

The Question of Legitimacy: Kenya's Recognition Policy of Governments under Moi during the Cold War – Eastern Africa Countries (1978-1990)

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ARTICLE INFORMATION

Received: October 02, 2020

Accepted: November 15, 2020

Volume: 2

Issue: 6

DOI: 10.32996/jhsss.2020.2.6.26

KEYWORDS

Recognition, Foreign-Policy, States, Legitimacy, Governments, Cold War, East Africa

ABSTRACT

During the 1970's, majority of states, including Kenya followed the practice of recognizing states and not governments. In so doing, they downplayed the granting of formal recognition to new governments. Kenya's policy, then, was clearly stated in parliament in 1971 when the then foreign affairs minister, Dr. Njoroge Mungai, was asked to comment on the Kenya government's position on the military regime of General Idi Amin of Uganda. He stated, "Kenya could not afford to interfere with internal matters of another state nor let any state interfere with internal matters of Kenya." However, during the Post-Cold War period, Kenya's recognition policy underwent major transformations to include recognition of de jure governments. This study critically examines Kenya's practice during and after the Cold War in a bid to reveal any distinct policy trends if any. The study aims to ascertain how, Kenya's recognition policy, has largely, been formulated, articulated and exercised during Moi's administration (1978-1990).

1. Introduction

Daniel Toroitich arap Moi was born on 2 September 1924 in Kuriengwo then a Kenya Colony located in the Sacho locality in Baringo district (now county) (McKenna, Feb 10, 2020). He belonged to the larger community of the Tugen sub-group of the Kalenjin community that reside in the Kenyan Rift Valley. Moi died in 4 February 2020 (*East & Richard, June 3, 2014*). Moi is considered a statesman and shrewd politician who served as the second and longest Kenyan Presidency (1978 to 2002) after the death of the founding father President Jomo Kenyatta who died in 22 August 1978. Before that, Moi had served as the third Kenyan vice President (1967 to 1978) after Jaramogi Oginga Odinga.

On 1 August 1982, Air Force personnel, led by Senior Private Grade-I Hezekiah Ochuka and backed by university students, attempted a coup d'état to oust Moi. However, the coup was quickly suppressed by military and police forces commanded under the command of the then Chief of General Staff Mohamoud Mohamed (*Nyamora, 1992. p. 12*). The main conspirators of the coup, including Ochuka were sentenced to death. This marked the last judicial known executions in Kenya (*Ndunda, 2016*).

Moi's continuation of Kenyatta's pro-Western policies ensured significant sums of development aid during the Cold War (1947–91) making Kenya one of the most prosperous African nations. In the early 1990s, however, Moi's regime faced the end of the Cold War, an economic stagnation under rising oil prices and falling prices for agricultural commodities especially in Africa. At the same time with the end of the Cold War in the 90s, the West no longer dealt with Kenya as it had in the past, as a strategic regional stronghold against communist influences from Ethiopia and Tanzania.

After independency in 1963, Kenya remained a one political party state till the late 1990s when ironically, Western countries began to demand political and economic reforms. The push lead Moi to legalize opposition parties in 1991. Moi announced his intention to repeal Section 2(A) of the constitution, allowing multipartyism through a KANU conference in Kasarani in

December 1991. Despite fierce debate and opposition from many delegates, the conference eventually passed the motion unanimously (Throup and Hornsby, 1998).

Moi run for re-election and won elections in 1992, the country's first multiparty elections amid charges of electoral fraud and riots. Again, a similar situation was witnessed in 1997 elections, where hundreds of Kenyans, mainly Kikuyu, were killed though Moi was elected again to his fifth term as president. However, Moi was constitutionally barred from running in the 2002 presidential elections. Some of his supporters floated the idea of amending the constitution to allow him to run for a third term, but Moi preferred to retire, choosing Uhuru Kenyatta, the son of Kenya's first President, as his successor (Lacey, 2002). KANU split into two, with dissidents joining the National Rainbow Coalition, whose candidate, Mwai Kibaki. A two to one majority elected Kibaki President over Kenyatta, and was confirmed as president on 29 December 2002. Moi handed over power in a chaotic ceremony that had one of the largest crowds ever seen in Nairobi in attendance. The crowd was openly hostile to Moi (Lacey, 2002).

After leaving office in December 2002 Moi, was largely shunned by the political establishment though he retained some popularity with the masses. His presence in public show a gathering or a huge crowd. In 25 July 2007, president Kibaki decided to appoint Moi as a special peace envoy to Sudan, referring to Moi's "vast experience and knowledge of African affairs" and "his stature as an elder statesman" bringing him to limelight again. In his capacity as peace envoy, Moi's was to help secure peace in southern Sudan, where an agreement, signed in early 2005, was being implemented (Hull, Reuters. 2007).

In August 2017, Moi was diagnosed with dementia (Kahawatungu. 29 August 2017). And in October 2019, he was hospitalized under critical condition at The Nairobi Hospital due to complications of plueral effusion (Mphaso, 29 October 2019). Moi died at The Nairobi Hospital on the early morning of 4 February 2020, at the age of 95 though his son, Raymond Moi, disputed that age claiming his father died aged at least 105 years (*Standard Digital, 10 February 2020*). A state funeral was held at Nyayo Stadium on 11 February 2020, followed by his burial at his Karabak home in Nakuru county on 12 February 2020 (BBC News.11 February 2020). *The funeral was done* with complete military honors that included a 19-gun salute followed by a missing man formation flyby (Moi sent off with 19-gun salute-VIDEO, February 2020). He was buried next to his former wife Lena Bomett (BBC News. 11 February 2020).

