PENYELESAIAN SENGKETA MARITIM ANTARA KENYA DENGAN SOMALIA PADA TAHUN 2014 – 2021 MELALUI MAHKAMAH INTERNASIONAL

JURNAL

Diajukan Untuk Memenuhi
Syarat Mendapatkan Gelar
Sarjana Hukum

Disusun Oleh:

BRITANIA DYAH AYU HAREFA
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FAKULTAS HUKUM
UNIVERSITAS MUHAMMADIYAH SUMATERA UTARA
MEDAN
2025

PENGESAHAN SKRIPSI

Judul	:	PENYELESAIAN SENGKETA MARITIM ANTARA KENYA DENGAN SOMALIA PADA TAHUN 2014-2021 MELALUI MAHKAMAH INTERNASIONAL
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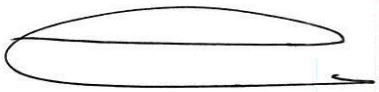
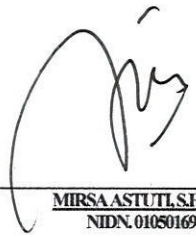
Skripsi tersebut diatas telah diujikan oleh Dosen Penguji Fakultas Hukum Universitas Muhammadiyah Sumatera Utara pada tanggal 07 Agustus 2025.

Dosen Penguji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MENETAPKAN

NAMA	:	**BRITANIA DYAH AYU HAREFA**
NPM	:	**2106200144**
PRODI / BAGIAN	:	**HUKUM/ HUKUM INTERNASIONAL**
JUDUL SKRIPSI	:	**PENYELESAIAN SENGKETA MARITIM ANTARA KENYA DENGAN SOMALIA PADA TAHUN 2014-2021 MELALUI MAHKAMAH INTERNASIONAL**

Dinyatakan : (**A**) Lulus Yudisium Dengan Predikat **Istimewa**
( ) Lulus Bersyarat, memperbaiki / Ujian Ulang
( ) Tidak Lulus

Setelah lulus dinyatakan berhak dan berwenang mendapatkan gelar **Sarjana Hukum (S.H)** Dalam Bagian **Hukum Internasional.**

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Prodi/Bagian	:	**HUKUM/ HUKUM INTERNASIONAL**
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Penguji	:	**1. Assoc. Prof. Dr. EKA N.A.M SIHOMBING, S.H., M.Hum NIDN: 8875550017**
		2. Assoc. Prof. Dr. FAISAL RIZA , S.H., M.H. NIDN: 0112068204
		3. MIRSA ASTUTI, S.H., M.H. NIDN: 0105016901

Lulus, dengan nilai **A**, Predikat **Istimewa**

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Ditetapkan di Medan
Tanggal, 07 Agustus 2025

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JUDUL SKRIPSI	:	**PENYELESAIAN SENGKETA MARITIM ANTARA KENYA DENGAN SOMALIA PADA TAHUN 2014-2021 MELALUI MAHKAMAH INTERNASIONAL**
PENDAFTARAN	:	**30 JULI 2025**

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Diketahui
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Dosen Pembimbing	:	**MIRSA ASTUTI, S.H., M.H.** **NIDN. 0105016901**

Selanjutnya layak untuk diujiankan

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Panitia Ujian Skripsi

Medan, 28 JULI 2025

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Dengan ini menyatakan sesungguhnya bahwa Jurnal yang saya tulis secara keseluruhan adalah hasil penelitian karya saya sendiri, kecuali pada bagian-bagian yang dirujuk sumbernya. Apabila ternyata di kemudian hari jurnal ini diketahui merupakan hasil plagiat atau merupakan karya orang lain, maka dengan ini saya menyatakan bersedia menerima sanksi akademik sesuai dengan ketentuan yang berlaku.

