Does the international Court of Justice have an impact on security on the African Continent?

Akpoghome, Theresa Uzoamaka, Akpoghome Godwin Uduimoh*

A. Abstract

Africa has been home to several conflicts and insecurity due to several challenges ranging from climate change, hunger and malnutrition, diseases, increase in population and the scramble for the scanty resources on the continent. Among the problems in the continent is the border/territorial dispute occasioned by the demarcation and delimitation of boundaries by the colonial masters. These conflicts relating to border or territorial boundaries have exacerbated. Some of these cases were filed before the ICJ for adjudication and settlement. It is in the light of this that this paper examines the impact of the ICJ on security in Africa. The paper adopts the doctrinal method and examines the purpose of the League of Nations and the United Nations. The paper finds that the League and UN Charter encourages pacific settlement of disputes which includes judicial settlement. The paper notes that ICJ is the principal judicial organ of the UN and that the ICJ has settled several boundary disputes in Africa. Without the intervention of the ICJ these disputes had the potential to cause instabilities and full-scale wars. It observes that these settlements engenders peace and security and increases the confidence of African states in the Court. It further observes that ICJ also resolves cases that do not have boundary colorations. The paper notes that African states are willing to implement the decisions of the Court although they have not done so to demonstrate their willingness and readiness to obey international law. Instead there have been external influences or motives that have greatly contributed to the way states respond to the Court's decision and notes that it can be argued that states have quickly complied with the decision of the ICJ when such decisions are in line with their domestic or political interests. The involvement of ICJ in resolving disputes in the region further reveals the continents growing confidence in the Court as the appropriate forum to resolve their disputes. This confidence has been demonstrated by the willingness of some African States to submit cases unrelated to territorial boundaries to the ICJ. These submissions reaffirm not only the willingness of parties to seek intervention of the ICJ to settle their disputes, but also the role and supremacy of the rule of law as the guiding framework to settle disputes among parties. The choice of the Court as a neutral arbiter removes the likelihood of bitter confrontation between governments and

* Akpoghome, Theresa U, Ph.D., LL.M, LL.B, BL, Professor, Department of Public Law, Faculty of Law, University of Delta, Agbor, Nigeria. E-Mail: teremajor@gmail.com, Ph: +2348065436545.

Akpoghome, Godwin U, MA, BA, (Ph.D. Research Candidate) University of Benin, Nigeria. E-Mail:uzowin2012@gmail.com. Ph:+2348033193890.

their peoples, particularly local communities, who may be unwilling to accept the outcome of the dispute. Based on the findings and observations, the paper recommends that ICJ should co-opt other regional and continental mechanisms in resolving boundary disputes. The paper notes the achievement of the AUBP and further recommends that ICJ should be a court of last resort for states. It then concludes by noting that Africa must be ready to find African solutions to African problems as regional mechanisms have better chances of understanding and resolving disputes better.
Key Words: *Africa, Security, Disputes, ICJ, Conflicts, Regional, Mechanisms, African Union.*

I. Introduction

Africa has and is still a continent facing a series of security breaches or threat particularly territorial disputes, immunities and criminal proceedings, armed activities on the continent, issuance of international arrest warrant and serious violations of international law. Security means much more than the deployment of armed forces. Where there is an effective judicial and quasi-judicial institution, they provide an efficient method of setting societal conflicts and enables check on the use of force by states.[1]

A ready instance on the use of judicial institution to resolve dispute would be Kenyan post election conflict. Events leading to the first round of the Kenyan presidential election in August 2017 revealed that tensions were high. Results coming from the polls showed that there was a tight race between the sitting President Uhuru Kenyatta and his contender Raila Odingo.[2] When the result revealed that Uhuru Kenyatta was winning with an unprecedented margin, the country was faced with the fall out, leading to ethnically based violence that led to the demise of an estimated 1,500 persons and the displacement of hundreds of thousands.[3] Rather than towing the same path, the opposition filed its case at the Kenya Supreme Court and in a landmark judgment the Supreme Court adjudged the election null and void on the basis that the national electoral institution failed to stick to the laid down practices for the conduct of the election. The opposition found justice simply by working within the system.[4]

Conflict over resources especially cattle rustling and farmer/herder conflicts over land, pasture and water constitutes the most common conflicts experienced in agrarian regions of Africa.[5] In Nigeria alone, the farmers/herders conflict has led to over 12,000 deaths in

1 Godfrey Musila 'Why Justice Matters for Security', (April 20 2018) Africa Center for Strategic Studies, https://www.africancenter.org/spotlight/why-justice-matters-for-security-africa/ (accessed 27 June 2022).

2 Ibid.

3 Ibid.

4 Ibid.

5 *Akpoghome*, *Theresa* and *Adikibe Ekene*, 'Herdsmen and Farmer Conflict in Nigeria: A Quest for Paradigm Shift', *Benson Idahosa University Law Journal*, Vol. 5, Pp. 1–20 at 6.

the northern part of the country between 2011 and 2017[6] and the terror has spread to the southern part of the country resulting in hundreds of death leading to abandonment of farm settlement by farmers giving rise to food insecurity in the country.[7] About 1,300 persons have died in this conflict and the Armed Conflict Location and Event Data (ACLED) has recorded over 8,343 deaths since 2005.[8] These involve gun violence from the herders. In South Sudan, the national political conflict is as a result of resource control over pasture and water between the farmers and herding community.[9] In Central African Republic, the conflict is between Muslim herders and Christian farmers involving gun violence along the Kenya-Uganda and Kenya-Ethiopia borders and it continue to impose harsh economic situations on the affected communities.[10]

Over 100 active border disputes have been documented in Africa, most of which exits as a result of the arbitrary sharing of the continent by the European Colonial Masters and the failure of the successive governments to ascertain and mark the borderlines.[11] As the African countries capacity to exploit resources within their borders grew, so did the potential for conflict with their neighbours. These conflicts requires effective and sustainable dispute resolution mechanisms and judicial mechanism provide an important means of settling such border disputes as noted in Article 33 of the UN Charter[12] and Article 4 (e) of the Constitutive Act of the African Union.[13]

Historically African states have embraced judicial institutions such as the international court of justice (ICJ) and the arbitral commissions when border conflict becomes difficult to settle. The ICJ has decided over seven border related cases in addition to its Advisory Opinions on disputes in Africa. Apart from border related cases, the ICJ has also intervened in the interpretation of international law rules in the continent as shall be shown in this paper. In view of the foregoing this paper examines the impact or contribution of the international court of justice in resolving current and emerging security challenges on the

6 *Ibid.* See also *Musila* note 1, p2.

7 Akpoghome, note 5 at 8.

8 *Josiah Oluwole*, 'Special Report: Farmers-Herders Conflict: After many Deaths, Ondo Residents, Officials seek relief under Anti-Open Grazing Law', (December 28 2021), *Premium Times*, https://www.premiumtimesng.com/regional/south-west/502828-special-relief-under-anti-open-grazing-law-html (accessed 2 July 2022).

9 *Musila*, note 1, p2.

10 *Ibid*.

11 *Ibid*.

12 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 arrangement or other peaceful means of their own choice.

13 The Constitutive Act provides that 'peaceful resolution of conflict among Members States of the Union through appropriate means as may be decided upon by the Assembly; Prohibition of the use of force or threat to use of force among member states of the Union'. See article 4(e) (f) Constitutive Act of the African Union 2002.

African continent. The paper is divided into eight parts including the introduction. Part II discusses the United Nations Mechanisms of dispute resolution and the role of the League of Nations in the same respect. This is to show that these institutions opted for pacific settlement of disputes as a means of achieving international peace and security. Part III presents the African Union Border Governance Strategy which has helped in resolving some border conflicts. The paper argues that the adoption of the governance strategies will help to reduce the task of the ICJ which appears to be overwhelming. Part IV examines the ICJ dispute resolution in Africa while Part V considers the contribution of ICJ in territorial and other dispute in Africa. Part VI assesses the impact of ICJs interventions on security in Africa. Part VII discusses the need for the ICJ to integrate the African dispute resolution mechanism and the challenges in Africa. The paper argues that the time has come for Africa to proffer African solutions to the problems in the region as the region understands and appreciates the peculiarities of the challenges while part VIII concludes the paper.

II. The Quest for international peace and security by the League of Nations and the United Nations.

When the League of Nations was established, the main object of the League was to maintain 'peace among nations' and this is also the primary aim of the United Nations.[14] It is the desire to attain this goal that Covenant of the League of Nations and the Charter of the United Nations stated that the peaceful settlement of disputes was the defining feature of the organizations.[15] Unfortunately, the establishment of the institutions did not restrain the states completely from using force in their bids to achieve foreign policy objectives.[16] The inability of the member states to peacefully resolve their disputes led to the fall of the League of Nations and this was followed by the unprecedented destruction experienced during World War II (WWII).[17]

After the WW II, during the negotiation and ultimately the adoption of the United Nations Charter in San Francisco, the negotiating parties resolved to incorporate the Statute of the International Court of Justice as a major part of the United Nations Charter.[18] This

14 John A Moore and Jerry Pubantz, *The United Nations: International Organization in the Twenty-First Century* (Pearson Prentice Hall) 2006, 2nded. (New York, 2017) Pp. 1–374.

15 Covenant of the League of Nations, art II, Charter of the United Nations Art I (UN Charter), United Nations Charter, https://www.un.org/en/about-us/un-charter/full-text (accessed 2 July 2022) 'Covenant of the League of Nations' https://www.1919_the_covenant_of_the_league of_nations_art_10_to_16_pdf (accessed 2 July 2022), https://unhcr.org/refworld/docid/3dd8b9854.html (accessed 2 July 2022).

16 *Charles Rizike Majinge*, 'Emergence of New States in Africa and Territorial Dispute Resolutions: The Role of the International Court of Justice', *Melbourne Journal of International Law* (2012) Vol. 13, 1–43 at 2.

17 *Ibid.*

18 United Nations Conference on Trade and Development, Dispute Settlement General Topics – International Court of Justice, UN Doc UNCTAD/EDM/MISC232/Add 19 (2003) 5.

decision had two key vital elements – first it reaffirmed the essential role of peaceful settlement of disputes among states and secondly it provided a platform within which nations could peacefully settle their differences.[19] The inclusion of the ICJ statute as a major part of the UN Charter showed the willingness of states of create an avenue or platform for the peaceful resolution of dispute as the devastation of the Second World War had not been forgotten.

As indicated earlier, the main purpose of the article is to discuss the impact of the ICJ on several contentions situations particularly the border or territorial disputes which have greatly impacted on security on the continent. Some of these situations have been presented for resolution at the ICJ and the impact of the ICJ intervention in these territorial and non-territorial disputes in ensuring in international peace and security is examined. The extent of compliance with the decision of the ICJ by the affected African state is also explored as this also impacts on the peace and security of the African Continent.

The UN Charter is very clear in its provision on the restriction on the use of force as its primary objective is to eliminate threat to peace and security while encouraging the settlement of disputes likely to breach international peace and security.[20] This aim is achieved by members undertaking to refrain in their international relations form the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.[21] The Need for peaceful settlement of disputes naturally leads to the prohibition of the use of force as enshrined in article 2 (4) of the UN Charter.[22] Article 33 require parties to a dispute which is likely of endanger international peace and security to seek the settlement of such conflict by way of negotiation, inquiry, mediation, conciliation judicial settlement or other peaceful means of their own choice.[23] Reaffirming this provision, the Manila Declaration further provides that '[e]very State shall settle its international dispute exclusively by peaceful means in such a manner that international peace, security and justice, are not endangered.[24] The above stipulation reaffirms the provision of art 33of the UN Charter which itemized

19 Fredrick Northedge, *The League of Nations- Its Life and Times 1920 – 1946* (Leicester, 1986) Ian Brownlie, *International Law and the Use of force by States* (Oxford, 1963).

