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**Border Diplomacy and Territorial Disputes in the IGAD Region: A Case Study
of Kenya**

JOSPHAT GITONGA NDIRANGU

**Submitted in Partial Fulfilment of Master of Arts Degree of Diplomacy,
Intelligence and Security at Strathmore University.**

School of Humanities and Social Sciences

Strathmore University

Nairobi, Kenya



December 2020


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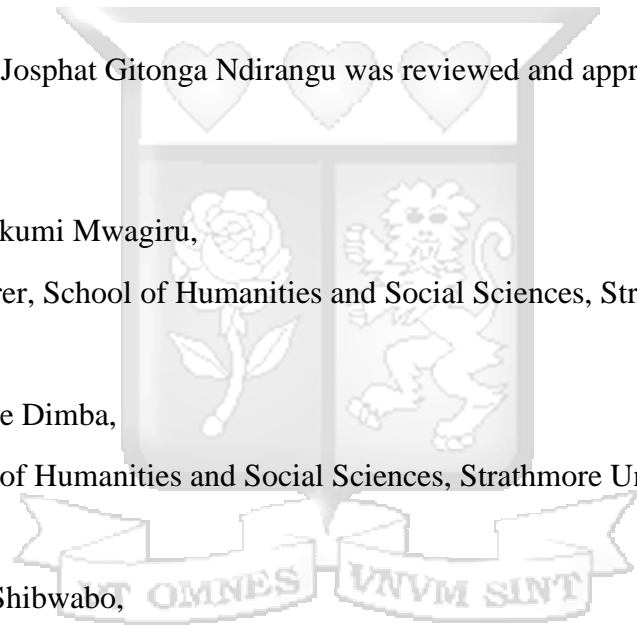
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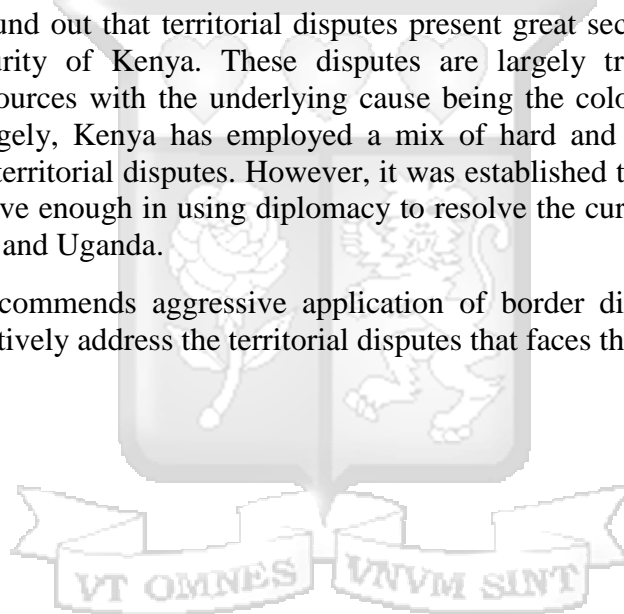
Abstract

Territorial disputes have serious ramifications on the national security of the State especially when not effectively addressed. Africa and the Horn of Africa are prone to border related conflicts owing to the colonial borders that were inherited upon independence and which do not reflect the ethnic and religious diversities that existed prior to colonization. This study investigated territorial threats in the Inter-Governmental Authority on Development region with special focus on Kenya. It also focused on specific border threats and how Kenya policy makers have responded to the threats using border diplomacy as the focal point. The study used a conceptual of analysis in order meet its goals and objectives.

The study aimed at establishing if border diplomacy has been fully utilised to resolve existing territorial disputes that have faced Kenya. In doing so, both primary and secondary data was collected in the research. Interviews were conducted to gather primary data from key stakeholders in the field of border diplomacy and national security. Data collected was analysed using framework analysis.

The study found out that territorial disputes present great security challenges to the national security of Kenya. These disputes are largely triggered by the trans-boundary resources with the underlying cause being the colonial legacy of borders drawing. Largely, Kenya has employed a mix of hard and soft approaches when dealing with territorial disputes. However, it was established that the country has not been aggressive enough in using diplomacy to resolve the current territorial disputes with Somalia and Uganda.

The study recommends aggressive application of border diplomacy by Kenya in order to effectively address the territorial disputes that faces the country.



Acknowledgment

My gratitude goes to the Almighty Lord for granting me good health and wisdom to successfully accomplish the dissertation. To my supervisor, thank you Sir for your good guidance in the entire dissertation writing process: Your patience and understanding manifested a positive character to emulate.



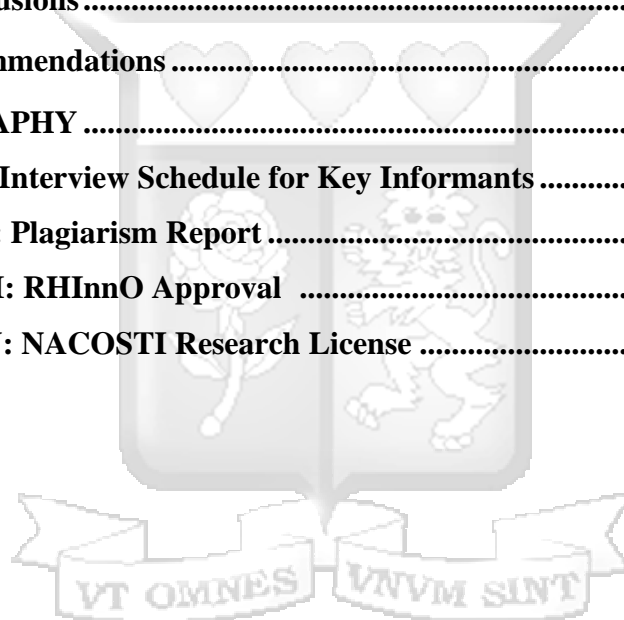
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List of Abbreviations

AG-	Attorney General
AU-	African Union
AUBP-	African Union Border Program
AUC	African Union Commission
AUBGS	African Union Strategy for Better Integrated Border Governance
BCOCC-	Border Control and Operations Coordination Committee
BMS-	Border Management Secretariat
CPA-	Comprehensive Peace Agreement
EEZ-	Exclusive Economic Zone
ECOWAS	Economic Community of West African States
ELF-	Eritrean Liberation Front
EPLF-	Eritrean Peoples' Liberation Front
ICJ-	International Court of Justice
IGAD-	Inter Governmental Authority on Development
KIBO-	Kenya International Boundaries Office
LAPSSET	Lamu Port South Sudan Ethiopia Transport
MOU-	Memorandum of Understanding
NFD-	Northern Frontier Districts
NFDLA-	Northern Frontier District Liberation Army
NPPPP-	Northern Province People's Progressive Party
OSBP-	One Stop Border Post
POEs-	Points of Entry
REC	Regional Economic Communities
SPLM-	Sudan's People Liberation Movement
TPLF-	Tigray People's Liberation Front
UNCLOS-	United Nations Convention on the Law of the Sea
UNHCR-	United Nations High Commissioner for Refugees
UN-	United Nations
UNGA-	United Nations General Assembly
UNMEE-	United Nations Mission in Eritrea and Ethiopia
UNSC-	United Nations Security Council

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My gratitude goes to the Almighty Lord for granting me good health and wisdom to successfully accomplish the study. To my supervisor, thank you Sir for your good guidance in the entire thesis writing process: Your patience and understanding manifested a positive character to emulate. Finally, to the sponsor of the programme for enabling me undertake the master's programme.



Dedication

I dedicate this thesis to my dear family (spouse, children and siblings) for their moral support during the entire Master's programme. Also to my late mother for nurturing a positive attitude towards life which has become a strong guiding philosophy while working on this thesis. Lastly, to my dear friends, college mates and colleagues for their support.



CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1: Introduction

Border diplomacy is a key component of national security of the state. This is because the territorial borders define the territory of the state which is one of the key characteristics of the state as per the Westphalia state system and the 1933 Montevideo Convention. Traditionally, every state is concerned with territorial integrity of view where states at the strategic level deal with survival in the anarchic international system thus making territorial integrity as one of the core national interests.¹ The importance that states attaches to territorial integrity is reflected in the manner in which huge resources are allocated towards protection of the territories.² To this end, states often establish and equip militaries to safeguard them against external aggression. In the colonial and cold war era, the military was also used for expansionist agenda where states sought new territories especially in search of raw materials. It is these expansionist activities that led major European powers to establish territories in Africa marking the epitome of the state system and territorial boundaries in the continent.³ However, these borders were arbitrarily drawn to serve the interests of the imperialists with little regard of the plight of the indigenous people. The colonial legacy of boundary making led to borders that would later on be contested by independent African states. In the 1950s and 1960s most African countries had gained independence. The organization of African Unity in its attempt to recognise colonial borders passed the Cairo Resolution of 1964 (OAU Res. AHG/Res. 16(1) Cairo) which outlined the principle of respecting the borders inherited at independence.

¹Nye Joseph, "Redefining the national interest," *Foreign Affairs* 78, no. 4 (1999), pp. 22-35.

²Gooneratne, Wilbert. & Mosselman, Elisabeth, "Planning across the borders": Border regions in Eastern and Southern Africa," *Regional Development Dialogue* 17, no.2 (1996), pp.136-152.

³ *Ibid.*

The adoption of the principle of respect of borders inherited at independence meant that Kenya inherited borders that Great Britain had when Kenya was known as the East African Protectorate. The same plight befell Kenya neighbours some of who were not contented with the borders. For instance, Somalia and Uganda would challenge these borders leading to territorial conflicts with Kenya.

The Constitution of Kenya in Chapter 14, articles 238 to 247 provides for the defense and protection of the sovereignty and territorial integrity of the State and charges this mandate on the security organs primarily the Kenya Defense Forces (KDF), but also other agencies such as the National Police service and the National Intelligence Service.⁴ This forms an aspect of border security management in Kenya. The state is regarded as an entity that under international law enjoys sovereignty and territorial integrity. Sovereignty is a principle of international law that gives the State powers to govern its subjects without external influence from state and non-state actors. Therefore, the state is able to exercise political power both internally and externally. On the other hand, territorial integrity is the principle under international law that places a caveat on states not to use force against the political independence or territorial integrity of another state, especially attempts to change the borders of that state.⁵ These two principles reinforce the importance of state's borders. However, the significance of states borders has been put to the test, especially with globalization and the emergence of cyberspace as the fifth global commons. Other global commons are high seas, the deep sea bed, atmosphere and the Antarctica/High seas. However, the challenge on territorial borders can be traced to the era of industrialization in Europe where issues such as advent of universal human rights,

⁴ Kenya Law Review Commission, *The Constitution of Kenya 2010*.

⁵ Abdelhamid El Ouali, "Territorial integrity: Rethinking the territorial sovereign right of the existence of the States," *Geopolitics* 11, no. 4 (2006), pp. 630-650.

environmental security since climatic changes knows no boundaries as well as advancement in telecommunication sector emerged.⁶

1.2: Statement of the Research Problem

The territory of a state is defined by territorial borders that delineate one state from another. These borders have to be clearly defined and recognized. These borders are evidence of state sovereignty as they demarcate the territorial framework within which a state's jurisdiction is established and exercised.⁷ They legalize and demarcate the exercise of territorial sovereignty of the state thus forming a critical component of international relations. States' boundaries also present challenges to the national security of states especially when contested by states. This is the epitome of territorial disputes where states disagree on legal instruments creating international boundaries.

To safeguard these borders, states use both hard and soft approaches. One of the widely used hard approach method is military action as deterrent measures against external aggression on a state's territory, as well as advancing national interests of the state.⁸ Building of alliances is also another form of hard approach as exemplified in the case of Kenya and Ethiopia which signed a defense treaty to safeguard their territories that had been claimed by their neighbour Somalia in the 1960s. On the other hand, border diplomacy is used to respond to border disputes as it offers peaceful mechanism to resolve such disputes.

Territorial borders in Africa are largely a creation of the colonial masters whose major interest was partitioning of the region for economic exploitation. These boundaries were and still remain problematic due to the arbitrary manner in which

⁶ Cohen Edward "Globalization and the boundaries of the State: A Framework for analyzing the changing practice of sovereignty," *Governance: an international Journal of Policy and Administration*, 14, no. 1 (2001): pp. 75-97

⁷ Ibid.

⁸ Neff Stephen, *War and the law of nations*, (Cambridge: Cambridge University Press 2005), p. 85.

they were drawn.⁹ The borders created by colonialists in Africa separated members of one community and placed them in different states. During its ‘First Ordinary Session of the Assembly of the Heads of States and Government’ held in Cairo Egypt in 1964, Organization of African Unity (OAU) declared that colonial borders inherited at independence would remain in force as the internationally recognized boundaries of the newly independent states.¹⁰ This was in response to calls by a section of African leaders to redraw the borders to reflect the reality on the ground with regard to ethnic and religious compositions of Africans. This declaration did not stop border conflicts that later on engulfed the continent. Kenya’s borders were also contested by some of its neighbours. Attempts to resolve some of these territorial disputes have been tricky due to existence of various versions of colonial maps and treaties regarding states borders.

Kenya currently has border conflicts with Uganda over Migingo Island in Lake Victoria, South Sudan over Ilemi triangle, and with Somalia over the Indian Ocean maritime border. The border with Ethiopia and Tanzania is also not fully demarcated and delineated. However, there is no notable contestation of these two borders. With the ongoing African Union Border Programme facing challenges, Kenya cannot afford to ignore the threat that border threats portend on its national security. There have concerns that reopening of the legal status of Kenya’s territorial borders may give rise to grave security consequences which may threaten the very survival of the state. On the other hand, if left unresolved, territorial disputes have the potential of escalating into full blown conflicts which would have serious ramifications on the national security of Kenya and its core environment in general. This is a serious dilemma that faces policy makers not only in Kenya but the IGAD region at large. At

⁹Ebo’o Agnes, Organised crime in Africa/Ten years of AU border programme, <https://enactafrica.org/enact-observer/ten-years-of-au-border-programme> (accessed 4th July, 2020).

¹⁰Amadife Emanuel & Warhola James “Africa’s political boundaries: Colonial cartography, the OAU, and the advisability of ethno-national adjustment,” *International Journal of Politics, Culture and Society* 6, no.4 (1993), pp. 533-554.

the same time, policy makers have been faulted for failing to effectively apply border diplomacy in resolving current disputes with South Sudan over Ilemi Triangle and the maritime dispute with Somalia despite being heavily involved in peace programmes in both countries. The gap lies in the failure to utilize border diplomacy in preventing such territorial disputes from occurring bearing in mind that Kenya has established diplomatic relations with its neighbours. Apparently, the application of border diplomacy appears as an afterthought, more or less as a reactionary measure after hard approach fails. This is a serious national security concern that needs to be addressed. The application of border diplomacy as a response in dealing with territorial disputes facing Kenya was the concern of this study.

1.3: General Objective

The objective of the study was to examine the relationship between border diplomacy and national security in Kenya.

1.3.1: Specific Objectives

- i. To analyse the causes of territorial disputes in the IGAD region.
- ii. To assess the implication of territorial disputes on the national security of Kenya.
- iii. To examine the application of border diplomacy as a response measure to territorial disputes in the IGAD region.

1.4: Assumptions

- i. Colonial legacy is one of the major causes of territorial disputes in the region.
- ii. Territorial disputes have negative implication on the national security of the state
- iii. Border diplomacy has not been effectively utilized in resolution of territorial disputes in Kenya.

1.5: Research Questions

- i. What are the major causes of territorial disputes in the IGAD region?
- ii. What is the implication of territorial disputes on the national security of Kenya?
- iii. How effectively has Kenya applied border diplomacy in dealing with territorial disputes?

1.6: Significance of the Study

Territorial integrity is an important aspect of national security for the state. The country's operational environment is in the volatile regions of the Horn of Africa and East Africa that are prone to territorial disputes and cross border crimes (human trafficking/smuggling, smuggling of contrabands, illicit trafficking of firearms, terrorism and cross border cattle rustling.) The study examined how Kenya has used border diplomacy as an approach in addressing various territorial disputes that have faced and continue to face the country. The study findings are relevant in adding knowledge on the whole aspect of border diplomacy, and thus useful for academics and national security practitioners.

The study findings are significant for scholars interested in Africa to further research on issues of border diplomacy and security. This is informed by the realization that in the wake of globalization, states' borders present a myriad of threats and opportunities for economic development. In Kenya for instance, border points provide opportunities for cross border trade with its neighbours and exploitation of natural resources therein. Further, its entry and exit point support tourism and trade which contribute significantly to economic development. States have a task of balancing between effective border control and the need to enhance regional

cooperation with like-minded states. Therefore, an effective border management regime is crucial for economic progress of the state and the region at large.

Borders present security threats to the security of the state.¹¹ This has seen states enhance their border control measures to address threats such as terrorism, smuggling of goods and people. In Kenya for instance, the multi-agency approach brings together elites drawn from various agencies to address these border threats. The effectiveness of such measures is hinged on the ability of a state to have legitimate borders that are recognized by not only its neighbours but international institutions like the United Nations, African Union, and Intergovernmental Authority on Development.¹² The study findings also provide policy options to policy makers and practitioners in the realm of border diplomacy and national security on how to effectively deal with threats and opportunities that borders present.

1.7: Scope of the Study

This study examined border diplomacy and security in Kenya in relations to its core environment (IGAD region) from 1963-2020. This is a significant period in border diplomacy as it covers the period that Africa decolonized and inherited colonial borders which were and continue to be contested by some independent African states. Of particular interest for the study was the colonial border legacy which has an origin in the era of the Berlin Conference of 1884-1885. The study also focused on African border diplomacy basing on the principle of respect of borders inherited at independence that was adopted by Organization of African Union (OAU) and its successor African Union (AU), ostensibly to address the thorny issue of colonial borders. This was a critical focus of the study as it ignited competing debates on whether OAU ought to have embraced the suggestion of re-

¹¹ Pokoo, John & Kwesi Aning, "Between Conflict and Integration: Border governance in Africa in times of migration," *International Reports*, 1, (2017), pp: 54-65.

¹² Crawford James, *The creation of states in international law* (Oxford: Oxford Press, 2007)

examining the colonial borders or if it took the right step in adopting the principle of respect of borders inherited at independence which was in itself an adoption of colonial borders.

Border diplomacy is an important concept in this research as it outlines how the countries like Kenya have dealt with border related threats and how best they ought to have responded to the same threats in the wake of globalization and the international law regime. For purposes of this study, a border refers the imaginary lines that demarcate a state's territory. Border security is a wide concept that entails not only territorial issues but also security threat such as cross border crimes (human smuggling, drug trafficking, cross border cattle rustling, smuggling of contraband). However, the study limited itself to the concept of border diplomacy with regard to territorial disputes between states and how this impacts on national security of the state of Kenya. Consequently, the focus was largely on border diplomacy and security in the management of Kenya's territory focusing on the territorial disputes that have faced the country since independence and how they have been managed. This entailed grouping of the disputes into two clusters: Historical (Shifta war and Uganda claim of western part of Kenya), and current (Migingo Island and Indian Ocean Maritime dispute and Ilemi Triangle). Data collection took place in Kenya targeting respondents that are involved in matters of policy making in the field of border diplomacy and national security. Informed by the government structure in Kenya where key policy makers are domiciled in the capital city of Nairobi, the study geographic area was Nairobi for purposes of data collection.

1.8: Literature Review: Border Diplomacy and National Security in Africa

This section examined Border Diplomacy and Security in Africa focusing on the colonial borders legacy, the implication of colonial borders and how border diplomacy has been applied in the African continent.

1.8.1: Creation of African International Borders

Africa's international borders were a creation of the Berlin Conference during the partition of Africa by imperial powers. The conference which took place in Berlin Germany in the years 1884 and 1885 partitioned Africa into colonies which were shared out amongst major European powers. In drawing these borders, the colonisers' main objective was to partition Africa into smaller states to be shared amongst the European powers and hence ratify governance and exploitation of natural resources. The methodology of the partition the continent brought together different communities into specific European territories without considering their geography, ethnicities, different cultures and forms of governance. Moreover, they divided peoples across two or even a multitude of states.¹³ Colonial border legacy created the problem of forced coexistence which puts the continent of Africa at the risk of interstate conflicts and irredentism over the contested border, and which continues to be a source of concern on stability of the continent.¹⁴

The principle of self-determination which was adopted by OAU aimed at ensuring that the continent was free from European rule. The period between the Berlin Conference and 1949 saw European countries engage in two world wars with Germany being the main aggressor. The camp that was led by Britain, France and later on United States of America emerged victorious with Germany losing some of its territories in Africa such as Tanganyika and Italian Somaliland. These territories

¹³ Yoon Yung, "The case of the Malawi-Tanzania dispute over lake Malawi/Nyasa," *The Journal of Territorial and Maritime Studies* 1, no. 1, (2014) pp. 75-89

¹⁴ Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy*, (Nairobi: institute of Diplomacy and International Studies, 2012).

were placed under the care of United Nations which in turn appointed caretaker states. The struggle for independence and eventual formation of OAU was instrumental in ensuring that the whole of Africa was free of European rule. These political and diplomatic efforts bore fruits in 1994 when the last country (South Africa) got liberated. The end of cold war saw the emergence of new definitions of self-determination. In Africa, the most significant approach was the one that looked stated that ethnic communities formerly divided by territorial borders (as was case during the partitioning of Africa by imperialists in the Berlin conference) are entitled to join together and form new states in the same manner witnessed in Europe soon after the end of cold war. This is an important concern of border diplomacy in Africa as some regions/communities started advocating for either secession or irredentism. For instance, the Northern Frontier Districts of Kenya wanted to join Somalia which marked the first territorial threat to Kenya.

1.8.2: Organization of Africa Unity Approach to Borders

Prior to colonization, the current state system did not exist in Africa. Communities had their own way of governance and marking their territories. After several years of economic exploitation, the colonisers had by end of 1960s granted independence to most African states. Upon assuming independence, each state assumed the borders that its colonial master had. The Organization of African Unity was formed by a group of 32 states that had recently gained independence to among other objectives enhance their bargaining power in the international system and also help in pushing for the independence of the states still under colonialism. The first major challenge that OAU had to deal with was the question of the legality of the colonial borders.¹⁵ There was a feeling among a section of African leaders that the colonial borders need

¹⁵ Makumi Mwagiru, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy*, (Nairobi: institute of Diplomacy and International Studies, 2012).

some readjustments to reflect the reality on the ground. Proponents of this idea felt the international borders drawn by the colonial powers were arbitrarily imposed artificial barriers that separated people of same culture. These borders were regarded as one of the negative effects of colonialism in Africa. This pressure was heaped on the regional body the Organization of African Union, but the body opted for the principle of respect of borders inherited at independence with majority decision except for some dissenting voices from Morocco and Somalia.¹⁶ This was effected through the ‘Cairo Declaration’ where member states committed to safeguard unity through cooperation and integration.¹⁷

The OAU principle of principle of respect of borders inherited at independence raises two schools of thought, those of the view that it was a right move in preventing territorial conflicts and those on the contrary. Proponents of this principle ground their arguments on the success of the principle by the Spanish-American Republics in determining borders of states that gained independence from Spain in South America. They also base their argument on resolution reached by African Heads of State and Government through the Cairo Resolution 16 (1) of 1964 on intangibility of African borders.¹⁸ According to Fred Mnyongani, the main objective of the Cairo Resolution was to discourage territorial annexation by force as well as irredentist, pan-nationalist and secessionist claims.¹⁹ This is evidenced by the fact that only two countries that voted against the resolution were Somalia and Morocco, both of which had, at the time, irredentist claims against their neighbours. The rest member States of the OAU, (most of whom contested their boundaries) supported the resolution, which provided for peaceful methods and modalities of resolving such disputes.

¹⁶ Yoon Yung, “The case of the Malawi-Tanzania dispute over lake Malawi/Nyasa,” *The Journal of Territorial and Maritime Studies* 1, no. 1, (2014) pp. 75-89

¹⁷ Ibid.

¹⁸ Malcon Shaw, *International Law*, (Cambridge: Cambridge University Press, 2017), p. 392.

¹⁹ Mnyongani Fredd, “Between a rock and a hard place: the right to self-determination versus uti possidetis in Africa,” *The Comparative and International Law Journal of Southern Africa* 41, no. 3 (2008), pp: 463-479.

Mnyongani further observes that the principle of respect of borders inherited at independence had negative outcomes as the continent witnessed conflicts over territorial ownership between states and also between secessionist movements and states.²⁰ This view is supported by another African scholar Agnes Ebo’o who argues that the damage caused by the colonial border legacy appears irreversible as the continent is still prone to more territorial disputes especially with the presence of natural resources at the borders.²¹

There is the school of thought that felt that OAU committed a mistake by rubberstamping colonial borders yet they are one of the negative outcomes of colonial legacy. This school of thought has scholars like Emmanuel Amadife, James Warhola,²² and Yoon²³ who are of the view that by avoiding the murky issue of redrafting African boundaries and reaffirming the colonial borders, OAU set ground for various territorial disputes that have rocked the African continent. As Yoon observes, there are instances where the colonial borders existed merely on paper and there were no clear physical border demarcation on the ground.²⁴ The colonial borders that independent Africa states inherited have been a source of conflicts between member states. This is compounded by lack of clarity on the actual colonial borders as there have been several adjustments since the Berlin conference that led to the partitioning of Africa. The original Berlin borders were readjusted after world war one where some territories previously held by Germany was allocated to France and Britain.²⁵ Whereas there have been initiatives to address border security

²⁰Ibid.

²¹Ebo’o Agnes, *Organised crime in Africa/Ten years of AU border programme*, <https://enactafrica.org/enact-observer/ten-years-of-au-border-programme> (accessed 4th July, 2020).

²²Amadife Emanuel & Warhola James “Africa’s political boundaries: Colonial cartography, the OAU, and the advisability of ethno-national adjustment,” *International Journal of Politics, Culture and Society* 6, no.4, (1993), pp. 533-554.

²³Yoon Yung, “The case of the Malawi-Tanzania dispute over lake Malawi/Nyasa,” *The Journal of Territorial and Maritime Studies* 1, no. 1, (2014) pp. 75-89

²⁴ Ibid.

²⁵ Amadife Emanuel & Warhola James ‘Africa’s political boundaries: Colonial cartography, the OAU, and the advisability of ethno-national adjustment,’ *International Journal of Politics, Culture and Society* 6, no.4, (1993), pp. 533-554.

challenges, the success has been long forthcoming. This is a pointer that there are no quick fix mechanisms to border security issues facing the continent.

According to Gregory Fox, breakaway territories cannot lawfully rely on this principle to argue their case on boundary disputes.²⁶ However, he points out that there are unique cases like that of Eritrea which was both a colony (of Italy) and a territory (of Ethiopia) and upon independence from Ethiopia, it assumed territories it had as an Italian colony.²⁷ This view is supported by Ann Peters who observes that the principle of *uti possidetis* not only applies to colonies but also regions seeking to secede (non-colonial self-determination).²⁸ She however advises that the principle ought to be applied while taking into account the ethnicity, culture and language of seceding region.²⁹ The principle of *uti possidetis* though not mentioned in the Cairo Resolution, its contribution to African border diplomacy cannot be overlooked. In his separate opinion in the Burkina Faso versus Mali case, Judge Yusuf argues that *uti possidetis* is not a principle of African international law; and that it is different from the Cairo Resolution notion of respecting borders inherited at independence.

Ikome Francis while reviewing the approach adopted by African Union on border diplomacy argues that the Cairo declaration did not provide the much anticipated stability in the continent with regard to territorial dispute. He added that the same was not achieved through the Constitutive Act of the African Union of 2000, where the regional body reiterated the principle of intangibility of African borders. Ikome is of the view that not revisiting the issue will not resolve the underlying problems to border disputes, but regard the move as courting future security problems for the

²⁶Gregory Fox, Eritrea in, Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov, *Self-determination and secession in international law*, (Oxford: Oxford University Press, 2020).

²⁷ Ibid.

²⁸ Anne Peters, "The principle of *uti possidetis juris*: How relevant is it for issues of secession?" In Walter, von Ungern-Sternberg and Abushov (eds), *Self-determination and secession in international law*, (Oxford: Oxford University Press, 2020). p. 119.

²⁹ Ibid.

continent.³⁰ Despite measures put in place by OAU and AU to enhance border diplomacy, states borders are a major source of inter-state conflict.³¹ Apparently, one of the shortcomings of colonial borders is the existence of several treaties and maps, thus raising their legality as border diplomacy instruments.³²

According to Adala in his article ‘The nature of African boundaries’, Africa, lacks effective border controls which is attributed to weak policies, insufficient funds and intricacies of addressing the long porous borders.³³ Adala argues that during the partition of Africa, the Europeans created borders out of their selfish national interest disregarding the ethnic concern which led to cross border communities such as the Tuaregs, Somalis, Maasai among others that are found in more than one state.³⁴ To these communities, the borders don’t mean a lot as they cross them to visit their kinsmen on the other side of international borders. These border communities have little of any sense of nationhood to the state.

William, Miles and David note that colonialists had little regard to the coherence of historic, cultural, and ethnic zones that existed in Africa.³⁵ Amanda Lea Robinson delve further into this issue adding that historical and cultural units were split, and different cultures, religions, languages, identities, and affiliations were enclosed in demarcated territorial units.³⁶

Thomas Pratt delved into this debate and links poor border control mechanisms in Africa to cross border organised crime such as human smuggling. It is such interests by border communities that complicate border diplomacy efforts such as the ongoing border demarcation and reaffirmation exercise spearheaded by the African Union.

³⁰ Ibid.

³¹ Baron Boyd, “African Boundary Conflict: An Empirical Study,” *African Studies Review* 22, no. 3, (1979), pp: 1-14.

³² Ibid.

³³ Adegunle Adala, ‘The nature of African boundaries,’ *Africa Spectrum*, 18, no. 2, (1983), pp. 177-189.

³⁴ Ibid.

³⁵ William Miles and David Rochefot, “Nationalism versus ethnic identity in Sub-Saharan Africa,” *American Political Science Review* 85, no. 2 (1991), pp. 393-403.

³⁶ Amanda Lea Robinson National versus ethnic identification in Africa: Modernization, colonial legacy, and the origins of territorial nationalism, retrieved from https://cpb-us-w2.wpmucdn.com/u.osu.edu/dist/e/1659/files/2014/01/Robinson_NationalismVsEthnicity-13xk2vn.pdf.

1.8.3: Border Diplomacy and Security Management in Africa

Border diplomacy is one of the oldest areas of diplomacy that is less studied. However, its elements have been studied in international relations and international law. But despite being a less trodden area, border diplomacy is crucial to the African continent in its attempt to demarcate and ratify border. If not well handled, borders disputes have the potential to cause conflicts between states and destabilise the peace and stability of a region. Border diplomacy is broad in its reach hence it requires an exhaustive analysis to be able to capture issues that are emerging in the international system.

Article 2(4) of the United Nations Charter provides for territorial integrity of states. The article prohibits states are from the use of force against the territorial integrity or political independence of another state.³⁷ This denotes the significance of the territory to a state. In his study on border diplomacy, Mwangi observes that territory is one of the key characteristics that define a state.³⁸ It is in this territory that the population lives and exploit resources therein for survival. The territory also offers a space for utilization of natural resources by the state. As part of national interest of the state, the territory has to be protected from external violation. To do so, states have to use the three elements of national power, namely diplomacy, economy and military in that order to safeguard and pursue their national interests in the international system.³⁹

Mark Zacher in his article ‘The territorial Integrity norm: International boundaries and the use of force’ argues that despite the perceived decline in the relevance/importance of interstate boundaries, the problem of territorial disputes and

³⁷United Nations Security Council, Purposes and principles of the United Nations, <https://www.un.org/securitycouncil/content/purposes-and-principles-un-chapter-i-un-charter> (Accessed 11th June 2020).

