

## Dangerously Consequential Presidential Proclamation and Executive Summary

It is tragic in Somalia's case as espoused in President Hassan Sheikh's recent [Presidential Proclamation](#) is that the issue was *misleadingly* framed as securing and claiming our EEZ of 200 nm. What is wrong with this emphasis or red herring is that according to UNCLOS every country can automatically claim an EEZ of 200 nautical miles with limited rights and privileges with regards to exercising sovereignty. But this is a diversion. The true objective and purpose of the recently orchestrated campaign of President Hassan Sheikh is **to limit Somalia's Territorial Sea to 12 nautical miles**, undermining Somali Law No. 37 on the Territorial Sea and Ports, of 10 September 1972. This law is the only valid legal instrument at the UN's depository (see the attached law from [Somalia's UNCLOS site](#)) that states our **Territorial Sea to be 200 nautical miles**.

On Monday July 21, 2014, the Somali government quietly submitted an Executive Summary to the Commission on the Limits of the Continental Shelf (CLCS), stating that its **Territorial Sea limit to be 12 nautical miles**, Contiguous Zone to be 24 nautical miles, EEZ to be 200 nautical miles, and Continental Shelf to be 350 nautical miles ([read page 7](#)). This submission plus the President's recent Proclamation representing Somalia's position and claims will be included in the provisional agenda of the thirty-seventh session of the Commission to be held in New York in early 2015 and to be considered for recommendations ([See CLCS site](#)). The recently submitted Executive Summary also states: "*The Government of Norway has provided assistance and advice to the Federal Government of Somalia (FGS) in the preparation of the present submission, and the Royal Norwegian Ministry of Foreign Affairs, the Norwegian Petroleum Directorate and the Norwegian Mapping Authority have been involved in this work.*"

The recent remarks by [President Hassan Sheikh](#) and the [Minister of Fisheries and Marine Resources](#) are misrepresentations and propaganda to mislead the public. In his address to Parliament, the President failed to tell the legislators 24 hours prior his government officially submitted an [Executive Summary](#) to the UN laying the ground to change Somalia's Territorial Sea Limit to 12 nautical miles from 200 nautical miles.

Given the record of Mogadishu's regime I would not be surprised if greed and corruption might be the driving forces behind the hasty efforts to limit Somalia's Territorial Sea to 12 nautical miles. It is clear to a neutral observer

that the interests of persistent foreign countries ([Norway and Kenya](#)) are the driving force behind the recent flurry of activities by the inept and corrupt regime in Mogadishu.

One wonders why the leadership and members of parliament are silent on this important question; after all, they have the principal and primary authority to pass all laws in Somalia including the maritime laws.

It is obvious that President Hassan Sheikh's dangerously consequential Presidential Proclamation and Executive Summary have totally bypassed Parliament. I suppose we don't have legally competent officials or scholars in our judiciary who could have warned of the obvious danger this Presidential Proclamation poses in undercutting Somalia's maritime rights.

The major problem with this Proclamation's submission to the United Nations Convention on the Law of the Sea (UNCLOS) is that the President started inaccurately his Proclamation with **draft** Laws No. 5, 11, and Decree 14 of 1989 as though they are final and not understanding these are internal state documents that were **never** settled nor harmonized with national maritime laws in effect such as Law No. 37. Siad Barre's regime **never** submitted these laws to the UN to declare an Exclusive Economic Zone, Continental Shelf or Contiguous Zone in accordance with the UNCLOS, which requires the incorporation of the definition of the maritime zones limits. The website of UNCLOS Depository for Somalia under the heading "Legislations" confirms never receiving these three laws precisely and states "**not available**" (see [Somalia's UNCLOS page](#)).

Even worse, in the Presidential Proclamation item #3 states: "In the Exclusive Economic Zone, the freedoms of navigation and over-flight and of the laying of submarine cables and pipelines *shall be governed by international law.*" But according to Somali Law No. 37 on the Territorial Sea and Ports, of 10 September 1972, our Territorial Sea of 200 nautical miles *gives us now* the sovereign and exclusive right to govern freedoms of navigation and over-flight and of the laying of submarine cables and pipelines without international interference. Why on earth the President wants to surrender these Somali rights and all the financial benefits these rights will accrue for our nation? This is beyond belief!

In my view, the Presidential Proclamation should have started instead with a language such as "... **Having considered and reiterating the full force and validity of Law No. 37 on Territorial Waters and Ports, of 10 September 1972, by means of which it establishes the breadth of its**

**territorial waters at 200 nautical miles in accordance with international law.... etc.”.** The inclusion of this language is important, because countries that want to protect their 200 nautical miles as their Territorial Sea must register their reservation with UNCLOS so as not to be delimited to the widely accepted 12 nautical miles; which is the default and globally prevalent standard. Remember as I stated at the beginning, countries such as Peru and Ecuador have asserted 200 nautical miles as their Territorial Sea.