20 UN Charter, Preamble.

21 *Ibid, Article 2 (4).* See John collier and Vaughan Lowe, *The Settlement of Disputes in International Law-Institutions and Procedures* (Oxford, 1979).

22 Christine Gray International Law and the Use of Force, 3rd (ed.) (Oxford, 2008) Ch. 2.

23 UN Charter, Ch VI article 33(1). See the UN General Assembly in its Declaration of the Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations Res 2625, UN GAOR, 6th comm., 37th sess, 68 plen mtg, Agenda item 83 supp. No. 18, UN Doc A/RES/2625 (XXV) (24 October 1970) Preamble, Manila Declaration on the Peaceful Settlement of International Disputes, GA Res 37/10, UN GAOR, 6th Comm. 37th sees. 68th plan mgt. Agenda item, 122, UN Doc A/RES/37/10 (15 November 1982) annex I, Para 1–2 (Manila Declaration).

24 Friendly Relation Declaration, UN Doc A/RES/2623 (XXV) Annex I, Para. 2, Manila Declaration, UN Doc A/RES/37/10 annex I, Para. 2.

the mechanisms that States can adopt to peacefully settle their disputes.[25] Again the Manila Declaration encourages States to act in spirit of good faith and cooperation and make every effort to achieve pacific settlement of their local disputes through such regional arrangements or agencies before referring their disputes to the United Nations Security Council.[26] It is important to reiterate that the UN Charter did not specify any particular means of resolving disputes peacefully; instead it mandates the members to use various options as long as they are channeled towards the amicable settlement of such disputes.[27]

III. The International Court of Justice (ICJ)

The ICJ is the principal judicial organ of the United Nations. It was established by the Charter of the United Nations, signed on 26 June 1945 at San Francisco[28] in pursuance of one of the primary purpose of the United Nations which is to bring about by peaceful and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.[29] The ICJ has its operating statute which forms part of the Charter, in addition to its own rules.[30] It started its work in 1946, when it replaced the Permanent Court of International Justice (PCIJ) which was established in 1920 under the auspices of the League of Nation.[31] One major point to note is that the ICJ did not succeed the PCIJ. The ICJ is one of the organs of the UN but the PCIJ was not an organ or the League of Nations.

The seat of the Court is in the Peace Palace at The Hague (Netherlands). It is the only organ of the UN out of the six that is not located in New York. The other principal organs of the UN are the General Assembly, the Security Council and the Secretariat.[32] The Court has two roles; the first is to settle, in accordance with international law, legal dispute submitted to it by States and the second is to give advisory opinions on legal questions referred to it by duly authorized UN organs and specialized agencies.[33] The Court

25 Friendly Relation Declaration, UN Doc A/RES/2625 (XXV), Annex II, Para.2, Manila Declaration, UN Doc A/RES/37/10 annex I, Para 5.

26 Manila Declaration, UN Doc A/RES/37/10, Annex 1 Para 5–6, annex II, Para 2.

27 UN Charter art 33(1), see also Manila Declaration UN Doc A/RES/37/10, Annex II, Para 6.

28 United Nations, *The International Court of Justice: Questions and Answers about the Principal Judicial Organ of the United Nations,* 10thed (United Nations Department of Public Information; 2000) Ch. I. See also ICJ, "History of ICJ", International Court of Justice 2017–2022, https://www.icj.org.en/history (accessed 20 May 2022).

29 UN Charter, art I, https://www.org/en.aboutis.un-charter/fulltext (accessed 30 June 2022).

30 United Nations note 28, p.2.

31 *Ibid.*

32 *Ibid.* See *Bowett D.W*, *Law international institutions* (Oxford, 2010).

33 Article 36 Statute of the ICJ.

is composed of 15 judges and is assisted by a Registry, its administrative organ.[34]Its official languages are English and French.[35]

The International Court of Justice as the principal judicial organ of the United Nations contributes to the peaceful means of dispute resolution between states. Boundary disputes[36] are the most common types of dispute between African States submitted to the court but these are not the only categories of contentious disputes submitted to the court by the African States.[37] Some have argued that African leaders should rely more on African institution such as the African Union (AU) to resolve disputes between African States.[38]

IV. Security and the Strategy for better Integrated Border Governance in Africa

African region is currently made up of 55 nations. After African states obtained their independence, the artificial and very poorly demarcated borders of many countries were considered the most potent source of conflict and political instability.[39] This generated serious debates on whether to revise or maintain the colonial borders.[40] The debate divided the academic community and policy-makers into two factions, the revisionist and the antirevisionist.[41] African colonial borders are conventionally understood to have been delineated by arbitrary processes during the later nineteenth century scramble for Africa most notably during the 1884 – 1885 Berlin conference when seven European powers agreed upon their zones of influence.[42]Intent on preserving the *status quo* and preventing further intra-European conflicts over African territories, European diplomats drew borders without taking into account local conditions, with limited knowledge of local geography and without in any way forecasting future independence: one consequences of this relative ignorance is that 44 % of the borders created after the Berlin conference followed straight lines.[43]Recently

34 Article 3(1) Statute of the ICJ.

35 Article 39 Statute of the ICJ.

36 Examples include the Nigeria and Cameroon dispute over the Bakassi peninsula and the maritime delimitation case between Somali and Kenya.

37 *Yusuf Abdulqawi Ahmed and Mandel Ruma*, "The International Court of Justice and African", (2 April 2020) Chatham house, https://www.chathamhouse.org/events/all/rresearch-event/international-court-justice-and-africa/ (accessed 20 May 2022).

38 *Ibid.*

39 *Ikome Francis N*, Institute for Security Studies Africa international borders as potential source of conflict and future threats to peace and security, Institute for Security Studies Paper No.233 (May 2012) p. 1.

40 *Ibid.*

41 *Ibid*. See also *Nugent P* and *Al Asiwaju* (eds.) *African Boundaries* (London, 1996) *Widstrand* (ed.) *Africa Boundary problems* (Uppsala, 1969): *Engelbert P, Tarango et al,* 'Dismemberment and Suffocation: A Contribution to the Debate on African Boundaries', *Comparative Political Studies* (December 2003) Vol. 35, No. 10, Pp. 1093–1118.

42 *Ibid,* p 1096.

43 *Ibid.*

scholarship has shown that Africa borders are not completely arbitrary. In a small number of cases, colonizers with access to more detailed information tailored borders to preserve the unity of cultural groups, to correspond to the borders of pre-colonial polities, or to accommodate requests of local chiefs.[44]

Engelbert *et al* finds that where colonial borders partitioned pre-existing political groupings – a phenomenon they call 'dismemberment'; this increased the proportion of international disputes. By contract, where borders brought together different pre-colonial political cultures- which they term 'suffocation', there has been a greater likelihood of 'civil wars, political instability and secession attempts'.[45]

However, the first integration organization in the continent of Africa, the Organization of African Unity (OAU) chose to maintain the *status quo* on borders to avert the likelihood of chaos and anarchy as fallout of boundary disputes.[46] Despite the choice of the OAU and the successor the African Union (AU), border conflicts became a source of instability, insecurity and conflict in the region and intra-state conflicts have replaced inter-state conflict in the continent since the late 1980.[47] There is the fear that border conflict will destabilize Africa as a result of Africa ever expanding population which is marked by shrinking economic resources and opportunities and high levels of migration.[48]

Ikome further noted that Africa's borders are very porous because of a lack of proper demarcation and delimitation. This has been identified as the major reason for the ease with which governance-related national conflicts in individual states have spilled over to the entire regions as has been the case in the Great Lakes region, West Africa and the Horn of Africa.[49] A number of African countries have at different times since independence been in conflict with each other over common boundaries. These conflicts have revolved around issues of trans- boundary minorities, trans-boundary resources, unclear frontiers and the challenges or difficulty in implementing existing colonial and post-colonial boundary agreements.[50]

44 *Ibid*, p 1096 – 97. The size and shape of African States appear to reflect colonizers' rational revenue-maximizing decisions as well as their size and likelihood of having straight borders are both negatively related to population density and the density of trade. Boundary making may have been a response to levels of pre-colonial political centralization, as more powerful African polities were better able to resist colonial partitions.

45 *Englebert et al* note 41, p 1093 – Island states typically were not subdivided, and so did not experience either of these processes.

46 *Ikome note* 39, p1.

47 *Ibid.*

48 *Ibid.*

49 *Ibid.* Many intra-state conflicts in Africa have been sparked by the forceful fusion of incompatible national groups into one state by the imposition of artificial boundaries by colonial powers.

50 *Kjell-Ake Nordquist*, 'Boundary Conflicts and Preventive Diplomacy', https://www.wilsoncenter.org/subsites /ccpdc/pubs/zart/ch2.htm (2) as cited by *Ikome* p 13.

Between the late 1950s and the late 1990s, more than half of Africa's States have been involved in some form of boundary-related conflict. While some of these conflicts were resolved using bi-lateral negotiations or third party facilitation,[51] others were very protracted.[52] As earlier observed, some of these conflicts were settled through sub regional and regional mediation efforts while other could only be settled after referral to the International Court of Justice.[53] Although the incidences of inter-state border conflicts have decreased considerably from 1980 compared to the first 15 years of Africa's independence, Africa's borders have continued to pose serious challenges.[54] Consequently, the management of boundary problems has been a central issue in policy making foras at the regional and continental levels.

This has given rise to so many border management proposals and resolutions. Based on the background of protracted border conflict between Nigeria and some of its neigbours, particularly the recurrent violent clashes between Nigerian security forces and Cameroonian gendarmes over their common maritime boundary, Nigeria proposed the establishment of OAU Boundaries Commission at the 37th Ordinary Session of the Council of Ministers in Nairobi, Kenya, in June 1981.[55] That proposal was aimed at evolving a framework that would permit the technical management of all Africa border problems with as little political interference as possible.[56] The proposal was referred to an ad hoc Ministerial Committee that had been mandated to study an earlier proposal by Sierra-Leone for the establishment of a Political Security Council.[57] The Ministerial Committee subsequently recommended that a Boundaries Commission should be established as a technical subsidiary organ of the proposed Security Council, or alternatively that it should be made one of its permanent committees.[58]

The ad hoc committee mandate was terminated abruptly by the 41st ordinary session based on the ground that prevailing circumstances on the continent did not permit the establishment of a political Security Council. Due to the fact that the establishment of a

51 They include Cote d' Ivore – Liberia 1960/61, Mali-Mauritania 1960/1963 and Dahomay -Bissau – Niger 1963/1965.

52 Protracted conflict include Ethiopia – Somalia (1950 – 1978 and beyond) and Cameroon – Nigeria (1963 – 2002).

53 There are four major cases in this regard and they include Tunisia- Libya boundary dispute that received ICJ's ruling in 1994; the Guinea Bissau – Senegal border conflict that was resolved by the ICJ ruling in 1992, the Libya – Chad claims over Auzou stripe, which was brought to an end by the ICJ ruling in 1992; and the Cameroon – Nigeria border conflict that was decided by the ICJ in 2002.

