

MARITIME BOUNDARY DISPUTES IN **AFRICA**

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OVERVIEW OF THE PRESENTATION

- ▶ INTRODUCTION
- ▶ HISTORICAL CONTEXT –BERLIN CONFERENCE.
- ▶ IMPORTANCE OF BORDER MANAGEMENT AT SEA.
- ▶ CAUSES OF BORDER DISPUTES- THE FLASHPOINTS.
- ▶ NEW THREATS AND VULNARABILITIES.
- ▶ IL AND ICJ JURISPRUDENCE
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- ▶ WAY FORWARD.

INTRODUCTION

- ▶ “Defined Territory” is one of the attributes of statehood-Montevideo Convention 1933.
- ▶ Terrestrial and maritime border delimitation - essential for maintenance of peace and order.
- ▶ Africa has thirty one (31) coastal states and eight (8) Island states –extra challenge of securing and control of the maritime domain.
- ▶ Africa’s borders (terrestrial and maritime) faced with many challenges- religious and terrorist movements; cattle rustling; human trafficking and Military conflicts. Challenges are about security and prestige.
- ▶ Recent discovery of oil and gas within Africa’s maritime domain-increased maritime border disputes between adjacent coastal states. Other causes include: increased population; political awareness and environmental challenges.
- ▶ Most maritime border disputes are between adjacent (vis- a -vis opposite)coastal states.

HISTORICAL CONTEXT

- Origin of “nation- state”/Westphalian Borders in Africa- *Berlin Conference 1884-85.*
- As a result of imperialism/colonialism, Africa has about 110 inter-state boundaries numerous other intra-state borders.
- The boundaries demarcated artificially and arbitrarily - thereby dividing and disrupting traditional communities.
- Colonial Border Problem- *Somalia – Kenya; Nigeria- Cameroon.*
- Irregular Borders.- *colonial terrestrial borders do not extend to Maritime domain*
- Flexible and fixed border concept conflict- *African concept of communal border vs. the colonial concept of border of private ownership*
- Adjacent and opposite coastal states – dictates mode of delimitation in IL.

IMPORTANCE OF BORDER DELIMITATION /MANAGEMENT AT SEA OFFAFRICA

- ▶ Rationale- *Strategic, Economic and Environmental Implications*
- ▶ Protection of State Sovereignty- *Nigeria and Cameroon, Somalia and Kenya*
- ▶ Maritime Security and Safety.-*coordinated border management; combating armed attacks of ships off the coast of Africa.*
- ▶ Peaceful Coexistence:- *Kenya-Tanzania, Tanzania Mozambique, Mozambique – South Africa.*
- ▶ Exploration and Exploitation of Marine Resources. *Somalia- Kenya, Nigeria-Cameroon*
- ▶ Strengthened diplomatic ties between Coastal States. (*Somalia- Kenya: strained diplomatic relationship*), *Nigeria-Cameroon, Guinea- Guinea Bissau*

UNCLOS FRAMEWORK

- ▶ The 1958 Geneva Conventions (on TS, CZ, CS and HS) & UNCLOS- provisions demarcation of maritime boundaries and Zones and rights and obligations of states in these zones.
- ▶ Africa's maritime boundaries encompass- TS, CZ, EEZ, CS and HS.
- ▶ UNCLOS requires states to settle border disputes through negotiation failing which to refer dispute to either ITLOS, ICJ, Arbitral tribunal or Special Arbitral tribunal (Article 92 UN Charter; UNCLOS Art 279 &Part XV)
- ▶ The Practice of states has produced Four categories of delimitation: Under provisions of IL (Treaty and Customary); Agreement; National legislation; and Judicial decisions
- ▶ UNCLOS -most reliable regime on delimitation of borders; one method?
- ▶ Despite the provisions of UNCLOS Africa has several unresolved maritime border disputes. No agreements ; Why?

