Compulsory Adjudication of International Court of Justice and Pacific Settlement of Kenya-Somalia Maritime Dispute

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Abstract: **Kenya and Somalia are among states that have accented to compulsory jurisdiction of the International Court of Justice on peaceful settlement of disputes. However, these two states are at odd over the verdict on international boundary delimitation passed by this court in regards to the Kenya-Somalia Maritime dispute. This study examined compulsory adjudication, carried out by the International Court of Justice, as means of resolving the Kenya Somalia maritime dispute. The specific objectives were: to explore the genesis of the maritime dispute between Kenya and Somalia, to analyse international legal framework on peacefully settlement of maritime disputes and to evaluate the state reservation towards compulsory adjudication as an approach for pacific settlement of maritime disputes. The study reviewed relevant literature and analysed case studies of maritime disputes that have been resolved or pending to ascertain the suitability of compulsory adjudication, arbitration or other alternative mechanisms in resolving the Kenya-Somalia maritime disputes. This study was anchored on the theories of institutional liberalism and realism. Institutional liberalism recognises international law as a regime that governs states hence the states accentuation to international arbitration by the International Court of Justice. Realism is about state centrism, national interest and that preserving their autonomy is crucial hence states remain the main actors in decision making processes and there is no authority to challenge anarchy of states in either abiding or otherwise with the compulsory adjudication. This study utilized the mixed research design and relied mostly on the historical and explorative designs. The research was primarily qualitative and explored both primary and secondary sources. Primary data was sourced through both archival data retrieval, and field research. Archival data was collected in the Kenya National Archives. Field data was gathered through key informant interviews and Focused Group Discussions. The target population from which samples was drawn from includes members of the diplomatic community of the two countries, peace and security experts, politicians, legal experts and employees of the International Court of Justice. Secondary data was sourced from conference papers, books and journals. The data collected was grouped, corroborated, analysed through contents analysis and presented using the qualitative research techniques and using themes that are comparable to the research objectives. The major proposition of the study was that maritime disputes may be resolved either through compulsory adjudication and that the international law through it elaborate legal frameworks also anticipates the maritime disputes may be resolved through or diplomatic and bilateral engagements between the two conflicting states. However, states have reservation in submitting their conflicts for compulsory adjudication by the International Court of Justice. For such, both Somalia and Kenya were willing and unwilling to comply with international arbitration for a number of reasons including: third party bias among judges, salience of territorial issues under contestation, uncertainty over the outcomes of the process, the bargaining power of the competing states and the likelihood of armed confrontation between the belligerent states. Information gathered in this study was not only beneficial in providing a body of knowledge on understanding the role of compulsory adjudication in pacific settlement of the disputes, but also added to existential knowledge on international legal framework on maritime disputes and state reservation in judicial settlement of territorial and maritime disputes.**

***Key Words*; compulsory adjudication, maritime disputes and IC**

I. INTRODUCTION

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

Compulsory Adjudication has been ratified by 73 states internationally (Nations, Charter of the United Nations and Statute of The International Court of Justice, 1946). This means that the International Court of Justice will accept legal disputes from these member states with the requirement that disputing states have agreed to the compulsory jurisdiction. Kenya accepted and was ready to cooperate with the compulsory adjudication over its maritime dispute with Somalia. There was however, change of heart later on. She withdrew and boycotted the proceedings. She later refused to comply with the judgment forcing Somalia to seek a possible course of action from the United Nations Security Council (Wasike, 2021).

Compulsory adjudication of international maritime disputes is considered by some states to be ruthless and dominating (United States Congress, 1960). There are perceptions also that international arbitration will only favour one country hence there is no firm promise that both states will remain to

be friendly after determination on the disputes. States therefore, have reservation over resolving their maritime disputes through adjudication. This explains why Kenya and Somalia are at odds on whether to peacefully resolve the maritime dispute through judicial settlement or through out of court settlement such as negotiation, mediation and arbitration bilateral negotiations.

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

The court had to first find out if the Memorandum of Understanding qualified to be legal. The Memorandum was signed by both states on 7th April 2009. Somalia on their part denied the validity of the memorandum sighting that the instrument was "non-actionable" and "void". (Somali V Kenya, Judgement on Preliminary Objections, 2017)

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

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

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

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

Objective

The aim of the study was to examine why compulsory adjudication was not the best means for resolving the Kenya-Somalia maritime dispute.

