The relationship between Kenya and Somalia

On 25 September, Kenyan President Uhuru Kenyatta and his Somali counterpart Mohammed Abdullahi Mohamed met in New York in occasion of the UN General Assembly. The meeting had a high symbolic value, in so far as it sanctioned the commitment of the two heads of state to normalize bilateral relations. The fact that the authorities of two neighbouring countries resorted to the mediation of the Egyptian President Al Sisi for organization of the meeting, however, is proof of the enduring tensions between Mogadishu and Nairobi. Frictions reached an unprecedented level between August and September, in conjunction with the elections in the southern region of Jubbaland and the approaching of the hearing before the International Court of Justice on the maritime border dispute between the two countries.

The dispute before the International Court of Justice

The dispute between Somalia and Kenya before the International Court of Justice concerns a sea triangle of about 100,000 square kilometers off the port of Lamu, in northern Kenya, but considered by Mogadishu as an integral part of its continental shelf. The position of the Somali government is based on an interpretation of the maritime border as projected southeast towards the Indian Ocean, in line with the trajectory of the land border. Kenya has always rejected these claims, arguing that the demarcation of the Exclusive Economic Zone and the Continental Shelf between the two countries should follow a parallel line from the intersection of land boundary. The controversy is of material and symbolic value. For Somalia, the submission to the Court in August 2014 represented a fundamental step towards regaining the country's international sovereignty after decades of civil war. The presence of potential offshore oil fields is an additional incentive for a government that barely controls the immediate surroundings of the capital, but could obtain access to large sources of revenue without bearing the costs of administrative de-concentration and security enforcement. For Kenya, defeat would translate into the loss of a sea area corresponding to about 26% of its Exclusive Economic Zone and a threat to the future of Lamu, the port that is intended to become the hub for offshore and on-shore oil production in northern Kenya.

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The first hearing before the Court was scheduled on September 13, but then postponed to November following Kenya's request to appoint a new pool of defenders\(^2\). The Kenyan strategy has always focused on moving the dispute from the judicial to the diplomatic realm, where Nairobi have greater political weight. Kenyan lawyers have repeatedly objected the incompetence of the International Court on the ground of an agreement signed in 2009 by the then Somali Minister for International Cooperation and, in the alternative, the existence of alternative resolution mechanisms\(^4\).

The months before the hearing were tense. Frictions started at the beginning of 2019, following rumours that the Somali government had secretly auctioned exploration rights in the disputed maritime area. Nairobi reacted by calling its ambassador in Mogadishu back home, while a senior officer at the Kenyan Ministry of Foreign Affairs threatened the use of force to protect national territorial integrity\(^5\). In May, in response to the ban placed by authorities to the participation of Somali diplomats to an international conference in Nairobi, the Somali government ordered all Nairobi-based non-governmental organizations operating in Somalia to leave the country immediately or move their headquarters\(^6\). In June, Kenyan authorities decided to close the border traffic in the Lamu area for security reasons. The assertiveness of the Kenyatta government has been stigmatised at home\(^7\). Nevertheless, it is precisely because of internal pressures from the parliament that the executive has adopted such an aggressive stance\(^8\).

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The relationship between Kenya and Somalia

The reconstructions of the dispute in the media are paradigmatic of the two governments’ positions. Pro-Nairobi voices accuse Somalia of acting in contrast with the principles of good neighbourhood. Moreover, they argue that the dispute weakens the common fight against Al Shabaab, damaging Somalia itself9. Pro-Somali voices, on the other hand, denounce the diplomatic escalation promoted by Nairobi as an attempt to force Mogadishu to an arbitration against its will10. The Somali government’s refusal to come to terms with this option is also taken as a proof of resistance against Kenya’s “imperialist” attitude in southern Somalia, where it maintains a foot on the ground through the Jubbaland administration. The “imperialist” thesis was somehow subscribed by the Somali delegation before the International Court of Justice when it argued that the 2009 bilateral agreement between Kenya and Somalia was void, as the treaty had been somewhat extorted during the civil war and signed with an authority with no power to act on behalf of the Somali state on the international scene.

Kenya’s reluctance to face the judgement is also attributable to the orientation of the International Court of Justice. The international community has historically used two competing principles to define maritime borders: equidistance and equity. While Nairobi has always maintained the superiority of the second principle to protect its positions in the Indian Ocean, recent rulings of the Court seem to favour the application of the equidistance principle, which is more in line with Somalia’s argument. Equidistance was adopted in 2002 by the International Court to settle the dispute between Nigeria and Cameroon over the Bakassi Peninsula, while equity was limited to the delimitation process on the ground11.

Tensions on Jubbaland

The dispute before the International Court of Justice is likely to shape the balance of power along the Kenyan-Somali maritime frontier. The tensions surrounding the electoral appointment in Jubbaland, on the other hand, are paradigmatic of the daily competition between Mogadishu and Nairobi for control of the hinterland of southern Somalia, since 2013 under the direct sphere of influence of the Kenyan security apparatus.

