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## **The Kenya-Somalia Historical Relations And The Contemporary Maritime Dispute: Implications For Bilateral Relations And Regional Peace**

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### **Abstract**

Kenya and Somalia have had a suspicious, cold relationship since independence, exacerbated by the Shifta War between 1963 and 1967. While Kenya had generally pursued a policy of good neighbourliness, it took a more aggressive approach in mid-October 2011, when Kenya Defence Forces (KDF) entered Somalia in hot pursuit of Al Shabaab militants it accused of violating its territorial integrity. In the wake of the International Court of Justice (ICJ) ruling of 12<sup>th</sup> October 2021 that awarded the large portion of the disputed maritime zone to Somalia, and which has been rejected by Kenya, the bilateral relations between Kenya and Somalia deteriorated. This paper reviews existing literature that is analysed and discussed thematically, to explore the evolving nature of the Kenya-Somalia relations, the ICJ maritime ruling and its implications to peace and security of the two countries in particular and the Horn of Africa in general. It concludes that while ICJ ruling may not be appealed and could be deemed final, Kenya and Somalia stand to benefit more should the two states open bilateral negotiations regarding the maritime dispute and other matters of mutual interest.

**Key words:** Kenya-Somalia relations, bilateral relations, multilateral relations, regional peace and Security

## Introduction

Kenya's cold relationship with Somalia started in the 1960's when a Shifta rebellion supported by Mogadishu claimed then Northern Frontier District (NFD). While Kenya crushed the rebellion and a peace agreement was signed in 1967 mediated by then Zambian President Kenneth Kaunda, the deep-rooted suspicion is still evident and has since characterized post-colonial Kenya-Somalia bilateral relations. More recently from 2011 when Kenya's military entered Somalia in hot pursuit of Al Shabaab, the underlying differences have continued to manifest with instances where Somalia indicated it had no confidence in Kenya's military serving under African Union Mission in Somalia (AMISOM).

The cold relationship between Kenya and Somalia reached its lowest when Somalia filed a maritime dispute<sup>1</sup> at The Hague-based International Court of Justice (ICJ) on 28<sup>th</sup> August 2014, accusing Kenya of encroaching and claiming part of its maritime territory. While Kenya initially agreed to participate in the legal proceedings, it would later withdraw from the case citing among other reasons that the court was biased against Kenya.<sup>2</sup> The ICJ proceeded with the case using Kenya's written submissions despite Kenya's protests. On October 12<sup>th</sup>, 2021, the ICJ ruled in favour of Somalia while Kenya rejected the court's ruling.

The rejection of ICJ ruling by Kenya not only raises questions on the role of ICJ in dispute resolution, but the implications of such ruling on long-term bilateral relations, especially of neighbouring states such as Kenya and Somalia. This study sought to reflect on the historical relationship of Kenya and Somalia in the wake of the ruling by ICJ that is likely to strain the relationship between the two countries into the future. While the Shifta War was crushed by Kenya and a peace agreement signed that helped restore normalcy between the two countries in the late 1960's, it created an environment where both Kenya and Somalia became suspicious of each other, with each sometimes perceiving the other as a threat to national security. While Somalia will view Kenya as being expansionist, Kenya claims to be legitimately protecting its historical terrestrial and maritime territory.

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<sup>1</sup> International Court of Justice (ICJ) <https://www.icj-cij.org/en/case/161>

<sup>2</sup> Horn Institute, <https://horninstitute.org/dead-end-what-kenyas-withdrawal-from-the-maritime-case-with-somalia-means/>

### **Conceptual Framework: Securitization**

In everyday use, security may suggest absence of violence or military threat. In its relations with Somalia, Kenya views Somalia's territorial claims as posing a "national security threat" to Kenya, justifying the essence of defending its territory through all means, including use of military force. In this case, both Somalia as a state and by extension its peoples are perceived as posing a level of threat in this regard. In an attempt to redefine securitization theory, the Copenhagen School broadened the meaning of security (Emmers, 2007) so as to include socio-politico-economic and environmental security. In this case, the concept of security was no longer viewed as objective, but a product of a particular social process hence constructed (Williams, 2003). Since securitization theory takes a constructivist and interpretive approach, it focuses on deconstructing what could be termed as amounting to a security problem (Balzacq 2011, xi).