1.1 Justification and objective of the study.

Not much was written about Kenya's foreign policy during Moi's reign. Foreign policy was in Moi's roadside speeches rather than documented. Scholars have doubt Kenya had stated foreign policy during Moi's reign. The objective of this study is to show how Kenya recognized governments in the period 1978-90 during Moi's term in office as President. It was in this period that there were rapid changes of governments around the world but more especially in Africa. Once an international actor (State) had been accepted internationally, it becomes very difficult for other international actors to change the status from recognition to non-recognition because of overthrow or any other change of government. The State remained an international legal person. Therefore, change of government did not affect the identity of the State as it was. Recognition of a government then meant recognition of the State, but did not work the other way (Talmon, 1988. p. 309). What was challenging the international community could not just assume recognition of new governments asserting themselves constitutionally or unconstitutionally with belligerent administrations in areas formally controlled by legitimate governments. The implication of having international recognition was to have the ability to conclude treaties, seeking membership into the international organizations like the United Nations and to have a vote to make decisions in the organization (Article 1 of Montevideo Convention on Rights and Duties of States 1933) (Dixon & McCorquodale, 1991. p .127).

In 1793 the U.S secretary of state Thomas Jefferson, for instance enunciated the classic American position, "we surely cannot deny to any Nation that right where on our own government is founded, that everyone may govern itself according to whatever form it pleases, and change these forms at its own will, and that it may transact its own business with foreign Nations through whatever organ it thinks proper. Whatever King, convention, assembly, committee, president or anything else it may choose, the will of the Nation is the only thing essential to be regarded" (Jentleson & Paterson, 1997. pp. 466-467). The reason for having diplomatic relations was not to confer a compliment, but to secure a convenience.

The U.S recognition policy first stated to be recognized, a government had to show respect for its international obligations. Nevertheless, in 1913 President Woodrow Wilson, in dealing with governments of Latin America introduced a new principle. The government must have been established through constitutional procedures respecting the will of the people. He used

the withholding of recognition as a weapon against those who did not meet these standards (Withheld diplomatic recognition from the Soviet Union for sixteen years) (Jentleson & Paterson. 1997. p. 467).

1.2 Research parameters

This study narrows down on a prior thesis study on Moi's foreign policy 1978-1998. Kenya's policy on recognition of governments during Moi's administration was not clear. The mystery, which surrounded the formulation and articulation of this policy, and the personalities who had been concerned lead to the question as to whether Kenya did have a recognition policy. This research investigated the nuts and bolts of formulation, trends and articulation of Kenya's recognition policy during Moi's term in office (1978-98). This study examined Kenya's recognition trends, rationalization of recognition of governments, major players and articulation of this policy under Moi's administration. The central research question investigated in this study was this: What trends emerged in recognition of governments by Kenya under Moi's administration (1978-1990)?

1.3 Importance of the study

The intended destiny of the study is to assist scholars and the public, to discern and understand the trends and articulation of Kenya's recognition policy under Moi's administration to improve on this policy for short and long-term practice. The outcome of the study is intended to be beneficial to scholars who want to carry out further research into Kenya's recognition policy and Moi as a case study. On the side, the study is intended to be a revelation into the most crucial but difficult component of Kenya's foreign and recognition policy. At the end, recognition policy trends and articulation would have been partially if not fully answered. Scholars who are currently studying Kenya's recognition policy can reference this study as a bedrock to identify consistencies, continuity, or discontinuity of Kenya's foreign policy with preceding administrations after Moi.

1.4 Conceptual framework

Recognition is thought to be fundamental in international law. Through recognition, international rights and obligations shall or shall not be put against new states or governments. It concerns also the rights and duties as an obligation to a community or not. The life of a state rotates around recognition. It is the starting point of the State or government as the legal personality. It is composed of subjects of international law. Recognition itself is serious and complex in its nature. And at times is subject to abuse by various governments (Taylor, 1994. p. 25). More serious is the question of those states that are not represented at the United Nations Organization as they are subject to non-recognition by major powers and international actors. This is because these major powers have the manipulation capacity to approve who is to be accepted into the organization or not because of the veto power. Therefore, "recognition" can be said to mean the act of acknowledging the fact of existence of a new entity into the international system and according it an independent status in existing international order, with rights and duties as envisaged in the international legal document (Satyavrata, 1964. p. 45).

