COMPULSORY ADJUDICATION OF THE KENYA-SOMALIA MARITIME DISPUTE

LUCY ADHIAMBO FELISTER

(S205/CTY/PT/27952/2018)

A RESEARCH PROJECT SUBMITTED TO THE SCHOOL OF LAW, ARTS AND SOCIAL SCIENCES IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL RELATIONS AND DIPLOMACY OF KENYATTA UNIVERSITY.

OCTOBER, 2022

DECLARATION

This research project is my original work and has not been presented for a degree in any other University.

Signature_____ Date: _____

Lucy Adhiambo Felister

S205/CTY/PT/27952/2018

Supervisor

This research project has been submitted for examination with my approval as University Supervisor.

Signature_____ Date: _____

Dr. Xavier Francis Ichani, Ph.D.

Lecturer, Department of International Relations, Conflict and Strategic Studies

DEDICATION

To my loving parents who have supported me through this journey, be blessed

ACKNOWLEDGMENTS

I thank God for the wisdom, knowledge and patience that have guided me through this study. Further, giving God thanks for all He's done, for what He's doing and for all He'll do for me.

To my Supervisor, Dr. Ichani Xavier, words are not enough to express my appreciation for all your effort and support you have given me. Thank you for your help and motivation. God bless you abundantly. Amen.

ABBREVIATIONS AND ACRONYMS

AMISOM	African Union Mission in Somalia
AMSSA	African Maritime Safety and Security Agency
AUBP	African Union Border Programme
AU	African Union
CEWARN	Conflict Early Warning & Response Mechanism
ECOWAS	Economic Community of West African States
ICJ	International Court of Justice
IGAD	Intergovernmental Authority on Development
ITLOS	International Tribunal on the Law of the Sea
NFD	Northern Frontier District
UNCLOS	United Nations Convention on the Law of the Sea

TABLE OF CONTENTS

OPERATIONAL DEFINITION OF TERMS

Border: This is the assumed geographic line or part of geographic area separating Kenya and Somalia, and in this case extends 681 Kilometres from Ethiopia's point to the Indian Ocean and denotes the span of a given state territory in the land and sea.

Contentious issues: This is a subject of national interest that is likely to cause disagreement or diplomatic row between Kenya and Somalia and in this study issues such as resources and its location.

Contiguous zone: This is the belt which extends a distance of twelve nautical miles beyond the country territorial sea limit.

Delimitation: This is the line drawn to separate maritime zones of Kenya and Somalia where they meet and overlap so as to distinguish the extent to which each of the two states may exercise it sovereign obligations.

Compulsory adjudication: Kenya and Somalia's maritime dispute was resolved through a mechanism under international law and presided over by the International Court of Justice.

Compulsory jurisdiction: This is when both Kenya and Somalia assures the United Secretary General that they are both accepting the Jurisdiction of the court. Kenya and Somalia have the opportunity to withdraw through acceptable channels and they are allowed to use reservations through alternative dispute resolution mechanisms.

Peaceful Settlement of Disputes: Kenya and Somalia could have opted for alternative dispute resolution approaches such as negotiation and mediation as a means of resolving contention issues of national interest such as maritime disputes.

LIST OF FIGURES

ABSTRACT

Kenya and Somalia are among states that have accented to compulsory jurisdiction of the International Court of Justice on peaceful settlement of disputes. However, these two states are at odd over the verdict on international boundary delimitation passed by this court in regards to the Kenya- Somalia Maritime dispute. This study examined compulsory adjudication, carried out by the International Court of Justice, as means of resolving the Kenya Somalia maritime dispute. The specific objectives were: to explore the genesis of the maritime dispute between Kenya and Somalia, to analyse international legal framework on peaceful settlement of maritime disputes and to evaluate the state reservation towards compulsory adjudication as an approach for pacific settlement of maritime disputes. The study reviewed relevant literature and analysed case studies of maritime disputes that have been resolved or pending to ascertain the suitability of compulsory adjudication, arbitration or other alternative mechanisms in resolving the Kenya-Somalia maritime disputes. This study was anchored on the theories of institutional liberalism and realism. This study utilized the mixed research design and relied mostly on the historical and explorative designs. The research was primarily qualitative and explored both primary and secondary sources. Primary data was sourced through both archival data retrieval, and field research. Secondary data was sourced from conference papers, books and journals. The data collected was grouped, corroborated, analysed through contents analysis and presented using the qualitative research techniques and using themes that are comparable to the research objectives. The major proposition of the study was that maritime disputes may be resolved either through compulsory adjudication and that the international law through it elaborate legal frameworks also anticipates the maritime disputes may be resolved through or diplomatic and bilateral engagements between the two conflicting states. However, states have reservation in submitting their conflicts for compulsory adjudication by the International Court of Justice. For such, Somalia and Kenya were willing and unwilling respectively to comply with international arbitration. Information gathered in this study was not only beneficial in providing a body of knowledge on understanding the role of compulsory adjudication in pacific settlement of the disputes, but also added to existential knowledge on international legal framework on maritime disputes and state reservation in judicial settlement of territorial and maritime disputes.

CHAPTER ONE

INTRODUCTION

1.0. Chapter Overview

This section will cover; background to the study, statement of the problem, general objective and specific objectives, research questions and premises, significance and justification of the study, scope of the study, limitations and delimitations of the study. The ultimate purpose of the chapter is to lay the foundation upon which the study was undertaken.

1.1 Background to the Study

Maritime disputes are on the increase and threaten bilateral relations of parties to disputes. Incentives for maritime disputes vary (Orttung & Wenger, 2016). International Law has established various jurisdictional regimes for resolving land and maritime disputes. Delimitation and demarcation of boundaries has been and still means of resolving disputes. Since independence in 1960s, many boundaries have been delimitated to resolve existing disputes in Africa (AUBP, 2013). States have however disputed or failed to abide by the decisions made by the International Court of Justice (ICJ).

Even though the international community created ICJ to amicably resolve disputes referred to it, the Court's decision has in many cases created further rift between parties threatening to exacerbate the existing conflict. Often severed relations emerge after the determination of the cases over disputed territories. This has left the international community with many questions in regards to what is the appropriate or best means to regulate conflicts between states. It is due to these concerns that experts

and policy makers tend agree, in the realist views, that there is no legal authority that is unanimously accepted in the international community to help in resolving disputes among states? Moreover, which states has moral obligation over what? And in this case, whether Kenya or Somalia's position is right in relations to the ongoing maritime dispute between them?

Maritime disputes between Kenya and Somalia presents a scenario where both states have to forego state interest, on the control of coastal and sea resources, in order to agree to resolve the existing dispute in a peaceful manner or sort for arbitration. However, when both states do not want to resort in either of the two options, then either Kenya or Somalia will have to enforce the law through the International Court of Justice where the court will exercise its compulsory adjudication on the matter. In most cases, the Court's decision in never fully welcome by both parties,

Many states have affirmed through declarations to be bound by compulsory adjudication of the International Court of Justice (ICJ), in regards to peaceful settlement of disputes involving them when the case is brought before the ICJ. To this the ICJ has listened and determined a number of cases. In most cases the ruling is contested for number of reasons. At its worst, states defy the ruling. A good example is the case between Kenya and Somalia over maritime territory concluded in 2021.

Compulsory Adjudication has been ratified by 73 states internationally (Nations, Charter of the United Nations and Statute of The International Court of Justice, 1946). This means that the International Court of Justice will accept legal disputes from these member states with the requirement that disputing states have agreed to the compulsory jurisdiction. Kenya accepted and was ready to cooperate with the compulsory adjudication over its maritime dispute with Somalia. There was however,

change of heart later on. She withdrew and boycotted the proceedings. She later refused to comply with the judgment forcing Somalia to seek a possible course of action from the United Nations Security Council (Wasike, 2021).

Kenya and Somalia have had chequered bilateral relations since independence with conflict threatening their diplomatic ties. The conflict between Kenya and Somalia, border disputes, and the on-going maritime dispute has and will continue to shape the relations between the two countries. While conflict and cooperation seem to characterize state bilateral relations, regulating relations between and among states has been a challenging issue. When it comes to resolving disputes among states, there is a thin line of deciding who deserves what and who does not. That is why, it was important to have a regulatory body in the form of ICJ that will adjudicated on interstate disputes or otherwise provided a mechanism that will have authority over such disputes and be regulated according to the law.

International maritime disputes can be resolved through adjudication of the court or alternative dispute resolution mechanisms. When conflicting states fail to come into an agreement over dispute, they tend to assume that either of the party has violated their rights. Moreover, the conflicting states feel that their territorial and sovereignty rights have been interfered with. Such feelings were reminiscent in the maritime dispute between Kenya and Somalia. Hence each of the two states takes steps to re-address the wrong. Thus, most maritime disputes have been resolved through the court system. Some have been resolved through the tribunals while others have been subjected to third-party dispute resolution mechanisms.

Compulsory adjudication of international maritime disputes is considered by some states to be ruthless and dominating (United States Congress, 1960). There are

perceptions also that international arbitration will only favour one country hence there is no firm promise that both states will remain to be friendly after determination on the disputes. States therefore, have reservation over resolving their maritime disputes through adjudication. This explains why Kenya and Somalia are at odds on whether to peacefully resolve the maritime dispute through judicial settlement or through out of court settlement such as negotiation, mediation and arbitration bilateral negotiations.

There are a number of maritime case files that the International Court of Justice has determined. Some of them are; *Burkina Faso v Niger* where the court demarcated the boundary that was disputed between the countries and both of them were satisfied with the decision (Burkina Faso v Niger, 2010). *Cameroon v Niger's* maritime dispute was ruled in favour of Cameroon with regards to the sovereignty of Bakassi Peninsula in Lake Chad and the maritime boundary was redrawn (Cameroon v Nigeria, 1994). *Nicaragua v Colombia* was also a case where the court ruled on the delimitation of the disputed boundary (Nicaragua v Colombia, 2001).

Maritime disputes have also been resolved through arbitration and some of the cases are; *Guyana v Suriname* where the tribunal Suriname's actions were constituted to be use of force and Guyana was awarded damages (Guyana v Suriname, 2004). *Bangladesh v Myanmar* (Bangladesh v Myanmar, 2008)was also determined by the tribunal where Bangladesh was awarded most parts of the disputed area and all exploitation rights. These are only some case studies determined through adjudication and their details were discussed in the literature review.

Territorial and maritime disputes have tended to increase tensions among states and if they are not resolved. The also lead to war (Forsberg, 1996). States throughout the

world value the integrity of their sovereignty and security by ensuring that their borders are not interfered with by external actors. International security is achieved through the protection of these borders and ensuring that its citizens are protected from any external threats. Historically, the realists believe that state borders are the most essential component when it comes to international security (LinkLater, 1995). International borders are therefore sacrosanct and must never be violated.

There are a number of legal regimes that regulate maritime disputes. They include: the United Nations Convention on the Law of the Sea (The United Nations Convention on the Law of the Sea, 1982), the Convention on the Territorial Sea and Contiguous zone (Convention on the Territorial Sea and Contiguous Zone, 1964), Convention on the Continental Shelf (Convention on the Continental Shelf, 1958), Convention on the High Seas (Convention on the High Seas, 1958), Convention on Fishing and the Conservation of living resources of the High Sea (nd the Conservation of the Living Resources of the High Sea on Fishing , 1958) and the African Charter on Maritime Security, Safety and Development (African Charter on Maritime Security, Safety and Development, 2016). These conventions are sources of international laws that provide legal framework for pacific settlement of disputes. The 1982 Convention on the Law of the Sea has for instance given parties to the treaty the opportunity to settle maritime disputes through alternative means but in case these means such as negotiations do not come through, they will have to take their dispute to the court or the tribunal.

One of maritime disputes resolved by the International Court of Justice example is the maritime dispute between *Cameroon and Nigeria.* Cameroon lodged an application with the International Court of Justice on 29th March 1994 against Nigeria over the

sovereignty of the Bakassi Peninsula islands in Lake Chad. Cameroon wanted the court to clearly show the land and the maritime boundary between the two states. Military intervention occurred on the disputed area and Cameroon asked the court to provide for temporary measures so as to avoid armed conflicts. The court allowed for temporary measures and asked both states to refrain from any military activities. In its application, Cameroon also asked for damages. The Court ruled that the sovereignty over the peninsula islands lay with Cameroon in the year 2002. The court also fixed the maritime boundary between the two states. The court further gave an order for the withdrawal of all administrative and military activities over a territory that belonged to either party (Cameroon v Nigeria, 1994). Although the honourable court pronounced itself, the compliance with the verdict has been minimal. (Cameroon v Nigeria, 1994)

Africa's maritime disputes have destabilized the economic, political and even social relations among states. The maritime disputes that are still pending need to be resolved through diplomatic means either through judicial settlement or bilateral talks and unless these disputes are resolved, they could affect maritime policies. Maritime disputes are usually delayed due to various reasons; some of them include, countries failing to attain a lasting result because of international and domestic impediments, lack of confidence in winning and lack of experience under the law of the sea (Ahmad, 2014).

Africa has had difficulties when it comes to resolving maritime disputes. Issues that concerned the sea in Africa has been left unattended for a long time until recently when states noticed the importance of territorial waters. Many maritime disputes in Africa have been left unresolved and this may be due to the belief that most African

countries have; they rely mostly on political beliefs and not legal practises. Africa also does not have the means and resources that could help in pushing of settling of maritime disputes as a region before resorting to international help. The African Union in the spirit of African solution for African problems holds that Africa should try as much as possible try and solve their disputes regionally before opting for international courts. To this, AU adopted the African Union Resolution (M/Res 1069 (XLIV) on peace and security. This resolution is supposed to promote good relations among African States when it comes to maritime disputes. The African Union Border Program was also adopted in 2007 to help in the oversight of African borders (Africa Union Border Programme, 2007).

Kenya's maritime dispute with Somalia commenced in 2014. Somalia refereed the dispute to the International Court of Justice for determination. Somalia sued Kenya and asked the Court to redraw the boundary in the Indian Ocean from a straight line to a diagonal flow. The area of contention is a triangle at the coast of Africa about 100,000 square kilometres and is rich in oil and gas. The maritime dispute was ruled in favour of Somalia but Kenya declared that it will not recognise the decision of the court. Kenya initially was reluctant to proceed because of two main reasons. First objection was that both countries had signed a Memorandum of Understanding (United Nations). Secondly, that both countries were entitled to alternative methods (Somali V Kenya, Judgement on Preliminary Objections, 2017).

The court had to first find out if the Memorandum of Understanding qualified to be legal. Somali on their part denied the validity of the memorandum sighting that the instrument was "non-actionable" and "void". (Somali V Kenya, Judgement on Preliminary Objections, 2017)

The International Court of Justice did not agree with these arguments. It stated that Somali's arguments were inadmissible secondly; the court argued that the Memorandum of Understanding was sufficiently enough to show that both parties had entered into force after they signed and ratification was not necessary. Lastly, the court was of the opinion that under customary international law, Somali was not in a position to revoke international law obligations as international law required parties to a treaty to conclude their agreement (Somali V Kenya, Judgement on Preliminary Objections, 2017).

The International Court of Justice further stated that if paragraph 6 of the agreement had the clause of an alternative dispute resolution mechanism as was argued by Kenya, then it would have emerged from the previous talks by the Norwegian Ambassador but since this was never mentioned earlier then the Memorandum of Understanding was not important in this situation (Somali V Kenya, Judgement on Preliminary Objections, 2017). Kenya argued that since both parties had not selected an alternative dispute resolution method, then Annex VII should be enforced to allow the parties to have a lee way to other methods of settling this dispute.

The court's position was that Article 282 served the role of making the Article broader and open to further interpretations on Jurisdiction matters so as to help in covering reservations that are not specific. (Somali v Kenya; Judgement on Preliminary Objections, 2017) The court finally found itself to have Jurisdiction because both the Memorandum of Understanding and Article 282 of the United Nations Convention on the Law of the Sea were not sufficient enough to fall under Kenya's reservation to the court's Jurisdiction. (European Journal of International Law Analysis, 2017)

This study focused on the different methods of dispute resolution mechanisms and sees what method could have been best for Kenya and Somalia before the ruling of the court that was delivered on 12th October 2021. The problem that was being addressed by this study is why Compulsory Adjudication was not working for the maritime dispute between Kenya and Somalia? Now that Kenya has refused the verdict of the court, were there any other alternative means that could have been best for the two countries besides adjudication and what the best way forward for the two countries is.

1.2. Statement of the Problem

Kenya and Somalia's maritime dispute has brought out two different opinions when the case had to be decided by the International court through the optional clause since both of them did not resolve their matter through peaceful means or arbitration. Somalia wanted the boundary line to be determined by the court but Kenya on the other hand wanted the boundary to remain as it were according to the 1979 decree.

The recent maritime dispute was in the brink of sparking another war between the two neighbouring states. Kenya and Somalia blamed each other for marketing oil blocs in the contested waters. Both countries acted negatively towards reciprocal bilateral relations. Kenya recalled her Ambassador to Somalia and evicted Somalia's delegate in Nairobi in February 2021. Kenya also suspended direct flights from Somalia to Nairobi and declined access to three top Somali officials at the Jomo Kenyatta International Airport in May 2021. Kenya also closed its border along Lamu in June 2021claiming insecurities. Somalia on the other hand stated that its officials will no longer tend to meetings in Nairobi and prohibited all Kenya-based NGOs.

The final judgement of the International Court of Justice that delimited the boundary was rendered in 2021. Whereas Kenya had affirmed through declarations to be bound by compulsory adjudication of the International Criminal Court (ICJ), in regards to peaceful settlement of disputes, the state withdrew her participation in the ICJ process and categorically opposed the judgement. Kenya stated that it will do all it takes to protect its borders despite the ruling. Kenya's decision adds to a number of existing controversies over the unresolved maritime disputes in Africa. The main question therefore is why there is no agreed unified approach in dealing with maritime disputes in Africa? Maritime disputes in Africa have inconsistent answers. Africa has embraced the principle of "use of force" when settling disputes and Africa has been externally influenced in decision-making processes. It also threatens to jeopardise the cordial relations between the two states owing the fact that Kenya has been in the forefront in resolving the internal dispute in Somalia that has protracted close to 30 years.

1.3 General Objective

The aim of the study was to look at why obligatory adjudication was not the leading implies for settling the Kenya Somalia sea dispute.

1.4 Specific Objectives

1. To investigate the origins of the maritime dispute between Kenya and Somalia.
2. To examine universal legitimate system on a serene settlement of maritime dispute between Kenya and Somalia.
3. To assess Kenya's reservation towards obligatory settlement as response for pacific resolution of maritime dispute between Kenya and Somalia.