II. METHODOLOGY

The study used the mixed research designs including historical design, explorative design and case study design. The historical design was used to trace the genesis and history of the maritime dispute between Kenya and Somalia. The explorative design was used in analysing the existing international legal framework on peaceful resolutions of maritime disputes. The case study design was used to compare different case laws on compulsory adjudication and state reservation to judicial settlement of international disputes.

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

The sampling size for the study used the stratified form of sampling. The maritime dispute between Kenya and Somalia required a specific set of people hence population elements such as age, education, gender and occupation to examine the size.

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

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

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

The study followed the rules and guidelines provided by the School of Security, Diplomacy and Peace Studies from Kenyatta University. The Ministry of Foreign Affairs, the United Nations and the institutions hosting the Somali Government in Kenya issued a permit to the researcher. The researcher ensured that the sample subjects were protected from any form of harm, their dignities respected and informed consent obtained before conducting the study. The researcher ensured that privacy and confidentiality was upheld at all times during the study. The researcher acted in a professional way to avoid misrepresenting the information obtained or being biased, she ensured that communication upheld transparency and honesty. In cases where the institutions or the individuals wanted to remain anonymous, the researcher applied anonymity. Finally, and most importantly, the researcher acknowledged the works of other authors used in any part of the study.

III. FINDINGS AND ANALYSIS

History of the Kenya Somalia maritime dispute

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

After independence, Kenya was not ready to give up control of the Northern Frontier District and this led to conflicts between Kenya and Somalia to a war that was then referred to as Shifta War (Howard, 1986). The war between the two countries did not escalate to a big one as both Kenya and Somalia agreed on a truce however both countries have since then been facing confrontations towards each other due to terrorist attacks, clashes and other disputes.

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

The Somali in NFD blamed Africa of not recognising them in many ways; it blamed Kenya of denying them employment and a visa to enter Kenya. The government of Somalia stated that the rest of Africa was not ready to break the barriers that were blocking Somalia from other African countries and that their territory was commonly referred to as a "punishment station". They were not allowed to travel to Kenya without a

special pass and that the only visitors they had in their country were prisoners, exiles and colonialists (Government, 1964).

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

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

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

The Observer London, a newspaper in London, stated that the Somali living in Kenya had the privilege and right to choose what their future would look like. It argued that the contested area is a desert which has nothing to offer in the Kenyan economy, have different religion hence no one can blame them for trying to fit in. The refusal of Kenyan leaders to let go a large part of their map is what the British government was fuelling. However, the observer was of the view that both Kenya and Somalia need an outsider who will act as a third party to try and help in the resolving their issue on the ownership of NFD (Observer, 1963).

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

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

President Jomo Kenyatta further stated that Radio Mogadishu was aimed at spreading propaganda since the year 1963 to the Somali people living in Kenya. This, according to the first president was an attempt to incite people inhabiting the NFD to fuel a civil war. The government of Kenya reiterated that they were not afraid of war and that they will do anything to defend its territory even if it meant bloodshed. Kenya urged African States to promote Pan-African Unity by condemning the actions of Somali in trying to divide African states with the use of insurgents (Kenyatta, 1963).

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

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

The Standard newspaper in the year 1965 recapped the talks that were between Arusha and Nairobi with regards to the territorial dispute that was going on between them. According to the standard newspaper, Mr Murumbi Joseph, who was then the Minister for Foreign Affairs said that Somalia wanted to revive old talks that were supposed to have been addressed by the Resolution in 1964? Mr Murumbi said that for the two countries to have a discussion, Somalia had to stop the Shifta in the North Eastern Region, the Somali Government should stop all the propaganda that the rebel group was inciting towards the Kenyan Government, the military and police of Somalia should work hand in hand with that of Kenya, Kenya would reinstate diplomatic relations with Somalia after the Shifta was done away with and finally that both governments should come out publicly to condemn the actions of the Shifta. These talks did not happen until Somalia had a change of heart on the above pointers (Standard, 1965).

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

The East African standard published that, the Minister of Information for Somalia; Mr Yusuf Ahmed Boukah stated that

Kenya had declared war on Somalia. The minister further said that it is capable of teaching Kenya a lesson it will never forget (Standard, 1966).

This study established that the maritime dispute between Kenya and Somalia goes way back in 2014 when Somalia decided to institute legal proceedings in the International Court of Justice against Kenya. Somalia's claims were that the maritime boundary between the two counties was to be redrawn. The maritime boundary was supposed to delimit the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf that was beyond 200 nautical miles.

