

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**The East African Community and Dispute Settlement**

**(A Case of Migingo Island)**

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**R50/60724/2011**

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**A Research Project submitted in partial fulfillment of The Degree of Master of Arts in**

**International Studies**

**May, 2013**

## Declaration

I, Warui Njoka David hereby declare that this research project is my original work and has not been presented for a degree in any other University.

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

Signed.....Date.....

Dr. Anita Kiamba

## **Acknowledgement**

To God for all his blessings, my wife Catherine Timmitira and our children for their unwavering support and to my supervisor for her guidance.

## **Dedication**

I dedicate this research project to all people of good will who preach peace and pray for the well being of the human race and to the memory my late father Mr. Peter Warui Njoka for his enthusiasm for education which he did not attain to his desired level and had to terminate it in order to ensure that his siblings went to school as he toiled and moiled to support them. His legacy and love for education will always be remembered for the educational investment and his enduring will and desire to ensure that his children got a good education. To my mother Mrs. Tabitha Wachinga Warui for her love of her children and her key role in their upbringing which has also been extended to her grandchildren

## **Abstract**

This research studies the East African Community's dispute settlement framework. It examines the dispute between Kenya and Uganda over Migingo Island. Indeed since the end of the World War II, the human race has strived towards peaceful coexistence and established international organization such as the United Nations, European Union and the African Union and other sub regional organization to steer issues of development, peace and security through integration and cooperation. The end of the Cold War and the advent of globalization. The International system has increasingly been geared towards cooperation efforts and states have joined together for cooperation in diverse areas of mutual interest. The republics of Kenya, Burundi, Rwanda, Uganda and the United Republic of Tanzania joined together and formed the EAC, one of the successful REC's in the African region.

The republics of Kenya and Uganda have been involved since 2008 in a dispute over Migingo Island located on their international border in Lake Victoria. The dispute has not augured well for the region and there is need for its settlement. The role and mandate of the East African Community in dispute settlement has been unclear leading to questions on its mandate and ability to settle disputes within the bloc. Its absence in the negotiations and its silence over the island dispute has raised questions in the region and internationally on its conflict management role. The East African Communities' ability to settle disputes would advance and enhance its integration agenda. The Migingo Island dispute therefore poses a credibility test case on the East African Community and its future role(s) in conflict management.

## Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
AEC	Africa Economic Commission
AMU	Arab Maghreb Union
ASAS	Association of Southern African States
ASEAC	Association of South East Asian Countries
ASF	African Standby Force
AU	African Union
BMC	Beach Management Committee
CEWARN	Conflict Early Warning System
CEWS	Continental Early Warning System
CM	Common Market
CPA	Comprehensive Peace Agreement
CPMR	Conflict Prevention, Management and Resolution
CU	Customs Union
DLO's	Defence Liaison Officer
DRC	Democratic Republic of Congo
EAC	East African Community
EAC	East African Court of Justice
EACWARN	East African Community Warning Early Warning System
EASF	East African Standby Force
ECA	Economic Commission for Africa
ECCAS	Economic Community of Central African States

EWS	Early Warning System
EACCPMR	East African Community Conflict Management and Resolution
EACEWS	East African Community Early warning System
EACJ	East African Court of Justice
EALA	East African legislative Assembly
EAP	East Africa Protectorate
ECCAS	Economic Commission of Central African States
ECOWAS	Economic Commission for West African States
ECOMOG	Economic Monitoring Group
EU	European Union
FLA	Final Act of Lagos
GoK	Government of Kenya
GoU	Government of Uganda
IBEA	Imperial British East Africa
IGAD	Intergovernmental Authority for Development
IGADD	Inter-Governmental Authority on Drought and Desertification
IGO	Intergovernmental Organization
IO	International Organization
JBC	Joint Border Commission
LPA	Lagos Plan of Action
LVCB	Lake Victoria Commission Basin
LVFO	Lake Victoria Fisheries Organization
M23	March 23

MLA	Azawad National liberation Movement
MOU	Memorandum of Understanding
NAFTA	North American Free trade Area
NATO	North Atlantic Treaty Organization
NEWC	National Early Warning Centers
NEPAD	New Partnership for African Development
NEP	North Eastern Province
NFD	North Frontier District
NGO	Non Governmental Organization
NRM	National Resistance Movement
OAU	Organization of African Unity
PEP	Panel of Eminent Persons
PEV	Post Election Violence
PF	Political Federation
PTC	Permanent Tripartite Commission
REC	Regional Economic Community
REWC	Regional Early Warning Centre (REWC)
SACU	South African Customs Union
SADC	Southern Africa Development Cooperation
SADCC	Southern African Development Coordination Conference
SG	Secretary General
SPLA	South Sudan Liberation Army
SSR	Security Sector Reform



UN	United Nations
UNSC	United Nations Security Council
UNAMID	United Nations and African Mission for Darfur
USA	United States of America
WTO	World Trade Organization

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# CHAPTER ONE

## Introduction to the Study

### 1.0 Background

The upsurge of interest in regionalism is both a response to and the result of fundamental transformation of the international order including increased economic globalization and competition, and geopolitical challenges<sup>1</sup>. This has led to attempts to revive dormant regional integration schemes, resurrection of failed ones, reorganization and strengthening of existing Regional Economic Communities (REC) and initiation of new schemes where non-existed.

Africa has recorded increased progress in political reforms leading to democratization and increased opening of the democratic space which have made politics more inclusive and this has been favourable towards the increased emergence of regional integration bloc's. The genesis of regional integration in Africa has its roots in the Pan African Movement led by radical leaders like Kwame Nkrumah of Ghana and Sekou Toure of Guinea who advocated and promoted the struggle for the cultural and social development of the African people. The establishment of the Organization of African Unity (OAU) in 1963 represented the consolidation of the gradualist approach to African unity as well as the broad issue of African development.

In post colonial Africa the drive for regional integration included a broad range of objectives, namely economic, social, and political and the need for greater international bargaining power.

The collaboration between the OAU and the Economic Community of Africa (ECA) especially from the late 1970's ushered in a new era of regional cooperation in Africa. It was in

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<sup>1</sup>Schiff M. and Winters L.A.,*Regional integration and development* (Washington DC:The International Bank for Reconstruction and Development/The World bank, 2003) p.1

this period that the Monrovia Colloquium was adopted in 1979 and the Lagos Plan of Action (LPA) and subsequently in 1980 the Final Act of Lagos (FLA) came into being and the processes resulted in the signing of the treaty for establishing the African Economic Commission (AEC) in 1991. The LPA was essentially the first blue print that articulated the preferred long term economic development path for the continent. The LPA and the Abuja Treaty elaborated the specific economical, political and institutional mechanisms for attaining the idea.<sup>2</sup>

The path to African integration has been faced with disagreements on the best approach due to the many integration blocs in the region. The African Union (AU) unable to agree on what constitutes the various regions amongst its fifty three(53) member states has divided the continent into five (5) membership regions for administrative purposes. These include the Economic Community of West African States (ECOWAS), Economic Communities of Central African States (ECCAS), South African Development Cooperation (SADC) and Intergovernmental Authority for Development (IGAD). The AU politically recognizes eight (8) regional groupings and its possible to count up to fourteen (14) overlapping economic communities on the continent.<sup>3</sup>

At the sub regional level Africa integration is the most important response to globalization, but the process has been slow. The establishment of the ECA and its advocacy in the promotion of effective economic grouping gave hope to the prospect of an African common market. Indeed ECA promoted and supported the building of viable economic groupings in each

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<sup>2</sup> Schraeder P. J., 2000, *African Politics and Society*, (Boston: Loyola University Press), p.307. cited in *AJIA* vol. 5 Nos. 1 & 2, 2002., G.Chikowore; The African Union and the Destiny of African hood: The Southern Africa Development Community and Neo-colonial Challenges to Pan-Africanism p.46

<sup>3</sup> Chikowore G., The African Union and the Destiny of African hood: The Southern Africa Development Community and Neo-colonial Challenges to Pan-Africanism', *AJIA* vol. 5 Nos. 1 & 2, 2002p.47

of the four sub–regions of Africa. The assumption was that successful sub – regional integration would serve as the building blocks for continental integration.

There are many reasons and aims of forming REC’s. These include governments binding themselves to better policies, a desire for accessing major markets, coping with competition, a desire to maintain sovereignty by pooling together rather than acting alone among other reasons. Most of the African economies are small in terms of per capita income as well as in population size and lack the comparative advantage to be competitive on their own. This necessitates the need for them to pool resources to enhance their economic development. These will facilitate integration of domestic policies which helps in overcoming market failures and trade restrictions.

Regionalism helps in reducing the chances of conflict with neighbours and facilitates the negotiation of agreements to share natural resources. It is believed that trading partners are least likely to get into conflict and if that happens they have the mechanisms to manage the conflicts. This is so because trade fosters peace and increases interdependence. Integration between the brings the people and governments together and increases access to the security of strategic raw materials and reduces the likelihood of any threats to trade embargo. The shared resources particularly those that cut across boundaries like water masses and eco systems can be exploited and managed for the benefit of the members. There are too, a number of REC’s that have emerged with the motivation and influence of establishing trade interactions as a means of removing the potential threats from their neighbours. This include the case of Argentine, to protect itself against Brazil and the formation of Southern African Development Conference (SADCC) in 1986, where some members signed a mutual defence pact because of the fear of the military and economic might of the then apartheid regime of South Africa<sup>4</sup>.

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<sup>4</sup> Schiff M. and Winters, Op cit.,p.190,195

Integration does not at all times promote peace and security and may occasionally result in conflict where trade appears to be skewed to a specific State. One of the causes of the American Civil War between the North and South was trade imbalance in favour of the North which was also one of the causes of the collapse of the EAC in 1977 whereby Uganda and Tanzania felt that trade was in favour of Kenya.<sup>5</sup>

The OAU charter of 1963 and the Constitutive Act establishing the AU of 2000 defined regional integration as one of the foundations of African unity. The need for African integration was recognized even before the creation of the OAU in 1963. The Southern African Customs Union (SACU) is the oldest customs organization in the world but had relatively little to show for its longevity. The Southern Rhodesia Customs Union was established in 1949, while the East African Community (EAC) came into being in 1967. The EAC however failed in 1977.<sup>6</sup> Key leaders such as Alpha Oumar Konare, Thabo Mbeki and Muammar Kaddafi, who supported the vision of a greater African identity have lost interest over time and some have moved on, while others are no longer in power.

The adoption of New Partnership for Africa's Development (NEPAD) on 23<sup>rd</sup> October 2001 in Abuja Nigeria provided an overall development agenda for the continent focusing on regional integration as one of the core objectives.<sup>7</sup> The NEPAD initiative is inclined more towards bridging the north-south divide. At the sub regional level, integration is the most important response to globalization, despite the process being slow and uneven. Individually African economies are too small and have to integrate with their neighbours to survive globally.

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<sup>6</sup> Colliers J. *Regional integration (Africa in the new World- How Global and Domestic Developments will impact by 2025)* 2008 p.113

<sup>7</sup> Taylor I. 'Globalization and regionalization in Africa: Reactions to attempts at neo-liberal regionalism' *Review of International Political Economy*, Vo.10, No 2, (2003) pp.311-312

Attempts by the East African Countries to unite date back to the colonial period, with formal economic and social integration dating back to 1897 with the construction of the Kenya – Uganda Railway. Other interventions were geared towards the development of institutions such as the Customs Collection Centre (1900), East African Currency Board (1905) the East African Postal Union (1905) the court of Appeal for East Africa (1909), East African Customs Union (1919), East African High Commission (1945), East African Common Services Organization (1961) and the East African Community (EAC) (1967).The institutions were formed as joint organizations to manage matters regarding the East African Countries and regulate trade relations between the partner States.

The initial EAC failed to survive beyond the first decade and was eventually dissolved in 1977. One of the main reasons cited as the cause of the collapse was the disproportionate sharing of the benefits from the community. This was in itself as a result of differences in the levels of development between the Partner States and lack of adequate policies to address this disparity.<sup>8</sup>

Migingo Island is on the International boundary between Kenya and Uganda. The island is estimated to be half an acre in size and is the cause of dispute between Kenya and Uganda. The waters around the island are rich in fish reserves that the citizens of the two countries and beyond have desire to exploit. The Migingo Island dispute has stirred emotions particularly amongst the fishermen. The island dispute came to the fore in 2008. The dispute despite the emotional burst of some of the leaders has not yet affected the relationship between the two states

The fisheries of Lake Victoria make a substantial contribution to poverty reduction and economic growth within the region. Over 2 million people are supported by the fisheries and the annual fish consumption needs of almost 22 million people in the region are met by the lake

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<sup>8</sup> GoK, *MEAC Strategic Plan 2008 -2012*, (Nairobi: Noel Creative media LTD, 2009) p.1

alone, making a significant contribution to regional food security. Migingo Island is famed for its fish landing which attracts many fishermen from Kenya and it is one of the few remaining areas of rich deep water- fishing for Nile perch in Lake Victoria with the returns from the Nile Perch raking millions of shillings.<sup>9</sup>

The influx of fishermen into the island brought with it pirates armed with assault rifles who apart from piracy, stole engine boats. The fishermen appealed to their respective governments. Uganda's response was immediate and the security officials took the opportunity to make extra money. This led to the mistreatment of Kenyans by the Ugandan Police with arrests and demands for entry permits, tax, fines and other rackets bordering on extortion.

The Migingo Island dispute started with Uganda's attempts to control fishing by Kenyan fisherman into its territory. The subsequent Kenyan fishermen's plight attracted public attention in Kenya and helped in bringing the Migingo dispute to the attention of the public. This eventually led to the start of bilateral talks between Kenya and Uganda which were held at the Heads of State, Ministerial and senior official's levels. Two heads of state meetings were held on the sidelines of an AU and EAC summit meeting. The talks resulted in the establishment of a joint survey team on 13th March, 2009 to determine the islands ownership.<sup>10</sup> As a result of the bilateral meetings the two states were required to have a joint police presence on the island, to maintain law and order. This has not worked well due to varied interests. In August 2012 for instance the Ugandan police raided the Kenyan police camp on the island.<sup>11</sup>

The EAC rules of procedure require that any partner state with an issue for discussion should raise it as a substantive agenda with a notice of not less than twenty days. Neither Kenya nor Uganda has initiated such an agenda with the EAC or to any other international body and

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<sup>9</sup> EAC, Lake Victoria Fisheries Organization, Strategic Vision Document 2012, pp.10 -12

<sup>10</sup> GoK / GoU., Ministerial joint communiqué, 13<sup>th</sup> March, 2009, p1.

<sup>11</sup> Otieno E., 'Ugandan police raid chief's camp' *Daily Nation*, (Nairobi), 6<sup>th</sup> August, 2012

neither has made a formal territorial claim which overlap. The dispute appears therefore to be a case of a lack adequate definition which in Koc's assertion, a dispute cannot be said to exist. It would however exist if the formal territorial claims between two states are incompatible.<sup>12</sup> The dispute has however been discussed as a motion by the East African Legislative Assembly (EALA) and declared a bilateral issue between Kenya and Uganda.

### **1.1 Statement of the research problem**

Kenya and Uganda are founder members of the EAC regional block and key actors in the EAC integration process. Both states are involved in a dispute over the ownership of Migingo Island. The dispute has been ongoing on since 2009. One of the major areas of disagreement is on whose territory the island is located. Bilateral meetings over the dispute have been held since 2009 to date and several joint ministerial communiqués have been made on the way forward but the dispute has remained unsettled.

The EAC's role and mandate in the settlement of the disputes between its members is not explicitly stated and there are no indications of actions if any that it has initiated towards the settlement of the Migingo dispute. The study will therefore attempt to identify ways and means of amicably managing the dispute. It will assess the mandate and role of the EAC in the settlement of disputes between its members.

### **1.2 Research questions**

- 1.) Does the EAC have a mandate on dispute settlement and what is it anchored on?
- 2.) Who are the actors in the dispute and what are their interests and motivations?
- 3.) What are the bilateral and multi lateral steps being undertaken to settle the dispute?
- 4.) What are the suggestions/recommendations towards peaceful settlement of the dispute?

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<sup>12</sup> Kocs S.A., 'Territorial Disputes and Interstate War' *The Journal of Politics*, Vol.57, No.1 (Feb., 1995) p161

### **1.3 Research objectives**

The ultimate objective of the study is to explore and analyze the mandate of the EAC in dispute settlement between the partner states, the framework in place for such an undertaking and how this has been operationalised in the case of Migingo Island dispute between Kenya and Uganda.

The objectives of the research are:

- 1.) To identify the EAC's regional bloc's mandate and function in the dispute settlement;
- 2.) To evaluate critically the EAC framework for dispute settlement; and
- 3.) To analyze and synthesize the Migingo Island dispute, the actors involved, their roles in the dispute and attempts towards its settlement.

### **1.4 Literature review**

The study will review relevant theories on international relations that can help in the understanding on the identified area of study. A brief review of the theories relevant and appropriate to state cooperation and integration will be undertaken and an appropriate theoretical approach closest to the study will be identified and utilized in the subsequent analysis of the research problem. The theoretical framework will further facilitate the researcher in making conclusions in relationship to the research problem.

The research is expected to outline what is in place in terms of the existing framework while outlining areas of improvement in the regional bloc's dispute settlement process. It will. The study will use the case method strategy to highlight the emerging issues on the study.

The Migingo Island dispute is a conflict on territory on a land mass of 0.5 hectares in Lake Victoria which has generated tension between the two neighbouring states. The researcher will outline what has been bilaterally achieved and multilaterally by the EAC towards the



settlement of the dispute. The study will further identify the policy gaps which may exist in the EAC conflict management system and give appropriate recommendations.

#### **1.4.1 Conceptual definition of conflict**

Mitchell defines conflict 'as a situation whereby two or more parties have incompatible goals about something'.<sup>13</sup> This could be as a result of perception or misinterpretation of an issue which may arise even in an ordinary discussion. Conflict has been described too as an inter-state war if the actors are sovereign states and the number of casualties exceeds 1,000 per year.<sup>14</sup> This perspective defines conflict in terms of the casualties inflicted to describe it as a war. Conflict has further been defined by Wanyama 'as the contentions or disagreements that arise between interested parties in a given issue or activity'.<sup>15</sup> The resultant arguments and counter arguments lead to tensions and behavioural actions which translate into a conflict. The authors agree in their definitions of conflict, that it is an incompatibility of goals, which they describe in various terms and which explain the concept of conflict. They are unanimous that conflict does not just happen and they recognize the fact that there are certain reasons for the emergence of conflicts.

Conflict management is defined as the resolution, mitigation or prevention of escalation of conflict. This would imply the control of the conflicting parties' abilities to hurt damage or destroy each other. Conflict management would therefore be deemed to have failed if it did not prevent escalation.<sup>16</sup> The ability to stop the escalation of conflict is very important in the conflict management process. Conflict management has also been defined as the process whereby the

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<sup>13</sup> Mitchell. C.R *The structure of international Conflict* (London: Macmillan, 1998) cited in Mwangi M. Conflict in Africa, Nairobi: Centre for Conflict Research, 2006 p.3

<sup>14</sup> Kornprobst M., 'The Management of Border Disputes in African Regional Sub-Systems: Comparing West Africa and the Horn of Africa' *The Journal of Modern African Studies*, Vol.40.No.3 (Sept.2002) pp.369 -393

<sup>15</sup> Wanyama F.O. Role of the Presidency in African Conflicts' Okoth P.G. and Ogot B.A. (1<sup>st</sup> ed. ) *Conflict in Contemporary Africa* (Nairobi: Jomo Kenyatta Foundation, 2000) pp.1 - 18

<sup>16</sup> Kornprobst M. Op cit., pp.,369 -393

conflicting parties are encouraged to engage each other to address the conflict.<sup>17</sup>This for instance would require the transition of a conflict situation from war to peace.

Conflict management in addition refers to the elimination, naturalization and the controlling of the means of pursuing the conflict.<sup>18</sup>The concept of elimination of conflict is arguably not true as conflicts by their very nature are endemic and can only be controlled to manageable levels and to a state where they are no longer harmful to the society. It is however possible to eliminate the underlying causes of conflict through the agreement of the concerned parties.

Conflicts require solutions which can be determined if the causes are identified clearly enough in order to establish an environment for sustainable development and there are several dimension ranging from political roles, armed forces, economic factors, civil society, leadership and governance, civil and military relations to conflict and development.<sup>19</sup>Managing conflicts involves prompt action in the form of interventions and may involve nominating a mediator or facilitator, setting up a special team to discover the cause of the conflict and confidence building towards concrete solutions and deploying peace missions to prevent, stop and resolve the conflict.<sup>20</sup> It is absolutely necessary for intervention measures to be put in place early enough in the life of the conflict while involving all parties so as to ensure goodwill in the conflict management process.

Conflict is an important aspect of human nature and cannot be eradicated and society has to leave with the challenges. There is no society whatsoever that is totally devoid of conflict. It is

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<sup>17</sup> Mwagiru M., *Conflict in Africa* (Nairobi: Center for Conflict Research, 2006) p.43

<sup>18</sup> Okoth P.G., 'Conflict in Contemporary Africa' Okoth P.G. and Ogot B.A. (1<sup>st</sup> ed. ) *Conflict in Contemporary Africa* (Nairobi: Jomo Kenyatta Foundation, 2000) pp.1 - 18

<sup>19</sup> Adedeji A., *Comprehending and Mastering African Conflicts: The Search for Sustainable Peace and Good Governance* (London: Zed Books, 1999) p.42

<sup>20</sup> Adedeji.A., *Ibid.*, p.27

however important that conflict is managed in order to eliminate its harmful effects to society.<sup>21</sup> Conflicts therefore have positive and negative aspects. It is the negative aspects of conflicts that lead to disastrous consequences in society which need to be managed. There is need to address the dysfunctional aspects of conflict early enough by taking remedial measures.

It is important to note that a distinction exists which distinguishes disputes from conflicts. It is also imperative to note that the terms conflict and disputes are sometimes used interchangeably. Disputes however unlike conflicts can be settled through a court process while conflicts involve analyzing the underlying causes and relationships and they involve removing the sources of the conflict. Conflicts however can only be only be solved through non coercive or non legal means.<sup>22</sup>

Diplomacy has helped with some success in managing some conflict situations before they became dysfunctional. The concept of preventive diplomacy is based on the notion that preventive strategies, frameworks and mechanisms can effectively forestall conflict from emerging to full scale levels if applied early enough.<sup>23</sup> The symptoms of conflict are evident much earlier before the conflict breaks into the open. The remedial measure taken to deal with the symptoms before they translate into problems is therefore very critical to the eventual management of the conflict.

#### **1.4.2 Regional organizations**

The functional approach viewed the 20<sup>th</sup> century as being characterized by growing or linking a numbers of technical issues that could be resolved only by cooperative actions across state

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<sup>21</sup> Kok N.Y. 'The Ties that Will not Bind' Nyong'o P.A(1<sup>st</sup> Ed.)*Arms and Daggers in the Heart of Arica, Studies on Internal conflicts* (Nairobi: African Academy of Sciences, 1993)pp.33 - 65

<sup>22</sup> Mwangiri M., *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Nairobi: Institute of Diplomacy and International studies,2008) pp.5-6

<sup>23</sup> Mwangiri M.,*Conflict in Africa* (Nairobi: Center for Conflict Research ,2006)p.11

boundaries.<sup>24</sup>This was acceptable as it was deemed appropriate that cooperation or integration could be achieved through a gradual phased approach involving a number of activities.

Regionalism is not an end in itself nor is it a means of creating super states. It exists for purposes of establishing boundaries that influence the dynamics of a new global order.<sup>25</sup>

The emerging regions are expected to be much stronger and competitive in their trade and other global issues in a cooperative endeavour rather than as individual States and as a consequence there has been an upsurge towards integration with the advent of the end of the cold war. This has been prompted by globalization which has brought increased competitiveness of states. Globalization reminds us that we are living in a “borderless” world in which territories matter less and where human capital matters more to national power and trade has increasingly triumphed over territory as a source of national power.<sup>26</sup>

A common definition of International integration states that it is: ‘..... the processes by which supranational institutions replace national ones – the gradual shifting upward of sovereignty from state to regional or global structures’.<sup>27</sup>

This may involve the shifting of certain national activities towards a new center. Integration can be as grand as political unification or free trade area. In broader terms, integration focuses on equitable regional development for the member states and plays a central role in the integration process.<sup>28</sup>The survival of the smaller states is even more precarious in the emerging international system, and survival is hinged on integrating with other states. Regional

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<sup>24</sup> Mitrany D.1965,Cited in Hentz J.J.,South Africa and the political economy of regional cooperation in Southern Africa, *The Journal of Modern African Studies*, Vol.43.No.1(March 2005)pp. 21-55:26

<sup>25</sup> Radtke K.W., et al.*Competing for Integration, Japan, Europe, Latin America, and Their Strategic Partners.* (New York: East Gate publication, 2002) pp.4 -5

<sup>26</sup> Simmons B.A.,’ Rules of Real Estate, Territorial Conflict, and International Borders as Institution ‘*Journal of Conflict Resolution*,Vol.49,No.6(Dec.,2005)pp.823 -848

<sup>27</sup> Goldstein J.S and Pevehouse J.C, *International Relations* (New York:Longman,2010)p.354

<sup>28</sup> Hentz J.J., South Africa and the political economy of regional cooperation in Southern Africa. *The Journal of Modern African Studies*, Vol.43.No.1(March 2005)pp.21-51:24

integration may occur amongst equal states or may exist as a sphere of influence for a dominant state. It has been identified as a path for peace and a strategy for development.

