



FEDERAL REPUBLIC OF SOMALIA
Ministry of Foreign Affairs & Investment Promotion

29 September 2016

Mr. Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague
Netherlands

Dear Sir:

With reference to the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, I have the honour to refer to the questions put to the Parties by Judge Crawford at the end of the Court's public sitting on 23 September 2016 and to the responses thereto submitted by Kenya, dated 26 September 2016.

Pursuant to the instructions of the President, I have the honour to submit herewith Somalia's observation on Kenya's responses to Judge Crawford's questions.

Please accept, Sir, the assurances of my highest consideration.

Sincerely,

Mona Al-Sharmani

Deputy Agent of the Federal Republic of
Somalia

Attachment

INTERNATIONAL COURT OF JUSTICE
SOMALIA v. KENYA
HEARING ON KENYA'S PRELIMINARY OBJECTIONS

*Observations of the Federal Republic of Somalia to the Response of
the Republic of Kenya to the questions posed by Judge Crawford on
Friday 23 September 2016*

29 September 2016

I. THE INTERPRETATION OF THE MOU

1. In its answers to Judge Crawford's questions, Kenya makes a further important concession; namely, that the MOU does *not* prevent the Parties from delimiting their maritime boundary *before* the CLCS has made its recommendation on delineation of the outer continental shelf. Specifically, Kenya states that the MOU "obviously does not prohibit the Parties from concluding one or more interim agreements" on delimitation, which the Parties may subsequently "either reaffirm ... or decide to modify" after the CLCS has made its recommendation.¹

2. This is directly contrary to its previous position.² On its latest position, Kenya now states that the MOU allows the Parties to conclude "interim agreements on delimitation covering ... *all* maritime areas in dispute".³

3. This latest stance completely undermines its Preliminary Objections, to the effect that the MOU established an "agreed two-step procedure" whereby an agreement on delimitation of any part of the boundary may be reached "*only after CLCS review*".⁴

4. Moreover, having previously argued that the bilateral discussions in 2014 did not even qualify as proper negotiations, Kenya further concedes that the discussions

¹ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), pp. 2, 5.

² See CR 2016/12, p. 24, para. 27 (Forteau) ("l'accord à conclure doit intervenir *après* les recommandations de la Commission des limites".)

³ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 2 (emphasis added).

⁴ KPO, para. 146 (emphasis added).

were negotiations and suggests that they could have resulted in a *permanent* agreement in respect of one or more of the disputed maritime areas prior to review by the CLCS. According to Kenya's latest submissions, "it was entirely possible that agreements, whether conceived as temporary *or permanent* components of the boundary regime between Kenya and Somalia, may have initially covered one or more maritime areas ... before the conclusion of a comprehensive, final agreement".⁵

5. Accordingly, despite its earlier argument that the MOU prevents delimitation of any part of the maritime boundary prior to delineation by the CLCS, Kenya now effectively concedes that this both legally and practically possible. In a last ditch effort to prevent the Court from hearing Somalia's Application, however, Kenya maintains that while the Parties could conclude an "interim" agreement regarding the entire maritime boundary, the text of the MOU prevents the "finalization" of such an agreement until after delineation by the CLCS. That distinction is then immediately collapsed, however, when it states that "even if the parties agreed by mutual consent to conclude a final agreement prior to CLCS recommendation, that would constitute a subsequent agreement replacing the agreed procedure under the MOU".⁶

6. Kenya's case is one of constant change and contradiction. Its current position appears to be:

- (a) The MOU does not prevent the Parties from reaching an "interim" agreement on delimitation, which may be temporary or permanent, and may relate to any or all of the disputed maritime areas.
- (b) Although the Parties may conclude an "interim" permanent agreement on delimitation of the *entire* maritime boundary, the MOU prevents them from reaching a "final" permanent agreement on delimitation of *any* part of the boundary until after the CLCS has made its recommendation.

⁵ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 5 (emphasis added).

⁶ *Ibid.*, p. 6.

- (c) While the MOU imposes a “legally binding”⁷ restriction on the Parties’ ability to reach a final agreement on delimitation, the Parties may *by agreement* remove that restriction on their ability to agree.