³⁸Makumi Mwangi, *Diplomacy and its relations: essays on African perspectives on contemporary diplomacy*, (Nairobi: institute of Diplomacy and International Studies, 2012).

³⁹ Mwangi Mwangi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).

the security vis a vis diplomatic implications reinforces the importance of territorial integrity and need for enhanced border diplomacy.⁴⁰ He proposes that scholars and practitioners of international relations ought to focus on developing norms concerning respect for territorial integrity.

Christian Marxsen looks at territorial integrity as a concept in international relations that guarantees the sanctity of territorial integrity of the State.⁴¹ This therefore makes the protection of territory not only a national but an international obligation.⁴² From this approach, it is evident that the principle of territorial integrity was originally designed to protect states against involuntary loss of territory to external actors. To this end, Marxsen observes that the importance of this principle is that it guarantees the state of its existence within its current borders, thereby making any attempts to violate territorial integrity of the State, a desecration of international law. This is an international principle for border diplomacy as it guarantees weaker states their protection against powerful neighbours who have the military capability to conquer new territories. This has been cited in the study in the case of Eritrea and Djibouti.

1.8.4: *Uti Possidetis Juris*

The principle of *uti possidetis juris* (as you possess under law) in international law terms provides that newly independent states ought to retain the borders that the preceding authority had.⁴³ For instance, in the case of a colony, once it got its independence, the borders that the colonial master had are the ones that the new state assumes under international law. This principle aimed to avert territorial disputes that

⁴⁰ Zacher Mark, "The territorial integrity norm: international boundaries and the use of force," *International Organization*, 55, no. 2 (2001), pp. 215-250.

⁴¹ Marxsen Christian, *Territorial Integrity in International Law – Its Concept and Implications for Crimea*, (Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2015) https://www.zaoerv.de/75_2015/75_2015_1_a_7_26.pdf.

⁴² Peters Anne, "The principle of *uti possidetis juris*: How relevant is it for issues of secession?" in Walter, von Ungern-Sternberg and Abushov (eds), *Self-determination and secession in international law*, (Oxford: Oxford University Press, 2020).

⁴³ Mirzayev Farhad, "General principles of international law: principle of *uti possidetis*," *Moscow Journal of International Law*, no 3. (2017), pp: 31-39.; Thirlway Hugh, *The Sources of International Law*, (Oxford: Oxford University Press, 2014).

could emerge if the borders were to be redrawn after independence.⁴⁴ *Uti possidetis juris* and *bon voisinage* are tools that countries utilise to manage border issues.

Alan Henrikson argues that these two principles are critical in border diplomacy as they offer softer approaches of resolving border disputes between states.⁴⁵ He proposes a model of peace making that can be applied to resolve conflicts between border communities and also between states. In this model, Henrikson advises that states engaged in a border dispute must make efforts to reach out to each other diplomatically with regard to the border dispute.⁴⁶ To set a good environment for diplomacy to take place, the domestic political system of these states must be well structured and democratic enough to accommodate public opinion especially from border communities that are directly affected by territorial disputes. This according to the scholar forms part of national agenda during decision making. The essence of this approach is to guarantee public support once a policy/treaty on border is put in place. When doing all this, states to ensure that international law especially on border diplomacy is adhered to when drawing border related treaties and also during the negotiation phases.⁴⁷

African borders are a creation of the Berlin Conference of 1884-1885 where Africa was partitioned into colonies. The outcome of the conference was small African states (colonies), some characterised by different communities whose cultures and previous systems of governance differed. The Berlin conference also led to separation of communities with similar cultures which were found themselves into

⁴⁴Mwagiru Makumi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).Thirlway Hugh, *The Sources of International Law*, (Oxford: Oxford University Press, 2014).

⁴⁵ Henrikson Alan, "Facing across borders: the diplomacy of bon voisinage," *International Political Science Review* 21, no. 2 (2000), pp. 121-147.

⁴⁶ Henrikson Alan, "Facing across borders: the diplomacy of bon voisinage," *International Political Science Review* 21, no. 2 (2000), pp. 121-147.

⁴⁷ Ibid.

different states.⁴⁸ By the end of 1960s, most African states had gained independence leading to the establishment of the Organization of African Union (OAU) with its headquarters in Addis Ababa Ethiopia. There was pressure from some African leaders for the Organization of African Union to consider readjusting some of the African borders.⁴⁹ This proposal was rejected by OAU which instead opted for a principle similar to that *uti possidetis juris*, known as the principle of respecting borders inherited at independence. *Uti possidetis juris* has its roots in Europe where its application was on disputes pertaining to private land. It meant that the status quo was to remain in place while the dispute was being settled, with its application limited to private land only. The application of this principle on territorial land has been contested by some international law experts such as Judge Yusuf of the *International Court of Justice* (ICJ) who argued that the principle adopted at the Cairo Conference and *uti possidetis juris* differs.⁵⁰ According to Yusuf, the principle of *uti possidetis* is different from the one adopted by OAU in the Cairo Declaration of 1964, due to difference in origin and purpose.⁵¹ Unlike in Africa, the principle was successfully adopted by Spanish-American republics which had gained independence in the 19th century. The major purpose was to ensure that there was no territory that could be regarded as unoccupied (no *terra nullius*), thus open to occupation by external powers. In Africa, the situation was different as there was no territories that could be considered *terra nulliu*, thus not open to occupation by an imperial power.⁵² Abdulqawi Yusuf rightfully observed that African boundaries were varied in nature unlike the Spanish American ones. According to Yusuf, African boundaries emerged

⁴⁸ Bernhard, Michael, Christopher, Reenock, and Nordstrom, Timothy, "The legacy of western colonialism on democratic survival," *International Studies Quarterly* Vol. 48, No. 1 (2004), pp. 225-250.

⁴⁹ Yoon, Yung. "The case of the Malawi-Tanzania dispute over lake Malawi/Nyasa," *The Journal of Territorial and Maritime Studies* 1, no. 1 (2014), pp. 75-89

⁵⁰ Abdulqawi Yusuf, *Frontier Dispute: Separate opinion of Judge Yusuf*, accessed on 9th September, 2020 from < <https://www.icj-cij.org/files/case-related/149/149-20130416-JUD-01-03-EN.pdf>>

⁵¹ *Ibid.*

⁵² *International Court of Justice, Summary of the judgement of 16th April 2013: Frontier Dispute (Burkina Faso/Niger)*, p. 5 accessed on 8th September 2020 from < <https://www.icj-cij.org/files/case-related/149/17318.pdf>>

after an agreement by colonialists in the Berlin Conference with some modifications taking place later on between the colonialists. He added that other state borders emerged after out of Trusteeship Agreement between United Nations and colonial states otherwise regarded as governing authorities.⁵³ It is this diversity in the borders that led to OAU not mentioning the principle of *uti possidetis* in its legal documents but opted to craft its own principle of respect State borders for peace and stability in the continent. The principle is heavily informed by that of territorial integrity which is enshrined in the United Nations Charter. The intrigues surrounding the principle of *uti possidetis juris*, self-determination and that of OAU/AU respect for boundaries of member states are issues of concern for African border diplomacy.

Africa lacks effective border controls which are attributed to poor policies, inadequate funds and complexities of addressing the long porous borders and the cross border communities. With poor border control mechanisms, African states have to contend with a myriad of threats that emanate from the borders such as smuggling of people and goods, trafficking of arms and narcotics, poaching, insurgencies and terrorism. Whereas there have been initiatives to address border security challenges, states still grapple with border problems. This is because the artificial nature of the African borders makes them a source of constant tensions, capable of degenerating into armed confrontations. Border management and reaffirmation of borders is an exercise that requires consensus and patience. Despite the agreement by Organization of African Union that colonial borders were the legitimate ones, there exist confusion and disagreements on their actual location on the grounds.⁵⁴ Attempts to demarcate porous borders and put up physical barriers and border pillars have been met with

⁵³ Ibid.

⁵⁴ Winter, Phillip, A border too far: The Ilemi triangle yesterday and today, *Durham Middle East Papers*, no. 100 (2019), pp. 1-63.

resistance by the border communities, as witnessed in the Kenya-Somalia securitization project.⁵⁵

Organization of African Unity failed in making a follow up to ensure that there was actual demarcation with pillars erected to demarcate the borders. This left the African countries with two options of legitimizing these borders, either through diplomacy or the use of force. Apparently, some African states chose the hard approach in resolving border related conflicts.⁵⁶ Some of these conflicts include; Morocco and Algeria, Uganda and Tanzania Niger and Benin, and Ethiopia and Somalia in the 1960s. In the 1970s and 1980s, diplomacy was used to resolve the border dispute between Ethiopia and Somalia, and between Chad and Libya, and Senegal and Mauritania. Some of the border related conflicts that resulted into war include Mali and Burkina Faso who fought over their border at different times during the 1960s, 1970s, and 1980s; and Nigeria and Cameroon in the 1960s and 1980s.

In cases where states opted for military action, some of the territorial disputes were not effectively addressed despite the cost implications. Some of the border conflicts resulted in creation of new states and hence alteration of the colonial borders. An example in the IGAD region is Eritrea which seceded from Ethiopia as well as South Sudan which voted to secede from main Sudan.

1.8.5: Maritime Diplomacy

Border diplomacy refers to the practise of steering international boundaries negotiations between states where diplomats reach out to each other in order to demarcate and reaffirm state borders. As a conduct of international relations, border diplomacy focuses on borders separating states which are either land or maritime.

⁵⁵ Cannon Brendon, "Terrorists, geopolitics and Kenya's proposed border wall with Somalia," *Contemporary Voices: St Andrews Journal of International Relations* 7, no. 2 (2016), pp: 23-37.

⁵⁶ Khadiagala Gilbert, "Boundaries in Eastern Africa," *Journal of Eastern African Studies* 4, no. 2 (2020), pp.262-278.

There are states like Kenya who have both land and maritime boundaries which creates the necessity for the study and application of maritime diplomacy as one of the way border diplomacy is practised. Africa is well endowed with maritime territories which are shared among various states. The African Union recognizes that the continent has underlying maritime boundary issues that if not adequately addressed could have adverse effects on peace and security in the region. Whereas maritime diplomacy is a key aspect of border diplomacy, it is a delicate issue that has the potential of igniting political and economic repercussions on the states involved. There are many technical and political challenges to resolving disputes. Delimitation improves overall maritime security by removing sources of international dispute, and in so doing removing an otherwise significant impediment to regional integration.

According to Okonkwo in his study on maritime boundaries delimitation and dispute resolution in Africa, there exists a global legal regime of the sea, and which maritime diplomacy is concerned with.⁵⁷ This global regime on seas encompasses:- The Geneva Conventions on Territorial Sea and Contiguous Zone (1958); The Convention on Continental Shelf (1958); and The United Nations Convention on the Law of the Sea (UNCLOS-1982).⁵⁸ These conventions are important in border diplomacy and maritime diplomacy as they outline on what constitutes as maritime boundaries and zones, internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf and archipelagic waters. They are also critical as they specify the rights and obligations of the States in mismanagement and governance of marine activities and any exploitation of the resources.⁵⁹ For purposes of this study, African maritime boundaries include territorial waters, contiguous zones, continental shelf and the exclusive economic zones. These maritime

⁵⁷ Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* 8, no.55, (2017), pp: 55-78.

⁵⁸Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," p. 55.

⁵⁹Ibid, p. 56.

boundaries are significant to the state due to the prestige and economic opportunities they offer. Therefore, having in place maritime boundaries that have been properly delineated and safeguarded is a matter of national security for the state. The United Nations Law of the Sea (UNCLOS) provides for states to settle maritime disputes through negotiations and/or any other diplomatic means available. It also creates room for further hearing of such disputes at the appropriate court or tribunal in line with Article 92 of the United Nations Charter.⁶⁰

Ahamefule Eluwa in his study established that with the growth of blue economy in the world, Africa has attracted interests from major powers of the world.⁶¹ The immense economic benefits that accrue from the maritime domain are an impetus for states to claim maritime space resulting in territorial conflicts. Eluwa opines that the increasingly growth of the maritime sector as a major line of communication, source of the world's sea food, industrial raw materials, and indeed energy has brought to the fore the issues of maritime security and maritime diplomacy.⁶² Advancement in technology has brought about the exploitation of sea resources in terms of ocean farming, exploitation of deep-water offshore oil and gas or gathering of manganese nodules from the sea bed. This would explain the flurry of activities by states that have access to coastlines.

Charles Ukeje and Ela Mvomio conducted a study on diplomacy and observed that African maritime boundaries are poorly demarcated resulting in several disputes.⁶³ According to the two scholars, the discovery/prospects of natural resources along the coastline and in the deep waters are a source of maritime conflicts, citing the Gulf of

⁶⁰Nguyen Lan, "The UNCLOS dispute settlement system: what role can it play in resolving maritime disputes in Asia?" *Asian Journal of International Law* 8, no. 1 (2018), pp: 91-115.

⁶¹Ahamefule Eluwa, *The role of diplomacy in the challenges to maritime security cooperation in the Gulf of Guinea: Case study of Nigeria*, (Thesis, University of Malta, 2011).

⁶² *Ibid.*

⁶³ Ukeje Charles & Ela Mvomio, *African approaches to maritime security-The Gulf of Guinea* (Abuja: Friedrich-Ebert-Stiftung, 2013).

Guinea which has several of such disputes.⁶⁴ The two scholars further caution that that efforts to resolve maritime disputes are derailed by unwillingness of states to abide by international treaties that they are party to.⁶⁵

As part of border diplomacy, states have to seek regional based solutions to maritime disputes a continental vision focused on developing a blue economy based upon a common or integrated sovereignty. They are unlikely to achieve this ambitious objective without first delineating maritime boundaries. Apart from this, the mismatch between political priorities and goals as provided for in strategies and policy documents, and the institutional capacity, resources, time and political will required to determine cases in a legal, legitimate and acceptable manner must be removed.⁶⁶ The continent of Africa has several unresolved maritime disputes which with the situation getting worse with prospects of natural minerals such as oil and gas. This study delved into this matter by focusing on maritime dispute between Kenya and Somalia whose ruling at International Court of Justice will have serious implication in the maritime law domain.⁶⁷

1.8.6: Africa Border Diplomacy in Practice

African Union recognises that good border governance and border diplomacy plays a significant role in enhancing peace and security and development in the region.⁶⁸ This is informed by the conflicts which the continent has witnessed over territories.⁶⁹ African borders are contentious due to the bad colonial legacy where boundaries were arbitrarily drawn. These borders are a source of strained relations between states where conflicts ensue. In its endeavour to enhance African diplomacy, the

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* 8, no.55 (2017), pp: 55-78.

⁶⁷ Pappa Marianthi, "The Impact of judicial delimitation on private rights existing in contested waters: Implications for the Somali-Kenyan maritime dispute," *Journal of African Law* 61, no. 3, (2017), pp: 393-418

⁶⁸ Adegunle Adala, "The nature of African boundaries," *Africa Spectrum* 18, no. 2, (1983), pp. 177-189.

⁶⁹ Ibid.

African Union formulated an African Union Border Governance Strategy (AUBGS) border as an instrument fashioned around the main objective of viewing borders as drivers to peace and development as opposed to barriers.⁷⁰ Further, African Union adopted the border programme which is known as African Union Border Programme as part of its border diplomacy. The aim of the programme is to have all African border demarcated and reaffirmed by the year 2022.⁷¹ The guiding principle is that through joint governance, African states can achieve peaceful relations.

Apart from AUBP, the principle of *uti possidetis* where African states agreed in principle to respect borders existing upon independence is enshrined in the Charter of OAU, Resolution AHG/Res. 16(1) on border disputes between African States.⁷² This resolution was agreed and adopted by the ordinary session of the Assembly of Heads of State and Government of the OAU which took place in Cairo Egypt in 1964. The same has been adopted by OAU's successor African Union in its constitutive Act of 2002. Another significant border policy adopted by the regional body is that of negotiated settlement of border disputes {captured in Resolution CM/Res.1069 (XLIV)} on peace and security in Africa.⁷³ This principle came into effect in 1986 during the 44th Ordinary Session of the Council of Ministers of the OAU, held in Addis Ababa. This principle is reinforced by protocol relating to the establishment of the Peace and Security Council of the African Union.⁷⁴ This council acts a focal point for collective security decisions by Africans, in what is popularly known as home grown solutions to local problems. AU advocates for shared commitments amongst member to adopt border diplomacy activities such as border delimitation

⁷⁰African Union (AU) 2007: Declaration on the African Union Border Programme and its Implementation Modalities, <http://bit.ly/2mVncUw> [Accessed on 17th June 2020].

⁷¹Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* 8, no.55, (2017), pp: 55-78.

⁷² Organization of African Union, Resolutions adopted by the first ordinary session of the assembly of heads of state and government held in CAIRO, UAR, from 17 to 21 July 1964, accessed on 16th June 2020 from https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf

⁷³Oduntan Gbenga, *International law and boundary disputes in Africa* (New York: Routledge, 2015), p.110.

⁷⁴ Powell Kristiana, *The African Union's emerging peace and security regime: Opportunities and challenges delivering on the responsibility to protect* (Addis Ababa: Institute for African Studies). p 15.

and demarcation as factors for peace, security and economic and social progress. This is captured in Resolution CM/Res.1069 (XLIV)⁷⁵, as well as in the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa, adopted by the Assembly of Heads of State and Government, held in Durban, South Africa, in July 2002.⁷⁶

In January 2007, a significant border diplomacy event took place in Addis Ababa where the 8th Ordinary Session of the Assembly of Heads of State and Government of the African Union established the African Union Border Programme. AU border policy centres around the need to put in place a new form of pragmatic border management aimed at promoting peace, security and stability, as well as to facilitate the integration process and sustainable development in Africa. Border diplomacy has also been enhanced with the enactment of the African Charter on Maritime Security, Safety and Development. This was arrived at by African Heads of State and Government who adopted and signed the charter (African Charter on Maritime Security, Safety and Development) in 2016 during the Extraordinary Summit of Heads of State and Government held in Lome, Togo. The objective of the charter is to enhance concerted efforts in management of the maritime resources in the continent.⁷⁷

Border diplomacy has significantly been effective in resolving some of territorial disputes in Africa. Indeed, many of the territorial disputes that engulfed the continent were resolved through negotiations. One of the best examples where border diplomacy effectively ended territorial dispute was in the case of Liberia and Guinea. The two West African neighbours had a dispute over territorial ownership of the

⁷⁵Oduntan Gbenga, *International law and boundary disputes in Africa* (New York: Routledge, 2015), p.110.

⁷⁶Hayatou Aissatou & Sturman Kathryn, "The Peace and Security Council of the African Union: from design to reality," In, Engel Ulf and Joao Gomes Porto (eds) *Africa New Peace and Security Architecture: promoting norms, institutionalizing solutions* (Farnham: Ashgate Publishing Limited, 2010) p. 57.

⁷⁷Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* 8, no. 55, (2017), pp:55-78

region around Mount Nimba.⁷⁸ This dispute took place from 1958 to 1960 in a region that is rich with natural resources opening it up to huge tourism potentials. However, through Border diplomacy initiatives, the two states managed to resolve the dispute without it degenerating into war.

A significant border diplomacy occurrence took place in 1989 between Ghana and Ivory Coast. The two West African neighbours had for a long time failed to agree on their common border. However, in 1989, the Ghana-Ivory Coast Border Demarcation Commission agreed on the definition of the 640 kilometres border between the two states.⁷⁹ However, the maritime border remained unresolved prompting Ivory Coast to petition United Nations to intervene in completion of the maritime border demarcation exercise in 2010.⁸⁰ In response, Ghana established a Boundary Commission to diplomatically engage Ivory Coast in an attempt to resolve the maritime dispute. The negotiations which were guided by international law failed to announce the outcome of the meetings, perhaps signalling a deadlock. The two states resolved to settle the matter through arbitral proceedings under Annex VII of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) in 2014.⁸¹ The matter was heard by a special chamber of the International Tribunal for the Law of the Sea (ITLOS) which was constituted under Article 15 (2) of the Statute of Tribunal in Annex VI.⁸² The tribunal in its ruling unanimously ruled in favour of Ghana where it stated that the oil exploration activities by Ghana had in no way violated Ivory Coast maritime territory.⁸³ This was a significant case for this study as

⁷⁸Kanyako Vandy, Oil revenues, security and stability in West Africa, accessed from, <https://books.google.co.ke/books?id=VDPnDwAAQBAJ&dq=Liberia+and+Guinea+dispute+over+mt+nimba&q=publisher#v=snippet&q=publisher&f=false>, P 172.

⁷⁹ Ibid, 173

⁸⁰ Ibid, 174.

⁸¹ Nuwan Peiris, "Ghana vs Ivory Coast," *American Journal of International Law* 112, no. 1 (2018), pp. 88-93

⁸² Ibid.

⁸³ International Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire, accessed on 12th June 2020 from, <https://www.itlos.org/en/cases/list-of-cases/case-no-23/>

one of the contested territories in Kenya's core environment is maritime in nature and is largely informed by prospects of natural gas and oil in the Indian Ocean.

In Kenya's core environment, border diplomacy has utilised in addressing some of the territorial conflicts. Some examples include the Kenyan-Ugandan dispute over the Western part of Kenya during the reign of Idi Amin and recently, Migingo island dispute where diplomacy is accredited for avoidance of a war between the two East African neighbours.⁸⁴ Another example is Eritrean-Ethiopian protracted border dispute. For several decades, the two neighbours were embroiled in a border conflict that resulted in war. However, the election of Prime Minister Abiy Ahmed saw diplomacy take centre stage in resolving the conflict where the Ethiopian and Eritrea have embraced diplomacy to find a long lasting solution to the conflict.⁸⁵ The two states agreed to end the hostility and resolve the issue diplomatically. Further, Ethiopia reached out to Somalia leading to signing of a tripartite agreement on cooperation and conflict resolution.⁸⁶ The tripartite agreement between Eritrea, Ethiopia and Somalia opened an avenue for pursuit of diplomatic negotiations to ongoing border disputes such Eritrea versus Djibouti and Kenya versus Somalia.⁸⁷ However, the fact that there is still a number of contested regions in the region (such as the Ethiopian-Eritrean and Djiboutian-Eritrean borders) necessitate the need for enhanced border diplomacy.

Maritime disputes are common in Africa with the continent suffering from several unresolved ones. These disputes spread across the continent with Kenya's core environment having several such as Kenya-Somalia over Indian Ocean maritime border; Kenya-Uganda over Migingo Island; and Tanzania-Malawi over Lake

⁸⁴ The Washington Post, Why Eritrea didn't win a Nobel for its peace accord when Ethiopia did? Accessed on 13th June 2020 from <https://www.washingtonpost.com/world/2019/10/11/why-eritrea-didnt-win-nobel-its-peace-accord-when-ethiopia-did/>

⁸⁵ Gridneff, Stevis, 'Nobel Peace Prize Awarded to Abiy Mohammed, Ethiopia Prime Minister,' *The New York Times*, (New York), 11th October, 2019, <https://www.nytimes.com/2019/10/11/world/africa/nobel-peace-prize.html>

⁸⁶ Temeseghen Billion, Somalia, Ethiopia and Eritrea sign a historic tripartite pact, accessed on 13th June 2020 from <http://www.shabait.com/articles/q-a-a/27016-somalia-ethiopia-and-eritrea-sign-a-historic-tripartite-pact->

⁸⁷ Ibid.

Malawi.⁸⁸ According to Okonkwo Theodore, African states stare at grave danger of conflicts due to these unresolved maritime disputes and which have the potential of derailing implementation of maritime policies and strategies.⁸⁹ He recommends that the continent must make deliberate efforts to address maritime disputes to be able to effectively utilize the resources therein, with special focus on the gap that exist in policy and legislation.⁹⁰

1.8.7: Gaps in the Literature

Border diplomacy in Africa is viewed from Eurocentric perspective and not from an African perspective yet the theories are supposed to be applicable to the African continent. This is a gap that this study was out to address. At the same time, the application of the principle of respect of borders inherited at independence which was largely informed by *uti pussdetis juris* as part of African border diplomacy failed to take stock that *uti possidetis* was a foreign concept that had its origin in Europe. The connection between a people and their territory, assumed and prescribed by Eurocentric theories of the "nation-state," found no room in these formations. There is also gap on how states are supposed to balance between right to self-determination by secessionist movements and their right to territorial integrity. The same applies on how states should balance between state centric tendencies (realism) and soft approaches when dealing with territorial related disputes. Moreover, there is little attention by scholars on African peace and security challenges in relation to the continent's wider maritime scope and its interplay with external political actors. This is despite the continent's maritime domain attracts lots of interests from major world powers in the West and East.

⁸⁸ Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa" *Beijing Law Review* 8, no. 55, (2017), p. 63.

⁸⁹ *Ibid*, p. 56.

⁹⁰ *Ibid*, p. 68.

The end of cold war was expected to herald a secure international system. However, post-cold war era has witnessed a wave of conflicts especially in Africa with a fair share of them being territorial disputes and secessionist wars.⁹¹ With the anarchical character of the international system, states are subjected to international law regime which advocates for an array of peaceful dispute resolution mechanisms. With regard to territorial disputes, border diplomacy is one of the approached at disposal of states in preventing violent confrontations between states. It is part of international preventive action that is adopted by the United Nations, African Union and IGAD. Preventive diplomacy has two broad models that are applicable in border diplomacy, that is hands-on and hands-off conflict preventive strategies. According to Sezai, Hands-off approach entails a third party intervention in a dispute using external incentives that are coercive in nature-coercive techniques.⁹² On the contrary, hands-on approach entails the third parties being deeply involved in the conflict with an intention of resolving the dispute amicably. Coercive diplomacy refers to a defensive strategy in order to secure a peaceful resolution of a serious dispute such as border dispute. Countries that chose to use this form of diplomacy use the threat of force or sanctions as was witnessed during Eritrea border dispute with Djibouti. The same strategy was partly applied by Kenya in its current maritime dispute with Somalia where it closed its border with Somalia and subjected Somali nationals to stringent travel clearance in a bid to force Mogadishu into dropping the case at Hague. The use of threats as an instrument of peaceful diplomacy is preventive by definition since threats are meant to prevent the

⁹¹ Ododa Opiyo, *The challenges of preventive diplomacy: The United Nations' post-Cold War experiences in Africa*, retrieved from <https://www.accord.org.za/ajcr-issues/the-challenges-of-preventive-diplomacy/>

⁹² Özçelik, Sezai, "The Theory and practice of preventive diplomacy: the case of preventive deployment in Macedonia," *Uluslararası İlişkiler* 3, no.11 (2006), pp. 103-128.

escalation of a given conflict into war.⁹³ Although coercive diplomacy basically depends on the use of force, it's advisable states to use it as a last resort measure.

In Africa, there is lack of consensus on what actually constitute preventive diplomacy and which can be applied to border diplomacy. The focus has been on civil wars and insurgents with little focus for border diplomacy as a form of preventative diplomacy with regard to territorial disputes. This constitutes part of research gap that this study filled.

The absence of a shared understanding among policy makers is in itself an obstacle to good policy makings in the field of preventative diplomacy.⁹⁴ The end result is different opinions amongst stakeholders with some viewing it as soft mediation and others as coercive diplomacy. To some experts in Sub-Saharan Africa, preventive diplomacy constitutes the consensual resolution of tensions and disputes while to others in North Africa it indicates a more regressive form of appeasement policy on basis of stability yet its counterproductive as it allows underlying drivers of conflict to persist.⁹⁵ This view is supported by Ganson and Wennmann who argues that conflict prevention in whichever form remains contested concept.⁹⁶

Border diplomacy best thrives in states that are democratic and adhere to international law. Indeed, there is an argument by proponents of peace democratic theory that democratic states rarely go to war. An analysis of territorial disputes that have degenerated into armed conflicts especially in the Horn of Africa reveals a notable trajectory where most states were under dictatorial regimes. Border diplomacy can be considered as one of the forms of soft power approach that states can utilize to resolve territorial disputes. But there is little focus by scholars has been

⁹³ Ibid.

⁹⁴Muggah Robert & Zyck Steven, "Preventative diplomacy and conflict prevention: Obstacles and opportunities," *Stability: International Journal of Security & Development* 1, no. 1 (2012), pp: 68-75.

⁹⁵Ibid.

⁹⁶Ganson Brian and Wennmann Achim, *Operationalizing conflict prevention as strong, resilient systems: approaches, evidence, and action points* (Geneva: Geneva Peacebuilding Platform, 2012).

on how public diplomacy can be used by border diplomacy practitioners as an approach of handling border disputes. Public is critical in finding a lasting solution to any form of conflicts. In the book *Maritime Border Diplomacy*, Myron Nordquist and John Norton Moore looks at preventative diplomacy as a form of dispute resolution in maritime affairs.⁹⁷ However, the scholars focus is largely on operational border security issues such as exploitation of marine resources and environmental protection thus overlooks the critical border security issue of maritime border disputes and how preventative diplomacy comes into play.

According to Jan Melissen⁹⁸ and Brian Hockings⁹⁹ public diplomacy is part and parcel of modern day international politics. They evaluate the new public diplomacy's importance in the current international system where conflicts of all nature are endemic. Melissen in his analysis identifies characteristics of good practice and it distinguishes between on the one hand propaganda, nation-branding and cultural relations, and on the other hand public diplomacy.¹⁰⁰ Hocking continues to unpick the various threads of which public diplomacy is composed, re-examines the 'soft power' argument that often surfaces in relation to the discussion on public diplomacy, and contrasts public.¹⁰¹ In all these noble debates, there is failure to link public diplomacy as an approach in resolving border disputes which are a potential source of conflicts in Africa. This is a glaring oversight (gap in literature) some of the world's most contentious disputes involve territory and have devastating effects for not only states involved but other actors in the international system.

⁹⁷ Nordquist Myron & Moore John, *Maritime border diplomacy* (ed), (Leiden: Martinus Nijhoff Publishers, 2011).

⁹⁸ Melissen Jan, "The new public diplomacy: Between theory and practice," In J, Mellisen (ed), *The new public diplomacy: Soft power in international relations*, (London: Palgrave Macmillan, 2005)

⁹⁹ Hocking Brian, Rethinking the 'New' Public Diplomacy, In J, Mellisen (ed), *The new public diplomacy: Soft power in international relations*, (London: Palgrave Macmillan, 2005)

¹⁰⁰ Ibid, p. 7.

¹⁰¹ Melissen Jan, "The new public diplomacy: Between theory and practice," In J, Mellisen (ed), *The new public diplomacy: Soft power in international relations*, (London: Palgrave Macmillan, 2005)

Another gap in literature on border diplomacy exists where border diplomacy in Africa is largely informed by Eurocentric principles. Aspects of border diplomacy such as the principle of *uti possidetis juris* and *bon voisinage* are borrowed from Europe and applied in Africa by the colonialists. This is despite a feeling by a section of African leaders at the time of independence that there was need to redraw the colonial borders. There is little literature on such ongoing African border diplomacy initiatives such as the African Union Border Programme. Areas of research that the literature has not addressed include progress of the programme, success story as well as challenges to the initiatives. Literature on challenges to the programme would be helpful to the concerned policy makers to make necessary adjustments to ensure success of the programme. Additionally, the literature is silent on applicability of the principle of *uti possidetis juris* in situations where some borders were not demarcated by the colonialists. The same is compounded by lack clarity on what constitutes colonial borders due to the various amendments of treaties by the colonial powers. By far and large, African based solutions to border issues are missing in the existing literature and this formed part of the contribution by this study.

