Implications of Piracy on the Kenya-Somalia Maritime Dispute

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Executive Summary

This paper examines the relationship between piracy and the resolution of the Kenya-Somalia maritime dispute. The Kenya-Somalia maritime border currently under dispute at the International Court of Justice (ICJ) remains key to Kenya's strategic interests. The bone of contention is in the variance of opinion where Somalia argues that Kenya-Somalia border runs based on the equidistance principle while Kenya claims that the border runs parallel to the latitude. Key findings are drawn from expert opinions and comprehensive desktop review of documented sources. Results indicate high likelihood of piracy escalating along the Horn of Africa and East Africa coastline as a result of the maritime dispute and state failure in Somalia. The potential loss of maritime territory to Somalia coupled with Somalia's inadequate security apparatus will directly impact on Kenya's national security. The situation is further compounded by other existing transnational organized crimes in the disputed zone. This paper recommends effective occupation of Kenya's maritime territory as a safeguard from the maritime threats.

Introduction

The continued instability of Somalia Government, which has been at war for close to thirty years, has further deepened the vulnerability of the contested zone and its environs to piracy. Between 2007 and 2012, the Somali piracy crisis was at its peak with more than 237 attacks across the Gulf of Aden, the Arabian Sea and the Red Sea daily. Some of the key factors occasioning this phenomenon include: Somalia's strategic location as a trade route for 40% of the world's trade; its free and liberated economy with no central bank to regulate money flow; its influential warlords who offer protection to pirates; and the inability of the Capital Mogadishu to control the larger state of Somalia (Venkataraman, 2016; Mbugua & Said, 2017; Horn International Institute for

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Strategic Studies, 2019). The ensuing discussion examines the prominent factors associated with piracy on the disputed Kenya-Somalia Maritime Zone and provides ways that Kenya can mitigate incidences of increased piracy in the disputed maritime space.

Background

Kenya's strategic claim in the maritime dispute is over 100,000 square kilometers of water mass that is currently under dispute. The current disagreement follows an earlier secessionist conflict between Kenya and Somalia-backed insurgents of Somali decent in the North Eastern region of Kenya, which resulted into the Shifta Wars of 1963-1967. The expansionist motive remains key in both situations but with the earlier case capitalizing on irredentism while the latter on economic fortunes at sea (Kellerman, 2011; Mutisya, 2017; Mutambo & Achuka, 2019).

The contested maritime zone has over the years been associated with piracy particularly after the fall of Siad Barre regime in Somalia in 1991. The local fishermen sought to protect their territorial waters from foreign vessels which were illegally fishing in tuna-rich waters thereby resulting into dwindling catch for the Somali fishermen. The resultant political vacuum further opened the door for environmental crimes such as toxic waste dumping. Consequently, vigilantes were formed to capture vessels involved in illegal fishing and dumping and holding them for ransom. As the motivation for profit grew among the vigilantes, they turned into pirates thereby occasioning a multimillion dollar criminal enterprise in the disputed zone and beyond (Elmi & Barise, 2006; Groot, 2010; Wabuke, 2019).

Methodology

This paper is based on qualitative data gathered from experts and practitioners on maritime issues in The Horn of Africa. The data was collected using interview guides which provided in-depth discussion on the Kenya-Somalia maritime dispute. The primary

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data was complemented by secondary data from documented sources then analyzed thematically.

Key Findings

The following issues remain prominent in relation to the discourse on the relationship between piracy and the resolution of the Kenya-Somalia maritime dispute.

Arming of Shipping Lines

The entire Kenyan coastline has been designated as a High Risk Area by the International Ship-owners Association for them to be able to protect their assets from piracy risks. This dictates that ships must undertake other measures in order to ensure their safety and that of their cargo. These measures include authorisation to have armed security on board through an agreement negotiated between International Ship-owners Association and the International Maritime Organization.

This introduces the problem of insecurity at sea, bringing national security dynamics at play. Key among them being the interaction of the ships

with international laws. Ships coming into Kenya's waters with armed guards, are bound by Section 31 of The Fire Arms Act which requires the arms to be confiscated, recorded and put into storage upon entry into Kenya's waters, within a specified security zone and returned when exiting.

There are fears that the increased pillage of the arms within Kenya Government armouries at Kenya Ports Authority could lead to proliferation of small arms and light weapons. This requires adequate measures to safeguard the weapons from the arms trafficking enterprise. As the stockpile increases, the possibility of the arms ending up in the hands of potential criminals within the region both at sea and on land looms large. The need for policy that speaks to a better long term plan on handling this stockpile is urgent.

Circumnavigation of the Disputed Zone

The shipping lines plying the Kenya-Somalia coastline continue to avoid the disputed zone as indicated in Figure 1. This is because it is largely unpoliced and hence prone to insecurity. Moreover, the international community has spread the message to shipping lines that there is no boundary between Kenya and Somalia. The situation has resulted into unstable communication between the Regional Maritime Rescue Coordination Centre and Somalia, thereby making it difficult to monitor distress frequencies, relay distress messages, acknowledge distress calls, assist in search and rescue mission coordination, and reduce reaction time. The possibility of pirates taking advantage of this gap in governance and attacking vessels plying the disputed area is real.

Moreover, pirates may exploit communication gaps to steer hijacked ships to unpoliced waters. There are charts being used by the international community which show that the line has already been delineated in a manner that places Kenyan waters in Somalia. This has increased the distance covered by the ships approaching Kenya from the north by 100 nautical miles while those approaching from the south cover only 12 nautical miles. This makes the distance to Kenyan waters from the north invariably longer in order to avoid the disputed area. It therefore takes more time for the ships to arrive in Kenya, increasing their expenditure and risk of piracy while at sea. These costs have a domino effect on the fuel costs and insurance premiums which eventually affect the cost of transport. This results to the increase in capital inflow and expenditure associated with the shipping industry.