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No.	TANGGAL	MATERI BIMBINGAN	TANDA TANGAN
1	15 Oktober 2024	Pengajuan Judul	
2	17 Oktober 2024	Revisi Judul dan ACC Judul	
3	05 Desember 2024	Penyerahan Proposal	
4	09 Desember 2024	Revisi Proposal	
5	03 Januari 2025	Penyerahan Revisi Proposal dan ACC Proposal	
6	20 Februari 2025	Penyerahan Artikel Jurnal	
7	22 Februari 2025	Revisi terkait Penulisan Artikel Jurnal	
8	24 Februari 2025	Revisi artikel jurnal setelah direview	
9	28 Juli 2025	Penyerahan artikel yang sudah dipublish dan ACC untuk mengikuti Ujian Tugas Akhir	

Mahasiswa dengan data dan judul Tugas Akhir (Jurnal) tersebut di atas telah melalui proses bimbingan dan telah dilakukan pemeriksaan terhadap daftar pustaka, oleh karenanya Tugas Akhir (Jurnal) tersebut disetujui untuk diujiankan.

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Date: 27th February 2025
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MARITIME DISPUTE RESOLUTION BETWEEN KENYA AND SOMALIA FROM 2014-2021 THROUGH THE INTERNATIONAL COURT OF JUSTICE

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MARITIME DISPUTE RESOLUTION BETWEEN KENYA AND SOMALIA FROM 2014-2021 THROUGH THE INTERNATIONAL COURT OF JUSTICE

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ABSTRACT

The maritime boundary dispute between Kenya and Somalia is one example of the rise of maritime disputes over natural resources. The dispute, which stems from different interpretations of boundaries in the Indian Ocean, has attracted the attention of the entire international community, especially on the African continent. In 2014, Somalia filed a lawsuit against Kenya in the International Court of Justice regarding the delimitation of maritime boundaries between the two coastal states. The International Court of Justice examined the basis of Somalia's lawsuit in proposing the settlement of the dispute. This study aims to determine the maritime zone boundary between Kenya and Somalia according to UNCLOS 1982, to determine the role of the International Court of Justice in resolving the dispute and to determine the legal impact of the International Court of Justice Decision regarding the maritime dispute between Kenya and Somalia. The research method used is normative law research with a statutory approach and a case approach. The results showed that the 1982 United Nations Convention on the Law of the Sea divided the maritime zone as inland waters, territorial sea, exclusive economic zone, and continental shelf. The International Court of Justice played an important role in determining the maritime boundary between Kenya and Somalia. The International Court of Justice's ruling has had a significant impact on the two countries' deteriorating bilateral relations, increasingly tense political relations, as well as impacting the security and socio-economic sectors in the East African region.

KEYWORDS *Maritime Disputes, Kenya-Somalia, International Court of Justice*

INTRODUCTION

According to international law, a state has full sovereignty over its own territory. This is because sovereign states essentially recognize no higher sovereignty than their own national sovereignty. To limit the power of a state, the territory of a state is limited, meaning that the state has supreme power or full sovereignty in its territory (Dela Rinanda Putri, 2022). States can meet the criteria as "international legal personalities" and have greater rights and obligations than other subjects of international law, thus becoming the most important and

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privileged subject compared to other subjects of international law (Gunawan, 2021).

In regulating the boundaries of certain territories according to International Law, there is no limit that regulates that all state borders are final so that in the international environment there are many disputes regarding borders between states, both borders on land and borders in the sea. States have reached an agreement to create and develop rules relating to maritime issues to rules relating to the activities of states at sea resulting in international law that includes comprehensive rules on this issue. Thus was born a of United Nations Convention on the Law the Sea, known as UNCLOS 1982, which regulates the extent of a country's sovereignty in its territorial waters.