1.5 Research Questions

a) What historical factors have brought about the maritime dispute between Kenya and Somalia?

b) Which laws and conventions are appropriate to a serene settlement of universal maritime dispute between Kenya and Somalia?

c) Why is Kenya unwilling to comply with worldwide obligatory adjudication as implies of quiet of maritime dispute between them?

1.6 Significance of the Study

The importance of this study was to try and explore more helpful information in understanding how maritime disputes can be solved peacefully without threating the security of states and its citizens. This study was able to uncover more information on the different approaches that Kenya and Somalia could have used in resolving their maritime dispute before the ruling that was delivered. It also helped in uncovering the laws and policies on international maritime disputes, how they have evolved over time and finally found the solution to a peaceful settlement of disputes. Most importantly, the study was to find out why compulsory adjudication was not the best means for Kenya and what African countries can do to come up with a unified approach when dealing with maritime disputes.

1.7 Scope of the Study

The academic scope of the study includes; genesis of the maritime dispute between Kenya and Somalia, international legal framework on peacefully settlement of maritime dispute between Kenya's reservation towards compulsory adjudication as recourse for pacific settlement of international maritime dispute between Kenya and Somalia. This study covered the period of 1900's to 2021 so as to understand how the

maritime border dispute between Kenya and Somalia has developed since colonial times and resolved. This case was brought before the court in 2014; major diplomatic wrangles have risen due this conflict. The study was largely focused on Kenya. It was done in Nairobi. This is because some of the Somalia's officials reside in Nairobi.

1.8 Limitations and Delimitations

Shortcomings that were experienced by the researcher include; there is little study on the Kenya-Somalia maritime dispute hence present literature review on the topic was challenging to find, primary data collection was limited due to the distance and covid 19 regulations, the sample size of the study was not wide enough and the scope of my study may be considered as little knowledge as the researcher has not experienced many years in publishing and research.

Other impediments for this research that may hinder researchers from achieving study objectives. Analyzing the maritime dispute between Kenya-Somalia is both legal and political undertaking. Discussion of legal matters submitted to courts for determination is prohibited by law. Despite these, the researcher was able establish the desirable data. Conducting interviews with senior embassies, senior government staff within the security sector and the Ministry of Foreign Affairs (MFA) was a delicate process that hangs in a balance and a challenge that was not easy to overcome. Furthermore, the researcher encountered financial constraints because of the advanced requirement to successfully collect data from the study locations hence necessitating the researcher to limit the research scope to fewer places. The study delimitated the scope to two government ministries. It included the ministry officials in the sample since they were responsible for sharing the research topic's relevant information.

1.9 Assumptions of the Study

The study assumed that relevant ministry officials from the Ministry in charge of internal security, and that of Foreign Affairs would share the details needed to help the researcher collect enough data and information about Kenya-Somalia maritime dispute.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This literature review is aimed at examining different approaches of different scholars on the issue of unresolved maritime disputes, comparing them to the present case study of Kenya and Somalia and to see the different approaches that can be used to resolve them.

2.1.1 Origins of the Kenya Somalia Maritime Disputes

Thompson (2015) has examined the conflict between Kenya and Somalia and its history in the pre-colonial period and how this conflict was largely influenced by Britain, France, Italy and Ethiopia. Thompson has analysed the conflict on boarder issues between Kenya and Somalia most especially during the 19th century. He has further explained on how this conflict largely impacted their relations in the international level. Thompson has pointed out that some of the present problems igniting their tensions are; refugees, terrorist attacks and instabilities in both regions (Thompson, 2015). This study helps to understand that maritime dispute between Kenya and Somalia did not heighten because of the present challenges that both countries face but this conflict was long before both countries got stabilized and most of these problems were due to security, interests and prestige of both countries.

Castegano (1964) states that Kenya and Somalia are connected by Somali's ethnic group that has for a long time occupied both sides of the disputed maritime boundary. He pointed out that the area which has largely been settled by Somali's is known as the Northern Frontier District of Kenya (Castegano, 1964). Somalia's unity with regards to the maritime dispute it has with Kenya could prove to be a strong factor as

it is under one nation and religion making them a threat to Kenya. Somalia is nationalistic meaning that they can fight against themselves but when fighting an external enemy, they unite and become stronger. This study sheds light on the cultural ties between Kenya and Somalia. The study explored the benefits of such cultural factors in the resolution of the maritime disputes.

Nilton (Cardoso1, 2016) has described the historical perspectives in Africa where he has analysed the history and security dynamics in the Horn of Africa in the post-colonial period so as to understand the security perspectives and challenges in the region. He went ahead to trace the history of security in the region from the cold war to the present (Cardoso1, 2016). Nilton was of the view that Africa emerged to be a new object of geopolitical, economic and was strategically placed in relation to its interests after facing political instability, socioeconomic problems and marginalization hence increasing Africa's importance to the international stage.

Nilton and Cardosol (Cardoso1, 2016) offer understanding on the fact that Kenya and Somalia's maritime dispute got much attention in Africa due to the rise of the economic and political factors that have come to be the most important elements in the region.

According to Okumu (WafulaOkumu, 2014) most of the African boundaries were not drawn to serve the African people but for the interests of the colonialists. He goes further to observe that boarders were drawn unreasonably, without any restrictions and without some form of control and that African countries were forced to redraw their boundaries after their independence, which caused instabilities in their social, economic and political lives (WafulaOkumu, 2014). The interests that these water bodies have contributed largely to African countries to have borders and protect their

sovereignty. Kenya and Somalia's maritime conflict can be seen as both countries trying to increase their power by making sure that neither of them takes away what they consider as powerful to the eyes of international actors.

Huth (Huth, 1998), states that a territorial dispute between states is as a result of a disagreement over a piece of territory that is claimed by two or more independent countries. He explains that a dispute usually arises when one state does not accept the definition of where the boundary line of its border with another country is currently located whereas the neighbouring state takes the position that the existing boundary line is the legal border between the two states based on a previously signed treaty or document (Huth, 1998). These studies aver that Kenya and Somalia's dispute was due to the economic, political and social factors that could cause territorial disputes, they include; resource scarcity, locational feature, domestic politics, geopolitical competition and cultural differences which have interests that other international actors want a piece of.

Weitzberg (Weitzberg, 2017) investigated on the history of Kenya and Somalia with regards to their borders. She has looked at how Somali people have lived in Kenya for a long time even before the Republic of Kenya was founded. She has analysed on how international actors have seen this action as a dangerous existence in Kenya. She looked deeper at how international actors have started looking at both countries without borders as their history was based on tribe, race and nationalities (Weitzberg, 2017). The maritime dispute between Kenya and Somalia resulted to both countries forming allies. Kenya was being supported by the United States and China while Somalia was being supported by Norway and the United Kingdom.

Woodward (Woodward, 1996) has looked at the history of state politics and international relations in Africa. He has looked at how conflicts in Africa were mostly caused due to its history and traditions. Woodward has pointed out the failures of international organizations in their attempts at peace keeping in Africa (Woodward, 1996). Today African countries have been influenced by international actors in maritime dispute resolution and as much it has helped in its development, it has largely impacted on their own independent sovereignty. This study offers more introspection on the state of politics and international relations between Kenya and Somalia.

2.1.2 International Legal Framework on Pacific Settlement of Maritime Disputes

Rongxing (Rongxing, 2012) has identified the United Nations Convention on the Law of the Sea as the main legal instrument which is aimed at establishing coastal boundaries and erecting an international sea bed authority to regulate seabed exploration not within territorial claims and to distribute revenue from regulated exploration (Rongxing, 2012). In its judgement that was delivered on 12th October 2021, The International Court of Justice applied the provisions of the treaty since both Kenya and Somalia are parties to it. The use of the court was only after failed negotiations between the two countries as the convention has given parties the freedom to seek other alternative means before resorting to the court.

Judge Helmut Tuerk (Tuerk, 2012) elaborated how the 1982 convention provides for a comprehensive regime of sea disputes. It offers regulations on all ocean spaces and the use of the ocean and its resources (Tuerk, 2012). Part VX of the convention requires parties to a treaty to settle their dispute peacefully hence, it has provided for mandatory procedures with binding decisions (The United Nations Convention on the

Law of the Sea, 1982). He also pointed out the fact that the International Tribunal for the Law of the Sea is the main judicial body that settles disputes related to the 1982 Convention, including maritime boundaries, fisheries, sea pollution or maritime scientific research (Tuerk, 2012). Article 297 and 298 of the same convention provides for limitations of the tribunal (The United Nations Convention on the Law of the Sea, 1982). States that have reservations on the legitimacy of the court have the freedom to turn tribunals to resolve their maritime disputes. Tuerk (Tuerk, 2012) assertion helps in understanding the merits and demerits of tribunals. It was interesting to notes that tribunal are not that flexible.

Maritime boundary delimitation has been discussed in detail by Masahiro and Miyoshi (Miyoshi, 2000) where they discussed the background of maritime delimitation. Miyoshi explains how decisions of the International Court of Justice have come through and how they guide states to come into final conclusions (Miyoshi, 2000). Kenya however was not guided by the decision of the court when the judgement delivered was in favour of Somalia. The decision of the court has made the relationship between Kenya and Somalia to be worse than before however we cannot deny the fact that past decisions of the court have acted as positive jurisprudence to most states internationally.

Harrison (Harrison, 2017) has pointed out that the oceans can only be protected when there is an effective legal framework governing them and that this will only be possible thorough the cooperation of states (Harrison, 2017). International actors and organisations play a significant role in making sure that all parties get involved with maritime decisions. Africa for instance needs coordination between international legal institutions and how international law that can be enforced by encouraging

institutionalizing regional bodies that will help in educating and creating awareness about unresolved and prolonged maritime disputes.

Rothwell (Stephens, 2016) has discussed how the sea is managed and governed by explaining the fundamentals principles of the United Nations Convention on the Law of the Sea. He has looked at how the convention has analysed the use of bilateral, regional and international agreements that are used in place of the convention. He has also looked at the rules and institutions that have been established by the convention and its achievements (Stephens, 2016). This Convention cannot be enough when resolving maritime disputes internationally most especially now that Kenya is not satisfied with the ruling the court. It is because of this reason that we need stronger and optional legal responses to help in maritime dispute resolution.

Scott (Elferink, 2015) has examined how the Law of the Sea convention has sparked different contentions and controversies on how it is used and applied. He has looked at how the law of the sea has evolved overtime and discussed how Hugo Grotius and John Selden have contributed to this major development. He has gone deeper to look at how the present governance of the oceans interacts with the traditional law of the sea (Elferink, 2015). The International Court of Justice did apply the use of this convention when resolving the maritime dispute between Kenya and Somalia and generally the treaty has also impacted the law of the sea and has influenced other states on how they can advocate for their rights and interests when it comes to maritime disputes.

Anderson (Anderson D. , 1998) has elaborated more on the “joint development” principle. He stated that, “the solution of a joint area may be second best to an agreed boundary, but a joint area may well be better than seeing a dispute remain unresolved

and possibly grow more serious (Anderson D. , 1998). The Kenya Somalia maritime dispute would have found a compromise to a defeat in litigation if this method was applied before taking the matter to court. Africa needs to ratify an effective treaty that provides for joint development which will permit the region to peacefully resolve complex maritime disputes in the future.

2.1.3 State Reservations to Comply with Compulsory Adjudication of Maritime Disputes

Kolb (Kolb, 2013) has appreciated the presence of the International Court of Justice today. He did not fail to recognize the Permanent Court of International Justice stating that they follow a strict procedure on doing things. Kolb looked into the history of the world court and its vast contribution in the international community and how the court has significantly contributed to the development of international law through its jurisprudence (Kolb, 2013). In determining the maritime dispute between Kenya and Somalia, the International Court of Justice had to first find it had jurisdiction, which it did according to the convention paving way for it to determine the maritime dispute between the two countries.

Slaughter (Slaughter R. K.-M., 2000) has appreciated the importance of International courts and tribunals and the way they have evolved over time. He is of the view that centralization of courts and the modern way of adjudicating international maritime disputes has been appreciated as one of the best developments of international law (Slaughter, 2000). Today courts in the international arena have greatly increased and to make it easier, states have also started embracing the importance of international tribunals. However, states still are not embracing the use of courts to settle their maritime disputes as most of them today are going for alternative dispute mechanisms.

Slaughter (2005) has argued that more independent tribunals are being set up as they play a big role in overseeing international affairs (Slaughter L. H.-M., 2005). He is of the view that when a state has breached or violated international treaties, it is easier to identify the breach and put the violating state to shame and it encourages all states to comply with international law. Critics have argued that states only turn to international tribunals as they are seen to have no power over them making the parties to have total control over the matters presented before the tribunal. This assertion will be examined in the Kenya-Somalia disputes.

Churchill (2010) has discussed the developments of the settlement of disputes with regards to the law of the sea. He has looked at the different methods of dispute resolution that states might opt to choose from. He further looked at compulsory means such as the use of courts, tribunals and other quasi-judicial bodies that will help in dispute resolution under the law of the sea. Churchill did not forget to add that these judicial and quasi-judicial bodies, not all of them make legally binding decisions (Churchill R. , 2010). To this, Kenya vs Somalia's maritime dispute has posed a dangerous relationship after the International Court delivered its judgement because Kenya is not willing to comply with the decision as much as it was binding.

Booth (Booth, 1986) in analysing maritime resources and the power they hold; he points out that there are military activities in the Exclusive Economic Zone. Booth in his work has also agreed to the fact that the sea has become a domain for power. He brings out a major concern that if the sea holds so much power, it is capable of causing insecurity issues (Booth, 1986). States dealing with unresolved maritime disputes and delimitation rights brings out a broader picture of how the water bodies are a source of power. This opinion of ocean and power has been analysed by Keohane and Nye

where they have contended that ocean politics promotes interdependence of states (Robert O. Keohane, 1987). Kenya has a stronger navy than Somalia and it may take advantage of this just to protect its contested maritime border. However, Kenya might not be able to succeed with this because of external influences such as the United Nations Security Council.

Wiegand (Wiegand, 2011) analyses on why territorial disputes have endured for a long time and why some last for years while others are resolved (Wiegand, 2011). Before Kenya and Somalia got their long awaited ruling, both countries could have looked at different strategies that could use to resolve their maritime dispute. Both countries however had noticed importance of negotiations and its bargaining power and how it was a better form of a diplomatic tool but this did not bear any fruits making them to proceed to court.

Oduntan (Oduntan, 2015) has looked at a different way in resolving maritime disputes. He has looked at the involvement of the African Union in solving maritime disputes. African Union established the African Union Border Programme which is in charge of delimitation, demarcation and settlement of African Boundary Disputes (African Union Border Program, 2008). Oduntan has also recognised African regional economic communities that are solely in charge of managing boundary disputes. For instance, The Conflict Early Warning and Response Mechanism which was formed to be in charge of detecting and managing cross-boundary disputes; The Intergovernmental Authority on Development which plays a part in border and boundary dispute and The Economic Community of West African States which has experience in boundary disputes and managing conflict resolution. African Union through these regional bodies should encourage the use of peaceful resolution

mechanisms like negotiations and bilateral agreements to help in fostering development in Africa rather than promoting unnecessary disagreements.

Khalfaouri and Yiallourides (Khalfaouri & Yiallourides, 2019) argue that Africa's maritime disputes have presently risen due to the discovery of the economic value that seabed resources have. They state that resources like oil and gas have a high probability of causing conflicts among African states and this is because states compete for power hence increased competition magnifies disputes. They further argue that most significant maritime boundary disputes in Africa, both past and on-going, the interplay between these disputes and the exploration and exploitation of seabed resources is clearly seen (Khalfaouri & Yiallourides, 2019). Kenya can go to any lengths to protect its sovereignty. Kenya and Somalia need to tone down their conflict so that it does not escalate. This is because this conflict can make Kenya to use any necessary means possible to protect its autonomy. Kenya for instance can use its military to defend its interests but can do it step by step that no state in the international arena will be aware of what its next step will be.

2.2 Summary of the Identified Gap

The "optional clause" in the United Nations Convention on the Law of the Sea still has given states the freedom to choose whether their maritime disputes should be resolved by the International Court of Justice or not. Compulsory adjudication therefore cannot be possible if this clause will continue to be practiced. States need to come up with alternative means to hasten the resolution of these maritime disputes.

2.3 Theoretical Framework

This study will be guided by two theories, Liberal Institutionalism and Realism. Liberal institutionalism theory explains how cooperation between states can help in

peacefully settling the maritime dispute between Kenya and Somalia. Realism explains why maritime interests cause states to conflict or disagree against each other; realism theory has also been discussed as a critique to this theory.

2.3.1 Liberal Institutionalism

Institutionalism seeks to explain why states are committed to institutions and what forms they take. These institutions make policy makers to view them as forms of progress hence they offer financial support in return (Richard, 2008). This theory focuses on how rules, norms and structures are established and in turn become authoritative guidelines in the social world (Scott, 2004).

The maritime dispute between Kenya and Somalia has overtime strained the relationship between the two countries. The International Court of Justice was placed with the mandate of resolving the maritime dispute between the two countries but despite its final ruling, Kenya still relents on accepting the decision of the court. Institutionalism does not encourage the use of force as opposed to realism. This school of thought encourages actors to come together to cooperate through various forums which in turn promotes the interactions between state and non-state actors.

This school of theory share most of realist's theories. They believe that the international system is anarchic, self-centred and only want to survive however institutionalism believes that cooperation between nations is certainly possible. The difference between this theory and realism is that institutionalism has the ability to form rules and regulations that can help in resolving dispute resolution. A good example is the United Nations Convention on the Law of the Sea that has for ages helped in resolving maritime disputes between and among states internationally.

Institutionalism promotes cooperation that is self-centred and selfish. (Keohane, 1984) For instance, if Kenya and Tanzania want to agree to lower their trade tariffs, both of these two countries will benefit from each other. However, Kenya will not lower its tariffs unless it is sure that Tanzania has lowered it to and this goes both ways. This can also be seen in the present maritime dispute between Kenya and Somalia. Kenya has not accepted the final ruling because it was trying to protect its economic interests.

Institutionalism argues that institutions prolong the time in which states interact making agreements and decisions to be in circles rather than a quick decision. This promotes repletion in terms of agreements encouraging long term cooperation rather than a short term one (Richard S. W., 2004). The International Court of Justice has been doing this with most of maritime disputes not just with the Kenya Somalia. There are many maritime disputes that are still pending or others that took relatively a long time to resolve and despite the fact that this is being handled peacefully, this takes a lot of time which the court could have concentrated on doing other important matters.

Institutionalism argues that institutions increase information on how states behave. Some of this information may be vital such that when a particular state breaks certain rules, they have to be sanctioned. Institutionalism also increases efficiency by providing a centralised forum for states to come. This makes it easier than a one on one meeting of states which can prove to be really costly and time consuming. (Richard S. W., 2004)

2.3.2 Realism

The main reason this study has used the realist school of thought is because of non-compliance which has been known to be the hindrance of states to cooperate.

