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Spring, 2020
STUDENT’S DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University in Nairobi for academic credit.

Signed: ______________________   Date: ______________________

Washington Jakoyo Midiwo

This thesis has been presented for examination with my approval as the appointed supervisor.

Signed: ______________________   Date: ______________________

Dr. Mercy Kaburu

Signed: ______________________   Date: ______________________

Professor Martin Njoroge

Dean, School of Arts & Sciences
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ABSTRACT

This study sought to examine foreign policy behavior as informed by territorial border dispute. As opposed to terrestrial borders that are commonly governed by domestic law, the focus of this study is maritime border dispute with a focus on Kenya-Somalia relations. The study focused on the period of 2009 when Kenya signed into an agreement with Somalia over the use of the continental shelf beyond the 200 nautical miles that define the territorial waters and Exclusive Economic Zone (EEZ), and 2019 as the dispute is still ongoing in the International Court of Justice (ICJ). From this background, the study generally examined the role of territorial border disputes in shaping foreign policy behavior. Specifically, the study has examined the causes of the maritime border dispute between Kenya and Somalia, the impact of the dispute on Kenya-Somalia relations and lastly the possible mechanisms of managing the dispute. Realism was adopted as the theoretical framework of analysis. Thus, theoretical tenets such as the centrality of state, national interests interpreted in terms of power, anarchy in the international system and self-help have shaped arguments of the study. This study adopts a qualitative research approach whereby measurements are not numerical, but aimed at generating in-depth understanding of the issues identified by the researcher. Study findings indicate that the need to protect vital national interests such as territorial integrity and economic resources, internal political dynamics in Somalia and external interests and some of the sources of the maritime border dispute. Notably, the dispute has resulted to constrained diplomatic relations between Kenya and Somalia, and has created uncertainty in the fight against terrorism in the Horn of Africa and protection of Somali refugees, and, is likely in impede efforts towards the stabilization of Somalia. While Somalia favors legal approach to the dispute, Kenya is in favor of a political solution that is viewed as likely to restore relations between the two neighboring states. The study findings underscore the central thesis of this study that, Kenya should adopt foreign policy options that will protect her territorial integrity and other vital national interests including national security and valuable seabed resources in the contested maritime zone. The study further opines that if possible and in the spirit of good neighborliness, Kenya and Somalia should seek political as opposed to legal options of resolving existing maritime border dispute. This according to the study will enhance the exploitation of the valuable seabed resources in the continental shelf outside of the EEZ for the benefit of the two states.
ACKNOWLEDGMENT

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DEDICATION

This work is dedicated to my late parents, Samson Midiwo and Margaret Waringa Midiwo. Though you are not here to witness this milestone, your very words of encouragement remain a source of inspiration for my academic success. And to you my late sister Pamela Akoth Midiwo, my pursuit for this degree was in your memory since you departed weeks before you could actualize your dream of travelling abroad for a Master’s degree. I did it on your behalf!
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<tr>
<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
</tr>
<tr>
<td>AU</td>
<td>African Union</td>
</tr>
<tr>
<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
</tr>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EALA</td>
<td>East African Legislative Assembly</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<td>IGAD</td>
<td>Inter-Governmental Authority on Development</td>
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<td>JDA</td>
<td>Joint Development Agreement</td>
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<tr>
<td>LAPSET</td>
<td>Lamu Port and Lamu -Southern Sudan - Ethiopia Transport Corridor</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>NFD</td>
<td>Northern Frontier District</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>TFG</td>
<td>Transitional Federal Government of Somalia</td>
</tr>
<tr>
<td>UN</td>
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CHAPTER ONE: INTRODUCTION

1.0 Introduction and Background

The importance of territorial borders to any state’s sovereignty cannot be overemphasized. Indeed, one of the principle elements of statehood is that of define territorial borders. According to the Montevideo Convention of 1933 on statehood a sovereign state is defined as an institution which is characterized by recognized territorial borders, a permanent population, a government and ability to conduct international relations with other states (Shaw, 2009; Brownlie, 1998). This makes territorial border a defining factor in defending state’s territorial integrity as one of the core principles of a state’s foreign policy including Kenya. While some states have not witnessed territorial border related disputes, others have been characterized with border conflict occasionally resulting to military confrontation and war. Disputes relating to territorial borders tend to inform foreign policy behavior between and among neighboring states, and in some cases they result into strained diplomacy as has been the recent case of Kenya and Somalia over the maritime border dispute.

Territorial border disputes are not a new phenomenon but one that can be traced back in history of sovereign states. For example, according to Hensel (1996) in the modern global system, there have been territorial issues particularly those involving contiguity that are likely to result to war between neighbors. According to Vasquez (1995) states do not just go to war because of contiguity and interactions with neighboring states but rather because of territoriality issues where border related issues remained unresolved for a long period of time. In other words, if territorial border disputes are not handled conclusively, states are likely to engage in war with neighboring states.
Understood from a realist perspective, states are in constant pursuit for power, and one attribute of such power is the geography of the state as defined by its territorial borders (Morgenthau, 1985). While Article 2(4) of the United Nations (UN) Charter prohibits use of force, Article 51 allows use of force for self-defense, which by implication means that states can use force to protect their territory from any form external invasion. Article 51 states that “Nothing in the present Charter shall impair the inherent right of an individual or collective self-defense of an armed attack against a member of the United Nations.” (United Nations, 1945). Such attacks by implications are related to the core interests of a sovereign state which include safeguarding territorial integrity and political independence.

Territorial border disputes are a common phenomenon in the post-colonial Africa considering the arbitrary borders created by the colonial governments during the Berlin Conference in 1884, and that were adopted by the post-colonial sovereign states. Englebert, Tarango and Carter (2002), observe that territorial borders and a state as concepts were alien to Africans as they conflicted with their traditional kingdoms and chiefdoms that were used as the basis of organizing communities in the pre-colonial Africa. They however allude to arguments by other scholars such as Ajala, (1983) Asiwaju, (1993; 1985) Barbour (1961) Bello (1995) Davidson (1992) among others, that indeed arbitrary territorial borders have been a source of interstate conflicts and constrained relations between neighboring states in Africa.
At its inception, the Organization of African Unity (OAU) made deliberate efforts to address border concerns that were threatening relations among Member States. Principally, Article 2 of the 1963 OAU Charter, emphasizes on respect for sovereignty and territorial integrity as some of the values that informs international relations among its Member States (OAU, 1963). Through the 1964 Declaration, OAU legitimized existing colonial boundaries of the newly independent African states as the basis of their territorial claims (OAU, 1964). During the Cairo Summit of July 1964, African Heads of States and Governments were in agreement that, only through the acceptance and respect for territorial frontiers bequeathed to them by the colonialists, also known as the principle of uti possidetis (see for example, Shaw, 2008), would Africa enjoy sustainable peace. Furthermore, the African Union (AU) which succeeded the OAU adopted the same principle with regard to territorial boundaries. As articulated in the AU Constitutive Act of 2000, Article 4(b) provides that states are expected to respect territorial borders existing on the achievement of their independence (AU, 2000). While such provisions in the AU Constitutive Act are meant to be the basis for international relations among member states, occasionally, as is the case of Kenya-Somalia relations, critical geopolitical and geostrategic interests such as territorial integrity override existing legal principles.

The Horn of Africa is one of the regions that have been characterized by territorial border related conflicts. As noted by Kornprobst (2002) the Horn of Africa has experienced territorial border conflicts some of which have resulted to war. Such border disputes have significantly informed foreign relations between neighboring states in the region as has been the case of Kenya-Somalia relations.
Since her political independence and attainment of sovereignty and statehood status, Kenya’s foreign policy towards Somalia has overly been defined by the need to safeguard her territorial integrity (Adar, 1994). This approach to foreign policy was informed by Somali’s *pan somalism* ideology or the move towards the establishment of a Greater Somalia that would see all peoples of Somali descent settled within one legally recognized territory or a state (Kaburu, 2017; Thompson, 2015; Lewis, 2002). Political instability witnessed in Somalia since the military ouster of Siad Barre in 1991, and the subsequent disintegration of Somalia saw Kenya adopt diplomacy of conflict management such as the 2002-2004 mediation process towards the restoration of the state of Somalia (Mwanika, 2015, Kaburu, 2018).

Another remarkable shift of Kenya’s foreign policy toward Somalia was the military response towards the *Al Shabaab*, a militant group associated with terror group including the Al Qaeda, whose continued terror attacks saw Kenya engage its military diplomatic instrument for the first time since independence (Anderson and McKnight, 2014; Kaburu, 2017). However, in the recent past Kenya has been embroiled in a territorial maritime border dispute with Somalia which has seen the two neighboring states temporarily sever their diplomatic relations. The maritime border dispute between Kenya and Somalia makes the basis of this study.

1.1 Problem Statement

Fixed and well defined territorial borders is a primary element of statehood and zealously guarded by sovereign states against external violation. Indeed, Article 2(4) of the UN Charter emphases on the need for member states to respect the territorial integrity and political independence of other states in their conduct of international relations (UN, 1945). Notably though, contested borders
and territories among states is a reality that dates back to the Westphalia Treaty that witnessed the world divided into sovereign independent states, defined by territorial borders, a population and a government. Disputes emerging from such borders have resulted to conflict and war in some cases as states seek to defend their territorial integrity.

The reality of contested borders is unique in Africa as it founded on the arbitrary and subjective nature that characterized the formation of African states to serve the European interests during the Berlin Conference of 1884. The complexity of resolving such border conflict lies on various aspect including communities that are separated by a mere imaginary border but have strong ties with their kinf-olds in the neighboring state as in the case Somali’s of Kenya and Somali’s of Somalia. Most importantly however, is the fact that states must take cognizance of such realities as they define their foreign policies towards their neighbors, with whom they share the disputed territorial border. This has been the case of Kenya and Somalia. As argued by Adar (1994), territorial integrity is the fulcrum around which Kenya’s foreign policy towards Somalia is built. Adar uses the then contested Northern Frontier District (NFD) as the basis of his argument.

While the two countries have enjoyed political independence for over five decades, the question of territorial border remains a source of concern, with the most recently being the maritime border dispute that saw Somalia seek legal redress against Kenya from International Court of Justice (ICJ) in 2014. The Kenya-Somalia maritime dispute is not unique in Africa. Notably, most African states have previously laid emphasis on land territories as opposed to maritime zones. The recent past has however witnessed rising interests for the control of maritime zones most of which are
undelimited. The key concern is what is informing coastal states behavior regarding the control of maritime zones, and why do such claims results to disputes between states. Using Kenya-Somalia maritime border dispute as its focus, the study examines the extent to which such border disputes have shaped Kenya’s foreign policy behavior towards Somalia between 2009 and 2019.

1.2 Objectives of the Study

Generally, the study examined the effects of territorial border dispute in shaping Kenya’s foreign policy towards Somalia between 2009 and 2018.

1.2.1. Specific Objectives

Specifically, the study;

1. Examined the causes of Kenya-Somalia maritime border dispute between 2009 and 2019
2. Assessed the effects of existing maritime border dispute on Kenya’s foreign policy towards Somalia
3. Explored possible mechanisms of managing the existing maritime border dispute between Kenya and Somalia.

1.3 Research Questions

1. What are the sources of Kenya-Somalia maritime border dispute?
2. What are the effects of the maritime border dispute on Kenya’s foreign policy towards Somalia?
3. What are the possible mechanisms of managing the maritime border dispute between Kenya and Somalia?
1.4 Justification and Significance of the study

This study makes both policy and academic contributions. From a policy perspective, the study informs development of policies towards sustenance of responsive relations with neighboring states who share contested territorial and maritime borders as is the case of Kenya and Somalia. Notably, one of the Kenya’s foreign policy principles is that of maintaining friendly relations with neighboring states. To this end, the study examined possible policy approaches that can protect the Kenya’s domestic and international interests including maintaining working relations with Somalia. This study identifies possible peaceful, but legitimate means of managing the Kenya-Somalia territorial maritime border dispute that can in return be used to inform foreign policy decision processes and subsequent outcomes.