1.9: Conceptual Framework Analysis

The study's main objective was to find out how the application of border diplomacy in resolving territorial disputes in Kenya impacts on the national security of the State. The independent variable for the study was territorial dispute while national security was the dependent variable. To be able to measure the study variables, the researcher looked at the causes of territorial disputes. Some of the intervening variables for this study are political factors (Nature of government, colonial legacy), economic factors (discovery of natural resources-natural gas and oil, trade routes for maritime territories) and socio-cultural factors (irredentism). To further draw meaning to the

impact of border disputes on the security of the state, the study examined the responses that Kenya has undertaken to address these territorial disputes. These responses are either hard or soft and have a bearing on the dependent variable.

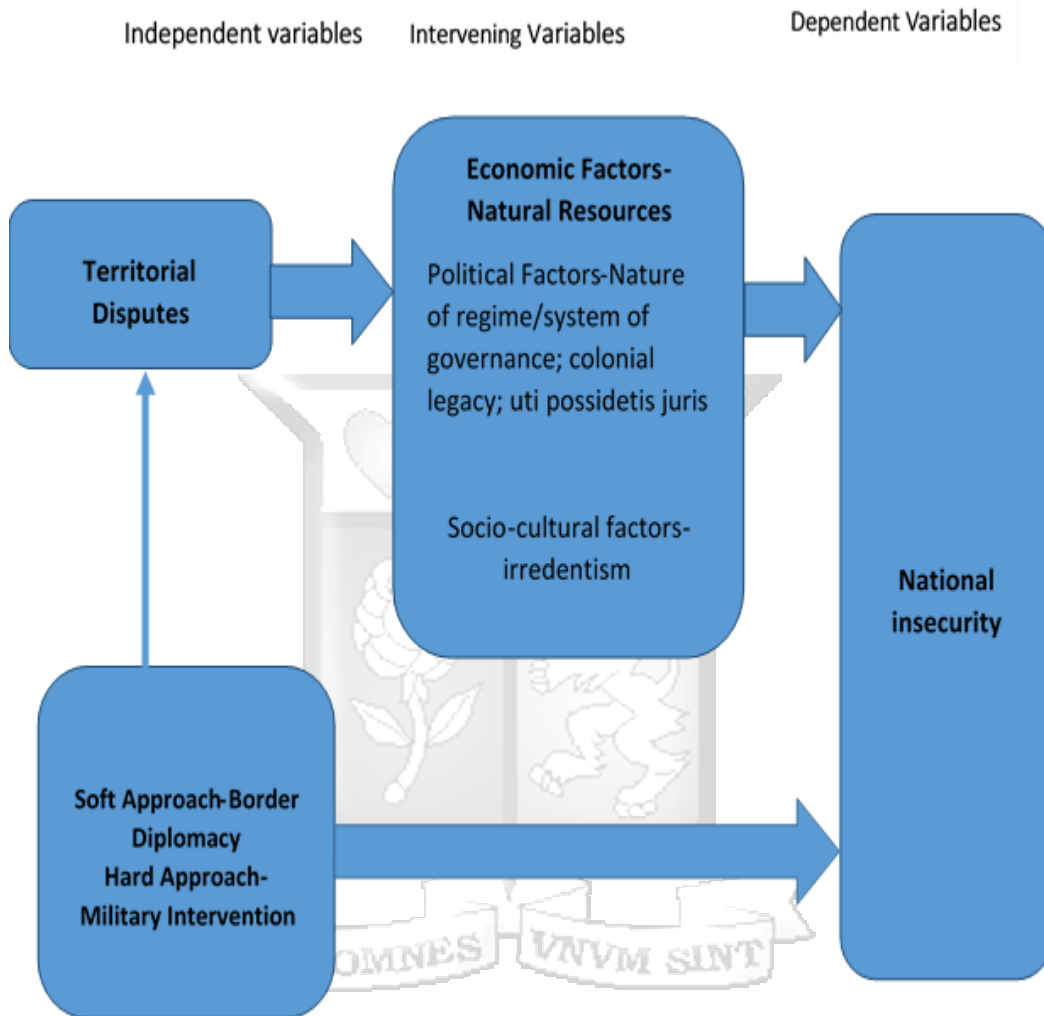


Fig 2.1: Conceptual Framework

1.10: Research Design and Methodology

1.10.1: Introduction

This section highlighted the research design, the study variable, the study area, the study population sampling techniques and sample size determination, research instruments, validity and reliability, data collection methods and data analysis as well

as the ethical considerations. All these were geared towards data collection and its analysis on border diplomacy as a response to territorial disputes in Kenya.

1.10.2: Research Design

Research design refers to a plan and structure that is formulated guide the research process in coming up with data that will help in answering research questions.¹⁰² This study adopted a descriptive research design which enabled the researcher to portray accurate facts through data collection and testing of the assumptions made in the study. The choice of the design was selected as provided the researcher with the opportunity to collect data from people with the relevant data. Data was gathered using a survey methodology where interviews were conducted from selected subjects. The aim of the survey was to generate data that could be comparable across the chosen sample to identify similarities and differences.

1.10.3: Target Population

A population is the total group of individuals with similar characteristics that fits the study requirements of the researcher.¹⁰³ It is from the study population that a sample is taken to assist in data collection. For purposes of this study, the population was drawn from current and former civil servants involved in matters of policies on border security and diplomacy in Kenya. These encompassed officials in the Ministries of Foreign Affairs, Defense and Interior who are involved in matters of border diplomacy especially at the policy making level. This aimed at excluding staff within the ministries whose daily work is not directly related to border diplomacy. A sample of 17 respondents was drawn to participate in the study, giving a confidence level of 90%.

¹⁰²Robson Colin, *Real World Research, (2nd Ed (Oxford: Blackwell, 2002).*

¹⁰³Mugenda, Olive & Gitau Mugenda, *Research Methods: Quantitative and Qualitative Approaches*, (Nairobi: Laba Graphics Services, 2003).

1.10.4: Sample Size

A sample is a set of data that is obtained from a statistical population using specified data collection techniques.¹⁰⁴ Since the research was qualitative in nature, the researcher applied subjective judgment as the research proceeded, until saturation was attained. To determine that saturation was reached, the findings of each interview were compared with those that had already emerged from previous interviews, and if it did not yield new themes, then saturation was deemed to have been achieved. Saturation was attained when adding more participants to the study did not yield additional perspectives to the research questions.

Purposive sampling technique was applied to select a sample of 17 research participants who possessed the relevant expertise in the field of border diplomacy and territorial disputes. Hence, expert opinion sampling, a type of purposive sampling was used to select participants who were considered to be experts on matters of border diplomacy in Kenya. Purposive sampling was preferred due to its ability to provide good information that is relevant to the research questions. The sample size was small since the participants had more information on the subject matter enabling the hitting of the saturation level at a fast rate.

1.10.5: Data Collection Tools

Data collection refers to a systematic process of gathering data based on variables of interest that enables one to measure and test hypothesis and answer the set research questions.¹⁰⁵ Data collection tools are the methods used to collect information for use in the study. The researcher collected both primary and secondary data. Secondary data was collected through content analysis of books and journals on the subject matter. Primary data was gathered from interviews and official documents of

¹⁰⁴ Bunce Arwen, Guest Greg & Johnson Laura, "How many interviews are enough? An experiment with data saturation and variability," *Field Methods* 18, no. 1 (2006), pp: 59-56.

¹⁰⁵ Cooper Donald & Schindler, Pamela, *Business research Methods*, (New Delhi. Tata McGraw Hill, 2005).

Government and International Organizations. The interviews enabled the researcher to obtain detailed information about the personal feelings, perceptions and opinions of the respondents.¹⁰⁶ Data collected was stored in the form of interview transcript notes and audio recordings. Moreover, secondary data on border diplomacy and security was collected to help in understanding and building a framework for analysis. This type of data was obtained from books, journals, newspapers and official publications.

1.10.6: Validity and Reliability

Validity ensures that the instrument employed in the research measures exactly what it's intended to. To ensure validity of the research instrument used in the study, the researcher used content validity technique to examine how effective the instrument answered the research questions. To ensure reliability, the study used the test-retest technique to ascertain the ability of the research instrument in providing consistency and dependability of the desired study variables.

1.10.7: Data Analysis and Presentations

Data analysis refers to the process of evaluating data using analytical and logical reasoning to examine each component of data that has been gathered, with a view of making meaning out of it.¹⁰⁷ Data generated out of the interviews was analysed using framework analysis- an advanced method of qualitative research analysis that entails familiarization, identifying a thematic framework, coding, charting, mapping and interpretation. Data was critically read to get a sense of the content then codes created to identify recurring themes and opinions. To identify the themes, the researcher banked on his analytical and critical thinking skills to be able to come up with the themes. Specifically, focus was on searching for missing information on

¹⁰⁶ Seale Clive. (ed.), *Researching Society and Culture*, 2nd edn), (London: Sage, 2004).

¹⁰⁷ Cooper Donald & Schindler Pamela, *Business research Methods*, (New Delhi. Tata McGraw Hill, 2005).

aspects that were never mentioned by the respondents and which the researcher expected to be mentioned. Moreover, primary data was scanned to identify words, phrases, metaphors and analogues commonly used and the emotions attached to each. Finally, the researcher compared the findings of the interview with those of the literature review to establish similarities. Thereafter, the themes were presented in a cohesive manner in line with the study objectives. To achieve this, the researcher summarised the data with a view to linking the research findings with the study objectives.

1.10.8: Ethical Considerations

This study adhered to the ethics of carrying out academic research as stipulated by Strathmore University and National Commission for Science, Technology and Innovation (NACOSTI). After obtaining ethical clearance from Strathmore University and NACOSTI, the researcher sought consent from all respondents before they could participate in the study. The respondents were duly informed of their rights as respondents which include pulling out at any stage should they feel so. The information obtained from the interviews was treated with utmost confidentiality and only utilized for purposes of this study. The same treatment applied to study findings.

1.11: Chapter Outline

Chapter One contains the introduction to the study, statement of the problem, study objectives, research questions, hypothesis, scope, justification, literature review, theoretical framework and methodology. Chapter Two is composed of survey border security and diplomacy as a concept where issues discussed include border security management in Africa context, the role of diplomacy in border security, the state and its characteristics, national security and national interests. Chapter Three examined border diplomacy and security in the IGAD region. Chapter Four examined border

security and diplomacy in Kenya with special focus on border threats that have faced Kenya since independence. It also contains Kenya's response to the border threats and how best it ought to have responded in line with best practices. Chapter Five contains a critical analysis of border security and diplomacy in IGAD and Kenya. The last chapter (6) contains the conclusions and recommendations.



CHAPTER TWO

BORDER DIPLOMACY AND SECURITY IN AFRICA

2.1: Introduction

From the Literature review in chapter one, it is evident that border conflicts present serious threat to States in Africa. These territorial conflicts are a threat to regional peace and stability due to their potential to degenerate into armed conflicts. The most common territorial disputes trace their origin to the colonial legacy that divided the continent into different states with borders that have and continue to be contested by African states.

The colonial legacy was enforced by OAU when it adopted the principle of respect for the borders inherited at independence where African states were supposed to adopt borders that they inherited from their colonial masters. Over time, there has been a conflict between the principle of territorial integrity and that of self-determination in Africa. States still hold on to their right to preserve their territoriality whereas some sections within given state clamour for self-determination. The unresolved issues surrounding borders in Africa have been a cause of border disputes between states. This chapter examined border diplomacy and security in Africa, focusing on how the Organization of African Unity (OAU) and its successor the African Union has dealt with border diplomacy and territorial disputes.

2.2: Diplomacy and National Security

Diplomacy is a discipline whose focus is on the management of a country's foreign interactions with other actors in the international system. It is concerned with the implementation of the foreign policy of a given state by using strategies that promote cohesion and peaceful relations between states in the international system.

Diplomacy has existed for a very long time and is one of oldest discipline that focuses on States' interactions. As the international system evolved, so did diplomacy as a discipline. In the dynamic operational environment of the state, there is a need for a good and adaptable foreign policy so that the state is able to pursue and protect its national interests. Indeed, diplomacy is one of the three instruments of national power that plays a key role in the pursuit of state's national interests.¹⁰⁸

A state is an entity that came into being after the Westphalia treaty of 1648 that marked the end of 30 years of war in Europe. It is regarded as a political entity that is made up of a defined geography, population and with sovereignty to formulate its own laws and policies. One of the popular theories of the state is pluralism. This theory posits that the society is a conglomeration of people and groups that are in constant competition with each other for political dominance. Thus, the pluralists argue that the state ought to be a neutral entity that exists to implement the will of the majority.

The concept of the state and that of government are closely related. According to the Montevideo Convention, having a government is one of the requirements of statehood. Government is a composition of people who are in charge of state apparatus in a given period of time. The government acts as the means through which state power is exercised by application of the laws of the land which are enshrined in the constitution. Diplomacy and its offshoots are practiced by technocrats who are part of the government serving the interest of the state. The state as a concept has a difference with that of nation-state. This is because a nation-state is apolitical entity that has all characteristics of a state but specifically with a population who perceive

¹⁰⁸Mwagiru Makumi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).

themselves as having a common identity.¹⁰⁹ The Westphalian state system originated from Europe in the 16th century after the end of the great wars. However, the European States moved away from the Westphalian notion of states due to the rise of nationalism in the 19th century. Nationalism created the idea that specific nations (Germans, French, English, Spanish etc.) should rule themselves, hence the rise of nation-states that were a departure from the Westphalian model. In Africa, apart from the three nation states (Somalia) the continent retained the Westphalia system that the Berlin Conference brought to Africa. Indeed, if Berlin had done its partitioning job properly, Africa would have remained a nation-state system and the Cairo Resolution would not have been necessary.

A state has four distinct characteristics; a distinct territory, a populace, a sovereign government and has the ability to enter into relations with others such as entering and concluding treaties with other states in the international system.¹¹⁰ The territory denotes boundaries of state with its neighbours in the international system. It is in this territory that the population of the state lives and identifies itself as the legitimate citizens. For the state to survive in the operational environment, it needs to have means and ways to exercise its powers, and this instrument is what is referred to as the government. The existence of all the other requirements of statehood necessarily imports ideas of sovereignty.

For a sovereign state to be able to survive in the anarchic international system, it has to formulate good strategies and policies on how to interact with its peers. As states interact in the international system, the guiding factor is their national interests which they seek to pursue and also preserve. This is achieved through formulation of national security policy and national security strategy both which constitute a state's

¹⁰⁹ Cohen Edward "Globalization and the boundaries of the State: A framework for analyzing the changing practice of sovereignty," *Governance: an international Journal of Policy and Administration* 14, no. 1 (2001): pp. 75-97.

¹¹⁰ Mwagiru Makumi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).

grand strategy.¹¹¹ States have at their disposal three elements of national power as they seek to implement their grand strategies. These are diplomacy/political, military and economic instrument. The dilemma is describing what national interests of a state and if they are permanent and perpetual, or they keep changing. In the case of Kenya, national interests are captured in Article 238 of the Kenya Constitution, 2010. The article defines national security as the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.¹¹² In most cases, the territory of the state form one of the core national interests as states seeks to protect their borders from infiltration by other actors in the operational environment. Some of the borders are endowed with natural resources thus attracting lots of interests from not only the players in the core environment but from other actors in the international system.

There is no consensus on what national interests are and often change with regime and personalities. This view is supported by Mwangi who explicitly argues that national interests are not often what politicians put out there as.¹¹³ This is a good approach that ensures that not every other issue that appears on the table of policy makers is treated as national interest or as a matter of grave national security concern. In this regard, there are those issues that require serious attention by the state as they threaten national security and require allocation of resources by the state. The rest that can be dealt with at a lower level preferably by non-state agencies that don't require to form part of national interests. For Kenya, national security interests are defined in the first part of art. 238(1); other national interests are not

¹¹¹Ibid.

¹¹²Kenya Law Review Commission, Constitution of Kenya 238 Principles of National Security, accessed poon 12th September 2020 from <https://www.klrc.go.ke/index.php/constitution-of-kenya/155-chapter-fourteen-national-security/part-1-national-security-organs/407-238-principles-of-national-security>

¹¹³ Makumi Mwangi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).

identified but the permission to identify them is contained in the last four words of article 238 (1) that talks of other national interests.

A critical analysis of diplomacy and its practice by states reveals that it is a critical tool that countries utilize to pursue their national interests.¹¹⁴ Diplomacy present states with the opportunity to resolve conflicts without resorting to the costly military interventions. Moreover, diplomacy is also concerned with cooperation and cooperative relationships and not just those of conflict in nature. Furthermore, globalization and emergence of non-state actors in the international realm has necessitated the restructuring of international system with diplomacy taking centre stage in the creation of a new world order.¹¹⁵ This shows the importance of diplomacy as an element of state power and especially its linkage with state's national security and national interests.

2.3: Globalization and its effects on territorial Integrity

There is a general debate on whether the advent of globalization has rendered the principle of territorial integrity insignificant. Proponents of this debate hold that with globalization, technology has made the spread of information and ideas across borders seamless and faster. This is premised on the argument that territorial border are no longer significant especially with the advancement in the global domain of cyberspace.¹¹⁶ However, despite globalization, the territory of the state plays a significant role in the international relations of states. It is a critical aspect of national interest with the ability to plunge states into endless conflicts.

The end of cold war heralded a new world order where conflicts at the global level shifted from global to regional and within the state. Africa for instance witnessed a

¹¹⁴Cohen Edward, "Globalization and the boundaries of the State: a Framework for analyzing the changing practice of sovereignty," *Governance: an international Journal of Policy and Administration* 14, no. 1 (2001): pp. 75-97.

¹¹⁵ Aksoy Metin & Servet Ahmet "Redefining diplomacy in the 21st century and examining the characteristics of an ideal diplomat," *MANAS Journal of Social Studies* 7, no. 3, (2018): pp. 907-921.

¹¹⁶ Cohen Edward, "Globalization and the boundaries of the State: a Framework for analyzing the changing practice of sovereignty," p. 79.

series of internal conflicts as sections within a given state fought the established regime for increased democratic space and other parties for self-determination. Moreover, conflicts between states largely bordered on territory. At the same time, the continent experienced civil wars where sections of the population expressed a desire to secede and form new states. The Horn of Africa had two cases in Ethiopia and Sudan that led to creation of new states namely Eritrea and South Sudan respectively. These developments altered the map of Africa and constitute significant development in the field of border diplomacy.

2.4: Border Diplomacy and Territorial Disputes in Africa

Border diplomacy is the art and practice of conducting international boundaries negotiations between states.¹¹⁷ It usually refers international relations through the intercession of professional diplomats with regard to issues of peace-making culture through mutual understanding.¹¹⁸ It is one of the oldest areas of diplomacy that is less studied. However, its elements have been studied in international relations and international law.¹¹⁹ But despite being a less trodden land, border diplomacy is crucial to the African continent. This is because the territorial borders have the potential of causing conflicts between states. Border diplomacy is broad in its reach hence it requires an exhaustive analysis to be able to capture the emerging issues in international relations. Border diplomacy utilises aspects of diplomacy in addressing issues surrounding states' borders.

Diplomacy is concerned with two broad aspects, namely conflict management and cooperation. It is concerned with conflicts because these tend to happen in a dynamic world. Thus, the essence of preventive diplomacy is to prevent conflicts from

¹¹⁷Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy*, (Nairobi: Institute of Diplomacy and International Studies, 2012).

¹¹⁸Ibid.

¹¹⁹Ibid.

happening and should they degenerate into wars, to end armed confrontation. In most cases, wars end through negotiated peace treaties between warring factions. Border diplomacy as an aspect of diplomacy is largely concerned with preventing territorial disputes from erupting into wars between concerned states.¹²⁰ For it to succeed, it is guided by provision of article three of Vienna Convention on Diplomatic Relations which advocate for peaceful relations. In this aspect, diplomats play a crucial role as they are the legal representatives of the sending State in the receiving State. Their major role is to protect in the Receiving State, the national interests of the Sending State within the permitted limited of the international law regime.¹²¹ This is achieved through negotiations with the Government of the receiving state with the overall objective being promotion of peaceful and friendly relations between two states engaged in diplomatic relations. Border diplomacy is exercised alongside other aspects of diplomacy such as economic diplomacy, public diplomacy, and diplomacy of conflict management. It can either be practiced as bilateral or multilateral diplomacy. Border diplomacy is one of the less studied areas of diplomacy.¹²² This part focused on this part the principle of *uti possidetis juris*, its implications on African border diplomacy, maritime border diplomacy and law of the sea, and African Union Border Programme.

2.4.1: Uti Possidetis Juris

The principle of *uti possidetis juris* (as you possess under law) in international law terms provides that newly formed states that are sovereign ought to retain the borders that the preceding area had before their independence.¹²³ For instance, in the case of a colony, once it got its independence, it automatically assume the territory that the

¹²⁰ Ibid.

¹²¹ United Nations, *Vienna convention on diplomatic relations, 1961, Treaty Series* 500 (2005); pp. 1-16. Accessed on 12th May 2020 from https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

¹²² Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

¹²³ Cohen Edward "Globalization and the boundaries of the State: A Framework for analyzing the changing practice of sovereignty," *Governance: an international Journal of Policy and Administration* 14, no. 1 (2001): pp. 75-97

colonial master possessed. This principle aim is to avert territorial disputes that could emerge if the borders were to be redrawn after independence.¹²⁴ This principle largely informed OAU's principle of respect to borders inherited at independence.

African borders are a creation of the Berlin Conference during the partition of the continent by imperial powers in 1884/1885. The conference partitioned Africa into colonies which were shared out amongst the European powers. The outcome was putting together different communities into one territories without considering the fact that these peoples had different cultures and forms of governance.¹²⁵ Moreover, they divide peoples across two or even a multitude of states. The conference came up with colonial maps for the colonies. Some of these boundaries were altered later on through treaties amongst the colonialists.

By the end of 1960s, most African states had gained independence leading to the formation of the Organization of African Unity (OAU) based in Addis Ababa, Ethiopia. There was pressure from some African leaders for OAU to consider readjusting some of the African borders but the body opted for the principle of the principle of inheriting the colonial territory in its entirety).¹²⁶ This implied that OAU recognised the borders that were set by colonial masters¹²⁷ thus giving signature to the injustices committed by the imperialists in the demarcation of the continent. OAU successor African union (AU) avoided the murky issue of redrafting African boundaries by reaffirming the colonial borders.

¹²⁴Ibid.

¹²⁵Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

¹²⁶ Yoon Yung, "The case of the Malawi-Tanzania dispute over lake Malawi/Nyasa," *The Journal of Territorial and Maritime Studies* 1, no. 1. (2014) pp.75-89.

¹²⁷Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

2.4.2: Implication of the principle of respect for borders inherited at independence

Whereas there have been initiatives to address border security challenges, the success has been long forthcoming. This is because of the artificial nature of the African borders which are a source of constant tensions between states and in worst case scenarios, wars. Border demarcation and delimitation is an exercise that requires consensus and patience. This is what informed OAU to advocate for respect of borders inherited at independence through the Cairo Resolution. Whereas there are maps outlining the boundaries, there exist confusion and disagreements on their actual location on the grounds.¹²⁸ Attempts to demarcate porous borders and erect walls and pillars have been met with resistance by the border communities, as witnessed in the Kenya-Somalia Securitization project where Kenya is erecting a wall near the border with its neighbour Somalia.¹²⁹ The founding fathers of OAU had in their wisdom hoped that this principle of inheriting the borders inherited at independence would emerge as a principle of international law that would be used as justification of converting colonial borders into international boundaries.¹³⁰ They also hoped that the subjects in these independent states would accept the boundaries as they were in a bid to quell any desire for secession. Unfortunately, this was not to be, as the continent experienced a series of border related conflicts between states and in some instances, secessionist wars.

The OAU failed in making a follow up to ensure that there was actual demarcation with pillars erected to demarcate the borders. This left the African countries with two options of protecting these borders, either through diplomacy or military

¹²⁸Ibid.

¹²⁹ Cannon Brendon, "Terrorists, geopolitics and Kenya's proposed border wall with Somalia," *Contemporary Voices: St Andrews Journal of International Relations* 7, no.2 (2016), pp.23–37.

¹³⁰Makumi Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy*, (Nairobi: Institute of Diplomacy and International Studies, 2012).

interventions. Apparently, some African states chose the hard approach in resolving border related conflicts.¹³¹ Some of these conflicts include; Morocco and Algeria, Niger and Benin, and Ethiopia and Somalia in the 1960s; Uganda and Tanzania and for a second time Ethiopia and Somalia in the late 1970s; Chad and Libya in the early 1980s; Senegal and Mauritania in the late 1980s; and Eritrea and Ethiopia in the late 1990s. Some of the border related conflicts that resulted into war include Mali and Burkina Faso which over their border at different times during the 1960s, 1970s, and 1980s, while Nigeria and Cameroon conflicted over boundaries in the 1960s and 1980s. Interesting, military interventions did not effectively address the border disputes despite the cost implications and their threat on regional peace and states' relations.

Uti possidetis juris is a principle of African border diplomacy that is held dear by African leaders. This is further enhanced by the high regard for territorial integrity where states attach lots of interest in their borders. However, despite the importance attached to these principles, territorial disputes have been common in Africa. Therefore, *uti possidetis juris* only achieved temporary success as it continues to create challenges to effective border diplomacy in Africa.¹³² With the current border diplomacy in Africa, the principle is a critical framework for delimitation and demarcation of the borders. But there is a feeling among scholars like Makumi Mwangiri that it faces serious issues of grounding in international law.¹³³

Uti possidetis juris present a challenge to African border diplomacy when it clashes with the principle of self-determination. Under the United Nations General Assembly

¹³¹ Mnyongani Freddy, "Between a rock and a hard place: the right to self-determination versus *uti possidetis* in Africa," *The Comparative and International Law Journal of Southern Africa* 41, no. 3 (2008), pp. 463-479.

¹³² Makumi Mwangiri, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

¹³³ *Ibid.*

Resolution of 1954, all people have the right to self-determination.¹³⁴ In Africa, this was the rallying call during the anti-colonialism campaign where it was interpreted to mean the rights of Africans to be free from colonial rule. Self-determination formed a key part of African diplomacy throughout the decolonization period. However, with the end of colonialism in Africa with South African independence in 1994, new sentiments of self-determination arose where regions within a sovereign state started expressing desires to secede and form their own independent states. This threatened colonial boundaries, marking a clash between OAU's principle of respect to borders inherited at independence and that of self-determination.¹³⁵ Proponents of secession argued that ethnic communities that were under an oppressive government or were divided by colonial boundaries had the right to self-determination, precisely what the Cairo Resolution sought to avoid.¹³⁶ However, these sentiments have in most cases been stopped with reference to the principle of territorial integrity, thereby attracting sentiments of suppression of a people's right to self-determination on grounds of the right of a state to territorial integrity.¹³⁷ The two principles of right to self-determination and that of the right of a state to its territorial integrity are both recognized under international law and the tension between them is a huge challenge for Africa's border diplomacy.¹³⁸

2.4.3: Maritime Diplomacy in Africa

The maritime sector is a critical aspect of international relations. This is because the overwhelming majority of global commerce travels by sea, most of the world's population lives within two hundred (200) miles of the coast, the world continues to

¹³⁴Muwanguzi Patrick, *Reconciling Uti Possidetis and Self Determination: The Concept of Interstate Boundary Disputes* (June 2007), accessed on 10th September 2020 from <<https://ssrn.com/abstract=1023163> or <http://dx.doi.org/10.2139/ssrn.1023163> >

¹³⁵Mnyongani Freddy, "Between a rock and a hard place: the right to self-determination versus *uti possidetis* in Africa," *The Comparative and International Law Journal of Southern Africa* 41, no. 3 (2008), pp. 463-479.

¹³⁶Muwanguzi Patrick, *Reconciling Uti Possidetis and Self Determination: The Concept of Interstate Boundary Disputes* (June 2007), accessed on 10th September 2020 from <<https://ssrn.com/abstract=1023163>>

¹³⁷ Mnyongani Freddy, "Between a rock and a hard place: the right to self-determination versus *uti possidetis* in Africa," *The Comparative and International Law Journal of Southern Africa* 41, no. 3 (2008), pp. 463-479.

¹³⁸*Ibid.*

rely on the sea as a source of protein, and the ocean ecosystem lies at the heart of global climate change.¹³⁹ Indeed, these interactions occur on both international waters as well as maritime territories of states. Therefore, states have to engage with each other diplomatically in order to regulate these interactions to be in line with international law maritime. Maritime territories offer not only channels of communication but also economic benefits such as exploitation of marine and natural resources such as oil and natural gas. These resources have led to offshore territorial claims by states especially with prospects of maritime resources such as oil and gas and development of blue economy.¹⁴⁰ Prior to the mid twentieth century, coastal state jurisdiction rarely extended more than three nautical miles offshore. This limit is obviously inadequate for the technical and political developments which have since taken place. A whole range of new problems and solutions have presented themselves in the intervening period, and appropriate responses and a set of guidelines for maritime delimitation is urgently required. Regional cooperation through border diplomacy (maritime diplomacy) will be fostered through open cooperation channels and a commitment to finding solutions. Maritime diplomacy therefore offers a platform where there are guiding principles and laws to address maritime disputes that may arise between states.

Maritime diplomacy is an array of activities that ranges from cooperative measures like port calls, exercises, humanitarian activities, persuasive deployment of forces and coercion.¹⁴¹ It is a form of flexible soft and hard power that states use to resolve maritime disputes without necessarily having to resort to armed conflicts.¹⁴² Africa is well endowed with vast maritime resources from the Pacific, Indian Ocean, Red Sea,

¹³⁹ Mingst Karen, *Essentials of international relations. 4th ed.* (New York & London: W.W. Norton & Company, 2008.)

¹⁴⁰ Oxman Bernard, "The territorial temptation: A siren song at sea," *The American Journal of International Law*, 100. no. 4 (2016), pp. 830-833.

¹⁴¹ Christian Miere, *Maritime diplomacy in the 21st century* (Oxford: Routledge: 2014).

¹⁴² Malowski Andrzej, "Maritime diplomacy in the 21st century: Drivers and challenges," *Israel Journal of Foreign Affairs* 9, no. 2 (2015), pp: 351-354.

Mediterranean and numerous lakes that are shared by several states. With much focus being on land territorial borders, maritime boundaries are significant source of territorial conflicts in the continent.

Post-colonial African states have faced numerous challenges in the process of consolidating their sovereignty. Members of the Organization of African Unity (OAU) agreed that upon independence, African states would retain their inherited colonial boundaries. This resolution meant that the colonial borders became the boundaries for independent African States. Apparently, the focus was mostly on land borders with maritime boundary delineation and management being largely neglected part of this process.¹⁴³ These issues were set aside or ignored at a time when competing priorities existed with regard to land borders. The maritime domain took a long time to assume the importance it is now perceived to have as most African policy makers suffered from sea blindness. Maritime boundary disputes are to a large extent fuelled by the growing interest in exploring and exploiting natural resources. Currently, there are several maritime border disputes in Africa such as Kenya-Somalia and Ivory Coast-Ghana.¹⁴⁴

A secure maritime domain has gained significance for coastal states due to the economic opportunities and security implications of secure maritime domain. The discovery of huge prospects of oil and natural gas in the maritime domain in Africa has fuelled conflicts between states claiming maritime territories. There are other factors that can be attributed to interstate claims on maritime areas in Africa. To begin with, technological advancement has enabled states to be able to explore and access resources. This is made possible by the growing interest of multinationals in the resources especially oil which is regarded as of good quality. However, the

¹⁴³Wekesa Peter, "Old issues and new challenges: The Mingingo Island controversy and the Kenya-Uganda borderland," *Journal of Eastern African Studies* 4(2), 2010, 331–340.