7. Kenya’s constantly shifting and inconsistent interpretation of the MOU reflects the incoherent nature of its objection to the Court’s jurisdiction. As the legal and evidential defects in its case have been exposed, Kenya has been forced to adopt increasingly contorted constructions of the MOU, and ever more strained accounts of the bilateral negotiations that took place in 2014.

II. THE NATURE AND SCOPE OF THE NEGOTIATIONS THAT TOOK PLACE IN 2014

8. Kenya accepts that the negotiations in 2014 “covered *all* maritime zones, including the territorial sea, the EEZ, and the continental shelf within and beyond 200 nautical miles”.⁸ The Parties therefore agree that the negotiations covered all of the disputed maritime zones between the land boundary terminus and the outer limit of the continental shelf. There is therefore no dispute between the Parties as to the answer to Judge Crawford’s first question.

9. In an effort to downplay the significance of those negotiations, however, Kenya asserts that the negotiations “were carried out at a high level of generality” and that Kenya “required further time for a proper presentation of its views”.⁹ It also suggests that Somalia did not engage in those negotiations in good faith, although it does not explain the basis for that claim.¹⁰ All of these are mere assertions, entirely without support, and contradicted by the documentary evidence that is before the Court.

10. As noted in Somalia’s earlier submissions, the contemporaneous accounts of the detailed substantive negotiations that took place in 2014 contradict Kenya’s

⁷ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 7.

⁸ *Ibid.*, p. 4 (emphasis added).

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 6.

characterization of those meetings.¹¹ The Joint Report of the first round of bilateral negotiations held on 26-27 March 2014 makes clear that the “Maritime Boundary Meeting” was attended by no fewer than 16 representatives of the Kenyan Government, including the Kenyan Ambassador to Somalia, the Deputy Solicitor-General, the Legal Adviser to the President of Kenya and a number of senior officials from the Ministry of Foreign Affairs, the Task Force on Delineation of the Continental Shelf and the Survey of Kenya.¹²

11. Moreover, the negotiations were expressly intended to enable the Parties to “reach a consensus on the potential maritime boundary line acceptable to both countries”.¹³ To this end, “[t]he negotiations commenced focusing on: (a) Kenya’s departure from the equidistance methodology adopted by [Kenyan legislation]; (b) starting point for the determination of the maritime boundary; (c) the appropriate baselines and base points; and (d) potential maritime boundary line”.¹⁴ The two delegations engaged in “a thorough discussion of principles of international law, including the principles of equidistance, equity and good faith” and “continued to negotiate for two consecutive days”.¹⁵

12. During the course of those negotiations, Kenya produced a detailed multimedia presentation entitled “Elaboration to Somalia on how and why Kenya arrived at a latitudinal boundary”.¹⁶ Kenya’s presentation included detailed submissions concerning (a) the application of Articles 15, 74 and 83 of UNCLOS to the Parties’ maritime boundary¹⁷; (b) the reasons why the concavity of the East African coast constituted “special circumstances” that warranted a departure from an

¹¹ See WSS, paras. 2.31-2.73, 3.34-3.47; CR 2016/11, pp. 41-50, paras. 26-53 (Reichler); CR 2016/13, pp. 23-29, paras. 10-24 (Reichler).

¹² Government of Somalia and Government of Kenya, *Joint Report on the Kenya-Somalia Maritime Boundary Meeting, 26-27 Mar. 2014* (1 Apr. 2014), Annex 1. MS, Vol. III, Annex 31.

¹³ *Ibid.*, p. 6.

¹⁴ Federal Republic of Somalia, *Report on the Meeting between The Federal Republic of Somalia and The Republic of Kenya On Maritime Boundary Dispute, Nairobi, Kenya, 26-27 March 2014* (1 Apr. 2014), p. 4. MS, Vol. III, Annex 24.

¹⁵ *Ibid.*

¹⁶ Government of Somalia and Government of Kenya, *Joint Report on the Kenya-Somalia Maritime Boundary Meeting, 26-27 Mar. 2014* (1 Apr. 2014), Annex 3, Slide 1. MS, Vol. III, Annex 31.