In Africa, five sub-regional organizations have been envisaged in the quest for a United States of Africa and subsequently several regional blocs have been established. These sub-regions are at different levels of operational effectiveness in dealing with the management of conflicts in the region.

### **1.4.3 Regional organizations and conflict management**

The international system and many organizations have put into place mechanisms and procedures to facilitate conflict management. The United Nations (UN) Charter, article 2, recognizes the sovereign equality of Nations and members are expected to abide to the various obligations e.g. the peaceful settlement of disputes. The United Nations Security Council (UNSC) deals with all issues of peace and security.

The World Trade Organization (WTO) one of the main actors regulating trade regimes on world trade has introduced a Compulsory Dispute Resolution Mechanism. It is through this mechanism where political mediation can be achieved or effected.<sup>29</sup>The mechanisms are important in dispute resolution and management despite, being complicated by the fact that national interests and those interests of the companies do not necessarily coincide making it difficult to enforce the rules. It is however important to have these mechanisms in place to manage conflict and regulate international trade. International experience has shown that states that have created river basins and other cooperative structures that prevent potential water related disputes.<sup>30</sup>The OAU has established a Commission of Mediation, Conciliation and Arbitration

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<sup>29</sup> Radtke K.W. and Wiesebron M., *Competing for Integration*(New York: East Gate Book,2002)p.6

<sup>30</sup> Martinin,C.A.M.,' *Role of Sub-Regional Organizations in Preventing Water-Related Conflicts in the Eastern African Region* ', International Peace Support Training Centre, Occasional Paper, Series1, No.7.,( Nairobi: International Peace Support Training Centre, Occasional,2010) p.8

which is a dispute settlement framework operating in the spirit of the Charter by encouraging cooperation.

ECOWAS which consists of sixteen members, some of whom include; Benin, Burkina Faso, Cape Verde, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo is one of the few regional bloc's with an economic as well as a security agenda. In 1990, it created the Economic Community of West African States Monitoring Group (ECOMOG) whose overall objective is to stop internal conflicts in member states before they become rebellious and spread of refugee's in the region. The focus being to stop conflicts early enough before they become unmanageable and on preventing conflicts from occurring as a strategy for dealing and managing conflict in Liberia among other places in the region. The regional bloc has undertaken a leading role in taking pre-emptive and corrective action in the West Africa region and has<sup>31</sup> received great attention and acclaim.<sup>32</sup> and commended because of its intervention in Liberia and Sierra Leone by helping in bringing an end to the turmoil in those two countries. ECOWAS is a unique example of a successful integration bloc with a conflict management and prevention approach on a multilateral basis in Africa. The regional bloc has put in place a Protocol on a Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security and amended its treaty to enable it deal with conflict management.

The Central African sub region is plagued with conflict which has resulted in intervention being initiated externally by the UN in the Democratic Republic of Congo (DRC) and more recently the involvement of the United States of America (USA) in the hunt for Kony in the areas bordering Uganda, DRC, Chad and South Sudan. The region is also experiencing the

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<sup>31</sup>Sesay A. and Kennedy E.C. *Regional Integration in West Africa: Selected experiences from the past and lessons from the EU for ECOWAS* ( Paper presented at the EAC Seminar on Dialogue on Regional Integration in East Africa, 19<sup>th</sup> – 20<sup>th</sup> March 2001 at Arusha) p.236

<sup>32</sup>Sesay A, 'The role of ECOWAS in promoting peace and security in West Africa' *Development Policy and Management Bulletin*, Vol.ix, No.3,(June 2002),p21

ongoing crisis in eastern DRC which involves the defectors of the DRC soldier, known as M23 who cause mayhem with the tacit support of Rwanda. The M23 has destabilized eastern DRC displacing hundreds of people. The need for intervention in the Great lakes Region has always depended on foreign forces under the auspices of the UN. This approach negates the assertion for African solutions to African problems.

#### **1.4.4 The East African Community and dispute management**

The Treaty for the Establishment of the EAC places emphasis on the importance of peaceful settlement of disputes within the regional integration bloc.<sup>33</sup> According to Mwangi, the EAC strategy of conflict management is based on the functional approach to conflict management. This approach envisages that cooperation among states reduces the occurrence of conflicts and their intensity. Mwangi believes that the inclusion of mechanisms for peaceful settlement and the legalistic approaches through provisions of the East African Court of Justice (EACJ) would lead to the collapse of the EAC mainly due to pressures exerted by both sides and the coexistence of the functional and legalistic approaches.<sup>34</sup> The EAC has introduced a bill which introduces a four stage dispute resolution process for a legally enforceable mechanism for the elimination of Non-Tariff Barriers within the EAC enforceable by the EACJ and which is expected to further the gains on the Common Market (CM)<sup>35</sup>. The assertion on the potential collapse of the EAC is farfetched as the community has continued to exist and has become stronger twelve years on with Rwanda and Burundi joining it in 2007. The regional bloc successfully launched a Customs Union (CU) in 2005, a CM in 2010 and negotiations on the

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<sup>33</sup> Article 123 (4)d, EAC Treaty

<sup>34</sup> Mwangi M., *Conflict in Africa* (Nairobi: Center for Conflict Research, 2006) p.37

<sup>35</sup> Mumo M, EAC bloc acts to remove non-tariff barriers, *Daily Nation, (Nairobi) (Weekly Business Supplement)*, June, 18, 2013 p.7

Monetary Union (MU) are at an advanced stage. The EAC unlike ECOWAS however has not been tested in terms on conflict management between its members.

According to Schiff and Winters' there is persuasive evidence, that trade will generally foster peace, if not friendly, relations between countries'. He further asserts that trade through economic interdependence and the promotion of free movement of goods may facilitate easier resolution of political and territorial disputes.<sup>36</sup>It can be concluded that the reason why the dispute between Kenya and Uganda has remained fairly low key might be partly due to their trade relations under the auspices of the EAC. Conflicts and disputes have been a major hindrance to economic development in Africa, causing death, destruction of homes, livelihoods and mass movement of people. The conflict management frameworks and mechanisms being developed in the EAC are expected to facilitate in the peaceful settlement of disputes.

#### **1.4.5 Actors and their roles in conflict/dispute situations**

Conflicts are complex and so are the actors involved, who may be many and inter linked because of their varied interests. The various complexities involved in a conflict, the processes and the issues that are interwoven in it, need to be dealt with in order to manage the conflict effectively.<sup>37</sup>An understanding of the conflict, the underlying issues and the various actors involved are central to successful management of conflicts. The actors have their various interests and motivation on the issue.

In the international system the state has remained the key actor, but increasingly the system has gradually accepted the existence of non – state actors. The non state actors consist of the Intergovernmental Organizations (IGO's) which consist of States and the nongovernmental

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<sup>36</sup> Schiff M. and Winters L.A, *Regional integration and development* (Washington DC: The International Bank for Reconstruction and Development/The World bank, 2003) pp.192.

<sup>37</sup> Mwagiru M. Op cit.,p.96



organizations (NGO's) whose members are private individuals and groups. IGO's are mostly created by states to address some common problems.

Many peace initiatives in Africa have failed because of being based on flawed premises that conflicting parties are only found within the countries of the conflict and that conflicts arise because of grievance rather than interests. The actors in a dispute determine the structure of its processes and possible outcomes. Critically from the foregoing, one can contextualize conflict in terms of its immediate neighbourhood or beyond. In conclusion conflict whether intra – or interstate or between different ethnic groups and other numerous actors with varied interests. These actors include the state, politicians, government bureaucrats, business people and general citizens among others.

According to the decision making theory of peace, some of the key actors such as governments, legislatures, security organs, political parties and other institutions easily subsume individual interests under their institutional dynamics and these easily hampers the conflict management process. In the case of the rational choice theory the basic actors are individuals with their specific interests and attitudes. Their interests may not be compatible or not with the institutional and group interests and could be totally ignored under the auspices of the institutions involved in the conflict and this could in reality impinge on the settlement of the dispute.<sup>38</sup> The Migingo Island dispute primarily involves Kenya and Uganda, but there is likelihood that there are other actors with varied individual interest in the dispute. This study would like to determine who the other actors are and what their interests are.

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<sup>38</sup> Baregu M. *Understanding Obstacles to Peace*, ( Kampala: Fountain Publishers, 2011)p.226

## **1.5 Justification of the study**

The mandate and role of the EAC in the settlement of disputes within the bloc has not been evident so far in the Migingo Island dispute. This is despite the dispute having been going on for six years.

The study would like therefore to establish what policies, procedures and mechanism are in place at the EAC which can be used to manage disputes amongst its members. This would help in facilitating and understanding how the Migingo Island dispute can be settled under the auspices of the EAC. The republics of Kenya and Uganda are members of the EAC and have been in a territorial dispute over the ownership of Migingo Island on Lake Victoria from 2008. Despite several joint meeting between them, the dispute has remained unresolved. The study will further make appropriate recommendations to the EAC on its dispute settlement framework with a view to improve on its existing strategies

## **1.6 Theoretical framework**

There are several theoretical approaches to the study of international relations. The theories are paradigms or conceptual frameworks that define the field of study and the agenda for research and policy making. Each one of the theoretical approaches has many versions and interpretations. Some of the theories are more relevant to the study of dispute settlement in the context of regional integration while others are not adept to analysis due to their general focus. New paradigms in the international system, like liberalism and others have come up emphasizing the role of cooperation and non- state actors.

Liberalism has a four dimensional definition which states that all the citizens are juridically equal and are at liberty to enjoy their basic rights, the legislatures derive their power from the electorate whose rights they must protect, that, the individual in a states has the right to

own property and lastly that, the most effective economic system is one that promotes and facilitates free trade domestically and internationally. Taken together these prepositions place a higher premium on order and authority for the community and they are willing to sacrifice the liberty of the individual for the stability of the community.<sup>39</sup>The theory on liberalism is premised on the prediction that hope, reason and universal ethics in the international system will lead to a peaceful and cooperative world with an international institutional framework capable of policing and instituting reforms that empower the international system. The existence of agreed upon rules and regulations enhances opportunities for cooperation. The development of institutionalized cooperation between states creates greater opportunities and possibilities to achieve greater international security.<sup>40</sup>

There are four varieties of liberalism that influence international relations, commercial, republican, sociological and liberal institutionalism. Commercial liberalism advocates for capitalist economy and it is promoted by the world's financial institutions. Major trading states and multinational corporations. It argues for free trade, private property rights, free markets and a more tolerant world. The republican liberalism promotes free trade and recognizes the value and importance of democratic states and their contributions to peaceful coexistence. Democratic states are much more inclined to respect citizen rights and as stated elsewhere in this paper they are least likely to go to war. Commercial and Republican liberalism have been adopted in forming the core foreign policies and goals of major powers.<sup>41</sup>

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<sup>39</sup> Tim.D.,Liberalism (4ed.) John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.110

<sup>40</sup> John B., International and Global Security (4ed.)John B.,et al, *The Globalization of World Politics An Introduction to International Relations* (Oxford: Oxford University Press) 2008 p.234

<sup>41</sup> Steven L.L. Contemporary Mainstream Approaches:Neo –realism and Neo –Liberalism ,John B. et al,*The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press)2008 p.131

Sociological liberalism focuses on community and interdependence and globalization. As transnational activities increase, citizens in the global system gets more inter linked and governments increasingly become interdependent. As a result states become increasingly aware of the need to cooperate with their neighbours. Liberalism has been found adequate in the international political system as it has the capacity to deal with problems relating to Acquired Immune Deficiency Syndrome (AIDS), environmental degradation, global warming, economic underdevelopment and globalization of trade and markets. Globalization has to be addressed through strong democratic states with traditions of good governance, robust regimes, open markets and institutions in the international system. These are contemporary issues that affect humanity and need to be addressed in a concerted manner.<sup>42</sup> Liberal institutionalism operate from three different assumptions, firstly in the examination of the structure of the global system, second, on the examination of the parts that make the global system, and thirdly, it focuses on the role of IO's. The three assumptions however all agree in the probing of the conditions under which the convergent and common interests between different states and political actors may result in mutual agreements.

The constructivist theory of international relations advocated by Alexander Wendt visualized and argued that states are the main actors in world politics. Their actions are not influenced by anarchy but by the way states socially build acceptable images of reality and thereof define changes on how cooperative efforts and practices can evolve.<sup>43</sup>

Liberal institutionalism is also geared towards the integration of states in a cooperation endeavour resulting in the creation of supranational institutions. It challenges the realism concept of state sovereignty and territorial integrity and asserts that states choose supranationalism which

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<sup>42</sup> Kegley C.W Jr., *World Politics: Trends and transformation* (Belmont: Thomson Learning Academic Centre, 2007) p.36

<sup>43</sup> Steven L.L Ibid., pp.43 - 45

is the merger of several states into a single federal government with powers divided between the state and the supranational level.<sup>44</sup> Liberal institutionalism is founded in the functional integration and regional integration studies of the 1940/50's and 1960's respectively. It suggests that peace and prosperity can only be achieved if states pooled their resources and ceded some authority to create new and larger integrated communities. Institutional Liberalism is seen as the mediator and the means of achieving cooperation among different actors as it focuses on mutual interests beyond trade and development issues.

Some of the additional issues include the threat of terrorism, weapons of mass destruction, drug trafficking and increasing emerging internal conflicts threatening international security. These threats cannot be handled by any one individual state alone. These would foster relationships requiring political coordination with the possibility of political integration.<sup>45</sup> To date however there is no such supranational state and the EU which is the best example has only attained partial sharing of power. The individual member states have not agreed to relinquish much of their power.

According to Immanuel Kant, the leading liberal theorist, peace and cooperation are possible among states and he emphasizes on the principle of reciprocity, and that democracies promote trade amongst them and do not fight each other.<sup>46</sup> The approach emphasizes on the importance and adherence to rules and regulations which are a cardinal rule for any cooperative effort. Kant argued that democracies are pacific in their international relations with other liberal states and he developed a hypothetical treaty for permanent peace. His proposition on the pacific nature of democracies has continued to attract scholarly interest and foreign policy

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<sup>45</sup> Goldstein J.S and Pevehouse J.C. *International Relations* (New York: Longman, 2010)pp.354 -355

<sup>46</sup> Kant I., *Perpetual Peace*. Edited by Lewis White Beck. Bobbs-Merril, 1957(1795). Russett, Bruce, and John O'Neal. *Triangulating Peace: Democracy, Interdependence, and International Organization*. Norton, 2000 Cited in Goldstein J.S and Pevehouse J.C. *International Relations Longman* (New York: Longman, 2010), p.85

imperatives.<sup>47</sup>The North Atlantic region which has been described as a security community for instance has experienced the absence of war as a means of resolving disputes between them. One common characteristic among them is that they are all democracies.<sup>48</sup>The USA used the justification of the absence of war in democracies to promote democratization in eastern and central Europe after the end of the cold war.

Liberal institutionalism which came about in the last decade of the 20<sup>th</sup> century is concerned with how IGO's and non state actors can promote international cooperation. The approach envisages the prospects of progress, peace and prosperity through expansion of trade, communication, advancement in technology and movement of labour. These activities cannot occur without independent states ceding portions of their sovereignty to a supranational institution in a process of integration, a process that begun to flourish in the 1950s and 1960s. This approach advocates and facilitates in the attainment of absolute gains.<sup>49</sup>

It has been established that states which existed in a federative set up like the USA, Germany Diet and the Swiss league were able to transform their conflictive interests to more peaceful interests when they came together' in a federation. The federative set up creates opportunities for free trade which results in a more peaceful world order which is beneficial to all actors irrespective of their nature and size of the economy. According to the USA president Woodrow Wilson, 'peace could only be secured with the creation of an international organization to regulate international anarchy'<sup>50</sup> it could not be left to bilateral diplomatic deals on its own. The international system needs to cope with disputes and means of enforcement if

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<sup>47</sup> Tim.D., Liberalism (4ed.) John B., et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.112

<sup>48</sup> Michael S John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008.p.212

<sup>49</sup> Kegley C.W Jr., *World Politics: Trends and transformation* (Belmont: Thomson Learning Academic Centre, 2007)pp.38-.38

<sup>50</sup> Tim.D., Op cit., p.113

non violent methods fail. Wilson advocated for the formation of an association of nations to preserve peace. Liberal theorists advanced the proposition that states despite being independent are willing to get together and form a federation in a cooperative endeavour. The theorists recognize the rationality of states in their quest for cooperation and emphasized on the concept of reciprocity and the need to have rules and regulations in place to guide on their interactions for the long term benefit of the members.<sup>51</sup> Liberalism has often been viewed by many writers as a theory of government with an explicit relationship on its focus on political economic theory and international relations.

Liberalism thinking led to the creation of the UN, whose membership is near universal and the great powers have been able to prevent and enforce actions contrary to their interests. The UN and other international institutions were created to undertake functions of states which the states had been unable to perform. Liberalism recognizes the role and importance of non state actors like transnational corporations and NGO's and new patterns of interaction geared towards interdependence and integration. In their view, institutions exert new influences in international relations and encourage cooperation.

Despite being competitive States do experience periods of peace and tranquility but when the need arises they will arm themselves or join alliances to retain or ensure that the power balance is favorable to them. A State's overall purpose however is survival in a hostile environment. To survive a State must rely on itself and must acquire power. States are sovereign and must do whatever is necessary to survive and advance their interests. Liberalists focus more on the principles of reciprocity and identity as opposed to realist who place emphasis on dominance.<sup>52</sup> The challenges by global trends are geared towards cooperation, which is evident

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<sup>51</sup> Goldstein J.S.,Pevenhouse J.C. International Relations,9<sup>th</sup> ed.Longman:2010 p.86

<sup>52</sup> Tim.D.,Op cit.,p.115

through the growth of collaborative multilateral institutions with states abiding to ethical and governance agreements in those institutions.

In conclusion, liberalism has two possibilities in a globalised world where neo-liberals saw relatively weak institutions responding to the challenges of managing and coordinating state behavior in a decentralized international order. The other as seen by radical liberals who sought to advance regulation by strengthening international institutions by making them more democratic and accountable in dealing with the negative aspects of globalization.<sup>53</sup>

Neo liberals agree that institutions once established can influence the foreign direction and perspective of states. It is easier, to encourage and promote cooperation at the local, national, regional and international level. The role of international institutions becomes more evident in the international arena where they play a big part in the resolving of global and regional problems. States are increasingly realizing acting unilaterally or limiting cooperative behavior will not aid in the resolution of the global problems afflicting mankind. The role of international institutions which exist in the spirit of cooperative endeavour will continue to play a big role in the international system and international relations.<sup>54</sup>

States have pursued regional integration for various reasons, for newly independent countries who wanted to settle down in their relations between themselves, between them and their former colonial masters, between them and former colonial powers and with others, often rival powers. The real intent is really to consolidate their international identity. Regional integration helps in managing interdependent particularly in their economic and social interaction and on issues of peace and security. Thirdly, there is the rationale for managing

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<sup>53</sup> Steven L.I., Contemporary mainstream approaches: neo-realism and neo-liberalism (4ed.) John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 pp.121

<sup>54</sup> Hass, P. et al *Institutions for the Earth*, Cambridge: IT press ed. 1993 cited in John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.134



internationalization for instance the interrelationship between various regional arrangements and the world global system.<sup>55</sup>

REC'S have had some success in functional cooperation, whereby limited arrangements are agreed between states to work together in particular areas such as transport, energy and health among other areas. However they have experienced difficulties relating to institutional weaknesses complicated by the multiplicity of arrangements requiring some measures of rationalization. In addition regional organizations have up scaled their role in conflict management. The best example is ECOWAS intervention in Liberia in 1990, which is well before it had established a formal basis for such an intervention. An AU Peace and Security Council was created in 2003, it deployed a Peace Mission in Burundi in 2003 and one in Sudan in 2004.<sup>56</sup>

The liberal institutionalism approach is in tandem with the EAC integration process as it focuses on democratic governance, free trade, multilateral, peace and security, cooperation in defence, foreign policy coordination among other areas of cooperation. The liberal institutionalism or neo liberal approach covers all the issues identified by the EAC as its areas of cooperation. These include cooperation in, trade liberalization and development, quality assurance, metrology and testing, monetary and finances, infrastructure and services, development of human resources and technology, environment and natural resources management, tourism and wildlife management and cooperation in political matters among other fields.<sup>57</sup>

Liberal institutionalism regimes enable in overcoming anarchy which may inhibit collaboration. Anarchy in itself does not preclude collaboration but makes it difficult to achieve

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<sup>55</sup> Edward B. and Thomas C. Regionalism in international affairs (4ed.) John B., et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.437

<sup>56</sup> Edward B. and Thomas C., *Ibid.*, p.442

<sup>57</sup> Articles 74-102, 111-114, 123-125, The Treaty for the Establishment of the EAC

and game theory attempts to explain why. Game theory focuses on the interaction between two actors each with only two possible outcomes, one cooperative and the other competitive and the ultimate interaction which can only lead to four possible outcomes. On the basis of this conceptual framework it becomes possible to model a wide range of social situations. The logic behind the prisoner's dilemma is used by neo liberals to explain why there is a wide range of irrational behaviour in the international system that can only be explained in a rational manner.<sup>58</sup>

Both Kenya and Uganda are sovereign States that wield power to cause or reign violence and can at the same time use peaceful means to solve any disputes between them. By virtue of their membership to the EAC, the two states are expected to comply with the Treaty establishing the EAC and the mechanisms and processes that regulate cooperation. The member States must then be bound by such regulatory framework detailing how to deal with disputes and other issues as and when they emerge. The principle of rationality is in operation in the EAC and there are rules of procedure that have been developed to manage the integration process.

The liberal institutionalism theory has been identified as the ideal approach for the study analysis as the dispute involves two sovereign States who are members of a common regional integration organization, with set rules and regulations for the settlement of disputes between its members. The liberal institutionalism theory will provide the basis for the description, analysis, synthesis and explanation of the emerging issues by providing a reference point.

### **1.7. Hypotheses of the study**

The EAC has limited capacity to manage conflict and disputes within the regional bloc and has been unable to manage emerging conflicts and disputes between member states.

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<sup>58</sup> Richard L. International regime. (4ed.) John B., et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.303

## **1.8. Methodology**

The study will rely on both secondary and primary data. The secondary data will be sourced from books, journals, periodicals, conference proceedings, reports and proceedings from the EAC meetings. The primary data will be generated through the administration of questionnaires to officials at the EAC secretariat who are responsible for the peace and security and those responsible for the administration of the Lake Victoria maritime docket, government officials.

## **1.9. Chapter outline**

The various chapters covered in the study have been discussed in detailed in the appropriate chapter but have been briefly been summarized in this chapter.

### **Chapter one: Introduction**

This chapter introduces the topic of the study (The East African Community and Dispute Management: A case of Migingo).It will cover the introduction of the area under study, the statement of the research problem, objectives, literature review justification of the study, theoretical framework, hypothesis and the methodology of the study.

### **Chapter two: Regional organizations and dispute settlement**

This chapter encompasses the conceptual basis of sub regional integration, a brief description of some regional blocs, their role and function in conflict management /dispute settlement. The chapter further identifies various modes of dispute settlement and it also outlines various categories of boundary disputes some of which involve Kenya and Uganda and their neighbours.

### Chapter three: East African Community and dispute settlement

This chapter briefly outlines the historical context of Kenya's boundaries with her neighbours, outlining some of the key features of the Kenya - Uganda boundaries as defined by various historical documents. The chapter further identifies EAC dispute settlement mandate and evaluates the dispute settlement framework, mechanisms, rules and regulations that have been put in place. The chapter in addition puts into focus the dispute settlement strategies undertaken through bilateral negotiations between Kenya and Uganda to determine the ownership of the Migingo Island towards settlement of the dispute.

