

**A CRITICAL RE-EXAMINATION OF KENYA'S APPROACHES TO
THREATS TO HER TERRITORIAL INTEGRITY**

BY

MARY GORRETY ACHIENG DIANA

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SUPERVISOR DR. ROSEMARY ANYONA

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DECLARATION

Declaration by student

I hereby declare this project is of my own original work and it has never been presented in part or whole for award of any certificate, diploma or degree in the University of Nairobi or any other higher learning institution.

Signature.....

Date.....

MARY GORRETY ACHIENG DIANA

R50/7009/2017

Declaration by the supervisor

This research project has been submitted for examination and the partial fulfilment of studies in Masters of Art (International Studies) my approval as the university supervisor.

Signature.....

Date.....

DR. ROSEMARY ANYONA

DEDICATION

Special dedication goes to God for the guidance and strength throughout my research, and to my family for their guidance, support and encouragement. I also thank my colleagues and friends, for their moral support during the research period and project writing. Lastly, I show gratitude for my lecturer Dr. Rosemary Anyona for the supervision and the advice she offered during the research.

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LIST OF ABBREVIATION

AMISON	African Union Mission in Somalia
AU	Africa Union
AUBP	African Union Border Programme
EAC	East African Community
ICC	International Criminal Court
ICJ	International Court of Justice
IGAD	International Governmental Authority Development
LoN	League of Nations
MFA	Ministry of Foreign Affairs
NFD	Northern Frontier District
NPPPP	Northern Province Peoples Progressive Party
OAU	Organization of the African Union
UN	United Nations
US	United States
USA	United States of America

ABSTRACT

Territorial integrity is an important aspect for states. It is the main concern in the national interest, security and peace for states. The concern of most states is to protect their territorial integrity as it ensures their place in International Relations. Territorial threat is an issue and concern for many states. The main source of territorial threat for most states in the international system is border demarcation mostly caused by colonialism. Other threats include; shared natural resource, ethnic communities living across international boundaries, insurgency and secessionist movements. In Africa most territorial disputes are a result of the scramble and partitioning of African countries during the Conference of Berlin. The dynamic and complexities of territorial issue in Africa makes this research worthwhile. The objective of this study was to re-examine Kenya's approaches in dealing with threats to her territorial integrity. This research study had three main research objectives; to identify the major threats to Kenya's territorial integrity, identify the approaches that Kenya has used in dealing with those threats and how Kenya has been able to defend her territorial integrity or not. The research critically examined the approaches Kenya has used, looking at the pros and cons of those approaches. The theory of Realism and its concepts was applied to the study to evaluate the importance the protection of territorial integrity by Kenya, the concept of conflict and war in state national interest. The research employed both qualitative and quantitative research approach, Non – Probability sampling which is Purposive sampling method. The study used primary methods and secondary method of data collection was used. This study found out that major threats to the country's territorial integrity are border demarcation issues such as the Maritime dispute with Somalia, Migingo Island and Ilemi Triangle disputes. Other disputes included terror attacks, refugees and piracy. The study also established that Kenya approaches in dealing with threats to her territorial integrity have been effective although it is faced with a lot of challenges. Diplomatic approaches have had but a few successes in the dispute over Migingo Island with Uganda and the Ilemi Triangle dispute with South Sudan. It has failed with the Somalia dispute that was later forwarded to the International Court of Justice (ICJ). In the end both the diplomatic and judicial approaches in dealing with threats to Kenya's territorial integrity are important. Finally, from the analysis, this study recommends that Kenya should ensure to employ the best approach in dealing with threats to her territorial integrity such as participating in good faith, adoption of non aggressive approaches to foster peace and use regional organizations in trying solving the threats to her territorial integrity if bilateral negotiations fail.

Chapter One

Introduction

1.1 Background to the study

One key theme that has been widely discussed in International Relations is the concept of territory. To be able understand why the territory is important, we should first understand that, the international system according to the realist school of thought is that, it is essentially a struggle among self interest states for power and position in an anarchical world, each state seeks to pursue their own national interest.¹ In the international system, state is considered the most important actor. It is the only legitimate representative of people who live in a concrete territory, and it is mainly concern is its survival and maintenance of its security. In an anarchical international system, states have almost constantly been at war and conflict and it strives to protect its territory and ensure its survival.

A territory is a geographical area under control of a single governing entity such as the state. It is an area whose borders are determined by the source of political power rather than solely by natural features such as rivers and ridges.² From the definition itself, the concept of territory becomes a major concern for states. The concept of territory is geopolitical. According to Goldstein, it concerns the struggle for power over territories for the purpose of political control over the space. In other words, geopolitics is the practice and ability of a state to control and compete for a territory.³

¹ Hans J. Morgenthau, *Politics among Nations: The struggle for Power and Peace*, 1st ed. (New York: Alfred A. Knopf publishers, 1948)

² Oxford Dictionary, 8th ed. (Oxford University Press, 2010)

³ Joshua S. Goldstein, *International Relations*, 5th ed. (American University, Washington, Longman Publishers, New York, 2004) p. 183

The issue of state territory only dates back to the Westphalian era. In the Pre Westphalia era the world did not have system international boundaries that were defined. According to Clark, medieval international system lacked international boundaries in the contemporary world.⁴ Territorial control was overlapping and changing from different political rulers. In the past states were mainly concerned with expansion of their territories, national security, military action and dominance in the international relations. After the Westphalia Peace Treaty of 1648, the concept of interstate borders was defined and state territory was adopted. In Africa, the concept of state territory was different. For instance; in the Pre colonial period, Africa had its own autonomous, self governing empires, such as the Mali Empire, Songhai Empire and the Kingdom of Aksum, in form of states. Conflict was mainly in form of clashes between different social formations such as pastoralist and cultivators.⁵ One of the defining moments of Africa relations is during the scramble and partitioning of Africa in the Conference of Berlin 1885, which saw division of Africa into states with territorial boundaries, regardless of the tribes and communities that existed in the region, colonized by the European powers of Britain, France, Portugal, Germany and Italy. This form of separatism led to ethnic tensions, where tribes which did not get along were now forced to be in the same country.

In the Post colonial Africa, after the end of colonialism and the independence of African states, one of the main issue that arose in the continent, was the issue of territory. With the rising border disputes and increase in secessionist movements in the continent especially in the region of Horn of Africa, and rising border disputes in the Great Lakes region. These newly independent states

⁴ Sir George Clark, *The Seventeenth Century*, 2nd ed. (New York, Galaxy Books publishers 1961)

⁵ Walter J. Rodney, *How Europe Underdeveloped Africa* (Tanzania and London, Bogle - L'Ouverture Publications, 1973)

of Africa were concerned with the promotion of their national security and protection of their sovereignty and territorial.

Territorial threats have emerged between African countries. These threats include; claim of control of a territory in another state by a state, border delimitation disputes, secessionist, maritime disputes and conflict over the use and control of natural resource. Border disputes are undeniably as the results of the negative effect of colonialism and the main threat to a country territorial integrity. For instance rivalries between ethnic communities as the result of partition separated ethnic tribes into different nations and forced conflicting ethnic groups in to one state. The rise of nation states was developmental and it increased the scale of African politics and also merged small ethnic groups into wider identities suggestive of nations.⁶ Border disputes have been a major cause of conflicts not only in Africa but the world. Africa border disputes have led to tensions, war, secessionism and irredentism, for instance; border disputes in different regions in Africa include; the East African region border disputes include; conflict between Kenya and Sudan over the Illemi triangle, dispute over Migingo Island between Kenya and Uganda, dispute over Lake Malawi between Tanzania and Malawi, Kenya and Somalis maritime dispute; the West African region include; the Benin-Niger frontier dispute. While border demarcations are the source of territorial dispute and a threat to a country's territorial integrity, natural resources is also a source of territorial disputes, either through claim of ownership or exploitation.

With these threats to country's territory, the concept of territorial integrity became important to African countries, with the expectation of prompting states to protect their territory and respect other states territory and reduce territorial disputes. Holsti argues that, the development of the

⁶ Ibid

concept territorial integrity concerns respect for states' territoriality because different scholars have realized that disputes that concern territory are the major cause of war frequency, interstate rivalries, war intensity between states.⁷ Vasquez echoes as stated that, territorial issues seem to be the ones associated with wars of all the issues over which wars could logically be fought and few interstate wars are fought without any territorial issue being involved in one way or another,⁸ hence the importance of territorial integrity.

Territorial integrity is a principle that prohibits one nation state from exerting its influence forcefully against the territorial integrity of another nation state. It is a main international law principle which exempts states from attempting border changes or secessionism in other nation-states. Territorial integrity is important for states, the main defining characteristic of a state and determinant its foreign relation.

1.2 Statement of research problem

Territorial integrity is an important aspect for Kenya and African countries. Kenya has faced numerous threats to its security over the years. And the rise of threats to its territorial integrity has been major concern for Kenya since its independence. With a multitude of border conflicts in the region that have led to terrorism, secessionist movements, ethnic violence and irredentism have affected the people, communities and Kenya's relations with other states. Territorial issues are a reality in the Sub- Sahara Africa, Great lakes region⁹ and the Horn of Africa, and it is believed that there will be a rise of territorial threats in the region and Kenya being a part of the

⁷ Kalevi J. Holsti, *Armed Conflicts and International Order: Peace and War 1648–1989* (Cambridge: Cambridge University Press 1991)

⁸ John Vasquez and Marie Henahan, *Territorial Disputes and the Probability of War 1816–1992* (Peace Research Journal No. 38 (2):123–38. 2001)

⁹ Okumu, "Resources and border disputes in Eastern Africa," (*Eastern African Studies Journal*, (2010)

region. One of the main threat to Kenya's territorial integrity has mainly been; the claim of possession of natural resources, resource exploitation, the demarcation of international boundaries and secessionism. These disputes have led to integration failure for instance; the East African Community collapse before its 2000 reestablishment, slow development and cross border ethnic conflict. These disputes have been and still are a challenge to Kenya and her neighbours in promoting the country's peaceful relations, development, integration efforts and most importantly her territorial integrity.

In the past Kenya has faced major interstate war in order to protect its territory, for instance the secessionist conflict with ethnic Somalis in Kenya on their bid to secede to Somalia that led to the Shifta war. Although Kenya has faced interstate territorial disputes, it has always adopted a moderate and tentative approach in managing her internal and external affairs. The country has managed to reduce interstate wars with her neighbours even with the rise of threats to her territory. For instance, although Kenya and Uganda have had territorial disputes since their independence, these two countries have not been in war. Even so, one of the main objectives of Kenya's foreign is protection of her sovereignty and the integrity of her territory, but guided on the resolution of conflicts by peaceful means principle. Kenya recognizes the importance of promoting peace in the country and with her neighbours as a pre-condition necessary for development.¹⁰ Therefore, this study seeks to investigate Kenya's approaches to managing threat to its territorial integrity, its challenges, effectiveness, and provide recommendations on how Kenya could promote its territorial integrity and national security as well.

¹⁰ Ministry of Foreign Affairs, *Kenya Foreign Policy*, Government of Kenya, 2014, <http://www.mfa.go.ke/wp-content/uploads/2016/09/Kenya-Foreign-Policy.pdf> (accessed April 17, 2019)

1.3 Research questions

The following are research questions for the study;

1. What are the major threats to Kenya's territorial integrity?
2. What approaches has Kenya used in responding threats to its territorial integrity?
3. How effective have Kenya's approaches been in protecting her territorial integrity?

1.4 Research objectives

The specific objectives of the study are;

1. To examine the major territorial threats to Kenya's territorial integrity.
2. To identify the approaches Kenya has used in responding to threats to its territorial integrity.
3. To critically analyse the effectiveness of Kenya's approaches in protecting her territorial integrity.

1.5 Policy justification of the study

The study investigated various approaches that Kenya has adopted in response to threats to her territorial integrity. The study focused on how these approaches have been effective in managing territorial threats, promoted peace and security and protection of its territorial integrity. This also focused on the policy, finding out if its main purpose is achieved, some of the challenges facing its implementation and the appropriate actions needed to ensure delivery result and if it is making any contribution to protect in territorial integrity.

The study aimed to add to academic literature on the effective approaches in managing territorial threats to countries border. According to Vasquez, the role of territory in interstate conflict is significant feature for the modern international relations as it is increasingly becoming a dynamic

research program in international studies. Territorial disputes mostly escalate in to interstate wars because they are the most conflict prone and most fatal.¹¹

Therefore this study is important for a range of academic purposes.

1.6 Literature review

This literature review describes how the stated research problem has been approached by different scholars in the past. It seeks to make references to current and past research on how Kenya has adopted various approaches in responding to threats on her territorial integrity and its effectiveness in protecting its territorial integrity.

1.6.1 Territorial integrity

Territorial integrity principle is important for Kenya, because it prohibits states from exerting its force on the territory of another state. It is one of the primary international law principles. Kenya as part of the International community respects the concept of territorial integrity and protects its territory against aggression by other states. Territorial integrity is defined as the ability of a country to defend and protect its land.¹²

The concept territorial integrity developed in three stages, which are the emergence stage, the acceptance stage and the institutionalization stage. According to Finnemore and Sikkink, these are the three main stages of the development of the concept of territorial integrity.¹³ The

¹¹ John A. Vasquez, *The War Puzzle* (University of Illinois, Urbana Champaign, 2009)

¹² Interview with Dr. Patrick Maluki, October 29, 2019

¹³ Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change- In Exploration and Contestation in the Study of World Politics* 1999, edited by Peter J. Katzenstein, Robert O.

emergence stage of norm and development of territorial integrity began with the end of First World War the adoption the League of Nations Covenant and the creation of the League of Nation (LoN). President Woodrow Wilson idealistic view in his Fourteen Points principles for peace, spoke of the covenant development mandated with the role of common guarantees of political independence and territorial integrity to all states both great and small. The 1919 League of Nations Covenant, in Article 10 of the LoN Covenant stated that the League members should preserve and respect against external aggression on another states' territorial integrity. It further adds that in case of any aggression or threat or danger of such aggression the LoN Council will advise the means which the fulfilment of the obligation.¹⁴ During the period the major proponents of the norm were the Western democratic states, and major multilateral treaties and declarations for the first time upheld the territorial integrity norm, particularly the 1919 League Covenant and its approval of 1931 Stimson Doctrine.

The UN Charter adoption marked development of territorial integrity norm under the acceptance stage. States had recognized the concept of territorial integrity and its importance in maintaining international peace and security. The June 1945 Charter of the UN in Article 2 (4) states that, all UN members shall refrain from threatening to use force or use force on another state's the territorial integrity or political independence in their international relations, or in any other way contrary to the purposes of the UN.¹⁵ The UN declaration of 1960 upheld the territorial integrity of states and pronounced that existing colonies were eligible for self-determination. In Africa, the Organization of African Union (OAU), in its Charter, Article 3 (3) states that states that are

Keohane, and Stephen D. Krasner (Cambridge, Mass.: MIT Press)

¹⁴ The League of Nations, "League of Nations Covenant", April 28, 1919, <http://www.unhcr.org/refworld/docid/3dd8b9854.html> (accesses May 19, 2019)

¹⁵ The United Nations, The UN Charter, 24 October 1945, www.unwebsite.com/charter (accessed May 20, 2019)

members of the OAU should respect the territorial integrity and sovereignty of each state and for is inalienable right to independent existence. The OAU also adopted strong stands in favour of the sanctity of existing state boundaries and promoted territorial integrity in Africa in its charter provision of 1963 and 1964 resolution supported the respect for inherited boundaries.¹⁶

The development of the institutionalization stage of territorial integrity norm encompassed the period of 1980 to the present day. There were key events occurring in the international system that strengthen the norm, for instance states responses to territorial conflicts. Notably Somalia's war against Ethiopia and Kenya where Somalia provided troops to Somalia rebels seeking union from Eastern Ethiopia and Northern Kenya. But OAU support of the original boundaries led to Somalia withdrawal and the 1990 Kuwait invasion by Iraq in order to annex part of Iraq, the UN members called for Iraq's withdrawal and Iraq was sanctioned from the UN. The development of an independent international court, the ICJ and adjudication of many territorial conflicts was also a major influence for the development of the concept of territorial integrity.¹⁷

Sovereignty and territorial integrity is a Kenya's vital interest in promotion of her national and foreign objectives. For Kenya to maintain its independence and ensure is socio-economic development, it needs the capabilities to defend its territory and protect its interest against all forms of threat. Kenya in its acquisition and administration of the necessary capabilities has adopted and upheld measures that emphasize the need to minimize the using force. In dealing

¹⁶ Organization of African Unity, Organization of African Unity Charter, 25 May 1963, <http://www.refworld.org/docid/3ae6b36024.html> (accessed April 10, 2019)

¹⁷ The League of Nations, "League of Nations Covenant", April 28, 1919, <http://www.unhcr.org/refworld/docid/3dd8b9854.html>

with external threats, Kenya adheres to the concept that diplomacy is the first line on defence and conflict prevention.

The foreign policy of Kenya is important, as it protects her territorial integrity. Makinda notes that from the beginning the foreign policy of Kenya was economic that sought to attract foreign capital and maintaining commercial links with her neighbours. It also wanted to ensure her security and acquire domestic political power. In pursuing these goals, Kenya maintained her independence in two ways; depending on the East African market and security depending on maintaining a defence agreement with Britain.¹⁸ Kenya Foreign Policy¹⁹ aims to achieve several national objectives, for instance, to advance prosperity of the economy and her people, advance the country's image, and promote multilateralism and Kenyan Diaspora interest by partnering with the Kenyans living abroad. The main national objective is to protect Kenya's sovereignty and territorial integrity, promote integration and enhance regional peace and security.²⁰

As stated in her foreign policy document, her foreign policy aims to protection of her territorial integrity, promotion of integration and enhancing regional peace and security, Kenya hence maintains close relations with her neighbouring countries. One of the principal pillars of her foreign policy that is concerned with peace, security and regional cooperation in protection of her territorial integrity is the peace diplomacy pillar. Kenya's peace and security diplomacy is recognizes peace and stability as necessary pre-conditions for the country's development and

¹⁸ Macharia M., *African Review of Foreign Policy* (United States International University publication, Nairobi, 1999) p. 40-48.

¹⁹ Ministry of Foreign Affairs, *Kenya Foreign Policy*, Government of Kenya, 2014
<http://www.mfa.go.ke/wp-content/uploads/2016/09/Kenya-Foreign-Policy.pdf> p. 12

²⁰ Ibid

prosperity. Kenya conviction is that its own stability and economic growth are dependent on stability of the sub-region, Africa and the rest of the world.²¹

This peace pillar seeks to support peace efforts by the AU and the UN by troops' contribution and providing leadership in peacekeeping missions, and create conflict analysis and prevention capacity nationally and in the region. Through these objectives, her foreign peace diplomacy draws on Kenya's experiences in conflict resolution and peacekeeping. Kenya further continues to institutional support involved in peace keeping in the continent. These include; the International Peace Support Training Centre and East African Standby Force (EASF) command.²² Kenya like any state has been faced with the task of managing their borders by ensuring that their territorial integrity is secure. However, Kenya also recognises that, should the sovereignty and territorial integrity of the country be threatened, force will be applied to restore peace, on terms favourable to Kenya. Kenya with the Ministry of Defence have supported of the AMISOM.

1.6.2 Territorial threats

According to Shaw it is inconceivable to define a "state" in international law without a territory or a geographical base.²³ Although a state's frontiers can be disputed, it must be based on, some piece of land, that is, a territory that is composed of frameworks which is tangible for the manifesting power by accepting authority of the state. One classic international legal criterion for

²¹ Ministry of Foreign Affairs, *Kenya Foreign Policy*, Government of Kenya, 2014
<http://www.mfa.go.ke/wp-content/uploads/2016/09/Kenya-Foreign-Policy.pdf>

²² Ibid

²³ M. Shaw, *The Title to Territory in Africa—International Legal Issues*, (1986) p.1

recognizing a state is its ability to control and secure its population and territory.²⁴ If a state is unable to protect its territory or the existence of its territory is questioned, it can be considered as a territorial threat.