Recognition of a new government arises when the State as an international actor remains, but the government in power is totally overthrown by either a revolution or by a popular uprising and that the State power is transferred to another entity or rebels in this case (Malcolm, 1997. p. 306). The difficulty which arises in such circumstances is that once such a government is not recognized, that might also mean that the State is not recognized because it is that government that represents the State.⁴ Accordingly then, a new entity (State) can be recognized through formal declaration, accepting of the recognized State to enter into legal relations with the recognized entity or by issuing a formal statement or by conduct of the State concerned. Therefore, recognition conforming in accordance to international law (Satyavrata, 1964. p. 45). Professor Hyde in Moore and Rivier, defines recognition as "the assurance given to the new State (if the State is the subject of recognition) that will be permitted to hold its place and rank in the character of an independent political organism in the society of nations" (International Law I. 56). This however relates only so far as the international legal personality of a State is concerned. Recognition of a new government arises when the State as an international actor remains, but the government in power is totally overthrown by either a revolution or by a popular uprising and that the State power is transferred to another entity or rebels in this case (Malcolm, 1997. p.306). The difficulty which arises in such circumstances is that once such a government is not recognized, that might also mean that the State is not recognized because it is that government that represents the State. (Satyavrata, 1964. p. 45).

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1.5 Organization of African Unity (OAU)

Kenya's recognition policy as envisaged in the foreign policy has over time, since independence changed with time. This is due to changing circumstances in the dynamic world. After independence, Kenya became a member of the OAU. So, in the essence, Kenya subscribed to the OAU charter, which in part wanted, member countries to contribute to a fund meant to assist those countries, which had not attained their independence, do so through a liberation struggle. It was in this spirit that, recognition was only focused to those states that had attained their independence from the colonialists. Eventually these were also the States that could join the OAU as its charter stipulated. These states could then join the United Nations thus becoming international actors.

However, the independence celebrations were short lived to most of these African countries. It dawned earlier than later, that the states, which had just acquired independence, were falling victim to coups. The military started ruling in several new states. This posed a new challenge both to the OAU and to regional governments. What then emerged immediately was for the OAU to change strategy. A way was to be devised to solve this emerging trend. A conflict management department was formed to look into this new challenge. However, the number of states that were ruled through extra-constitutional ways increased and the OAU was overwhelmed. Here the question of recognition of such regimes was arising with the fear that by recognizing such regimes could give motivation to other States also to follow suit. Many, including Kenya decided to stick to their guns, by only recognizing states and not governments. It is easy to realize here that, recognizing only States has its own problems. First for those states that are not recognized suffer from being isolated from the international community. Second, for those states that refuse to offer recognition also risk carrying out bilateral trade with such states, which could be having crucial resources needed by the non-recognizing state. Then the third is the idea of national interest of the non-recognizing state. What will be at stake from such action?

Moi came to power at the height of this confusion. However, Kenya tried to maintain its policy on non-interference in other country's internal affairs. It is in this context that Kenya managed to relate to military regimes, more especially to the brutal regime of Idi Amin of Uganda. Only four years later, in 1981, Moi was to become the OAU chairman. Amongst his first challenges was to deal with conflicts in Chad, Western Sahara, apartheid South Africa, Namibia, Sudan, Angola and Mozambique. Ironically as Moi was trying to get solutions to conflicts elsewhere in Africa, back home things were also getting out of hand. In 1982, the Kenya air force staged an unsuccessful coup (*Nyamora, 1992. p. 12*). This really put Moi on an awkward position as a peacemaker

1.6 History of Kenya's foreign policy

Kenya's policy was clearly stated in parliament in 1971 when the then Foreign Affairs minister, Dr. Njoroge Mungai, was asked to comment on the Kenyan government's position on the military junta of General Idi Amin of Uganda. He announced Kenya's doctrine of recognizing effective governments rather than regimes. Thus, this made the Kenyan government recognize Idi Amin's government as an effective government rather than that of Milton Obote (Munene, 1997). During the cold war, Kenya, like many other states, adopted the Estrada Doctrine on recognition. The Estrada Doctrine pre-supposes the automatic recognition of governments at all circumstances (Jessup, 1931). It attempts thus to lay down a clean test for recognition in all circumstances excluding political considerations and exigencies of State and is thus unrealistic, particularly where there are competing governments. It has been criticized as minimizing the distinction between recognition and maintenance of diplomatic relations. However, a complete opposite fashion of this is the Tobar Doctrine or the Doctrine of Legitimacy (Stansifer, 1967. P 251-272), which suggests that, governments which came into power by extra-constitutional means should not be recognized, at least until the change had been accepted by the people. The concept amounts to the promotion of non-recognition in all revolutionary situations and it is, and was, difficult to reconcile with reality and political consideration (Mexican secretary of Foreign Relations).

2. Literature Review

2.1 Cold war era 1978-1990.

During this period, several issues shaped Kenya's recognition and non-recognition practice as tools of foreign policy practice. Amongst these were the ideological, geographical and strategic rivalries amongst the super-powers. Europe was divided into armed camps whereas the other parts of the world placed under security alliances with some remaining non-aligned. All these developments led to the continents of Asia, Latin America and even Africa to forge forward for the *Estrada Doctrine* (Jessup, 1931), which generally accepted governments as they came and needed international attention. Recognition of States only was the order of the day in the 1970's while granting or withholding recognition to new governments was overlooked.

Similarly, the American recognition policy was summarized in 1977 by the foreign secretary as that which had been based on avoidance of recognition in cases of changes of governments and to concern Americans with the question of diplomatic relations and not with new governments.