### Chapter four: East African Community and the settlement of the Migingo Island dispute

This chapter focuses on the topic of the study of the East African Community and the settlement disputes with specific reference to the Migingo Island dispute. The chapter reveals the results of the case study. The objectives of the case study which were, to analyze and synthesize the Migingo island dispute and the various actors involved, their roles in the dispute and the attempts towards its settlement; evaluation of the framework for dispute settlement in the EAC integration bloc; and to establish the EAC's regional bloc mandate and function in dispute settlement.

### Chapter five: Conclusions and recommendations

This chapter will cover the findings and the conclusions of the study and make recommendations.

## CHAPTER TWO

### Regional Integration and Dispute Settlement

#### 2.0. Introduction

This chapter encompasses the conceptual basis of sub regional integration, a brief description of some regional blocs, their role and function in conflict management and dispute settlement. The chapter further identifies categories of boundary disputes that the OAU has had to grapple with when most of its member states started gaining their independence in the 1960's. The chapter further identifies the various modes of dispute settlement that the UN Charter has stipulated for its members.

#### 2.1. United Nations and dispute settlement

The UN was established in the background of World War I and II, where enormous human suffering was experienced and millions of people lost their lives. The UN with a membership of one hundred and ninety two (192) is a multipurpose organization with the key objectives geared towards maintaining international peace and security and improving the quality of life for humanity. The UN Charter established the UNSC to deal with issues of world peace and security and to ensure that world wars do not occur again.<sup>59</sup> The UN's mandate in peace and security is very expansive and it has facilitated in the maintenance of world peace and security as stipulated in the UN Charter.<sup>60</sup> The Charter has provisions that encourage the role of regional organizations and explains the modalities to be followed in undertaking the security mandates in their respective regions and sub regions.<sup>61</sup> Chapter VI, articles 33 – 38 of the UN charter deals with the Pacific Settlement of Disputes and article 33, specifically outlines the modes of dispute

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<sup>59</sup> Article 7, United Nations Charter

<sup>60</sup> Article 24(1), United Nations Charter

<sup>61</sup> Article 52, United Nations Charter

settlement which includes the involvement of regional agencies. The Article outlines how disputes can be settled amicably and peacefully within the ambit of the UN and the UNSC.<sup>62</sup> Through the regional and sub regional organizations the UN has participated in peace initiatives in the Congo, in the early sixties, Somalia, and Rwanda in the 1990's, and the DRC and in Darfur area among others. Some of the UN missions however have not been very successfully.

The international system is governed by sets of rules and institutions known as regimes and which have become a global phenomena. There is hardly any area of international discourse that is devoid of regimes. Liberal institutionalism believed that regimes, enabled states to collaborate, promote their own good and trade flourished best when promoted and maintained by a benign hegemony and regimes promoted globalization and a liberal world order.<sup>63</sup> International cooperation has enabled the establishment of governance regimes that regulate trans-boundary environmental problems to sustain the global common. When fish, animals, water, or pollution cross national frontiers the need for cooperation among member states is scaled up.<sup>64</sup> Regionalism has become a pervasive feature of international relations and in the last couple of decades it has become a force that is challenging the centrality of the state. Since the end of the cold war, various international and regional organizations have had to review their security and peace mandates by amending their treaties and other instruments to meet increasing and emerging security concerns. These include monitoring human rights, providing humanitarian assistance, protecting civilians, taking care of internally displaced persons, refugees,

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<sup>62</sup> Articles 33 -38, United Nations Charter

<sup>63</sup> Richard L., Op cit., pp.298-299

<sup>64</sup> John V., Environmental Issues, (4ed.) John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.356

disarmament, demobilization and reintegration as well as peace building and other areas targeting Security Sector Reforms (SSR).<sup>65</sup>

## **2.2. Regional integration and dispute settlement**

The AU has continuously in its deliberations supported regional integration blocs as an expression of continental identity and coherence. The ECA was the champion for regional integration from the 1960's. It was geared towards the attainment of economic development through five REC's namely COMESA, SADC, ECOWAS, Arab Maghreb Union (AMU) and Economic Community of Central African States (ECCAS). This was expected to ultimately translate into an integration of Africa in their proposal on the Lagos Plan of Action (LPA) in 1991.<sup>66</sup>

Integration is mainly the outcome of necessity felt by the nation-states to integrate in order to improve peace, security and economic development. Integration is a form of regionalism with distinct processes and outcomes, whereby regional actors may opt to invest in effective functional institutions to translate into supra-nationalism after the ceding and sharing of sovereignties for problem solving.<sup>67</sup> Saitoti, viewed regional integration as a framework in which countries enhanced their interaction mainly through elimination or lowering of tariff barriers to trade.<sup>68</sup> Regional integration is a process involving the growth of linkages and transactions derived primarily from economic activity but involving social interconnectedness. Joshua Goldstein and others refer to international integration as the process by which supranational

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<sup>65</sup> Guttray A., Recent trends in peace keeping operations run by regional organizations and the resulting interplay with the United Nations System, *African Journal on Conflict Resolution*, and Vol.11. No.3 2011 pp. 32-34.

<sup>66</sup> Orwa D.K., 'Search for African Unity' Cited in Ojo, J.C.B et al, *African international Relations*, London: Longman, (1987) pp.73 - 95

<sup>67</sup> Khadiagala G.M., Second EAC Dialogue on the Relationship between Political and Economic Integration, EAC, Dar es Salaam, Tanzania, 18 – 19<sup>th</sup> April, 2012

<sup>68</sup> Saitoti G., *The challenges of Economic and Institutional Reforms in Africa*, (Nairobi: Ashgate publishers, 2002) p. 89

institutions replace national ones. <sup>69</sup>This leads to the gradual shifting, upwards of sovereignty from state to regional or global structures.

Cooperation and integration are not mutually exclusive. They are both approaches for regional governance which is pursued by the different sectors and dimensions in regional relations. In practical usage all regional systems have a mixture of both. States pursue regional integration for different reasons, for newly independent countries, it is to settle down in their relations between themselves, between them and their former colonial masters, between them and former colonial powers and with other, often rival powers. Their real intent is really to consolidate their international identity. Second, regional integration helps in managing interdependency particularly in their economic and social interaction and in issues of peace and security. Thirdly, there is the rationale for managing internationalization for instance the interrelationship between various regional arrangements and the world global system. <sup>70</sup>

In economic integration there are several phases that have been identified, namely; free trade area, customs union, common market and the monetary union. <sup>71</sup> Stephan identifies three ways, which sovereign states can form a federation, namely; coming together, holding together and putting together. The trilogy is applicable in all stages of economic integration but in varying degrees. The 'coming together' is the most common but equally the most difficult route of integration as it depends on other interactive factors. <sup>72</sup>Integration is therefore the creation of intense and diversified patterns of interaction among previously autonomous units such as the case of Kenya, Uganda, Tanzania, Burundi and Rwanda which have formed the EAC. The creation of the intensive and diversified patterns may be partly economic and security such as it

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<sup>69</sup> Goldstein J.S *International Relations* (New York: Longman 2010),p.354

<sup>70</sup> Edward B. and Thomas C. Op cit., p.437

<sup>71</sup> Muhika S.T., Political integration as the Pillar of successful economic integration, Wafubwa et al, *The drive towards economic integration in East Africa: A book in honor of Hon. Beatrice Kiraso (Arusha : EAC) 2012*,p.165

<sup>72</sup> Stephen, A. C., *Arguing Comparative Politics*, (Oxford: Oxford University press,2001,p.323



is in the case of SADC, while others are partly, social, economic and political. The EAC has taken in its stride all the three patterns of integration.

REC's have scaled up their roles in conflict management and dispute settlement. ECOWAS for instance intervened in Liberia in 1990 before it had a formal or legal framework as a basis for such an intervention. In 2003, the AU established a Peace and Security Council, which was able to deploy a Peace Mission in Burundi in 2003 and Sudan in 2004.<sup>73</sup> This was a positive achievement geared towards having an African solution to African problems. The AU peace and security architecture seeks to establish an African Standby Force (ASF) of 30,000 troops in its five regions which would be called upon at short notice to intervene in cases of conflict in the region. This would remove over dependency on the UN and other western powers to solve Africa's problems. The stand by brigades consist of, the military, police and civilian components. Its operation was scheduled for 2008 but later it was pushed to 2010, then 2013 and now to the year 2015. The East African Standby Force (EASF) consisting of four hundred and fifty (450) specially trained forces each set aside from Burundi, Comoros, Djibouti, Kenya, Rwanda, Seychelles, Somalia, Sudan and Uganda and are expected to be available at short notice. The EASF headquarters was formally established in Kenya in January 2011.<sup>74</sup>

### **2.3. Regional organizations and dispute settlement**

In today's world most territorial contests are no longer focused on taking entirely new lands but are geared towards claiming territory on the basis of prior legal claims. Contests over legally disputed territories have remained a common occurrence. Disputes over territory need not be the actual cause of the conflict as there could be other manifestations of more fundamental

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<sup>73</sup> Edward B. and Thomas C. Regionalism in international affairs (4ed.) John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.442

<sup>74</sup> Oluoch F., Deadline for African Standby Force, *The East African*, (Nairobi) January 26<sup>th</sup> – 1<sup>st</sup> February 2013, p.15

causes. It is also possible to distinguish territorial disputes that have been created for political expediency. Territory therefore remains an issue of great importance to states and IGO's have prohibited territorial conquests in favour of self determination.<sup>75</sup>

It is imperative to note that many boundary markers dating to colonial times have disappeared or were never actually put in place which therefore calls for technical clarification to eliminate uncertainties which have caused border disputes in some African states.<sup>76</sup> The Migingo Island dispute case study, the focus of this research paper is an entirely new territorial dispute between Kenya and Uganda and has no historical or legal basis.

There was an upsurge on conflicts in Africa after the cold war forcing the international community to intervene. The conflicts increased even more in the early 1990's and the international community intervention experienced difficulties in Somalia. During the genocide in Rwanda the international community did little as millions of people lost their lives. The international community had become fatigued with aid demands from Africa and has more or less opted out. This therefore required that African States to increasingly seek their own solutions to their own problems without necessarily depending exclusively on the international community. In the last two decades a number of African regional integrations bloc's such as ECOWAS and SADC have successful taken up peace intervention missions within their respective bloc's. The UN has continued to support such intervention in line with article 33, of its charter.

### **2.3.1. The African Union and dispute settlement**

The OAU was established in 1963 with the aim of promoting the unity and solidarity of the African states and to act as a collective voice for the African continent. The main purpose then

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<sup>75</sup> Kocs S.A., 'Territorial Disputes and Interstate War' *The Journal of Politics*, Vol.57, No.1 (Feb., 1995). pp.159-160

<sup>76</sup> Mnyamwezi R., Mwakio P., Governor wants border reviewed, *The Standard* (Nairobi) 14<sup>th</sup> May, 2013, p.20

was to ensure that the countries that were under colonial rule and apartheid achieved independence. With many African countries having achieved their independence, there was a need to amend the mandate to change with the global trends. It was with this in mind that the idea of the AU was conceived in Libya in September 1999. The then Chair of the organization, the Libyan President, Muammar Khadafi envisioned a United States of Africa.

The AU is therefore a premier and principal organization for the promotion of accelerated socio-economic integration of the continent. This is expected to create greater unity and solidarity among the African countries and peoples. The AU is based on the common vision of a united and strong Africa and on the need to build a partnership between governments and all segments of civil society. As a continental organization it focuses on the promotion of peace, security and stability on the continent, a requirement for the implementation of the development and integration agenda of the Union.

In the past the AU was constrained by its charter from intervening in the internal conflicts/disputes of its members. The situation has now changed and the AU can now get involved in resolving internal conflicts in member states. The AU has introduced a department dealing with conflict resolution and management and has set in place Good Offices which it can utilize as the need arises. The purpose of Good Offices is to create an environment for negotiations to take place; it is not to conclude negotiations.<sup>77</sup>

The AU Constitutive Act provides for the right to intervene in member states for a variety of reasons ranging from war, crimes against humanity to genocide among others. The Act allows individual member states to request for intervention by the AU in order to restore peace and security and it provides for the right to intervene in member states for a variety of reasons

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<sup>77</sup> Bujra A., *Development Policy Management Forum*, DPMF Occasional Paper, No.4,(2002) African Conflicts: Their Causes and their Political and social Environment.p.40

ranging from war, crimes against humanity to genocide among other crimes. The AU has additionally been empowered to impose sanctions on a member state who fails to comply with its decisions and policies.

The AU through its the African Peace and Security Council (APSC) has been collaborating with the UN in peacekeeping missions such as the United Nations and African Mission for Darfur (UNAMID) which was extended in 2012 for an additional twelve months.<sup>78</sup> The AU however lacks the expertise and resources for peace enforcement despite having had some successes in Central Africa and the Horn of Africa. The AU needs to strengthen its mechanism for managing conflicts with the sub regional organizations and strengthen its links with the UN for financial and expertise support which it lacks and also to involve other actors in its conflict management processes.<sup>79</sup>

### **2.3.1.1. The African Union and the settlement of boundary disputes**

A border dispute is a conflict between two states arising from a situation whereby one state is claiming territory being administered by the other. A border dispute is categorized as being managed if the border dispute is resolved, mitigated or having been prevented from escalating.<sup>80</sup>

In Africa many of the boundaries were drawn with inaccurate or inadequate information and resulted in a number of territorial boundary disputes in the early sixties and seventies. These territorial disputes were between Somalia and Kenya in 1967, Somalia and Ethiopia in 1975,

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<sup>78</sup> Nation D.' African Union Darfur peace forces mandate', *Daily Nation*, (Addis Ababa), 26 July 2012 p23.

<sup>79</sup> Bujra A., Op cit., pp.1 -47

<sup>80</sup> Kornprobst M., 'The management of Border Disputes In African Regional – Sub Systems: Comparing West African and the Horn of Africa' *The journal of Modern African Studies*, Vo.30, No.3.(Sept.,2002)p.373

Uganda and Kenya in 1976, Nigeria and Cameroon, Morocco and Mauritania among others and some of these disputes are yet to be settled.<sup>81</sup>

Africa has therefore been grappling with the arduous and urgent task of preventing, managing and resolving conflicts most of which relate to boundaries which were determined during the colonial era. Two possible approaches have been identified in dealing with the problem of colonial boundaries. One approach is to leave the situation to evolution, which has predominantly been the case since the scramble for Africa. The approaches main set back is the absence of predictability. The second approach is an attempt towards a directed development process with pre determined goals.<sup>82</sup>This approach could be easily supported through the formation of REC's focusing on economic, security and politics, singly or in a combination. This may in some ways lead to the elimination of some colonial boundaries related problems. A number of African States to date are still grappling with the issue of national sovereignty.

The OAU boundary resolution of July 1964 is sometimes equated with *uti possidetis* a doctrine which is unique to certain Latin American boundary situations and which is misleading in the African context. *Uti possidetis* is the award of interim possession as the preliminary to the establishment of ownership of territory. Its use in international law has been restricted to boundary cases in Latin America.<sup>83</sup>

The OAU Charter despite declaring boundaries as being inviolable did not reduce the inter- state boundary disputes. A number of characteristics of the boundaries in Africa that made them amenable to disputes include, imprecise borders, ethnic groupings straddling across

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<sup>81</sup>Prescott,J.R.V. '*Boundaries and Frontiers*'(London: room helm Ltd,1978 )pp.97,110)

<sup>82</sup> Mukisa R.S., '*Towards peaceful Resolution of Africa's Colonial boundaries*' Africa Africa,Vol.44.No.1,International Relations and Human Rights (Jan-Mar ,1997)pp.19-24

<sup>83</sup> Jolowicz H.F *Historical Introduction to the Study of Roman law*,2<sup>nd</sup> ed., Cambridge University press,1952,pp273-274 cited in McEwen A.C., *International Boundaries of East Africa*, Clarendon Press,1971p.27

borders, passing through strategic terrain, others through rich mineral areas and cutting of neighbouring countries.<sup>84</sup>

### **2.3.2. Economic Commission for West African States (ECOWAS)**

ECOWAS is a regional economic grouping of fifteen countries established in 1975. Its initial mandate was on economic development but has over time been extended to include peace and security. It has established a military arm operating as ECOMOG which is a formal arrangement for member states armies to work together in peace keeping missions in war situation in a member state. Its intervention in the Liberian and Sierra Leone conflict was unprecedented in the history of Africa's international relations. Despite being ill equipped to deal with the crisis and lacking a formal structure to deal with the conflict, the emerging humanitarian crisis was overbearing and could not be ignored. ECOWAS has eventually developed and adopted a Mechanism for Conflict Prevention, Management, Resolution, Peace keeping and Security.<sup>85</sup> In 2011, ECOWAS threatened to use military force to compel president Gbabo of Cote de Voire out of office after a flawed election. In pursuit of its peace and security mandate ECOWAS further facilitated Mali to form a government of national unity with the military coup leaders in exchange for the lifting of economic sanctions. ECOWAS in 2012 planned on its intervention in northern Mali to put down the northern rebellion by the Azawad National liberation Movement (MLA) with tacit support from the UN and the EU. France however took the initiative lead from ECOWAS and intervened militarily.<sup>86</sup>

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<sup>84</sup> Bujra A., Op cit., p.5

<sup>85</sup> Johnson. A.E.' Regional conflict resolution mechanisms: A comparative analysis of two African Security Complexes.' *African Journal of Political Science and International Relations*, Vol.3., 10., (Oct, 2009) pp.409-422

<sup>86</sup> The Daily Nation, 'Pressure piles on rebels as foreign troops secure town in Northern Mali' *Daily Nation*, 6<sup>th</sup> February 2013, p.38

### **2.3.3. Southern African Development Community (SADC)**

SADC was formed in 1980 as a loose alliance of nine (9) majority-ruled States in Southern Africa known as the Southern African Development Coordination Conference (SADCC). Its overall aim then was to coordinate development projects in order to lessen economic dependence on the then apartheid South Africa. The founding Member States were: Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, United Republic of Zambia Tanzania and Zimbabwe. SADCC translated into SADC after the apartheid regime era came to an end in South Africa. It exists today and has both an economic and a security mandate. Its members after the conflict in Lesotho in 1994 created an independent wing known as the Association of Southern African States (ASAS) with a mandate is to deal with conflicts in the region.

In 1994 SADC sent an intervention force from South Africa into Lesotho to quell the violence which broke out between rival army factions following the disputed elections. In 1996 SADC sent President Ketumile to the DRC as a facilitator for peace after an internal crisis turned into an assortment of military players ranging from marauding armed groups to government armies fighting extraterritorial wars. Its intervention in Lesotho was more successfully than in the DRC.

During its intervention in the DRC, SADC had no formal mechanism to settle disputes amongst its members in the sub region, like ECOWAS it was still able to initiate dispute settlement process in the DRC.<sup>87</sup> These interventions indicate that regional organizations can initiate measure to settle disputes and therefore addressing problems closest to where they are occurring which is in line with the UN and AU Charters. In 2012 and in pursuit of its peace and security mandate, the SADC Summit issued a Communiqué condemning Rwanda for its

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<sup>87</sup> Johnson.A.E, Op.,cit.,pp.409-422

interference in the DRC.<sup>88</sup> Its notable that Tanzania the Chair of the SADC Summit in 2012 is also a member of the EAC alongside Rwanda.

#### **2.3.4 Inter-governmental Authority on Development (IGAD)**

The Inter-Governmental Authority on Drought and Desertification (IGADD) was established in 1986. Its founding members were Somalia, Sudan, Djibouti, Federal Republic of Ethiopia, Kenya and Uganda. In 1996 IGADD transformed itself into the Inter-Governmental Authority on Development (IGAD). Its primary mandate on conflict management, prevention and resolution. This was solely to enable it to deal with the emerging conflicts and disputes in the Horn of Africa. This was upon the realization that development cannot take place unless there was peace in the region. IGAD has devoted itself to issues of inter-state and intra -state conflict in line with its mandate and has since established a Conflict Early Warning and Response Mechanism (CEWARN) to enable it pursue its mandate. Parallel to the peace initiatives, it has focused on capacity-building and peace awareness creation amongst its members.<sup>89</sup>

IGAD has also been at the center of the Sudan peace process which resulted in the signing of the Comprehensive Peace Agreement (CPA) which eventually resulted in the coming into being of the Republic of South Sudan. IGAD has also been at the center of the search for peace in Somalia, where the AU's mission known as African Mission to Somalia (AMISOM) has been involved in peace keeping.

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<sup>88</sup> SADC, Summit Communiqué August, 2012

<sup>89</sup> Koech J., 'Emerging Challenges of Security in IGAD', Mwagiru M., African Regional Security in the age of Globalization, Nairobi: Institute of Diplomacy and International Studies (2004) p. 126



Both ECOWAS and IGAD have made substantial contribution in conflict management in their respective sub-regions.<sup>90</sup> The role of ECOWAS in Liberia and IGAD in the Sudan peace process has been a big boost towards African solutions to African problems.

In 2012, the UNSC put Mali on its agenda with the concerns and counsel of ECOWAS and this resulted in the UN passing resolutions 2056,2071 and 2085 to facilitate measures towards tackling the dispute. The UN efforts have however been up staged by France's intervention. The UN had the AU and ECOWAS blessing for an African led stabilization force. Their efforts have however been turned towards supporting the initiative taken by France.<sup>91</sup>

### **2.3.5 East African Community**

The EAC is the regional intergovernmental organization comprising Burundi, Kenya, Rwanda, Tanzania and Uganda. Its vision is to have a prosperous, competitive, secure, stable and politically united East Africa; and the mission is to widen and deepen economic, political, social and cultural integration in order to improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade and investments.<sup>92</sup> Some of the EAC member states belong both to the Horn of Africa and the Great Lakes conflict systems. Kenya and Uganda fit in both conflicts systems. These two conflict systems have experienced intra and inter- state conflicts at various time periods and each one of the member states has been involved in one way towards the resolution and management of the conflict. Both Kenya and Uganda played a key role towards the signing of the CPA between the South Sudan People's Liberation Army (SPLA) and the government of Sudan. Presently Burundi, Kenya and Uganda

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<sup>90</sup> Olisa M.S.O., 'Standing on Sinking Sand: ECOMOG and the Liberian Internal Conflict' Nyongro P.A., *Arms and Daggers in the heart of Africa*(Nairobi: African Academy of Sciences,1993)261-286)

<sup>91</sup> Arun Mohan Sukumar,Intervention:Africa Pushed aside in Mali Peace effort, The Standard,28<sup>th</sup> January, 2013,p15

<sup>92</sup> EAC,Development Strategy,2012,p.8

are members of part and of the (AMISOM) while Tanzania on her part has been involved in the Burundi peace process which resulted in the Arusha Accord.

Since 2006, the EAC has formulated various protocol's frameworks and mechanisms in the area of peace and security and has developed various mechanisms on conflict prevention, management and resolution. In addition to the strategies and mechanism the EAC has developed protocols on foreign policy coordination, cooperation in defence and peace and security. The protocols on foreign policy coordination and cooperation in defence have their origins from MOU's which date back to 1998 and 1999 respectively and which have been now been upgraded to protocols. The protocol once ratified by the partner states become an integral part of the treaty.<sup>93</sup> The strategy for regional peace and security itself was developed in 2006 and is currently being reviewed to include new and emerging crimes. The EAC has approved a Conflict Prevention and Management and Resolution Mechanism (CPMR) and an Early warning System (EWS), a Peace Facility (PF), and a Panel of Eminent Person (PEP). To further strengthen its obligation in its peace and security mandate the EAC has initiated a training on mediation among its partner states to eventually constitute a mediation support group. It has also initiated discussions on the Peace Facility which is a financial mechanism to facilitate the funding of peace and security issues.<sup>94</sup>

The foundation for the protocols and the mechanism is the EAC treaty which has created the enabling environment for the formulation of the pre/post conflict and peace and security instruments. Despite the EAC not having been involved substantively in conflict management process, it has recognized the importance of peace and security as envisioned in the Treaty for establishment of the EAC as one of the key areas for cooperation.

