

Ruling on maritime dispute to severely test Kenya's soft power

The clock is ticking towards the September 9-13, 2019, tipping point, when the International Court of Justice (ICJ) at The Hague, Netherlands, will decide on the maritime delimitation case filed by Somalia against Kenya on August 28, 2014.

Never before in its history has Kenya's capacity to harness the technologies of soft power to protect its interests been so severely tested. In the information age, soft power, defined by the Harvard Professor Joseph Nye as the ability of countries to attract and co-opt, rather than coerce (hard power), is the handmaid of diplomacy.

Kenya's think tanks and universities are the white knights of soft power in the search for durable solutions to the security challenges arising from the Somali-Kenya maritime dispute.

It is in this context that the Horn Institute (the International Institute for Strategic Studies) convened over 30 experts of think tanks, universities and research firms from across Africa in Nairobi on July 25-26, 2019.

For many, the gist of the Kenya-Somalia Maritime dispute is the 160,579 square kilometres (62,000 square-miles) oil-rich triangle in the

Indian Ocean. But what is at stake is that Kenya faces the existential threat of losing its access to international waters, resources and geo-strategic advantage. Its landlocked neighbours have to explore viable alternative access to the Indian Ocean ports.

Kenya's soft power blitz has to rest on six planks. First, Nairobi has to put its house in order by winning the hearts and minds of its domestic constituency and carrying its people along in this decisive case. Up to this point, the threat level to Kenya's territorial integrity, economy and security among its citizens is very low.

Kenyans need to know that what is at stake is not just the vast deposits of hydrocarbons in the Indian Ocean. The equidistant line running South will intersect the Parallel east line marking Kenya-Tanzania border, severely reducing Kenya's territorial waters, closing its access to international routes and literally turning it into a "landlocked country".

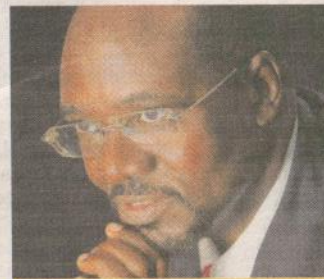
Ships entering Kenya may have to seek clearance from Mogadishu or Dar-es-Salaam, a real threat to Kenya's territorial integrity and sovereignty. Sadly, Kenya's coast waters will be no more than a large swimming pool of no strategic

worth.

Second, despite the case, Kenya must continue with its economic, security and other activities within its territorial waters in line with the international principle of "Effective Occupation". Ungoverned spaces in the territorial waters will give sway to pirates, waterborne terrorists and other criminals. Kenya's newly created Coast Guard has to move quickly and work with relevant county governments and local communities to support and empower fishermen and local communities as engines of maritime development.

Third, Kenya need to deploy its soft power to effectively blunt residual Somali nationalism. This is necessary to deter Somalia's political elite from weaponising the case. The timing of the ICJ September ruling is perfect for Mogadishu's elite to inflame public passion and whip Somali nationalism to a fever-pitch as a strategy to win the 2020 presidential election. Nairobi has also to stay alert to the possibility of the weaponisation of terrorism in the conflict, giving Al-Shabaab a new lease of life as a bona fide defender of the Somali nation.

Fourth, Kenya has to convince the world that while it is still committed to a rule-



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based international system, the International Court represents a redundant Anglo-Saxon adversarial court system. The American law professor and Director of the Centre for Conflict Resolution at the University of California, Carrie Menkel-Meadow, rightly characterised this adversarial system as "inadequate, indeed dangerous, as a dispute resolution system". It cannot guarantee a decision that will be acceptable to all parties or end the dispute amicably. Indeed, it will complicate regional peace in the volatile Horn of Africa.

Moreover, the court has serious moral deficit as an honest impartial broker. The Court's President, Abdulqawi Ahmed Yusuf (2009-2027) is a Somali citizen. His election in 2009 actually made the court route attractive to Somalia, which unilaterally exited a negotiated path, jettisoned the 2009 Memorandum of Agreement on the demarcation of the Kenya-Somalia maritime border and took the court's adversarial route.

The success of Kenya's soft power or quiet diplomacy will be measured by its ability to get the court to either delay the case or to withdraw it all together to give way to non-adversarial negotiated settlement of the matter.

Fifth, Kenya has to use its instruments of soft power to expose the role of the geopolitical interests of the Gulf States in the dispute.

The spillover effects of geopolitical wars pitting the Turkey-Qatar axis against the Saudi Arabia-United Arab Emirates front in the Gulf region are fanning the crisis. Sixth, also under severe test is the capacity of Kenya's knowledge-based institutions and lobbies to use soft power to produce evidence and expose the role of the oil corporations and other interests in masterminding and bankrolling

the case at the international court of justice and fanning the Kenya-Somalia dispute.

Seventh, Kenya has to use soft power to influence the policy of the emerging African Peace and Security Architecture to support negotiated solutions to maritime disputes on the continent, and specifically the Kenya-Somalia dispute.

This demands that Kenya ride on the "2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy)", designed to enhance maritime viability for a peaceful and prosperous Africa.

Finally, Nairobi has to win over key members of the UN Security Council — America, United Kingdom, France, China and Russia — to the reality that the ripple-effects of the ICJ case have the potential of destabilising the entire Indian Ocean beyond Kenya-Somalia territorial waters.

All maritime boundaries in the West Indian Ocean run parallel East.

Upholding the Equidistant principle will demand that all boundaries along the East Coast be adjusted, with the potential of opening new conflicts.

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