In fact, there are still many maritime disputes over natural resources. The maritime boundary dispute between Kenya and Somalia is one example. Territorial claims usually consist of land and sea areas but can also consist of islands. The deteriorating relationship between Kenya and Somalia has attracted the attention of the entire international community especially on the African continent. These territorial issues are difficult to resolve and can lead to conflict between countries, strained relations and even war. Both Kenya and Somalia claim sea territory around the Indian Ocean (Kuman, 2022). Somalia initially accused Kenya of granting exploration rights to multinational companies Total and Eni to explore for resources in the disputed waters. In a separate letter to the companies, Somalia claimed that part of the area granted by Kenya falls within Somalia's Exclusive Economic Zone, making the oil companies' activities in the area illegal and intends to impose daily fines on them for violating Somalia's sovereignty.

Kenya and Somalia were ultimately unable to reach an agreement and claimed approximately 160,000 kmof offshore East African territory 2 in the Indian Ocean with estimated reservesoil and gas . The territorial dispute between Kenya and Somalia is over an area of approximately 100,000 km2 in the Indian Ocean. The conflict arises from a difference of opinion between Kenya and Somalia. Somalia claims that the sea border should be the direction of the land border between the two countries,drawn in while Kenya claims that the sea border should be drawn horizontally rather than in the direction of the land border between the two countries (Pillo, 2022).

As a result of ongoing disputes stemming from conflicting interpretations of how the boundary should extend into the Indian Ocean, Somalia filed a claim against Kenya at the International Court of Justice in August 2014. Somalia argued that its southern border should run southeast as an extension of the land border. Kenya argued that Somalia's border should turn at about 45 degrees from the coastline and run in latitude. The litigation has taken nearly seven years amid diplomatic contestation between the two countries (Marini, 2021).

According to UNCLOS 1982, a coastal state has the right to guarantee the maritime area measured by its base line, which includes the maritime zone set out in the provisions of UNCLOS 1982. Kenya and Somalia's relations have been strained since Mogadishu severed diplomatic ties and accused Nairobi of interfering in its internal affairs. Somalia has expelled Kenya's ambassador in Mogadishu and

recalled its own ambassador. Kenya continues to deny any interference and claims that Farmaajo is using it as a scapegoat to score political points within the country.

The is also over a maritime border that is rich in oil and can support the country's economy. Kenya and Somalia have tried to settle the dispute through negotiations but could not reach an agreement, so they resorted to the dispute International Court of Justice (ICJ).

Based on the above background, it is interesting to examine the problem of maritime boundary disputes that still occur frequently due to the struggle for natural resources contained therein. Therefore, this journal will discuss the settlement of the maritime dispute between Kenya and Somalia in 2014-2021 through the International Court of Justice.

RESEARCH METHOD

This type of research is a type of normative legal research. The research approach used is the legislation approach, in this case using the United Nations Convention on the Law of the Sea 1982 and the results of the International Court of Justice Decision and the Case Approach (Sihombing & Hadita., 2022). The data source that can be used in conducting this legal research is secondary data which includes primary, secondary, and tertiary legal materials. The data collection tool for this research uses library research. Furthermore, the data analysis technique is carried out in a qualitative manner, namely the selection of theories, principles, norms, doctrines and articles in the Convention or International Court Decisions that are relevant to the problem. Then it is analyzed qualitatively so that a solution can be obtained and a conclusion can be drawn and integrated into an analysis flow that is easy for other parties to understand.

RESULT AND DISCUSSION

Maritime Zone Boundary between Kenya and Somalia According to UNCLOS 1982

According to the 1982 , a coastal state has the right to guarantee the maritime area measured by its base line to include the maritime zone that has been regulated in the provisions of UNCLOS *United Nations Convention on the Law of the Sea*1982. In determining maritime boundaries in the territorial sea, the provisions of Article 15 of UNCLOS 1982 apply, which states that two states confronting or adjoining are not allowed to claim the territorial sea beyond the base line or to *median median* line between the two states unless the two states make another agreement due to rights based on historical considerations or other special conditions that allow not apply the principle of the line.