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<sup>93</sup> Article 151, The Treaty for the Establishment of the EAC

<sup>94</sup> EAC, Report of the Partner States meeting to consider the Zero draft peace facility for the operationalization of the conflict prevention, management and resolution held on 10<sup>th</sup> October, 2012 in Arusha, Tanzania

## 2.4 Conflict management

Conflicts have a life of their own, which is dynamic and organic. The life cycle of a conflict starts with the birth of a conflict from a situation of relative calm or peace, this period is often followed by a periods of tensions, which if not addressed, develops into a crisis situation which too if left un attended leads to the conflict becoming violent. The eventual resolution of the conflict leads to the death of the conflict and the end of the conflict cycle which begins all over again with a different issues emerging from a period of relatively peace. The need for resolving conflicts is important and has to be dealt with through various methods of conflict management. Some of the conflict methods include litigation, arbitration, negotiation and mediation.<sup>95</sup>

It is important to distinguish disputes from conflicts since sometimes the two terms are used interchangeably. Disputes unlike conflicts can be settled through a court process. Conflicts involve analyzing the underlying causes and relationships and it involves removing the sources of the conflict. Conflicts can only be solved through non coercive or non legal means.<sup>96</sup>

Conflicts are an integral way of life, it is however their intensity, magnitude and nature that makes the difference. Conflicts become unhealthy when they become violent and destructive and the need for their prevention, management and resolution become inevitable.<sup>97</sup>

It is widely recognized that the outcome of conflict management activities is largely influenced by the interaction of the issues, the actors and the conflict. This makes conflict management a complex process which should allow a broad based mediation process.<sup>98</sup>Power relations are inevitably a factor of consideration as the asymmetric power relationships in the SADC and ECOWAS security complexes during the Liberian, Sierra Leone and Lesotho

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<sup>95</sup> Mwangi M., *The Water's Edge: Mediation of Violent Electoral Conflict in Kenya* (Nairobi: Institute of Diplomacy and International studies,2008) pp.5-6

<sup>96</sup> Mwangi M., *Ibid.*, p.38

<sup>97</sup> Machira A., *Armed Conflict and the Law* (Nairobi:Aluka Educational Services,2010)p.3

<sup>98</sup> Mwangi M. *The Water's Edge Op cit.*, p.43

conflicts have demonstrated with South Africa and Nigeria respectively emerging as hegemonies in their respective REC's.<sup>99</sup>

#### **2.4.1 Modes of Dispute Settlement**

The UN charter stipulates on the peaceful management of conflicts or disputes which is through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or resorting to other regional institutions, agencies among others for peaceful means.<sup>100</sup> The different methods of peaceful management of conflict can be severally classified as either legal/non legal and coercive/non coercive. Some of the non coercive methods of peaceful management of conflicts include negotiation, mediation and facilitation.<sup>101</sup>

Conflicts can be managed through a negotiation process which is undertaken through three key distinct phases; the pre-negotiation phase, the actual negotiation and the post – negotiation phase. The negotiation process leads to mediation, whose processes are similar to those of negotiation.<sup>102</sup> Mediation is an advanced form of negotiation and a non coercive form of conflict management whereby negotiations go on in the presence of a third party. Mediation is normally used when the negotiation efforts have failed to take off or become deadlocked. A mediator need not be impartial in order to achieve a successful outcome of the mediation.<sup>103</sup> Managing conflicts involves prompt action in the form of interventions and may involve nominating a mediator or facilitator, setting up a special team to discover the cause of the conflict and confidence building towards concrete solutions and deploying peace missions to

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<sup>99</sup>Johnson.A.E.'Regional conflict resolution mechanisms: A comparative analysis of two African Security Complexes.' *African Journal of Political Science and International Relations*, Vol.3.,10.,(Oct,2009)pp.409-422

<sup>100</sup> Article33, UN Charter

<sup>101</sup> Mwangiri M. *The Water's Edge* Op cit., pp.36-37

<sup>102</sup> Mwangiri M. *Ibid.*, p.120

<sup>103</sup> Mwangiri M. *Ibid.*,pp.15-17

prevent, stop and resolve the conflict.<sup>104</sup> It is absolutely necessary for intervention measures to be put in place early enough in the life of the conflict while involving all parties so as to ensure goodwill in the conflict management process.

#### **2.4.2 Role of Regional organizations in dispute settlement**

When disputes break out some of the institutions that can play a critical role in diffusing them amongst member states are the REC's and IGO's.<sup>105</sup> Lack of water management treaties for instance can lead to conflict in international shared water basins if one state attempts to build a dam, in situations where there are some institutional arrangements e.g. treaties or conventions in shared waters the situation would not be conflictive.<sup>106</sup> This emphasizes the importance of various regimes and institutions that facilitate in the regulation of the international political system to manage.

Conflict management is borne from the idea that during normal interactions actors who find themselves in conflictive situations which are inevitable will always manage their conflicts through peaceful means irrespective of whether the conflicts are violent or non-violent.<sup>107</sup> In the peace and security sector the IGO's have established frameworks and mechanisms to be used in the early identification and monitoring of conflicts and disputes and for their peaceful settlement. The member states are therefore bound by the regulatory framework detailing how to deal with the conflicts before and after they have begun.

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<sup>104</sup> Mwangi M. *Conflict in Africa: Theory Processes and Institutions of Management*(Nairobi: Centre for Conflict Research, 2006), p.27

<sup>105</sup> Johnson. A.E.' Regional conflict resolution mechanisms: A comparative analysis of two African Security Complexes.' *African Journal of Political Science and International Relations*, Vol.3., 10.,(Oct,2009).410

<sup>106</sup> Giordano M.F.,Giordano M.A. et al, International Resource Conflict and Mitigation, '*Journal of Peace Research*, Vol.42 No.1 (Jan.2005)pp.47 -65

<sup>107</sup> Mwangi M. *The Water's Edge* Op cit.,pp.15-17

The UN and the AU both have developmental, peace and security mandates and both have established frameworks and mechanisms to be used in the early identification, monitoring and their management. The member States are all bound by the regulatory framework.

Cooperation in the integration process lends itself to the peaceful management of conflicts. The UN recognizes the importance of peaceful management of disputes. The UN Charter stipulates that negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resorting to regional agencies or arrangements and any other peaceful means of one's choice as some of the methods of peaceful conflict management.<sup>108</sup> On its part the OAU has identified similar and related methods of peaceful conflict management which include, negotiation, mediation, conciliation and arbitration.

The methodology adopted in conflict management should be guided by the type of conflict. Disputes are more amenable to settlement methodologies and conflicts respond better to resolution approaches. In addition it is important to distinguish between unofficial and official actors as it will help in determining whether to use track one or track two diplomatic method.<sup>109</sup> Migingo Island conflict revolves around the determination through delimitation of the boundary to determine in whose territory the island lies. It would be prudent to use the judicial or arbitration settlement mechanism as the dispute is both of a boundary and a political nature.

## **2.5 Categories of boundary disputes**

Land disputes can be categorized into territorial and positional disputes. Territorial disputes occur when one state claims a part of territory belonging to another state at the time when the claim is made. This type of dispute can be further divided into irredentist and non – irredentist. In inter- state relations an irredentist border dispute is one whereby a number of African states

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<sup>108</sup> Article 33(1), UN Charter

<sup>109</sup> Mwangi M., *Conflict in Africa: Theiry, processes and institutions of management.*(2006)pp.119-121

challenged the legitimacy of the existing colonial boundaries and their corresponding territorial apportionments. Some of the countries that pursued irredentist policies were Togo, Morocco, Ghana and the Somali Republic. These irredentist policies caused five major conflicts in Africa, between Kenya and Somalia, Somalia and Ethiopia, Morocco and Algeria and between Ghana and Togo. A non irredentist policy was associated with the African states that accepted in principle the existing colonial boundaries and therefore wanted status quo maintained. This however did not forestall border disputes, as some conflicts emerged relating to interpretation of documents delimiting the borders and their exact physical location.<sup>110</sup> By contrast positional border disputes arise from situations whereby the boundaries between two states are not clearly defined.<sup>111</sup> The Migingo Island dispute fits in this category. The cite boundary classification on boundary disputes is however flexible as the various categories can also be transformed into any of the other boundary categories.<sup>112</sup>

### **2.5.1 Kenya's territorial disputes**

Kenya's boundary disputes with her neighbours fall in both the irredentism and non – irredentism categories. An irredentist border dispute is one where a state has challenged the legitimacy of existing colonial boundaries and their corresponding territorial apportionments. A non irredentist policy is associated with African states that accepted the existing colonial boundaries.

Kenya boundary dispute with Somalia was based on the rejection of their common colonial boundary by Somalia as it artificially divided the Somali people into Kenya Ethiopia

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<sup>110</sup> Saadia T. The sources of Status Quo and Irredentism Policies, Widstrand C.G. ' *African boundary problems*' (Uppsala: Almqvist & Wiksells Boktryckeri Atiebolag, 1969) p.101 -102

<sup>111</sup> Kornprobst M., ' *The management of Border Disputes In African Regional – Sub Systems: Comparing West African and the Horn of Africa* 'The journal of Modern African Studies, Vo.30, No.3. (Sept., 2002) pp.383

<sup>112</sup> Widstrand C.G., ' *Some African Boundary Problems: A Discussion* ' Widstrand C.G (2<sup>nd</sup> ed.) *African Boundary problems* (Uppsala: Almqvist & Wiksells Boktryckeri Atiebolag, 1969) pp.168-182

and Djibouti. Kenya has had non –irredentism territorial claims by South Sudan in the Elemi Triangle and between Kenya and Uganda in 1976 that led to the temporary closure of their common border by Kenya to convey its displeasure over claims of its western territory by Uganda. In 2008 a dispute emerged between Kenya and Uganda on the ownership of Misingo Island.<sup>113</sup>

### **2.5.1.1 Kenya – Somalia boundary dispute**

Kenya's relationship with Somalia was marred with a border dispute on their international boundary. This was because the republic of Somalia refused to recognize the validity of the pre – independent boundary arrangement and made claims on a territorial area that included Somali people with a view to have the Somali people live into a single ethnically homogenous state.

Kenya's position was on maintaining her territorial integrity, and not to allow the secession of a minority group to promote a trend towards permissive fragmentation of her territory. Kenya favored the crystallization of the international boundaries in the positions they occupied at the time of independence as any alternative approach towards rearranging international boundaries would be a recipe for disaster. The Somali territorial claim was waged against Ethiopia and Kenya.<sup>114</sup>

The Somalia Republic did not agree to this arrangement and saw the dispute as not being one of land but related it to the Somali Nomadic people. It therefore laid claim to the North Frontier District (NFD) of Kenya which has been renamed named as the North Eastern Province (NEP) and some parts of it have been carved out and merged into Eastern and Coast provinces. The Somali government intensified its claim to the NFD in 1965 when Kenya abolished the regional system of Government.

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<sup>113</sup> Prescott J.R.V., *Boundaries and Frontiers* (London: Croom Helm, 1978) p.76

<sup>114</sup> Widstrand C.G Op.,cit.,p.101



The NEP experienced frequent violence and loss of life until 1967 when President Kaunda of Zambia facilitated a side meeting on the margins of an OAU Summit in Kinshasa, Zaire where the differences were discussed. This meeting was followed by another meeting between Kenya and Somali mediated by President Kaunda of Zambia in Arusha, Tanzania. The meeting issued a joint communiqué in which the two parties agreed to maintain peace and security on both sides of their borders, resumption of diplomatic relations and a joint working committee to review progress towards the implementation of the agreement.

Recently there has been simmering discontent on Kenya Somalia international maritime boundary arising from the international agreements which initially recognized the three mile rule to twelve mile rule and more recently to 200 mile rule on the territorial waters ownership.<sup>115</sup> The international agreement requires that states agree on the common maritime border between them and to give consent towards sharing of ocean resources. The maritime dispute between Kenya and Somalia centers on the location of their maritime border in the Indian Ocean. The Kenyan position is that the maritime border should run directly east parallel to the line of latitude, while the Somalia's is that it should run perpendicular to the coastline. The area in dispute is believed to hold significant offshore hydrocarbon resources which Kenya has already licensed oil and leased out rights to exploration companies.<sup>116</sup> Kenya and Somalia had signed an agreement in 2009 allowing either party to go ahead with activities in the disputes area while awaiting demarcation. The Somalia parliament later disallowed the agreement. In June, 2013 the Somalia cabinet passed a resolution expanding its sea boundary by about 38,000 square kilometers which

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<sup>115</sup> Allot A., 'Boundaries and the Law in Africa' Widstrand C.A., *African Boundary Problems* (Uppsala: Almqvist & Wiksells Boktryckeri Aktiebolag 1969) pp.9 - 21

<sup>116</sup> The East African., Joint Report 'Simmering border disputes to control oil gas', *The East African* (Nairobi, August 26-31, 2012) pp.4-5

would expand its territory to what Kenya believes is hers and which its already exploring. This is likely to trigger acrimony between the two states<sup>117</sup>.

### **2.5.1.2 Kenya – South Sudan boundary**

The boundary between Kenya and Southern Sudan has not been demarcated and its problem dates to the time of the British colonial rule in the two territories. The boundary was established through of a series of activities which included, the second Anglo-Germany treaty in 1890. This resulted in the establishment of the boundary which demarcated their respective spheres of influence. The making of the Buganda Kingdom which was located in the north and western part of Lake Victoria a British protectorate in 1894 and the creation of the East Africa Protectorate (EAP) in 1895, through the annexation of the territory located between the Indian Ocean and the Rift Valley. This territory was later extended to the area adjacent to Buganda and the name Uganda acquired a general usage of the entire area. The additional activities of transferring the then Eastern Province of the Uganda protectorate in April 1902, to the East African protectorate by the British Foreign office, the inadequacies and failure of the Mixed Commission established in 1912 to demarcate the area around the north west corner of Lake Turkana which led to the subsequent establishment of the red and blue boundary lines. The Anglo-Germany Agreement of 1914 which established the initial boundary between Kenya and Uganda and the British Order in Council of 1926 which annexed more territory from the Uganda protectorate to the Kenya colony all contributed towards the establishment of the Kenya – South Sudan boundary and its attendant problems.

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<sup>117</sup> Kang'aru W., Wokabi C., Scramble for resources fuels conflict in East Africa, *Daily Nation*, Nairobi, (Weekly Business Supplement), June, 18, 2013) pp.8-9

Despite there being no declared dispute between Kenya and South Sudan relating to the northwest corner of Lake Turkana measuring between 10,000 and 14,000 square kilometers and also known as the Elemi triangle. The area has generated new interests as hopes of striking oil have been building in the region. Kenya and Ethiopia have also been delineating their boundary due to the frequent border clashes in that region.

## **2.6 Uganda's territorial disputes**

The Republic of Uganda has not experienced any irredentist related boundary dispute. It has however had a border dispute with the United Republic of Tanzania relating to the Kagera region and between it and Kenya in relationship to its claim over Kenya's western region in 1976 and its current claim over Migingo Island.

### **2.6.1 Uganda-Sudan dispute**

Uganda has had boundary disputes with the successor Republic of Sudan on their international border and Uganda occasionally made military incursion into Sudan in pursuit of the Lord's Resistance Army of Joseph Kony.

### **2.6.2 Uganda-Tanzania dispute**

Uganda went to war with Tanzania after Idi Amin, the then President of Uganda, claimed part of the Tanzania Kagera region and subsequently invaded it. The invasion of Kagera region of Tanzania by Uganda was repulsed and led to the eventual overthrow of the president Idi Amin.

### **2.6.3 Dispute between Uganda and the Democratic Republic of Congo**

In 1996, Uganda was one of the governments that were involved in the extraterritorial regional war that raged in and around Zaire as the DRC was then known. This was despite having signed

security arrangements with President Kabila of the DRC. The involvement of Uganda in the DRC led to differences between it and Rwanda and this resulted in their armies fighting each other briefly between August 1999 and May 2000.<sup>118</sup>

In 2012, Uganda and Rwanda were accused of fanning conflict in eastern DRC and the SADC issued a Summit Communiqué condemning Rwanda's intervention in the DRC.<sup>119</sup> Rwanda has been accused of supporting the M23 rebels in the DRC and as a result foreign aid has been frozen by its development partners, among them Germany, United Kingdom, Netherlands and the USA.<sup>120</sup> Uganda in recent times has been having a dispute with the DRC over their common international boundary in Lake Albert region. This dispute has been incensed with the recent discovery of oil in the lake.

## **2.7 Kenya - Uganda dispute**

Kenya and Uganda have experienced relative calm on their international boundary since independence. This state of affairs can be traced way back to the period when Uganda between 1931 and 1970 managed the Karasuk area of Turkana County on behalf of Kenya. The administration of the Karasuk area dates back to pre and post independence period through a mutual agreement between the two states. The land area under administration lies between the two states occupied by the Karamoja, Turkana and the Pokots who all pastoralists and have experienced conflicts relating to pasture, water and cattle rustling. Despite this relative calm on the boundary between Kenya and Uganda, there have been two disputes relating to their international boundary. The territorial claim by Uganda on Kenya territory based on reverting to

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<sup>118</sup> Johnson. A.E.' Regional conflict resolution mechanisms: A comparative analysis of two African Security Complexes.' *African Journal of Political Science and International Relations*, Vol.3., 10., (Oct, 2009) pp.113-114

<sup>119</sup> SADC Communiqué of August 2012

<sup>120</sup> Emmanuel Rutayisire and Fred Oluoch, Congo Talks in Addis could unlock aid to Rwanda, *The East African*, 26<sup>th</sup> January - 1<sup>st</sup> February, 2013, p.6

the borders that existed under the Anglo- Germany treaty of 1914 and the dispute relating to the ownership of Migingo island.

Kenya and Uganda from 2008 have had a long-running dispute over the ownership of Migingo, tiny island in Lake Victoria that serves as a landing site for fishermen from both countries. Claims to the island's ownership by both countries have not yet resulted in a fight, but often elicits verbal exchanges between the two governments.

## CHAPTER THREE

### East African Community and Dispute Settlement

#### 3.0 Introduction

This chapter briefly outlines the historical context of Kenya's boundaries with her neighbours, outlining some of the key features of the Kenya - Uganda boundary as defined by various historical documents. The chapter identifies the EAC dispute settlement mandate and evaluates the dispute settlement framework, mechanisms, rules and regulations that have been put in place. The chapter in addition puts into focus the dispute settlement strategies undertaken through bilateral negotiations between Kenya and Uganda to determine the ownership of the Migingo Island towards settlement of the dispute.

#### 3.1 Historical background of the East African Protectorate boundary

The republic of Kenya shares boundaries with Tanzania in the south, Uganda to the west, South Sudan and Ethiopia to the north and Somalia and the Indian Ocean to the east. Kenya, Tanzania and Uganda share the waters of Lake Victoria with each one of them covering, six (6), forty eight(48) and forty six(46) per cent respectively.

The three East African countries have had boundaries which have been fairly stable and uncontroversial. The boundary between Kenya and Tanzania from the eastern part of Lake Victoria to Lake Jipe has never been concluded into a legal agreement and has remained dispute free and uncontroversial. The international boundary between Kenya and Uganda extends from the tri-junction with Tanzania in Lake Victoria northwards towards mountain Zuria on the tri-junction with South Sudan. The origin of these boundaries can be traced to agreements made under the colonial rule and which in some ways can be described as having been precisely demarcated. This factor made the countries acceptance of the *status quo* on the existing territorial

boundary at independence somewhat different from the possidetis doctrine in Latin America.<sup>121</sup>

The doctrine of uti possidetis in Roman law is the award of interim possession as the preliminary to the establishment of ownership. Its use in international law has been restricted to boundary cases in Latin America.<sup>122</sup>

### **3.1.1 East African Protectorate boundaries**

The Imperial British East Africa (IBEA) came into being in 1888 and it began to rapidly establish administrative authority in the British sphere of influence. As a result of the penetration of the British and Germany inland into the continent, it required that their respective spheres of influence, particularly west of Lake Victoria to be determined.

The second Anglo-Germany treaty in 1890 completed the boundary between their spheres of influence by a line which followed the parallel of 1° south latitude across Lake Victoria and continued westward to the 30<sup>th</sup> meridian east longitude. In 1894 the Buganda kingdom which was located in the north and western part of the lake was made a British protectorate.

In 1895, the United Kingdom created the EAP. This included the territory located between the Indian Ocean and the Rift Valley. Gradually the protectorate rights were extended to the area adjacent to Buganda and the name Uganda acquired a general usage of the entire area.

In April, 1902, the then Eastern province of the Uganda Protectorate was transferred to the East African protectorate by the British Foreign office. The province was delimited on the west by the present day boundary, on the north of the Suam or Turkwel River, on the eastern

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<sup>121</sup> McEwen A.C., *International Boundaries of East Africa*: (London: Oxford Press,1971) p.287

<sup>122</sup> Jolowicz H.F *Historical Introduction to the Study of Roman law*,2<sup>nd</sup> ed.,Cambridge University press,1952,pp273-274 cited in McEwen A.C.,*International Boundaries of East Africa*, Clarendon Press,1971p.27

escarpment of the river for much of the distance between Lake Rudolf and Lake Natron, and on the south by the German sphere westward to Lake Victoria.

The boundary in Lake Victoria between Kenya and Uganda on the north and Tanzania on the South and a part of the boundary between Uganda and Tanzania west of the lake is an example of a boundary formed by a line of latitude in East Africa which is the parallel of 1°south. It is one of the remnants of the Anglo Germany Agreement of 1890.<sup>123</sup> There was an attempt to join East Africa and the Uganda protectorates under the British Foreign Office in 1905. This however failed and the two protectorates were shifted from the British Foreign Office to the Colonial Office.

### **3.1.2 Kenya –Uganda boundary**

The boundary between Kenya and Uganda was established by the Anglo-Germany Agreement of 1914 and has not been demarcated. It was established by transfers of territory based on the British Order in Council of 1926 from the then Uganda Protectorate to the British East Africa protectorate and ultimately to the Kenya colony. A number of administrative agreements have since then amended the boundary in a number of places. In one instance, between 1959 and 1960, a joint Uganda- Kenya demarcation party defined the entire boundary on the ground, covering a distance of approximately 322 km as series of straight lines marked with 180 boundary pillars.<sup>124</sup> The boundary has been peaceful to the extent that between 1931 and 1970 Karsuk in Turkana, a part of Kenya was administered from Uganda based on a agreement between the two countries.<sup>125</sup>

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<sup>123</sup> McEwen A.C Op. cit, p.,50

<sup>124</sup> McEwen A.C., Ibid., p.74

<sup>125</sup> Ibid., p.249



### **3.1.3 Kenya–Tanzania boundary**

The Kenya-Tanzania boundary extends approximately, seven hundred and sixty nine, (769) km between Lake Victoria and the Indian Ocean. The boundary has remained as it was during the era of the British East Africa and Germany protectorates.

The Tanzania tripoint is on 1<sup>st</sup> parallel south and about 33 degrees 56° longitude. Eastward from the tripoint, the boundary traverses the lake for 19 km, and in a straight line south eastward for 463 km passing eastward of Mt.Kilimanjaro for 92 km to the southern end of Lake Jipe. From Lake Jipe the straight line continues southeastward for 303km and then the boundary is determined by short straight lines and streams for 5km to Ras Jimbo and on to the Indian Ocean. The land part of the boundary between Kenya and Tanzania is demarcated by pillars and it has be devoid any dispute.<sup>126</sup>

### **3.1.4 Kenya-Sudan boundary**

Kenya did not have a common boundary with the successor republic of Sudan until 1926 when the Rudolf province which formed the eastern part of Uganda was transferred to Kenya, by the Kenya Colony and Protectorate (Boundaries) Order in Council of 1926.This Order in Council described in a detailed manner, the Kenya –Uganda boundary from the border with Tanzania.

Prior to that, in 1912 a Mixed Commission had been appointed to determine the boundary between Uganda and Sudan after the transfer of the Lado enclave from the Congo to the Sudan. The Mixed Commission did not do a thorough investigation on the eastern extremity of Lake Rudolf to help in determining the border between Uganda and the successor Republic of Sudan.

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<sup>126</sup> The Geographer. Bureau of Intelligence and Research, Tanzania – Uganda Boundary, *International Boundary Study*,No.55-(September 1,1965)pp4-.6

The failure on the part of the Mixed Commissioners resulted in an unambiguous legal definition on the boundary between Kenya and Sudan and presently between South Sudan and Kenya. The result is that there are three different descriptions relating to the Kenya-South Sudan boundary. Firstly, there is the boundary as determined by 1914 order of the Secretary of State in 1914 and which was accepted by the two countries with the formal transfer of the territory taking place on 21<sup>st</sup> April 1914.