One of the main threats to a country's territorial integrity is disputes over territory. While there are other territorial threats such as insurgency or secessionism, one that seems to be the prime source of interstate conflicts are territorial disputes. Disputes over territory are also referred to as border conflicts or transboundary conflicts. Territory is often a source of conflict as it is a fundamental a place for states, and its existence is rooted in territory.²⁵ Territory provides the basis for states to exercise their power by delimiting the human and physical resources over which they have control. Territory promotes national identity and cohesion and it is of high most importance to the state.

Oduntan discussion on boundary disputes in Africa. He states that, African boundaries are largely superimposed and are, therefore, very susceptible to conflict. He points out that boundaries that are superimposed generate conflict by creating a disjoining of socio-cultural system interactions and political system. He argues that it is not surprising that all sub-regions of Africa are nearly evenly afflicted with the scourge of boundary disputes.²⁶

Kenya lies within the East African region. It borders Ethiopia, Somalia, South Sudan, Uganda and Tanzania. The East African region is made up of two sub-regions; the Horn of Africa and the

²⁴African Union Border Programme, *Delimitation and Demarcation of Boundaries in Africa* (Commission of the African Union / Department of Peace and Security, 2014)

²⁵ Michael Mann, *The autonomous power of the state: Its origins, mechanisms and results* (European Journal of Sociology. 1984) p. 185-213.

²⁶ Gbenga Oduntan, *International Law and Boundary Disputes in Africa* (London, Routledge Publishers, 2015) p.5

Great Lakes region which are currently major civil war and political instability theatre. According to Legwaila, for forty years the Eastern Africa has been wracked by conflicts.²⁷ Political scientist Jorge Dominguez further illustrate that, “Border disputes of territoriality increased war probability and have higher chances of escalating into states to war than other kinds of disputes”²⁸ Okumu further echoes that, the East African region has a shares more than thirty boundaries, every Eastern Africa country has had a border dispute with her neighbouring country.

These disputes mostly occur because of territorial claims, and are most often caused by the availability of transboundary resources, the lack of clearly defined and marked boundaries and security-related matters. The territorial integrity of Kenya is threatened because the borders that were inherited at independence are yet to be conclusively delineated and demarcated. The current hottest border spots are; Kenya-Uganda dispute over Migingo Island, Kenya-South Sudan border over Ilemi Triangle, Kenya-Somali maritime border and Kenya-Ethiopia-Somalia borders.²⁹ Whittaker notes that, Kenya is surrounded by states that have continued to claim or attempted to claim parts of its territory, hence this being a threat her territorial integrity. For instance, the insurgent movement by Somalia in attempt to unite Somalis in Kenya to form one larger state during the Shifita War was a challenge to the territorial integrity and sovereignty of Kenya.³⁰

²⁷ Legwaila Joseph Legwaila, *The United Nations Role in the Horn of Africa* (Uganda, December 2002)

²⁸ Jorge I. Dominguez, et al., *Boundary Disputes in Latin America* (United States of America Institute of Peace) <http://www.usip.org/files/resources/pwks50.pdf> (accessed April 20, 2019)

²⁹ Okumu, “Resources and border disputes in Eastern Africa,” *Eastern African Studies Journal*, (2010)

³⁰ Hannah Whittaker, *Pursuing Pastoralists: the Stigma of the Shifita during the Shifita War in Kenya 1963-1968*, 2008, <http://artsonline.monash.edu.au/eras/files/2014/02/whittaker-article.pdf>

President Idi Amin in 1976 attempted to redraw the Kenya and Uganda boundaries. Amin claimed that Kenya's Western districts were part of Uganda before the colonial re-demarcation of the territorial boundaries. According to Amin, these districts extended all the way to Naivasha. He further claimed that these areas were very fertile and were economical for Kenya. However, he stopped his claim after the former President of Kenya Jomo Kenyatta threatened to block Uganda's imports through the port of Mombasa.³¹

According to Okumu, even though cross-boundary resources disputes have been taken seriously in the period of the last five years, security of state borders have been the principal focus in interstate relations throughout the region over many years, with trafficking of drugs, rustling of cattle, trafficking of humans, auto theft and smuggling guns all featuring in the economy of the borderlands. Security issues that align with terrorism include the influx of undocumented and illegal immigration through border points that are illegal by communities or persons that have families on both sides of two state borders, and conducting illegal cross border activities such as herding by herd boys, trafficking of human and the monitoring of patrol team movements.³²

One of the factors that causes the growth of territorial disputes and the increase in potential for conflicts in Eastern Africa especially interstate conflicts is due to increased discovery or thought of existence of natural resources on shared borders or in borderlands. Territorial disputes over natural resources is common in East Africa, one can further argue that it seems to be the only characteristic of territorial disputes in the region. While the region is characterized by poverty, rapid population growth and environmental degradation, it is understandable why shared natural

³¹ Bamuturaki Musinguzi, *The Day Idi Amin Wanted to Annex Western Kenya*, The East African, Nairobi, 10th September 2011, www.theeastafrican.co.ke/news (accessed May 26, 2016)

³² Okumu, "Resources and border disputes in Eastern Africa," *Eastern African Studies Journal*, (2010) p. 279-297

resource become a source of conflict. The competition of the scarce natural resource, for instance; the Lake Victoria, which is considered as one of the most important shared natural resources by Kenya, Uganda and Tanzania,³³ has caused territorial disputes with the most notable conflict between Kenya and Uganda over the Migingo Island.

Roberts argues that resources from the world's freshwater are increasing under pressure due to population growth, increase in economic activities and improvement of living standards have led to increase in competition for limited fresh-water resource and intensified conflict.³⁴ While Gleick states that actors involved in competing of interests over quantity of resources have led to the inability to avoidable conflicts, these vary from the simple verbal confrontation to actual armed conflict.³⁵ The rumour or the discovery of oil as a natural resource has as well led to territorial disputes, most notably; the Ilemi Triangle disputes between Kenya and South Sudan and the disputed maritime border of Kenya and Somalia.

Along the Kenya borders, there are exists shared ethnic communities. This means that one ethnic community lives across two different countries only separated by a border that they do not recognize, for example, the Maasai ethnic community of Kenya and Tanzania and the Luo ethnic community of Kenya and Uganda, the Somalis of Kenya, Somalia and Ethiopia. This is a source of territorial disputes for states, for instance it has caused irredentist movements in Somalia to unite the Somalis of Kenya and Ethiopia, disputed border between Kenya and Tanzania over the Maasai community, Kenya and Tanzania have had disputed border issues in the past, although

³³ Worthington & E. B. Worthington, *The inland waters of Africa: the result of two expeditions to the Great Lakes of Kenya and Uganda, with accounts of their biology, native tribes and development.* (London: MacMillan, 1933)

³⁴ Paul Roberts, *Integrated Water Resource Management*, (Oxford ; Oxford press, 2005) p.56

³⁵ P.H. Gleick, *Water and Conflict, Fresh Water Resources and International Security* (International Security press, 1993) p. 79 - 112

they have not escalated into conflict. The Maasai community are present in Kenya and Tanzania. Since they live a pastoralist livelihood they move across the border in search for pasture. In 2017, the Tanzania, seized and auctioned cattle which were grazing and brunt chicks which Kenyan herders had brought into their country fearing they would spread diseases. This has strained diplomatic relations between these countries and Kenya marking borders afresh between her and Tanzania. The use of shared resources by different ethnic groups across state boundaries causes territorial disputes and it is a threat country's territory. Along the Illemi triangle, ethnic conflicts have existed between the nomadic tribes of Didinga, Nyangatom, Topasa, Dassanech and Turkana through livestock raids with the use of fire arms. This shows that ethnic communities can cause territorial disputes ad a threat to Kenya's territorial integrity.

1.6.3 Approaches to dealing with threats to territorial integrity

Every threat to a countries territorial integrity has its own character and there is no specific approach in solving them.³⁶ Different states have used different approaches in dealing with threats to their territorial integrity. The UN Charter promotes peaceful methods of dispute settlement and prohibits the using force. Even so, states have still resorted to the threat or using force in responding to threats to her territorial integrity. States are advices under the UN Charter to use of mediation, negotiation, inquiry, conciliation, arbitration and ICJ for the settlement of disputes by peaceful means, because these approaches can be used in effectively in dealing with threats to a country's territorial integrity.³⁷

³⁶ Masataka Okano, How to deal with Border Issue: A Diplomat-practitioner's perspective, p.39

³⁷ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

Kenya as a member of the UN and a signatory to the UN Charter recognises the use of settlement of disputes by peaceful means as stated under the second article, clause four of the UN Charter.³⁸

Kenya has used and promoted negotiation and mediation as approaches in settling threats to her territorial integrity. In response to the Kenya – Uganda border dispute regarding Migingo, Kenya has used negotiation as an approach to try and solve the disputes. The country has also held negotiation talks with Somalia regarding the Maritime border disputes, although Somalia later forwarded the case to the ICJ for settlement of the dispute. Kenya also held mediation talks with Somalia with the help of the Ethiopia Prime Minister as the mediator.

Kenya has had unconventional approach in dealing with threats to her territorial integrity. Kenya has threatened to use force or actually engaged in the conduct of using force in attempt to protect her territorial integrity. Territorial disputes occur when official representatives of one country make explicit statements claiming sovereignty over a specific piece of territory that is claimed or administered by another country. Kenya issued threat to use force towards Uganda when it claimed annexation of Kenyan territory.³⁹ Kenya has equally used force in response to protecting her territorial integrity from threats. In the case of Kenya – Somalia insurgency movements in the North-eastern part of Kenya. Kenya used force in a counter insurgency effort during the Shifta war.

1.6.4 Gaps in literature review

In the above literature review, the study established the existence of gaps in academic research done on Kenya's approach on managing her territorial threats with the focusing on the major

³⁸ The United Nations, The UN Charter, 24 October 1945, www.unwebsite.com/charter (accessed May 20, 2019)

³⁹ Bamuturaki Musinguzi, "The Day Idi Amin Wanted to Annex Western Kenya", The East African Nairobi 10 September 2011, www.theeastafrican.co.ke/news (accessed August 26, 2019)

threats to Kenya's territorial integrity that emerged since colonialism to the contemporary threats. Little academic research has covered focusing on the prospects and challenges of Kenya's approaches in managing threats on her territorial integrity. There exists literature on territorial disputes which escalated into war around the world; literature on territorial disputes that did not escalate into a major conflicts or wars is limited. This study hence seeks to further pursue gaps and also try to identify the effectiveness of Kenya's approach to territorial threats with her neighbours.

1.7 Theoretical framework

Theoretical framework in research involves the application of a theory in research study to guide the research to existing body of knowledge. This section identifies underlying theoretical assumptions in existing literature and show how inductively or deductively the theory mentioned will provide the basic principal in understanding the relationship between a country's foreign policy and territorial disputes, and the reason as to why territorial conflicts occur between and among states.

There is no one theory best explains the conduct of state international interactions, although there is a single theoretical framework that has managed over the years to hold a central position in the application of international relations. This is the realism approach, that favours international relations scholars and mostly contested by others, but almost all take it into account. Although realisms foundation is the main of dominant theory, the theory is a highly diverse body of thought, it best explains world politics. This study will therefore apply the propositions of the

state, national interest, security and state relation of the Realist theory.⁴⁰ The state theory in international politics, considers State as the central actor in international relations, because its sovereignty, territory and population. Realist holds that nation states are main important actors of international relations. Their main objective is protecting their sovereignty and promoting their national interests making it “a war for all against all”. In an anarchic international system state is primarily concerned with her self interest.

National interest is the primarily concern for states even when they participate in international relations. According to realist proponents, military interests are more important while economic interests are less relevant as for states in ensuring their security. States pursue their national interest through their foreign policy. International relations in political realism is explained in terms of power. Where exercising of power by one state towards another state is often times referred to as realpolitik or just power politics.⁴¹ Morgenthau asserts that in international politics, similar to domestic politics there is existence power struggle.⁴² For states power is an important because it ensures their survival in the international system. States use power in two ways that is thorough hard power and soft power. In hard power states use military and economic means to influence other states behaviour. States use coercive diplomacy, the threat of military intervention or sanctions implementation; for soft power, states use its ability to attract and cooperate than coerce. State use culture, diplomacy and history to appeal states to act according to their will.

⁴⁰ Hans J. Morgenthau, *Politics among Nations: The struggle for Power and Peace*, 1st ed. (New York: Alfred A. Knopf, 1948)

⁴¹ Joshua S. Goldstein and Jon C. Pevehouse, *International Relations*, 9th Edition, (Longman Publishers, 2010) p. 43

⁴² Hans J. Morgenthau, *Politics among Nations: The struggle for Power and Peace*, 1st ed. (New York: Alfred A. Knopf, 1948)

State security is the ability of a state to ensure the security of its territory, its population, institutions and economy. It is the protection against any forms of foreign attack. States rely on economic, political and military powers to ensure security in the international system. The proposition of Realist theory such as state theory, national interest and power theories are relevant to this study because they explain the importance of territorial integrity and why there are territorial disputes among states. Although Kenya's relation with her neighbours has not always been solid, protecting her territorial integrity has always been paramount. States are still important actors and they seek to promote their national interest and security through their foreign policies. With this, incompatible goals and maximization of power by some states in Africa, especially the Great Lakes region and Horn of Africa region, conflict arises such as disputes over territory.

Because of the territorial nature of the state all international conflicts especially those that are concerned with physicality and involve territory are the most important to the state. Disputes that involve territory are mostly in two forms; disputes over the control of an entire state with I existing borders that usually causes secessionist disputes and dispute over border line demarcations.⁴³ Therefore the theory of realism is important in this study because it will help us understand the state nature, the importance of territory for states while pursuing their national interest and why conflict is inevitable even with integration attempts and peaceful relations through diplomacy among states.

⁴³ Joshua S. Goldstein and Jon C. Pevehouse, *International Relations* 9th ed. (Longman Publishers, 2010) p. 179

1.8 Hypothesis

The main purpose of this research study is to investigate if there is relationship between phenomena. This study critically examines Kenya's approaches in managing threats to her territorial integrity. The following hypothesis will be analyzed;

- Kenya's approaches have effectively managed territorial threats to her territorial integrity.
- Kenya's approaches have not effectively managed territorial threats to her territorial integrity.

1.9 Methodology

This section of the research explains the type of research design, sample size, target population, data collection methods and techniques, validity and reliability, data analysis and data presentation.

1.9.1 Data collection method

This study applied primary data collection and secondary data collection methods from data sources. It also combined qualitative methods and quantitative methods of research to acquire data that is necessary during data analysis. The qualitative method used was in form of interviews while the quantitative methods included the questionnaires. This study used qualitative research design, where it involved investigation of Kenya's approach to territorial threats to her territorial integrity. The research used survey method of data collection through administered questionnaires and structured interviews.⁴⁴ Therefore, since qualitative research involved obtaining insights on explanation and description of events from the population. This design

⁴⁴ Cooper R. and Schindler P., *Methods of Research*, 7th ed. (Irwin McGraw –Hill, 2000) pg.112

gave insight on territorial disputes as a threat to Kenya's territorial integrity and how effective has these approaches been for Kenya.

Primary data collection method was used since it involves the researcher directly interacting with the population. The collection of primary data used was primarily collected using qualitative research, through questionnaires, interviews to targeted population. It enabled the researcher to work with both literate and illiterate respondents. Secondary data collection method involved the use of information that will have been obtained from others work. Secondary data information was collected from academic literature in books, academic journals, biographies and the internet sources which will be relevant for the study. The targeted population for this study are the academics, practitioners and researchers specialized in international peace, security and foreign relations, foreign and ministerial officials as well. The population in focus was 50 in number and it mainly focuses of the international relations practitioners. For the sampling method the study used the Non- Probability sampling through Purposive sampling method to target population that are specialized in security and territorial issues which is considered suitable.

1.9.2 Data analysis and presentation

The analysis of the collected data in the research was analyzed by the identifying similarity in variables, examining and interpreting the patterns and themes in textual data and determines how they can assist in answering the research questions. It involved the coding of the data, identifying the patterns and interpreting their meaning. The data presentation was inform of content analysis, photographic and textual display that will help in arranging the data in new ways and assist in identifying systematic and interrelationship across phenomena.

1.10 Chapter Outline

Chapter one introduces of the research project. The introduction outlines a brief study background, the research problem, the issues to be addressed, the objectives of the research and why it is important. The main subsections of the first chapter include; the statement of research problem, objectives of the research, research questions, literature review and most importantly the research methodology.

Chapter two will identify major territorial threats that have occurred along the Kenyan borders and how they are a threat to her territorial integrity. This will further explore territorial threats over land and water.

Chapter three will identify the approaches Kenya has used in responding to threats to her territorial integrity. The chapter aims to investigate Kenya's approaches in responding to the threats to her territorial integrity and focus on each territorial threat and the approach Kenya used in responding to each threat.

Chapter four will critical analysis of the effectiveness of Kenya's approaches in protecting her territorial integrity. This chapter will show the effectiveness of Kenya's approaches in responding to her territorial threats and how it has handled disputes with her neighbours. It will look on the positive impact and the negative impact of the approaches. It also seeks to analyze whether it has been effective in managing territorial disputes and what role and position has it taken in managing such disputes.

Chapter five entails the findings summary, conclusion and recommendations. The chapter sums up the findings. It draws all the findings and presents the data collected and gives recommendation on areas for further academic and general research on the topic under research. It will look at whether this research approves or disapproves the hypothesis.

Chapter Two

Major Threats to Kenya's Territorial Integrity

2.1 Introduction

The second chapter answers the first research question and it is meant to answer what are the major threats to Kenya's territorial integrity. It is meant to identify all the major threats that have occurred to Kenya's borders since her independence in 1963 to 2019, from those that have occurred in the past to the contemporary threats and those that are still arising. Kenya shares its borders with five countries; Tanzania to its South, Uganda borders to its West, South Sudan in the North West, Ethiopia border to the North and to its North East with Somalia. Kenya subsequently shares its two main water bodies with some of these countries; the Indian Ocean with Somalia and Tanzania and with Uganda and Tanzania the Lake Victoria.

This chapter further investigates the threats that eminent from the Kenya – Somalia borders. It investigates the secessionist movement from the Somalia ethnic group to the contemporary maritime delimitation dispute. It also investigates the Islamic terror group the Al Shabaab and how it threatens the territorial integrity of Kenya. The chapter also investigates the role of shared resource in threatening her territorial integrity in focusing on the dispute over Migingo Island and how it has threatened her territorial integrity.⁴⁵ This chapter will also focus on the Northern part of Kenya and how the shared borders of Kenya, South Sudan and Ethiopia has led to the emergence of threats to the country's territorial integrity, looking at the Ilemi Triangle and ethnic conflicts among different ethnic groups living in the Ilemi Triangle region and the role of the shared natural resource, Lake Turkana.

⁴⁵ Okumu, "Resources and border disputes in Eastern Africa," *Eastern African Studies Journal*, (2010)

2.2 Kenya – Somalia territorial threats

Somalia is one of the biggest threats to Kenya's territorial integrity.⁴⁶ Kenya and Somalia are neighbouring countries in the East African region. Kenya borders Somalia to the South-West. They share a land boundary and its coastline, the Indian Ocean. Kenya and Somalia like most African states had its boundaries constructed by the colonial powers which overlooked their historical ties or tribal and ethnical settlements. The existence of ethnic communities that cuts across territorial borders was and it still threatens to her territorial integrity.⁴⁷ This factor has not only contributed to inter-communal, intra-state, inter-state and regional disputes but also greatly affected transboundary inter-tribal interest. The study found out that Kenya-Somalia border has the most eminent threats to Kenya's borders, population, territorial integrity and national security. Tensions between the two countries began since the colonial period, from secessionist movements to the current maritime border dispute.

