

THE EAST AFRICAN COMMUNITY'S MARITIME DOMAIN:  
AN INNOVATIVE INSTITUTIONAL FRAMEWORK.

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## DECLARATION

*“I certify that the work contained in this thesis, or any part of it, has not been accepted in substance for any previous degree awarded to me, and is not concurrently being submitted for any degree other than that of Doctor of Philosophy being studied at the University of Greenwich. I also declare that this work is the result of my own investigations, except where otherwise identified by references and that the contents are not the outcome of any form of research misconduct.”*

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## **ABSTRACT**

This PhD thesis analyses the main maritime policy and maritime security challenges facing the six East African Community (EAC) States, both individually and collectively, and how the EAC can play a leading role in resolving these challenges while maintaining its overall mission. The EAC is an Inter-Governmental Organisation (IGO), with the ultimate aim, set out in its 1999 founding Treaty, Article 5(2), of political union. In that regard, it differs profoundly from other supra-national organisations, which are analysed for comparison. The research uses a combination of qualitative and quantitative approaches and a case study technique to obtain primary data through in-depth interviews, non-participatory observation and focus group discussions during two fieldwork visits in the EAC region. Participants from outside the EAC also provided corroborative information. Through purposive sampling, 52 individuals and 22 institutions within and outside the EAC region participated in the research. Data were analysed through thematic analysis techniques. The research found that piracy, armed robbery against ships at sea, illegal fishing, trafficking of narcotics, light weapons, and humans, and marine degradation are the main security threats in the EAC maritime domain, which the researcher has defined as the Exclusive Economic Zones (EEZ) of its two coastal States, currently out to 200 nautical miles, and areas of interest further out in the Indian Ocean. If Outer Continental Shelf (OCS) rights are secured, the domain may extend. It is also likely that the EAC shore and maritime infrastructures may be hit by maritime terrorism, most likely by the Islamist group, al-Shabaab. The lack of legal and institutional maritime frameworks and a weak Secretariat at the EAC are among the main factors that prevent the EAC taking a leading role in regional maritime security governance. At the time of writing, there are no maritime security policies, including a maritime security strategy, at the EAC or even at national level. A strong sense of state sovereignty, differences in political ideologies and affiliation, and economic rivalry between Kenya and Tanzania, the only coastal States of the EAC, cause further disagreements in regional maritime security cooperation. This research is, therefore, a wake-up call to the EAC Secretariat and the politicians of EAC member States to invest their political will and financial resources in regional maritime security efforts. Having analysed the issues, the research recommends the establishment of an EAC maritime security strategy and a Maritime Security Regime (MSR) to improve and manage regional maritime security while the Community is waiting for its stated long-term objective of a federation to materialise. However, the key EAC participants interviewed in the primary source research consider that unlikely to happen anytime soon.

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## **Abbreviations and Acronyms**

|              |  |
|--------------|--|
| AIS          | Automatic Identification System  |
| AMISOM       | African Union Mission in Somalia   |
| ASEAN        | Association of Southeast Asian Nations   |
| BMP          | Best Management Practice   |
| CLCS         | Commission on the Limits of the Continental Shelf  |
| COMESA       | Common Market for Eastern and Southern Africa  |
| CSI          | Container Security Initiative  |
| CSL          | Cooperative Security Location  |
| DCoC         | Djibouti Code of Conduct, 2009   |
| DEMURRAGE    | A charge payable to the owner of a chartered ship on failure to load or discharge the ship within the time agreed, or to port upon failure to clear cargos within specified period 'grass period'. |
| Displacement | Ship's weight based on Archimedes' principle   |
| DRC          | Democratic Republic of Congo   |
| DWT          | Dead Weight Tonnage  |
| EAC          | East African Community   |
| EA-SA-OI     | Eastern African, Southern African and Indian Ocean   |
| ECCAS        | Economic Community of Central African States   |
| ECOWAS       | Economic Community Of West African States  |
| EEZ          | Exclusive Economic Zone  |
| EU           | European Union   |
| GT           | Gross Tonnage  |
| HSC          | High Sea Convention 1958   |
| ICS          | The International Chamber of Shipping  |
| IGAD         | Intergovernmental Authority on Development   |
| IGO          | Intergovernmental Organisation   |
| ILO          | International Labour Organisation  |
| IMB          | International Maritime Bureau  |
| IMO          | International Maritime Organisation  |
| IOC          | Indian Ocean Commission  |
| IOTC         | the Indian Ocean Tuna Commission   |
| ISA          | International Seabed Authority   |

|                    |   |
|--------------------|---|
| ISPS Code          | International Ship and Port Facility Security code, 2004  |
| ISSC               | International Ship Security Certificate   |
| ITF                | International Transport Federation  |
| ITLOS              | International Tribunal for the Law of the Sea   |
| IUU                | Illegal, Unreported and Unregulated fishing   |
| KMA                | Kenya Maritime Authority  |
| LNG                | Liquefied Natural Gas   |
| LRIT               | Long Range Identification and Tracking of ships   |
| MARPOL 73/78       | International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 |
| MASE               | Indian Ocean MARitime SEcurity Initiative, 2011   |
| MCA                | Maritime and Coastguard Agency  |
| MDA                | Maritime Domain Awareness   |
| MLC                | Maritime Labour Convention, 2004  |
| MoU                | Memorandum of Understanding   |
| MRCC               | Maritime Rescue Coordination canthers   |
| MSC                | Maritime Security Companies   |
| Nautical Mile (NM) | A unit used in measuring distances at sea, equal to 1,852 metres or 1.852 miles (approximately 2,025 yards).  |
| PCASP              | Privately Contracted Armed Security Personnel   |
| Pelagic            | Relating to the deep Seas and Oceans, and, therefore, for area outside the 'maritime domain'                  |
| PMSC               | Private Maritime Security Company   |
| PPPs               | Public Private Partnerships   |
| PSC                | Port State Controls   |
| PSI                | Proliferation Security Initiative, 2003   |
| ROs                | Recognized Organisations  |
| SADC               | Southern Africa Development Cooperation   |
| SLOC               | Sea-Line of Communication   |
| SOLAS              | International Convention for the Safety of Life at  |

|         |  |
|---------|--|
|         | Sea, 1974  |
| STCW    | Standards of Training, Certification and Watch keeping   |
| SUA     | Convention for the Prevention of Unlawful Acts Against the Safety of Maritime Navigation 2005  |
| SUMATRA | Surface and Marine Transport Authority   |
| TEU     | Twenty Foot Equivalent Unit- The standard container carried by sea. Typically 20 feet long, 8 feet tall although exact dimensions may vary.  |
| UNCLOS  | United Nations Convention on the Laws of the Sea, 1982   |
| UNCTAD  | United Nations Conference on Trade and Development   |
| UNODC   | United Office on Drugs and Crime   |
| URT     | United Republic of Tanzania  |
| WMD     | Weapon of Mass Destruction. Includes Nuclear, Radiological, Biological and Chemical weapons. The Radiological weapons use a conventional explosion to disseminate radioactive material. The term is also used at the time of writing to include some types of improved conventional ammunitions, including Thermobacic |
| ZIG     | The <i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> (German Corporation for International Cooperation)  |
| ZMA     | Zanzibar Maritime Authority  |

## **Information Cut-Off Date**

The information Cut-Off Date for research for this thesis is 30 April 2016. However, other material gleaned during the writing-up process has been inserted up to 16 September 2016.

# **1. Chapter One: Introduction**

## **1.1 Introduction**

This research investigates the principal maritime policies and maritime security challenges facing the six States of the East African Community (EAC), individually and collectively. The research also considers the possible role of the EAC in resolving those challenges, while at the same time staying within its overall aims, including the ultimate creation of a Federation (see 1.2.1 below). In addition to providing the necessary background, the chapter deals with the research questions, objectives, significance and deliverables as well as its limitations. It also outlines of the rest of the research.

## **1.2 Background to the research**

### **1.2.1 An overview of the EAC**

The EAC is an Inter-Governmental Organisation (IGO). As can be seen in Figure 1-1, the EAC currently comprises the States of Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. The EAC was officially re-established on 7 July 2000, after a previous version of the association was officially dissolved on 1 July 1977.<sup>1</sup> The previous version of the Community had been made up of the States of Kenya, Tanzania and Uganda. These three States are also known as the 'EAC founders' within the new EAC.

While Burundi and Rwanda joined the Community on 1 July 2007, South Sudan is the newest member of the Community. The EAC leaders approved its accession on 2 March 2016,<sup>2</sup> and it formally joined the

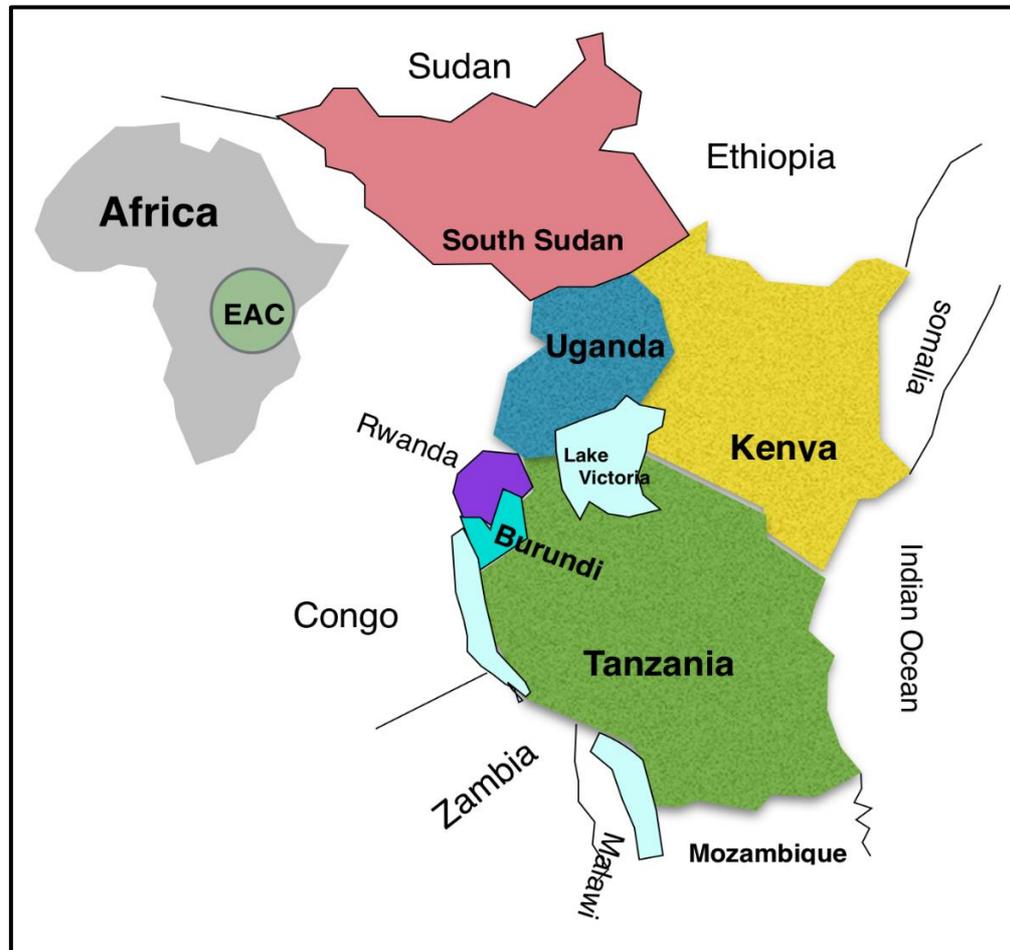
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<sup>1</sup> Katembo (2008.p.110). See also Okungu, J. 2010. On 10 June 1977, the East African Community Budget committee failed to approve the 1977-1978 estimates. On Friday 1 July 1977, the EAC was paralysed for lack of an operating budget. Available at: <http://www.newvision.co.ug/D/8/20/725202> [Accessed on: 18 November 2015].