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

The judgement was delivered on 12th October 2021 and the court ruled in favour of Somalia. Kenya had claimed that Somalia had agreed openly that there was a maritime boundary between the two countries and that it was without any reservations. Kenya was of the opinion that the present boundary line was a sign of fair and impartial delimitation. The court however ruled that there was no maritime agreement between Kenya and Somalia. Somalia further asked the court for damages since it had accused Kenya of breaching international law but the court did not find sufficient grounds to back those claims.

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

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

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

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

Legal Framework on Peaceful Settlement of Maritime Dispute between Kenya and Somalia

The second objectives sought to establish legal frameworks under compulsory adjudication for resolving maritime disputes. The United Nations Convention on the Law of the Sea is the main legal instrument governing the waters. The International Court of Justice, the International Arbitral Tribunal and the international agreements pushed the enactment of international treaties that have regulated how maritime boundaries are drawn and its changes during the past half century.

The Law of the Sea and Kenya and Somalia Maritime Dispute

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

The United Nations Convention on the Law of the Sea was ratified so as to help with the settlement of disputes relating to water bodies. It is aimed at establishing coastal boundaries and erecting an international sea bed authority to regulate seabed exploration not within territorial claims and to distribute revenue from regulated exploration. States had to protect their interests in seas and this convention made sure that there was a balance between these interests and neighbourly states through the processes of arbitration and adjudication.

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

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

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

Parties to a dispute that are involved UNCLOS have been provided different forums under Article 287 which are; International Court of Justice, International Tribunal for the Law of the Sea, arbitral tribunals and special tribunals. The goals and objectives of UNCLOS are not to provide solutions to their disputes but rather to guide the necessary parties to reach an accepted solution through its principles and standards. However, as much as this treaty has been embraced as the main legal instrument on the law of the sea, it still has its own challenges.

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

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

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

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

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

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

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

Despite having discussed the shortcomings, this convention has also been a strong pillar globally by strengthening and appreciating the importance of international law. UNCLOS has managed to bring together more than 160 states together through its ratification. The convention has enabled countries to come together in matters concerning decision making, dispute resolution mechanisms, consultations, expert opinions and many more. Agreements between two countries have now been elevated to agreements to more than three countries promoting multilateralism. A good example is the use of international organisations like the International Maritime Organization and the International Sea Bed Authority.

The Kenya-Somalia maritime dispute has shown that the ratification of UNCLOS is not an absolute and final surety that the rules have to be followed. Kenya made sure that it did not attend the hearings at the International Court of Justice, showing the international community that its interests are far much important than adhering to the rule of law. The Kenya Somalia's struggle for power on the maritime resources in Indian Ocean is likely to trigger the presence of military activities in the Exclusive Economic Zone. The sea has become a domain for power and states will do all that it takes to preserve their power and prestige. Kenya has realized that Indian Ocean can impact its economy, political, security and social sectors in many positive ways hence making ocean politics to promote interdependence of states, where a state only pushes agendas for its own benefit (Booth, 1986).

Kenya's resistance to the ICJ's judgement is due to the discovery of the economic value that seabed resources have. Resources like oil and gas have a high probability of causing conflicts between Kenya and Somalia and this is because both states are competing for power hence increased competition magnifies disputes. Most of the maritime boundary disputes in the world today; both past and on-going have shown that there is interplay between the disputes and the exploration and exploitation of seabed resources. (Khalfaouri & Yiallourides, 2019) African states have shown tremendous growth in all sectors, especially its economic sectors. For instance, in 2017, Africa produced 8,072 thousand barrels of oil on a daily basis which summed up to 8.7% of world's oil production which

was estimated to hold 8.5% of the world's proven oil reserve. (Khalfaouri & Yiallourides, 2019)

Kenya made its own independent decision separating itself from the decision of the court hence it acted as a unitary actor. This means that when Kenya decides to go to war because of the unsatisfied ruling of ICJ, or make peace with Somalia by accepting the ruling, it will make decision on its own without external influence from other states. Once Kenya makes its own decision, it remains final in the eyes of the international actors. Kenya and Somalia both need to remember that Africa is not stable before the international community because it has experienced sudden conflicts, tense ideological confrontations, territorial disputes, cross-border destabilisation and continued militarization. It is due to these reasons that Africa is now referred to as a crisis zone or a stage where the Soviet Union and the United States of America come to showcase their power capabilities (Sharamo & Mesfin, 2011).