54 *Ikome*, note 39, p 5.

55 AU document CM/1119 (XXXVII) cited in AU, summary note on the African Union Border Programmes and its implementation modalities (BP/EX/2 (2)) Addis Ababa, 4–7 June 2007, p.2.

56 *Ibid.*

57 AU, Document CM/Res. 860 (XXXVII), *Ibid* 2.

58 AU, Document CM/127 (XLI) Annex I of the 41st Ordinary Session of the Council of Minister *Ibid; 3.*

Boundaries Commission had been linked to the establishment of a political Security Council, the Boundaries Commission idea died with the Ministerial Committee.[59] Regardless of the set-back, the leader in the region continued to indicate concern about the implication of the continents arbitrary and poorly delineated borders. They held on to the view that the struggle for the liberation of the continent from colonialism and its attendant effects, and the establishment of an atmosphere of peace, security, economic and social progress, was achievable only by the elimination of the causes of border tensions.[60]

In June 1991, Nigeria re-introduced a revised and more elaborate proposal for the establishment of an OAU Boundaries Commission at the 54th Ordinary Session of OAU Council of Ministers in Abuja, Nigeria.[61] This proposal contained recommendations for the establishment of national boundaries commissions by OAU Member States and of Regional Economic Communities (RECs). Although Nigeria did not record a huge success with the proposal, it however was successful in inserting elements of the proposal into one of the signature structures it introduced into the OAU, namely, the Council on Security, Stability, Development and Cooperation in Africa (CCSDCA).[62] The Memorandum of Understanding (MOU) on the CCSDCA, adopted by the OAU Assembly in Durban South Africa in July 2002, recognized the fact that border problems continued to threaten the prospects of peace and security on the continent and contained specific provisions for addressing border questions. Particularly the MOU made provision for the delineation and demarcation of inter-African borders by 2012.[63] On its part, the AU has upheld the principle of the inviolability of African borders as contained in article 4(b) of the AU Constitute Act.[64] It is important to observe that the objectives of the AU that are very noble will remain pipe dreams unless Africa succeeds in properly delineating its borders and transforming border areas from being a source of inter-state conflict.

59 AU, BP/EXP/2(II), *Ibid 3.*

60 This mood was reflected by the adoption of peace and security resolution CM/Res. 1069 (XLIV) by the Council of Ministers in Addis Ababa, Ethiopia in July 1986. The Council of Minister, *inter alia*- Reaffirmed its adherence to the principle of peaceful settlement of border and conflicts between states; Reaffirmed the support of African people and countries for resolution AHG/Res. 16(1) of July 1964; Encouraged Member States to undertakes or pursue bilateral negotiations with a view to demarcating and effectively delineating their common borders.

61 AU, CM/1659 (LIV) Addendum 2.

62 *Ikome* note 39, p5.

63 *Ibid.*

64 Article 4 (b) AU Constitutive Act 2002 provides: The Union shall function in accordance with the following principles: (a) sovereign equality and interdependence among Member States of the Union; (b) respect of borders existing on achievement of independence… Other germane objectives include the achievement of greater unity and solidarity among African countries and peoples, the acceleration of the political and socio-economic integration of the continent; and the promotion of peace, security and stability.

In 2020, the AU Commission/AU Department for Peace and Security published the African Union Strategy for better integrated border governance.[65] This is because in Africa, peace and security have been fundamentally interconnected with the good governance of borders and the attainment of sustainable development of borderlands. The African Union Commission (AUC) has shown its firm commitment to transform the nature of border governance by establishing the African Union Border Programme (AUBP).[66] Functioning as a platform for consultation and deliberation, the AUBP has developed and gathered support from the AU Member States on a series of normative guidelines and instructive documents, including the AU Convention on Cross-Border Cooperation (Niamey Convention).[67] The normative frameworks are not self-executing and the African Union Border Governance Strategy (AUGBS), complements the existing texts and instruments, and aims at clarifying the modalities of implementation on border governance to enhance peace and security initiatives and bilateral cooperation between bordering countries.[68]

Although the Niamey Convention is a normative step forward, the AU Border Governance Strategy based on the demands of the situation, gives a new impetus to the governance of African borders.[69] More fundamentally, the strategy is expected to narrow the wide policy-implementation gap in border governance.[70] The aim is to entrench cross-border cooperation whose implementation is based on central administration and regional level, as well as on the important local community participation.[71] This strategy takes into account emerging security challenges such as cyber-attacks, terrorism, violent extremism, trafficking in human beings and drugs.[72]

African borders 30.35 million km^{2}areas[73] covers 6 % of the total surface area and about 20 % of the total land area of the earth. Its total length of coastline, including islands is 40, 036km. the continent as made up of 55 States out of which 16 is landlocked. Its terrestrial international boundaries total a length of more than 170,000 Km$^{2.}$ It is estimated that only 35 % are demarcated.[74] This massive Africa's land mass, the multiplicity of sovereign states the abundant natural resource and surrounding open seas and oceans have implications for the continents security, peace and stability. In one breath, they represent opportunities for the African people to use these natural resources and advantages for its economic develop-

65 AU, Africa Union Strategy for Better Integrated Border Governance (AU Commission /AU Dept. for Peace and Security; 2020) 1–47.

66 *Ibid,* Foreword.

67 *Ibid.*

68 *Ibid.*

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Ibid.*

73 Including the 13 million Km^2 Exclusive Economic Zones (EEZ) of African States.

74 AU note 65, p6.

ment and in another breath, the same geographic circumstance have made the continent vulnerable to both internal and external threats.[75] Border areas are poorly governed due to lack of capacity, absence of infrastructure and state presence or an inability to exercise effective control over the territory due to contested legitimacy and marginalization.[76] In Africa, the state borders are often not identical to people's borders and hence have been known to foster three kinds of tensions.[77]

As earlier observed the African Heads of States and Government committed themselves through Cairo Resolution 16 (1) from 1964 to the intangibility of borders upon independence. The colonial legacy in many cases left imprecisions in, or simply a sheer lack of clear physical border demarcation on the ground.[78] This is also true for the delimitation of maritime boundaries in Africa. This has led to violent conflicts; some took more than 5 year to settle while some have not been settled. Some of this case settled using non judicial mechanism while some others were filed before the International Court of Justice.

V. Contributions of ICJ to Dispute Resolution in Africa

We earlier observed that African countries have at different times since independence been in border related conflict.[79] Some of these conflicts were brought before the ICJ for adjudication and settlement. This section reviews some of these cases and the impact the ICJs judgments have had on security in the continent. Some of these cases were contentious while in some the advisory opinion of the ICJ was sought. Here we attempt to examine some of the cases decided or that were presented before the ICJ by African States on borders and other conflicts *albeit* briefly.

75 *Ibid.*

76 *Ibid.*

77 Tensions between neighbouring states, between state and their people and between states and violent actors including international criminal cartels and terrorist groups.

78 AU note 65 p. 6.

79 Some of these conflict include Ethiopia- Somalia 1950 – 61, 1963–77 1977–78; Cameroon/Nigeria-1963 – 2002; Algeria/Tunisia – 1961 – 1970, Algeria/ Morocco – 1962 – 1970; Ethiopia/Kenya – 1963–1970; Cote d' Ivoire/ Liberia 1960–1961; Mali/Mauritania, 1960–1963; Chad/Libya, 1935–1994; Guinea Bissau/Senegal, 1980 -1992; Dahome/Bissau/Niger, 1963–1965, Kenya/Somalia, 1962 – 1984, Tunisia/Libya – 1990 – 1994; Malawi/Tanzania 1967 –, Mali/Burkina Faso – 1963; 1974 – 75, 1985–86; Ghana/Upper Volta/Burkina Faso 1964–1966; Equatorial Guinea/Gabon 1972; Ethiopia/Eritrea 1952 – 1992; 1998 – date.

1. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo (DRC) v. Uganda)[80]

In June 1999, the Democratic Republic of Congo (DRC) filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda "for acts of armed aggression committed…. in a flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity" in addition to the reparation for acts of intentional destruction and looting and the restitution of national property and resources appropriated for the benefit of the respective respondent States. In its applications instituting proceedings against Burundi and Rwanda the DRC referred as bases for the Court's jurisdiction, to articles 36, paragraph 1, of the Statute, the New York Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation and lastly article 38, paragraph 5, of the Rules of Court. However, the government of the DRC informed the Court on January 15 2001 that it intended to discontinue the proceeding against Burundi and Rwanda, stating that it reserved the right to invoke subsequently new grounds of jurisdiction of the Court. The two cases were therefore removed from the list on 30 January 2001.

2. In the Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of Congo v. Uganda*).[81]

On 23 June 199, the Democratic Republic of Congo (DRC) filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (Uganda) in respect of a dispute concerning the "acts of armed aggression perpetrated by Uganda on the territory of the DRC, in flagrant violation of the United Nations Charter and of the Charter of the Organisation of African Unity[82]. The DRC founded the jurisdiction of the Court on the declarations of acceptance of the compulsory jurisdiction of the Court made by the two states. On 19 June 2000, the DRC filed a request for the indication of provisional measures to put a stop at all military activity and violation of human rights and of the sovereignty of the DRC by Uganda.[83] On 1 July 2000, the court ordered each of the two parties to prevent and refrain from any armed action which might prejudice the rights of the other party or aggravate the dispute, to take all measures necessary to comply with all of their obligations under international law and also to ensure full respect for fundamental human rights and for the applicable provisions of humanitarian law. Uganda subsequently filed a

80 *DRC v Rwanda,* ICJ judgment delivered on Jan 30,2001, https://www.icj-cih.org/en/lase/115 (accessed 30 June 2022).

81 *DRC v. Uganda*, ICJ Judgment delivered February 9, 2022, https://www.icj.cij.org/en/case/116 (accessed 30 June 2022).

82 *Ibid*, Paras. 1–47.

83 *Ibid*.

counter memorial containing three counter- claims by an Order of 29 November 2001. The Court found that two of the counter – claims (acts of aggression allegedly committed by the DRC against Uganda; and attacks on Uganda Diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the DRC is alleged to be responsible) were admissible as such and formed part of the proceedings.

Following oral proceedings in April 2005, the court handed down its judgment on the Merits on 19 December 2005.The Court first dealt with the question of invasion of the DRC by Uganda. After examining the materials submitted to it by the parties, the Court found that from August 1998 the DRC had not consented to the presence of Ugandan troops on its territory (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement). The Court also rejected Uganda's claims that its use of force, where not covered by consent, was an exercise of self-defense finding that the pre-conditions of self-defense did not exist. Indeed, the unlawful military intervention by Uganda was of such magnitude and duration that the Court considered it to be a grave violation of the prohibition of the use of force as expressed in Article 2 paragraph 4 of the United Nations Charter.

The Court also found that, by actively extending military logistics, economic financial support to irregular forces operating on the territory of the DRC, the Republic of Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention. The Court then moved to the question of occupation and of the violation of human rights and humanitarian law. Having concluded that Uganda was the occupying power in Ituri at the relevant time, the Court stated that as such, it was under an obligation, according to article 43 of the 1907 Hague Regulations to take all measures in its power to resolve and ensure as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the law in force in the DRC. This had not been done. The Court also considered that it had credible evidence sufficient to conclude that Uganda Peoples Defense Force (UPDF) troops had committed violations of international humanitarian law and human rights law.[84] It found that these violations were attributable to Uganda.

