

**ASSESSING KENYA'S NATIONAL INTERESTS IN RATIFYING AND
DOMESTICATING INTERNATIONAL TREATIES, 2002-2013**

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Public Administration in Partial Fulfillment for the award of Master Degree of Arts in
Diplomacy and Foreign Policy (Executive) of Moi University.**

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DECLARATION

DECLARATION BY THE CANDIDATE

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DEDICATION

I dedicate this work to the ancient, only One and true God.

“May our society be cream, may it be milk, may it be honey and beer.” Maasai Prayer

ABSTRACT

This study examines Kenya's national interests in ratifying and domesticating international treaties in the period 2002 to 2013. The general objective of the study was to assess Kenya's national interests defined by her foreign policy, on the treaties ratified in the stated period 2002 to 2013. The specific objectives were to analyze Kenya's foreign policy, to assess the treaties ratified by Kenya from 2002 to 2013 and to evaluate the challenges and successes experienced by her in implementing these treaties. Using the well-established International Relations theories namely realism and neo-realism, the study examined Kenya's national interests as defined in her foreign policy document. The mode of doing this research was online desk research for its convenience in saving on time and cutting down on costs. A critical study of the treaties established that the security consideration is the main interest in all of the 55 treaty documents. These 55 treaty documents presented as population elements for the study. This sampling frame was drawn from secondary data using the Kenya National Law Reporting treaties full text database. The main findings show that from 2002 to 2013, Kenya government ratified a total of 55 treaties. Purposive sampling picked the two treaties a) Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography and b) Trademark Law Treaty; both are about security the former regarding security of local innovations and inventions with industrial capability; the latter being a tool to protect families being the cornerstone of society. The Kenya Foreign Policy document of 2014 clearly stipulates the four pillars of peace, economic, diaspora, environment and cultural diplomacies. The extent to which these have been addressed by the treaties as listed in the annex, may not be determined by a mere glance at the treaties. However, considering the objectives of each, the study concludes that in as much as a treaty is about security, for instance, it also affects economy and diaspora as well. The study revealed a tendency to realism in the country's ratifying of treaties, exhibition of the reality of world-states concerned primarily with their security and pursuing power as the means to assure the survival of the state. This is in each of the 55 treaties ratified within the stipulated time frame of 2002 to 2013. This study recommends future studies to assess the extent of direct/ indirect international interference in the nation's affairs resulting from international treaties ratified earlier i.e. before independence, from independence to end of 2001 and from 2013 to date.

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LIST OF ABBREVIATIONS

CIA	Central Intelligence Agency
CITES	Convention on International Trade of Endangered Species
EAC	East African Community
ECT	Energy Charter Treaty
FCN	Friendship Commerce and Navigation
GDP	Gross Domestic Product
IAAF	International Association of Athletics Federation
ICCPR	International Covenant on Civil and Political Rights
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
IWC	International Whaling Company
KANU	Kenya African National Union
KEIN	Kenya Environment Information Network
KFP	Kenya Foreign Policy
KNBS	Kenya National Bureau of Statistics
MEA	Multilateral Environment Agreement
NAM	Non-Aligned Movement
NEMA	National Environment Management Authority
NCLR	National Council for Law Reporting
SPLM / SPLA	Sudan People's Liberation Movement (SPLM) /The Sudan People's Liberation Army (SPLA)
TICAD	Tokyo International Conference on African Development
TLT	Trademark Law treaty
UK	United Kingdom
UN	United Nations

UNFCC	United Nations Framework Convention on Climate Change
UNCCC	United Nations Convention on Climate Change
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children’s fund
VCLT	Vienna Convention on the Law of Treaties
WIPO	World Intellectual Property Organization

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CHAPTER ONE: INTRODUCTION

1.0 Background to the Study

This study sought to assess Kenya's national interests in ratifying and domesticating international treaties during the period 2002 to 2013. This chapter comprises a discussion on Kenya's history, geographical location and her national interests- being the gist of this study. As per Berridge (1995) diplomacy is an essentially political activity and well resourced and skillful, a major ingredient of power. Its chief purpose is to enable states to secure the objectives of their foreign policies without resorting to force, propaganda or law. It follows that diplomacy consists of communication between officials designed to promote foreign policy either by formal agreement or tacit adjustment. Though it also includes such discrete activities as gathering information, clarifying intentions and engendering goodwill, it is thus not surprising that , until the label diplomacy was affixed to all of these activities by Edmund Burke in 1796, it was known most commonly as negotiation, by Cardinal Richelieu as 'négociation continuelle'. This study seeks to establish the effectiveness of Kenya's foreign policy on the global platform by assessing the treaties she has entered into within the time frame of 2002 to 2013 inclusive.

Kenya's development as a state is tied to international treaties and agreements crafted and signed elsewhere. The Berlin Conference which partitioned Africa is one of the influential treaties that have had a lasting effect in world politics. The Berlin Treaty was a product of Berlin Conference, a meeting of 14 nations namely United Kingdom (UK), France, Germany, Austria, Belgium, Denmark, Spain, the United States of America, Italy, the Netherlands, Portugal, Russia, Sweden-Norway and Turkey (Ottoman Empire). The insensitivities of this

treaty are demonstrated by how boundaries were crafted. For example, the borders between Kenya and Tanzania, and part of the border between Kenya and Somalia still look as though they were drafted with a pencil and ruler (Giles, B. 2002 p. 63). The Berlin Treaty was a product of the Berlin Conference, a meeting of 14 nations viz United Kingdom, France, Germany, Austria, Belgium, Denmark, Spain, the United States of America, Italy, the Netherlands, Portugal, Russia, Sweden-Norway, and Turkey (Ottoman Empire). The meeting was to discuss territorial disputes in Africa to prevent a European War over Africa. The meeting was held in Berlin Germany from November 1884 to February 1885. It is noteworthy that during this conference, there was not a single African in sight. Hornsby, C., (2012) explains that independent Kenya did not emerge suddenly in 1963, as a blank slate on which its new leaders could write, but as the organic evolution of decades of development, conflict and change, both under British rule and before the colonial incursion. He states that for Kenya, independence was a critical symbolic step, but the process of decolonization had begun six years before and continued for a decade thereafter. Kenya gained her independence in 1963 and became a republic in 1964 with her first president, Jomo Kenyatta.

The republic of Kenya occupies an area of about 583,000 square kilometers (CIA, fact book, 2018). She is located on the Indian Ocean's western sea board, bordered by Tanzania to the south, Uganda to the west, Sudan and Ethiopia to the north and Somalia to the east. The external boundaries of Kenya are a result of a series of international agreements promulgated in the late 19th and early 20th centuries. Kenya's boundary with Ethiopia was for example agreed upon in 1907 and was amended as recently as 1963-64, while Sudan and Kenya reached an accord on a northern boundary in 1930 and the eastern boundary with Somalia dates from 1924. The CIA fact book (2018) further states that there's the issue of the Ilemi

triangle situate in Northern Turkana which needs to be laid to rest once and for all. Kenya is the economic, financial, and transport hub of East Africa. Kenya's real GDP growth has averaged over 5% for the last decade. Since 2014, Kenya has been ranked as a lower middle-income country because her per capita GDP crossed a World Bank threshold. While Kenya has a growing entrepreneurial middle class and steady growth, its economic development has been impaired by weak governance and corruption. Although reliable numbers are hard to find, unemployment and under-employment are extremely high, and could be near 40% of the population. In 2013, the country adopted a devolved system of government with the creation of 47 counties and is in the process of devolving state revenues and responsibilities to the counties, Kenya Foreign Policy-(KFP), 2014.

Agriculture remains the backbone of the Kenyan economy, contributing one-third of GDP. About 75% of Kenya's population of roughly 48.5 million works at least part-time in the agricultural sector, including livestock and pastoral activities. Over 75% of agricultural output is from small-scale, rain-fed farming or livestock production. Tourism also holds a significant place in Kenya's economy. In spite of political turmoil throughout the second half of 2017, tourism was up 20%, showcasing the strength of this sector. Kenya has long been a target of terrorist activity and has struggled with instability along its northeastern borders. Some high visibility terrorist attacks during 2013-2015 (e.g., at Nairobi's Westgate Mall and Garissa University) affected the tourism industry severely, but the sector has rebounded strongly in 2016-2017 and appears poised to continue growing. (CIA/gov-2018.)

Before its occupation by Britain, Kenya was the habitat of African tribes some practicing settled agriculture and others pastoral nomads. All had but the slightest of contact with the outside world. Arabs in search of slaves and ivory provided the first of outside contacts. In

1885, the Berlin Act by which the great powers agreed on a general code of behavior to be followed in annexation of African territories set the stage for the ensuing “scramble” (KFP, 2014). Eliot, C. Sir (1905) states, ‘This Protectorate is often, but incorrectly, confounded with Uganda. The confusion is not unnatural, for it must be confessed that the name British East Africa is unfortunate, as it suggests a general geographical designation for our territories in this region rather than the name of a particular administrative section. That, however, is its proper official signification, and it is probably now too late to alter the expression, inconvenient though it is’. Sir Charles Eliot was H.M. (His Majesty’s) Commissioner for the East Africa Protectorate from January 1901 until June 1904, and of this period he states in his book East Africa Protectorate at p. 19, were perhaps the most interesting years of his life but to his deep regret he felt obliged to resign his post. He briefly gives reason for his resignation later in his book. This study required an appreciation of regimes prior to 2002 to 2013. These were the Kenyatta and Moi regimes.

1.1.1 Kenyatta’s Approach to Foreign Policy

Key issues of foreign policies during Kenyatta’s regime were decolonization efforts in Africa which made Kenya part of Non-aligned Movement and had to maintain a fine balance between maintaining Kenya’s interest and those of colonial powers which still controlled the economy. Hornby, C. (2012) asserts that since 1963, Kenya has been buffeted by the vagaries of oil prices, Cold War politics, technological change and globalization. He states that the perception of national autonomy that most governments try to portray – that they can decide the nation’s policies independently of outside forces – was always an illusion. He correctly states that there was always a strong relationship between Kenya and foreign governments, and the British played the role of patron and guardian uncle to Kenya for the first decade of its independence. As the influence of the UK diminished in the 1970s, it was replaced by the

United States as a more powerful but less reliable patron. External as much as internal pressure forced the reintroduction of multi-party democracy in 1991. Horny (2012:29) states that by the mid- 1990s, the debate over Kenya's dependence on foreign interests had shifted to the 'tyranny' of the international financial institutions (the World Bank and the International Monetary Fund). He states that the balancing act and the conflict continued however: should Kenya follow its own course or open its borders and adopt ideas from elsewhere? How far should local farmers, industries and elites be protected against foreign factories, capitalists and farmers? Maritim (2013:41) cites Goldstein's (2011: 94) mention of part of Kenyatta's speech at independence where he declared, "The aim of my government which starts today is not to be pro-left or pro-right. We shall pursue the task of nation building in friendship with the rest of the world.... we want to befriend all, and we want aid from everyone." Kenyatta's policy statement came at a time when geopolitical and strategic considerations were pursued in Africa by the United States and the Soviet Union. Kenyatta was determined to be a good neighbor within the East African region and protect Kenya's territorial integrity. Being an elderly statesman, he was consulted on continental matters.

1.1.2 Moi's Approach to Foreign Policy

Kenyatta was succeeded by the then vice-president Daniel T. Arap Moi who built on the achievements of his predecessor launching an impressive four year development plan. An attempted coup by junior air force officers in 1982 was foiled and resulted for a while in political detentions and press censorship. After the coup, the national assembly declared Kenya as a one party state. Moi ruled the country for 24 years and was succeeded by president Kibaki in 2002. Kibaki led the country from this year on, through the post-election violence of 2007 and handed over to Uhuru Muigai Kenyatta in 2013. In 2014, the Ministry of Foreign Affairs and International Trade released the first ever foreign policy for the country one of

the many milestones of the current government. Wrong, M. (2008) states in her column that past experience in Ethiopia, Uganda and Nigeria suggests that donor outrage is usually followed by full co-operation with governments. She gives an example of Moi regime being denied aid of up to \$350 million for not allowing multipartyism. She states that within weeks, Moi rescinded a ban on multiparty politics. However, international leverage has dwindled since then, thanks to Kenya's vibrant economy. Ever since independence to date Kenya enters treaties which direct her interactions with other state actors. The colonial government entered treaties which are binding to the country to date not unless they have been rescinded. This presents a need for study to establish which these treaties are, how they have impacted us and the way to go with the same.

Maritim (2013:48) quotes Wright (1999:102-103) who states that the foreign policy under the Moi administration had become more of a presidential prerogative, more aggressive and consequently more controversial. He further states that Moi emphasized what came to be known as Nyayo philosophy, following the —footsteps of Kenyatta with the objective of achieving espoused principles of love, peace and unity as well as the more concrete objective of maintaining close links with the west. In the regional foreign policy, Moi put the Nyayo philosophy into practice in the following areas: good neighborliness, peacemaking and peacekeeping. Kenya and Uganda have had stormy relations especially on border issues. Moi handled challenges posed by Uganda by attempting to maintain good relations, bearing in mind that Uganda is Kenya's leading trading partner. The Sudanese situation has also been difficult. Kenya has been torn between providing relief to southern Sudan and maintaining good relations with the Sudanese government. The Sudanese government has accused Kenya of aiding the rebel movement known as SPLM / SPLA. The Sudan People's Liberation

Movement (SPLM) was founded in 1984 under John Garang's leadership whose strategy building years were in Kenya mostly under the aegis of Moi's regime.

