Kenya contends, would cut it off from 98 per cent of its potential entitlement to the continental shelf beyond 200 nautical miles and deprive it entirely of any entitlement to the outer limits of the continental shelf at 350 nautical miles from the Kenyan coast. It adds that the situation would be as if the outer continental shelf in this area were generated by the coastal projections of Somalia and Tanzania alone, and Kenya simply did not exist. That cut-off effect has also been invoked by Kenya as a relevant circumstance requiring the adjustment of the provisional equidistance line in the exclusive economic zone and on the continental shelf within 200 nautical miles. Kenya does not ask the Court to treat the maritime boundary agreements between Kenya and Tanzania, and between Tanzania and Mozambique, as opposable to Somalia. Rather, these agreements establish the "regional context" within which the boundary between the Parties must be appraised. According to Kenya, there is no question of being "compensated" for the agreements it has entered into, as Somalia claims. It insists that an equitable maritime delimitation cannot ignore equitable delimitations that were agreed in the past, consistent with the applicable law at the time: this is a matter both of "historical equity" and "common sense".

* * *

186. The Court held in the 2017 Judgment that it has jurisdiction over the Application filed by Somalia on 28 August 2014 and that the Application is admissible (*I.C.J. Reports 2017*, p. 53, para. 145(3)). In that Application, Somalia requested the Court to determine the course of the maritime boundary between the Parties in the Indian Ocean, including on the continental shelf beyond 200 nautical miles (*ibid.*, p. 10, para. 11; see also paragraphs 25-27 above).

187. The Court recalls that, as expounded in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, "any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder" (*Judgment, I.C.J. Reports 2007 (II)*, p. 759, para. 319).

188. The Court observes that both States have made submissions on the limits of the continental shelf beyond 200 nautical miles to the Commission in accordance with Article 76, paragraph 8, of the Convention. Kenya made its submission to the Commission on 6 May 2009, while Somalia made its own submission on 21 July 2014 and provided an amended Executive Summary on 16 July 2015. In addition, each Party filed an objection to consideration by the Commission of the other's submission. These objections were subsequently withdrawn. The Court notes that both Somalia and Kenya have fulfilled their obligations under Article 76 of the Convention. At the same time, the Commission has yet to consider these submissions and make any

recommendations to Somalia and to Kenya on matters related to the establishment of the outer limits of their continental shelves. It is only after such recommendations are made that Somalia and Kenya can establish final and binding outer limits of their continental shelves, in accordance with Article 76, paragraph 8, of UNCLOS.

189. The Court emphasizes that the lack of delineation of the outer limit of the continental shelf is not, in and of itself, an impediment to its delimitation between two States with adjacent coasts, as is the case here. As the International Tribunal for the Law of the Sea observed,

“the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf” (*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 100, para. 379).

190. To support the argument that the Court may proceed to the delimitation of the continental shelf beyond 200 nautical miles on the basis of the information contained in the Parties’ submissions to the Commission, Somalia avails itself, in particular, of the Judgment in the *Bangladesh/Myanmar* case. It is true that in that Judgment, the Tribunal proceeded to determine the maritime boundary of the continental shelf beyond 200 nautical miles on the basis of the submissions made by Bangladesh and Myanmar to the Commission. The Tribunal was convinced that, in view of the uncontested scientific evidence on the unique nature of the Bay of Bengal and information submitted to it during the proceedings, there was a continuous and substantial layer of sedimentary rocks extending from Myanmar’s coast to the area beyond 200 nautical miles. It noted that a “thick layer of sedimentary rocks covers practically the entire floor of the Bay of Bengal” (*Judgment, ITLOS Reports 2012*, p. 115, para. 445). It thus concluded that both Parties had entitlements to a continental shelf extending beyond 200 nautical miles (*ibid.*, pp. 115-116, paras. 446 and 449). This being so, the Court notes that, in reaching that conclusion, the Tribunal in that case took particular account of the “unique situation [in the Bay of Bengal], as acknowledged in the course of negotiations at the Third United Nations Conference on the Law of the Sea” (*ibid.*, p. 115, para. 444).