Second, there is the red line boundary signed between the Provincial Commissioners of Kenya's Turkana District and the District Commissioner of the eastern District of Sudan of what was then Mongalla province of Sudan. The red line was demarcated in 1938 symbolizing the agreed grazing area which was drawn in a map. This was mainly to facilitate access to grazing lands and watering holes by the Turkana people in what had been traditionally their northern grazing limits. Kenya too had a free hand in the area and has all along been using the area for military operations. Thirdly, the red line proved unsatisfactory for containing the tribal raids and the boundary was extended further north to what is referred to as the blue line and which came to be adopted as the international boundary between the two countries. The Kenya –South Sudan boundary has remained porous and without effective administration and a final decision on its delimitation.<sup>127</sup>

### **3.1.5 Kenya –Somalia boundary**

The boundary between Kenya (British East Africa) and Somalia (Italian protectorate) was initially determined by the Anglo – Italian agreement of 1891, and Juba land represented the eastern boundary of British East Africa territories and remained so until the signing of the Anglo Italian agreement in 1924. The agreement ceded the entire Juba land to the Kenya colony.

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<sup>127</sup> McEwen A.C., Op cit. pp.130 ,132,134

The line of demarcation between the Anglo and Italian spheres of influence was determined by the Anglo- Italian protocol of 1891. This agreement recognized the line of demarcation as starting from the Indian Ocean and following the mid –channel (thalweg) of the river Juba up to latitude 6 degree north. The 1924 Anglo–Italian treaty amended the boundaries and ceded the entire Juba land to the Italians. This was as a result of an alliance that had been formed during World War I the war. The British in turn acquired new territories which were under Germany influence and felt obliged to share with the Italians the war spoils for their support during World War I.

The final boundary agreement between Kenya and Somalia was finalized with exchange of notes between Britain and Italy in 1933 which endorsed the Mixed Commission’s Agreement of 1927 which had been commissioned to demarcate the boundary.<sup>128</sup> This therefore conclusively settled the legal status of Kenya –Somalia international boundary. The boundary was later demarcated in 1957-58 to replace destroyed boundary beacons.

### **3.2 Origin and history of the Kenya – Uganda boundary**

The Kenya-Uganda international boundary origins can be deduced from the Anglo-Germany Treaty and the British Order in Council of 1926, the Uganda independent Constitution, the Kenya Independent constitution of 1963, the Uganda Constitution of 1995, and the Kenya Constitution of 2011 among other legal instruments.

#### **3.2.1 British Order in Council**

The British order in Council is one of the earliest and one of the conclusive documents that is available in reference to the exact boundary between the Kenya- Uganda boundary from the tri –

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<sup>128</sup> McEwen A.C., *Ibid.*, pp.24-25, 115, 121 -122

junction with Tanzania northwards to the tri-junction with the republic of South Sudan. The genesis of the British Order in Council was the formation of the Kenya Colony. In 1920 the EAP became the Kenya Colony with the exception of the 16 km (the 10 mile coastal strip) leased from the Sultan of Zanzibar, which then became the Kenya protectorate. The current Turkana District previously known as Rudolf Province was transferred to Kenya, from Uganda in 1926 by the British Order in Council.<sup>129</sup>

In the schedule annexed to “the Kenya Colony and Protectorate (Boundaries) Order in Council, 1926” the Kenya-Uganda boundary is delimited in three sectors from south to north:<sup>130</sup> Boundary from 1°south latitude, through Lake Victoria to the mouth of the Sio River; boundary from the mouth of the Sio river to the summit of Mount Elgon; and from the summit of Mount Elgon to Mount Zulia on the boundary of South Sudan.

The Kenya –Uganda border is approximately 933 kilometres long. Beginning from the tripoint with Tanzania, extending northwards through Lake Victoria for 138, kilometres and for about 58 km between the Bukwa and Kanamuton rivers, the remainder of the boundary is demarcated by either pillars or rivers

### **3.2.2 Boundary from 1°south latitude, through Lake Victoria to the mouth of the Sio River**

The East African countries of Kenya, Tanzania and Uganda share the waters of Lake Victoria with each one of them covering, six (6), forty eight (48) and forty six(46) per cent respectively. This in essence means that they share a common maritime boundary in the vast fresh water lake.

The international boundary between Kenya and Uganda is itself divided into three different sectors. The first sector outlining the international boundary begins in Lake Victoria at the Tanzania tripoint [where the boundaries of Kenya, Uganda and Tanzania have an

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<sup>129</sup>Her Majesty’s Government, British Order in Council,1926, p.72

<sup>130</sup>Her Majesty’s Government, Ibid.,pp.74-76

intersection] through Lake Victoria to the mouth of the Sio River on the border between Kenya and Uganda.<sup>131</sup>

### **3.2.3 Boundary from the mouth of the Sio River to the summit of Mount Elgon**

The second sector begins from the mouth of the Sio River to the summit of Mt. Elgon on the tri junction with South Sudan. The sector contains two major boundary changes relative to the text of the British Order in Council. These are a detailed demarcation between the Sango and Alupe rivers, and a completely new boundary alignment in the vicinity of Mount Elgon (Masaba). The Kenyan and Ugandan officials agreed that the segment of the boundary in the densely populated areas between the Sango and Alupe rivers should be demarcated by pillars for visual identification. This was demarcated by Uganda in 1927 and 1932.<sup>132</sup>

### **3.2.4 The summit of Mount Elgon to Mount Zulia on the boundary of South Sudan**

The boundary alignment between the source of the Malaba River also known as the Luwakhakha and the northern point of two streams forming the Suam also known as the Turkwel where it emerges from the crater of Mount Elgon. This alignment of the boundary was officially amended in a letter in 1936 from the Colonial Secretariat of Kenya to the Chief Secretary of Uganda.<sup>133</sup>

### **3.2.5 The Kenya Constitution (1963)**

The independent Kenya Constitution of 1963 schedule II, reaffirms the contents of the British Order in Council of 1926 on Kenya's and Uganda international boundary. The Kenya Constitution of 1963 has captured the British Order in Council parameters in determining the

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<sup>131</sup> The Geographer. Bureau of Intelligence and Research, Tanzania – Uganda Boundary, *International Boundary Study*, No.55-(September 1,1965)p.4

<sup>132</sup> The Geographer, Bureau of Intelligence and Research, Kenya – Uganda Boundary, *International Boundary Study*, No.139-(August 27,1973) p.4

<sup>133</sup> The Geographer.(1973),Ibid,p.6

border between Kenya and Uganda. The constitutions schedule II, articles, 21, 22,33,35,36 and 37 help in the identification of the Kenya and Uganda Boundary.<sup>134</sup> The articles identify the key features which are predominantly, rivers and mountains in the identification of the boundary.

The boundary for instance from the Tanzanian tri-junction is described as true bearing of 160° 40° to the boundary pillar No.17 on Kenya Tanzania international boundary, then generally northerly by the Kenya – Uganda international boundary to a point in Lake Victoria at the intersection of a straight line running due west from the most northerly point of Ngothe island.<sup>135</sup>

### **3.2.6 The Constitution of Uganda (1967)**

Article 2 (2), of the Constitution of the Republic of Uganda gives a complete description of her boundaries in the second schedule. It defines her boundaries with the Democratic Republic of Congo, South Sudan, Kenya, Tanzania and Rwanda. This forms an official statement of what Uganda considers to be her territory.<sup>136</sup> A comparison of the schedule and the original instruments establishing her boundaries reveals minor textual discrepancies, for instance the description on the base of the Turkana escarpment on her border with Kenya is given through a series of bearings and distances and reference has been made to boundary pillars on areas which were previously uncertain.<sup>137</sup> The same article defines and describes the Uganda – Kenya boundary from north to south. In the sector beginning with the Uganda-South Sudan and Kenya tri-junction on the international border all the way to the Uganda –Tanzania and Kenya tri-junction in Lake Victoria, the description are directional.<sup>138</sup>

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<sup>134</sup> GoK, Kenya Constitution,1963,pp.242-243,280-283,285,290-294

<sup>135</sup> GoK.,Ibid.,p.286

<sup>136</sup> GoU,Constitution of the Republic of Uganda, 1995p 23.

<sup>137</sup>McEwen A.C.,*International Boundaries of East Africa:* (London: Oxford Press,1971)p.6

<sup>138</sup> McEwen A.C.,Ibid.,pp.298-299

### 3.2.7 The Constitution of Uganda (1995)

Between her independence in 1962 and the coming into power of the National Resistance Movement (NRM) Uganda had experienced a military coup led by Idi Amin Dada and subsequently and in quick succession a number of presidents the last in the series being General Tito Okello. The NRM decided on the restoration of a new political dispensation and political order and promulgated a new constitution in 1995. The constitution was basically a replica of the Uganda independent constitution. It described the international boundaries of Uganda with article five (5) of the second schedule of the Constitution of Uganda, describing the Uganda's boundary with Tanzania, Rwanda, DRC, South Sudan and Kenya.

**Figure 3.1: Map of East Africa**



Source: [www.google.co.ke/url](http://www.google.co.ke/url) (2013)

### 3.3 Migingo Island dispute

The fisheries of Lake Victoria make a substantial contribution to poverty reduction and economic growth within the lake region. There are over 2 million people who are supported by the fisheries in the lake. The lake meets the annual fish consumption needs of almost 22 million people in the region making a significant contribution to regional food security.<sup>139</sup>

The lakes total fish production is estimated at between 400,000 and 500,000 tons per year with Tanzania landing 40%, Kenya 35% and Uganda 25%.The value of the landed fish ranges between US\$ 300 and 400 million.<sup>140</sup>The environs of Migingo Island is one of the few remaining areas of rich deep water- fishing for the Nile perch in the lake. The island which occupies half an acre of land has a population estimated at one hundred and thirty is famous for fish landing (figure3.2).

The ownership of the island occupied by Kenyans, Ugandans and Tanzanians is in dispute between Kenya and Uganda. Before the advent of security forces, the island had experienced an influx of fishermen and pirates. The pirates were armed with assault rifles and apart from piracy resorted to stealing engine boats. The fishermen in Migingo Island appealed to their respective governments for intervention due to the menace. The island dispute started with Uganda's attempt to control the purported fishing by Kenyan fisherman in its territory. The tactics used by the Ugandan security forces resulted in the mistreatment, arrests, and demands for entry permits, tax, fines and extortion to the Kenyan fishermen. Their plight attracted the public

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<sup>139</sup> EAC, Lake Victoria Fisheries Organization, Strategic Vision Document (2008-2012) pp.6-10

<sup>140</sup> Martinin C.A.M., '*Role of Sub-Regional Organizations in Preventing Water-Related Conflicts in the Eastern African Region*', International Peace Support Training Centre, Occasional Paper, Series 1, No. 7., (Nairobi: International Peace Support Training Centre, Occasional, 2010) pp.15



attention in Kenya leading to the start of bilateral talks between Kenya and Uganda and prompting the initiation of a joint survey in 2009 towards settling the dispute.<sup>141</sup>

According to one of the communiqués the location of the disputed island could be determined in relation to Ilemba and Pyramid Island as described in the 1926 Order in Council. The Kenyan team in the survey places it five hundred and ten (510) meters inside Kenya from the Kenya/Uganda international Boundary (figure 3.1).

**Figure 3.2: Ugingo, Migingo and Pyramid Island**



Source: [en.wikipedia.org/wiki/Migingo Island](https://en.wikipedia.org/wiki/Migingo_Island) (2013)

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<sup>141</sup> The Daily Nation, 6<sup>th</sup> August, 2012 p.16

**Figure 3.3: Mingingo Island**



Source: Daily Gumboot, Island Snatchers by posted on 8<sup>th</sup> June 2009 by John Horn  
Dailygumboot.ca

### **3.4 Regional economic community and dispute management**

Disputes and conflicts are peculiar and they are also universal, and have some common threads that run through them. They have some common causal factors and are caused by a multiplicity of factors and can be solved by coercive as well as non coercive methods. There is recognition that sub regional organizations have a key role to play in the management of conflicts and disputes. The UN for instance recognizes that regional organizations can be utilized as one of the modes of conflict/dispute management in their respective regions<sup>142</sup>.

The rationale for managing internationalization creates international organizations with structures that establish the interrelationship between various regional arrangements and the international system.<sup>143</sup> This is what the liberal institutionalism aims to achieve by encouraging global cooperation through international law and institutions. This relates to international law

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<sup>142</sup> Article 52, UN Charter

<sup>143</sup> Edward B., and Thomas C. Regionalism in international affairs(4ed.) John B., et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.437

and the existence of international regimes to regulate the behavior and action of the integrating states. The principles of cooperation and reciprocity as propounded by the liberalists are very important and central to regional integration. They allow for trade to flourish creating the least like hood for conflict in the long term.<sup>144</sup> The principle of reciprocity is operational in the EAC and it's more evident in the EAC's Council decision making process which is based on consensus<sup>145</sup>.

### **3.5 Historical background of the East African Community**

The East African Countries attempts at integration date back to the colonial period. The formal economic and social integration date back to 1897 with the construction of the Kenya–Uganda Railway. The initial EAC was formed in 1967 but failed to survive beyond the first decade, collapsed and was dissolved in 1977. One of the main reasons cited as the cause of the collapse was the disproportionate sharing of benefits by the members, which was as a result of differences in levels of development between the states and inadequate policies to address this disparity.

Various attempts to restart the EAC continued, and in November 1999, the Treaty for the establishment of the EAC was signed by Kenya, Uganda and Tanzania and came into force in 2000. Burundi and Rwanda expressed interest to join the community and subsequently joined in 2007. The EAC is recognized globally as a vibrant regional economic community. Its attractiveness is demonstrated by the keen interest on its membership by the neighbouring countries of Sudan, South Sudan and Somalia.<sup>146</sup>

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<sup>144</sup> Norman A., *The Foundations of International Polity*, Heinemann, 1914, Ward, Michael D., Randolph M., Silverson, and Xun Cao, Disputes, Democracies and Dependencies: A Reexamination of the Kantian peace. *American Journal of Political Science* 51(3), 2007:583-601. Cited in Goldstein J.S and Pevehouse J.C. *International Relations Longman* (New York: Longman, 2010), p86

<sup>145</sup> Article 15(4), EAC Treaty

<sup>146</sup> EAC ,Report of the EAC Council of Ministers ,held on 20<sup>th</sup> – 23<sup>rd</sup> August, 2012 held in Bujumbura, Burundi

### **3.6 The East African Community and dispute settlement**

The EAC is more re-known as an economic integration bloc much more than in the area of dispute settlement. Since its re - inception in 2000, the EAC has initiated the Customs Union, Common Market and its currently negotiating on the envisaged Monetary Union and edging a step closer towards Political Federation.

In the peace and security sector the EAC has made tremendous progress through the development and creation of protocols and mechanism which has enabled it to establish a dispute settlement framework. The approved protocols are the foreign policy coordination, cooperation in defence and on peace and security. Kenya and Burundi have ratified the protocol on Foreign Policy Coordination while the other two are at various stages of at ratification by the partner states. The protocols once passed become an integral part of the treaty which established the EAC.<sup>147</sup> A mechanism for the early warning system and conflict prevention, management and prevention and resolution has been established. The overall foundation for conflict resolution, prevention and management in the EAC remains the EAC Treaty.

#### **3.6.1 The East African Community Treaty**

The Treaty for the establishment of the EAC is one of the key instruments that sets out the framework for the EAC integration process. The member states also known as Partner states have committed themselves to pursue the objectives on peaceful resolution of disputes and conflicts as stipulated in the Treaty. They have recognized that peace and security are the pre-requisites for their social-economic development.<sup>148</sup> The Treaty commits the partner states to promote peace and security and to promote cooperation in defence.<sup>149</sup> It further commits them to

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<sup>147</sup> Article 151,EAC Treaty

<sup>148</sup> Articles 123 &124, EAC Treaty

<sup>149</sup> Article 5(iii),EAC Treaty

promote close cooperation in socio-economic development and other varied areas to provide a framework for its implementation.<sup>150</sup> This aspect has enabled the EAC to develop a number of protocols, strategies and mechanisms all geared towards cooperation in foreign affairs, environmental issues, customs, economic issues and the use of shared resources such as the water ways and water towers and ecological systems.

### **3.6.2 East African Community Strategy for Regional Peace and Security**

The EAC's Strategy on Regional Peace and Security (SRPS) vision is 'A secure and peaceful environment for development' was developed in 2006 to provide a policy direction on peace and security. The strategy has fourteen goals formulated with a number of strategic objectives geared towards fulfilling its goals and responding to the ever evolving security needs and threats. Goals fourteen and fifteen focus on conflict management and resolution and conflict early warning systems respectively.<sup>151</sup> The SRPS is currently under review to include new threats and emerging crimes and to align it with the protocol on Peace and Security. The review also aims at incorporating and domiciling the prisons and correctional services, maritime security, genocide, peace support sector and money laundering into the peace and security strategy.<sup>152</sup>

### **3.6.3 Protocol on Foreign Policy Coordination**

In January, 1999 and prior to the signing of the Treaty in November of the same year, the partner states had signed a Memorandum of Understanding (MOU) on Foreign Policy Coordination. This underscored the importance they attached to their collective action especially in contemporary international relations and international system context. The MOU has since been

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<sup>150</sup> Articles 150, EAC Treaty

<sup>151</sup> EAC/GTZ SALW Project, 'Strategy for Regional Peace and Security' pp.1- 63

<sup>152</sup> EAC, Report of the Meeting of EAC Experts to Review the Regional Strategy on Peace and Security 6<sup>th</sup> -9<sup>th</sup> June 2012 held in Dar es Salaam Tanzania pp.

upgraded into a protocol to provide for a more binding framework in pursuit of the community's common foreign interests.<sup>153</sup> The protocol is premised on the communities' fundamental principles of 'peaceful co-existence and good neighbourliness 'and the peaceful settlement of disputes.<sup>154</sup> This is a departure from the traditional diplomacy of becoming 'the brother's keeper', and the theory that the security and stability of your neighbour is a guarantee of your own security and stability. Kenya and Burundi have already ratified the protocol and the other three countries are in various stages of their ratification process.

#### **3.6.4 Protocol on Cooperation in Defence**

The EAC cooperation in defence affairs predates the re establishment of the East African Community. The first MOU on Cooperation in Defence was signed on 30<sup>th</sup> April 1988 and the first Defence Liaison Officers (DLOs) from Kenya, Tanzania and Uganda were deployed to Arusha in 1999. The MOU was revised in 2001 and has since been upgraded into a protocol on Cooperation in Defence which member states were expected to have ratified by November 2012.

The Protocol on Cooperation in Defence recognizes the secondary role of the defence sector in support of the civil authorities in the areas of disaster management, disarmament, maritime security and surveillance, establishment of an EWS and combating terrorism and cattle rustling.<sup>155</sup> Kenya is in the process of ratifying the protocols in line with the new provisions of the Treaty making and Ratification Act.

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<sup>153</sup> EAC, 14<sup>th</sup> Council of Ministers, Decision No.22

<sup>154</sup> Article 6, EAC Treaty

<sup>155</sup> EAC, Report of the 4th Joint meeting of the Sectoral Councils on Cooperation in Defence, Intestate Security and Foreign Policy Coordination, 19<sup>th</sup> January, 2012, Arusha, Tanzania

### **3.6.5 Protocol on Peace and Security**

The Protocol on Peace and Security was signed during the EAC 's 14th Ordinary Meeting in Nairobi in November 2012 and subsequently signed by the 6<sup>th</sup> Joint Meeting of the Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination held on 12<sup>th</sup> January 2013 in Dar es salaam. The protocol operationalizes Articles 123, 124 and 125 on cooperation in political affairs, regional peace and security, and defence respectively.

Article 124 of the Treaty commits the partner states to foster and maintain an atmosphere conducive to peace and security through cooperation and consultations. This is to be achieved through prevention, better management, and resolution of disputes and conflicts within the Community. In particular, Article 124(5), reiterates the Community's objective to "... enhance the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities."<sup>156</sup>

#### **3.6.5.1 Conflict Prevention Management and Resolution (CPMR)**

The process of developing the CPMR begun in 2010. These was in pursuance to the SRPS and the draft protocol on peace and security.<sup>157</sup> The AU has been supporting the process through the AU Africa Peace Facility. The CPMR framework broadly provides for: conflict early warning, including establishment of a situation room: mediation and establishment of good offices; peace support operations (as elaborated in the protocol on cooperation in defence matters); demobilization, disarmament, resettlement, reconstruction and rehabilitation; post conflict

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<sup>156</sup> Article 124, Treaty for the establishment of the EAC

<sup>157</sup> EAC, Report of the meeting of the Partner States Experts on the Draft EAC Conflict Prevention, Management and Resolution Mechanism, February 19<sup>th</sup> -20<sup>th</sup> 2010, Kampala Uganda.

reconstruction and development; and the EAC peace fund.<sup>158</sup> This is expected to help in ensuring the sustainability of peace and harmonious co-existence in the region.

### **3.6.5.2 East African Community Early Warning Mechanism (EACWARN)**

The EACWARN mechanism has been developed in conformity with the SRPS and the Protocol on Peace and Security. The objective of the EACWARN is: ‘to facilitate the anticipation, preparedness and early response to prevent, contain and manage situations that are likely to affect peace and security in the region’<sup>159</sup>

Institutionally, EACWARN is modeled, adopted and customized version of the early warning methodology of the AU’S Continental Early Warning System (CEWS). The EACWARN is programmed to have a Regional Early Warning Centre (REWC) located in the EAC headquarters in Arusha and a National Early Warning Centers (NEWC) in each of the five partner’s states.

The EACWARN will monitor, analyze and develop tailored and timely responses and options on threats to peace and security in the region. It will be driven by data collection from open sources. It will monitor, conflict and cooperation analysis and the development of policy responses, options and formulations undertaken by analysts based at REWC in Arusha.<sup>160</sup>

### **3.6.5.3 Panel of Eminent Persons (PEP)**

The CPMR Mechanism and the draft Protocol on Good Governance will provide for the establishment of PEP with a mediation capacity for deployment when the need arises. This is in line with the requirement of the Continental Peace and Security Architecture to have similar

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<sup>158</sup> EAC, Draft Conflict Prevention Management and Resolution mechanism

<sup>159</sup> EAC, Draft EAC Early Warning Mechanism pp.1-5

<sup>160</sup> EAC, *Partner States Experts Meeting* (Draft Conflict Prevention and Management Resolution Meeting 19 – 20<sup>th</sup> February 2010, Kampala)



peace and security frameworks at the REC's level.<sup>161</sup> This enables the AU to have linkages with the sub-regions and vice versa. A draft modality for the establishment of the PEP as one of the operational modalities of the CPMR was approved in March 2012.<sup>162</sup> The PEP is expected to facilitate in conflict management in the region. The concept of PEP has been used in the DRC, Burundi and recently in Kenya when Kofi Annan brokered peace after the Post Election Violence (PEV) in Kenya.

### **3.7 Managing the Migingo Island dispute**

Territorial conflicts between Kenya and Uganda have been previously driven by political overtures. In 1976 Uganda claimed a part of Kenya which had been transferred from the then Lake Rudolf Province of Uganda in 1926 to the Kenya colony. In 2008 Uganda developed a dispute with Kenya over the ownership of Migingo. Since the dispute begun several bilateral meetings have been held at Heads of State, Ministerial and Senior official levels from March 2009 to June 2011 towards the peaceful settlement of the dispute.

#### **3.7.1 The Lusaka AU Summit**

The first attempt by Kenya and Uganda to settle the Migingo island conflict took place on 6<sup>th</sup> March 2009 on the sidelines of a Tripartite Summit of EAC, SADC, and COMESA talks in Lusaka. The meeting agreed on the withdraw of the Ugandan security forces from the island, sending an envoy to communicate Uganda's decision on the removal of Uganda's flag from Migingo. This was to be done within the framework of good neighbourliness as diplomatic efforts were being pursued to resolve the issue.

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<sup>161</sup> EAC, Report on the Establishment the EAC Panel of Eminent Persons, January, 2012, Arusha, Tanzania

<sup>162</sup> EAC, Report of *Partner States Experts Meeting* to Consider the Draft Roadmap for the Operationalization of the EAC Early Warning Mechanism, 29<sup>th</sup> – 20<sup>th</sup> March 2012, Entebbe, Uganda)

### **3.7.2 Kampala Bilateral Ministerial meeting**

The first bilateral meeting at Ministerial level was held in Kampala, Uganda on 13<sup>th</sup> March 2009. The meeting agreed on the primary reference documents to be used, the withdrawal of security forces from the island, a joint boundary survey, stoppage of harassment of fishermen and the enforcement of the Lake Victoria Fisheries Organization (LVFO) fishing regulations.