Besides the definition given earlier at section 1.10 above, the Penguin Dictionary of International Relations defines foreign policy as an activity which entails actions, reactions, and interactions of state actors. It is a "liminal" activity in the sense that policy-makers exist on a frontier between two worlds—the domestic politics of state and its external environment. Their task is to mediate between these two worlds (Evans and Newnham 1999:179). In light of the definition, it is possible to identify following features of foreign policy as a practice and a concept (Drulakova and Drulák 2007:9–11; Kratochvíl and Drulák 2009:21–23, 329–331). Foreign policy belongs to the field of International Relations, as well as to history, political science, regional studies, sociology, or psychology (multidisciplinarity and interdisciplinarity). Modern foundations of the concept lie in the seventeenth century (although reflections on it go as far as to Thucydides (395–460 B.C) or Machiavelli (1469–1527)). The nineteenth century gives birth to the reflection of "higher and more important form of policy" connected to safeguarding the national interest (or survival of the state). It is a means of positioning of the state (society) toward its surroundings, hence, toward other states or other players. Realism understands foreign policy as rational behaviour of a unitary actor (state), while liberalism focuses on preferences of individuals or groups within the state and their influence on its external action.

Constructivism understands foreign policy as a feature of national identity, it studies the role of norms and the constitution of identities (e.g. socialization of actors), and their influence on national interests. Again it is a liminal activity and a category between domestic (inner) and foreign (outer, external) environment (so called inside—outside assumption). It is

characterized by specific goals and means which lead to the goals (e.g. military versus non-military means).

The concepts of realism, liberalism, constructivism as they relate to foreign policy are discussed in detail later on in this study's review of existing literature. Alden, C., (2011) states that traditionally, foreign policy makers have assumed that it is the very nature of the international system itself – being anarchic, that is without any recognized central authority – which compels states to pursue a relentless quest for security and wealth. With states in direct competition with one another to achieve security and wealth needs, cooperation between them is ultimately tactical and limited to a series of selective, self-interested alliances. A 'security dilemma' prevails, whereby efforts by one state to increase its sense of security through arms acquisition or other defensive measures merely inspire other states to adopt similar strategies, and ironically perpetuates a general sense of insecurity among all states (Alden, C., 2011).

1.2 Statement of the Problem

Mr. Mwai Kibaki was Kenya's third President and as per Kamau, M. (2018) he states that according to Kenya National Bureau of Statistics (KNBS), the value of imports from China in 2017 reached Sh390 billion, a 20 per cent jump from Sh337 billion in 2016. This is against the total imports of Sh1.7 trillion during the year 2018 during Uhuru's regime. Kamau (2018) states that imports from China stood at Sh248.6 billion in 2014- transition year from Kibaki's to Uhuru's regime. Like other nation states, Kenya has a foreign policy that guides her interactions in the international system published in 2014, fifty-one years after independence. Howell, J. (1968) states "In foreign affairs, Kenya presents various faces to international

community. In global terms, external policy has been markedly radical in nature and characterized by a strong sense of morality and idealism”. He further avers that rarely does a major foreign policy statement fail to contain some allusion to the inequalities of the present international order or some reassertion of both the desirability of a peaceful and just international community of nations.

Baylis, J. et al (2011) states that while it cannot be specifically defined, foreign policy is said to refer to those actions of a state that are meant to achieve particular objectives involving other actors beyond the state’s own boundary. They are the cords of international relations. Although this definition of the term foreign policy can be termed as the generally accepted definition, what must be emphasized is that different people define foreign policy differently. Goldstein (2008) for example defines foreign policy as strategies used by governments to guide their actions on the international platform. According to Goldstein, foreign policies are what spell out the objectives state leaders have decided to pursue in a given relationship or situation as well as the general means by which they intend to pursue those objectives. He concludes that the day to day decisions made by various arms of government are guided by the goal to implementing foreign policies.

‘The finalization of the Kenya Foreign Policy marks a milestone achievement for our nation. It is the first time since our independence that Kenya has a written foreign policy’ a statement by Uhuru Kenyatta contained in the preamble of the Kenya’s first ever foreign policy reads; ‘The basis of post independent Kenya’s foreign policy is however found in the KANU manifestos of 1961 and 1963. In these documents Kenya’s foreign policies include: protection of her territory or territorial integrity against the threat of Somali secessionists in the Northern Frontier District today known as the North Eastern province, Economic

development, Non-alignment and promotion of good neighborliness,' (KFP, 2014). This study therefore sought to assess Kenya's national interests in ratifying and domesticating international treaties for the period 2002 to 2013.

1.3 The Objectives of the Study

This study sought to analyze how foreign policy interests influenced the treaties Kenya entered into within the timeframe of 2002 to 2013 with a view to;

- i. Assess Kenya's national interests,
- ii. Analyze the extent to which international treaties ratified by Kenya reflects her national interests.
- iii. Discuss successes and challenges in the domestication of international treaties.

1.4 Research Questions

The main research questions were;

- i. What are Kenya's national interests?
- ii. To what extent do international treaties ratified by Kenya reflect her national interests?
- iii. What are the successes and challenges in the domestication of international treaties in Kenya?

1.5 Justification of the Choice of Study

The results of the study inform Academics on the strength of our foreign policy and what this portends for Kenya's ability to transact business in all spheres, globally. For academics as well, this study provides a basis for further research in the area of treaties and how these

treaties either inhibit or strengthen a state's bargaining power on the international playfield. The study will present to workers in the Ministry of foreign affairs, pertinent information on effect of treaties on foreign policy in Kenya. Aullo (2013) states in her study that the influx of Chinese nationals in Kenya and the huge infrastructural contracts that Chinese companies have won particularly in the last decade is part of the reason why she conducted her study. However, her study examines Kenya and China foreign policies towards each other giving an analysis of their bilateral relationship whereas this study answers the question of whether Kenya's national interests are reflected in the international treaties she has ratified and domesticated in the period 2002 to 2013.

1.6 Limitations of the Study

This study did not address the influence of Kenya's treaties made outside of the 2002 to 2013 timeframe. The treaties under consideration in this study were only those published in the KNLR website. This decision was taken by the researcher for convenience in terms of resources- time and money wise. This study in its geographical consideration focused on Kenya's foreign policy which espoused her national interests. Future studies may focus on East Africa or other countries or regional blocs and the influence the treaties they have signed has had on their individual country's foreign policies.

1.7 Delimitation of the Study

There was need to ensure that either the date of enforcement or adoption was within the study's timeframe of 2002 to 2013. For instance the 'Convention on the rights of persons with disabilities, 2006', has within its title 2006, however the enforcement date, even the

adoption date are much earlier i.e. 19th June 1976 and 23rd June 1973 respectively. Therefore, this particular legal document did not meet criteria for scrutiny in this study.

1.8 Assumptions

This study assumed that treaties, protocols, covenants, agreements presented in Kenya Law Reporting database were legitimate policy instruments to which Kenya is signatory and thus responsible for effecting the same to the extent stipulated in the instrument/s. This study also assumed that agreements, charters, covenants, declarations, protocols all fell under the broad term 'treaty'. This study did not consider the items 'amendments', 'annexes' and 'other', in the treaty section of the Kenya Law reporting, as being examples of treaties.

1.9 Ethical Considerations

This research work was conducted within the confines of confidentiality where called for, shunning presentation of biased/erroneous results. The data was collected from a public website of a national agency hence the quality of the data assured.

1.10 Definition of Terms

Agreement; A treaty is an agreement under international law entered into by actors in international law, namely sovereign states and international organizations. A treaty may also

be known as an (international) agreement, protocol, covenant, convention, pact, or exchange of letters, among other terms.

Caesura; any break, pause, or interruption.

Charter; A formal document granting or demanding from the sovereign power of a state certain rights or liberties.

Constructivism; In [International Relations](#), constructivism is the claim that significant aspects of international relations are historically and socially constructed, rather than inevitable consequences of human nature or other essential characteristics of world politics.

Covenant; A binding agreement, a contract.

Domestication of treaties; States achieve the incorporation into their domestic laws of multilateral or bilateral treaties (international obligations) of which they are parties, so that the rights and duties contained in such treaties may become applicable and enforceable domestically in the States concerned. By focusing on the question of domestic application of treaties, the framers of the topic have rightly put aside the issue of application of treaties to States internationally, since that issue has been well settled by the 1969 Vienna Convention on the Law of Treaties. That Convention, let us observe briefly, inter alia, established the means by which a State may express its consent to be bound by a treaty, which thereby becomes applicable to it at the international plane, by: "signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed."

Declaration; Can be classified into two categories: declarations, adopted by bodies such as the United Nations General Assembly, which are not legally binding although they may be politically so as soft law; and conventions, which are legally binding instruments concluded under international law.

Diplomacy; the conduct of the relations of one state with another by peaceful means or the skill in the management of international relations or tact, skill, or cunning in dealing with people.

Foreign policy; Alden, C. (2011) states 'Foreign policy is, to use Christopher Hill's definition, 'purposive action with the view towards promoting the interests of a single political community or state'. The study of foreign policy is referred to as foreign policy analysis, and its focus is the intentions and actions (primarily) states aimed at the external world and the response of other actors (again, primarily states) to these actions.

Hegemony; the word hegemony comes from the Greek word hēgemonía, which means leadership and rule. In international relations, hegemony refers to the ability of a State actor with overwhelming capability to shape the international system through both coercive and non-coercive means.

Kyoto protocol; a protocol is the original draft of a diplomatic document, especially of the terms of a treaty agreed to in conference and signed by the parties an example is the Kyoto Protocol or Accord which is an international treaty among industrialized nations that sets mandatory limits on greenhouse gas emissions. The greenhouse effect is the warming effect of the sun on greenhouse gases, such as carbon dioxide, that act to trap this heat in our atmosphere.

Liberalism; it is one of the main schools of international relations theory. Liberalism comes from the Latin 'liber' meaning "free", referred originally to the philosophy of freedom.

National interests; often referred to by the French expression *raison d'état* ("reason of State"), is a country's goals and ambitions whether economic, military, or cultural. The concept is an important one in international relations where pursuit of the national interest is the foundation of the realist school.

Neo-realism; Neorealism or structural realism is a theory of international relations that says power is the most important factor in international relations. It was first outlined by Kenneth Waltz in his 1979 book *Theory of International Politics*. This theory is subdivided into defensive and offensive neo-realism.

Policy interest; A country's foreign policy, also called foreign relations or foreign affairs policy, consists of self-interest strategies chosen by the state to safeguard its national interests and to achieve goals within its international relations milieu. The approaches are strategically employed to interact with other countries.

Proces-verbal; an official report of proceedings or facts; minutes (of a meeting).

Quid-pro quo; Latin for "something for something," is used to describe when two parties engage in a mutual agreement to exchange goods or services. ... As a term, quid pro quo is used similarly in business and legal contexts to convey that a good or service has been exchanged for something of equal value.

Ratification; Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case

of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

Realism; Realism is a tenet that views the world as it is, and not in terms of an unrealized ideal. It emphasizes the constraints of the real world and the need for pragmatism and prudence. Applied to international politics, realism sees a conflict-ridden world of states concerned pre-eminently with their security and pursuing power as the means to assure their survival. Borrowing from Literature, Schipper, M. (2006) p.1., defines realism as truth, hard facts. However as per Donnelly, J. (2000), p.9, he states that realism in the context of International Relations means an approach to interacting with other states on the premise that States are motivated primarily by their national interest/s.

Travaux préparatoire; The literary meaning of this French term is preparatory works. It constitutes the materials used in preparing the ultimate form of an agreement or statute, especially of an international treaty. The materials constitute a legislative history. *Travaux préparatoires* contain the various documents including reports of discussions, hearings and floor debates that were produced during the drafting of a Convention, treaty or an agreement.

Vision 2030; The Kenya Vision 2030 aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

This study sought to establish the influence of foreign policy on the instruments of International Relations ratified by the State of Kenya namely treaties. This study picked the theories of realism and neo-realism to discuss Kenya's national interests in view of the treaties signed because these two theories correctly describe the characteristics of interaction by Kenya with other state actors. It was deemed prudent to briefly comment on constructivism towards the end of the chapter.

2.1 Kenya's National Interests

Mogire (1993) quotes Morgenthau (1985) who states that the concept of national interest is of central importance in any attempt to describe, explain, predict or prescribe international behaviour. He affirms that students of international relations agree that the primary justification of state action is national interest. The study by Gakuya, R.N., (2013) establishes that Kenya's foreign policy has changed through the three transitions the country has been through, that is under presidents Kenyatta, Moi, Kibaki and now Uhuru Kenyatta. He states that the foreign policy focus under each president has determined the key areas that the country has focused on for development. In President Kibaki's reign, the economic pillar of Kenya's foreign policy was central to Kenya's foreign relations, with focus being diversifying sources of development funding to include new economic partners, notably the adoption of the "Look East" policy in foreign relations. This has led to China increasing in significance as a development partner, and a source of funding for large scale infrastructural development projects in Kenya. Aullo (2013) states that although the two countries, Kenya and China had

contact with each other dating back to 15th century AD, they began their official relations soon after Kenya's independence in 1963. She contends that great interest has developed in the last century over China's interest in the African continent including Kenya. The Vision driving Kenya's Foreign Policy agenda is the pursuit of 'A peaceful, prosperous and globally competitive Kenya' while the Mission is "To project, promote and protect Kenya's interests and image globally through innovative diplomacy, and contribute towards a just, peaceful and equitable world".

"The foreign policy objectives are informed by our common desire for a peaceful, united and prosperous country as embodied in Kenya's National Anthem, the Constitution and Kenya Vision 2030. Through the foreign policy objectives, Kenya seeks to promote and safeguard national, regional and international peace and security and protect our sovereignty and territorial integrity" states KFP (2014:5).

Kabukuru, W. (2006) states in his article that China views Kenya as a strategic partner owing to its centrality, gateway to east, central and horn of Africa, political stability, communications hub, infrastructure and also as a vital link in the East African Community (EAC) and the Common Market for Southern and Eastern Africa (COMESA) -which is home to 400 million people. Currently, Kenya is the biggest single recipient of overseas development assistance in Africa from the Far East Countries. Raphael Tuju, former Kenya's foreign minister, stated that the eastward-looking strategy was not a policy to be debated, but a pragmatic and fundamental decision that Kenya had to make. It is significant to note that when Tuju was minister for tourism, he skipped an important annual International Tourism Bourse in Berlin, Germany, to head a Kenyan delegation to China and Japan; Kenya's

diplomatic paradigm shift started quietly soon after President Kibaki came to power notes Kabukuru, W. (2006).

