

PRESS STATEMENT ON THE MARITIME DELIMITATION CASE (SOMALIA V KENYA) AT THE INTERNATIONAL COURT OF JUSTICE 15TH-24TH MARCH 2021

1. Kenya has decided not to participate at the Maritime Delimitation Case (Somalia v Kenya) which is currently ongoing at the International Court of Justice. This decision is on account of procedural unfairness at the Court. It is a decision that was made after deep reflection and extensive consultation on how best to protect the sovereignty and territorial integrity of the Republic of Kenya.
2. In a letter to Mr. Philippe Gautier, the Registrar at the ICJ, Kenya re-affirmed that it was not properly before the court in accordance with its acceptance of the court's jurisdiction. Kenya outlined that while it had no doubt about the merits of its case, procedural unfairness had left doubt on whether substantive justice would be done. Kenya re-stated that it should not have been dragged to the Court by Somalia merely because of the neighbor's resurgent expansionist agenda. Kenya also noted that the composition of the membership of the bench conducting the case reinforced concerns of bias, citing the case of Somali Citizen, Judge Abdulqawi Yusuf, who sits on the ICJ and who has previously represented Somalia at the Third United Nations Conference on the law of the sea. At the conference the Judge stated that delimitation of the EEZ and continental shelf should not be affected in accordance to the principle of equidistance but rather by application of equitable principles.
3. Moreover, in affirming and imposing its jurisdiction on Kenya over this matter and failing to appreciate the full extent of Kenya's reservations in its Optional Clause Declaration under Article 36(2) of the ICJ Statute, the Court, deprived the parties of the opportunity to have the dispute resolved in a suitable, non-adversarial manner, which, in fact Somalia had itself consented to under the 2009 Memorandum of Understanding, an instrument that the ICJ has affirmed as a valid treaty.
4. Kenya has also informed the Court that influential third-party commercial interests are fueling the case, that threatens to destabilize the peace and security of an already fragile region. The speed at which the matter was rushed before the Court and the players involved in this dispute, pointed to a well-orchestrated strategy of pitting the countries against each other in total disregard to the precarious security situation in the region. Influential third parties are intent on using instability in Somalia to advance predatory commercial interests with little regard to peace and security in the region.
5. Kenya remains confident in its position that there is an existing maritime boundary that was established in 1979. The boundary as established has been respected by both Countries until 2014 when Somalia attempted to repudiate the agreement by dragging Kenya to the International Court of Justice seeking to appropriate Kenya's maritime space.
6. From the onset, Kenya has advocated for a diplomatic solution. Kenya's preference for negotiation reflects the African Union Border Programme which encourages States to resolve disputes through bilateral negotiations or within the African Union Peace and Security architecture.
7. Kenya has provided the Court with a comprehensive background to Kenya - Somalia relations underscoring Kenya's longheld commitment to peaceful and friendly relations despite Somalia's intransigence and territorial ambitions against Kenya. It undisputable that the Government and people of Kenya have made great sacrifices for their Somali neighbours. Kenya has provided humanitarian relief to hundreds of thousands of Somali refugees. Its military has protected the Somali Government from terrorists. The Somali Government was hosted in Nairobi for several years because of insecurity in Mogadishu. It enjoyed generous financial, diplomatic, and military support from Kenya. Its gradual return to Mogadishu was made possible thanks to the thousands of Kenyan and regional troops in the African Union Mission in Somalia ("AMISOM").

8. Hundreds of Kenyan civilians and security personnel, including a number of Kenyan soldiers, have lost their lives due to, or in the fight against, the Al Shabaab terrorist group. The Kenyan Navy has also played an active role against terrorist activity and piracy off the Somali coast. The UN and the African Union have recognized Kenya's "huge" and "extraordinary sacrifice" in support of their Somalia.
9. The Government and People of Kenya said feel betrayed that Somalia had brought the case before the ICJ after repudiating a maritime boundary that it had consented to for over 35 years. Somalia has incited hostility against Kenya, and actively contributed to the climate that encourages attacks against Kenyan civilians and against Kenyan forces in Somalia and even threatening their ability to continue to support AMISOM. Somalia has also undermined the fundamental need for stability and predictability of boundaries among States.
10. Any consideration of this equidistant claim sets a dangerous precedent as it will not only reward Somalia's belligerent conduct but also has the potential of disturbing already established boundaries.
11. Kenya's concerns have also been exacerbated by previous decisions taken by the Court which has created a perception of unfairness and injustice towards Kenya including amendment by the Court to its rules to allow for hearings to be conducted via video link without consultation of member states prior to the issuance of the hearing dates for this case. Kenya has consistently communicated to the Court its reasons for seeking a deferment of the case including the COVID-19 pandemic conditions that hampered Kenya's ability to prepare adequately for the hearing.
12. The COVID19 pandemic struck when Kenya had just recruited a new legal team. As such, Kenya and its legal team have not had an opportunity to have preparatory meetings and engagements. The court has failed to appreciate that Kenya is exactly where it was at the beginning of 2020 with regard to its compilation of its international legal team. Without such necessary preparations, Kenya is of the considered view that any participation in the hearing will be nothing more than a perfunctory, cosmetic and symbolic exercise. The seriousness of the case requires proper and adequate preparation. In Kenya's view, it would be ill-advised for it to participate in a complex case with far-reaching consequences, without such proper and adequate preparation. These and other related matters have forced Kenya to stand back from the court and to continue to insist that the resolution of this border dispute belongs in its rightful place on the bilateral and or continental platform.
13. It is in view of the foregoing well elucidated reasons that Kenya reached the decision not to participate in the hearings and remains steadfast that this dispute should be withdrawn from the Court and resolved through bilateral negotiations. Kenya also expects Somalia to normalize its relations with Kenya following their unprovoked and unjustified decision to sever diplomatic relations with its neighbour. Somalia has to normalize its relations with Kenya before it can engage on any platform anywhere in the world with any person and or agent of Kenya through any proxy.
14. Kenya has informed the Court that any insistence on its participation in the proceedings, defeats Kenya's right to a fair hearing. Kenya has collected, and continues to collect substantial additional evidence in this matter. Such evidence will be of value only if Kenya is given ample opportunity to prepare it for proper and effective presentation to the Court. The current timelines – and in the context of the pandemic – have not afforded Kenya such an opportunity.

18th March, 2021