CAUSES OF MARITIME BORDER DISPUTES IN AFRICA

- Natural resources- offshore oil and gas deposits; more value than land (*Somalia –Kenya Dispute*).
- Only 30% of Africa’s boundaries are demarcated:
 - ✓ Not a priority in the absence of incursion
 - ✓ Delimitation is complex and expensive with room for discretion
 - ✓ Regional problems
 - ✓ Overlapping entitlements to rights and jurisdiction
- Sea is governed by IL with defined rights and obligations and cannot be occupied like land with full sovereignty.
- States want to create “buffer zones” in case of conflict; regional hegemony; control of trading routes; fishing grounds; and intense nationalistic pride.

LAND AND MARITIME DOMAIN INTERFACE

- ▶ Governance across the land-sea interface is an emerging challenge; Problems/ security threats on land are reflected at sea (and vice versa)- piracy.
- ▶ The propensity for, and intensity of social-ecological interactions across this land sea interface are being exacerbated by cross-system threats (e.g., climate change)
- ▶ Along the major economic regions of the world, the maritime-land interface represents a crucial challenge being addressed to secure economic growth (notably in terms of foreign direct investments) and to participate in international trade (in terms of export oriented strategies)
- ▶ After the Berlin Conference the land borders became the basis of fixing the sea borders; and yet these were not fixed until potential incursions were noted or oil and gas resources discovered.

IL AND ICJ JURISPRUDENCE

- ▶ ICJ Jurisprudence has established the following principles:

Equidistance principle; Equity and Equitable principle; Single maritime boundary; proportionality principle; Relevant circumstances ;Geographical circumstances; Non geographical circumstances; Social-Economic circumstances; and Special circumstances.

- General Principle/norm of customary IL

- delimitation of any maritime boundary is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring with regard to the geographic configuration of the area in dispute and other relevant circumstances, an equitable result (Gulf of Maine Case-1984).

-It is also a settled international law principle that a unilateral delimitation cannot be binding upon a third state (Anglo- Norwegian Fisheries Case-1984)

ICJ JURISPRUDENCE (Contd...)

- ▶ In the event of a boundary dispute the ICJ would follow the following steps:
 - ✓ *Consider any existing tacit agreement and apply the terms;*
 - ✓ *If not determine base points for fixing of equidistance line—purely legal basis;*
 - ✓ *Draw a provisional equidistance (unless relevant/special circumstances dictate otherwise);*
 - ✓ *Consider whether the equidistance line needs modification to yield equitable outcome;*
 - ✓ *Apply an ex post facto dis-proportionality test to confirm equitable outcome; and*
 - ✓ *Certify start and end points to avoid encroachment on rights of third states.*