In terms of scholarly significance, this study contributes to the existing literature on territorial and maritime border disputes and foreign policy behavior of states. Indeed, there is comprehensive literature on territorial border related dispute between states both globally and regionally. Equally, there exists literature on contested territorial and maritime borders in the Horn of Africa, as well as the concept of territorial integrity and foreign policy. Using Kenya-Somalia as the case study, this research contributes to the understanding the extent to which territorial disputes inform a state’s foreign policy behavior particularly with regard to neighboring states. To this end the study examined the perceived causes of Kenya-Somalia maritime border dispute, the possible mechanism of resolving the dispute and finally, the impact of such territorial border dispute in shaping foreign policy behavior. In addition, the study underscores the application of theory, in this case the realist theory in analyzing foreign policy behavior.
In addition, the study is of importance to various institutions that are charged with policy development. These institutions include, parliament, the executive arm of government and particular Ministries such as that of Foreign Affairs and Defence. Equally, this study benefits specialized institutions including the National Intelligence Service, and United Nations agencies such as the United Nations High Commission for Refugees (UNHCR) considering that Kenya host over half a million refugees from Somalia. Furthermore, this study contributes to the understanding of regional conflicts and provides possible solutions to the same. This makes the study significant to regional organizations such as the East African Community (EAC), Intergovernmental Authority on Development (IGAD) and African Union (AU). The study is also of importance to the general citizenry as it creates awareness of existing relations and conflicts between the two neighboring states. Being at the core of the existing conflict, policy makers from Somalia will benefit from this study towards in the identification of Somali’s possible foreign policy options towards Kenya.

1.5 Scope of the Study

The study examines Kenya-Somalia relations in the context of a maritime border dispute. While Kenya’s foreign policy since independence has overly been anchored on territorial integrity as argued by Adar (1994) among other scholars, this study will focus on the maritime border dispute that has witnessed Somalia seek legal redress from the ICJ in 2014. The choice of 2009 and 2019 is based on the fact that Kenya and the Federal Republic of Somali signed a memorandum of understanding (MoU) in May 2009 to “…grant to each other no-objection in respect of submissions on the outer limits of the continental shelf beyond 200 nautical miles to the commission on the limits of the continental shelf.” (UN, 2009). This memorandum was drawn
with total recognition that there is an existing maritime dispute between the two neighboring states and that they were to act in good faith with regard to the contested region until the dispute is resolved. The scope is also informed by the decision by the Somalia government to seek legal redress from the ICJ against Kenya on the contested maritime border. The 2019 is based on the fact the issue is resulted to diplomatic row between the two neighboring states and it is ongoing.

1.6 Structure of the Thesis

The study is presented in five different chapters. Chapter one provides a detailed background to the study. In addition, it details the problem statement, objectives of the study, research questions, significance and justification of the study and the scope of focus. Chapter two presents a comprehensive literature review, including conceptualization of territorial maritime border, the concept of foreign policy analysis, and how these two concepts relate to each other. In addition, the chapter reviews literature on global and regional territorial border disputes as well as the border disputes within the Horn of Africa, and firstly the Kenya-Somali relations. The main aim of this chapter is to explore the possible gap within the existing literature that provides basis of this study. Chapter three provide the preferred methodology that will be used by the study. Chapter Four provide a thematic and detailed analysis of the research findings, while chapter five will provide a summary, conclusion and recommendation.
CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This chapter reviews available literature on territorial border dispute and foreign policy behavior. The chapter provides a conceptualization of territorial border, foreign policy and why territorial border disputes and their immense influence on a state’s foreign policy behavior. In particular, the literature reviewed focused more on Kenya-Somalia relations. The chapter provides a broad understanding of the area under investigation and identifies the gap that has been addressed by this study. To this end, the study contextualizes border disputes from a global and regional levels and then specifically addressed the Kenya-Somalia maritime border dispute.

Further the chapter provides a theoretical framework of analysis that is guiding the study. While acknowledging that various theories can be used to explain Kenya-Somalia relations, this study adopts the realist approach. Realist theory is founded on the centrality of the state in international relations. Thus, state survival among other national interests are viewed as paramount. Territorial integrity is defined in terms of secured borders and states guided by self-help in an anarchic system. A threat to such borders can therefore result to use of hard diplomacy including the military.

2.1 Conceptualizing Territorial border and Foreign Policy

The concept of territorial borders dates back to the Treaty of Westphalia that witnessed the emergence of sovereign states as the primary units on analysis in international relations. Although borders may be viewed as a natural and ideological occurrence, territorial borders are understood within the confines of international law. Indeed, according to the 1933 Montevideo Convention on Rights and Duties of a state identifies defined territory as one of the primary elements of a state.
Article I of the Convention states that “The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.” (Montevideo Convention, 1933). This makes territorial borders important as they define not only the geographical space but also the legal jurisdiction of a sovereign state.

Just like the Montevideo Convention, other global and regional conventions have emphasized on the need to respect territorial integrity by not interfering with internal matters of sovereign states while treating each other as equals based on the virtue that states are legal persons within the confines of international law. For example one of the core principles of the United Nations (UN) is equality of states as provided for in Article 1 of the UN Charter. In addition, relations among member states are to be based on respect for each other's territorial integrity (United Nation, 1945). Furthermore, Article 4 of the UN Charter prohibits use of force against territorial integrity of Member States. This position that has been reemphasized by the African Union Constitutive Act in Article 3(2) that one of the core objectives of the Union is to “…defend the sovereignty, territorial integrity and independence of its Member States….” (African Union, 2000). Such emphasis by global and regional conventions clearly indicate the importance attached to territorial borders as key determinants of a state’s geographical territory and why states therefore seek to safeguard them by all means within their disposal.

Territorial borders are artificially created and bear ideological and cultural connotations including race and ethnicity. However, territorial borders within the African continent are unique and should
be contextualized within the events and occurrences of the colonial period. The borders were arbitrarily created by colonial governments without respect for African cultures and ethnic orientations as was the case in other parts of the world, creating what Englebert, Tarango and Carter (2002) describe as artificial and accidental territorial borders, a situation that has been associated with perennial interstate conflicts. The importance attributed territorial borders makes them core to state’s foreign policy as will be discussed later in this study.

As a concept foreign policy can be defined as the conduct and practice of international relations among various actors in the international system, where states are the primary units of analysis (Alden and Aran, 2012). External relations among states are determined by the choices that leaders make when faced with challenges and also when possible opportunities are available. Kaarbo, Lantis and Beasley (2013) conceptualizes foreign policy as actions undertaken by a sovereign state towards an external target though the secondary consequences could impact on its internal politics. Their conceptualization of foreign policy points to the fact that internal and external factors are critical the formulation and subsequent behavior of states in international relations. It also means that foreign policy behavior can only be understood by careful interrogation of the state institutions that are directly involved in the foreign policy decision making process, as well as the issues/interests at stake.

The conceptualization of foreign policy has also been advanced by other scholars. For example, Hudson (2005), defines foreign policy as the strategy or approach chosen by the national government to achieve its goals in its relation with external entities, which includes decision to do
nothing. Equally, Kurgat (2000) conceives foreign policy as a combination of aims and interests pursued and defended by a state and its ruling elites in it relation with other states, and the method and means used for the achievement and defence of the said objectives. Kurgat thus notes that the state engages in wide range of activities through different sectors of the government in its relation with other entities similarly acting on the international arena as they advance their interests abroad. Sturkey (2007) differentiates between diplomacy and foreign policy. He defines diplomacy as the process of dialogue and negotiation by which states conduct their relations and pursue their purposes by means short of war, while foreign policy is the substance of a state relations with others, and the purposes it hopes to achieve by those relations.

Foreign policy is thus engaged in the identification of the objectives, while diplomacy is the tool used towards the achievement of the set goals. Hermann (1990) and Okoth (2007) view foreign policy as strategies adopted by sovereign states aimed at addressing or pursuing certain goals towards the external environment, in other words, as the means through which national goals are pursued and acquired, or through which a state extracts external resources to satisfy internal demands. (Herman, 1990; Okoth 2007).

The fact that foreign policy targets external environment but with domestic implication, makes territorial borders become critical as they define what is to be understood as external and vice versa. On such basis, I argue that there is a link between territorial borders and foreign policy behaviour of any state. Thus, any territorial border dispute is likely to be at the core in the formulation and practice of state’s foreign policy towards its neighbours. The case of Kenya-
Somali relations is good example as safeguarding of its territorial integrity remains the fulcrum of Kenya’s foreign policy towards Somalia since independence. As noted by Adar (1994), Kenya’s foreign policy towards Somalia has been anchored on issues of territorial integrity due to the then disputed Northern Frontier District (NFD) which Somalia had laid claims with the hope of creating a Greater Somalia as will be discussed later in this chapter. Notably, territorial border disputes are not only a regional but also a global phenomenon.

2.2 Contextualizing Territorial Border Disputes

As noted earlier border disputes can be traced back to 1648 when the sovereign states became the basis of conducting foreign relations. Thus territorial borders are perceived as a European concept as it was used to bring to an end the thirty years of War in Europe. Indeed, Englebert, Tarango and Carter (2002) describe the concepts as alien to Africa which by then had a different social and cultural system in terms of governance and social stratification. Hensel (1996) argues that individuals responsible for policy making accord a lot of emphasis to territorial borders has they remain possible sources of conflict and war. He notes that territorial issues are the most conspicuous causes of conflict in the world. Hensel (1996) associate the importance of a clearly territory to a number of factors including available natural resources such as strategic minerals, and the population that derive their identities from the territory particularly when there is an ethnic or religious identity. In addition, a territory is important to states as a means of increasing their security particularly if it has unique defensible mountains and other unique geographical traits. Such unique features if located along contested territorial borders can cause conflicts and even war among neighboring states.
Realist such as Morgenthau (1985) view a clearly defined territory as a vital source of state power. Indeed, beyond the physical elements that it may contained in any territory are the intangible attributes such as the source of national identity and cohesion which is rooted in the very autonomy of a state within its territory. Thus territorial related disputes invoke personal and group sentiments as people would their sense of belonging to a specific territory, which makes it challenging to transfer contested territory from one state to another (Hensel, 1996).

Vasquez (1995), attributes territorial disputes to human nature. The scholar argues that “...human collectivities are more prone to fight over territory in the modern global system than other issues, even highly salient ideological issues, is not obvious. Human collectivities have learned in history that if territorial issues cannot be resolved, it is efficient and legitimate to resort to war under certain circumstances. In part, they have no doubt learned this from their experiences in history. War may have been selected out as an efficacious practice for dealing with territorial conflict. The reason for this is not entirely known and is an area in great need of interdisciplinary research. One would naturally turn to the life sciences for some hypotheses and in doing so a plausible case can be made that humans fight over territorial issues more than other issues because of an inherited tendency toward territoriality. This in turn is probably related to the fact that territory provides space, food and resources for living.” (Vasquez (1995: 282).

In comparing contiguity and territorial disputes in relation to war, Vasquez (1995) observes that while not most issues may not result to war, territorial related issues are likely to cause war among neighboring states. In other words, neighboring state who have territorial disputes are likely to result to war compared to those who do not characterized by such realities. It is therefore observable that wars are less frequent among non-neighbors because even though they may have ideological, economic, or political disagreements and even power rivalries they usually do not have territorial disputes.

According to Murphy (1990) Territory is a frequent source of conflict among and between states because the state is fundamentally a place and that its existence and autonomy is rooted in the
territory. Territory therefore provides a basis for exercising state power over the population and the resources within it. Thus territory is of supreme importance to the state and there is core in determining the behavior of the state towards other actors in the system. Using a few cases including Ecuador and Peru, India and Pakistan, Togo and Ghana, Murhpy (1990) argues that territorial conflicts can be used to explain the sources of armed struggles, places where territorial wars are likely to occur and possible solutions to ongoing territorial wars.