<sup>2</sup> Karuri, K. 2016. 'South Sudan officially joins East African Community'. *Africanews*. Available at: <http://www.africanews.com/2016/04/15/south-sudan-officially-joins-east-african-community/> [Accessed on: 11 April 2016].

Community on 5 September 2016 following its ratification of the 1999 Treaty for the establishment of the EAC, herein referred to as the 1999 EAC Treaty.<sup>3</sup>

**Figure 1-1: Current EAC States<sup>4</sup>**



At the time of writing, it should be noted that the EAC, do not have the legal or political status of a 'Federation'. However, according to Article 5(2) of the 1999 EAC Treaty, the ultimate goal of the Community is to

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<sup>3</sup> EAC (2016), Republic of South Sudan deposits Instruments of Ratification on the accession of the Treaty for the establishment of the East African Community to the Secretary General. Available at: <http://www.eac.int/news-and-media/press-releases/20160905/republic-south-sudan-deposits-instruments-ratification-accession-treaty-establishment-east-african> [Accessed on: 10 September 2016].

<sup>4</sup> Author (2015).

have a federal government (political unification).<sup>5</sup> Nonetheless, it is unclear when the political federation agenda will be tabled before the member States and the how the federation would actually be formed.<sup>6</sup> In the absence of a clear roadmap for political unification, there will always be a vacuum regarding decisions on regional maritime policies, in particular those applicable to the areas of maritime safety and security in the EAC maritime domain. The EAC as a security region will be examined in Chapter Two and greater detail will be provided in Chapter Eight.

### **1.2.2 The EAC Maritime Domain**

The concept of the 'maritime domain' encompasses two other concepts: 'maritime' and 'domain'. While the term 'maritime' is connected with sea affairs such as seaborne trade (among others), 'domain' means "an area of territory owned or controlled by a particular ruler or government".<sup>7</sup> For these reasons, 'maritime domain' entails a clear connection between maritime spaces, as described by the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), and a coastal state jurisdiction.

Based on the above facts, 'maritime domain' would mean areas of sea, ocean or other navigable waterways that are under a coastal state's jurisdiction. It should be noted at this stage that three States of the EAC have signed and ratified UNCLOS 1982 and so are governed by the provisions of its terms. These include the general principles of

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<sup>5</sup> 1999 EAC Treaty, Art.5(2)

<sup>6</sup> Hamad (2016). See on page 67 of article published by the author titled "Neo-Functionalism": Relevancy for East African Community Political Integration? 'Execution of security policies at the EAC is largely depending on how the Federation would be formed. Will it be a one-tier system (supranational organisation) with a single president and common policies across the region, or will it be a two-tier system (intergovernmental organisation) with a single federal president and shared economic and security policies among the member states?'

<sup>7</sup> See *the Oxford Dictionary* at: <https://en.oxforddictionaries.com/definition/domain> [Accessed on: 10 October 2015].

customary International Law now incorporated in to the Convention as well as a range of ‘new’ principles created by it.<sup>8</sup>

The connection between maritime spaces and a coastal state’s jurisdiction was initially put forward by Steven Haines in 1993.<sup>9</sup> According to Haines, ‘maritime domain’ refers to a “collection jurisdictional zones claimed by a coastal state”,<sup>10</sup> which could by definition only extend as far as the limit of the exclusive economic zone (EEZ) (that is, out to 200 nautical miles (nm)).<sup>11</sup>

The UNCLOS 1982 grants coastal states varying jurisdictions over the sea and ocean areas commonly known as maritime zones. These are the Territorial Sea (out to 12 nm under Article 3), the Contiguous Zone (out to 24 nm under Article 33), and the EEZ (out to 200 nm under Article 57). It should also be noted that UNCLOS 1982 also incorporates the previously existing rights to a portion of the Continental Shelf under Article 76. In addition, the EEZ may be extended, by international agreement, out to 350 nm, depending on the configuration and bathymetric depth of the continental shelf. This area is known as the Outer Continental Shelf (OCS).<sup>12</sup>

The powers and jurisdictions of a coastal state over its maritime zones diminish as the maritime zones extend out to the seas. Coastal states have jurisdiction of one kind or another over approximately one-third of the world’s seas and oceans (see section 2.5.5 on page 97).<sup>13</sup> The other two-thirds are legally regarded as the High Seas (governed by Part VII of UNCLOS 1982) and may be considered to be part of the ‘common

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<sup>8</sup> Only four members of the UN have yet to ratify UNCLOS 1982. These are the US, Israel, Turkey and Venezuela.

<sup>9</sup> Haines (1993).

<sup>10</sup> Ibid. and Haines (2016. p.258).

<sup>11</sup> Nautical mile is a unit used in measuring distances at sea, equal to 1,852 metres or 1.852 miles (approximately 2,025 yards).

<sup>12</sup> Rothwell and Stephens (2016). The provisions relating to the continental shelf are complex and are not strictly relevant to this research.

<sup>13</sup> High Seas Alliance (2015).

heritage' of all mankind. No one has an exclusive jurisdiction over these waters.

However, in 2005, the US postulated a definition of 'maritime domain' that is contrary to the above notion. The US sees the 'maritime domain' as:

'all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime related activities, infrastructure, people, cargo, and vessels and other conveyances'.<sup>14</sup>

This definition does not provide a clear distinction between maritime zones (areas of sea and ocean) and activities within those areas. It further ignores the need to attach jurisdictions for maritime zones (one-third of the world's seas and oceans) to coastal states. While the definition has already been internationalised, it perhaps refers to the world's maritime domain and not to that of states, Alliance or IGOs.

In keeping with the US definition, the 2014 UK National Strategy for Maritime Security, for example, adopts the US meaning of 'maritime domain', which encompasses the world's seas and oceans in their entirety (see part 3.2 of the Strategy).<sup>15</sup> Fortunately, part 1.9 of the Strategy acknowledges that there is a distinction between a maritime domain and the activities within it: "The maritime domain is vast, but not uniform- the activities taking place within is largely concentrated within ports, shipping lanes, waterways, fixed infrastructure, and fishing grounds, leaving large swathes of the world's seas and oceans broadly empty".<sup>16</sup> As noted, this distinction is not reflected in the American definition of maritime domain.

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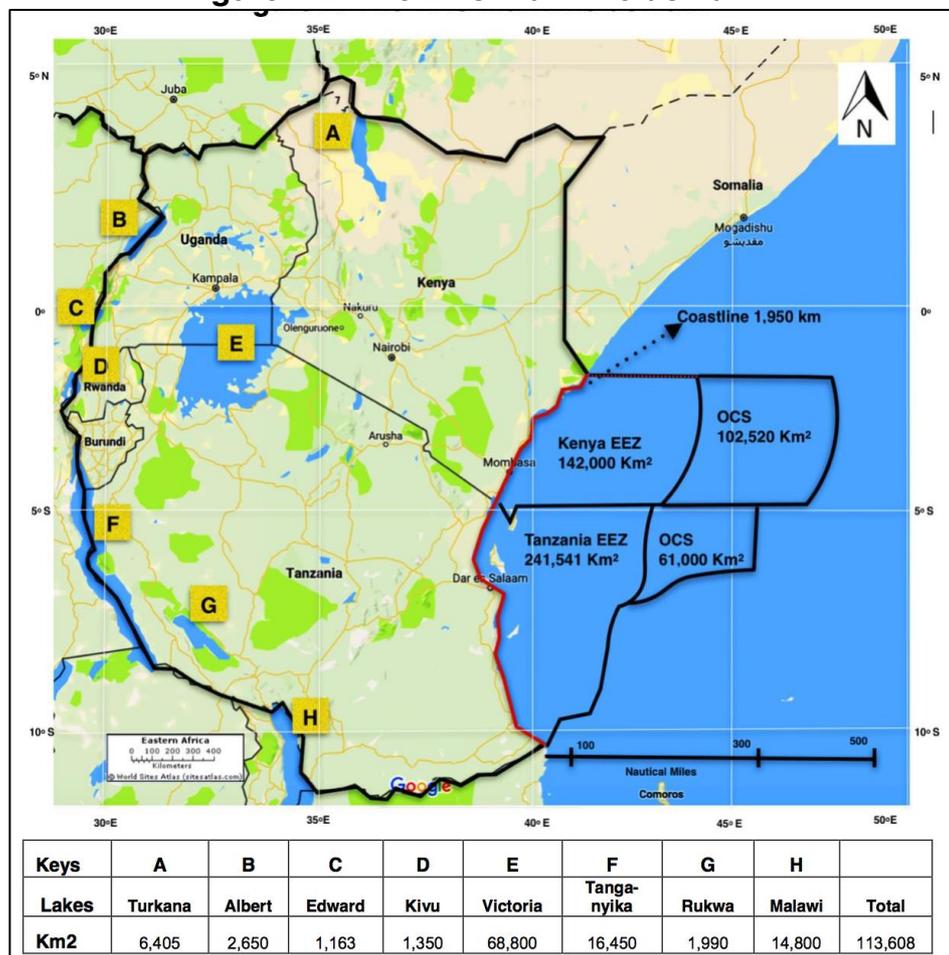
<sup>14</sup> The US National Strategy for Maritime Security (2005, p.1).