International institutionalism requires international organizations such as the United Nations to be able to enforce measures that will help states to comply with the decisions of the International Court of Justice. Kenya has refused to acknowledge the decision of the court due to many reasons hence the importance of discussing realism theory as a critique to liberal institutionalism.

Realists view that the safety of their territories come first and treat national development as a means to state autonomy and safety. They believe that states are always working towards preserving their security against both external and internal threats. (Waltz, 1979) Kenya and Somalia have both vowed to protect their territories by all means and this has led them to take their dispute for adjudication to protect their interests.

States are usually autonomous meaning that they can make their own decisions and are usually self-preserved. Liberalists do not lay their thinking on the moral issues but rather they much rely on deceit and power. States usually concentrate on the national interests above everything. The dispute between Kenya and Somalia is being driven by their own interests and especially the Exclusive Economic Zone of the disputed area. Oil and gas has been discovered to be rich and this could strengthen the economy of either country.

Realists argue that states formulate policies that will make the international arena see them as improving the world's standing. Look at Russia and Syria, despite of the war between the two states, Russia has managed to strengthen and maintain the relationship so as to protect its interest and more so in the international arena. A maritime policy should also be ratified especially by African countries so as to help with the unresolved maritime cases.

Sovereignty is a principle that gives birth to anarchy. A state is sovereign because it is being recognised on an official basis by other states as being in control of its own territory and its citizens. Sovereignty, though embraced, it hinders cooperation among states on security issues hence states tend to become competitors for military power. This competition in turn brings about security dilemma, when one state improves its security; it produces fear to another state who in turn seeks to improve their security. (Waltz, 1979) Kenya and Somalia fear that when the disputed area is awarded to either of them, especially now that it was awarded to Somalia, they will become more powerful than the other in Africa and may attract more allies.

Thucydides is said to be the founding father of Realism theory. He tried to explain realism on the basis of war and peace. He saw that there was an unhealthy conflict between the Greek states and the non-Greek states such as Persia and Macedonia. Thucydides argued that Inequality was natural and inevitable. (Finley, 1972)

Thucydides argues that in an international arena, the strong should rule the weak. He is of the view that panic and fear is inborn which in turn leads to immoral conduct making war to be unavoidable internationally. An unstable balance of Power is the only way to attain peace. (Finley, 1972)

In his book, "History of the Peloponnesian war", he states that states dominate in war and politics and non-state actors are irrelevant in participation of world politics. (Finley, 1972)

Machiavelli argues that strength is a very important factor or states to survive. In his book, "The Prince", he tried to distinguish politics from ethics. He shows us what the world looks like when viewed from a dismayed point of view. He argues that it is

easier for a ruler to be feared that to be loved, so long as their welfare are being served, they will do according to your will. He adds that if rulers are not crafty, they may miss to notice a threat which may end up harming or destroying the state. (Wooton, 1995)

He argues that in the international system, the world is a dangerous place as well as a place to maximize your benefits and opportunities. If a state wants to survive in this world, it should be aware of the dangers it is facing and taking necessary precautions to avoid them and in the case of opportunities; states should be ready to exploit them. (Wooton, 1995)

Machiavelli does not believe in the moral ethics of love, peace, charity or acting in good faith, he terms this as being politically irresponsible. (Mingst, 2008) He argues that if states act through these norms, states will end up losing everything to the extent of sacrificing their own citizens.

Hans Morgenthau on the other hand sees men and women as political animals that their only goal is to pursue power. He adds by saying that this power is used to find an advantageous political standing and can also dictate other states. It is this nature of animals that encourages men and women to be in conflicts with each other. In his book "politics among nations" (Hans, 2005)Morgenthau constituted to what he called the six principles of realism. (Keaney, 2008)

The first principle he pointed out that politics was regulated by law which is connected to humanity and natural justice. Secondly, that statesman thinks and acts "in terms of interest defined as power. Thirdly he added that although states' primary focus is on interests, their power heavily relies on "political and cultural environment". The "universal moral principles" can only be used after they are separated and refined

depending on time and place. Fifth he warned that by pursuing their national interests, it could lead to total destruction. Finally, he stated that political procedures are determined by a states' power.

This theory has however been criticised. Critiques have argued that realists have fully concentrated on only military and security and have left out the importance of other factors that make state relations strong. They have ignored issues such as economic, social and cultural factors. Critiques have also argued that realists do not explain the process of making the national interests policies but only focuses on how to protect them. Another weakness of this theory is that realism has ignored the importance of cooperation since states today relate through conflict and cooperation but realism only recognises conflict.

2.4 Conceptual framework

Figure 2.4 explains how the maritime dispute between Kenya and Somalia could have been resolved either through judicial settlement or bilateral negotiation and how realism theory has involved international players and regimes into the dispute.

Compulsory Adjudication is the topic that will be described and changed by the researcher. It can be manipulated to describe the maritime dispute between Kenya and Somalia and at the same time it can help the researcher to understand the roles that judicial settlement and bilateral negotiations play.

The international legal framework, state reservations over compulsory adjudication and peaceful settlement of maritime disputes are some of the outcomes that the researcher to find some new information from. These three altogether depend on the main topic hence helps the researcher to come up with definite outcomes.

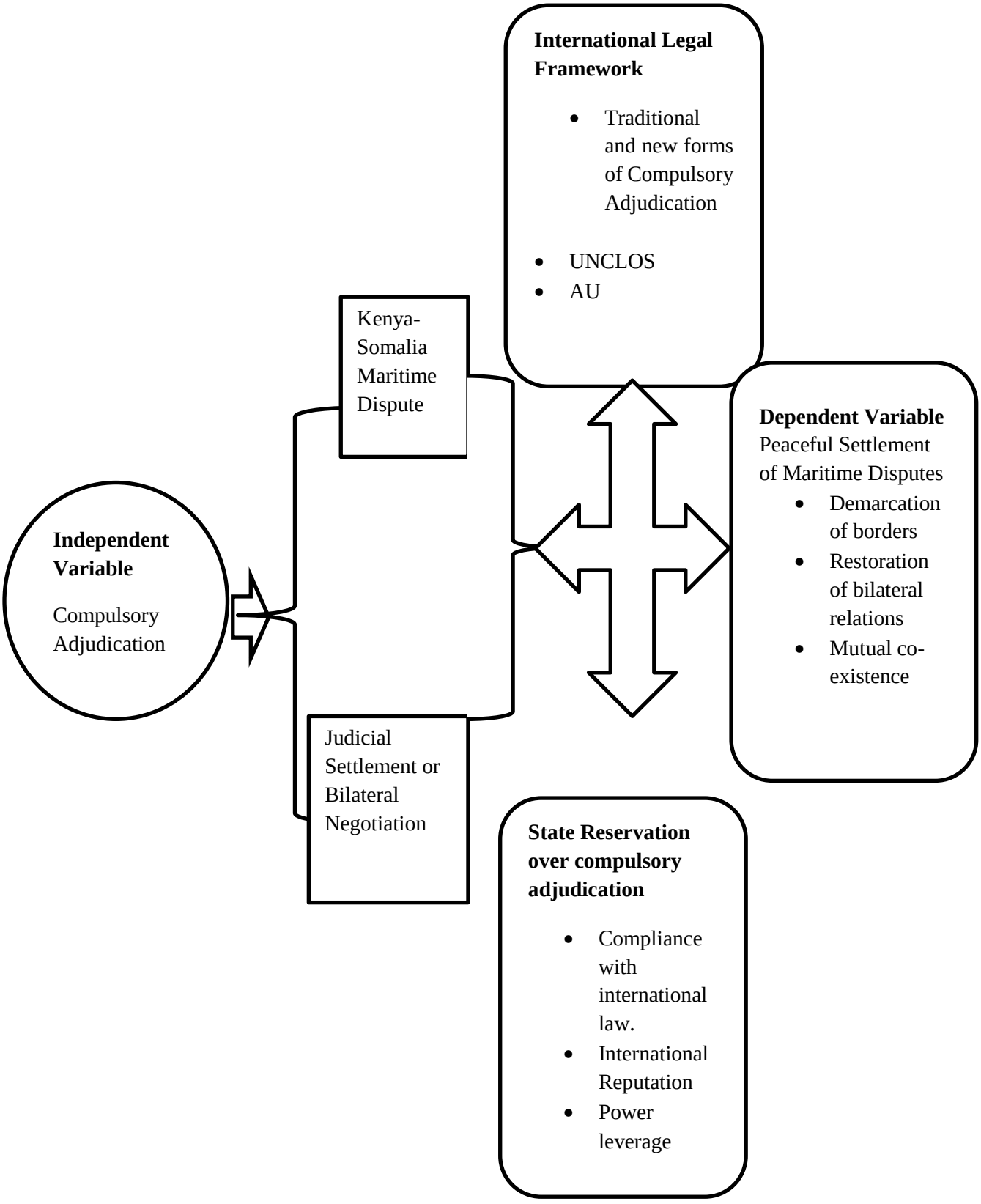


Figure 2.1: Conceptual Framework.

Source: Researcher, 2022.

2.5 Conclusion

This section has summarised what most authors a scholars have found on maritime disputes. The Kenya-Somalia maritime dispute is a new topic and books, articles and other sources have been a challenge to access in this section. However, the researcher has been able to refer to some similar contentious issues that are controversial over maritime borders by comparing past and present literature so as to come up with the summary of this literature review. The theoretical framework on the other hand has helped the researcher to understand how the data is going to be interpreted and how this study is going to be guided or suggest the best explanations for the maritime dispute between Kenya and Somalia.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter covered; the research design, location of the study, target population, sampling techniques, sample size, data collection instruments, pilot test/pre-testing, validity and reliability of research instruments, techniques of data collection, methods of data analysis and ethical considerations.

3.1 Research Design

The study mainly concentrated on the case study design. However, this study can be said to be a complex research problem hence applied the mixed method research designs including historical design, explorative design and case study design. The historical design was used to trace the genesis and history of the maritime dispute between Kenya and Somalia. The explorative design was used in analysing the existing international legal framework on peaceful resolutions of maritime disputes.

The case study design was used to compare different case laws on compulsory adjudication and state reservation to judicial settlement of international disputes. The research compared different forms of dispute resolution methods and found out which one was more favourable to Kenya and Somalia. More so, the study went deeper to find out how maritime policies have evolved over the years. The research found out the impacts of the maritime dispute and the chain of events afterwards. This design helped improve an existing solution. This design was challenging as the respondents proved difficult to cooperate and was difficult getting willing participants.

3.2 Area of the Study

Although the contested area is a triangular patch of 100,000 km2 (about 62,000 square miles) along the Indian Ocean that comes about from projecting the Kenya-Somalia common border eastwards, international maritime disputes were compared with the current research. Since the study was about peacefully settling the dispute, physical movement was limited, however experts from the legal and marine department were consulted as discussed in the data collection procedures and techniques section.

3.3 Target Population

The study focused on all of the individuals, organizations and stakeholders that are involved with legal maritime disputes both in Kenya and Somalia. These include: government officials, embassies, politicians, legal experts, peace and conflict experts, and employees of the International Court of Justice.

The number of advocates that were involved was 12; students from Kenyatta University, Nairobi University and Mount Kenya University were 23, 2 from the ministry of Defence, 2 from world vision, and 6 from the ministry of foreign affairs.

3.4 Sampling Size and Sampling Procedure

The sampling method used for the study was the stratified form of sampling. The maritime dispute between Kenya and Somalia required a specific set of people hence population elements such as age, education, gender and occupation to examine the size. The researcher used the stratified random sampling when choosing the sampling size. Sub-groups were created from the entire population who have similar characteristics. The advocates that were involved in this study were chosen because of their legal understanding of the maritime dispute. The students helped the researcher through their education level by coming up with their different opinions of

the maritime dispute. Stakeholders from the Ministry of Defence, world vision and ministry of foreign affairs were a subgroup that was chosen from the population size because these had a big population size that could not be handled without using a random sampling method.

The study area for this research has been selected purposively due to the fact that Somali can be challenging to travel to. The respondents will be selected through the simple random sampling because the target population is small and manageable hence they all have an equal chance of being selected; this will be the primary data while the secondary sources will include books, journals, magazines and electronic sources.

3.5 Instruments of Data Collection

The study used primary data collected through Key Informant Interviews and Focus Group Discussions. The informants were respondents who are knowledgeable in the research problem and they were selected through the strategic positions they hold in their organizations. The Focus Group Discussions were interviewing a number of respondents under the same organization at the same time. This helped in getting different opinions and a lot of information under the shortest time possible. The study also used same questionnaires distributed to all respondents without bias. The questionnaires were open-ended so as to enable the respondents to have freedom of expression.

3.5.1 Questionnaires

This instrument helped the researcher get more information from the respondents. The information gathered was accurate and flowed in a logical manner which contributed to getting reliable conclusions. The study used open-ended questions which gave the respondents the opportunity of expressing their ideas and not limiting them to a

particular set of questions while adopting the virtue of privacy. Open-ended questions enabled the researcher get detailed and descriptive information.

3.5.2 Interview Schedule

This was to be a conversation between the researcher and the respondent, where the researcher asked the questions and is answered by the respondent. Interviews were supposed to be used so as to get in-depth and detailed information and the researcher was also to be able to judge the validity of the information by looking at the body language and listening to the voice and intonation of the respondent. Interviews were more personal than a questionnaire and it was to enable the researcher have more control over the order and flow of the questions. The mode of conducting the interviews varied according to the circumstances and distance. The study used mostly telephone conversations or the internet because of the distance limitation.

The study contained questions which were within the scope of the study and the research objectives. The interview schedule was limited to only key informants from the Foreign Affairs Ministry, Law firms and institutions hosting the Somali Government. The researcher then organized the responses in a logical manner and finally, the data was analysed.

3.5.3 Focused Group Discussions

The researcher formed two focused groups, one was advocates and the other one was students. These two groups were people from similar backgrounds or professions and they were able to discuss the maritime dispute between Kenya and Somalia so as to get divergent views. This study particularly aimed at international relations experts in school and Legal practitioners who agreed or disagreed with each other where they

provided on what they agreed about the issue at hand. The researcher was the moderator of the discussion and ensured that that there was even participation of the discussion, was neutral, was not ambiguous and made a detailed report which was prepared after the meeting to summarise the different opinions.

3.6 Pre-testing

The researcher used this stage to test her questionnaires and surveyed questions to a specific target group which evaluated the reliability and validity of the survey instruments before the final distribution. This helped the researcher to know whether the questions were well framed and that the responses being given were relevant depending on the objectives of the study. Issues such as ambiguous words, skipped items, amount of time used and difficulties in tracing the resources back were dealt with after pre-testing; hence this enabled the researcher's work to be credible and accounted for.

3.7 Validity and Reliability of the Instruments

Validation of research means that the results of the study were meaningful and they served the purpose of the assessment. The validity of the study was also determined by the scores from a measure should represent the variable they are intended to. Validation of the study was measured such that, if different researchers had to examine this specific problem, they should all come up with the same conclusion. The tests of the research are supposed to be relevant, appropriate and used correctly. The test should also be meaningful, trustworthy and should serve the purpose to reach the desired goals.

Reliability on the other hand helped the researcher determine the constituency of a measure. It helped the researcher make comparisons that were reliable and the tests were free from errors. Reliability means that the tests obtained should be consistent across time through testing and re-testing. The consistency of people's responses across the subject matter helped prove if the study was reliable. Finally, different observers were consistent in their judgements. All this was done by collecting and analysing data. Reliability of the research was also dependent on the sources used by the researcher.

3.8 Data Collection Procedures and Techniques

The information for the research was obtained through in-depth interviews with the officials from agencies that were both in the legal and maritime field since they were in the best position to explain on how the maritime dispute between Kenya and Somalia could be peacefully determined. Some of these agencies were the Kenya Maritime Authority, The Kenya State Department for Fisheries, Aquaculture and the Blue Economy, The National Oceanographic Committee and the Kenya Coast Guard to assess on the maritime security. Legal offices were also visited. This was done after obtaining a research permit. Questionnaires were administered and collected by the researcher to the sample subjects either physically, through mail, phone or online depending on the circumstances of time, distance and money. The researcher also used the Focus Group Discussions with advocates and students of international relations. All these meetings were prepared for in advance by making relevant appointments so as to avoid impromptu visits. Observation was not used by the researcher as there were some complex issues which needed direct interaction with the sample subjects, and if this was used, the researcher may have ended up missing out on the complete

picture. The study used both primary and secondary sources of information, and finally the data collected was through qualitative method.

3.9 Data Analysis

The method of analysis was based on the information collected though questionnaires, interviews and focus group discussions, which are qualitative in nature as it was difficult to find quantitative data on maritime issues. The data collected was presented in a table and categorized as per their shared characteristics. Secondary data was acquired from assorted and review of unpublished and published materials, academic papers, and journals. An in-depth analysis was done; quantitative data was analysed through content analysis. This was to build a conclusion by methodically and quantitatively categorizing definite features of messages and using the matching method correlated tendencies. Descriptive data was analysed thematically into themes corresponding the objectives of the study which include: to explore the genesis of the maritime dispute between Kenya and Somalia, to analyse international legal framework on peacefully settlement of maritime dispute and to evaluate the state reservation towards compulsory adjudication as an approach for pacific settlement of maritime disputes. The findings generated from this study were used to compile the final document.

3.10 Ethical Considerations

The study followed the rules and guidelines provided by the School of Security, Diplomacy and Peace Studies from Kenyatta University. The Ministry of Foreign Affairs, the United Nations and the institutions hosting the Somali Government in Kenya issued a permit to the researcher. The researcher ensured that the sample subjects were protected from any form of harm, their dignities respected and informed

consent obtained before conducting the study. The researcher ensured that privacy and confidentiality was upheld at all times during the study. The researcher acted in a professional way to avoid misrepresenting the information obtained or being biased, she ensured that communication upheld transparency and honesty. In cases where the institutions or the individuals wanted to remain anonymous, the researcher applied anonymity. Finally, and most importantly, the researcher acknowledged the works of other authors used in any part of the study.

CHAPTER FOUR

PRESENTATION OF DATA, ANALYSIS AND DISCUSSION

4.0 Introduction

The maritime dispute between Kenya and Somalia commenced in 2000s when Somalia was experiencing internal conflicts. It was during this time when Kenya tried to seize the opportunity by coming up with a maritime border that was almost similar to the one it shares with Tanzania (Coggins, 2021). The United Nations Convention on the Law of the Sea has provided for the delimitation of territorial waters. This is provided for under Article 15 of the Convention where it provides that states that are opposite adjacent to each other are not allowed to extend their territorial sea past the median line (The United Nations Convention on the Law of the Sea, 1982).