A number of interstate conflicts are attributed to territorial border issues. This according to scholars and as was earlier noted is due to the formation of the African states by the colonial governments. According to Englebert, Tarango and Carter (2002) the arbitrary nature of boundaries in Africa increase the likelihood of interstate and international conflicts, consequently weakening the stability of governments and regions. Geertz (1973) argues, that postcolonial states in Africa are not only liable to “dismember” peoples across borders, but they may also “suffocate” heterogeneous groups within. Thus the arbitrary nature of the borders has effects on both internally and externally. When people of the same decent are dismembered by a territorial border as in the case of Somali’s in Kenya and those of Ethiopia, they can easily destabilize governments as they push for irredentist separation to join their blood kins in the neighboring states. This was the case of the shifta war in Kenya between 1964 and 1967 (Adar, 1994; 2007; Thompson, 2015; Kaburu, 2017).

As noted by Englebert, Tarango and Carter (2002), those who claim international irredentist consequences assume that governments represent the interests of their partitioned citizens and will
deploy efforts for their reunification, presumably within their own borders. Some circumstances may magnify the chance of irredentist claims, such as the level of precolonial statehood of the partitioned group, the prevalence of ethnic nationalism in the claimant country, or the degree of enforcement of the border by either government (Kapil, 1966; Touval, 1969). For example, Somalia’s claims over Ethiopian and Kenyan territory inhabited by ethnic Somalis which form the basis of repeated conflicts with both countries, including long-lasting hostilities in Ethiopia’s Ogaden region, represents probably the best-known case of African irredentism (Boyd, 1979) though not the only one. International disputes with irredentist elements have also involved Morocco, Algeria, Western Sahara, Libya, Chad, Ghana, Togo, and Côte d’Ivoire (Englebert, Tarango and Carter, 2002).

Conflicts among and between African states have also been caused by ill-defined borders. According to Englebert, Tarango and Carter (2002), poor delimitation and demarcation caused by colonial legacies or because of decision by governments of the day in charge of both states, or because of border related treaties lead to territorial disputes or causes tension among neighboring states. This argument has been expounded by other scholars for example, Ajala, (1983) and Allott, (1974) who note that discrepancies between delimitation and demarcation may also promote conflict. Furthermore, multiple and contradicting treaties have, for example, contributed to disputes between Benin and Niger (over the island of Lete), between Ethiopia and Somalia, and between Nigeria and Cameroon (Mariam, 1964; Ngwa, 1993). Other delimitation conflicts have involved Burkina and Mali, Chad and Nigeria, Côté d’Ivoire and Ghana, Zaire and Zambia, and Zambia and Botswana. Sudan and Kenya also disagree over the “Ilemi Triangle” portion of their
joint boundary (Brownlie, 1979). According to Kum (1993) the hope and belief that the boundary area contains natural resources can amplify disputes.

Although most territorial border conflicts among states are centered land/territory, coastal states occasionally experience conflicts relating to territorial sea otherwise known as maritime borders, which is the focus for this study. Maritime border disputes occur commonly between two or more neighboring coastal states, who conflict over control of delimited territorial waters, economic exclusive zone (EEZ) or the continental shelf. According to the United Nations Convention on the Law of the Sea, (hereinafter UNCLOS) every coastal state has its sovereignty extended beyond the land territory, and thus, the said state exercises its sovereign authority of the air space and the territorial sea as well as its bed and subsoil. In particular, Article 2 (1) provides that “The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. Equally, Article 2(2) provides that “…This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.” (UNCLOS, 1982). Such provisions bequeath sovereign states with a core responsibility of protecting territorial sea as part of its legal territory.

Maritime border dispute between and among sovereign may manifest in different ways. For example, states may differ over boundaries delimiting of their maritime zone as was the case of Nigeria and Cameroon as was presented in the International Court of Justice (ICJ) and even more generally in the Gulf of Guinea (Gbenga, 2015). In other cases states may conflict over
overlapping entitlements to maritime rights and jurisdiction. For example the right to conduct naval trainings and drills as was the case of South China Sea (Churchill and Lowe, 1999), or the right to have control fishing in certain maritime zones, or even the right to exercise power of arrest and prosecution of pirates as was the case of Kenya on Somali pirates in 2009 (Wambua, 2010; Gathii, 2009). Occasionally maritime border conflicts are based on continued exploitation of resources from disputed territories as was the case of continued fishing by Western Sahara (Gbenga, 2015). Of importance however is states unrelenting push for the exploitation of highly valuable seabed resources such as oil and hydrocarbons in disputed maritime zones as is the current case of Kenya and Somalia which is the focus of this study.

In most cases, maritime border disputes are associated with the rights to exploit resources within territorial sea and the adjacent regions. For instance, according to Khalfaoui and Yiallourides (2019) maritime border in Africa is associated with the recent discoveries and exploration of vital seabed resources such as gas and oil. Notably, African states have in the recent past exhibited high growth rates based on discovery of abundant natural resources and in particular the increased production of oil that feeds into the global market. Khalfaoui and Yiallourides (2019) notes that oil production in Africa increased significantly in the recent past and as 2017 Africa controlled at least 8.7% of the world oil production. Considering that exploration of valuable resources such as oil and gas are financial intensive, most international companies require both fiscal and legal certainty before they commit themselves into such investments. It is based on this reality that a number of neighboring coastal states in Africa such as Kenya and Somalia have been involved in maritime border disputes as they seek to secure and take control of their territorial sea and resources therein.
Just like the arbitrary nature of territorial borders in Africa, disputes relating to maritime borders can be associated with colonial states. For example, since African countries gained independence, most of them have had to deal with border related conflicts because of their arbitrary nature as European states drew borders on the basis of their rivalry and their desire to control strategic resources. In particular, most maritime boundaries were undelimited at the independence of most African states. Consequently, the exploration and exploitation of valuable natural resources has been hampered by unresolved maritime disputes. In a move to resolve the problem, the African union set the year 2010 which was later extended to 2017 as a deadline for states to delimit both their land and maritime border to enhance exploitation of resources. As at 2014 only 32 out of the 100 delimitation had been settled (Khalfaoui and Yiallourides, 2019).

The above observation by scholars paint a picture of land and maritime territorial related conflicts resulting from the history of colonialization and the arbitrary nature of the inherited territorial borders, that characterize and shape relations between and among African states as in the case of the coastal states in the Horn of Africa. It is on this basis that the next section of this study examines Kenya’s foreign policy towards Somalia as founded on territorial integrity and more particularly the recent maritime border dispute.

2.3 Understanding Kenya-Somalia Relations

The study of have study of Kenya-Somalia relations has been explored from various viewpoints. This study focuses on territorial border disputes and foreign policy behavior, with Kenya-Somalia relations as the case study. In this regard, this section reviews available literature on Kenya’s
foreign policy behavior towards Somalia. The main aim is to identify possible knowledge gap that will act as the basis of this study.

Kenya’s foreign policy has overly been founded on territorial integrity. For example, Adar (1994) examine the concept of territorial integrity and foreign policy behavior focusing on Kenya-Somali relations between 1963 and 1983. Adar (1994) has argued that territorial integrity remained the key determinant of Kenya’s foreign policy towards Somalia. Using the Northern Frontier District (NFD) Adar has argued that the expansionist nature of the successive Somali governments, informed by their *pan-somalism* ideology remained a threat to Kenya’s territorial integrity. Making reference to *shifita* war between 1964 and 1967, Adar (1994) observes that the contested NFD region was informed by the Kenyan Somali’s who, by the support of the then Somali government were fighting for secession, or an irredentist move that would see the region incorporated in the larger Somali Republic. However, Adar (1994) notes that by adopting the principle of *uti posidentis* (adopting the borders as they were at independence).

His argument has been supported by various scholars including Makinda (1983), Howell (1968), Mwanika (2015) and Kaburu (2017) among others. For example, Thompson (2015) argues that the understanding of Kenya-Somali relations can be traced back to their independence in the early 1960’s when Somalia attempted to adopt a *Greater Somalia* ideology, aimed at uniting the population of the Somali descent within the region through the principle of self-determination. According to Thompson (2015) the move was viewed as a possible threat to territorial integrity of all the neighboring states including Kenya, Djibouti and Ethiopia. For example, the population of
the larger part of the Kenya’s NFD is of the Somali descent. In response to the perceived threat, Woodward (1996) locates Kenya’s foreign policy behavior towards Somalia on territorial integrity, with the aim of safeguarding her national interests against Somali’s nationalistic philosophy. Kenya’s position was strengthened by the Organization of African Union (OAU) Charter, which embraced the principles of territorial integrity, sovereignty and independence. Further, the 1964 OAU Resolution adopted *uti possidentis* as principle, laying emphases on the recognition and respect for existing boundaries at independence as a defining factor for territorial integrity and sovereignty among African States (OAU, 1964). The move was aimed at countering the envisioned border conflicts among neighboring states.

Kenya’s foreign policy towards Somalia was and is shaped by internal politics within Somalia. For example, the military ouster of Said Barre and the subsequent disintegration of Somalia came in 1991, barely after the end of cold war (Lewis, 2002; Thompson, 2015). As argued by Bradbury and Kleinman, (2010) and Hesse (2014) the interests of major powers such as the United States had significantly shifted from containment of the spread of communism, to that of spreading democracy to the newly established states in Eastern Europe. This affected the flow of foreign aid in Africa including Somalia. Menkhaus (2010) however notes that the United States made attempts to respond to the humanitarian crisis through *Operation Restore Hope*, a humanitarian intervention that had been sanctioned by the United Nations Security Council Resolution 794 of 1992. After the failed attempt by the United States led intervention, the burden of stabilizing Somalia was taken up by neighboring states. Kenya, through President Moi engaged in unilateral reconciliation efforts in 1994 and 1996. According to Menkhaus (2009) Kenya’s multilateral effort under IGAD came at a time when attempts by Ethiopia, Egypt and Djibouti, through the Sodere,
Cairo, and Arta Peace Conferences, had failed to reinstate a functional government in Somalia, with claims of poor representations that compromised the legitimacy of most peace initiatives.

After a decade of continued anarchy and failed conflict management attempts by regional and global actors, Kenya adopted both multilateral diplomacy of conflict management towards the Somali conflict (Kamudhayi, 2004; Kaburu, 2018; Mwanika, 2015; Adar and Yoh, 2006). Through the auspices of Intergovernmental Authority on Development (IGAD) Kenya engaged in the 2002-2004 Somali peace process that culminated into the establishment of the Transitional Federal Government of Somalia (TFG) (Adar, 2007; Kaburu, 2018; 2017). Although the TFG did not enjoy total legitimacy from all the warring factions, it remained a recognized entity that conducted international relations on behalf of Somalia as a state and its citizenry. With a good knowledge of the internal and systemic realities in relation to Somalia, Kenya chose soft power diplomacy of conflict management as an approach to the crisis. According to Mwagiru (2006) this approach to regional conflict was not new to Kenya as the same had been used in managing the Ugandan conflict in 1985 as well as the Sudan peace talks that were ongoing.

The wake of international terrorism led to a change of Kenya’s foreign policy, particularly with regard to national and regional security, with Kenya engaging more on conflict management and state stabilization efforts. According to Iyob and Keller (2006) the change was informed not only by the Western Powers who had identified weak and failed states such as Somalia as possible breeding haven for international terrorism, but also the series of terrorist attacks that had previously been executed in Kenya by the Al Qaeda and related groups. For instance, in 1998, the U.S. Embassy in Nairobi was hit by terrorist and left over 200 Kenyans dead and scores injured, while in November 2002, an Israeli owned hotel in Mombasa was hit by Al Qaeda associated militants.
(Anderson and Mcknight 2014). According to Barkan (2004) such occurences devastated the tourist sector of Kenya’s economy, forcing the Kibaki government to join the global war on terror, through establishment of a Counterterrorist Unit that works in collaboration with the U.S.