2.1.1 An Analysis of the Foreign Policy Relations among Trading Countries with Kenya

Mogire (2008) states that political relations are conducted through bilateral and multilateral channels and that presently Kenya has diplomatic relations with Israel as well as with a number of Arab states. He notes that currently i.e. 2008, ‘Kenya has bilateral relations with Israel, Saudi Arabia, United Arab Emirates (UAE), Iran, Egypt and Libya (in which it has embassies), Iraq, Jordan, Kuwait, Yemen, the Palestinian Liberation Organization (PLO) and the Arab League (which have embassies in Kenya). Since Kenya lacks resources, it only establishes embassies in countries where it has vital economic and/or political interest.’ This is in line with KFP, (2014), p. 12 which states, “The core priorities of Kenya’s Foreign Policy which are anchored on the above five pillars are: to enhance global peace and security; to promote economic development and prosperity; to take a leadership role in addressing global environmental issues; to expound Kenya’s rich culture as an avenue to promoting understanding and better relations; and to enhance Kenya’s stature in the international affairs.” Mogire further states that Arab–Israel competition for Kenya’s support began immediately Kenya became independent.

On the eve of independence, Israel and the Arab states sent delegations to the independence celebrations (Mogire, 2008). However, the Arab representatives abandoned their plans to raise the issue of Israeli representation after seeing the picture of Golda Meir, the Israeli foreign minister, and Jomo Kenyatta, the prime minister designate, in the press laying down the foundation stone of the Israeli embassy building and reading Kenyatta’s words that he looked forward to friendship between the two countries (Naim, 2005). Mogire further

narrates that in 1973, in the aftermath of the October War, and following considerable Arab pressure, Kenya and several other African states decided to break diplomatic relations with Israel (Mogire, 2008). However, this had very little practical effect on Kenya–Israeli relations, which essentially continued as before, albeit unofficially. Kenya allowed an Israeli diplomat to continue serving as an interest officer under the auspices of a foreign embassy. For example, Arye Oded, who served as an interest officer between 1978 and 1981, states that he operated as an ambassador in every aspect apart from external, formal aspects (Oded, 2000, p. 129). Mossad agents and Israeli entrepreneurs also became informal advisors to the Kenyan president. In 1988, Kenya restored full diplomatic relations with Israel (Chazan, 2006). Mogire, E., (2008) respecting the foreign relationship between Kenya and Middle East countries cites (Howell, 1968; Okumu 1997) who states that Kenya’s foreign policy principles are non-alignment, respect for territorial integrity, support for liberation movements and African unity and economic development.

2.1.2 Non-Alignment

Hveem and Willetts (1970) state that Non-Alignment Movement (NAM) does not mean adherence to the rule of non-involvement, refusing to take sides in any inter-state dispute to which the country is not a direct party. They cite the time of the Bandung Conference in 1955 where leaders like Nehru and Sukarno stressed that they reserved to themselves the right of positive active involvement in any dispute. “They would even go to the extent of taking sides in the dispute but, as a matter of principle, they declared themselves against any permanent or long-term involvement on the side of one or the other of the parties to the Cold War. This would constitute alignment.” They also opine that non-alignment does *not* and did not require politico-ideological or social-structural differentiation from the two blocs, nor does it require

uniformity in these respects within the movement. Internally, "non-aligned" countries are free to pursue the kind of policies they wish. They have a right to claim non-intervention in their own affairs from countries inside as well as outside the movement. To what extent non-alignment is practical or likely to occur when there is strong similarity or congruence with the political and social system of any one bloc member is another matter.' Terrosy '(2005) quotes (Fischer, 2005: 86) who states that the need for a movement such as the NAM was born after World War II as a result of the Cold War and the process of decolonization, as a certain vacuum had been created between the US-led West and the East dominated by the Soviet Union following first the ideological confrontation, then, the strategic competition and arms race of the two superpowers. "Some of the former colonies had become pawns of the superpowers on their global chessboard".

2.2 Treaties

International treaty making publication (2017) hereafter referred to as ITM publ. defines treaties as international instruments that are legally binding under international law. The term "treaty" is generally confined to major agreements of political importance (for instance, treaties of alliance or treaties of friendship). Baylis, J. et al (2011) defines a treaty as an agreement under international law entered into by actors in international law, namely sovereign states and international organizations. A treaty may also be known as an (international) agreement, protocol, covenant, convention, pact, or exchange of letters, among other terms. Regardless of terminology, all of these forms of agreements are, under international law, equally considered treaties and the rules are the same.

Treaties can be loosely compared to contracts: both are means of willing parties assuming obligations among themselves, and a party to either that fails to live up to their obligations can be held liable under international law. Fitzmaurice, M. (2003) states that '...the concept

of the treaty – what constitutes a treaty and what is the nature of a treaty obligation is one of the most intractable problems in the law of treaties.” Also she quotes Judge Jessup as saying, “the notion that there is a clear and ordinary meaning of the word “treaty” is a mirage. The occasion for this comment is judicial experience which shows that the determination of whether a certain instrument constitutes a treaty has important practical consequences.” Also Perkowski and Gruszevska 2013 p.1, state that the Vienna Convention on the Law of Treaties from the 23 of May 1969 r. – hereinafter referred to as the Vienna Convention (United Nations Treaty Series, vol. 1155, p. 331), entered into force on 27 January 1980. It defines a treaty as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. The UN publication (2002:6) states that the Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty or undertake any other treaty action on behalf of the State without an instrument of full powers.

2.2.1 The Peace Treaties of Westphalia and the Osnabruck (1648)

Fassbender, B. (2011) states, “The term ‘Peace of Westphalia’ principally denotes the Treaty of Peace between France and the Holy Roman Empire and the Treaty of Peace between the Holy Roman Empire and Sweden, signed on 24 October 1648 in the town of Münster in Westphalia, a territory in the north–west of Germany which today belongs to the German states North Rhine—Westphalia and Lower Saxony. The treaties had been negotiated in Münster’ and the nearby town of Osnabrück”. This established the legal basis of modern statehood and by implication the fundamental rules or constitution of modern world politics.

(Baylis J., et al, 2011) states that although Pope Innocent referred to the Westphalia settlement at the time as ‘null, reprobate and devoid of meaning for all time’, in the course of subsequent four centuries it has formed the normative structure or constitution of the modern world order. At the heart of the Westphalia settlement was agreement among Europe’s rulers to recognize each other’s right to rule their own territories free from outside interference. This was codified over time in the doctrine of sovereign statehood. Fassbender (2011) further states that the Peace of Westphalia is seen by many international lawyers and political scientists as a decisive caesura in the history of international law and relations, which marks the beginning of a modern secular system of sovereign and equal States. He states that according to Hans Morgenthau, the Peace of 1648 ‘made the territorial state the cornerstone of the modern state system’ and that Richard Falk called the co-ordination of sovereign State units ‘the basic formal ordering conception in international society since the seventeenth century’ and explained that ‘it is convenient to identify this conception with the Peace of Westphalia of 1648, a dramatic event in the process of transition from medieval society to the modern world... Westphalia evolved a new image of coordinated states, each sovereign within its territorial sphere’. Further he states that other authors introduced the term ‘Westphalian cartography’ to describe an international system characterized by clear, mainly territorial, delimitations of political authority and social bonds (Devetak and Higgott 484).

(Baylis J., et al, 2011) avers that it was only in the 20th Century, as global empires collapsed that sovereign statehood and with it national self-determination finally acquired the status of universal organizing principles of world order. The Versailles Peace Treaty augured both a new framework for European security and a new international order. Neither objective was achieved. There were crucial differences between the victorious powers over policies towards

Germany and principles governing the international order. The treaty failed to tackle what was for some the central problem of European security after 1870- a united and frustrated Germany – and precipitated German revanchism by creating new states and devising contested borders. For some scholars, 1914-1945 represented a thirty year war. Others saw the period 1919 to 1939 as a twenty year crisis. From the Treaties of Westphalia in 1648 onwards, states have been regarded as by far the most powerful actors in the international system. They have been ‘the universal standard of political legitimacy’, with no higher authority to regulate their relations with each other.

The contemporary international legal system is a historical artifact. Not in the sense of being irrelevant to present circumstances, but in the sense of being deeply structured by the social and political conditions of modernity like most present day institutions, it bears the imprint of revolutions in social thought and practice that from the eighteenth century onwards transformed the political landscape of Europe and then much of the world. Great writers such as Hugo Grotius (1583-1645) and Emerich de Vattel (1714-67) are often cast as the ‘fathers’ of international law, and the Treaties of Augsburg (1555), Westphalia (1648) and Utrecht (1713) are seen as landmarks in the development of international public law. Yet despite the importance of these historical figures and moments, the modern international legal system acquired many of its distinctive characteristics as late as 19th Century. The present international system has its roots in Europe, and before the 19th Century the vast majority of European states were monarchies. The kings and queens who ruled these states justified their power by appealing to the doctrine of divine right, to the idea that monarchs were ordained with authority directly from God (Bodin 1967:40) quoted in Baylis J. et al (2000). At this time law was generally understood as the command of a legitimate superior. Humanity in

general, including monarchs, was subject to God's law and natural law, both of which embodied the command of God. The subjects of particular states were also ruled by municipal law, which was the command of monarchs, who stood above such law. These ideas about divinity, authority and law had a profound influence on early international law. Derived from the law of nature, international law was understood as a set of divinely ordained principles of state of conduct, accessible to all endowed with the right reason. European monarchs were obliged to observe international law not because they had reached a contractual agreement with one another, or at least not primarily, but because of fealty to God (Grotius 1925:121).

Kisiangani (2014) posits that studies have demonstrated the nexus between a country's domestic setting and circumstances, and its external diplomacy. In the case of Kenya, the trajectory of its regional and international engagements has largely been affected by domestic agendas. In the immediate post-independence era, Kenya outlined the following basic norms and principles to guide her foreign relations; namely respect for sovereignty and territorial integrity of other states, and preservation of national security, good neighborliness and peaceful coexistence, peaceful settlement of disputes, non-interference in the internal affairs of other states, non-alignment and national self-interest and adherence to the Charters of the United Nations and the African Union. Goldstein and Pevehouse (2008) notes that although realists see the laws of power politics as relatively timeless and unchanging, liberal theorists generally see the rules of International Relations as slowly, incrementally evolving through time and potentially becoming more and more peaceful. Kenya has been at peace with all her neighbors since her independence in 1963.

2.2.2 Modern Form

‘Since the late 19th century, most treaties have followed a fairly consistent format. A treaty typically begins with a preamble describing the High Contracting Parties and their shared objectives in executing the treaty, as well as summarizing any underlying events (such as the aftermath of a war in the case of a peace treaty). Modern preambles are sometimes structured as a single very long sentence formatted into multiple paragraphs for readability, in which each of the paragraphs begins with a gerund (desiring, recognizing, having, and so on)’, Baylis, J. (2011).

The High Contracting Parties; referred to as either the official title of the head of state (but not including the personal name), e.g. His Majesty The King of X or His Excellency The President of Y, or alternatively in the form of "Government of Z"; are enumerated, and along with the full names and titles of their plenipotentiary representatives, and a boilerplate clause about how their representatives have communicated (or exchanged) their full powers (i.e., the official documents appointing them to act on behalf of their respective high contracting party) and found them in good or proper form. The ITM publ. (2017) states that however, under the Vienna Convention on the Law of Treaties, if the representative is the head of state, head of government or minister of foreign affairs, no special document is needed, as holding such high office is sufficient.

The end of the preamble and the start of the actual agreement are often signaled by the words "have agreed as follows." After the preamble comes numbered articles, which contain the substance of the parties' actual agreement. Each article heading usually encompasses a paragraph. A long treaty may further group articles under chapter headings. Modern treaties,

regardless of subject matter, usually contain articles governing where the final authentic copies of the treaty will be deposited and how any subsequent disputes as to their interpretation will be peacefully resolved. The end of a treaty, the eschatocol (or closing protocol), is often signaled by a clause like "in witness whereof" or "in faith whereof," the parties have affixed their signatures, followed by the words "DONE at," then the site(s) of the treaty's execution and the date(s) of its execution. The date is typically written in its most formal, longest possible form. For example, the Charter of the United Nations was "DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five." If the treaty is executed in multiple copies in different languages, that fact is always noted, and is followed by a stipulation that the versions in different languages are equally authentic. The signatures of the parties' representatives follow at the very end. When the text of a treaty is later reprinted, such as in a collection of treaties currently in effect, an editor will often append the dates on which the respective parties ratified the treaty and on which it came into effect for each party. ITM publ., 2017, p. gives an overview of the process of treaty making which matches Baylis, J. (2011)'s process.

2.2.3 Bilateral and Multilateral Treaties

Baylis J. et al (2011) define bilateral treaties thus, "Bilateral treaties are concluded between two states or entities. It is possible, however, for a bilateral treaty to have more than two parties; consider for instance the bilateral treaties between Switzerland and the European Union (EU) following the Swiss rejection of the European Economic Area agreement. Each of these treaties has seventeen parties. These however are still bilateral, not multilateral, treaties. The parties are divided into two groups, the Swiss ("on the one part") and the EU and its member states ("on the other part)". The treaty establishes rights and obligations

between the Swiss and the EU and the member states severally—it does not establish any rights and obligations amongst the EU and its member states. A multilateral treaty is concluded among several countries. The agreement establishes rights and obligations between each party and every other party. Multilateral treaties are often regional. Treaties of "mutual guarantee" are international compacts, e.g., the Treaty of Locarno which guarantees each signatory against attack from another.

