



The Kenya-Somalia Maritime Dispute: Impact of the ICJ Ruling on Kenya's National Security Interests

Dr. John Mwangi

Executive Summary

This paper analyzes how the March 2021 International Court of Justice (ICJ) ruling on Kenya-Somalia maritime dispute will impact on Kenya's sovereignty, territorial integrity and economic prosperity. These national security interests have implications on Kenya's defence strategy, maritime governance and internal security dynamics. The paper draws on expert interviews and desktop research. The key findings discussed include implications on sovereignty, maritime security and the Al-Shabaab. This paper recommends addressing the existing policy gaps in maritime governance; engaging the diplomatic muscle; intensifying Somalia stabilization process; reaching out to north eastern and coast regions and resolving the refugee crisis as crucial in maintaining sovereignty and territorial integrity.

Introduction

This paper analyzes how the March 2021 ICJ ruling on Kenya-Somalia maritime dispute will impact on Kenya's national security interests. It argues that Kenya's sovereignty, territorial integrity, and economic prosperity are tied to this dispute. The paper explores debates on sovereignty, maritime security, and the Al-Shabaab question. It suggests several recommendations to safeguard Kenya's national security interests. The paper observes the need for continuous Somali state stabilization interventions, addressing governance gaps in north eastern and coast regions, including solutions for the protracted refugee situation in the northern Kenya region.

Background

Kenya-Somalia maritime dispute is centered on a territorial claim on the Exclusive Economic Zone (EEZ) of over 100,000 square kilometers on the Indian Ocean region. Both countries claim sovereignty on this territory (McCabe, 2019). The dispute arose out of a failed negotiation process that commenced in 2009 within the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Somalia



Photo credit: KDF

lodged the maritime delimitation case at the International Court of Justice (ICJ) in 2014. The bone of contention is the variance of opinion where Somalia argues that Kenya-Somalia border runs by the equidistance principle while Kenya claims the border runs parallel to the latitude. The possibility of Kenya getting no access to the high seas unless with permission from Somalia is real, since Kenya already delimited its sea boundary with Tanzania.

Beneath the dispute, is a huge blue economy potential characterized by extensive hydrocarbon deposits, fish and other marine resources (Rasowo et.al, 2020). These economic interests have drawn in geopolitical actors such as Norway, UK, Turkey, UAE, France,

USA and Qatar. These actors continue to utilize varied maps of the disputed zone depending on their interests.

Methodology

This paper draws on qualitative experts' interviews and review of secondary literature from books, journals, and grey literature. The data gathered was analyzed thematically.

Key Findings

The following findings are prominent in relation to the discourse on the implications of ICJ ruling on Kenya's national security interests.

Sovereignty and Territorial Integrity

The ICJ ruling on the maritime dispute is bound to have major implications on Kenya's sovereignty and territorial integrity. Kenya's Defence White Paper of 2017 outlines that the country's territory including its Exclusive Economic Zone (EEZ) on the Indian Ocean runs parallel to the Somalia maritime border (GOK, 2017). This is in congruence with presidential proclamations of 1979 and 2005 which declare Kenya's claim on the EEZ. However, Kenya has yet to effectively occupy and exploit the full potential of the EEZ. The Maritime Zone Act of 1989 and revised in 2012 reemphasizes Kenya's EEZ on the Indian Ocean.

The issue of territorial disintegrity to Kenya becomes critical in this debate because the principle of parallel of latitude has only been sparingly applied at the ICJ. The widely used equidistance principle would in turn impact on other maritime boundaries in the entire West Indian Ocean maritime region up to South Africa.

Another key sovereignty question is the issue of Kenya's perceived interference in Jubaland state in Somalia which was once part of Kenya's territory under the British East African Protectorate in 1895 (modern day Kenya). Jubaland, was however, handed over to the Italians in 1924 as a reward for its support to the British in World War 1. The Jubaland question is key because the disputed zone extends into her territory and therefore remains a strategic zone for both Kenya and Somalia. Kenya's support to Jubaland which is a buffer zone in the war against terrorism has been seen as a possible interference with Somalia's sovereignty (Mwangi, 2016). The Federal Government of Somalia (FGS) fears that Jubaland may lend strategic support to Kenya in return and this will complicate the FGS claim on the maritime zone. The deteriorating diplomatic relations between the two countries including the expulsion of the Kenyan diplomat from Somalia is a manifestation of this question.

Another prominent aspect of this discussion is the territorial irredentism aspirations of the Kenyan Somalis in north eastern region. Their desire to join the greater Somalia has characterized their relations with political regimes in Kenya since independence. The *Shifita War* of 1963-1967 is a constant reminder of this ambition (Mburu, 2005; Lochery, 2012). Kenyan Somalis are already in anticipatory mood for Kenyan loss at the ICJ. If Somalia's prayer is granted by the ICJ, there are fears that it could spark another irredentist war to fulfil the suspended ambition in north eastern region.

