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LIMITS IN THE SEAS



No. 92
MARITIME BOUNDARY:
KENYA-TANZANIA

This paper is one of a series issued by The Geographer, Bureau of Intelligence and Research of the Department of State. The aim of the series is to set forth the basis for national arrangements for the measurement of the territorial sea or the division of the maritime areas of coastal nations.

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June 23, 1981

Office of The Geographer
Bureau of Intelligence and Research

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On December 17, 1975, the Republic of Kenya sent a note to the United Republic of Tanzania proposing the terms of an agreed delimitation of the boundary between their respective territorial waters and other maritime jurisdictions of the two States. The United Republic of Tanzania replied on July 9, 1976, accepting these terms. The exchange of notes constitutes an agreement on their maritime boundary which entered into force on July 9, 1976. The full text of the agreement is as follows:

EXCHANGE OF NOTES BETWEEN THE UNITED REPUBLIC OF TANZANIA
AND KENYA CONCERNING THE DELIMITATION OF THE TERRITORIAL
WATERS BOUNDARY BETWEEN THE TWO STATES

I

Kenyan note

December 17th, 1975

Your Excellency,

I have the honour to refer to the meetings held between officials of the United Republic of Tanzania and of the Republic of Kenya on 8th May, 1972 at Mombasa, Kenya and from 6th to 8th August, 1975 at Arusha, Tanzania and on 4th September, 1975 at Dar-es-Salaam, Tanzania, on the delimitation of the territorial waters boundary between our two countries and to state that, as a result of the said meetings, the following points were agreed:

1. Boundary:

Base Lines:

- (a) Ras Jimbo beacon-Kisite Island (rock)
- (b) Ras Jimbo-Mwamba-wamba beacon
- (c) Mwamba-wamba beacon-Fundo Island beacon (rock)
- (d) Fundo Island beacon (rock)-Ras Kigomasha lighthouse
- (e) Kisite Island (rock)-Mpunguti ya Juu-lighthouse

2. The description of the boundary:

- (a) On the West: The median line between the Ras Jimbo beacon-Kisite Island/Ras Jimbo-Mwambawamba beacon base lines to a point 12 nautical miles from Ras Jimbo up to a point hereinafter referred to as 'A', located at 4°49'56"S and 39°20'58"E;
- (b) On the East: The median line derived by the Intersection of two arcs each being 12 nautical miles drawn from Mpunguti ya Juu lighthouse and Ras Kigomasha lighthouse respectively hereinafter referred to as point 'B', located at 4°53'31"S and 39°28'40"E and point C, located at 4°40'52"S and 39°36'18"E;
- (c) On the South: An arc with the centre as the Northern Intersection of arcs with radii 6 nautical miles from point 'A' as described in paragraph 2(a) above and point 'B' which is the Southern Intersection of arcs from Ras Kigomasha lighthouse and Mpunguti ya Juu lighthouse.
- (d) The eastward boundary from Point C, which is the Northern Intersection of arcs from Ras Kigomasha lighthouse and Mpunguti ya Juu lighthouse as described under paragraph 2 (b) above, shall be the latitude extending eastwards to a point where it intersects the outermost limits of territorial water boundary or areas of national jurisdiction of two States.
- (e) The marine charts of 1:250,000 describing the co-ordinates of the above points shall form an integral part of this agreement.

3. Fishing and fisheries:

- (a) It was agreed that indigenous fishermen from both countries engaged in fishing for subsistence, be permitted to fish within 12 nautical miles of either side of the territorial sea boundary in accordance with existing regulations.
- (b) It was agreed that there be reciprocal recognition of fisheries licences, regulations and practices of either State applicable to indigenous fishermen aforesaid. The fishing within the area specified in paragraph 3 (a).

After due consideration of the said points of agreement, including the attached map describing the co-ordinates of the boundary as delimited, the Government of the Republic of Kenya hereby confirms that it accepts the above recommendations having been fully convinced that they are for the mutual benefit of our two countries.

If the Government of the United Republic of Tanzania is of the same view, then it is suggested that this Note and your reply thereto in the affirmative shall constitute an Agreement for the territorial waters boundary between our two States and other related matters referred to above and the same shall enter into force on the date of the receipt of your said Note in reply.

Accept, Your Excellency, the assurances of my highest consideration.