Historically, before the scramble and partition of Africa, the Northern Frontier District (NFD) in Kenya was joined with the southern region of Somalia, formerly known as Jubaland.⁴⁸ In 1960 the British government declared all areas inhabited by the Somali, be unified into one administrative region before Somalia's independence. However, the dissolution of the colonies owned by the British, despite Britain granting administrative to Kenya of the NDF to Kenya, Kenya was unwilling to give part of her land that they was just granted administration to Somalia even after its independence.⁴⁹

⁴⁶ Interview with Alfred Makotsi, November 5, 2019

⁴⁷ Interview with Dr. Patrick Maluki October 29, 2019

⁴⁸ Osman M. Amin, *Proposals for the future of Somalia*, (SPM 1993) p. 1-10

⁴⁹ David D. Latin, *Politics, Language, and Thought: The Somali Experience*, (Chicago University Press, 1977) p.75

The independence of Kenya and Somalia changed their view of the borders, from a demarcation line dividing different colonial territories to a border between sovereign states. As a result, a new political identity for the Somali ethnic community at the borderlands was introduced. The colonially demarcated borders presented the new independent states in Africa with two options: they could either maintain the colonial inherited borderlines by accepting the imperfections inherent in the colonial partitions with the attendant consequences of managing separatists and irredentists tendencies or make the effort to redesign the borders.⁵⁰ In this realisation, the Northern Province Peoples Progressive Party (NPPPP) in the NDF of the Somali ethnicity in Kenya sought to unify themselves with the Somalis in Somalia Republic, a secessionist movement that led to the Shifta war.⁵¹

The Shifta war was a secessionist conflict of 1963-1967 where the ethnic Somalis in the NDF in Kenya attempted to secede from Kenya to join their fellow ethnic Somalis in the Republic of Somalia. With the NPPPP and the Somalis in the NDF violently seeking union with Somalia, the Kenyan government enacted a number of repressive measures that were designed to end their efforts.⁵² The Kenyan government placed Somali leaders in preventive detention camps where they were held until late 1970s. Kenya also closed the North Eastern Province from general access by outsiders and members of parliament.

⁵⁰ Muhammad B. Ahmad, *African Boundaries and the Imperative of Definition*, (2012) p.16

⁵¹ Bruce Baker, *Escape from Domination in Africa: Political Disengagement & Its Consequences*, (Africa World Press: 2003) p.83

⁵² Ibid

There was a series of mass slaughter and skirmishes between the Kenyan Army and the Somali insurgents under the group Northern Frontier District Liberation Movement (NFDLM).⁵³ A state of emergency was declared which allowed security forces to detain people without trial, restricting rights to assemble and movement and confiscating property of communities in retaliation on acts of violence. The influence of super powers during the war was a threat to Kenya. Somalia had aligned with the Soviet Union, who provided military assistance to Somalia and was able to expand its military, in fear of a full-blown war the Kenyan government responded with counter insurgency efforts.

The Shifta war was eminently the first territorial threat to territorial integrity of Kenya's and the offset of Kenya and Somalia bitter-sweet relations. Following the Shifta war, there were a series of war, massacre and terrorist threats between the two countries. For instance; the Garissa massacre of 1980 was where ethnic Somali residents were massacred by the Kenyan government in Garissa District in the North East Province, which led to the deaths of over 3000 people. The Wagalla massacre of the Somalis in 1984 in Wajir District was another series events spurred by the Kenya-Somali conflicts that took place at the Wagalla Airstrip where Kenyan troops went to diffuse clan-related conflict and ended up killing 5000 Somali men.

The Shifta war raised concern over secessionist movement and territorial integrity for Kenya that led to the support and advocator of the fourth article 4 of the OAU Charter that prohibits member states of the AU from interfering with matters that occur within other states. According to Ochieng and Ogot, Kenya embraced the principles of good neighbourliness. Kenya also assumed a more pragmatic stance in establishing a military alliance with Ethiopia to protect itself against

⁵³ John Drysdale, *The Somali Dispute* (Pall Mall Press 1964)

the Somalia's threat. Kenya also maintains relations with states that border her and ensure peace but not devoid of sporadic challenges. For example, Somalia has remained a security threat to Kenya up to date and this threat has continued to be the most vital and immediate foreign policy issue for Kenya.⁵⁴

Terrorism is another threat and it is considered the main threat to Kenya's territorial integrity as it directly affects Kenyans. Attacks by militia group such as Al – Shabaab across the Kenyan border with Somalia⁵⁵ Omenje and Githigaro argue that, terrorism is one of the most threats to security that directly affects and faces world governments today. Terrorism is a transnational crime that goes beyond the control and reaches of the state security and has increasingly become an international problem that requires concerted action by the community of nations.⁵⁶ In 2011, the Kenyan government and the Somali military coordinated Operation Linda Nchi against the militia group in Somalia, the Al-Shabaab. The mission was to provide support to the Somalia government and stability in the country.⁵⁷

Since the inception of its operation, the Al-Shabaab vowed to retaliate against the Kenyan government, which led to many terrorist attacks in Kenya, a serious threat to the territorial integrity of the country as it inhibited Kenya failure to protect its territory and its people against outside aggression. The 2013 Westgate shopping mall attack, the Nairobi bus bombing and Gikomba bombing in 2014, the Lamu and Mpeketoni attacks in 2014, the attacks in Garissa

⁵⁴ Ogot B. A. and Ochieng W. R. eds., *Decolonization and Independence in Kenya 1940-1993*(1996)

⁵⁵ Anthony Mukena, interview email message to author, October 28, 2019

⁵⁶ Omenje K. and Githigaro, *The state policing challenges in Kenya: The review of peace and conflict* (University Press, 2010)

⁵⁷ Somalia government supports Kenyan forces' mission, Archived from the original on 14 March 2012, www.standardmedia.co.ke

University College in April 2015 and the Dusit D2 attacks in 2019 are examples of terrorist attacks by terrorist attacks by the Al –Shabaab a militia group based in Somalia.

The study established that the influx of refugees in Kenya is another threat to her territorial integrity.

According to Thapan he associates the movement of migration that has always entailed and accompanied every stage of the development of civilization. In the past, people used to move from one place to another either unwillingly or forcefully through slavery or in other reason such as colonialism.⁵⁸ Kenya hosts refugees from other countries for instance; Somalia, Ethiopia and South Sudan. Kenya is a UN member and a signatory to 1951 UN Refugee Convention and 1969 AU Refugee convention. The country hosts asylum seekers from neighbouring countries and refugees as well. There are two main refugee camps in Kenya, the Kakuma in Turkana and Dadaab in Garissa. Kenya hosted Somali refugees during the Somalia civil war and Somali famine. The flow of Somali refugees had an impact on security dynamics especially on the North Eastern part of Kenya. Despite Kenya opening her border to refugees and creating a large refugee camps as some in the world, Dadaab, the inflow of refugees was unrestricted. This has poses a major territorial threat to the territorial integrity of the country. It is believed that it has facilitated the entry of terrorist group Al-Shabaab to the country, organized crimes, illegal trade and trafficking of small arms and weapons into Kenya.⁵⁹ Al-Shabaab had made the refugee camp

⁵⁸ Meenakshi Thapan, *Women and Migration in Asia, Transnational migration and the politics of identity* 1st ed. (SAGE publications Pvt. Ltd, November 2005) Vol 1, p.9-23

⁵⁹ Abdi Awa, “In Limbo: Dependency, Insecurity, and Identity Amongst Somali Refugees in Dadaab Camps,” (*An International Journal of Somali Studies*, 2010) p. 5-7

a major site for hiding their weapons.⁶⁰ This shows that the influx of refugees especially of Somali nationals in Kenya become and still is a threat to her territorial integrity.

Looking into a more contemporary threat to the territorial integrity of Kenya that has emerged on the Indian Ocean, the study found out that the Maritime delimitation dispute with Somalia is a threat to the territorial integrity of Kenya. One respondent mentioned that conflict with Somalia over the Indian Ocean was a major threat.⁶¹ According to Brown dispute over natural resources such as land, water and minerals are ubiquitous. It is established that disputes over resources triggers violence and destruction, especially in states with weak governance, states with ethnic and political division and high levels of corruption. Resource disputes can challenge a nation's stability, and security.⁶² Resource dispute between states arise over the control and ownership of the disputes resource, or boundary demarcation of the resources.

Somalia filed in the ICJ proceedings on August 28, 2014, against Kenya concerning the maritime dispute in the Indian Ocean that delimitates the territorial sea, exclusive economic zone (EEZ), beyond 200 nautical miles of the continental shelf. Both countries are signatories to the United Nations Convention on the Law on the Sea (UNCLOS). Somalia argues its maritime boundary line draws perpendicular from its land to the coastline while Kenya draws its boundary line straight into the Indian Ocean. This dispute has further created tension between the two countries. In the ICJ, Kenya presented an argument on the historical claim that the Kenya and Somalia maritime border, Kenya does not hold when examining the inconsistent and the

⁶⁰ UNHCR, *Dadaab Update*, (1-15 July 2014) p1-2

⁶¹ Interview with Eve Zita October 30, 2019

⁶² Brown Keating, *Addressing Natural Resource Conflicts: Working towards more effective resolution of National and Sub national resource disputes*, (June 2015) p. 2-4

definition. Kenya argued the disputed territorial water has been under their jurisdiction. Kenya has changed their maritime boundary four times. The 1972 Ewith Territorial Water Act was the first principle that was in Article 15 of the UNCLOS. The second agreement occurred when the President of Kenya issued a Presidential Proclamation that changed the boundary from a diagonal line to a straight line in 1979.⁶³ The third time Kenya changed the boundary was under the Maritime Zones Act of 1989 which returned the boundary in agreement with the 1972 Ewith Territorial Water Act. Years later, Kenya changed the border for the fourth time, on 9th June 2005 in a Presidential Proclamation, which established the disputed border line that is present to date. In Figure 2.1 below illustrates in details the Kenya – Somalia maritime dispute.

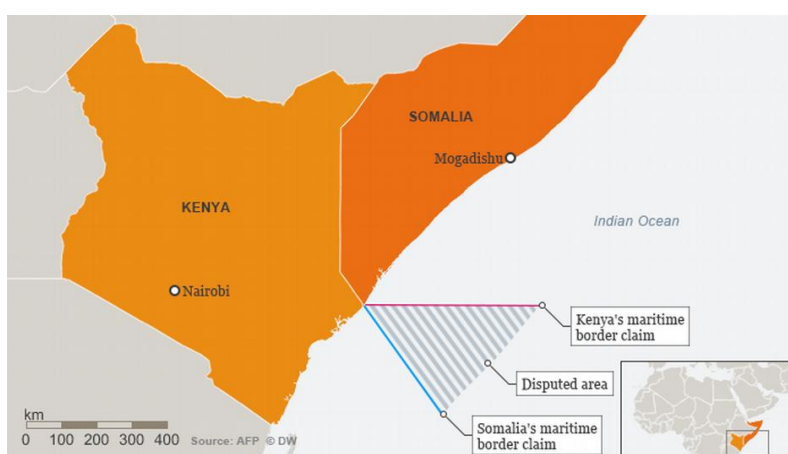


Figure 2.1: Kenya – Somalia Maritime Dispute illustration⁶⁴

The 1988 Somali Maritime Law that established the maritime boundary with Kenya is based on the equidistance principle which contradicts the historical claim by Kenya over the maritime territory. Hence the differing views between the two countries hence causing the maritime dispute as both claims are illegitimate. The dispute emerged due to the coastal oil field dispute. The presence of oil and gas reserves located underneath the Indian Ocean sea bed, with Somalia

⁶³ The case of the Delimitating the Indian Ocean Maritime boundary with (Somalia versus Kenya), November 2017

⁶⁴ Kenya or Somalia: Who owns the sea and what lies beneath? Photograph <https://www.dw.com/en/kenya-or-somalia-who-owns-the-sea-and-what-lies-beneath-19557277> (accessed October 22, 2019)

arguing that Kenya is occupying its territorial waters and engaging in inappropriate auctioning, drilling and exploratory activities. This dispute has created uncertainty, lack of peace around the Kenya border and strained diplomatic relations with Somalia.

Piracy in the Indian Ocean by Somali nationals has become a menace and led to insecurity and also become a threat Kenya's territorial integrity. The study found out that piracy was mentioned as other forms of threat to Kenya's territorial integrity.⁶⁵ From the kidnappings, killings of Kenyan naval police and the adverse effects on maritime trade has posed insecurity issue for Kenya. The threat of piracy is particularly disturbing and a concern for Kenya's territory, security and economy. Somali piracy is biggest maritime threat not only for Kenya but other countries as well since the 1990s as Somali pirates do not target a particular country.⁶⁶ Piracy has negatively impacted trade along the Indian Ocean. According Bensassi, Somali pirates in 2009 hijacked 47 vessels took and above 800 crewmembers hostages and carried out above 200 attacks on ships that were violent.⁶⁷ For instance in November 2008, the Somali pirates hijacked ships at the Gulf of Eden target the ships that were headed for the Kenyan Mombasa Port.⁶⁸ Kenya's territorial integrity is threatened by Somalia, from proliferation of light weapons and small arms, refugees' influx and the spread of Islamic fundamentalism that also hinders open trade and investment between Kenya and Somalia.

⁶⁵ Interview with Camilla Agak, November 2, 2019

⁶⁶ Murphy M., *Somali Piracy: Why Should We Care?*, (Russi journal; vol. 156, 2012) p. 4-12

⁶⁷ Bensassi, S. and Inmaculada, M, *How Costly is Modern Maritime Piracy for the International Community?*(University of Gottingen, 2010)

⁶⁸ *Kenya reports on the hijacked Chinese fishing boat*, (International herald tribune association press, November 14, 2008)

2.3 Kenya – Uganda Migingo Island border dispute

Lake Victoria is the largest fresh water lake in African and the second largest in the world. Lake Three countries, Uganda, Kenya and Tanzania have shared border with there are numerous islands spread all over the lake belonging to the three countries. Lake Victoria plays a critical role to the economic and diplomatic relations to these countries. The lake's impacting nature on several states has become a source of threat to the countries territorial claims. One of the current conflicts and notable dispute has been between Uganda and Kenya over the Island of Migingo. One respondent stated that dispute over Migingo Island arose over the competition of economic resources;⁶⁹ while another stated that the Migingo Island in Lake Victoria is a major threat to Kenya's territorial integrity.⁷⁰ The opposing discussions over the ownership of Migingo Island explains the increasing pattern of conflicts that revolve around African boundaries over the years especially the Great Lakes region of Africa, indicating debates on unresolved issues around the emergence, nature, transformation of the borders, and their significant role in addressing questions of territoriality, citizenship and nationhood. Border controversies in Africa, for instance, the Migingo case highlights the perils of the state for treating borders as marginal spaces that can be ignored. This argument developed in the analysis of the Migingo Island case. In that border relations be seen as an instrument of testing good relations between neighbouring countries and regional integration, and that this will be best accomplished if local communities are directly involved in resolving outstanding border issues rather than leaving this to political elites and central government alone.⁷¹

⁶⁹ Interview with Boffin Onyango, October 30, 2019

⁷⁰ Anthony Mukena, interview email message to author, October 28, 2019

⁷¹ Peter W. Wekesa, "The Migingo Island controversy and the Kenya Uganda borderland: Old issues and new challenges," *Eastern African Studies Journal*, (2010) p. 332

The study found out that, the Kenya-Uganda dispute over claims to the ownership of Migingo Island only came to the fore in 2004. According to Okumu, although the Kenya had always occupied and exercised her territorial sovereignty on the island since 1926, one could believe that the disputes emerged only a few decades back, perhaps caused by competition of resources by the two countries.⁷² The Migingo conflict in East Africa has been characterized by the media to fishing grounds and geographical boundary disputes between the two countries.⁷³ However the conflict is influence by historical and political factors.

Historically, the Kenya-Uganda border demarcations were made by the British in 1962 under the 1962 British Order in Council which established the current border. The document contains the boundary pillars, coordinates and the feature of Migingo Island nature. It is believed that Migingo Island was uninhabited until 1991.⁷⁴ The border between the two countries was to rely on the 1995 Second Schedule of the Constitution of Uganda, which was annexed from the First Schedule of 1967 Constitution of Uganda in 1995 and the 1926 Kenya Colony and Protectorate Boundaries Order in Council and the 1963 Kenya Legal Notice No. 718, Schedule II Boundaries, Part I, the Districts, 37, District of Busia.⁷⁵

The Kenya Uganda border was made by the British in 1926 and did not raise any issue in regard to Migingo until 2008. There had been a series of annexation of some islands in Lake Victoria by Uganda. In 1970 Uganda's President Idi Ami seized, Sigulu Island, the then largest Island

⁷² W. Okumu, "Resources and Border Disputes in Eastern Africa," *Eastern African Studies Journal*, (2010) p. 279

⁷³ Dr. Obiero Ong'ang'a, *Migingo Island Conflict Management through Transboundary Multi-stakeholders Dialogue*, (Osienala publishers 2009) p. 2

⁷⁴ Peter W. Wekesa, "The Migingo Island controversy and the Kenya Uganda borderland: Old issues and new challenges," *Eastern African Studies Journal*, (2010) p. 332 - 335

⁷⁵ Ibid

inhabited by the Banyala people. Other islands include the Lolwe, Remba and Wayami Island.⁷⁶ The rise of Idi Amin in Uganda also posed a serious threat to the territorial integrity of Kenya when he claimed Uganda borders to be withdrawn due to the fact that from the from the Rift valley region of Kenya belonged to the Ugandan territory. The territory included the Nyanza region and part of the Rift Valley up till Naivasha.⁷⁷ This shows that there has been existence of threats to Kenya's territorial integrity along the Kenya-Uganda border.

The contestation over the ownership of Migingo Island rose in June 2004 when Uganda deployed forces, the Uganda Marine police into Migingo and they pitched a tent and hoisted the Ugandan flag on Migingo. They also imposed a special tax on Kenyans fishermen which steered diplomatic tensions between the two countries. Tensions rose on the island when Kenyan policemen were deployed to check on the treatment of Kenyan fishermen after protests by Kenyan fishermen on hostile treatment by Ugandan Police force. Migingo is the central fishing ground for the industries involved in fishing in the North-eastern part of Lake Victoria.