UNCLOS 1982 divides the maritime zone into several namely :

a. Inland Waters located on the landward side of the baseline used to define a country's territorial sea including the depth of rivers, lakes, bays, harbors and other parts of the waters as long as they are on the landward side of the baseline. The inland waters of state sovereignty apply absolutely without any restrictions by international law in the form of obligations to provide guarantees for the exercise of the right of peaceful passage for foreign ships. The drawing of straight archipelagic baselines does not

deprive an archipelagic state of the right to designate part of its waters as inland waters (Agoes, 2021). Inland waters are an area that is the sovereignty or full power of the state and even foreign ships are not allowed to pass through. Where the coastal state has the exclusive right to explore and exploit the resources contained therein.

b. The Territorial Sea is that part of the sea which is beyond the base line or baseline and is bounded by an outer line or boundary. The right of peaceful passage applies in the territorial sea if such action is necessary in normal navigation or forced in an emergency but is still limited and can be considered not peaceful if the passing foreign ship commits acts that are detrimental to the security, public order or fiscal interests of the coastal state. This is also emphasized in Article 2 of UNCLOS 1982, where the sovereignty of a state in the territorial sea is absolute to apply all applicable laws and regulations in the country concerned and fulfill the applicable provisions and reach an agreement on the outer limits of the territorial sea, namely 12 nautical miles measured from the base line.
c. The Exclusive Economic Zone or EEZ is the area beyond the territorial sea and the area adjacent to it subject to a special legal order, in which the rights and jurisdiction of the coastal state as well as the rights and freedoms of other states are regulated by the provisions of the relevant Conventions and the width of the EEZ is 200 miles measured from the base line. In the EEZ area, full coastal state sovereignty applies and the national law of a coastal state is enforced. The Exclusive Economic Zone is an area beyond and adjacent to the 200-mile territorial sea that is subject to a special regime in which there are rights and jurisdiction of the coastal state and freedoms for other states.
d. The Continental Shelf is regulated in Article 76 paragraph (1) of UNCLOS 1982 which is defined as the seabed and the land beneath it from the area beneath the surface of the sea which lies beyond its territorial sea along the natural continuation of its land area to the outer edge of the continental margin or to a distance of 200 nautical miles from the base line. According to Article 83 of UNCLOS 1982, if the delimitation of the continental shelf between states whose coasts are opposite or adjoining must be done by agreement on the basis of international law as stated in Article 38 of the Statute of the International Court of Justice to reach a fair settlement.

The coastal state or island state has the exclusive right to explore and exploit its natural resources, lay submarine cables and pipelines, determine the direction of travel of marine pipelines over the continental shelf and authorize and regulate drilling on the continental shelf for all purposes.

The dispute between Kenya and Somalia that occurred some time ago was caused by maritime boundary issues, especially the boundary line of Exclusive Economic Zone waters. Coastal states are obliged to provide access to other countries, especially neighboring countries and *landlock states*, which are regulated in Chapter V of UNCLOS 1982 starting from Article 55 to Article 75.

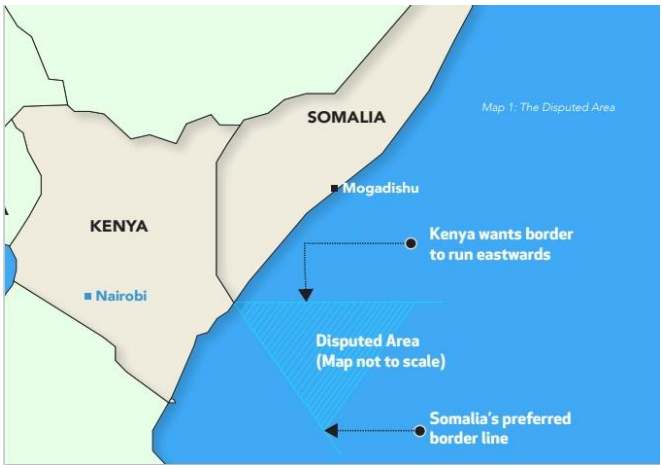

Figure 1
Source: *The HORN Bulletin Vol. IV Issue VI 2021*

The triangle-like area is the subject of a dispute over its oil, marine gas and rich fishing resources, especially tuna, as well as shipping development. As a result of the debate between Kenya and Somalia, which failed to find a middle ground, Somalia filed a maritime boundary dispute against Kenya in 2014 with the International Court of Justice regarding the delimitation of the maritime boundary between the two coastal countries in the Indian Ocean.