<sup>15</sup> The UK National Strategy for Maritime Security (2014, p.15).

<sup>16</sup> *ibid.*, p.10.

In the light of the discussion above, for the purpose of this research, the 'EAC maritime domain' refers to the areas of the Indian Ocean adjacent to the coastlines of Kenya and Tanzania and extending to the outer limit of the EEZ, which is currently 200 nm. For that reason, the EAC's inland navigable waterways (coded A to H in Figure 1-2) of approximately 114,000 km<sup>2</sup> will not be considered part of the EAC maritime domain used in this research.<sup>17</sup> Since the EAC is not yet a Federation, the EAC maritime domain certainly comprises the maritime domains of Kenya and Tanzania as these are the only two coastal States of the EAC (see Figure 1-2 and Table 1-1).<sup>18</sup>

**Figure 1-2: The EAC maritime domain<sup>19</sup>**



<sup>17</sup> See 6.4 on page 230, Figure 1-2 and footnote no 799

<sup>18</sup> Art. 8(1) UNCLOS 1982. 'Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state'.

<sup>19</sup> Author (2015).

**Table 1-1: Area and breadth of the EAC maritime domain.<sup>20</sup>**

| <b>States</b> | <b>EEZ Km<sup>2</sup></b> | <b>Outer limit of Continental Shelf Km<sup>2</sup> (<i>possibility</i>)</b> | <b>Coastline Km</b> |
|---------------|---------------------------|---|---------------------|
| Kenya         | 142,000                   | 103,520   | 536                 |
| Tanzania      | 241,541                   | 61,000  | 1,414               |
| <b>Total</b>  | <b>383,541</b>            | <b>164,520</b>  | <b>1,950</b>        |
| Breadth       | 200 nm                    | 150 nm  | 350 nm              |

While UNCLOS 1982 makes it clear that inland waters are excluded from its provisions relating to the maritime domain, it appears that within the EAC, there is a perception that inland waters are part of the Community maritime affairs. The reasons for this are clear in the light of the importance of these inland waters to the economies and social lives of the EAC. Additionally, this interpretation of maritime affairs, aligns with the meaning of maritime affairs as stipulated in the 2050 Africa's Integrated Maritime Strategy (2050 AIMS).<sup>21</sup>

The 2050 AIMS which is the African Union's blue economy strategy, recognises Africa's inland waters (rivers and lakes) as part of broad meaning of Africa's maritime affairs. For that reason, any further determinations of EAC maritime policy will probably impact on inland water activities. Due to limitations of time and resources, however, this research focuses on the Indian Ocean maritime domain of the EAC. For purposes of this research, inland waters activities will not be considered as part of the Community maritime affairs despite its importance to the regional economy. Therefore, security issues in the EAC inland waters are outside the parameters of this research.

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<sup>20</sup> Data organised by the author sourced: Ruitenbeek, Hewawasam and Ngoile (2005)

<sup>21</sup> 2050 AIMS, Art. 8. See also Potgieter (2013).

The architecture of the EAC 'maritime domain' as determined by the UNCLOS 1982 is currently made up of 200 nm of EEZ which include 12 nm of Territorial Sea. Neither of the coastal EAC member States has so far been able to extend its maritime zones to the Outer Limit of the Continental Shelf (OCS), despite bidding to do so.<sup>22</sup> The OCS areas under discussion (see Figure 1-2) are absolutely important for energy security.<sup>23</sup> As shown in Table 1-1 above, the EAC maritime domain abuts onto a coastline of approximately 1,950 kilometres (1,053 nm) covering the 383,541 square kilometre area of the two States' EEZs.<sup>24</sup>

### 1.2.3 Importance of the EAC Maritime Domain

The globally connected economy relies on the oceans and adjoining littorals for fishing, access to natural resources, and the movement of much of the world's commerce.<sup>25</sup> Insecurity in the maritime domain has a huge impact on the cost of production, transportation, exports and imports. Therefore, effective governance of the maritime domain has become essential for economic growth (now often referred to as the 'blue economy'), the marine environment, human security and national security.

The EAC is no exception to that notion. In 2008, for example, more than 14 per cent of the entire EAC population lived along the 1,950 kilometres

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<sup>22</sup> Both Kenya and Tanzania have formally applied at the CLCS to extend their maritime domains to the OCS. However, because of the ongoing Kenya-Somalia maritime border dispute and disagreements between Tanzania and its Semi-autonomous islands of Zanzibar over sharing of natural resources in those waters, both States have so far failed to extend their maritime zones to the OCS.

<sup>23</sup> CLCS (2012), Mbalamwezi (2012), CLCS (2014), Oluoch and Kimani (2012), War hits Kenya's bid to expand waters. *The East African*. Available at: <http://www.theeastafrican.co.ke/news/War+hits+Kenyas+bid+to+expand+waters+/-/2558/1316006/-/y3faxpz/-/index.html> [Accessed on: 5 November 2015].

<sup>24</sup> Index mundi (2015), UNCTAD (2005.p.1)

<sup>25</sup> (Sandoz, J.F. 2012). Maritime Security Sector Reform. *United States Institute of Peace, special report no. 306*. Available at: <http://www.usip.org/sites/default/files/SR306.pdf> [Accessed on: 10 October 2015]. See also Herbert-Burns (2012).

of Kenyan and Tanzanian shoreline,<sup>26</sup> and they are principal beneficiaries of the regional Territorial Seas.<sup>27</sup> Since then the proportion has increased due to Somali instability. The EAC coasts are also sources of employment and means of living for 22.2 per cent of the EAC population (over 30 million out of 135.4 million).<sup>28</sup>

Between 2000 and 2015, there have been large oil and gas discoveries in the EAC maritime domain. These discoveries offer potential energy security assurance to the Community and to the wider region.<sup>29</sup> Tanzania, for example, has an estimated 55.08 trillion cubic feet (tcf) or approximately 1,600 Cubic Kilometres of proven natural gas reserves.<sup>30</sup> It has already signed 25 production sharing agreements (PSAs), of which eight are for offshore drilling.<sup>31</sup>

Kenya's oil reserves are estimated to be 600 million barrels and it has twelve offshore oil and gas blocks.<sup>32</sup> These discoveries have made the world superpowers and great powers, such as the EU, China, India and the US, regard the EAC as a potential future energy supply region.<sup>33</sup> However, their race for the EAC's resources has potentially turned the

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<sup>26</sup> (Kabubu, 2009). This figure is certainly likely to have increased post-2008.

<sup>27</sup> Sea Around Us Project. EEZ waters of Kenya and Tanzania. Available at: <http://www.seaaroundus.org/eez/404.aspx> [Accessed on: 10 October 2015].

<sup>28</sup> (Kaskazi Environmental Alliance- KEA, 2012). 'Coastal and Marine Ecosystem of East Africa.. Available at: <http://www.keainc.org/coastalmarine-ecosystems.html> [Accessed on: 10 October 2015].

<sup>29</sup> Akombo, A. 2015. 'Oil & Gas Africa: East Africa To Auction More Exploration Blocks In 2015'. *AFKinsider*. Available at: <http://afkinsider.com/87963/oil-gas-africa-east-africa-auction-new-exploration-blocks/> [Accessed on: October 2015] and Senelwa, K. 2015. 'Kenya to create 14 more oil blocks'. *The East African*. Available at: [Accessed on: 10 October 2015].

<sup>30</sup> Ng'wanakilala, F. 2015. 'Tanzania lifts gas resources estimate to 55 trillion cubic feet'. *Reuters*. Available at: <http://af.reuters.com/article/tanzaniaNews/idAFL5N0YT0NO20150607> [Accessed on: [10 October 2015]

<sup>31</sup> Ibid

<sup>32</sup> Patey, L. 2014. 'Kenya: An African Oil Upstart in transition. The oxford Institute for Energy Studies'. Available at: : <http://www.oxfordenergy.org/wpcms/wp-content/uploads/2014/10/WPM-53.pdf> [Accessed on: 10 October 2015]

<sup>33</sup> Interviewees 45 and 47.

EAC into a complex security region. That makes the EAC's intervention absolutely necessary.<sup>34</sup> The need for action by the EAC is examined in Chapter Eight.

On average, over 95 per cent of EAC international trade by volume passes through Kenyan and Tanzanian seaports. In 2013, for example, EAC seaports recorded a throughput of more than 36 million tons of cargo, including 1.47 million Twenty Foot Equivalent Units (TEUs),<sup>35</sup> and approximately 2,500 international and 1,500 domestic vessels called into EAC seaports. The EAC's main seaports are the Mombasa port in Kenya and the Dar-Es-Salaam port in Tanzania.<sup>36</sup> The legitimate interests of landlocked States are specifically protected under Part X of UNCLOS 1982. Consequently EAC seaports also serve numerous landlocked states, including Malawi, Zambia, Burundi, Rwanda, Uganda and South Sudan and other neighbouring States such as Congo and Democratic Republic of Congo. These ports are, therefore, treated as 'regional' ports rather than serving only the EAC. They are also used for international humanitarian missions for the Great Lakes region, including Somalia. Mombasa Port, for example, has been named the UN's major humanitarian supply gate in the Eastern African region.<sup>37</sup>

According to Potgieter, 'in 2008, over 1.5 million Somalis are depending on humanitarian aid, 80 per cent of which are delivered by sea through Kenya port'.<sup>38</sup> The UN report published in the Kenya Ports Authority Handbook in 2014 stated that the port of Mombasa in Kenya is one of the world's busiest ports for handling aid cargoes for the UN's World

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<sup>34</sup> Ibid.

<sup>35</sup> (EAC, 2014).

<sup>36</sup> Tanga, Mtwara and Zanzibar ports in Tanzania are the EAC's ports.

<sup>37</sup> ISSUU (2014, pp 56-58). Kenya Ports Authority Handbook-2014. Available at: [http://issuu.com/landmarine/docs/kenya\\_ports\\_2014/56](http://issuu.com/landmarine/docs/kenya_ports_2014/56) [Accessed on: 11 October 2015]

<sup>38</sup> (Potgieter, 2008, p.2). The data used by Potgieter is valid up to 2008, after which point the figures should have been much larger as Somali stability has been declining on a daily basis and humanitarian needs were escalating.