It was because of this discovery that Kenya had to go back to Somalia so as to fix the maritime border line between the two states but Somalia's president who was Yusuf Ahmed at that time, declined to have any bilateral talks on the issue claiming that it could threaten the security of its people.

Kenya and Somalia both tabled their requests and prayers in 2009 to the Commission (Sea, 2013) when Somalia discovered Kenya had extended is border line past the 200 nautical miles. A Memorandum of Understanding (MOU) was signed by both states where they will submit their claims to the commission. This dispute was not able to be settled by the Commission making the matter to be taken to the International Court of Justice. The European colonialists sketched the boundary separating Kenya and Somalia in the 1900's being guided by treaties and protocols (Ahmad, 2014).

4.1 Origins of the Kenya Somalia maritime dispute

The first objective sought to establish the genesis of the Kenya Somalia maritime disputes. The study found the disputes lies in historical antecedents that made the conflict inevitable. The study noted that Kenya and Somalia's differences can be dated back to the 20th century when both countries were competing over the ownership of Northern Frontier District (of Kenya). The Northern Frontier District was back then Juba land's territory however today it is part of Somalia's jurisdiction (Mohammed, 1993). When Somali land was granted independence by the British Government in the year 1960, all land that was occupied by the people of Somalia were directed to come together and become one country. Kenya was given temporary control of the District after the British Government got rid of the colonialists in the area but was to surrender it later after consolidation of all Somaliland.

The conflicts also stem from a phrase expressing isolation of the peoples of Somalia. One such phrase is "A people in isolation". This was a statement that was given by the Somalis of Kenya Northern Frontier District (NFD), in March 1962. The government of Somali publicly stated that it will not allow anyone to play with their destiny. The government clearly stated that it was a one nation, speaking one language which was strong enough to be entangled from the controls of the colonialists. Somali people claimed that the British Government was being pressured by Kenya to deny the Somali people what's rightfully theirs (NFD Frontier Problem Planted by Britain between Kenya and Somali Republic, 1963).

The Somali in NFD blamed Africa of not recognising them in many ways; it blamed Kenya of denying them employment and a visa to enter Kenya. The government of Somalia stated that the rest of Africa was not ready to break the barriers that were

blocking Somalia from other African countries and that their territory was commonly referred to as a "punishment station". They were not allowed to travel to Kenya without a special pass and that the only visitors they had in their country were prisoners, exiles and colonialists (Government, 1964).

Negotiations that were held in 1962 between Kenya and Somalia wanted the inhabitants of the Northern Frontier District to have the freedom of self-determination. President Jomo Kenyatta in his speech at the Mogadishu airport stated that the topic on the Northern Frontier District was a very "touchy question" but which was not impossible to solve in a very diplomatic manner. However, in a press conference in 1962, Somali's minister of information claimed that president Kenyatta was wrong when he said that the NFD was "part and parcel of Kenya" (Government K. , 1962).

The African report in Washington 1963 published out a report on the crisis in the North of Africa. Colin Legum one of the reporters stated that President Kenyatta and Ronald Ngala were not ready to surrender the NFD territory and that they were using the British Government to cushion Somali's rage (Legum, 1963).

Radio Addis Ababa also was debating whether Kenya should allow Somalia to acquire the Northern Frontier District. However, Radio Addis was of the opinion that Kenya and its people had already made up their minds by not allowing any part of the NFD to be given away and that Britain can only serve one master, not both Nairobi and Mogadishu (Ababa, 1963).

The Observer London, a newspaper in London, stated that the Somali living in Kenya had the privilege and right to choose what their future would look like. It argued that the contested area is a desert which has nothing to offer in the Kenyan economy, have

different religion hence no one can blame them for trying to fit in. The refusal of Kenyan leaders to let go a large part of their map is what the British government was fuelling. However, the observer was of the view that both Kenya and Somalia need an outsider who will act as a third party to try and help in the resolving their issue on the ownership of NFD (Observer, 1963).

The African Union, formerly known as African Unity back in 1963, held an inaugural summit conference in Addis Ababa. The President of Somali made a speech stating that the main problem that African countries had was territorial disputes. President Aden Abdullah Osman stated that the biggest hindrance and obstacle facing African countries was the artificial political boundaries that were imposed to them by colonialists. The president suggested that if the territorial disputes were to be resolved, it would worsen the matter hence he said that things were best left as they were (Osman, 1963).

President Jomo Kenyatta on the other hand said that the Northern Frontier District was part and parcel of Kenya. He further asserted the Somalis living in Kenya and those in Somalia were brothers and that they should continue living as such. The president said that the secessionists who wanted to separate themselves from the Kenyan government were igniting unwanted friction which could lead to civil war. He further added that the Somali government should stop sending ammunition, money and propaganda which was fuelling the war between them (Kenyatta, 1963).

President Jomo Kenyatta further stated that Radio Mogadishu was aimed at spreading propaganda since the year 1963 to the Somali people living in Kenya. This, according to the first president was an attempt to incite people inhabiting the NFD to fuel a civil war. The government of Kenya reiterated that they were not afraid of war and that

they will do anything to defend its territory even if it meant bloodshed. Kenya urged African States to promote Pan-African Unity by condemning the actions of Somali in trying to divide African states with the use of insurgents (Kenyatta, 1963).

Mr Malcolm MacDonald called out a state of emergency in the Northern Eastern region of Kenya, on 28th December 1963. This was due to the on-going attacks by the bandits, who were raiding police and military posts in Kenya (Kenya, 1963).

The Organization of African Unity in the year 1964 came up with a Resolution that was adopted on 15th February 1964.The Charter of the Organization of African Unity, paragraph 4 stated that Kenya and Somalia should do all it can to resolve their dispute. The Charter further called for both countries to avoid the use of propaganda and other negative means that was fuelling their tensions as they sought for a peaceful resolution (Unity, 1964).

The Standard newspaper in the year 1965 recapped the talks that were between Arusha and Nairobi with regards to the territorial dispute that was going on between them. According to the standard newspaper, Mr Murumbi Joseph, who was then the Minister for Foreign Affairs said that Somalia wanted to revive old talks that were supposed to have been addressed by the Resolution in 1964? Mr Murumbi said that for the two countries to have a discussion, Somalia had to stop the outlaws in the North Eastern Region, the Somali Government should stop all the propaganda that the rebel group was inciting towards the Kenyan Government, the military and police of Somalia should work hand in hand with that of Kenya, Kenya would reinstate diplomatic relations with Somalia after the diplomatic row was done away with and finally that both governments should come out publicly to condemn the actions of the bandits.

These talks did not happen until Somalia had a change of heart on the above pointers (Standard, 1965).

The Africa Research Bulletin that was published in London 1966 looked into the deteriorating relations between Kenya and Somalia. Mr Osogo who was the Minister of Information and Broadcasting said that the bad relationship between the two countries had worsened such that they were not going to allow any Somali minister to go through the Nairobi airport (Standard, 1966).

The East African standard published that, the Minister of Information for Somalia; Mr Yusuf Ahmed Boukah stated that Kenya had declared war on Somalia. The minister further said that it is capable of teaching Kenya a lesson it will never forget (Standard, 1966).

Kenya needs to protect its name and prestige before the international community. For instance, since October 2021, Kenya resumed the presidency of the United Nations Security Council, the same body that states turn to for sanctions when international law has been breached. As the leader of this body, states require Kenya to follow the rule of law and not undermine its role as the president of the council. Regionally, Kenya is a member of the African Union Peace and Security Council hence its goal is to help African countries to peacefully resolve their disputes, and Kenya is not an exception.

The decision of the court has impacts on both countries whether socially, politically or economically. Unresolved maritime border disputes in Africa are issues that should be looked at into with great concern. Africa's general security has been a subject of debate in the international arena, and if this is not handled diplomatically or through

other accepted legal means, it could accelerate to a level that could cause dire consequences.

Conclusion

The zealous protection of boundaries is seen not to be a new practice as states did this from way back. Kenya and Somalia have been protecting their boundaries since before and after their independence mainly to protect both their political and economic interests. Factors such as the prestige of one's country and the richness of natural resources to exploit are some of the reasons that have made these two countries protect the territories since time immemorial.

4.2 Legal Frameworks on Peaceful Settlement of Maritime Dispute between Kenya and Somalia

The second objectives sought to establish legal frameworks under compulsory adjudication for resolving maritime disputes. To achieve this objective, the study explores a number of international legal frameworks and there application to the pacific resolution of the Kenya – Somalia disputes. This study established as follows. The United Nations Convention on the Law of the Sea is the main legal instrument governing the waters. The International Court of Justice, the International Arbitral Tribunal and the international agreements pushed the enactment of international treaties that have regulated how maritime boundaries are drawn and its changes during the past half century. Before diving into the legal frameworks, the study first sought to find ways in which the ICJ secures jurisdiction to hear cases.

4.2.1 How the ICJ establishes jurisdiction to hear cases

The jurisdiction of the court is divided into two sections; contentious jurisdiction and advisory jurisdiction. For the court to hear contentious issue, the parties in dispute are required to give consent to the court. Consent is given through different ways; it depends on what circumstances the matter was brought before it. The general ways that the court may obtain this consent include;

First: through a special agreement. Article 36 (1) of the Statute of the ICJ states that all cases to which the parties refer are included in the court's jurisdiction. The parties are required to provide a notification to the registrar by an agreement of both parties and it should indicate the subject (ICJ, 1945).

A good example is the Malaysia and Indonesia dispute where the clash was over sovereignty of Pulau Ligitan and Pulau Sipadan both agreed that it should be solved over friendly relations before the International Court of Justice. The court ruled in favour of Malaysia (Sovereignty over Pulau Ligitan and Pulau Sipidan; Indonesia vs Malaysia, 2002).

Secondly: consent is obtained through provisions of treaties and conventions. Article 36 (1) of the same statute provides that the court's jurisdiction encompasses everything specifically outlined in current treaties and conventions. This is usually through an application by a party who has instituted proceedings against another by indicating on what provision of the treaty or convention the party is basing the claims on (ICJ, 1945).

An example is the treaty of Amity and Co-operation in South-East Asia on the Malaysia and Indonesia dispute (Amity, 12th July 2012).

Thirdly: In relation to any other state accepting the same obligation, a state may recognize the court's jurisdiction as mandatory. This is what is referred to as compulsory adjudication which can also be referred to as the optional clause declaration. The parties in dispute will have to assure the Secretary General of the United Nations that it has accepted jurisdiction. This will automatically be the court's agreement through a declaration. However both parties can withdraw through accepted channels and reservations to be made through adopting alternative mechanisms hence the gap of the term compulsory jurisdiction (ICJ, 1945).

Before discussing the legal framework governing the law of the sea, this section will first discuss the development of compulsory adjudication from its traditional ways to its new forms.

4.2.2 Traditional and New Generations of Compulsory Adjudication

Fourthly the study analysed the generations of compulsory adjudication. This study noted that before the establishment of the Charter of the United Nations, states in the International Community had the authority to use force when settling their disputes in general not only maritime, unless they had entered into an agreement that provided for self-restraint.

The use of third parties in dispute settlement was in many cases ignored in international law thus making the use of military to be a norm. As the years progressed, states have come up with different institutions and mechanisms which have opened up the option of peaceful resolution of conflicts. The Charter of the United Nations changed a lot of things with regards to resolution of conflicts as it banned the use of force unless under special circumstances.

4.2.3 Traditional Regime of Compulsory Adjudication

States have had the option to resolve their maritime disputes in two ways. The first way was to persuade the conflicting parties to reach an agreement and secondly, where a third party comes in to reach a legally binding decision.However, states did embrace the use of negotiations when settling their disputes. Negotiations do not require the presence of a third party. Decision making is left completely to the parties in question without any external interference. Negotiation allows both parties to benefit from their agreement making it to be a fair form of settlement as there will be no winner or loser.

Negotiation was however not embraced fully as the facts of the dispute were closely scrutinized as rules will be used on a strict basis. This was also considered difficult to reach a decision as the party which was considered to be more powerful than the other, is likely to pressurize the weaker state by using any means necessary to make the outcome be in its own favour.

Maritime disputes can be resolved through negotiations although as an alternative dispute resolution mechanism has not worked on many maritime disputes as compared to arbitration and adjudication. Negotiations involve two states who are directly weighing both of their interests and this is likely not to provide a permanent solution when it comes to maritime disputes.

Traditionally, the introduction of a third party to resolve conflicts was through inquiries and good offices. Inquiries involved conflicting parties to agree to set up an international body that is composed of impartial persons who are to investigate the facts of the dispute and come up with an impartial decision. The parties in dispute will then agree whether the findings will be legally binding or not. Good offices were

where a third state or an international body offers or are asked to persuade the parties in dispute to solve their dispute and come up with a reasonable solution.

Binding decisions traditionally were usually achieved through the use of Arbitration. Arbitration main objective was to repair the differences of the conflicting parties basing on international law that was previously agreed upon by the states. Arbitration entails that the court will keenly examine the facts and the law applicable to them whereby the decision made will be legally binding on the parties.

Over the years, treaties have come up with regard to the establishment of arbitral courts. An example is the Permanent Court of Arbitration which was established during the first Hague Convention for the sole purpose of peaceful settlement of international disputes in 1899.

The rule of law made western states to opt for adjudication. States had relied on the concept of "open diplomacy" where the rule of law helped the international community to ease their tensions. In 1921, the Permanent Court of Arbitration was created but was later replaced by the International Court of Justice in 1946. The establishment of the World Court came along with some major positive changes. The court made the conflicting parties to no longer have the option of choosing their own preferred judges; it encouraged and promoted harmonious and development of international law; law became more authoritative and strict and finally it attracted more qualified judges who came to the picture and made sure justice was served.

4.2.4 New Regime of International Compulsory Adjudication

The gradual changes of traditional law into the modern law were due to the adoption of the 1945 Charter of the United Nations. The new order introduced new features

which included; the use of force which was previously used at any given point has been limited to a few exceptions. States have embraced the traditional means of settling disputes converting some of them into permanent institutions like the judicial bodies.

Examples of such bodies are the Security Council and the General Assembly that have been able to peacefully settle disputes among states: and secondly; compliance with international legal standards has been embraced internationally. This helps states to prevent conflicts by introducing penalties and sanctions to states that breach international law rather than waiting for an act to happen then acting after the breach.

The use of international arbitral and judicial bodies has not been fully accepted by all states in the international arena. The fast increase of judicial bodies is likely to bring about doubt when it comes to the application of international law. Since the world court is the main international judicial organ, it should be given the authority of having the last say or making the final decision.

The right to opt for conciliation or adjudication has been strengthened through compulsory conciliation or adjudication has been laid out in treaties and they are determined through the consent of member states by a majority vote.

There are two exceptional cases where compulsory adjudication is allowed. Two treaties that have allowed for this concept are the 1969 Vienna Convention on the Law of Treaties and the 1982 Convention on the Law of the Sea (Treaties, 1969) (Sea, 1982).

4.2.5 The African Union Legal Frameworks

Kenya and Somalia signed Resolutions of all African Peoples Conferences that were held in 1958 and 1960. The 1958 conference that was held in December 1958, Accra was known as the Resolution on Frontiers, Boundaries, and Federation. It was agreed by African States that; all artificial frontiers that were drawn by the imperialists should be denounced and that a permanent and quick solution should be implemented by African states (Resolution on Frontiers, Boundaries, and Federation, 1958).

The Kinshasa Declaration and the Arusha Memorandum which were both signed in 1967 were as a result of the negotiations between Kenya and Somalia. The Kinshasa Declaration stated that both Kenya and Somalia had agreed to respect each other's territories; both countries should resolve any other pending issues between them; both countries should maintain peace and security; no propaganda should be spread by either of the countries whether through TV, radio or other channels and finally both Kenya and Somalia agreed to meet in Lusaka with President Kaunda to finalize their cooperation (Unity, The Kinsasha Declaration , 1967).

The Arusha Memorandum on the other hand required both countries to practice god neighbourliness; the interests of the people of both countries should come first and to avoid reopening of the issue between Kenya and Somalia (Unity, 1967).

The African Union adopted the African Charter on Maritime Security and Safety and Development in Africa on 15th October 2016. Chapter III of the charter has provided for maritime governance, specifically, on maritime boundaries. Article 12 states that the delimitation of boundaries with respect to African States should be according with the provisions of International law. Article 45 of the same charter has provided for settlement of disputes. The article provides that African states have the freedom to

settle their maritime disputes through mutual consent of parties through negotiations, mediation, conciliation and other peaceful means. In the event that these methods do not work, states will be required to refer the matter to the African Court of Justice Human and People's Rights or to an arbitrator (Union, African Charter on Maritime Security, Safety and Developmet, 2016).

The African Union Border Program which was established in 2007 was created to reduce the territorial conflicts among African states. Its main objective is to help African states in the delimitation and demarcation of borders. The program also aims at strengthening other regional bodies by promoting regional cooperation in Africa (Africa Union Border Programme, 2007).

A good example where the African Union has been involved is the maritime dispute between Tanzania, Mozambique and Comoros where several bilateral and multilateral agreements were signed. The African Union noted that these agreements were a big milestone on the African Union Border Program. The Agreements signed were the maritime agreement on delimitation between Mozambique and Comoros and another one between Tanzania and Comoros.

4.2.6 The Law of the Sea and Kenya and Somalia Maritime Dispute

The Law of the sea is governed by the United Nations Convention on the Law of the Sea which is considered as the main legal instrument which was adopted in 1982 but came into force in 1994 (Sea T. U., 1982).

The United Nations Convention on the Law of the Sea was ratified so as to help with the settlement of disputes relating to water bodies. It is aimed at establishing coastal boundaries and erecting an international sea bed authority to regulate seabed

exploration not within territorial claims and to distribute revenue from regulated exploration. States had to protect their interests in seas and this convention made sure that there was a balance between these interests and neighbourly states through the processes of arbitration and adjudication.

Territorial sea has been defined by this convention as the 12 nautical mile zone from the baseline or low-water line along the coast. (United Nations Convention on the Law of the Sea, 1982) Article 56 of the same convention describes on how a country's Exclusive Economic Zone is established, which should extend to 200 nautical miles from the country's coastline.

Sovereign rights for exploration, exploitation, conservation and resource management of living and non-living natural resources in the waters have been laid out in Article 56. The Continental Shelf has been defined as the underwater portion of the country's coastal landmass, including seabed and subsoil of the shelf. (The United Nations Convention on the Law of the Sea, 1982)

UNCLOS introduced other mechanisms of dispute resolution other than adjudication and this is provided for under parts XI and XV (Nations., 1982). It gave parties options to choose their favourable models that would best suit them. Disputes are now open to be solved by agreements, international organizations or other alternative dispute mechanisms such as negotiations, arbitration and mediation. When parties enter into an agreement and there is difficulty in its interpretation, then the court or a tribunal will come in to help.