2.2.4 Reservations

Baylis, J. (2011) states that Reservations are essentially caveats to a state's acceptance of a treaty. Reservations are unilateral statements purporting to exclude or to modify the legal obligation and its effects on the reserving state. These must be included at the time of signing or ratification, i.e. "a party cannot add a reservation after it has already joined a treaty". Originally, international law was unaccepting of treaty reservations, rejecting them unless all parties to the treaty accepted the same reservations. However, in the interest of encouraging the largest number of states to join treaties, a more permissive rule regarding reservations has emerged. While some treaties still expressly forbid any reservations, they are now generally permitted to the extent that they are not inconsistent with the goals and purposes of the treaty. The UN publication (2002:12) states that a reservation may enable a State to participate in a multilateral treaty that the State would otherwise be unwilling or unable to participate in.

Baylis, J. et al (2011) "When a state limits its treaty obligations through reservations, other states party to that treaty have the option to accept those reservations, object to them, or object and oppose them. If the state accepts them (or fails to act at all), both the reserving state and the accepting state are relieved of the reserved legal obligation as concerns their

legal obligations to each other (accepting the reservation does not change the accepting state's legal obligations as concerns other parties to the treaty). If the state opposes, the parts of the treaty affected by the reservation drop out completely and no longer create any legal obligations on the reserving and accepting state, again only as concerns each other. Finally, if the state objects and opposes, there are no legal obligations under that treaty between those two state parties whatsoever. The objecting and opposing state essentially refuses to acknowledge the reserving state is a party to the treaty at all”.

2.2.5 Amendments

UN publ. (2002:22) states that “The text of a treaty may be amended in accordance with the amendment provisions in the treaty itself or in accordance with chapter IV of the Vienna Convention 1969. If the treaty does not specify any amendment procedures, the parties may negotiate a new treaty or agreement amending the existing treaty”. There are three ways an existing treaty can be amended states Baylis, J. et al (2011). First, formal amendment requires State parties to the treaty to go through the ratification process all over again. The re-negotiation of treaty provisions can be long and protracted, and often some parties to the original treaty will not become parties to the amended treaty. When determining the legal obligations of states, one party to the original treaty and one party to the amended treaty, the states will only be bound by the terms they both agreed upon. Giving an example of New Zealand ITML publ. (2017: 7) states “Treaties often prescribe specific rules governing the amendment of the treaty, which must be followed. Commonly, parties will amend a treaty by agreement. Any amendments should be treated as a new treaty action in and of itself and the New Zealand Government must follow the same constitutional and procedural requirements outlined in this Guide for the conclusion of a treaty.” Baylis, J. et al (2011) states “Treaties

can also be amended informally by the treaty executive council when the changes are only procedural: technical change in customary international law can also amend a treaty, where state behavior evinces a new interpretation of the legal obligations under the treaty. Minor corrections to a treaty may be adopted by a procès-verbal; but a procès-verbal is generally reserved for changes to rectify obvious errors in the text adopted, i.e. where the text adopted does not correctly reflect the intention of the parties adopting it.”

2.2.6 Protocols

ITM publ. (2017: 44) states, “A protocol, in the context of treaty law and practice, has the same legal characteristics as a treaty. The term protocol is often used to describe agreements of a less formal nature than those entitled to a treaty or convention. Generally, a protocol amends, supplements or clarifies a multilateral treaty. A protocol is normally open to participation by the parties to the parent agreement. However, in recent times states have negotiated a number of protocols that do not follow this principle. The advantage of a protocol is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.” Baylis, J. et al (2011) states “In international law and international relations, a protocol is generally a treaty or international agreement that supplements a previous treaty or international agreement. A protocol can amend the previous treaty, or add additional provisions. Parties to the earlier agreement are not required to adopt the protocol. Sometimes this is made clearer by calling it an "optional protocol", especially where many parties to the first agreement do not support the protocol.” Some examples: the United Nations Framework Convention on Climate Change (UNFCCC) established a framework for the development of binding greenhouse gas emission limits,

while the Kyoto Protocol contained the specific provisions and regulations later agreed upon. Another example is the Machakos Protocol discussed in the work of Brereton and Ayuko (2016:141) the authors state that this document established the peace process (Sudan – South Sudan Peace Process) in July 2002 and would make up the first of the CPA (Comprehensive Peace Agreements) six composite protocols and agreements, which committed the parties to several principles.

2.3 Domestication of Treaties

Ngara, C.O. (2017) quotes Okeke 1997 and Okene 2009 who state that for a treaty concluded between Nigeria and any other country to have the force of law, it must be enacted into law by the National Assembly. Such a treaty necessarily requires to be explicitly incorporated into national law, through an Act of the National Assembly in order for it to be enforceable. Domestication of a treaty thus denotes the process of incorporating treaty into municipal or national law. The Treaty Making and Ratification Act of Kenya enacted in 2012 and revised in 2014, codifies the process of ratification.

2.3.1 Execution and Implementation

Treaties may be seen as 'self-executing', in that merely becoming a party puts the treaty and all of its obligations in action. Other treaties may be non-self-executing and require 'implementing legislation'—a change in the domestic law of a state party that will direct or enable it to fulfill treaty obligations. An example of a treaty requiring such legislation would be one mandating local prosecution by a party for particular crimes. The division between the two is often not clear and is often politicized in disagreements within a government over a treaty, since a non-self-executing treaty cannot be acted on without the proper change in

domestic law. If a treaty requires implementing legislation, a state may be in default of its obligations by the failure of its legislature to pass the necessary domestic laws. Nanda V.P., (1990: 383) gives the example of *MacNamara v. Korean Airlines* where the court attempted to reconcile provision of the Friendship, Commerce and Navigation (FCN) Treaty between the US and Republic of Korea and the later provisions of the 1964 Civil Rights Act.

2.3.2 Interpretation

Maftai, J. and Varvara, C. (2012:5) quote (Linderfalk, 2007, p. 1) who states that it is widely accepted that the treaty is nowadays the principal source of public international law. Also treaties are the best way to find and determine the international commitments that the states commit themselves as subjects of international legal relations binding as carriers of sovereignty. It was even believed that “we live in the age of treaties.” Baylis, J. et al (2011) states that the language of treaties, like that of any law or contract, must be interpreted when the wording does not seem clear or it is not immediately apparent how it should be applied in a perhaps unforeseen circumstance.

The Vienna Convention states that treaties are to be interpreted "in good faith" according to the "ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose." International legal experts also often invoke the 'principle of maximum effectiveness,' which interprets treaty language as having the fullest force and effect possible to establish obligations between the parties. According to Eberhardt, P. et al., (2018) on interpretation of the one treaty to rule them all i.e. Energy Charter treaty (ECT) that no one party to a treaty can impose its particular interpretation of the treaty upon the other parties. For instance the nightmare being created by the ECT treaty about which the following

comment is made, Non-Western delegations were much less active in the ECT talks. Until the very end, according to accounts from the time, negotiators from Eastern Europe and Russia had some “problems” in grasping key “terms and principles” of the ECT while Western parties “spent a lot of time explaining” them. One arbitration expert even commented that some former Soviet Union members signed the ECT because “it was a chance to flex their newly acquired statehood”, adding that treaties are to states “what alcohol and driving are to teenage boys”.

Again as per Eberhardt, P., (2018:12) states that according to the main legal advisor to the negotiators, several ECT articles and their potential risks received only cursory review as the EU forced outstanding controversial issues to a conclusion. He describes the result as an “untidy”, complex legal “package” of hard to manage “parts”, “annexes”, “decisions”, “understandings”, “declarations” and “interpretations”. In other words: a paradise for lawyers wanting to make money from it, but a nightmare for pretty much everyone else. Further she states “The ECT is an international agreement dating from the mid-1990s of nearly 50 countries stretching from Western Europe through Central Asia to Japan. Under the treaty foreign investors can sue signatory governments over measures in the energy sector that they consider harmful to their profits. For example energy giant Vattenfall has sued Germany over environmental restrictions on a coal-fired power plant and for phasing out nuclear power” (ibid: 11). Consent may be implied however, if the other parties fail to explicitly disavow that initially unilateral interpretation, particularly if that state has acted upon its view of the treaty without complaint. Consent by all parties to the treaty to a particular interpretation has the legal effect of adding another clause to the treaty – this is commonly called an 'authentic interpretation'. International tribunals and arbiters are often called upon to resolve substantial

disputes over treaty interpretations. To establish the meaning in context, these judicial bodies may review the preparatory work from the negotiation and drafting of the treaty as well as the final, signed treaty itself states Baylis, J., (2011).

2.3.3 Consequences of Terminology

“One significant part of treaty making is that signing a treaty implies recognition that the other side is a sovereign state and that the agreement being considered is enforceable under international law” states Baylis, J. et al., (2011). Hence, nations can be very careful about terming an agreement to be a treaty. For example, within the United States, agreements between states are compacts and agreements between states and the federal government or between agencies of the government are memoranda of understanding. Another situation can occur when one party wishes to create an obligation under international law, but the other party does not. This factor has been at work with respect to discussions between North Korea and the United States over security guarantees and nuclear proliferation.

The terminology can also be confusing because a treaty may and usually is named something other than a treaty, such as a convention, protocol, or simply agreement. Conversely some legal documents such as the Treaty of Waitangi are internationally considered to be documents under domestic law. The purpose of this Treaty of Waitangi was to enable the British settlers and the Māori people to live together in New Zealand under a common set of laws or agreements.

2.3.4 Ending Treaty Obligations

This section explains the process of ending treaty obligations. Helfer, L.R., (2012) states that “an old adage says that no one likes to talk about divorce before a wedding. Yet that is, in effect, precisely what States do when they negotiate new treaties. Buried in the back of most international agreements are provisions that describe procedures for the treaty parties to end their relationship.” He quotes the 1969 Vienna Convention on the Law of Treaties (VCLT) 42 (5), 54 (6), 65 (8) and 70 (1), which he says provides no fewer than thirteen articles containing termination, denunciation, or withdrawal rules that apply when States do not negotiate treaty-specific rules on these topics.

2.3.5 Withdrawal

Treaties are not necessarily permanently binding upon the signatory parties. As obligations in international law are traditionally viewed as arising only from the consent of states, many treaties expressly allow a state to withdraw as long as it follows certain procedures of notification. For example, the Single Convention on Narcotic Drugs provides that the treaty will terminate if, as a result of denunciations, the number of parties falls below 40. Many treaties expressly forbid withdrawal. Article 56 of the Vienna Convention on Laws of Treaties provides that where a treaty is silent over whether or not it can be denounced there is a rebuttable presumption that it cannot be unilaterally denounced unless: it can be shown that the parties intended to admit the possibility, or a right of withdrawal can be inferred from the terms of the treaty. The possibility of withdrawal depends on the terms of the treaty and its travaux preparatoire. It has, for example, been held that it is not possible to withdraw from the International Covenant on Civil and Political Rights. When North Korea declared its

intention to do this the Secretary-General of the United Nations, acting as registrar, said that original signatories of the ICCPR had not overlooked the possibility of explicitly providing for withdrawal, but rather had deliberately intended not to provide for it. Consequently, withdrawal was not possible (Baylis, J. et al., 2011).

In practice, because of sovereignty, any state can purport to withdraw from any treaty at any time, and cease to abide by its terms. The question of whether this is lawful can be regarded as the success or failure to anticipate community acquiescence or enforcement, that is, how other states will react; for instance, another state might impose sanctions or go to war over a treaty violation. According to VCLT 1969, if a state party's withdrawal is successful, its obligations under that treaty are considered terminated, and withdrawal by one party from a bilateral treaty terminates the treaty. When a state withdraws from a multilateral treaty, that treaty will still otherwise remain in force among the other parties, unless, it otherwise should or could be interpreted as agreed upon between the remaining states parties to the treaty.

2.3.6 Suspension and Termination

If a party has materially violated or breached its treaty obligations, the other parties may invoke this breach as grounds for temporarily suspending their obligations to that party under the treaty. A material breach may also be invoked as grounds for permanently terminating the treaty itself. A treaty breach does not automatically suspend or terminate treaty relations, however. It depends on how the other parties regard the breach and how they resolve to respond to it. Sometimes treaties will provide for the seriousness of a breach to be determined by a tribunal or other independent arbiter. An advantage of such an arbiter is that it prevents

a party from prematurely and perhaps wrongfully suspending or terminating its own obligations due to another's alleged material breach.

Treaties sometimes include provisions for self-termination, meaning that the treaty is automatically terminated if certain defined conditions are met. Some treaties are intended by the parties to be only temporarily binding and are set to expire on a given date. Other treaties may self-terminate if the treaty is meant to exist only under certain conditions. A party may claim that a treaty should be terminated, even absent an express provision, if there has been a fundamental change in circumstances. Such a change is sufficient if unforeseen, if it undermined the “essential basis” of consent by a party, if it radically transforms the extent of obligations between the parties, and if the obligations are still to be performed. A party cannot base this claim on change brought about by its own breach of the treaty. This claim also cannot be used to invalidate treaties that established or redrew political boundaries.

2.3.7 Invalid Treaties

There are several reasons an otherwise valid and agreed upon treaty may be rejected as a binding international agreement, most of which involve problems created at the formation of the treaty. For example, the serial Japan-Korea treaties of 1905, 1907 and 1910 were protested; and they were confirmed as "already null and void" in the 1965 Treaty on Basic relations between Japan and the Republic of Korea (Baylis, J. et al., 2011).

2.3.8 Ultra-Vires Treaties

Baylis, J. et al., (2011) states that a party's consent to a treaty is invalid if it had been given by an agent or body without power to do so under that state's domestic laws. States are

reluctant to inquire into the internal affairs and processes of other states, and so a "manifest violation" is required such that it would be "objectively evident to any State dealing with the matter". A strong presumption exists internationally that a head of state has acted within his proper authority. It seems that no treaty has ever actually been invalidated on this provision. Consent is also invalid if it is given by a representative who ignored restrictions he is subject to by his sovereign during the negotiations, if the other parties to the treaty were notified of those restrictions prior to his signing. According to the preamble in The Law of Treaties, treaties are a source of international law. If an act or lack thereof is condemned under international law, the act will not assume international legality even if approved by internal law. This means that in case of a conflict with domestic law, international law will always prevail.