⁷⁶ Joe Ombuor, *How Much More Territory Will Kenya Cede to Uganda Before the State Intervenes*, The Standard, Nairobi, 27 December 2008, www.standardmedia.co.ke (accessed October 23, 2019)

⁷⁷ Rossi, R. C, *The Migingo Island Dispute between Kenya and Uganda*, (Brooklyn International Law Journal, Vol.42. No.2 2016)

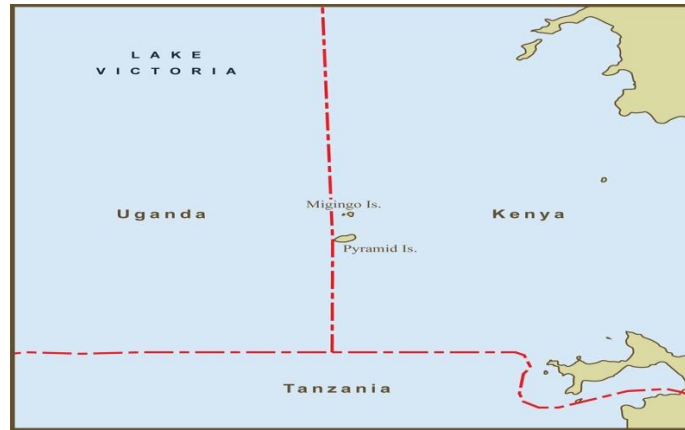


Figure 2.2: Location of Migingo Island on the map⁷⁸

Migingo Island's location has also fuelled dispute between the two countries. The island is located in Karungu division in Sori-Bay in 10 kilometres off Migori district in Kenya and it is over 100 kilometres from the closest land area in Uganda. However, the authorities in Ugandan claim Migingo Island falls within the boundaries of Bugiri, located in the eastern district. The proximity to the Kenyan shore has enhanced the utility of the island to Kenya's fishermen who wish to exploit the resources of Nile perch found in the lake.⁷⁹ This suggests the territorial conflict is not solemnly raised by historical factors. The Migingo Island dispute is a threat to Kenya's territorial integrity. The dispute raises the concept of sovereignty which is essential for a Kenya to ensure her territory is protected. With continuing disputes between these two countries souring diplomatic ties would result in strained integration efforts in the EAC and slow economic development from affected trade and tariffs agreements.

⁷⁸ Andy Proehl, Map of the Uganda/Kenya border dispute over Migingo Island , July 20, 2011 (accessed November 7, 2019)

⁷⁹ Peter W. Wekesa, "The Migingo Island controversy and the Kenya Uganda borderland: Old issues and new challenges," *Eastern African Studies Journal*, (2010) p. 335

2.4 Kenya – Ethiopia – South Sudan territorial threats

The Ilemi Triangle is another territorial dispute that poses a threat to Kenya's territorial integrity. Since the beginning of the conflicts it has exhibited rational politics which makes it interesting a great concern to the security, international relations and geopolitics of the Africa Horn. The geopolitics of the African Horn region entails power, politics, place, policy, and interest that states as they interact in the Horn of Africa region. Many threats to Kenya's territorial integrity as already discussed mainly occurs along the borders of States on the Horn of Africa regions, these include Somalia, Sudan, South Sudan and Ethiopia.⁸⁰

Figure 2.2 illustrates the Ilemi Triangle dispute between the three countries. The Ilemi Triangle is contested and claimed by three countries; Kenya, South Sudan and Ethiopia. This issue is why the region has not been fully claimed by one state and not economically developed by any government.⁸¹ The Ilemi Triangle located on the unexplored oil rich region in south of South Sudan. This is due to the insecurity, the 30-year civil war in South Sudan, the inability for any state to claim the region, the lack of infrastructure or modern facilities.⁸²

⁸⁰ Edward Waithaka and Patrick Maluki, "Emerging Dimensions of the Geopolitics of the Horn of Africa," *International Journal of Science Arts and Commerce*, vol. 1. no 4 (June 2016)

⁸¹ Jones et. al. *An Introduction to Political Geography: Space, Place and Politics* (2011)

⁸² Ibid

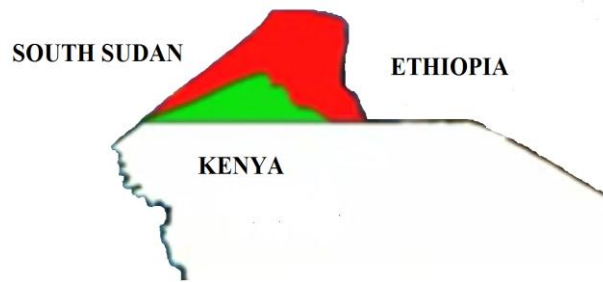


Figure 1.3: Ilemi Triangle

Historically, the politics of the Ilemi Triangle dates back to the partition of Africa by the colonial powers. It is hard to map Ethiopia's political history on the Ilemi Triangle since it was not colonized. There was no urgency of border delimitation of Kenya, Sudan and Ethiopia borders since Kenya and Sudan were under the British rule. Ethiopia under Emperor Menelik II unification was hampered by imperial interest in 1891. Emperor Menelik II sent imperial powers outlining the extent of his empire and expanded Ethiopia southwards in order to hind the British expansion and sphere of influence in the north. Ethiopia therefore conquered many areas just as the British did. Ethiopia claimed Lake Turkana and the territory that runs to the southern end of the Lake.⁸³ British disagreeing with the idea insisted on running the Ethiopia – Kenya boundary.

In 1902, Ethiopia marked the Ethiopia –Kenya border and marked the 'Maud line' that was considered the de facto Kenya – Ethiopia border. Uganda also contributed to the Ilemi Triangle disputes since it was also under the British imperial rule and shares a border with Kenya and South Sudan. In 1902 the Uganda Order in Council transferred some parts inhabited by Turkana's from Uganda to Kenya making Uganda reduces by two – thirds of its size. These parts of land transferred to Kenya were the Turkana inhabited areas. After Kenyan colonial authorities

⁸³ Harold, M. *The life and times of Menelik II Ethiopia 1844-1913*, (Oxford: Clarendon Press., 1975)

established an administrative boundary in 1926 that did not correspond with the 1907 Anglo-Ethiopian treaty as a measure of accommodating Turkana's ancestral grazing area within Kenya and offering the Turkana's protection against Ethiopia's cattle rustlers and Sudanese militia.⁸⁴ This event led to the portion of Ilemi not falling under Kenyan administration.

The need to redefine the borders of British territories in Africa issues that were important to border rectification between Kenya, Uganda and Sudan over the Ilemi, this led to the formation of the 1914 Uganda – Sudan Boundary Commission. The main issues were the determination of Turkana grazing ground while Sudan sought to gain access to Lake Turkana and Ethiopia to bring the Kuku ethnic community into Sudan.⁸⁵ In 1918, the Labour patrol was commissioned to undertake study on issues resulting from each country, with the objectives of punishing and disarming firearms from the Donyiro, Marile and Turkana tribes. The British were reluctant to invest in the administration of troops due to the casualties and cost in the Ethiopia's military involvement.

The Kenyan, Ugandan and Sudanese officials met in Kigutum Uganda in 1924 to discuss the delimitation of Ilemi Triangle which had become a serious territorial issue. Uganda and Kenya convinced Sudan to redraw the boundary and include Turkana grazing grounds on the northern side of across the 1914 line ceding the territory to either Kenya or Uganda. In 1926, Sudan agreed to cede 1167 square miles of the Ilemi to Kenya and an addition of 90 square miles above, the Old Red Line. After 1926, the colonial authorities in Kenyan established an administrative boundary that did not correspond with the 1907 Anglo-Ethiopian treaty as a way

⁸⁴ Mburu, N. "Delimitation of elastic Ilemi Triangle: Pastoral conflict and official indifference in the horn of Africa. *African Studies Quarterly*," *The Online Journal for African Studies*, Spring, (2003)

⁸⁵ Ibid

of accommodating Turkana's ancestral area and protection against Ethiopian and Sudan militia.⁸⁶ The British disarmed the military balance and Turkana community in 1929 and the conflict between them and the Inyangatom and Dassanech neighbours was disrupted. The military imbalance increased the cattle rustling raids and insecurity in the region.⁸⁷

From 1931, the British determination to establish law and order in the Ilemi Triangle mandated Sudan to contribute towards the expense of administering peace in the Ilemi. Due to Sudan's rejection of the proposal made by the British and poor administration of the territory as there were no roads and other infrastructures, the establishment law and order in the region failed. The same year, the administrations of Sudan-Mongalla and Kenya-Turkana agreed that the northern limits of Turkana pastures were within the area defined by the Red Line. With the threat of the Italians invasion of Ethiopia in 1936, the British were compelled to realign the East African territorial boundaries to contain the Italian imperialism in the region. After occupying Ethiopia, Italians claimed Ilemi Triangle. As a result, the 1902 Maud Line was confirmed as the Kenya – Ethiopia border to protect British interest against the Italians.

Kenya and Sudan established a survey team in 1938, which extended the Red line in the northeast direction and established 'Wakefield line' or the 'Provisional Administrative Boundary'. The Inyangatom and Dassanech conducted a series of violent raids in the administered areas of Turkana and killed hundreds of people of Ilemi. The Italians denial of the involvement, the British dropped bombs in a punitive raid conducted by the Kenya Africa Rifles

⁸⁶ Ibid

⁸⁷ Mburu, N., "Delimitation of elastic Ilemi Triangle: Pastoral conflict and official indifference in the Horn of Africa," (*African Studies Quarterly, The Online Journal for African Studies, Spring, (2003)*)

(KAR) and the Royal Air Force.⁸⁸ In 1944, the British foreign offices established the Blue line that was west of the Red line which enlarged Ilemi Triangle. With Ethiopia and Sudan failing to agree on the exact location of the line to avoid splitting the Nuer and Anuak ethnic groups, Ethiopia proposed the proposed exchange of the Baro salient and River Omo to remain in her territory. Sudan established a patrol to that prohibited Kenya and Ethiopia pastoralist moving into the western region of Sudan while it gave up on patrol and developing in the east. This event did not affect the sovereignty of both Sudan and Kenya.⁸⁹ By 1947, Kenya had seven police posts in the territory with British police and armed Turkana tribal police operating in Ilemi,⁹⁰ making the 1914 line disappear in both countries.

After colonialism and the gain of African independence, Jomo Kenyatta in 1967, tried to convince Britain on determination of the boundary between Kenya and Sudan by proposing recognition of the red line as the international boundary between the two countries placing the 1914 line null and void. In 1990, the Ethiopian government armed the Dassarech to attack the Turkana in Kenya and Sudanese in the region, resulting in the Koikai massacre that led to the death of thousands of Borans. In a counter measure, President Daniel T. Moi's government supplied arms to the Turkana ethnic community and support of the SPLA led to speculations that Kenya had occupied the area. To date, Kenya maps the red line as the official boundary and continues to man the territory. The 21st century saw a new dimension on the territorial dispute over the Ilemi Triangle. In 2005, after signing of the Comprehensive Peace Agreement in Sudan saw the formation of a new nation in Africa. After years of the Sudanese war, the country split into two nation states, the Republic of South Sudan was created in 2011. South Sudan changed

⁸⁸ Ibid

⁸⁹ Martin, J. *The Ilemi triangle history* (Nairobi: Opinion Kenya Ltd , 2011)

⁹⁰ Mwaure, P. *Kenya's claim over Sudan, Ethiopia border triangle precarious* (Khartoum: Sudan tribute 2005)

the dispute over the Ilemi. South Sudan inherited the claim of Ilemi from its former nation Sudan after gaining its independence and followed the Anglo-Ethiopian treaty of 1907 which places the entire Ilemi Triangle to the Sudanese side which bore the Sudanese Patrol line.⁹¹

Although Sudan refrained from the administration of Ilemi Triangle since 1956, since the country entered into an agreement with the Kenyan government under the SPLA/M leader Dr. John Garang, to cede Ilemi to Kenya for both logistical and military support during the Sudan civil war. With its independence, South Sudan revisited claims over the Ilemi pointing accusation on the legality of Kenya's ownership.⁹² It wrote to the Security Council seeking interventions to reclaim part of Ilemi that extends to Kenyan territory in fear of that oil exploration is ongoing in Kenya, which may lead to them losing from the wells in Turkana located at the lower side of the oil table than the wells in Sudan.⁹³ This claim led to the re-emergence of dispute over the Ilemi Triangle and further posing a threat to Kenya's territorial integrity. Although today Kenya solely controls and administers the Ilemi Triangle, as its territory and with the current discovery of natural resources for example, oil, hydrocarbon, mineral reserves and water in the Lake Turkana has further intensified the dispute over the Ilemi Triangle. The acquisition of small arms by ethnic communities especially in the Turkana region among the Karamajong community in the Ilemi Triangle is a main cause of the territorial threats.⁹⁴ In Figure 2.3 below, it illustrates the different shapes of what the Kenyan map ought to become and what Kenya might lose in the future if the Ilemi Triangle dispute is to be resolved. Therefore, the Ilemi Triangle is a major threat to Kenya's territorial integrity.

⁹¹ Sophie. H. and Max. H., *South Sudan*, (London: Brandt Travel Guides, 2013)

⁹² Edward Waithaka and Patrick Maluki, "Emerging Dimensions of the Geopolitics of the Horn of Africa," *International Journal of Science Arts and Commerce*, Vol. 1. No 4 (June 2016)

⁹³ Ibid

⁹⁴ Interview with Jackline Kilavi October 27, 2019

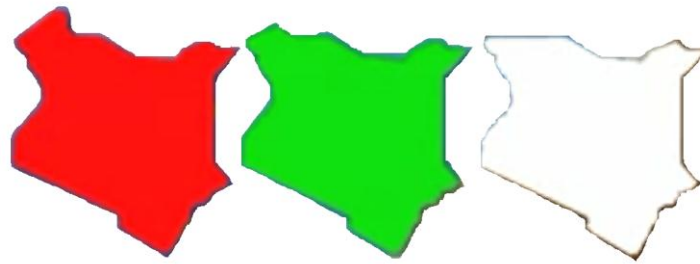


Figure 2.4: Illustration of different shapes of Kenya map if the Ilemi Triangle dispute is to be resolved.

Territorial threats have also emerged along the Kenya – Ethiopia border that has threatened Kenya’s territorial integrity. Cross border attacks by bandits especially by Ethiopians across Kenya and killing pastoralists and citizens.⁹⁵ The clash between the Ethiopia security and the Oromo Liberation Front (OLF), a secessionist group in Ethiopia has led to the influx of refugees to the country, and the deployment of Ethiopian soldiers in Moyale which threaten to Kenya’s territorial integrity.⁹⁶ Over 5000 Ethiopian have entered into Kenya fleeing the country after botched military operations that target the OLF fighters. The Ethiopian government later deployed soldiers in a region that borders Kenya near the area of Moyale in Oromiya in the pursuit of the OLF. This led to the killing and injuring of civilians in the region. It is reported that the Ethiopian soldiers mistakenly killed nine civilians.⁹⁷ This event has been a threat to Kenya’s territorial integrity.

⁹⁵ Anthony Mukena, interview email message to author, October 28, 2019

⁹⁶ Aaron Maasho, “About 5000 Ethiopians flee to Kenya after botched military operation” March 13, 2018, <https://www.reuters.com/article/us-ethiopia-violence/about-5000-ethiopians-flee-to-kenya-after-botched-military-operation-idUSKCN1GP1T4> (accessed October 28, 2019)

⁹⁷ Abdur Rahman Alfa Shaban, “Ethiopia military unit ‘mistakenly’ kills nine in Moyale, Residents flee into Kenya” 10, March, 2018, <https://www.africanews.com/2018/03/10/ethiopia-military-unit-mistakenly-kills-nine-in-moyale-residents-flee-into-kenya/> (accessed October 29, 2019)

In summary, territorial threats have emerged along Kenya's territorial borders. Nearly all countries that border Kenya have threatened her territorial integrity. These are Uganda to the East with the Migingo Island issue, South Sudan and Ethiopia to her North over the Ilemi Triangle and Somalia to the Northeast over the secessionist movement and maritime border issues. Other territorial threats include; the influx of refugees into Kenya's territory, terrorism by the Somali led group Al Shabaab, Cross border transnational crimes and Piracy in the Indian Ocean. This chapter has given an overview of threats to Kenya's territorial integrity.

Chapter Three

Kenya's Approaches Threats to Its Territorial Threats

3.1 Introduction

This chapter answers the second research question and objective. It seeks to answer what approaches Kenya has used in responding to threats to her territorial integrity. It seeks to discuss about diplomatic practices and the pacific methods of dispute settlement and also discuss the undiplomatic methods such as war or using force that has been used by states and Kenya alike has used in responding to her territorial threats.

It is quiet common that territorial disputes are difficult to resolve. There is no international law that contains an outlined set of norms that establishes international conventions that determine nation's sovereignty over territory in the direction of competing claims that are factual based on ethnic, cultural, religious, historical or other social, economic and political factors. States are unwilling to lose their territory because they uphold their national interest and sovereignty. Territorial disputes often emerge once they are linked to interest that are economically or socially important. Economic led factors are natural resources for example; oil, hydrocarbons, mineral reserves, shared grazing areas, water sources or strategic resources.⁹⁸

State may find difficulty in dealing with threats to its territorial integrity due to factors such as the willingness or unwillingness for state to recognize that there is a dispute, whether both parties will reach an agreement on the best approach to use in solving the dispute and distinction

⁹⁸ The Carter Center, *Approaches to solving territorial conflicts: sources, situations, scenarios and suggestions* (May 2010)

between approaches of resolution of border dispute whether it is binding and nonbinding from methods such as arbitration and adjudication of the use of good offices.⁹⁹

3.2 Diplomatic approaches

States have used diplomacy to conduct their relations in the international system since the medieval times. Diplomacy is a tool that uses peaceful means to conduct relationships among states in international relations. Nations try to acquire and secure their national interest and goals through diplomacy. Barston defines diplomacy as the skill that involves practice in the conduct of negotiation between states or groups with representatives who are concerned with managing state relations with other states, governments, nongovernmental organizations and multinational corporations. This hence draws that diplomacy is shaped around giving advice, shaping and foreign policy implementation.¹⁰⁰

The conduct of diplomacy has existed since the period when diplomacy was dealt on an official basis by empires, kingdoms, States and other central powers in the world. There existed diplomatic archives discovered in Egypt that dated back to 13th century BC. Diplomatic missions that were permanent represented the set up by one country in the territory of another dates to the 15th Century during the period of Renaissance.¹⁰¹ Melissen states that in the modern world, diplomacy has struggled in reflecting the diversity, pluralism and complex interdependence of the globalized age. In examination of any contemporary international relations problem, it is impossible to not consider the challenges that face diplomacy which in turn poses challenges on

⁹⁹ Ibid

¹⁰⁰ Barston, R. P, *Modern Diplomacy*, (Publisher, Pearson Longman, 2006) p.6

¹⁰¹ Op. Cit., *The ABC of Diplomacy*, p.3

innovating diplomatic practices and the contributing of diplomacy in easing world problems, promotion of justice, peace and order in the world.¹⁰²

Conflict and war is inevitable among states, and in order to promote order, minimize and prevent chaos among states, states have resorted to the idealist view and methods of conducting their affairs in international relations that would promote cooperation and resolve disputes among themselves through diplomacy. Diplomacy is concerned with promoting the economy, security, politics, or cultural relations of states. It is also concerned with defending human rights and promoting peaceful settlement of disputes in its role in international commitment to promote peace in the world. These diplomatic methods of settling disputes among states are also known as the pacific dispute settlement methods. The settlement of dispute by peaceful means is considered essential especially in the interest of avoiding deadly armed conflict. The UN is the main champion for the norm and practice of peaceful settlement of disputes. The second Article of the UN Charter lays out principles which the member of the UN are mandated to pursue the aims of the first Article through settling their disputes by peacefully, in ways that there's no endangerment of international peace, international security, and justice. According to Bruno, the goal of the settlement of disputes peacefully is important in a world order that has banned using of force or implementing coercion.¹⁰³ This set of principle has hence created obligations for states that are members of the UN and the responsibilities of the UN main organs. States independently have the responsibility to settle their disputes though pacific settlement of disputes. The UN Charter also provides for other institutional arrangement that promoted the pursuance of the same principle.

¹⁰² Melissen J., *Soft Power in International Relations: The New Public Diplomacy* (Hound mills, 2005) p.41-43

¹⁰³ Simma. Bruno, ed., *The United Nations Charter: A Commentary*, 2nd ed., vol. 1 (Oxford, Oxford University Press, 2002), 103.