¹⁴⁴Okumu Washington, "Resources and border disputes in Eastern Africa," *Journal of Eastern African Studies* 4, no. 2 (2010) pp: 279–297.

location of oil fields and natural resources deposits can be a source of serious conflicts when states unilaterally determine and apportion exploration blocks that infringe upon areas of disputed ownership by a neighbouring state, as is the case with the maritime dispute between Kenya and Somalia. The maritime sector in Africa is faced with the challenge of piracy and sea robbery. This poses a great challenge to states reaping benefits of the maritime industry, which becomes a concern to states' national interests.

Underlying African maritime boundary issues, if left unresolved, could have a disastrous effect on efforts to create maritime security and the development of coastal states in Africa. The concern of maritime diplomacy is to resolve such disputes which may have political and economic repercussions for the states involved. Further, maritime disputes and their resolution has the potential of impacting negatively on regional cooperation in line with Africa border diplomacy programmes such as ABPU, 2050 AIMS and the AU Agenda 2063. There are many technical and political challenges to resolving disputes. Delimitation improves overall maritime security by removing sources of international dispute, and in so doing removing an otherwise significant impediment to regional integration. In Africa, states have realized the importance of regional efforts in enhancing maritime diplomacy so as to reap maximum benefits that the maritime domain has to offer (blue economy). But to be able to achieve this, they must delimitate and demarcate their maritime boundaries and also address the challenge of sea blindness (a scenario where national security policy makers fail acknowledge the critical role that maritime security and naval power plays in securing a country's strategic security as well as its economic prosperity).

2.4.4: 2050 AIMS

In January 2014, the African Union (AU) during its 22nd Summit adopted the 2050 AIM Strategy, an Africa-wide integrated maritime strategy. The purpose of the strategy was to have a multidimensional perspective approach toward as maritime security. In essence, the strategy aimed at expanding the approach from just piracy and armed robberies at the sea, by inclusion of other illicit activities at sea and laying more emphasis on sustainable development of the African Blue Economy and Maritime Safety at the core of dealing with maritime security.¹⁴⁵ The justification for the expanded strategy was that a maritime security agenda concentrating solely on piracy and armed robbery at sea would be lopsided in favour of the developed maritime states agenda of protecting their trading interests. Besides, the narrow approach would leave out other threats to maritime security that are a hindrance to full utilization the Blue economy of African states.

The 2050 AIM Strategy's multidimensional approach has influenced subsequent maritime security instruments especially in the Intergovernmental Authority on Development's (IGAD) which in 2015 formulated its own Integrated Maritime Strategy 2015. Likewise, the Djibouti Code of Conduct was developed as Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden.¹⁴⁶ This code provides a framework for capacity building in the Gulf of Aden and Western Indian Ocean to counter the threat of piracy that is a threat to effective sea repute activities along the Somalia waters.¹⁴⁷ States that have adopted the Djibouti Code of Conduct are: Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United

¹⁴⁵ Xiaowen Fu, Adolf Ng and Yui-Yip Lau, "Somalia," *Maritime Policy & Management* 37, no. 7, (2010), pp.677-697.

¹⁴⁶International Maritime Organization, Djibouti code of conduct, accessed on 8th March 2020 from <[http://www.imo.org/en/OurWork/Security/PIU/Documents/DCoC%20Newsletter%20\(2015\).pdf](http://www.imo.org/en/OurWork/Security/PIU/Documents/DCoC%20Newsletter%20(2015).pdf)>

¹⁴⁷ Ibid.

¹⁴⁷ Menzel Anja, "Institutional adoption and maritime crime governance: The Djibouti Code of Conduct," *Journal of Indian Ocean Region* 14, no. 2 (2018), pp. 152-169.

Republic of Tanzania and Yemen. Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Sudan and the United Arab Emirates.¹⁴⁸ These states affirmed their support towards cooperation in the fight against piracy and armed robberies against ships.

2050 AIMS provide an opportunity for member states to have a comprehensive understanding of potential challenges in the maritime industry. This is in turn accord them an opportunity to have concerted efforts that improves maritime conditions with respect to environmental and socio-economic development as well as the capacity to generate wealth from sustainable governance of Africa's seas and oceans. In essence, the challenge with the implementation of the 2050 AIM Strategy is how to achieve coherence as it engages with wide-ranging maritime security threats, whilst reconciling this with achieving maritime safety, resource development to achieve blue economy developmental goals and maritime security.

2.4.5: The Lome Charter (Maritime Diplomacy)/African Union Charter on Maritime Security and Safety and Development in Africa

A significant milestone in African Border diplomacy was the adoption of the Lome Charter by the African Union heads of state and government met on met on 15th October, 2016. The leaders had met in Lome Togo at the African Union (AU) Extraordinary Summit on Maritime Security and Safety and Development in Africa in Lomé, Togo. The summit was attended by representatives from 52 African countries who included seventeen Heads of state, six heads of government and a vice-president, where thirty one countries signed the treaty upon closure of the summit.¹⁴⁹ This is significant given the relative indifference displayed by governments in the past towards signing, acceding and ratifying other AU maritime

¹⁴⁸International Maritime Organization, *Djibouti code of conduct*, accessed on 8th March 2020 from <[http://www.imo.org/en/OurWork/Security/PIU/Documents/DCoC%20Newsletter%20\(2015\).pdf](http://www.imo.org/en/OurWork/Security/PIU/Documents/DCoC%20Newsletter%20(2015).pdf)>

¹⁴⁹African Union, African charter on maritime security and safety and development in file:///C:/Users/USER/Documents/thesis/Chapter%202/37286-treaty-0060_-_lome_charter_e.pdfAfrica (Lome Charter).

security, development and governance instruments, such as the African Maritime Transport Charter and the Revised African Maritime Transport Charter.¹⁵⁰

The process of formulating the charter was hectic with delegates raising concern on clarity of some of the charter's articles on maritime development and also on implication on states' sovereignty.¹⁵¹ For instance, the charter on one hand provides for states to gather and share information and intelligence on maritime issues but goes ahead and issues a safeguard clause that leaves the states at liberty to withhold information that is detrimental to their national interests. Likewise, the charter is not explicit on how states can harness collaboration in resolving maritime disputes.¹⁵²

Despite these shortcomings, the charter major strength is its recognition that no state is capable of singlehandedly securing itself against maritime threats, as well as provides the means to sustainably develop its maritime domain. The charter therefore recognizes the need for support in developing security objectives, and the need for neighbouring states and partners to cooperate in matters to do with maritime security. Of interest to this study were articles 13 and 14 which touch on maritime boundaries and protection of maritime territories. These two articles call on states to delimit their respective maritime boundaries in conformity with provisions of relevant international legal instruments. It also defines maritime territories as maritime spaces under the jurisdiction or responsibility of the State Party.

2.4.6: United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS), otherwise known as the Law of the Sea Convention or the Law of the Sea treaty, is the international agreement by member states of the United Nations during the third Conference on

¹⁵⁰ Ibid.

¹⁵¹ Brits Pieter & Michelle Nel, "African maritime security and the Lomé Charter: Reality or dream?" *African Security Review* 27, no. 3-4, (2018), pp: 226-244

¹⁵² Ibid.

the Law of the Sea (UNCLOS III) 1973-1982.¹⁵³ It provides rules for the use of the oceans by nations regarding topics such as exploitation of the marine resources targeting management and conservation. Most importantly under the new laws, states with coastlines now have territorial sovereignty over a breadth of sea up to 12 nautical miles away from their coastline. For instance, Article 2 of the convention provides that the sovereignty of a coastal State extends beyond its land territory and internal waters, extending to the airspace that is over its sea territory subject to the provision of the convention and international law.¹⁵⁴

Article 3 of the 1982 Convention states that every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles (nm).¹⁵⁵ This is measured from the baselines as laid down in the Convention, and Article 4 provides that the outer limit of the territorial sea of each State is the line every point of which is at distance from the nearest point of the baseline equal to the breadth of the territorial sea. The international consensus on the 12 nautical mile (nm) territorial sea limit was one of the achievements of UNCLOS III, and was a culmination of a process which began with the conference for the Codification of International Law convened by the League of Nations in 1930, and continued during UNCLOS I and UNCLOS II.¹⁵⁶ Although Article 3 of the 1982 Convention permitted coastal States to have a maximum breadth of their territorial water of 12nm, this breadth cannot always be definite, leaving room for disputes between neighbouring coastal states. Article 12 of the Convention provided that a roadstead which is situated astride the outer limit of the territorial sea is included entirely in the territorial sea. A roadstead

¹⁵³ Charney Jonathan "Progress in International Maritime Boundary Delimitation Law," *The American Journal of International Law* 88, no. 2 (1994), pp: 227-256.

¹⁵⁴ Kwiatkowska Barbara, "Creeping jurisdiction beyond 200 miles in the light of the 1982 law of the sea convention and state practice," *Ocean Development & International Law* 22, no.2 (1991), pp: 153-187.

¹⁵⁵ Mazen Adi, *The application of the law of the sea and the convention on the Mediterranean Sea* (New York: United Nations, 2009).

¹⁵⁶ Rothwel Donald & Tim Stephens, *The international law of the sea* (London: Bloomsbury Academic, 2016).

which is wholly detached from the territorial sea also clearly forms part of the territorial sea, albeit it a detached part.¹⁵⁷

States that extend their boundaries as permitted by UNCLOS, expect to take advantage of natural resources located within their maritime domain and to develop extractive industries in this domain.¹⁵⁸ An extension of boundaries increases both a state's perception of its national importance and the threats posed by neighbouring states or foreign actors, such as fishing fleets that may try and take advantage of the state's lack of presence within its maritime domain. The coastal States have full sovereignty over their territorial seas, thus activities such as fishing, mineral extraction, the laying of submarine pipelines and cables and marine scientific research are prohibited without the express consent of the coastal State. Article 17 provides for the innocent passage for vessels belonging to all States in the territorial seas. However, the right of over flight for foreign aircraft is subject to the consent of the coastal State.¹⁵⁹ The concept of 'innocent passage' through the territorial sea is derived from Articles 18 and 19 of the 1982 Convention and it means the continuous and expeditious transit, through territorial waters or internal waters, on route to or from the high seas, in a manner which does not prejudice the peace, good order and security of the coastal State.¹⁶⁰ This provision has its roots in the work of the 1930 Hague Conference which defined the passage is not innocent when a vessel makes use of the territorial sea of a Coastal States for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interest of that State.¹⁶¹

According to this convention, the coastal State has the right to prevent passage which

¹⁵⁷United Nations, *United Nations Convention on the Law of the Sea*, retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

¹⁵⁸Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* no. 8, (2017), pp: 55-78.

¹⁵⁹Haijiang Yang, *Jurisdiction of the coastal state over foreign merchant ships in international waters and the territorial sea* (Berlin: Springer, 2006.)

¹⁶⁰Jill Barret & Richard Barnes, *Law of the Sea: UNCLOS as a living treaty* (London: British Institute of International and Comparative Law, 2016).

¹⁶¹ Oxman Bernard, "The territorial temptation: a siren song at sea," *The American Journal of International Law* 100, no. 4 (2016), pp: 830-851.

is not innocent. Article 19 of the Convention treat any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner as a violation of the principles of international law embodied in the Charter of the United Nations.¹⁶²

In Maritime Diplomacy, there exist maritime zones from which maritime conflicts emerge. The maritime zones that are recognised under International Law are internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the high seas and the area. Internal waters are the waters on the landward side of the baseline from which the breadth of the territorial sea is measured. Each coastal State has full sovereignty over its internal waters as if they were part of its land territory. Territorial Sea refers to a region claimed by a coastal State that extends seaward 12 nautical miles from its baseline.¹⁶³ In this regard, the coastal State exercise sovereignty over the territorial sea, the airspace above it, and the seabed and subsoil beneath it. A Contiguous Zone is the territory that a Coastal State can claim extending 24 nautical miles from its baseline.¹⁶⁴ It is within the contiguous zone, that a coastal State may exercise the control obligatory to prevent the transgression of its customs, financial, immigration and protocols within its territorial sea. At the same time, the state can punish those who violate these rules within its territory or territorial sea. Additionally, in order to control trafficking in archaeological and historical objects found at sea, a coastal State has the right to bar their removal without its consent.¹⁶⁵ The exclusive economic zone is the territory claimed by the Coastal State that extends up to 200 nautical miles from its baseline. It is in this EEZ

¹⁶²Yang, Haijiang, *Jurisdiction of the coastal state over foreign merchant ships in international waters and the territorial sea* (Berlin: Springer, 2006.)

¹⁶³National Council for Law Reporting, *Marines Zones Act, 2013*, accessed on 20 October 2020 from www.ilo.org/dyn/natlex/docs/ELECTRONIC/9630/115510/F-1693266898/KEN9630.pdf

¹⁶⁴Lagoni Rainer & Daniel Vignes (eds), *Maritime delimitation* (Boston: Martinus Nijhoff Publishers, 2006).

¹⁶⁵Beasley Peter, *Technical aspects of maritime boundary delimitation* accessed on 21 October 2020 from https://books.google.co.ke/books?id=LcLXdP1zvcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

that the State is able to exercise sovereignty for purposes of exploring, exploiting, conserving and managing natural resources therein.

The issue of delimitation and demarcation of maritime areas between/among states is an important requirement in maritime diplomacy and for peaceful relations between states. Before Coastal States can start to exploit the natural resources in their EEC, there is need to have their maritime borders clearly delimited and demarcated. According to UNCLOS, the delimitation of maritime zones shall be effected by agreement on the basis of international law. Delimitation in this case means the determination of a boundary line by treaty or other legally accepted mechanisms. Demarcation on the other hand is the actual laying of a boundary on ground through the use of features such as pillars.

2.5: Application of Border Diplomacy in Resolving Territorial Conflicts in Africa

Territory is a significant component as it defines the State as by international relations and the international law regime. Territories have economic significance as they contain minerals and other strategic resources that motivate states to pursue territorial acquisition. Therefore, a States' territories must be clearly defined and reaffirmed to enable the State protect its borders. States boundaries are a source of competing territorial claims at the International Court of Justice by states in Africa.¹⁶⁶ These disputes have led to interstate conflicts where one state claim part of territory of another.

By 1963, most African states had gained independence leading to the formation of Organization of African Unity (OAU). The regional body was faced with the tricky issue of state boundaries that were arbitrary drawn by colonialists whose major interest was exploitation of resources. Prior to colonialism, the concept of state

¹⁶⁶ Sumner Brian, "Territorial Disputes at the International Court of Justice," *Duke Law Journal* no.53 (2004), pp: 1779-1812.

boundaries was non-existent. It was colonial powers who introduced the Westphalia state system in the continent giving birth to the present state boundaries.¹⁶⁷ When the colonialists entered Africa, they found communities that had their own system of governance albeit different from theirs. To occupy the land, they used various tactics such as conquest, treaties with African rulers, purchase and occupation of vacant lands.¹⁶⁸ At the Berlin Conference of 1884/1885, representatives of thirteen European countries laid down rules that would pave way for occupation of Africa. Article 34 of the 1885 Berlin Act, produced by the Berlin Conference, stipulates, “Any Power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present act, in order to enable them, if need be, to make good any claims of their own”.¹⁶⁹ In addition, article 35 stipulates that the signatories to the Act were obligated to establish their authority in the occupied territories so that trade would be facilitated for the Western powers. The purpose of these notification and effective occupation rules was to prevent multiple claims to the same territory on the Africa coasts, and thereby avoid conflicts among the European powers.¹⁷⁰ Though there was no violent military clash among the European powers, these rules triggered competitive European imperial expansion toward the African interior, where notification and the effective establishment of authority were not required. They involved African rulers in the process by signing

¹⁶⁷ Okonkwo Theodore, “Maritime boundaries delimitation and dispute resolution in Africa,” *Beijing Law Review* no. 8, (2017), pp.: 55-78.

¹⁶⁸ Yoon Yung. “European Colonialism and Territorial Disputes in Africa: The Gulf of Guinea and the Indian Ocean.” *Mediterranean Quarterly* 20, no.2 (2009), pp: 77-94.

¹⁶⁹ General Act of the Berlin Conference on West Africa, 26 February 1885 accessed on 16th June 2020 from <https://loveman.sdsu.edu/docs/1885GeneralActBerlinConference.pdf>

¹⁷⁰ Leon Daniel, “The Conference at Berlin on the West-African Question,” *Political Science Quarterly* 1, no. 1 (1886); pp. 103-139

treaties with them although the Africans could hardly comprehend the content of the treaties.

Among the notable border disputes are the Ethiopian-Eritrean; Tanzania-Malawi over the demarcation of the lake Malawi (Nyasa) border which has been exacerbated by discoveries of gas in the lake;¹⁷¹ and Nigeria-Cameroon. Apparently, most border disputes are fuelled by prospects of minerals such the Tanzania-Malawi (oil), Kenya-South Sudan (oil), Kenya-Somali over the maritime border (oil), Nigeria-Cameroon (Oil). There have been instances where disputing states opted for military action to resolve the territorial disputes. Some of these wars include Morocco-Algeria in 1963; Somalia-Ethiopia in 1976-1978; Burkina Faso-Mali in 1985; Libya-Chad (1973-1988); and Ethiopia-Eritrea (1998-2000).¹⁷²

Border Diplomacy is the other approach that has been used to resolve some of the border issues in Africa. Some of the examples include the Kenyan-Ugandan dispute over territories during Idi Amin reigns;¹⁷³ and recently, Migingo island dispute where diplomacy is accredited for avoidance of a war between the two East African neighbours. In the Horn of Africa, the Eritrean-Ethiopian protracted border dispute lasted for several decades resulting into war. The matter was referred to ICJ which ruled that Eritrea had legitimacy over the disputed territory. It was not until Abiy Ahmed took power as Ethiopia Premier that diplomacy took centre stage in resolving the conflict. The two states agreed to end the hostility and resolve the issue diplomatically. Further, Ethiopia reached out to Somalia leading to signing of a tripartite agreement on cooperation and conflict resolution. The tripartite agreement between Eritrea, Ethiopia and Somalia opened an avenue for pursuit of diplomatic

¹⁷¹ Simmons Beth "Rules over Real Estate: Trade, Territorial Conflict, and International Borders as Institution," *Journal of Conflict Resolution* 49, no.6 (2005), pp: 823-848.

¹⁷² Ludeki Chweya, "Emerging dimensions of security in the IGAD Region," in African regional security in the age of globalization, ed., Makumi Mwangiru, (Nairobi: Heinrich Boll Foundation, 2004) pp. 42-52.

¹⁷³ Ibid.

negotiations to ongoing border disputes such Eritrea versus Djibouti and Kenya versus Somalia. However, the fact that there is still a number of contested regions in the IGAD region (such as the Ethiopian-Eritrean and Djiboutian-Eritrean borders) necessitate the need for enhanced border diplomacy to resolve the issues.

2.6: The African Union Border Programme

The Principle of Intangibility which was emphasized in the Organization of African Union (O.A.U) charter of 1963-sanctioned at first ordinary session of the OAU Assembly of states and Government held in Cairo in July 1964 held that the borders for the independent states in Africa constituted a tangible reality.¹⁷⁴ This laid ground for peaceful settlement of any conflicts that would arise out territorial claims by member states. Border diplomacy in Africa was enhanced further through the resolution on peace and security in Africa through negotiated settlement of border conflicts adopted by the O.A.U council of ministers in 1986.¹⁷⁵ The principle of the sanctity of boundaries inherited from colonial times does not therefore deprive African states of their sovereign right to re-adjust a boundary line, provided that there is border diplomacy in the exercise.¹⁷⁶ Consequently, African Union aware of the fact that territories continue to pose a challenge to some states in the continent, came up with a border demarcation programme that was agreed upon by Ministers from 46 member states.¹⁷⁷ The programme known as the African Union Border Programme (AUBP) envisages having all African borders demarcated by the year 2022.¹⁷⁸ This was a continuation of an earlier plan by the Assembly of the Union in

¹⁷⁴ Yoon Yung, "European Colonialism and Territorial Disputes in Africa: The Gulf of Guinea and the Indian Ocean," *Mediterranean Quarterly* 20, no.2 (2009), pp: 77-94.

¹⁷⁵ *Ibid.*

¹⁷⁶ AU, *African Union celebrates its first African border day with the aim of transforming African borders from barriers to bridges* (Addis Ababa: AU, 2011).

¹⁷⁷ African Union, Declaration on the African Union Border Programme and its implementation modalities as adopted by the conference of African ministers in charge of border issues held in Addis Ababa (Ethiopia), on 7th June 2007 (AU: Addis Ababa: 2008).

¹⁷⁸ Kamazima Switbert, "Nothing for us without us: Tanzania-Uganda borderlands' desired soft border management for improved livelihoods, border peace, security and a united and Integrated Africa," *International Journal of Advanced Scientific Research and Management*, 3, no.6, (2018), pp: 208-220.

July 2011 in Malabo that had proposed the delimitation and demarcation of the borders by 2017.¹⁷⁹ The spirit of AU is that of peaceful settlement of disputes and is envisioned in its Agenda 2063 that calls for a peaceful and secure continent.¹⁸⁰

AU predecessor, the Organization of African Unity its wisdom adopted the principle of respect for border inherited at independence.¹⁸¹ It is within this context that African states retained the colonial borders with the intention of OAU being to prevent border related conflicts. Most of these colonial borders exists save for a few alterations. With only about a third of African Borders clearly delimited and demarcated, the African Union (AU) considers ill-defined borders as potential sources of conflict, especially when natural resources are discovered in the border regions.¹⁸² Such borders are a threat to peace and security, and they hinder regional integration, economic growth and development. This is what inspired the birth of African Union Border Programme in 2007 as a direct response to potential territorial conflicts.

The African Union Border Programme was born out of recognition that border issues from an integral part of African peace and security strategies. The founding fathers of Africa resolved to adopt colonial border at independence out of appreciating the fact the process of fresh demarcation would generate serious political and security problems for the newly independent states.¹⁸³ Subsequently, AUBP emerged as a basic component of the 2004-2007 plan of action by AU on border management with three key objectives all revolving on border reaffirmation.

The first objective of AUBP is the completion of the process of delimitation and demarcation of the continent's borders (both land and maritime). The second one

¹⁷⁹ AU, *African Union convention on cross-border cooperation* (Niamey Convention), (Addis Ababa: AU, 2014).

¹⁸⁰ Ibid

¹⁸¹ Makum Mwangi, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

¹⁸² Yung Yoon, "Colonialism and Border Disputes in Africa: The Case of the Malawi-Tanzania Dispute over Lake Malawi/Nyasa," *The Journal of Territorial and Maritime Studies* 1, no. 1 (2014), pp.75-89.

¹⁸³ Ibid.

focuses on cooperation among the states that share borders through sub regional bodies like East African Community (EAC) and Economic Community of West African States (ECOWAS). Finally, the border program seeks to develop Pan-African capacity building mechanisms to engage in research and training for a pragmatic border management that promotes regional integration.¹⁸⁴

The AU border programme faces several challenges that threaten to derail the completion of border reaffirmation by 2022. Notably, border reaffirmation is a costly endeavour that requires immense human and capital resources that most African states are unable to meet.¹⁸⁵ Instability in some parts of the continent poses a serious challenge to the demarcation process.¹⁸⁶ This is compounded by dangerous wildlife and harsh terrain, as well lack of political goodwill resulting in delayed border negotiations.¹⁸⁷ In some instances, there is inadequate data such as maps, charts and treaties to facilitate the demarcation process. Indeed, the colonial borders which are the basis of the exercise are not certain on the ground further complicating the ongoing exercise. Moreover, treaties between countries have shortfalls making their reliability difficult.¹⁸⁸ Finally, lack of cooperation from border communities leads to vandalism of the border pillars.

Going by these challenges, it is evident that the delimitation and demarcation of African boundaries is a daunting task that call for more political goodwill, allocation of adequate resources and technical expertise. AU has sought the support of development partners especially members of the European Union like Germany. Germany for instance has supported the implementation of the African Union Border

¹⁸⁴Asiwaju Anthony, *Respecting for peace, security and sustainable development: The African Union Border Programme In European comparative historical perspective*, https://brill.com/view/book/edcoll/9789047440680/Bej.9789004178335.i-215_006.xml

¹⁸⁵ Ibid.

¹⁸⁶ Okonkwo Theodore, "Maritime boundaries delimitation and dispute resolution in Africa," *Beijing Law Review* no. 8, (2017), pp: 55-78.

¹⁸⁷ Ibid.

¹⁸⁸ Makumi Mwagiru, *Diplomacy and its relations: Essays on African perspectives on contemporary diplomacy* (Nairobi: Institute of Diplomacy and International Studies, 2012).

Programme across the continent in conjunction with the Commission of the African Union. The support is focused on three levels of delimitation and demarcation; cross border cooperation and strengthening the African Union and Regional Economic Communities (RECs).¹⁸⁹ In delimitation and demarcation, the project identifies selected AU member states in the border delimitation and demarcation exercises. Some aspects of the support include trainings on best practices in border demarcation exercises with a view to enhance the technical capacity of border commissions. Moreover, there is support for awareness to border communities on the importance of border reaffirmation exercises so that they are in support of the exercises.

Secondly, the project brings together various stakeholders such as border communities, local, civil society and state actors to implement cross-border cooperation projects at selected borders. Finally, the German sponsored project strengthens the AUBP-unit and selected Regional Economic Communities (RECs) in supporting border governance initiatives of their Member States.¹⁹⁰ This in line with the AU recognition that sub-regional organizations such as ECOWAS and IGAD are instrumental in the success of the border delimitation exercises.¹⁹¹ In their turn, the sub-regional organizations are expected to conduct an inventory of the status of their borders and mobilize necessary resources to facilitate the success of the programme. Moreover, they are required to come up with dispute resolution mechanisms to settle any issues of contention that would arise and derail the process. These constitute significant development in border diplomacy.

The project works with the African Union Commission (AUC) and the RECs to improve their capabilities to exercise their roles as norm developers, multipliers and

¹⁸⁹GIZ, *From barriers to bridges: Support to the African Union border programme*, https://www.giz.de/en/downloads/AUBP_Brochure_ENG_June2016.pdf

¹⁹⁰Ibid.

¹⁹¹ Healy Sally, "Seeking peace and security in the Horn of Africa: the contribution of the Inter-Governmental Authority on Development," *International Affairs* 87, no.1 (2011), pp: 105–12.

coordination platforms. This is an important initiative that has helped add value to African Union Border Programme in its efforts to put an end to territorial conflicts in the continent. It is through the border project that member states have been able to establish or reform their border commissions which are critical in successful implementation of the African Union Border Programme. The project has been active in West Africa where Niger reformed its border commission with Ivory Coast establishing a new border commission through support of the German sponsored project. Togo and Benin have embarked on a joint delimitation exercise of their maritime boundary through support of the programme.

German Society for International Cooperation (GIZ) supports African countries with expertise and digital technology.¹⁹² The AUBP unit conducted a joint research together with the Institute for Peace and Security Studies (IPSS) at the Addis Ababa University on border conflicts at the Horn of Africa and in East Africa. The AU now offers a database with border governance experts to its Member States and the RECs. In 2020, the Assembly of the African Union adopted the African Union Strategy for Better Integrated Border Governance (AUBGS).¹⁹³ It serves as framework for border governance across the continent as well as an instrument of orientation, coordination and coherence of border policies at continental, national and regional levels. The AUBGS carries forward the work previously adopted in 2014 by the AU Convention on Cross-Border Cooperation (the Niamey Convention).¹⁹⁴ The project supports the ratification of the Niamey convention. In total, about six thousand kilometres of border had been delimited and demarcated by 2019 through GIZ support.

¹⁹²GIZ, From barriers to bridges: Support to the African Union border programme, https://www.giz.de/en/downloads/AUBP_Brochure_ENG_June2016.pdf

¹⁹³ African Union, African Union Border Governance Strategy, 2017. retrieved from <http://www.peaceau.org/uploads/2018-06-14-aubgs-e.pdf>

¹⁹⁴ Ibid.

CHAPTER THREE:

BORDER DIPLOMACY AND SECURITY IN THE IGAD REGION

3.1: Introduction

Border diplomacy in Africa began with the adoption of the principle respect for the borders inherited at independence by OAU. The principle major objective was prevention of territorial conflicts by ensuring that states adopted the borders inherited from the colonial masters. It is these colonies that all member states of OAU committed to respect. However, a glaring mistake by OAU was failure to make follow up on the reaffirmation of the borders. The end result was borders that existed on colonial maps with no pillars on ground. This gave leeway for some states to contest each other's borders resulting in territorial disputes. This chapter focused on territorial disputes in the IGAD region which forms part of Kenya's core environment.

3.2: Background to Intergovernmental Authority on Development (IGAD).

The Intergovernmental Authority on Development (IGAD) in E astern Africa was created in 1996 to succeed the Intergovernmental Authority on Drought and Development (IGADD). The latter was founded in 1986 with the mandate to mitigate the effects of drought and other natural calamities that had persistently rocked the region.¹ The countries that came together to form the organization were Kenya, Djibouti, Ethiopia, Somalia, Sudan and Uganda with South Sudan being the latest entrant after its independence on 9th July 2011.² IGAD whose secretariat is based in Djibouti embraced the concept of human security where the main focus

¹Ibori Musa, Idagu Edward and Obiageli Lawrence, Intergovernmental Authority on Development and regional integration in East Africa: Achievements, challenges and prospects, *Global Journal of Political Science and Administration* 7, no.2 (2019), pp.1-11.

²Dersso Solomon, *East Africa and the Intergovernmental Authority on Development: Mapping multilateralism in transition* (New York: International Peace Institute, 2014).

was the well-being of the people in the region. This is by recognizing that there is a need to enhance regional cooperation in priority areas of food security and environmental protection, economic cooperation, regional integration and social development peace and security, since there can be no development in the face of conflicts. The region is a unique one in Africa due to the fact that colonial borders have been redrawn (creation of Eritrea and South Sudan) with the possibility of further redrawing in the near future.³ This is occasioned by the clamour for independence by some states like Somaliland and Puntland. The region is one of the most unstable in Africa with contentious national and regional policies that are a source of mistrust and rivalry between member states. The insecurity in the region takes various forms most notably resource based conflicts where border communities clash over pastures and water. Indeed, the security challenges that IGAD member states deal with are deeply interconnected, with some internal conflicts spilling over to the borders.

The aims of IGAD are clearly outlined in its Article 7 and include but are not limited to encourage members to embrace joint development strategies and gradually harmonize macro-economic policies and programmes in the social, technological and scientific fields.⁴ Further, IGAD aspires to synchronize policies on trade, customs, transport, communications, agriculture, and natural resources and environment, with a view to enhancing free flow of goods, services and people within member states, thereby improving investments.⁵ To further enhance regional development, the body purpose to initiate and promote programmes and projects to achieve regional food security and sustainable development of natural resources and environmental

³Woodward Peter, *Crisis in the Horn of Africa: Politics, piracy and the threat of terror* (New York: I.B. Tauris, 2013).

⁴ Maalim Mahboud, *IGAD role in stability and diplomacy in the Horn of Africa* (London: Chatham House, 2013).

⁵ Ibori Musa, Idagu Edward and Obiageli Lawrence, "Intergovernmental Authority on Development and regional integration in East Africa: Achievements, challenges and prospects," *Global Journal of Political Science and Administration*, 7, no.2 (2019), pp.1-11.

protection, and encourage and assist efforts of Member States to collectively combat drought and other natural and man-made disasters and their consequences.⁶ This would see development and improved a coordinated and complementary infrastructure, in the areas of transport, telecommunications and energy in the region. These objectives are geared towards the promotion of peace and stability in the region and create mechanisms within the region for the prevention, management and resolution of inter-State and intra-State conflicts through dialogue.⁷

Geographically, the IGAD region stretches over an area of 5.2 million kilometre squared that comprises Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda.⁸ It has a coastline that is about seven thousand (7000) kilometres running along the Indian Ocean, Gulf of Eden and the Red Sea. This coastline is strategic making it an important transport hub especially the route to Far East and through the Suez Canal. In addition, the region plays host to various international agencies such as United Nations Environmental Programme in Nairobi, as well as the Headquarters of African Union in Addis Ababa Ethiopia. With such a high presence of international organizations with a diplomatic touch, the policy makers in the region can't afford to ignore the importance of border diplomacy in resolving border conflicts between member states.