The Somali government hoped that the electoral round of 22 August would bring a new candidate to the presidency of the southern region after six years of unchallenged domination by Kenya’s ally Ahmed Madobe. Before elections, however, Kismiaio and Mogadishu exchanged accusations on the manipulation of the vote12. Madobe’s reconfirmation did not ease the situation, because the federal government rejected the outcome of the ballot and suspended any institutional collaboration.

The dispute between Jubbaland and Mogadishu is a pandora box that could negatively affect the institution building process in Somalia and regional stability as well. On the domestic front, the federal government’s reaction consisted in the ban of direct flights between Jubbaland and the rest of the world13. The air transport measure was also designed to reaffirm the principle of the federal government’s ultimate responsibility in maintaining internal order. This emerged clearly a few days after the elections, when the federal police took advantage of the stopover in Mogadishu of one of Madobe’s main collaborators - the Minister of Security of Jubbaland, Abdirashid Janan - to arrest him on the basis of torture charges made by the Monitoring Group for Somalia in 2017.

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The capture, while applauded by international associations for the defence of human rights\textsuperscript{14}, worsened relations with Kismaio where, in the meantime, one of the main candidates of the opposition was seriously injured in unclear circumstances\textsuperscript{15}. On 22 September, the last chapter of the crisis: the federal government suspended all flights to and from Kismaio, to prevent former President Sheikh Sharif Ahmed from attending the ceremony for Madobe’s electoral victory\textsuperscript{16}.

The Jubbaland affair also poisoned the relationship between Somalia’s two main partners in the war on Al Shabaab: Kenya and Ethiopia. Addis Ababa was the main intermediary of Mogadishu in Kismaio since the rise of Prime Minister Abiy Ahmed. In return, the Somali federal government supported the new Ethiopian political course with the arrest of some senior officials loyal to the former president of Somali Regional State Abdi Iley, detained in Ethiopian prisons since the summer of 2018\textsuperscript{17}. Ethiopia’s leverage in Jubbaland can be traced back to the longstanding relations between Addis Ababa and Ahmed Madobe. The presence of Ethiopian troops on the ground within the AMISOM structure is another critical factor. The territorial distribution of the mission assigns Jubbaland to sector 2, under the control of Kenya, but it combines the predominance of Nairobi with an Ethiopian-Kenyan condominium on sector 6, where the strategic port of Chismaio is located\textsuperscript{18}.

During the run-up to the elections, Addis Ababa lobbied on behalf of the federal government for the reopening of the deadlines for the presentation of candidates. Madobe’s resistance to these demands opened a diplomatic crisis between Addis Ababa and Nairobi. A few days before the elections, the Kenyan commander in sector 2 rejected the request of the Ethiopian counterpart from sector 6 to deploy additional Ethiopian soldiers at the airport of Kismaio\textsuperscript{19}. This was probably motivated by Ahmed Madobe’s fears of an increasing Ethiopian military presence in the run-up to the elections, because a few days later Jubbaland forces occupied the Kismaio airstrip to prevent the descent of an Ethiopian plane transporting troops to the city\textsuperscript{20}. Nairobi also clashed with other international partners within UNSOM: on 20 August, Kenya rejected the statement of the United Nations Special Representative for Somalia, James Swan, who expressed regret for the lack of inclusivity in the electoral process\textsuperscript{21}.

Analysis, assessments and forecasts

The combination of the dispute before the International Court of Justice and the electoral turn in Jubbaland brought the relationship between Kenya and Somalia to the lowest point since the Shifita-war in the 1970s. Nairobi is keen to avoid a judicial solution to the dispute and could explore any option to prevent Mogadishu from gaining control of the contested area, including the withdrawal of Kenyan troops from AMISOM or exploiting patronage networks in southern Somalia to fuel unrest. The electoral dispute with Jubbaland also represents the highest point of the tensions between Mogadishu and regional states since 2017. Mohammed Abdullahi Mohammed remains a strong supporter of centralization, but he is confronted by powerful regional stakeholders with independent connections with the external world. Tensions between Kenya and Ethiopia within AMISOM pose a threat to the effectiveness of the AU mission in southern Somalia, where

\textsuperscript{14} Somaliland, 14 September, https://www.somaliland.com/security/madobes-fierce-rival-wounded-in-kismayo/
\textsuperscript{15} http://www.somalidispatch.com/featured/amnesty-international-welcomes-the-arrest-of-abdirashid-janana/
\textsuperscript{19} https://twitter.com/HarunMaruf/status/116351582428332034?source=twitter
\textsuperscript{20} https://twitter.com/HarunMaruf/status/1163482034473492480
Kenyan contingents have been repeatedly criticized for the lack of coordination with other AMISOM partners\textsuperscript{22}. Al Shabaab might exploit this rift. The movement already agitated the spectre of a Western plot against Moslems, arguing that Kenya’s aggressive attitude urged a reaction in the form of a mass mobilization to defend the sovereignty of Somalia\textsuperscript{23}.

\textsuperscript{22} Paul D. Williams, Fighting for Peace in Somalia: a history and analysis of AMISOM, Oxford University Press, 2018, p. 148.