The third issue that the Court was called upon to examine concerned the alleged exploitation of Congolese natural resources by Uganda.[85] In this regard, the Court considered that it had credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers had been involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities had not taken any measures to put an end to these acts. Uganda was responsible both for the conduct of the UPDF as a whole and for the conduct of individuals soldiers and officers of the UPDF in the DRC. This was so even when UPDF officers and soldiers had acted contrary

84 *Ibid*, Paras. 74–79.

85 *Ibid.*

to instructions given or had exceeded their authority.[86] The Court found on the other hand that it did not have at its disposal credible evidence to prove that there was a governmental policy on the part of Uganda directed at the exploitation of natural resources of the DRC or that Uganda military intervention was carried out in order to obtain access to Congolese resources.

In respect of the first counter-clam of Uganda the Court found that Uganda had not produced sufficient evidence to show that the DRC had provided political and military support to anti-Uganda related groups operating in its territory, or even to prove that the DRC had breached its duty of vigilance by tolerating anti-Uganda rebels on its territory.[87] The Court thus rejected the first counter -claim submitted by Uganda in its entirety. As for the second counter-claim of Uganda, the Court first declared inadmissible the part of that claim relating to the alleged maltreatment of Uganda nationals not enjoying diplomatic status at Ndjili International Airport. Regarding the merits of the claim, it found on the other hand, that there was sufficient evidence to prove that there were attacks against the Embassy and the acts of maltreatment against Uganda diplomats at Ndjili International Airport. Consequently, it found that DRC had breached its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Uganda embassy was also a violation of the rules of international law on Diplomatic Relations.[88]

The Court noted in its judgment that the nature, form and amount of compensation owed by each party had been reserved and would only be submitted to the Court should the parties be unable to reach agreement on the basis the judgment just rendered by the Court. Following the delivery of the judgment, the parties have regularly informed the Court on the progress of negotiations.

On 13 May 2015 noting that the negotiations with Uganda had failed, the DRC asked the Court to determine the amount of reparation owed by Uganda. While Uganda maintained that this request was premature, the Court, in an order of 1 July 2015, observed that although the parties had tried to settle the question directly, they had clearly been unable to reach an agreement. The parties have subsequently filed written pleadings on the question of reparations.

By an order to 8 September 2020 the Court decided to arrange for an expert opinion, in accordance with Article 67, paragraph I of its rules on some heads of damage claimed by the DRC, namely the loss of human life, the loss of natural resources and property damage. By an order of 12 October 2020, the Court appointed four independent experts for that purpose, who submitted a report on reparations on December 2020.[89] After holding oral proceedings in April 2021, the Court delivered its judgment on the question of reparation of 9 February 2022, awarding US$ 225, 000, 000 for damages to persons, US$ 40, 000,000.00

86 *Ibid.*

87 *Ibid*, Paras. 80–84.

88 *Ibid.*

89 Paras. 1–47.

for damage to property and US$60,000,000 for damage to related natural resources.[90] It decided that the total amount due should be paid in five annual installments of US$ 65,000,000.00 starting from 1 September 2022, and that should payment be delayed post judgment interest of 6 percent would accrue on any overdue amount as from the day after the day on which the installment was due.[91]

3. Frontier Disputes (Burkina Faso/Republic of Mali)[92]

Burkina Faso and Mali were formerly a part of what was called French West Africa.[93] The dispute was brought pursuant to the claim of ownership of a 100 mile strip of land (commonly known as the Agachar strip) between the two countries- an area reported rich in mineral resources. While the OAU and other African countries had tried to mediate, their efforts could not resolve the dispute.[94] By a special agreement in September 1983, both States decided to refer the case to the ICJ.[95] The claim of Burkina Faso was grounded upon the frontier delimited by the French colonial administration and the principle of *uti-possidetis* which means that the frontier inherited from colonial powers cannot be altered without the voluntary consent of the states.[96]It relied on colonial maps, which it considered to be authentic to prove its case.[97]

Mali challenged the assertion of Burkina Faso and contended that the disputed area had historically and geographically formed part of what was French Sudan. Mali also rejected the maps that Burkina Faso relied upon. It argued that such maps were contradictory and largely conflicted with existing legal documents. Mali further contended that most of the inhabitants of the area were ethnically Malian contrary to the assertion of Burkina Faso.[98] The Court was called upon to answer the following question:

90 BBC "ICJ order Uganda to pay $325m for DR Congo Occupation", (10 February 2022), https://www.bbc.com/news/world-africa-60323900 (accessed 20 May 2022). See also Chris Olaoluwa Ogunmodede, "Two ICJ Rulings Highlights Africa Regional Integration Challenges, (Feb 16 2022), https://www.worldpoliticeservice.com/trend-lines/30330/two-ICJ-rulings-highlight-africa-s-regional-integration-challenges/ (accessed 20 May 2022). See also Paras. 405–408, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) ICJ, Summary 2022/1, 9 February 2022.

91 *Ibid*, Para. 409 by twelve votes to two.

92 (Judgment) (1986) ICJ Rep 554 (Frontier Dispute).

93 *Gino Naldi*, 'Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali): Uti possidetis in an African perspective', *International and Comparative Law Quarterly*, (1987), Vol. 36, p893.

94 *Ibid,* p 894.

95 Frontier Disputes (1986) ICJ Rep 554.

96 *Naldi,* note 93, 84.

97 *Ibid.*

98 *Ibid.*

> *What is the line of frontier between the Republic of Upper Volta and the Republic of Mali in the disputed area as defined [by the parties]? The disputed area consists of a band of territory extending from the sector Koro (Mali) Djibo (Upper Volta) up to and including the region of Beli.*[99]

An important aspect of the dispute from the start was the commitment made by the parties to be bound by the decision of the Court and to demarcate the frontier within one year after the judgment has been delivered.[100] The Court made a significant distinction between the determination of a land boundary and the delimitation of the continental shelf,[101] if it affected the interests of third parties, the Court could decline jurisdiction over the matter.[102]After examining the evidence submitted by the parties, the Court noted that the maps 'cannot in themselves alone be treated as evidence of a frontier.[103] Rather, they are generally extrinsic evidence varying reliability, which might be used with other evidence of a circumstantial nature to establish the facts in question.[104] The Court went on the fix a frontier line by drawing a series of a straight line from the western end to Niger's frontier which was to be demarcated by the parties.[105] As to whether the Court could have applied a French law which was in force during the period, the Court observed that 'becoming independent, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power' as part of the ordinary operation of the machinery of state succession.[106]

The significant point in this case is that the Court relied on the principle of uti-possidetis in determining the matter and went on to delimit the line between Mali and Burkina Faso.[107] The parties expressly requested that the Court resolve their dispute on the basis of uti-possidetis, the Court invoked and relied on the principle.[108] On the significance of

99 Reproduced in Frontier Dispute [1986] ICJ Rep 554, 557 – 8 [2].

100 *Ibid*. See also *Naldi,* Frontier Dispute note 96, 894.

101 Frontier Dispute [1986] ICJ Rep 554, 578 [47].

102 Dapo Akande, 'The Role of the International Court of Justice in the Maintenance of International Peace', *African Journal of International and Comparative Law,* Vol. 8, 592, 595.

103 Frontier dispute (1986) ICJ Rep 554, 583 Para 56.

104 *Ibid.*

105 *Ibid.*

106 *Naldi,* Frontier Dispute note 93, 895.

107 Frontier Dispute [1986] ICJ Rep 554, 565, Para 20.

108 *Ibid*. For more information on the principle of *uti possidetis*, see Malcolm Shaw, 'The Heritage of State: The Principle of *Uti Possidetis* Juris Today', (1996) 67 *British yea Book of International Law*, 75, Malcolm N Shaw, *Title to Territory in Africa's International Legal Issues* (Oxford University Press, 1986). Suzanne Lalonde, *Determining Boundaries in a Conflicted World: There Role of Uti possidetis* (McGill – Queen University Press, 2002); Tomas Bartos '*Uti Possidetis* – Quo Vadis? (1997) 18 *Australian Year book of International Laws,* 37; Steven Ratner R, 'Drawing a Better Line: Uti possidetis and Borders of News States', *American Journal of International Law*, (1996) Vol. 90, p590, Constantine Antomopoulos, 'The Principle of Uti Possidetis Juris in Contemporary International Law' (1996) 49, Revue Hellenique de Droit International 29.

the principle, the ICJ noted that '[i]ts obvious purpose is to prevent the independence and stability of new states, being endangered by fratricidal struggle provoked by the challenging of frontiers following the withdrawal of the administering power'.[109]

Indeed, the Court further observed that the OAU Charter made indirect reference to the principle of *uti-posidetis*,[110] the ICJ noted that the affirmation of this principle by African statesmen or organs of the OAU are not attempts to introduce a new principle or extend a rule not previously applied in another continent to Africa. The Court stated that these affirmations are declaratory rather than constitutive as they recognizes and confirm an existing principle.[111] The Court further observed that the obligation to respect pre-existing international frontiers in the event of State succession derives from a general rule of international law whether or not it is grounded in the principle of *uti possidetis.*[112]

4. Frontier Dispute (Burkina Faso/Niger).[113]

On 20 July 2010, Burkina Faso and Niger, jointly submitted a frontier dispute between them to the ICJ, pursuant a Special Agreement signed in Niamey on 24 February 2009 and which entered with force on 20 November 2009. In article 2 of the Special Agreement, the Court was requested in particular to determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong to beginning of the Botou bend.[114] In its judgment of 16 April 2013, the ICJ observed that Article 6 of the Special Agreement entitled 'Applicable Law', highlighted, amongst the rules of international law applicable to the dispute, "the principle of the intangibility of boundaries inherited from colonization and the Agreement of 28 March 1987". It noted that the first two articles of that agreement specified the acts and documents of the French colonial administration which must be used to determine the delimitation line that existed when the two countries gained independence. It then interpreted and applied the relevant instruments to determine the frontier in the sector in question.[115]

The ICJ decided that, having regard to the circumstance of the case, it would nominate at a later, date, by means of an order, the experts requested by the parties in article 7, paragraph 4, the Special Agreement to assist them in the demarcation of their frontier in the area in dispute. By an order of 12 July 2013, the Court nominated the said three experts. The case was thus completed and was removed from the Court's list.[116]

109 Frontier Dispute (1986) ICJ Rep 554, 557, 565, Para 20.

110 *Ibid 565* – 6, Para 22.

111 *Ibid 566,* Para 24.

112 *Ibid.*

113 "Latest Development-Frontier Dispute (Burkina Faso/Niger, International Court of Justice", https://www.icj.org/en/case/149 (accessed 30 June 2022).