The Role of the International Court of Justice in Resolving Maritime Disputes Between Kenya and Somalia

The International Court of Justice is one of the main legal institutions where the Court is an inseparable part of the UN and an integral part of the UN Charter. In resolving the maritime boundary dispute between Kenya and Somalia, the International Court of Justice examined the basis of Somalia's claim in filing for settlement of the dispute. The International Court of Justice considered that if the maritime boundary claims made by the two countries were different, maritime activities in the triangle area did not fall into the category of violating a country's sovereign rights prior to a ruling.

The International Court of Justice claimed jurisdiction to try this dispute based on Articles 282, 287 and 288 of UNCLOS 1982 which authorizes the International Court of Justice to resolve maritime disputes. Even though Kenya objected to the ICJ's jurisdiction, the International Court of Justice continued the process (Wu, 2018).

After receiving Somalia's request on August 28, 2014, asking to determine the issue of maritime boundaries, the International Court of Justice began a further investigation into the claims of the two countries. Then, on October 7, 2015, Kenya filed its preliminary objections and On February 2, 2017, the International Court of Justice issued its Judgment on the preliminary objections filed by Kenya. Although Kenya repeatedly stated that there was an MoU or Memorandum of Understanding regarding the determination of boundaries and then argued that in Paragraph 6 of

the MoU made a firm statement that the issue of delimitation or determination of territorial boundaries after a decision from the CLCS or the Commission on the Limits of the Continental Shelf made its recommendation, the International Court's decision could be taken after the recommendation was issued.

The International Court rejected this argument on the grounds that according to the interpretation of the wording in the Title and the first five paragraphs of the MoU, the parties intended to separate the delineation and delimitation processes (Gunawan et al., 2022). Between the delineation and delimitation of the continental shelf beyond 200 nautical miles, although they have similarities in that a country draws a line in its territory, the subject matter and procedures are different. Delineation involves drawing a line between coastal states where the part of the High Seas is defined as the common heritage of mankind by Article 137 of UNCLOS, while delimitation involves establishing a line between two coastal states (Arifin, 2022).

Then, the public hearing on the subject of the case, which was originally scheduled to be held from September 9 to 13, 2019, was postponed until March 2021 due to a request for postponement submitted by Kenya. At the hearings on March 15 and 18, 2021, Kenya withdrew and did not participate in the hearings at the International Court of Justice due to several reasons that were later conveyed by Kenya.

The International Court follows a specific structure when deciding on the determination of maritime boundaries. The first task of the International Court in any attempt to determine maritime boundaries is to determine the relevant beaches that must be taken into account in determining these boundaries. The International Court will identify the baseline as the starting point from which each maritime zone will be determined in accordance with what is stated in Article 15 of UNCLOS 1982.

The International Court of Justice finally delivered its decision on October 12, 2021, in which Somalia won the maritime boundary dispute between Somalia and Kenya. The International Court of Justice transferred control of the potentially oil-rich region and other resources in the Indian Ocean to Somalia after Kenya overturned the International Court of Justice's decision.

The legal impact of the International Court of Justice's decision is to start with the same line of distance to achieve a fair result. Taking into account geographical considerations relating to the characteristics of the coastline, whether straight or curved, the length of the coastline and the presence of islands or waters. Non-geographical considerations such as security interests, economic factors such as oil and gas deposits, and the historical rights and behavior of the state.