2.3.9 Misunderstanding, Fraud, Corruption, Coercion

Articles 46–53 of the Vienna Convention on the Law of Treaties set out the only ways that treaties can be invalidated—considered unenforceable and void under international law. A treaty will be invalidated due to either the circumstances by which a state party joined the treaty, or due to the content of the treaty itself. Invalidation is separate from withdrawal, suspension, or termination (addressed above), which all involve an alteration in the consent of the parties of a previously valid treaty rather than the invalidation of that consent in the first place. A state's consent may be invalidated if there was an erroneous understanding of a fact or situation at the time of conclusion, which formed the "essential basis" of the state's consent. Consent will not be invalidated if the misunderstanding was due to the state's own conduct, or if the truth should have been evident.

Consent will also be invalidated if it was induced by the fraudulent conduct of another party, or by the direct or indirect "corruption" of its representative by another party to the treaty. Coercion of either a representative, or the state itself through the threat or use of force, if used to obtain the consent of that state to a treaty, will invalidate that consent.

2.3.10 Contradictions to Peremptory Norms

A treaty is null and void if it is in violation of a peremptory norm. These norms, unlike other principles of customary law, are recognized as permitting no violations and so cannot be altered through treaty obligations. These are limited to such universally accepted prohibitions as those against the aggressive use of force, genocide and other crimes against humanity, piracy, hostilities directed at civilian population, racial discrimination and apartheid, slavery and torture, meaning that no state can legally assume an obligation to commit or permit such acts.

2.4 Conventions

Throughout the past decades, many countries have learned that possession of abundant material sources, i.e. power in the traditional sense, or as perceived by realism or liberalism, does not automatically convert into successful, i.e. effective and legitimate, foreign policy (Burchill et al., 2009:233). How such a situation can be explained or, better, understood and which lessons can be learned, has become an underlying question in political, as well as academic discussions. The author suggests that success in foreign policy depends on both its efficiency and legitimacy which are interdependent. This rather commonsensical assumption/conclusion can have, nevertheless, implications for real foreign policy and, here above all, for its analysis. Particularly when analyzing foreign policies of numerous "small

states” (in fact, the majority of countries in the world can be denoted as “small”), some of which have recently become rather active and successful on the international scene, a focus on non-material factors or means/goals rather than material factors or sources of foreign policy is useful and telling.

2.5 Agreements as Instruments of Foreign Policy

Krutz and Peake (2009:29) state that “the power to enter into international agreements is a fundamentally important power of the American presidency. Historically, international agreements have played a prominent policy role—from the creation of important alliances and the ending of major wars to the emergence of critical international organizations and global trade structures.” Agreements in Foreign Relations may be referred to as an executive agreement. An executive agreement is an agreement between Kenya and a foreign government that is less formal than a treaty and is not subject to the constitutional requirement for ratification by two-thirds of Parliament. For instance the Constitution of the US does not specifically give a president the power to conclude executive agreements. However, he may be authorized to do so by Congress, or he may do so on the basis of the power granted him to conduct foreign relations. Despite questions about the constitutionality of executive agreements, in 1937 the Supreme Court ruled that they had the same force as treaties. Because executive agreements are made on the authority of the incumbent president, they do not necessarily bind his successors.

Most executive agreements have been made pursuant to a treaty or to an act of Congress. Sometimes, however, presidents have concluded executive agreements to achieve purposes that would not command the support of two-thirds of the Senate. For example, after the outbreak of World War II, but before American entry into the conflict, President Franklin

Delano Roosevelt negotiated an executive agreement that gave the United Kingdom 50 overage destroyers in exchange for 99-year leases on certain British naval bases in the Atlantic. The use of executive agreements increased significantly after 1939. Prior to 1940 the U.S. Senate had ratified 800 treaties and presidents had made 1,200 executive agreements; from 1940 to 1989, during World War II and the Cold War, presidents signed nearly 800 treaties but negotiated more than 13,000 executive agreements.

Also agreements may be regarded as secret diplomacy which is often associated with a forgone era of Bismarckian intrigue. After Versailles secret agreements were thoroughly condemned for engendering mistrust and antagonism among the great powers and contributing to the Great War. In his Fourteen Points speech, Woodrow Wilson emphasized that “It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind” (Wilson, 1918). Secret dealings were discouraged by Article 18 of the League of Nations Covenant and Article 102 of the United Nations (UN) Charter, which tied the legality of international agreements to a public registration process (Lipson 1991: 537). While such institutional innovations have apparently eliminated formal secret treaties among the great powers, private understandings and informal agreements remain a ubiquitous feature of contemporary international bargaining (Lipson, 1991).

Such arrangements vary widely in their degree of secrecy. Some agreements are intended to be secret and remain so for example the negotiations for normalizing relations between Japan and South Korea contained secret understandings that were not publicly released until forty years after the treaty came into force. Other quid pro quos are officially denied but nearly transparent for example during their campaign to obtain permanent seats on the UN Security

Council, diplomats from Germany and Japan showered offers of economic aid to a host of smaller countries, prompting a critical Pakistani Ambassador to state that the lobbying efforts would be “judged as unethical or worse” if they were part of a domestic election (Bloomberg, 2005). South Korea pursued similar policies to secure support for Ban Ki Moon as the Secretary General of the UN, offering inducements ranging “...from tens of millions of pounds of extra funding for African countries to lucrative trade agreements in Europe —and even the gift of a grand piano to Peru” (The Times, 2006).

A Japanese Fisheries Agency official faced criticism for being unusually blunt about his government’s use of checkbook diplomacy to secure the support of poor member states to overturn a whaling ban in the International Whaling Commission (IWC), (The Seattle Post-Intelligencer, 2001). Recent quantitative evidence also suggests that the US privately secures support from non-permanent members of the UN Security council by leveraging its foreign aid budget and UNICEF aid (Kuziemko and Werker 2006), as well as IMF lending (Dreher et al. 2006). Despite the prevalence of private agreements in international diplomacy, their potential consequences have received surprisingly little attention in the international bargaining literature. Existing formal models of crisis bargaining generally assume all outcomes are public. While some international agreements may produce only public outcomes, we posit that virtually all diplomatic negotiations occurs under conditions in which some types of private deals are possible. It is, therefore, useful to think about the generalizable implications of private agreements on international diplomacy, in terms of both observable and unobserved outcomes.

2.6 Theories of World Politics: Realism

Realism emphasizes the constraints on politics imposed by human nature and the absence of international government. Together, they make inter-national relations largely a realm of power and interest. “Human nature has not changed since the days of classical antiquity” (Thompson 1985: 17) quoted from Donnelly, J. (2000). And that nature, according to realists, is at its core egoistic, and thus inalterably inclined towards immorality. As Machiavelli puts it, in politics “it must needs be taken for granted that all men are wicked and that they will always give vent to the malignity that is in their minds when opportunity offers” (1970: Book I, ch. 3) quoted from Donnelly, J. (2000).

Realism taught American leaders to focus on interests rather than on ideology, to seek peace through strength and to recognize that great powers can coexist even if they have antithetical values and beliefs. The fact that realism offers something of a manual for maximizing the interests of the state in a hostile environment explains in part why it remains the dominant tradition in the study of world politics. The theory of realism that prevailed after the Second World War is often claimed to on an older, classical tradition of thought. In Baylis et al., (2011) p. 86 work, it is stated that realists are skeptical of the idea that universal moral principles exist and therefore warn state leaders against sacrificing their own self-interests in order to adhere to some indeterminate notion of ethical conduct. Moreover, realists argue that the need for survival requires state leaders to distance themselves from traditional morality which attaches a positive value to caution, piety, and the greater good of humankind as a whole. Other definitions for realism are presented thus, ' Realism is not a theory defined by an explicit set of assumptions and propositions. Rather, as many commentators have noted it is a general orientation: “a philosophical disposition” (Gilpin 1986: 304): “a set of normative

emphasis which shape theory” (Ferguson and Manbach 1988:79); an “attitude of mind” with “ a quite distinctive and recognizable flavor” (Garnett 1984:110); “ a loose framework” (Rosenthal 1991:7): and “a ‘big tent’ with room for a number of different theories”, (Elman 1996:26). Realism is an approach to international relations that has emerged gradually through the work of a series of analysts who have situated themselves within, and thus delimited, a distinctive but still diverse style or tradition of analysis states Donnelly, J. (2000) p.6. Machiavelli argued that these principles were positively harmful if adhered to by state leaders. It was imperative that state leaders learned a different kind of morality which accorded not with traditional Christian virtues but with political necessity and prudence. Power is crucial to the realist lexicon and has traditionally been defined narrowly in military strategic terms. Yet irrespective of how much power a state may possess, the core national interest of all states must be survival. Like the pursuit of power, the promotion of the national interest is, according to realists, an iron law of necessity, states Baylis et al., (2000).

Further, Baylis et al., (2000) state that self help is the principle of action in an anarchical system where there is no global government. According to realism, each state actor is responsible for ensuring its own wellbeing and survival. Realists do not believe it is prudent for a state to entrust its safety and survival on another actor or international institution, such as the United Nations. States, in short should not depend on other states to ensure their own security. Unlike in domestic politics, there is no emergency number the states can dial when they are in mortal danger. This is true of China, Realists believe that liberal arguments for engaging China are based on shaky ground. Zhang et alia, (2001) state that it is true that economic interdependence between China and the world economy is intensifying, that economic interdependence alone, however, is insufficient to change Chinese behaviour

decisively and is at the mercy of Chinese leadership's cold calculation of cost and benefit. Also, Mearsheimer, J.J., (2006) p. 72, states that Structural realist theories ignore cultural differences among states as well as differences in regime type, mainly because the international system creates the same basic incentives for all great powers. He states that whether a state is democratic or autocratic matters relatively little for how it acts towards other states. Nor does it matter much who is in charge of conducting a state's foreign policy. Structural realists treat states as if they were black boxes: they are assumed to be alike, save for the fact that some states are more or less powerful than others. This is an interesting comment by Mearsheimer, J.J. (2006), because in realism it's about the benefits derivable from a country regardless of its internal matters in this case culture.

2.7 Neo- Realism

Realists believe that power is the currency of international politics. Great powers, the main actors in the realists' account, pay careful attention to how much economic and military power they have relative to each other. Zhang, Y. et al., (2001) quotes Gong, G.W. (1984) who states that as Chinese leaders of the late nineteenth and early twentieth century discovered, the standard for their country to satisfy at a minimum involved the protection of the lives and property of foreign nationals, the conduct of diplomatic relations through the institutions of ambassadors and a foreign ministry, and an embrace of international law. For classical realists like Hans Morgenthau (1948a), the answer is human nature. Virtually everyone is born with a will to power hardwired into them, which effectively means that great powers are led by individuals who are bent on having their state dominate its rivals. Nothing can be done to alter that drive to be all-powerful. For structural realists, human nature has little to do with why states want power. Instead, it is the structure or architecture of the international system that forces states to pursue power. In a system where there is no higher

authority that sits above the great powers, and where there is no guarantee that one will not attack another, it makes eminently good sense for each state to be powerful enough to protect itself in the event it is attacked. In essence, great powers are trapped in an iron cage where they have little choice but to compete with each other for power if they hope to survive, states Mearsheimer, J.J. (2006) p. 72. On the other hand, defensive realists like Waltz, K., (1979) maintain that it is unwise for states to try to maximize their share of world power, because the system will punish them if they attempt to gain too much power. The pursuit of hegemony, they argue, is especially foolhardy.

Offensive realists like Mearsheimer, J. (2001) take the opposite view; they maintain that it makes good strategic sense for states to gain as much power as possible and, if the circumstances are right, to pursue hegemony. The argument is not that conquest or domination is good in itself, but instead that having overwhelming power is the best way to ensure one's own survival. For classical realists, power is an end in itself; for structural realists, power is a means to an end and the ultimate end is survival. Baylis et al., (2000) states that power is based on the material capabilities that a state controls and that the balance of power is mainly a function of the tangible military assets that states possess, such as armoured divisions and nuclear weapons. However, states have a second kind of power, latent power, which refers to the socio-economic ingredients that go into building military power. Further Baylis et al., (2000) states that latent power is based on a state's wealth and the size of its overall population. Great powers need money, technology, and personnel to build military forces and to fight wars, and a state's latent power refers to the raw potential it can draw on when competing with rival states. It should be clear from this discussion that war is not the only way that states can gain power. They can also do so by increasing the size

of their population and their share of global wealth, as China has done over the past few decades. Neorealism – or structural realism – is a theory of international politics. The theory is usually associated with Kenneth Waltz (1924–2013) who in his 1979 book titled ‘Theory of International Politics’, endeavored to construct a very general framework for explaining recurring patterns of state behavior and state interaction in the international system. As is the case with all theories, there are many things that Neorealism fails to explain. Neorealism is often faulted for failing to explain or predict events or behavior and that Neorealists have never set out to explain or predict phenomena in the first place (Baylis et al., 2000).

He further states that every theory claims its own domain so that Neorealism consists of the biggest issues – past, present, and future – in international relations: war, the avoidance of war, power balancing, power seeking, the death of states, security, competition and arms races, alliance formation, and the like. In an anarchic world, where interests collide, where survival and security constitute the basic goals of states, where the distribution of power largely shapes what states can and cannot do and whom they have reasons to fear and not fear, the biggest gamble one takes is to remain oblivious to the risk posed by unchecked power. America’s power is as yet unchecked and unbalanced. Waltz tells us that this will eventually change, though perhaps only slowly. We should in any case listen to him, because he is in all likelihood in the right (Baylis et al., 2011). Besides the two theories discussed above, there is Constructivism which focuses on the idea of anarchy but departs from prior positions on the anarchical system. Constructivists allow for attention regarding the “making” of the conditions (Ruggie, 1998: 877); actors do not respond to “given” conditions, they create them.