Proponents of the Copenhagen School see securitization as speech act "...which an intersubjective understanding is constructed within a political community to treat something as an existential threat to a valued referent object, and to enable a call for urgent and exceptional measures to deal with the threat" (Buzan & Wæver, 2003, p.491). For successful securitization, the Copenhagen School emphasized speech acts, securitizing actor and the audience together with a presence of enabling conditions that support securitization. Regardless of the School one belongs, there are differences on how one approaches the study of security and could adopt either a philosophical, sociological or normative approach to securitization. Indeed, scholars in the Copenhagen School may include those adopting a philosophical approach and post-structural perspective (Balzacq, 2011) They are convinced that through the spoken word language holds the power to determine whether something is securitized as a threat or not (Buzan et al, 1998). It is in this regard that speeches of Kenyan politicians and senior state officials are perceived as securitizing Somalis.

The Copenhagen School, however, also has critics who are of the notion that the proponents overemphasize speech acts and that conditions proposed by the school are too vague to operationalize (Stritzel, 2007). Criticising the Copenhagen school theory of securitization as rigid and fixated (Gusfield, 1981), Balzacq (2005, p.172) views securitization as more strategic "practice that occurs within, and as part of, a configuration of circumstances, including the

context, the psycho-cultural disposition of the audience, and the power that both speaker and listener bring to the interaction”.

Besides the Copenhagen approach in security studies is also the Paris School and the Welsh School. These schools differ significantly in terms of their philosophy, sociological and normative orientations. The Paris school in its sociological approach maintains that securitization may actualize even without any “discursive design” (Balzacq, 2011, p 1). Unlike the Copenhagen School that emphasizes the role of speech acts in securitization, Balzacq (2005) contends that relying on speeches alone is too narrow and limited in understanding securitization hence may too simplistic.

### **Shifita War as a basis of Kenya-Somalia cold relationship**

Soon after the independence of Kenya and Somalia, a secession war dubbed the Shifita War started in 1963 and lasted until 1967. It came to an end after the Arusha Peace Agreement<sup>3</sup> chaired by then Zambian president Kenneth Kaunda was signed on 28<sup>th</sup> October 1967. This War started when Somalia claimed then Northern Frontier District (NFD) in north-eastern Kenya (Scharrer, 2018) while Kenya vowed not to cede an inch of its territory (Otunnu, 1992). Few years later, when the United Liberation Front of Western Somali raised the unification matter during an Organization of African Unity (OAU) delegates meeting in Mogadishu in 1974, Kenya’s then Attorney General Charles Njonjo asserted that “Kenya could never agree to surrender part of her territory. Kenyans, be they Borans or Somalis, who did not support Kenya 'should pack their camels and go to Somalia'.”<sup>4</sup> This statement meant that Kenya was already questioning the ‘Kenyaness’ of the Somali people in the NFD. This has not changed much even in the 21<sup>st</sup> century. This bid to create a Greater<sup>5</sup> Somalia was also extended during the Somalia-Ethiopian War of 1977 when Somalia attempted to annex the Ogaden region in Ethiopia (Tareke, 2000). The Somalia-Ethiopian War of 1977 and the Shifita War in Kenya (1963-1967) became the basis of questioned nationalism of Somalis in Kenya and Ethiopia respectively.

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<sup>3</sup>Standard University, <http://web.stanford.edu/group/tomzgroup/pmwiki/uploads/1378-1967-11-KS-a-RRW.pdf>

<sup>4</sup>C. Legum (ed.), *Africa Contemporary Record*, 1974-75: B209, London.

