An Assessment of Kenyan Diplomatic Strategies in Managing Its Kenya-Somalia Maritime Border Disputes

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Abstract
Kenya has historically been accused of holding a privileged position in the region by her neighbors. One of the issues concerned the persistence of the market inequalities coupled with the centralization of most of the headquarters of the common services in Nairobi, Kenya. This fact posed structural challenges to the East African Common Services Organization (EACSO), creating a center-periphery relations in the region. It is factual that the Geneva conventions on territorial sea and Contiguous zone, the continental shelf, the United Nations Law of the sea and the High Sea are the recognized global regimes on the sea. Okonkwo posits that delimitation of maritime borders can only be classified into four broad categories that include: Provisions of international law, National legislation, judicial decisions and delimitation by agreement. Maritime boundaries are a frequent cause of conflicts. The Memorandum of understanding between Kenya and Somalia over the maritime dispute was signed in 2009. Having sidelined the MoU and Somalia taking Kenya to the International Court of Justice (ICJ) in 2014 gives this research more ground to demystify the main reasons or objectives why Kenya seems to be so much interested in resolving this dispute in the disputed region in the Indian Ocean in an out of court arrangement. Using available literature on how Kenya is going about on the dispute it is embroiled in with Somalia over the maritime boundary, the study seeks to asses Kenyan diplomatic strategies in managing its Kenya-Somalia maritime border disputes. This study used qualitative method of data collection and made use of secondary methods of data collection. This data was retrieved from journal article, books on the dispute, magazines discussing about the ongoing dispute, government websites, recoded interviews of important persons handling the dispute and from United Nations documents. The findings indicate that Kenya has employed various diplomatic strategies in regards to managing her various border disputes. This has been through threat of military engagement as a preemptive strategy, negotiations and Mediation. The study recommends that various strategies of dispute resolution other than litigation be employed to broaden the scope of resolution of conflicts and to relieve the International Court of Justice .It is covered in the UN Charter but it has not been utilized because the drafters of the charter, most governments and most academics seem to end with an option which has the structures provided for in the International Court of Justice as the most justified means of conflict resolution.
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1.1 Introduction

The post-colonial Africa has seen numerous border disputes between states either owing to irredentist views like the question of Greater Somalia which has been central to Somalia, Kenya and Ethiopia discourses since the onset of their independence or island and land disputes like the Kenya-Uganda Migingo island dispute (Berh, 2108, p.2).Those who still have the courage to confront colonialism like (Adebajo, 2005) posited that the earlier Bismarkian curse of the past remains to haunt Africa's future: a bloody brother's war was fought over the colonial border of Ethiopia and Eritrea and between Cameroon and Nigeria are still squabbling about the Bakassi peninsula a legacy of German and British colonialism – which according to Adebajo has been decided largely in favor of Cameroon by the International Court of Justice. This stance was echoed by Olaosebika and Oluwafemi (2018), who claimed that the boundaries of modern African States were the creation of European diplomats who partitioned Africa among themselves with little regards to knowledge of the socio-cultural characteristics of the continent.

Kenya has also had boundary disputes with Somalia and so has Ethiopia. All these conflicts can equally be traced back to the colonial legacy of these states. The main focus of this study will be the strategy Kenya is employing other than litigation in the International court of justice and the objectives of managing the border disputes. The greater Somalia question has pitted Kenya and Somalia far apart ever since the two countries gained in independence in the 1960s.The Somalia people wanted the reunification of their people back to Somalia after independence hence straining relations with Kenya over the formerly Northern Frontier District currently North Eastern part of Kenya and straining their relations even more with the Ethiopia over Ogaden region. These irredentist views of the Somali government were intent on further integrating the Ogaden province in Ethiopia, the Northern Frontier District in Kenya, and French Somaliland. But diplomacy, guerrilla war, propaganda, and outright battles have led them only to failure (Laitin 1976).

Kenya has so far tried to use diplomacy to manage her border disputes with Somalia from 2010 to 2019.All these have been in the general concern of achieving national interests. As one (Maluki) claimed, at often times diplomacy has been described as a complex and challenging practice of fostering relationships around the world in order to resolve issues and advance interests. The second idea is probably the fundamental change of circumstances that was adopted after the March 4, 2013 elections. This doctrine argues that in the previous year, Kenyatta and Ruto were individual suspects but now are president and Deputy President of a sovereign nation and therefore symbols of national unity. Lastly, there was the ICC on trial theses, indicating the Kenyan cases could break or build the ICC credibility (Kagwanja, 2015).That was a direct attack on Kenyan sovereignty and thus whereas it didn't directly involve border disputes, the fact that Kenya engaged regional countries especially through the African Union to protect her sovereignty makes the ICC case on Kenyan leaders a case to consider in this study in addition to the disputes with Somalia.

In light of the above this study sought to assess Kenyan diplomatic strategies in managing its Kenya-Somalia maritime border disputes.