Kenya and Somalia's hardline positions on protecting every inch of their claimed territories could lead to a major conflict over the disputed zone with devastating sovereignty and territorial issues on both sides. Within this context, the territories bordering Kenya and Somalia are at stake. This conflict is likely to attract the greater Somalia population in the Horn of Africa.

The continued instability in Somalia manifested in the threat of terrorism, weak governance structures, and transnational organized crimes pose a great challenge to maritime security. The situation is further compounded by internal security dynamics in Kenya such as irredentism in north eastern region and perceived marginalization of the coastal communities. Lamu and Tana River counties remain prominent in this discourse due to their proximity to the Kenya-Somalia border.

Maritime Security

The ICJ ruling presents several maritime security threats which will complicate the management of terrorism principally from the Al-Shabaab, and transnational organized crimes on the sea. These crimes include piracy on the high seas, arms, narcotics and human trafficking. Terrorism and transnational organized crimes require regional and international cooperation of which Kenya remains a key player. This is complicated by Somalia's weak governance mechanisms that enable terrorism and Transnational Organized Crimes. Somalia has the largest coastline in



Photo credit: KDF

Africa stretching to about 3,000 kilometers and an ocean territory of about 120 kilometers from the coastline. This endowment is hampered by weak security cover with negative impacts on the maritime domain (Akpomera, 2020). Beyond Somalia, Africa's maritime domain is marked by ungoverned spaces that lack national security cover and policies to exploit the maritime resources. Collaborative security including in-country inter-agency cooperation are needed to fill the weak governance gaps in the maritime domain (Akpomera, 2020; Bateman, 2016).

Transnational organized crimes will impact on the Kenya's economic development plan that now includes blue economy resource exploitation. Maritime security contributes

to challenges related to marine pollution, illegal unreported unregulated fishing, marine research, and tourism (Kadagi et al. 2020).

This dispute puts oil and gas exploration and fishing in the disputed territory on hold since harnessing of these resources requires clear boundaries and maritime security (Kadagi et al, 2020). A related human security threat is the potential loss of livelihoods for the fishing communities that border the disputed territory such as Kiunga, Lamu County that is a key fishing ground (Kadagi et al. 2020).

There is also an incoherent maritime governance architecture to safeguard Kenya's maritime security. There is yet to be an effective maritime

governance strategy but plans are underway to develop one. Maritime governance is spread across various government departments and organizations such as the Kenya Coast Guard Service, Kenya Maritime Authority, State Department and Shipping within the Ministry of Transport, The Kenya Defence Forces and the Maritime Police Unit. These multiple overlapping agencies are hindering a coordinated response to maritime security threats especially where there is disconnect between civilians and armed forces personnel. Likewise, various government departments use conflicting maps and governance strategies. The result has been poor information flows and disjointed responses on maritime governance issues.

The AI-Shabaab

The AI-Shabaab will leverage on the ICJ ruling and the resultant nationalistic wave in Somalia to strengthen its recruitment and mobilization campaigns regionally and globally. AI-Shabaab's propaganda portrays Kenya as an intruder in "Islamic" Somalia. AI-Shabaab has previously applied the nationalist rhetoric rather than a religious perspective to mobilize against 'foreign occupation', and related limitations imposed on the national self-determination (Mueller, 2019; Papale, 2020). On this maritime dispute, the FGS and the AI-Shabaab have a common nationalistic position. These two actors could capitalize on the 'occupiers' narrative to launch maritime terrorism threats against Kenya, including offshore commercial activities.

In the scenario of a diplomatic dispute escalating between the two countries, national resentment will be directed at Kenyan troops serving with the African Union Mission to Somalia (AMISOM) forces in Somalia. This resentment narrative will be adopted for AI-Shabaab propaganda and recruitment. The ICJ ruling will put the Dadaab refugee complex question into focus given that it has previously been used for terrorism and arms smuggling. The AI-Shabaab are likely to recruit from the camp and this will present extended security threats in Kenya. In addition

to the security considerations posed by the AI-Shabaab, refugees exert a considerable financial burden (Mwangi, 2016).

