



Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)

ARGUED: 19 November 2017

DECIDED: 19 November 2017

1 The Majority Opinion was signed by and agreed to by Justice Stogin, Justice Rojas, Justice Wallrich, Justice
2 Taoreed, Justice Gray, Justice Hardin, Justice Amlani, Justice Santos, and Justice Knights.

3 The Court acknowledges jurisdiction over the case based on answering any questions of international law
4 under Article 36 section 2b of the International Court of Justice Statute. In addition, Article 282 of the United
5 Nations Convention on Law of the Sea (UNCLOS) allows any states parties to the convention to submit disputes to
6 a procedure that entails a binding decision. Since the Court is being asked to analyze the legality and equitability
7 of the Kenyan/Somali maritime border, the Court feels that we have jurisdiction under the above statutes.

8 The Court was asked to consider the "equidistance principle" in the ruling of this border dispute. However,
9 the Court did not find the "equidistance principle" to be applicable to this case. *Article 15*, of UNCLOS states,

10 Where the coasts of two States are opposite or adjacent to each other, neither of the two States is
11 entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the
12 median line every point of which is equidistant from the nearest points on the baselines from which
13 the breadth of the territorial seas of each of the two States is measured. The above provision does
14 not apply, however, where it is necessary by reason of historic title or other special circumstances
15 to delimit the territorial seas of the two States in a way which is at variance therewith.

16 It is our belief that there is a legitimate historical argument that supersedes the "equidistance principle".
17 While the ICJ is not bound by precedent, it was taken into the analysis of this decision. After much deliberation on
18 the legitimacy of the historic argument in relation to *Article 15*, it was determined that this case included a historic
19 element granting them a credible claim to the land in question.

20 The opinion and explanation of reasons of the Court is as follows:

21 The petitioner and the respondent have demonstrated conclusive evidence that the issues surrounding their
22 maritime border dispute are sufficiently complex and cannot be resolved via bilateral negotiations. Specifically this
23 evidence includes the UNCLOS, Kenya's 1972 Territorial Waters Act and 1989 Maritime Zones Act.

24 Based on the necessity by reason of historic title clause in *Article 15* of the UNCLOS, the Court must
25 acknowledge the claim and recognition of the claim by Kenya and Somalia, respectively. According to the delegation
26 of Kenya in the proceedings, the disputed maritime region has historically been under its control, which was then
27 affirmed by the delegation of Somalia. In the absence of a simultaneously recognized international agreement between
28 the two parties, the best dispositive reasoning for judgement is *uti possidetis*. The parallel with common law
29 jurisprudence in regard with adverse possession advises the Court to take into account the historic possession of
30 these waters recognized by the delegation of Somalia. In the absence of an established title for the disputed region
31 the role of *effectivites* must be taken into consideration, according to *Land and Maritime Boundary*, 2002 I.C.J. at
32 350 . With Kenya's presence in the disputed region, Kenyan *effectivites* is grounds for a claim to the disputed region.

33 The Court has already acknowledged the Memorandum of Understanding as a valid treaty under international
34 law. It was signed with the understanding that both sides would be bound by signature and not ratification by
35 legislatures of each respective country. During oral arguments, Somalia contended that the agreement was made
36 when Somalia was under duress from Kenya. The Court was not presented with any evidence to substantiate

37 this claim, nor could the Court find any evidence to suggest that Somalia was forced to sign the Memorandum of
38 Understanding.

39 Even though the Court is not bound by precedent, the Court recognizes the importance of past cases in
40 which historical situations have been found to be valid ways to determine maritime boundaries. This includes the
41 Court's decisions in *Libya v. Chad* as well as *Qatar v. Bahrain*. In *Libya v. Chad*, the Court determined that
42 based on a historical 1955 Treaty, the boundaries between the two countries were set and accepted by both countries.
43 During oral arguments Somalia accepted the historical claim that Kenya had maintained control of the disputed
44 area for 100 years. In *Qatar v. Bahrain*, the Court decided that based on the historical use of disputed islands by
45 the precursors of the current Qatari government. Similarly, with Somalia's lack of contestation of the historical use
46 of the territory the Court found that Kenya had historical title to the disputed maritime zone. In addition, the
47 decision of the Court does not limit the role of the CLOS because both Somalia and Kenya are welcome to engage
48 in negotiations as sovereign nations and submit to the decisions of other United Nations bodies. The decision of the
49 Court is based on its interpretation of international law, and therefore, regardless of the decision, the Court does not
50 prohibit countries from coming to diplomatic agreements on their own accord.

51 Looking at part II of the United Nations Convention of the Law of the Sea, "Territorial Sea and Contiguous
52 Zone", one can read in Section II, article 7.1 "Straight Baselines", that "in localities where the coastline is deeply
53 indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of
54 straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the
55 territorial sea is measured." Thus, this differs from the boundary line wanted by Somalia. As a result, the Island's
56 territorial waters which forms the territorial border for Kenya, would cross with the equidistant line proposed by
57 Somalia. This confers with the historical claim defended by Kenya and does not present a break in the temporary
58 line that gives the historic claim to this country.

59 It has been brought to the attention of this Court that there has been a sale of mineral rights by Kenya to a
60 third party. This fact has not been considered by this Court to determine its decision. The sale of mineral rights is
61 an arrangement that belongs to the sovereignty of a country, and it does not affect nor should be considered towards
62 the establishment of boundary lines. If the determination of this Court had been that the sale of mineral rights
63 had taken place within an area that was determined to belong to Somalia, then the consequences of the contractual
64 agreement could have been considered; however, that is not the case.

65 The Court Orders the Following:

66 First, that Kenya will maintain the current maritime borders along with the current economic zones. This
67 is the line that was proposed and outlined by Kenya.

68 Second, Somalia will respect the border along the longitudinal line from the coast of Kenya. Any further
69 negotiations or agreements are to be made between the two sovereign states.

Signed By

Justice Knights

Justice Wallrich

Justice Rojas

Justice Hardin

Justice Amlani

Justice Gray

Justice Stogin

Justice Santos

Justice Taoreed