1.2 Problem Statement
The current dispute with Somalia over maritime border between the two states, a case that is before the International court of Justice (ICJ) proves how serious Kenyan disputes over territory are. According to (Walker, 2015), African maritime boundary disputes, unless resolved in a concerted and timely manner, will imperil both the short and long-term implementation of maritime policies and strategies. It is with this backdrop that this study sought to find out how the Kenyan foreign policy and strategies manages both the maritime and border disputes with her neighbors to her advantage in a region which has of late proved to be applying Machiavellian international politics and interests. The Kenyan Draft regional integration policy for Kenya notes that regional integration is an arrangement where states enter into regional agreements in order to enhance regional cooperation. This cooperation according to the draft can be attained through regional institutions and rules. Kandie claimed in 2015 that this is underpinned by a wide range of economic, social, political, and security initiatives to achieve peace, stability and wealth as defined by the parties involved in these agreements.

Kenya and the Federal Republic of Somalia had a Memorandum of Understanding in the year 2009 concerning their dispute which partly reads as follows: "On this understanding the Republic of Kenya has no objection to -the inclusion of- the areas under dispute in the submission by the Somali Republic of preliminary-information indicative of the outer limits of the continental shelf beyond 200 nautical miles."(MoU 2009, p.1). However, there are renewed disputes between the two states over this territory in the Indian Ocean, hence the need for this study.

1.3 Research Objective
To asses Kenyan diplomatic strategies in managing its Kenya-Somalia maritime border disputes.

1.4 Research Question
What diplomatic strategies has Kenya employed in managing Kenya-Somalia maritime border disputes?

1.5 Review of related Literature
1.5.1 Bilateralism in World Politics
Kenya embraces bilateralism in pursuing its foreign policy objectives through bilateral trade, political, environmental and cultural agreements with various nation states. Among priority countries, said Mohammed, are East Africa Community member states which are Kenya's strategic trading partners of all states. These countries host a significant number of Kenyan expatriates and remain the focus of the Kenyan business community (Amina 2014).Bilateral agreements is a vital component of Kenya's foreign policy because it is a strategy employed by many if not all countries around the globe. However, for the purposes of achieving state interest, countries may resort to strain their relations in regards to their national interests. The border dispute is all about the politics of state survival. Eritrea as a new independent state was linked to Addis Ababa and was crucially assisted by the latter in political and economic terms (Abbink, 1998).But because of national interest; their bilateral relations were strained leading to violence dispossession and death. For instance, according to Abbink, massive expulsion of Ethiopians in Eritrea already started in 1991 and led to at least 50,000 people (traders, workers in the port of Asseb and in industry and services, Ethiopian army personnel and government administrators) being sent out without any of their possessions. Insecurity and fear among Eritreans in Ethiopia has been commonplace due to many personal tragedies such as sudden job loss without compensation, forced migration of people, the abandoning of children and the splitting up of mixed Ethiopian/Eritrean marriages. The policies of countries as regards bilateral relations between states affect the citizenry. As Abbink(1998) claims, what is most regrettable is that the antagonism and the resulting hatred that has been generated by policies and rhetoric of the two regimes of Eritrea and Ethiopia sinks down to the level of daily life and inter-personal

relationships of the ordinary people. After the violent conflicts between the two states, the International court of Justice ruled in favor of Eritrea, something that did not sit well with Ethiopia as they refused to withdraw troops from this region.

Kenya and Somalia have seen bilateralism at play in their disputes over territory. For instance, the maritime dispute between the two countries was first addressed by a memorandum of understanding between the two countries in the year 2009.The MoU of 2009 partially states that "the two coastal States are conscious that the establishment of the outer limits of the continental shelf beyond 200 nautical miles is without prejudice to the question of delimitation of the continental shelf between states with opposite or adjacent coasts. The MoU also stated that while the two coastal States have differing interests regarding the delimitation of the continental shelf in the area under dispute, they have a strong common interest with respect to the establishment of the outer limits of the continental shelf beyond 200 nautical miles, without prejudice to the future delimitation of the continental shelf between them. This dispute has recently been contested in the international court of justice after Somalia sued Kenya at the International Court of Justice at The Hague, Netherlands, for unlawful operations in her maritime territory. This dispute recently escalated into a full blown conflict in 2019 with Nairobi expelling Somalia ambassador and recalling its envoy to Mogadishu. Ogila, on 18th February 2019 claimed in a local daily in Kenya that this action was after Nairobi accused Mogadishu of auctioning oil exploration rights for a disputed part of the Indian Ocean which dispute is yet to be resolved in an international court, the international court of Justice. Kenya has however called on Somalia to accept solving the matter outside of the courts but instead hold talks or indulge other dispute resolution mechanisms other than the courts, a case that was quashed by the ICJ in February 2017 affirming the sustainability of the case. Whether or not bilateralism with Somalia works for Kenyan interests is one of the object of this study.

1.5.2 Regional Integration and Border Disputes.

Economic integration entails removal of trade barriers especially to movement of goods, labor and capital through coordination of monetary and fiscal policies by the involved states. Political integration on the other hand entails operating from common political systems and institutions, foreign policies and merged security arms; and common policies in social policy (education, health care, unemployment benefits and pensions (Kandie,2015).