'State absence' in ungoverned spaces in parts of the coast and northern Kenya region will be easily exploited by the AI-Shabaab and its affiliates in Kenya such as *Jaysh Ayman* and *Al-Hijra* which continue to recruit in Kenya including Kenya's prison system (Sahan Africa, 2018). The AI-Shabaab is rapidly evolving in governance structures by controlling territory and exercising taxation, and engaging in criminality (Levy & Yusuf, 2019). The group is already engaged in wildlife trophies trade principally with ivory and also in heroin trade (Petrich, 2019; Toole, 2020). Their significant presence in Kenya is aided in part by a large Somali population, corruption at the state level, including relative ease to traverse land and maritime borders with Somalia (Petrich 2019; Papale, 2020). These factors have enabled it to create illicit funding networks and recruitment in such places as Nairobi (more prominently in Eastleigh and Majengo), including Mombasa (Petrich, 2019). It is likely to exist in Somalia and expand its influence in The Horn of Africa for the long haul. This is on account of state weaknesses in Somalia, the reliance on external backers for state stabilization, AI-Shabaab long war strategy, and the fact that it taps into the cultural dimension of imposing strictly Shariah law on the population (Maruf & Joseph, 2018).

Conclusion

This paper concludes that a concerted action is needed for ongoing Somalia state stabilization process, addressing the existing policy gaps in maritime governance, and engagement of the diplomatic muscle are crucial in ensuring that Kenya maintains her sovereignty and territorial integrity. In addition, extending its bureaucratic reach in northern Kenya and the coastal regions through development and job creation to counter AI-Shabaab recruitment is crucial.

RECOMMENDATIONS

The following recommendations are offered:

1. Regional organizations and the international community should intensify the Somalia state stabilization processes. These would include areas of state building such as institutional strengthening of the security sector in Somalia as a strategic intervention to forestall possible security gaps that may be exploited by groups such as Al-Shabaab in the current dispute.
2. Kenya should re-engage its diplomatic potentials with Somalia through regional and the international community interventions to find an amicable settlement to the maritime dispute.
3. Kenya should engage diplomatically with Somalia on the Jubaland question as part of finding a solution to its protracted refugee situation.
4. Kenya needs to extend its bureaucratic reach in north eastern and the coast regions to remove incentives for local populations to defect to Al-Shabaab. This would include offering targeted development interventions.
5. Kenya should intensify regional and international cooperation on maritime governance.

References

Akpomera, E. (2020). Africa's Blue Economy: potentials and challenges for more locally beneficial development. *Review of African Political Economy*, 47(166), 651-661

Bateman, S. (2016). Maritime security governance in the Indian Ocean region. *Journal of the Indian Ocean Region*, 12(1), 5-23

Kadagi, N.I. et al. (2020). Joint management of shared resources as an alternative approach for addressing maritime boundary disputes: The Kenya-Somalia maritime boundary dispute. *Journal of the Indian Ocean Region*, DOI: 10.1080/19480881.2020.1823169

Levy, I., & Yusuf, A. (2019). How Do Terrorist Organizations Make Money? Terrorist Funding and Innovation in the Case of al-Shabaab. *Studies in Conflict & Terrorism*, DOI 10.1080/1057610X.2019.1628622

Lochery, E. (2012). Rendering Difference Visible: The Kenyan State and Its Somali Citizens. *African Affairs*, 111(445), 615-639.

Maruf, H., & Joseph, D. (2018). Inside Al-Shabaab. *The secret history of Al-Qaeda's most powerful ally*. Bloomington: Indiana University Press.

Mburu, N. (2005). Bandits on the border: *The last frontier in the search for Somali unity*. Trenton, N.J: Red Sea Publishers.

McCabe, R. (2019). Policing the Seas: Building Constabulary Maritime Governance in the Horn of Africa-The Case of Djibouti and Kenya. *African Security*, 12(3-4), 330-355

Ministry of Defence Kenya (2017). *Defence White Paper: Republic of Kenya*.

Mueller, J.C. (2019). Political, Economic, and Ideological Warfare in Somalia. *Peace Review*, 31(3), 372-380

Mwangi, O.G. (2016). Jubaland: Somalia's new security dilemma and state-building efforts. *Africa Review*, 8(2), 120-132

Petrich, K. (2019). Cows, Charcoal, and Cocaine: Al Shabaab's Criminal Activities in the Horn of Africa. *Studies in Conflict & Terrorism*, DOI: 10.1080/1057610X.2019.1678873

Rasowo, J.O. et al. (2020). Harnessing Kenya's Blue Economy: prospects and challenges. *Journal of the Indian Ocean Region*, DOI: 10.1080/19480881.2020.1825199

Sahan Africa (2018). Al-Shabaab as a Transnational Security Threat in: Michael Keating & Matt Waldmann (Eds). *War and Peace in Somalia: National Grievances, Local Conflicts and Al- Shabaab*. New York: Oxford University Press, pp. 401-412.

Toole, G. (2020). Research Note: Deception, Drugs, & Death: Interviews with Survivors of al-Shabaab's Youth Recruitment Traps in Kenya. *Studies in Conflict & Terrorism*, DOI: 10.1080/1057610X.2020.1862774