The decision means that the territorial boundary will be based on parallel lines rather than parallel latitudes and divides the disputed territory roughly in half of the territorial claims for both. Overall, the verdict is very favorable to Somalia and means that Kenya must cede part of its territorial waters to Somalia under the 1979 Presidential Proclamation.

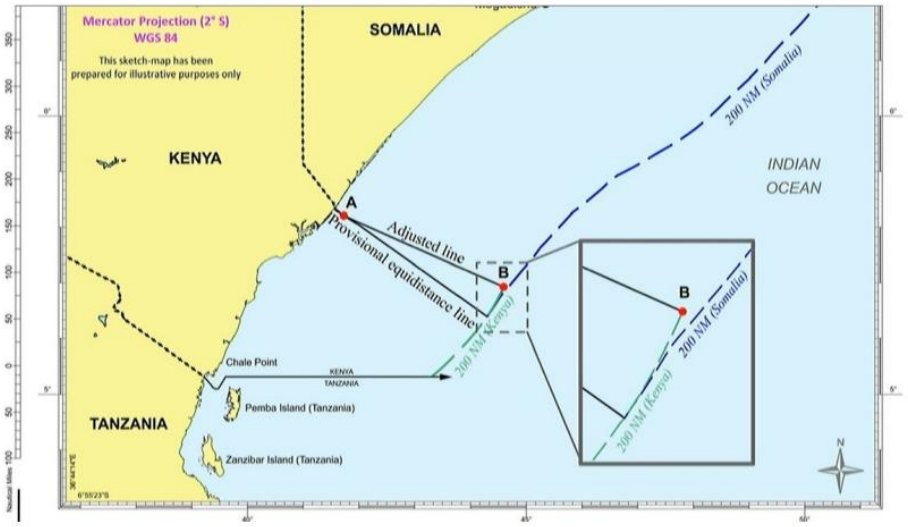

Figure 2
Source: International Court of Justice showing the adjusted maritime boundary between Kenya and Somalia. https://icj-cij.org/case/161

Kenya then rejected the decision of the International Court of Justice and defied the decision and said it would not accept the decision of the International Court of Justice. This was delivered by President Uhuru Kenyatta and Somalia responded to Kenya's decision to immediately comply with the International Court of Justice (Kuman, 2022).

Kenya stated that it was withdrawing from the Court at the International Court of Justice on the grounds of bias, lack of impartiality and unfair process. Kenya also objected to the composition of the Judges where one of the Judges was a Somali national and represented Somalia at the Third UN Conference on the Law of the Sea. Kenya also said that it stood by its claim from the beginning and emphasized its stance and wanted a settlement outside the Court in order to maintain bilateral relations between the two countries. However, the International Court of Justice found that there was no substantial evidence on any of the arguments before the Court and therefore rejected all of Kenya's objections and the decision of the International Court of Justice was in line with the principles of UNCLOS and its precedents (Muhammed, 2023).

The decisions of the International Court of Justice are final and binding on the parties to the dispute. Despite its wisdom and reality, it is difficult to ensure that the decisions of the International Court of Justice will be effective. They must be implemented in good faith. The UN Security Council can take action if a party fails to implement an International Court of Justice ruling.

The Legal Impact of the International Court of Justice's Decision on the Settlement of Maritime Disputes Between Kenya and Somalia

After the International Court of Justice issued a ruling on the settlement of the maritime dispute between Kenya and Somalia in which the disputed territory

was divided in favor of Somalia's claim. The ruling had far-reaching implications for bilateral relations, political, security and socio-economic relations in the region and beyond, and it was feared that it could trigger a war between the two countries.

Somalia criticized Kenya after Kenya blocked the entry of two Somali Legislators and a minister after they landed at Nairobi Airport and then deported them. Somalia responded by ending diplomatic relations with Kenya, accusing Kenya of interfering in its internal affairs, which Kenya later denied (Hulu & Sinambela, 2021).