Asian region have had a fair share of disputes especially on South China Sea. Indian's position on the South China Sea was indicated in me joint ASEAN-India Vision Statement in December 2012 (Jawli, 2016). The statement as per Jawli posits, "India's role in ensuring regional peace and stability," and for that "They agree to promote maritime cooperation to address common challenges on maritime issues," and that "They are also committed to strengthening cooperation towards ensuring maritime security and freedom of navigation, and safety of sea lanes of communication for unfettered movement of trade as per the International law, including UNCLOS. The mere fact of engaging ASEAN and minding the position of UNCLOS by India is good enough to indicate how regional integration mechanisms can be used to avert conflicts and resolve those conflicts that break out.

Vincent Bakpetu Thompson gave clear and detailed history of the perennial dispute between Somalia and Kenya over the territory of Kenya's currently North Eastern Province. The central assumption of Thompson's work is that the puzzle of 'the problem of the Horn of Africa generally' can be found in 'the survival of Somalia's territorial claim expressed as the quest for the missing lands and their right to self-determination everywhere in the region'–and in Kenya's and Ethiopia's opposition to Somali irredentism (p.231).This claim reflect a long history to the question of greater Somalia. But to talk about integration, Kenyan regional policy and framework is more succinct on the matter of security. The Kenya regional policy document 2015 states that Security threats have metamorphosed over the recent past are cross border in nature including terrorism, international crime syndicates, piracy, money laundering schemes, cybercrime, narcotics and human trafficking, wildlife poaching, environmental degradation among others. This informed Kenya's defense of its territory against al-Shabaab of Somalia to take a more interventionist tact. Kenyan forces initially pursued kidnappers across the border, but soon became involved in the African Union Mission in

Somalia, and supported aspirations for an autonomous Juba land state in southern Somalia. In August 2011 African troops together with TFG forces managed to push Al-Shabaab out of the Somali Capital; Mogadishu. The success is also attributed to more troop contributions from member states that include Kenya and Djibouti(Ligawa, W.O., Okoth, P.G. and Matanga, F.K. 2017).The three go ahead to say that during the mid-2012 AMISOM made a lot of gains. These gains are due to involvement of the Kenyan Defense Forces (KDF), which is well equipped and includes a large Navy plus the Air force. They posited that this reinforcement greatly contributed to the achievements against Al-Shabaab. This is a classic example of Kenya's integration measures collaboration in securing her borders.

1.5.3 Construction of Kenya - Somalia Border

David Kiplei, "Borders and National Security in the Horn of Africa: A historical View" says that it is because of colonial legacies that border disputes are impossible. He argues that the legacies are the main cause of

demarcation of states that ended up dividing various communities into two different states. According to him, these divisions made it impossible to manage illegal movement of people leading to porous border that made it difficult to manage issues such as terrorism, cattle rustling, smugglers and bandits.

American political scientist called Robert Pape (2003) movingly underscored that the most promising way to reduce terrorism by any given country especially suicide terrorism is by reducing the terrorists' confidence in their ability to carry out attacks against a target society. Pape's conclusion suggests that countries consistently under attack like Kenya ought to have border defenses other than just relying on military offensives to terrorists (p. 357). Whether this statement informed Kenya decision to construct a wall on Kenya-Somalia is moot although the action coincides with Pape's thesis on how to combat suicide terrorism. Terrorist attacks planned in Somalia, involving Kenyan nationals who were trained in the Republic of Somalia, have been an ongoing problem in Kenya and one that has only intensified in recent years (Cannon 2016).

In fact, the attack on the Kenyan Garissa University was shocking in its brutality. 700 people were held hostage by AL Shabaab who only freed those they identified as Muslim and slaughtered anyone else identified as Christian during the attack. 148 people were killed in the attack and other 79 were wounded. Needless to say, four of the terrorists were eventually shot by Kenya security forces and a fifth reportedly detonated his explosive belt, killing himself (Odula, Muhumuza&Senosi, 2015).This followed the Westgate attack in 2013 by the same militant group.

According to Cannon (p. 25) the government also publicized plans and touted its firm commitment to build a border wall along Kenya-Somalia border. First reported in February 2015, Kenya's government announced that the wall, already reportedly under construction prior to the attacks, would keep the militant al-Shabaab terrorists from entering Kenya from Somalia and boost security (Kazungu, 2015). In support of Cannon's views (p. 26), the construction of the wall would prove that Kenyan government and security forces were capable of protecting Kenya's citizens, something that was questionable given Al-Shabaab's seeming ability to strike Kenya from Mombasa to Lamu to Garissa to Nairobi. All this act of building a wall will go a long way to protect Kenyan interests and ensure security

Kenya is not the first country to construct border walls for security. Approximately twenty-five border walls have either already been built, or are been fortified around the world since 2000 (Jones ,2012).Other countries according to Jones that have built walls include USA, Israel and India who have together built more than 3,500 miles of walls and fences.

It is very compelling especially if one looks at security to justify construction of border walls.