191. The Court observes that the entitlements of the Parties to the continental shelf beyond 200 nautical miles are to be determined by reference to the outer edge of the continental margin, to be ascertained in accordance with Article 76, paragraphs 4 and 5, of UNCLOS (*ibid.*, p. 114, para. 437).

192. Paragraphs 4 and 5 of Article 76 provide:

- “4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

- (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
- (b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
- 5. The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.”

193. The entitlement of a State to the continental shelf beyond 200 nautical miles thus depends on geological and geomorphological criteria, subject to the constraints set out in Article 76, paragraph 5. An essential step in any delimitation is to determine whether there are entitlements, and whether they overlap. The situation in the present case is not the same as that addressed by the International Tribunal for the Law of the Sea in the *Bangladesh/Myanmar* case. In that case, the unique situation in the Bay of Bengal and the negotiation record at the Third United Nations Conference on the Law of the Sea, which threw a particular light upon the parties’ contentions on the subject, were sufficient to enable the Tribunal to proceed with the delimitation of the area beyond 200 nautical miles.

194. The Court notes that in their submissions to the Commission both Somalia and Kenya claim on the basis of scientific evidence a continental shelf beyond 200 nautical miles, and that their claims overlap. In most of the area of overlapping claims beyond 200 nautical miles, both Parties claim that their continental shelf extends to a maximum distance of 350 nautical miles. The Court further notes that neither Party questions the existence of the other Party’s entitlement to a continental shelf beyond 200 nautical miles or the extent of that claim. Their dispute concerns the boundary delimiting that shelf between them. Both Parties in their submissions — Somalia in those presented at the close of the hearings and Kenya in its Rejoinder — request the Court to delimit the maritime boundary between them in the Indian Ocean up to the outer limit of the continental shelf. For the reasons set out above, the Court will proceed to do so.