The Charter of the UN has emphasized on settlement of disputes peacefully, which has been echoed and elaborated in subsequent declarations and resolutions. For example; the General Assembly declaration and resolutions include; resolutions 2627 of October 24, 1970, 2734 of December 16, 1970 and 40/9 of November 8, 1985 which deals comprehensively with the declaration of friendly relations and cooperation among states principle, in accordance with the UN Charter resolution 2625, annex. The declaration of Manila on the settlement of international disputes through peaceful means resolution 37/10, annex, declaration of the prevention and removal of disputes and situations that may threaten international peace and security and on the role of the UN in this field resolution 43/51, annex and the declaration on fact-finding by the UN in the field of the maintenance of international peace and security resolution 46/59, annex.¹⁰⁴

The principles of settlement of disputes peacefully are linked to various international law principles. The sovereign equality of states principle, equal rights and self determination of peoples principle, non-use of force in international relations principle, principles of international law concerning sovereignty, independence and integrity of states territory and the non-intervention in the internal affairs or external affairs of states principle.¹⁰⁵ States are obligated to settle disputes peacefully as stated in the Charter. Although Article 33, paragraph 1 is not precise in registering, but sets out options for settlement of disputes peacefully, the UN Legal Office provides a detailed description of the procedure of all the legal texts and it details each mechanism that has been forwarded in its detailed manual development. There are eight main categories, these are; negotiation, mediation, arbitration, conciliation, enquiry, regional

¹⁰⁴ UN Legal Affairs Office, Codification Division, *The Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹⁰⁵ Ibid

organizations, international tribunals, and other peaceful means. Kenya as a member of the UN and a signatory to the Charter recognizes the significance of dispute settlement by the use of peaceful means. Secondly, Kenya has used peaceful methods of dispute settlement as an approach in dealing with threats to her territorial integrity.

3.2.1 Negotiation

Negotiation is the first resort to conflict resolution for disputing parties to a conflict. It is the most used and popular means of dispute settlement because it is accepted universally method of dispute resolution and pose many advantages. Negotiation is the best diplomatic method of peaceful settlement of territorial threats, especially bilateral negotiations.¹⁰⁶ One characteristic of negotiations is flexibility, according to the declaration of Manila on settling international disputes by peaceful means, because it can be applied to various types of disputes whether legal, technical or political.¹⁰⁷

In negotiations, only the disputing parties are involved during negotiation talks and states to the dispute can monitor all the stages of negotiation process and conduct in the manner which they deem most suitable. It is effective, consultations may be considered and exchange of views as well.¹⁰⁸ Negotiations can be bilateral that is conducted solely between two parties, multilateral conducted between several states that are parties to a dispute such as in an international conference and collective negotiations conducted in the form of international organization that may lay out the framework for the negotiation process.

¹⁰⁶ Interview with Jackline Kilavi October 27, 2019

¹⁰⁷ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹⁰⁸ Ibid

Negotiation process begins when both states perceives to an existing dispute before the process of negotiation take place. Negotiations will take place if both parties to the dispute agree to a common interest of bridging the gap and solve the dispute. The three main processes of negotiations are; the initial phase considered as pre negotiation phase, where the framework of the negotiation process is decided, the place of negotiation, degree of publicity, duration of the negotiation process and attitude of the parties. The second phase is the negotiation phase where actual negotiations take place and finally the outcome phase or post negotiation phase where terms of agreement are arrived at. Successful negotiations may lead to a comprehensive or joint agreement, a memorandum or declaration, and in the case of unsuccessful negotiations, parties may choose to adjourn the negotiation process or issue a joint statement recording the failure of the negotiations if the dispute relate to the interpretation or application of a treaty.¹⁰⁹ Also in an event of unsuccessful negotiation, the parties to the dispute may use to other settlement of disputes methods including, consultation, conciliation, arbitration or resort to the ICJ.

Territorial disputes in international relations have been resolved through negotiations. For instance, in May 2014, the Philippines and Indonesia settled their maritime dispute after twenty years of negotiation. Foreign ministers of the two countries met in Manila and signed an agreement which defined the maritime borders that overlapped the EEZ of the Celebes Seas in Mindanao on the southern area of the Philippines. This shows that threats to a country's territorial integrity can be solved peacefully with exemption of the using force or the military.¹¹⁰

¹⁰⁹ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹¹⁰ Philippines and Indonesia resolve 20year border dispute, <http://www.bbc.com/news/world-asia-27535004> (accessed on September 6, 2019)

The study found out that Kenya has used negotiations to settle territorial disputes and minimize the threat to her territorial integrity. Kenya has for instance held bilateral negotiations with Somalia over disputes that arise between them. Kenya and Somalia have subsequently conducted negotiations on various questions on delimitation of the maritime. Kenyan Foreign Ministers and Somalia held a meeting on 21 March 2014, at which it was agreed that a technical meeting be held among relevant officials. A first bilateral meeting was held in Nairobi on 26 and 27 March 2014. On 28 and 29 July 2014, a second bilateral meeting was held which was attended by the two Foreign Ministers. The Parties agreed to reconvene on 25 and 26 August 2014 for a third meeting, but that meeting never took place.¹¹¹

The study also established that, since the emergence of the dispute over Migingo Island, Kenya and Uganda have held bilateral talks from March 2009 to 2013 to manage the dispute.¹¹² In March 2009, bilateral meeting was held in Kampala to agree on the primary reference documents to be used to ascertain the boundaries, the withdrawing of the forces of security from the island to stop harassment of locals by the security forces, establish a joint boundary survey and enforcement of Lake Victoria Fisheries Organization (LVFO) fishing regulations.¹¹³ Another meeting was held by the head of states in Lusaka during the AU Summit, during which it was agreed that Uganda would withdraw its flag and security forces from Migingo Island. A second bilateral meeting was held in May 2009 between Kenyan President and Ugandan President during the South African Development Community meeting. The meeting was used to launch the survey of the Kenya – Uganda border in Lake Victoria which was never initialized after Uganda

¹¹¹ ICJ, *Delimitation of the Indian Ocean Maritime between Somalia v. Kenya*, (Judgment of 2 February 2017)

¹¹² Dennis Onyango, *Kenya Uganda in Talks Over Migingo Island Dispute*, (The Standard , Nairobi, 21 November 2013) Available from: www.standardmedia.co.ke (accessed on September 6, 2019)

¹¹³ Ibid

withdrew his team.¹¹⁴ To date, with all the negotiation attempts. The Migingo Island dispute still remains unresolved.

This study found established that in regards to the Ilemi Triangle dispute, on 1st July 2019, the heads of state of Kenya and South Sudan held bilateral talks in Nairobi on resolving the Ilemi Triangle dispute. They agreed to form a joint border commission that will be responsible for cross-border ethnic conflicts between the communities living in the area.¹¹⁵

3.2.2 Mediation

Mediation is another method of settlement of international disputes peacefully with a third party intervention in an attempt to reconcile conflicting parties. Mediation is negotiation with the presence of a third party usually not part of the dispute or conflict. The third party may be an individual, state, group, regional or international organization. Mediation is usually considered a procedure that is set either by the third party who offers mediation and is accepted by the disputing parties, or it can be initiated by the parties to the dispute themselves agreeing to mediation process. Mediation has been provided in a many multilateral instruments such as The Convention of the Hague for the pacific settlement of international disputes of 1899 and 1907, the UN Charter, the OAU Charter and protocol of the commission of mediation, conciliation and arbitration of 1964, the 1936 Inter-American Treaty on Good Offices and Mediation and the 1970 Declaration on the International Law principle.

¹¹⁴Ibid

¹¹⁵ Kenya, South Sudan form team on Ilemi Triangle conflict, Monday, July 1 2019, The East African, <https://www.theeastafrican.co.ke/news/ea/Kenya--South-Sudan-form-team-on-Elemi-Triangle-conflict/> accessed November 10, 2019

Mediation is more than an adjunct to negotiations, in practice the UN has become a distinctive instrument that facilitates a dialogues between disputing parties to an international dispute. Mediation aims to scale down hostilities and tensions in hopes of achieving suitable solutions in an international dispute. The main purpose of mediation is performing preventive function in reducing tensions that has developed in the course of an international dispute.

Mediation in practice tends to implement good offices, although the difference between the two is minimal. For instance; in 1981 the Algeria government tried to settle the dispute between USA and Iran, over the detainment of American diplomatic and consular staff. This led to the Algiers Decoration or Accords signed on 19 January 1981, which resolved the Iran hostage crisis. Since the US was hindered in politically or militarily intervening in the affairs of the Iranian that were internally, the Algerian mediator Mohammed Benyahia tried to resolve the issue. It was effective in achieving a settlement involving, among other issues, the release of the detained hostages.¹¹⁶

Mediation is consensual in nature and seeks to result in a win – win outcome for it to be considered successful. From 1967-2005, the government of Indonesia was in an insurgent war with a separatist group sought independence Sumatra in the Aceh region from Indonesia called the Free Aceh Movement. The group fought against the Indonesian force in Aceh insurgency that resulted in the loss of over 15,000 lives.¹¹⁷ In 2005, after the tsunami disaster, the Free Aceh Movement and the delegation of Indonesia approached the then President of Finland to mediate their dispute. The mediation process was successful and a peace agreement was signed between

¹¹⁶ Gary Sick, Harold H. Saunders and Warren Christopher American Hostage in Iran: The conduct of a crisis Yale, (1985)

¹¹⁷ Aceh GAM separatists, 24th January 2005, www.news.bbc.co.uk/2/hi/asia-pacific/3039243.stm (accessed September 6,2019)

them. The two parties came to an agreement and ceased hostilities and the Free Aceh Movement agreed to disarmament.¹¹⁸

Mediation efforts have also been accepted by a written agreement, for instance in the Chile and Argentina case regarding the 1977 Beagle Channel Award. The two countries signed an agreement on January 8, 1979 at Montevideo that led to accepting a proposal for dispute settlement and implementations of the mediation by Cardinal Antonio Samore. The mediation process requires consent and acceptance by the disputing parties and it cannot be imposed on disputing parties. As indicated in the third article of the 1936 Inter-American Treaty on Good Offices and Mediation, article twelve of the Pact of Bogota of 1948 and article twenty of OAU Protocol of 1964, the parties to the dispute should have mutual consent in choosing the mediator or mediators.¹¹⁹

In Africa, mediation has a history of resulting in mixed efforts to end conflicts. Some mediation has been successful in resolving disputes. For instance in the 15 year Mozambican Civil war between the Marxist ruling Front for the Liberation of Mozambique and the anti communist insurgent forces of the Mozambique National Resistance. The Mozambican war ended in 1992 as a result of mediation talks by the Mozambican church and the government of Italy that resulted in signing the Rome General Peace Accord between these two leaders that helped the parties achieve peace and reconciliation.¹²⁰ This shows that, although mediation process in Africa has

¹¹⁸ Billion. P. Waizenegger, *Peace in the wake of disaster? Secessionist conflicts and the 2004 Indian Ocean tsunami*, (Blackwell Publishing July 2007) p.411-427

¹¹⁹ The Beagle Channel arbitration between Chile and Argentina, in *International Law Reports*, Vol. 52, p. 93

¹²⁰ Clayton Hazvinel Vhumbunu, *Suppressing the revival of Conflict in Mozambique through Inclusive National Dialogue*, (African Center for Constructive Resolution of Disputes - ACCORD publishers, (May 10, 2017)

been challenging and unsuccessful, it has been successful in fostering peace in Mozambique and it is an important peaceful method of solving disputes.

The study found out that Kenya has used mediation as one of its approach in dealing with threats to her territorial integrity. In the case of the Somalia – Kenya Shifta war, Zambian President Kenneth Kaunda initiated mediation peace talks between the Somali Prime Minister Mohamed Egal and Kenyan President, Jomo Kenyatta. The mediation talks were successful where the two governments signed a Memorandum of Understanding (MOU) in October 1967. This resulted in an official ceasefire that prevailed in a period of time, until 1969.¹²¹

The study established that, in March 2019, the Ethiopian Prime Minister Abiy Ahmed initiated mediation talks between Kenya and Somalia seeking to resolve the long running maritime delimitation dispute. The Somali president Mohamed A. Farmajo's main objective was to strengthen diplomatic relations with Kenya even with the ongoing maritime border dispute case in the ICJ.

The study found out that, Kenya has been critical in conflict resolution and mediation between warring parties in the Ilemi Triangle region. Kenya belongs to a number of regional inter-governmental organizations which are instrumental in maintenance of security and peace. Kenya's membership of the IGAD as a fundamental organization in peace and stability in the region of the Great Lakes has been in the forefront in stabilizing the war-torn Sudan. The Kenya-led IGAD Process successfully mediated between the government of Sudan and the Sudan

¹²¹ Richard Hogg, 'The New Pastoralism: Poverty and Dependency in Northern Kenya,' *Africa Journal of the International African Institute* (1986): p. 319–333. JSTOR 1160687

People's Liberation Army/Movement (SPLAM). In this context Kenya-led IGAD process was an institutional setup that was legitimately empowered to pursue peace in Sudan and ensure security of the region.¹²² The unfolding political events in the African Horn region enabled Kenya led by IGAD process to succeed in the mediation process between SPLA/M and the Sudanese government a move that fosters confidence in the states that belong to the authority reducing conflict potentiality.

3.3 Arbitration and Judicial settlement

The Convention of Hague for the 1899 and 1907 Pacific Settlement of International Disputes describes objects of international arbitration as the disputes settlement between states. This led to establishing the Permanent Court of Arbitration (PCA), located in The Hague at the Peace Palace in Netherlands. The dispute is to be settled by judges who are selected by the disputing parties themselves. The basic arbitration characteristic is that, it is procedural hence results in binding decisions upon the disputing parties.

The PCA is an institution that plays the role of resolving arbitration, including cases concerning territory. PCA addresses cases between states and between states and no state actors.¹²³ The PCA draws its sources of law from the same as the ICJ under the ICJ Statute, namely international treaties and customs, arbitral decisions and general law principles. The PCA secretariat provides registry services, legal and administrative support to tribunals and commissions. It also offers assistance in the selection of arbitrators and may act as an appointing authority.

¹²² Kinyanjui, B, *Kenya strikes oil in Turkana County but drilling could take years*, (Daily Nation, 2012)

¹²³ PCA, *Arbitrating Disputes through Optional Rules between Two States* (The Hague, n,d)

One of the territorial dispute cases was resolved through arbitration by the PCA was the U.S and the Netherlands dispute over the Island of Palmas. The U.S claimed that the island was a succeeded to America by Spain in a treaty after Spanish-American war. The treaty Spain ceded to the U.S its pacific island territories. This showed that the island layed midway between the Spanish colonial territory, the Philippines, and the Dutch East Indies. After arbitration between the U.S and Netherlands, the island was given to the Dutch when it was discovered that Spain did not exercised control on the island.¹²⁴

PCA also formed an arbitrary panel Eritrea and Yemen case of over the Red Sea Islands. PCA solved the dispute concerning territorial sovereignty and its scope in 1996. The PCA concluded that the islands, rocks and elevation in the three groups belonged to Eritrea and those in two groups belonged to Yemen. Sovereignty was awarded to Yemen on islands entailing traditional fishing regimes in the region that included free access by fishermen of both Eritrea and Yemen.¹²⁵ In the case of Africa, PCA served as a registry for the Eritrean – Ethiopian Boundary Commission (EEBC) peace agreement that was established in December 2000 that ended the border war from 1998 – 2000. The PCA was mandated with the responsibility of delimitating and colonial treaty border demarcation that was based on the 1900, 1902, and 1908 colonial treaties between Italy and Ethiopia that were relevant.¹²⁶

¹²⁴ T. Van den Hout, “International Disputes Resolution: The Role of the PCA —Reflections on the Centenary of the Convention for the Pacific Settlement of International Disputes of 1907,” *Leiden International Law Journal*, 21 (2008) p. 643–661

¹²⁵ October 3, 1996; the second stage concerned maritime claims exclusively.

¹²⁶ U.N., *Reports of International Arbitral Awards*, Delimitation of the Border (Eritrea-Ethiopia), April 13, 2002 - November 7, 2002, Vol. XXV, pp. 83-202.

Arbitration is similar with judicial settlement methods by international courts and whose judgement are also binding, final without an appeal as stated in Article 60 of the ICJ Statute. Although arbitration and judicial settlement are similar, they are structurally different. Arbitration occurs by mutual the consent of disputing parties where they have some control over the stages of the process by appointment of arbitrators for instance. This varies with judicial settlement where international courts or international tribunals and parties are not subject to any control.

In Judicial settlement of territorial disputes, State parties may seek solution to a dispute through submission of the dispute to an international court or international tribunal that is composed of judges who are independent and tasked with the role of settling the claims based on the basis of international law. The Permanent Court of International Justice was the first international court that was created by the LoN in 1922. The ICJ succeeded it in 1946 and became one of the principle organs of the UN. The ICJ in Article 36 of the ICJ Statute states that the ICJ generally has jurisdiction in all cases which parties have referred to it. Other international institutions responsible with settlement of disputes through judicial means are the 1982 International Tribunal for the Law of the Sea and the UNCOLS¹²⁷ that has jurisdiction over disputes that concerns the sea. Apart from the ICJ, other international courts include the African Court of Justice and Human Rights (ACJHR) and the East African Court of Justice (EACJ).

The ICJ has successfully settled territorial disputes between states since its inception, for instance the Cambodia – Thailand Preah Vihear temple dispute. In 1962 Cambodia formally

¹²⁷UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

accused Thailand for occupying a section of Cambodia's territory surrounding the Temple of Preah Vihear, a place considered for worship and pilgrimage by Cambodians. It requested ICJ to declare its sovereignty and Thailand should withdraw its army. The ICJ awarded the temple to Cambodia but failed to demarcate the boundary between the two countries. In 2011, Cambodia applied to the ICJ and requested the interpretation of the 1962 judgement and requested sovereignty over the vicinity of the temple. The ICJ ruled in favour of Cambodia and peace returned between the two nations.¹²⁸

The study found out that Kenya is a signatory to the UN, AU and the EAC Charter all with international courts with the responsibility of settling international disputes. Kenya recognises the importance of arbitration and judicial proceeding as peaceful settlement of territorial disputes method. In 28 August 2014, when Somalia filed a case against Kenya concerning the maritime border delimitation dispute, where Somalia sought to establish one defining maritime boundary with Kenya in the Indian ocean that delimited from the territorial sea to the continental shelf. Both states are signatories to the UNCLOS. Since the maritime border dispute was becoming a problem to Kenya's territorial integrity. Kenya presented itself to the ICJ as it is mandated and plays its role in ensuring the dispute is settled between the two countries.

3.4 The threatening of using force and using of force

According to the UN Charter, it is clear that the threatening of using force and the using force is prohibited from states. In the second Article of the UN Charter it states that all state members of the UN should restrain from threatening to use force or use force on another states' the territorial

¹²⁸ ICJ, Request for interpretation of June 15, 1962 case concerning the Temple of Preah Vihear (Cambodia versus Thailand) <https://www.icj-cij.org/en/case/45> (accesses November 10, 2019)

integrity or political independence.¹²⁹ Therefore, a question arises on what should states do, in case of the emergence of threat that threatens its territorial integrity and its population bearing in mind the realist argument that states do not fully cede their sovereignty to any international organization and they rely on their military defence to protect their interest and territory. The UN as we all know is mandated with the role of maintenance of world peace. The question then remains, what should the UN and states do in response to breaches of peace, threats to peace and aggression acts if peaceful methods of disputes settlements have failed?

