

118. The Court observes that the course of the median line as described in paragraph 117 corresponds closely to the course of a line “at right angles to the general trend of the coastline”, assuming that the 1927/1933 treaty arrangement, in using this phrase, had as an objective to draw a line that continues into the territorial sea, a question that the Court need not decide (see paragraph 109 above).

D. Delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles

1. Delimitation methodology

119. The Court will now proceed to the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles from the coasts of the Parties. The relevant provisions of the Convention for this exercise are contained in Article 74 of UNCLOS for the delimitation of the exclusive economic zone and Article 83 for the delimitation of the continental shelf.

Article 74, paragraph 1, provides:

“The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

Article 83, paragraph 1, reads as follows:

“The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

120. In substance, these two provisions are identical, thus facilitating the establishment of a single maritime boundary delimiting two distinct maritime zones with their own specific legal régimes (see e.g. *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 33, para. 33; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 295, para. 96).

121. The above-quoted provisions are of a very general nature and do not provide much by way of guidance for those involved in the maritime delimitation exercise. The goal of that exercise is the achievement of an “equitable solution”. If two States have freely agreed on a maritime boundary, they are deemed to have achieved such “an equitable solution”. However, if they fail to reach an agreement on their maritime boundary and the matter is submitted to the Court, it is the task of the Court to find an equitable solution in the maritime delimitation it has been requested to effect.

122. Since the adoption of the Convention, the Court has gradually developed a maritime delimitation methodology to assist it in carrying out its task. In determining the maritime delimitation line, the Court proceeds in three stages, which it described in the case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (Judgment, I.C.J. Reports 2009, pp. 101-103, paras. 115-122).

123. In the first stage, the Court will establish the provisional equidistance line from the most appropriate base points on the coasts of the parties. As the Court has stressed, “the line is plotted on strictly geometrical criteria on the basis of objective data” (*ibid.*, p. 101, para. 118).

124. In accordance with Articles 74 and 83 of the Convention, the delimitation shall achieve an equitable solution. The Court has explained that “the achievement of an equitable solution requires that, so far as possible, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way” (*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Judgment*, *I.C.J. Reports 2012 (II)*, p. 703, para. 215). The Court will therefore, in the second stage, “consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result” (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, *Judgment*, *I.C.J. Reports 2009*, p. 101, para. 120, referring to *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, *Judgment*, *I.C.J. Reports 2002*, p. 441, para. 288). Various factors, referred to as “relevant circumstances”, may call for the adjustment or shifting of the provisional line. These factors are mostly geographical in nature, although there is no closed list of relevant circumstances. They are not specified in the provisions of the Convention related to delimitation, which do not use the term “relevant circumstances”. These relevant circumstances have been identified and developed in the practice of the Court, the International Tribunal for the Law of the Sea and arbitral tribunals in the context of each case. As observed by the Arbitral Tribunal in the case between Barbados and Trinidad and Tobago, the relevant circumstances are “case specific” (*Arbitration between Barbados and the Republic of Trinidad and Tobago, Award of 11 April 2006*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVII, p. 215, para. 242).

125. In the third and final stage, the Court will subject the envisaged delimitation line, either the equidistance line or the adjusted line, to the disproportionality test. The purpose of this test is to assure the Court that there is no marked disproportion between the ratio of the lengths of the relevant coasts of the parties and the ratio of the respective shares of the parties in the relevant area to be delimited by the envisaged line, and thus to confirm that the delimitation achieves an equitable solution as required by the Convention. Whether there is such a marked disproportion is a matter for the Court’s appreciation in each case by reference to the overall geography of the area (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, *Judgment*, *I.C.J. Reports 2009*, p. 129, para. 213).

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126. Somalia maintains that the three-stage delimitation methodology described above is in the circumstances of this case the only appropriate method for delimiting the maritime boundary between Somalia and Kenya.

127. Kenya argues in its written pleadings that the three-stage methodology is not mandatory. It does not deny that this method may be appropriate to achieve an equitable solution in certain cases; however, in its view, it is not appropriate in the present case. Kenya submits that, in light of the applicable law, the regional geographical context and practice, and the conduct of the Parties, the parallel of latitude is the appropriate methodology to achieve an equitable solution. It contends that, in any event, the parallel of latitude provides for the most equitable delimitation in this case.