Food Programme (WFP).<sup>39</sup> Each year, aid cargoes of between 3,000 and 6,000 TEUs are handled through the port of Mombasa.<sup>40</sup> That makes the port the UN's major supply gateway in the East Africa with links by road to the Great Lakes Region and by road and sea to Somalia.<sup>41</sup> Despite all of these factors, the EAC maritime domain is not safe and is vulnerable to a number of conventional and non-conventional maritime security threats.

### **1.3 Vulnerability of and Grand Challenges for the EAC Maritime Domain**

#### **1.3.1 Vulnerability**

Like all the world's maritime domains, the EAC maritime domain is vulnerable to maritime security threats. The EAC's shoreline, ports, offshore installations and lucrative maritime zones provide great economic opportunities for the local population and foreign investors, but they are highly vulnerable to maritime crimes and other maritime security threats. Maritime criminals are always keeping an eye open for a perfect opportunity to attack. As defined by Christian Bueger, "Maritime security refers to threats that prevail in the maritime domain including maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes or maritime accidents and disasters".<sup>42</sup>

Further to that Bueger argues that in Africa, the issue of maritime security receives little attention from the policy makers.<sup>43</sup> That makes the African maritime domains especially vulnerable. Most of the African states, including EAC States, depend on international partners' security

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<sup>39</sup> ISSUU (2014.pp 56-58).

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Bueger (2015.p.159)

<sup>43</sup> Bueger (2013)

projects for protection of their own maritime domains.<sup>44</sup> However, because of financial constraints, many of these international maritime security projects do not last long.

The Security Association for the Maritime Industry (SAMI) estimates that over the next 20 years maritime traffic will increase by 50 per cent but due to economic hardship in traditional maritime states, navies will also shrink by 30 per cent.<sup>45</sup> The shrinkage of the world's navies will inevitably result in less deployment of naval assets for protection of the world's Sea Lines of Communications (SLOCs). As a result of that, security of SLOCs will be shifted into the hands of individual states, regional organisations such as the EAC and for commercial reasons, to the Private Maritime Security Companies (PMSCs).

The EAC maritime domain is mostly affected by piracy, armed robbery against ships at sea, smuggling of illicit drugs and weapons, human trafficking, illegal fishing and environmental destructions.<sup>46</sup> There is also an ongoing maritime border dispute between Kenya and Somalia.<sup>47</sup> At the time of writing, the dispute is in the hand of the International Court of Justice (ICJ).<sup>48</sup> Somalia first referred the dispute to the International Court of Justice (ICJ) in 2014. Hearings have taken place and on 2 February 2017 the ICJ had issued its preliminary ruling in favour of Somalia.<sup>49</sup> Analysis of those threats will be analysed in detail in Chapter Four, 'Problems and Challenges in the EAC maritime domain'.

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<sup>44</sup> Ibid.

<sup>45</sup> Isenberg, D. 2012. The Rise of Private Maritime Security Companies. *CATO Institute*. Available at: <http://www.cato.org/publications/commentary/rise-private-maritime-security-companies> [Accessed on: 11 October 2015. see also Williams (2014).

<sup>46</sup> (Bichou, Bell, and Evans, 2013); (Ukele, 2013), see also KMA (2009)

<sup>47</sup> Moss (2013), Devan (2013), Mbaria (2014), Farah (2015)

<sup>48</sup> ICJ (2016). Maritime Delimitation in the Indian Ocean (Somalia v. Kenya). Available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=SK&case=161&k=00> [Accessed 18 October 2016]

<sup>49</sup> Ibid.

Among these threats, piracy, illegal fishing, drugs trafficking and armed robbery against ships at sea are the most prominent ones in the EAC maritime domain. Although the Somali piracy epidemic seems to have been stabilised by 2014, the piracy problem in the region has probably paused rather than ended.<sup>50</sup> According to International Maritime Bureau's statistics, Somali-related maritime criminals are operating in the EAC maritime domain. Evidence suggests that, Somali pirates have sometimes been operating deep into Tanzanian maritime domain.<sup>51</sup>

While there has so far been no evidence of pure maritime terrorist attacks in the EAC maritime domain, there have been attacks launched on land in various parts of Kenya by Al-Shabaab, a terrorist group linked to Al-Qaeda. In 2011, for example, Al-Shabaab is believed to have stormed a Kenyan beachside resort, the Kiwayu Safari Village, some 40 kilometres off Somali coast. In this incident, which was undertaken through sea, a British man was killed and a British woman, Judith Tebbutt, was taken hostage for about six months inside Somalia.<sup>52</sup>

Al-Shabaab does not have necessary maritime combat capabilities to deliver deadliest maritime terrorism attacks on its own. Nevertheless, through Al-Qaida of which Al-Shabaab is an affiliate member it might be able to deliver sea-borne attacks.<sup>53</sup> Also a nexus between the Somali piracy and Al-Shabaab is something not to be ignored completely.<sup>54</sup> Although there is no firm evidence that the two are working together, there is a possibility that Al-Shabaab might use pirates to deliver attacks

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<sup>50</sup> (Venugopalan, 2013)

<sup>51</sup> IMB (2014) and UNOSAT (2014, p.22). UNOSAT Global Report on Maritime Piracy: a geospatial analysis 1995-2013. United Nations Institute for Training and Research. Available at: [https://unosat.web.cern.ch/unosat/unitar/publications/UNITAR\\_UNOSAT\\_Piracy\\_1995-2013.pdf](https://unosat.web.cern.ch/unosat/unitar/publications/UNITAR_UNOSAT_Piracy_1995-2013.pdf) [Accessed on: 11 October 2015].

<sup>52</sup> Laing (2015)- MI6 'believed Kenya holiday couple Judith and David Tebbutt kidnapped by al-Shabaab'.

<sup>53</sup> Barnett (2013)

<sup>54</sup> Leonard and Ramsay (2013)

at sea.<sup>55</sup> This is yet more proof that the group is dangerous and there is a chance that it might deliver its next attack at the EAC maritime domain. This possibility will be examined in Chapter Four, and it also the subject of an article published by the author.<sup>56</sup>

As noted, the EAC maritime domain has not yet received its proper attention at the Community level. This is in line with Bueger's arguments that maritime security has been a long-neglected stepchild of African security politics and that African maritime domains receive only scant attention as to regards maritime security threats.<sup>57</sup> Such threats would also impact upon maritime trade passing through the EAC and as a consequence have a global impact.<sup>58</sup> The notion of neglecting maritime security issues also applies to the EAC. Therefore, the EAC has a duty to its member states to do much more to protect its regional maritime domain from any possible kind of maritime crime.

### **1.3.2 Grand challenges**

The biggest challenge the EAC is currently facing in the area of maritime security would appear to be the lack of any centralised maritime policy at Community level. This is partly explained by a lack of any institution or steering committee within the EAC that has the specific role of dealing with maritime affairs. While there are eight institutions within the EAC specifically designed to address different issues of the region, there is nothing of that nature to specifically govern maritime affairs.<sup>59</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> Hamad (2016) – See Appendix 7, article 4

<sup>57</sup> Bueger (2013.p.298)

<sup>58</sup> Ibid.

<sup>59</sup> The institutions created are: 1) the Lake Victoria Basin Commission, 2) Civil Aviation Safety and Security Oversight Agency, 3) Lake Victoria Fisheries Organisation, 4) Inter-University Council for East Africa, 5) the East African Development Bank, 6) the East African Kiswahili Commission, 7) The East African Health Research Commission and 8) the East African Science and Technology Commission.

This is a strong omission and suggests that the EAC has so far done very little to protect its own maritime domain from the aforesaid maritime security threats. This is in spite of the fact that the EAC Strategy on Regional Peace and Security of 2006 together with the Protocol on Peace and Security of 2013 recognise that, terrorism,<sup>60</sup> piracy,<sup>61</sup> proliferation of illicit small arms,<sup>62</sup> and cross border crimes<sup>63</sup> are threatening regional peace and security and the whole regional integration processes.<sup>64</sup>

*The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*, says the peace and security efforts are being hindered by weak institutional structures within the EAC Secretariat, in particular, the lack of a Directorate for Peace and Security and inadequate implementation of regional strategies and standards within the partner countries.<sup>65</sup> Clearly, therefore the lack of a regional maritime institution will always be a drawback to the issues of maritime security in the EAC maritime domain and this has been recognised.

Article 93 of the 1999 EAC Treaty insists on the harmonisation of maritime transportation and ports policies, but says nothing on maritime security. Likewise, Articles 123, 124 and 125 of the same Treaty insist on the 'promotion of peace, security and stability within, and good neighborliness among the partner's states' — once again saying nothing specific about maritime security. Furthermore, among the short-term plans of the 2050 AIMS attached to the Africa's regional organisations including the EAC is for the regional organisations to create their own

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<sup>60</sup> EAC- Peace and Security Protocol, Art. 6.

<sup>61</sup> Ibid, article 7.

<sup>62</sup> Ibid, article 11.

<sup>63</sup> Ibid, article 12.

<sup>64</sup> Davoodi (2012), Makame (2012). Sezibera (2012).

<sup>65</sup> GIZ (2014). Promotion of peace and security in the East African Community (EAC). Available at: <https://www.giz.de/en/worldwide/15668.html> [Accessed on: 11 October 2015].

integrated regional maritime security strategies before the end 2018.<sup>66</sup> At the time of writing, there is no evidence whatsoever to suggest that the EAC will meet this deadline.

Owora Richard Othieno, the principal communication officer at the EAC headquarters in Arusha, added that 'as a Community, there is currently no harmonised position or strategy on the piracy menace'.<sup>67</sup> At the time of writing, there are five EAC cooperation agreements (MoU) on Peace and Security, but none of these relate specifically to maritime security.<sup>68</sup>

Therefore, the lack of proper regional maritime legal and institutional frameworks has been recognized as a factor preventing the EAC from having steering policies on its maritime affairs including maritime security issues. For that reason, regional maritime affairs, including maritime security issues within the EAC maritime domain, are left hanging, with no over-arching policies at the regional level. Therefore, a regional maritime security regime is a formal possible measure to combat maritime security threats in the EAC maritime domain (out to 200 nm) and possibly beyond.