The Security Council is the organ is responsible for determining if there is existence to peace threats, peace breaches or aggression acts and recommends or decides on suitable capacity that shall be taken in maintaining or restoring international peace and international security. In the Article 44 of the UN Charter, the Security Council can decide to apply force, before calling upon a another UN member state to provide armed forces as obligated under Article 43 it can also call upon that member and compel them to participate in the Security Council decisions concerning employing of armed forces contributed by the members.¹³⁰

The issue of using of force emerged from the Nuremberg principle after the end of World War Two that formulated the rule of law on the effectiveness in using force that hindered aggressive war and that aggressive war was illegal and states responsible should be held accountable. Even with the adoption of the principle, wars, state invasions, armed forces, overthrowing of

¹²⁹ The United Nations, The UN Charter, 24 October 1945, www.unwebsite.com/charter (accessed October 20, 2019)

¹³⁰ The United Nations, The UN Charter, 24 October 1945, www.unwebsite.com/charter (accessed October 20, 2019) p.9

governments and wrongful acquisition of territory is still prevalent among states.¹³¹ The UN General Assembly in 1946 affirmed the principle of Nuremberg as existing international law.¹³² There are instances where the using force is allowed or can be justified by states in international law. These include using force for self defence, using force for justified political or moral end and during humanitarian intervention.

States often threaten to use force or actually use force as a response of self defence either individually or collectively as their legal justification. When states decide to resort to armed force, it is mainly claimed to be an act of self defence. The legitimacy of self defence only is an armed attack occurs as clearly stated in the UN Charter. This refers to responses made by a state in close time to an imminent threat or an attack. These threats can be inform of terrorist attacks against a state's national or seizure of hostages, threats of force by a hostile state, indirect aggression where a sate instigates or aids subversive armed activities to overthrow the regime of another state and foreign state intervention in internal matters such as civil strife by providing arms and personnel to one side.¹³³ In these instances, states can fail to use to non- forcible dispute settlement methods as they may fail to adequately redress the situation.

UN Charter under Article 51 allows for using force for by one state or for collective self defence if an armed attack happens on a UN member, until the Security Council takes necessary actions to maintaining peace and security internationally. Therefore on the UN Charter states that using force is only allowed in respect to self defence by nation states. For instance; the UN has authorized using force during the 1950 invasion of North Korean to South Korea that led to the

¹³¹ Oscar Schachter, *In Defense of the International Rules on the Using Force*, (University of Chicago Law Review)

¹³² The General Assembly Resolution 95, United Nations Document A/64 at 188 (1946)

¹³³ Ibid

Korean War. The Security Council authorized the formation of UN Command that was given forces to repel the North Koreans invasion, under the UN Security Council resolution 82 and 83.¹³⁴ In a form of collective defence, over 21 countries of the UN contributed to military personnel.

Using force is justified if the states use it to attain particular political or moral ends. This is considered at the concept of “just war”. The using of force by states would be allowed when it is necessary for them to achieve self determination. State can be allowed to use force whether it is in response to fighting for their freedom from foreign and external domination, fighting for freedom from representative or tyrannical government especially for democratic states. This was evident especially during the fight for independence during the colonial period. Although some scholars such as Firmage stated that national liberation wars were legally not under international law,¹³⁵ while some scholars viewed that states had the duty and right for using force in their liberation efforts.

Using of force as sated earlier is prohibited and only allowed by the Security Council or as a mechanism for collective defence. Other circumstance allows for the using of force, for instance; during humanitarian intervention where threatening of force or using force is also permitted. According to Sean, humanitarian intervention is the act by a state, states or international organization that threatens to use force or use force for the purposed of protecting another state’s nationals that are targeted either politically or socially against widespread deprivations form

¹³⁴ Bowett, Derek W., *United Nations Forces: A Legal Study Of United Nations Practice*, (Stevens publishers, London, 1964) p. 29-60

¹³⁵ Edwin B. Firmage, *The ‘War of National Liberation’ and the Third World*”, in *Law and Civil War in the Modern World*, p. 304–347

human rights that are internationally recognized.¹³⁶ It is interference that is usually armed by a single or several states without any consent to the in the internal affairs of another state, to prevent a situation that deprive basic rights to humans, people of population of that state. Although the UN Charter prohibits the using force, it is argued the protection of human rights is an obligation for every state and every state has the fundamental obligation to take actions to ensure the protection and respect for these fundamental rights.

In the foreign policy objectives of Kenya, it recognises should the country's sovereignty and territorial integrity be threatened, force will be applied to restore peace, on terms favourable to Kenya. It also indicates that Kenya with the Ministry of Defence have supported of the AMISOM.¹³⁷ Kenya is on the fore front on advocating for peaceful relations with other states. The country's foreign policy for instance is instructed by the principles of peaceful coexistence with neighbours and other nations, and secondly, resolution of conflicts peacefully. Even so Kenya has also threatened to use force or actually used force in defending her territorial integrity.

The study found out that Kenya has in the past threatened to use force in order to protect her territorial integrity. Kenya defended her territorial integrity from Uganda when the then President of Uganda Idi Amin issued a claim of parts the Kenyan territory that belonged to Uganda. This territory was from the province of Rift Valley and the whole part in Western Kenya including the Nyanza and Western provinces. His argument was that the British colonialist had made a mistake during border demarcations and that that part of Kenya's territory

¹³⁶ Sean D Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order*, (Pennsylvania University Press, Philadelphia, 1996)

¹³⁷ Ministry of Foreign Affairs, *Kenya Foreign Policy*, Government of Kenya, 2014, <http://www.mfa.go.ke/wp-content/uploads/2016/09/Kenya-Foreign-Policy.pdf>

belonged to Uganda. Idi Amin said that he had a written agreement with the then British Colonial Secretary of state Herbert Asquith transferring some sections of Uganda to Kenya 1926.¹³⁸ This was a serious threat to the territorial integrity of Kenya and possibility of an interstate war was imminent. Then Kenyan President Jomo Kenyatta issued a warning and threatened to use force and stated that they will not cede a single inch of her territory.¹³⁹ Idi Amin backed down his claim and stated that Uganda had no intentions of claiming her neighbours' territory. Although the two countries never went to war, tension between the two remained high and the possibility of war.

The study found out that Kenya has also used unconventional approaches in dealing with threats to her territorial integrity. Kenya has mostly been using force, mainly through the military and police.¹⁴⁰ The Kenya and Somalia dispute and war is the best example of Kenya using force in response to protecting her territorial integrity against territorial threats. As discussed in Chapter two on the Kenya – Somalia disputes that rose because of the insurgency movement by Somalis in North-eastern Kenya. During the Shifta war, Kenya undertook some counter insurgency measures through a series of war. The Garissa massacre for instance that led to the killing of Somali residents by the Kenyan government. Another incident where Kenya used force was during the Kenya – Somalia conflict when Kenya Provincial Commissioner ordered the security forces to gather 5000 Somali men of the Degodia clan into Wagalla airstrip in Wajir. The security forces opened fire on them and then attempted to hide their bodies. The Kenya

¹³⁸ Bamaturaki Musinguzi, "The Day Idi Amin Wanted to Annex Western Kenya", *The East African* Nairobi 10 September 2011, www.theeastafrican.co.ke/news (accessed August 26, 2019)

¹³⁹ Rossi R. C., *The Migingo Island Dispute between Kenya and Uganda*, (Brooklyn Journal of International Law, Vol . 42, 2016)

¹⁴⁰ Interview with Henry Mkare, October 31, 2019

government in the year 2000, admitted to the killings although stated that 380 people were killed.¹⁴¹

In conclusion of this chapter, pacific methods of conflict resolution accepted by the UN and States alike are negotiation, mediation, arbitration and judicial proceedings. As discussed in this Chapter, Kenya upholds the use of peaceful methods of conflict resolution as provided in her constitution. Kenya has either used or participated in mediation, negotiation or judicial proceedings to solve threats to her territorial integrity. Kenya has also in the past used unconventional methods to approach threats to her territorial integrity through the threatening using force or actual using force by using of her military in trying to solve threats to her territorial integrity.

¹⁴¹ Waal, Wagalla Massacre: Families Demand Payment, 1997 Archived from the original (PDF) p.41, www.benadir-watch.com/2005News/0226_NFD_Wagalla_Massacre.pdf

Chapter Four

Critique of Kenya's Approaches to Threats to Its Territorial Threats

4.1 Introduction

This chapter addresses the third research question and objective. It answers the question of how critically has Kenya's approaches been effective in protecting her territorial integrity against territorial threats. This chapter critically analyzes the effectiveness of Kenya's approach, looking at the positive and negative effects, considered as their prospect and challenges of the approaches which Kenya has used in responding to threats to her territorial integrity. Kenya has used several approaches in dealing with threats to her territorial integrity. Some of these approaches include; negotiation, mediation, the use of the ICJ, the threatening to use force and using force through aggression.

This chapter will be looking into the prospects and challenges of the approaches used in managing and resolving the threats to Kenya's territorial integrity. The chapter looks into prospects and challenges of Kenya's effort in using negotiation in resolving some of the threats to her territorial integrity such as the Migingo Island and Somalia maritime disputes. The prospects and challenges for the use of mediation as an approach in resolving the dispute with Somalia during the Shifta war.¹⁴² The chapter investigates the use of court such as the ICJ by Somalia in resolving the Maritime dispute and the role Kenya has played in resolving the dispute. The chapter also looks into the threat using force and the using of force as an approach has been used by Kenya in trying to manage and resolve threats to her territorial integrity, in the

¹⁴² John Drysdale, *The Somali Dispute* (Pall Mall Press, 1964)

Somalia case during the insurgency movement and Uganda during Idi Amin's rule and what some of the prospects and challenges for Kenya are.

4.2 Prospects and challenges on Kenya's use of diplomatic approaches

International disputes are easily settled by the use of diplomatic methods settlement of disputes by peacefully. This ensures that peace and security is not endangered internationally and the relation between states is not strained. Negotiation, mediation, inquiry, good offices and conciliation have been considered the best non-judicial approaches of settlement of territorial disputes. Article 33 of the UN Charter provides that disputing members to a dispute that would endanger maintaining of international peace and international security may first seek a solution by mediation, negotiation, conciliation, enquiry, judicial settlement, arbitration, seek other regional agencies or arrangements, or alternative peaceful means deemed suitable for them.¹⁴³ Whichever of these methods used, international law is the substantive criteria for solving a dispute.¹⁴⁴ It is therefore important for a state party to present legal arguments which are more easily justified and convincing than the other state party in light of international law.

Kenya advocates for the use of diplomatic methods of peaceful settlement of disputes and it has used diplomatic methods in approaching threats to her territorial integrity.¹⁴⁵ Kenya has used negotiation and mediation in attempts of solving her threats to her territorial integrity. Negotiation has been the principal diplomatic means of managing international disputes. Negotiations are conducted through diplomatic means either by respective foreign officials or

¹⁴³The United Nations, The UN Charter, 24 October 1945, available at www.unwebsite.com/charter (accessed September 25, 2019)

¹⁴⁴ Interview with Camilla Agak, November 2, 2019

¹⁴⁵ Ministry of Foreign Affairs, *Kenya Foreign Policy*, Government of Kenya, 2014, <http://www.mfa.go.ke/wp-content/uploads/2016/09/Kenya-Foreign-Policy.pdf> p. 12

diplomatic representatives. If negotiations are impossible or the disputing parties are unable to solve their disputes, a third member may intervene in trying of solving the dispute, the third party interventions maybe by way of mediation, conciliation or good offices or use of judicial settlement of disputes.

Kenya has used negotiation and mediation as diplomatic methods of settlement of threat to her territorial integrity disputes. Kenya attempts at negotiation have had several prospects and challenges. On the Kenya – Uganda and Kenya – Somalia territorial issues, the country has held bilateral talks with the two countries to discuss over the Migingo Island and Maritime border disputes respectively. These approaches that Kenya has used have had some prospects and challenges, not only on the attempt at the resolution of the dispute or protection of Kenya's territorial integrity but also promoting her image in conducting of her foreign relations.

4.2.1 Challenges

Diplomatic methods of dispute settlement have not always been successful and approaches such as negotiation and meditation have their disadvantages. The main challenge for negotiation and mediation before initialization is that disputing parties must agree to the existence of a dispute. Secondly, disputing parties must also show the willingness to solve the dispute or conflict. One respondent sated that the settlement of territorial dispute will be difficult if the states fail to recognize the dispute and show interest in solving it as in most cases the occupying state tries to maintain the status quo.¹⁴⁶

¹⁴⁶ John Olang² interview emailed message to author, November 1, 2019

During the period of Cold War for instance, the Russia formally the Soviet Union refused to recognize the dispute with Japan over the Northern territories over the longest time period. Since the end of World War II, Japan and Russia efforts for settlement of the territorial disputes peacefully between the countries have been halted. Both Japan and the Soviet Union claim the island territories that lie in the north and south respectively.¹⁴⁷ Japan claims the northern territories of Etorofu Island, Shikotan Island, Hobamai Island and Kunashiri Island that have been controlled by Russia and views that there is no question of debate or discussion on the territorial dispute with Japan as it has controlled the territories under the Russian Federation and it has always been reluctant to renounce its claim of the four islands as it ensures Russia's naval access to the Western Pacific. This has dragged the dispute for over 70 years as Russia shows the unwillingness to resolve the dispute.¹⁴⁸

The study found out that in the Kenyan case, negotiation approach has had a challenge, for instance the Kenya – Uganda Migingo Island dispute, where Uganda seems unwilling and not keen in the resolution of the dispute as it prefers not to disrupt the status quo of its occupation of the Migingo Island because it stands to lose of the dispute is resolved and it loses the Island to Kenya. While the colonial map shows that Migingo Island lies within the Kenyan territory and Uganda is aware of this position, hence why even with negotiation efforts and the agreement to establish a joint survey enforcement team, Uganda has been unwilling to cooperate.¹⁴⁹ This

¹⁴⁷ Simran Walia, Japan and Russia dilemma over their territorial dispute, 20 May 2019, www.orfonline.org/research/japan-russia-dilemma-over-territorial-dispute-50973/?amp (accessed September 26, 2019)

¹⁴⁸ Ibid

¹⁴⁹ Rossi, R. C., *The Migingo Island Dispute between Kenya and Uganda*, (Brooklyn Journal of International Law, Vol. 42, 2016)

hence becomes a challenge and disadvantageous approach for Kenya in protecting her territorial integrity.

With negotiation and mediation, state parties are unable to compel other parties to participate in the resolution of the dispute. As discussed, it solemnly relies on the state parties' willingness to the resolution of the dispute or not. It cannot be forced and it can only take place with the consent of both parties. Negotiation and mediation approaches have therefore been a challenge for Kenya in solving territorial disputes and emerging threats to her territorial integrity. The unwillingness of Somalia to resolve the maritime border dispute through negotiation or mediation and choosing to have the dispute by the ICJ despite Kenya's attempt at negotiations to solve the dispute shows the disadvantages of negotiation and mediation approaches.¹⁵⁰

Other disadvantage of the use of diplomatic approaches is the issue of non-binding.¹⁵¹ An agreement set by the disputing states would require a court for enforcement or a state may later revoke the terms of agreement. The issue of non-binding makes negotiation and mediation lack any legal precedent. In mediation for instance, the mediator is not the decision maker but a facilitator for the state parties to reach a settlement. Mediation can only be binding if the two parties reach an agreement as an outcome. Both mediation and negotiation are non-binding and this becomes a challenge for states. For instance; Sudan President Gaafar Nimeiry in 1983 terminated the Sudan – SSLM Addis Abba negotiation agreement that established peace between Sudan and the SSLM. Gaafar abolished the Southern Sudan Autonomous Region and declared

¹⁵⁰ Interview with Lawyer Kibe Mungai, on Kenya - Somalia maritime row yet to be resolved, KTN News 2019 July 17, 2019

¹⁵¹ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

Sudan as an Islamic state ending the agreement of negotiation process and leading to 1983 Second Sudanese Civil War.¹⁵² The study found out that, in the Kenya – Somalia mediation case by former Zambian president that established a MOU that resulted in a ceasefire, after the 1969 Somalia coup, the new military leader Mohamed Siad abolished the MOU claiming it was corrupt and unsatisfactory. The Somalia government under Mohamed Siad’s leadership revoked the terms of the agreement.¹⁵³

Another challenge of the diplomatic approaches is that state parties may engage in negotiation or mediation but they fail to guarantee “good faith”. The peaceful settlement of disputes principle is linked with several other international law principles including the principle of good faith where States should fulfil in good faith the obligations assumed to them in the Charter of the UN and all interrelated and interpreted principles should be modelled according to international law.¹⁵⁴ The declaration of Manila provides that states to act in good faith with the view of avoiding disputes that would affect their friendly relations. This principle provides that states shall implement in good faith all provisions of agreement concluded by them for the settlement of dispute in accordance with international law. The UN General Assembly urges states to observe and promote in good faith the provisions of settlement of international disputes peacefully. It also expresses confidence in good faith and willingness of two governments to pursue negotiations. This means that state parties to a dispute should be fully participate and show the willingness to resolve the dispute. They should also agree with all the terms and provisions of the agreement.

¹⁵² David H. Shinn, *Addis Ababa Agreement: was it destined to fail and are there lessons for the current Sudan Peace Process*, In *Annales d’Ethiopie*, Vol 20, annex 2004 p. 239-259, http://www.persee.fr/web/revues/home/prescript/article/ethio_0066-2127_2004_num_20_1_1077 (accessed September 29, 2019)

¹⁵³ Tom Wanabisi “*The Somali Dispute: Kenya Beware*”(Marine Corps Command and Staff College, 6 April 1984)

¹⁵⁴ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

The main reason for failed negotiation or mediation is the fact that States simply agree to negotiations but fail to adhere to the terms of agreement either by revoking them or failing to follow through, as it seem especially negotiations and mediations in Africa where having a deal signed is easier than implementation of its content.¹⁵⁵

In the case of mediation efforts in Burundi which was mediated by President Julius Nyerere in Arusha, Tanzania was to establish peace and end the Burundian Civil War. This mediation effort established a power sharing formula between ethnic quotas in politics, check and balances and equal participations in government and equal representation in military through integrating minority groups and former rebels in the armed forces of Burundi. This led to the Arusha Accord also referred to as the Arusha Peace and Reconciliation agreement that was signed in August 28, 2000. Mediation attempts in Burundi have failed despite the Arusha Accord attempt in advancing peace, stability and reform. The Burundian government under President Pierre Nkurunziza pursuit for a third term in government led to an attempted coup and thousands of killings. In 2016, the presidential term limit was lifted, the independence of the defence ministry was diluted and the ruling party was given control of the force. This led to the breakdown of the Arusha Accord that was implemented in their constitution and fear of another civil war in Burundi.¹⁵⁶

The study found out that in the Kenya – Somalia maritime border delimitation case. Kenya and Somalia had bilateral negotiations and established a MOU where they agreed to constitute an agreement to settle their disputes through by other means that the ICJ as Kenya rejected the

¹⁵⁵ Ibid

¹⁵⁶ Paul Nantulya , "*Burundi: Why the Arusha Accords are Central*", Africa Centre for Strategic Studies. 5 August 2015, <https://africacenter.org/spotlight/burundi-why-the-arusha-accords-are-central/> (accessed September 30, 2018)

dispute to be heard and determined by the ICJ. The MOU was signed on 11th June 2009 and registered by the UN at Kenya's request. Despite Somalia initially recognizing the MOU, Somali leaders denied the instruments validity later and deciding to forward the case to the ICJ in 28th August 2014. Somalia did not act in good faith in terms of the MOU agreement.¹⁵⁷

Diplomatic approaches such as negotiation and mediation approaches are time consuming. They can take a lot of time to solve the many disputes. The duration of negotiation process varies, while some may be concluded in a short period of time, such as few days, others extend over several years to even decades. Often time limits are set for a duration which the negotiation process can be conducted before agreement is found or the parties may use to other peaceful settlement means. For example; 1981 Treaty that established the Organization of Eastern Caribbean states that, if any dispute that may arise between member states and is unsolved within a period of three months from the referred date, any party to the dispute may submit to the conciliation procedure.¹⁵⁸ Time limit has in other cases been established in mediation processes. In Article 5 of the Inter-American Treaty of 1936, it provides that, the mediator determines the time period that does not exceed six or be less than three months for parties to arrive at a settlement. If the period expires, the parties shall use other means of dispute settlement.¹⁵⁹ Diplomatic approaches are known to take a long time to resolve for instance; the Ilemi Triangle dispute between Kenya and South Sudan. According to Kapil, despite several efforts made in delimiting borders between the two countries since the beginning of the dispute, the process of managing this disputed region through negotiations has proven not futile. To date the Ilemi

¹⁵⁷ Vigdis Broch-Due, *The Quest for Identity in Post-colonial Africa: Violence and Belonging*., ed. 1, (Routledge: 2005) p.174-175

¹⁵⁸ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹⁵⁹ Ibid

Triangle has not yet been solved.¹⁶⁰ One respondent stated that diplomacy requires a lot of effort and time while some parties can be hostile and this becomes a challenge for diplomacy.¹⁶¹

4.2.2 Prospects

Why then is negotiation important in dispute settlement? The declaration of Manila on the settling international dispute by peaceful means highlights flexibility as a positive characteristic of negotiation held directly between parties as a method of settling of disputes peacefully. Negotiation is flexible since it can be applied by states in all kinds of disputes and it only involves the state parties to the dispute. States have used negotiation to solve territorial dispute.¹⁶²

Negotiation has been used to end war or civil war in states, for instance direct negotiations between Sudan government and the Southern Sudan Liberation Movement (SSLM) that led to the end the first Sudan Civil War 1955 – 1972 that led to the 1972 Addis Ababa Agreement.¹⁶³

Negotiation has been used to enhance trade relations through bilateral trade agreements. In negotiation, parties are able to control the outcome of the negotiation process as parties can monitor the process of all phases of negotiation and can conduct it in ways they consider most appropriate.