For those who are interested to know the UN’s persistent strategy to limit our Territorial Sea to 12 nautical miles by diverting attention to the EEZ’s 200 nautical miles and the Continental Shelf’s 350 nautical miles, is to simply shield those who would be legally liable had our Territorial Sea was 200 nautical miles. Why this is significant? Because otherwise the International Community will have no legal basis to arrest and charge young Somalis as pirates and more importantly to avoid potential future lawsuits that might be brought by the Somali government for dumping toxic waste in Somali territorial waters that caused hundreds of deformed births, to say nothing of the illegal fishing and depletion of Somali marine resources.

Worth noting is that the United States Senate which refused to ratify UNCLOS has always protested Somalia’s Law No. 37 of September 10, 1972, asserting a 200-mile Territorial Sea, and described it as excessive. This assertion may be found in U.N. LOS BULL., No.2, Mar. 1985, at 76, which I am researching but this protest cable sent the by American Embassy Mogadishu note dated Aug. 28, 1982 should be sufficient ([State Department telegram 231502, Aug. 18, 1982](#); [American Embassy Mogadishu telegram 6215, Aug. 29, 1982](#)). For further details read: “[Fishing in Troubled Waters - Somalia’s Maritime Zones and the Case for Reinterpretation](#)”; published by the American Society for International Law, and “[International Cooperation To Combat Piracy & Armed Robbery Against Ships](#)”, by Professor Robert Beckman submitted at a roundtable discussion on the United Nations Convention on the Law of the Sea in 2010.

For the benefit of those who are not familiar with the history and background surrounding Somalia’s Territorial Sea and waters, I thought the following comments on chronological events and facts might be useful:

1. The United Nation has as an official submission of [Somali Law No. 37 on the Territorial Sea and Ports, of 10 September 1972](#) so according to international law: “**The Somali Territorial Sea includes the portion of the sea to the extent of 200 nautical miles within**

**the continental and insular coasts, delimited according to the provisions of articles 2 and 3 of this Law” and “The Somali Territorial Sea is under the sovereignty of the Somali Democratic Republic. Offences committed within the limits of the Territorial Sea on board a vessel relating to penal health and public security shall be governed by Somali law”;**

2. All countries signatory to the United Nations Common Law of the Sea (UNCLOS) in 1982 are required to ratify the law prior to 1994; harmonize it with their relevant national laws and accept that its Territorial Sea to be 12 nautical miles, Contiguous Zone to be another 12 miles, and Exclusive Economic Zone (EEZ) to be 200 nautical miles;
3. Since Somalia was in a civil war starting 1991 it was not in a position to officially respond to the UNCLOS 1982 requirement as stated in number 2 above; therefore in the case of Somalia according to international law it has de facto and de jure a 200 nautical miles as its Territorial Sea and EEZ under UNCLOS;
4. The former Somali Transitional Federal Government (TFG) in 2008 under former PM Sharmarke signed a Memorandum of Understanding ([MOU](#)) with Kenya facilitated by Norway and with the encouragement of former UN SGSR Amadou Ould-Abdallah opened the door for a dispute between Somalia maritime borders with Kenya. However, shortly thereafter the Somalia’s Transitional Federal Parliament overwhelmingly rejected the validity of the MOU. Worth noting, Somalia’s Transitional Government per UNSC resolutions had no mandate from the Somali people to represent them and no power to sign and ratify treaties and international covenants;
5. On March, 18, 2013, Somalia’s Foreign Minister Fawziya Yusuf Aden and her Kenyan counterpart jointly issued a communique which ambiguously opened the door again on the same issues raised in the TFG’s 2009 Memorandum of Understanding, though stating that: **“...6. We will seek to confirm the status of these laws with our Parliaments.”** (as stated in the attached [communique](#));
6. In an effort to rectify and put to bed any confusion and ambiguity created by former Foreign Minister Fawziya Aden, the current Foreign Minister Dr. Abdirahman Beile sent a [letter dated February 4, 2014](#) (this letter is shown on Kenya’s CLCS page under “Somalia”

heading) to UNSG's Ban Ki-Moon, regarding the Continental Shelf Zone and Kenya's transgressions. In reiterating Somalia's position with regards to its maritime borders, he stated "...protesting the continued activities of oil companies under license to Kenya in maritime zones claimed by the Somali Republic..." and made an excellent point in relation to the "...person considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty..." where President Hassan's Proclamation is constitutionally dubious since he is a President with limited or shared executive powers with the Prime Minister unlike Kenyan or American Presidents who are after all are elected in direct elections by their citizens. Besides, these laws are the Parliament's prerogative exclusively;