Piracy off the coast of Somalia is another factor that has in the recent past shaped Kenya’s foreign policy behavior towards Somalia. According to Gathii (2010), the continued piracy off the coast of Somalia has been cited as one of the gravest threat to both the regional and international security emanating from the failed state of Somalia, and perpetuated by the *Al Qaeda* linked militant group - the *Al Shabaab*. According to Dagne (2010), Somali pirates intensified their attacks in 2008 and 2009, hijacking vessels and demanding for considerable amounts of US dollars in ransom payments. In response to the threat by the pirates Kenya became a primary destination for prosecution of Somali pirates, after entering into agreement with among others, the European Union and the United States in January 2009.

The unanticipated shift of Kenya’s foreign policy towards Somalia was however witnessed in October 2011, when Kenya deployed its military troops into Somalia, in pursuit of the *Al Shabaab*. Having advocated for non-interventionist approach since the collapse of the Somalia government system in 1991, Kenya shifted to *hard power* diplomacy and deployed its military forces to Somalia. Hughes (2012) acknowledges that Kenya’s objective was clearly spelt out as that of dislodging the *Al Shabaab*, and capturing the port of Kismayu, which had remained instrumental in financing activities of the militant group. This argument has been upheld by the Kenya Defence Forces (2014) who also views the military incursion as having had positive effects on the Somali citizenry, whose rights had been grossly violated by the *Al Shabaab* in the absence of a stable
government to provide security. Claims of self-defence and human rights violations, coupled with the assertion that the TFG of Somalia had made requests for a military support to whip out the Al Shabaab, were used to justify Kenya’s action using the African Union Constitutive Act of 2000, that allows for military intervention in case of gross human rights violation and war crimes in member states (African Union, 2000; Kenya Defence Forces, 2014).

In a move to manage border security particularly in the wake of continued terror attacks, Kenya has envisioned on building on her border neighboring Somalia. Investigating Kenya-Somali relations from this lens Cannon (2016), argues that the construction of wall in likely to ignite conflicts relating to Somali’s irredentist ideology that seeks to have Somali communities reunited to for the greater Somalia, and which dates back to Kenya’s independence, and continues to shape relations between the two neighboring states. This argument is founded on the fact the colonially determined African borders resulted to artificial separation of populations of Somali decent that now account for citizens of five neighboring states in the horn of Africa including Kenya, Ethiopia, Djibouti, Somaliland and Somalia (Thompson, 2015; Lewis, 2002; Menkhaus, 2009; 2010). Other concerns relating to Kenya’s idea of building the wall is that it is likely to ignite possible claims by other states within the volatile Horn of Africa. Cannon (2016) further argues that high level of corruption among the Kenyan officials is likely to compromise on the successful completion and operationalization of the envisioned wall.

Deviating from the commonly used general theories of international relations adopted by others scholars such as Adar (2007) and Okoth (2010) among others, Kaburu (2017) examined Kenya’s
foreign policy towards Somalia using a decision making approach. Decision making theory views foreign policy behavior as informed by individuals acting singly or in a group (Hudson, 2005; 2008; 2012). According to Kaburu (2017) Kenya’s foreign policy towards Somalia has been shaped by various factors emanating from both internal and external environments. Kaburu (2017) examines various foreign policy decisions that were undertaken by successive Kenyan governments including the engagement in unilateral and multilateral diplomacy, hosting of the Somali refugees, prosecution of Somali pirates, and the decision to use the military against the Al Shabaab in 2011 which resulted to integration of the Kenya Defence Forces (KDF) into African Union Mission in Somalia (AMISOM). Such are the decisions that have continued to shape Kenya’s foreign policy behaviour towards Somalia.

In her analysis, Kaburu (2017) uses various models of decision making to advance the argument that Kenya’s foreign policy towards Somalia has over the years been shaped by individual human decision makers acting singly, such as the president, or in a group such as the cabinet to determine state behaviour. Making reference to Kenya-Somalia relations between 1996 and 2012, Kaburu argues that Kenya’s foreign policy behavior towards Somalia has continually been shaped by individual decision makers acting singly or in a group. The scholar makes emphasis to institutions such as Parliament and the Ministry of Foreign Affairs through which foreign policy issues are channeled through to inform state behavior (Kaburu, 2017).

All other factors held constant, it is important to note is that territorial integrity based on contested borders has remained instrumental in shaping Kenya’s foreign policy. However, except for Adar (1994) who focused on territorial integrity from a legalistic lens in the study of Kenya’s foreign policy towards Somalia, most other scholars have focused on systemic and other domestic factors
including diplomacy of conflict management. As it continues to unfold, Kenya-Somalia maritime border conflict requires a scholarly investigation in a move to make the necessary recommendations towards its peaceful and sustainable conclusion. This study therefore seeks to contribute to the existing literature gap by exploring the territorial maritime border dispute between Kenya and Somalia in shaping Kenya’s foreign policy towards Somalia in the period between 2009 and 2019.

The 2009-2019 period is informed by a bilateral agreement signed by the two neighboring states in 2009 regarding the use of the continental shelf establishment beyond the Exclusive Economic Zone of 200 nautical miles beyond territorial sea as stipulated by the United Nations Convention on the Law of the Sea (UNCLOS, 1982.) Presumably, the agreement was founded on Joint Development Agreement (JDA) as an approach to the management of resources within contested maritime zones. This approach is expressively supported by UNCLOS, that emphasis on the need for such agreements to be founded on international law, and should be drawn between states with adjacent or opposite coasts on the basis of equity. Emphasis on mutual agreements of contested EEZ and Continental shelf, Articles 74(3) and 83 (3) provides that “Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation” (UNCLOS, 1982).

The 2009 signed agreement stipulates that the two neighboring coastal states are conscious of possible differing interests within the delimitation of the continental shelf beyond the 200 nautical
miles, but acknowledge the need for cooperation to safeguard and promote existing common interests in the continental establishment. However, though the bilateral agreement was concluded and deposited to the UN General Assembly in 2009, the two neighboring states have continued to lock in a maritime border dispute that saw Somalia taking Kenya to the International Court of Justice (ICJ) over the disputed maritime border dispute in 2014. Available literature has not examined the dynamics in Kenya-Somalia relations as founded on the maritime border dispute since 2009, particularly from a realist perspective which form the basis of this study.

2.4 Theoretical Framework

This study adopts the realist theory as a framework of analysis. The realist conception of the national interest dates back to Nicolo Machiavelli, who, in The Prince, for example, predicted the importance of the role of interest in international relations. He argued that the Prince as a ruler has to be conscious of when and when not to use power (Clinton 1994). A state’s national interest defines the reason of states domination of foreign policy studies since the inception of the nation-state at the 1648 Treaty of Westphalia. For Hans Morgenthau (1985) whose works over several decades continued to dominate the scholarly debate surrounding realism, a state’s primary or principal concern is driven by the national interest defined in terms of power in international relations. In other words, sovereign states, the dominant actors in international relations must protect their physical (territory), political (political and economic system) and cultural (historical values and experiences) identities against any interference and encroachment by any other state or actor.
Morgenthau identifies six fundamental principles that define political realism. They include, one; that laws that govern the society are founded on human nature, and that the society can only be improved through the understanding of the laws under which it is governed. Thus, for realism, foreign policy can only be ascertained through examination of political acts by statesmen and the envisioned consequences of such acts. According to Morgenthau (1985) acts by statesmen must be understood with the operational and contextual milieu. Two; that international politics and state behavior is informed by national interests and therefore the statesman should use rationality to ensure maximization of identifiable national interests. Three; that the national interests are defined in terms of power, where power comprises of anything that establishes and maintains control of man. Power is also understood as all social relations which serve an end including violence, as long as it can control man. Four; according to realism universal moral principles cannot be used to define state actions but should be filtered in the context of time and place, and that political actions must not be judged by universal moral principles’ Five; political realism is against adoption of moral laws of a particular state as equivalent to morals that govern the universe as every states pursues its own interests and not the universal common good. Six and lastly, realism believes that political standards understood in terms of power govern the international system, and that all other standards are subordinate to politics (Morgenthau, 1985).

Brown and Ainly (2005) sums up Morgenthau’s political realism as one that conceives international relations as founded on states that are constant pursuit for power, a situation that makes war inevitable. They however question the nature of the state as conceptualized by realism in terms of, one; its primacy in international relations while other institutions such as international organizations are its subordinates and two, the stress on national interests which they argue that
state is just but a conceptual construct that may not have interests. This argument advances a perception that national interest emanates from individual decision makers who use the state as an instrument. This idea is equally advanced by Rosenau (1968; 1966), Sprout and Sprout (1965) and Synder, Bruck and Sapin (1954), who advocate for the study of international relations on the premise of a decision making theory which gives room for understanding the role of human agency in shaping state behavior.

Given the anarchic nature of the international system as noted by Waltz (1979) and Bull (2012), sovereign states guard their national interest and values. For realists, such as Thucydides, power (military might) which gives a state the means to compel others to do what is in their national interest is an important instrument for the state’s survival (struggle for power) in the international system (Connor 1984; Crane 1998). It is a state’s domestic or national variables that determine its behavior in the international system. Weber (2014) opines that realism and neorealism as key theories agree that there is no foreseeable way out of international anarchy as the proposed global government cannot guarantee states of their security. This assumption by the realist’s points to the fact that states must work towards increasing their power to enhance their survival in the anarchic international system. For states, the more powerful they are, the more they are not likely to be threatened by the less powerful state (Weber, 2014).

Realism conceives the state as most important and thus the behavior of the international system is significantly shaped by individual states who are in constant pursuit for power. Indeed, realists regard other actors such as international organizations whether governmental or non-governmental and individuals as subordinate to the state. According to Jackson and Sorensen (2007), states are
perceived as most important because they have control of critical instruments such as the legal and military power that other actors in the international system do not poses. Equally, a states are not answerable to any higher authority in the system and therefore every state must seek to protect itself against possible forces emanating from other states in their continued pursuit for power and control in an anarchic international system (Waltz, 1979; 1954; Bull, 2012). This conception of the international system leads to arms race and security dilemma as states are founded on the principle of self-help in which states are not willing to entrust their security on any other states or institution except onto themselves.

For the most part of its post-independence history, Kenya hardly involved itself in external military interventions across its territorial boundaries. Instead, its foreign policy and foreign policy behavior were driven by what has been called ‘quiet diplomacy’ (Makinda 1983 and Orwa 1994). The deployment of KDF in Somalia in 2011, therefore, marked a clear paradigm shift in the country’s foreign policy and foreign policy behavior. Of importance to the country and this study in particular, was the cardinal responsibility for the preservation of its national interest understood from a realist theoretical framework.

The realist arguments such as the primary importance of state survival, the need to pursue and protect national interests in an anarchic international system provide a critical understanding on the importance of securing territorial borders. Thus, in view of the realist conception of a state, as a unitary, homogeneous and rational actor who is guided by national interests is interpreted in terms of power. Based on the realist understanding of state power and national interests, this study
will examine Kenya’s vital interests that are threatened by the contested maritime border with the neighboring Somalia. With territorial integrity being at the core of existence of any state, the realist theory provides a framework through which the effects of contested border can be understood, and the choice of mechanisms that can be used in addressing the dispute without injuring the sovereignty of either of the states, a situation that could lead to war.