States in the region have put in measures to restrict movement of goods and people. These range from immigration and customs checks to ensure that the movement of goods and people are authorized. However, policy makers should be alive to the fact that border controls have politically important perceptual and symbolic effects. Border controls are not merely for deterrent purposes but also project an image of

⁶ Ibid

⁷ Dersso, Solomon, *East Africa and the Intergovernmental Authority on Development: Mapping multilateralism in transition* (New York: International Peace Institute, 2014).

⁸ Ibid.

moral determination and buttressing up the state's territorial legitimacy.⁹ Routine border control mechanisms such as document validations, cargo and luggage screening and patrols of borders are synonymous with state's authority and exercise of power over its subjects as well as visitors to the state.¹⁰ This constitutes an element of Statecraft where power politics is about power politics and show of power through show of government presence. From a realist perspective, border control presents states with an opportunity to display sovereignty and power.¹¹ It's also a form of extending foreign relations where some states have special considerations for visitors from friendly states (waiver of Visa requirements).¹² Even as there is a pronounced erosion of the state's traditional economic and military border control roles, its law enforcement role not only persists, but continues to expand.¹³

3.3: Specific Border Issues in the Intergovernmental Authority on Development Region

The IGAD region has experienced several border conflicts as States contest their common boundaries. It is a region that has witnessed emergence of two new States of Eritrea and South Sudan after successful secession wars. At the same time, other states have also had conflicts over the legality of the colonial borders. However, it is the Somalia case that presents the greatest security challenge to the stability of the region. Soon after independence, Somalia designed a five-star flag which embodied its desire to unite all Somalis in the region to be under one political jurisdiction. The Somali community was divided during the partitioning of the continent and placed in different states of Kenya, Ethiopia, Djibouti and Somalia. Each star in the flag

⁹ Andreas Peter, 'Redrawing the line: Border and security in the twenty-first century,' *International Security* 28, no. 2 (2003), pp. 78–111.

¹⁰ Ibid.

¹¹ Rudolph Christopher, "Sovereignty and territorial borders in a global age," *International Studies Review* 7, no. 1 (2005), pp.1-20.

¹² Torpey John, *The invention of the passport: surveillance, citizenship, and the state* (Cambridge: Cambridge University Press, 2000).

¹³ Cohen Edwards, "Globalization and the Boundaries of the state: a framework for analyzing the changing practice of sovereignty," *governance: An International Journal of Policy and Administration* 14, no. 1, (2001), pp. 75–97.

symbolizes the five territories where the Somali community is found (Ogaden province in Ethiopia, North Eastern Region in Kenya, Djibouti, British Somaliland and Italian Somaliland). This desire to unite the Somali nation is what led to the irredentism clamour in North Eastern Region of Kenya and the Ogaden Province in Ethiopia.

Table 3.1: Border Disputes in the IGAD Region

States	Years	Description of Dispute	Status
Ethiopia Civil war	1961-1993	Eritrea province secessionist war	Resolved with Eritrea becoming an independent state.
Sudan civil war	1955-1972; 1983-2005.	South Sudan secessionist campaign	South Sudan gained independence from Sudan in 2011
Somalia-Ethiopia	1960-date	Somalia laid claim over the Ogaden region of Ethiopia that is inhabited by people of Somali origin.	Ongoing
Uganda-Tanzania	1974-1979	Uganda laid claim to the Kagera Salient which is located south of its border with Tanzania and north of River Kagera	Resolved
Ethiopia-Eritrea Border war	1998-2020	Possession of Badme region situated in the Tigray province as a result of different interpretations of colonial treaties	Disputed region awarded to Eritrea in 2002 but Ethiopia disputed the outcome by Eritrea-Ethiopia Boundary Commission. Conflict ongoing
Uganda-South Sudan border Dispute	2005-2010	Dispute on the border along Kajo-Keji county of South Sudan and Moyo district	Border demarcation and reaffirmation exercise ongoing
Eritrea-Djibouti	2008-2018	Status of Dumeira Mountain and Dumeira Island.	Conflict ongoing
Sudan-South Sudan Border Conflict	2012-2016	Conflict over the Oil rich Abyei region	Conflict ongoing with resolution efforts spearheaded by UN
Ethiopia- Sudan	1966-2002	Ethiopia laid claim over Fashqua and Umbrega triangles along the common border	Not resolved
Kenya-Ethiopia	1963	Dispute over the Gadaduma wells along the common border	Resolved in principle between the two states
Kenya-Somalia	1963-1981	Somalia claimed Kenya's Northern Frontier Districts later called North Eastern Province which wanted to secede and join Somalia.	Resolved after military engagement between Kenyan military and Somalia backed militia (shifta)

Kenya-Sudan /South Sudan	1963-date	Kenya and South Sudan claim over Ilemi Triangle is a likely trigger to conflicts. Kenya asserts its claim on a 1914c border drawn by Britain and later on the red line demarcated in 1938.	Ongoing
Uganda- Kenya	1976	Uganda under Amin Dada claimed parts of western Kenya that was transferred by Britain from the Ugandan Protectorate in 1902 and 1926	Resolved diplomatically
Kenya Uganda	2008-date	Conflict over Migingo Island in Lake Victoria	Ongoing
Kenya-Somalia	2014-date	Conflict over the Indian Ocean Maritime Border	Matter at International Court of Justice

3.3.1: Ethiopia-Eritrea Border Dispute

Eritrea was formerly an Ethiopia province where from 1961 to 1991, it fought a secessionist war with Ethiopia. Eritrea gained its independence from Addis Ababa in 1993, and adopted the boundary that earlier defined it as a province of Ethiopia. This boundary was just an imaginary line on which Eritrea and Ethiopia implicitly agreed that it should form the international border demarcating the two new neighbours.¹⁴ Being a silent agreement, this border issue would later on be a source of conflict between the two states especially with the confusion surrounding the interpretation of the colonial treaties between Ethiopia and Italy. Amidst this confusion, Eritrea claimed ownership of Badme region which is situated in the Tigray province. This sparked a serious conflict in 1998 where Eritrea soldiers clashed with security officials from the region. Ethiopia would later on declare total war against Eritrea after notifying the United Nations Security Council in line with Article 521 of the United Nations (UN) Charter.¹⁵

In response, OAU initiated mediation process and was backed by joint efforts from United States of America (USA) and Rwanda. The peace process called both parties

¹⁴Terrence Lyons, "The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa," *Review of African Political Economy*, 36, no. 120 (2009), pp. 120-167.

¹⁵ *Ibid.*

to withdraw their troops from the disputed region, something which Asmara opposed and instead demanded that there be a demilitarization of all disputed areas along the common border.¹⁶ Eritrea further demanded that the pacified areas be monitored by a neutral force while peace talks took place. These talks were unsuccessful as Ethiopia continued to occupy Eritrea's territory. In retaliation, Asmara supported the Oromo Liberation front which had set base in Somalia.¹⁷ The conflict spilled over to the Horn of Africa where Ethiopia supported rebel groups in Somalia and Sudan.

A second round of peace talks was initiated in Algiers Algeria resulting into a Comprehensive Peace Agreement (CPA) in December 2000.¹⁸ As a result of the CPA process, the Eritrea-Ethiopia Boundary Commission embarked on a boundary awarding exercise.¹⁹ The disputed area was awarded to Eritrea, a move that was vehemently opposed by Ethiopia. Four years later, another conflict ensued when Ethiopia failed to participate in a border demarcation and reaffirmation exercise spearheaded by the Eritrea-Ethiopia Boundary Commission.²⁰ This led to the two states severing diplomatic relations for several years. It took the intervention of Prime Minister Mohammed Abiy Ahmed who diplomatically engaged his Eritrean counterpart Isaias Afewerki.²¹ Abiy's diplomatic prowess was boosted by increased back-channel talks by Saudi Arabi and United Arabs Emirates. The two Arab nations have expressed interest in the Horn of Africa in a bid to curb Iran's influence in the region.²²

¹⁶ Stauffer Ulrich, *Ethiopia and Eritrea Peace Treaty and end of UN-sanctions* (Basel: Afrika-Komitee, 2018), p

¹⁷ Sally Healy, *Lost Opportunities in the Horn of Africa: How Conflicts Connect and Peace Agreements Unravel*, (Chatham House Horn of Africa Group Report, 2008).

¹⁸ Lyons Terrence, "The Ethiopia-Eritrea Conflict and the Search for Peace in the Horn of Africa," *Review of African Political Economy* 36, no. 120 (2009), pp. 120-167.

¹⁹ Woldemariam Michael, *The Eritrea-Ethiopia thaw and its regional impact*, p. 184. <http://www.currenthistory.com/Woldemariam-CH2019.pdf>

²⁰ Stauffer Ulrich, *Ethiopia and Eritrea Peace Treaty and end of UN-sanctions* (Basel: Afrika-Komitee, 2018), p.3.

²¹ Ibid.

²² Woldemariam Michael, *the Eritrea-Ethiopia thaw and its regional impact*, P. 184. <http://www.currenthistory.com/Woldemariam-CH2019.pdf>

3.3.2: Eritrea-Djibouti Border Dispute

Eritrea and Djibouti were involved in a border dispute over the status of Dumeira Mountain and Dumeira Island, where both states claimed territorial ownership. Geographically, Dumeira Island is located off the coast of the Eritrea and Djibouti at the Southern end of the Red Sea.²³ It's a strategic island due to its proximity to Babel-Mandeb strait, an important shipping lane for global commerce.²⁴ The conflict escalated between in 2008 when Djibouti claimed that Eritrea had violated its territorial integrity by deploying troops on its land. In June 2018, militaries of the two nations clashed. The conflict attracted interest from outside Africa with France providing logistical, medical and intelligence support to Djibouti.²⁵

Historically, there was a boundary agreement between France and Italy of 1900 which outlined the border between the two states. According to the agreement, the border starts at *Cape Doumeira (Ras Doumeira)* at the Red Sea and runs for one and a half kilometres along the watershed divide of the peninsula. Apparently, this agreement was not explicit as it did not provide a clear legal provision on which state owned the Doumeira Island and its adjacent smaller islets.²⁶ This lacuna in the agreement triggered the conflict between French Somaliland (Djibouti) and Eritrea.

In 1935, a critical border diplomacy development occurred when France and Italy signed the Franco-Italian Agreement. In this agreement, the two colonial powers agreed that some parts of French Somaliland (Djibouti) be given to Italy (Eritrea). However, those involved in drafting the agreement omitted a critical component of border management, the demarcation and reaffirmation of the Eritrea-Djibouti

²³Mansour Ahmed and Yehia Ahmed, "Saudi Arabia and UAE in the Horn of Africa: Containing Security Threats from Regional Rivals," *Contemporary Arab Affairs*, 12 no. 3, (2019), pp. 99-118.

²⁴ Peter Woodward, *Crisis in the Horn of Africa: Politics, Piracy and the Threat of Terror* (New York: I.B. Tauris, 2013),

²⁵Casper Lawrence, *Falcon Brigade: Combat and command in Somalia and Haiti hardcover*, (Lynne Rienner Publishers, Inc. 2002).

²⁶ Kevin Frank, "Ripeness and the 2008 Djibouti-Eritrea border dispute," *Northeast African Studies*, 15, no. 1 (2015), pp. 113-138.

border.²⁷ This was the epitome of the border conflict between Eritrea and Djibouti. The conflict attracted international attention with some countries like France taking sides. Others like the United States of America, Arab League and United Nations condemned the conflict advocating for diplomacy. Regional neighbours like Ethiopia also waded into the conflict with Addis Ababa proclaiming that it was ready to employ all means possible to safeguard its trade corridor with Djibouti.²⁸ To the international actors, Eritrea was the aggressor and called on Asmara to withdraw its troops. In 2009, the United Nations Security Council passed Resolution 1907 where it imposed arms embargo on Eritrea.²⁹ The Security Council also imposed travel bans on top leaders of and froze the assets of some of the country's political and military officials.³⁰ The United States and African Union were in agreement that Eritrea should adopt dialogue to resolve the dispute. Eritrea response was negative as it accused the United States of meddling in its sovereignty. As a protest, Eritrea rejected the deployment of African Union peace keeping mission in the disputed area. The conflict threatened regional stability with the involvement of Ethiopia. Eritrea also reached out to Somalia in a bid to win its support in pushing for the lifting of sanctions imposed by UN.³¹

The international pressure was meant to compel Eritrea to move its troops out of the disputed area, but the efforts did not bear fruits. The stalemate took a twist in 2010 when Eritrea and Djibouti agreed to mediation spearhead by Qatar. The mediation process was able to guarantee a ceasefire and a period of relative calm. Qatar deployed troops to act as a buffer between the two warring states a move that was

²⁷Abbink John, Ethiopia—Eritrea: proxy wars and prospects of peace in the horn of Africa, *Journal of Contemporary African Studies* 21, no. 3 (2003), pp. 407-426.

²⁸Ibid.

²⁹ Franklins Steve, 'Regime change and war: Domestic politics and the escalation of the Ethiopia-Eritrea conflict,' *Cambridge Review of International Affairs* 16, no. 1 (2003), pp. 119-133.

³⁰Bareketeab Redie, 'The morality of the U.N. Security Council sanctions against Eritrea: Defensibility, political objectives, and consequences,' *African Studies Review* 56, no. 2 (2013), pp. 145-161

³¹ Macharia Munene, Conflict and postcolonial identities in East/the Horn of Africa, in Omeje Kenneth (ed), *The crisis of post-colonialism in Africa* (Dakar, CODESRIA, 2015), pp. 123-142.

supported by both parties. In June 2017, Qatar withdraws its troops, creating anxiety that the conflict would escalate. One month later, Djibouti wrote to the United Nations to request for diplomatic interventions in resolving the conflict.³² Djibouti beseeched the United Nations Security Council to intervene and find a lasting solution that would be legally binding on the right ownership of the Dumeira Mountain and Dumeira Island.³³ However, with the intervention of Ethiopia, the conflict ended on September 2018 when Eritrea and Djibouti agreed to normalize diplomatic relations. However, suspicion still exists between Eritrea, Djibouti and Ethiopia with Djibouti being lukewarm to the peace deal between Eritrea and Ethiopia.³⁴ This is partly informed by economic interests where landlocked Ethiopia uses the port of Djibouti for its export and import trade. With renewed diplomatic relations, there is a feeling that Ethiopia might go back to using Asmara port, at the expense of Djibouti. This is an example of how economic interests can affect diplomatic relations and border diplomacy between neighbouring states.

3.3.3: Uganda-South Sudan Dispute

A border dispute emerged in 2005 between communities in the Kajo-Keji county of South Sudan and Moyo district in Ugandan.³⁵ Although the border dispute never degenerated into armed confrontations, there have been cases of armed militias from South Sudan crossing into Uganda and being repelled by the army. At the same time, there have been instances where South Sudan's soldiers have crossed into Uganda and erected barriers in Lamwo district. Such tensions and incidents of violence along the border have hampered cross border trade and joint development projects such as

³²Mutambo Aggrey, *Djibouti border dispute could roil Ethiopia-Eritrea peace deal*, 23 July 2018 (Daily Nation) <<https://www.nation.co.ke/news/africa/Djibouti-border-dispute-could-roil-Ethiopia-Eritrea-peace-deal/1066-4677248-7ds9a6/index.html>>

³³United Nations letter dated 18 February 2019 from the Secretary-General addressed to the President of the Security Council <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2019_154.pdf>

³⁵Cherry Leonardi and Martina Santschi, *Dividing communities in South Sudan and Northern Uganda: Boundary disputes and land governance*, (Nairobi: Rift Valley Institute, 2016).

roads.³⁶ The Presidents of Uganda and South Sudan met in November 2010 to promote the peaceful resolution of the dispute. Through the Summit diplomacy, a 26 members' joint committee was formed with the mandate of resolving the dispute by demarcating the border between the two neighbours.³⁷ The committee benefited from African Unions Border Programme trainings on border demarcation, as part of African Union support to member states in the field of border reaffirmation.

3.3.4: Sudan-South Sudan Border Conflict

South Sudan's got its independence from Sudan in 2011 after a protracted civil war (from 1955 to 1972 and 1983 to 2005). This was a conflict that saw over two million people lose their lives and double that figure become refugees in other countries such as Kenya.³⁸ The secessionist campaign was spearheaded by the Sudan's People Liberation Movement under John Garang and sought political independence of the black community from the Arab led Khartoum regime. The war ended after diplomatic efforts that culminated into a referendum where the people of South Sudan overwhelmingly voted for secession.

However, the new State found itself in a serious border conflict with Sudan over the common boundary especially in the Oil rich Abyei region.³⁹ The conflict escalated into a full blown war in May 2012 when Sudan seized the region after several days of clashes with South Sudan. Apart from the Abyei conflict, South Sudan invaded the oil rich Heglig area in 2012 forcing Sudan to retaliate. The conflict came to an end after the signing of the agreement on borders and natural resources on September 2016 under the auspices of African Union.⁴⁰ With regard to the Abyei disputed

³⁶ Ibid.

³⁷ Poggo Scopas, *The First Sudanese Civil War: Africans, Arabs, and Israelis in the Southern Sudan, 1955-1972* (London: Palgrave Macmillan US, 2011).

³⁸ Gebrewold Belachew, *Anatomy of violence: Understanding the systems of conflict and violence in Africa*, (Farnham: Ashgate Publishing Company, 2009).

³⁹ Craze Joshua, Jérôme Tubiana & Claudio Gramizzi, *A state of disunity: Conflict dynamics in unity state, South Sudan, 2013-15* (Geneva: Small Arms Survey, 2016).

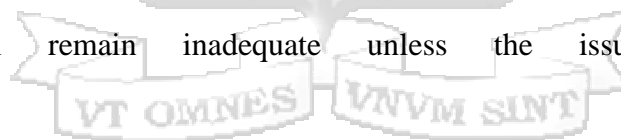
⁴⁰ Natsios Andrew, *South Sudan and Darfur: What everyone needs to know*, (Oxford: Oxford University Press, 2012).

region, the UN has taken a leading role in trying to resolve this conflict. Through its interim Security Force, UN has helped to monitor the peace process while using diplomacy to try and make the leadership of the two states agree on a long lasting border agreement.⁴¹

3.5: Conclusions

As the region deals with various forms of conflicts such as border disputes, IGAD has to reorganize itself to be able to wade through the border disputes between member states. In doing so, it has to address some inherent challenges among them historical enmity, mistrust and antagonism among IGAD countries.

There is also the challenge of the region remaining prone to outbreak of internal disputes as well as border related conflicts, a case in point being the recent conflict in South Sudan. In addressing these challenges, the body lacks a common economic body with states being members of multiple economic groupings. This is compounded by lack of a clear hegemon with Ethiopia and Kenya vying for leadership. With all these challenges, the role of IGAD peace and security in the region will remain inadequate unless the issues are addressed.



⁴¹United Nations, 'Unique opportunity' to resolve border dispute between Sudan, South Sudan. 24th October 2018.

CHAPTER FOUR:

KENYA'S TERRITORIAL THREATS SINCE INDEPENDENCE

4.1: Introduction

Kenya's core environment is in the Greater Horn of Africa whose members also form the Inter-Governmental Authority on Development (IGAD).¹ It is a region that has attracted a lot of interests globally due to several decades of armed conflicts, displacement of people and severe hunger crises.² It is a region that is gearing towards a new order as global powers compete to gain strategic advantage in controlling the region due to its geostrategic location that is the sea route and closeness to Middle East.³ It is also a region that has experienced several territorial disputes some even resulting in new states like Eritrea and South Sudan.

The United States of America, China, European and Middle East powers have established economic, political and military interests in the region.⁴ The United States for instance is concerned over Chinese growing interests in the region. This is informed by China setting up a military base in Djibouti and its diverse economic investments in the regions.⁵ China has emerged as an economic power that is competing with US in dominance of global power, marking a shift from the cold war era where the Soviet Union competed with America over control of the Horn of Africa.⁶ This puts Kenya in an awkward position as it tries to gain foothold in the region which is its core environment.

¹Wasara Samson, 'Conflicts and state security in the Horn of Africa: Militarization of the civilian group,' *African Journal Political Science* 7 no. 2 (2002).

² Kabandula Abigail and Timothy Shaw, 'Rising powers and the horn of Africa: conflicting regionalisms,' *Third World Quarterly* 39 no. 12 (2018) pp. 2315-2333

³ David Lake, 'Regional security complexes: A systems approach', In Patrick Morgan and David A. Lake (eds), *Regional orders – Building security in a new world* (University Park, PA: Pennsylvania State University Press, 1997), p.31

⁴Christopher Cramer, *Civil war is not a stupid thing: Accounting for violence in developing countries* (London, Hurst and Company, 2006), 79–80.

⁵ Holbrooke Richard, 'The next president: Mastering a daunting agenda', *Foreign Affairs* 87, no.5, (2008), pp.2–24.

⁶ Donna Jackson and Jimmy Carter, *Horn of Africa: Cold war policy in Ethiopia and Somalia* (North Carolina: McFarland & Company Inc).

There are a numbers of notable developments in the Horn of Africa that are of interest to Kenya. Ethiopia and Eritrea renewed diplomatic relations ending years of hostility and diplomatic isolation for Eritrea. Asmara has entered into various pacts with Ethiopia, Djibouti and Somalia in an effort to enhance its international standing as it seeks to have international sanctions lifted.⁷ In all these diplomatic efforts, Ethiopia has taken a leading role overshadowing Kenya which is known for its diplomatic acumen.

Ethiopia has also has embarked on utilization of the Nile waters to the chagrin of Egypt which has threatened to use all means at its disposal to protect the flow of the Nile which is its lifeline. The country is in the process of constructing the Grand Renaissance dam which is expected to produce hydroelectricity to power its industries as well as export to neighbours such as Kenya and Djibouti. In this regard, an analysis of Kenya's foreign policy and grand strategy towards other state actors in the region is critical.

4.2: An overview of Kenya's Foreign Policy/Diplomacy towards its neighbours

This section examines Kenya's foreign policy towards states in its operational environment in the light of the changing international system. A historical analysis of Kenya's foreign policy reveals that it has changed in terms of themes which could be attributed to the dynamism in the external environment. At independence, Kenya practiced quiet diplomacy characterized by a low profile approach to international affairs. While Ethiopia allied itself with the erstwhile USSR and Cuba, Somalia aligned with the United States of America and Tanzania became the intellectual

⁷Wasara Samson, "Conflicts and state security in the Horn of Africa: Militarization of the civilian group," *African Journal Political Science* 7, no. 2, (2002).

hotbed for the Third World left, Kenya maintained poised neutrality and a policy of non-intervention.⁸

During President Moi's era, Kenya's foreign policy was marked by active involvement in regional peace diplomacy. This policy was largely informed by need to protect the country from spill overs of regional conflicts by maintaining a approach of ideological ambivalence- being neither a friend nor a foe of regional and international powers.⁹ Kenya was also engaged in conflict mediations which were the main feature of Kenyan diplomacy during and after the cold war period. Kenya became the venue for peace negotiations between the warring sides in Sudan, Somalia, and Uganda. Various agreements were negotiated and concluded in Nairobi, including the 1985 peace deal between the Ugandan government of President Tito Okello and his main antagonist Yoweri Museveni, the leader of National Resistance Army (NRA) which was fighting to topple Obote.¹⁰

In the era of President Kibaki, Kenya's foreign was economic oriented with a shift in policy where Kenya turned to the East (China and Japan) as its new major economic partners in efforts to revamp the economy.¹¹ Besides economic diplomacy, diplomacy of peace mediation took place specifically the signing of the 2005 Comprehensive Peace Agreement between the Khartoum based Sudan government and the South Sudan People's Liberation Movement (SPLM).¹² The mediation efforts ended Africa's longest-running civil war, and led to the emergence of South Sudan as the newest state in the international system. Kenya also played an important mediation role in the Somali conflict, hosting the negotiations and the signing of the

⁸Howell John, "An Analysis of Kenya's foreign policy," *The Journal of Modern African Studies*, 6, no. 1 (1968), pp. 29-48.

⁹ Makinda Samuel, "From quiet diplomacy to cold war politics: Kenya's foreign policy," *Third World Quarterly* 5, no. 2 (1983), pp. 300-319.

¹⁰Mabera Faith, "Kenya's foreign policy in context (1963-2015)," *South African Journal of International Affairs* 23, no. 3, (2016), pp. 365-384

¹¹ Miatta Fahnbulleh, "In search of economic development in Kenya: Colonial legacies & post-independence realities," *Review of African Political Economy*, 33, no. (2016), pp. 107, 33-47

¹² Mabera Faith, "Kenya's foreign policy in context (1963-2015)," *South African Journal of International Affairs* 23, no. 3, (2016), pp. 365-384

agreement that led to the creation of the Transitional Federal Government (TFG) of Somalia in 2004. This strategy by Kenya put it on the world map as a state with good diplomacy, thereby earning it some good diplomatic reputation in the region.¹³

Presently, the foreign policy of Kenya is anchored on five major pillars: Economic, Peace, Environmental, Cultural and Diaspora. These pillars are critical in this study as they can be utilized in border diplomacy as tools of safeguarding Kenya's territorial integrity and resolving territorial disputes arising. The purpose of Economic diplomacy is to achieve a robust and sustained economic transformation that will help the country realize its economic and social goals in line with the ambitious Vision 2030.¹⁴ This economic development cannot be achieved in the absence of peace. Therefore, through Peace Diplomacy, Kenya purposes to capitalize on its rich legacy in promoting peace and stability in the region as necessary conditions for development and prosperity in countries within its core environment (IGAD). Environmental Diplomacy recognizes Kenya's enormous stake in the sustainable management of its own natural resources, both regionally and globally.¹⁵ Kenya has a rich cultural heritage which through Cultural Diplomacy can be utilized as an important aspect in its relations with other countries in the international system. On its part, Diaspora Diplomacy seeks to utilize the capabilities of Kenyans living abroad in the national development agenda.¹⁶

The need for the country to secure the regional and wider economic objectives largely informs Kenya's foreign policy. The main focus is on how the country can strengthen regional organizations particularly the East African Community (EAC) and IGAD as vehicles of economic integration and prosperity as well as avenues of

¹³ Ibid.

¹⁴ GOK, Kenya foreign policy, (Nairobi; Government Printer, 2014).

¹⁵ Ibid

¹⁶ Ibid

resolving disputes between member states.¹⁷ Therefore, it is through the foreign policy objectives that Kenya strives to enhance its foothold in the region by putting measures aimed at promotion and protection of national, regional and international peace and security and protection of its sovereignty and territorial integrity.

The implementation of this policy is spearheaded by the Ministry of Foreign Affairs and International Trade to improve regional integration and cooperation. This is not only as a means of creating peace and stability, but also as a way of fostering economic growth in Kenya and the wider African community. To quote the policy, “Kenya continues to play a lead role in fast-tracking regional and continental integration so as to boost intra-African trade as part of the efforts to reduce economic marginalisation of Africa in the global economy. The overarching objective is the improvement of Kenya’s competitiveness for foreign direct investments and that of its export products, increase of market access and developing its attractiveness as a leading tourist destination.”¹⁸

Diplomacy is the strategy that implements the foreign policy of a state. In line with grand strategy, it is one of the three sources of national power which the state uses to guide its interrelationships with other state actors in the international system. States have diplomatic doctrines that guide them on how to about interactions devoid of war. To effectively achieve its national interest, a state needs to formulate a good grand strategy. This grand nested is nested on the three elements of national power which are the implementation vehicles of the grand strategy.

According to Mwangiri, there is a choreography of response tools which must happen in a certain order with diplomacy taking the centre stage and the other two providing supportive roles. But this is informed by the nature of threat to national interest

¹⁷ Maberu Faith, “Kenya’s foreign policy in context (1963–2015),” *South African Journal of International Affairs* 23, no. 3, (2016), pp. 365-384

¹⁸ GOK, Kenya foreign policy, (Nairobi; Government Printer, 2014).

where a mix of either of the two or all of them can be applied. But in best international practise, the military tool is a last measure and its application is regulated by international law regime such as Article 2(4) of the UN charter. The military tool was the preferred one in the traditional security especially with the Westphalian State system where the military was used to conquer territories and rule over them. Balance of power was expressed in the form of a large and well equipped military for defence and offensive purposes. Powerful states like the United States of America used military as one of the tools of asserting its dominance in the globe. However, diplomacy has taken centre stage as a serious tool to address conflicts between states and also further national interests.

4.3: Kenya Grand strategy towards the Horn of Africa

Kenya aspires to assert itself as the regional power amidst stiff competition from its neighbours Ethiopia and Tanzania. The country has fashioned its international image as a regional hub for peace, transport and diplomacy while playing host to a number of International agencies (United Nation Environmental Programme, United Nations Office on Drugs and Crime, International Civil Aviation Organization). The country has also midwived several peace processes such as South Sudan and has troops in Somalia as part of African Union's efforts to pacify the war torn Somalia. However, there have been concerns on whether Kenya has a Grand Strategy towards its neighbours in the volatile Horn of Africa and IGAD region. To be able to effectively answer this question, it is ideal to understand the concept of Grand Strategy, its meaning, formulation and implementation.

For a country like Kenya to be able to survive in its core environment, it has to coordinate and direct its resources towards the attainment of its national security objectives. This is made possible through a grand strategy which can be defined as a

practical plan by the state on how to utilize its military, economic and diplomatic means to achieve its political ends or national interests over a given period of time in the most cost effective way.¹⁹ Going by this definition, the grand strategy can be described as a three-legged stool, with each leg signifying the elements or national power (military, economy and diplomacy). This is a traditional perspective where the three sources of national power are a result of the evolution of the modern state and enables the state to interact with other state actors in the operating environment.

According to Makumi Mwagiru, the three elements of national power represent a world view of states in the modern international system.²⁰ Their major concern is how the state will survive in the international system. Therefore, the concerns or stakes of the grand strategy are too high as they mean the survival of the state. Consequently, the grand strategy process is the highest form of strategizing that key policy makers undertake. It is the grand strategy that harmonises all policies and plans of the state towards safeguarding a state's national interests from threats that emanate from its operating environment.²¹

Grand strategy identifies threats to the survival of the state for the three sources of national power to address. This is done through a comprehensive analysis of the external environment of the state. In so doing, the formulators of the grand strategy must ensure that the stool is balanced to avoid instability in the state. A critical question is whether Kenya has a grand strategy in place and if yes, how effective has it been. There is a debate on whether small powers like Kenya need to be concerned with the business of grand strategy or it should be a preserve of powerful state actors like the United States and Russia. Kenya has the three elements of national power,

¹⁹Betts Richards, "The grandiosity of grand strategy," *The Washington Quarterly* 42, no. 4 (2019), pp. 7-22.

²⁰Mwagiru Makumi, *Policy and strategy in national security: context, perspectives and challenges in East Africa*, (Nairobi: Three Legs Consortium, 2017).

²¹ Wanyande Peter, 'Emerging Dimensions of Security in the IGAD Region,' In Makumi Mwagiru *African Regional Security in the Age of Globalization*, ed, (Nairobi: Heinrich Boll Foundation, 2004) pp. 67-82.

the military, economy and diplomacy. The bone of contention is whether the policy makers have been able to balance the stool. Despite having one of the best militaries and diplomatic presence in the region, the economy of Kenya is not advanced. This makes the balancing task of the three legged stool (grand strategy) a difficult one.