The agreed primary reference documents included the British Order in Council of 1926, schedules to the Kenyan Constitution of 1963 and the Ugandan Constitution of 1995. The joint boundary survey work was to be carried out and completed within two months by 13<sup>th</sup> May, 2009. It was agreed that the dispute settlement process was to be pursued within the framework of the EAC cooperation and the desired objective of regional integration.

The Ministers meeting was followed by a meeting of senior officials on 14<sup>th</sup> March 2009, to work out modalities on how to operationalize the Joint Communiqué issued by the Ministers. The senior officials agreed on a meeting of Surveyors, Chiefs of Procurement and Directors of Fisheries to discuss the details of a joint boundary survey.<sup>163</sup>

A meeting between the Chiefs of Police held on Friday 19<sup>th</sup> March 2009, agreed on modalities for the immediate withdrawal of security personnel from the Island. Subsequent meetings took place from the 20<sup>th</sup> and 21<sup>st</sup> March 2009 which established modalities and time frames for the survey exercise and its budgetary requirements.

Despite the series of meetings held in Kampala there were reports of continued harassment of fishermen and rising tensions on Migingo Island. As a result a joint Ministerial fact finding tour of Migingo was conducted on 27<sup>th</sup> March 2009 and both delegations re-iterated their commitment to the Kampala agreements. During this meeting Kenya demanded the immediate

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<sup>163</sup> GoK /GoU., Ministerial Bilateral Meeting of March 2009

removal of the Ugandan flag from the Island pending the determination of the ownership of the island. Uganda on her part pleaded for time to allow for further consultations before they could respond to Kenya's demand.

### **3.7.3 Kisumu Technical Officers' meeting**

In addition to the Head of State and the Ministerial meetings between the two states, two technical meetings were held separately for surveyors and the police. The Police Chiefs held their meeting in Kampala on 2<sup>nd</sup> April 2009 and agreed on the deployment of security personnel.<sup>164</sup> The surveyors meeting was held in Kisumu on 7<sup>th</sup> - 8<sup>th</sup> May 2009 and the meeting agreed on the surveying methodologies and modalities. Presently Kenya and Uganda are jointly policing the island.<sup>165</sup>

### **3.7.4 Bilateral Ministerial meeting on the survey of the Migingo Island**

This was the second bilateral ministerial meeting which was held on 11<sup>th</sup> May 2009. This was a follow up of the Kampala, Lusaka and Arusha meetings, the latter two meetings were held on the margins of a SADC and EAC Summit meetings respectively, held between the two Heads of State. The bilateral meeting was also used to launch the survey of the Kenya-Uganda border in Lake Victoria.

The meeting stated that the 'survey shall be guided by the following documents, 1926 Order in Council, 1963 Kenya Constitution, 1995 Uganda Constitution and any other relevant documents'. The joint survey team was to start its work immediately and was expected to be finished by 11<sup>th</sup> September 2012. The survey was to be in conformity with the AU and UN requirements that all countries execute their international boundary protocols and deposit them

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<sup>164</sup> Gok/GoU., Joint Chiefs of Police Report, held in Kampala on 2<sup>nd</sup> April, 2009

<sup>165</sup> GoK/GoU., Joint Technical Officers Report held in Kisumu on 7<sup>th</sup> 2009

with the AU by 2012. The survey work was to begin from the middle of the Sio River southwards following the description in the Order in Council. The joint survey team was further expected to determine which was Pyramid Island between the two islands next to Migingo Island. This was to be determined alongside the location of Migingo Island. The survey teams were expected to draw straight lines from Remba Island on the two islands and to report on the two dimensions of the survey. In the determination of the boundary at the tri-junction of Kenya, Uganda and Tanzania, the latter would be requested to join the survey team.

The survey team was 'expected to operate in the spirit of EAC cooperation and in case of disagreement an independent expert was to be contracted to assist'. Upon completion of the survey of the maritime boundary the team was to survey the rest of the unmarked boundary points up to with the tri-junction with South Sudan.<sup>166</sup>

### **3.7.5 Kenya –Uganda joint meeting on the resumption of the joint boundary survey**

The joint consultative meeting was held in Nairobi from the 25<sup>th</sup>-26<sup>th</sup> July 2011 as a follow up to discuss the resumption of the joint survey which had stalled. The bilateral negotiating team reiterated on, Resolution AHG/res.16 (1) on border disputes between African states, adopted by the first Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Cairo in 1964 and article 4(b) of the Constitutive Act of the AU on African states boundaries.

The negotiations also reiterated their commitment to the Kampala Communiqué of 13<sup>th</sup> March 2009, and the Nairobi Communiqué of 11<sup>th</sup> May 2009 and particularly on items five and six. Item five stated that the survey work was to begin from the middle of the Sio River southwards following the description in the Order in Council. The joint survey team was expected to determine which was Pyramid Island between the two islands next to Migingo. This was to be

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<sup>166</sup> GoK / GoU., Joint Communiqué, Bilateral Meeting on Migingo Island 11<sup>th</sup> May, 2009

determined alongside the location of Migingo Island. The survey teams were to draw straight lines from Remba Island on the two islands and to report on the two dimensions of the survey.<sup>167</sup>

The negotiations agreed on the submission of the survey work done by 9<sup>th</sup> July 2009 to be submitted within a fortnight there on. The teams agreed that the basis for defining the most westerly points of the Pyramid, I Lembe, Kirigit, Mageta islands, and the most southerly, westerly, and northerly points of Sumba island should be established. This would be guided by the AU's resolution AHG/res.16 (1) on border disputes between African states.

In addition the Kenya and Uganda were to proceed in identifying the islands and their physical features as described in the 1926 Order in Council. The survey work was to start and commence from the mouth of the Sio river and all points agreed upon be demarcated with visible marks. In pursuing their work the survey team was to record documents, sign them and present them to the Ministerial team. The survey work was expected to be completed by 26<sup>th</sup> October 2011, and a report presented to the bilateral ministerial committee.<sup>168</sup>

### **3.8 Challenges towards dispute settlement**

The joint survey commencement its work on 2<sup>nd</sup> of June 2009, but hit a deadlock as the Ugandan technical team withdrew from the survey exercise on 9<sup>th</sup> July 2009 barely one month after the survey started with the pretext that they needed to consult further. Some of the challenges that have emerged from the bilateral negotiations relate to interpretations of the Ministerial bilateral communiqués by the technical teams and technical disagreements relating to professional approaches to the survey works between the Kenya and Uganda teams.

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<sup>167</sup> GoK / GoU., Joint Communiqué, Bilateral Meeting on Migingo Island 26<sup>th</sup> July, 2011

<sup>168</sup> GoK / GoU., Ministerial Bilateral Meeting, July 2011

### 3.8.1 Interpretations of Ministerial Communiqué's

There has been some misunderstanding between the bilateral technical teams in the interpretation of some of the recommendations on some of the Bilateral Ministerial Communiqués.<sup>169</sup> In particular there were was a need to understand what were the recommendations of the Nairobi Ministerial Communiqué of 11<sup>th</sup> May, 2009. Some of the misunderstandings related to technical disagreements relating to what was the westernmost point of any of the islands and specifically on if it was where the water meets the land or if it is where the rock outcrop goes into a descent under the lakes waters. The technical team would also need to agree on where the boundary buoys would be constructed on the international boundary between the two states. Kenya for instance wanted to pursue the international norm of constructing floating buoys which was not acceptable to the Ugandan technical team.

The technical teams could not agree which between the two islands adjacent to Migingo was Pyramid Island, which was so named because it resembled a pyramid. However if the surveying of the islands was undertaken from a southerly direction as indicated by the communiqué it would result in a totally different island being described as Pyramid as the current maps were plotted based on a northerly direction survey. The survey in addition if undertaken in a southerly direction would split Pyramid Island into two equal halves, each half in the Kenyan and Ugandan territories.

The joint survey team was expected to establish the location of Migingo Island and it was expected to draw straight lines from Remba Island to the two islands and to report on the two dimensions of the survey.<sup>170</sup> The survey work was expected to begin from the middle of the Sio River southwards following the description in the Order in Council. It was not clear what was the

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<sup>170</sup> GoK /GoU., Ministerial Bilateral Meeting, July 2011,p.2

exact location of the middle of Sio river. This was due to different interpretation as the river had changed its course a number of times. The river itself constitutes one of the physical features of the international boundary between Kenya and Uganda. There were disagreements too; pertaining to the geological age of Migingo Island whereby Uganda claimed it was a recent phenomenon which had emerged due to the receding of lake.

The survey works involved the delineation of the maritime boundary between Kenya and Uganda by the technical teams whereby the participation of Tanzania would be required particularly at the tri junction of the three countries international boundary in Lake Victoria. The communiqué never identified who between Kenya and Uganda would be responsible for inviting Tanzania to participate in the survey.

### **3.9 Conclusions**

The lessons from ECOWAS and SADC indicates that there is a need for regional organizations to be prepared to deal with conflict as the UN on its own is not able to resolve all the international conflicts/disputes in their region. The REC's will need to institutionalize mechanisms for conflict management and resolution.<sup>171</sup> The inter-linkages between the AU and its sub-regions will therefore enhance the process further.

The EAC partner states have experienced internal as well as external conflicts spilling over from neighbouring countries. The prevailing conflict prevention, management and resolution in EAC have lacked a formal mechanism to address the emerging dispute and have relied on reactionary approach more geared to post-conflict management and not focusing on prevention.

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48. Johnson.A.E.'Regional conflict resolution mechanisms: A comparative analysis of two African Security Complexes.' *African Journal of Political Science and International Relations*, Vol.3,.10.,(Oct,2009)pp.409-422

Diplomacy is the best option for the two parties in resolving their conflict. Kenya benefits from Uganda in terms of trade and commerce, transportation, educational and employment opportunities. Both Kenya and Uganda collaborate in global and regional security and political issues. Presently both are in AMISOM, the African Mission in Somalia. These arrangements are in conformity to the liberal institutionalism theory which emphasizes that states are more likely to cooperate and sort their differences amicably without resorting to force if they are in a cooperative engagement.



## **CHAPTER FOUR**

### **An analysis of the East African Community and the settlement of the Migingo Island dispute**

#### **4.0 Introduction**

This chapter focuses on the topic of the study which is the EAC and the settlement of disputes: A case study of Migingo Island. The chapter undertakes an analysis of the case study and makes conclusions based on the findings. The objectives of the study were: a) To analyze and synthesize the dispute and identify the various actors and their roles towards its peaceful settlement; b) To establish the EAC's mandate and function in dispute settlement; and c) To evaluate the EAC's dispute settlement framework.

The study was conducted using a sample size of twenty (20) respondents drawn from the partner states and the EAC secretariat (Table: 4.1). The data was collected through structured interviews, face to face interviews, organizational reports and conference proceedings. The respondents consisted of officials from partner states involved in peace and security affairs.

The case study is approached in a structured manner and is based on six themes covered under the following descriptions: a) The causes of Migingo Island dispute, actors in the dispute and how they are affected; b) The dispute settlement framework /mechanisms used by Kenya and Uganda and their impact towards the dispute; c) Bilateral and multi lateral steps undertaken towards the dispute settlement; d) The dispute modes application on Migingo Island dispute; e) The mandate of EAC on dispute settlements ,its dispute settlement modes and their application and their potential use on the Migingo Island dispute: and f) Recommendations thereof.

The data has been analyzed based on the six stated themes and synthesized by comparing the case study findings with information gathered in the literature review in the previous chapters.

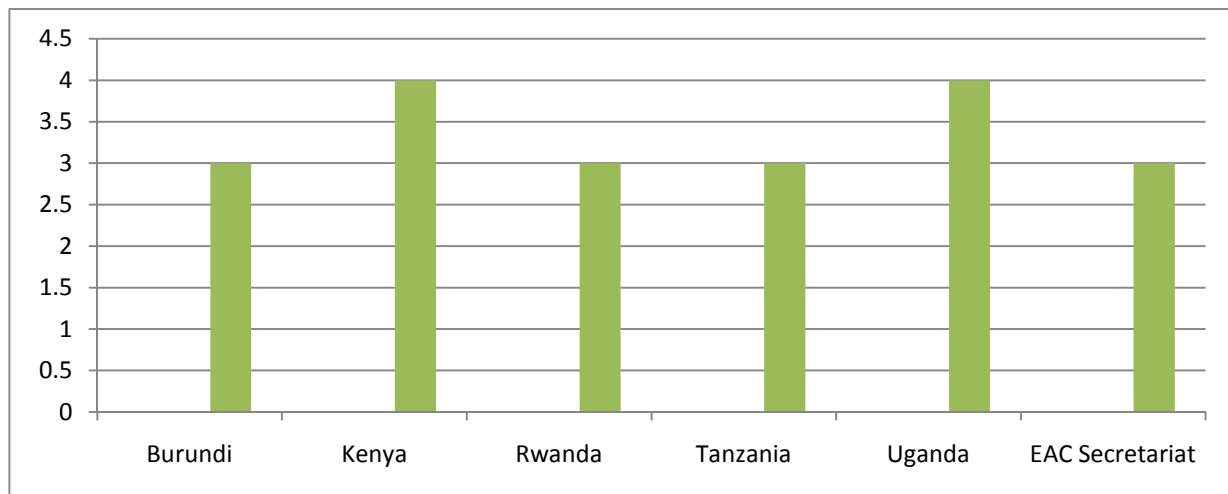
**Table: 4.1: Respondents in the Study**

<b>Partner State/EAC secretariat</b>	Burundi	Kenya	Rwanda	Uganda	Tanzania	EAC Secretariat
<b>No. of respondents</b>	3	4	3	4	3	3

Source: Author (2013)

The twenty interviewees were drawn from the partner states Ministries of Defence, Internal Security, Foreign Affairs, East African Community and the EAC’s secretariat. The interviewees are on a day to day basis involved in implementation of peace and security programmes in their countries. The interviews from the EAC Secretariat were responsible for implementation of programmes in the peace and security sector. The respondents from Burundi, and Rwanda appeared not well acquainted with the dispute as the Kenyans, Ugandans and Tanzanian and the EAC officials were. This to some extent gave credence to the fact that the dispute has been treated as a bilateral issue between Kenya and Uganda. The respondents drawn from the EAC and the partner states are graphically presented (figure4:1)

**Figure 4.1: The interviewees in the study**



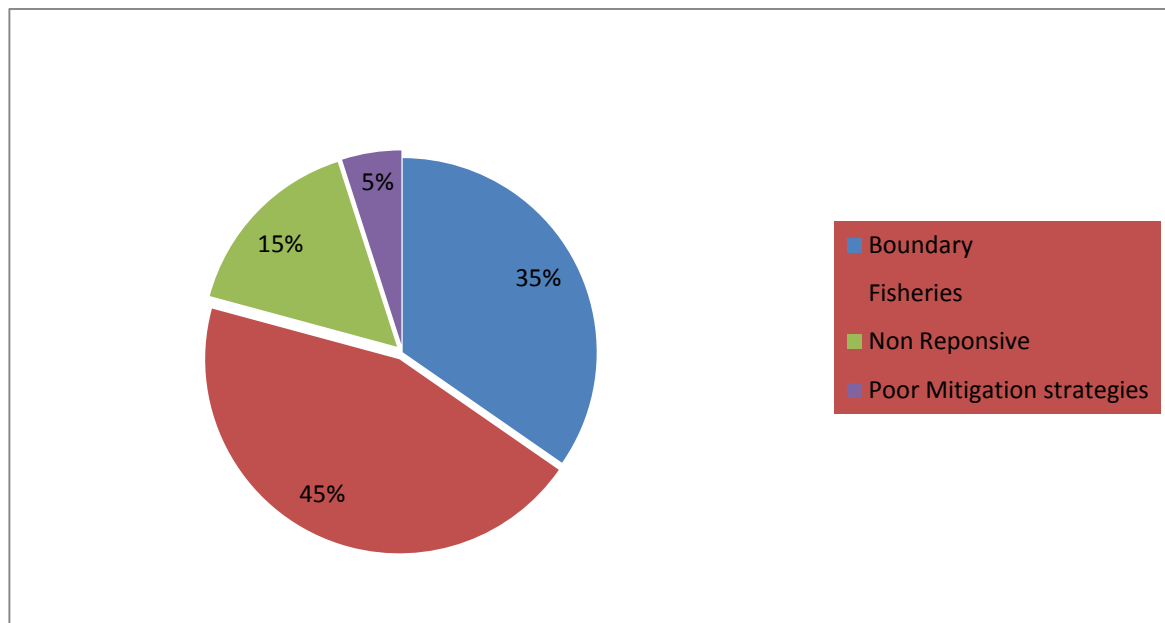
Source: Author (2013)

The dispute between the two states which began in 2008 has not been presented to EAC Council of Minister's for discussion and mediation and nor has it been declared as a dispute at the International Court of Justice.

#### **4.1 The causes of Migingo Island dispute**

The first theme of the study focuses on the causes of the dispute and the actors involved. All the twenty respondents were asked to identify the causes of the dispute, 9(45%) of the respondents identified fishing rights as the main cause, 7(35%) identified it as a boundary dispute, while, 3(15%) of the respondents attributed the dispute to political posturing, 1(5%) respondent attributed the dispute to lack of dispute settlement strategies between the two countries (figure 4.2).

**Figure 4.2: Causes of the dispute**



Source: Author (2013)

According to the data analyzed, Migingo Island dispute is primarily about fisheries on the international boundary between Kenya and Uganda as indicated by (45%) and (35%) of the respondents respectively. The island provides ideal fish landing point unlike Ugingo and Pyramid Island which are inaccessible due to their steep gradients.<sup>172</sup> The Migingo Island dispute is in conformity to Wanyama's definition of dispute 'the contentions or disagreements that arise between interested parties in a given issue or activity'.<sup>173</sup> The dispute is about fisheries on the international maritime boundary of the two states.

The concept of dispute is related to that of conflict. Mitchell's defines conflict 'as a situation whereby two or more parties have incompatible goals'.<sup>174</sup> The incompatibility of goals

<sup>172</sup>Interview with, Busena A., Senior Deputy Secretary, Chairperson of the Task Force on International boundary, Office of the President, Provincial Administration and Internal Security, Kenya, Bujumbura, August, 2012

<sup>173</sup> Wanyama F.O. Role of the Presidency in African Conflicts' Okoth P.G. and Ogot B.A. (1<sup>st</sup> ed.) *Conflict in Contemporary Africa* (Nairobi: Jomo Kenyatta Foundation, 2000) p.18

<sup>174</sup>Mitchell C.R. *The structure of international Conflict* (London: Macmillan, 1998) p.3

case may relate to the location of the fisheries which is on the international boundary and the idealness of Migingo Island and for fish landing. At the core of the problem is the resource dispute relating to fisheries which fishermen from the countries are competing for. The incompatibilities and disagreements between Kenya and Uganda on Migingo Island are therefore of a resource and transboundary nature.<sup>175</sup> The Uganda government has on several occasions admitted that the island belongs to Kenya while maintaining that the water around it belongs to Uganda.<sup>176</sup> These kinds of statement coming from Ugandan government sources are very ‘telling’ on the islands ownership. It has a bearing on the disagreement on what constitutes the westernmost point of any of the islands.

#### **4.1.1 The actors in the dispute**

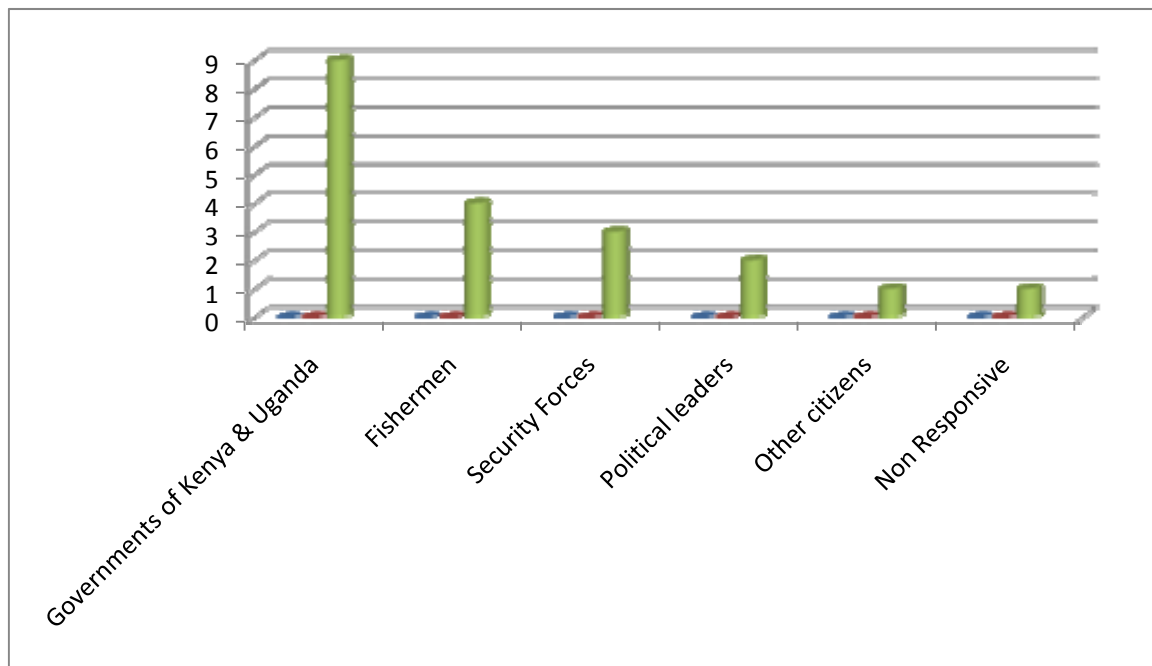
The identification and role of the actors in a dispute is central to the settlement of disputes. There was a need to identify who these actors were and what was their interest in the dispute. Twenty (20) of the interviewees responded to the issue. 9 (45%) of them identified the governments of Kenya and Uganda, 4 (20%), other respondents identified fishermen, while three (3) representing 15% of the respondents identified security agencies as one category of actors, while two (2) of the respondents consisting 10% identified leaders, while one (1) respondent representing 5% of the respondent identified the local population and a further, one (1) representing 5% of the interviews did not respond to the question (figure 4.3).

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<sup>175</sup> Interview with Niyonzima S. Assistant Commissioner, Legal and Judicial, Ministry East African Community Affairs, Uganda, Arusha, September, 2013

<sup>176</sup> Otieno E., ‘Ugandan police raid chief’s camp’ *Daily Nation*, (Nairobi), 6<sup>th</sup> August 2012

**Figure 4.3: Key Actors in the Migingo Island dispute**



Source: Author (2013)

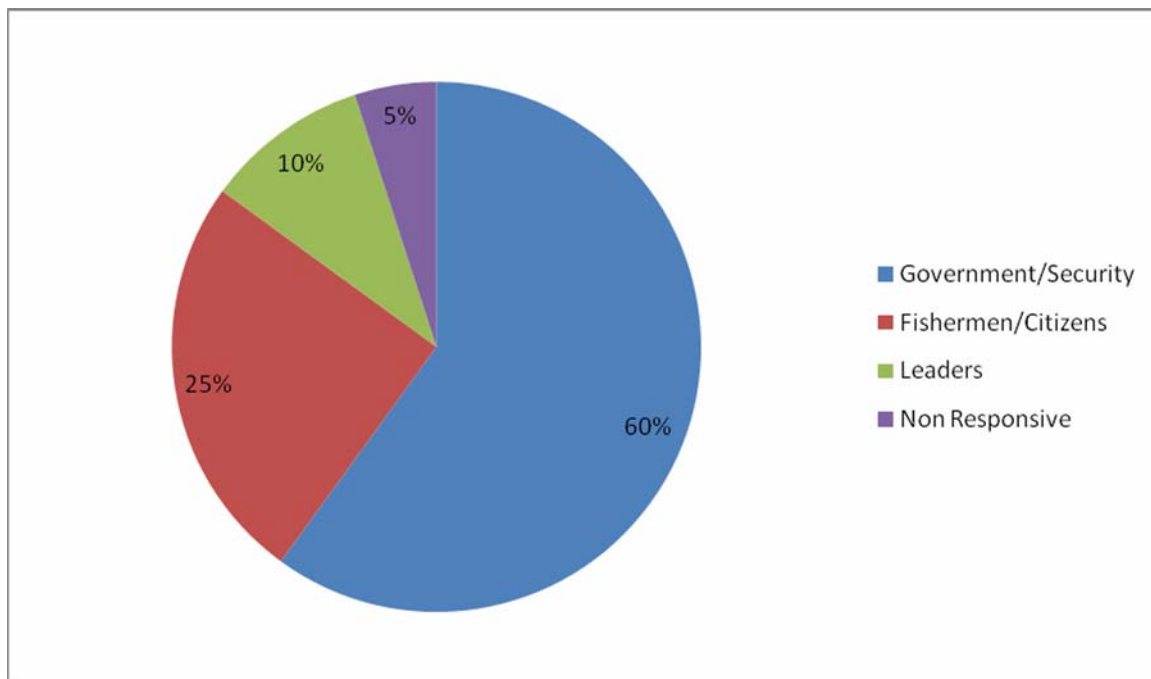
It is evident from the data that there are two primary actors in the dispute, the republics of Kenya and Uganda represented by 45% of the respondents and the fishermen by 20% who are aligned to their respective states. The governments of Kenya and Uganda primary concern is territory. The fishermen’s concern is the fisheries as its their main source of income.<sup>177</sup> The security agencies constitute (15%) and the local leaders and the other citizens constituting (5%) are the secondary actors in the dispute.