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<sup>66</sup>2050 AIM Strategy, Annex C: Plan of Action for Operationalisation. Available from: <http://pages.au.int/sites/default/files/Annex%20C%2C%20PoA%20%28Eng%29.pdf> [Accessed: 22 February 2014]

<sup>67</sup> Edwin, W. (2010) EAC seeks joint piracy patrol. *The EastAfrican*. [Online] 22 February 2014. Available from: [www.theeastafrican.co.ke/news/-/2558/865574/-/pv5tj8z/-/index.html](http://www.theeastafrican.co.ke/news/-/2558/865574/-/pv5tj8z/-/index.html) [Accessed: 22 February 2014]

<sup>68</sup> GIZ (2014). 1) MoU with Eastern and Southern Africa Anti-Money Laundering Group; 2) MoU with the African Union cooperation on peace and security; 3) MoU with Regional Centre on Small Arms (RECSA); 4) MoU with Interpol cooperation on the fight against transnational crimes; and 5) MoU with International Conference on the great Lakes Region promoting peace and security, democracy and good governance (ICLR). Available at: <http://eacgermany.org/wp-content/uploads/2014/05/GIZ-EAC-Factsheet-P+S.pdf> [Accessed on: 13 November 2015]

## **1.4 Aims and Objectives of the research**

### **1.4.1 Research Aims**

To investigate the principal maritime policy and maritime security challenges facing the six EAC States, individually and collectively, and to investigate how the EAC can play a role in resolving those challenges while remaining faithful to its stated overall aims.

### **1.5 Research questions**

In order to achieve the research aims, the following research questions which are also research objectives are pursued.

#### **1.5.1 Main research questions**

- What are the principal maritime policy and maritime security challenges facing the six East African Community States, individually and collectively, and how can the EAC play a role in resolving those challenges while remaining faithful to its stated overall aims?

#### **1.5.2 Subsidiary questions**

1.5.2.1 To what extent does the establishment of the EAC make it feasible for the EAC to take primary responsibility for maritime policy and security issues in the EAC maritime domain and adjacent waters?

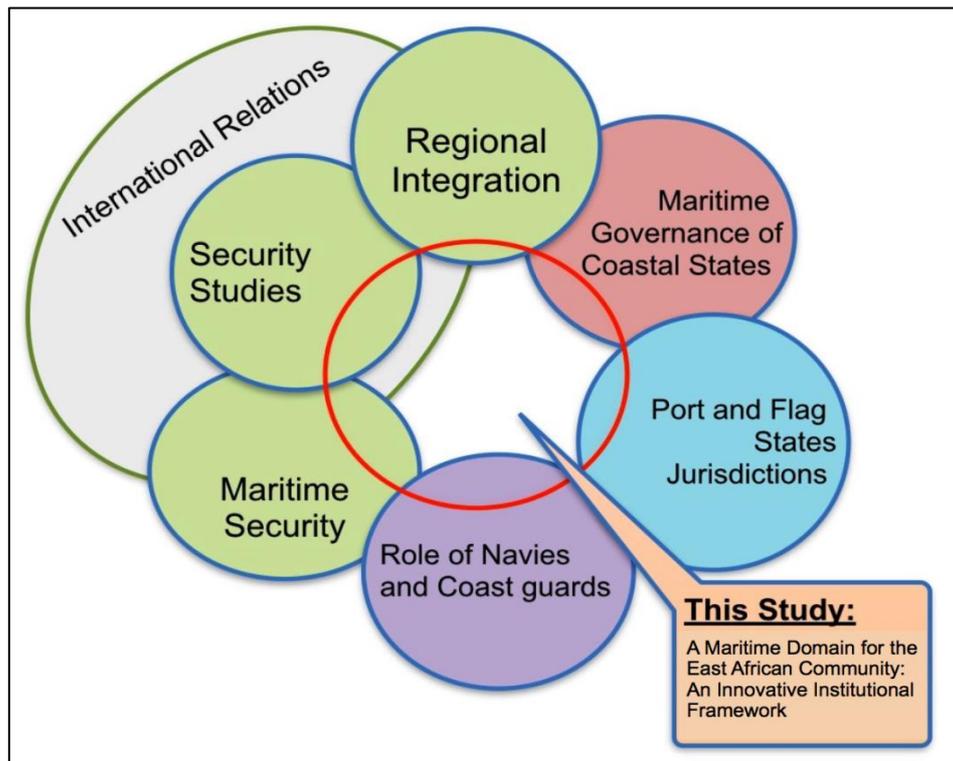
1.5.2.2 What are the political, legal and economic challenges that are likely to be associated with the above process?

1.5.2.3 As part of this process, will it be possible to establish a maritime security regime which will enable the EAC to co-operate with other coastal states in the region as well as with other global stakeholders in addressing maritime security threats and improve maritime safety?

This research focuses on, and depends on, the academic disciplines shown graphically in Figure 1-3. The diagram shows the gap in the existing literature explored more fully in the literature review (Chapter Two). Although legal questions are of great importance, whether in

terms of flag state jurisdiction, maritime boundaries or Port State Control, this is not, primarily, a thesis on the applicable Law; the legal issues will be considered only where directly relevant.

**Figure 1-3: Position of the research in relation to relevant academic disciplines<sup>69</sup>**



**1.6 Significance and deliverables of the research and why it is the innovative framework.**

As noted in section 1.2.1, the EAC aims to be a Federation, which no other Intergovernmental Organization (for example, the EU, and ASEAN) has, as a specific aim. Therefore, the EAC presents a unique opportunity for maritime cooperation to lead to longer term political unification. That is why the EAC presents the opportunity to create an ‘innovative framework’. As it will be discussed in Chapter Seven and Eight, this could be achieved through the creation of a Maritime Security Regime and the unification of members as individual under a single EAC

<sup>69</sup> Author (2015)

flag. However, there is the widespread conviction that unified flag state is not an important solution (section 7.5).

The main beneficiaries of this research are the EAC's member States and their respective institutions as well as the EAC at the Community level. The research will explore in detail the needs of the EAC, as a regional organisation, to protect its own maritime domain accordingly. Because the EAC does not have centralised maritime security policies and institution at the regional level, this research is expected to deliver the following benefits to the EAC, its member States and to the international maritime community:

- **The EAC 'Vision of the Sea':** Through a shift in perspective, the EAC will start to think about its maritime borders and their importance to the regional economy and security. It is likely that the outputs of this research will be a valuable input to the EAC maritime strategic plan which is due to be formulated by 2018.
- **The maritime steering institution:** This research will encourage the regional maritime players to create a regional maritime security regime to spearhead regional maritime affairs including maritime security.
- **A platform for future research:** This research will be a benchmark for other regional organisations on how to use non-military ways of addressing regional maritime security.
- **Contribution to literature review:** This research will add to the literature relating to the EAC maritime security governance. This will be the first overarching research to fully explore maritime security issues and challenges of the EAC as a region.

### **1.7 Limitations and delimitations of the research**

This research is primarily based on the potential contributions of a regional maritime security regime to regional security and economy. Because of the existing nexus between maritime security and the

national security of the coastal states, the following delimitations have been applied:

- In the EAC, the term 'maritime' includes sea waters, lakes and rivers. However, the security issues raised by lakes and rivers do not form part of this research (see 1.2.2). For that reason, 'maritime security' in this research means maritime security issues relevant to the Kenya and Tanzania maritime domains at least out to 200 nm, but also including the OCS of the Indian ocean.
- The processes and limitations of EAC political unification will not be a focus of the research, although it has a direct impact on and may be affected by the outcome of the research's suggestions. This is a politically sensitive issue and will not be directly addressed. In this research, the goal of political unification is assumed to be outside the investigation's timeframe (2013–2016).
- South Sudan is the EAC's newest member, accepted into the Community on 2 March 2016 and officially admitted on 5 September 2016. At that time, the research was nearly completed. Therefore, South Sudan inland waters detail will not appear in this research.

## **1.8 Research Outline**

The chapter titles and contents are as follows:

- Chapter One: Introduction: The Chapter explores background and context of the research, an outline of the research problem, research questions, and significance of the research and an outline of the remaining chapters.
- Chapter Two: Literature review: The chapter analyses relevant literature in the academic disciplines related to the research. These are: International Relations, regional integration, security studies, maritime security, port and coastal states, flag state jurisdiction,

governance of maritime spaces of coastal states and the roles of navies and coastal guards.

- Chapter Three: Research methodology: Chapter shows that this research uses a mix of qualitative and quantitative methods. Informant selected through purposive technique, data analysed through thematic technique.
- Chapter Four: Problems and Challenges in the EAC Maritime Domain. These are: Piracy and armed robbery against ships at sea, Illegal fishing, trafficking of illicit drugs, humans and small arms and maritime border disputes between Kenya and Somalia.
- Chapter Five: The EAC's Maritime Security Governance. An Analysis of the EAC Maritime Security Policies alongside those of Other Regional Organisations. The chapter analyses maritime security governance at ASEAN, ECOWAS and the EU compared with that of the EAC.
- Chapter Six: Maritime Governance in the EAC: A Case Study of Maritime Security Governance in Kenya and Tanzania. The chapter looks on how Kenya and Tanzania, the only coastal States of the Community, unilaterally govern their own maritime spaces. Legal and institutions frameworks and enforcement capabilities of these states were examined and gaps were identified.
- Chapter Seven: Possible Solutions: An EAC Flag State: Its Feasibility and Stakeholders Attitudes. The chapter examines flag states administration of the EAC. A contribution of the harmonised flag states mostly those of Kenya and Tanzania to regional maritime security. It also sheds some light on application of the concept of the 'blue economy' to the EAC.
- Chapter Eight: Possible Solution: The EAC as a Security Region: Can it be a Regional Maritime Security Regime? The chapter examines the possibility of the EAC establishing its own maritime

security regime as an institutional framework in order to tackle regional maritime security issues.

- Chapter nine: Conclusions. The chapter sums up the research findings, contributions to the research, future direction of the research and ends with general remarks over the research.

## 2 Chapter Two: Literature Review

### 2.1 Introduction

A literature review is “an analysis and synthesis of research sources to generate a picture of what is known about a particular situation and knowledge gaps that exist relating to that situation”.<sup>70</sup> Only by understanding the work that has gone before can one identify the ‘lacuna’ in the literature base that new research must fill and thus constitute a demonstrable contribution to knowledge. First two years in the research was used to collect literature review data specifically related to the EAC’S maritime affairs to support the research of *The East African Community’s Maritime Domain: An Innovative Institutional Framework*.

The literature was collected through an extensive review of international secondary sources, as well as the EAC’s own records which made available to the author. It became apparent that the international sources were scattered and very limited information on EAC maritime affairs, and the EAC database did not provide any ready-made and useful information in this regard. Therefore, the EAC maritime domain and its maritime affairs remain largely un-researched. This had the advantage that the required information had to be obtained by interviewing local maritime experts and stakeholders as identified in the references (Appendix1 on pages 397-401).