While Britain, through its secretary of State for foreign affairs, Lord Carrington in the 1980's stated that the British government would not accord recognition to governments and regimes which came to power unconstitutionally and an assessment on whether they are able to carry out their duties of State control would be carried out (U.S Dept of State bulletin, 10 October 1977. p. 464).

2.2 How Moi's foreign policy emerged

After the death of the founding father of the republic of Kenya President Kenyatta in August 22, 1978, Moi took office as the second president. Though he tried to follow the footsteps (Nyayo philosophy) of his predecessor, he from time to time shifted his recognition policy of governments to go in line with changing times both domestically and internationally. The most visible aspect in the continuity of Kenya's recognition policy from Kenyatta to Moi in the 1980s was Kenya's continued alliance with socialist Ethiopia, as long as the Somalia threat remained, there were no compelling reasons to withdraw from the pact. While the foreign policy making process under Kenyatta was extremely cautious, with State house only giving final clearance for the pursuit of foreign policy. Under Moi foreign policy making was differentiated by the president's personal diplomacy and involvement in the management of foreign policy sometimes to the exclusion of relevant institutions to the foreign policy making process. Secondly, Kenya's foreign policy had been both constrained and determined by the country's economic performance, and internal opposition to the Moi regime. As the region shifted towards a new regional equilibrium, particularly with resolution of conflict in Ethiopia, the dangers of regional instability caused by ethnic sub-nationalism in Sudan, Uganda, Rwanda, Burundi and the Democratic Republic of Congo, Kenya's recognition policy of governments had to take cognizance of the need to mediate internal conflicts in the region.

2.3 Moi as the chief architect of Kenya's foreign policy

Musambayi (1995) suggests that Moi over time not only cherished summits but equally espoused foreign policy statements in many political rallies he addressed. This to him, is totally a complete shift from his predecessor (late President Kenyatta) whose practice of leaving foreign policy and articulation to those under him. Eventually as Moi led the foreign policy formulation and articulation, he moved foreign policy from its office along Harambee Avenue to the office of the President at Harambee House. In the process he ended up personalizing the foreign policy. The late minister for foreign affairs Dr. Robert Ouko acknowledged this by saying that, "the chief architect of Kenya's foreign policy was President Moi" (Chelagat, 1991). Foreign policy being complex, leaving it to one person can be very taxing. This has led Kenya in most cases to fall victim of being an advocate of principle rather than commitment. All shortcomings in Kenya's foreign policy can be attributed to one-man style of doing things or rather a clique who might not be having the interests of Kenyans at heart. The Democratic Republic of Congo is one example where Kenya shifted its foreign policy overnight. It should be to the interest of all Kenyans if the public and parliament debate foreign policy before being implemented since it involves the country's national interests.

2.4 Kenya – Eastern African States (Kenya - Uganda)

Events in the neighboring countries and Eastern Africa were not pleasing either to Moi at this time. In 1985, the President of Uganda, Milton Obote was overthrown for the second time. The first time having been in 1971. He was restored to power by the assistance of the Tanzanian forces and government after they ousted dictator Idi Amin in 1979 who had taken power in 1971. Obote fled to Kenya where he joined his wife who had been to Kenya earlier to attend a United Nations Women's Conference held in Nairobi. Mr. Kitili Mwenda was Obote's personal friend and he hosted Obote's wife for some time. However, the government of the Kenya, which did not want to take sides with the new regime in Uganda, did not want the presence of Obote in Kenya for a long time. This was a precautionary measure, in case the new regime demanded for his extradition to face charges related to corruption and abuse of power. Earlier, security arrangements made by the three East African countries could not help Obote either, to stay in power. Obote had made a request for military assistance from the three East African countries earlier as things were getting out of hand in his country but this was denied. This security arrangement had paved the way for the Arusha accord on regional co-operation between Kenya, Uganda and Tanzania. Failing to invoke this security arrangement, Obote tried another trick, by inviting Moi to Mbale to attend an International Cooperative Day celebration as a way of telling the opposition that he had the Kenyan backing in case of trouble. However, Obote's leadership was crumbling and nothing could have prevented him from falling. There was a lot of unrest in the army who finally ousted him.

General Tito Okello took power and became the new head of State. It seemed, this time the Kenyan government did not want to rush to recognize the new regime and the government used the principle of “wait and see” as a means of looking at developments in Uganda. In a brief statement issued by the Kenya government, said, “The Kenyan government is watching with keen interest the development of political events taking place in Uganda, and it is the governments hope that the people of Uganda, and especially the children, will no longer be haunted by nightmares”. Before this statement, the then Voice of Kenya radio and television gave the coup and developments in Uganda a total blackout (Weekly Review, August 2, 1985. p. 13). It was after three weeks that President Okello talked with President Moi. The government had decided to take its time before engaging in any official communication with Uganda’s new rulers. This was Kenya’s first official acknowledgement of Uganda’s new military government in Kampala (Weekly Review, August 23, 1985. p. 13). But at the background, still was the problem of a guerilla movement led by Yoweri Museveni. Museveni had led his National Resistance Army (NRA) forces to fight Obote’s government, however after the overthrow of Obote by Okello, Museveni decided to negotiate for a peaceful settlement of the conflict in Uganda. The peace talks were first held in Nairobi under the chairmanship of President Moi. It was under the insistence of Museveni that the talks be held in Nairobi because of the long-standing relationship that existed between Nyerere and Obote’s Former government. Museveni had refused to attend peace talks, which were scheduled to be held in Dar es salaam under the auspices of President Nyerere. He said that Nyerere could not have been entirely neutral in the peace talks between the two parties. It was later claimed by international observers to this peace talks that, the Ugandan government delegation came to Nairobi with a major concession to Museveni’s concession. However, the Uganda coup leaders, members of the military council and the cabinet were already divided over Muwanga’s appointment as executive prime minister. Muwanga had served as vice-president in Obote’s government. This was a major stumbling block to the peace deal and if Muwanga could be sacked at that level then maybe the differences could be erased and could have given the government a good ground to meet Museveni as a united front. Muwanga was however later sacked (Weekly Review, August 30, 1985. p. 3-4).