¹⁷ *Ibid.*, Slide 3.

equidistance line¹⁸; (c) the methodology and factual basis for computing the length of the relevant coasts¹⁹; (d) a detailed “Calculation of equitably shared Areas” which included specific figures for the length of the relevant coasts²⁰; the ratio of the relevant coasts²¹; the “area to be shared”²²; a suggested “[p]roportionate sharing” of that area²³ and the ratio of the respective allocations of maritime space that would be produced by that suggested sharing²⁴; and (e) a detailed explanation of “[w]hy absolute Median lines may not be an option for Kenya”.²⁵

13. The “intense discussions”²⁶ held at the second round of meetings in July 2014, attended by the Foreign Ministers, were equally detailed. As Kenya noted in its written Preliminary Objections, “Somalia used the meeting to advance a detailed argument on equidistance as the only possible solution to the maritime boundary dispute”.²⁷ Somalia referred to case law from the Court, ITLOS and *ad hoc* maritime delimitation arbitrations, and presented graphic charts illustrating the merits of the Parties’ arguments.²⁸

14. The Kenyan delegation responded with a detailed presentation which included discussion of maritime delimitation case law, the process for identifying the relevant

¹⁸ *Ibid.*, Slide 4.

¹⁹ *Ibid.*, Slide 6.

²⁰ *Ibid.*, Slide 8. According to Kenya’s presentation, the relevant coasts are 430 km (Kenya) and 1,920 km (Somalia).

²¹ *Ibid.* According to Kenya’s presentation, the ratio is 1:4.47.

²² *Ibid.* According to Kenya’s presentation, the “Area to be shared” is 805,020 km².

²³ *Ibid.* According to Kenya’s presentation, a “Proportionate sharing” of the relevant area would give Kenya 147,193 km² and Somalia 657,029 km².

²⁴ *Ibid.* According to Kenya’s presentation, the “Proportionate sharing” proposed by Kenya would lead to a ratio of 1:4.46 in the respective areas of the two States.

²⁵ *Ibid.*, Slide 10.

²⁶ Memorandum from the AG Director, Horn of Africa Directorate, to the Cabinet Secretary, Ministry of Foreign Affairs & International Trade, Republic of Kenya (15 Aug. 2014), p. 1.

²⁷ KPO, para. 109.

²⁸ See M. Al-Sharmani and M. Omar, Representatives of the Ministry of Foreign Affairs of the Federal Republic of Somalia, *Report to the File of the Meeting between the Federal Republic of Somalia and the Republic of Kenya On Maritime Boundary Dispute, Nairobi, Kenya, 28-29 July 2014* (5 Aug. 2014). WSS, Vol. II, Annex 4; Memorandum from S. Mokaya-Orina, Head/Legal & Host Country Affairs Directorate, to Cabinet Secretary, Ministry of Foreign Affairs & International Trade, Republic of Kenya (8 Aug. 2014).

coastline, the effect of the concavity of the East African coastline and the reasons why, in Kenya's view, a parallel of latitude would yield an equitable solution.²⁹

15. Both presentations were followed by "heated discussions" about the factual and legal grounds for the Parties' respective claims.³⁰

16. Accordingly, Kenya's claim that the negotiations were conducted at a "high level of generality" is not supported by the evidence and is unsustainable.

17. Furthermore, Kenya's suggestion that it "required further time for a proper presentation of its views"³¹ is disingenuous. The sole document cited in support of that statement makes it clear that on the first day of the meeting held on 28-29 July 2014 the Kenyan delegation requested *and was granted* time to respond to Somalia's presentation the following day.³²

18. Kenya's statement that the negotiations were "a confidence-building process to persuade Somalia to withdraw its objection to Kenya's CLCS submission"³³ is equally unsupported. This claim was not made in Kenya's written Preliminary Objections, and was raised for the very first time during Kenya's oral submissions.³⁴ There is no hint of this objective in any of the contemporaneous evidence. Indeed, the contemporaneous documentation is to the contrary. It demonstrates that the Parties' objective in carrying out these high-level, substantive and detailed negotiations

²⁹ See *ibid.*

³⁰ M. Al-Sharmani and M. Omar, Representatives of the Ministry of Foreign Affairs of the Federal Republic of Somalia, *Report to the File of the Meeting between the Federal Republic of Somalia and the Republic of Kenya On Maritime Boundary Dispute, Nairobi, Kenya, 28-29 July 2014* (5 Aug. 2014), p. 1. WSS, Vol. II, Annex 4.