However, it can't miss progressive scholars who would criticize such moves as not alive to the reality of globalization. For instance, (Szary,2012, p.3) had a fair share of criticism to wall building by saying that the irony of this acts of wall building, if there is one, is that, "… in the increasingly globalized world, the world is witnessing a relapse of border demarcation and of closing up of national spaces." Cannon (p. 32) also criticized this Kenyan move by saying that the wall will severe the situation by reigniting border disputes with other states in the region. He also cited the possibility to separate communities living on both sides of the Kenya/Somalia border. It is also important to add that corruption to some degree may cause this project fail as Al-Shabaab militants may access Kenya due to kick backs. These arguments was central to this study.

 According to the work of Jacob McKnight and David Anderson(2015), "Understanding Al-Shabaab: Clan, Islam, and Insurgency in Kenya," divisions were at the Kenya Somalia border due Al-Shabaab who had been driven from Central Somalia by Ethiopian and AMISOM led forces leading to radicalization of young Muslims at this border in Kenya. The most important thing in this work is that the authors are clear that in clan and Islam, theological differences are not a hindrance. They furthermore show that the North Eastern people are victims and a target foe recruitment by the Al-Shabaab terrorists.

1.5.4 Diplomacy on Kenya Somalia Maritime Dispute.

It is almost certain that Geneva conventions on territorial sea and Contiguous zone, the continental shelf, the United Nations Law of the sea and the High Sea are the recognized global regimes on the sea (Okonkwo, 2017, p. 55). Okonkwo (p.56) posits that delimitation of maritime borders can only be classified into four broad categories that include: Provisions of international law, National legislation, judicial decisions and delimitation by agreement. Maritime boundaries are a frequent cause of conflicts. The UN charter under UNCLOS in article 92 provides for settlement of such disputes through either diplomatic measures or negotiations .However, should the parties fail to agree, they should make a request to the court of tribunal having jurisdiction over their conflicts (Article 92 UN Charter).

Maritime boundary management, as per Okonkwo (p. 66), is an expression of sovereignty of the states and default in its proper management could mean a threat to state sovereignty. According to Okonkwo, in resolving these disputes, so many interest are involved which include: political, economic and primordial interests. This study agree with him and so is Walker who said that,

"increasingly exacerbated by a growing interest in exploring and exploiting natural resources (Walker, 2015).

The Eritrean-Ethiopia conflicts attracted Mediation efforts to a commendable level with a string of African leaders—including Zimbabwe's Robert Mugabe, Djibouti's Hassan' Gouled, Rwanda's Paul Kagame, and Kenya's Daniel Arap Moi—passing by in both capitals (Abbink 1998, p.

553).This level of diplomacy cannot be underrated. This came at the backdrop of the UN, US-Rwandan facilitators and also OAU efforts to mediate between the two countries.

Kenya and the Federal Republic of Somalia had a Memorandum of Understanding in the year 2009 concerning their dispute which partly reads as follows: "On this understanding the Republic of Kenya has no objection to -the inclusion of- the areas under dispute in the submission by the Somali Republic of preliminary-information indicative of the outer limits of the continental shelf beyond 200 nautical miles."(MoU 2009, p.1)

However, there are renewed disputes between the two states over this territory in the Indian Ocean.

To paraphrase, (Pappa, 2017, p. 403-403) contented that according to the principle of equidistance, Somalia now argues that the boundary should follow a diagonal, southeast route into the Indian Ocean, as an extension from the states' land border. He then states that according to Kenyan position, the maritime boundary should be a straight line emanating from the states' land boundary terminus and extending due east along the parallel of latitude on which the land boundary terminus sits (p. 404). This dispute was exacerbated in 2012 after Kenya granted a number of permits (Production Sharing Contracts or PSCs) for the exploration of Western Indian Ocean. This led Somalia to Challenge this validity of Kenya's exploration for oil blocks L-21, L-22, L-23 and L24 (p. 403).

According to Pappa, Somalia took the dispute a notch higher in 2014 by requesting the International Court of Justice to determine the single maritime boundary, dividing all the maritime areas appertaining to Somalia and Kenya in the Indian Ocean. Kenya tried to petition in October 2015 that the case should be referred outside the court so that the two countries could resolve it through negotiation but this case was quashed by ICJ on February 17th 2017.The dramatic denying of Somalia representatives to Kenya in 2019 and the Kenyan recalling of its ambassador from Somalia shows the level and seriousness of this dispute between the two states over the disputed maritime boundary. Pappa quotes the foreign affairs minister of Somalia, Abdullahi Haji, proclaimed in 2012 that the issue between the two states is not a dispute; rather it is a territorial argument that came after oil and gas companies became interested in the region. These disagreements will inform the vital parts of this study.