Using realism this study examined Kenya’s foreign policy in the wake of maritime border conflict with the neighboring Somalia. As noted earlier in the chapter, realism views the state as existing in anarchic international system where there is no higher authority charged with the responsibility of protecting the state. As argued by Mingst (2008), anarchy in the international system constrains the decision maker and the subsequent foreign policy outcomes. Thus using the realist approach the study underscores possible threats to Kenya’s vital national interests and explores possible mechanisms that can be used to resolve the contested maritime zone between Kenya and Somalia.
CHAPTER THREE: RESEARCH METHODOLOGY

3.0 Introduction

This chapter explains the methodological approach that was adopted in this study in terms of the research design, the sampling criteria, data collection method, tools of data collection and analysis as well as the response to ethical issues and concerns during the research process. As a process, research employs various methods, techniques and procedures towards creation of knowledge. According to Gravetter and Forzano, (2009), research is a systematic process that seeks to provide solutions to existing social concern. In other words, research responds to the why and how questions in society. Research methodology is therefore the application of different techniques to discover data in order to support the claim of knowledge. Using the acquired knowledge, the researcher is able to build on or discard previous set of knowledge on social reality. This chapter therefore provides detailed approaches with regard to design, sampling, data collection and analysis.

3.1 Research Design

A research design provides a detailed framework for overall plan of how the investigation was carried out including the type of data to be collected, method of data collection, tool of data collection to be employed and analysis of the data according to the priorities set out by the researcher (Kothari, 2004). A research process can broadly be premised on a qualitative, quantitative or a mixed approach. Such approaches shape the research in terms of the data to be collected, methods of data collection, the sampling method as well as the data analysis and interpretation.
This study adopted a qualitative research approach whereby measurements are not numerical, but focus on interrogating the problem of the study with an aim of generating in-depth understanding of the issues identified by the researcher (Trochim, 2001). The approach draws attention to the fact that people drive meaning to events from their own environment. For this study, meaning is driven from the Kenya’s territorial boarders in relations to foreign policy behavior, and more in particular towards Somalia. This kind of approach allows the researcher to get closer to the data, and understand people’s actions and meanings that they attach to their political environment, and for this case the meaning of territorial borders in relation to foreign policy behavior.

Qualitative approach was most preferred for this study because through in-depth interviews that it provides for, critical evaluation of the complexities of political interaction within which foreign policy decision are concluded and implemented. The tools of data collection will therefore be flexible enough to allow the researcher to understand and interpret the world from the social meanings as perceived and as constructed by the respondents which (Kayrooz and Trevitt, 2005) refers to as the insider perspective. Being a case study, this study deals with one identifiable issue with space and time, and therefore limits itself to a case study of Kenya- Somalia relations between 2009 and 2019 as informed by territorial border dispute. The case study approach allowed for historical information to be used to explain the Kenya’s foreign policy towards Somalia over a specific period of time.

3.2 Sampling Criteria and Target Population

Sampling is carried out to increase viability, cost effectiveness, precision and manageability of research. For this study, purposive method was used to identify the sample of investigation.
Purposive sampling was appropriate for this study because the focus was on individuals, organizations or documents with specific information, or knowledge on Kenya’s foreign policy behavior towards Somalia. The method was selected on the basis that it would provide an opportunity for the researcher to select the relevant institutions and individuals who have been or are directly involved in foreign policy decision making and implementation of the same. In addition, the study used snowball method to enable the researcher to utilize social networks that may not been accessible to outsiders. Snowball is important considering that foreign policy is more of an executive undertaking and there has been changes in the government including transfers and retirement during the period under investigation, 2009-2019, thus the need for the social networks.

The target population comprised of official government bureaucracies in the executive and other constitutionally sanctioned institutions which are involved in the making and implementation of foreign policy. In particular, selection of respondents was limited to individuals who are working or have previously worked within the following institutions; the Presidency, for example, cabinet secretaries of various ministries including where possible the secretary to the cabinet, whether retired or currently in office; officials from specific ministries such as Foreign Affairs, Interior and Coordination of National Government, Defence, and the former Provincial Administration among others. As an integral institution in decision making, views of parliament were sough through interviewing members of legislative assembly (former and current). The researcher further sought views from specialized agencies like the National Intelligence Service as well as the academia. The study had a target of twenty-five respondents, only total of seventeen individuals were interviewed as illustrated in chapter four.
3.3 Data Collection

Data collection as a process requires careful organization and control to enhance validity. This study used in-depth interviews from individuals that were purposively selected. An interview guide was used. This approach allowed for authenticity, richness and in-depth response which defines qualitative approach. The interview guide ensured that the interviewer remained as focused as possible, while leaving room for the respondent to provide as much information as he/she felt comfortable to diverge. A pilot study was carried out to ensure efficiency of the tool in terms of content and time, and for identification of possible problems that were likely to arise during actual interviews including possible ambiguity of research questions. Apart from the in-depth interviews, documents including reports that may not be published, memos, minutes of meetings, policy documents, and any other form of official communication within and across the targeted government institutions and agencies were used as sources of primary data. Since parliament has an instrumental role in foreign policy decision making, published and unpublished official Hansards were also used as source of primary data.

3.4 Data Analysis

Data analysis was based on study questions that were developed from the research objectives. Since the study has adopted a qualitative approach, the mode data analysis was based on both content and narrative analysis. Thus, the research questions and responses were grouped in terms of similarity which helped to develop patterns and themes onto which the content was analyzed and narrative developed. The process of classifying the themes involved sorting and sifting information in terms of the type, classes, sequences, and processes of relevant data. After sorting the data in themes, each category was coded to allow for easy tracing of the data. Use of content
analysis helped the researcher to recognize and respond to new themes that emerged during data collection and to integrate them systematically within the broader themes of the study. This is because of the spiral nature of a qualitative study in which the researcher has a likelihood of going back and forth as new issues that enrich the study emerge when the study is in progress. Apart from the data gathered during the interviews, the themes were enriched using primary and secondary data from reports, communiques and official parliamentary Hansards among others.

3.5 Ethical Considerations

Ethical issues are critical in a research process as they impact directly on the integrity of the findings and the study in general. One of the basic ethical principles of research is that of lawful collection and processing of the data, a clear and lawful purpose, and that the data collected should be adequate, relevant and not excessive. Based on this principle, the researcher adhered to the legal framework of academic research in Kenya by obtaining a permit from the respective government institution, the National Commission for Science, Technology and Innovation. In addition, the researcher provided adequate information to the respondents by asserting on the academic purpose of the research findings. Given the nature of this study, the researcher endeavored to ensure that the data collected is as accurate as possible.

The researcher sought consent from the respondents to ensure that their participation did not in any way compromise on personal and official principles. In addition, the researcher was flexible enough to ensure that respondents did not answer any questions that they were not comfortable with, or that which they feel have no adequate and credible information that would contribute to
the study. The researcher guaranteed confidentiality of the respondents by ensuring that the academic purpose of the information collected is maintained, and that no part of the information would be shared with any other person except the researcher. In addition, the data interpretation and analysis was made in such a manner that the respondent’s identity would not be directly revealed.
CHAPTER FOUR: DATA ANALYSIS AND PRESENTATION OF RESEARCH FINDINGS

4.0 Introduction
This chapter provides an analysis of data collected from respondents who were purposively sampled from various state institutions charged with the development and implementation of Kenya’s foreign policy. Research findings are presented thematically with themes developed from three objectives upon which the study was founded. The study findings underscore the central thesis of this study that, Kenya should adopt foreign policy options that will protect her territorial integrity and other vital national interests including national security and valuable seabed resources in the contested maritime zone. The study further opines that if possible and in the spirit of good neighborliness, Kenya and Somalia should seek political and not legal options of resolving existing maritime border dispute in a manner that protect the sovereignty of each individual state, and encourages interdependence and partnership to ensure continued coexistence, and allow for the exploitation of the valuable seabed resources in the continental shelf outside of the EEZ.

The chapter is presented in various subsections. Section one provide general overview of the data collection and a review of the objectives guiding the study. The subsequent section provides findings of the study as guided by the various objectives and research question that form the basis of the thematic analysis.

4.1 Overview of Data Collection and Study Objectives
This study adopted a purpose approach to the selection of respondents. Thus, respondents drawn from individuals working or who have previously worked with the Ministry of Foreign Affairs,
Ministry of Defence, the Presidency, Members of Parliament, National Secretariat for Refugee Protection and National Intelligence Service. In addition, the researcher interviewed a respondent from the East African Community to shed light on regional integration in relation to the maritime dispute. Opinions from academia was also sought through interviews. The study had a target of twenty-five respondents but due to challenges relating to their duty schedules, only seventeen were successfully interviewed. The table below provides a summary of the number of respondent and their institutions of affiliation.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Number of respondents</th>
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<tbody>
<tr>
<td>1. Ministry of Foreign Affairs</td>
<td>4</td>
</tr>
<tr>
<td>2. Ministry of Interior and Coordination of National Government</td>
<td>3</td>
</tr>
<tr>
<td>3. Members of Parliament</td>
<td>3</td>
</tr>
<tr>
<td>4. National Intelligence Service</td>
<td>2</td>
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<tr>
<td>5. Ministry of Defence</td>
<td>2</td>
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<tr>
<td>6. Academia</td>
<td>2</td>
</tr>
<tr>
<td>7. Former Provincial Commissioners</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total number of respondents</strong></td>
<td><strong>17</strong></td>
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</tbody>
</table>
The study used snowball method which enabled the researcher to utilize social networks that were not accessible to outsiders. Snowball was important considering that foreign policy is more of an executive undertaking and there has been changes in the government during the period under investigation, 2009-2019, thus the need for the social networks to help in the identification of relevant individuals who may have left the service through retirement or otherwise, or have moved to other state departments. Individuals identified and interviewed in this study were presumed to have been involved in Kenya’s foreign policy decision making process through which vital decisions with enduring impact on state foreign policy behavior are concluded and implemented.

Apart from the primary data that was collected through interviews, the study has analyzed primary documents such as policy papers, documentaries, related laws such as the provisions of UNCLOS, various court decisions as well as any available memoires. The primary data was supported by secondary data through review of available literature inform of books and journal articles among others. Because of the nature of the study, where foreign policy is understood as a more elitist venture with minimal involvement of the public, a qualitative approach to data collection and analysis was adopted.

Research findings are presented thematically and responds to the key objectives of the study. In general, the study sought to examine the effects of maritime border dispute in shaping Kenya’s foreign policy towards Somalia between 2009 and 2019. Specifically, the study examined the causes of Kenya-Somalia maritime border dispute between 2009 and 2019; assessed the effects of existing maritime border dispute on Kenya’s foreign policy towards Somalia, and explored possible mechanisms of managing the existing maritime border dispute between Kenya and Somalia. To this end the study was guided by the following research questions; what are the
sources of Kenya-Somalia maritime border dispute, what are the effects of the maritime border dispute on Kenya’s foreign policy towards Somalia, and what are the possible mechanisms of managing the maritime border dispute between Kenya and Somalia. Figure 1: Map of the Kenya-Somalia Disputed Maritime Area

Source:
https://www.google.co.uk/search?q=kenya+maritime+border+dispute+with+somalia+map+of+the+contested+areas&tbm=isch&source=hp&sa=X&ved=2ahUKEwi79v2I7b7lAhXTPsAKHZgsAA0Q7A46BAgECQ
Figure 1 above is a representation of the contested maritime zone. Generally, and according to the map above, it is estimated that if Somalia’s border claim is to be adopted, Kenya is likely to lose an estimated 26% of her EEZ, and 85% of her continental shelf. In addition, and at least according to the map, Kenya will be closed from the open seas as Somalia will be bordering Tanzania in the Indian Ocean. Such a loss of territory would imply that Kenya and particularly the ports of Mombasa and Lamu loses their geopolitical and geostrategic importance in relation to the landlocked states within the Horn of Africa and the East African region. This would impact on Kenya as an economic hegemony in the region, and more importantly would have negative bearing on one of the core attributes of power and survival as a sovereign state.