<sup>5</sup> Greater Somalia was to extend Republic of Somalia into all Somali-occupied territories in Ogaden (Ethiopia), NFD(Kenya) and Djibouti

The marginalization and securitization of the Somali population in post-colonial Kenya was not new and seem to have followed a colonial script. In an attempt to put an administrative border between antagonistic Somalis and the Galla community, British colonial rule in Kenya faced intense resistance from the Somalis. Responding to the Somali resistance, the British through its Outlying District Ordinance declared NFD a closed district in 1926 (Otunnu, 1992). This gave the colonial administrators sweeping and arbitrary powers to check any form of dissent in NFD. The subsequent Special District Ordinance further imposed severe restrictions on movement to and from the NFD as Special District (Castagno, 1964). This attitude and subsequent policies touching on Somali issues was to guide how Kenyan state officials perceived Somalis to date: that of seeing Somalis as outsiders and as security threat to the established order.

While a majority Somalis in Kenya preferred unification with Somalia even before independence, Kenya's then leading political parties Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) rejected this bid at the independence talks in the Lancaster House Conference (Castagno, 1964). Rejecting unification with Somalia was also consolidated since Ethiopia had rejected it too regarding its Ogaden region and because of the deal the British and KANU had in regard to protecting British interests in post-independent Kenya (Otunnu, 1992). It was therefore clear in the mind of Kenyan leaders at independence that Somalis had been coerced to be part of Kenya and proposed that those unwilling to be part of the Kenyan administration were free to go to Somalia (Castagno, 1964). Having failed to push the reunification diplomatically, the grating of independence to Kenya in 1963 immediately activated a secessionist rebel movement called the Shifta (1963-1967) that waged an unsuccessful guerrilla war in NFD against the GoK.

Kenyan Somalis, though majority supported the unification with Somalia (Otunnu, 1992), were forced to be part of the Kenyan state after losing the Shifta War that officially ended in 1967 after the signing of the Arusha Agreement mediated by then Zambia's president Kenneth Kaunda. The few Kenyan-Somali collaborators became agents of the Kenyan central government and were given privilege to politically steer the Somalis in their constituencies. Other Somalis became part of Kenya whether by choice or prevailing circumstances. The attempted break-away had, however, already created an image that securitized Somalis as outsiders and "has

continued to influence the Kenyan authorities' behaviour towards the Somalis, which has led to gross violations of human rights” (Otunnu, 1992, p.21). “Since then, Kenyan authorities perceived Somalis as “credible threat” and as “enemies” of the Kenyan state (Otunnu, 1992, p. 21). It created the impression that Somalis differ fundamentally and politically from other members of the Kenyan state hence amount to what Straus (2015) argue as unmaking them as not belonging to the nation. As a result, Somalis in NFD had difficulty integrating culturally and territorially into the Kenyan state (Kituyi, 1990)

The fact that Somalis are generally nomadic pastoralist made it even more difficult for the Kenyan state to penetrate. A forced villagization programme under a guard, advocated for by the Kenyan state in attempts to contain the Shifta rebels failed (Whittaker, 2012). This attempts at sedentarization, just like in the case villagization in Tanzania (Scott, 1998), were attempts by Kenyan state authorities to simplify and make the Somali people legible. Like many high modernist programmes that aim to socially engineer societies, forced villagization failed as Somalis were not ready to abandon their nomadic pastoralist lifestyle and by end of 1967 only half of the population had been villagized (Whittaker, 2012). Another collective punishment of the Somali people in Kenya was the infamous Wagalla Massacre where an estimated 500 to 3000 Somalis from the Degodia clan may have been killed by Kenyan security agencies after a failed disarmament exercise (Anderson, 2014)

### **Kenya on Somali refugees as threat to peace and security**

Because of this cold historical relationship between Kenya and Somalia, Somali refugees in Kenya have found themselves discriminated and securitized (Scharrer, 2018). This discrimination stems from historical perceptions that Somalis perpetrated the Shifta War of secession and currently of seeing Somalis as linked to terrorism as in Al Shabaab (Scharrer, 2018). Scharrer argues that this othering of Somalis in Kenya has evolved with time “from shifta and bandits, to poachers, refugees, then pirates and now al-Shabaab” (Scharrer, 2018, p.507)