CASES OF BORDER DISPUTES- FLASHPOINTS

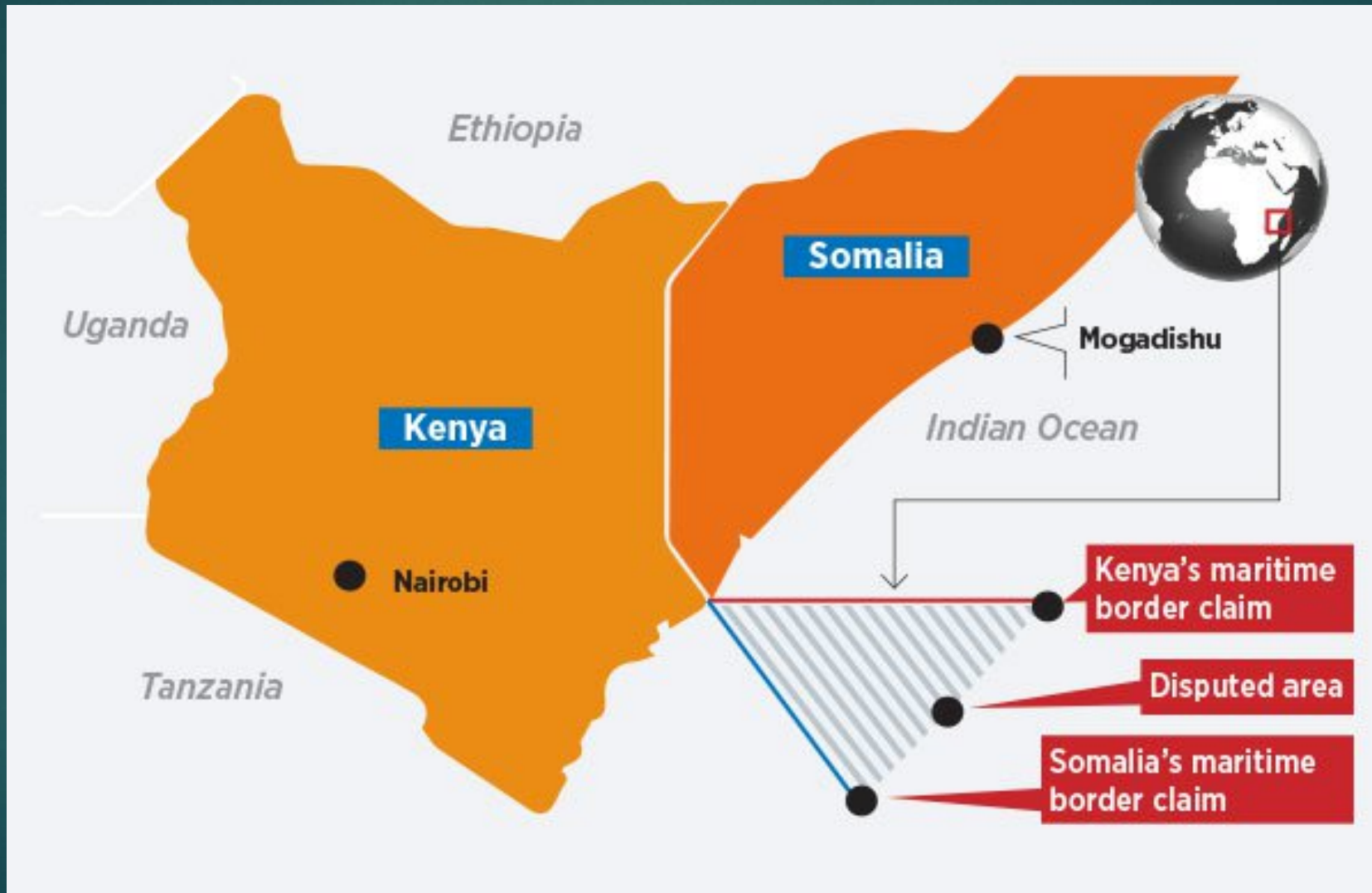
▶ Active

- ✓ *Somalia- Kenya* (2016) ICJ - Indian Ocean oil blocks ; (ongoing).
- ✓ *Ghana – Ivory Coast* (2010) ITLOS – (concluded)
- ✓ *Nigeria- Cameroon* (2012) ICJ – Equidistance line (concluded but creates new disputes)
- ✓ *Gabon-Equatorial Guinea* ICJ – Equidistance line
- ✓ *Guinea- Guinea Bissau* ICJ (concluded but region still volatile)

▶ Potential

- ✓ *Cameroon-Equatorial Guinea* (arising from ICJ judgment)
- ✓ *Equatorial Guinea-Gabon*
- ✓ *Sao Tome & Principe-Equatorial Guinea-Gabon* (equidistance line creates problems below)
- ✓ *Republic of Congo-Gabon*
- ✓ *Republic of Congo-DRC-Angola* (Over Cabinda Enclave)

FLASHPOINTS (Contd...)



BEST PRACTICES AND SUCCESSES IN MARITIME BORDER DELIMITATION

- ▶ SINGLE BORDER DELIMITATION-*India Ocean Coastal States, Kenya and Tanzania (1975/1976); Tanzania and Mozambique (1988); Mozambique and South Africa (1988); and Mauritius and Seychelles*
- ▶ BILATERALISM- *Greentree Agreement between Nigeria and Cameroon*
- ▶ The Ripple effect of ICJ judgment???

NEW THREATS AND VULNARABITIES

- ▶ Lack of a regional legal and institutional framework on maritime border management in Africa.
- ▶ Discovery mineral resources in marine territories.- *scramble of the resources by neighbouring states and foreign actors*
- ▶ Foreign states influence on maritime border disputes in Africa.
- ▶ Multinational oil corporations influence on maritime border disputes in Africa.
- ▶ Land border disputes influence on maritime borders- the interface?