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128. The Court observes that the three-stage methodology is not prescribed by the Convention and therefore is not mandatory. It has been developed by the Court in its jurisprudence on maritime delimitation as part of its effort to arrive at an equitable solution, as required by Articles 74 and 83 of the Convention. The methodology is based on objective, geographical criteria, while at the same time taking into account any relevant circumstances bearing on the equitableness of the maritime boundary. It has brought predictability to the process of maritime delimitation and has been applied by the Court in a number of past cases (e.g. *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, *I.C.J. Reports 2009*, p. 101, paras. 115 *et seq.*; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, p. 695, para. 190; *Maritime Dispute (Peru v. Chile)*, Judgment, *I.C.J. Reports 2014*, p. 65, para. 180; *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, *I.C.J. Reports 2018 (I)*, p. 190, para. 135). The three-stage methodology for maritime delimitation has also been used by international tribunals (see *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, *ITLOS Reports 2012*, p. 67, para. 239; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award of 7 July 2014, RIAA, Vol. XXXII, p. 106, para. 346; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, *ITLOS Reports 2017*, p. 96, para. 324).

129. The Court will not use the three-stage methodology if there are “factors which make the application of the equidistance method inappropriate” (see *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007 (II)*, p. 741, para. 272), for instance if the construction of an equidistance line from the coasts is not feasible (*ibid.*, p. 745, para. 283). This, however, is not the case in the present circumstances where such a line can be constructed.

130. Moreover, the Court does not consider that the use of the parallel of latitude is the appropriate methodology to achieve an equitable solution, as suggested by Kenya. A boundary along the parallel of latitude would produce a severe cut-off effect on the maritime projections of the southernmost coast of Somalia (see sketch-map No. 2 above).

131. The Court therefore sees no reason in the present case to depart from its usual practice of using the three-stage methodology to establish the maritime boundary between Somalia and Kenya in the exclusive economic zone and on the continental shelf.

2. Relevant coasts and relevant area

(a) *Relevant coasts*

132. The Court must first identify the relevant coasts of the Parties, namely those coasts whose projections overlap (*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 97, para. 99).

133. As regards its own relevant coast, Somalia maintains that it extends for 733 km, from the land boundary terminus with Kenya in the south to the area just south of Cadale, some 92 km north of Mogadishu. Somalia notes that, north of this point its coast arcs gradually away from the area of overlapping entitlements and is therefore no longer relevant to the delimitation with Kenya.

134. Concerning Kenya's relevant coast, Somalia, in its written pleadings, submitted that all of Kenya's coast is relevant except for two sections facing due south and thus away from the delimitation area, namely the north-eastern extremities of Ungama Bay in the central portion of Kenya's coast and the final section of Kenya's coast as it approaches Tanzania. Excluding these two sections, Somalia concluded that the total length of Kenya's relevant coast is 466 km. At the hearings, however, Somalia agreed that all of Kenya's coast, from the border with Somalia in the north to the border with Tanzania in the south, is relevant, with a length of 511 km (see sketch-map No. 6 below).

135. While Kenya accepts that Somalia's relevant coast has a length of 733 km, it nonetheless maintains that, if Somalia's approach, using a radial projection from the land boundary terminus, is applied consistently, the radial projection from the land boundary terminus should extend to 350 nautical miles with the result that Somalia's relevant coast measures only 714 km. It acknowledges, however, that the difference is not significant.

136. Concerning its own relevant coast, Kenya indicates that it generally agrees with Somalia's approach. It states, however, that it would also include a 30 km section of coastline south of Chale Point on its coast, and therefore estimates its relevant coastal length at approximately 511 km following its natural configuration (see sketch-map No. 7 below).

137. The Court, using radial projections which overlap within 200 nautical miles (see paragraph 132 above), has identified that the relevant coast of Somalia extends for approximately 733 km and that of Kenya for approximately 511 km (see sketch-map No. 8 below).