114 *Ibid.*

115 *Ibid.*

116 *Ibid.*

5. Territorial Dispute (Libyan Arab Jamahiriya/Chad)[117]

On 31 August 1990, the Libyan Arab Jamahiriya filed in the Registry a notification of an agreement that it had concluded with Chad in Algiers on 31 August 1989, in which it was agreed, *inter-alia*, that in the absence of a political settlement of their territorial dispute, they under took to submit that dispute to the Court.[118] On 3 September 1996, Chad filed an application instituting proceedings against Libyan Arab Jamahiriya that was based upon the aforementioned agreement and subsidiarily, on the Franco-Libyan Treaty of Friendship and Good neighborliness of 10 August 1995.[119] The parties subsequently agreed that proceeding had in fact been instituted by two successive notification of the Special Agreement constituted by the Algiers Agreement. The written proceedings occasioned a filing. This dispute concerned a title to a region of about 530 000km^2 along the Aouzon strip made up of the entire frontier between the two states.[120] After the filing, the parties submitted memorials; a Counter Memorial and a Reply, accompanied by voluminous annexes, and the oral proceeding were held in June and July 1993.[121]

The Court delivered its judgment on 3 February 1994. The ICJ began by observing that Libya considered that there was no existing boundary, and had asked the Court to determine one, while Chad considered that there was an existing boundary and had asked the Court to declare ad what the boundary was.[122] The Court then referred to the lines claimed by Chad and by Libya, as illustrated in sketch-map reproduced in the judgment,[123]Libya's claim was on the basis of a coalescence of rights and titles of the indigenous inhabitants, the Senoussi Order, the Ottoman Empire, Italy and Libya itself, while that of Chad was on the basis of a Treaty of Friendship and Good Neighbourliness concluded by Frances and Libya on 10 August 1955, or alternatively, on French effectivités, either in relation to, or independently of the provisions of earlier treaties.[124]

The Court noted that it had been recognized by both parties that the treaty between France and Libya was the logical starting point for consideration of the issues before it.[125] Neither party questioned the validity of the 1955 Treaty, nor did Libya question Chads right to invoke against Libya any such provisions thereof as related to the frontiers of Chad. One of the matters specifically addressed was the question of frontiers, dealt with in article 3

117 Judgment (1994) ICJ Rep 6.

118 *Ibid.*

119 *Ibid.*

120 *Ibid, 10 Para 3.*

121 Territorial Dispute (*Libya Arab Jamahiriya v Chad)*, ICJ reports https://www.ICJ-org/en/case/83 (accessed 30 June 2022).

122 *Ibid.*

123 Judgment (1994) ICJ Report 6, p 146.

124 Territorial Dispute *supra* note 121. See Treaty of Friendship and Good-Neighborliness, France-United Kingdom of Libya, signed 10 August 1955, 1596 UNTS 264 ('Friendship Treaty').

125 *Ibid.*

and Annex I.[126] the Court pointed out that of the 1955 Treaty did not result in a boundary, this furnished the answer to the issues raised by the parties. Articles 3 of the treaty provided that France and Libya recognized that the frontier between *inter alia,* the territories of French Equatorial Africa and the territory of Libya were those that resulted from a number of international instruments in force on the date of the constitution of the United Kingdom of Libya and reproduced in Annex I to the Treaty.[127]

In the view of the Court, the terms of the treaty signified that the parties thereby recognized complete frontiers between their respective territories as resulting from the combined effects of the instruments listed in Annex I.[128] by entering into the Treaty, the parties recognized the frontiers to which the text of the treaty referred, the task of the Court was thus to determine the exact content of the undertaking entered into. The Court specified in that regard that there was nothing to prevent the parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line. If it was already a territorial boundary, it was confirmed purely and simply.[129]

It was clear to the Court that contrary to what was contended by the Libyan Arab Jamahiriya- the parties had agreed to consider the instruments listed as being in force for the purpose of Article 3, since otherwise they would not have included them in the Annex. Having concluded that the Contracting Party wished, by the 1955 Treaty, to define their common frontier the Court considered what the frontier was. Accordingly it proceeded to a detailed study of the instruments relevant to the case:

i. To the east of the line 16^0 longitude, the Anglo-French Declaration of 1999 – which defined a line limiting the French zone (or sphere of influence) to the north-east in the direction of Egypt and the Nile Valley, already under British control and the Convention of 8 September 1919 signed at Paris between great Britain and France which resolved the question of the location of the boundary of the French zone under the 1899 Declaration;
ii. To the West of the line of 16^0 longitudes, the Franco Italian Agreement (Exchange of Letters) of 1 November 1902, which referred to the Map annexed to the Declaration of 21 March 1897. The Court pointed out that that map could only be the map in the *livre jaune* published by the French authorities in 1899 and which showed a dotted line indicating the frontier of Tripolitania.

The ICJ described the line resulting from those relevant international instruments considering the attitudes adopted subsequently by the Parties with regards to their frontier it reached the conclusion that the existence of a determined frontier had been accepted and acted upon by the parties. Lastly referring to the provision of the 1955 Treaty according to

126 *Ibid.*
127 *Ibid.*
128 *Ibid.*
129 *Ibid.*

which it had been concluded for a period of 20 years and could be terminated unilaterally, the Court indicated that that treaty had to be taken to have determined a permanent frontier and observed that when a boundary has been the subject of agreement, its continued existence is not dependent upon the continuing life of the treaty under which the boundary was agreed.[130]

After the Court's decision in separate letters to the UN Secretary General, the government of both countries committed to abide by the judgment and noted the role of the Court in bringing the dispute to a satisfactory end.[131] This marked the end of 20 years of Libyan occupation of Aouzou strip.[132] It is important to note that in order to fully implement this decision both parties sought assistance from the UN. Indeed, through Resolution 915 of May 1994, the UNSC authorized the establishment of UN Aouzou Strip Observer Group to oversee the withdrawal process as required by parties.[133] It can be convincingly argued that a weaker country like Chad cannot easily compel a powerful country like Libya to concede such a strategic territory through military superiority.[134] Thus political and economic considerations were also likely to have played a part.[135]

6. Maritime Delimitation in the Indian Ocean (*Somalia v Kenya*)

On October 12, 2001 the ICJ delivered its final ruling in the Maritime Delimitation in the Indian Ocean case (*Somalia v Kenya*).[136] The Maritime boundary dispute between Kenya and Somalia, adjacent states, bordering the Indian Ocean, essentially arose from their fun-

130 *Ibid*, 37 Paras. 72 – 73. See also Temple of Preah Vi hear (1962) ICJ Rep 6.

131 *Ali Ahmed Elhouderi*, Letter dated 6 April 1994, from the Permanent Representative of the Libyan Arab Jamahiriya to the UN addressed to the SecretaryGeneral, UN Doc. S/1994/402 (13 April 1994) annex; *Laoumaye Makomp Koumbairia*, Letter dated 13 April 1994 from the Permanent Representative of Chad to the UN addressed to the Secretary General, UN Doc S/1994/424 (13 April 1994) Annex. See also *Aloysius P Llamazon*, 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice', *European Journal of International Law* (2007), Vol. 18, 815, 829–30.

132 *Ibid.*

133 *Boutros Boutros -Ghali*, 'A Grotian Moment', *Fordham International Law Journal* (1995), Vol. 18, 1609, 1611.

134 *Charles Riziki Majinge*, 'Emergence of New States in Africa and Territorial Dispute Resolution: The Role of the International Court of Justice", *Melbourne Journal of International Law* (20112), Vol. 13, 1–43 at 26.

135 *Ibid.*

136 Maritime Delimitation-The Indian Ocean (*Somalia v Kenya*), Judgment (Oct 12, 2021) https://www.icj-cij.org/en/case/161 (hereinafter Somalia-Kenya case). For more information see *Clive Schofield, Pieter Bekker and Robert van de Poll*, 'The World Court Fixes the Somalia-Kenya Maritime Boundary: Technical Considerations and Legal Consequences", *American Society of International Law* (December 08 2021), Volume 25, Issue 25, https://www.asil.org/insifhts/volume/25/issue/25 (accessed 5 July 2022). See also *Timothy Walker and Mohamed Gaas,* "ICJ Draws Line in Kenya and Somalia Troubled Waters", https://www.issafrica.org/iss-today/icj-draws-the-line-in-kenya-and-somalia-troubled-waters/ (accessed 20 May 2022).

damentally different approaches to maritime delimitation. Somalia instituted proceedings against Kenya through an application to the ICJ in August 2014, requesting that the Court establish a single maritime boundary delimiting the territorial sea, Exclusive Economic Zone (EEZ) and continental shelf, including seawards of 200 nautical miles from the coast. Kenya raised preliminary objections to the Court jurisdiction and the admissibility of Somalia's application in 2005,[137] but these were rejected by the Court in 2017.[138] After delays including the Covid-19 pandemic, hearing on the merits of the case were finally held in March 2021. But three days before the hearing started, Kenya informed the Court that it would not be participating in the hearing due to the Court's refusal to postpone the hearing further.

Somalia based its request for a maritime boundary delimitation on its claims that there was no pre-existing boundary with Kenya and argued that an equidistance line (i.e. a line every point of which is at an equal distance from the nearest points on the base line of each state) was the appropriate method to delimit the boundary between the two States. In contrast, Kenya asserted that a boundary already existed between the parties consistent with Kenya's claim line along the $1^{0}39'443.3$ 25 parallel of latitude. Kenya maintained that Somalia had acquiesced to its unilateral parallel of latitude claim primarily on the basis that Somalia had not responded to Kenya's 1979 claim until 2014.[139] In response, Somalia argued that it was "unreasonable and unrealistic" for Kenya to expect Somalia to respond diplomatically to its claims when Somalia was embroiled in civil war that deprived it of a functioning government from 1979–2014.

The ICJ decided, noting the "high threshold" for proof regarding the establishment of a maritime boundary through acquiescence[140] and also bearing in mind Somalia arguments concerning its civil war and resulting lack of a government in the period 1991–2005,[141] the Court rejected Kenya's contention that a maritime boundary consistent with the parallel of latitude already existed between the parties.[142] Hence, it was for the ICJ to fix the boundary.

Before the independence of the parties the former colonial powers, Italy and Great Britain had settled the land border issues through a 1927 agreement and exchange of notes in 1933.[143] Although the parties indicated different coordinates for the location of the final permanent border beacon closest to the coast, Primary Beacon No 29 (PB 29), these

137 Counter – memorial of Kenya https://www.icj-cij.org/en/case/ 161; Somalia-Kenya case, p. 7 (accessed 30 June 2022).

138 Somalia- Kenya case, Preliminary Objective (Feb.2 2017) https:www.icj-cij.org/en/case/161 (accessed 30 June 2022).

139 Proclamation of the president of the Republic of Kenya (Feb 28, 1979) https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KEN_1979_Proclamation.pdf (accessed 5 July 2022). See Somalia-Kenya case, p. 38.

140 Somalia-Kenya Case, note 138, p.52.

141 *Ibid*, 79.

142 *Ibid* p 89.