1.5.5 Kenyan Regional Leverage in Foreign Policy.

Kenya has historically been accused of holding a privileged position in the region by her neighbors. One of the issues concerned the persistence of the market inequalities coupled with the centralization of most of the headquarters of the common services in Nairobi, Kenya. This fact posed structural challenges to the East African Common Services Organization (EACSO), creating a center-periphery relations in the region (Adar, 2011). According to (Newlyn1971, p, 348), most gains from the East Africa common were went to Kenya. These structural challenges, among other reasons that this study will unfold, necessitated the re-conceptualization and restructuring of the EACSO into the East African Community I (EAC I, 1967-1977).Tanzania and Uganda claimed that Kenya had the best terrain, geographical features like mountains, lakes rivers and best agricultural white highlands hence the dispute that partly contributed to the collapse of EAC in 1977. Kenya also borders the Indian Ocean which enables her act as a gateway to East African region.

Nairobi Kenya is the regional headquarters of UN bodies in Africa and this seems to be leverage in terms of foreign policy. The UN complex in Nairobi Kenya hosts 24 UN agencies and programs which include UNEP and UN HABITAT. These offices are grouped together as the United Nations Office at Nairobi (UNIC).

Alexander Hoseason (2010), "The Role of Borders as Sites and Progenitors of Conflict: A Critical Analysis," sees borders as instigators of conflicts. According to him, borders give the vital divide that separates entities into opposing sides. Alexander is however ambitious that despite the effects of borders, their existence don't eliminate cooperation or collaboration.

The literature shows that the boundary dispute is a product of colonial legacies which predispose Kenya and Somalia to conflicts. The boundary divided the Somali people hence leading to some identity crisis which acted as the auspice upon which the greater Somalia conflict began. The literature shows that this lead to a porous border between the two states and the radicalization of the Muslim youths along the border together with Al-Shabaab attacks in Kenya are as a result of the clan identity created by the border.

The insecurity escalated with the fall of the government in Somalia in the 1990s leading to increased refugees in Kenya at Dadaab refugee camp and this was increased with the emergence of Al-Shabaab terrorist group which started attacking Kenya occasionally like the mentioned cases of Westgate attack, Garissa University attack among others. However, the literature pointed out the efforts by the government of Kenya and Somalia to make agreements with the two Memoranda of Understanding (MoU). The 2009 MoU on Maritime dispute points out the efforts to have an understanding out of the current dispute over the delimitation of maritime border between Kenya and Somalia.

Overall, there was very scanty information on alternative dispute resolution and why Kenya is insisting on resolving her conflict with Somalia in an out of court arrangement. Updated material and information on this

dispute helped to understand the main reasons for Kenya's behavior towards the dispute and understand the various strategies that she is utilizing to manage the dispute.

1.6 Research Methodology

The research utilized a descriptive case study research design by analyzing both quantitative and qualitative data. A case study is a research strategy that shed light on a phenomenon by studying in-depth a single case example of the particular phenomenon

Units of analysis refers to the units of observation (Babbie, 2011).Units of analysis include the phenomenon, people, entities, departments or countries that one researches on. In this study, the units of analysis are the Kenya Defence forces which are responsible for guarding the borders against external aggression, The Ministry of Immigration and the ministry of foreign affairs.

This study utilized purposive sampling method which was applied in retrieving the required content. This was through carefully and purposefully selecting the specific documents, websites, recorded interviews of people and that address the problem of this study.

This study utilized secondary sources of data. Secondary data was from the official government websites, journal articles, magazines and reports relating to the border disputes

The study systematically reviewed and analyzed literature and data collected in the field based on the thematic areas of the study. This went along way to help to dichotomize literature based on the thematic areas. In addition to that, the study interrogated various literature on Kenyan regional foreign policy and its management of border disputes and then analyzed from various recorded interviews of key senior government official of Kenya and Somalia who were interviewed by Kenyan media houses.

In this study, thematic analysis was of great help and utilized to show the relationship between Kenya's regional foreign policy and its management of border disputes.

1.7 Research Finding

This study made the following findings in regard to the assessment of Kenyan diplomatic strategies in managing its Kenya-Somalia maritime border disputes.

Kenya has employed various diplomatic strategies in regards to managing her various border disputes. This has been through threat of military engagement as a preemptive strategy, negotiations and Mediation. The latter strategy has been used by Somalia especially in the current maritime dispute although the paper sought to find out why Kenya has insisted on alternative dispute resolution mechanism as a strategy of managing the disputes between the two sovereign states over the maritime border. According to the Kenyan Ministry of foreign affairs (2019), Kenya has tried to resolve the border disputes with Somalia mainly in two ways. "That she has willingly and procedurally enjoined herself to international legal processes regarding the international boundary disputes, which include bilateral negotiations and subservience to the International Court of Justice (ICJ) where this matter of the Kenya/Somalia boundary currently rests." Pappa (2017) avers that it is possible for maritime disputes to end in violence but to avoid that situation,

International Law gives several ways for a peaceful resolution of such interstate conflicts. In Pappa's view (p.397), the Un Charter in that regard states that "the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".

The disagreement over the procedure of resolving this conflict emanates from the underlying understanding of borders by the two states which according to Agnes (2018,p 161) is very different. Agnes in her dissertation claims that Kenya and Somalia have very different concepts of the border. The difference, she claims, mainly emanates from the debate on territorial integrity Vis a Vis self- determination. Given territorial integrity, Kenya supports maintaining colonial borders inherited at independence. This forms the greater problem which has been ailing the two countries since independence where Somalia has claimed some territory in the Northern Frontier District. On the contrary, Somalia inclines to self-determination guided by the wishes of the people enclosed in a state border (Agnes, 2018).