Parties to a dispute that are involved UNCLOS have been provided different forums under Article 287 which are; International Court of Justice, International Tribunal for

the Law of the Sea, arbitral tribunals and special tribunals. The goals and objectives of UNCLOS are not to provide solutions to their disputes but rather to guide the necessary parties to reach an accepted solution through its principles and standards. However, as much as this treaty has been embraced as the main legal instrument on the law of the sea, it still has its own challenges.

One weakness of UNCLOS is that the words are vague and ambiguous making it to be less effective when it comes to its interpretation. Article 298 of the convention provides that disputes arising out of maritime boundary delimitations are subject to compulsory adjudication as long as one of the parties to the dispute has requested the court or the tribunal.

Article 298 however has not been followed to the latter by many states raising questions to the enforceability of the convention. States have not presented their matter for compulsory adjudication making the provision to only be on paper and not practiced. This Article aims at helping states to peacefully resolve their disputes and not worsen the situation by leading it on to an armed conflict.

Kenya has recently pointed out that it will not accept the judgement of the International Court of Justice that was delivered on 12th October 2021 in favour of Somalia. Decisions of the court are binding but when it comes to enforcement, it is weak on that as many states have been known to ignore its decisions.

The International Court of Justice ruled that the maritime borderline should continue to run on the same direction as Somalia's land territory. Kenya on its part said that it was ready to defend its territory as the court's decision was based on biasness.

The lack of enforcement of the International Court Justice through the UNCLOS and the lack of compulsory adjudication can stir up stale relations between Kenya and Somalia. Kenya is strong on the basis of military activities as it also has a navy and when it is compared to Somalia. Its decision to not accept the decision of the court can cause Kenya to take military steps so as to protect the disputed border.

According to realists they believe that an international court will only be effective if it's able to compel compliance on a losing party (CF Eric, 2005). The stronger the state protesting in a dispute, the more powerful its impact will be upon the judgment of the court or its influence.

Somalia on the other end, can decide to seek help from international bodies like the United Nations Security Council or the International Police if at all Kenya decides to take matters in its own hands and sanctions can be imposed. The International community will support Somalia as most states will not want to breach international law. Political interests will however make the capacity to enforce such sanctions to be limited as the Security Council has rarely used Article 94 of UNCLOS to enforce its judgments (Schulte, 2004).

Kenya's unwillingness to recognise the ruling of the International Court of Justice and the lack of understanding between Kenya and Somalia can lead to the use of force or threats on the same. Such actions will show that UNCLOS has been resisted in the international community and steps should be taken so as to strengthen the convention on the law of the sea.

Despite having discussed the shortcomings, this convention has also been a strong pillar globally by strengthening and appreciating the importance of international law.

UNCLOS has managed to bring together more than 160 states together through its ratification.

The convention has enabled countries to come together in matters concerning decision making, dispute resolution mechanisms, consultations, expert opinions and many more. Agreements between two countries have now been elevated to agreements to more than three countries promoting multilateralism. A good example is the use of international organisations like the International Maritime Organization and the International Sea Bed Authority.

The Kenya-Somalia maritime dispute has shown that the ratification of UNCLOS is not an absolute and final surety that the rules have to be followed. Kenya made sure that it did not attend the hearings at the International Court of Justice, showing the international community that its interests are far much important than adhering to the rule of law.

The Kenya Somalia's struggle for power on the maritime resources in Indian Ocean is likely to trigger the presence of military activities in the Exclusive Economic Zone. The sea has become a domain for power and states will do all that it takes to preserve their power and prestige. Kenya has realized that Indian Ocean can impact its economy, political, security and social sectors in many positive ways hence making ocean politics to promote interdependence of states, where a state only pushes agendas for its own benefit (Booth, 1986).

Kenya's resistance to the ICJ's judgement is due to the discovery of the economic value that seabed resources have. Resources like oil and gas have a high probability of causing conflicts between Kenya and Somalia and this is because both states are

competing for power hence increased competition magnifies disputes. Most of the maritime boundary disputes in the world today; both past and on-going have shown that there is interplay between the disputes and the exploration and exploitation of seabed resources. (Khalfaouri & Yiallourides, 2019) African states have shown tremendous growth in all sectors, especially its economic sectors. For instance, in 2017, Africa produced 8,072 thousand barrels of oil on a daily basis which summed up to 8.7% of world's oil production which was estimated to hold 8.5% of the world's proven oil reserve. (Khalfaouri & Yiallourides, 2019)

Kenya made its own independent decision separating itself from the decision of the court hence it acted as a unitary actor. This means that when Kenya decides to go to war because of the unsatisfied ruling of ICJ, or make peace with Somalia by accepting the ruling, it will make decision on its own without external influence from other states. Once Kenya makes its own decision, it remains final in the eyes of the international actors.

Kenya and Somalia both need to remember that Africa is not stable before the international community because it has experienced sudden conflicts, tense ideological confrontations, territorial disputes, cross-border destabilisation and continued militarization. It is due to these reasons that Africa is now referred to as a crisis zone or a stage where the Soviet Union and the United States of America come to showcase their power capabilities (Sharamo & Mesfin, 2011).

Negotiation has also been provided for under Articles 74 and 83 of UNCLOS (Nations., 1982). Although negotiation has been recognised by the convention as an alternative method to resolve maritime disputes, the convention has still warned parties that this method may not lead to a permanent solution. When conflicting states

do not find a solution through negotiating, they can leave the matter as it was before or refer the matter for adjudication or arbitration.

Examples of maritime disputes that have been resolved using the UNCLOS are the maritime disputes between Tunisia and Libya and maritime dispute between Ghana and Côte d'Ivoire. The maritime dispute between Tunisia and Libya was resolved with the help of the UNCLOS where a joint agreement was formed between the two countries. A joint oil company was formed between the two countries where the proceeds were going to be shared between the two (Tunisia vs Libya, 1988). The maritime dispute between Ghana and Côte d'Ivoire was resolved by the International Tribunal on the Law of the Sea which has been established under UNCLOS. Both countries agreed to cooperate and signed a partnerships agreement (Ghana and Côte d'Ivoire , 2017).

Conclusion

The United Nations Convention on the Law of the Sea has established rules and norms that Kenya and Somalia can follow in their quest to achieve a diplomatic understanding. The final ruling of the court that Kenya is so adamant in ignoring was also based on the UNCLOS. This convention needs to find stronger enforcement measures that will help states in the future to comply with the decisions of the court.

4.3 State Reservation towards Compulsory Adjudication as Recourse for Pacific Settlement of International Maritime Dispute

The third objective sought to understand why Kenya had reservation over compulsory adjudication by the international court of justice. This section addresses that. We begin with brief history of International adjudication. This study noted that

International adjudication began with the formation of the Permanent Court of Arbitration, the Permanent Court of International Justice, the International Court of Justice, and the International Tribunal for the Law of the Sea, Regional courts and tribunals. At formation, seventy-three United Nations member states came into agreement when they signed the charter with regards to compulsory jurisdiction. This implies that any international legal disagreement concerning these member states may be presented to the court as long as all states party to the dispute before the International Court of Justice have accepted its compulsory jurisdiction.

This study has established that the maritime dispute between Kenya and Somalia accelerated when Somalia decided to institute legal proceedings in the International Court of Justice against Kenya. Somalia's claims were that the maritime boundary between the two counties was to be redrawn. The maritime boundary was supposed to delimit the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf that was beyond 200 nautical miles.

Kenya, in its response, objected to the application stating that the world court did not have jurisdiction to determine the maritime the maritime dispute but the court later ruled that it had jurisdiction over the matter. The hearings proceeded to determine the maritime dispute but Kenya did not attend any of those hearings that were held from 15th to 18th March 2021.

The judgement was delivered on 12th October 2021 and the court ruled in favour of Somalia. Kenya had claimed that Somalia had agreed openly that there was a maritime boundary between the two countries and that it was without any reservations. Kenya was of the opinion that the present boundary line was a sign of fair and impartial delimitation. The court however ruled that there was no maritime agreement between

Kenya and Somalia. Somalia further asked the court for damages since it had accused Kenya of breaching international law but the court did not find sufficient grounds to back those claims.

Delimitation of the maritime border favoured Somalia as it was given the rights over the exclusive economic zone making Somalia more advantageous on the contested area. The International Court of Justice was of the view that the judgement delivered was fair and just hence the court was content and fulfilled with its decision.

Days before the final ruling was delivered, Kenya had notified the international realm that it will not acknowledge the decision of the court as Kenya accused the court of being prejudiced. Somalia on its part was overwhelmed with the decision of the court stating that justice had prevailed and that the rule of law was followed and adhered to. The Federal Republic of Somalia also encouraged the Government of Kenya to accept the verdict but this does not seem to be the case for Kenya. The next steps that Kenya will decide to take in the future will determine whether the two countries will repair their relationship or further strain their diplomatic ties.

4.3.1 Case Studies of Maritime Disputes Subjected to Compulsory Arbitration and Adjudication

To fully understand, the concept of international arbitration, this study found it prudent to explain examine, the past cases files subjected to International Court of Justice. In analysing these cases, the study found that the principle of *Res Judicata* can be applied on matters of compulsory adjudication. This Latin term means "a matter judged" meaning that once a matter is determined by a court, it cannot be re-litigated, its judgments are final. The International Court of Justice has applied this principle when resolving maritime disputes. Some of the examples are; *Costa Rica v*

Nicaragua and *Nicaragua v Colombia* maritime cases. This rule was applied by the Permanent Court of International Justice and International Tribunals. Res Judicata has been outlined in Article 59 and 60 of the International Court of Justice statutes (ICJ, 1945) and Article 33 of the Law of the Sea Convention (The United Nations Convention on the Law of the Sea, 1982). The International Court of Justice on 12th October 2021 also applied this principle when it gave the final judgement on the Kenya Somalia maritime dispute.

The Examples of maritime cases decided through the International Court of Justice are:

Burkina Faso v Niger maritime dispute

Burkina Faso and Niger both took their frontier dispute to the International Court of Justice through a joint letter of notification dated 12th May 2010. A special agreement was filed by both states pursuant to Article 36(1) of the statute of the International Court of Justice. This dispute was over a part of a boundary between Tong-tong in the north and Baotou in the south. The decision of the Joint Technical Commission in 2009 was not satisfying for both countries making them to file a special agreement to the international court of Justice for a final determination. The court demarcated the boundary between the two states in four sections, between the Tong-tong astronomic marker and the Baotou bend in the south. Both states were happy with the decision of the court as Niger claimed that it gained towards the North and lost some down South (Burkina Faso v Niger, 2010).

Nicaragua v Colombia maritime dispute

Claims were brought by Nicaragua against Colombia in the year 2001 over the sovereignty of a territory and maritime delimitation in the western Caribbean. Nicaragua asked the court to declare sovereignty over the islands of Providencia to

itself and to fix the sea border separating both disputing countries. The International Court of Justice found out that it did not have jurisdiction over the sovereignty of the islands of San Andres, Providencia and Santa Catalina hence they remained with Colombia. The court however found out that it had jurisdiction to determine the sovereignty of other maritime features and the issue of delimitation was addressed (Nicaragua v Colombia, 2001).

A court with compulsory jurisdiction has however not been accepted wholly. Compulsory adjudication has been resisted by some governments (Kelsen, 1943). This means that a court may come up with a final decision but a state will not live up to fulfilling its obligation by either not following what the court has ordered or enforce war among states. This has been seen recently in Kenya where President Uhuru Kenyatta announced that Kenya will not recognise the ruling of the court. The challenge comes in when a centralized body like the international police is formed to be always at the disposal of the court. This can only come into effect when a majority of countries agree to sign so as to ratify the international police into a treaty. Most states would not agree to such because this would be an interference of their sovereignty.

Compulsory adjudication has also been resisted by states because of the introduction of bilateral talks through alternative dispute resolution mechanisms. States in the past did embrace the use of their governments and legislators as courts and not the independent judiciary bodies as today. In the past, there was no centralization of court management (Kelsen, 1943). Today, law has evolved to centralized judicial bodies. Parliament was then being used as courts. The courts before were only concentrating on whether crimes were committed and if so, whether both parties could settle their

conflict peacefully and if the offended person had the right to defend himself if need arose (Kelsen, Law, Peace in International Relations, 1942).

Compulsory adjudication has also been objected because it's believed to be defective, lacks some legal elements, meaning that compulsory adjudication cannot survive without an international legislative body which is competent to accommodate the evolving changes of international law. This argument has however been challenged since most decisions made by the court usually foreshadows the legislation process. Some states have come up with rules that courts' decisions cannot be interfered with by the legislators. Legislators are allowed to adopt but not change the decisions of the court. There is a statement made by a scholar that says, "All law is judge-made law." This shows how a legislator cannot exclude a judge but a judge can do without a legislator (Lile, 1929).

States internationally have not fully accepted the importance of courts in settling international disputes. They argue that most conflicts are not legal but they are economic and political and that courts only participate in a small part of the dispute. This argument is however not true because, whether a dispute is economic or political, it will still be a legal dispute. The economic and political aspects come into play because of the interests that states have hence such disputes arisen because both states want to dominate or manage those interests.

The Locarno Treaties of 1925 has defined a legal dispute as one which conflicted parties are after their legal entitlements (Treaty of Locarno, 1925). Legal disputes are contentions where claims are presented and International Law comes in when those claims are denied.

Compulsory adjudication has the option of conciliation when states want to. Kenya and Somalia may have opted for settling their maritime disputes in a friendly manner and the court should have only come in when both parties did not find a common ground (ICJ, 1945).

Kenya and Somalia would have looked for representatives who would have negotiated on their behalf and arrived at a final decision. Another option is where both Kenya and Somalia would have come together but with the presence of a third party who would only help in explaining what the conflict entails and helped them in coming up with a decision. Another option that both of these countries may have relied on is when the decision between Kenya and Somalia could have been agreed upon by a third party or an outsider and will be binding.

International adjudication has been defined as where states cooperate in the resolution of international disputes through methods of litigation, arbitration, conciliation, mediation and advisory reports (Tribunals, 2004).

International tribunals can only be successful if they are independent and free from external interference. Scholars have proposed that independence will succeed if international tribunals have judges of their own who will make final decisions (Slaughter R. K.-M., 2000).

Guyana v Suriname

This was a conflict delimitation of boundary boarder of Guyana where Guyana claimed that Suriname breached the provisions of international law. Guyana initiated the arbitral proceedings in 2004 and issued three claims; first, it wanted a fair line to be drawn to differentiate their rights; second, Guyana wanted damages for the oil that was taken by Suriname in the disputed area and finally, for temporary solutions to be made on the disputed area as they wait for a final determination. The tribunal's final decision was that Suriname's actions constituted to be a threat of use of force under international law, but damages were not awarded to Guyana (Guyana v Suriname, 2004).

Bangladesh v China

Bangladesh initiated a statement of claim asking for the separation of the maritime boundary between itself and India on Bengal's coastal land where Bangladesh claims jurisdiction of the territorial waters. Both states disagreed on the Land boundary and the Radcliffe award. Bangladesh was awarded 111,000 square kilometres of the Exclusive Economic Zone waters in the coastal land of Bengal including exploitation of all resources. The 12-mile territorial sea around St. Martin's island was awarded to Bangladesh by the tribunal.

States have started adopting the new generation of international adjudication. The new method of international adjudication has helped in the reduction of many caseloads, has pushed for dispute resolution and treaty signing by states and it has voiced out the importance of international affairs and law. Its weaknesses are questionable efficiency and it has little survival for future use (Slaughter R. K.-M., 2000).

Instability on water bodies are experienced due to the fact that the sea has been neglected overtime making it difficult to determine who owns what, hence bringing in the intervention of external factors such as the military and international non-governmental organisations. Africa as a region has not been keen enough to enact policies that govern maritime security and this is a gap that policy makers, academics and stakeholders need to address. However in 2012, African Union through its broad maritime strategy published comprehensive maritime strategies which was adopted in 2014 (Union, 2012). This is a major strength as it enabled maritime issues in Africa to receive more attention.

Unresolved maritime disputes have to date become a contentious subject as actors in the international arena have begun to notice the importance of maritime resources. Resources such as oil and gas have brought out a new term "sea power" and how it has impacted politics on water bodies (Bull, 2008).

States value their independent decision making hence they act as unitary actors. This means that when states resort to go to war because of unresolved maritime disputes, or make peace, it will make decision on its own without external influence from other states. Once a decision is made by a state, it remains final no matter how the international arena deems it. This principle of sovereignty and power is explained clearly through the realism theory where men and women are seen to be political animals and that their sole goal is to pursue power (Hans, 2005).

Africa has since adopted the principle of *"uti-possidetis*" which means that one may continue to possess such as you do possess. This has become the new normal for most African countries making states to believe that first come first serve; hence the maritime territory belongs to the one who acquired it first.

Maritime disputes are likely to be settled due to power relations between disputing states. Power relations between states have been brought out clearly through the realism theory. Power relations is all about who is the larger actor between the disputing states and in case a conflict erupts, which state will be able to get more allies more than the other state. Negotiations can also be influenced by power relations as states with more power may enforce the use of force when matters do not go according to their plans (Osthagen, 2019).

States resolve their maritime dispute because of regional patterns, whether friendly or enmity between disputing states. Most boundary relations are focused on positive diplomacy where states promote peace and co-existence. These terms are mostly used when disputes are settled and agreements are made to bind the parties. Terms like allies and security relations play a big role in solving maritime disputes.

Kenya and Somalia have had a territorial dispute where there was a disagreement over a piece of territory that was claimed by both countries. Their dispute arose when Somalia did not accept the definition of where the boundary line of its border with Kenya was currently located whereas Kenya took the position that the existing boundary line was the legal border between the two states based on a previously signed treaty or document (Huth, 1998).

States today have begun protecting their maritime boundaries because of economic interests and the power that they possess. Resources such as oil, gas and hydrocarbon reserves have aroused keen interests among international players (Anderson).

The maritime dispute between Kenya and Somalia proved to be difficult to resolve most importantly because of the economic interests that lie beneath it. The petroleum

reserves, minerals and fisheries over the disputed area are some of the main triggers that are slowing down the maritime dispute between Kenya and Somalia.

Kenya and Somalia's maritime dispute can also be attributed to the colonialists as the reason behind it as they are the ones who demarcated the boundaries without being guided by any treaties or legal agreements. Colonialists in the past drew boundaries, giving one group a territory while not considering another group, causing groups to be separated according to their race, ethnicity or religion. Kenya and Somalia for instance borders each other in Mandera and Lamu counties. Kenya has blamed Somalia on several occasions on the attacks that Al-Shabaab has had a hand on Mandera County hence one can only see that the borders drawn by colonialists were mainly because of economic, geopolitical and administrative interests.