³¹ *Letter* from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 4.

³² *Memorandum* from S. Mokaya-Orina, Head/Legal & Host Country Affairs Directorate, to Cabinet Secretary, Ministry of Foreign Affairs & International Trade, Republic of Kenya (8 Aug. 2014), p. 2 (stating that "[a]fter the presentation by the Delegation of Somalia, the Delegation from Kenya requested for time to respond to Somalia's presentation. On the afternoon of the second day, the Delegation of Kenya made a presentation responding to the issues raised by Somalia. The presentation touched on: Applicable (maritime) laws in Kenya; factors considered in arriving at the parallel of latitude; and a conclusion presenting the scenario (parallel of latitude) after application of the said factors. Kenya, too made reference to a number of case law including *Bangladesh V. Myanmar* and *Romania V. Ukraine*, and cited State practice and bilateral history in support of equitable principles").

³³ *Letter* from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 3.

³⁴ See CR 2016/12, p. 33, para. 20 (Lowe).

between March and July 2014 was to reach an agreement on the boundary in all maritime zones.³⁵ As the Kenyan Ambassador to Somalia put it at the March 2014 meeting, the Parties were to “work hard to find a speedy solution to the current maritime dispute between the two countries.”³⁶

III. WAIVER

19. As Somalia explained in its response of 27 September to Judge Crawford’s second question, it considers that Kenya’s full engagement in these high-level, substantive and detailed negotiations, for the purpose of reaching an agreement on the entire course of the maritime boundary, constitutes a waiver, either by agreement with Somalia or unilaterally, of any “rights” it might have had under the MOU to a prior recommendation by the CLCS. Kenya’s strained effort to downplay the negotiations, both in oral argument and its 26 September letter, reflects its concern that Somalia may be right on the waiver issue.

20. Kenya thus begins its answer to Judge Crawford’s second question by asserting that “it cannot be said that Somalia negotiated in good faith ... or that there were ‘meaningful negotiations’ on delimitation of the maritime boundary consistent with the jurisprudence of the Court.”³⁷ As shown above, these assertions are contradicted by the contemporaneous documentary evidence.

³⁵ See, e.g., Letter from H.E. Dr. Abdirahman Beileh, Minister of Foreign Affairs and International Cooperation of the Federal Republic of Somalia, to H.E. Ms. Amina Mohamed, Minister of Foreign Affairs & International Trade of the Republic of Kenya, No. MOFA/SER/MO/ /2014 (13 Mar. 2014), MS, Vol. III, Annex 43 (indicating that the purpose of the negotiations is to “discuss a resolution to” the Parties’ “existing dispute relating to the delimitation of the[ir] maritime boundary”); *Note Verbale* from the Ministry of Foreign Affairs and International Trade of the Republic of Kenya to the Ministry of Foreign Affairs & Investment Cooperation of the Federal Republic of Somalia, No. MFA/REL/13/21A (24 July 2014), WSS, Vol. II, Annex 24 (stating that the July 2014 meeting was “to discuss the issue on the delimitation of the two countries [sic] overlapping maritime boundary.”); Government of Somalia and Government of Kenya, *Joint Report on the Kenya-Somalia Maritime Boundary Meeting, 28-29 July 2014* (July 2014) (indicating that the Parties intended to “bridge the gaps between the two parties’ positions” on “the maritime boundary between Kenya and Somalia”); *Memorandum* from Ag. Director, Horn of Africa Director, to Cabinet Secretary, Ministry of Foreign Affairs & International Trade, Republic of Kenya (15 Aug. 2014) (stating that the Parties intended “to continue working on” “the delimitation [sic] of the Kenya-Somalia maritime boundary” “with a view to reaching an amicable solution”).

³⁶ Federal Republic of Somalia, *Report on the Meeting between The Federal Republic of Somalia and The Republic of Kenya On Maritime Boundary Dispute, Nairobi, Kenya, 26-27 March 2014* (1 Apr. 2014), p. 1. MS, Vol. III, Annex 24.

³⁷ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 6. Kenya cites the North Sea cases as nominal support for this assertion.