THREATS & VULNERABILITIES (CONT...)

- ▶ Increased Population- *use of marine resources as collateral for foreign aid*
- ▶ Overdependence on foreign aid in all aspects of governance- *attracts foreign interference in maritime border disputes*
- ▶ Inadequate technology *-to safeguard and secure the maritime borders.*
- ▶ Illegal Unregulated and Unreported (IUU) fishing- *increased threat?*
- ▶ Corruption- *Government* officials' individual gain over national maritime territory safeguard.
- ▶ Lack of cooperation among African states on resolution of maritime border disputes .

AU EFFORTS ON DELIMITATION OF MARITIME BORDERS

- ▶ OAU July 1964- Res .to respect existing borders
- ▶ OAU (July1986) – 44th Council of Ministers- Res. for negotiated settlement of border disputes.
- ▶ AU (July 2007)-Durban Res of Heads of State – member states to limit and demarcate boundaries
- ▶ AU (January 2007) –Addis Ababa Ord. session of heads state –resolution on structural preservation of conflicts through the implementation of the African Union Border Program (AUBP)
- ▶ Pan African Conference on Maritime Boundaries and Continental Shelf for the Implementation of AUBP (2009)- *Expedite action; Harmonize laws and policies; Build Capacity*
- ▶ African Charter on Maritime Security, Safety and Development (2016)- solidify commitment to efficient and effective management of resources seas and waterways for sustainable, equitable and beneficial exploitation of critical resources.
- ▶ AIMS Strategy- implementation?

SOMALIA-KENYA CASE- NEW REGIONAL THREAT???

- ▶ Unresolved Colonial Land Border between Kenya and Somalia.
- ▶ Isolation of the Northern Frontier District by The Colonies of Somalia and Kenya.
- ▶ Kenya - Ethiopia Settlement of the land boundary with Somalia.
- ▶ Northern Frontier District contention in Post Independence Kenya and Somalia.
- ▶ Discovery of gas and oil deposits in the disputed maritime boundary.
- ▶ Shift war in the 1960s between Kenya and Somalia
- ▶ Strained diplomatic relations between Kenya And Somalia
- ▶ Marginalisation of the Somali inhabitants of the Northern Frontier District due to cessation threat.
- ▶ Escalation of the land border disputes to the maritime domain –the interface?

SOMALIA KENYA CASE- LIKELY SCENARIOS

- ▶ The ICJ might follow its ruling in *Guinea and Guinea Bissau* - exercise of control over a territory gives a right of sovereignty- *win for Kenya/ loss for Somalia.*
- ▶ The ICJ might also settle for bisector/proportionality method (*Nicaragua V Honduras*) to ensure equity and split the disputed maritime area between Kenya and Somalia (*favourable for lasting peace?*)
- ▶ The ICJ might decide in favour of Somalia's Equidistance line thereby making Kenya shelf locked and opening disputes over the southern border with Tanzania. (*Least favourable?*)
- ▶ Kenya and Somalia may settle the case out of court and agree on a sharing formula over the oil resources without disrupting sovereignty of the two states (*Most favourable for regional peace*)

CONCLUSIONS/WAY FORWARD

- ▶ Border disputes in Africa stem from colonial borders agreed at the Berlin Conference(1884-1885).
- ▶ The irregularities of the land border delimitations at the Berlin Conference is the basis of the current African maritime border disputes.
- ▶ Single border delimitation practice and bilateralism (by Agreement) has been a success in maritime delimitation of land & maritime borders in parts of Africa.
- ▶ Foreign influence remains a threat to border delimitation and management in Africa- *Adopt regional frameworks for dispute resolution.*
- ▶ Discovery of oil resources in Africa's maritime domain threatens to escalate maritime border disputes.
- ▶ Lack of technical skills (and equipment) on border delimitation and management is a security threat to Africa.
- ▶ Escalating maritime border disputes might threaten regional peace- *Somalia Kenya dispute*

THANK YOU