The researcher looked at how maritime disputes can be resolved using different methods. Kenya and Somalia's maritime dispute was the main focus however other maritime disputes were also looked at so as to compare the different approaches. The study also looked adjudication if it was the best method to resolve the maritime dispute and if not, then, why are states running away from it and trying to use other alternative means to peacefully resolve their maritime disputes. The researcher went deeper to look at both sides of adjudication, arbitration and negotiation with regard to the Kenya Somalia maritime dispute.

4.3.2 Adjudication

Thirdly, the study examined Adjudication or litigation of maritime disputes has for a long time known to be the most common way of resolving such disputes. Maritime disputes are usually presented before the court as a form of a lawsuit where legal processes are followed ending up with a win-lose situation (Gumel, 2003).

Adjudication however has its own shortcomings making states to look for other alternatives to resolve their maritime disputes. Adjudication generally instils anxiety between the disputing parties due to the doubt and distrust of the decision of the court. The decision of the court can end up creating enemies instead of encouraging positive diplomacy.

4.3.3 The International Court of Justice and Compulsory adjudication

The study also sought to establish why the consent was to be compulsory. The study found that the Committee that was given the responsibility of drafting the Permanent Court of International Justice statute was of the view that the world court, now known as the International Court of Justice, was to be granted jurisdiction that required no consent from the participating states so as to reduce the recourse on the use of force. This position was again supported in 1945 by a majority of committee members, however it was highly opposed and until today, states have the option to consent before presenting their matter before the court. Kenya and Somalia are not forced to present their matter for dispute resolution but rather it is their choice to do so.

The choice of either Kenya or Somalia to present their maritime dispute before the court in some ways limits the court to fully carry out its duties as some states will interfere in the administration of Justice. Kenya on 8th October 2021 stated its position that it will not recognise the decision that will be made by the International Court of Justice due to preferential reasons.

States have started shying away from the court because of many doubts that the court is still competent and fair enough to resolve maritime disputes.

4.3.4 Why Kenya is unwilling to comply with the International Court of Justice

Finally, the study sought to establish factors that make states to comply or not with international arbitration. This study noted that there are various causes of maritime disputes that cause states to disagree. States can dispute over maritime issues due to sovereignty, rights over maritime resources and also prestige that a country holds since its independence. Realists have identified that conflict will always be a part of people's norm of living. Realists believe that people will always be selfish and aggressive; hence states as the main actors in the international arena will be influenced by their emotions.

Kenya on 8th October 2021 announced that it will not recognise the decision that will be made by the International Court of Justice on accounts of biasness and unsuitability to resolve the maritime dispute. Kenya states that the decision that is expected to be delivered on 12th October 2021 will have adverse effects on political, social and economic sectors on Kenya's livelihood. Kenya is unwilling to proceed to the court due to the following reasons:

Independence and Impartiality

There have been debates as to whether the International Court of Justice Acts as an agent or as a trustee in the international arena. This is a clear indication that indeed independence and impartiality of the court has been corrupted by states (CF Eric, 2005).

Article 2 of the statute of the International Court of Justice has clearly set out the principle of independence (Nations, 1945). It states that judges appointed from all

nationalities and are qualified should be independent. Article 20 of the same statute requires all members to exercise their powers impartially and conscientiously.

Article 3 of the Statute of the International Court of Justice provides that among the regular members of the court, a national is not allowed to have more than two members hence the rule "one judge per national". (ICJ, 1945)

The principles of independence and impartiality have been contentious as politics today has started dominating electoral processes, especially within our judicial bodies. A good example is the Security Council members that are almost an exact replica of what is composed in the permanent 5.

Judicial independence has been diminished by the re-election of same judges that have previously already served their term. States do come in when they try to appoint judges that are preferred by them and can serve according to their own interests. States appointing their own preferred legal representatives have introduced new Latin term known as "Onusiens" meaning "Lawyer diplomats on the bench" (Rosenne, 1976).

Kenya and Somalia allowed their national judges to participate in the present maritime dispute raising questions of impartiality. Most judges have in the past made decisions favouring their own states making their decisions to be biased.

Legitimacy of judicial bodies

The legitimacy of the court is questioned by states when the composition of the court clearly represents how power is shared in the global arena. Kenya's reservations of separating itself from the decision of the court can be associated to the fact that one of the judges, Judge Abdulqawi Ahmed Yusuf is from Somalia and was once elected as the president of the court. This court is the most powerful judicial body worldwide.

The charter of the United Nations, where the court's authority is derived from, considers the court as the "principal judicial organ." The members of this court are elected by the Security Council and the General Assembly with the same states being given positions under the permanent 5.

The legitimacy and effectiveness of the court is dependent on the success of the United Nations hence when the United Nations fails to resolve its maters, the court will come in to try and resolve the matter. The decisions reached are usually critiqued by many states as the court will only come in desperate situations.

Figure 1 shows the decline in the use of the International Court of Justice and this may be contributed due to its legitimacy. If the reason for the decline of the use of this court is due to its legitimacy, then it may end up losing its credibility in the international arena.

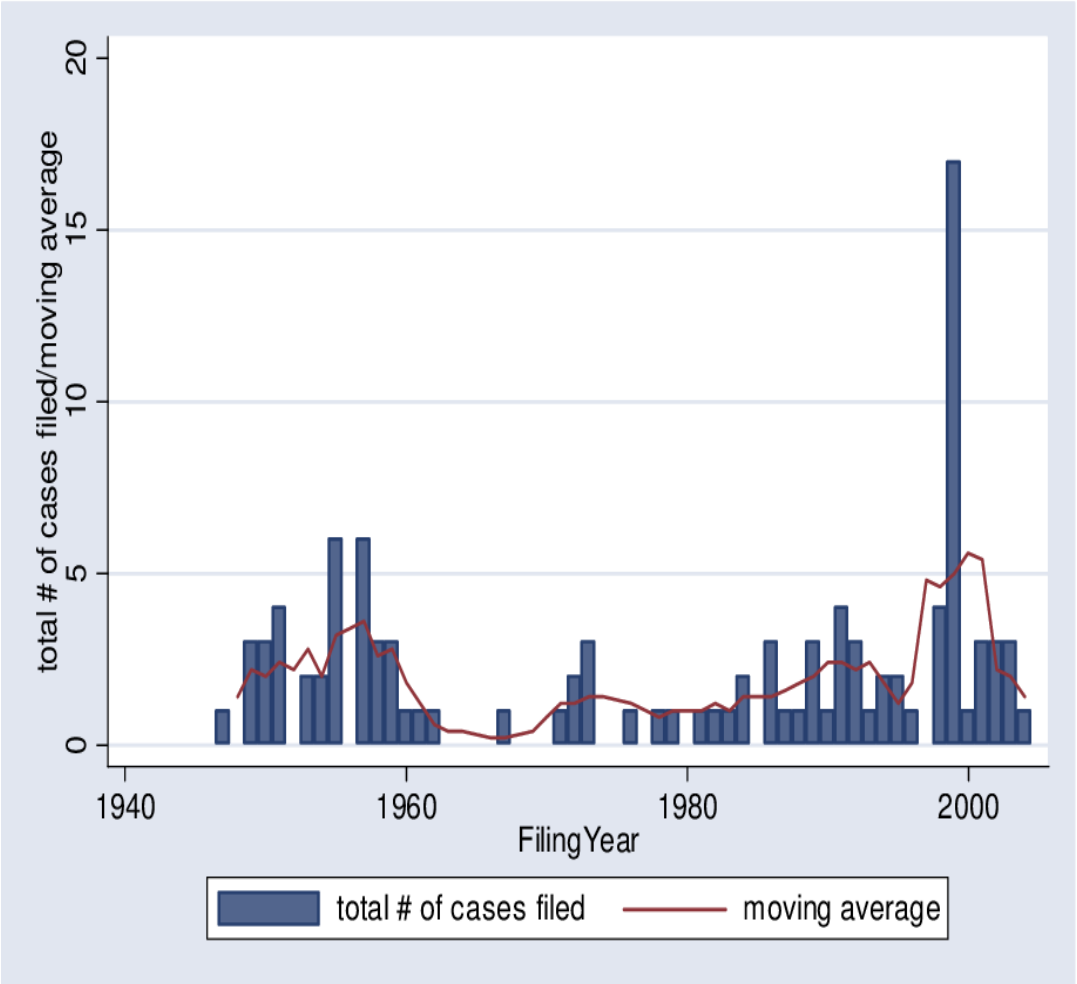


Figure 4.1 Decline on the use of the ICJ

(CF Eric, 2005)

The court has highly aligned itself to the interests of the states making its legitimacy to be shaky and doubtful. The International Court of Justice has been criticised by academics as rigid and inefficient (Jennings, 2006).

Compliance

Kenya can also decide to shy away from the court due to the methods of delivering its rulings, how matters are analysed, and assessment of its decisions and how the parties to the dispute react to the final outcome.

Although judgements and rulings are supposed to be the final say of the court, states have not been able to uphold such due to the weak enforcement methods applied by the court, through its institutions and implementation.

Article 94 of the charter of the United Nations has provided for enforcement measures (Charter of the United Nations, 1945). This article requires every member that is a party to the charter to always comply with the decisions rendered by the court and this applies to both Kenya and Somalia since they are both signatories to the charter. Kenya and Somalia are obligated to comply and failure to do so, recourse will be taken by the Security Council which will make further recommendations for the obligations to be performed. (Reisman, 1971)

Resources

The International Court of Justice is composed of fifteen judges who have been given the mandate to protect the interests of 193 states. The court's budget is allocated by the General Assembly; however it's always allocated a budget of less than one per cent of the total United Nations budget making the court's budget expenditure to be very tight and limited to certain areas (Rosenne S. , 2006). Judges and presidents of the court still contemplate that their workload is still high and continue to increase making them to call for a budget increase (UNGA., 2000).

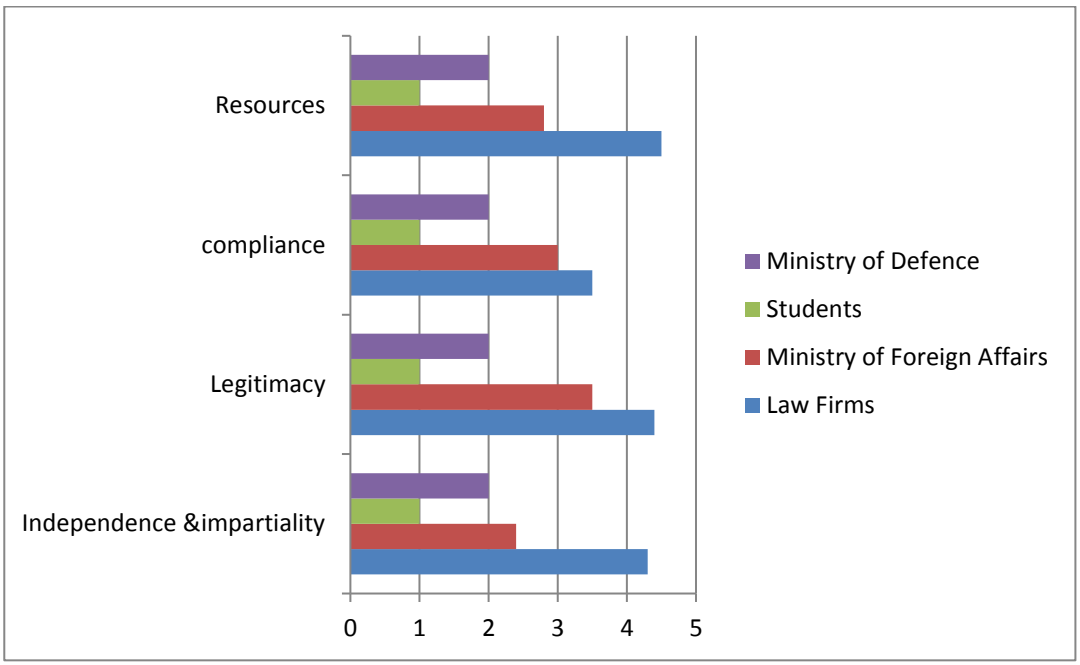


Figure 4.2 Data Collected through Questionnaires

As per the data collected through the use of questionnaires, legal firms have the firm believe that the international court of justice is independent and impartial, free from any external interference as compared to students who believe that the court is highly influenced by external factors. However not all legal officers were supporting the fact that the court is not influenced externally as a few percentages of them were of the view that the court is not free from external influence.

In summary, the data collected through questionnaires shows how fellow researchers, who were students, had the opinion that the International Court of Justice has been largely impacted by external actors and that the decisions that are reached by the court are connected to other factors. Legal practitioners on the other hand believe that the court mostly is not influenced but makes their decisions on its own without any external factors.

4.4 Tribunals

The study also sought to know if the use of tribunal would be applicable in resolving Kenya vs Somalia disputes. The study noted that tribunals have been part of courts in carrying out adjudication processes. There is a thin line separating tribunals and courts but tribunals are seen to be inferior to courts, hence they are usually partially supervised by courts.

Tribunals were established to help with the increase of workload in courts. There are over more than 70 types of administrative tribunals that deal with different types of disputes, that almost more than one million cases are resolved by tribunals yearly. The number of cases resolved by tribunals was six times greater than the ones resolved by courts making tribunals to play a significant role when it comes to alternative methods (Kelly, 2009).

The study investigated why states would prefer tribunals to courts. The study noted that Kenya and Somalia can prefer to take their maritime dispute to the tribunals because of the following reasons:

Tribunals re preferred to courts as they hear cases much *faster* than the courts. Tribunals are strict on dates as compared to courts where disputes can be postponed. However, there have been some complaints that some tribunals are being overwhelmed due to increase of workload making dispute resolution to be slower.

Tribunals are *cheaper* than courts as costs on legal representation, court processes and court fees are not applied to tribunals.

The standard and strict rules that are followed by courts are not imposed on tribunals hence they are *informal*. Courts will bring in parties to comply with their question and

answer or be in contempt of the court but tribunals aim to help parties air out their problems before the tribunal.

Decisions made by a previous tribunal are not binding to other similar cases as courts have practiced over the years making tribunals to be more *flexible*. However, since tribunals are inferior to courts, they are led and governed by the precedents made by the court.

Courts procedures and hearings are mostly exposed to the public and tribunals are always private, making sensitive matters to be only accessible to the parties involved.

4.5 Arbitration

The study also sought to know if the use of arbitration would be applicable in resolving Kenya vs Somalia disputes. The study noted that arbitration is considered to be one of the oldest mechanisms of alternative dispute resolution. The procedure entails the involvement of a third party. A panel is involved when it comes to decision making, parties get to choose their place of meeting, following rules that are agreed upon by themselves before the meeting but are less rigid as compared to courts.

States have started to embrace the use of arbitration because of its mutual understanding between disputing states and the principle of interdependence. States go for arbitration process so as to try and retain the positive diplomatic relationship it has with the opposing state other than destroying it through court processes.

Section 1 of the Arbitration Act provides for three principles (The Arbitration Act, 1996); First, arbitration aims at providing for fair resolution of disputes with no delay or expense through a tribunal that is considered impartial; second, the disputing parties have the freedom to choose on how their dispute should be resolved considering the

best interests of the public; and lastly, the court is not allowed to interfere with the process unless it is guided by the treaty.to be minimal.

The Arbitrator's roles have been increased making the court's interference to be minimal. The court will only come in when it wants to provide for legal advice and assistance or when the process is failing and there is no hope for settlement.

The maritime dispute between Kenya and Somalia can be best suited for arbitration because of its autonomous principle, the powers that the arbitrator has and its appellate rights. Both countries will be allowed to make their own choice of the dispute resolution method and no interference unless no settlement is agreed upon.

The unwillingness of states to proceed with court processes and go for arbitration is because of the following advantages of the use of arbitration.

Kenya and Somalia will enjoy the *privacy* that arbitration comes with since its procedure is usually secretive and only disposed to the parties involved. This helps sensitive information not to be released to the public without the consent of the parties. Kenya and Somalia will also avoid negative publicity that may arise out of the sensitive information.

Proceedings under arbitration are *informal* as compared to court procedures. Kenya and Somalia can schedule activities at their own convenience.

Arbitration is *faster* than the courts as the courts usually handle a lot of cases from different countries whereas this process only handles a particular dispute in question.

When it comes to cost and expenses, arbitration is a *cheaper* procedure compared to courts. Courts require expenses from documentation, hearing allowances, appeals,

remedies, damages and court fees in general. Arbitration costs are jointly share between the disputing parties.

The arbitrator in question will be specialised in maritime dispute sector with the Kenya Somalia dispute, hence he or she is an *expert* as opposed to courts where the legal representatives are not specialized to one particular matter.

The Maritime dispute between *Bangladesh and Myanmar* is a good example of a maritime dispute that was resolved by the International Tribunal for the Law of the Sea. This maritime dispute was over overlapping allegations over the exclusive economic zone and its continental shelf (Sea I. T., 2012). *Bangladesh and India* have also resolved their maritime dispute through arbitration, a matter that lasted for over 40 years since 1974 under the Permanent Court of Arbitration (Arbitration, 2014). The maritime dispute between Guyana and Suriname was resolved through arbitral proceedings where Guyana initiated proceedings claiming that Suriname had breached international law. The tribunal found that Suriname had initiated the use of force (Arbitration P. C., 2004).

4.6 Conclusion

Compulsory adjudication has helped a lot of maritime disputes to be resolved however this is not always the only method as there are other alternative means that states can opt for. This include: arbitration and use of tribunals. States need to embrace these alternatives to retain diplomatic ties.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This section is going to look at a brief summary of the entire research just to recap on the main details that were captured in the study. A conclusion will also be put forward to see what the final reasoning of the findings is. Recommendations will then be suggested as what can be the best way forward for Kenya and Somalia and finally areas for further research will also be looked at.

5.1 Summary

This study has identified one major grey area that needs further research and attention. States have courts that help in resolving disputes. The difference between these domestic courts and the international community is that, domestic disputes are given the avenue to appeal in case one is not okay with the decision. Kenya has Magistrate Courts, High Court, the Court of Appeal and the Supreme Court. Internationally, matters decided by the International Court of Justice are final and states are not given the opportunity to appeal the judgments.

The maritime dispute between Kenya and Somalia has provided for conflicting results and outcomes. The main question that was always coming up is that, was this decision based on a political interference or was the court impartial and fair? International law and international relations have not been clear when it comes to maritime disputes and their settlement processes.

Decisions based on international relations mostly conclude basing on economic and political interests. Its arguments are based on technicalities but it does not provide proof and evidence of the maritime disputes.

On the other hand, decisions and arguments that are based on international law are mostly built on the UNCLOS. This treaty is considered as the main legal convention on the law of the sea making other arguments to be disregarded as it does not concentrate on the "why" but rather on the "how"; for instance, international law cannot tell us why maritime disputes are resolved but it will show you how to do it.