After three peace talks held in Nairobi, it seemed that the parties involved were not agreeing on a settlement. This prompted Moi to issue a strong warning to both parties, that if they were not agreeing then, he would pull out. This temporarily sobered the two parties and they agreed to sign a peace treaty. However, what emerged, was that, as the peace talks were going on in Nairobi, Mr. Yoweri Museveni set up an interim government to administer the areas in Uganda that were under his control. This was a big blow to the peace initiatives already underway in Nairobi and to the chairman who was Moi (Weekly Review, November 8, 1985. pp. 16-17). In a rejoinder statement to Moi’s earlier threat that the two parties sign up or they pack and leave. Museveni said arrogantly, that the delays in signing up the peace treaty was not wasting time and that there was no need for Moi to give them an ultimatum. “No one is wasting time here. We did not force Moi to chair the talks, but it is his duty as an African to help seek a peaceful settlement to the Ugandan problem...it is an honor for him to be a vanguard of this peace process and Kenyans should not see it as a waste of their presidents’ time. However, if Kenyans are fed up, it is their own business. I am not going to be intimidated by that. We have 93 000 square miles in Uganda. We can go back home and talk there (Weekly Review, December 6, 1985. pp. 10-11). After one month, the peace accord was not implemented, and fighting broke out. Moi called for other countries to assist. Those called to assist include (Hassan Mwinyi of Tanzania, Mobutu of Zaire and Habyariamana of Rwanda). Museveni’s NRM troops kept on advancing towards the capital city of Kampala as, Okello called for another round of talks with Museveni, under the chairmanship of Moi. However, it was clear that Museveni was not interested in talks but wanted power. NRM spokesman Dr. Sam Kissekka was very categorical on this, when he said; “there was no need for such talks after three months of negotiations (Weekly Review, January 24, 1986. p. 30).

Finally, Museveni took overpower in Uganda in 1986 after a bloody confrontation between loyal government forces and Museveni’s NRM guerrillas. What is interesting here, is how the Kenyan government was following unfolding events in Uganda. Even as NRA guerrilla troops were advancing towards the capital city Kampala, and it was clear that Okello was losing ground, the Kenyan government and President Moi still held tight to the Nairobi peace accord. It seemed that Moi had stood a wrong ground as bloodshed marked the final stage for Okello as the Head of State. It had become apparent that the guerrillas were committed and motivated while the government forces were not (Weekly Review, January 31, 1986. pp. 7-8). It took the Kenyan government four days to recognize the new government in Uganda. This was only after Museveni was sworn in as the Head of State, and Moi had, had a meeting with Museveni at Lake Kivu town in Goma in eastern Zaire. Present also were President Mobutu of Zaire and Habyariamana of Rwanda (Weekly Review, January 31, 1986. p. 9). After this meeting Moi appealed for amnesty for the former President of Uganda, Tito Okello, to be allowed to return home from exile in Sudan by the Museveni government. Moi had argued that Okello was a good man, who had been deceived by his advisers. The amnesty was granted by the Museveni government and went on to say that, Okello could be granted all entitlements as a former head of State.

2.4.1 Kenya - Tanzania

It was not until 1 August 1982 that Kenya's relations with Tanzania were tested. Mr. James Orenge and Kihika Kimani fled to Tanzania to seek asylum after it was alleged that they were part of the people who wanted to overthrow the Kenyan government. But their request for asylum was turned down because of warm relations between the two countries. So, they went to Zimbabwe both members of the Commonwealth, which have diplomatic relations at ambassadorial level but not extradition treaty (Weekly Review, February 18, 1983. p. 4). It was not long after this that the issue of traitor arose. The person named behind this was the then powerful constitutional minister Mr. Charles Mugane Njonjo. Subsequently Moi suspended Njonjo as minister who also resigned his seat as Member of Parliament in 1983. What followed this resignation was interesting, in that, countries that did not have good relations with Kenya because of Njonjo started changing their stand. Britain was among the first country to react. For a long time, Britain had an impression of Njonjo having a special relationship with Whitehall (British diplomats would rather say that Njonjo created any such impression not by the British government) (Weekly Review, July 8, 1983. p. 4).