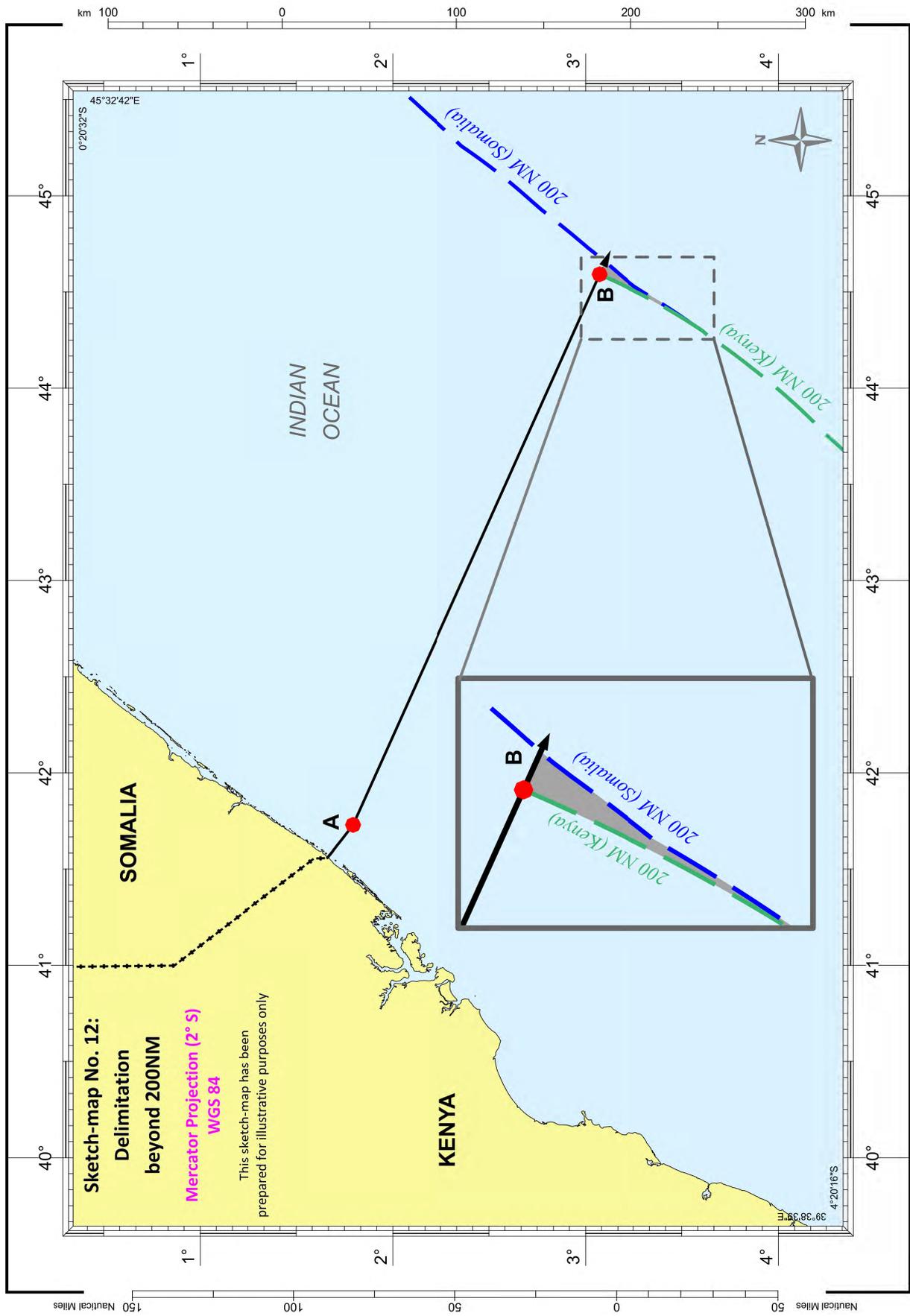
195. As regards the relevant circumstances invoked by Kenya for the adjustment of the provisional equidistance line, the Court has already considered them earlier and adjusted the line accordingly in the exclusive economic zone and on the continental shelf up to 200 nautical miles. The Court recalls that both Somalia and Kenya have claimed a continental shelf extending up to 350 nautical miles in the greater part of the area of overlapping claims. Somalia has claimed a continental shelf beyond 200 nautical miles, including in the area between the point OL1, located at the end of the equidistance line it claims as the maritime boundary, at co-ordinates 5° 00' 25.69" S and 46° 22' 33.34" E, and point OL7, located further north, close to the parallel of latitude, at co-ordinates 2° 00' 47.69" S and 49° 26' 05.09" E. Kenya has claimed a continental shelf up to 350 nautical miles in the area between the point ECS1, located on the hypothetical line constructed