143 Termed the "1927/1933 Treaty arrangements" by ICJ, *ibid*, p32.

differences were slight (approx. 9.8 meters) and Somalia indicated that it was willing to accept the coordinates proposed by Kenya.[144] The ICJ then endeavored to connect PB 29 to a point on the coastal low water line as the land terminus point (LTP) that would be used as the starting-point for the maritime boundary. This it did by defining a straight line perpendicular to the general direction of the coast in the vicinity of the land border terminus as it appeared on British Admiralty Chart.[145] The point located by the Court is 44.8 meters southeast of PB 29 and importantly, is consistent with the location of the low- water that can be discerned from high resolution satellite strategy.[146]

However, the Court's use of the relatively small scale (1:350, 000) nautical chart which incorporated dated surveys is problematic, not least because the coastline in the vicinity of the land terminus point as depicted on the chart is predominantly well inland of the location of the coast indicated on satellite imagery, resulting in later complication when the maritime boundary was delimited.[147] Somalia and Kenya are parties to the UN Convention on the Law of the Sea (UNCLOS).[148] So, for the territorial sea the ICJ chose to define a median line in keeping with article 15 of the UNCLOS and adopted the well-established three stage approach as the basis from delimitation of the EEZ and the Continental Shelf.[149]

In drawing the median line for the delimitation of the territorial sea, the Court selected base points along the main land coasts of the parties, ignoring small offshore features.[150] The Court selected four base points for each part, designated 51 – 54 and K1 – K4. For the EEZ and Continental Shelf delimitation, the Court turned to the first stage of the three stage process and constructed a provisional equidistance line. At the second stage involving consideration of a relevant circumstances that might lead to an adjustment of the provisional line, the Court observed that when the coast of Kenya and Somalia are

144 *Ibid*, p.96.

145 British Admiralty Chart 3362. This approach was consistent with the practice in other international cases such as that taken in the Ghana-Cote d'Ivoire case. See Case Concerning Delimitation of the Maritime Boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean (Ghana/Cote d' Ivoire), Case No. 23 Judgment of September 23 2017, https://www.itlos.org/en/main/cases/list-of-cases/case-no-23 / (accessed 5 July 2022) (hereinafter Ghana-Cote d' Ivoire case).

146 QGIS P1 13.14.16 (64-bit) Open Sources Software (Version Sept. 20, 2020); Border/Marine Regional Analysis Dar es Salam, Kenya & Somalia. 1' 55 50.32 'S, 42' 5034.05 'E, Scale 1:1250 (c) 2021 MAXAR Technologies (Imagery Accessed November, 15, 2021) as cited Clive Schofield *et al* note 136.

147 The United Nations Group of Expert report on baseline cautious against the use of charts that are too old and recommends the use of chart of 1:50,000 -200, 000 scale for the depiction of baselines. See United Nations, Baseline: An Examination of the Relevant Processions of the United Nations Conventions on the Law of the Sea (DOALOS, New York, 1989) 1–2.

148 United Nations Convention on the Law of the Sea, (Montego Bay, Dec, 10 1982, in Force Nov. 16. 1994 1833, U.N.T.S 396. Both parties signed the Convention on December 10, 1982, ratifying it on March, 2, 1989 and July 24 1984. See Somalia -Kenya Case note 138, Pp. 33 and 92.

149 Somalia – Kenya Case, note 138, Pp. 122–125, 131.

150 *Ibid, p113.*

examined in isolation, "any concavity is not conspicuous".[151] However, the ICJ viewed the concavity of the coastline in the broader East African Regional context, including the coast of Tanzania,[152] and on this basis found that the coastline projection of Kenya was narrowed, substantially reducing its maritime entitlements with 200m of the coast.[153] Accordingly, the Court adjusted the EZZ delimitation line northwards such that from point A it follows a compass bearing of 114^0. However, as a direct consequence of the apparent error in the location of point A, there are inevitable "knock on" consequences for the EEZ and Continental Shelf boundaries.[154]

With regards to delimitation of the Continental Shelf Seaward of 200m EEZ limits, the Court decided by nine votes to five, that a continuation of the adjusted line was appropriate, to the outer limits of the party's continental shelves.[155] Again, as a consequence of the discrepancy in the location of point A, portions of the outer continental shelf were allocated to Somalia rather than Kenya. Approximately 324.1 km^2 or 94.4 square nautical miles of the combined EEZ and continental shelf areas beyond 200m EEZ limits lies within Somalia, rather than Kenyan side of the boundary line.

7. Maritime Boundary between Cameroon and Nigeria (*Cameroon v Nigeria*)[156]

The pacific settlement of this dispute is a testimony to the fact and belief that an international tribunal can be expedient way of breaking a negotiation deadlock in situations while a government's freedom to negotiate is constrained by domestic consideration.[157] The dispute was about the sovereignty over the Bakassi Peninsula between Nigeria and Cameroon, an area of approximately 1000sq kilometers.[158] The economic importance of this region was considerable; its natural resources included an estimated 24 billion barrels of proved oil reserve, as well as rich fish stock.[159] Having failed to resolve the dispute amicably in March 1994, Cameroon instituted proceedings against Nigeria 'relat[ing] essentially to

151 Somalia – Kenya Case, note 138, p 164. The ICJ recognized that the construction of an equidistance line can produce a cut off effect where the coastline is characterized by a concavity, *ibid*, p162.

152 *Ibid, Pp. 165–167.*

153 *Ibid p.169.*

154 *Clive Schofield* note 136, p5.

155 Somalia-Kenya case, note 138, p 196.

156 Preliminary Objections [2002] ICJ Rep 2003 (Land and Maritime Boundary).

157 *Ndumbe J Anyu*, 'The International Court of Justice and Border Conflict Resolution in Africa: The Bakassi Peninsula Conflict; *Mediterranean Quarterly*, (2007), Vol. 18, 40, 53–54.

158 *Charles Riziki Majinge*, "Emergence of New States in Africa and Territorial Dispute Resolution: The Role of the International Court of Justice," *Melbourne Journal of International Law* (2012), Vol. 13, 1–42, 31.

159 *Ndumbe*, note 157, 53–4.

the question of sovereignty over the Bakassi Peninsula'.[160] In its application, Cameroon contended that the 'delimitation [of the maritime boundary between two states] has remained a partial one and [that], despite many attempts to complete it between the parties, they have been unable to do so.'[161] To 'avert further incidents between the two countries,' Cameroon requested that the Court determine the course of the maritime boundary between the two states beyond the line fixed in 1975.[162] In June 1994, Cameroon filed an additional application to extend the subject of the dispute to include the 'question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad.'[163] Cameroon asked the Court to merge the two application and 'specify definitively' the frontier between two states from Lake Chad to the Sea.[164]

Cameroon based its claims of sovereignty over this territory on a number of treaties and arrangements between Germany and Britain and later between Nigeria and Cameroon.[165] Cameroon also cited the parties' exchange of diplomatic notes.[166] But importantly, Cameroon argued that treaties between Britain and Germany signed in March and April 1913 making provisions for settlement of their frontiers were definitive and binding in demonstrating that the Bakassi Peninsula belonged to Cameroon.[167] It further contended that the Thomson-Marchand Declaration[168] of 1930 had confirmed the earlier boundary set in 1913.[169] Cameroon contended that as a holder of conventional territorial title to the disputed areas, it need not demonstrate the effective exercise of its sovereignty over those areas because a valid conventional title prevails over any effectivitiés to the contrary.[170]

On the other hand, Nigeria reasserted its title based on three claims:

1. Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title;
2. Effective administration by Nigeria, acting as sovereign and an absence of protest; and
3. Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over Darak and the associated Lake Chad villages.[171]

160 Land and Maritime Boundary (2002) ICJ Rep 303, 312, Para 1.

161 *Ibid.*

162 *Ibid*.

163 *Ibid*. See also *Ndumbe* note 157, 45.

164 Land and Maritime Boundary [2002] ICJ Rep 303, 312, Para 1.

165 *Ndumbe* note 157, 47–8.

166 *Ibid*. See also Land and Maritime Boundary (2002) ICJ Rep 303, 331–2, Para 34.

167 *Ibid*, p. 48.

168 Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government respecting the Boundary between British and French Cameroons, 34 UKS 863 (Signed and entered into force 9 January 1931) (Thomson-Marchand Declaration).

169 For a history of Thomson-Marchand Declaration, see Land and Maritime Boundary (2002) ICJ Rep 303, 331–2, Para 34.

170 *Ibid*, 351, Para 64.

171 *Ibid*, 349.

In addressing the claims of Nigeria, the ICJ stated that 'the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which takes into account many other important variables of fact and law.[172] Making reference to its earlier decision in the *Fisheries Case*,[173] it observed that "historical consolidation" referred to, in connection with external of the territorial sea, allows land occupation to prevail over established treaty title."[174] The Court rejected Nigeria's historical basis for its territorial claim, and held that twenty years of connection were far too short to confer such a title on Nigeria.[175] The ICJ, making reference to its earlier decision in Burkina Faso/Republic of Mali observed that:

> *Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a state other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivité does not co-exist with any legal title, it must invariably be taken into consideration.*[176]

On the sovereignty of Lake Chad, the Court held that 'there was no acquiescence by Cameroon in the abandonment of its title in the area in favour of Nigeria.'[177] The Court concluded that the situation was essentially one where the effectivité adduced by Nigeria did not correspond to the law, and that accordingly 'preference should be given to the holder of the title.'[178] On the sovereign ownership over the Bakassi Peninsula, the ICJ observed that it was unable to accept Nigeria's contention that until its independence in 1960, and notwithstanding the Anglo-German Agreement[179] of March 11 1913, the Bakassi Peninsula had remained under the sovereignty of the kings and chief of old Calabar.[180] The Court stated it saw no evidence that Nigeria thought that upon independence it was acquiring Bakassi from the kings and chiefs of old Calabar because Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence.[181]

172 *Ibid*, 352, Para 65.

173 Fisheries Case (*United Kingdom v Norway*) (Judgment) [1951] ICJ Rep 116.

174 *Land and Maritime Boundary* [2002] ICJ Rep 303, 352, Para 65.

175 *Ibid*.

176 *Frontier Dispute* [1986) ICJ Rep 554, 587, Para 63. See also *Land and Maritime Boundary* [2002] ICJ Rep 339, 353–4, Para 68.

177 *Land and Maritime Boundary* [2002] ICJ Rep 339, 354–5, Para 70.

178 Frontier Dispute [1986) ICJ Rep 554, 587, Para 63.

179 Agreement between the United Kingdom and Germany respecting the Frontier between Nigeria and the Cameroons, from Yola to the Sea and the Regulation of Navigation on the Cross River, 281 Conts. 23 (Signed and entered into force 11 March, 1913) ('Anglo-German Agreement'). See also Land and Maritime Boundary [2002] ICJ Rep 339, 355–7, Para 75.

180 *Land and Maritime Boundary* [2002] ICJ Rep 339, 400, Para 194.

181 *Ibid*, 405–6, Para 207.

Based on all the agreements signed between Cameroon and Nigeria, the Court opined that 'it is clear from each one of these elements that the parties took it as a given that Bakassi belonged to Cameroon.'[182] The ICJ accordingly concluded that the boundary between Cameroon and Nigeria in Bakassi is delimited by arts XVIII and XX of the Anglo-German Agreement and that sovereignty over the Peninsula lies with Cameroon.[183] It is trite the observe that while it is evident that the Court played a decisive role in resolving this dispute between Nigeria and Cameroon, it is clear that these two countries were not prepared to go to war because of this contested territory.[184]

VI. Impact of ICJ's Intervention to Security in Africa

The foregoing discussions have shown the level of ICJ's intervention in ensuring security in Africa. The major impact is the peaceful resolution of territorial disputes in the region. It is also important to observe that these impacts should not obscure the 'rocky relationship between the Court and the African region in the early days of decolonization. The ICJ has contributed immensely to the maintenance of international peace and security on a continent that has a history of conflicts.[185] This position is based on the reality that most of the disputes resolved by the Court were concerned with areas rich in natural resources. Without the intervention of the ICJ these disputes had the potential to cause instabilities and full-scale wars.[186]

Although countries have been willing to comply with the decision of the ICJ, they have not done so to demonstrate their willingness and readiness to obey international law. Instead there have been external influences or motives that have greatly contributed to the way states respond to the Court's decision.[187] Generally, it can be argued that states have quickly complied with the decision of the ICJ when such decisions are in line with their domestic or political interests.[188] Morocco's reluctance to honour its obligations can partly

182 *Ibid*, 410–1, Para 214.