To be precise on matters of maritime disputes, UNCLOS provides that states settle their maritime conflicts mutually and through means of their own choice which according to this research Kenyan government seeks to exploit. Pappa (2017) avers that no state may try to mover in a unilateral manner to demarcate a disputed maritime area as per the UNCLOS provision. This mutual settlement of the dispute according to him can be achieved through negotiations that leads to an agreement.

1.7.1 Power of Negotiations.

The Kenyan government has been pushing for an alternative dispute resolution mechanism over the question of the border disputes with Somalia. According to Tuuryare (2019), Kenya seeks to open new fresh talks with her neighboring Somalia so as to end the protracted row between Mogadishu and Somalia. This is the spirit of

compromise that Kenya has always embraced every time she faces a dispute with the neighboring states such as Uganda over Migingo.

It is worth noting that the Kenyan government, through the ministry of Foreign Affairs, have tried to reach out to the Somalia government for an amicable resolution of this conflict. According to Ogila (2018), despite Somalia taking the case before the International Court of Justice, Kenya has however called upon Somalia to simply accept negotiation or indulge other dispute resolution mechanisms other than the courts, something that was not just quashed by the international court of justice in February 207 but also refuted by the Somalia government.

In addition to that, other players have joined Kenya in her desire to solve the conflict amicably and using dialogue which can be partly categorized as part of negotiations. In that regard, Britain through Jane Marriot her High Commissioner to Kenya said that they would like to see Kenya and Somalia resolve the maritime border dispute amicably. "Dialogue between Kenya and Somalia on how to solve the maritime dispute is important. This is why the step taken by President Kenyatta to meet with his Somalia counterpart during the United Nations General Assembly was impressive," Marriot (2019).Marriot said that during her visit to the home of the deputy President William Ruto in Karen Nairobi.

Kenya seems to extend a hand of brotherhood to Somalia to ensure a win-win scenario where both will not lead to a situation where a zero sum game will be unavoidable. This is what Kilmann calls compromise whereas Kenya are calling alternative dispute resolution mechanisms. Somalia chose to unilaterally go to International Court of Justice hence leading to this competition which will definitely lead to a win lose situation. Kenya on the other side is employing assertiveness and cooperation hence insisting on expanding the range of possible options like exhausting alternative dispute resolution which if Somalia accepts this route of resolution will lead to minimally acceptable conditions to all and relationships undermanaged. Negotiation will just lead to a win-win situation where the two states will agree of the oil blocks and the nautical miles each should concentrate on other than being rigid to ensure that one state perhaps loses in the fullness of time.

The diplomatic strategy of negotiation has been the most sought after strategy for Kenya in the ongoing dispute. President Kenyatta (2019) during the United nations General Assembly averred that, "My administration continues to reach out to the Federal Republic of Somalia in an effort to find and amicable and sustainable solution to the maritime boundary dispute between us. In this regard, I welcome the decision of African Union Peace and Security Council of the 3rd September 2019 that urges both parties to engage. According to Pappa (2017, p.397), the UN charter privileges the use of negotiation as the preferred mechanism for settlement of disputes. Similarly, the UN conventions of the law of the Sea provides for delimitation of the maritime boundary between states amicably. It is in this normative framework that Kenya calls for the resolution of this dispute through negotiation and we remain hopeful that the federal government of Somalia will be amenable and committed to the search for a mutually acceptable and sustainable solution to this dispute." Such presidential statement at the world's greatest International organization is not short of the clear policy of the government of Kenya towards the Kenya Somalia dispute. Negotiation is clearly the most favorite strategy for Kenya in this dispute and without any doubt, it is backed by the UN charter and UNCLOS which guides issues relating to maritime disputes.

The questions perhaps which pop out when one sees Kenyan efforts to resolve this dispute amicably in a sustainable manner would be; why should Kenya not trust the International court of Justice? Why should the president of Kenya make it clear in the UNGA that he needs an amicable resolution that is alternative to the litigation process at the International Court of Justice which is mandated to resolve such disputes between states? Is this not the same arrangement that Kenya sought during the fateful case against the Kenyan president, his deputy and the four other suspects who had been taken before the International Court of Justice in the Hague due to the 2007/2008 Kenyan post-election violence? Is it because Kenya lacks confidence in the international institutions or is it because she has confidence of getting justice in local arrangements? The answer to these questions lie in the motive and objectives of Kenya in the disputed region which addresses Kenya's regional foreign policy and why it wants an amicable solution to the dispute.