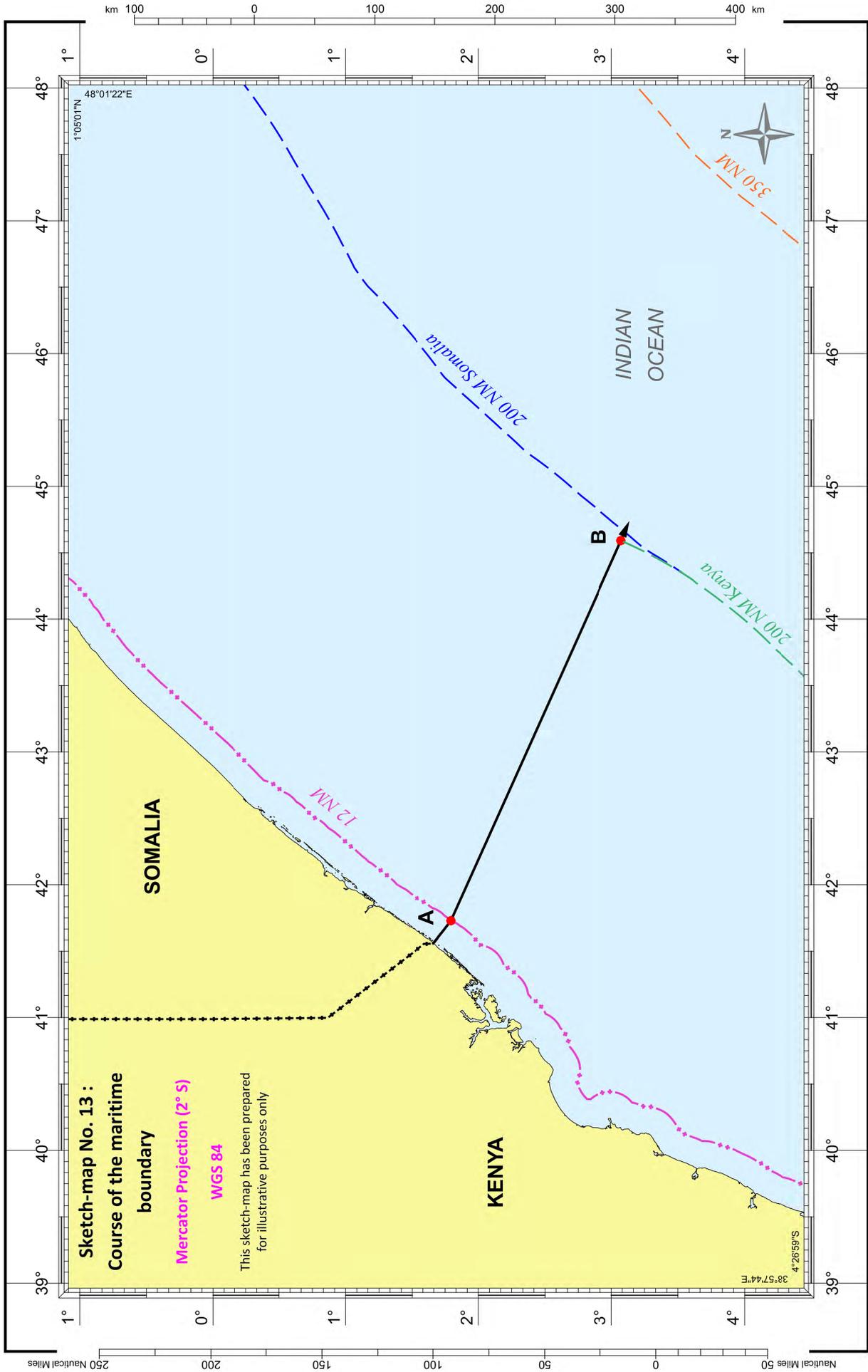
as an extension of the existing boundary with Tanzania at co-ordinates 4° 41' 00.29" S and 46° 34' 36.02" E, and the point ECS38, located further north at a short distance from the parallel of latitude, at co-ordinates 1° 44' 21.82" S and 47° 24' 13.79" E. In view of the foregoing, the Court considers it appropriate to extend the geodetic line used for the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles to delimit the continental shelf beyond 200 nautical miles.

196. The Court therefore concludes that the maritime boundary beyond 200 nautical miles continues along the same geodetic line as the adjusted line within 200 nautical miles until it reaches the outer limits of the Parties' continental shelves which are to be delineated by Somalia and Kenya, respectively, on the basis of the recommendations to be made by the Commission or until it reaches the area where the rights of third States may be affected. The direction of that line is depicted on sketch-map No. 12 below.

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197. Depending on the extent of Kenya's entitlement to a continental shelf beyond 200 nautical miles as it may be established in the future on the basis of the Commission's recommendation, the delimitation line might give rise to an area of limited size located beyond 200 nautical miles from the coast of Kenya and within 200 nautical miles from the coast of Somalia, but on the Kenyan side of the delimitation line ("grey area"). This possible grey area is depicted on sketch-map No. 12. Since the existence of this "grey area" is only a possibility, the Court does not consider it necessary, in the circumstances of the present case, to pronounce itself on the legal régime that would be applicable in that area.