Yours

Dr. Munyua Waiyaki
Minister for Foreign
Affairs

H.E. Mr. Ibrahim Kaduma, M.P.,
Minister for Foreign Affairs,
United Republic of Tanzania
Dar es Salaam, Tanzania

II

Tanzanian note

9th July, 1976

Your Excellency,

I have the honour to acknowledge receipt of your letter Ref. No. MFA.273/430/001A/120 of 17th December, 1975 which reads as follows:

[See Letter I]

I have the honour to confirm that the foregoing is acceptable to the Government of the United Republic of Tanzania.

Please accept, Your Excellency, the assurances of my highest consideration.

Ibrahim M. Kaduna
Minister for Foreign Affairs

H.E. Dr. Muryua Waiyaki
Minister for Foreign Affairs,
Office of the Minister,
Nairobi, Kenya

Analysis

The Kenya-Tanzania maritime boundary is depicted on the attached illustrative map. The boundary consists of three turning points and an undefined seaward terminus. The turning points are located in the Pemba Channel area and are all within 12 nautical miles of the coast; but, as Article 2(d) of the agreement states, the boundary shall follow the latitude of point C (4°40'52"S) "...extending eastwards to a point where it intersects the outermost limits of territorial water boundary or areas of national jurisdiction of [the] two States." Kenya currently claims a 12-nautical-mile territorial sea, and Tanzania claims a 50-nautical-mile territorial sea.¹ The intersections of their claimed territorial seas with the boundary are depicted as points 1 and 2, respectively, on the attached map.

With reference to Article 2(d), point 4 illustrates where Kenya's claimed 200-nautical-mile economic zone intersects the 4°40'52" parallel of south latitude, and point 3 identifies where a potential Tanzanian 200-nautical-mile claim would intersect this parallel of latitude. The salient coastal points affecting these outer limits are indicated on the attached map as the bases from which the light-red construction lines are drawn.

Both countries are able to extend their maritime zones eastward to a full 200 nautical miles without overlapping an opposite State to the east. For most of its length the boundary traverses waters deeper than 100 fathoms. From the land boundary terminus to point A, the water depths are less than 100 fathoms. Boundary segments A-B and B-C are situated in the Pemba Channel where depths range from 100 to 300 fathoms (600 to 1,800 feet). Seaward from point C the depths range from 250 fathoms to over 2,000 fathoms.

The interesting section of the boundary is situated near shore in the Pemba Channel area (see map insert). Article 1 of the agreement establishes straight baselines for each

1. The United States does not recognize any State's claim to a territorial sea breadth in excess of 3 nautical miles. In the UN Law of the Sea negotiations, however, the United States has expressed its willingness to accept a maximum territorial sea breadth of 12 nautical miles within the framework of a comprehensive and acceptable Law of the Sea treaty.

country in the boundary region, although some of these baselines do not seem to influence the course of the boundary.² The first boundary segment extends from the land boundary terminus at Ras Jimbo to point A, which is 12 nautical miles seaward from Ras Jimbo. Point A, however, is only 6.8 nautical miles from Kisite Island and the Tanzanian baseline. This segment is equidistant between the two baselines described in Article 1(a) and (b): i.e., lines connecting Ras Jimbo to Kisite Island (Kenya) and Ras Jimbo to Mwamba-wamba beacon (Tanzania).

Turning points B and C have been situated in locations where the 12-nautical-mile arcs as drawn from Mpunguti ya Juu lighthouse (Kenya) and Ras Kigomasha lighthouse (Tanzania) intersect. In order to establish boundary segment A-B, point X was created. Point X is the northern intersection of 6-nautical-mile arcs drawn from points A and B. With point X as the center, a 6-nautical-mile arc was drawn between points A and B to form that segment of the boundary. Points B and C are connected by a straight line. The agreement, however, does not state what kind of lines are to be employed, i.e., geodesics, great circles, or rhumb lines. From point C the boundary continues eastward along the parallel of latitude of point C to, as previously noted, an undefined terminal point.

The course of the final boundary combines numerous delimitation methodologies. The first boundary segment is equidistant between the two claimed straight baselines. Segment A-B has been developed by drawing an arc from point X, an artificially established point. Segment B-C is equidistant between selected coastal points one from each country. The seaward extension of the boundary from point C is based on a parallel of latitude. Thus, the boundary represents an agreement which has been established in accordance with equitable principles and which is satisfactory to both countries.

2. Baselines in international law serve the purpose of defining the limit between internal waters and the territorial sea. Various international law principles are used in determining the baseline. The establishment of baselines by bilateral agreement is not a common practice. The status of the baselines created by this agreement is not clear and, under any interpretation, could not be binding on third States.