¹⁶⁰ Kapil, R. (1966), *On the Conflict Potential of Inherited Boundaries in Africa*, p. 660.

¹⁶¹ Anthony Mukena, interview email message to author, October 28, 2019

¹⁶² UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹⁶³ Collins Robert, *Eastern African History*, (Markus Wiener Publishers,1991)The Addis Ababa Peace Agreement, www.britannica.com/place/Sudan/The-Addis-Ababa-Agreement (accessed September 26, 2019)

Negotiation promotes privacy and confidentiality of the proceeding and it is a fast approach in dispute settlement than all the other means. Negotiations are effective as it is the most resorted means of dispute settlement by states. States have been known to resort to other means of disputes settlement such as arbitration or mediation when negotiation efforts have failed. In 1993 secret negotiation that was conducted between the government of Israel and the Palestine Liberation Organization (PLO) in Oslo, Norway leading to the Oslo Accords. This was an attempt to set up a resolution framework for Israeli – Palestinian conflict. Negotiations were aimed at creating a Palestinian National Authority (PNA) where Palestinians would exert control and the withdrawal of forces of Israel’s defence from West Bank and Gaza strip.¹⁶⁴

The study established negotiation as a prospect promotes peaceful relations between states. Kenya’s negotiation attempt has enabled her to promote and preserve relations with her neighbours. The Kenya negotiation efforts with Uganda over the Migingo Island are an example of how the two states have used negotiation through bilateral talks in order to solve the dispute. Even with the dispute, Kenya and Uganda still maintain their bilateral relations in trade and commerce. Negotiations enable state parties to control the outcome of the proceedings and this is shown with the Kenya – Uganda Migingo Island dispute where the two countries layed terms to help resolve the border issue. Kenya and Uganda agreed to ascertain the boundaries, withdrawal of security forces and cease harassment of the locals. This shows the prospect of negotiation in protecting solving dispute between Kenya and Uganda and protecting Kenya’s territorial integrity.

¹⁶⁴ Eyal Hareuveni, “*By Hook and by Crook: Settlement of Israeli policy in the West Bank,*” (July 2010)

Mediation process occurs in the presence of a third party. Mediation as an approach occurs during dispute settlement between parties that are unable or unwilling to resolve dispute between them. These two parties may have hostilities or different view and negotiations are impossible. Like negotiations, mediations also seek to achieve a win – win solution for both parties. Kenya has used mediation in solving conflicts and disputes. An example of successful mediation for Kenya was during the 2007 – 2008 post election violence, when the former UN Secretary General Koffi Annan held mediation talks between the President Kibaki and Opposition leader Raila in ending tribal violence that had claimed more than a thousand lives.¹⁶⁵

The study established that there have been mediation efforts between Kenya and Somalia over a number of disputes. There have been a number of mediation efforts in Somalia and many that seem to fail and bore no success. Even so, Kenya successfully engaged in mediation talks with Somalia during the Shifta war, mediated by the former Zambian President Kenneth Kaunda. The mediation successfully led to the two governments signing an MOU in 1967 that resulted in ceasefire in a period of time.

4.3 Prospects and challenges on Kenya's use of judicial settlement

Judicial settlement is a dispute settlement method through judicial proceeding. Judicial methods differ from diplomatic approaches because it involves the use of courts and tribunals. State that are parties to the dispute may submit the dispute to a court or tribunal to seek solution composed of judges who are independent and are tasked to settle the claims on international law basis and render decisions which are binding on parties. The ICJ is the first world wide recognized

¹⁶⁵ Kofi Annan Takes Over Kenya Mediation, CBS News, January 10, 2008, <https://www.cbsnews.com/stories/2008/01/10/world/main3695650.shtml> (accessed on September 29, 2019)

international court. It is also one of the main principal organs of the UN.¹⁶⁶ Another international institution that is mandated with the responsibility of judicial settlement of dispute is the International Tribunal for the Law of Sea under UNCLOS of 1982 with the jurisdiction over sea disputes.¹⁶⁷ Other courts that can settle international disputes between states include; the African Court of Justice and Human Rights of the African Union and the EACJ for the EAC. As stated earlier both the judicial settlement and arbitration are binding and their rulings are not appealable. The ICJ plays two roles contentious and advisory role.

4.3.1 Challenges

The application and conduct of international law has challenged jurisdiction concept. Nation states and international organizations are required to conduct their international relations within their jurisdiction by not intervening in the conducts of other states, through respecting their sovereignty and the equality of other States. ICJ jurisdiction has always been challenged in its role of dispute settlement. This is a challenge in the use of judicial settlement of disputes as an approach in dealing with territorial threats by states. Settling international disputes through international courts can be subjected to State concern over its recognition and the jurisdiction of the ICJ over the disputes. In some cases the ICJ may be unable to acceptance of its jurisdiction as state that has opposed its jurisdiction does not recognize ICJ jurisdiction.

Kenya is a UN member and a Statute of the ICJ party.¹⁶⁸ As a party to the ICJ, Kenya submitted reservations on ICJ jurisdiction as stated in Article 36 paragraph 2 of the ICJ Statute and in

¹⁶⁶ United Nations, Article 92, UN Charter, 24 October 1945

¹⁶⁷ UNCLOS 1982, Article 287 (1) (a) and annex VI, article 1 (1). The Tribunal, as well as its Sea-Bed Disputes Chamber, having jurisdiction in disputes, is to be established upon the Convention entry into force.

¹⁶⁸ International Court of Justice, Article 93 (1), ICJ Statute, 18 April 1946; 1 UNTS XV1

Article 36 paragraph 1 that gives ICJ jurisdiction over cases that refer to it and all issues provided by the Charter of the UN, conventions or enforced treaties¹⁶⁹ However, although Kenya recognizes ICJ's jurisdiction on the Maritime delimitation dispute with Somalia, Kenya challenged ICJ's jurisdiction on the basis of the MOU signed with Somalia. Kenya pointed its reservation it made in an article that excludes ICJ from solving the disputes, regarding the parties to the dispute are agreed or shall be agreed to seeking to other method of settlement.¹⁷⁰ Kenya hence put forward two objections over ICJ's jurisdiction and the case admissibility. First Kenya pointed out that the MOU that was signed between her and Somalia entailed an agreement to have recourse to some other methods of settlement apart from the ICJ. Secondly, Kenya argued that UNCLOS entails a resolution mechanism for disputes that also amounts to an agreement to have recourse to some other methods to which both States are parties to.

The study found out that, Kenya has filed several reservations in respect to declaring and recognising the jurisdiction of the ICJ. For instance, Kenya reserves that it shall not take resolution by the court on disputes that occur between it and the Commonwealth of Nations member states.¹⁷¹ This has been challenge for the resolution of the Migingo Island dispute by the ICJ, as Uganda is a member of the Commonwealth. This has an exception as a treaty may also indicate the conditions where one party may unilaterally invoke jurisdiction that is established by the commission. For instance is the 1948 Pact Bogota case also referred to as the American Treaty on Pacific Settlement, was a treaty signed among the American States Organization on an agreement to peacefully settle their disputes. This required states to first use all the disputes

¹⁶⁹ United Nations, *International Court of Justice Statute*, April 18, 1946, <https://www.refworld.org/docid/3deb4b9c0.html> (accessed September 29, 2019)

¹⁷⁰ *Somalia v. Kenya*, Judgement on Preliminary Objections (February 2, 2017) p. 18–19

¹⁷¹ ICJ, Article 93 (1), *International Court of Justice Statute*, 18 April 1946, Registered under No. 7697; 531 UNTS 113

settlement methods before taking the matter to the UN Security Council.¹⁷² The Pact Bogota is one of the treaties that hinder the jurisdiction of the ICJ. Uganda can file the Migingo dispute to the ICJ as it recognizes ICJ's jurisdiction and has no agreement with another state, although it does not file the issue on reservation that Kenya is unwilling to take the case to the ICJ. This is a challenge of using judicial settlement approach in solving Kenya's territorial threats.

Judicial settlement as an approach is time consuming and expensive. One respondent stated that judicial cases drag for years.¹⁷³ Litigation and court trial cost a lot as compared to other approaches of dealing with territorial threats. It is noted that because of the pre-constitutive nature of international courts and tribunals, they are suitable compared to ad hoc tribunals that take a lot of time to solve or deal with matters that require agency such as measure of protection.¹⁷⁴ On the rule of procedure for the ICJ, the basic statutes and procedure rules of international courts or tribunals do not provide for any specific duration within which a case should be decided. Although certain dates and time limits are determined, as orders by the court seized with the case with regard to the filing of pleadings, the submission by the memorials parties, counter-memorials and, as the case may be, replies as well as the papers and documents in support, and the time where every party must have concluded arguments.¹⁷⁵ This results in many territorial issues remaining unresolved for long periods of time. In the Maritime case, Somalia filed the Maritime dispute case to the ICJ in 2014. The ICJ is expected to reach a verdict in 2019, which is in a 5 year period of time.

¹⁷² American Treaty on Pacific Settlement, 4/30/1948, Pact Bogota, available from <http://www.oas.org/juridico/english/sigs/.html> (accessed September 29, 2019)

Pacific Settlement of the American Treaty, April 30, 1948, OAS treaty series No. 17 and No. 61, <https://treaties.un.org/doc/Publication/unts/Volume%2030/v30.pdf>

¹⁷³ Interview with Camilla Agak, November 2, 2019

¹⁷⁴ UN Legal Affairs Office, Codification Division, *Peaceful Settlement of Disputes between States Handbook* (New York: UN, 1992)

¹⁷⁵ Ibid

4.3.2 Prospects

One of the main advantages of judicial settlement of disputes in international relations is that disputing parties can be compelled to participate. State, international organizations and also individuals can be summoned by ICJ or the International Criminal Court (ICC) to appear in court for trial. In the Kenya – Somalia maritime dispute case, after Somalia filed a case to the ICJ, Kenya appeared in court. Despite her arguing against the ICJ's jurisdiction in hearing the case, Kenya was still compelled to participate in the hearings.

Judicial settlement especially the ICJ, decisions made by the court are binding and cannot be revoked or appealed. In Statute of the ICJ, Article 60 provides that the courts judgements are final and with no appeal even in cases a dispute as to the judgement meaning and scope arises. This is also provided in Article 296 of the UNCLOS.¹⁷⁶ For this reason, the ICJ is referred to a compulsory means of judicial settlement. This is important because it prohibits states to take actions either by disputing the judgment and further causing the dispute to escalate and deteriorate the dispute or situation. While the ICJ has solved a number of territorial disputes among states, here is just but a few of the case. For instance is the Libya and Chad territorial dispute over the Aouzou strip. Libya claimed the strip was inhabited by its indigenous inhabitants, the Senoussi and had administrative control while Chad argued that the border was established through the treaty of good neighbourliness between France and Libya in 1955. The ICJ ruled in favour of the Chad sovereignty and ended Libya's claim over the territory.¹⁷⁷

¹⁷⁶ UNCLOS Article 296 of the UNCLOS, (UN publication) p.101

¹⁷⁷Gino J. Naldi, *The Territorial Dispute case between Chad and Libya Arab Jamahirya*, (Cambridge University press) Vol. 44 No. 3 Jul, 1955), p. 683-90

Although judicial decisions are binding and cannot be appealed, the ICJ in the same Article 60 of its Statute provides for interpretation of the agreements in an event where a party disputes. It states that the court shall construe by translating or giving further interpretation if requested by any party. In cases where state disputes the decisions, meaning or scope made by the ICJ, it is unable to appeal but request for the interpretation. For instance, the ICJ was mandated with the responsibility of interpreting the Boundary treaty of 1881 between Chile and Argentina frontier case.¹⁷⁸ The two States were differing on whether the highest Andean peak or the continental divide was to be considered the boundary that divided the two countries. On the maritime dispute between Libya and Tunisia, Tunisia applied for the revision and judgment interpretation of February 24, 1982 in the Continental Shelf case between the two countries. The ICJ in its ruling concluded that from the 1982 judgment, both the two countries shared a common continental shelf and there was no need for delimitation.¹⁷⁹

The study established in the Kenya – Somalia case in the ICJ, the settlement of the dispute entirely relies of the ICJ judgement. While Somalia filed the case to the ICJ, Kenya was compelled to present herself to the ICJ. Secondly, the two countries rely on the ICJ’s decision which will be binding should be acceptable by both countries and will not be revoked. This approach is significant because, it will put an end to the growing tensions between the two countries and hinder the escalation of the dispute.

¹⁷⁸ Treaty between the Argentina and Chile: Defining the Boundaries between the two Countries, (Hathi Trust Digital Library. London, HMSO, issued by the Foreign Office. 23 July 1881) p.1103-1105 (accessed September 29, 2019)

¹⁷⁹ Revision, application and interpretation of the Judgment of February 24th 1982 Tunisia verses Libyan Arab Jamahiriya Case concerning the Continental Shelf (*Tunisia/Libyan Arab Jamahiriya*), <https://www.icj-cij.org/en/case/63>

4.4 Prospect and challenges on threatening to use force and using force by Kenya

Before there was order, the conduct of international relations was mainly through threatening to use force and going to war. Even though disputes between ruling families, states and kingdoms were settled through diplomacy, they would still resort to threaten to use force and use force for dispute settlement. According to Kelsen, war had been considered to be permissible because of the existence of sovereignty among states.¹⁸⁰ Most wars from the Pre Westphalia period to the twenty first century concerned the acquisition of territory, and these wars led to exchange of territory, wars of self-determination, demarcation and drawing of new boundaries.

Today threatening to use force and using force in solving territorial disputes is outlawed. In the second Article, paragraph 4 of the UN Charter prohibits States on threatening or using of force. It states that members should refrain from threatening to use force or use force on another states territorial integrity or political independence, but should be according with the UN purposes.¹⁸¹ It places states under affirmative obligation of settling their international disputes peacefully in manners that it does not endanger peace security and justice internationally. This law has been ratified by all the UN members and protected by the UN Charter against the using force. Prohibiting using force and the non-intervention principle in a states internal affairs or external affairs is a fundamental international law principle governing the conduct of state relations. Although threatening to use force is prohibited among states, the Security Council resolution is able to authorize the threat of using force and using force in some cases.

¹⁸⁰ Hans Kelsen, *Law and peace in international relations*, (Harvard University Press, 1942)

¹⁸¹ United Nations, United Nations Charter, 24th October 1945, IUNTS XVI, available at www.unwebsite.com/charter (accessed September 25, 2019)

4.4.1 Challenges

Although the using force is prohibited, it is not absolute. States have still resorted to threatening and using force in response to defending their territorial integrity. Using force by states is usually justified during humanitarian intervention and self defence. It is believed that if force is used with the absent of self defence or humanitarian intervention, international law is violated. Threatening of using force or using force as has been prohibited by the UN poses a lot of challenges not only to the international peace and security but for states conduct of international relations.

The first challenge of the threatening to use force is that it does not foster international peace and international security. One respondent stated that the use of military force is costly and furthers instability.¹⁸² The using of force hinders relationships between states and also hinders the settlement of the territorial dispute. When a territorial dispute arises between states and the states go to war, the dispute takes longer to resolve, for instance the Kashmir conflict between India and Pakistan. There have been numerous conflicts and wars between India and Pakistan, but the Kashmir conflict has been the major cause of dispute between the two countries. After the partitioning of the British India in 1947, the two states disputed over the territory of Kashmir as the princely ruled Kashmir and Jammu states were responsible for choosing whether to be part of India or part of Pakistan or maintain their independence. In fear that Kashmir would accede to India, Pakistan army along with the Islamic forces attacked and occupied parts of the princely state that forced Maharaja of Kashmir to in signing an Accession instrument of the state to India and receive military aid. After the ceasefire India controlled nearly two thirds of the Kashmir,

¹⁸² Oginga Fredrick Oginga, interview email message, November 4, 2019

Jammu and Ladakh while Pakistan only controlled one third of Kashmir.¹⁸³ This consequently contributed to the Indo-Pakistani war of 1965, 1971 and 1999 to date.

In the Kenya – Somalia case the study found out that, when Kenya’s territorial integrity was faced with an insurgent threat, the country resorted to using force to torment the Somali insurgents into submission. According to Owaahh, when the country was faced with another threat in the 21st century, it recruited the children of Somali ethnicity to fight in its war, leading to a failed plan where it brought Kenya to war with itself.¹⁸⁴ This begins from the history of the NFD as discussed in the previous chapters, after Kenya refused to cede its territory to Somalia after secession movements in the region. Kenya’s adopted counter insurgent measure to protect her territorial integrity. Kenya launched a military and propaganda campaign across the country. There was a series of genocide and concentration camps, the Garissa and Wagalla massacre are the two examples of result of using of force by Kenya. This approach that Kenya used in protecting her territorial integrity has led to further wars, conflict and dispute between the two countries.¹⁸⁵

The study established that there have been terrorist attacks in Kenya by the Somali militia group, the Al Shabaab, according to various scholars it dates back to the Shifta war. In his article, Owaahh describes how the Shifta war led to the Al Shabaab terrorist attacks. In 2011, Kenya in response to protecting its territory and people in the North-eastern region it formed an

¹⁸³ Prasad S. N and Pal Dharm, *The Historical Operations in Jammu and Kashmir between 1947- 1948*, (New Delhi, Department of History, Ministry of Defence, India government, Thomson Press India) 1987) p. 418
Thomas Raju, *Perspective o Kashmir, The roots of conflict in South Asia*, (Westview Press) p.25

¹⁸⁴ Owaahh, “From the Shifta War to Al Shabaab terror: Why Kenya is its own worst enemy,”
medium.com/@owaahh/from-the-shifta-war-to-al-shabaab-why-kenya-is-its-own-enemy-b37f6889bafc

¹⁸⁵ Ibid

autonomous state Jubaland in Somalia border acting as a buffer zone where Kenya would train Somalis to help government transitions. This led to Kenya equipping Somalis with military skills and equipment and who later joined the Al Shabaab. Although not clear on the number, Kenya is unlikely to classify the war against terror as an insurgent as it can be that they are now fighting clan war against another clan, hence a fight against itself.¹⁸⁶ The conflict and wars between the two countries has mainly occurred due to the issue of territory. Somalia remains the biggest threat to Kenya's territorial integrity to date.¹⁸⁷ There is strained relations and cooperation between the two states. The cons of the conflicts have caused human rights violations that have also occurred as during the territorial disputes. Ethnic profiling by Kenya on Somali nations has also been a problem of using force.