Before the 1991 Somali refugee crisis, Kenya had no clear refugee policy and the approach more *laissez-faire* (Burns, 2010). An increased restriction and repression of Somali refugees intensified after the 1998 and 2002 bombings (Burns, 2010) that targeted USA embassy in Nairobi and Israeli Paradise Hotel in Kikambala, Mombasa respectively. The Somali-occupied

NFD which was later renamed Northeastern province after Kenya attained independence was administered under emergency rule until 1991 when the emergency was lifted

Just like Kenyan Somalis, Somali refugees continue to be securitized in Kenya. While securitization in itself may not be harmful, the accompanying discrimination and violation of rights of Somalis is. This securitization is worse on Somali refugees as they lack the political representation to challenge it. Kenyan Somalis, on the other hand, though securitized can attempt to push back through their political representatives in parliament and at the county levels. Somali refugees for lack of such political representation only challenge the securitization.

Historically, the ousting of President Siad Barre and subsequent collapse of the Somalia state in 1991 marked the influx of Somali refugees into Kenya and other countries (Menkhaus, 2007). Siad Barre ruled a Somalia that was characterized by deeply rooted clan animosities and suspicion that later made it difficult for post-Siad Barre rival clans to compromise and work together (Samatar, 1986; Lyons & Samatar, 1995). As a result, Somali refugees in Kenya have been hosted at Dadaab refugee camp with limited freedom of movement. The intensity or extent of securitization of Somalis however differs considerably depending on the security challenges Kenya is facing at any given time.

In the recent past for instance, the Somalia-based Al Shabaab militant group threats on Kenya have intensified (Burns, 2010). This was partly because of infiltration of Al Shabaab elements to the Dadaab refugee camp and the subsequent recruitment of Somali refugees by Kenya ostensibly to fight against Al Shabaab in Somalia (Burns, 2010). Following Kenya Defence Forces (KDF) entry into Somalia in mid-October 2011 in hot pursuit of Al Shabaab, a series of retaliatory attacks<sup>6</sup> on Kenyan soils by Al Shabaab ensued and has claimed hundreds of lives. The Government of Kenya (GoK) has blamed these attacks partly on the militarization of Dadaab refugee camp and has consequently intensified calls to close down Dadaab refugee camp and for Somali refugees to repatriate. This, GoK claims, was because Kenya is “facing an existential terrorist threat”<sup>7</sup> from Al Shabaab whom it claims are using Dadaab camps to plan and launch attacks on Kenya. Al Shabaab terrorist attacks on Kenyan soils intensified from 2011

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<sup>6</sup>Crisis Group, <https://www.crisisgroup.org/africa/horn-africa/kenya/hidden-cost-al-shabaabs-campaign-north-eastern-kenya>

<sup>7</sup> Ministry of Interior, Kenya <http://www.interior.go.ke/index.php/2015-02-28-06-43-54/news/99-ps-karanja-kibicho-explains-why-the-government-is-shutting-down-refugee-camps>

when Government of Kenya (GoK) declared war on the terrorist group and pursued them inside Somalia. As Al Shabaab terrorist intensified their retaliatory attacks on Kenyan soils, the GoK increasingly claimed that Somali refugees in Dadaab were supporting or sympathizing with the Al Shaabab. Consequently, according to a report by International Institute for Democracy and Electoral Assistance (IDEA), Kenya's policy on refugees significantly changed from 2011 when it preferred that refugees should reside in designated refugee camps and not in urban areas in what it termed as security reasons (Opon & Antara, 2018). Indeed, Somali refugees fleeing Somalia have been hosted in Dadaab refugee camps in remote vast North-eastern Kenya, only 70 kilometres from Kenya-Somalia border.