2.8 Conceptual Framework

The study sought to assess the influence of Kenya's foreign policy on treaties ratified within the time period 2002 and 2013, inclusive. Based on the above literature review, the outstanding concepts and their relationship are illustrated in the diagram below.

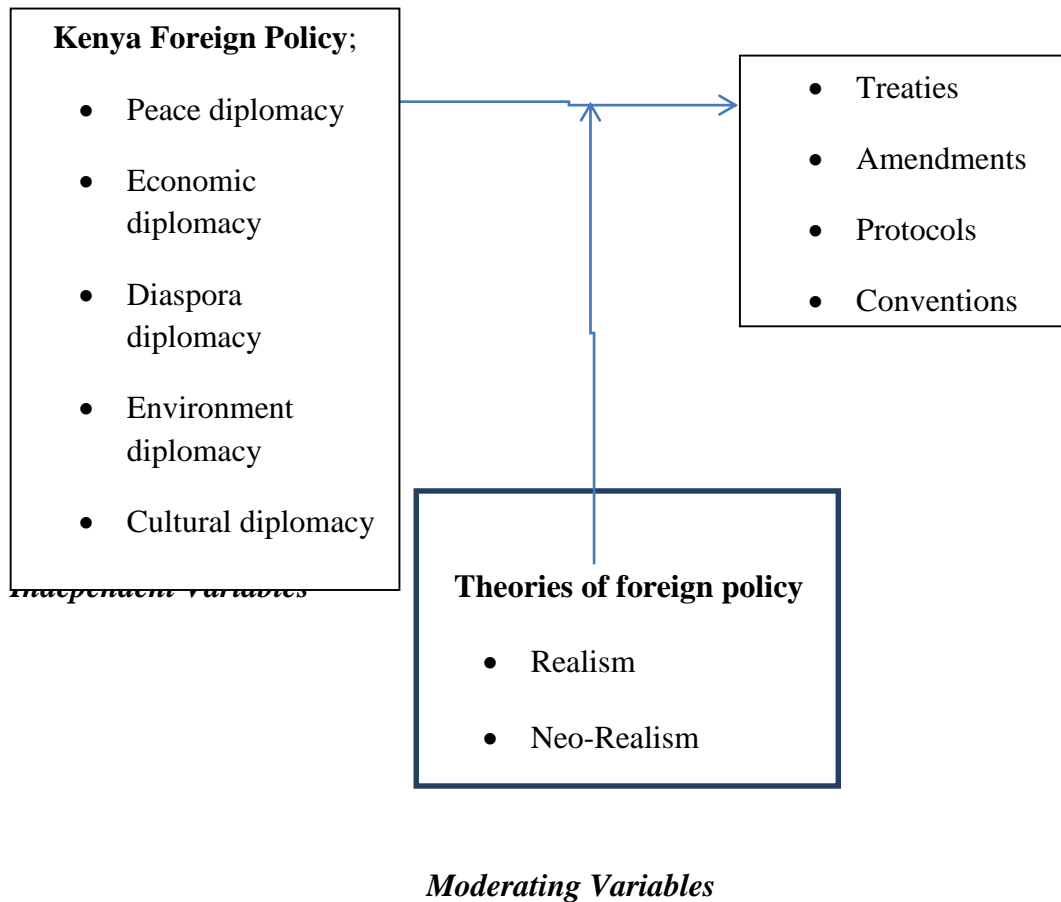


Figure 2.1 Conceptual Framework

Source: Researcher's Conceptualization (2018)

Since the foreign policy influenced the treaties in this study, it became the independent variable and the treaties being influenced assumed the status of dependent variables. The moderating variables presented possible political states or environment within which the State actors would interact, the state of realism and neo realism. There are other environments

or political positions of international engagements besides these two examples being liberalism and constructivism. Why the choice of these two only in this study? The study picked realism and neo-realism because these two theories describe Kenya's political stance with other state actors in that she pursues the promotion of her interests.

CHAPTER THREE: METHODOLOGY

3.0 Introduction

This chapter discusses the data collection methods used in this study.

3.1 Secondary Data

This research study used the external desk review technique where secondary data was exclusively drawn from the Kenya Law's Treaties and Agreements Database. A list was developed to enumerate the treaties entered into by the State between the timelines 2002 to 2013, both years inclusive, see Annex I. This list is the population of treaties entered into by the State for this study. Hence the sampling frame of N= 55 comprise treaties, protocols, declarations, covenants, conventions, charters and agreements. The criteria used to pick as subjects in the study was either 'date of entry into force' if this was not available, then, 'date of adoption'. The database provides content of the treaties as well as a preamble of pertinent information presented as shown in Annex II. In all the treaties listed in Annex I none of them had the sheet in Annex II populated fully. The study made use of percentages and averages in the analysis of collected data. Secondary data was collected through desk review. This involved scanning literature, analyzing secondary data and creating a reference list so that all documents are organized and easily accessed to others. Desk research as the name suggests is the research technique mainly done with minimal physical movement basically sitting and sifting through books and digitized data for information. It is a low cost and time saving technique as compared to field research. The main cost items involved are execution time, telephone and data bundles charges. It is an effective technique since can it is quite quick

and cheap and most of the required information can easily be fetched from electronic data sources.

Basically there are two types of desk research techniques namely internal and external desk research techniques. Internal desk research pertains to analysis of data generated in an organization in the course of executing its daily tasks. Examples of data generated within an organization may be drawn from the reception, visitors' book, the procurement and accounts department as well. Actually for each and every department in an organization data must be being generated which is useful for scrutiny to derive important insights with which to steer the organization in the right direction. The main advantage in performing internal desk research is that it involves internal and already existent organizational resources to organize the collected data in such a way that it is not only efficient but also usable. Internal desk research is comparatively very cheap and effective as internal resources are deputed and the expenditure in getting data from outside is less.

Alternatively, external desk research involves collecting relevant data and this from outside the organizational boundaries. These external desk researches are the online desk research, government published data and customer desk research. Respecting online desk research, of a truth there is an incredible amount of data available online on internet. It is for this reason that the research of data for this study was online desk research. Critical to any researcher using the internet is specificity, since there are billions of pages available on internet. Two approaches exist for digging out the relevant information from internet, one is directly browsing the specific information from identified organizations, industries or known databases and extracting the required data of these sites. Search engines such as google, known to be one of the fastest search engines, it is able to link a researcher to useful sites and

fast. Government published data is the second example of external desk research. Governments publish a great deal of data online that can be used in the research process. This data is related to social, financial and economical aspects of countries. The governments' websites are mostly free to access. Lastly is the customer desk research which is about extracting information for research by directly communicating with existing or prospective customers. Customers/ direct users/ end users are the ones who are considered the most informed as they are the ones actually using products and services and are aware of the current market trends more than any other entity in an organizational setting, therefore the feedback provided by customers is the most accurate and useful data which can be used most effectively in helping make decisions. The research design used in this study was exploratory research design. This research design involves gathering information in an informal and unstructured manner. The exploratory research design is proper when the researchers know little about the study area. Descriptive statistics was used to show the distribution of types of treaties as presented in KNLR database. The graphs developed presented perspectives to mull over and underscore the findings of the study as being, that to a very large extent, national interests define the treaties entered into by the State of Kenya.

CHAPTER FOUR: FINDINGS AND DISCUSSIONS

4.0 Introduction

The following is a discussion of the first objective of this study which was to assess Kenya's Foreign Policy interests.

4.1 Descriptive Analysis of Data

The analysis of secondary data collected as a result of the online desk research used both percentages and averages statistical techniques. The results of the analysis yielded the number of treaties signed during the inclusive period 2002 to 2013. They were 2 treaties, 17 protocols, 2 declarations, 27 conventions, 6 charter and 1 agreement; a total of 55 legal documents of foreign policy. The figure 3.1 below is a pie-chart showing the distribution of the foreign policy documents in percentages.

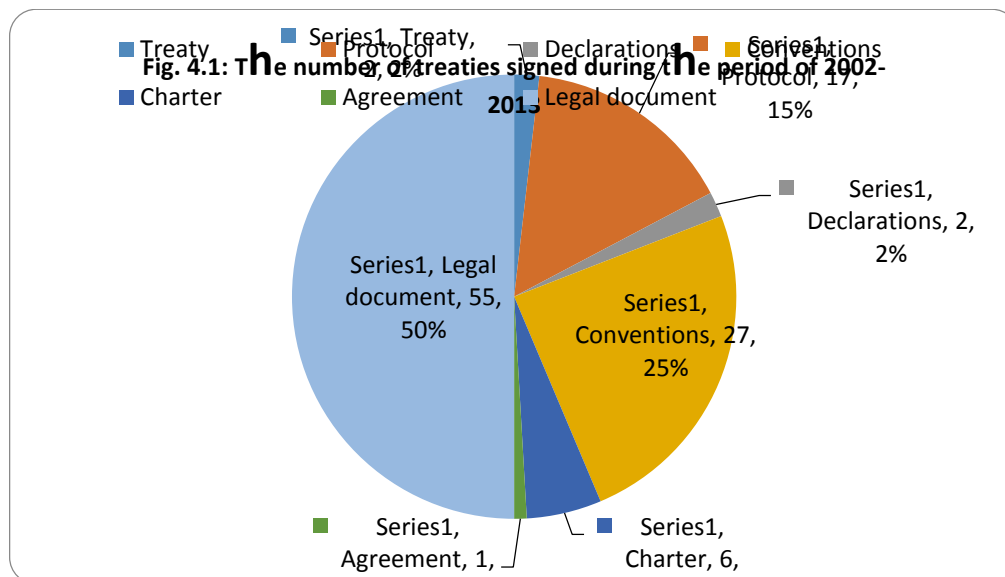


Fig. 4.1; Pie Chart Showing the Number of Treaties Signed 2002-2013

Source: Research data (2018)

The largest percentage of the foreign documents signed during this period of 2002-2013 was the legal documents at 50%, followed by conventions at 25%. Protocols made up 15% of the foreign documents whereas the remaining four document types each were at less than 10%.

The Kenya Law Reporting (NCLR) database has a total of 42 agreements, 13 charters, 315 conventions, 5 covenants, 9 declarations, 78 protocols and 12 treaties i.e. 474. Given that some of these legal instruments have enforcement dates going back to the late 19th century, a percentage of 55 out of the total 474 items i.e. 11.6% may not be deemed as being insignificant for 2002 to 2013 period. The apt comment would be that the foreign affairs department was fairly active during this period 2002 to 2013. The following figure 4.2 is a bar chart showing the distribution of these documents as presented in the NCLR website. It shows that there are more conventions than other legal foreign policy instruments.

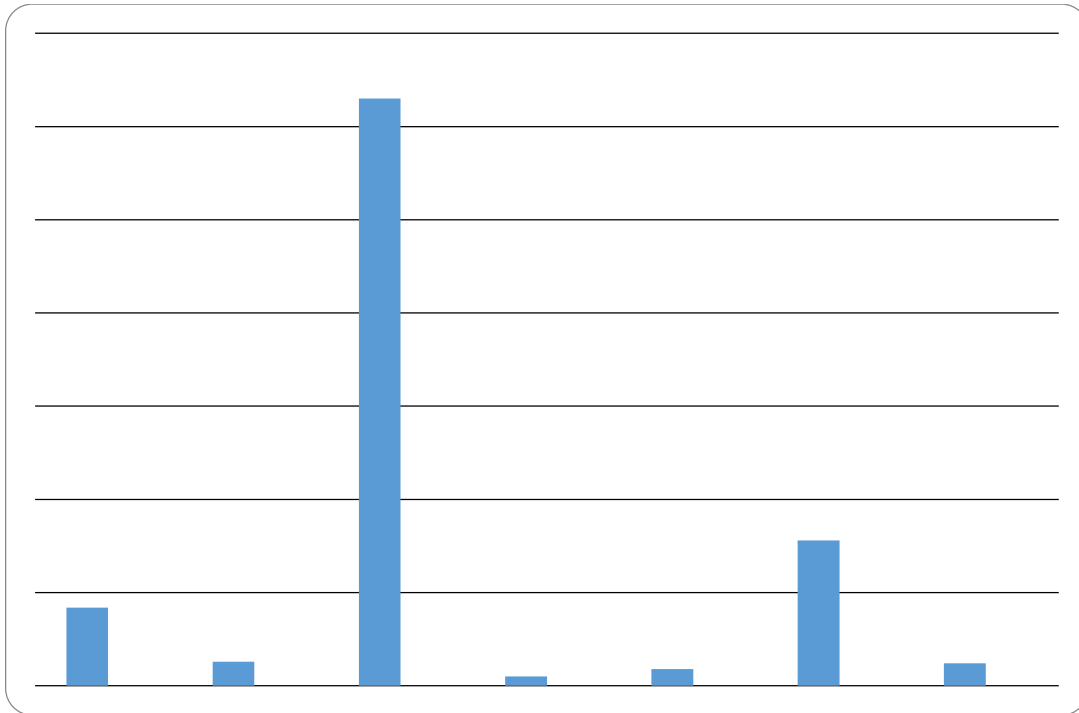


Figure 4.2: Bar Chart Showing the Distribution of Different Foreign Policy Documents in the NCLR Website

Source: Research data (2018)

As pertaining to the strength of Kenya's foreign policy, for the period 2002 to 2013 based on the number of treaties enforced, the foreign affairs could do better to be seen to be less protectionist but outward looking for more and bigger markets for the country. The foreign affairs department could do better at being more robust than it is. The challenge of Kenya's foreign policy would be to developing more treaties as compared to covenants and protocols.

4.3 An Assessment of Kenya's National Interests

In assessing Kenya's policy interest it would be pertinent to determine in light of the above narrative in the literature review whether Kenya is a realist or a neo-realist State. She is a realist State, this is because of the nature of her objectives in the foreign policy document

being to protect Kenya's sovereignty and territorial integrity; to promote sub-regional and regional integration and co-operation; enhancing regional and global peace and security; advancing the economic prosperity of Kenya and her people; projecting Kenya's image and prestige; promoting international cooperation and multilateralism; promoting and protecting the interests of Kenyans abroad; and enhancing partnership with the Kenya Diaspora and descendants. In each one of these objectives, Kenya makes a statement for recognition of its presence; hence she is a realist state. Security being the golden thread running through all the stated objectives.