V. ALLEGED VIOLATIONS BY KENYA OF ITS INTERNATIONAL OBLIGATIONS

198. In its final submissions, Somalia requests the Court 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”. Somalia, however, stated during the oral proceedings that it does not insist on compensation for past violations. It asks the Court to order Kenya to cease its wrongful acts and to make available to Somalia the technical data acquired in areas that are determined by the Court to be subject to the sovereignty or sovereign rights and jurisdiction of Somalia.

199. Somalia argues that by its unilateral actions in the disputed area, Kenya has violated Somalia’s sovereignty over the territorial sea and its sovereign rights and jurisdiction in the exclusive economic zone and on the continental shelf, as well as the principles enshrined in UNCLOS. Recalling Article 77 of UNCLOS, Somalia maintains that economic activities in a disputed maritime area, including exploration and exploitation, constitute a violation of the exclusive rights of the State whose jurisdiction over that area is recognized following delimitation. It adds that when it was informed of such activities and was in a position to react, it protested against them. In the Applicant’s view, Kenya’s argument that there was no area in dispute before 2014 is not persuasive, because an area of overlapping claims had emerged by the end of the 1970s and has remained in dispute ever since.

200. Somalia also argues that irrespective of where in the disputed area Kenya’s activities took place, they were in violation of Kenya’s obligation, under Article 74, paragraph 3, and Article 83, paragraph 3, of UNCLOS, not to jeopardize or hamper the reaching of a final agreement concerning the delimitation of the exclusive economic zone and continental shelf. In Somalia’s view, violations of these provisions arise not only from unilateral activities that physically affect the marine environment, but, in some cases, from non-invasive acts as well, such as seismic surveys, which States can consider as a violation of their sovereign rights. The Applicant asserts that Kenya’s unilateral activities in the disputed maritime area “have generated mistrust and animosity in relations between the Parties”, jeopardizing and hampering the possibility of reaching a final agreement between them.

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201. Kenya argues that there was no dispute over the maritime boundary until 2014, when Somalia formally asserted an equidistance line. Thus, it maintains that it had the right to engage freely in activities consistent with its sovereign rights in areas where it had claimed and exercised uncontested jurisdiction. In its view, such activities cannot be said to be unlawful, even if the areas concerned had been in dispute and are now attributed by the Court to Somalia. The Respondent adds that Somalia wrongly conflates the sovereignty that coastal States enjoy in the territorial sea with the more limited sovereign rights exercised in the exclusive economic zone and on the continental shelf.

202. As regards Article 74, paragraph 3, and Article 83, paragraph 3, of UNCLOS, Kenya argues that the obligation, during the transitional period, not to jeopardize or hamper the reaching of a final agreement, does not preclude all activities in the disputed area. Kenya maintains that this obligation is concerned only with activities that lead to permanent physical change in the disputed area, and that it does not apply to activities commenced prior to a dispute. The Respondent contends that the expansive interpretation of this obligation proposed by Somalia is contrary to the jurisprudence of the Court and that of international tribunals. Kenya adds that Somalia has not provided evidence that either its Government or its population ever perceived Kenya's alleged activities as an attempt to deprive Somalia of its rights under international law. Kenya points out that most of the activities referred to by Somalia predate the emergence of the dispute in 2014 and that they were transitory in nature. Thus, it argues that Somalia has failed to establish that Kenya authorized any unlawful activities in the disputed area.

* * *

203. The Court will first examine the Applicant's argument that, by its unilateral actions in the disputed area, Kenya has violated Somalia's sovereignty over the territorial sea and its sovereign rights and jurisdiction in the exclusive economic zone and on the continental shelf. The Court recalls that Somalia's submission "is made in the context of proceedings regarding a maritime boundary which had not been settled prior to the decision of the Court. The consequence of the Court's Judgment is that the maritime boundary . . . has now been delimited as between the Parties" (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 718, para. 250). The Court considers that when maritime claims of States overlap, maritime activities undertaken by a State in an area which is subsequently attributed to another State by a judgment "cannot be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States" (*Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, ITLOS Reports 2017, p. 159, para. 592).