According to Block (2014, p.9), Kenya, through the Kenyan National Assembly voted to withdraw from the Rome Statute in September 2013.The reason why ICC is of interest here is because the cases are related where the accused, the leaders of Kenya and the government of Kenya respectively have sought to have a local arrangement to their disputes other than the international organizations. The reasons for doing so are similar. According to Block (2010) ,The main reason for pushing for withdrawal from ICC or solving the cases outside of ICC was the believe that justice is difficult to bring to the people of the republic of Kenya if the trials are held in Europe away from Kenya territory. In fact, in that regard, the Trial Chamber V (A) which sat on the Ruto/Sang trial recommended to the judges that all or portions of the trial be held in Kenya or in the neighboring Tanzania at the now unused seat of the International Criminal Tribunal for Rwanda(Block,2014 ,p .10).This was, as argued by Natalie Block ,considered to bring justice closer to the victims according to the trial Chamber and the six Kenyans who had been accused of committing crimes against humanity in the Kenyan Post election violence.

This answers part of the questions raised above on why Kenya seeks an alternative dispute resolution mechanism especially negotiation between her and the Federal Republic of Somalia.

1.7.2 The Mediation Card.

It is perhaps careless to fail to notice the efforts of Kenyan government to utilize mediation as a strategy of diplomacy to resolve her conflict with Somalia. Needless to say, the African Union Peace and Security council (2019) during their 873rd meeting encouraged the office of the African Union Commission chairperson to make use of his good offices expeditiously, either personally or through the appointment of a special envoy that will engage with the conflicting countries towards finding an amicable and sustainable settlement, in consultation and collaboration with the relevant regional mechanisms in the East African region. This is not further from what the Kenyan government has been advocating for after the Somalia government took matters before the International Court of Justice in 2014.This will be mediation if at all it is to happen as envisioned. However, President Mohammed Farmajo in his address to the UNGA 74th session that this dispute must be settled in the International Court of Justice which has the jurisdiction over such disputes and that in accordance with the International Law, the courts judgment will be binding on Kenya as well. In addition to that, he refuted the above position of African Union by quoting the conclusion of the UN Peace and Security Council on 3rd September 2019 that African Union is not empowered to intervene this case that is before the International Court of Justice.

It must be realized that negotiations are not always successful as denoted by Marianthi (2017 p,398).Like Marianthi avers that, the way to protect the situation from a stalemate is to observe part XV of UNCLOS that provides countries with means of a third party resolution which is mediation/ arbitration and adjudication. The Kenya Somalia border dispute emanates from their disagreement on the exact location of their respective boundary in the Western Indian Ocean. On grounds of equidistance, Somalia postulates that the boundary should follow diagonal South East route into the Ocean extending from her land border which has been rejected by Kenya which on the other side contends that the maritime boundary should be a straight line emanating from the her land boundary terminus(Pappa,2017,p.403).In 2009,technocrats drawn from both Kenya and Somalia drew an MoU which was bitterly rejected by the parliament which eventually prompted Mogadishu to file a case at the International Court of justice five years later.

President Abdel Fattah El Sisi of Egypt in the spirit of good neighborliness and negotiation held trilateral summit talks with his colleagues President Mohamed Abdullahi Mohamed of Somalia and Uhuru Kenyatta of Kenya in New York City on the Tuesday of 24/9/2019 on the sidelines of the 74th session of the UN General Assembly. The meeting came at the behest of Kenya and Somalia in the light of Egypt's current chairmanship of the AU, aimed at addressing issues between the two states, said the Egyptian Presidential spokesman Bassam Radi.

According to Radi, the Egyptian president urged the duo to iron out their differences and preserve their fraternal and cordial relationship which they have enjoyed for a very long time.Mr.Kenyatta and Mr. Farmaajo thanked Fattah El Sisi for answering their call to hold the trilateral summit which according to Radi, they said reflects the sincere intentions of Egypt in regards to serving the interests of their people and ensuring joint action to achieve regional peace, stability and development. Most importantly, he concluded by saying that the two countries reached a truce which was meant for Kenya and Somalia to form a committee meant to work after adopting the measures to restore confidence and normalize bilateral relations. This shows how willing the Kenyan Government is interested to solve this dispute amicably despite the fact that President Mohammed Farmajo still held his earlier stance of following the courts proceedings the following day on the flow of the 74th Session of the UNGA meeting 2019.To quote him, "Somalia and Kenya are neighbors on the Indian Ocean Coast of East Africa who enjoy peaceful and friendly relations.

We all match to Kenya for the steadfast support for the Somali's people over other years. While our overall relations are excellent, our maritime boundaries have never been delimited and is the subject of disagreement between our two sister states. Bilateral negotiations did not achieve an agreement in the past. In order .In order to obtain peaceful and equitable settlement, in 2014,and in conformity to with international law, Somalia in its truth to proceedings before the International Court of Justice the highest legal authority of the UN. We are pleased that the Court found that it had the jurisdiction to resolve the dispute and that is scheduled final hearing on the merit of the case for the first week of November this year. Somalia as a member of the UN and a party to the statute of accord is committed to seeing this judicial settlement process through to its end." This indicates that Mogadishu is not interested in settling the dispute in an out of court arrangement as clearly sought by Nairobi.