In analysing the threats that faces Kenya, a historical analysis of its interactions with its other state actors in the operational environment is important. This is because this history contains vital lessons and how they can inform present and future decisions with regard to states interactions.²²

Even though there is no written document that can be authoritatively be referred to as the grand strategy of Kenya, there exist policy documents such as foreign policy, national security strategy and defence strategy, which must inform Kenya's grand strategy toward the region. Kenya faces a myriad of threats to its national interests especially claims of its territorial from some of its neighbours.²³ At the same time, its economic dominance is under threat from its neighbours such as Ethiopia and Tanzania, hence the need for flexibility in its policy approach towards the region.

4.4: Competing views on Kenya's Grand strategy towards states in the Horn of Africa

In its effort to assert itself in the Horn of Africa, Kenya has to contend with competing views about its strategic approach towards the region. These competing views revolve around the traditional approaches of realism and liberalism specifically targeting what would be referred to as the country's grand strategy and its three elements of national power. As a source of national power, the military as a hard approach to Kenya national security points to a leaning towards realists' as evidenced in the composition of the National Security Council and its subordinate

²²Mwagiru Makumi & Njoroge Humphrey [eds.], *Grand Strategy in Kenya: Vol. 1: Concepts, Context, Process and Ethics*, (Nairobi: Three Legs Consortium, 2014).

²³ Ibid

organs. The provisions of the Constitution (2010) on National Security and supporting statutes compound this problem. For instance, the constitution in article 138 provide for the three national security organs (Kenya Defence Forces, National Intelligence Service and National Police Service) to safeguard Kenya's territory from any external and internal threats.²⁴ This is reflected in Kenya's policy and approach towards the Horn of Africa. From a realist perspective, the country has sought to continuously allocate huge budgets to its security agencies, cognisant of the threats presented by the region.

Additionally, Kenya has entered into pacts with allied countries such as the defence pact with Ethiopia and is also a contributing nation to the East Africa Standby Force. On the other hand, Kenya's foreign policy advocates for diplomacy in engaging with its neighbours especially on matters of national security. For instance, in its fight against terrorism, Kenya had to employ diplomacy to seek support of the international community as it sent its troops to Somalia. Kenya has fronted itself as a regional peacemaker which has earning it a good reputation in the international arena. The country is an important contributor to various United Nations Mission as well as African Union. Case in point is South Sudan and Somalia where Kenya has contributed troops to peace keeping missions for the UN and AU respectively. However, in doing so, Kenya has to balance multiple security agendas, ranging from following a responsibility to protect, to pursuing economic self-interest, to executing international counterterrorism agendas.²⁵

The war against terror has attracted competing views among Kenya policy makers largely realism versus liberalism. Kenya's geographic proximity to the war-torn Somalia, its long porous border and many Western interests in Nairobi make the East

²⁴ Government of Kenya, *The Constitution of Kenya 2010*, (Nairobi: Government Printer, 2010.)

²⁵Bachmann Jan, "Kenya and international security: Enabling globalization, stabilizing 'stateness', and deploying enforcement," *Globalizations* 9, no. 1, (2012) pp. 125-143.

African nation vulnerable to terror attacks especially from Somali based *Al Shabaab*. Of interest to this study is the political and ideological objectives of *Al Shabaab* which seeks to establish a caliphate in the East African region. The establishment of this caliphate is in itself a threat to the existence of Kenya as a state as it would mean ceding political sovereignty and territory to the terror group. There are those in and out of government who are of the view that Kenya need to continue with its effort in and out of Somalia until the terror group is neutralised. The competing view is that the country has its troops in Somalia yet *Al Shabaab* is able to carry out attacks in Kenya's territories. There is a perception that the continued attacks within the Kenya territory is informed by presence of Kenyan troops in Somalia. It is the feeling of this school of thought that Kenya should withdraw its troops and channel the resources both human and money towards securing the country from further infiltration by *Al Shabaab*. They also base their argument that the war against terror is not a viable concept as Kenya Defence Forces joined African Union Mission in Somalia (AMISOM) thus transforming into a peace keeping mission. What this portends for Kenya's decision making is that it cannot make unilateral decision but has to consult AU.

The strategy to use in securing Kenya from various cross border crimes along its porous border with Somalia attracts different perspectives which also inform formulation of policies. These cross border crimes are perpetuated by criminal groups that violate the territorial borders especially in the ungoverned areas where there is little government presence. There are those who are in support of hard approach that include construction of a wall, deployment of security personnel to secure the porous border, and in extreme measures closure of the border. Others view this as an exercise in futility, a waste of public funds and one that may strain

relationship between the two East African neighbours. Those in support of the soft approach argue that Kenya has to consider the cross border communities that interact with each other regardless of the physical border.

The Kenya Somalia border is porous, stretching to about six hundred and eighty-two (682) Kilometres. It is a border that was inherited from Britain upon independence and presents some of the serious territorial and security threats to the country. It is a source of territorial disputes between Kenya and Somalia. Additionally, several cross border crimes take place along the border such as illegal migrations, smuggling of illicit goods, illicit drugs trafficking and entry of terrorists who carry out atrocities inside Kenyan territory.²⁶ In order to address some of these security challenges, the Kenya government came up with a policy to secure its border with Somalia through the construction of a security wall at a cost of 3.4 billion Kenyan shillings as a part of its border security management strategy. The plans were mooted in the wake of the deadly Garissa university college terror attack that claimed the lives of 148 Kenyans on the fateful 2nd April 2015. The plan was to come up with a two feet wall fitted with Closed Circuit Camera Television (CCTV) cameras and designated immigration and custom points to regulate movement of people and goods. The announcement of the plan was received with mixed reactions with a section of Kenyans in support and another against. Those in support saw the move as a positive one in securing the long porous border with the war torn neighbour. On the other hand, some felt that the move was a ploy to swindle public resources as four years down the line, the project has moved at a slow pace with the fence being substandard. Communities along the border also feel that the security wall would separate them from their kinsmen living

²⁶Konrad Victor, "Towards a theory of borders in motion," *Journal of Borderland Studies*, 30, no.1 (2015) p.3.

across the border. This is a pointer to problems created by the British colonial masters who drew a border line separating communities such as the Somali.²⁷

In context, Kenya is host to about half a million refugees, majority of them from Somalia (54%). The rest are from Ethiopia, South Sudan, Rwanda, Eritrea and Uganda. The refugees are housed at Kakuma, Dadaab and Urban areas in Kenya. The refugee issue attracts perspectives that are contending in that there is a feeling that Kenya should not continue hosting them yet they pose a security and environmental threat. On the other hand, there is a school of thought that Kenya is bound by the international law regime to host the refugees. In May 2016, following a spate of terror attacks in Kenya, the Kenyan government in an unprecedented move decided to close Dadaab Refugee camp which host about half of the total refugees' population in Kenya. This move attracted competing views with those supporting the move citing security concerns, environmental degradation and economic burdens as reasons why refugees should go back to Somalia. They also felt that sections of Somalia such as Jubaland had been pacified and hence refugees had a safe place to settle. However, Kenya was not able to actualise this plan unilaterally as the international community intervened forcing Kenya to halt the plans and allow for negotiated plans on repatriations.

There have been claim that closure of the camp is against the principle of non-refoulement.²⁸ According to this principle, all states are obliged by international law not to repatriate any persons to a state where his/her life or freedom will be at threat based on religious, racial, nationality or socio-political affiliations.²⁹ Moreover, the Kenyan High Court declared the move to close refugee camps as unconstitutional in

²⁷Castagno Alphonso, "The Somali-Kenyan controversy: Implications for the future," *Journal of Modern African Studies* 2, no. 2 (1964) p. 165.

²⁸Allain Jean, "The jus cogens nature of non-refoulement," *International Journal of Refugee Law* 13, (2001), 533-534.

²⁹ Molnar Eszter "The principle of non-refoulement under international law: Its inception and evolution in a nutshell," *COJOURN* 1, no, 1 (2016), pp.51-61.

2017 as Kenya has international obligation to safeguard the rights of the refugees. Regardless, Kenya seems determined to close the refugees' camps despite the competing views from the international community and a section of the civil society. Diplomacy is one of the three elements of national power and an arm of the three legged stool of Grand Strategy. Indeed, diplomacy has been one of the tools used by Kenya in responding to territorial threats in the Horn of Africa region, particularly Somalia. Therefore, pursuance of diplomacy against the backdrop of territorial threats emanating from Somalia and other Kenya neighbours is another issue that attracts competing views. The constitution as well as foreign policy of Kenya is supposed to provide a grand strategy that steers the country in its engagement with other players in the operating environment. However, the contrary is evident with no clearly outlined response strategy. The Kenyan constitutions and foreign policy document, appears to have competing policy objectives. Whereas on one hand the foreign policy document provides for peaceful means towards resolution of conflicts, the constitution on the other hand mandates the Kenya Defence Forces to protect the country against external aggression. This opens the Pandora box where competing views take centre stage. For instance, the foreign policy document recognises the need for Kenya to respect international norms, customs and laws, yet the country's top policy makers disregarded by toying with the idea of closing the Dadaab refugee camp despite its international obligations and the principle of non-refoulement.

The economy is the third element of national power, and part of the three legs that makes the grand strategy. The economy is one of the five pillars of foreign policy of Kenya where it appreciates the fact that the economy is critical in supporting the national security policy and foreign policy. The Horn of Africa region offers a good option for market for Kenyan products and services as well as source of raw

materials. At the same time, the territorial boundaries in the region have natural minerals that if well utilised can spur economic growth. Ironically, most of the territorial disputes that face Kenya are centred in areas with mineral prospects. Kenya appreciates that regional stability is a key ingredient in achieving its economic agenda and therefore has invested in peace and security of its neighbours such as Somalia and South Sudan. It has also pursued bilateral and multilateral diplomacy with other stable countries in the region as outlined below.

There are ongoing concerted efforts to enhance between states in the region such as massive road and railway projects. The Lamu Port-South Sudan Ethiopia Transport (LAPSET) transport corridor is a critical project that is to link Ethiopia and South Sudan with the Lamu port for import and export trade. However, this is at risk due to the ongoing conflicts in South Sudan and Somalia which threaten the safety of goods on transit. Thus, it is the policy of the government to enhance regional and global peace and security so that the economic pillar gains. On the other hand, there is a contrary opinion that Kenya should concentrate its resources in trading with peaceful countries in the region and further abroad as opposed to pursuit of the elusive peace in troubled states. In this regard, the Kenya government under the leadership of President Uhuru Kenyatta has embarked on diplomatic endeavours to court Ethiopia to enhance trade. As late as March 2019, the leaders of Ethiopia and Kenya held bilateral negotiations that bordered on trade and investment. The hallmark of the meeting was review of the Special Status Agreement (SPA) signed in 2012 to enhance economic partnership. SPA focuses on trade, investment and food security between the two states that have attracted several investments from China in a look east policy.³⁰ However, the bigger picture is an expanded market that covers the

³⁰Corkin Lucy, "Redefining foreign policy impulses toward Africa: The roles of the MFA, the MOFCOM and the Exim Bank," *Journal of Current Chinese Affairs* 40 no. 4 (2011), p.62.

Horn of Africa States of Eritrea, Djibouti and Somalia. Some of the joint projects between Ethiopia and Kenya include Moyale Joint city and Economic Zone, Lamu-Garissa-Isiolo-Moyale and Moyale-Hawassa-Addis Ababa road networks and power supply where Ethiopia is set to supply Kenya with about 400MW of hydro-power from the Grand Ethiopian Renaissance Dam. However, these economic engagements can be severely dented by the unresolved territorial disputes between Kenya and some of her neighbours.

4.5: Territorial Disputes that Have Faced Kenya since Independence

Kenya's territorial threats in this section were analysed under post-Independence conflicts and current territorial threats. The post-independence territorial disputes were between Kenya and its two neighbours Somalia and Uganda and occurred during the reign of the first president of Kenya Jomo Kenyatta. These threats are critical for this study as they were largely informed by the colonial territorial legacy and the approach by Kenya was largely hard in nature with deployment of military and diplomacy being the last resort. The current threats are also with the same states as will be outlined in the subsequent sections. The approach by Kenya has been different with border diplomacy being embraced as the first response. Finally, the third territorial threat that faces Kenya is with South Sudan over the Ilemi triangle.

4.6: Post-Independence Territorial Threats (Historical)

This section covers territorial threats that have faced Kenya in the period after independence, during Jomo Kenyatta reign as the President. During this period, there were two major territorial threats that emerged; the first one being the quest by the Northern Frontier Districts to breakaway and join Somalia. The second threat was posed by Uganda in 1976 when Idi Amin claimed territories on the Western part of Kenya.

4.6.1: Kenya-Somalia Territorial Dispute over the Northern Frontier Districts

Somalia borders Kenya to the East with a total border measuring six hundred and eighty-two (682) kilometres. The boundary is unique as it has the Somali community that straddles the border.³¹ It is these people of Somali origin in the former Northern Frontier Districts who harboured irredentist ideologies upon independence in 1964. This was the first major territorial dispute between Kenya and Somalia. This dispute exposed Kenya to one of its serious territorial threats as it stood to lose approximately a third of its territory had the Northern Frontier District the irredentist quest succeeded.

The dispute can be traced way back to the colonial period and colonial legacy of creation of states in Africa. During the partitioning of Africa by European powers, the Somali community was placed in three different countries, that is Somalia, Ethiopia in Ogaden province and Kenya in the Northern Frontier Districts.³² Prior to Kenya's independence, there emerged a movement supported by Somalia officials that wanted the northern frontier to be part of Somalia which had gained independence in 1960. A referendum was conducted in the frontier districts with the locals voting overwhelmingly to join Somalia. However, Britain and Kenya had other ideas and ended up disregarding their wishes.³³ In reaction, the Somalis waged a guerrilla war against the Kenyatta administration. The rebellion was composed of a political wing and a military outfit led by a group of young fighters who had been secretly trained in Somalia ³⁴ The political wing operated under the Northern

³¹Mburu Nene, *Bandits on the border: The Last frontier in the search for Somali unity* (Trenton: Red Sea Press, 2005).

³²Weitzberg Keren, "Rethinking the *shifia* war fifty years after independence: Myth, memory, and marginalization," In Kithinji Michael, Koster M.M., Rotich J.P. (eds) *Kenya After 50. African Histories and Modernities* (New York: Palgrave Macmillan, 2016).

³³Whittaker Hannah, "The socioeconomic dynamics of the *shifia* conflict in Kenya, 1963-1968," *The Journal of African History* 53, no. 3 (2012), pp. 391-408.

³³ Ibid

³⁴ Ringquist John "Bandit or patriot: The Kenyan *Shifia* War 1963–1968," *Baltic Security & Defence Review* 13, no. 1 (2011)

Province People's Progressive Party (NPPPP) whose main political agenda was agitation for the Northern Frontier Districts to join Somalia state.³⁵

Kenya was not ready to part with almost a third of territory to its eastern neighbour Somalia. Independent Kenya government led by Jomo Kenyatta was alive to the fact that a government's legitimacy is tested by its ability to defend its territorial integrity. Therefore, it declared a state of emergency in the Northern Frontier Districts of Moyale, Mandera, Wajir, Isiolo, Garissa and Marsabit and deployed soldiers to quell the movement.³⁶

There exist two schools of thought over the irredentist idea by the Kenyan Somalis. One school of thought has scholars such as Khalif, Zeinabu and Oba Gufu John who argues that the British government should have granted the Kenyan Somalis their wish to join Somalia. They base their arguments on a number of premises. One is that before the arrival of the colonialists, the Somali nation existed as one entity that was administered through a clan based form of governance.³⁷ Moreover, in a referendum like manner, the commission led by the Nigerian judge found out that a majority of the residents in the northern part of Kenya expressed their desire to leave Kenya and join their kinsmen in Somalia.³⁸ At one point, the first president of Kenya Jomo Kenyatta harboured ideas of redrawing of African borders in consideration of tribal and ethnic compositions along the borders in what he termed as a step in resolving conflicts between states. These ideas which were expressed at the 1964 Pan African Congress meeting in Cairo and are a pointer that there was a feeling among African leaders of the need to reconsider the colonial borders. At the same time, this

³⁵Weitzberg Keren, "Rethinking the *shifita* war fifty years after independence: Myth, memory, and marginalization," In Kithinji Michael, Koster M.M., Rotich J.P. (eds) *Kenya After 50. African Histories and Modernities* (New York: Palgrave Macmillan, 2016).

³⁶ Whittaker Hannah, "The socioeconomic dynamics of the *shifita* conflict in Kenya, 1963-1968," *The Journal of African History* 53, no. 3 (2012), pp. 391-408.

³⁷Weitzberg Keren, "Rethinking the *shifita* war fifty years after independence: Myth, memory, and marginalization," In Kithinji Michael, Koster M.M., Rotich J.P. (eds) *Kenya After 50. African Histories and Modernities* (New York: Palgrave Macmillan, 2016).

³⁸ Ringquist John. "Bandit or Patriot: The Kenyan *Shifita* War 1963-1968." *Baltic Security & Defence Review* 13, no. 1 (2011)

school of thought hold that the British government alienated NFD from development as it considered the region unproductive and could not fit in its economic exploitation agenda. Therefore, it would only make sense for British and Kenyan governments to allow the frontier to be part of Somalia as it was considered of less economic significance to Kenya.³⁹ Had the frontier been allowed to join Somalia, this school of thought is of the opinion that the move would have contributed to a relatively stable Horn of Africa and also saved Kenya from the costly *Shifita* war.⁴⁰

However, those opposed to this school of thought argue that economic development of a region falls under economic and social rights that require money to provide. Therefore, Kenya with its low economic status at the time of independence may not have been in a position to pump in funds to develop the area. This view resonates with thoughts of Mwangi who stated that, “these (economic and social rights) are rights to which states aspire, and as long as they are aspiring, they cannot be held to account.”⁴¹

An interesting concept of ‘ambiguous citizenship’ is introduced by Tabera Scharrer who belongs to this school of thought. Ambiguous citizenship refers to a situation whereby Kenyan Somalis despite being born within the Kenyan territory are subjected to ‘politics of belonging’. This mostly applies when seeking Kenya national identification cards and also in the population census exercises. In 1989 for instance, the Kenyan government came up with requirement that all Somalis had to be registered to ascertain their citizenship status.⁴² This form of discrimination further gives justification on why the northern part of the country ought to have been part of the larger Somalia state. States don’t exist in anarchy but are bound by international

³⁹ Whittaker Hannah, “Frontier security in North East Africa: Conflict and colonial development on the margin, 1930-60,” *The Journal of African History* 58, no. 3 (2017), pp. 381-402.

⁴⁰ Iona Lewis, *Modern history of the Somali: Revised, updated and expanded*, (James Currey Publishers, 2002) p. 207.

⁴¹ Makumi Mwangi, *Policy and strategy in national security; context, perspectives & challenges in East Africa* (Nairobi: Three Legs Consortium, 2019). p. 45.

⁴² Whittaker Hannah, “The socioeconomic dynamics of the *shifita* conflict in Kenya, 1963-1968,” *The Journal of African History* 53, no. 3 (2012), pp. 391-408.

law, thus has an obligation to respect Human Rights of their citizens.⁴³ Therefore, the Kenyan government has a core expectation to protect the human rights of the Somalis as opposed to what appears to be discriminatory practices. It is these alleged discriminations of the Kenyan Somalis that give justification for the Irredentism.

The other school of thought is realist in nature and is of the view that a state is defined by its territory and any legitimate government should have a legal and moral responsibility to safeguard its territorial integrity. Thus, Kenya had all rights to safeguard her territorial integrity by using hard approach to deal with the irredentism quest. Scholars in this school of thought include Atieno Odhiambo, Ayissi Castagno and Dalleo Atieno. According to proponents of this debate, the Shifta war bring into limelight how the realism power politics came into play where both Kenya and Somalia sought the use of force to gain control of the NFD. Somali nationals in Kenya sought to join mainland Somalia since they shared social and religious aspects and had the support of the Somalia government. Prior to 1960, there was merger of British Somaliland and Italian Somaliland to form the state of Somalia. Upon gaining independence in 1960, Somalia expressed its political desire to regain the three other Somali inhabited regions of Ogaden in Ethiopia, Northern Frontier Districts in Kenya and French Somaliland.⁴⁴ The Somalia flag had five stars symbolizing the five Somalia regions, a sign of support to the irredentism in Kenya. The Kenyan NFD was the fourth star, a move that gave impetus to NPPPP to clamor for a breakaway of the NFD to join mainland Somalia.⁴⁵ With much lobbying from NPPPP, the Somalia Parliament gave its approval for NFD to join Somalia and called on the Executive arm of the government to actualize the move.

⁴³ Ibid.

⁴⁴ Hoskyns Catherine & Kane Thomas, *The Ethiopia-Somali-Kenya dispute, 1960: Documents* (Dar Es Salaam: Oxford University Press, 1969).

⁴⁵ Mburu Nene, *Bandits on the border: The Last frontier in the search for Somali Unity*, (Trenton NJ: Red Sea Press, 2005).

On the other hand, Kenya viewed a breakaway of NFD as a threat to its national unity and territorial integrity. This led to diplomatic row between the two East African neighbours which almost resulted into direct war. According to realism, states exist in an operating environment that is volatile and thus seek to build alliances to safeguard their interests. This is what informed Kenya and Ethiopia to form a defense pact as they sought to safeguard their territories that were claimed by Somalia.⁴⁶ Britain with Kenya because of its economic and military interests in Kenya. According to proponents of this school of thought, the main reason for colonizing Kenya was her abundance in raw materials for its industries. The threat posed by irredentist Somalia also projected a negative impact on British economic interests in Kenya.⁴⁷ Therefore, Britain supported Kenya by supplying military hardware and also training to its security forces to help crush the rebellions. Despite the guns of Northern Frontier District Liberation Army (NFDLA) going silent in the 1970s, the irredentism quest for the Northern part of Kenya that is occupied by people of Somali origin is still alive. The current terror threat facing Kenya is propagated by the Somalia based Al Shabaab group which seeks to establish a caliphate that would include the counties in the former Coast and North Eastern provinces.

4.6.2: Kenya-Uganda Border Dispute

Uganda borders Kenya to the West with the two East African neighbours sharing a common border measuring approximately seven hundred and seventy-two kilometres (772 kms). Uganda is Kenya's biggest trading partner with the landlocked country using Mombasa port for its import and export trade. The two states are members of the East African Community and have a long political history having been colonies

⁴⁶ Branch Daniel, "Violence, decolonization and the cold war in Kenya's north-eastern province, 1963–1978," *Journal of Eastern African Studies* 8, no.4, (2014): pp. 642-657.

⁴⁷ Ibid.

of Britain. They have enjoyed good diplomatic relations despite the territorial disputes between them.

Kenya and Uganda got into a territorial dispute in 1976 when President Idi Amin claimed that the whole of the former Western and Nyanza provinces and parts of Rift Valley stretching up to Naivasha were part of Uganda territory. This statement by Amin almost pushed Kenya and Uganda into a full blown war and threatened the cordial relationship between the two East Africa neighbours. According to Amin, Uganda was in possession of a colonial map and a written agreement that was signed by the British colonial secretary Herbert Asquith, transferring parts of his country to Sudan and Kenya in 1914 and 1926 respectively.⁴⁸ Amin asserted that historically, most parts of Kenya were in British Uganda. After the scramble and partition of Africa by imperial powers in 1884, Uganda was placed under British control and later on subdivided into six provinces in 1902 as outlined in the table below:-⁴⁹

Table 4.1: Region Annexed from Uganda and Awarded to Kenya.⁵⁰

Province	Districts/Regions
Rudolf	Turkana and Karasuk
Eastern	Nandi, Kavirondo, Eldoret, Naivasha, Maasai, up to the border with Tanzania
Central	Karamoja, Sebei, Mumias, Busoga and Bukedi
Buganda	Entebbe, Masaka, Kampala, Bugangaizi and Buruli
Nile	the present Nile Province, Lango, Acholi, Juba, and Baragazalo
Western Province	Rwenzori, Boga, Hoima and Masindi

⁴⁸ Khadiagala Gilbert, "Boundaries in Eastern Africa," *Journal of Eastern African Studies* 4, no. 2 (2020), pp.262-278.

⁴⁹ Amin Idi, *The Shaping of modern Uganda and administrative divisions: Documents, 1900-76*, (Kampala: Government Printer, 1976).

⁵⁰ Bamaturaki Musinguzi, The Day Idi Amin Wanted to Annex Western Kenya, *The East African*, Nairobi, 10th September 2011, www.theeastafrican.co.ke/news(accessed March 26, 2020).

In response, Kenya deployed its military on the Ugandan border, a move that forced Amin to back down claiming that he had no intention of going to war with Kenya.⁵¹ While Kenyatta deployed the military, there was a flurry of diplomatic activities across the region to force Amin to back down on his claims. While going by the colonial map Amin was justified in his claims, his assertions were time bad as the Organization of African Union (OAU) recognized African boundaries at the time of independence. The Uganda-Kenya dispute is another pointer to one of the negative effects of colonial legacy in Africa where border disputes are a threat to regional stability.

4.7: Kenya's Current Territorial Disputes

4.7.1: Migingo Island Dispute between Kenya and Uganda

After the fall of Idi Amin, Yoweri Museveni took power and is the longest serving president of Uganda. Just like his predecessor, he has claimed ownership of a Kenyan territory, the Migingo Island. Migingo which is approximately twenty-two thousand square feet is another source of dispute between Uganda and Kenya.⁵² The Island is located inside Lake Victoria, the largest lake in Africa. Kenya, Uganda and the United Republic of Tanzania share 6 percent, 49 percent and 45 percent respectively of the lake. Migingo Island, an uneven, rocky outcrop covering less than one acre on Lake Victoria, lies on the border between Uganda and Kenya. The islanders live in a crowded slum of rusted shacks. Kenya has assumed its 6 per cent ownership in terms of the 1926 border demarcation when it was still a colony of Britain. Two Kenyan fishermen, Dalmas Tembo and George Kibebe, claim to have been the first inhabitants of the island in modern times.

⁵¹ Ibid

⁵² Wafula Okumu, 'Resources and border disputes in Eastern Africa,' *Journal of Eastern African Studies*, 4, (2010), pp.279-297

The territorial dispute took centre stage in 2004 when Ugandans started settling on the island which was originally populated by Luos from Kenya.⁵³ Thereafter, followed Ugandan customs officials, police and the military to enforce the collection of taxes on Kenyan fishermen. In 2009, some Kenyan fishermen argued that given that none of the Nile perch was hatched in the Ugandan territory (the nearest Ugandan landmass and nearest Ugandan freshwater source is 85 km away), the fish belonged to Kenyans. In the same year, Ugandan fishermen called upon their local government for help, with the Ugandans being first to respond by sending maritime police. Upon their arrival, the Ugandans raised their country's flag and slowly began to administer the resident fishermen who had made their home on the tiny island.⁵⁴ A Kenyan administrator travelled with a convoy of a dozen policemen, and once again raised the Kenyan flag that had been torn down by the Ugandan forces. As a sign of solidarity with their fellow citizens in Migingo, some Kenyans uprooted a section of the Kenya-Uganda railway to stop Uganda from accessing the Mombasa port for its imports.⁵⁵

With tension mounting between Kenya and Uganda, high diplomatic interventions were instituted to dispel a looming war between the two East African neighbours. The outcome of the diplomatic efforts was an arrangement that allowed fishermen from both states to continue fishing under supervision of police from both

⁵³ Wafula Wekesa, 'Old issues and new challenges: The Migingo Island controversy and the Kenya-Uganda borderland,' *Journal of Eastern African Studies* 4, no. 2 (2020), pp. 331-340.

⁵⁴ Rossi Christopher, 'The Migingo Island Dispute between Kenya and Uganda,' *Brooklyn Journal of International Law* 42, no.2 (2016), pp: 659-693.

⁵⁵ Kwamchetsi Makokha, 'Why Raila Should be Barred from Invading Migingo: Raila Odinga Could Easily Plunge Kenya into War over a Rocky Piece of Land,' *Daily Nation* (Mar. 26, 2016), <http://www.nation.co.ke/oped/Opinion/Why-Raila-should-be-barred-from-in-vading-Migingo/>

countries.⁵⁶ At the same time, a Joint Technical Committee of experts was constituted to evaluate the border dispute but not much has come out of the team.⁵⁷

Despite its small size, Migingo island is famed for its rich population of the Nile perch fish making the half an acre piece of land strategic offshore weigh station and campsite for eventual export of the fish. However, it's not fish that makes Migingo a centre of conflict but also possibility of commercial oil deposits on the bend of Lake Victoria. Resolving the dispute will require political goodwill from the leadership of the two countries.

4.7.2: The Indian Ocean Maritime Territorial Dispute with Somalia

The second territorial dispute between Kenya and Somalia is over the maritime boundary in the Indian Ocean. The dispute took centre stage in 2014 when the Somalia Government under the leadership of President Mohamed Farmajo auctioned some oil blocks in the Indian Ocean, in a territory that Kenya considers her maritime territory. Kenya had tried to engage Somalia diplomatically but Mogadishu opted to forward the dispute to The Hague based International Court of Justice (ICJ) in 2014 for determination. The territory in question is located in the offshores of Indian Ocean measuring about 62,000 square miles and there are prospects of natural gas and oil. Whereas Kenya maintains that the border runs parallel to the line of latitude directly east of its shared land terminus with Somalia, her neighbour wants its sea border to extend the frontier line of its land border in a southeast direction. Somalia draws its claim on the equidistance principle derived from the United Nations Convention on the Law of the Sea.⁵⁸ The claims overlap contested legal regimes

⁵⁶ Rossi Christopher, "The Migingo Island Dispute between Kenya and Uganda," *Brooklyn, Journal of International Law* 42, no.2 (2016).

⁵⁷ Kakeeto Richard et al., *Managing Trans-Boundary Water Conflicts on Lake Victoria with Reference to Kenya, Uganda and Tanzania, in shared waters, shared opportunities: hydro politics in East Africa*, (Bernard Calas & C.A. Mumma Martinon, eds., and 2010), pp.65-67.