By aggregating the various actors one gets a comprehensive picture of the actors (figure 4.4).The security agencies (15%) constitute part of governments and could be clustered with the states [governments] category (45%) which increases the tally of that category of actors to

<sup>177</sup> Interview with, Nzisabira P., Advisor to the Minister, Ministry of National Defence, Burundi, Arusha, September, 2012

twelve (12) respondents representing 60% of the total respondents. The citizens when grouped together with the fishermen increased the tally in this category from four (4) to five (5) respondents constituting 25% of the sample population. It is imperative to note that the percentage increase to 60% for governments and 25% for the fishermen is as a result of combining the actors. This reaffirms that the two states are the key actors in the dispute. The dispute is however being played out by the Kenyan fishermen and the Ugandan security forces who constitute 25%.

**Figure 4.4: Combined Actors**



Source: Author (2013)

The primary actors in the dispute are the governments of Kenya and Uganda.<sup>178</sup> The fishermen have a stake in the amicable settlement of the dispute. It is evident note that the security agencies particularly from Uganda have played are a big role in fanning the dispute.<sup>179</sup>

<sup>178</sup> Interview with, Kayijuka F., Counselor, Rwanda High Commissioner Dar es salaam, Arusha, September, 2012

<sup>179</sup> Otieno E., 'Ugandan police raid chief's camp' *Daily Nation*, (Nairobi), 6<sup>th</sup> August 2012, p16

The security [Ugandan] actor's involvement in the control of the fisheries grounds in and around Migingo Island is the basis of the authority they wield. The same cannot be said of the Kenyan security forces that only came into the picture long after the negotiations had started. This explains why the Ugandan security forces have been resisting the entry of the Kenyan security forces despite a joint ministerial bilateral communiqué having authorized their entry and the joint patrol of the island.

Alexander Wendt has pointed out that states are the main actors in world politics and their actions are not necessarily influenced by anarchy but on how cooperative efforts and practices have evolved between them.<sup>180</sup> Mwangiri postulates that there are various complexities involved in a dispute and there are issues that are interwoven that need to be dealt with in order to settle the dispute.<sup>181</sup> In the dispute the security agencies are embedded into the government as one of the actors and the local population is interwoven in the fishermen category. This is in agreement with Mwangiri's recognition of the complex nature of disputes when he notes that conflicts and disputes are complex and the actors involved, are many and inter linked because of their varied interests. Understanding the role of actors and their interests in a dispute and the complexities in it helps in the disputes settlement. It appears therefore that the negotiations may require both track one and two diplomacy towards its settlement although the overall magnitude and number of people affected may dictate differently.

#### **4.1.2 The disputes impact on the actors**

In identifying who the actors were, the respondents were required to establish what the actors stood to lose from the dispute. 65% (13 ) of the respondents described their loss as economic. 15 % (3) of the respondents indicated it was not politically expedient for Kenya and Uganda to be

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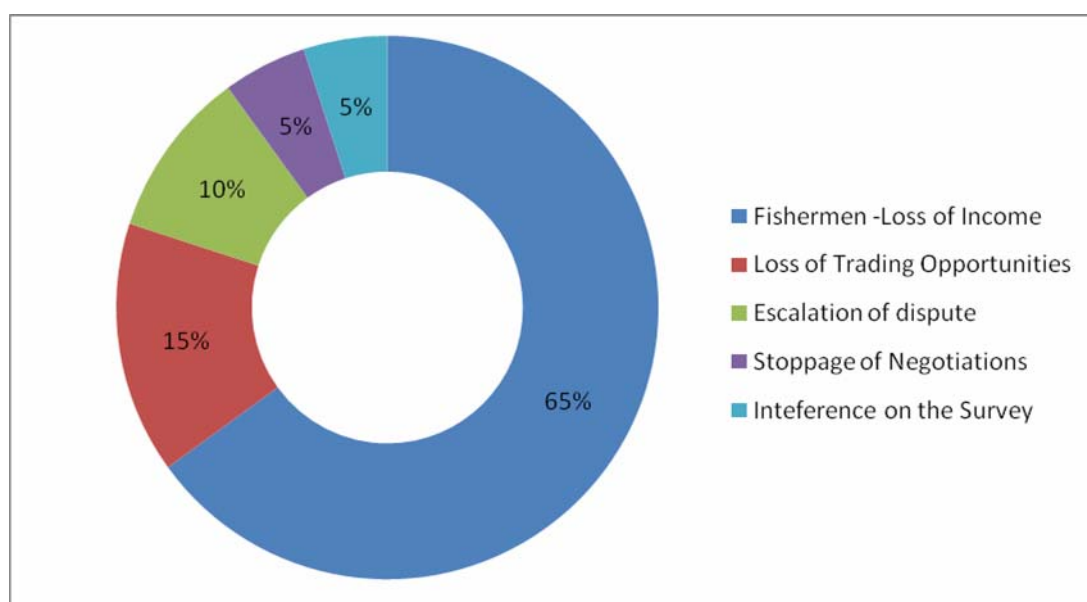
<sup>180</sup> Wanyama, F.O., Ibid., pp.43 - 45

<sup>181</sup> Mwangiri M., *Conflict in Africa* (Nairobi: Center for Conflict Research, 2006) p.96



involved in a dispute being major trading partners.10% (2) of the respondents expressed concern on the possibility that the dispute would escalate further.5%(1)respondent indicated there was a need for negotiations to continue while another 5% (1) respondent emphasized urgency towards the completion of the surveying exercise (Figure 4.5).The liberal institutional theorists have postulated that states that trade together are least likely to go war as they have opportunities for settling their dispute in a peaceful manner<sup>182</sup>.

**Figure 4.5: The impact of the dispute on the actors**



Source: Author (2013)

The Migingo Island dispute is about resources [fish] and is therefore a dispute about interests. Mwangiri states that conflicts unlike disputes are about values, which are at the heart of the people's survival. Disputes unlike conflicts are about interests and are bargain able. They are amenable to dispute settlement modes and can be negotiated.<sup>183</sup>The Migingo Island is a dispute about interests, which have brought about the disagreements and therefore negotiable. The UN

<sup>182</sup> Steven L.L. Contemporary Mainstream Approaches:Neo –realism and Neo –Liberalism ,John B. et al,*The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press)2008 p.131

<sup>183</sup> Mwangiri *Diplomacy: Documents, Methods and Practice* (Nairobi: Institute of Diplomacy and International Studies,2004)p.118

recognizes that disagreements between states may occur and specifies methods of their peaceful settlement. The UN expressly forbids the use of force or the threat to use it in conducting relations between states. Its Charter identifies methods of peaceful settlement as, negotiations, enquiry, mediation, arbitration conciliation, judicial settlement, resorting to regional agencies or arrangements, or any other peaceful means.<sup>184</sup>

#### **4.1.3 The actor's interests in the dispute**

The study inquired on the actors interests in the dispute,70%(14) of the respondents indicated that fisheries was their main interest , 25%(5) of the respondents indicated state sovereignty [territory] as the main interest for both states, 5% (1) respondent was unresponsive (figure 4.6).

Also, 70% indicated that fisheries were their main interest as it was the fishermen's main source of income. A further 25% of the respondents confirmed that the dispute was about resources as opposed to territory. The dispute is about Kenyan fishermen straying into Ugandan waters on fishing excursions and not about territory [*Migingo Island*].<sup>185</sup>The notion of actors and interests in a dispute has been aptly captured by Mwangi who, explains that disputes are complex and the actors involved, are many and inter linked and each one of them having different interests<sup>186</sup>.

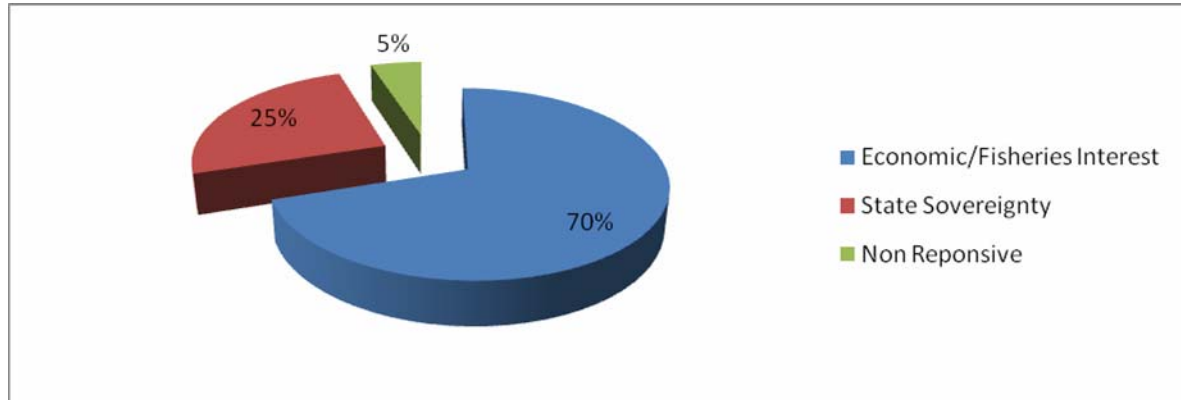
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<sup>184</sup> Article 2 (4), UN Charter

<sup>185</sup> Interview with, Allan Githaiga, Legal officer ,Ministry of East African Community, Kenya, Nairobi,October,2012

<sup>186</sup> Mwangi M.,*Conflict in Africa* (Nairobi: Center for Conflict Research ,2006)p.96

**Figure 4.6 Actors and their Interests**



Source: Author (2013)

#### **4.2 Kenya and Uganda's approach to the dispute settlement**

The second theme related to the disputes settlement modes adopted by Kenya and Uganda and their impact on the settlement of the dispute. The interviewees were required to identify the dispute settlement modes that Kenya and Uganda were using.<sup>10</sup> (50%) of the respondents indicated that diplomacy was the best way of settling the dispute, 4 (20%) indicated that there was a need to survey the boundary, 6(30%) respondents were non responsive. It is evident from the data analyzed that 50 % of the respondents advocated for diplomatic negotiation and 30% of the respondents advocated for the continued joint surveying of the boundary. The approaches which have been identified hinge on diplomatic means which sought a negotiated process. Negotiations are a means of peaceful settlement of disputes which is in conformity with Mwangiri's emphasis on preventive diplomacy in settling disputes.<sup>187</sup>The survey works as advocated by 30% of the respondents can be undertaken only with mutual understanding agreed upon by both parties.

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<sup>187</sup> Mwangiri M., Ibid.,p.11

Preventive diplomacy is based on the notion that preventive strategies, frameworks and mechanisms can effectively forestall dispute from escalating if applied early enough.<sup>188</sup>

Preventive diplomacy is important and plays a key role in the settlement of the dispute.

According to Immanuel Kant, peace and cooperation is possible among states. Kant asserts that democracies that trade and promote trade amongst them do not fight each other. Uganda is Kenya's largest trading partner and it relies on the Kenyan harbour for its imports and exports.<sup>189</sup> It would therefore not be ideal to go to war or have a protracted dispute between major trading partners and the option of diplomacy would be the most ideal solution.<sup>190</sup> Kant has also emphasized on the importance of adherence to rules and regulations which are a cardinal rule for any cooperative effort.<sup>191</sup> The cooperative efforts in IGO's give them the propensity to settle disputes between them. The diplomatic negotiations initiated between Kenya and Uganda the two states stopped the dispute from escalating and allowed for the joint surveying of their international boundary. In one of the bilateral meetings the involvement of third parties was recommended in case the two parties failed to agree. This was in harmony with Kornprobst who emphasized on the need for prompt action in the settlement of disputes through mediation.<sup>192</sup>

#### **4.2.1 The impact of the interventions on the dispute**

The respondents interviewed were required to explain the impact of the dispute settlement mechanism that Kenya and Uganda were applying on the dispute, 11(60%) indicated that the

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<sup>188</sup> Interview with, Mbundi Stephen., Assistant Director, Ministry of East African Cooperation, Tanzania, Arusha, September, 2012

<sup>189</sup> Interview with, Magambo Tom, Policy Analyst, Office of the President, Uganda, Arusha, Septmeber 2012

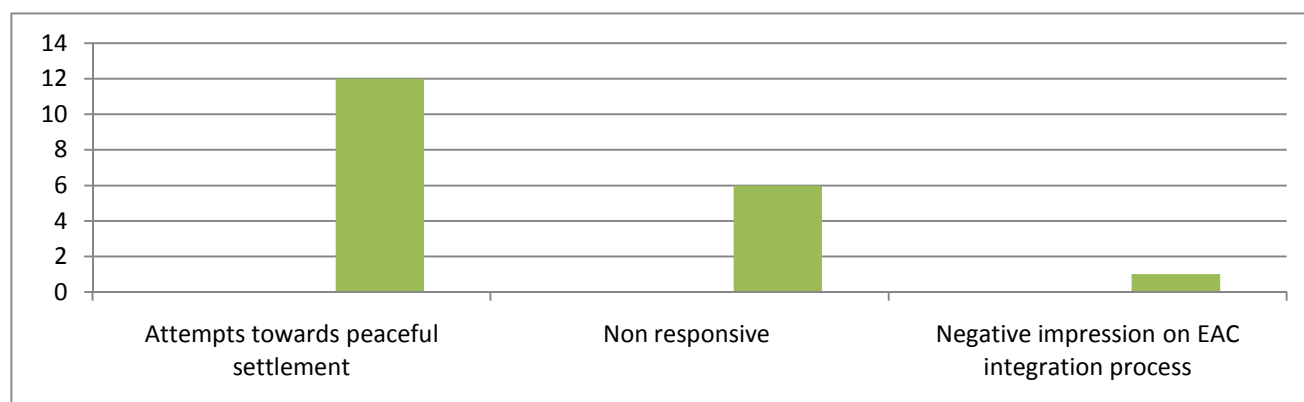
<sup>190</sup> Interview with Serwadda L, Commissioner, Social Affairs. Ministry of East African Community Affairs, Uganda, Kampala, September, 2012

<sup>191</sup> Kant I., *Perpetual Peace*. Edited by Lewis White Beck. Bobbs -Merril, 1957 (1795). Russet, Bruce, and John O'Neal. *Triangulating Peace: Democracy, Interdependance, and International Organization*. Norton, 2000 Cited in Goldstein J.S and Pevehouse J.C. *International Relations Longman* (New York: Longman, 2010), p.85

<sup>192</sup> Kornprobst M., 'The management of Border Disputes In African Regional – Sub Systems: Comparing West African and the Horn of Africa' *The journal of Modern African Studies*, Vo.30, No.3. (Sept., 2002) p.27

bilateral negotiations helped in reducing tension between them. The negotiations facilitated in the initiation of the joint technical survey to delineate and mark the boundary. (5%) of the respondents indicated that the dispute had created suspicion on both states commitment to the EAC integration process.<sup>6</sup> (30%) other respondents were non responsive to the question (figure 4.7). It is therefore evident that an environment for peaceful settlement of the dispute had been created as evidenced by 60% of the respondents by the negotiation process. The diplomatic initiatives brought the two parties to the negotiation table eased the tension between the two states. One respondent indicated that the dispute could have negative implications on the EAC integration where they play a key role in the bloc.<sup>193</sup> The high number of non responsiveness at 3% is explained as lack of awareness on the achievements of the negotiation process by the respondents.

**Figure 4.7: Effects of the dispute settlement process**



Source: Author (2013)

### **4.3 Bilateral and Multi lateral interventions undertaken towards the dispute settlement**

The third theme related to the role played by the bilateral and multi lateral interventions towards the settlement of the dispute. The respondents were required to identify the bilateral and multi

<sup>193</sup> Interview with, Kiriba K., Director Political, Defence and Legal Affairs, Ministry of East African Community Affairs, Tanzania, Arusha, October, 2012

lateral steps that had been undertaken towards the settlement of the dispute.<sup>19</sup> (95%) indicated that they were not aware of bilateral and multi lateral interventions which had been undertaken towards the settlement of the dispute. 1(5%) respondent did not answer the question.

The bilaterally diplomatic negotiations undertaken had culminated in a number of ministerial and technical meetings being that had been held between the officials of the two countries. The negotiations helped to calm down the tense situation and led to the constitution of a technical survey team to survey the two countries international boundary which started and later stalled.<sup>194</sup> Multi laterally not much has taken place other than the two side summit meetings held during the AU meeting in Lusaka and the EAC meeting in Arusha both in 2009.<sup>195</sup> It is therefore evident that there were negligible multi lateral attempts towards the settlement of the dispute. Bilaterally there were a series of diplomatic initiatives. The EAC emphasizes on the promotion of peace, security and good neighbourliness between partner States.<sup>196</sup> The EACJ provisions in the treaty empower any partner state or the SG to refer issues with a bearing to the treaty to it.<sup>197</sup> These provisions provided an opportunity for Kenya and Uganda to lodge their dispute with the EAC.<sup>198</sup> Neither of the two states has referred the dispute anywhere for arbitration.

#### **4.4 East African Community mandate on dispute settlement**

The fourth theme of the study related to the mandate of the EAC on dispute mandate and its application in the bloc. The respondents were required to answer the question if the EAC has a mandate for dispute settlement in the REC. 15 (75%) of the respondents indicated that the EAC

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<sup>194</sup> Interview with, Lorna Serwadda, Commissioner, Ministry of East African Community Affairs, Uganda, September 2012

<sup>195</sup> Interview with Leonard Onyonyi, Peace and Security Expert, East African Community Secretariat, October, Arusha, 2012

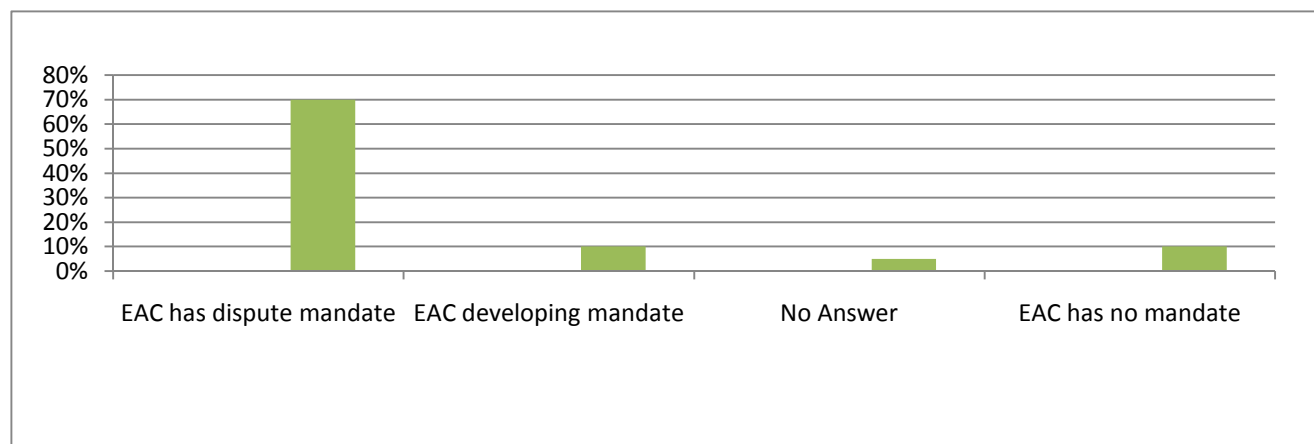
<sup>196</sup> Article 5, EAC Treaty

<sup>197</sup> Article 28-29, EAC Treaty

<sup>198</sup> Articles 5(3)f, 6(b),(c),(f)

has a mandate on dispute settlement.<sup>2</sup>(10%) indicated that currently the EAC did not have such a mandate but was working towards formulating a dispute settlement framework.<sup>2</sup> (10%) respondents were categorical that the EAC did not have a dispute settlement framework in place and 1(5%) respondent did not answer the question (figure4.8)

**Figure 4.8: The EAC mandate on dispute settlement**



Source: Author (2013)

It is evident from the data analyzed that a majority (75%) of the respondents were certain that the EAC had a mandate on dispute settlement. The Treaty for the establishment of the EAC stipulates on sovereign equality of its members, peaceful –coexistence and good neighbourliness and the peaceful settlement of disputes.<sup>199</sup>The EAC between 2006 and February 2013 had been developing a framework for dispute settlement.<sup>200</sup> The framework included the SRPS, the CPMR, and protocols on foreign policy coordination, cooperation in defence and peace and security and the EWS among other instruments.<sup>201</sup>This is indicative of the bloc’s capacity to engage in the settlement of disputes.

<sup>199</sup> Article 6 (a),(b),(c),EAC Treaty

<sup>200</sup> Interview with, Masabo S.,Security Adviser, Ministry of the President and Security, Burundi, Arusha,September,2012

<sup>201</sup> Interview with Biharamiriza B, Conflict Early Warning Expert, East African Community, Arusha, October, 2012

Radtke points out that the WTO, the main actor regulating trade regimes on world trade introduced a compulsory dispute resolution mechanism through which political mediation could be achieved amongst its membership.<sup>202</sup> This was dictated by the need for regulations to settle current and potential disputes between its members and to ensure that the disputes did not necessarily disrupt world trade. It is evident that the EAC has a mandate on dispute settlement which it has been strengthening. This was confirmed by 75% of the respondents who affirmed that the EAC's has a mandate on peaceful settlement of disputes. Additionally 10% of the respondents indicated that the EAC was developing a dispute settlement framework. The aggregation of the first two tallies of 75% and 10% making a tally of 85% is an affirmation on the existence of a dispute settlement framework within the EAC.

The willingness of states to co-exist peacefully is emphasized by Goldstein a liberal theorist who advanced the preposition that states despite being independent; are willing to come together in a cooperative endeavour. He emphasized the concept of reciprocity and the need to have rules and regulations in place to guide states interactions for the benefit of their members.<sup>203</sup> This principle is line with the liberal institutionalism approach where IGO's formulate rules and regulations to govern its members in their agreed areas of cooperation. The EAC is not an exception has progressively introduced rules and regulations to regulate its members in areas of agreed cooperation.<sup>204</sup> The existence of rules in itself does not eliminate disputes but provides a platform for their settlement.

Tim recognizes that peace cannot be left alone to the warring states and emphasizes on the role played by IGO's and quotes USA president, Woodrow Wilson who stated that, 'peace

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<sup>202</sup>Radtke K.W., et al. *Competing` for Integration, Japan, Europe, Latin America, and Their Strategic Partners*. (New York: East Gate publication, 2002) p.6

<sup>203</sup> Goldstein J.S., Pevenhouse J.C., *International Relations*, 9<sup>th</sup> ed. Longman: 2010 p.86

<sup>204</sup> Article 54, EAC, Protocol on the Establishment of the EAC Common Market



could only be secured with the creation of an international organization to regulate international anarchy',<sup>205</sup>The UN recognizes that disagreements between states may occur and to specify methods of peaceful settlement of disputes, and expressly forbids the use of force or the threat of the use of force in conducting relations between states.<sup>206</sup>

#### **4.5 East African Community dispute settlement modes**

The fifth theme of the study relates to the EAC dispute settlement modes. The respondents were required to explain and elaborate on the dispute settlement modes which they had identified in the EAC. 8 (40%) of the respondents identified diplomacy. 7 (35%) identified CPMR and the protocol on peace and security, 1 (5%) of the respondent indicated that there was no mechanism in place for dispute settlement. 4 (20%) respondents did not respond to the question.

The diplomatic means referred to by 30% of the respondents were identified as negotiations, mediation, legal settlement through the EACJ and bilateral cooperation through JBC. The instruments under reference by 35% were developed by the EAC and included the CPMR mechanisms, protocols on protocol on foreign policy coordination, cooperation in defence and peace and security (figure 4.9).<sup>207</sup>The EAC has an established dispute settlement framework which is further being enhanced through the development of various mechanism..