Moreover, fishing vessels licensed to fish in Kenyan waters completely avoid the disputed area for security reasons. This results in massive economic loss in terms of fishing prospects because of the charts in use. The circumnavigation of the disputed zone therefore remains profitable for piracy but hands heavy losses to fishing vessels. These loses are expected to continue since there is no effective utilization of the fishing grounds in the disputed zone.

Figure 1: Map of Circumnavigable Zone in Somalia-Kenya Maritime Zone
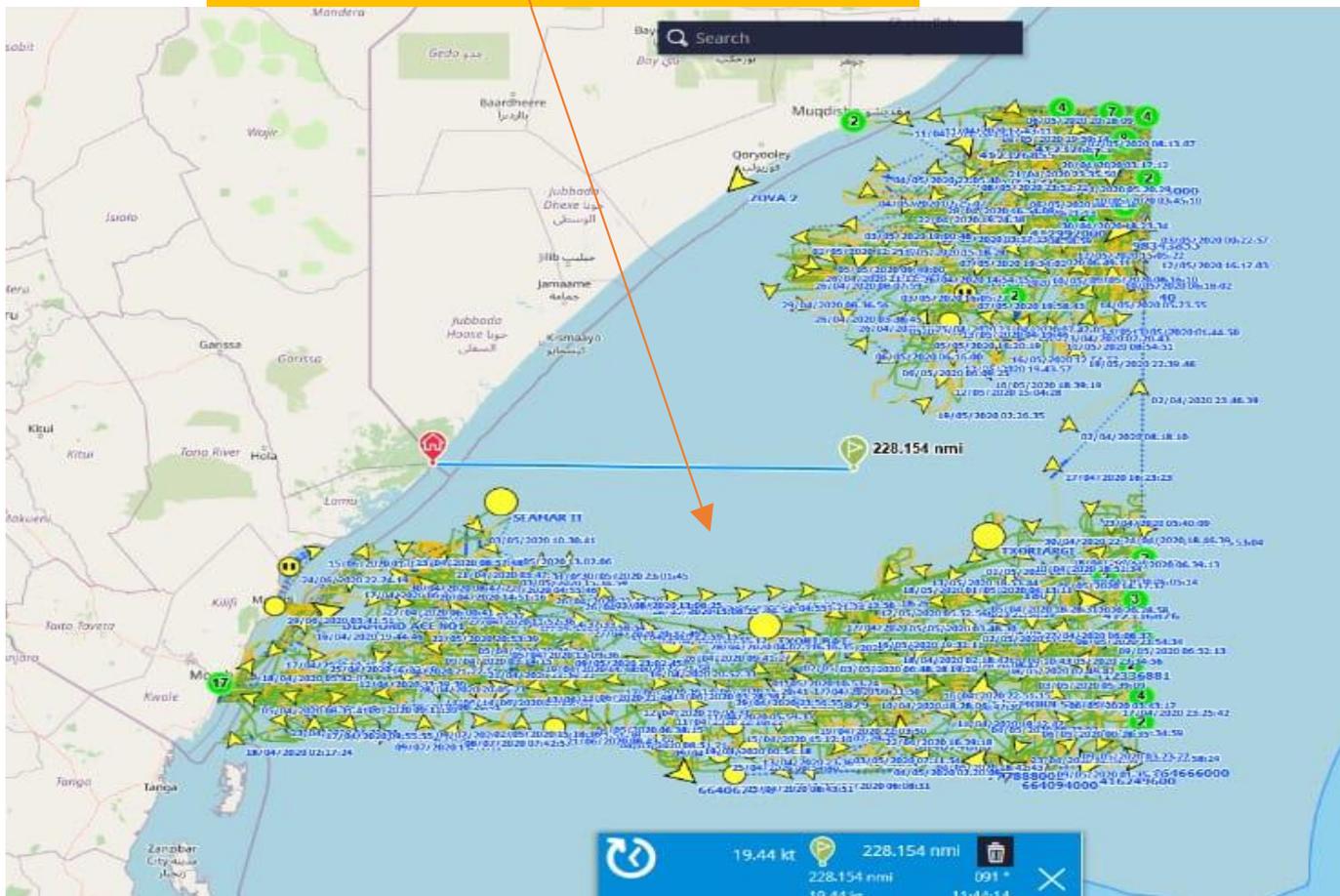

Photo credit: Government of Kenya

Conclusion

The possibility of piracy escalating if Kenya loses the dispute remains real. This will further jeopardize Kenya's national security as it will lead to continued arming of shipping lines and circumnavigation of the disputed zone due to the inadequate capacity of Somalia to protect the high seas from criminal networks. There is a window of opportunity for the government of Kenya to escalate the issue of the impending threat of piracy to the African Union and United Nations Security Council in order to reach an amicable solution to the maritime dispute.

RECOMMENDATIONS

The following recommendations are offered:

1. Kenya and Somalia should strengthen their maritime governance capacities in order to safe-guard the countries from maritime security threats.

2. Kenya should liaise with the international community to develop and circulate a common map of Kenya's international boundaries for adoption by the international shipping lines.

3. Kenya needs to lobby the international community to lift the High Risk Area advisory on its maritime area in order to reduce the necessity of armed guards on ships and effectively take control of stockpiling of weapons on land.

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