There are several impacts of the International Court of Justice on Kenya and Somalia's relationship (Sabala, 2021):

1. The International Court of Justice's decision exacerbated diplomatic relations and further strained tensions following the International Court of Justice's ruling on a maritime dispute between Kenya and Somalia. These tensions risk destabilizing the already conflict-prone East African region.
2. Disrupt the economies of both countries especially for Kenya which has previously granted exploration licenses to multinational companies such as Total and Eni in the area.
3. The involvement of several other international partners who openly take sides in this issue such as the UK and Norway who support Somalia. The United States and France are supporting Kenya, which is feared to divide neighboring East African countries to side with one of the warring parties.
4. Creating a new threat to security and peace in the Indian Ocean zone of Africa. If Kenya decides to station troops in the contested area, Somalia will eventually do the same despite its military weakness and will seek allies to help it protect the area, leading to protracted tensions and fighting between the two armed forces.
5. Kenya's non-compliance with the International Court of Justice's Judgment could also lead to further tensions and armed conflict in the future.
6. The applied the principle of equidistance in determining maritime boundaries, which set a precedent in resolving similar disputes International Court of Justice and can be used to resolve maritime boundary disputes.
7. This ruling has the potential to affect regional cooperation in the region.
8. Termination of bilateral cooperation in trade between the two countries.
9. Uncertainty due to maritime disputes can disrupt investment in the region due to reluctance to invest in areas that are considered unstable, hindering economic growth in the region.
10. There are challenges in enforcing the International Court of Justice's Decision in implementing the content of the Decision.
11. The International Court of Justice's ruling also impacts the access rights of fishermen from both countries, affecting the livelihoods of fishermen living near the disputed area.

Both countries should refrain from taking strong stances that could damage bilateral relations and suffer adverse consequences in the future. Kenya and Somalia should also avoid tension excessive and should respect and implement the ruling of the International Court of Justice. If Kenya continues to disobey the ruling of the International Court of Justice then Somalia can refer the case to the UN Security Council to mediate the situation and minimize disruption to regional peace and security.

CONCLUSION

According to the 1982 United Nations Convention on the Law of the Sea, maritime zones are divided into inland waters, territorial seas, exclusive economic zones and continental shelves. Kenya and Somalia are neighboring countries, therefore Article 15 of UNCLOS 1982 applies in determining their maritime boundaries where countries that face or adjoin each other are not allowed to claim territorial seas beyond the base line or median line between the two countries unless the two countries make other agreements based on historical considerations or due to certain conditions.

The International Court follows a specific structure when deciding on the determination of maritime boundaries. The first task of the International Court in any attempt to determine maritime boundaries is to determine the relevant coasts that must be taken into account in determining these boundaries. The International Court will identify the baseline as the starting point from which each maritime zone will be determined in accordance with what is stated in Article 15 of UNCLOS 1982. In the middle of the trial, Kenya withdrew from the International Court of Justice trial because, according to Kenya, the trial was biased and unfair. The International Court of Justice finally delivered its decision on October 12, 2021, which ruled in favor of Somalia on the sea boundary between Somalia and Kenya. The International Court of Justice transferred control of the potentially oil-rich region and other resources in the Indian Ocean to Somalia after Kenya overturned the International Court of Justice's decision. Kenya also rejected the decision and opposed the International Court of Justice's decision.

The impact of the International Court of Justice's decision is far-reaching, ranging from a deterioration in the bilateral relations between the two countries to increasingly strained political relations, with repercussions for security and socio-economic conditions in the East African region. The involvement of a third party has also exacerbated the already poor relations between the two countries, raising fears that it will divide the countries in the East African region into those that side with one country and those that side with the other. The impact of the ruling also has the potential for armed conflict if the two countries do not respect the decision of the International Court of Justice. Somalia can refer this dispute to the UN Security Council if Kenya continues to disobey the International Court of Justice's ruling in order to minimize disruption to regional peace and security..

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