⁵⁸Olorundami Fayokemi, "The Kenya/Somalia Maritime boundary delimitation dispute," *Ethiopian Yearbook of International Law* (2017), pp.173-185.

involving the continental shelf, the Exclusive Economic Zone, and extended continental shelf claims beyond 200 nautical miles from the coast (see map below)

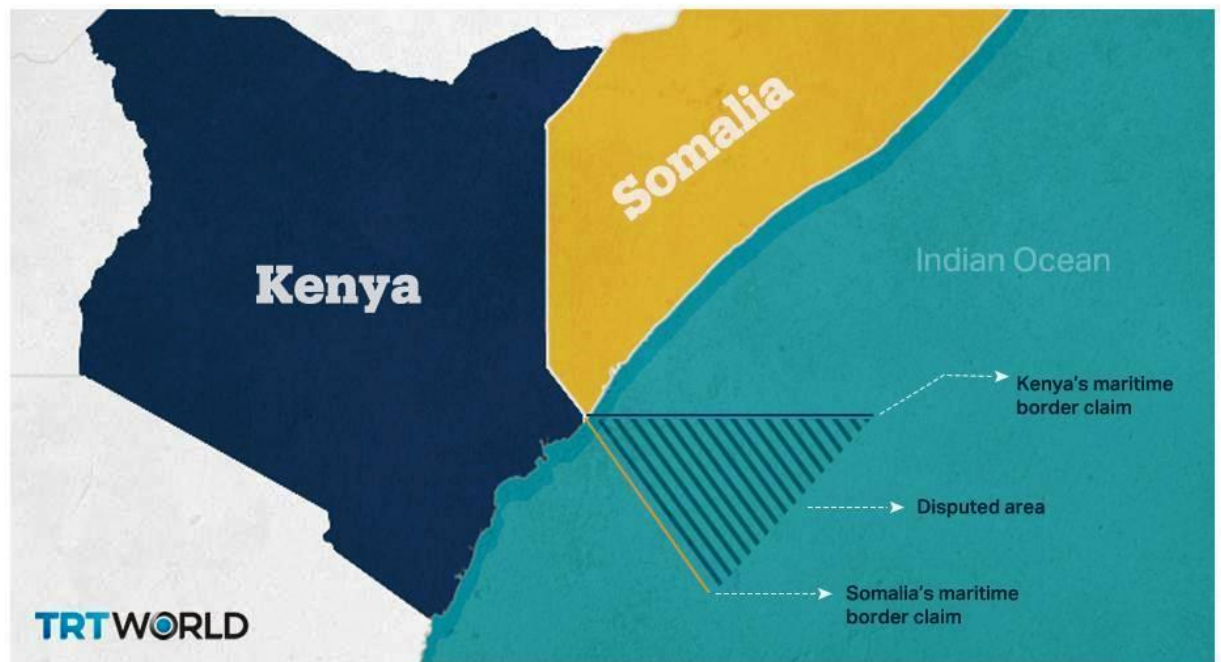


Figure 4.1: Map of the Kenya and Somalia outlining the maritime area under dispute: Source AFP.⁵⁹

4.7.3: Kenya-South Sudan Border Dispute (Ilemi Triangle)

Kenya and South Sudan have border issues over Ilemi Triangle but it's yet to escalate into a conflict. The Ilemi Triangle is a land mass that measures approximately 14,000 square kilometres whose ownership is the source of a territorial dispute between Kenya and South Sudan. The land also borders Ethiopia which has never officially claimed the territory despite occasionally deploying troops in the name of pursuing cattle rustlers. This is despite the inconclusive 1907 Anglo-Ethiopian treaty which gave the Emperor of Abyssinia political over communities living in the Ilemi triangle. Later on, British colonial authorities in Kenya and Sudan made several attempts to redraw the border resulting in several boundary lines.

⁵⁹AFP, accessed on July 2020 from <https://www.afp.com/en>

With the intrigues surrounding borders in the British East Africa protectorates and colonies, there arose a need to redraw the borders. This led to the establishment of the Uganda-Sudan Boundary Commission 1914.⁶⁰ Among issues that this commission was to address was the determination of Turkana grazing grounds and the boundary line of Sudan within Lake Rudolf, modern day Lake Turkana. Additionally, the commission was mandated to redraw the Sudan's border with Ethiopia, with a view of placing the Kuku ethnic group inside Sudan's territory. The outcome of these efforts placed the Ilemi triangle within Sudan's territory. With Kenya gaining self-determination from Britain, the country's leadership had interest in owning the Ilemi triangle. Nairobi reached out to Britain in 1967 to support its cause for the recognition of the 'Red Line' as the international Kenya-Sudan boundary.⁶¹ This arrangement if successful would have made the 1914 line which placed the whole of Ilemi Triangle in Sudan null and void.⁶² These diplomatic efforts did not bear fruits and Ilemi Triangle remained as part of Sudan.

With change of guard in Nairobi in 1978, the Moi regime took a fresh interest in the politics of Ilemi. This was a period in which Sudan was engulfed in a civil war with the South seeking self-determination. Nairobi took a central role in negotiating for peaceful resolution of the Sudan civil war. South Sudan People's Liberation Movement (SPLM) led the southerner's quest for secession. Under the leadership of John Garang, SPLM entered into a secret deal with Kenya to support the movement militarily and logistically in exchange for the Ilemi triangle.⁶³

⁶⁰Mareike Shomerus, Vaughan Christopher & Lotje de Vries (eds), *The Borderlands of South Sudan: Authority and identity in contemporary and historical perspectives* (London: Palgrave Macmillan, 2013).

⁶¹ Ibid.

⁶² Wendy James, *The Borderlands of South Sudan: Authority and Identity in Contemporary and Historical Perspectives* (Palgrave Series in African Borderlands Studies) 2013th Edition. (London: Palgrave Macmillan, 2013).

⁶³Young John, "John Garang's Legacy to the peace process, the SPLM/A & the South," *Review of African Political Economy* 32 (2005): pp. 540-541.

To assert its claim of the disputed territory, Kenya published maps in 1986 that showed Ilemi triangle as part of its territory.⁶⁴ This sparked protest from Sudan which claimed that it was part of its Equatorial province. Typical of most territorial disputes, the Ilemi triangle conflict was a creation of the colonialists where the British had several treaties that were crafted to allow free movement of Turkana herders. In one of the 1936 non-binding undertaking, Britain never legally transferred the territory to Kenya but only allowed the British Colonial Governor to administer it on behalf of the colonial authorities in Juba. This forms the justification for South Sudan's claim over Ilemi Triangle. However, upon independence of Sudan in 1956, the territory remained under Nairobi which was still under the rule of Britain.

2011 was a landmark year in the world history as the international system welcomed a new member state called South Sudan with its capital city in Juba. The leadership of South Sudan trashed the secret agreement it had entered with Kenya and instead laid claim to territories originally owned by Sudan. This meant that the new state wanted its territories to reflect the Anglo-Ethiopian agreement treaty of 1907 which placed the entire Ilemi triangle under Sudan. The Juba administration reached out to United Nations Security Council over the Ilemi triangle dispute with Kenya in a bid to get back the territory which Kenya had occupied by deploying its military and having the Turkana from Kenya who are armed and graze on the land. The land which was initially regarded as only fit for grazing livestock is likely to be contested by Kenya and South Sudan due to prospects of huge deposits of oil.⁶⁵

⁶⁴ Nene Mburu, "Delimitation of the Ilemi Triangle: A history of abrogation of responsibility," *African Studies Quarterly* 6 (2003)

⁶⁵ Anderson David and Adrian Browne, "The Politics of Oil in Eastern Africa," *Journal of Eastern African Studies* 5, no:2 (2011): pp. 391–392.

CHAPTER FIVE

CRITICAL ANALYSIS OF BORDER SECURITY AND DIPLOMACY IN IGAD AND KENYA

5.1: Introduction

Across the IGAD region where Kenya is a member state, the possibility of territorial disputes is high due to the discovery and/or increased exploitation of trans-boundary resources. This trajectory has seen territorial disputes graduate from colonial legacy to resource based conflicts where states lay claim to territories that have natural resources. The current three territorial disputes that Kenya has with its neighbours Uganda (Miging Island), Somali (Indian Ocean Maritime Border) and South Sudan (Ilemi Triangle) have been triggered by resources mostly oil, natural gas and marine resources. In the post-colonial territorial disputes, Kenya approach was largely hard approach (military intervention) with a little bit of diplomacy towards the end of the disputes. The current disputes have seen a shift from hard to soft approach with diplomacy taking centre stage in attempts to resolve the conflicts. This section analyses the causes of the territorial disputes and the strategies employed by Kenya policy makers towards its territorial threats with a view to establishing gaps and how they can be enhanced to guarantee the state of its territorial integrity.

5.2: Causes of Territorial Disputes in Kenya and IGAD Region

From the data collected, it emerged that there are two major causes of territorial disputes in IGAD region where Kenya is a member. These two causes are colonial legacy and resources especially trans-boundary resources such natural gas, oil and fish. Previously, studies on territorial threats tended to focus on colonial legacy as the leading cause of territorial disputes. However, the current disputes that Kenya has

with its neighbors depict a scenario where resources are becoming a trigger as well as a cause of the territorial disputes.

5.2.1: Resources

From the study, it was established that natural resources are a major factor informing the occurrence of territorial disputes in the IGAD region. Whereas colonial legacy is largely the root cause of territorial disputes, prospects and discovery of such natural resources such as oil, natural gas among others bring to the fore historical boundary issues between states especially where the said resources are located across or along the common border. A majority of the respondents in the study felt that in the Kenyan context, all the three current territorial disputes have been largely triggered by resources in the disputed area. This information was further corroborated by secondary data on border diplomacy in the region. The table below summarizes border conflicts and their causes in the IGAD region:

Table 5.1: A Summary of Resource based territorial conflicts

Conflict parties	Location	Resource (s) at stake
South Sudan-Sudan	Abiyei State	Oil
Uganda and DRC	Lake Albert in the Great Lakes	Crude oil alongside diamond, gold and Colton
Kenya-South Sudan	Turkana County in the Ilemi Triangle	Oil and water
Kenya-Uganda	Misingo island in Lake Turkana	Fish, water and prospects of oil
Kenya-Somali	Indian Ocean Maritime Boundary	Oil and natural gas

Lake Victoria which is the largest lake in the continent is shared by Tanzania, Uganda and Kenya. The three EAC member states are faced with the critical issue of how to manage the vast water body and the common resources therein especially water and fish. For instance, there is a feeling by Kenya and Tanzania that Uganda is

responsible for the sharp decline in water levels due to its hydroelectricity projects. With regard to marine resources, the study established that there has been a rise in tension between states especially Kenya and Uganda over the Migingo Island which is rich in the Nile perch. Cases of security officers harassing and apprehending fishermen for trespassing in the territorial waters have been recorded raising tensions between states. This is despite the fact that many communities living around the lake rely on it for livelihood and with boundaries not clearly demarcated, cases of trespass are a concern to the three states.

According to a senior Kenyan official, a meeting convened in 2000 brought together respective heads of the ministries of fisheries from Kenya, Uganda and Tanzania.⁶⁶ The outcome of the meeting was a resolution to demarcate the boundaries in Lake Victoria by means of bright beacons to address cases of fishermen trespassing ignorantly.⁶⁷ The essence of this meeting was to address the perennial problem of conflict over resources in the lake. However, the study found out that the agreement did not achieve its objective as immediately Kenya and Uganda had a serious dispute over Migingo Island, which nearly plunged the two neighbours into a war in 2009. Migingo Island is one of several islands on Lake Victoria and is heavily endowed with fish and constitutes a major source of livelihood for many Kenyan fishermen from the border communities in western Kenya. It is used by fishermen as a landing and drying bay signifying its strategic importance.⁶⁸ It was a feeling of some of the policy makers interviewed that its possibly because of this strategic importance that Uganda under the leadership of President Kaguta Museveni claimed that Migingo was Ugandan territory.⁶⁹ A year later in 2009, Museveni conceded that the Migingo

⁶⁶ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020.

⁶⁷ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

⁶⁸ Rossi Christopher, "The Migingo Island dispute between Kenya and Uganda," *Brooklyn Journal of International Law* 42, no.2 (2018), pp.659-690.

⁶⁹ Interview with a Ministry of Defense official, Nairobi, September 11, 2020.

Island was actually a Kenyan territory, but the waters belonged to Uganda. The implication of this statement is that the fish in the waters adjacent to the island belonged to Uganda and any Kenya fisherman operating therein was trespassing.⁷⁰ Further, the statement by the Ugandan leader implied that the waters West of Migingo Island are Ugandan territorial waters. Revisiting the earlier dispute in 1976, President Idi Amin claimed the regions in dispute were fertile for agriculture and played a significant contribution towards Kenya's GDP and food security. This is a manifestation of how resources act as triggers as well as causes to territorial disputes between states.

From the study, it was apparent that natural resources are at the centre of the ongoing Maritime dispute between Kenya and Somalia.⁷¹ The maritime boundary has existed since the two states gained independence in the 1960s and Somalia had never contested the maritime border until recently when there are prospects of natural oil and gas.⁷² Ostensibly, the conflict escalated when Somalia allegedly auctioned mineral blocks within the disputed territory to Norway.⁷³ According to senior policy makers who participated in the study, the move by Somalia to auction the mineral blocks amounted to infringement on Kenya's territory.⁷⁴ On its part, Somalia denies the allegations on grounds that the auctioned blocks lie squarely within its territories. With the matter before ICJ, Somalia seeks to have ICJ settle the dispute so as to define the actual maritime boundary between the two neighbouring countries in the Indian Ocean, delimiting the territorial sea, exclusive economic zones and continental shelf beyond the 200 nautical miles.⁷⁵

⁷⁰ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 8, 2020.

⁷¹ Interview with a senior official at Border Management Secretariat, Nairobi, September 16, 2020.

⁷² Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020.

⁷³ Ibid.

⁷⁴ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

⁷⁵ Orwa Chris, Why Kenya will be lucky to win Somalia maritime case, (DAILY Nation, Nairobi) July 19, 2019.

From data gathered, it is clear that the three current territorial disputes between Kenya and its two neighbours Uganda and Somalia are a manifestation of border conflicts largely caused and fuelled by desire for territorial materialism. Indeed, whereas the territorial disputes across Africa are largely linked to the colonial legacy of arbitrarily drawing of boundaries, they are triggered by prospects of trans-boundary natural resources along the borders.

5.2.2: Colonial Legacy

The researcher found out that most of territorial disputes in Africa are largely attributed to the colonial legacy of maps and boundaries drawing. Even in cases where other factors like trans-boundary resources appear to be the actual trigger of the territorial disputes, disputing parties tend to revisit colonial maps to support their claims.⁷⁶ Colonial legacy of boundaries in Africa began with the Berlin Conference that partitioned the continent of Africa into several states with borders that have been contested since independence.⁷⁷ Prior to colonization of the continent, Africans had no identity with the state system and its boundaries. Each community and kingdoms had their way of recognising their territories which were mostly marked by natural features such as valleys, rivers and hills. The concept of state territories is Eurocentric in nature and was introduced into Africa by the colonialists.⁷⁸ The essence of these colonial borders was to make it possible for the colonial powers to govern and exploit the resources in the continent without conflicting amongst themselves (colonial powers). In coming up with the state borders, the colonialists only factored in their interests and disregarded the diversity that was in Africa. The outcome was emergence of states some with different tribes that had nothing in

⁷⁶ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 18, 2020.

⁷⁷ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

⁷⁸ Yoon Yung, "The case of the Malawi-Tanzania dispute over Lake Malawi/Nyasa," *The Journal of Territorial and Maritime Studies* 1, no. 1, (2014), pp.75-89

common in terms of political and cultural organization.⁷⁹ In other instances, some communities were placed in different states creating the modern day border communities. In Kenya, border communities are Somalis who are found in Kenya and also in Somalia and Ethiopia, Massai of Kenya and Tanzania, Luos of Kenya and Uganda.⁸⁰

State boundaries started making sense to Africans after attaining independence. Upon the attainment of independence, a section of leaders voiced their concern over the colonial boundaries and were of the opinion that the boundaries needed to be relooked to reflect the reality on the ground (for instance the issue of cross border communities). However, OAU in its wisdom felt that revisiting the colonial boundaries issues would cause more problems for the newly independent states and in the process adopted the principle of respect for borders inherited at independence. The implication of this principle was that African States were supposed to inherit the borders that the colonial masters had during the colonial period. Moreover, states affirmed to respect the borders existing upon attainment of independence. The expectation of OAU was that by adopting the colonial borders, states would be content and avoid any territorial disputes. However, the principle only achieved a temporary truce as the continent would later on experience several territorial disputes, some even degenerating into armed conflicts.⁸¹

From the study findings, it was established that colonial legacy contributed significantly to the Shifta war pitting Kenya and a section of the Somali community that wanted to join Somalia. It was the expectation of Somali nationals living in the Frontier Districts that a review of the colonial borders would deliver justice to them to be part of Somalia state where their kinsmen are. Indeed, through content analysis,

⁷⁹ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 10, 2020

⁸⁰ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020

⁸¹ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 10, 2020.

it was established that prior to independence, a referendum conducted in the region had the locals vote to join Somalia but the results were disregarded by the Britain which was the colonial power administering Kenya.⁸² Even though Kenya and Somalia did not engage in a direct war, Somalia secretly supported the Shifta fighters.⁸³ The rebellion was composed of a political wing and a military outfit led by a group of young fighters who had been secretly trained in Somalia.⁸⁴ The Somalia flag had five stars symbolizing the five Somalia regions which included the Northern Frontier Districts, a sign of support to the irredentism in Kenya.⁸⁵ This assertion is true as the Somalia Parliament passed a resolution urging the Somalia government to support the irredentism quest in Kenya.

The study found out that the territorial disputes that Kenya has faced with its neighbouring states of Somalia, Uganda and South Sudan can be traced back to the outcomes of colonial legacy of boundaries drawing. In the dispute between Kenya and Uganda over the Western part of Kenya, Uganda laid claim to the territories which were transferred to Kenya by the British. The transfer which took place in 1926 was effected by the colonialists on justification that they needed to have the Kavirondo community (presently known as Luhya) under one state. This is ironical if the precedent that placed the Somali community into three different states is anything to go by. Ostensibly, it appears that the British wanted to have the Mombasa Kisumu Railway line under one jurisdiction (British East Africa Protectorate-Kenya colony). The transfer of these territories is what Uganda under President Idi Amin Dada used to justify its attempt to reclaim them, an attempt that would have resulted in a new

⁸² Whittaker Hannah, "The socioeconomic dynamics of the shifta conflict in Kenya, 1963-1968," *The Journal of African History*, 53, no. 3 (2012)

⁸³ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 10, 2020.

⁸⁴ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 10, 2020.

⁸⁵Weitzberg Keren, 'Rethinking the *shifta* war fifty years after independence: Myth, memory, and marginalization,' In Kithinji Michael, Koster M.M., Rotich J.P. (eds) *Kenya After 50. African Histories and Modernities* (New York: Palgrave Macmillan, 2016).

boundary between Kenya and Uganda.⁸⁶ Uganda laid its claim on grounds of a colonial map and a written agreement that was signed by the British colonial secretary Herbert Asquith, transferring parts of his country to Sudan and Kenya in 1914 and 1926 respectively.⁸⁷

In the case of the territorial dispute with Somalia, the Northern Frontier Districts are mostly inhabited by members of the Somali speaking community. The effects of is that it separated the Somali community and placed it in three different Countries- Kenya, Somali and Ethiopia. To date, the Somali community in Kenya and Ethiopia still harbours interest to be part of Somalia. Some of the respondents felt that had the colonialist took cognizant of the diversity of the African communities when drafting these borders, some of the border conflicts in the region would have been avoided.⁸⁸

Colonial legacy is also attributed to the dispute between Kenya and South Sudan over the Ilemi triangle.⁸⁹ It is the British who annexed the Ilemi triangle from Sudan and reserved it to the Turkana community residing in Kenya (then known as British East Africa Protectorate) as a grazing ground. However, the transfer was not effected legally as the Britain only allowed the British Colonial Governor based in Kenya to administer Ilemi Triangle on behalf of the colonial authorities in Juba.⁹⁰ This nonbinding transfer is what Sudan and later on South Sudan uses basis to reclaim the territory. Interestingly, Sudan gained independence in 1956 but the triangle remained under the colonial governor based in Nairobi. Had the British legally

⁸⁶Bamuturaki Musinguzi, The Day Idi Amin Wanted to Annex Western Kenya, The East African, Nairobi, 10 September 2011, www.theeastafrican.co.ke/news(accessed March 26, 2020).

⁸⁷ Ibid.

⁸⁸Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.; Interview with a senior official at Border Management Secretariat, Nairobi, September 16, 2020.; Interview with a senior official at Border Control and

⁸⁹ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 18, 2020.

⁹⁰ Interview with a senior official at Border Management Secretariat, Nairobi, September 16, 2020

transferred the Triangle to Kenya, the grey issues surrounding the border would have been easily addressed.⁹¹

The above cases point out to the negative effects of the colonial map and boundary drawing legacy. Colonial legacy left borders that are not clearly demarcated as well as communities that straddle across the states borders. Whereas the adoption of Cairo Resolution (respect on borders inherited at independence) by OAU was aimed at averting territorial disputes, the objective was not fully achieved as the continent did experience territorial disputes later on. The ongoing African Union Border Programme is aimed at correcting some of these defects on colonial borders although challenges exist towards successful implementation of the programme.

5.2.2: External Actors

Some of the policy makers interviewed articulated that there are some instances where external actors both state and non-state actors play a role in escalation of territorial disputes. These actors tend to have interests in the contested territories especially those of economic nature.⁹² The best example where external actors have been linked to the conflicts is the Kenya-Somalia maritime dispute where state and non-state actors have interests due to the prospects of natural gas and oil. Apparently, Somalia auctioned the mineral blocks to companies based in the United Kingdom and Norway which explains why the two states have expressed support for Mogadishu in the dispute.⁹³ On the other hand, United States and France have backed Kenya's claim possibly to get a share of the minerals once exploited and also due to their ties with Nairobi in the antiterrorism campaign. The feeling among a section of Kenyan policy makers is that these external actors could have a hidden hand in

⁹¹ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

⁹² Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020.

⁹³ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

influencing Somalia to lay claim over the maritime territory and forward the case to ICJ so as to benefit from the resources in the disputed territory.⁹⁴

5.3: The Implication of Territorial Disputes to Kenya's National Security

5.3.1: Strained relationships with its neighbours

From the study, it came out that territorial disputes have a tendency of causing tension between states and in worst case scenarios severing of diplomatic relations. A majority of the respondents credited border diplomacy where Kenya was able to avoid war and maintain its diplomatic ties with Uganda despite the two disputes that threatened the cordial relationships between the two states.⁹⁵ However, they opined that in the case of Somalia, relations between Kenya and Somalia have been severely affected by the territorial disputes.⁹⁶ The irredentist war led to strained diplomatic relationships between Kenya and Somalia and even when the war ended, the relations between the two neighbours have been shaky. The current maritime dispute has worsened the situation. This could be attributed to the high stakes in the case.⁹⁷ For instance, should Somalia win the case, the outcome might render Kenya landlocked denying it of the immense economic interests from marine resources and port operations along the Indian Ocean coastline.⁹⁸

Some of the respondents pointed out that by Somalia auctioning some oil blocks in the disputed territory, was a sign of strained diplomatic relations between the two States. It is this action by Somalia that triggered a series of reactions from Kenya most notable a statement released by the Ministry of Foreign Affairs which termed the move by Somalia as outrageous and an act of provocation that deserved

⁹⁴ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

⁹⁵ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

⁹⁶ Ibid.

⁹⁷ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020

⁹⁸ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 10, 2020.

condemnation from not only Kenyans but the international community.⁹⁹ Moreover, Kenya went ahead to recall its ambassador to Somalia and ordered the Somalia envoy to return to his country. Although the Ministry of Foreign Affairs in Kenya denied recalling its envoy over the dispute, it is apparent that there is strained diplomatic relations between the two IGAD state members.

Kenya plays a significant role in African Union's and UN's effort to stabilize war-torn Somalia. It is part of the African Mission in Somali where it contributes troops in the efforts to get rid of the terror group Al Shabaab.¹⁰⁰ However, there is a feeling among policy makers in Kenya and who formed part of this study targets that should the current territorial dispute escalates, Kenya may decide to prematurely withdraw its troops from Somalia, which in turn may create a security vacuum and give Al-Shabaab room to reorganize.¹⁰¹ This would deal a blow to regional and international efforts to pacify Somalia. Moreover, it was established that the maritime dispute is likely to escalate the local (Somali) population's resentment against Kenyan military presence in Somalia, which in turn could be exploited by Al-Shabaab as part of its recruitment propaganda machinery.

5.3.2: Escalation of the Refugee Crisis at Daadab Refugee Camp, Kenya

The study found out that the ongoing territorial dispute between Kenya and Somalia has the potential of adversely affecting refugees hosted by Kenya, majority of who are from Somalia. Lately, Kenya has expressed reservations in continuing playing host to the refugees especially in the Dadaab camp citing among other reasons security concerns as the camp is alleged to be a hideout for Al-Shabaab operatives. Kenya as some respondents observed could use the refugee issue as a bait to force

⁹⁹ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 17, 2020

¹⁰⁰ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹⁰¹ Ibid.

Somalia to withdraw the case at ICJ. Their feeling is that should Somalia win the case at ICJ, Kenya might go ahead with its planned closure of the camp.

Traditionally, refugees have been regarded as victims of insecurity thus a humanitarian crisis.¹⁰² This informed the UN to adopt the principle of non-refoulement where States are prohibited from turning away a person running away from persecution in their country.¹⁰³ However, there has been a change in this view, with the refugees' crisis being viewed as a threat to national security. States now analyse the refugees' crisis in terms of their impact politically, economically, socially and security. Whereas Kenya is bound by international law with regard to refugees, the country has an obligation to its citizens in terms of their security. Thus, the country has a responsibility to ensure that all refugees entering the country are genuine and have no ulterior motive.¹⁰⁴ It is the feeling among a section of security personnel that the country should enhance the process of screening refugees.¹⁰⁵ However, while doing so, the country has to be alive to the fact there exists international law that protects the refugees with bodies such as UNHCR taking a lead charge. UNHCR is now more involved in the in refugee affairs in a bid to ensure they are secure in the wake of securitization of practises related to refugees and asylum seekers.

5.3.3: Obstruction of Somalia's Interests to Join East African Community

Another potential impact of the territorial dispute is derailment of Somalia's entry into the EAC. The study found out that Somalia has desires to be part of the regional economic block and in 2013, it embarked on a strong diplomatic campaign to achieve this objective. Some of the respondents felt that Kenya being a strong actor

¹⁰²Mogire Edward, "Refugees reality: Refugees rights versus state security in Kenya and Tanzania," *Transformation* 26, no.1 (2009), pp.15-29.

¹⁰³Loescher Gil, "Refugees as Grounds for International Action," in Eric Newman and Joanne van Selm (eds), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State* (United Nations University Press, Tokyo, 2003). p. 33.

¹⁰⁴Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020.

¹⁰⁵Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 10, 2020.

in the block is likely to use its influence to block any bid by Somalia to join the organization. This has the potential of escalating the diplomatic crisis in the region since Somalia has reached out to Tanzania to further its case to join the regional block, notably Tanzania has its fair share of diplomatic issues with Kenya.¹⁰⁶ The effect of blocking Somalia entry into EAC is that the EAC Agenda on Peace and Security would be hampered. This is because Somalia is a source of security threats to the EAC states especially Kenya as its home to terror group Al Shabaab as well as a source of illegal firearms.¹⁰⁷

5.4: Kenya's Response towards the Border Territorial Threats

The constitution of Kenya provides for protection of the country against external aggression and violation of its territorial integrity, and vests this mandate on the Kenya Defence Forces.¹⁰⁸ This informs why the military was the first tool of response during the irredentist war as well as the dispute with Uganda during the reign of the President Jomo Kenyatta. It is the *Shifta* war that signifies an important step in Kenya management of border security where a number of approaches were employed. These include hard approach through deployment of security forces to deal with security threats, declaration of a curfew in the contested area, closure of the porous Somalia border and stricter laws on registration of persons of Somali origin; and border diplomacy.¹⁰⁹ Since the shifta war, Kenya has faced other territorial disputes with its neighbours and how it responded to them is the subject matter of this section of the study. Apparently, hard approach was largely witnessed during the dispute with Somalia and Uganda during the reign of Jomo Kenyatta. On the other

¹⁰⁶ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

¹⁰⁷ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 10, 2020.

¹⁰⁸ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 10, 2020.

¹⁰⁹ Tabea Scharrer "Ambiguous citizens": Kenyan Somalis and the question of belonging," *Journal of Eastern African Studies* 12, no. 3, (2018), pp. 494-513.

hand, diplomacy was the response adopted during the reign of Kibaki and the current regime of President Kenyatta.¹¹⁰

5.4.1: Hard Approach

Hard approach in international relations implies the wide range of coercive policies, such as coercive diplomacy, economic sanctions, military action, and entering into military alliances for deterrence and mutual defence of national interest of the state. In the Kenyan context, hard approach towards territorial disputes entails (military action) deployment of military, coercive diplomacy, and military alliance.

5.4.2: Deployment of the Military

Independent Kenya adopted the Westphalia State System whereby security was viewed from a traditional perspective. Threats to national interests' especially territorial integrity elicited a hard approach in the form of military deployment. This strategy was used in the irredentist war and with Uganda under Idi Amin.¹¹¹ The country also deployed the military to deal with Al Shabaab which was threatening its economic and territorial interests. Kenya is regional hub for transport due its access to the Indian Ocean. It provides a gateway to landlocked countries such as Uganda, South Sudan, Democratic Republic of Congo, Rwanda and Burundi. The port of Kilindini in the Kenyan second largest city of Mombasa is a great source of revenue for the country.¹¹² This combined with the vast opportunities presented by the blue economy are a great source of economic power for Kenya in the region.

However, this has been under threat in the past from piracy, whose proceeds were used to finance terror activities by Al Shabaab targeting Kenya.¹¹³ The problem was more pronounced in the years 2008 and 2009 where several ships were attacked by pirates mostly from Somalia rendering the Indian Ocean waters on the Somali stretch

¹¹⁰ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

¹¹¹ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

¹¹² Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 17, 2020.

¹¹³ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020.

dangerous for maritime activities.¹¹⁴ The pirates activities were a threat to the maritime industry as they operated on the busy Somali waters stretch where many ships transit between the Suez Canal and the Indian Ocean on daily basis. The pirates could at times advance their activities into the Kenyan waters which Kenya perceived as an act of violation of its territorial integrity. Moreover, the growing influence of Al Shabaab was a threat to Kenya's territorial integrity. The Somalia based terror group seeks to establish a Muslim Caliphate that would see territories in the former North Eastern and Coast provinces be part of the caliphate. Kenya regime interprets this as a reincarnation of the irredentist clamour that was witnessed soon after independence. Therefore, to counter the influence of Al Shabaab and Piracy, Kenya opted to use a hard approach by deploying the military.¹¹⁵ At the same time, the country has formulated laws that criminalize the act of piracy. One of the legal provisions is the Merchant Shipping Act of 2006 where article 369, defines piracy and penalties for those engaged in the vice.¹¹⁶

5.4.3: Closing of the border and declaration of State of emergency

Closure of border and declaration of state of emergency are some of the hard approaches that Kenya has employed in response to territorial disputes. This has mostly been the response towards Somalia particularly during the Irredentist war. On top of deployment of security personnel, Kenya declared a state of emergency in the Northern Frontier Districts of Moyale, Mandera, Wajir, Isiolo, Garissa and Marsabit and closed its border with Somalia.¹¹⁷ With increased insecurity posed by Al Shabaab, Kenya closed its border with Somalia in June 2019 in what political

¹¹⁴Ismail Abdi, Mark Lindberg & Basil Mahayni, "The dialectics of piracy in Somalia: the rich versus the poor," *Third World Quarterly*, 31, no.8 (2020), pp. 1377-1394.

¹¹⁵ Interview with a senior military officer at the Ministry of Defense, Nairobi, September, 11, 2020

¹¹⁶ Kenya Law Reports, The Merchants Shipping Act no 4 2009, (Nairobi: National Council for Law Reporting, 2009).

¹¹⁷Whittaker, Hannah, "The socioeconomic dynamics of the shifta conflict in Kenya, 1963-1968," *The Journal of African History* 53, no. 3 (2012), pp. 391-408.

observers viewed as attempts to pressurize Mogadishu to withdraw the maritime case at ICJ.