Other countries, which amended their relations with Kenya, were Israel, Tanzania and Uganda. Israel for its part, the relationship between the two countries depended so much on Njonjo. And this was done through Israel diplomats (Kenya–Based Jewish personalities). The Israel diplomats looked upon Njonjo to amend relations with their country, which had been severed ten years before, following the general boycott of the Israel State. Tanzania on the other hand, which had had bad relations with Kenya, had an opportunity to amend the relations and to resume diplomatic relations. Njonjo was an arch enemy of the late president of Tanzania, Julius Nyerere. Njonjo was never an admirer of socialism which Tanzania had adopted through Nyerere and Nyerere was not an admirer of capitalism which Njonjo was a defender of (Njonjo termed Nyerere's Tanzania as 'man eat nothing society' while Nyerere termed Kenya as 'Man eat man society') (Weekly Review, July 8, 1983. p. 5). Kenya needed Tanzania to open its border because of the badly needed trade (Preferential Trade Agreement) PTA Relations with Uganda were no better either, Njonjo had bad relations with President Milton Obote of Uganda. What was startling at the time (1983) was that, though Njonjo had fallen as a person his system was still in place.

Njonjo was described by the time as a 'system'. His system could not be done away within a day, but rather would take many years. This is because many of the men in the government by the time were 'Njonjo men' and the government could not expel them in a day (Weekly Review, July 8, 1983. p. 5). Njonjo had wielded a lot of power; even the criminal investigation department came directly under him. As an Attorney General from independence to 1980 when he resigned to enter politics, Njonjo had even a lot of influence as to who was appointed to the Judiciary. He as the Attorney General spearheaded the smooth transition from the late President Kenyatta to Moi in 1978. Accordingly, then, with his downfall, Kenya was undergoing another transition though with less impact than the Kenyatta-Moi transition. From the 'Njonjo era to post-Njonjo era' (Weekly Review, July 22, 1983. p. 4). It is thought that, Njonjo had stood the way of growth of the office of the Attorney General, that when he left, it could not stand on its own for some time. 'the man was the office, it became so identified with him that when he left it, the country had a hard time adjusting to his departure (Weekly Review, July 22, 1983. p. 4). Njonjo was too close to Moi, and it was alleged that the public could even see his influence over Moi. Njonjo too often rode in the presidential limousine. This prompted the public to refer to the limousine as a Matatu. Njonjo easily influenced the foreign policy of Kenya, more so choosing who was Kenya's friend (recognition). This is true as to when he decided to trade with South Africa though it was against the governments wish and the OAU conventions (Weekly Review, July 22, 1983. p. 5). Though Njonjo was not the vice president by then, he was the number two man in the power structure. This made the then vice President Mwai Kibaki very uncomfortable (Weekly Review, August 12, 1983. p. 7).

After the 1983 general election, Mr. Elijah Mwangale was appointed as minister for foreign affairs, while the permanent secretary in that ministry was Mr. Bethwel Kiplagat (Weekly Review, October 7, 1983. p. 5). It was during this time that President Moi and President Nyerere of Tanzania held talks on restoring relations as before. Through foreign ministers from both countries, an agreement was reached of starting full diplomatic relations, which had been severed since 1977 when the two countries closed their borders (Weekly Review, December 16, 1983. p. 13). It was a game of trying to solve one problem while another one evolves; Moi did not have much peace in the 1980s as he kept on suspecting people or groups of people wanting to topple him.

In April 1984, a publication called *Pambana* (deal with) emerged. Moi claimed this publication was meant to destabilize the government. He said that the publication was funded by some foreign embassies and it was published by a professor he did not name. He warned that such embassies could be closed. As a follow up to this, a journalist cum-politician (Mr. Wangondu Kariuki) was arrested for being in possession of seditious publication. He was jailed for four years (Weekly Review, April 13,

1984. p. 23). On the other hand, there was a spillover from Southern Sudan into Kenya after president Numeiry of Sudan introduced *sharia* law (Most of the Southern Sudanese are Christians). Moi felt this threatened Kenya's security and the region as a whole; he requested Numeiry to rescind this law and even tried to reconcile President Numeiry and Garang of the (Sudanese Peoples Liberation Army). Numeiry and Moi assured Garang of his security if he agreed to join the Khartoum government (Weekly Review, December 21, 1984. p. 44).

2.5 Personalities who were influential in Kenya's foreign policy

During Kenyatta's era, it was difficult to talk about Kenya's Foreign policy without giving reference to personalities like, James Gichuru, Njoroge Mungai, Peter Mbiyu Koinange, Joseph Murumbi and Charles Mugane Njonjo. Foreign policy formulation was a preserve of Dr. Njoroge Mungai, Charles Njonjo and Mbiyu Koinange notwithstanding the fact that Murumbi oversaw that slot as minister of foreign affairs. Even after Kenyatta's death in 1978, Njonjo who was the Attorney General during Kenyatta's era remained in government in the new government of Moi in the same position as before. Infact, he had helped Moi secure the presidency after the Kikuyu elites wanted to block Moi's succession bid according to the Kenyan constitution. By blocking him by changing the constitution through parliament. He still remained very powerful though most of his colleagues in the Kenyatta government started falling off. It is to be remembered that during Kenyatta's era, Njonjo had tried openly to change the recognition policy of Kenya, by urging the government to change its policy of non-recognition to recognition of the Boer regime. But the then foreign affairs minister, Mr. Munyua Waiyaki replied that, "it would only happen over his dead body (Munene, August 27-28, 1997). So Kenya did not recognize the Boer regime although unofficial dealings still went on. Njonjo wielded a lot of power; even the criminal investigation department came directly under him. As Attorney General, from independence to 1980 when he resigned to enter politics, Njonjo had even had a lot of influence as to who was appointed to the judiciary. He as the then Attorney General spearheaded the smooth transition from the late president Kenyatta to Moi in 1978 (Weekly Review, July 22, 1983. p. 4). It thought that, Njonjo had stood the way of growth of the office of the Attorney General that when he left, "the man and the office became so identical that when Njonjo left, the country had a difficult time adjusting to his departure (Weekly Review, July 22, 1983. p. 4). During Moi's era, Njonjo's influence could be felt everywhere, in and out of the country. Njonjo was too close to Moi. The public could even see it. In neighboring countries, the first former president of Tanzania feared him, as a powerful capitalist. But with his downfall in 1983, after he was named a traitor following the August 1982 coup, Kenya underwent another transition though less from that of Kenyatta to Moi. This one was from "Njonjo era to post Njonjo era (Weekly Review, July 22, 1983. p. 4).