The experience of ECOWAS intervention in West African has shown that what is needed is goodwill of member states towards conflict management. Sesay has brought out the ECOWAS experience intervention in Liberia and Sierra Leone despite it not having a comprehensive

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<sup>205</sup> Tim.D., Liberalism (4ed.) John B. et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press) 2008 p.113

<sup>206</sup> Article 2 (4), UN Charter

<sup>207</sup> Interview with, Magotsi D., Under Secretary, National Secretariat on Peace Building & Conflict Management, Ministry of State for Provisional Administration and Internal Security, Office of the President, Nairobi, October, 2012

dispute settlement framework.<sup>208</sup> The EAC unlike ECOWAS had a comparative advantage as article 6 (b) of its treaty recognized the issue of peaceful settlement of disputes through peaceful co-existence and good neighbourliness.

#### **4.5.1 General application of the East African Community dispute settlement modes**

The respondents were required to cite instances where the EAC had used its dispute settlement modes.9 (45%) of the respondents indicated that the EAC had not utilized any of its dispute settlement mode in the dispute.5 (25%,) of the respondents cited instances where EAC dispute settlement approaches had been used, while 6(30%) of the interviewees did not respond to the question. The dispute settlement interventions identified (25%) included the JBC's, surveillance and border Committees which were more of a bilateral nature between Kenya and Uganda.

The dispute mode of marking and destroying of illegal weapons under the SALW was linked to the EAC as it has a programme running in the partner states. The presence of Burundi, Kenya and Uganda in Somalia who are EAC members had been construed as an EAC mission while in reality it was an AU mission. The EAC has had opportunities for dispute settlement and has pursued peaceful settlement of disputes directly and indirectly in the region<sup>209</sup>. The EACJ has been very instrumental in settling disputes and its decisions have been complied by the partner states. The EALA on its part has established a parliamentary committee on conflict resolution and management that conducts fact finding missions on peace and security in the partner states and makes recommendations and on how to address the conflict.<sup>210</sup>.

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<sup>208</sup> Sesay A. and Kennedy E.C. *Regional Integration in West Africa: Selected experiences from the past and lessons from the EU for ECOWAS* ( Paper presented at the EAC Seminar on Dialogue on Regional Integration in East Africa, 19<sup>th</sup> – 20<sup>th</sup> March 2001 at Arusha) pp.21,236

<sup>209</sup> Article 5(3)f,6 EAC Treaty

<sup>210</sup> Interview with, Masara Y., Principal State Counsel, Attorney Generals Office, Tanzania, September, 2012

Some instances were cited where the EAC played some marginal and key roles. These include when in 2010 the EAC prevailed on the Burundi opposition which had called for a boycott of elections after the former rebel leader Agatha Rwasa lost and went into hiding after the preliminary commune elections, alleging political repression. The PEV in Kenya in 2008 provided for an indirect involvement by the individual EAC partner towards the promotion of a peaceful settlement of the dispute.<sup>211</sup>

Since its inception in 2000 the EAC has formulated various protocols and mechanisms in its various areas of cooperation. In the peace and security sector, protocols in foreign policy coordination, cooperation in defence and peace and security have been concluded. Kenya and Burundi are the only two partner who have ratified the protocol on foreign policy coordination. The EAC has completed and finalized mechanisms such as the EACCPMR, EACEWS. The PEP and the PF are in their final stages of conclusion. These interventions cited are indicative of the efforts that the EAC has undertaken towards establishing a dispute settlement framework for its members. The strategy on regional peace and security formulated in 2006 provides the operational implementation plan of the peace and security sector.<sup>212</sup> The EAC therefore has a dispute settlement mandate provided for in the treaty and which it can use in the peaceful settlement of disputes supported by the mechanisms it has developed.

None of the respondents were however able to link any EAC dispute settlement process to the Milingo Island dispute. All the negotiations that had been undertaken have been of a bilateral nature between Kenya and Uganda. The two states have however recognized the need for the involvement of a third party in case of disagreements or a deadlock in their bilateral talks.

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<sup>211</sup> Interview with, Okidi S., Principal Information Officer, Ministry of EAC, Kenya, Nairobi, October, 2012

<sup>212</sup> EAC, Strategy for regional peace and security pp.52 -64

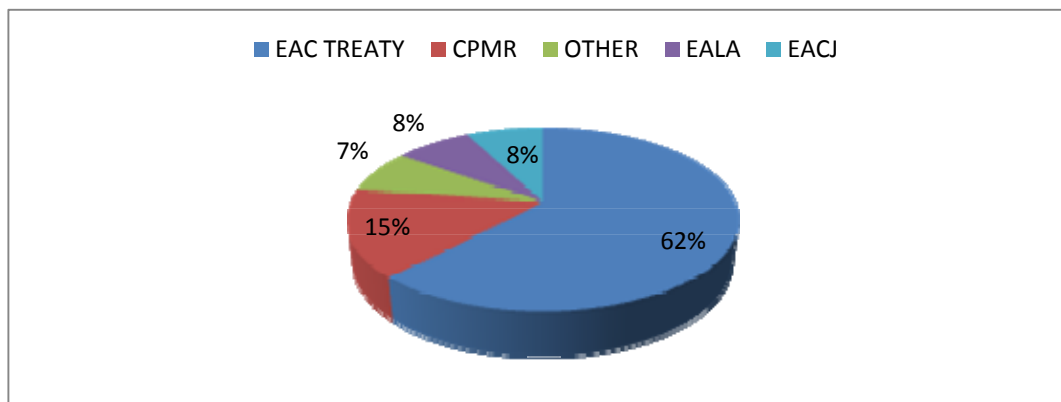
The involvement of Tanzania was deemed to be appropriate when the survey reached her tri-junction on her international boundary with Kenya and Uganda.

#### 4.5.2 Application of East African Community dispute settlement modes on Migingo

##### Island dispute

The fifth theme of the study further sought the identification of dispute settlement modes that could be applied on the Migingo Island dispute. 12(62%) respondents identified the treaty, 3(15%) of the respondents identified the CPMR, 2 (8%) highlighted EALA's role, 2(8%) cited the EACJ and one (7%) of the respondents did not respond to the question (figure 4.9).

**Figure 4.9: EAC dispute settlement mechanisms**



Source: Author (2013)

The EAC treaty is specific on acceptable means of dispute settlement between the partner States, while the EACJ provides a legal opportunity through which the dispute could be settled. The other mechanisms such as the PF and the PEP provide an additional support for third party intervention.<sup>213</sup>

Mwagiru in specific reference to the EACJ in 2006 had argued against the use of legalistic provisions and approaches in the EAC as he prophesized that it would lead to its

<sup>213</sup> Interview with, Munanura O., Director, Rwanda National Police, Arusha, September, 2012

collapse.<sup>214</sup>Mwagiru's proposition has been proved false as seven years later it has not collapsed. The EAC partner states have increasingly created an enabling environment for the effective functioning of the court.

In some of its recent rulings like the case of Anyang Nyongo vs. Government of Kenya and the East African Development Bank (EADB) vs. Blue Line Enterprises of Tanzania, the court made bold ruling which were in favour of the bank.<sup>215</sup>The Blue Line Enterprise case is still before the Court of Appeal (Civil Application No. 110/2009) pending its conclusion<sup>216</sup>.The courts assertion is in line with the 8% of the respondents who advocated on the need to increase the role of the EACJ in dispute settlement within the REC

In the last two decades REC's in the African region have up scaled their dispute settlement mandates. Thomas has cited the case of ECOWAS intervention in Liberia in 1990 before it had formulated legal instruments for such an undertaking.<sup>217</sup>The EAC is empowered by the EAC Treaty to peacefully settle disputes between its members and has a formal basis for such an undertaking.

#### **4.5.3 Completeness of the East African Community dispute management modes**

The respondents were required to assess the completeness of the EAC tools on dispute settlement. 10 (50%) indicated, there were no dispute settlement interventions in place in the EAC, that could be utilized as many of them were in various stages of development,5(25%) indicated that the EAC had tools for dispute settlement,1(5%) highlighted that the EAC did not

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<sup>214</sup> Mwagiru M.,*Conflict in Africa* (Nairobi: Center for Conflict Research ,2006)p. 37

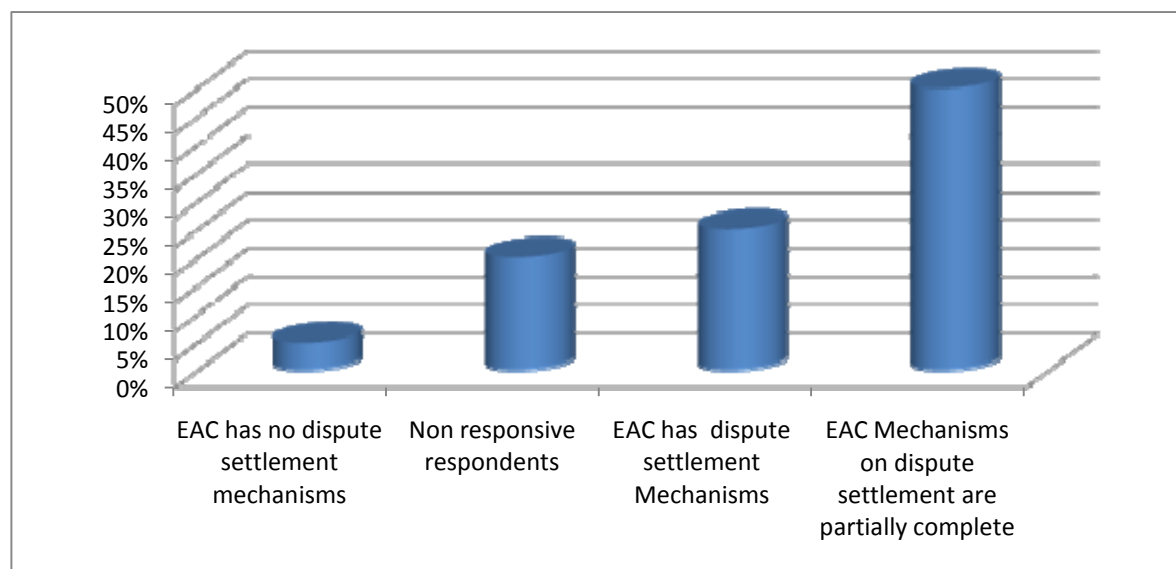
<sup>215</sup> EAC,Report of the Summit (Ref:EAC/SHS14/2012)p.14

<sup>216</sup>EAC,Report on the Council of Ministers meeting, held in November, 2011 in Bujumbura, Burundi

<sup>217</sup> Edward B., and Thomas C. Regionalism in international affairs(4ed.) John B.,et al, *The Globalization of World Politics An introduction to international relations* (Oxford: Oxford University Press,2008) p.442

have mechanisms in place to manage disputes, 4(20%) of the respondents did not respond (figure 4.10).

**Figure 4.10: EAC dispute settlement modes**



Source: Author (2013)

The 50% who indicated that the EAC had no dispute settlement mechanisms were not adequately informed as the provisions of the Treaty for the Establishment of the EAC has provided for the peaceful settlement of disputes. It is imperative to note that 25% of the respondents indicated that the EAC had developed dispute settlement modes which could be used in dispute settlement. The mechanisms provide additional instruments to aid the provisions in the treaty and have been developed to enhance the EAC's dispute settlement capacity.<sup>218</sup>

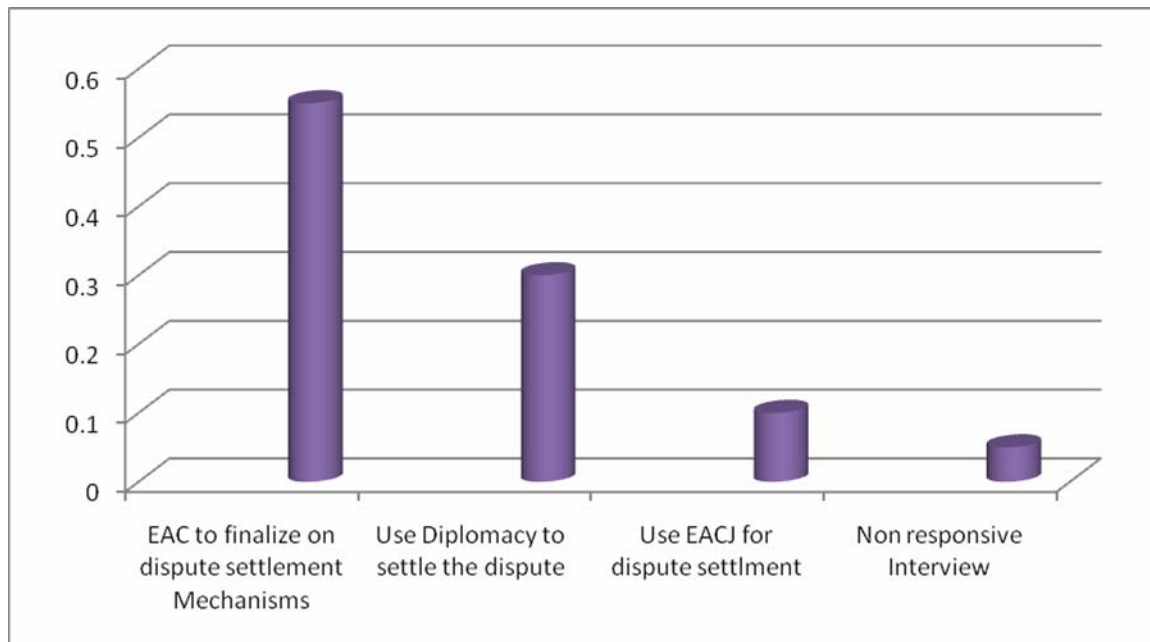
This perspective has been collaborated by the EAC reports and the 50% of the respondents who have confirmed on the various components of the EAC dispute settlement framework.<sup>219</sup> The incompleteness of some of the mechanisms did not constitute the reason for the EAC's lack of involvement in the Migingo Island dispute. It is conclusive, therefore to state

<sup>218</sup> Interview with, Umutoni N., Head of Research Bureau, Rwanda, Arusha, September, 2012

<sup>219</sup> Interview with, Masumbuko, A. Director General, Ministry of East African Cooperation, Arusha, October, 2012

that the evidence presented indicates that the EAC has a relevant policy framework for the peaceful settlement of disputes despite some aspects being in the formulation stages figure 4.11. The two partner states had the option of invoking the EAC rules of procedure which require a member state to bring an agenda item for discussion to the EAC for deliberation.<sup>220</sup>

**Figure 4.11: The application of EAC’s dispute settlement modes/mechanisms**



Source: Author (2013)

#### **4.6 Recommendations on the East African Community dispute settlement modes**

The sixth theme of the study focused on the suggestion or recommendations on the EAC dispute settlement modes. The interviews were required to make recommendations on how the EAC could enhance its dispute settlement framework in the context of the Migingo Island dispute. 11 (55%) of the respondents implored the EAC to expedite completion of the protocols and mechanisms in order to make the dispute settlement framework comprehensive. 6 (30%) of the interviews vouched for the continued use of the ongoing preventive diplomacy interventions,

<sup>220</sup> Rule 8,2(f).8(4) EAC Rules of procedure for Coordination Committee

2(10%) of the respondents advocated the increased utilization of the EACJ in dispute settlements while one (5%) respondents did not answer the question.

A majority of the respondents (55%) emphasized on the need for the conclusion of the additional mechanisms such as the PEP and PF and others in order to make the dispute settlement framework more comprehensive. These mechanisms have been developed by the bloc which is also in the process of reviewing its strategy on regional peace and security.<sup>221</sup> An additional (30%) of the respondents vouched for the continuation of the stalled negotiations between the two states so as to settle the dispute in an amicable manner. 10% of the respondents emphasized on the need to use the EACJ as an institution for settlement as it had improved its credibility over time and the EAC Council of Ministers went further to improve its staffing needs.

The provisions of the Treaty provide the foundation for the EAC mandate on dispute settlement which has been further strengthened by the creation of various support mechanisms like the EWS, CPMR, PEP and the PF.

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<sup>221</sup> Interview with, Masumbuko Andre, Director, Ministry of the Presidency, Burundi, Arusha, September, 2012



## CHAPTER FIVE

### Case Study Conclusions and Recommendations

#### 5.0 Introduction

The chapter outlines a summary of the key findings and the issues arose in the study. The chapter revisits the objectives of the study in order to determine whether they were achieved or no. It revisits the study hypothesis to establish if it has been proved or disapproved. The chapter ultimately gives recommendations for implementation based on the findings.

The Migingo Island dispute is primarily about fisheries on the international boundary between Kenya and Uganda. The Nile perch which is the predominant fish species in the area is popular for export and the Migingo Islands environs are famed for its high fish catches. During their fishing excursions the fishermen who are predominantly Kenyan end up straying into Ugandan waters. As noted in the study the island is five hundred metres from the international boundary between Kenya and Uganda. The dispute is therefore about Kenyan fishermen straying into Ugandan waters and less about territory. The Migingo Island provides ideal fishing landing grounds unlike the neighbouring islands of Ugingo and Pyramid both in Kenya. The incompatibilities and disagreements between the two states are therefore about resources, which are transboundary in nature.

Conflicts and disputes are complex situations and the actors involved, are normally many, varied and inter linked. The primary actors in the dispute are the republics of Kenya and Uganda. The secondary actors are the fishermen and the Ugandan security forces who both play out the dispute. There is a need to understand the role of the actors and their interests in the dispute and the complexities as it would help towards its settlement. The inclusion of the fishermen as actors in the dispute would enhance further the dispute settlement.

The Ugandan security forces have continued their destabilizing role in the dispute despite the presence of Kenyan security forces. The Ugandan security forces actions were contrary to the mutually agreed role of joint patrolling of the island.

The primary concern and interests of Kenya and Uganda is primarily territorial, while that of the fishermen was the fisheries which were their main source of income. The Ugandan security agencies interest in the dispute was identified as the extra but illegal income obtained from the imposition of illegal taxies and levies, which they thrived on. It was therefore not in the interest of the security forces would therefore like the continuation of the dispute for their benefit.

Kenya and Uganda have a JBC composed of government functionaries operating in the regions along their international boundary. The JBC's ordinarily deliberate on peace, security and socio-economic development issues affecting the communities on their common boundary. They hold meetings annually in alternate venues in each of the countries. In addition there are peace committees organized by the communities living along the common boundary. The environment for the peaceful settlement of the Migingo Island dispute was created by the bilateral diplomatic negotiation process which begun in 2009. The negotiations culminated in ministerial and technical meetings being held between the officials of the two countries. The negotiations led to the easing of tensions, and led to the constitution of a technical survey team to survey the two countries international boundary.

The survey work on the Kenya-Uganda boundary which is part of the bilateral negotiations stalled due to technical misunderstandings between the two countries technical teams. The completion of the demarcation of the boundary would also enable Kenya and Uganda to meet their obligations on the AU resolution AHG/res.16 (1) on border disputes.

The negotiations have recognized the need for a third party involvement in case of disagreements or a deadlock as well as the involvement of Tanzania on the demarcation of the border at the tri junction of the three states in Lake Victoria.

The dispute settlement process has not received adequate attention at the multi lateral diplomatic level other than the two side summit meetings held under the auspices of the AU held in Lusaka and one the other held under the EAC in Arusha, both in 2009.

The EAC rules of procedure require a member state to raise issues as a substantive agenda to the EAC Secretariat, for deliberation by the EAC Council of Ministers. Neither Uganda nor Kenya has formally lodged their dispute. The EAC decision making framework is hampered by a cumbersome decision making framework based on consensus which is not appropriate for peace and security issues. It is conclusive to state that the EAC has a mandate on dispute settlement. The Treaty for the establishment of the EAC stipulates on sovereign equality of its members, their peaceful –coexistence and good neighbourliness and the peaceful settlement of disputes. The EAC dispute settlement modes are grounded under the provisions of the treaty and were found adequate enough to be utilized towards the settlement of any dispute.

The EAC since coming into being in 2000 has enhanced its dispute settlement framework through the development of a strategy on regional peace and security and the formulation of protocols and other dispute settlement mechanisms. This has further enhanced the bloc's capacity to engage in the peace settlement of disputes.

The EAC has directly and indirectly been involved in conflict management processes albeit in a limited manner. In 2008 the EAC was directly and indirectly involved towards the settlement of the dispute which arose in Kenya after the disputed elections of 2007. In 2010 it

directly prevailed upon the Burundi opposition not to boycott elections after a dispute arose at the communal level.

The continuation of the Migingo Island dispute is likely to have implications on the EAC integration process which would negatively impact on the cooperation between the two states and would hamper the pace of the integration process. This is significant because both countries are founder members of the REC and continue to play a key role in the bloc's integration process. Kenya and Uganda must establish ways and means of managing their porous international boundary. These would forestall the insecurity and the lawlessness which attracted criminal elements on Migingo Island leading to the fishermen's fear and uncertainty

The ultimate objective of the study was to establish, explore and analyze the mandate of the EAC in dispute settlement framework, how it has been operationalised in the case of Migingo Island dispute between Kenya and Uganda. The objectives of the study have been achieved as the causes of the dispute were identified and the mandate of the EAC integration bloc on dispute settlement established. In addition the various actors in the dispute and their various interests were identified. The impact of the dispute on the actors and its implications has been elucidated. An assessment on the application or use of the EAC dispute settlement modes and its supporting framework was undertaken. This helped in demonstrating the EAC's dispute settlement framework capacity within the bloc.

The hypothesis of the study stated that 'the EAC has limited capacity to settle disputes within the regional bloc and it has been unable to settle disputes between its members'. The study has established that the hypothesis as stated is not true. The hypothesis has therefore been disapproved as the EAC has the capacity to settle disputes between its members, and has established a framework, guided by the treaty which was ratified by all its members before its

inception in 2000. The EAC has put in place protocols and mechanisms that it has developed, approved and ratified since then which have enhanced the EAC's dispute settlement capability.

## **5.1 Recommendations**

Partner states should take into cognizance article 5(3) of the EAC treaty, which emphasizes on the sustainable utilization and protection of their natural resources and develop a framework on the modalities of fishing in Lake Victoria for the benefit of its citizens.

Lake Victoria Commission Basin (LVCB) and Lake Victoria Fisheries Organization (LFO), have responsibilities on maritime security and fisheries on the lake respectively. The EAC should review their rules and regulations to regulate maritime security, fishing and the use of the lakes shared resource and establish mechanisms to deal with any emerging disputes.

The security forces and particularly those of Uganda should be reined in to avoid their unilateral decisions causing undue tension and unsettling the prevailing calm. They should cooperate and work with their Kenya counterparts to ensure peace and tranquility within the framework of the bilateral agreements.

The Beach Management Committees should be revitalized to manage the fisheries business within the framework of the LBDO and the LVFO. The government of Kenya and Uganda should streamline the taxes and levies to be levied and by whom in the interim period pending final agreement on the ownership of the island.

Kenya and Uganda should strengthen their JBC and establish additional ways and means of managing their porous boundary. Their inability to do so has contributed to the lawlessness on their common boundary. This has attracted criminal elements and insecurity leading to fear and uncertainty on their citizens.

Kenya and Uganda should operationalize the Nairobi communiqué's decision eight issued on 11<sup>th</sup> May 2009 on the involvement of a third with a view to breaking the deadlock.

Kenya and Uganda should upscale their diplomatic negotiation initiative and hasten the conclusion of their bilateral negotiations talks in the spirit of the EAC integration process. The negotiations, which have stalled, should be reopened and the deadlock on the survey works cleared to facilitate in the completion of the demarcation process. The survey works should be allocated adequate financial resources and the emerging technical surveying challenges clarified and amicably settled in a timely manner.

Kenya and Uganda should invoke resolution seven of their ministerial communiqué held in Nairobi on 11<sup>th</sup> May 2009 on the involvement of Tanzania on the demarcation of their international boundary. The involvement of Tanzania would in essence introduce a third party into the dispute settlement process.

The EAC partner states should finalize the ratification of the protocols on Foreign Defence and Peace and Security. In addition the EAC Council of Ministers should approve and the mechanisms geared towards the development of a comprehensive dispute settlement system. The strategy on regional peace and security, which is under review, should incorporate new and emerging crimes such as genocide, maritime security, money laundering, and cyber crime. It should also incorporate the correctional and probation after care services into the strategy.

The EAC should review its consensus approach to decision making in its procedures to unlock the pending issues of good governance and other potential issues in the future which may not be solvable through the approach. A restructured and empowered EAC would enable it to manage and initiate action on far reaching issues relating to areas of cooperation while acting promptly.

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