The first objective found out that the history of conflict and cooperation between the two countries could have been caused because of many reasons. Factors that may have precipitated the maritime dispute between Kenya and Somalia were summarized in five major factors that could have led to the rise of tensions between Kenya and Somalia. They include; exploitation of the rich resources on the disputed area, the strategic position of the disputed triangle, political differences and interests of both states, the prestige of their cultures and finally, the history of a particular state that is held so close to the people's heart.

The second objective uncovered the main legal instrument that was applicable to peacefully settle the maritime dispute between Kenya and Somalia was the United Nations Convention on the Law of the Sea. The court relied on sections 74 and 82 of the convention in the delimitation process where the principles of fairness and equality have been applied during the whole process.

The third objective on Kenya and Somalia willing or unwilling to comply with international compulsory adjudication as means of peacefully settling the maritime

dispute between them was due to several factors. Kenya has had reservations as to why the International Court of Justice was not the best place to resolve their maritime dispute with Somalia. Kenya was of the opinion that the court lacked its own independence and impartiality. Claims of improper judicial selection process and political interference have greatly impacted on the decisions of the world court. The judicial legitimacy has also been questioned. Kenya also argued that the court is not well equipped to handle such cases as it lacks enough resources to handle the increased workload.

5.2 Conclusion

Kenya and Somalia should come together and try to find a permanent solution for their stale relationship. The decision of the International Court of Justice has not settled matters as tensions are still high between the two countries. Diplomatic efforts should be used to help both countries come to terms with the decision of the court. This relationship was much better before the ruling was delivered, as much as they did not see eye to eye, there was a lot of positive interactions between the two countries.

This maritime dispute was either resolved basing on legal principles or political interests. The dispute at hand was more of a political one because Kenya was not willing to surrender its maritime boarder to Somalia due to its richness in natural resources that was paramount to protect its interests.

Kenya and Somalia need to understand that their conflict will not only affect them but will put pressure to other states internationally. We do not want a situation where sanctions have to be put in place just because Kenya refused to accept the ruling of

the court, this will have negative effects to the country and affect its relations with other states.

5.3 Recommendations

With respect to objective 1, States need to come together to cooperate and find permanent and swift solutions for their maritime disputes. This can only be done with the help of regional and international bodies such as the African Union and the United Nations. Africa should encourage the use of regional bodies in resolving conflicts. More regional bodies should be put in place to help with the large numbers of unresolved maritime disputes. A good example of such an initiative is the launch of the African Union Border Programme in 2007 (Africa Union Border Programme, 2007) which helps in maintaining peace and security promotes integration and development in Africa and most importantly helps in governing African borders.

With regards to objective 2, maritime policies should be put in place most especially in Africa. The region needs a more unified approach when dealing with unresolved maritime disputes. This will only be successful if education and awareness on maritime issues are concentrated on.

Concerning objective 3, a Joint Development Scheme could have been a temporary solution before the ruling of the court was delivered. Kenya and Somalia could have agreed to enter into a temporary agreement so that they both manage the disputed area by equally exploiting the resources. Articles 74 and 83 of the Convention on the Law of the Sea has provided for this type of agreement (Nations., 1982). A good example where this scheme was used was the agreement between Japan and the Republic of Korea (The Agreement between Japan and the Republic of Korea Concerning Joint

Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, 1974).

An example is the bilateral understanding between *Jamaica and the Republic of Colombia* where both countries through a joint commission agreed to collaborate and handle resources on the disputed zone. Another example is the agreement between Norway and Iceland where a fisheries commission was established to overlook the sharing of the disputed area between the two countries. In Africa the principle of joint development mechanism was seen between *Nigeria* and *Sao Tome* where both countries had to share the Exclusive Economic Zone which was rich in petroleum and other natural resources.

5.4 Areas for further research

The international community needs to establish legal institutions that will enable states to appeal for an aggrieved decision. If the International Court of Justice is the most superior legal institution, then, lower courts should be established so that a matter starts from a lower level going up in case of indifferences.

There is also an unclear provision on the exact methods and ways of demarcation of boundaries in the UNCLOS. The convention has just provided on the principles that should be followed when demarcating the maritime boundaries but it has not laid out the procedures and techniques to be used.

REFERENCES

Anderson, D. (n.d.). *Methods of Resolving Maritime Boundary Disputes;* Retrieved July 31, 2013, from http://www.chathamhouse.org/sites

Adekeye, A. (2003) Africa and America in the Age of Terror*: Journal of Asian and African Studies*; pages 175-191.

Anderson, David. (1998) *Strategies for Dispute Resolution; Negotiating joint agreements,* IN; Modern Law of the Sea; Martinus Nijhoff Publishers; Boston; chapter 28, pages 491-501.

Arbitration, P. o. (2014). The Bay of Bay of Bengal Maritime Boundary Arbitration between the People's Republic of Bangladesh and Republic of India.

Badalan, E. (2009). *Global System and Security.*Burectsi: Editura Centrului Tehnic-Editorial al Armetei.

Bangladesh v Myanmar maritime dispute; 2008.

Barnett M, & Emmanuel, A. (1998) *Security Communities:* Cambridge University Press.

Barry, B. (1991) *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era:* Cambridge University Press.

Booth, K. (1985) *Law, Force and Diplomacy at Sea;* George Allen & Unwin Limited.

Booth, K. (1986). *Law, Force and Diplomacy at Sea;* Winchester: Allen & Unwin.

Born, G. (2012) A New Generation of International Adjudication; *Duke Law Journal:* Vol 61, No.4, pages 775-879; Duke University School of Law.

Bull, H. (1976) Sea Power and Political Influence*;* Volume 16, Issue 22, *Power at Sea*; The new environment papers from the IISS 17th Annual Conference; Pages 1-9.

Burkina Faso v Niger maritime dispute; 2010.

Buzan, B. (2003) *Regional Security Complex Theory in the Post-Cold War World*; IN; Soderbaum, F & Shaw, T; Theories of New Regionalism; *a Palgrave reader;* Palgrave Macmillan, London; pages 140-159.

Cambridge Essential English Dictionary (2011) (Cambridge Essential Eng. Dictio); 2nd edition; Cambridge University Press.

Cameroon v Nigeria maritime dispute; 1994.

Caro, D & Scheiber, H. (2014) *the Oceans in the Nuclear Age: Legacies and Risks:* An Expanded Edition: Brill-Nijhoff.

Castagano, A. (1964) the Somali-Kenyan Controversy; Implications for the Future; *Journal of Modern African Studies,* No. 2; 158-817.

Cesar, N; & Cardoso, F. (2016) Regional Security in the Horn of Africa: Conflicts, Agendas and Threats; *Brazilian Journal of African Studies*: Volume 1, pages 131-165.

CF Eric, A. P. (2005). *Judicial Independence in International Tribunals;* LRI

Charter of the United Nations (1945).

Chazan, N; Lewis, P; Mortimer, R; Rothchild, D & Stedman, J. (1999) *Politics and Society in Contemporary Africa:* Lynne Rienner Publishers.

Churchill R; (2010) *Trends in Dispute Settlement in the Law of the Sea; Towards the Increasing Availability of Compulsory Means;* IN; French D, Saul M and White N; International Law and Dispute Settlement; New Problems and Techniques; Hart Publishing; pages 143-172

Convention on the Continental Shelf (1958).

Convention on the High Seas (1958).

Covenant of the League of Nations (1920).

Creswell, John W. (2003). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches, 2nd ed. Thousand Oaks, CA: Sage.

Demessie, F. (2014) *Regional Approaches to Maritime Security in the Horn of Africa;* Friedrich-Ebert-Stiftung Regional Office.

Dyke, J. (2005) an Analysis of the Aegean Disputes under International Law*: Journal of Ocean Development & International Law*: Volume 36: pages 63-117.

Dyke, M; Broder, P; Lee S & Paik, J. (2013) *Governing Ocean Resources; New Challenges Emerging Regimes;* Martinus Nijhoff Publishers.

Elman, C; & Jensen, M. (2014) *the Realism Reader:* Taylor & Francis.

European Journal of International Law Analysis. (2017, February 22). Retrieved from https://www.ejiltalk.org/the-icjs-preliminary-objections-judgement-in-somalia--v-kenya-causing ripples-in-law-of-the-sea-dispute-settlement; Volume 28; Issue 1; pages 1-11.

Forsberg, T. (1996). Explaining Territorial Disputes: from power politics to normative reason*; Journal of Peace Research*; *vol 33 no.4*, pages 433-449.

Fox, H. (1990) *Joint Development of Offshore Oil & Gas: Volume II: a model agreement for states for joint development with explanatory commentary;* British Institute of International and Comparative Law.

Ghana v Côte d'Ivoire; 2017.

Ghosn, F; Palmer, G; & Bremer, S. (2004) The MID3 Data St, 1993-2001: Procedures, Coding Rules, and Description: *Journal of Conflict Management and Peace Science*: Volume 21, pages 133-154.

Government of Kenya; 1963.

Gumel, A. (2003). Trends in the Adjudication of Maritime Cases; *the Experience of a Trial Court Judge*, 58.

Guo, R. (2009) *the Land and Maritime Boundary Disputes of Asia (Asian Political, Economic and Security Issues);* Nova Science Publishing Incorporation UK.

Guo, R. (2012) *Territorial Disputes and Conflict Management: The Art of Avoiding War:* Routledge.

Guyana v Suriname maritime dispute; case no. 2004; Permanent Court of Arbitration.

Harrison J; (2017), *Saving the Oceans through Law; the International Legal Framework for the Protection of the Marine Environment;* Oxford University Press.

Hans, M. J. (2005). *Politics among Nations; the Struggle for Power and Peace:* New York.

Helfer, L; Slaughter, A. (2005) Why States Create International Tribunals; A response to Professor Dosner & Yoo; *Law Review,* 899-904.

Hensel, P; McLaughlin, S; Sowers, T; & Thyne, C. (2008) Bones of Contention: Comparing Territorial, Maritime, and River Issues*; Journal of Conflict Resolution*, Volume 52, pages 117-143.

Hong, S & Dyke., M. (2009) *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea (*Publications on Ocean Development): Brill.

Howard, R. E. (1986). *Human Rights in Commonwealth Africa:* Rowman & Littlefield Publishers.

Huth, P. (1996); *Standing Your Ground; Territorial Disputes and International Conflict:* The University of Michigan Press.

Jackson, R & Sorensen, G. (2017) *Introduction to international relations; theories and approaches:* Oxford University Press, United Kingdom.

Jahn, B. (2013) *Liberal Internationalism: Theory, History, and Practice)* Palgrave Macmillan Publishers: London.

Jennings, R. (2006). *General Introduction; the Statute of the International Court of Justice:* Oxford: Oxford University Press.

Jomo Kenyatta; 1963

Keaney, B. (2006) *the Realism of Hans Morgenthau:* University of South Florida.

Keaney, A. (2008). *The Realism of Hans Morgenthau.* Florida: University of South Florida.

Kelly, G. S. (2009). *The English Legal System; ninth edition:* USA & Canada: Routledge.

Kelsen, H. (1942). Law and Peace in International Relations; *the Oliver Weridell Holmes Lectures for 1940-1941;* Harvard University Press, Cambridge, 1942 P 151.

Kelsen, H. (1943). Compulsory Adjudication of International Disputes; *The American Journal of International Law;* Cambridge University Press Vol 1, No. 1 Vol III, No. 4.

Keohane, R. (1984) *After Hegemony; Cooperation and Discord in the World Political Economy:* Princeton University Press, New Jersey.

Keohane, R; Moravesik, A; Slaughter, A. (2000) Legalised Dispute Resolution; Interstate and Transnational; *International Law Organisation.*

Keohane, R & Nye, J. (2011) *Power and Interdependence:* (Longman Classics in Political Science): Pearson.

Khalfaouri's, A., & Yiallourides, C. (2019); Maritime Disputes and Disputed Seabed Resources in the African Continent; *Routledge Handbook of Energy Law,* 29.

Kolb R; (2013). *The International Court of Justice;* Oxford, Portland; Hart Publishing; pp. 307

Kombo, M.., (2018) *Advancing Security in East Africa Coastal Region through Maritime Strategy: Case of Kenya*; University of Nairobi.

Larson, A. (January 1961), The facts, the Law and the Connally Ammendment. *Duke Law Journal*, pages 74-119.

Legum, C. (1963). Somali Liberation Songs; *Journal of Modern African Studies.*

LinkLater, A. (1995). *Boundaries in Question; New Directions in International Relations.* London: Pinter Publishers.

Machiavelli, N. (1995). *The Prince* . Indiana Polis: Hackett publishing Company.

Macmillan, J & Linklater, and A. (1998) Boundaries *in Question: New Directions in International Relations:* Pinter Publishers

Mbugua, J & Mwachinalo, M. (2017) *an Assessment of Maritime Insecurity in the Kenya Maritime Domain:* International Peace Support Training Centre, Nairobi.

Mensah, T. (2006) *Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation;* IN; Lagoni, R & Vignes, D; Maritime Delimitation: Martinus Nijhoff Publishers; pages 151-160.

Meunier, S & Vachudova, M. (2018) Liberal Intergovernmentalism, Liberalism and the Potential Superpower of the European Union*; Journal of Common Market Studies*; pages 1631-1647.

Mingst, K, Mckibben, H; & Arreguin-Toft, I., (2018) *Essentials of International Relations:* W.W. Norton & Company.

Mohammed, O. (1993). Somalia, Proposals for the Future. 1-10

Morgenthau, H. J. (1948). *Politics Among Nations; The Struggle for Power and Peace.* NewYork; Alfred A. Knopf. Toronto; Ryerson Press.

Muhammad, B. (2014) African Boundaries and the Imperative of Definition in the Delimitation and Demarcation of Boundaries in Africa: 2nd edition; Commission *of the African Union.*

Newman, N. (*2017) Maritime Boundary Disputes:* Oxford.

NFD Frontier Problem Planted by Britain between Kenya and Somali Republic (1963).

Nicaragua v Colombia maritime dispute; 2001; Preliminary Objections Judgment.

Nicholas Chinedu Eze. (2011) *Rethinking Maritime Delimitation and Promoting Joint Development of Petroleum: The Nigeria-Sao Tome and Principe of Joint Development Model; University of British Colombia.*

Norduquist, M & More, J. (2012) *Maritime Border Diplomacy (Centre for Oceans Law and Policy):* Brill- Nijhoff.

Oduntan, G. (2016) *International Law and Boundary Disputes in Africa:* Routledge.

Onwuegbuzie, A.J and Kathleen M.T. (2007) "A Typology of Mixed Methods Sampling Design in Social Science Research" *The Quarterly Report,* Vol.12, No. 2. Organization of African Unity; 1964

Orttung, R. W., & Wenger, A. (2016). Explaining Cooperation and Conflict in Marine Boundary Disputes Involving Energy Deposits. *Region*, *5*(1), 75–96. http://www.jstor.org/stable/24896615.

Osthagen, A. (2019) *Lines at Sea: Why do States Resolve Their Maritime Boundary Disputes;* University of British Columbia.

Peel, M., (2010) *A Swamp Full of Dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier;* Chicago Review Press.

Potgieter, T. (2008) *the Maritime Security Quandary in the Horn of Africa Region: Causes, Consequences and Responses:* University of Stellenbosch.

Radio Addis Ababa; 1963

Reisman, M. (1971): *Nullity and Revision; the Review and Enforcement of International Judgements and Awards.* Yale University Press.

Resolution on Frontiers, Boundaries, and Federation (1958).

Richard, S. W. (2004). *Institutional Theory; in Encyclopedia of social theory.* Thousand Oaks.

Richard, S. W. (2008) *Institutions and Organisations; Ideas and Interests.* Los Angeles: Sage Publications.

Rosenne, S. (1976); the Composition of the Court: *The Future of the International Court of Justice; Oceana Publications*, 167-168.

Rosenne, S. (2006); *the Law and Practice of the International Court;* Martinus Nishoff.

Rothwell D & Stephens T; (2016): *The International Law of the Sea;* Hart Publisher

Ruggie, J. (1998) *What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge: International Organization*; Volume 52, No.4; MIT Press; pages 855-885.

Schulte, R. C. (2004). *Compliance with the Decisions of the International Court of Justice;* Oxford: Oxford University Press.

Scott K and Elferink A; (2015) *the Oxford Handbook of the Law of the Sea;* Oxford Publishers

Scott, R. (2013) *Institutions and Organizations: Ideas, Interests, and Identities:* Sage Publications.

Scott, W. (2004) *Institutional Theory;* IN George Ritzer; Encyclopaedia of Social Theory; Thousand Oaks, Sage; pages 408-414.

Sea, I. T. (2012). Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal.

Semple, E. (2007) *Influences of Geographic Environment on the basis of Ratzel's System of Anthropo-Geography*: Greenbie Press.

Sharamo, R & Mesfin, B. (2011) *Regional Security in the Post-Cold War Horn of Africa:* Institute for Security Studies, South Africa.

Siebels, D. (2020) *Maritime Security in East and West Africa: A Tale of Two Regions;* Palgrave Pivot.

Silva, C. (2012) *Congo, the African World War: Armed Conflicts, State-building and Alternatives for Peace;* Federal University of Santa Maria.

Soderbaum, F & Shaw, T.., (2003) *Theories of New Regionalism; a Palgrave reader:* Palgrave Macmillan, London.

Somali V Kenya maritime dispute, Judgement on Preliminary Objections. (2017,

February 2). pp. paras 18-19; para 103-104; par 128, 130.

Somalia at a Glance; 1964

Statute of the International Court of Justice(1945).

Sylvest, C (2014) Russell's Realist Radicalism*: The International History Review Journal*: Volume 36: pages 876-893.

The African Charter on Maritime Security and Development (2016)

The Arbitration Act. (1996).

The Convention on the Teritorial Sea and Contiguous Zone (1964).

The East African Standard, 1966; London; Africa Research Bulletin

The Kinsasha Declaration, (1967)

The Observer; 1963; London

The settlement of Maritime Delimitation Disputes by the International Court of Justice; *The Journal of Territorial and Maritime Studies,* Vol 5, No.2, pages 46-74; McFarland & Company.

The Standard, 1965

The United Nations Convention on the Law of the Sea(1982).

The United Nations Financial Rules and Regulations (2003).

The Vienna Convention (1969).

Thompson Vincent B; (2015) *Conflict in the Horn of Africa: The Kenya-Somalia Border Problem 1941-2014;* UPA,

Thucydides. (2009) *the History of the Peloponnesian War;* e-book produced by Albert I mrie & David Widger.

Treaty of Locarno (1925).