According to Kenya's Foreign Policy document, the vision driving Kenya's Foreign Policy agenda is the pursuit of 'A peaceful, prosperous and globally competitive Kenya' while the Mission is "To project, promote and protect Kenya's interests and image globally through innovative diplomacy, and to contribute towards a just, peaceful and equitable world". Again these statements underscore the inherent jostling for recognition on the world stage, marketing itself for strategic partnerships on the world stage. "Through the foreign policy objectives, Kenya seeks to promote and safeguard national, regional and international peace and security and protect our sovereignty and territorial integrity", KFP, 2014. It is stated in the document that as a country, Kenya purposes to support the work of regional, international and multilateral organizations in finding lasting solutions to conflict and terrorism activities for a free and secure world. True to this statement is Kenya's involvement in the South Sudan Peace Treaty assented to by Kiir and Maachar this month, August, 2018. Kenya's Foreign Policy 2014 document is inclined towards upholding the country's sovereignty, promoting universal peace and fostering better relations with her neighbors, the rest of the African continent and the world at large. Kenya does this by continuing to consolidate and strengthen

its foreign relations and diplomatic engagements with other countries as well as international and multilateral organizations at the regional, continental and international levels.

The Policy is anchored on five interlinked pillars of diplomacy namely: Economic; Peace; Environmental; Cultural and Diaspora. Economic diplomacy aims to realize a robust and sustained economic transformation so as to secure Kenya's social economic development and prosperity in line with the goals and aspirations of the Kenya Vision 2030. Peace Diplomacy seeks to consolidate Kenya's legacy in promoting peace and stability as necessary conditions for development and prosperity in countries within the region. Environmental Diplomacy recognizes Kenya's enormous stake in the sustainable management of its own natural resources, both regionally and globally. Cultural Diplomacy aims to use culture as a vital tool in international relations especially through the use of cultural heritage (Thimlich Oinga recognized by UNESCO as a world heritage site in 2018) and endowments as the pedestals of our foreign engagement. The Diaspora Diplomacy recognizes the importance of harnessing the diverse skills, expertise and potential of Kenyans living abroad, and facilitating their integration into the national development agenda. These pillars inform the core priorities and strategies for her bilateral and multilateral engagement so as to strengthen relationships, enhance social cultural cooperation and promote her national interests.

In line with Kenya's foreign policy's objectives of promoting and protecting Kenya's interest abroad, the Government of Kenya by 2014 had established a total of 54 diplomatic missions in 49 countries and appointed 25 Honorary Consuls who provide support and assistance in promoting Kenya's interest abroad. At this time the Cabinet Secretary in charge of the foreign affairs docket was Amb. Amina Mohammed. The core priorities identified in the policy document are anchored on the abovementioned five pillars and they are: to enhance global

peace and security; to promote economic development and prosperity; to take a leadership role in addressing global environmental issues; to expound Kenya's rich culture as an avenue to promoting understanding and better relations; and to enhance Kenya's stature in the international affairs. Kenya shall seek to strengthen bilateral relations, foster regional integration and support strategic partnerships at the continental and multilateral levels. Currently the foreign affairs docket is headed by Dr. Amb. Monica Juma, an embassy is to be opened in Geneva by October 2018; one was opened in Senegal earlier this year 2018; all these in line with the policy objectives to increase Kenya's presence both regionally and globally.

4.3 An Analysis of Treaties Ratified in 2002 to 2013

The following is an analysis of the second objective of this study which was to make an analysis on the treaties signed by Kenya in the period 2002 to 2013, fringe years included. The following are the findings resulting from scrutinizing the treaties so signed with the critical pillars of Kenya Foreign Policy. There are quite a number of treaties signed by the State as described in chapter three above i.e. N=55. This section focused on the Trademark Law treaty selected purposively from the sampling frame in Annex I.

4.3.1 Trademark Law Treaty (TLT); Date of Adoption; 2012

The TLT was concluded in 1994 and is open to States members of World International Intellectual Property Organization (WIPO) and to certain intergovernmental organizations. Instruments of ratification or accession must be deposited with the Director General of WIPO. As per Kenya Law reporting database, Kenya is a signatory to this treaty which shall apply to marks consisting of visible signs, provided that only those Contracting Parties which

accept for registration three-dimensional marks shall be obliged to apply this Treaty to such marks. Registration” means the registration of a mark by an Office whereas Office” means the agency entrusted by a Contracting Party with the registration of marks. The aim of the Trademark Law Treaty (TLT) is to standardize and streamline national and regional trademark registration procedures. This is achieved through the simplification and harmonization of certain features of those procedures, thus making trademark applications and the administration of trademark registrations in multiple jurisdictions less complex and more predictable.

WIPO gives a lucid summary as to the content/ provisions of the treaty. The great majority of the provisions of the TLT concern the procedure before a trademark office which can be divided into three main phases: application for registration; changes after registration; and renewal. The rules concerning each phase are constructed so as to clearly define the requirements for an application or a specific request. The first phase – application for registration – the Contracting Parties to the TLT may require, as a maximum, the following indications: a request, the name and address and other indications concerning the applicant and the representative; various indications concerning the mark, including a certain number of representations of the mark; the goods and services for which registration is sought classified in the relevant class of the Nice Classification (established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)); and, where applicable, a declaration of intention to use the mark. Each Contracting Party must also allow that an application can relate to goods and/or services belonging to several classes of the Nice Classification. As the list of permissible requirements is exhaustive, a Contracting Party cannot require, for

example, that the applicant produces an extract from a register of commerce, an indication of a certain commercial activity, or evidence to the effect that the mark has been registered in the trademark register of another country.

The second phase of the trademark procedure covered by the TLT concerns changes in names or addresses and changes in the ownership of the registration. Here too, the applicable formal requirements are exhaustively listed. A single request is sufficient even where the change relates to more than one – possibly hundreds – of trademark applications or registrations, provided that the change to be recorded pertains to all registrations or applications concerned. As to the third phase, renewal, the TLT standardizes the duration of the initial period of registration and the duration of each renewal to 10 years each. Furthermore, the TLT provides that a power of attorney may relate to several applications or registrations by the same person or entity. The TLT also contains Model International Forms (MIF) corresponding to the maximum requirements that a Contracting Party may provide for in respect of a particular procedure or document. A Contracting Party may also prepare its own Individualized International Form for use by applicants, provided that such forms do not require mandatory elements that would be additional to the elements referred to in the corresponding MIF. Most notably, the TLT does not allow a requirement as to the attestation, notarization, authentication, legalization or certification of any signature, except in the case of the surrender of a registration.

Regarding the peace diplomacy pillar which is about Kenya's conviction that its own stability and economic wellbeing are dependent on the stability of the sub-region, Africa and the rest of the world ; this treaty affirms Kenya's bid to a peaceful existence both regionally and globally. Regarding economic diplomacy pillar which is about Kenya having robust

economic engagements necessary to secure her regional and overall economic objectives in line with the Kenya Vision 2030. This treaty is imperative as it perpetuates ownership of innovations through patenting. With regards to Diaspora Diplomacy pillar, which is about harnessing the diverse skills, knowledge, expertise and resources of Kenyans living abroad, and facilitating their integration into the national development agenda, this treaty is imperative to ensure Kenya's innovations of international application are protected globally.

Next is the environment diplomacy pillar. "Among key issues underlined by the environment pillar is the effective implementation of the Multilateral Environmental Agreements (MEAs) such as the Convention on International Trade of Endangered Species (CITES)." KFP (2014: 25). The environmental diplomacy pillar is derived from the Kenya Environmental Policy, 2013 document which underscores that environment and natural resources are valuable national assets upon which the country's sustainable development is anchored. This may have been the basis for the tragic move of rhinos from their natural habitat to Tsavo. Brand Kenya falls in this category. Finally is the Cultural Diplomacy Pillar about which is stated in KFP, 2014, p.27 that "The potential of Kenya's cultural heritage is enormous and there is need for its exploitation for the development of the country. Over the years Kenya has continuously placed emphasis on cultural recognition and understanding as the basis for dialogue". Kenya has had her inventions viz, kiondo, akala patented by such nations as Japan. On the strength of this treaty Kenya must be alert through its citizenry, government agencies so that this anomaly (countries stealing Kenya's original inventions) does not happen ever again.

4.4 Successes and Challenges in the Domestication of International Treaties 2002-2013

The following is a discussion of the third objective of this study which was to identify the successes and challenges resulting from domesticating international treaties ratified 2002-2013. Regarding the peace diplomacy pillar one of its objectives is to collaborate with other African countries to strengthen the conflict prevention, management and resolution capacity of regional institutions, including the East African Community (EAC), Inter Governmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA) and the African Union (AU with the aim of promoting sustainable peace and development. The following statement was made in response to analyzing the manifestos of the two primary competing parties during the 2017, August general elections in the country that “A permanent Kenyan troop presence in Somalia is untenable and will only result in more resentment from the Somali people and lead to more terrorist attacks in Kenya. A strategic interest for Kenya tied into how it impacts the citizens’ daily lives is clearly absent in the current campaign “(Monda, D. 2017). Currently in as much as the Kenya soldiers are still in Somalia, the country as had good relations with Somalia with its president visiting the country on no less than two occasions since August 2017. Relations with the other East African Community member countries Uganda, Tanzania, Rwanda and Burundi, and lately South Sudan, are all upward looking. The major challenge being complete removal of Ugandan soldiers from Migingo Island. Border dispute exists between a number of other African states including Malawi and Tanzania however for this case unlike the Migingo case, a solution presents in the form of Heligoland Treaty. The partition of the lake's surface area between Malawi and Tanzania is under dispute. Tanzania claims that the international border runs through the middle of the lake. On the other hand, Malawi claims the whole of the

surface of this lake that is not in Mozambique, including the waters that are next to the shoreline of Tanzania. Both sides cite the [Heligoland Treaty of 1890](#) between Great Britain and Germany concerning the border. The wrangle in this dispute occurred when the British colonial government, just after they had captured Tanganyika from Germany, placed all of the waters of the lake under a single jurisdiction, that of the territory of [Nyasaland](#), without a separate administration for the [Tanganyikan](#) portion of the surface. Later in colonial times, two jurisdictions were established. The dispute came to a head in 1967 when Tanzania officially protested to Malawi; however nothing was settled. Occasional flare-ups of conflict occurred during the 1990s and in 2012 when Malawi's oil exploration initiative brought the issue to the fore, with Tanzania demanding that exploration cease until the dispute was settled.

Regarding economic diplomacy pillar whose objectives include increasing capital flows to Kenya and the East African region; to support export promotion and investment by Kenyan enterprises within the region and beyond and to promote the country as a favorite destination for foreign direct investment, tourism, and conferencing. Since August 2017, Kenya as hosted important conferences and workshops viz IAAF global sports meet at Kasarani, TICAD, Maritime workshops among others. These are a boost to the economy. In terms of relations with major foreign powers, China is increasingly becoming a leading partner in Kenya's economic development. It's of utmost significance that Kenya's core interests vis-à-vis China are leveraged; the means to do so also clearly defined. The important question of the growing volume of debt owed to the Chinese and how this weakens Kenya's negotiation and bargaining power needs to be addressed urgently. The United Kingdom has deep historical, economic and security ties with Kenya. Kenya needs to address how this event

presents gains to Kenya's. Relations with the United States may be described as being cordial.

With regards to Diaspora Diplomacy pillar some of its objectives include providing effective and responsive consular services and facilitating Kenyans abroad to participate in national development. Lately there have been issues of Kenyan workers being mistreated in foreign countries especially those in the Middle East. The government through Foreign Affairs has responded favorably as stated in a Reuters article, "Kenya plans to lift a ban on its citizens working in the Gulf - introduced in 2014 because of abuses - with new safeguards, such as requiring recruitment agencies to pay a security bond so they can repatriate any distressed migrants." Mang'era, A., (2018). These cases are supposed to decline with time but this is not the case. There's need to place clear guidelines on how government aid may be sought by those in distress. Also government response has been to send its diplomats to arbitrate on behalf of the distressed individuals as stated in an article in the Standard newspaper, "the government has sent three diplomats to the Middle East to help resolve abuse Kenyans are reportedly suffering in Gulf countries". Also that "The government has launched a crackdown on rogue employment agencies that have been facilitating Kenyans travel to these countries." (Nyabundi, D. 2017).

The environment diplomacy pillar's objectives include championing the strengthening of United Nations Environmental Programme (UNEP) and United Nations Human Settlements Programme in Nairobi (UN HABITAT) in prioritizing the global sustainable development agenda and promoting compliance with the relevant national, regional and international environmental legislation, regulations, standards, and other appropriate operational procedures and guidelines. This calls for synergies between the foreign affairs department

and the environment docket in the country. Example of such synergy is the Kenya Environmental Information Network (KEIN), a project initiated by UNEP together with the National Environment Management Authority (NEMA). KEIN initiative brings together Kenyan institutions that generate environmental data. The network is intended to create a framework for cooperation and coordination amongst various stakeholders thus preventing duplication of information for local, regional and global consumption.

Finally the Cultural Diplomacy Pillar pursues among others the following objectives; respecting and recognizing cultural diversity and heritage; promoting cultural exchanges and partnerships and promoting global intercultural dialogue. Optional Protocol to the Convention on the rights of the child, on the sale of children, child prostitution and child pornography whose entry into force was 2002, comes to bear on this cultural diplomacy pillar. The protocol recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The treaty came into being as a result of the state parties' grave concern on the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography. There was a deep concern among the state parties at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography. Sanga, B. and Ongala, M. (2018) report that Child rights groups, hoteliers and police admit that pedophiles, especially retirees from the United Kingdom, Belgium, Italy and France, and wealthy local tourists are sexually exploiting minors with impunity. A number of particularly vulnerable groups, including girl children

are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited.