4.3 Causes of Kenya – Somalia Maritime Border Dispute

This section provides findings on sources of the maritime border dispute between Kenya and Somalia. As noted earlier in this study, border conflicts between Kenya and Somalia dates way back in the colonial times. Indeed, since African countries gained independence, most of them have had to deal with border related conflicts because of their arbitrary nature as European states drew borders on the basis of their rivalry and their desire to control strategic resources. In particular, most maritime boundaries were undelimited at the independence of most African states, a situation that saw African Union set 2010 as a deadline for states to conclude delimitation processes for both land and sea borders (Khalfaoui and Yiallourides (2019). The deadline was reviewed and extended to 2017 but as it stands a number of states as in the case of Kenya and Somalia are still embroiled in legal battle at the ICJ to determine the maritime border in the Indian Ocean.
Understandably however, Kenya’s border dispute dates way back to early 1960’s when the two states gained independence. The two states however focused more on the territorial land borders within minimal concentration on the maritime borders. The Greater Somalia ideology advanced by successive Somali Presidents and their claim for the Northern Frontier District of Kenya led to the Shifta war between 1964 to 1967 (Kaburu, 2018; Thompson; Lewis, 2002). As was noted by one of respondent in this study, “Kenya-Somalia maritime border conflict cannot just be traced on the 2009 bilateral agreement between the two neighboring states, rather the dispute should be given a historical context that saw Kenya’s foreign policy towards defined on the basis of territorial integrity due to contested borders at independence.”

As opposed to contested land border dispute that dates back at independence, issues relating to the contested maritime border can be traced back to 1979 when Kenya proclaimed her maritime zones including the contested boundary. In a move towards enhancing exploitation of seabed resources within her proclaimed maritime zones, Kenya used to the provisions on UNCLOS and entered into a bilateral agreement with Somalia in 2009 and had the same deposited with the United Nations General Assembly in the same year. A respondent from the Ministry of Foreign Affairs noted that the agreement between Kenya and Somalia was to provide a legal/political backing for Kenya’s exploitation of valuable natural seabed resources including oil and gas. In other words, the respondent construed that the dispute between the two states is based the control and exploitation of seabed resources within the contested maritime zone. This observation is supported by Khalfaoui and Yiallourides (2019), who observes that the challenges and disputes relating to undelimited maritime zones among African states are founded on the discovery, control and exploitation of vital resources such as oil and gas.
At the core of state interest is power emanating from the state’s source of revenue. According to Khalfaoui and Yiallourides (2019), in 2012 Kenya had awarded exploration licenses for eight offshores blocks in the Indian Ocean to foreign oil companies, including Italy-based Eni, France-based Total, and Anadarko Petroleum. Out of the eight offshores that Kenya has been laying claim of, only one is not within the contested maritime zone. And though Kenya had entered into an agreement with the Somalia government in 2009, the Somalia parliament had rejected agreement citing Kenya’s contravention of the Somalia domestic law that defined its maritime zones including the EEZ and the continental shelf. This reality compromises on possible exploration of valuable resources in the contested areas.

Commenting of the exploration of seabed resources in the contested region, a respondent from the Ministry of Foreign Affairs noted that “…in 2018 during the African Oil week in Cape Town, Somalia had indicated that it was in the process of mapping its offshore oil blocks and was preparing to offer the blocks for auction. In February 2019 during Somalia oil and Gas Conference in London, Somalia had offered to auction some of its oil blocks, some of which unfortunately lie within Kenya’s territory.” Another respondent noted that for Somalia to think of auctioning oil and gas blocks that are within Kenya’s maritime zone is a breach of the principle of good faith, which is used in the operationalization of bilateral and multilateral agreements in international relation. The respondent noted that such a step was likely to sever the friendly relations that have existed for long between the two neighboring states. Based on such observation it can be argued that the maritime dispute between Kenya and Somalia is not more about the border but rather the discovery of gas and oil within the contested region.
Closely related top exploited of the seabed resources with regard to Kenya- Somalia maritime border dispute is the external influence from interested parties. Notably, Kenya and Somalia had both engaged external parties in the possible exploration of seabed resources including oil and gas. For instance, in 2012, Kenya awarded exploration licenses for eight offshores blocks in the Indian Ocean to foreign oil companies, including Italy-based Eni, France-based Total, and Anadarko Petroleum, see for example Khalfaoui and Yiallourides (2019). On the other hand, Somalia has been working on auctioning oil and gas blocks, with agreements aimed at being concluded by January 2020. Considering that the resources at stake are of high value, it can be argued that external interests by various multinationals and their mother states have a significant influence on the maritime dispute between the two neighboring states. As one of the respondent noted, the there are conflicting economic interests from external forces whose aim is to control the oil fields, and since Kenya has the necessary political stability that would bar any form of economic exploitation, the multinationals are envisioning a possibility of accessing the same resources through Somalia as a weak but strategic state.

Apart from the exploitation of vital seabed resources, Kenya’s maritime border dispute with Somalia is founded on the need to protect its territorial integrity. One of the core elements of statehood is recognized territorial borders and the ability of the state to its territorial integrity that is founded on such borders. One of the respondents noted that the disputed territory has a significant effect on Kenya’s territorial integrity as the proposed border by the Somalia government is likely to see Kenya lose around 26% of its EEZ and 85% of the continental shelf.
The respondent noted that,

“It is the duty and the responsibility of the government of ensure that Kenya’s territorial integrity and sovereignty is protected from any form of external interference. We must understand Somalia as one state that claimed part of Kenya’s territory, the then Northern Frontier District since independence. The current claims are not any different and must be treated with the seriousness that they deserve. Kenya should not lose her maritime zones and the resources therein to Somalia at all cost. After all, since 1979 Kenya proclaimed her maritime zones and Somalia has never raised any concerns and therefore should not be allowed to do it today. We also ought to ask what exactly is informing Somalia’s claims if not the seabed resources in the contested territory.”

Indeed, majority of the respondents were of the opinion that Kenya should protect its territorial integrity through all means including use of the armed forces. Using the principle of self-help in anarchic international system as argued by realists such as Morgenthau (1985), Waltz (1979) and Bull (2012), use of force is necessary when the very core of state survival such as the territory is threatened. Using this line of thought a respondent noted that Kenya should employ her military to protect her territory as the two states waits for the determination of the case by the ICJ.

Another key factor relating to Kenya-Somalia maritime border dispute in the internal political dynamics in Somalia. Notably, the Federal Republic of Somalia will be undertaking its general elections in 2020. A successful electoral process in 2020 will be landmark being the first popular election since 1969 when Somalia became a military led state. General elections can be used by elites to galvanize nationalistic positions as a strategy to gain support from the public. One of the respondent noted that, leaders take certain position not necessary to serve national interests but rather personal political interests. In this according to respondent, the Somali elites are out to project Kenya as a threat to the territorial integrity of Somalia and thus the need to ensure that the case is determined by ICJ as opposed to negotiations; that according to the leaders are likely to be compromised. Elites create this kind of perception to persuade the citizens of the leader’s ability
to protect the state from any form of aggression and thus the need to have then voted into power. This can be understood behind the many failed attempts by Kenya to persuade the Somalia government to have a negotiated settlement of the maritime border dispute.

Thus, it can be concluded that the Kenya-Somalia maritime border dispute is founded on vital national interests including protection of territorial integrity from external aggression, and to secure high valued seabed resources in the contested maritime zone. Consequently, positions taken by the two contending states can be construed to be rational, where the state is understood as a unitary and homogeneous entity whose behavior is guided by national interests (Morgenthau, 1985; Allison, 1971; Mintz and DeRouen, 2010). As opined by realist theorists, every state is a rational institution that seeks to maximize on their national interests abroad. With territorial integrity and economic influence being at the core of what defines state power, it can be argued that the maritime dispute between the two states ought to be managed in manner that does not compromise on their strategic goals to deter possible future wars.

4.4 Effects of Kenya-Somalia Maritime Border Dispute

Disputes involving two or more states have significant effects not only on the disputants but also could have regional and global impact. Considering the level of interdependence among national states and populations across the globe, whether due to trade or security, the impact of conflicts among states cannot be underrated. This section examines the impact of Kenya-Somalia maritime border dispute not only on the two conflicting states but also on the regional and global arena.
As noted in earlier, the contested maritime zones have been associated with seabed resources including gas and oil. Continued dispute in the area would therefore mean that exploration of the said resources could be delayed or completely abandoned. A respondent noted that, “…exploration of gas and oil is a venture which involves international auction, or agreements between states and multinational institutions. It is such an expensive venture that may not be carried out in a legally or politically contested region. This means that neither of the states between Kenya and Somalia can be able to exploit the resources until the dispute is settled…”

It is worthwhile noting that as opposed to terrestrial regions that have for long been a source of conflict regarding borders, the maritime zones have for long not been securitized in Africa. Exploration of highly valued resources are therefore at the core of maritime disputes that if not managed could delay the transformation of such resources into national wealth. For instance, as noted by Khalfaoui and Yiallourides (2019), Kenya had already entered into agreements with multinational corporations such as Total in 2012 in a move to start the exploration of the resources. Equally, Somalia indicated that its process of auctioning the oil blocks was to be concluded by January 2020, a move that saw diplomatic relations between the two states severed in early months of 2019 as Kenya protested the move. Thus the current maritime dispute at the ICJ is likely to jeopardize such initiatives and cause further delays in the exploration and exploitation of the resources.

The maritime border dispute between the two neighboring is also likely to jeopardize on efforts for regional peace and security. Undeniably, the Horn of Africa regional has been characterized
by some of the longest conflicts such as that of Somalia and Sudan. As one of relatively stable state, Kenya has remained instrumental in efforts towards stabilization the region. For instance, Kenya was involved in the 2002-2004 Somalia peace process as well as the Sudan peace process that culminated in the signing of the comprehensive peace agreement, commonly known as the CPA (Menkhaus, 2009; 2010; Mwanika; 2015; 2013; Kaburu; 2018; 2017). Since 2007 the African Union has engaged its forces in Somalia under the umbrella of African Union Mission in Somalia (AMISOM). Equally, in 2011 Kenya joined the fight against terrorism and engaged its defence forces in Somalia in 2011 that were later integrated into AMISOM in 2012 (Kenya Defence Forces, 2014). It is against this backdrop that this study argues that the maritime border conflict is likely to affect such efforts as Kenya remains at the core of the stabilization efforts in Somalia. Majority of the respondents interviewed during this study alluded to the fact that the dispute is likely to witness a more fragile Horn of Africa as well as the larger East African region.

Closely related to regional peace and security is the protection of thousands of refugees in the conflict prone region. As at 2016 Kenya was hosting close to six hundred thousand refugees, majority of whom were of the Somali origin (See for example, UNHCR, 2016). Although Kenya has had to deal with numerous challenges relating to the hosting of refugees particularly from Somalia, the emergence of Al Shabaab brought new dynamics in refugee protection. For instance, with the group having claimed their involvement in the Garissa University and Westgate terrorist attack in 2015 and 2013 respectively, there has been continued push for repatriation of Somali refugees and a subsequent closure of the Dadaab refugee camp which hosts majority of the refugees from Somalia (Kaburu, 2017).
Although refugee protection is enshrined in international law through Conventions and Protocols that Kenya is signatory to, there are possibilities that a prolonged maritime dispute between the two neighboring states likely to result to actualization of the closure of refugee camp and forced repatriation of refugees that is against the *Non Refoulement* principle. As one of the respondent noted, “Kenya has been very patient with regard to management and protection of Somali refugees, this situation may however not last long if the maritime border dispute is not resolved. With the existing perception of the link between Somali refugees and the *Al Shabaab*, the border dispute coupled with Somalis inflexibility against negotiated agreement, Kenya is likely to repatriate Somali refugee even though it is against international refugee law in a bid to force Somalia into the negotiating table.”