The person who took over from Njonjo's position as the second most powerful person other than the president in Kenya was Mr. Nicholas Kipyatur Kiprono arap Biwott. Biwott was the president's trusted key adviser and strategist, his confidant and business associate. so much is his influence that he earns the nickname he gave himself of "Total Man (Weekly Review, May 7, 1993. p. 21). Though a powerful minister, Biwott's life was surrounded with alleged mystery, scandals and corruption. It was rumoured that he masterminded the killing of the them foreign affairs of Dr. Robert Ouko.

In February 1990, the then minister for foreign affairs and international co-operation, Dr. Robert Ouko died in mysterious circumstances. His body was found burnt six kilometers away from his Koru home after missing for about three days. Moi said in a statement after learning of his death, "it is with profound sorrow that, I have to announce today the death of honorable, Dr. Robert Ouko, minister for foreign affairs and international co-operation and Member of Parliament for Kisumu town. Dr Ouko is the best foreign minister that Kenya has ever had. I will greatly miss him (Weekly Review, February 23, 1990. p. 5. Dr. Ouko had just flown home from the US after attending an American Annual congressional breakfast prayer meeting in Washington D.C with President Moi. After learning of his death, the US embassy in Nairobi flew its flags at half-mast for two days which was very unusual for a foreign country to honor an individual who was not a head of State while the Kenyan government did not.

3. Methodology

This study focuses on Moi's foreign policy 1978-1998. This study however, narrows down to specific period of the cold war period (1978-1990). The research materials for this study were mostly from secondary sources, though with a few personal statements from willing people I contacted at the ministry of foreign affairs and the Nation newspapers. Mainly the information gathered was from Magazines, Weekly's, Newspapers, Books and Journals.

3.1 Limitations

Though I tried as much as I could not to be biased on my arguments and critic, at times I felt overwhelmed by issues that I found myself so strongly against certain personalities. Time was also a factor which confined. Places I visited like the foreign

affairs offices and the people I interviewed were rather unwilling to delve into critical issues concerning the government and more especially President Moi.

3.2 Analysis: recognition policy rationale

Due to the method used to collect information, the method of analysis used in this study was descriptive and analytical. Various studies, speeches, statements, books, newspapers, magazines, seminar papers and research papers were closely examined (analyzed). In addition, case studies were given.

As noted earlier, Kenya like most States, adopted the policy of recognizing States only under Moi. This was in pursuit of avoiding antagonism brought about by recognition of governments. In this circumstance then, Kenya was able to overtly recognize governments which otherwise it could have not (Galloway, op. cit. p. 142). In the formative years it was difficult to identify the direction of Kenya's recognition policy due to the non-existence of any identifiable tradition or established pattern of interests, however John Howell (1968) identified two strands, one conservative and the other radical in Kenya's foreign policy, thus seeing two distinct strands in Kenya's international relations. The conservative policy operated with respect to Kenya's objectives in Eastern Africa-objectives, which revolved around maintaining the regional *status quo* of pre-independence, which facilitated and enhanced Kenya's predominant role in the region. Secondly, the radical strand in the international arena characterized by non-alignment in international affairs as a principle by which the new State asserted its independence and sovereignty. Though it was clear that the principle of non-alignment pre-supposed that Kenya envisaged the principle of self-determination, which also pre-supposes that a State should refrain from interfering in internal matters of another State. This gives reference to respect for territorial integrity of other States. A principle found in OAU and UN charters (Olatunda, 1985. P. 87).