204. Somalia complains of surveying and drilling activities conducted or authorized by Kenya in the Lamu Basin, referring in particular to the offshore oil concession blocks identified by Kenya as Blocks L-5, L-13, L-21, L-22, L-23, L-24 and L-26. The Court notes that these concession blocks are located entirely or partially north of the equidistance line claimed by Somalia as the maritime boundary. There is no evidence that Kenya's claims over the area concerned were not made in good faith. Under the circumstances, the Court concludes that it has not been established that Kenya's maritime activities, including those that may have been conducted in parts of the disputed area that have now been attributed to Somalia, were in violation of Somalia's sovereignty or its sovereign rights and jurisdiction.

205. The Court now turns to the Applicant's argument that Kenya's activities were in violation of Article 74, paragraph 3, and Article 83, paragraph 3, of UNCLOS. These paragraphs, which refer to the exclusive economic zone and the continental shelf respectively, read as follows:

“Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

206. Under these provisions, States with opposite or adjacent coasts that have not reached an agreement on the delimitation of the exclusive economic zone or continental shelf are under an obligation to “make every effort . . . during this transitional period, not to jeopardize or hamper the reaching of the final agreement”. The Court considers that the “transitional period” mentioned in these provisions refers to “the period after the maritime delimitation dispute has been established until a final delimitation by agreement or adjudication has been achieved” (*Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, Judgment, ITLOS Reports 2017, p. 168, para. 630). As previously noted (see paragraph 83 above), the Court is of the view that a maritime delimitation dispute between the Parties has been established since 2009. Accordingly, the Court will only examine whether the activities conducted by Kenya after 2009 jeopardized or hampered the reaching of a final agreement on the delimitation of the maritime boundary.

207. The Court observes that Somalia complains of certain activities, including the award of oil concession blocks to private operators and the performance of seismic and other surveys in those blocks, which are of a “transitory character” (see *Aegean Sea Continental Shelf (Greece v. Turkey)*, Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976, p. 10, para. 30). These activities are not of the kind that could lead to permanent physical change in the marine environment, and it has not been established that they had the effect of jeopardizing or hampering the reaching of a final agreement on the delimitation of the maritime boundary (see *Arbitration regarding the Delimitation of the Maritime Boundary between Guyana and Suriname*, Award of 17 September 2007, RIAA, Vol. XXX, pp. 132-133, paras. 466-467 and 470).

208. Somalia also complains of certain drilling activities, which are of the kind that could lead to permanent physical change in the marine environment. Such activities may alter the status quo between the parties to a maritime dispute and could jeopardize or hamper the reaching of a final agreement (see *ibid.*, p. 137, para. 480). Somalia refers, in particular, to four wells drilled in the offshore Lamu Basin as of 2011, to “sea core” and “seabed core” drilling operations carried out in Block L-22 in 2013 and 2014, and to exploratory drilling in Block L-5 which was “scheduled in 2015”. Kenya does not deny having authorized drilling operations in the Lamu Basin, but states that “there was no drilling of seabed core” in Block L-22 in 2014 and that the drilling scheduled in Block L-5 “never took place”.

209. The Court notes that a presentation made in 2011 by a commissioner from Kenya’s Ministry of Energy refers to offshore drilling operations in the Lamu Basin but only lists wells drilled until 2007. A map included in the Final Report of the Strategic Environmental and Social Assessment of the Petroleum Sector in Kenya, issued in December 2016 by the Ministry of Energy and Petroleum of Kenya, identifies four wells drilled in the Lamu Basin after 2009, but all of them are located south of and at a great distance from the equidistance line claimed by Somalia as the maritime boundary. The map does not show any wells drilled after 2009 in the oil concession blocks referred to by

Somalia. With respect to the alleged drilling in Block L-22, two documents issued by a private operator state that “sea core drilling operations [were] in progress on the L22 offshore license” in 2013 and that “[o]n the offshore L22 license, seabed core drilling operations were carried out in early 2014”. However, these documents do not specify the precise location of those operations. As for the alleged drilling in Block L-5, Somalia has not provided the Court with evidence demonstrating that any such drilling operation ever took place. Thus, on the basis of the evidence before it, the Court is not in a position to determine with sufficient certainty that drilling operations that could have led to permanent physical change in the disputed area took place after 2009.

