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#### Update on the case concerning maritime delimitation in the Indian Ocean

*Somalia v. Kenya*

#### Background

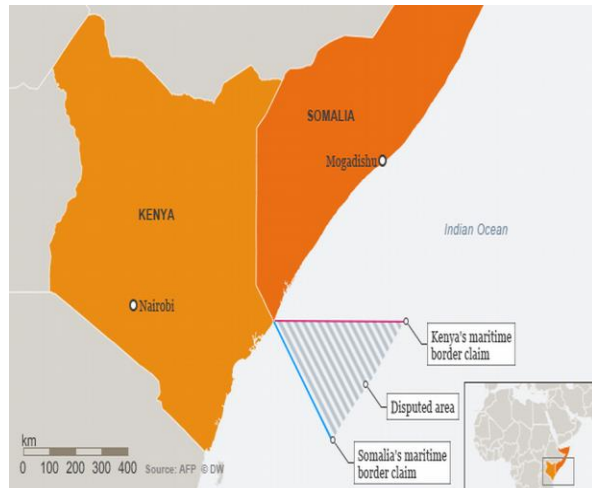
The Federal Republic of Somalia (Somalia) and the Republic of Kenya (Kenya) are adjacent States on the East African coast. Both states have ratified the United Nations Convention on the Law of the Sea (UNCLOS). Under [Article 76, paragraph 8](#) of the UNCLOS, a State party to the UNCLOS intending to establish the outer limits of its continental shelf beyond 200 nautical miles (nm) shall submit information on such limits to the Commission on the Limits of the Continental Shelf (CLCS).

On 7 April 2009, both states signed a [Memorandum of Understanding](#) (MOU) agreeing to grant each other a no-objection in respect of such submissions to the CLCS. On 14 April 2009, Somalia submitted [preliminary information](#) indicative of the outer limits of the continental shelf beyond 200 nm to the United Nations Security Council (UNSC). Kenya deposited [its submission](#) with respect to the continental shelf beyond 200 nm with the CLCS on 6 May 2009. Somalia objected to the registration of the MOU and the CLCS's consideration of Kenya's submission on the ground that a maritime boundary dispute existed between the two states.

In [Somalia's full submission](#) deposited with the CLCS on 21 July 2014, it stated that the outer limits of the continental shelf of Somalia extend well beyond 200 nm from the [baseline](#) across the entirety of Somalia's Indian Ocean coast. On the other hand, Kenya claims that the outer limit of its continental shelf extends to 350 nm from its coastline. Somalia asserts that in the territorial sea, the boundary should be a median line, as specified by Article 15 of the UNCLOS, and in the Exclusive Economic Zone (EEZ) and continental shelf, the boundary should be established pursuant to Articles 74 and 83. Kenya maintains that the maritime boundary is a straight line emanating from the parties' land boundary

terminus, and extending east parallel with the latitude and covers the territorial sea, EEZ and continental shelf beyond 200 nm. (See Map 1)

Map 1: Map of disputed area<sup>1</sup>



### The International Court of Justice Case

On 28 August 2014, while the dispute was pending before the CLCS, Somalia [instituted proceedings](#) against Kenya before the International Court of Justice (ICJ). Somalia requested the Court to determine, based on international law, the complete course of the single maritime boundary dividing all the maritime zones appertaining to Somalia and to Kenya in the Indian Ocean. This included determining the continental shelf beyond 200 nm and the precise geographical co-ordinates of the single maritime boundary in the Indian Ocean.

Kenya raised two [preliminary objections](#) on the jurisdiction of the Court and the admissibility of Somalia's claim. Both objections were [overruled by the court](#) because neither the MOU nor Part XV of the UNCLOS fell within the scope of the reservation to Kenya's optional clause declaration. Consequently, the court fixed a time limit for filing of written pleadings and scheduled a [public hearing](#) to start on 9 September 2019, which was [further adjourned](#) to the week beginning 15 March 2021.

### Attempts at Diplomatic Engagement

The ICJ case is a culmination of failed diplomatic efforts undertaken by Kenya and Somalia. Each country accused the other of bad faith and ulterior motives in the negotiations preceding the filing of the case. Somalia accused Kenya of precipitating a breakdown in the talks to resolve the maritime boundary dispute amicably, while Kenya claimed Somalia reneged on the MOU.

Kenya claimed that during the London Oil and Gas Auction held on 16 February 2019, [Somalia offered gas and oil blocks](#) located within the disputed maritime space for auction. [Somalia denied](#) Kenya's claim on the alleged auction but did not deny inclusion of the contentious maritime space on the maps presented at the London auction. The diplomatic row between the two states escalated to the [recall of accredited diplomats](#) in their respective capitals.

Kenya prefers an [out-of-court settlement](#) and has urged that the case be withdrawn or deferred to allow the African Union-led mechanism for an alternative dispute resolution. Somalia on the other hand has [rejected the offer for an amicable settlement](#) as proposed by Kenya and maintains that it pledged to comply with the court's judgement. Indeed, while addressing the [74<sup>th</sup> UN General Assembly in September 2019](#), the President of Somalia maintained that the decision of the ICJ is the only remedy for

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<sup>1</sup> Deutsche Welle, 2016. Africa: Kenya or Somalia? Who owns the sea and what lies beneath. Available [here](#).

a lasting settlement on the maritime delimitation dispute between the two states. Somalia reiterated the [AU's Peace and Security Council's](#) position that the AU was not empowered to intervene in the dispute that was pending before the ICJ.

Apart from the political, economic and diplomatic dynamics of the ICJ case, there is also the geopolitical dimension to it given that the maritime border dispute has become a proxy war between powerful multinational oil exploration companies interested in the oil and gas resources within the East African coast. Multinational corporations domiciled in the USA, UK, France, Italy and Norway have been awarded oil and gas [exploration contracts](#) by either Somalia or Kenya. It may be argued that such political inclination by some permanent members of the casts aspersions on an independent and objective ICJ decision on the maritime border dispute between the two states.

### **Conclusion**

Although Kenya acquiesced to the ICJ jurisdiction, they preferred a resolution of the dispute through the CLCS. On the other hand, Somalia is firm on having [a final ICJ decision](#) that would bind both states. For Kenya to win, it will have to demonstrate relevant circumstances why an [equidistance line](#) should not be adopted as the preferred means of delimitation.

The adoption of an equidistance line to delimit the extended continental shelf by the ICJ could affect the other maritime boundaries in the region fixed by mutual agreements on the basis of the [parallel latitude method](#). Such an outcome may destabilize the region as it may lead to demands for the reopening of discussions on maritime borders between Kenya and Tanzania and Tanzania and Mozambique (both of which were fixed by the use of the parallel latitude method).

Arguably, the case will be settled amicably if the ICJ allows the parties to fix maritime boundaries by agreement as has been the practice of the states in the Seychelles and Mauritius region. Indeed, a dispute settled through confrontation could well undermine the international consensus on settling maritime border disputes amicably and stimulate settlement of other maritime border disputes between African coastal states through coercive measures; a possibility that should best be avoided.

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### **Further reading:**

See International Court of Justice statements on the dispute: <https://www.icj-cij.org/en/case/161>

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