183 *Ibid*, 416, Para 225.

184 *Majinge*, note 158, p 33.

185 *Mweti Munya*, "The International Court of Justice and Peaceful Settlement of African Disputes: Problems, Challenges and Prospects," *Journal of International Law and Practice* (1998), Vol. 7, 159, 43.

186 *Ndumbe*, note 157.

187 *Aloysius P. Liamzon*, "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice," *European Journal of International Law* (2007), Vol 18, 815, 829–30.

188 Despite the decision of the ICJ reaffirming the right to self-determination of people of Western Sahara through a fair referendum, Morocco has been reluctant to comply with this decision despite the efforts of the UN and the OAU now AU, to compel Morocco to honour its obligations as determined by the Court. See International Crises Group, "Western Sahara: Out of the Impasse," (Middle East/North Africa Report No 66, 11 June 2007), 6–9.

be attributed to its unwillingness to give up the territory it considers its own, the strategic location of the territory, and the natural resources in the contested territory.[189]

The involvement of ICJ in resolving disputes in the region has further revealed the continents growing confidence in the Court as the appropriate forum to resolve their disputes

. This confidence has been demonstrated by the willingness of some African States to submit cases unrelated to territorial boundaries to the ICJ[190]. These submissions reaffirm not only the willingness of parties to seek intervention of the ICJ to settle their disputes, but also the role and supremacy of the rule of law as the guiding framework to settle disputes among parties. Another impact can be seen in the extent to which African states have been willing to comply with the judgments rendered by the court. It is observed that parties to the disputes have subsequently written to the President of the ICJ to thank him or her for the ICJ's assistance in resolving their disputes.[191] This is a sign that the states not only have confidence in the work of the court but also the growing appreciation of the pivotal role of the court as the neutral arbitral avenue.[192] The choice of the Court as a neutral arbiter removes the likelihood of bitter confrontation between governments and their peoples, particularly local communities, who may be unwilling to accept the outcome of the dispute.[193] With the legitimacy the ICJ enjoys as a result of its success in setting disputes, the likelihood that the Courts decisions will be respected is very high.[194]

Another major impact is that the ICJ's decisions have contributed to the maintenance of peaceful neighborliness among the affected communities by taking into account their basic interests in the disputed areas. This aspect is very important because territorial disputes often linger due to inability to address the fundamental interest of those affected by the decision of the Court.[195] A good instance of this is seen in the Courts adjudication of the

189 *Ibid*, 12.

190 For instance, the Republic of Guinea submitted its dispute against DRC on the rights of a citizen who was allegedly mistreated by the DRC authorities. See Ahmadou Sadio Biallo (*Republic of Guinea v Democratic Republic of the Congo*) (Judgment) [2010] ICJ Rep 103.

191 *Munya*, note 185, 221.

192 *Majinge*, note 158, 35.

193 For instance, if a state were to decide to negotiate the settlement bilaterally, there is the possibility that some sections of that state's society might accuse the government of having 'conceded too much' or for having 'short changed' them, founded on nationalistic rhetoric or fears over the loss of their livelihood. See *Paulson Colter*, 'Compliance with Final Judgments of the International Court of Justice since 1987,' *American Journal of International Law* (2004), Vol. 98, 434, 436–7. The author posits that there has been 'no substantial defiance' of ICJ judgments. See p. 450–1.

194 *Ibid,* 436–7. After the Nigerian/Cameroon dispute resolution, President Olusegun Obasanjo of Nigeria and his Cameroonian counterpart Paul Biya observed that the agreement 'was an efficient instrument to implement the Court's decision bringing a definitive conclusion to out border conflict.' See United Nations, 'Nigeria, Cameroon sign Agreement ending Decades – Old Border Dispute: Sets Procedure for Nigeria withdrawal from Bakassi Peninsula,' (Press Release, AGR/1397, 12 June, 2006).

195 See *Munya*, note, 185 which relates to the historical distrust of the Court by the African states.

dispute between Botswana and Namibia.[196] Although, this decision was notable for the determination of the boundary in favour of Botswana, its importance lay in the manner it addressed the concerns of the local people who had inhabited the island and used its resources for many years. Here, the Court cited the Kesene Communiqué and observed that the local population should be permitted to carry on their lives with minimal interference.[197] In so doing, such decisions contributes to the settlement of disputes between states, while also enhancing mutual coexistence of the local population and mitigating any possible disruption in the lives of the local population.[198]

Finally, the Court has reiterated its position in its decisions on the need to observe the principle of *uti possidetis* as encapsulated in the OAU and the Cairo Resolutions on State Borders. It has maintained the need to respect and observe colonial boundaries as bequeathed to African nations by their departing colonial masters.[199] The Court has reaffirmed that it is the best means to preserve what has been achieved by people who have struggled for their independence.[200] Upholding this principle will enhance the commitment of African countries from contesting territorial boundaries.

VII. Ways of Increasing ICJ's Impact on Security in Africa

The ICJ has allowed the use of its facilities by African states to settle territorial/border claims. Out of the 18 African cases currently before the ICJ, 13 involve boundary and territorial disputes. This is worrying as there are about a 100 active border contests across Africa. These contests are likely to increase due to population increase, growing nationalism, and competition for limited resources. The ICJ being the principal judicial organ of the UN should be a Court of last resort where disputes will terminate after all other mechanisms have been exhausted. In this wise, the ICJ should consider co-opting African dispute resolution mechanisms. The African Union (AU) has established a robust mechanism for dispute settlement in Africa and this includes border delimitation and demarcation.[201]

Aside the elaborate regional and continental court system, the AU established the African Union Border Programme (AUBP) in 2017. This is to facilitate among other things, border delimitation and demarcation. The AUBP recognizes that ill-defined borders in

196 Kasikili/Sedudu Island [1999] ICJ Rep 1045.

197 *Ibid*, 1106–7, para 102. The decision was significant because it acknowledged that local communities in the area had coexisted for many years and depended on the resources in the area for their livelihood. It would have been unjust and an indifference to the plight to order their removal without offering them an alternative to earn their living.

198 *Majinge*, note 158, 36.

199 *Aman Mahray McHugh*, 'Resolving International Boundary Disputes in Africa: A Case for the International Court of Justice," *Howard Law Journal* (2005) Vol. 49, 209, 214.

200 *Munya*, note 185 for a discussion on the plight of the African states following colonization.

201 *Macharia Kamau and Frederick Koigu Ndegwa*, 'Why ICJ should Co-opt African Dispute-Solving Mechanisms,' (20 August, 2021), https://www.newafricanmagazine.com/26769/ (Accessed 20 May, 2022).

Africa were a source of conflict particularly when natural resources and foreign economic interest were at play.[202] The AUBP operationalises the shared commitment among African states to 'pursue the work of border delimitation and demarcation as factors for peace, security, economic and social progress.' This is expressed in the Memorandum of Understanding on Security, Stability, Development and Cooperation in Africa (CSSDCA).[203]

It has been shown that the AU has the capacity to exhaustively settle border disputes. This is clearly demonstrated through the AUBP.[204] The ICJ faces increasingly complex and multifaceted issues arising from the changing dynamics of the modern world. In a world where crises are the norm, it is important to deploy existing resources to address the most pressing issues and ensure the synergy of assets at the regional, continental, and international levels to address contemporary challenges.[205] It will be needful for the IC to co-opt other dispute mechanisms that will contribute to making the Court truly representative and more honorable, faithful, impartial, and conscientious.[206] Institutions like the AUBP and other regional, continental and legal institutions can play a central role in the settlement of disputes as well as facilitate the work of the ICJ by having cases exhaustively addressed by these institutions before being escalated to the ICJ.[207]

This process will not only provide unique regional perspectives that will benefit ICJ but also address the criticism of the ICJ being Eurocentric in its approach. The use of AUBP in border disputes will reduce the use of ICJ as these cases may overwhelm the Court. AUBP will be strengthened as well as other regional organizations which would have the primary responsibility for disputes originating in their regions. In addition, the policies spelt out in the African Union Strategy for better integrated border governance should be implemented.[208] Member states, regional economic communities and the AU and its Commission should take on their responsibilities as laid down so that the implementation of the strategy will be aligned with Agenda 2063.[209]

202 The AUBP is guided by the Principle of Negotiated Settlement of Border Disputes as provided for in Resolution 1069 (XLIV) on Peace and Security in Africa through Negotiated Settlements of Boundary Disputes, adopted by the 44th Ordinary Session of the Council of Ministers.

203 Adopted by the Assembly of Heads of State and Government Meeting held in 2012.

204 The successful resolution of the Tanzania, Mozambique and Comorros Maritime dispute is a case in point. In 2011, the AUBP facilitated negotiations that resulted in the establishment of maritime boundaries between the three East African countries and the Indian Ocean triple point between them.

205 *Kamau*, note 201, 3.

206 *Ibid.*

207 *Ibid.*

208 AU, African Union Strategy for Better Integrated Border Governance (Addis Ababa: AU Commission, 2020).

209 *Ibid*, 48–49.

Regional mechanisms facilitate expedited settlement of disputes and ensures greater acceptance of settlement.[210] The ICJ statute allows it to make rules for carrying out its functions.[211] In this wise, ICJ should consider bold actions that meet the demands of a changing world which includes referral of disputes for regional settlement. If this happens, then the African border and territorial disputes currently before the ICJ can be managed and decided by the AUBP and other African-led dispute resolution systems. Africa must continue to look for ways of resolving African problems by finding African solutions.

VIII. Conclusion

This paper examined the impact of the ICJ on security on the African continent. The paper noted that Africa has been home to conflicts bothering on territorial border claims. This was traced back to the scramble of Africa by the colonial masters and the irregular demarcation or delimitation of borders and frontiers. The paper noted that the main aim of the UN is to maintain international peace and security and in line with this objective, Article 33 encouraged states to seek pacific means of resolving their disputes and in answer to this, there is also the judicial settlement. ICJ is the principal judicial organ of the UN and has played very key roles in setting territorial disputes that would have escalated to wars thereby jeopardizing international peace and security.

The paper noted that in settling these frontier disputes and other territorial claims, the ICJ had reiterated the need for contesting states to respect the principle of uti possidetis as the way to settling these disputes. It was noted that where no clear boundaries existed, the ICJ took it upon itself to determine the boundaries. The paper noted that states have been satisfied and ready to comply with the decision of the court in matters brought before it. This shows that there is a growing confidence in the Court by African States as against the situation after they gained independence. That notwithstanding the paper noted the need for the ICJ to serve as a Court of last resort if it will not be overwhelmed by the numerous border disputes in Africa. This it can do by co-opting regional and continental mechanisms in border dispute resolutions.

Bibliography

Ahmadou Sadio Biallo (*Republic of Guinea v Democratic Republic of the Congo*) (Judgment) [2010] ICJ Rep 103.

Akpoghome, Theresa and Adikibe Ekene, 'Herdsmen and Farmers Conflict in Nigeria: A Quest for Paradigm Shift', *Benson Idahosa University Law Journal*, Vol. 5, Pp. 1–20 at 6.