Tuerk, H. (2012) *Reflections on the Contemporary Law of the Sea: (*Publications on Ocean Development); Brill-Nijhoff.

Tunisia V Libya; 1988

UNGA (2000, October 26). Presidential Speech to the UNGA

United States Congress, Senate, Committee on Foreign Relations; (1960) *Compulsory Jurisdiction, International Court of Justice*; U.S Government Printing Office

Wafula O. (2014) The Purpose and Functions of International Boundaries: with specific reference to Africa: in the Delimitation and Demarcation of Boundaries in Africa: *Commission of the African Union.*

Waltz, K. (2010) *Theory of International Politics and the Emerging Structure of International Politics, International Security:* Waveland Press, NewYork.

Wambua, P. (2009) Enhancing Regional Maritime Cooperation in Africa: The Planned End State*: African Security Review* 18.3; Institute for security studies; pages 1-15.

Wasike Andrew (2021); Kenya Rejects ICJ Ruling Over Maritime Dispute with Somalia; Andolu Agency Africa

Weitzberg K. (2017); *We do not Have Boundaries; Great Somalia and the Predicament of Belonging in Kenya;* Ohio University Press; 288 pages.

Wiegand, K. (2011) *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, and Settlement (Studies in Security and International Affairs Ser.),* University of Georgia Press.

William, Minor Lile. (1929) Judge-Made-Law: *Virginia Law Review;* Vol 15, No. 6; Pages 525-536.

Williams, P. (2008) *Security Studies: An Introduction;* Taylor & Francis Group: London and New York.

Woodward P, (1996) *The Horn of Africa; State Politics and International Relations;* Canada; St. Martin's Press; 226 pages

Yiallourides, C. (2020) *Maritime Disputes and Disputed Seabed Resources in the African Continent:* IN Hunter, T; Herrera, I; & Crossley, P; Routledge Handbook of Energy Law: Chapter 31 Taylor & Francis/Routledge.

APPENDICES

APPENDIX I - RESEARCH INSTRUMENTS

Questionnaire

Target Population: was completed by legal professionals, Lawyers, professional arbitrators, mediators, negotiators and officials from the Ministry of Foreign Affairs and the Somalia Embassy Officials in Kenya.

Purpose: The information gathered here was used as part of an academic research based on finding out whether the maritime dispute between Kenya and Somalia will have any impacts on the regional security in the Horn of Africa.

Confidentiality: The views and responses given here were highly confidential. The writer of this questionnaire is the only owner and was destroyed after the completion of the research.

Part A: Demographic Data

- Kindly indicate your institution?

……

- Kindly indicate your gender?

  Female ☐

  Male ☐

- Respondent's Age?

1	21 to 30 years	[ ]
2	31 to 40 years	[ ]
3	41 to 50 years	[ ]
4	Above 51 years	[ ]

- Duration of time serving in the institution?

  0 to 5 years ☐

  6 to 11 years ☐

  12 to 17 years ☐

  Above 18 years ☐

Part A: Genesis of maritime boundary dispute between Kenya and Somalia

- Has the history of conflict and cooperation between Kenya and Somalia impacted on the rising tensions between the two countries?

☐ ☐ Yes ☐ No

- Does Juba land region have anything to do with the rising tensions between Kenya and Somalia?

Yes ☐ No ☐

- If yes, will it stir up conflicts or resort to the use of force between Kenya and Somalia?

Yes ☐ No ☐

- To what extent are these statements true with regards to Juba land stirring tensions between Kenya and Somalia?

	Not True	Somewhat true	Mostly True	True	Very True
Kenya wants to annex Juba land by sending troops to claim its territory					
The attack by Somalia's soldiers in Mandera which led to the destruction of property was aimed at provoking Kenya.					

- What is your level of agreement that these are the right procedures to resolve the maritime dispute between Kenya and Somalia?

	Strongly Agree	Agree	Uncertain/Not Applicable	Disagree	Strongly Disagree
Litigation					
Arbitration					
Negotiation					
Mediation					
Conciliation					
Adjudication					
Joint Management Scheme					

- If in any case both countries choose an out of court mechanism, will there be public awareness, trust and confidence in the process?

Yes ☐ No ☐

- Will both countries actively participate in the settlement process?

Yes ☐ No ☐

- ❖ Can bilateral talks between Kenya and Somalia find a completely permanent solution to this maritime dispute?

  Yes ☐ No ☐

- ❖ To what level do you concur with the following statements on alternative mechanisms?

	Strongly Agree	Agree	Uncertain/Not Applicable	Disagree	Strongly Disagree
There is inadequate knowledge on bilateral applications					
Both Kenya and Somalia may be emotionally involved in the decision making process					
It can worsen the maritime dispute					
It can prolong the maritime dispute					
Third parties may have their own interests					

- ❖ Do you believe that the dispute between Kenya and Somalia is more of a political one than a legal one?

  Yes ☐ No ☐

- ❖ Are Kenya and Somalia pursuing a dangerous policy to the extent of affecting their security before stopping?

  Yes ☐ No ☐

- What is your level of agreement on these statements about Kenya and Somalia pursuing a dangerous policy?

	Strongly agree	Agree	Uncertain/ not applicable	Disagree	Strongly disagree
Kenya and Somalia are politically playing a game of trying to get what each one of them wants by putting clearly that if one state does not get it, either of them will do something dangerous.					
The principle of "uti possidetis" meaning, "may you continue to possess such as you do possess" is a problem in Africa.					
Africa mostly resorts to settlement of international boundary disputes by the use of force, when the decision doesn't favour them.					
The decision of the International court of Justice could worsen the diplomatic relationship between Kenya and Somalia since the final judgement will only favour one side.					

- Will the final decision worsen the relationship between Kenya and Somalia?

  Yes ☐ No ☐

- Can Kenya and Somalia protect itself from the interference of third parties?

  Yes ☐ No ☐

- Can third parties protect themselves from blackmail in this dispute?

  Yes ☐ No ☐

Part B: Laws and Conventions that will help in peacefully settling the dispute between Kenya and Somalia.

- Will the United Nations Convention on the Law of the Sea play a major role in peacefully settling the dispute between Kenya and Somalia?

  Yes ☐ No ☐

- To what level do you agree with the statements on the decision reached by the International Court of Justice on the Kenya Somalia maritime dispute?

	Strongly agree	Agree	Uncertain/ not applicable	Disagree	Strongly disagree
The best solution between Kenya and Somalia is a political solution and not a legal one so as to have a bargain able arrangement					
The International Court of Justice will not deliver a judgement that will leave both countries happy and content.					
Africa should come up with its own regional body that will be in charge of settling its own maritime disputes before resorting to international bodies.					
Many African maritime disputes have remained unresolved or are pending in the International Court of Justice.					
States have started embracing the use of Alternative Dispute Resolution mechanisms as compared to court processes.					

Part C: Sate reservation on Compulsory adjudication and peaceful settlement of international maritime disputes

- Will the maritime dispute between Kenya and Somalia be settled by the International Court of Justice?

  Yes ☐ No ☐

- If yes, to what extent will the decision positively affect the relationship between Kenya and Somalia?

1	Very strong extent	[ ]
2	Great extent	[ ]
3	Moderate extent	[ ]
4	Little extent	[ ]
5	No extent	[ ]

- What is your level of agreement on the following statements on the success of the International Court of Justice to resolve this dispute?

	Strongly agree	Agree	Uncertain/ not applicable	Disagree	Strongly disagree
The court is not personal and does not favour The court is impartial and neutral					
It is organised and can solve complex cases It educates other states and not the disputing states only It provides for future rules					
It reduces tensions on political matters					

- Will the International Court of Justice be able to deliver an independent judgment to help in resolving the maritime dispute?

  Yes ☐ No ☐

- If yes, will the decision reached by the court be fair to both Kenya and Somalia?

  Yes ☐ No ☐

End

Thank you for your participation

APPENDIX II: INTERVIEW GUIDE

The information gathered here will be used as part of an academic research based on finding out whether the maritime dispute between Kenya and Somalia will be resolved by the International Court of Justice or alternative mechanisms.

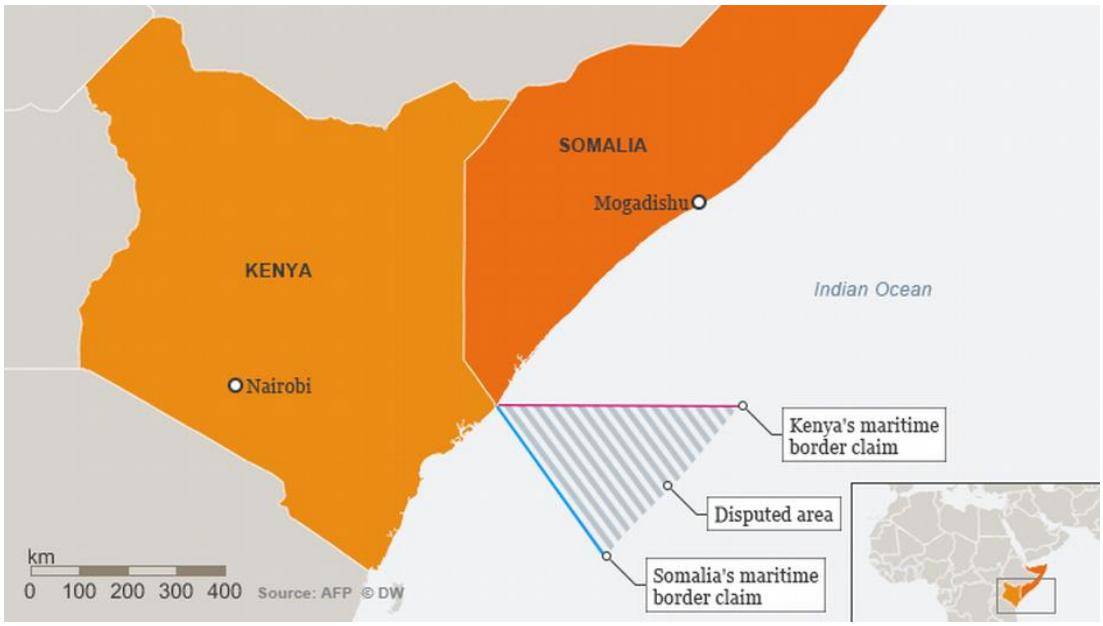
The respondents will be reached through face-to-face, telephone conversations, or the internet and mail if distance will limit.

COMPULSORY ADJUDICATION AND PEACEFUL SETTLEMENT OF KENYA -SOMALIA MARITIME DISPUTES

1. What is the history of Kenya and Somalia's maritime dispute and how is it relevant to this research?
2. How will the neighbouring countries in Africa who are involved in the maritime dispute between Kenya and Somalia be affected whether negatively or positively?
3. What are Kenya's interests in the Indian Ocean and vice versa for Somalia? How have these interests shaped their approach to their territorial claims?
4. Will the role of patriotism and nationalism play in the maritime dispute between Kenya and Somalia?
5. Is armed conflict between Kenya, Somalia and its neighbours looming?
6. What are some of the preventive measures that can be applied in the maritime dispute between Kenya and Somalia?
7. In case a conflict breaks between Kenya and Somalia, what are some of the crisis management measures that can be used?
8. Should military action be considered in case of an impending crisis between Kenya and Somalia?

9. How deep should international actors get involved in the Maritime dispute between Kenya and Somalia?
10. How have African Policies on maritime disputes and territorial claims shaped Africa as a region on seeking to settle the dispute between Kenya and Somalia?
11. What other policies are there for resolving maritime disputes in Africa, both resolved and unresolved? What are the reasons behind the unresolved cases and what can be done to correct this?
12. What role have international and regional bodies like the African Union and the United Nations played in mitigating the regional tensions surrounding the Kenya-Somalia dispute?
13. What are some of the challenges faced when settling the Kenya-Somalia maritime dispute and what should be done to prevent acceleration?
14. What other factors contribute to the maritime dispute between Kenya and Somalia?

APPENDIX III - MAP



Source: https://www.dw.com/en/kenya-or-somalia-who-owns-the-sea-and-what-lies-beneath/a-19557277

APPENDIX IV: RESEARCH PROPOSAL APPROVAL LETTER

KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke
Website: www.ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 810901 Ext. 4150

Internal Memo

FROM: Dean, Graduate School

DATE: 1st November, 2021

TO: Lucy Adhiambo Felisters
C/o Inter. Rel. conf. & Strg. Studies Dept.

REF: S205/CTY/PT/27952/2018

SUBJECT: APPROVAL OF RESEARCH PROPOSAL

We acknowledge receipt of your revised Research Proposal as per our recommendations raised by the Graduate School Board of 29th September, 2021 entitled "International Arbitration and Prospects of Peaceful Settlement of Kenya Somalia Maritime Disupte".

You may now proceed with your Data Collection, Subject to Clearance with Director General, National Commission for Science, Technology and Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed Supervision Tracking and progress report forms per semester. The forms are available at the University's Website under Graduate School webpage downloads.

Thank you.

HARRIET ISABOKE
FOR: DEAN, GRADUATE SCHOOL

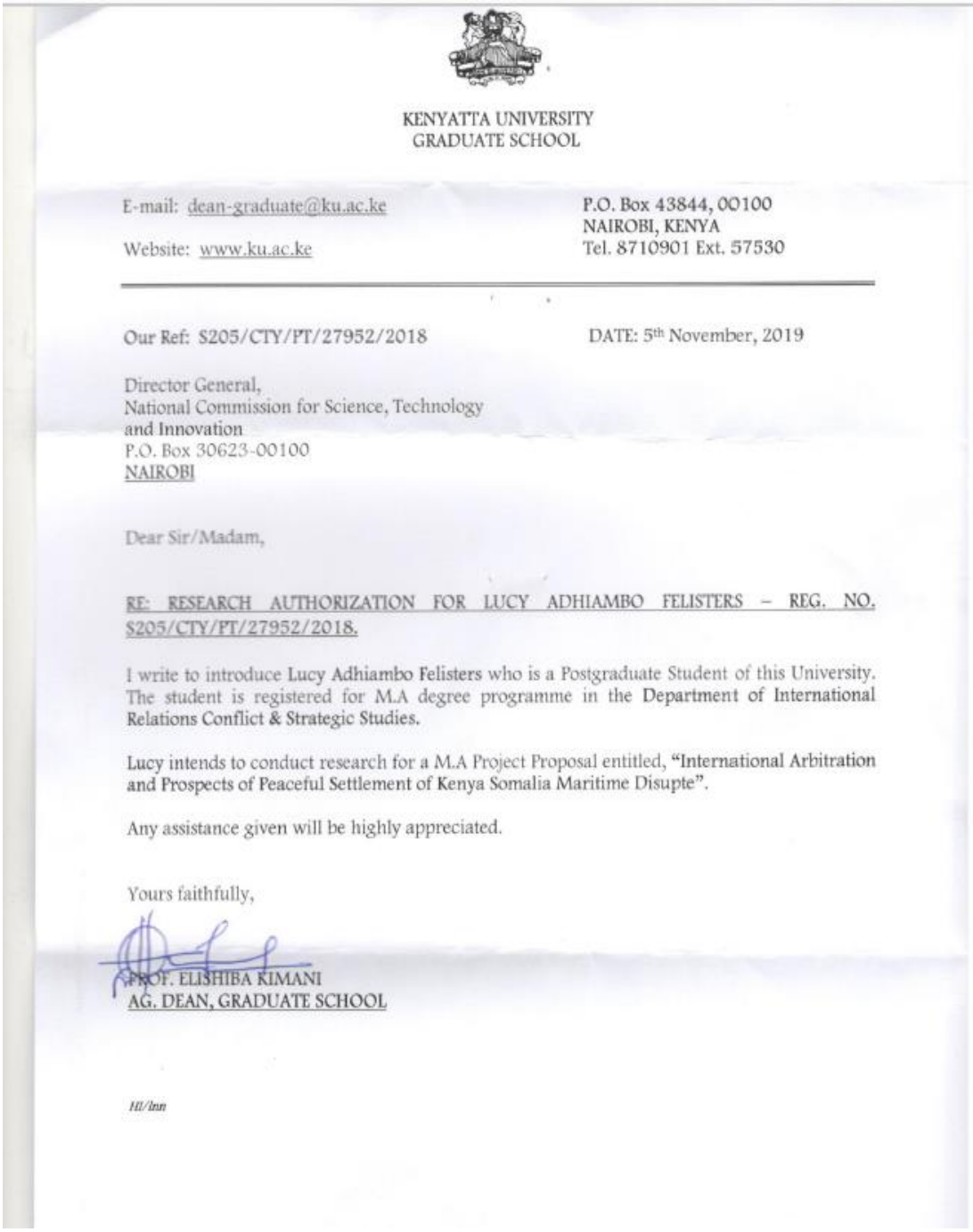
C.c. Chairman, Department of International Relations Conflict & Strategic Studies.

Supervisors:

1. Dr. Xavier Ichani
C/o Department of Inter. Rel. conf. & Strg. Studies
Kenyatta University

HI/lnn

APPENDIX :V RESEARCH AUTHORIZATION LETTER



KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke
Website: www.ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 8710901 Ext. 57530

Our Ref: S205/CTY/PT/27952/2018

DATE: 5th November, 2019

Director General,
National Commission for Science, Technology
and Innovation
P.O. Box 30623-00100
NAIROBI

Dear Sir/Madam,

RE: RESEARCH AUTHORIZATION FOR LUCY ADHIAMBO FELISTERS – REG. NO. S205/CTY/PT/27952/2018.

I write to introduce Lucy Adhiambo Felisters who is a Postgraduate Student of this University. The student is registered for M.A degree programme in the Department of International Relations Conflict & Strategic Studies.

Lucy intends to conduct research for a M.A Project Proposal entitled, "International Arbitration and Prospects of Peaceful Settlement of Kenya Somalia Maritime Disupte".

Any assistance given will be highly appreciated.

Yours faithfully,

PROF. ELISHIBA KIMANI
AG. DEAN, GRADUATE SCHOOL

HI/lnn

APPENDIX VI: NACOSTI PERMIT

REPUBLIC OF KENYA

NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Ref No: 677021

Date of Issue: 20/November/2021

RESEARCH LICENSE

This is to Certify that Miss.. FELISTER Lucy ADHIAMBO of Kenyatta University, has been licensed to conduct research in Nairobi on the topic: INTERNATIONAL ARBITRATION AND PROSPECTS OF PEACEFUL SETTLEMENT OF KENYA SOMALIA MARITIME DISPUTE for the period ending : 20/November/2022.

License No: NACOSTI/P/21/14470

677021

Applicant Identification Number

Director General
NATIONAL COMMISSION FOR SCIENCE,TECHNOLOGY & INNOVATION

Verification QR Code

NOTE: This is a computer generated License. To verify the authenticity of this document, Scan the QR Code using QR scanner application.