The initial information obtained through online and library sources was used as the base to formulate questions used in the fieldwork. The academic disciplines impinging on this research are: International relations (IR), regions and regionalism, security studies, maritime security, maritime legal and regulatory frameworks, and regional maritime security cooperation. As shown in Figure 1-3 on page 18, these

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<sup>70</sup> Burns and Grove (2001. p. 810), see also Randolph (2009.p.2)

areas reflect the research questions identified in Chapter One and reveal the lacuna which the following chapters will fill.

## **2.2 International Relations (IR)**

International Relations (IR) is an academic discipline that focuses on the study of the interaction of the actors in international politics, including states and non-state actors which include commercial organisations.<sup>71</sup> Brown and Ainley describe IR as “study of the relations of states, and that those relations are understood primarily in diplomatic, military and strategic terms”.<sup>72</sup> The discipline of IR was established in 1919, after the First World War in order to prevent recurrence of such conflicts.<sup>73</sup>

One of the key features of the international system exposed by ‘realists’ is that it is a state of anarchy - each state in the system is sovereign and does not have to answer to a higher authority.<sup>74</sup> This viewpoint is accepted by both schools of thought in IR; but at a different degree (see 2.2.1 below).<sup>75</sup> IR as an academic discipline has two principal schools of thought; Realism and Liberalism.

### **2.2.1 Realism and liberalism: The two leading approaches in world politics**

As theories, realism and liberalism are opposed. Realists and liberalists have shown little consensus on the parameters of world politics. World politics—or the international system, at its simplest—refers to interaction among states on politics, the economy (globalisation) and security. IR scholars take different approaches to the meaning of world politics. Therefore, states take different approaches towards their national security and this affects their international security relations. In this study, these theories will be summarised and linked to the notions of regionalisation and regional security behaviour.

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<sup>71</sup> Sutch,P. and Elias,J. (2007)

<sup>72</sup> Brown and Ainely (2009)

<sup>73</sup> Collins(2010. p. 2)

<sup>74</sup> Sutch,P. and Elias,J. (2007)

<sup>75</sup> Diez, T and Hudson, D. (2011. p. 2)

### **a) Realism**

Realism is not a single, monolithic theory, but rather a family of theories that altogether make realism a complete set of IR theory.<sup>76</sup> Within it, there are a number of sub-theories that contradict each other.<sup>77</sup> Despite some strong criticism, realism is accepted as a founding theory that puts the IR philosophy forward when the discipline was created after World War I. This research examines how structural realism, or neorealism, as one set of realist theories, influences world politics. The realism is based on the assumptions that the international system is 'anarchic' and power is a decisive factor in international politics.

Thucydides, as one of the founders of traditional realism,<sup>78</sup> and Waltz, as founder of neorealism,<sup>79</sup> both agree that, in the realist world, the strong do what they can and the weak do what they must. Realists believe that only nations can influence world politics and security, while social groups and international organisations, such as intergovernmental organisations (IGOs), non-governmental organisations (NGOs) and the like, have little impact on world politics.<sup>80</sup> Clearly, therefore, realists would accord little importance to an IGO like the EAC.

- **Anarchic international system**

Because the international system is anarchic, realists believe that the world is a chaotic place: wars are unavoidable and military power is always a decisive factor for a state's survival, including its ability to defend its sovereignty.<sup>81</sup> This implies that the world is ultimately lawless and there is no supreme power above states.<sup>82</sup> For this reason, every state has to survive on its own and international cooperation and social

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<sup>76</sup> Donnelly (2000. p.6). See also Collins (2000.p.16).

<sup>77</sup> Donnelly (2000)

<sup>78</sup> Thucydides as cited by Forde (1992)

<sup>79</sup>Waltz(1986b)

<sup>80</sup> Collins (2010. p. 17). See also Donnelly (2000. p. 6).

<sup>81</sup>Dornal (2011)

<sup>82</sup> Grieco (1998), Dornal (2011)

groups have little role in world politics; hence, they are of little use. While trying to clarify the term ‘anarchy’, Waltz said that in IR, ‘anarchy’ means the absence of supreme powers above the state’s power.<sup>83</sup>

The world system being ‘anarchic’ or ‘lawless’ does not, however, mean that it is an unsafe place in which to live. Rather, it is an indication that there is no ‘911’ helpline that a state could dial if it were in trouble. All a state can do is keep on going, competing, struggling and surviving with its own means. Otherwise its only salvation is to find a way of getting some help from other states, not from overarching international organisations or regimes.<sup>84</sup> Realists believe that international organisations/regimes are created by states, and thus work under their command to benefit those states rather than the world.<sup>85</sup> Knowing this, every state has to struggle and survive on its own, and international organisations—such as the United Nations (UN), NGOs and IGOs including the EU and the EAC—cannot offer much help to the state when it is in trouble.

- **Power is a decisive feature in world politics**

Realists believe that struggling for power in order to survive is one of the cornerstones of world politics. Power is considered as country’s capacity to deter any foreign threats to its territories.<sup>86</sup> Under realism, a state’s sovereignty can only be threatened by other sovereign states. This ignorance of internal conflicts, such as civil wars and human security in general, is one of the major drawbacks of the realism theory.<sup>87</sup>

As argued by Kerr, up to 2007, 95 per cent of battle deaths are caused by internal conflicts, while only 5 per cent are caused by inter-state

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<sup>83</sup> Powell (1994)

<sup>84</sup> Grieco (1998)

<sup>85</sup> Law(2007)

<sup>86</sup> Collins (2010).

<sup>87</sup> Ibid

conflicts.<sup>88</sup> For example, between April and July 1994, the Rwanda Genocide, which lasted for 100 days, claimed approximately 800,000 lives.<sup>89</sup> The casualty figure in the internal Rwanda Genocide is far higher, for example, than that of the seven-month international Tanzania–Uganda war in 1978–79, which claimed between 3,000 and 4,000 lives.<sup>90</sup>

Once a state has the necessary powers, it can defend its sovereignty and, through its foreign policies, influence world politics. It is also true that the failure of one nation is followed by the rise of another state; this ensures that the world powers remain balanced.<sup>91</sup> For that reason, in the international system, the most reliable brake on the power of one state is the power of other states. This scenario can be explained through the case of the US and the Soviet Union during the Cold War era.

The term ‘balance of power’ refers to the general concept of the power of one or more states being used to balance the power of another state or group of states.<sup>92</sup> Rosen and Jones see power as the ability of an international actor to use its tangible and intangible resources and assets in such a way as to influence the outcome of events in the international system with the goal of improving its own satisfaction with the system.”<sup>93</sup>

It is hard to measure a state’s powers in precise terms; however, Goldstein and Pevehouse suggest that growth of Gross Domestic

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<sup>88</sup> Kerr (2007. p.101).

<sup>89</sup> BBC News. (2014). Rwanda genocide: 100 days of slaughter. Available at: <http://www.bbc.co.uk/news/world-africa-26875506> [Accessed 2 April 2014].

<sup>90</sup> Polynational War Memorial. Available at: <http://www.war-memorial.net/Uganda-vs-Tanzania--3.165> [Accessed 2 April 2014]

<sup>91</sup> Jo Jakobsen (2013). Neorealism in International Relations – Kenneth Waltz. *Popular Social Science*. Available at: <http://www.popularsocialscience.com/2013/11/06/neorealism-in-international-relations-kenneth-waltz/> [Accessed 2 April 2014].

<sup>92</sup> Nexson (2009).

<sup>93</sup> Rosen and Jones(1977).

Product (GDP) and military strength could be the best indicators of a state's power.<sup>94</sup> This kind of power is referred to as tangible power.<sup>95</sup> Soft power is an alternative form of power in IR, defined as "the ability of a state to affect others through the co-optive means of framing the agenda, persuading, and election positive attraction in order to obtain preferred outcomes".<sup>96</sup> Soft power includes non-material elements such as national will, diplomatic skills, international media, and popular support for the government.<sup>97</sup> Powerful media, such as the BBC, CNN, Al Jazeera, Russian Television (RT) and the like, are some examples of soft power used by states in world politics at the time of writing.

### **b) Liberalism**

The realist ideology does not believe that civil societies and international organisations can contribute decisively to world politics. Realists agree that states are the ultimate contributors in the international system, and posit that only powerful states can survive in the world, which is full of conflict and violence. The liberalist theory, however, takes an opposite view. Liberalist theory does acknowledge the role of the state as a leading actor in world politics. This suggests that liberalism also accepts the notion that the world system is anarchic. However, although both realism and liberalism have elements of anarchy, liberalists agree that cooperation is what matters most and that states should not act alone in order to bring about world peace, as suggested by realists.

Liberalists believe that the world system is a source of world peace, and that harmony can only be obtained by states through cooperation and the significant involvement of civil society and international organisations.<sup>98</sup> By saying that world peace can be brought about by the

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<sup>94</sup> Goldstein and Pevehouse (2012. p. 38) see also Nye (1990)

<sup>95</sup> Nye (1990)

<sup>96</sup> Nye (1990.p.31-32)

<sup>97</sup> Ibid.

<sup>98</sup> Ebeling (2013).

state in cooperation with others, liberalists acknowledge that there is also an element of anarchy in the liberalist ideology. However, differently to realism, where anarchy is an absolute, in liberalism it is a complement that requires civil societies and international organisations to take leading roles.<sup>99</sup>

According to Doyle, “the liberal states also existing in the anarchy, that is, a lawless world but its anarchy is different from that of realism. Rather than being overwhelmingly a relative contest, a zero-sum game, their contest is a positive- or negative-sum game. They can win or lose together.”<sup>100</sup> To that end, liberals suggest that, although states have an important role in the international system, non-state actors are creating world peace and harmony without the use of force (military power).<sup>101</sup>

There are three main pillars that liberalists agree could influence world peace. These are: a) human rights; b) globalisation; and c) international institutions.<sup>102</sup>

- **Human rights**

How human rights might influence world politics is one of the most debated issues in IR. According to the United Nations Commission for Human Rights: “Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.”<sup>103</sup>

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<sup>99</sup> Collins (2010.p.36), See also Slaughter (1995).

<sup>100</sup> Doyle (2012. p. 7).

<sup>101</sup> Jumarang (2011).

<sup>102</sup> Collins (2010. pp. 35-43).

<sup>103</sup> (OHCHR)-Office of the High Commissioner for Human Rights (2012). What is human right? Available at:

<http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx#> [Accessed 2 April 2014].