4.4.2 Prospects

States have always resorted to using force in their interactions to achieve their interests for many centuries. The threat of using force and using force is prohibited in international law principle. States have still used threat and force in settling their disputes. While it is not always recommended, threatening to use force and using force has some prospects in managing threat to a country's territorial disputes.

After the end of the First World War, efforts were made to maintain relations between states and in 1919 the LoN was formed. Under the Covenant of the LoN, states were required to submit inter-state dispute of any kind for arbitration or other judicial settlement forms at the Leagues' Council but the LoN failed to prohibit states right in resorting to war, although it has provided

¹⁸⁶ Ibid

¹⁸⁷ Interview with Alfred Makotsi, November 5, 2019

limitations.¹⁸⁸ The occurrence of the Second World War hindered peaceful international relations ended.

The Charter of the UN prohibits the threat of using force and using force, but the same is allowed in Article 51 which states that, the right of an individual state or states in collective self-defence is unhindered if there is an armed attack occurs against a UN member.¹⁸⁹ UN members can take measures in self defence and they should be reported to the Security Council. These will not affect the Security Council's responsibility or authority, if it decides to take action that seems necessary to maintaining and restoring of peace and security internationally. In this article threatening to use force or using of force is allowed in collective defence if a member has been armed attack and it is used to maintain or even enforce peace.

The UN Security Council authorizes using of force. As a major organ of the UN, it plays the role of collective security system by determining threat to peace, recommend on the most suitable measures shall be taken and deciding if force can be used against another state. This prevents unilateral actions by states rather multilaterally, that is, collectively, in collective defence. For example, in the case of Libya during the Libya Civil war in 2011¹⁹⁰ that occurred because of fighting against the Gaddafi forces and those seeking to oust him. The UN Security Council authorised using force under the 1973 UN Security Council Resolution. The resolution acted under Chapter 5 of the Charter of the UN authorized members to take all necessary actions and to have an immediate ceasefire in Libya that ended civilians' attacks that constituted humanity

¹⁸⁸ The Use of Force in International Law (The Open University, 2016) <https://www.open.edu/openlearn/society-politics-law/the-use-force-international-law/content-section-0>

¹⁸⁹ United Nations, The UN Charter, October 24th 1945 , available at www.unwebsite.com/charter (accessed September 25, 2019)

¹⁹⁰ Sam Dagher, *Libya City Torn by Tribal Feud*, The Wall Street Journal, (June 21, 2011)

crimes. This resulted in a overthrow of Libyan Arab Jamahiriya, the death and end of Muammar Gaddafi and UN authorization of military intervention by North Atlantic Treaty Organization (NATO).

Using of force has occurred during in self defence. The UN Charter under Article 51 states that, States may resort to the using force in self defence in legitimate cases.¹⁹¹ Self defence is the mechanism used by states in retaliation to militarized attack against a state's territorial integrity. For states to resort to self defence, it should demonstrate that it is a victim of armed attack. Traditionally using force was designed to regulate armed attack from states but with changing the International System, states can use self defence against a non state actor, for instance terrorists. This became a great concern for states especially after the aftermath of the September 11th 2001 terrorist attack in the US.

The 2001 UN Security Council Resolution 1373 was issued that all states should take necessary measures in preventing the commission of terrorist attacks.¹⁹² The UN Security Council also established a Counter Terrorism Committee that was responsible with implementing the resolution. The UN Charter still allows using force only in circumstances that are extreme in nature. Although states can use force, it should be in conduct with the law governing the specifics of the using of force. International humanitarian law sets out the rules that can be applied in armed conflict situations. It aims to limit detrimental effects of warfare, providing

¹⁹¹ United Nations, Charter of the United Nations, 24th October 1945, 1UNTS XVI, available at www.unwebsite.com/charter (accessed September 25, 2019)

¹⁹² The United Nations, UN Security Council Resolution 1371, 28 September 2001, <http://unscr.com/en/resolutions/1371> (accessed September 30, 2019)

protection of those who are not taking part in the hostility, defines rules of conduct and restriction regarding the methods and means of warfare that can be employed.¹⁹³

Threatening to use force or using force has been effective in dealing with territorial disputes. For instance; the territorial aggression, where in 1974 when Turkey invaded Cyprus after a coup d'état which led to an agreement of power between Cyprus and Greece. The invasion brought the Turkish people who were living in the Northern part of Cyprus together with the Turkish people and expelled the Greeks. The Turkish Cypriots in 1983 together with Turkey created an independent Republic of Turkey of the Northern Cyprus which constituted the de facto state boundary by using force. The UN and Western countries to date refuse to recognize the Turkish Republic of Northern Cyprus and only Turkey recognizes the secession state. The international opposition outcome led to the creation of the state could be the reunification of the Turkish and Greeks parts of the island and hence coercive territorial changes would lead to nullification.¹⁹⁴

The concept and justification of the using force was presented during 1962 Cuban missile crisis. The Soviet Union installed missiles in Cuba it was a threat to territory of the US. The Soviet Union had placed nuclear missiles in Cuba as it had feared that the US had placed nuclear missiles in Italy and Turkey directly aimed at the Soviet Union. The US responded with a blockage implying to threaten to use force. US acted on a defence mechanism by establishing a naval blockade by preventing USSR missiles from further entering into Cuba. US claimed that

¹⁹³ The Using of Force in International Law (The Open University Press, 2016)

<https://www.open.edu/openlearn/society-politics-law/the-use-force-international-law/content-section>

¹⁹⁴ Robert McDonald, *The Problem of Cyprus*, (Adelphi Papers, International Institute of Strategic Studies, London, 1989)

its actions was in self defence and justified the blockade and never claimed that the Soviet Union was acting on a reciprocal basis as it had its missiles close to the Soviet Union.¹⁹⁵

The study established that in the Kenyan case, Kenya resorted to the threat of use force when the then President of Uganda Idi Amin attempted to annex part of Kenya's' region and President Jomo Kenyatta threatened to use force to protect Kenya's territorial integrity. This was effective as it made Uganda back down its claim because of fear of uncertainty and the possibility war. It could also lead to strained relations between the two countries. With this approach Kenya was able to defend her territorial integrity. One could agree with the threatening of using force as it was effective and quick in solving Kenya's territorial threat since war did not occur between the two countries as Uganda backed down its claim over Kenya.

The study observed that majority of respondents mentioned time as one of the challenge facing diplomatic methods as an approach for Kenya in dealing with threats to her territorial integrity. One respondent mentioned inadequate capacity in terms of finances and human capacity in terms of military personnel, corruption, weak border policies, while other respondents stated that international institution such as the ICJ can be vulnerable to manipulation and use of military force leads to high cost and increase of instability ¹⁹⁶ From this it can be deduced that while majority of the respondents approved both diplomatic approaches in dealing with threats to Kenya's territorial integrity compared to non diplomatic approaches they stated that both approaches had some challenges and prospects. In doing so, one respondents recommended the adoption of some initiatives such as regular land and body patrol, clear demarcation of the

¹⁹⁵ Abram Chaves, *The Cuban Missile Crisis, International Crises and the Role of the Law*, 1st ed. (Oxford Press Publishers, April 11, 1974)

¹⁹⁶ Anthony Mukena, interview email message to author, October 28, 2019

country's border lines, equal distribution of resources to all parts of the country's border such as Northern districts of Kenya. Another respondent stated that Kenya should invest in intelligence gathering and develop good relations with other states.¹⁹⁷

The study found out that majority of respondents mentioned diplomatic approaches as the main approach that Kenya has used in dealing with threats to her territorial integrity. Negotiation, Mediation and ICJ was mainly mentioned by the respondents while few respondents mentioned the use of non diplomatic methods such as the using of force in the Al – Shabaab and terrorism cases. Other respondents mentioned negotiation as the best approach while others mentioned mediation, arbitration and the use of courts, using force and sanctions as well. And other respondents stated the enactment of national legislation that classifies acts that compromise territorial integrity as treason, punishable by death, use of the coast guard to enhance protection of territorial waters, participating in cross-border conflict resolution. Kenya availed KDF soldiers as part of AMISOM troops to Somalia to help address the civil war in the land. Being a neighbour to Somalia, Kenya's protection and territorial integrity is depending on the stability of the horn of Africa region as the suitable approach in dealing with threats to the territorial integrity of Kenya.¹⁹⁸

From the study analysis, the study established that negotiation was the best approach for Kenya in managing territorial disputes, while meditation was the suitable approach in dealing with territorial threats while other respondents stated that Kenya should use arbitration and the ICJ in handing territorial disputes. Other respondents approved the using of force in circumstances

¹⁹⁷ Interview with Henry Mkare, October 31, 2019

¹⁹⁸ Interview with Camilla Agak, November 2, 2019

where diplomatic methods have failed such as the case with Al-Shabaab and the use of sanction in the case of Migingo Island. Therefore the study can deduce that, majority of respondents mentioned that diplomatic methods such as negotiation and mediation were better approached for Kenya in dealing with threats to her territorial integrity compared to the use of international courts, the using of force and sanctions.

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This chapter concludes by stating that, in critically analyzing some of the methods that states and Kenya have used in responding to threats to their territorial integrity. The pacific methods of

¹⁹⁹ Anthony Mukena, interview email message to author, October 28, 2019

²⁰⁰ Interview with Henry Mkare, October 31, 2019

conflict resolution such as negotiation, mediation and judicial proceedings are effective as they pose fewer challenges as compared to the threatening to use force or using force in settling disputes in regards to territory. Kenya has been successful in managing threat to her territorial integrity by the use of negotiation with the Migingo case with Uganda while negotiation has been unsuccessful with Somalia. In regards to the threat of using force or using of force, Kenya was able to stop Idi Amin's claim to annex its territory through the threat of using of force while the other hand, the using of force in Somalia did not fully enable Kenya to protect her territorial integrity.

Chapter Five

Summary of Findings, Conclusion and Recommendations

5.1 Introduction

The aim of the study was to re-examine Kenya's approaches in dealing with threats to her territorial integrity under three research objectives and research questions. From literature review, chapters, data collection and data analysis this chapter entails; the summary of findings, conclusion and recommendations. The following study entailed three objectives which investigate Kenya's approach in dealing with threats to her territorial integrity. This study investigated the major threats to the territorial integrity of Kenya with specific references along the Kenya and Uganda border, Kenya and Somalia border, Kenya and South Sudan and the Kenya and Ethiopia borders.

5.2 Summary of findings

The study established that there has been the existence of territorial threats to the territorial integrity of Kenya especially along the Kenya and Somalia border. The neighbouring country of Somalia has been considered the main source of territorial threats to Kenya's territorial integrity since independence. The study established the first threat occurred during the Somali insurgency movements that led to the Shifita war. Secondly, the study established that terrorism from the Somalia based terrorist group, the Al Shabaab is another threat to the country's territorial integrity. The influx of refugees in the country, especially the Somali refugees is also considered a threat to Kenya's territorial integrity, as it has been considered to facilitate the entry of the Al-Shabaab terrorist group, small arms proliferation and organized crimes in the country. The study

also found out a more contemporary threat to emanating from Somalia is the Indian Ocean maritime delimitation dispute when Somalia filed the dispute to the ICJ. Other threats to the territorial integrity of Kenya that has also emerge in the Indian Ocean border of Kenya and Somalia is the issue of piracy by Somalia nationals.

The study established that Migingo Island dispute is another threat to Kenya's territorial integrity. With the existence of shared natural resource, Lake Victoria, between Kenya and Uganda there has been territorial disputes over delimitation and ownership of the Lake Victoria small islands. The Kenya – Uganda dispute over the ownership of Migingo Island came to existence in 2004 after Uganda deployed his forces in the Island and imposing tax on and harassing Kenyan fishermen. This dispute has been a threat to Kenya's territorial integrity as the issue is still yet to be resolved. The study found out that the Ilemi Triangle is still another major threat to Kenya's territorial integrity. The territorial dispute is contested and claimed by three countries; Kenya, Ethiopia and South Sudan. The oil and minerals discovery in the region has furthered the intensity of the conflict between these countries and especially with the communities living in the region. The dispute in the Ilemi Triangle has been dated back before the independence of these countries. The border between the three countries has been drawn three times; the Kenya – Ethiopia Maud line of 1902, the Red line of Kenya and Sudan in 1938 and the Blue line drawn by the British officials in 1944. Rivalry communities living in the region has also intensified the conflict over the Ilemi Triangle. Therefore this has led the Ilemi Triangle dispute become major threat to the territorial integrity of Kenya.

In investigating Kenya approaches that have been used since its independence, the study found out that nearly all available measures of dispute settlement or conflict resolution has been used by Kenya in trying to solve threats to her territorial integrity. Kenya as a member of the United Nation and a signatory to the UN Charter recognizes the importance of settling disputes through peaceful means. Under Article 159 of the 2010 Kenyan Constitution it states that the judicial authority of Kenya through its exercises in courts and tribunals will be guided by the principles of alternative dispute resolutions such as negotiation, mediation, arbitration and reconciliation. This counters the traditional form of settlement of disputes based on the court settings. The study found out that Kenya has used negotiation as an approach in trying to solve the Migingo Island dispute with Uganda. Negotiation efforts have also been underway with Somalia over the Maritime delimitation dispute. Kenya has also used mediation as an approach to threats to her territorial integrity by participating and engaging in mediation efforts, for instance during the Shifta war that was mediated by the Zambian President, in solving the Somalia insurgency movements that threatened Kenya's territory. The study also found out that Kenya has engaged in mediation efforts with Somalia over the Maritime delimitation dispute in 2019 under the Ethiopian Prime Minister. For Kenya as a member of the UN and party to the Hague convention, Kenya recognizes ICJ's role in dispute settlement. Although Kenya has never taken any dispute with her neighbouring countries to the ICJ or any Arbitration court to solve threats to her territorial integrity, Kenya has participated in court procedures in solving territorial disputes for instance in the case of the Maritime border delimitation dispute with Somalia. The study found out that although Kenya recognizes importance of settlement of disputes by peaceful means, Kenya has also used the threatening of using force and using force through war and aggression in dealing with threats to her territorial integrity. Kenya threatened to use force during Idi Amin's

aggression on annexing Kenya's territory that halted his claim. Kenya has also used force during the Shifta war with Somalia with implementing counter insurgency measures that later led to mass killings and massacres in the country.

5.3 Conclusion

Kenya's territorial integrity is important for the country as it ensures the protection of her security and the people. Threats to the territorial integrity of Kenya have been an issue and a major concern for Kenya since her independence in 1963. Kenya has faced numerous threats to her territorial integrity from her neighbouring countries. The major external threats to Kenya's territory are the Migingo Island dispute, Ilemi Triangle dispute and the Maritime delimitation dispute. Other threats to Kenya's territorial integrity also include; terror attacks by the Al Shabaab, the influx of refugees, transnational organized crimes and piracy in the Indian Ocean. These threats have been caused by shared borders, natural resources and ethnic communities. These threats have not only threatened the security of the country but also for the country's population.

Kenya considers the importance of approaches such as negotiation, mediation and arbitration in trying to solve the threats to her territorial integrity. These approaches have been effective in managing some disputes while they have failed in managing others. Although Kenya does not consider the threatening to use force or using force as an approach in dealing with threats to her territorial integrity, the country has in the past used force in dealing with her territorial threats. Whilst the Uganda case was successful with the threatening of using force, the using of force did not yield much success with Somalia during the Shifta war. Since the country still poses a major

threats to Kenya's territorial integrity to date. Kenya has made much effort in trying to solve the threats to her territorial integrity, although it is faced with the challenge where her neighbours that are party to the dispute are unwilling to resolve some of the disputes, for instance; Uganda's reluctance in resolving the Migingo Island dispute and Somalia unwillingness to resolve the Maritime delimitation through negotiation and taking the dispute to the ICJ. Even with these challenges Kenya has effectively managed in resolution of these threats maintain peaceful relations with her neighbours and hinder the possibility of war due to territorial disputes.

5.4 Recommendation

From investigation the approaches Kenya has used in dealing with threats to her territorial integrity, this study makes the following recommendations;

- i. Kenya should ensure that before they employ these approaches of dealing with threats to her territorial integrity, the other state party to the dispute is willing to resolve the dispute. Kenya and Uganda in resolving the dispute over Migingo Island and South Sudan in solving the Ilemi Triangle dispute with as currently unresolved.
- ii. Secondly, Kenya should ensure that the approaches used in dealing with the various disputes are effective, the participation of both members in the processes and implementation of the agreements are followed in "good faith"
- iii. Kenya should adopt other peaceful and non aggressive approaches in dealing threats to her territorial integrity with the use of her economic prowess such as sanctions. Economic

sanctions can manage another states aggression especially one that is dependent on Kenya's economy.

- iv. Kenya can also use other regional cooperation and organizations for example EAC, IGAD and the AU in solving the threats to her territorial integrity. Kenya can resort to the East African Court of Justice in solving disputes with Uganda as both states are members of the EAC.

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ANNEXES

Annex 1: Letter of Data Collection



UNIVERSITY OF NAIROBI
College of Humanities and Social Sciences
Institute of Diplomacy and International Studies

Tel : (02) 318262
Telefax : 254-2-245566
Fax : 254-2-245566
Website : www.uonbi.ac.ke
Telex : 22095 Varsity Ke Nairobi, Kenya
E-mail : director-idis@uonbi.ac.ke

P.O. Box 30197
Nairobi
Kenya

August 14, 2019

TO WHOM IT MAY CONCERN

RE: MARY GORRETY ACHIENG DIANA – R50/7009/2017

This is to confirm that the above-mentioned person is a bona fide student at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi pursuing a **Master of Arts Degree in International Studies**. She is working on a research project titled, **“A CRITICAL EXAMINATION TO KENYA’S APPROACHES TO THREATS TO ITS TERRITORIAL INTEGRITY”**.

The research project is a requirement for students undertaking Masters programmes at the University of Nairobi, whose results will inform policy and learning.

Any assistance given to her to facilitate data collection for her research project will be highly appreciated.

Thank you in advance for your consideration.



Professor Maria Njomo,
Director, IDIS

&
Professor of International Relations and Governance

Annex 2: Consent letter

University of Nairobi
P.O Box 30197-00100
Tel: 318262

Mary Gorrety Achieng Diana,
Mobile No: 0708461702
Email: dianaachieng454@gmail.com

Dear respondent,

The questionnaire and interview guide is aimed at collecting data for research purpose on the re-examination of Kenya's approaches to threats to her territorial integrity.

The research will be in partial fulfilment of the requirement for the award of the degree of Master in Arts in International Studies at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi.

Please note that any information collected will be treated with utmost confidentiality.

Your utmost cooperation in this exercise will be highly appreciated.

Thanks in advance.

Yours sincerely,

Mary G. A. Diana

-

4. What are other threats to Kenya's territorial integrity?

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5. Where is the location of the main source of Kenya's territorial threats?

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6. What are the main causes of these threats?

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-

7. What are some of the approaches Kenya has used in solving threats to her territorial integrity?

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-

8. What is the best approach for Kenya to use in dealing with threats to her territorial integrity?

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-

9. What are the challenges of the selected approaches?

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10. Other than those mention in Question 7, what are other initiatives that can be adopted by Kenya in order to minimize threats to her territorial integrity?

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Thank You

Annex 4: Research Permit

End