Kenya's decision to mediate in the conflict in Uganda conflict was until 1985, Kenya's finest hour as a regional conflict manager during the Cold War. Surrounded by socialist regimes, this proved to be a treat to Kenya's trade interests regionally. At the same time, Kenya's trade routes to Zaire, Rwanda and Burundi were being adversely affected by the conflict in Uganda. Which was a very important route for Kenya to the near region. So mediating in this conflict was an important step Kenya took to safeguard her interests regionally and to make sure that there was always a friendly regime in Uganda for Kenya to have easy access to the Great Lakes region. President Moi also wanted recognition as an elder Statesman in East Africa. And in this way to have Nyerere's mantle as the regional Statesman. He, Moi wanted to also leave a legacy as a peacemaker by creating a *Pax Nairobi*. It was Kenya's worry at the time that if (NRA) took power in Uganda on its own terms then Kenya risked, the hegemony it sought regionally. Domestication of the revolution was thought to be the only solution. And getting involved in getting a solution to the conflict was a viable decision. Kenya, which by the time was very conservative in its international diplomacy and politics, and Moi, who was himself a conservatist, never believed in military takeovers or revolutions. He envisaged legitimate governments. And so mediating in the Uganda conflict was a suitable way in which Tito Okello could still remain in power. It was also during this time that Nyerere was handing over power to Mwinyi in Tanzania and Moi saw an opportunity to take over from Nyerere as a regional Statesman. And the Uganda mediation could be like a prove to that claim. However, though given the opportunity, the mediation was carried out in a very crude and inexperienced manner. In fact, in what can be called a very traditional way. Concisely, Moi's foreign policy of recognition of governments can be summed up as a failure.

4. Results and Discussion

The mediator personalized the mediation and was very animated to reach an agreement more than to construct an enduring post-conflict political structure in Uganda (Weekly Review, November 1, 1985. p. 4). The mediation was more concerned with the post-conflict constitutional administration and constitutional structures than the psychological aspect of the conflict. In turn then, the mediation failed to address the psychological dimension of the conflict, and the attitudinal factors that separated the parties to the conflict. At the end the psychological gap widened which made both parties go far apart than even before. The anticipated peace then could not endure. And within a month of signing the peace agreement, peace collapsed and war broke out. The mediation was also conducted on purely along the lines of track one diplomacy. The Uganda conflict needed diplomatic other than an official one. It required the input of an unofficial approach, which would have helped to address the conflict and its management more at a level of attitudes of the parties. All this had different repercussion on the parties involved. First, the NRM saw the mediation as a way of changing the Okello regime to the Museveni regime. And on the other hand, the ruling UNLA saw the mediation as a way of enhancing regime consolidation, which meant renegotiating regime powers but not change of government. while the mediator himself saw the mediation as a center at which the warring parties could bargain for a common end. In turn then the mediation process was badly divided and was prone to fail in its anticipated end. So the rush to reach an end to the conflict by signing a peace treaty was uncalled

for as even Museveni latter said in Nairobi, "there was no need for an ultimatum in signing up, as that was not wasting time (Weekly Review, December 6, 1985. pp. 10-11). Politically, recognition is a weapon or tool that can be used by a State to make its ends meet internationally. So granting or withholding of recognition is at the disposal of a State. It is a tool that can be used by States for bargaining or compel. Strong States use recognition to compel weak States to do as they wish (Ajil. No. 87 October. 1993. P. 695). Where the main way of achieving this end is by imposing sanctions to those States, which do not comply.

Kenya and indeed Moi, had played a very important role in regional and Africa in general peace mediation. Moi's desire to be a peacemaker in region had earned him, not only as mediator but also a reputation as a respected Statesman. He had played this role since he became the second President of Kenya in 1978. It didn't take long after he ascended to power than he also became the Organization of African Unity chairman. Here Moi got a niche as a conflict mediator, since it is part of the OAU charter to mediate in regional conflict. Moi was engaged in spearheading the OAU's management of the conflicts

As many African States acquired their independence, what then followed were "coups" in many African States. The OAU found itself in a quagmire, as what its immediate task was in the early sixties was to see that colonialism was brought to an end. But the question of coups overtook the former. So many countries were left with the question of either accepting the new regimes, which came to power through extra-constitutional means.

5. Conclusion

The study has surveyed Kenya's recognition policy under Moi's regime in reference to International Law. The issue of legitimacy of governments has been examined. The justification of recognition has also been dealt with in reference to the situation, national interest and period (Cold War). The change in recognition policy from that of States to governments has also been surveyed and the reasons why have been stipulated. Regional diplomatic change and the need for Kenya to avoid isolation in the changing world have been traced. The study also gave the theoretical framework under which my arguments were based. The importance of this study has also been explained. An in-depth analysis of Kenya's recognition policy and critique of the emerging policy is also highlighted, given the dynamic regional and international policy realities have been looked into. What is then important in the change in Kenya's recognition policy is that it gave Kenya a new look into regional and international affairs. In a wider perspective, it helped shape Kenya's foreign policy in a new dynamism and yet the public and parliament not even the foreign ministry was directly involved. It is true that any foreign policy of any country ought to be based on realities and not on hearsay. It should be focused on long term rather than short-term objectives. This will help foreign policy have formulation trends and articulation patterns. Then with a well-stipulated, framed and balanced foreign policy, Kenya can move into the next stage, which will be claiming regional and international Leadership.

My recommendation would be, for contemporary Kenya to have a vibrant foreign policy, it would be important to have all stakeholders involved in the formulation of foreign policy. The public should be left to have an input, the legislature and the intellectuals. Higher learning institutions should be the pillars at which foreign policy is not only learnt but also debated and tested as compared to foreign policies of other countries. In this way, new life will be pumped into the already nearly dormant foreign affairs ministry. Indeed, many people even scholars doubt Kenya had stated foreign policy during Moi's reign.

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