5.4.4: Coercive Diplomacy

Coercive diplomacy is one of the common practices adopted by states while dealing with their peers in the international relations. Coercive diplomacy is aimed at achieving certain political objectives in line with national interests without resorting to war.¹¹⁸ A state involved in a territorial dispute with its neighbour has at its disposal several coercive diplomacy techniques such as economic sanctions, expulsion from a regional body or suspension of an economic agreement.¹¹⁹ From data collected, all the three mentioned tactics have been employed by Kenya when dealing with territorial disputes. Other tactics include threat to close the Dadaab refugee camp, threat to ban Uganda from importing through the Mombasa Port as well as threat to sever diplomatic relations in the case of the maritime dispute with Somalia.¹²⁰ The strategy was first employed by Kenya when Uganda under Idi Amin claimed some Kenyan territories. While Kenya deployed its troops along the border, President Kenyatta successfully employed coercive diplomacy by threatening Uganda with economic sanctions that would include banning of Uganda imports through the Port of Mombasa. This move forced Idi Amin to back down and the dispute ended. In the case of maritime dispute with Somalia, Kenya has employed an array of coercive strategy such threat to close the Dadaab refugee camp, stopping of direct flights from Mogadishu to Nairobi and severing of diplomatic ties.¹²¹

With regard to closure of the Dadaab refugee camp, majority of the refugees in the country are from Somalia. In the past, specifically in 2016, the Kenyan government

¹¹⁸ Muggah Robert & Zyck Steven, "Preventative diplomacy and conflict prevention: Obstacles and opportunities," *Stability: International Journal of Security & Development* 1, no. 1 (2012), pp: 68-75.

¹¹⁹ Ibid.

¹²⁰ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

¹²¹ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020.

decided to close Dadaab Refugee camp on grounds of national security as it alleged that the camp was used as a hideout by terrorists.¹²² This move attracted divergent views with those supporting the move citing security concerns, environmental degradation and economic burdens as reasons why refugees should go back to Somalia. They also felt that sections of Somalia such as Jubaland had been pacified and hence refugees had a safe place to settle.¹²³ However, Kenya was not able to actualize this plan unilaterally as the international community intervened forcing Kenya to halt the plans and allow for negotiated plans on repatriations. There is a feeling especially from members of the civil society have been claim that closure of the camp is against the principle of non-refoulement. According to this principle, all states are obliged by international law not to repatriate any persons to a state where his/her life or freedom will be at threat based on religious, racial, nationality or socio-political affiliations.¹²⁴ Moreover, the Kenyan High Court declared the move to close refugee camps as unconstitutional in 2017 as Kenya has international obligation to safeguard the rights of the refugees.¹²⁵ Regardless, Kenya is likely to use this threat to close the camp as part of its coercive diplomacy against Somalia with regard to the maritime boundary dispute.¹²⁶

5.5: Soft Approach (Border Diplomacy)

The study established that Kenya has used border diplomacy to try and address some of the territorial disputes that it has faced since independence. To begin with, during the shifta war, Kenya used diplomacy after the military option dragged for long. It engaged Mogadishu to agree to end its support to the militias, culminating in the

¹²² Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 8, 2020

¹²³ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020

¹²⁴ Molnar Tamas “The principle of non-refoulement under international law: Its inception and evolution in a nutshell,” *COJOURN*, 1 no, 1 (2016), pp: 51-61.

¹²⁵ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

¹²⁶ Interview with an official in the Ministry of Foreign Affairs., Nairobi, September 15, 2020.

signing of the Arusha Agreement.¹²⁷ The diplomatic agreement between the two states managed to end hostilities between the two neighbours, with Somalia cutting its support to the militias. This in turn allowed the Kenyan military to weaken the command and structure of the military wing of NPPPP, and subsequently neutralizing the irredentist campaign.¹²⁸ The strategy employed here is a mix of hard and soft approaches where military action is the first line of response especially where there is an immediate threat to national security and where the adversary's troops are inside the country's territory.

Lately, Kenya has adopted diplomacy as its first line of defence to deal with territorial disputes with its neighbours. This is in line with its international commitments under the United Nations and African Union, the two international institutions that advocates for diplomatic approach towards disputes between states, without necessarily opting for military confrontation.¹²⁹ Currently, Kenya has territorial disputes with Somalia, Uganda and South Sudan, where border diplomacy has taken centre stage in trying to reach amicable solutions. The Migingo island dispute with Uganda led to a section of Kenyans calling for military deployment to drive out Ugandan Police and revenue authorities and secure the Island. However, the policy makers opted for border diplomacy where both countries made commitments towards a peaceful resolution. Kenya has arguably one of the well trained and equipped military in the region which is capable of defending its territories, however, the military is not the first line of response with regard to territorial threats facing the country.¹³⁰ Instead, the country has adopted soft approaches in dealing with the current territorial threats from its neighbours.

¹²⁷ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹²⁸ Ibid. ¹²⁸

¹²⁸ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

¹²⁸ Interview with an official in the Ministry of Foreign Affairs., Nairobi, September 15, 2020.

¹²⁸ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹²⁹ Interview with an official in the Ministry of Foreign Affairs., Nairobi, September 15, 2020.

¹³⁰ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

Likewise, border diplomacy efforts have been initiated to try and resolve the controversy around the ownership of the Ilemi Triangle.

5.6: The Effectiveness of the Approaches/Strategies

The study established that diplomacy has been the most effective strategy in responding to threats to Kenya's territory. However, in the case of Uganda during the reign of Idi Amin, hard approach was successful as the deployment of troops along the border with Uganda and coercive diplomacy forced Uganda to abandon its claim over Kenya's territory. Military action also effectively ended the irredentist campaign in the Northern Frontier District thereby saving Kenya from losing a third of its territory. However, the efforts of the military were supplemented by diplomacy supplemented military action through signing of the Arusha agreement in October 1967 between Kenya and Somalia whose outcome was an official ceasefire.¹³¹ Border diplomacy has helped in easing tensions between Kenya and her two neighbours Uganda and South Sudan over the contested territories of Migingo Island and Ilemi Triangle respectively.¹³² At the same time, it provides a platform to disputing parties (Kenya, Uganda and South Sudan) to address the territorial disputes. Despite having several territorial disputes, the IGAD region has not witnessed many wars between states with credit being given to border diplomacy.

5.7: Status and Challenges of African Union Border Programme (AUBP) and Border Diplomacy

Kenya is a member of African Union and therefore supports border diplomacy efforts by the regional body towards resolving territorial disputes as well as ensuring that all borders all demarcated and delineated by the year 2022. The major border diplomatic effort by AU is the ongoing African Union Border Programme. The study

¹³¹ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020

¹³² Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

sought to find out the status and challenges of the programme with regard to Kenya's borders.

From the study, it was established that Kenya is party to AUBP exercise and has implemented its recommendation to have a border office KIBO which was established in 2013.¹³³ Border demarcation and reaffirmation exercise has progressed well with regard to the Kenya-Tanzania border where joint border committee has held several meetings and agreed on specific border lines. The same applies to the Kenya-Ethiopia border and which is attributed to the fact that the two boundaries are largely not contested unlike the other three between Kenya and Uganda, Somalia and South Sudan. Border diplomacy efforts have been initiated to demarcate the Kenya borders with Uganda and South Sudan. Kenya and Uganda have established a plan of action that guides the process of demarcation and delineation of the common border.¹³⁴ In 2016, Kenya and Uganda established a Joint Border Commission to demarcate the joint border. The commission has made progress in the survey of the border while avoiding the disputed area of along Lake Victoria. With regard to Migingo Island, the two states have been engaging diplomatically especially through Joint Ministerial meetings to manage the conflict. For instance, in 2019, a joint Ministerial meeting between ministers of foreign affairs of the two states met and agreed on a plan of action on how to demarcate and delineate the border long the contested area.¹³⁵ At the same time, the head of police in Uganda and Kenya have agreed on joint operations at island to avert possible clashes between police from both countries as witnessed in the past.¹³⁶ This meeting was informed by cases where

¹³³ Interview with a Ministry of Interior and Coordination of National Government official, Nairobi, September 9, 2020.

¹³⁴ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

¹³⁵ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 14, 2020.

¹³⁶ Ibid.

the security officers from both countries clashed in the island raising possibilities of escalation of the dispute.

In July 2019, a Heads of States Summit took place in Nairobi between President Uhuru Kenyatta of Kenya and Salva Kiir of South Sudan.¹³⁷ The Summit took place in the backdrop of perennial clashes between Toposa of South Sudan, the Turkana of Kenya and Nyang'atom of Ethiopia. This Summit followed protests from South Sudan officials after Kenya deployed troops along Nadapal to prevent cattle raiding among the pastoralist communities of Turkana, Toposa, Didinga, Nyang'atom and Dessanach of Ethiopia, and Karamojong of Uganda.¹³⁸ Earlier on in 2009, the two states had entered into an MOU that allowed Kenya to temporarily set up a control border post near Nadapal area which is adjacent to the disputed area.¹³⁹ The outcome of the Summit was a resolution to form a joint border commission to help resolve ethnic conflict between communities in the oil-rich Ilemi Triangle. The border commission mandate was to guide amicable solution to disputes that may arise between the two states over their shared border.¹⁴⁰

The study established that there are no efforts to demarcate the Kenya-Somalia border which is largely attributed to the instability in Mogadishu which derails any meaningful border diplomacy engagement.¹⁴¹ With regard to the maritime dispute with Somalia, it was found out that the matter is before the ICJ after Somalia petitioned the court with the first hearing being held on 19th and 20th of September 2019. The petition has exposed weaknesses in the Kenya's legal system and level of diplomatic engagement. While Kenya objected to ICJ jurisdiction over the matter and presented an MOU entered with Somalia to determine the matter away from

¹³⁷ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

¹³⁸ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹³⁹ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020.

¹⁴⁰ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 18, 2020.

¹⁴¹ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

courts, the ICJ found the MOU to be insignificant. This is because the MOU did not have commitments or requirements on how the conflict was to be resolved. In objecting to ICJ's jurisdiction, Kenya relied on Article 282 of the UNCLOS that the grounds were not sufficient to exclude it over the matter. This was a blow to Kenya which had hoped to have the matter determined out of ICJ.

The major challenges to border diplomacy and AUBP are resistance from border communities and cartels involved in transnational crimes. There is also competition for scarce resources such as water among the border communities. Another major challenge is external interference in the maritime row and the unstable Somalia which makes border diplomatic engagements difficult.¹⁴² Moreover, there is lack of cooperation from states in the ABPU programme as well as inadequate resources both human and material in the demarcation exercise. Finally, there is lack of professionalism on Kenya diplomats especially in the Indian Ocean territorial dispute.

Border communities and cartels along the contested borders tend to resist demarcation and delimitation exercises due fear of being curtailed from crisscrossing the common borders.¹⁴³ Attempts to erect border pillars are frustrated by the border communities who appear to have no regard for state borders or are ignorant of their importance. Interestingly, in the case of Ethiopia border where Kenya and Ethiopia have no major territorial disputes as states, the main challenge is posed by cartels involved in illegal trade who bypass the gazetted entry point of Moyale OSBP and uses ungazetted Points of Entry (POEs) popularly known as *panya routes* to avoid payment of taxes. In an interview with one of the BCOCC official, it was established that an initiative to dig trenches to block Lorries from entering the Kenyan border

¹⁴² Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹⁴³ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

using the ungazeted route in 2020 was thwarted by the cartels who refilled it.¹⁴⁴ The same kind of resistance was witnessed along the Somalia border with Kenya where the latter had sought to construct a fence to deter illegal entry of people and goods.

Interference from state and non-state actors in territorial disputes is another challenge that was cited. This is applicable to the maritime border dispute where Norway and United Kingdom appears to take the side of Somalia so as to benefit from the exploitation of the resources therein (Oil and natural gas).

5.8: Possible Reaction to the ICJ Verdict

From the study, it was established that the stakes over the maritime territorial disputes are high for Kenya due to the geostrategic and economic opportunities that the disputed territory presents. The dispute threatens Kenya's territorial integrity where loss of the territory would have far reaching security and economic consequences.¹⁴⁵ This explains why Kenya is seeking an out of court settlement in order to avoid the tricky choice of whether to respect the verdict or not especially if it's not favourable.¹⁴⁶ Kenya is a signatory to the United Nations charter where it committed to respect the content of the charter and resolutions of the UN and its organs such as ICJ.¹⁴⁷ In this regard, ICJ is at some point set make a verdict on the ownership of the contested maritime area. It is expected that both states will honour the verdict in line with international best practices.¹⁴⁸ However, a number of respondents were of the opinion that either side (Kenya or Somalia) could choose to ignore the verdict and proceed with its own plans of claiming the disputed territory. This is because territorial integrity is one of the core national interests of the State.¹⁴⁹ However, such a move would be detrimental to that state's international reputation

¹⁴⁴ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 18, 2020.

¹⁴⁵ Interview with a senior officer at the Ministry of Defense, Nairobi, September, 11, 2020.

¹⁴⁶ Interview with a senior official at Border Control and Operations Coordination Committee, Nairobi, September 18, 2020.

¹⁴⁷ Interview with an official in the Ministry of Foreign Affairs., Nairobi, September 15, 2020.

¹⁴⁸ Pappa Marianthi, "The Impact of judicial delimitation on private rights existing in contested waters: Implications for the Somali-Kenyan maritime dispute," *Journal of African Law* 61, no. 3, (2017), pp: 393-418

¹⁴⁹ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

and could even attract sanctions from the international community. This is the major reason why Kenya has all along sought for an out of court settlement with Somalia. Meanwhile, a tripartite summit in Nairobi involving Farmajo, Kenyatta and Ethiopian Prime Minister Abiy Ahmed scheduled for March was delayed over the coronavirus outbreak.¹⁵⁰ This engagement is informed by the feeling that Africa and IGAD to be specific offer alternative dispute resolution mechanisms that Kenya and Somalia can explore to resolve the dispute. This is because by resorting to the ICJ alternative, the outcome has been frosty diplomatic relationships between the two neighbours. There is a feeling that Somalia ought to recognize that Kenya has long been a protector and defender of Somalian interests and deserve better engagements with regard to the issue.

At the same time, some respondents felt that ICJ the judicial organ of the United Nations is facing accusations of impartiality as some serve national interests. Further, there have been claims of the court being a victim of conflicting interests among member states, who use and control it. While African states have in the past rushed to the ICJ and the Permanent Court of Arbitration to resolve territorial or boundary disputes, concerns persist on the partiality of these UN judicial bodies. The feeling by some policy makers is the court no longer serves the interests of all member states but those of the powerful states especially in the application of Eurocentric international law that compromises the interests of African countries.¹⁵¹ Further, there are concerns that the composition and staffing of these courts remain unrepresentative of Africa. In the end, states are out to protect their national interests one of them being territorial integrity.

¹⁵⁰ Interview with a senior officer at the Ministry of Foreign Affairs and International Trade, Nairobi, September 15, 2020.

¹⁵¹ Interview with a senior official at Border Management Secretariat, Nairobi, September 17, 2020

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1: Introduction

The study established that territorial disputes have adverse effects on national security of Kenya as well as other states in the IGAD region. This largely occurs when states fail to effectively implement border diplomacy to resolve the conflicts especially where military action is employed as the first line of response. The implication of military action is economic loss, loss of life and strained relationships between states. The past and current territorial disputes in Kenya are largely caused by colonial legacy of border and maps drawing as well as resources along the common borders. From the research, it was established that colonial legacy is largely the epitome of these territorial disputes with resources being the trigger.

Kenya major territorial threats are from Somalia where two territorial disputes have been witnessed (Irredentism war and the maritime boundary dispute). The threat by Somalia has been largely informed by Somalia's expansionist and irredentism desires which predates Kenya's independence. Despite the 1967 Arusha Agreement that ended the Shifta war, Somalis have not abandoned the expansionist ambition as witnessed in the Maritime dispute. Moreover, the Somali community straddles across the Kenya-Somalia border and interacts oblivious of the colonial state borders. The other threats have been from Uganda's claim over the western part of Kenya in 1976 and the Migingo Island which is ongoing. Kenya currently faces a possible territorial threat to her territory from South Sudan over its border along the Ilemi Triangle. Of the three current disputes, it is the maritime dispute with Somali that threatens Kenya's national security the most due to the strategic location of the territory in dispute and which may render Kenya landlocked should Somalia win the case at ICJ.

However, this should not imply that there is an inch of Kenya's territory that is insignificant. Territorial integrity of the state cannot be quantified on the basis of perceived or real resources at stake only. In its entirety, the state should be able to protect all its territories regardless. Therefore, all the current territorial threats need to attract an almost equal level of attention as they all have serious ramifications on the national security of the state.

Kenya response to its territorial disputes with its neighbouring states has been a mix of soft and hard approaches. The major hard approach has been the military action, coercive diplomacy and closure of borders. Hard approach was largely adopted during the first phase of territorial disputes between Kenya and Uganda and with Somalia. Diplomatic efforts were initiated later on during the war with the irredentist movement in North eastern region while coercive diplomacy was employed in the Ugandan case, although there was deployment of the military as a deterrent measure. The second phase of territorial disputes covers the ongoing disputes between Kenya and Uganda, Somalia and South Sudan. Unlike in the first wave, Kenya has been hesitant to deploy its military to deal with the territorial disputes with Uganda over Migingo Island, Somalia over the Indian Ocean maritime border and South Sudan over the Ilemi triangle. Despite having a relatively strong military compared with its disputing neighbours, Kenyan policy makers have opted for diplomatic efforts such as border diplomacy to try and resolve the territorial threats. Perhaps this is informed by the economic interests that the country has with the disputing parties who form part of its core environment. Uganda is Kenya's biggest trading partner as it uses the Port of Mombasa for its import and export trade. This in turn earns Kenya revenue which is key in supporting economy which is one of the three elements of national power. Despite pressure from a section of its citizens to deploy the navy in the

Milingo island, Kenya was reluctant due to considerations of the cost of war and ensuing implications as well as its international obligations where UN and AU advocates for peaceful dispute resolution mechanisms. The same reasons informed Kenya's response with regard to the disputes with Somali and South Sudan. Kenya has great economic Interest with South Sudan especially in the Lamu Port South Sudan Ethiopia Transport Corridor (LAPSSET) project where a pipeline is to be constructed to export South Sudan oil through Lamu Port. Border diplomacy is also preferred by Kenya in its dispute with Somalia where it seeks an out of court settlement. However, Kenya has not aggressively utilized border diplomacy in resolving the territorial disputes and in some cases like the maritime dispute appears as an afterthought.

6.2: Conclusions

Territorial disputes continue to pose security challenges to states in the IGAD region. Kenya being a member of IGAD regard's its territorial integrity as one of its core national interests. Since independence, threats to Kenya's territorial integrity have been a major security and foreign policy issue for the country's policy makers. Of the three current territorial disputes, it is the maritime dispute with Somalia that presents Kenya with its biggest national security threat. This is because should Somalia win the case before ICJ, Kenya would become landlocked thereby denying it of the immense economic and geostrategic benefits that access to Indian Ocean presents. Moreover, unlike the disputes with Uganda and South Sudan where the two neighbours are willing to engage in diplomacy to resettle the matters, Somalia has been reluctant.

The territorial disputes are triggered by trans-boundary resources with the underlying issue being colonial legacy borders that are contested by states. Kenya approach to

territorial disputes is a mix of hard and soft approaches. In the first two disputes with Somalia and Uganda, hard approach was the first response. However, in the current disputes with Somalia, South Sudan and Uganda, the country appreciates the importance of peaceful dispute resolution mechanisms bordering on border diplomacy in trying to resolve the threats to its territorial integrity. Initially, the military action managed to stop the irredentist war, but did not address the desire by the Somali community living in Kenya to join Somalia. Border diplomacy adoption in the Migingo and Ilemi triangle disputes has helped Kenya handle the threats with its neighbours in a diplomatic way without degenerating into war. However, these border diplomacy efforts have not been without challenges. The most notable one being lack of full commitments with disputing states in finding amicable solutions to the conflicts.

6.3: Recommendations

Kenya needs to fully adopt border diplomacy as its first line of response to all the territorial threats, current and future. This calls for enhancement of its diplomatic ingenuity to be able to deal with such territorial disputes without necessarily having to go the legal way or the hard approach. The application of border diplomacy should be aggressive enough so as to achieve the set objective. While embracing border diplomacy, Kenya should not steer away from its commitment to international obligations therefore should commit to the ICJ process should Somalia refuse an out of court settlement. However, it should not abandon its diplomatic campaign to have the matter settled out of court using other peaceful methods. While the court operates on the premise of professionalism, Kenya is alive to the fact that the impartiality of the judges could be suspect due to their national loyalties and political interests of different states. The main concern for Kenya is that the President of the court is a

Somali national which casts doubts on the impartiality of the bench. Kenya need to upscale its diplomatic efforts to convince Somalia to settle the matter outside ICJ and commit to pursue other peaceful means such as arbitration, negotiation, conciliation, organs of the UN (General Assembly and Security Council) and regional mechanisms such as AU and IGAD. Diplomatic means will offer the two states with the benefit of agreeing on the most amicable settlement where they will have the chance to terminate the dispute voluntarily. Such as avenue will not only mend the strained diplomatic relationships but also enhance cooperation and mutual respect between Kenya and Somalia. It will also set a good precedent in resolving conflicts between states in the region.

Kenya and Somalia can borrow a leaf from Nigeria and the archipelago of Sao Tome Principe who used diplomacy to resolve territorial dispute. The above territorial dispute is similar to the one between Kenya and Somalia as the area in dispute is a maritime territory rich in natural resources. The outcome of the negotiations between Nigeria and Sao Tome Principe was the establishment of a Joint Development Zones to exploit the oil in the disputed territory. Kenya and Somalia can adopt the same approach by sharing the disputed territory as well as the minerals in it. The maritime dispute in question is more of political than legal hence a political avenue should be pursued with heads of state through summit diplomacy taking a lead role.

Kenya is a member of UN, AU, EAC and IGAD which are international bodies that advocates for peaceful settlement of disputes. In order to widen the scope of alternatives to resolution of territorial threats, Kenya should utilize these institutions in order to find amicable solutions to the current territorial threats. To this end, Kenya which is a key player in these regional bodies need to spearhead a campaign

to strengthen them so that they have more capacity in resolving disputes between member states in a peaceful and amicable manner.

The policy makers ought to ensure that application of diplomatic efforts in dealing with territorial disputes is mutually agreeable with the disputing parties/states. The essence of this recommendation is to ensure that both parties involved in the dispute participate in good faith which would guarantee commitments to the resolutions.

Training and equipping of officers whose jurisdiction touch on border/territorial issues such as in the Ministries of Defence, Foreign Affairs and Interior, Border Control and Operations Coordination Committee and Kenya International Boundaries Office and Survey of Kenya. This is aimed at enhancing their capacity and competency in dealing with territorial integrity which is a core national interest of Kenya.

A state is regarded to enjoy territorial integrity when it is able to assert its presence in all of its territories. One of the glaring security gaps in Kenya has been ungoverned areas especially along its borders which makes it easy for external aggressors (both states and non-state actors) to infringe on its territories. There is need for the country to occupy all its territories through deployment of border agencies to ensure that there are regulated activities along the border.

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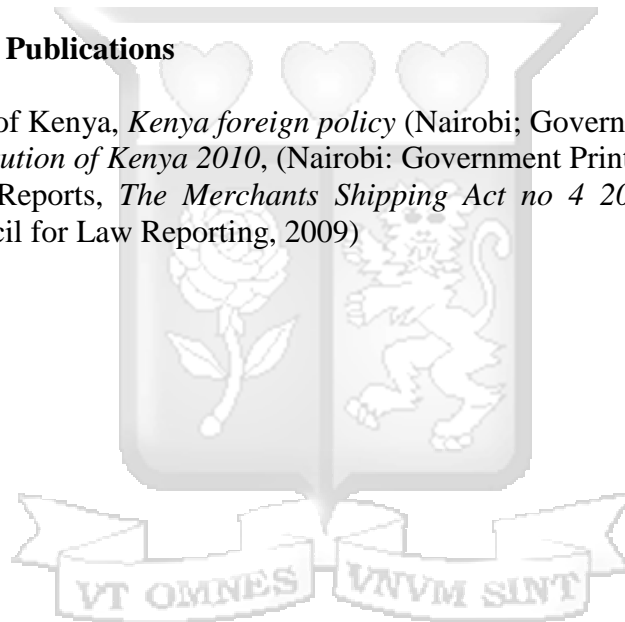
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Appendix I: Interview Schedule for Key Informants

SECTION A: INFORMED CONSENT

My name is Josphat Ndirangu, a student at Strathmore University, School of Humanities and Social Sciences. I am undertaking a study on “Border Diplomacy and Territorial Disputes in the IGAD Region: A case study of Kenya”. Please assist in contribution of information towards this study by answering the following questions.

I reassure you that your identity and information will be treated with utmost confidentiality and used for purposes of this study only. Please free to decline to answer any question you feel not comfortable with.

SECTION B: STRATEGIES APPLIED BY KENYA IN DEALING WITH BORDER ISSUES

1. Kenya has since independence been confronted with several territorial disputes with its neighbours namely Somalia over Northern Frontier Districts (irredentist war and Indian Ocean Maritime border), Uganda over the Western part of the country and Migingo Island, and recently with South Sudan over Migingo Island. What are the major causes of these territorial disputes?
2. Of the three current territorial disputes (Indian Ocean maritime dispute, Migingo Island and Ilemi Triangle with South Sudan) which one (s) do you feel threaten Kenya’s national security the most?
3. How has Kenya responded to Territorial border threats that have faced it since independence?
4. In your opinion, what would say about the effectiveness of these strategies
5. How prepared are Kenya policy makers in dealing with border related threats?

SECTION C: THE ROLE OF BORDER DIPLOMACY IN RESOLVING TERRITORIAL DISPUTES IN THE IGAD REGION

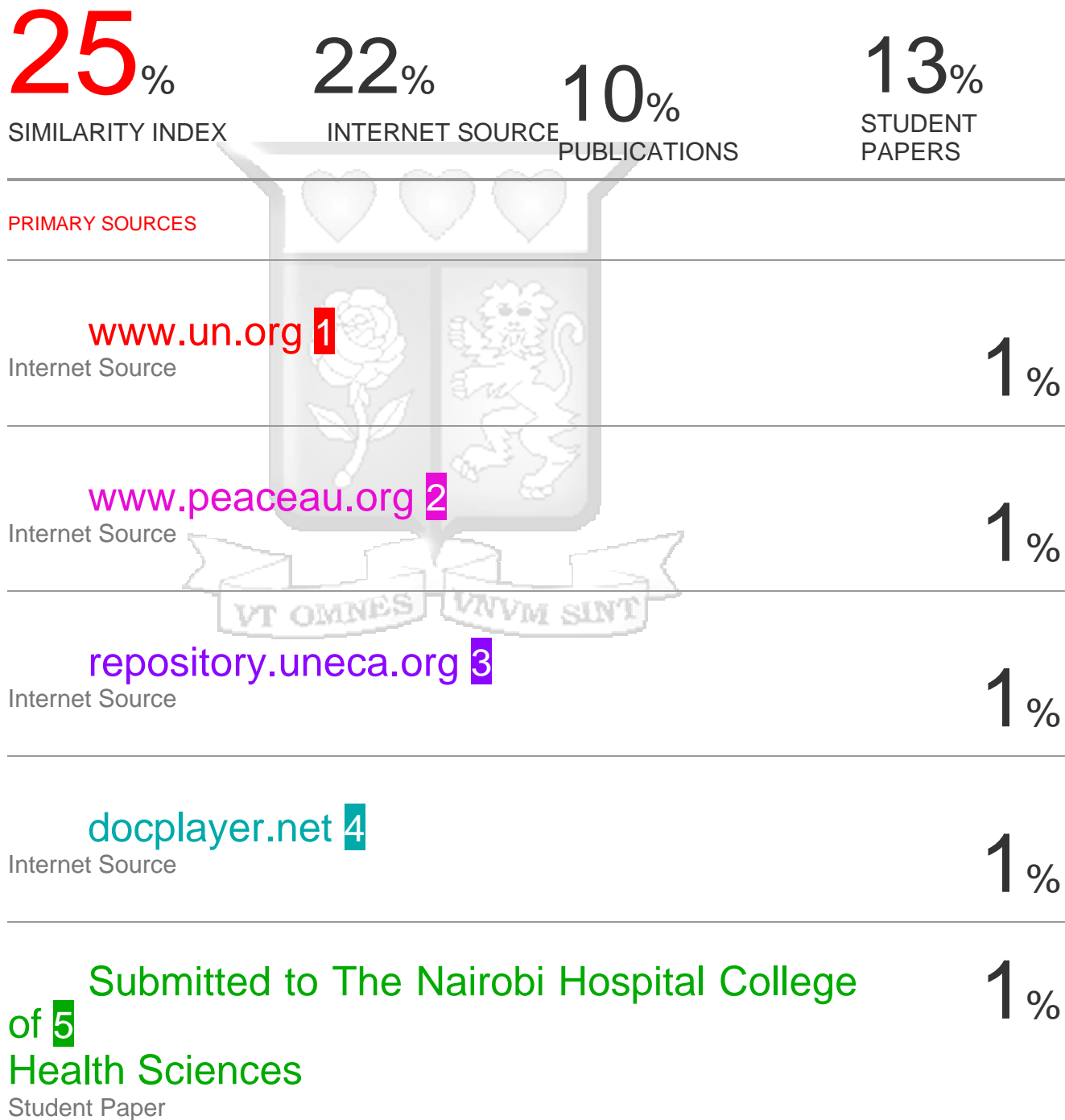
6. What has been the contribution of border diplomacy in resolving border disputes in the IGAD region?
7. Has Kenya effectively utilized border diplomacy in dealing with territorial disputes it faces?
8. The African Union in its efforts to put an end to the protracted territorial disputes in the continent established the African Union Border Programme (AUBP) where member States are mandated to demarcate and reaffirm borders by the Year 2022. What is the status of the African Union Border Programme with regard to Kenya's territories?
9. Are there any challenges that Kenya is facing in its efforts to comply with the AU's 2022 deadline?
10. With regard to the maritime dispute, is Kenya willing to comply with the International Court of Justice ruling if it's not in its favour?
11. The operating environment of the State is ever dynamic and Kenya is not an exemption. Do u think this change in Kenya's operational environment necessitate policies change on border diplomacy and other national security?

Appendix II: Plagiarism Report

Appendix II: Plagiarism Report

Josphat Gitonga Ndirangu: Border Diplomacy and Territorial Disputes in the IGAD Region: A Case Study of Kenya

ORIGINALITY REPORT

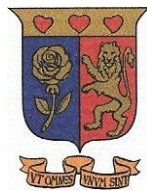


Appendix III: RHinnO Approval

STRATHMORE UNIVERSITY

1st September 2020

Mr Gitonga Ndirangu, Josphat
Josphat.Ndirangu@strathmore.edu



Dear Mr Gitonga,
RE: Border Diplomacy and Territorial
Region: Case Study of Kenya

Disputes in The IGAD

This is to inform you that SU-IERC has reviewed and approved your above research proposal. Your application approval number is SU-iERC0786/20. The approval period is 1st September 2020 to 31st August 2021.

This approval is subject to compliance with the following requirements:

- i. Only approved documents including (informed consents, study instruments, MTA) will be used
- ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-IERC.
111. Death and life-threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-IERC within 72 hours of notification
- iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-IERC within 72 hours
- v. Clearance for export of biological specimens must be obtained from relevant institutions.
- vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
- vii. Submission of an executive summary report within 90 days upon completion of the study to SU-IERC.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) <https://oris.nacosti.go.ke> and also obtain other clearances needed.

Yours sincerely,

r Virginia Gichuru,
Secretary; SU-IERC
Cc: Prof Fred Were,
Chairperson; SU-IERC



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Appendix IV: NACOSTI Research License



Ref No: 663472 Date of Issue: 13/September/2020 **RESEARCH LICENSE**

This is to Certify that Mr. JOSPHAT GITONGA NDIRANGU of Strathmore University, has been licensed to conduct research in Nairobi on the topic: BORDER DIPLOMACY AND TERRITORIAL DISPUTES IN THE IGAD REGION: A CASE STUDY OF KENYA for the period ending: 13/September/2021.

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