Somali refugees are securitized by GoK as posing security threats on Kenya and have subsequently put pressure on Somali refugees to return, threatening to close Dadaab refugee camp. Although these claims by GoK may be legitimate, the blanket condemnation of all Somali refugees is untenable.

Although Kenya's fear that elements within Somali refugees could be sympathizers of the Al Shabaab, their response in dealing with these claims have been criticized as disproportional, unwarranted and amounts to mass persecution of Somali refugees (Lind, Mutahi & Oosterom, 2017). Somali refugees arrested during police crackdown like the "Operation Usalama Watch"<sup>8</sup> have often been released by the courts for lack of adequate evidence linking them to the purported terrorism. Defending the Somali refugees, Kenya National Commission on Human Rights (KNCHR) report <sup>9</sup> criticized this operation for transforming into an ethnic profiling targeting the Somali community in Kenya. Human Rights Watch (HRW) castigated the operation as undermining human rights<sup>10</sup>. On their part, Amnesty International criticized the operation as mere scapegoating of Somali refugees for government failure to guarantee security<sup>11</sup>. Scholars like Lind, Mutahi and Oosterom (2017) see this treatment of Somalis as connected to tumultuous

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<sup>8</sup> "Operation *Usalama* Watch" was a Kenya police crackdown that began in April 2014 targeting undocumented immigrants as part of taming the spiraling insecurity including terror attacks. *Usalama* is Swahili word for peace or safety.

<sup>9</sup>Kenya National Commission on Human Rights

<https://www.knchr.org/Portals/0/CivilAndPoliticalReports/Report%20of%20KNCHR%20investigations%20on%20Operation%20Usalama%20Watch.pdf?ver=2018-06-06-194906-830>

<sup>10</sup>Human Rights Watch <https://www.hrw.org/news/2015/01/29/kenya-counterterrorism-operations-undermine-rights>

Amnesty International, <sup>11</sup><https://www.amnesty.org/en/latest/news/2014/05/kenya-somalis-scapegoated-counter-terror-crackdown/>



Kenya-Somalia conflict dynamic. They see Somalia-based Al Shabaab as taking advantage of the long-running state violence against the Somalis in Kenya to advance their agenda against the Kenyan state (Lind, Mutahi & Oosterom, 2017).

While this is not to exonerate Somali refugees as dozens of Improvised Explosive Devices (IED) have claimed tens of lives of Kenyan law enforcers<sup>12</sup> (UNHCR, 2014) inside Dadaab refugee camps, proper investigations ought to be done to bring those responsible to justice. The very fact that improvised explosive devices are buried in camps means that Al Shabaab cells could be operating in Dadaab refugee camps disguising as refugees or working in collaboration with some refugees.

Largely due to the Al Shabaab terror attacks in Kenya, the Kenyan public is also increasingly becoming xenophobic<sup>13</sup> towards Somali refugees and even Kenyan Somalis. This was especially the case between 2012 and 2016 when the GoK struggled to tame a series of Al Shabaab attacks that seemed to get security apparatus unawares. Frustrated Kenyans were turning their anger on Somalis whom the state was accusing of sympathizing with Al Shabaab or being actively involved in their activities.

### **Kenya-Somalia maritime dispute: Why bilaterally negotiation matters**

The Kenya-Somalia maritime dispute at the International Court of Justice (ICJ) took an interesting turn when Kenya declined to participate in the case in what it termed as “procedural unfairness” at the Court. While Kenya has consistently discouraged Somalia from pursuing the matter at The Hague-based ICJ, Somalia has been adamant and seems to believe that only the ICJ will deliver justice concerning the maritime dispute. In practice however, Kenya and Somalia may have to ultimately negotiate their maritime dispute and find a lasting solution, regardless of the court ruling that favoured Somalia’s claims. The fact that Kenya has rejected the ICJ ruling points to the need to go back to the negotiating table. There are many reasons why negotiations hold the key to the peaceful resolution of the maritime conflict post ICJ ruling.