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

The third objective sought to understand why Kenya had reservation over compulsory adjudication by the international court of justice. This section addresses that. We begin with brief history of International adjudication. This study noted that International adjudication began with the formation of the Permanent Court of Arbitration, the Permanent Court of International Justice, the International Court of Justice, and the International Tribunal for the Law of the Sea, Regional courts and tribunals. At formation, seventy-three United Nations member states came into agreement when they signed the charter with regards to compulsory jurisdiction. This implies that any international legal disagreement concerning these member states may be presented to the court as long as all states party to the dispute before the International Court of Justice have accepted its compulsory jurisdiction.

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

Compulsory adjudication has also been resisted by states because of the introduction of bilateral talks through alternative dispute resolution mechanisms. States in the past did embrace the use of their governments and legislators as courts and not the independent judiciary bodies as today. In the past, there was no centralization of court management (Kelsen, 1943). Today, law has evolved to centralized judicial bodies. Parliament was then being used as courts. The courts before were only concentrating on whether crimes were committed and if so, whether both parties could settle their conflict peacefully and if the offended person had the right to defend himself if need arose (Kelsen, Law, Peace in International Relations, 1942).

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

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

Compulsory adjudication has the option of conciliation when states want to. Kenya and Somalia may have opted for settling their maritime disputes in a friendly manner and the court should have only come in when both parties did not find a common ground (ICJ, 1945). Kenya and Somalia would have looked for representatives who would have negotiated on their behalf and arrived at a final decision. Another option is where both Kenya and Somalia would have come together but with the presence of a third party who would only help in explaining what the conflict entails and helped them in coming up with a decision. Another option that both of these countries may have relied on is when the decision between Kenya and Somalia could have been agreed upon by a third party or an outsider and will be binding.

The International Court of Justice and Compulsory adjudication

The study also sought to establish why the consent was to be compulsory. The study found that the Committee that was given the responsibility of drafting the Permanent Court of International Justice statute was of the view that the world court, now known as the International Court of Justice, was to be granted jurisdiction that required no consent from the

participating states so as to reduce the recourse on the use of force. This position was again supported in 1945 by a majority of committee members, however it was highly opposed and until today, states have the option to consent before presenting their matter before the court. Kenya and Somalia are not forced to present their matter for dispute resolution but rather it is their choice to do so.

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

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

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

Finally, the study sought to establish factors that make states to comply or not with international arbitration. This study noted that there are various causes of maritime disputes that cause states to disagree. States can dispute over maritime issues due to sovereignty, rights over maritime resources and also prestige that a country holds since its independence. Realists have identified that conflict will always be a part of people's norm of living. Realists believe that people will always be selfish and aggressive; hence states as the main actors in the international arena will be influenced by their emotions. Kenya on 8th October 2021 announced that it will not recognise the decision that will be made by the International Court of Justice on accounts of biasness and unsuitability to resolve the maritime dispute. Kenya states that the decision that is expected to be delivered on 12th October 2021 will have adverse effects on political, social and economic sectors on Kenya's livelihood. Kenya is unwilling to proceed to the court due to the following reasons:

Independence and Impartiality

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

Article 2 of the statute of the International Court of Justice has clearly set out the principle of independence (Nations, 1945). It states that judges appointed from all nationalities and are qualified should be independent. Article 20 of the same statute requires all members to exercise their powers impartially and conscientiously.

The principles of independence and impartiality have been contentious as politics today has started dominating electoral processes, especially within our judicial bodies. A good example is the Security Council members that are almost an exact replica of what is composed in the permanent 5. Judicial independence has been diminished by the re-election of same judges that have previously already served their term. States do come in when they try to appoint judges that are preferred by them and can serve according to their own interests. States appointing their own preferred legal representatives have introduced new Latin term known as "Onusiens" meaning "Lawyer diplomats on the bench" (Rosenne, 1976).

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

Legitimacy of judicial bodies

The legitimacy of the court is questioned by states when the composition of the court clearly represents how power is shared in the global arena. Kenya's reservations of separating itself from the decision of the court can be associated to the fact that one of the judges, Judge Abdulqawi Ahmed Yusuf is from Somalia and was once elected as the president of the court. This court is the most powerful judicial body worldwide. The charter of the United Nations, where the court's authority is derived from, considers the court as the "principal judicial organ." The members of this court are elected by the Security Council and the General Assembly with the same states being given positions under the permanent 5.

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

Compliance

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

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

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

Resources

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

IV. CONCLUSION

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

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

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

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