According to liberalism, civil societies have much to teach the world. If human beings in their societies can live in harmony and resolve their conflicts peacefully, why then can states not learn from civil society and apply the same principles internationally between nations? If it is wrong for an individual to engage in socially unacceptable or criminal behaviour, it is also wrong for states.”<sup>104</sup>

- **Globalisation**

Liberalists agree that the best way to govern the world peacefully is through global integration.<sup>105</sup> However, some scholars see global integration as a capitalist method of oppressing the poor.<sup>106</sup> Integration or cooperation can be economic, technological, social or even military. As suggested by Haas, any increase in cooperation between states necessitates integration in one policy area, which subsequently has a knock-on effect, creating pressure for further integration in neighbouring policy areas, or spill-over.<sup>107</sup> “Spill-over refers to a situation where co-operation in one field necessitates co-operation in another.”<sup>108</sup>

Through cooperation, the chance of a conflict that would end up in a war breaking out is significantly reduced.<sup>109</sup> “Globalisation is the process by which the world is becoming increasingly interconnected as a result of massively increased trade and cultural exchange. Since globalisation encourages free trade between nations, as well as the supply and demand for capital across nations, freedom of movement, and, most importantly, democracy, there is a high chance that the globalisation process could reduce the need to have military conflicts that could lead to wars.<sup>110</sup> Adding to this, Weede notes that there is a strong connection between globalisation and world politics: “the economic benefits of

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<sup>104</sup> Burchill (2005. p. 67).

<sup>105</sup> Tim, W., (2014).

<sup>106</sup> Ibid.

<sup>107</sup> Cini(2003)

<sup>108</sup> Cini(2003.p.81)

<sup>109</sup> Kukoc (2009).

<sup>110</sup> Weede(2004).

globalisation and free trade are much less important than the international security".<sup>111</sup>

In 2014, the Russian Federation invaded Crimea, which has been a sovereign part of Ukraine after the break-up of the Soviet Union. Western countries, including the US, attempted to put in place punitive trade sanctions on Russia. Nevertheless, many of the sanctions were believed to have had little impact on Russia, or even backfired due to the fact that both sides, the West and Russia, are highly integrated and depend on each other, particularly in the areas of trade, energy and security.<sup>112</sup>

While some scholars support the globalisation ideology, some argue that globalisation is simply benefiting rich countries while offering little to developing countries.<sup>113</sup> Scholars believe that globalisation cannot stop wars from happening. In 1913- Norman Angell, in the classic work *The Great Illusion* had predicted that: "economic interdependence between Germany and England made any war between the two unthinkable".<sup>114</sup> Nevertheless, a few months after his words appeared in his book, the First World War broke out and Germany and Britain found themselves at war.

China, as another example, is one of the many states to have benefited significantly from globalisation. Following its 'Opening-up and Reform' policy in 1978, over the 38 years from 1978 to 2016, China opened its doors to foreign investment, which has, in turn, boosted its economy.<sup>115</sup>

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<sup>111</sup> Ibid. p. 165.

<sup>112</sup> Reuters (2014). UPDATE 1-Russia sanctions may hurt German engineering sector-VDMA. Available at: <http://in.reuters.com/article/2014/04/07/ukraine-crisis-germany-engineering-idINL6N0MZ1GE20140407> [Accessed 8 April 2014]

<sup>113</sup> Ibid, 48.

<sup>114</sup> Angell (1913.p.3).

<sup>115</sup> Tisdell (2009. p.7)

Because of the country's economic boom, China's economy has become the world's third largest after the US and Russia.<sup>116</sup>

Chinese economy is developing simultaneously with military capability. This military strength is the result of military spending: China now has the most military strength after the US and Russia.<sup>117</sup> These factors somewhat negate the idea of globalisation as a force that might influence world peace and security. Some scholars are highly critical of integration through globalisation, as it does not evenly distribute the benefits to all.<sup>118</sup> Rich states seem to benefit more from globalisation than poor states.

- **International Institutions**

As noted, liberalist ideology acknowledges that human rights (civil society), economic interdependence (globalisation) and international institutions (international organisations) are the three most important pillars for regional and international peace and harmony. It is worth noting that these pillars are not mutually exclusive; rather, they complement each other. The international institutions referred to in this research are interGovernmental organisations (IGOs), non-governmental organisations (NGOs) and multinational companies (MNCs). In broader terms, there are two kinds of international institution. On the one end, there are IGOs such as the EAC, while, on the other end, there are international societies (international regimes).

IGOs, such as the EAC, are formed through agreements, between sovereign states that are normally located in the same geographical area, or that are perhaps apart but working towards a common goal.<sup>119</sup> International regimes, however, are sub-groups of international

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<sup>116</sup> Global Fire Power (2015). The Complete Global Firepower list puts the military powers of the world into full perspective. Available at: <http://www.globalfirepower.com/countries-listing.asp> [Accessed on: 02 August 2015]

<sup>117</sup> Ibid.

<sup>118</sup> Marquardt (2005. p.127).

<sup>119</sup> Miller (1994)

institutions, connected by norms, rules, principles and procedures.<sup>120</sup> It is worth noting that a state becomes a member of an IGO upon ratifying a treaty.

Krasner provides the most reliable definition of the term 'regime' when he says: "regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations".<sup>121</sup> Hedley Bull, in his book *The Anarchical Society: A Study of Order in World Politics*, defines an international regime as a

"group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions".<sup>122</sup>

By introducing the world 'society', Hedley Bull echoes the liberalist view that international institutions influence world politics and security behaviours.<sup>123</sup> According to Hoffman, citing Bull: "System means contact between states and the impact of one state on another; society means common interests and values, common rules and institutions."<sup>124</sup> Hoffman's arguments further strengthen the hypothesis that the approach used by IGOs in international politics is connected through the *system* while the regime is connected through *society*.

Liberals see international institutions as an alternative to having military powers competition in shape world politics. One of the advantages of international institutions, and more specifically international regimes, is

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<sup>120</sup> Collins (2010.p.40)

<sup>121</sup> Krasner (1982. p. 186)

<sup>122</sup> Bull (1977.p 13).

<sup>123</sup> Hoffman (1986).

<sup>124</sup> Ibid, p.185.

that they do not have to be attached to states because, they work independently.<sup>125</sup>

For example, IGOs are usually run through a secretariat, which works independently of member states. This is one of the strongest arguments of liberals; even under the anarchic assumptions on which realists base their views, international institutions can work because their roots are not attached to states.<sup>126</sup> Liberalists support the roles of international institutions, such as IGOs, NGOs and MNCs, in bringing about world peace and harmony, which they achieve by breaking norms, overcoming problems via collective action (which individual states cannot facilitate on their own) and mediating conflicts between party states.<sup>127</sup>

It is also argued that impartiality, legitimacy and transparency reduce uncertainty and relay information. Liberalists support the idea that states tend to maximise their 'absolute gains' rather than 'relative gains' in world politics.<sup>128</sup> The 'absolute gain' theory measures the total effect, comprising power, security, and the economic and cultural effects of an action, thus providing a perfect way for states to cooperate and avoid unnecessary competition that would subsequently open the doors for military confrontation.<sup>129</sup>

While liberalists support international institutions, realists argue that international institutions have no particular roles in the international system; hence, they are irrelevant.<sup>130</sup> Moreover, realists argue that international institutions are created by the state, work on behalf of the

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<sup>125</sup> Mitchell (2006) "Co-operation in World Politics: The Constraining and Constitutive Effects of International Organisations", *International Studies Association Meeting in San Diego, California*. Available at: [http://ir.uiowa.edu/polisci\\_pubs/7/](http://ir.uiowa.edu/polisci_pubs/7/) [Accessed on: 13 September 2015]

<sup>126</sup> Bayeh (2014),

<sup>127</sup> Ataman (2003).

<sup>128</sup> Grieco, (1988)

<sup>129</sup> Ibid.

<sup>130</sup> Glaser (2003)

state, and depend on the state for their survival.<sup>131</sup> Therefore, their existence has no independent effect on world politics; moreover, they jeopardise the state's sovereignty.

Realists further argue that, because of the reasons previously mentioned, many states are worried about allowing international institutions too much autonomy.<sup>132</sup> Inability of the UN to scrutinise the invasion of Iraq in 2003 by the US and its allies is one of the examples most frequently cited by realists. Realists also believe that there is no nexus whatsoever between international institutions and security. This is because international institutions facilitate discriminating trade terms that benefit the more powerful countries with big economies, leaving less developed nations and infant industries to struggle.<sup>133</sup>

### **2.3 Regional Integration**

Regional integration is an important component of IR. It allows states to interact through an international system at regional level. IR examines the international interface, where sovereign states interact with each other and may agree on a common course of action.<sup>134</sup> Collins sees IR as covering an international system that allows interaction between states over matters which they consider to be of vital interest.<sup>135</sup> As defined by Haas: "Regional Integration is a process by which two or more sovereign states enter into regional agreements to co-operate and work closely together to achieve among others, peace, stability and wealth."<sup>136</sup>

Usually, regional integration involves one or more written agreements that describe the areas of cooperation in detail. The written agreements

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<sup>131</sup> Ibid.

<sup>132</sup> Abbott and Snidal (1998.p. 30).

<sup>133</sup> Milner (2005. pp. 841-844).

<sup>134</sup> Kaplan (1957), Bull (1977) and Waltz (1979).

<sup>135</sup> Collins(2010. p. 493).

<sup>136</sup> Haas(1968. p.3.)

normally take the form of a 'Treaty' that state parties have to ratify. Scholars use different terms to express the meaning of regional integration. This has led to some scholarly debates on what constitutes the real meaning of the term 'regional integration'.<sup>137</sup> Some prefer to use the term 'regionalism', referring to any kind of regional integration, while others focus more on 'integration', often meaning economic integration.<sup>138</sup> This scholarly debate will be touched upon later.