Regional integration through membership of sub regional bodies has shaped foreign policy of various states in Africa and globally. Every regional organization is founded on a set of principles that are shared by member states. Kenya and Somalia are members of the Inter-Governmental Authority on Development (IGAD) which is founded on the need to enhance a shared vision of sustainable peace within the principle of sovereign equality. On the other hand, Somalia is seeking to register its membership with the East African Community (EAC) in which Kenya is a founding states. Such organization whose aim is to increase regional integration and create the much needed market for goods are services from membership is likely to come to halt if we have members engrossed in border conflicts.

As noted by a respondent working with the East African Legislatlative Assembly, (EALA), “…plans to have Somalia as a full pledged member of EAC are at a very advanced stage. Unfortunately, the
Kenya-Somali maritime border conflict is likely to derail these plans considering that Kenya is a founder member of EAC, and that her position on issues relating to the community is treated with utmost respect. As it stands, member states of EAC ought to prevail on the two states to address the raging dispute not as legal issue but a political problem that require a political solution. It is only through negotiation and peaceful management of such dispute that we can realize meaningful regional integration.”

Lastly, the continued border conflict is likely to impact negatively on the stabilization of Somalia. As a state, Somalia has been identified as a failed state since the ouster of Siad Barre in 1991 and the subsequent disintegration of state institutions. Until the recent past, Somalia remained without a central government and Kenya has been instrumental in the stabilization process. A respondent observed that the maritime border dispute has significantly severed relations between the two neighboring states. The respondent further noted that Somalia would have benefited more from Kenya’s political stability in its post conflict reconstruction process. This, according to the respondent is likely not to be the case considering the diplomatic feud between the two states.

4.5 Management of Kenya Somalia Maritime Border Dispute: Potential Mechanisms
Conflict relating to territorial integrity or any aspect at the core of state survival are viewed as highly political and can easily led to use of force. The case of territorial conflict between Kenya and Somali dates back to independence and have occasionally resulted to tension and even use of the military. For instance, Kenya engaged her military in the fight against Shiftas (bandits of Somalia origin who were advocating for irredentism in support of pan-Somalism ideology) in the
early years of her independence (Adar, 1994; Thompson, 2015; Lewis, 2002). While the solution for the terrestrial border conflict between Kenya and Somalia has been based on the principle of *uti possidentis* (that every state adopts its borders as they were at independence). As opposed to land boundaries, most of which were delimited at independence, most of the maritime borders among African states were and are still undelimited. This reality coupled with the discovery of valuable seabed resources explains the numerous maritime disputes among coastal states in Africa, with the ongoing Kenya-Somalia dispute being just one of them.

Maritime disputes are to be managed within the confines of UNCLOS. Founded within the principle of the United Nations, UNCLOS advocates for peaceful approaches to maritime disputes. In particular, Article 279 of UNCLOS obligates states parties “…to settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter” (UNCLOS, 1982). Article 2(3) of the UN Charter referenced in Article 279 of UNCLOS provides that, “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”, while Article 33 (1) The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” (UN, 1945).
A number of respondents were interviewed regarding the most optimal means of managing the Kenya-Somalia dispute. Majority of the respondent were in favor of negotiation between the two neighboring states. A respondent noted that the two states have had friendly relations and therefore should work towards a negotiated agreement towards the dispute. Another respondent that the dispute poses a risk to the brotherly relations between the two states, and could easily impact on peace and security in the fragile region. The respondent therefore hoped that the two states would negotiate and come up with an amicable solution to the current problem.

The Kenya-Somalia maritime border dispute is an ongoing subject of ICJ and dates back in 2014 when Somalia filed a case against Kenya. And though the ICJ has legal jurisdiction over the maritime dispute, there are concerns relating to a 2009 agreement between Kenya and Somalia over the joint management of resources beyond the 200 nautical miles that define the EEZ. Partly the agreement between the two coastal states stipulates that,

“…the two coastal States are conscious that the establishment of the outer limits of the continental shelf beyond 200 nautical miles is without prejudice to the question of delimitation of the continental shelf between states with opposite or adjacent coasts. While the two coastal States have differing interests regarding the delimitation of the continental shelf in the area under dispute, they have a strong common interest with respect to the establishment of the outer limits of the continental shelf beyond 200 nautical miles, without prejudice to the future delimitation of the continental shelf between them. On this basis the two coastal States are determined to work together to safeguard and promote their common interest with respect to the establishment of the outer limits of the continental shelf beyond 200 nautical miles” (UN, 2009).

Provisions of such an agreement deposited in the UN General Assembly cannot be ignored in the management of Kenya-Somalia maritime dispute. UNCLOS provides for mutual Agreements between costal states as an approach to managing disputes of delimitation of maritime zones.
Article 83 provides that “…the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law.…” It further provides that “…pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.” (UNCLOS, 1982). Although the above provisions are in support of a mutual agreement, the Kenya-Somalia agreement of 2009 clearly acknowledges existing maritime zones that are under contention, thus allowing for possible intervention by ICJ against Kenya’s wish.

While legal approach to the dispute can be used to resolve the maritime border dispute, some respondent viewed the dispute as a political and not a legal one, and therefore were in favor of a political process. A respondent was of the opinion that, territorial borders are understood as the core of foreign policy issues that relate to national identity and state sovereignty, and are best handled using political means other than legal means. The respondent was therefore opposed to a legal process whose outcomes are likely to threatened the friendly relations between the two neighboring states. Another respondent was however of the opinion that Kenya could implore on the ICJ to use the principle effectivite’s and equitability to have Kenya retain the maritime zone under contention. The principle of effectivites or effective occupation and control is the foundation of uti possidetis juris and can be used to grant Kenya the contentious maritime zones considering that the areas have been under Kenya’s occupation and control since 1979.
While the legal approach to the maritime dispute is most preferred by Somalia as opposed to Kenya’s push for political settlement, it must be understood has having some weakness. For example, international law as opposed to domestic law lack enforcement mechanisms of court decisions, and that states are expected to adhere to provisions using the principle of good faith otherwise known as *pacta sunt servanda* (Shaw, 2008; Brownlie, 2009). While the two disputing states could be compelled to obey the outcome of the court on the basis of such as principle or that of complementarity, the final decision on whether to respect the outcome lies on the individual states.

However, contextualized within a realist thinking it is likely that Kenya, who has been occupying the contested maritime zone is not likely to cede ground relating to her maritime border, even in a situation where the ICJ ruling provides so. Territorial borders are high political issues as they relate to the core of state survival. Thus, states are likely to weigh out on strategic alternatives rationally to ensure vital geopolitical and geostrategic national interests are not compromised, but instead are maximized upon. Furthermore, according to realism universal moral principles including international law cannot be used to define state actions but should be filtered in the context of time and place. Thus, political realism is against adoption of moral laws of a particular state or international law as the set morals that govern the universe as every states pursues its own interests and not the universal common good (Morgenthau, 1985). In this context therefore, Kenya’s case should be understood in the context that that political standards in terms of power govern the international system, and that all other standards including international law are subordinate to politics (Morgenthau, 1985).
Use of Regional and sub-regional bodies is another strategic approach that could be used in the management of the maritime dispute. Kenya and Somalia have membership in the Inter-Governmental Authority on Development (IGAD) and African Union (AU). In addition, and as noted earlier in the study, plans to incorporate Somalia in the East African Community (EAC) are at an advanced stage. Thus majority of the respondents were of the opinion that the two states should use the regional bodies who have better understanding and have direct relation with the conflict no manage it. However, one of the shortcoming that was pointed out was the weak institutional structure of the regional and sub-regional bodies in managing such a dispute. The respondent noted that though African union has established a border program in 2007, it remains in adequate in terms of technical, institutional, technological and financial capacity.

While most respondents preferred peaceful methods a cross-section of respondents were of the opinion that Kenya should use forceful occupation of the maritime zone in question since it has been controlling it since 1979. A respondent argued that “… Kenya should engage her military in defending what belong to her. Territorial issues are core to statehood and therefore Kenya should not even negotiate with Somalia but rather use the military to protect her vital national interests….” Another respondent observed that “if the border is determined by ICJ and it favors Somalia prefers a diagonal line as opposed to the parallel line proposed by Kenya, then Kenya’s key projects such as the Lamu Port and Lamu -Southern Sudan-Ethiopia Transport Corridor (LAPSET) will be threatened considering that Kenya will be locked out the open international waters. In other words, Kenya is likely to lose her strategic importance in the region if she is locked out of the open waters. This is why Kenya, should never have appeared to the ICJ, and should actually use forceful occupation of the contested maritime zone…” Use of force can be contextualized within the realist
principles where states are guided by the need to protect themselves from an anarchic system where self-help remains a guiding principle (Morgenthau, 1985; Bull, 2012).

Lastly, Kenya can choose to approach her foreign policy towards the maritime dispute by seeking support from world powers such as the United States and Britain. According to a respondent, Kenya has strategic partnerships with international powers and should be able to exploit such relations to maximize on her national interests. The respondent held the opinion that Kenya should seek for support from such powers that can easily weigh on Somalia to embrace a political approach to the maritime dispute as opposed to the legal approach. While this approach could be viewed as viable, it needs further interrogation to identify possible national interest that such world powers are likely to be pursuing in support for Kenya. This way Kenya can be able to adopt the option that will maximize on her national interests.

4.6 Conclusion

This chapter thematically presented the findings of the study based on the general and specific objectives. The research findings indicate that Kenya-Somalia maritime border dispute is founded on the discovery, exploration and exploitation of valuable seabed resources such as gas and oil in the contested region. Fears associated with the pan-somalism ideology as perpetuated by successive Somalia governments, coupled with the arbitrary nature of territorial borders has been a source of suspicion for Kenya. It is notable that the maritime border dispute has been a source of diplomatic row between the two neighboring states in the recent past. A continued conflict between the two states is likely to affects efforts of stabilizing Somalia and the continuing war against
international terrorism, and more particularly the *Al Shabaab*, as well as the management of the refugees. Furthermore, the findings have pointed to a number of mechanisms that can be used in the management of Kenya-Somalia maritime dispute including, the ongoing legal process, negotiation and mediation, or, and if necessary the use of military force as a last result.
CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATION

5.0 Introduction

This chapter provides a summary of the study, makes conclusion and makes recommendations relating to policy and further studies. This study sought to examine foreign policy behavior as influenced by territorial border dispute. As opposed to terrestrial borders that are commonly governed by domestic law, the focus of this study is maritime border dispute with a focus on the ongoing Kenya-Somalia border dispute. The study focused on the period of 2009 when Kenya signed an agreement with Somalia over the use of the continental shelf beyond the 200 nautical miles, and 2019 as the dispute is still ongoing in the ICJ. The study was guided by three objectives. Generally, the study examines the role of territorial border disputes in shaping foreign policy behavior. Specifically, the study sought to examines the causes of the maritime border dispute between Kenya and Somalia, examine the impact of the dispute on Kenya-Somalia relations and lastly to explore possible mechanisms of managing the dispute.

The study is founded on realism as the framework of analysis. Thus, theoretical tenets such as the centrality of state, national interests interpreted in terms of power, anarchy in the international system and self-help have shaped this particular study. Morgenthau (1985) identifies six fundamental principles that define political realism. They include, one; that laws that govern the society are founded on human nature, and that the society can only be improved through the understanding of the laws under which it is governed. Thus, for realism, foreign policy can only be ascertained through examination of political acts by statesmen and the envisioned consequences of such acts. Two; that international politics and state behavior is informed by national interests and therefore the statesman should use rationality to ensure maximization of identifiable national
interests. Three; that the national interests are defined in terms of power, where power comprises of anything that establishes and maintains control of man.