21. Kenya's next argument against waiver is a *non sequitur*: that "Somalia had clearly rejected its commitments under the MOU", and that, therefore, the negotiations "cannot be construed as subsequent conduct or any form of waiver".³⁸

22. Kenya never explains how the second proposition follows from the first. In fact, there is no relation between the two points. Somalia is alleged to have failed to comply with its non-objection obligation under the MOU, which is found in paragraph 5 and is not even addressed by paragraph 6 (the penultimate paragraph) of the agreement—the source of Kenya's supposed "rights" to a prior recommendation by the CLCS. It is unclear why Kenya believes that it cannot be held to have engaged in conduct entirely inconsistent with its "rights" under paragraph 6, and thereby waived those "rights", on the basis of Somalia's alleged breach of an obligation found in a different part of the MOU.

23. Kenya claims, contrary to the evidence, that it was driven to initiate and engage in the negotiations because of Somalia's violation of its non-objection obligation. In fact, Kenya first invited Somalia to commence negotiations to delimit the maritime boundary the year before Somalia committed its alleged violation.³⁹

24. By the time negotiations began in March 2014, Somalia's objection to Kenya's CLCS submission was in place, and Kenya sought to place this issue on the Agenda for the "Maritime Boundary Meeting". However, at Somalia's insistence, Kenya agreed to remove the matter from the Agenda and it was not discussed.⁴⁰

Ibid., p. 6 n.20. Somalia notes, however, that in that case the three parties agreed that there was no point in proceeding with negotiations after just six months of tripartite talks given their inability to agree even on questions of the applicable delimitation method. *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment*, I.C.J. Reports 1969, p. 3, para. 9.

³⁸ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 6.

³⁹ See Joint Press Release by Kenyan Cabinet Secretary for Foreign Affairs (Hon. Amina Mohamed) and Somali Deputy Prime Minister, Minister of Foreign Affairs & International Cooperation (Hon. Fawzia Yusuf H. Adam) (31 May 2013), p. 2. KPO, Vol. II, Annex 31. See also *Note Verbale* from the Ministry of Foreign Affairs and International Trade of the Republic of Kenya to the Embassy of the Federal Republic of Somalia in Nairobi, No. MFA. PROT/7/8/1 (7 Mar. 2014). WSS, Vol. II, Annex 23.

⁴⁰ See Somalia and Kenya, *Joint Report on Maritime Boundary Meeting, 26-27 Mar. 2014*, pp. 1-2. MS, Vol. III, Annex 31.

25. Significantly, Kenya agreed to this removal without reserving any of its rights under the MOU, and then proceeded to engage in two rounds of substantive negotiations to reach agreement on the maritime boundary. In its submission of 26 September, Kenya acknowledges, in particular, “[t]he absence of an express reservation as to the timeliness in terms of the penultimate paragraph of the MOU...”.⁴¹

26. Kenya cannot have it both ways. It cannot simultaneously argue, on the one hand, that the negotiations were specifically intended to *give effect to Kenya’s rights* under the MOU, and, on the other, that the negotiations were not subsequent conduct in relation to Kenya’s rights under the same document.

27. If the negotiations were specifically connected with, and intended to give practical effect to, the Parties’ rights and obligations under the MOU, then Kenya’s conduct in relation to those negotiations—and its failure to expressly reserve any right it had to a prior recommendation by the CLCS—would clearly give rise to a waiver of Kenya’s rights.⁴² In Somalia’s view, for the reasons expressed in its letter of 27 September and above, they *did* constitute such a waiver.

28. Kenya protests that the two meetings in 2014 were not held “in order to implement the agreed procedures under the MOU”.⁴³ Somalia does not agree that the MOU established any “agreed procedures” with respect to delimitation. If it did, however, then the negotiations that took place would plainly fall within the purview of those “agreed procedures”. The Court has previously held that negotiations may fall within the scope of a particular instrument even though no express reference is made to the instrument during the negotiations.⁴⁴

⁴¹ Letter from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 3.

⁴² Kenya asserts that it “consistently held the view” that “[t]he MOU requires a negotiated agreement, to be finalized after CLCS recommendations”. *Ibid.*, pp. 6-7. None of the documents Kenya cites at footnotes 22-25 of its responses provide any support for this contention.

⁴³ *Ibid.*, p. 3.