7. On June 30, 2014, President Hassan Sheikh issued a Presidential Proclamation with specific coordinates of Somalia's EEZ that undermined Dr. Beile's letter which clarified Somalia's position succinctly regarding the Continental Shelf Zone, As explained above, this proclamation makes reference to drafted internal state papers with no legal standing. However, the UN and countries such as Kenya and Norway after becoming aware of the existence of such internal documents that were never submitted to UNCLOS, found it opportune to use this information and coerce Somalis to accept it as an existing and binding UNCLOS instruments. Where else in the world have you seen an internal state document that is work in progress and is open for debate and discussion domestically is construed as an agreed upon national law already submitted to the UN. Legal scholars in the forum and elsewhere could correct me if I am wrong on this;
8. On July 21, 2014, "the Federal Republic of Somalia submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the Convention, information on the limits of the Continental Shelf beyond 200 nautical miles from the baselines from which the breadth of its Territorial Sea is measured. In accordance with the Rules of Procedure of the Commission (CLCS/40/Rev.1), a communication is being circulated to all Member States of the United Nations, as well as States Parties to the Convention, in order to make public the Executive Summary of the submission, including all charts and coordinates contained in that summary. The consideration of the submission made by Somalia will be included in the provisional agenda of the thirty-seventh session of

the Commission to be held in New York in early 2015. Upon completion of the consideration of the submission, the Commission shall make recommendations pursuant to Article 76 of the Convention.” (Copied from [UN CLCS's site](#)). **The Parliament should urgently withdraw and invalidate both the Presidential Proclamation and the Executive Summary and send a reassertion of Somali Law No. 37 of Territorial Waters and Ports .**

Furthermore, it seems to me what President Hassan fails to appreciate is that Somalia and a handful of other countries have the blessing and privilege to claim 200 nautical miles as their Territorial Sea due to the maritime laws passed by Siad Barre regime's when other countries did not.

The fact that Somalia has the sovereign right of 200 nautical miles as Territorial Sea and all the benefits it entails is precisely what is driving crazy Kenya and their partner in crime Norway of wanting to limit Somalia's Territorial Sea to 12 nautical miles. Remember, no one is disputing the legality and right of Somalia's EEZ to be 200 nautical miles nor its Continental Shelf to be even a 350 nautical miles. What Kenya and Norway are doing is creating falsely the impression that the issue at contention is the establishment of a Continental Shelf and EEZ for Somalia, but in reality, this is a straw man created to camouflage their hidden agenda to coerce Somalia to **voluntarily** relinquish its Territorial Sea of 200 nautical miles by urging the Somali government to submit new documents with UNCLOS to nullify Somali Law No. 37 (preserving 200 nm for Somalia's Territorial Sea) and replace it with Laws No. 5, 11, and Decree 14 of 1989 that are deemed to be invalid as I explained earlier. Why the obsession with these old draft laws of 1989 and not require the passage of new laws by the newly recognized government? Because it is prior to 1994 when UNCLOS became in effect.

What Kenya regrets is that unlike Somalia, Kenya's government in the 1970s failed to enact laws like Somali Law No. 37 and claim 200 nautical miles as their Territorial Sea.

I wonder if it is too much to expect from Somalia's current parliament - notoriously renowned for its dereliction of duties and vote selling to the highest bidder - to rectify the damage done by President Hassan Sheikh's reckless Presidential Proclamation and Executive Summary.

Also this responsibility falls on patriotic and concerned Somalis wherever they are to organize and work hard to annul this Proclamation and related Executive Summary to protect the nation's marine resources. Parliament can be helpful by making it very difficult to make amendments without a comment period for

the public and civil societies to express their views and subsequently deliberate thoroughly these pertinent issues in the parliament. Only after adhering to this transparent process should the final version of the amendment or new law put to vote requiring at least two-thirds majority for it to take effect. This process should also apply to any new laws and amendments that govern the country's natural resources particularly oil and gas.

Finally, equally distressing is how the current regime in Mogadishu transferred to the UAE the privilege and right to exploit the country's oil and gas without due consultation and input from parliament ([see attached](#)). The deal was signed by the Minister of Mineral and Petroleum who is a novice in the complex world of hydrocarbon negotiations to say nothing about his lack of knowledge and expertise to understand the terms of the legal agreement he signed!

Most of us became aware of this deal after it had been executed, which normally is the way all citizens of poor and fragile countries discover the plundering of their most precious natural resources (Read: [How an Israeli Billionaire Wrested Control of One of Africa's Biggest Prizes](#)).

Perhaps others more knowledgeable than me can provide us detailed information about what is in this secret deal. What is astounding about this deal is that the Somali government is giving away carte blanche to the government of UAE the right to exploit Somalia's oil and gas. However, we all know the UAE has neither the technical know-how nor companies with the capability to do so, in essence, the UAE is a broker or "Dellaal"(as stated in [Mubadala Petroleum](#) website: *"...The assets we manage include exploration, appraisal, development and production projects, with a primary geographic focus on the Middle East, Africa and Central and Southeast Asia. Through acquisitions, partnerships and the winning of new exploration licenses, we are continuing to expand our asset base but maintaining a clear geographical focus and discipline in relation to the nature of the opportunities we pursue."*); who obtained billions of dollars' worth of rights for free and can now turnaround and shop for an international oil company or companies that have the capabilities to explore and drill, and enter into agreements with them pocketing billions of dollars that will be denied to Somali people.

With a regime like the one we have in Mogadishu, who needs an enemy.