Power is also understood as all social relations which serve an end including violence, as long as it can control man. Four; according to realism universal moral principles cannot be used to define state actions but should be filtered in the context of time and place, and that political actions must not be judged by universal moral principles’ Five; political realism is against adoption of moral laws of a particular state as equivalent to morals that govern the universe as every states pursues its own interests and not the universal common good. Six and lastly, realism believes that political standards understood in terms of power govern the international system, and that all other standards are subordinate to politics (Morgenthau, 1985). Based on such principles the study projects Kenya foreign policy towards Somalia has shaped by the realist conceptualization of national interests that are interpreted in terms of power.

This study adopted a qualitative research approach whereby measurements are not numerical, but aimed at generating in-depth understanding of the issues identified by the researcher. The approach draws attention to the fact that people drive meaning to events from their own environment. For this study, meaning was driven from the Kenya’s territorial boarders in relations to foreign policy behavior, and more in particular towards Somalia. Qualitative approach was most preferred for this study because through in-depth interviews that it provides for, critical evaluation of the complexities of political interaction within which foreign policy decision are concluded and implemented. The tools of data collection were therefore flexible enough to allow the researcher
to understand and interpret the world from the social meanings as perceived and as constructed by the respondents which (Kayrooz and Trevitt, 2005) refers to as the insider perspective.

Being a case study, this study dealt with one identifiable issue with space and time, and therefore limited itself to a case study of Kenya- Somalia relations between 2009 and 2019 as informed by maritime border dispute. The case study approach allowed for historical information to be used to explain the Kenya’s foreign policy towards Somalia over a specific period of time. Respondents were drawn from various state institutions that relate to the development and implementation of foreign policy. They include but not limited to the presidency, ministry of foreign affairs, ministry of defence, national intelligence service and parliament. A respondent from the East African Community was interviewed with an aim of getting insights relating to regional integration in the context of this study.

5.1 Summary of Findings

5.1.1 Causes of Kenya-Somalia Territorial Border Dispute.

The research findings indicate that there are various factors that inform the maritime border dispute between Kenya and Somalia. One of the key factors is the discovery, exploration and exploitation of valuable seabed resources such as oil and gas within the contested maritime zone. Related to the vital resources is the historical and colonially founded arbitrary territorial borders that characterize most African states including those in the Horn of Africa. Findings also indicate that as opposed to land territory that states concentrated on for a long time, maritime borders conflict have been on the rise in the recent past. In addition, the pan-somalism ideology that has been perpetuated by successive Somalia governments has been a source of suspicion for Kenya.
External factors have also been associated with the maritime border dispute. For instance, they are identifiable multinational corporations that had already secured agreements by Kenya to explore the highly valued seabed resources that include oil and gas in the contested maritime zones. Notably, Somalia is in the process of auctioning several blocks within their territorial sea, unfortunately some of the identified blocks fall under the contested territory, and thus interested foreign actors are likely to informing Somali’s approach to the maritime dispute. From an internal perspective, Somali’s upcoming popular elections in 2020 has also been associated with the maritime dispute. Majority of the respondents were of the opinion that the current Mogadishu government is using the maritime dispute to garner support from the Somali citizenry as they prepare for elections. While other factors may be of critical importance in shaping Kenya’s foreign policy in relation to the dispute, it can be concluded that the maritime border dispute is founded on vital national interests including protection of territorial integrity from external aggression, and to secure high valued seabed resources in the contested maritime zone. Consequently, positions taken by the two contending states can be construed to be rational aimed at maximizing on the strategic interests.

5.1.2 Effects of Kenya-Somalia Maritime Border Dispute

The effects of the Kenya-Somalia maritime border dispute cannot be overemphasized. In the recent past the dispute has been a source of diplomatic row between the two neighboring states, which points to a strained relationship between the two states, a situation that could affects other aspects of interaction including trade and cross border movements. The dispute is also likely to waken historical border disputes that resulted into the shifta war and have continued to shape Kenya’s foreign policy towards Somalia. From a security perspective, the dispute is likely to
compromise on existing efforts in the fight against international terrorism and the stabilization of Somalia. Notably, Kenya has been instrumental in the peacemaking initiatives since the ouster of Siad Barre and the subsequent disintegration of Somalia. For example, Kenya was directly involved in the 2002-2004 Somali peace process that culminated with the establishment of the transitional federal government (TFG). Currently, Kenya has contributed her military troops into AMISOM in a move to fight the Al Shabaab. Such efforts are likely to be affected by the prolonged maritime border dispute.

Closely related to the stabilization of Somalia, is possible effects of the dispute is likely to have on Somali refugee protection. Notably, Kenya is a host to over half a million Somali refugees most of who reside in the Dadaab refugee camp and others are urban refugees in Nairobi and other towns across the country. In the recent past there has political push for the repatriation of Somali refugees as a means of addressing terror threats by the Al Shabaab. This the maritime dispute is likely to waken the call for forceful repatriation though against the principle of non refoulement. The dispute is also likely to affect regional integration considering that Somalia’s request for her integration into the EAC is at an advanced position.

5.1.3 Mechanisms of Resolving the Maritime Border Dispute

Study findings have pointed to a number of mechanism that can be used in the management of Kenya-Somalia maritime dispute. Aimed at preserving international peace and security, the UN Charter provides for a number of pacific means to manage international conflicts. Article 2(3) of the UN Charter referenced in Article 279 of UNCLOSE provides that, “All Members shall settle their international disputes by peaceful means in such a manner that international peace and
security, and justice, are not endangered.”, while Article 33 (1) The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” (UN, 1945).

Since 2014, the ICJ has been dealing with the dispute from a legal perspective after Somalia took Kenya to court over the contested maritime border. While the legal approach through the ICJ is the most preferred by Somalia, it bears some weaknesses including the method of enforcement, considering that the issue area is core to state survival and national integrity. On the other hand, Kenya has conceptualized the dispute as political and therefore prefers use political methods including negotiation to arrive to an amicable solution. Other methods that have been suggested by respondents is due of regional organizations in which Kenya and Somalia are member states such as IGAD and AU or the EAC that Somalia has sought to be admitted as a member. Unfortunately, all the regional and sub-regional organizations are lacking functional structures that can be charged with the responsibility of ensuring that sustainable solution to the dispute is realized.

However, from a realist perspective there are fears that Kenya may adopt use of force through her military to secure her territorial borders including the contested maritime zone that she has been occupying since 1979, and therefore lays sovereign claim to it. Indeed, the question of territorial borders is core to the survival of the state or to the territorial integrity of the state. Any threat to such vital interests can be a justification for use of force at least as per Article 51 of the charter
that gives the sovereign state rights to self–defense of hot pursuit as was the case of Kenya’s unilateral military engagement with the Al Shabaab in Somalia in 2011. Kenya can also choose to approach its foreign policy towards the maritime dispute by seeking support from world powers such as the United States and Britain. Indeed, Kenya has strategic partnerships with international powers and should be able to exploit such relations to maximize on her vital national interests

5.2 Conclusion

This study has examined the effects of the ongoing maritime border dispute between Kenya and Somalia on Kenya’s foreign policy. Existing literature indicates that there are numerous undelimited maritime and terrestrial border between and among African states. This reality dates back to the colonial times when African borders were arbitrary drawn, separating people with shared decent into different sovereign states as is in the case of Somali’ who are spread across five states. More importantly, the arbitrary nature of boundaries has and continues to be a source of tension between neighboring states which occasionally leads to war as was the case of the shifta war between Kenya and Somalia. Notably, maritime borders have hardly been a point of focus for most African states. However, in the recent past, the push for the delimitation of maritime zones has been on the increase. This situation can be explained by the discovery, exploration and exploitation of seabed resources whether within the territorial waters, EEZ or the continental shelf.

Since her early years of independence, Kenya’s foreign policy towards Somalia has been founded on territorial integrity. This was due to Somali’s unrelenting quest to have the former Northern Frontier District as part of its territory. In a move to protect her territory, Kenya entered into military pact with the neighboring Ethiopia that was equally faced with the same problem.
However, there was a significant shift of Kenya’s foreign policy towards Somalia after the ouster of Siad Barre in 1991 and subsequent disintegration of Somalia, where Kenya adopted diplomacy of conflict management in a move to stabilize Somalia. 2011 marked another significant shift of Kenya’s foreign policy with a military engagement in pursuit of terror related Al Shabaab in Somalia.

The ongoing maritime dispute has and continues to have significant influence on Kenya-Somali relations. The dispute is founded on undelimited maritime zones between the neighboring states. The discovery of vital seabed resources in the contested maritime zones has heightened tensions between the two states as each seek to control the maritime zones and the resources therein. Although the two states had entered into an agreement in 2009, Somalia sought legal redress from ICJ and the case is still on going. Most importantly however is the impact that the dispute has had on the two neighboring states including severed diplomatic relations among others. Although Somalia prefers a legal process, Kenya remains optimistic that since the dispute is political in nature, it should be addressed using political means such as negotiation. The study finding support the central thesis that Kenya’s should work towards securing her vital national interests through any means, and in the spirit of self-help in an anarchic international system, use of force may also be a possible alternative for Kenya.
5.3 Recommendation

From the research findings this study makes the following recommendations.

1. Since Somalia has rejected to politically negotiate with Kenya over the contested border, Kenya should withdraw from the case by refusing to cooperate as it is the wrong approach towards political disputes.

2. Kenya should explore the option of effective occupation since she claimed ownership of the contested territory since 1979. This would help Kenya to acquire her sovereign rights of the contested region.

3. Both Somalia and Kenya should work towards creating public awareness of the issues at hand, and engage in constructive means to avoid escalation of the dispute.

4. Kenya should also enhance her presence in Somalia, and lobby the leaders of various federal states in favor of negotiated settlement.

5. African Union and the sub regional organizations should work towards developing and strengthening available institutions for resolving maritime border disputes.

6. Since the dispute is still ongoing, there is need for further studies on the final determination and the effects thereof.

7. Further analysis of the actors and their interests should be carried out to inform policy options.
REFERENCES


APPENDIX

Appendix 1: Proposed Interview Schedule/ Guiding Questions.

The interview guide has questions generated to respond to the objectives of the study. The questions will not necessarily apply to all interviewees but will be selected depending on the respondent in terms of his organization and position. All the data collected will only be used for academic purpose.

Section A

1. What is your general view of Kenya’s foreign policy behavior towards its neighboring states?
2. What are the possible factors that determine the variation in Kenya’s foreign policy towards her neighboring states?
3. How have territorial border related issues informed Kenya’s foreign policy behavior?
4. What are the possible causes of territorial border disputes between Kenya and her neighboring states?
5. Who determines Kenya’s foreign policy decisions and subsequent behavior and how? (President, Ministry of foreign Affairs etc.)
6. How has Kenya handled territorial disputes with her neighboring states? Have such mechanisms been effective? If yes or no, why?

Section B

1. What is your view on Kenya-Somali relations as neighboring states?
2. What factors have informed Kenya’s foreign policy towards Somalia?
3. Comment on Kenya’s territorial dispute as independent states
4. In the recent past Kenya has been involved in a maritime territorial border dispute with Somalia. Are you aware of the dispute? If yes, what is your opinion on the said dispute?
5. What are the possible causes of the dispute?
6. In your own opinion, what are Kenya’s national interest in the disputed territory?
7. Apart from Kenya and Somalia are there other possible external actors who have informed the dispute? If yes, who are they and what are their possible interests?
8. How has the territorial maritime border dispute shaped Kenya’s foreign policy towards Somalia?
9. Do you think this maritime dispute has effects on other neighboring states in the Horn of Africa? If yes, how?
Section C

1. What mechanism are the available mechanisms for managing territorial border disputes between sovereign states?
2. What mechanisms have been employed in the management of the Kenya-Somalia border disputes?
3. How successful have the mechanisms that have been involved in the management of the dispute?
4. What are possible opportunities and challenges of the dispute management approaches?
5. What is your take on the available multilateral avenues of dispute resolution like the UN, AU and IGAD?

Section D

1. Please provide any recommendation on this topic of discussion.

Thank you for your time and the invaluable insights towards this study.