⁴⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment*, I.C.J. Reports 2011, p. 85, para. 30 (stating: “While it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court (Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1984, pp. 428-429, para. 83), the exchanges

29. Accordingly, if the MOU created “agreed procedures” for the negotiated delimitation of the common maritime boundary, then negotiations regarding delimitation of that boundary are self-evidently within the ambit of those procedures. As such, conduct by Kenya during those negotiations would give rise to a unilateral waiver of its rights under the MOU.⁴⁵

30. As a fallback position, Kenya argues that “irrespective of any purported waiver” of the temporal requirement, there was “no waiver of a right to a negotiated agreement as the method of settlement”.⁴⁶ Somalia reiterates that its primary case is that the MOU did not establish an obligation to seek to reach a negotiated agreement. Even if it did, however, for the reasons explained above and in Somalia’s written and oral pleadings, through its participation in high-level, detailed, intensive and substantive negotiations in 2014 Somalia amply fulfilled that obligation.

31. Somalia considers it telling that, in contrast to its own answers to Judge Crawford’s questions, which extensively cited to the case law on the issue of waiver, Kenya’s answers cite none. That failure constitutes a tacit admission that the relevant case law is unhelpful to Kenya’s case.

IV. THE IMPORTANCE OF A TIMELY RESOLUTION OF THE MARITIME BOUNDARY DISPUTE

32. Finally, Somalia must respond to Kenya’s assertion that there is “no pressing need to settle the entire boundary immediately”.⁴⁷ Kenya’s argument is again contradicted by contemporaneous evidence and Kenya’s own submissions.

33. By way of example, in a *Note Verbale* to the United Nations dated 24 October 2014, Kenya referred to “bilateral diplomatic negotiations, at the highest levels

must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter”).

⁴⁵ Conversely, if Kenya is right that the 2014 delimitation negotiations did not constitute an implementation of the “agreed procedure” contained in the MOU, then it must logically follow that the MOU did not establish an exclusive means of settling the maritime dispute. If the Parties were able to conduct delimitation negotiations outside the framework of the MOU—as Kenya’s argument necessarily implies—then this would demonstrate that the MOU did not create a single, compulsory method for resolving the maritime dispute.

⁴⁶ *Letter* from H.E. Mr Githu Muigai, Agent of the Republic of Kenya, to H.E. Mr Philippe Couvreur, Registrar (26 Sept. 2016), p. 7 (emphasis omitted).

⁴⁷ *Ibid.*, p. 5.

possible” which were aimed at “*resolving this matter expeditiously ... with a view to continuing peaceful cooperation, security and stability in the region*”.⁴⁸

34. In addition, a newspaper article from June 2013 annexed to Kenya’s Preliminary Objections reports that as long ago as 2010 a team of maritime boundary specialists from the Commonwealth Secretariat conducted a training workshop for Kenyan government officials on the basis that, “establishing clear maritime boundaries will have important implications for security, shipping, environmental protection, fishing and offshore resource exploration in the region”.⁴⁹

35. Kenya’s suggestion that there is no urgency is difficult to reconcile with its express acknowledgment that “Somalia is still in the midst of a fragile post-conflict transition”,⁵⁰ having just emerged from “a long period of instability caused by civil war, humanitarian disaster and widespread terrorism”⁵¹; that “border security is a fundamental threat to Kenya”⁵²; and that maritime security in the disputed area “continues to pose an existential threat to Kenya and other countries within the region”.⁵³ All of these factors make an early resolution of the maritime boundary dispute a matter of necessity.

⁴⁸ *Note Verbale* from the Permanent Mission of the Republic of Kenya to the United Nations to H.E. Ban Ki-Moon, Secretary-General of the United Nations, No. 586/14 (24 Oct. 2014). MS, Vol. III, Annex 50 (emphasis added).

⁴⁹ Article from *Hiiraan*, “Somalia Cabinet rejects appeal for talks on border dispute with Kenya” (10 June 2013). KPO, Vol. II, Annex 32.

⁵⁰ CR 2016/10, p. 23, para. 25 (Akhavan).

⁵¹ CR 2016/12, p. 38, para. 3 (Muigai).

⁵² CR 2016/12, p. 14, para. 10 (Akhavan).

⁵³ CR 2016/10, p. 23, para. 25 (Akhavan).