Firstly, while the ICJ ruling in theory is expected to be binding, in practice this depends on whether parties to the conflict will be willing to enforce the decision of the court. As an organ of

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<sup>12</sup>UNHRC <https://www.unhcr.org/54d3762d3.pdf>

<sup>13</sup>Al Jazeera <https://www.aljazeera.com/blogs/africa/2012/11/50161.html>

the United Nations, ICJ has no machinery to enforce its decisions unless they are sanctioned by the United Nations Security Council (UNSC), the only organ of the United Nations that can enforce decisions.

Secondly, if the maritime dispute ends up as a deliberation at the UNSC, politics are likely to take pre-eminence over the legality of the matter. This is because the UNSC is a political institution, comprising of states with vested interests. With international players already taking sides over the maritime dispute, a unanimous decision of the five permanent members of UNSC is very unlikely, meaning no enforceable decision can be reached. The permanent members with veto powers are United States America (USA), France, United Kingdom (UK), China and Russia. Of these, USA and France support Kenya while UK supports Somalia. At the time that Kenya is holding the position of the non-permanent member in the UNSC, it is likely that it will lobby states to support her position of using negotiation to resolve the maritime dispute.

Thirdly, while the disputed maritime area is said to be rich in offshore oil and gas, the overall good neighbourliness between Kenya and Somalia is more important than any economic benefits confined to the maritime area alone. Although neither conclusive nor general, studies also point that natural resources such as oil and gas, if not properly managed might end up being a “resource curse”, a situation where natural resource-rich countries have less economic growth, weak democracy or worse development outcomes than countries with no or less natural resources. This therefore means that both Kenya and Somalia should not overrate the importance of the resource rich maritime area at the expense of the relationship between the two countries.

Finally, it is important to note that although international organisations like ICJ were established with a clear mandate of solving international disputes, it is always more rewarding to exhaust existing channels bilaterally before escalating to regional and international institutions respectively. The collapsed post-election violence cases of the “Ocampo Six”<sup>14</sup> at the International Criminal Court is a testimony that multilateralism is not always a panacea to our domestic or regional problems. While international judicial systems are competent and well

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<sup>14</sup> Justice and Conflict Organization, <https://justiceinconflict.org/2016/04/07/a-missed-trial-or-a-mistrial-the-end-of-the-icc-cases-against-ruto-and-sang/>

placed to interpret international law and render justice, it may not fully appreciate the domestic dynamics of the dispute.

Due to the fact that international bodies such as International Court of Justice (ICJ) could easily be branded as foreign and intrusive by politicians, their noble intentions are often overshadowed by the local politics at the state and regional levels. As a result, failure to obtain undisputed mutual consent of involved state parties to the dispute may greatly impede the court processes and deny the international courts the much-needed cooperation from concerned parties. Consequently, in the case of Kenya-Somalia maritime dispute, there is need to especially strengthen regional institutions that are likely to understand and appreciate the African context better and the ramifications of such monumental court decisions especially to regional peace and security. The fact that multilateralism was increasingly challenged especially during President Trump administration means that states should focus on strengthening their bilateral and regional dispute resolution mechanisms before resorting to international organisations for arbitration.

### **The ICJ ruling: implications for Kenya-Somalia bilateral relations**

The fact that Kenya rejected the ICJ ruling on the Kenya-Somalia maritime dispute was expected, given that she had withdrawn from the oral presentations<sup>15</sup> at The Hague-based court. Prior to the withdrawal, Kenya had also challenged the jurisdiction of ICJ in handling the matter, a case that Kenya lost as ICJ maintained that it had the jurisdiction to arbitrate over the maritime dispute<sup>16</sup>. The fact that Kenya was uncomfortable to have the case determined by the ICJ raises questions of what actually constitute consent of state parties involved in a dispute. The ICJ relied on the fact that Kenya and Somalia being parties to the United Nations Convention on the Law of the Sea (UNCLOS) meant that it was admissible for both parties to argue their case at the ICJ. According to Chan (2018), ICJ's ruling on jurisdiction in the Kenya-Somalia maritime dispute elevates the ICJ as the default adjudicator in law of the sea disputes and that objections to its jurisdiction must be precise and tenable.