Ethiopian Prime Minister also sent emissaries to Kenya and Somalia to try and resolve the dispute between the two countries. The meeting was supposed to happen on According to Tubei (2019), the Ethiopian Prime Minister mediated a "less-than-colorful" meeting in Kenya's capital between Mr. Kenyatta and Mr. Farmajo. This meeting happened on Wednesday 3 of July 2019 and the Ethiopian prime minister wanted the two to iron out their disputes. Although the results of the meeting were not pleasing, Tubei claimed that the meeting was not for nothing because Dr. Abiy actually managed to convince the duo to restore a bit of diplomatic normalcy until

the case at the ICJ was concluded. However, the spokesperson of Mohammed Farmajo, Abdinur Mohamed Ahmed reported about the meeting. "Their Excellencies President Mohammed Farmaajo and President Uhuru Kenyatta agreed on strengthening diplomatic ties between the two countries. They also agreed to have their respective ambassadors' return to each country's mission to resume their important duties. Co-operation and partnership," he said.Figure 3.By Star Magazine. Mediation and Negotiation have been the most ideal strategies that Kenya has sought to utilize so as to end the dispute with her sister country Somalia in an amicable and sustainable way.

1.7.3 Threat of Military Action

The dilemma of this dispute mirrors a similar case between China and Philippines over South China Sea and the subsequent landmark ruling of the case in 2016.Storey (2016) avers that China refused to participate in the case with Philippine government and when the ruling was made against China, Beijing swiftly declared it to be "null and void" and they added that they would neither recognize it nor accept it. Like the Kenya case who denounce the competence of the International court of justice to give local justice, the Chinese case questioned the judges competence and integrity as the state run press claimed that the ruling was a conspiracy of the US and Japan

(Storey,2016).Moreover, Storey (2016,P.4) averred that after the ruling, Chinese Foreign Minister Wang Yi at the sides-lines of the Asia-Europe Summit in Mongolia told his Philippines counterpart that they "might be headed for confrontation" if Philippines would not disregard the ruling. Kenya is exploiting the Chinese strategy of disdain of the litigation strategy for insisting on an alternative dispute resolution mechanism outside the courts. The Mashujaa day celebrations in Kenya on 20th of October 2019 send signals of possible confrontation should the territorial integrity of Kenya be violated. The Mama Ngina waterfront celebrations send a clear message to the region about Kenya's navy might .This was simplified in the speech of President Uhuru. Apart from the Navy displaying their equipment ranging from ships missiles and guns, the speech of Mr. Kenyatta was clearly addressing a neighbor who is in conflict with the territorial integrity of Kenya and all guesses pointed at Somalia. In his speech, "We will not turn back in our pursuit to secure our national interest in the shipping industry, averred Mr. Kenyatta. This is after Kenya accused Somalia of allowing their fishermen to get into Kenyan waters illegally(Uvumbi,2019).In addition to that, the Kenyan Foreign affairs minister had said that Kenya would not cede even an inch of its territory a move that has seen Somalia object an out of court settlement. This positions added with the fact that the Kenyan parliament had proposed military deployment to the contested area as a way of protecting the countries territorial integrity.

Article 241 (3) of the Constitution states that the Kenya Defence Forces is responsible for the defense and protection of sovereignty and territorial integrity of Kenya and may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly (Kenyan Constitution, 2010). In this spirit, in August 2019, the Kenyan parliament had proposed military action as a way of protecting Kenya's territorial integrity. This happened in a joint motion where the leader of Majority in parliament Aden Duale and his Counterpart the Leader of Minority John Mbadi said that the KDF should move in to protect the sovereignty and territorial integrity of Kenya in that region (Vidija ,2019).

In the Defence white paper (2017), Mr. Kenyatta averred that Kenya will not spare any effort in promoting peace and understanding within the region, but she is equally determined to use all means at her disposal, including military force to uphold her sovereignty and her territorial integrity to ensure the security of the sovereign people of Kenya. Therefore, with all these circumstances, statements, policy positions and the Mashujaa day celebrations that showed the military strength of Kenya only reaffirms that the Kenyan government is willing to go to a bitter confrontation with Somalia should the court rule in favor of Somalia just like the case of China and Philippines as articulated by Storey (2016 ,p.4) who also before the case was concluded distanced themselves from the case but declared the case null and void after it was determined and even threatened a confrontation with Philippines.

1.8 Conclusions

In regard to the findings of this research, Kenya has employed various diplomatic strategies in regards to managing her various border disputes. This has been through threat of military engagement as a preemptive strategy, negotiations and Mediation. The latter strategy has been used by Somalia especially in the current maritime dispute although there has been need to find out why Kenya has insisted on alternative dispute resolution mechanism as a strategy of managing the disputes between the two sovereign states over the maritime border.

1.9 Recommendations

In relation to the study findings, a recommendation is made that various strategies of dispute resolution other than litigation be employed to broaden the scope of resolution of conflicts and to relieve the International Court of Justice .It is covered in the UN Charter but it has not been utilized because the drafters of the charter, most governments and most academics seem to end with an option which has the structures provided for in the

International Court of Justice as the most justified means of conflict resolution.

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