210 Regional mechanisms appreciates the nuances better and are able to accommodate the complementary factors of peace, security and stability.

211 Statute of the ICJ, Article 30.

Ali Ahmed Elhouderi, Letter dated 6 April 1994, from the Permanent Representative of the Libyan Arab Jamahiriya to the UN addressed to the Secretary General, UN Doc. S/1994/402 (13 April 1994) annex.

Aloysius P Llamazon, 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice', *European Journal of International Law* (2007), Vol. 18, 815, 829–30.

Aman Mahray McHugh, 'Resolving International Boundary Disputes in Africa: A Case for the International Court of Justice," *Howard Law Journal* (2005) Vol. 49, 209, 214.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) ICJ, Summary 2022/1, 9 February 2022, Paras. 405–408.

AU Document CM/1119 (XXXVII) cited in AU, summary note on the African Union Border Programmes and its implementation modalities (BP/EX/2 (2)) Addis Ababa, 4–7 June 2007, p.2.

AU, Africa Union Strategy for Better Integrated Border Governance (AU Commission /AU Dept. for Peace and Security; 2020) 1–47

AU, African Union Strategy for Better Integrated Border Governance (Addis Ababa: AU Commission, 2020).

BBC "ICJ order Uganda to pay $325m for DR Congo Occupation", (10 February 2022), https://www.bbc.com/news/world-africa-60323900 (accessed 20 May 2022).

Boutros Boutros -Ghali, 'A Grotian Moment', *Fordham International Law Journal* (1995), Vol. 18, 1609, 1611.

Bowett D.W, *Law international institutions* (Oxford, 2010)

Charles Rizike Majinge, 'Emergence of New States in Africa and Territorial Dispute Resolutions: The Role of the International Court of Justice', *Melbourne Journal of International Law* (2012) Vol. 13, 1–43, 2.

Charter of the United Nations Art I (UN Charter), United Nations Charter, https://www.un.org/en/about-us/un-charter/full-text (accessed 2 July 2022) Covenant of the League of Nations, art II, (accessed 2 July 2022).

Charles Riziki Majinge, 'Emergence of New States in Africa and Territorial Dispute Resolution: The Role of the International Court of Justice', *Melbourne Journal of International Law* (20112), Vol. 13, 1–43, 26.

Charles Riziki Majinge, 'Emergence of New States in Africa and Territorial Dispute Resolution: The Role of the International Court of Justice,' *Melbourne Journal of International Law* (2012), Vol. 13, 1–42, 31.

Chris Olaoluwa Ogunmodede, 'Two ICJ Rulings Highlights Africa Regional Integration Challenges', (Feb 16 2022), https://www.worldpoliticeservice.com/trend-lines/30330/two-ICJ-rulings-highlight-africa-s-regional-integration-challenges/ (accessed 20 May 2022).

Christine Gray, *International Law and the Use of Force*, 3rd (ed.) (Oxford, 2008) Ch. 2

Clive Schofield, Pieter Bekker and Robert van de Poll, 'The World Court Fixes the Somalia-Kenya Maritime Boundary: Technical Considerations and Legal Consequences', *American Society of International Law* (December 08 2021), Volume 25, Issue 25, https://www.asil.org/insifhts/volume/25/issue/25 (accessed 5 July 2022).

Constantine Antomopoulos, 'The Principle of Uti Possidetis Juris in Contemporary International Law', (1996) 49, *Revue Hellenique de Droit International* 29.

Constitutive Act of the African Union 2002, Article 4(e) (f).

Counter – Memorial of Kenya https://www.icj-cij.org/en/case/161; Somalia-Kenya case, p. 7 (accessed 30 June 2022).

Covenant of the League of Nations, https://www.1919_the_covenant_of_the_league of_nations_art_10_to_16_pdf (accessed 2 July 2022), https://unhcr.org/refworld/docid/3dd8b9854.html (accessed 2 July 2022).

Dapo Akande, 'The Role of the International Court of Justice in the Maintenance of International Peace', *African Journal of International and Comparative Law,* Vol. 8, 592, 595.

DRC v Rwanda*,* ICJ Judgment delivered on Jan 30, 2001, https://www.icj-cih.org/en/lase/115 (accessed 30 June 2022).

DRC v. Uganda, ICJ Judgment delivered February 9, 2022, https://www.icj.cij.org/en/case/116 (accessed 30 June 2022).

Engelbert P, Tarango et al*,* 'Dismemberment and Suffocation: A Contribution to the Debate on African Boundaries', *Comparative Political Studies* (December 2003) Vol. 35, No. 10, Pp. 1093–1118.

Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government respecting the Boundary between British and French Cameroons, 34 UKS 863 (Signed and entered into force 9 January 1931) (Thomson-Marchand Declaration).

Fisheries Case (*United Kingdom v Norway*) (Judgment) [1951] ICJ Rep 116.

Fredrick Northedge, *The League of Nations- Its Life and Times 1920 – 1946* (Leicester, 1986).

Friendly Relation Declaration, UN Doc A/RES/2625 (XXV), Annex II, Para.2.

Frontier Dispute [1986) ICJ Rep 554, 587, Para 63.

Gino Naldi, 'Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali): Uti possidetis in an African perspective', *International and Comparative Law Quarterly*, (1987), Vol. 36, p893.

Godfrey Musila 'Why Justice Matters for Security', (April 20 2018) Africa Center for Strategic Studies, https://www.africancenter.org/spotlight/why-justice-matters-for-security-africa/ (accessed 27 June 2022)

Ian Brownlie, *International Law and the Use of force by States* (Oxford, 1963).

ICJ, "History of ICJ", International Court of Justice 2017–2022, https://www.icj.org.en/history (accessed 20 May 2022).

Ikome Francis N, 'Institute for Security Studies Africa international borders as potential source of conflict and future threats to Peace and Security', *Institute for Security Studies Paper No.233,* (May 2012) p. 1

International Crises Group, "Western Sahara: Out of the Impasse," (Middle East/North Africa Report No 66, 11 June 2007), 6–9.

John A Moore and Jerry Pubantz, *The United Nations: International Organization in the Twenty-First Century* (Pearson Prentice Hall) 2006, 2nded. (New York, 2017)

John Collier and Vaughan Lowe, *The Settlement of Disputes in International Law-Institutions and Procedures* (Oxford, 1979).

Josiah Oluwole, 'Special Report: Farmers-Herders Conflict: After many Deaths, Ondo Residents, Officials seek relief under Anti-Open Grazing Law', (December 28 2021), *Premium Times*, https://www.premiumtimesng.com/regional/south-west/502828-special-relief-under-anti-open-grazing-law-html (accessed 2 July 2022).

Kasikili/Sedudu Island Case [1999] ICJ Rep 1045.

Kjell-Ake Nordquist, 'Boundary Conflicts and Preventive Diplomacy', https://www.wilsoncenter.org/subsites /ccpdc/pubs/zart/ch2.htm (2).

Land and Maritime Boundary [2002] ICJ Rep 303, 312, Para 1.

Laoumaye Makomp Koumbairia, Letter dated 13 April 1994 from the Permanent Representative of Chad to the UN addressed to the Secretary General, UN Doc S/1994/424 (13 April 1994) Annex.

Latest Development-Frontier Dispute (Burkina Faso/Niger, International Court of Justice, https://www.icj.org/en/case/149 (accessed 30 June 2022)

Macharia Kamau and Frederick Koigu Ndegwa, 'Why ICJ should Co-opt African Dispute-Solving Mechanisms,' (20 August, 2021), https://www.newafricanmagazine.com/26769/ (Accessed 20 May, 2022).

Malcolm N Shaw, *Title to Territory in Africa's International Legal Issues* (Oxford, 1986).

Malcolm Shaw, 'The Heritage of State: The Principle of *Uti Possidetis* Juris Today', (1996) 67 *British yea Book of International Law*, 75.

Manila Declaration, UN Doc A/RES/37/10 annex I, Para 5.

Maritime Delimitation-The Indian Ocean (*Somalia v Kenya*), Judgment (Oct 12, 2021) https://www.icj-cij.org/en/case/161 (hereinafter Somalia-Kenya case).

Mweti Munya, 'The International Court of Justice and Peaceful Settlement of African Disputes: Problems, Challenges and Prospects,' *Journal of International Law and Practice* (1998), Vol. 7, 159, 43.

Ndumbe J Anyu, 'The International Court of Justice and Border Conflict Resolution in Africa: The Bakassi Peninsula Conflict; *Mediterranean Quarterly*, (2007), Vol. 18, 40, 53–54.

Nugent P and Al Asiwaju, (eds.) *African Boundaries* (London, 1996) *Widstrand* (ed.) *Africa Boundary problems* (Uppsala, 1969).

Paulson Colter, 'Compliance with Final Judgments of the International Court of Justice since 1987,' *American Journal of International Law* (2004), Vol. 98, 434, 436–7.

Preliminary Objections [2002] ICJ Rep 2003 (Land and Maritime Boundary).

Proclamation of the president of the Republic of Kenya (Feb 28, 1979) https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KEN_1979_Proclamation.pdf (accessed 5 July 2022).

Somalia- Kenya case, Preliminary Objective (Feb.2 2017) https:www.icj-cij.org/en/case/161 (accessed 30 June 2022).

Statute of the ICJ, Article 30.

Steven Ratner R, 'Drawing a Better Line: Uti possidetis and Borders of News States', *American Journal of International Law*, (1996) Vol. 90, p590.

Suzanne Lalonde, *Determining Boundaries in a Conflicted World: There Role of Uti possidetis* (McGill – Queen University Press, 2002).

Temple of Preah Vi hear (1962) ICJ Rep 6.

Territorial Dispute (*Libya Arab Jamahiriya v Chad)*, ICJ reports https://www.ICJ-org/en/case/83 (accessed 30 June 2022).

Timothy Walker and Mohamed Gaas*,* 'ICJ Draws Line in Kenya and Somalia Troubled Waters', https://www.issafrica.org/iss-today/icj-draws-the-line-in-kenya-and-somalia-troubled-waters/ (accessed 20 May 2022).

Tomas Bartos '*Uti Possidetis* – Quo Vadis? (1997) 18 *Australian Year book of International Laws,* 37.

UN Charter, art I, https://www.org/en.aboutis.un-charter/fulltext (accessed 30 June 2022).

United Nations Conference on Trade and Development, Dispute Settlement General Topics – International Court of Justice, UN Doc UNCTAD/EDM/MISC232/Add 19 (2003) 5.

United Nations Convention on the Law of the Sea, (Montego Bay, Dec, 10 1982, in Force Nov. 16, 1994 1833, U.N.T.S 396. Both parties signed the Convention on December 10, 1982, ratifying it on March, 2, 1989 and July 24 1984.

United Nations, Baseline: An Examination of the Relevant Processions of the United Nations Conventions on the Law of the Sea (DOALOS, New York, 1989) 1–2.

United Nations, *The International Court of Justice: Questions and Answers about the Principal Judicial Organ of the United Nations,* 10thed (United Nations Department of Public Information; 2000) Ch. I.

Yusuf Abdulqawi Ahmed and Mandel Ruma*,* 'The International Court of Justice and Africa', (2 April 2020) Chatham house, https://www.chathamhouse.org/events/all/rresearch-event/international-court-justice-and-africa/ (accessed 20 May 2022).