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<sup>15</sup> Standard Media. <https://www.standardmedia.co.ke/kenya/article/2001406314/kenya-withdraws-from-icj-maritime-border-case-with-somalia>

<sup>16</sup> <http://kenyalaw.org/kenyalawblog/court-declares-it-has-jurisdiction-over-somalias-application-against-kenya/>

In its submissions, Kenya argued that the bilateral negotiations between Kenya and Somalia had not been exhausted and that there were several regional bodies that could intervene in case the bilateral talks failed. This call was rejected, a decision that could suggest giving priority to judicial intervention over bilateral negotiations. While the ICJ was within its legal mandate to arbitrate in the case, the question of whether the court's ruling actually settles the matter is debatable. Although the law is blind to all other non-legal matters, the implementation of its decision is highly a political matter that require the willingness and commitment of state parties in the dispute.

Rejecting the ICJ ruling, Kenya accused the ICJ of what he termed as “jurisdictional overreach” and that it raises fundamental questions on the “respect of sovereignty and the consent of states to international judicial processes”<sup>17</sup>(Kenyatta, 2021). According to President Kenyatta, decisions of international tribunals are only binding to the extent of the consent by a state and that the ICJ imposed itself into an excluded matter that it had no jurisdiction over.

While it is too early to make conclusions, scholars and policy analysis observe that the ICJ ruling on the Kenya-Somalia maritime dispute, and Kenya's rejection of the decision which Somalia supports, presents the greatest test to the bilateral relations of the two countries<sup>18</sup>. While the decision of the ICJ roughly gave both Kenya and Somalia half of the disputed territory, this decision is seen to have favoured Somalia considering that Kenya lost a chunk of a maritime territory it claimed. Kenya's relations with Somalia deteriorated during the court battle at the ICJ and the bad blood may set the trend into the future especially after the ICJ ruling that Nairobi considers it favoured Mogadishu. It remains to be seen whether Somalia will actually occupy the disputed territory and the response of Kenya should that happen considering it had indicated it is ready to defend her territory militarily. While the jury is out there, it is evident that the ICJ ruling may have just ushered Kenya and Somalia into a new phase of suspicion and mistrust that if not well managed threatens regional peace and security.

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<sup>17</sup>The Presidency, Kenya. <https://www.president.go.ke/2021/10/13/statement-by-h-e-hon-uhuru-kenyatta-cgh-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-on-the-international-court-of-justice-judgement-in-maritime-delimitation-ca/>

<sup>18</sup> Crisis Group. <https://www.crisisgroup.org/africa/horn-africa/kenya/un-court-decision-fresh-test-kenya-somalia-ties#:~:text=The%20International%20Court%20of%20Justice,maritime%20border%20dispute%20with%20Kenya.>

**Conclusion**

History demonstrates that the suspicion and mistrust between Kenya and Somalia is historical and dates back to attempts by Shifta rebels to annex NFD as part of the Greater Somalia. While this dispute was solved militarily and a peace agreement signed, the suspicions and mistrust remain to date. Since the early 2000's, the increasing extremist and terrorist threats with bases in Somalia have further strained the relationship between the two countries, with Kenya claiming to be protecting her territorial integrity by pursuing Al Shabaab inside Somalia while Somalia questions Kenya's intentions given their history. The filing of the maritime dispute at the ICJ by Somalia in 2014, and the subsequent court decision in 2021 that Kenya rejected, is bound to take the relationship of the two countries into a new low with a real threat of threatening regional peace and security. While the ICJ decision on the maritime dispute could be deemed as final, there is room for Kenya and Somalia to continue negotiating bilaterally and normalize their relations for mutual prosperity.

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