210. The Court further notes that, in 2014, the Parties engaged in negotiations on maritime delimitation (see paragraph 69 above) and that, in 2016, Kenya suspended its activities in the disputed area and offered to enter into provisional arrangements with Somalia.

211. In light of these circumstances, the Court cannot conclude that the activities carried out by Kenya in the disputed area jeopardized or hampered the reaching of a final agreement on the delimitation of the maritime boundary, in violation of Article 74, paragraph 3, or Article 83, paragraph 3, of UNCLOS.

212. For the reasons set out above, the Court finds that Kenya has not violated its international obligations through its maritime activities in the disputed area. Since Kenya’s international responsibility is not engaged, the Court need not examine Somalia’s request for reparation. Somalia’s submission must therefore be rejected.

213. The maritime boundary between the Parties having been determined, the Court expects that each Party will fully respect the sovereignty, sovereign rights and jurisdiction of the other in accordance with international law.

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214. For these reasons,

THE COURT,

(1) Unanimously,

Finds that there is no agreed maritime boundary between the Federal Republic of Somalia and the Republic of Kenya that follows the parallel of latitude described in paragraph 35 above;

(2) Unanimously,

Decides that the starting-point of the single maritime boundary delimiting the respective maritime areas between the Federal Republic of Somalia and the Republic of Kenya is the intersection of the straight line extending from the final permanent boundary beacon (PB 29) at right angles to the general direction of the coast with the low-water line, at the point with co-ordinates 1° 39' 44.0" S and 41° 33' 34.4" E (WGS 84);

(3) Unanimously,

Decides that, from the starting-point, the maritime boundary in the territorial sea follows the median line described at paragraph 117 above until it reaches the 12-nautical-mile limit at the point with co-ordinates 1° 47' 39.1" S and 41° 43' 46.8" E (WGS 84) (Point A);

(4) By ten votes to four,

Decides that, from the end of the boundary in the territorial sea (Point A), the single maritime boundary delimiting the exclusive economic zone and the continental shelf up to 200 nautical miles between the Federal Republic of Somalia and the Republic of Kenya follows the geodetic line starting with azimuth 114° until it reaches the 200-nautical-mile limit measured from the baselines from which the breadth of the territorial sea of the Republic of Kenya is measured, at the point with co-ordinates 3° 4' 21.3" S and 44° 35' 30.7" E (WGS 84) (Point B);

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Robinson, Iwasawa, Nolte; *Judge ad hoc* Guillaume;

AGAINST: *Judges* Abraham, Yusuf, Bhandari, Salam;

(5) By nine votes to five,

Decides that, from Point B, the maritime boundary delimiting the continental shelf continues along the same geodetic line until it reaches the outer limits of the continental shelf or the area where the rights of third States may be affected;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Tomka, Bennouna, Xue, Sebutinde, Iwasawa, Nolte; *Judge ad hoc* Guillaume;

AGAINST: *Judges* Abraham, Yusuf, Bhandari, Robinson, Salam;

(6) Unanimously,

Rejects the claim made by the Federal Republic of Somalia in its final submission number 4.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twelfth day of October, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Somalia and the Government of the Republic of Kenya, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

President DONOGHUE appends a separate opinion to the Judgment of the Court; Judges ABRAHAM and YUSUF append separate opinions to the Judgment of the Court; Judge XUE appends a declaration to the Judgment of the Court; Judge ROBINSON appends an individual, partly concurring and partly dissenting, opinion to the Judgment of the Court; Judge *ad hoc* GUILLAUME appends a separate opinion to the Judgment of the Court.

(Initialed) J.E.D.

(Initialed) Ph.G.