It is the belief of the state parties that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children. The tools for raising public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level. Article 5 of this protocol states “The offences referred to in Article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties,” (UN publication, p. 250). Case in point is a Birmingham Crown Court in the United Kingdom putting charity boss behind bars for assault on vulnerable Kenyan street Children in Gilgil, between 2002 and May 2013 as reported in an article by an anonymous The Standard Newspaper reporter in 2015. Foreign sex offenders in Kenya are arrested when found guilty of their offences and deported to their countries of origin to face charges in their own courts.

Article 10 states that the “States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts

involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations,” (UN publication, p. 252). For the objects enshrined in the Kenya Foreign Policy to be realized, all government agencies have to work together, in the absence of such synergistic approach to problem solving, then the cultural diplomacy pillar’s objectives and indeed the implementation of the entire foreign policy, will be like a broken cistern, a calabash, ever leaking.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This study provides the historical perspectives of foreign policy implementation in Kenya within the period 2002 to 2013 by way of looking at treaties and to what extent these address the Kenya Foreign Policy. Perusing all the treaties, N= 55, in the sampling frame in Annex I, this research concludes that as a state party, Kenya is doing well in some part and poorly on other parts.

The reasons for doing well are political goodwill, funding to provide requisite structures to execute the provisions of treaties the reverse is true for poor performance. It is important to note that Kenya has in the past not had a written single foreign policy framework document and that the conduct of Kenya's foreign relations has been informed by various official documents, and executive pronouncements and circulars, including the following: the Constitution of Kenya; the Sessional Paper No. 10/1965 on "African Socialism and its Application to Planning in Kenya"; the Sessional Paper No. 1/1986 on "Economic Management for Renewed Growth"; Manifestos of the ruling political parties; National Development Plans; Kenya Environmental Policy, 2013: Kenya Vision 2030 and its Medium Term Plans; and International Treaties, Conventions, Agreements and Charters (KFP (2014) p. 20). There is therefore need for future studies on the existing document and how it helps the country position itself in an increasingly neo-liberalist/ constructionist world. Maina, A.T., (2013) states that ever since the Kibaki administration, Kenya's foreign policy has tilted heavily to international economics. Whereas in Moi's Government foreign policy was heavily employed to defend the KANU regime and its Machiavellian tactics of holding on to power, Kibaki's foreign policy has been one marked with a lot of development aspiration and

rhetoric. The document Vision 2030 was launched by former President Mwai Kibaki on 30th October 2006.

5.1 Peace Diplomacy Pillar

Underlying Kenya's peace and security diplomacy is the recognition of peace and stability as necessary pre-conditions for development and prosperity. Linked to this, is Kenya's conviction that its own stability and economic wellbeing are dependent on the stability of the sub-region, Africa and the rest of the world. One of the objectives of this pillar is to promote the resolution of conflicts by peaceful means. The 'Protocol To The OAU Convention On The Prevention And Combating Of Terrorism, 2004' as its main objective to coordinate and harmonize continental efforts in the prevention and combating of terrorism in all aspects. Kenya reared its military might to ward off Al shabbab interference with territorial peace in the north. The protocol supports this Kenya's intervention however in the resurgence of al-Shabaab, the Somali government's wariness of the KDF's relationship with Madobe feeds into the hands of al-Shabaab, which has promoted the idea of a foreign-led intervention. If public opinion were to turn against the KDF, this narrative could increase recruitment for the group, which was born in Middle and Lower Jubba and focuses on minority or marginalised clans and groups, according to Somalia expert Farah Abdulsamed. McEvoy, C. (2013:8) cites Abdulsamed as stating that "The movement is capable of surviving and eventually ruling the poor and minority clans, by providing a voice and influence to those who have grievances."

5.2 Economic Diplomacy Pillar

According to Kenya's foreign policy the economic diplomacy pillar pursues the quest for a peaceful and stable environment linked to its socio-economic development and prosperity, and that of the region. A robust economic engagement is necessary to secure Kenya's

regional and overall economic objectives in line with the Kenya Vision 2030. One of the key objectives of this pillar is to promote the country as a favorite destination for foreign direct investment, tourism, and conferencing. The United Nations Convention against transnational organized crime states as one of its objectives that a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions shall be instituted. This will deter such activities as described by McEvoy (2013) that despite the UN Security Council's and Somali government's bans on charcoal exports – which are al-Shabaab's main source of revenue, estimated at generating in excess of \$25 million for the group in 2011 (UN Monitoring Group, 2012: 147) – they continue unabated from Kismayo under the control of Ras Kamboni: an estimated 700,000 bags were reportedly exported in November 2012 and 800,000 in December, with at least 20 ships collecting it per month. At a minimum of \$25 per bag, this would have produced an income of at least \$37,500,000 for these two months alone.

5.3 Diaspora Diplomacy Pillar

As per the country's foreign policy, it states that the Government of Kenya recognizes the huge and untapped potential of Kenyans Abroad which can contribute to the country's national development agenda. The Diaspora pillar aims to harness the diverse skills, knowledge, expertise and resources of Kenyans living abroad, and facilitating their integration into the national development agenda. This informs the Diaspora Pillar which seeks to harness the contribution of Kenyans living abroad through the implementation of the National Diaspora

policy. One of the objectives of this pillar is to provide effective and responsive consular services. Kenya is a signatory of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which entered into force on 22nd June 2006. The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. This protocol supports the diplomacy pillar by providing a conduit to state to reach her peoples and aid her peoples in distress.

5.4 Environmental Diplomacy Pillar

The Kenya Environmental Policy, 2013 underscores that environment and natural resources are valuable national assets upon which the country's sustainable development is anchored. Kenya recognizes its enormous stake in the sustainable management of its own natural resources, those of the region and the world. The objectives of this pillar are interalia to promote compliance with the relevant national, regional and international environmental legislation, regulations, standards, and other appropriate operational procedures and guidelines. This pillar hinges on the economic pillar. Lately we have had rhinos protected, others moved to the Tsavo National Park to ensure they do not go extinct and to have tourists come to view them.

5.5 Cultural Diplomacy Pillar

The potential of Kenya's cultural heritage is enormous and there is need for its exploitation for the development of the country. Over the years Kenya has continuously placed emphasis on cultural recognition and understanding as the basis for dialogue. It is through cultural activities that a nation's idea of itself is best represented. Kenya's cultural diplomacy aims

to increase awareness of her cultural richness and to generate interests in the country's cultural heritage. One of the objectives of this pillar is to respect and recognize cultural diversity and heritage. This pillar hinges on the economic pillar and to this end we have had Ura gate- Tharaka Nithi County, Turkana and Samburu cultural festivals.

Indeed as of the political scenario currently unfolding, state foreign policy confirm Kenya's engagement with the world is shifting as part of a general trajectory towards more strategic, self-interested and confident policymaking. Peacekeeping in Africa in general is at a critical juncture: it is increasingly required to respond to ever-more-complex threats with multifaceted and holistic peacekeeping and peace building responses. Kenya's unprecedented engagement in Somalia is perhaps an inevitable part of this general shift. While it clearly represents a break from the past, it is not illustrative of a more expansionist policy or agenda than before, however. The Somalia case is deemed unique: the intervention is part of a pragmatic approach to foreign policy that was adopted by the Kibaki government (2002-13), following the more introspective and passive Moi years (1978-2002). Kenya's willingness to engage in complex future peace operations, particularly in its backyard, will almost certainly be influenced by events on the ground. This study recommends a future study to respond to the question 'Since we as a country started facing east i.e. 2002, have our national interests been captured in the treaties ratified since then to date?'

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APPENDICES

APPENDIX I

List of Treaties and the Year of Adoption / Entry into Force

Treaties (2)

Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography

Date of entry into force; 2002

Trademark Law Treaty

Date of adoption; 2012

Protocols (17)

Protocol To The Treaty Establishing The African Economic Community Relating To The Pan-African Parliament

Date of Entry into Force; December 14th 2003

Protocol Against The Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime

Date of Adoption; July 8th 2004

Protocol Relating To The Establishment Of The Peace And Security Council Of The African Union, 2002

Date of Entry into Force; December 26th 2003

Protocol Relating To The Establishment Of The Peace And Security Council Of The African Union, 2002;

Date of Entry into Force; December 26th 2003

Protocol On Amendments To The Constitutive Act Of The African Union, 2003

Date of Adoption; July 11th 2003

Protocol On The Establishment Of East African Customs Union

Date of Adoption; March 2nd 2004

Optional Protocol To The Convention On The Rights Of The Child On The Involvement Of Children In Armed Conflict

Date of Entry into Force; February 12th 2002

Optional Protocol To The Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment

Date of Entry into Force; June 22nd 2006

United Nations Convention Against Transnational Organized Crime

Date of Entry into Force; December 25th 2005

Protocol On The Statute Of The African Court Of Justice And Human Rights

Date of Adoption; July 1st 2008

Protocol On The African Investment Bank

Date of Adoption; June 30th 2009

Swakopmund Protocol On The Protection Of Traditional Knowledge And Expression Of Folklore

Date of adoption; November 23, 2007

Protocol On The Law Applicable To Maintenance Obligations

Date of Adoption; November 23rd 2007

Protocol Relating To An Amendment To The Convention On International Civil Aviation (article 50 A)-1990

Date of Entry into Force; November 28th 2002

Protocol Relating To An Amendment To The Convention On International Civil Aviation (article 56)-1989

Date of Entry into Force; April 18th 2005

Protocol To Amend The Convention On Damage By Foreign Aircraft To Third Parties On The Surface

Date of Entry into Force; July 25th 2002

Protocol Supplementary To The Convention For The Suppression Of Unlawful Seizure Of Aircraft

Date of Adoption; September 10th 2010

Declaration (2)

The Coolum Declaration

Date of Adoption; March 5th 2002

Declaration Of Principles For International Elections Observers And Code Of Conduct For International Elections Observers, 2005

Date of Adoption; October 27th 2005

Conventions (27)

Protocol To The OAU Convention On The Prevention And Combating Of Terrorism, 2004

Date of Adoption; July 8th 2004

African Union Convention On Preventing And Combating Corruption, 2003

Date of Entry into Force; August 5th 2006

Oau Convention On The Prevention And Combating Of Terrorism

Date of Entry into Force; December 6th 2002

International Plant Protection Convention

Date of Entry into Force; October 2nd 2005

Rotterdam Convention On The Prior Informed Consent Procedure For Certain Hazardous Chemicals And Pesticides In International Trade

Date of Entry into Force; February 24th 2004

Stockholm Convention On Persistent Organic Pollutants

Date of Entry into Force; May 17th 2005

C183 Maternity Protection Convention, 2000

Date of Entry into Force; February 7th 2002

Commonwealth (Latimer House) Principles On The Three Branches Of Government, 2003.

Date of Adoption; December 1st 2003

United Nations Convention Against Corruption

Date of Entry into Force; December 14th 2005

Optional Protocol To The Convention On The Rights Of Persons With Disabilities, 2006

Date of Entry into Force; May 3rd 2008

International Convention For The Suppression Of The Financing Of Terrorism

Date of Entry into Force; April 10th 2002

International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families, 1990

Date of Entry into Force; July 1st 2003

Safety And Health In Agriculture Convention, 2001

Date of Entry into Force; September 20th 2003

Seafarers Identity Documents Convention (Revised), 2003

Date of Entry into Force; February 9th 2005

Maritime Labour Convention, 2006

Date of Adoption; February 7th 2006

Promotional Framework For Occupational Safety And Health Convention, 2006

Date of Entry into Force; February 20th 2009

Work In Fishing Convention, 2007

Date of Adoption; June 14th 2007

Domestic Workers Convention, 2011

Date of Adoption; June 16th 2011

African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention)

Date of Adoption; October 23rd 2009

Convention On Choice Of Court Agreements

Date of Adoption; June 30th 2005

Convention On The International Recovery Of Child Support And Other Forms Of Family Maintenance

Date of Adoption; November 23rd 2007

Convention On The Law Applicable To Certain Rights In Respect Of Securities Held With An Intermediary

Date of Adoption; July 5th 2006

Convention On Cluster Munitions, 30 May 2008

Date of Entry into Force; August 1st 2010

Convention For The Unification Of Certain Rules For International Carriage By Air (1999 Montreal Convention)

Date of Entry into Force; November 4th 2003

Convention On Compensation For Damage Caused By Aircraft To Third Parties-General Risks Convention [*]

Date of Adoption; May 2nd 2009

Convention On Compensation For Damage To Third Parties, Resulting From Acts Of Unlawful Interference Involving Aircraft [*]

Date of Adoption; May 2nd 2009

Convention On The Suppression Of Unlawful Acts Relating To International Civil Aviation

Date of Adoption; September 10th 2010

Charters (6)**Protocol To The African Charter On Human And Peoples' Rights On The Establishment Of An African Court On Human And Peoples' Rights**

Date of Entry into Force; January 25th 2004

Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa, 2003.

Date of Entry into Force; November 25th 2005

African Youth Charter

Date of Entry into Force; August 8th 2009

African Charter On Democracy, Elections And Governance, 2007

Date of Adoption; January 30th 2007

Charter For African Cultural Renaissance

Date of Adoption; December 24th 2006

African Charter On Statistics

Date of Adoption; February 4th 2009

Agreements (1)

Agreement On The Privileges And Immunities Of The International Criminal Court (ICC)
Date of Entry into Force; July 22nd 2004

Appendix II

Region	-
Subject	International Relations
Date of Adoption	December 3rd 1958
Place of Adoption	Paris, France
Date of Entry into Force	May 30th 1961
Date of Signature	-
Date of Accession/Succession/Ratification	-
Date of Deposition	-
Place of Deposit	-
Treaty Status	-
Declarations and Reservations	-
Domestic Legislation	-
Relevant Government Ministry	-