In order to place the term 'regional integration' into context, there is already a need to understand the meaning of the term 'region(s)' as it is used in IR. In Africa, for example, the history of regional integration dates back to the 1900.<sup>139</sup> The EAC is no exception to this. As can be seen in Figure 2-1, the EAC has over a hundred years of history, stretching back all the way to the 1900. During that time, the regions of Kenya and Uganda were British colonies while Tanganyika (now Tanzania) was a German colony and shortly before its independence, a British protectorate.<sup>140</sup>

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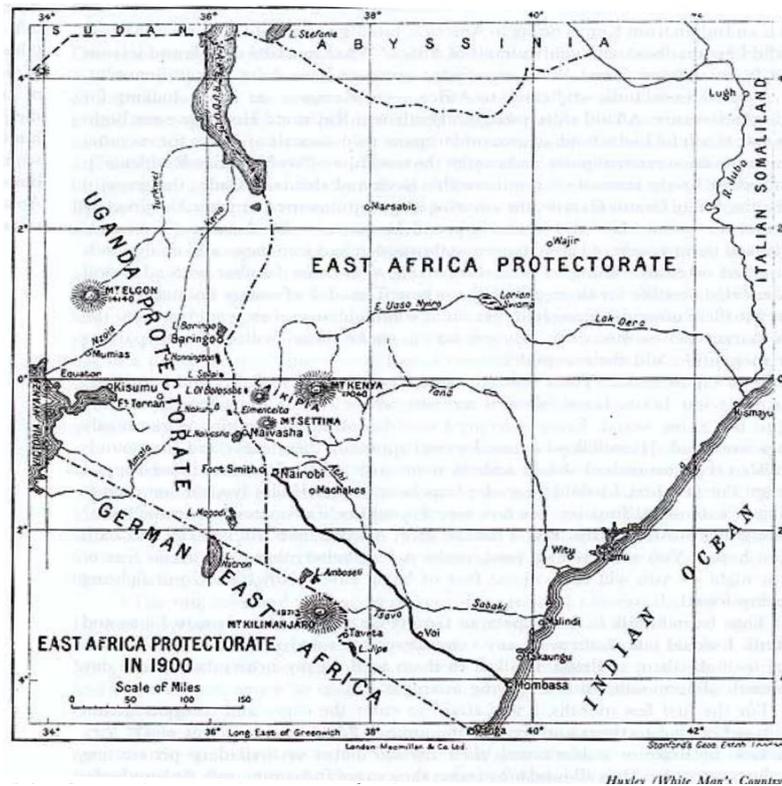
<sup>137</sup> Dosenrode (2010)

<sup>138</sup> Laursen (2010.p.3)

<sup>139</sup> Gela, A. and Kibret, H. (2002. p. 2). Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA. Available at: <http://www.soas.ac.uk/economics/research/workingpapers/file28853.pdf> [Accessed on: 26 August 2015]

<sup>140</sup> (Reith and Moritz, 2011). See also Mwapachu, n.d: EAC, past, present and future. Available at: <http://www.firstmagazine.com/DownloadSpecialistPublicationDetail.480.ashx> [Accessed on: 2 February 2014]

**Figure 2-1: The Map of East Africa in 1900 showing the British Protectorate<sup>141</sup>**



Ever since, regional integration has been seen by African nations as a means of supporting their economic and development strategies and also by a demonstration of a post-colonial identity. This attitude has resulted in a very large number of regional integrations, with less tangible results and some overlapping interests (see section 8.5.2 overlapping economic and security interests of the EAC in other regional organisations). There are a number of reasons why African regional integrations have not been as successful as they should have been. De Melo and Tsikata claimed that too much regional integration with overlapping memberships is one of the reasons for the failure of African integrations to produce better results.<sup>142</sup>

<sup>141</sup> The Map of East Africa in 1900s; Available at: <http://www.sikh-heritage.co.uk/heritage/sikhherth%20EAfrica/Nostalgic%20Miscellaneous.html> [Accessed on: 5 November 2015]

<sup>142</sup> De Melo and Tsikata(2014)

As seen in Figure 2-2 on next page, at the time of writing, there are 14 regional integrations in Africa with little effects to regional economies and security integration. These regional organisations demonstrate the overlap and redundancy of certain African regional organizations, and the inherent complexity of economic cooperation between different African states. The African Union (AU) recognises UMA, COMESA, CEN–SAD, EAC, ECCAS, ECOWAS, IGAD, and SADC as only eight organisations that have significant influence on African economic and security integration.

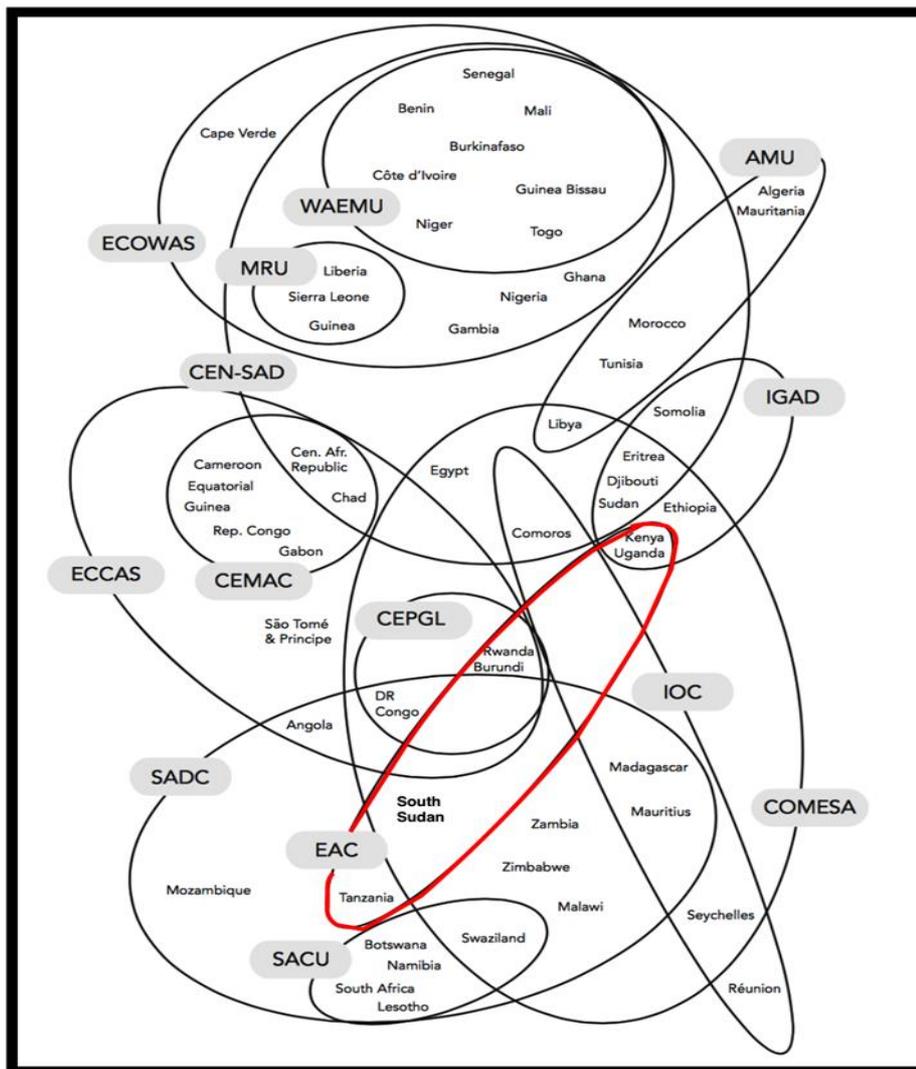
De Melo and Tsikata claimed that there is not a single African state that is not at least a member to one of the regional integrations.<sup>143</sup> This situation has created some conflicting forces within regional cooperation, along with some overlapping interests. The EAC is shown in Figure 5 in the red ellipse. Another reason for the failure of African integration is the excessively ambitious goals attached to integration, along with an unreasonable timeframe.<sup>144</sup> Some of the integrations such as those of the EAC, for example, want to have full economic integration, including a monetary union and political and security cooperation, all to be achieved within an unrealistic timeframe.

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<sup>143</sup> De Melo and Tsikata(2014)

<sup>144</sup> Ibid.

Figure 2-2: Regional Arrangement in Africa<sup>145, 146</sup>



### 2.3.1 What is a region?

A region is often defined as a group of countries located in the same geographical area. However, in IR studies, this explanation has, for a

<sup>145</sup> Modified by author from Woodrow Wilson International Center for Scholar: Africa Program (2008.p.34)

<sup>146</sup> KEY: **AMU**: Arab Maghreb Union; **CEMAC**: Economic and Monetary Community of Central Africa; **CEN-SAD**: Community of Sahel-Saharan States; **CEPGL**: Economic Community of the Great Lakes Countries; **COMESA**: Common Market for Eastern and Southern Africa; **EAC**: East African Community; **ECOWAS**: Economic Community of West African States; **ECCAS**: Economic Community of Central African States; **IGAD**: Inter-Governmental Authority for Development; **IOC**: Indian Ocean Commision; **MRU**: Mano River Union; **SACU**: Southern African Customs Union; **SADC**: Southern African Development Community; **WAEMU**: West Africa Economic and Monetary Union.

long time, been criticised because it does not provide a broad definition of 'region'. Region(s) and regionalism are two important terms in IR, and their meanings are not fully associated with physical regions.<sup>147</sup> According to Levis and Wigen, regions disappear and reappear as they are transformed by various economic, political, and cultural factors.<sup>148</sup>

Andrew Hurrell, for example, sees regions in four clusters: "a) regions as contenders for diversity and differences, b) regions as poles or powers, c) regions as levels in a system of multilevel global governance, and d) regions as harbingers of change in the characters of international society".<sup>149</sup> It is further argued by Levis and Wigen that, for the purposes of convenience, regions can be grouped into physical and functional regions.<sup>150</sup>

'Physical region' refers to territorial, military, and economic space controlled primarily by states, while 'functional regions' are defined by non-territorial factors, such as culture and the market, which are often the purview of non-state actors.<sup>151</sup> The above notion is also advocated by Buzan and Wæver who said that, geographical proximity increases regional security integration in particular in the areas relating to military, political, societal and environmental integration.<sup>152</sup> However, for economic integration, geographical proximity is not a catalyst.<sup>153</sup>

Figure 2-3 on next page, shows post the Cold War RSCs as seen by Buzan and Wæver in 2003. It also shows how adjacency influences the formation of RSCs. In the long run however, adjacency is not permanent, tends to increase and decreased depending on security issues of the region. Buzan and Wæver continue further by saying that

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<sup>147</sup>Vayrmnem (2003), Jonas(2011),

<sup>148</sup> Levis and Wigen (1997),

<sup>149</sup> Hurrell (2007. p.136)

<sup>150</sup> Levis and Wigen (1997)

<sup>151</sup> Levis and Wigen (1997. p.27)

<sup>152</sup> Buzan and Wæver (2003.p. 45).

<sup>153</sup> Ibid.

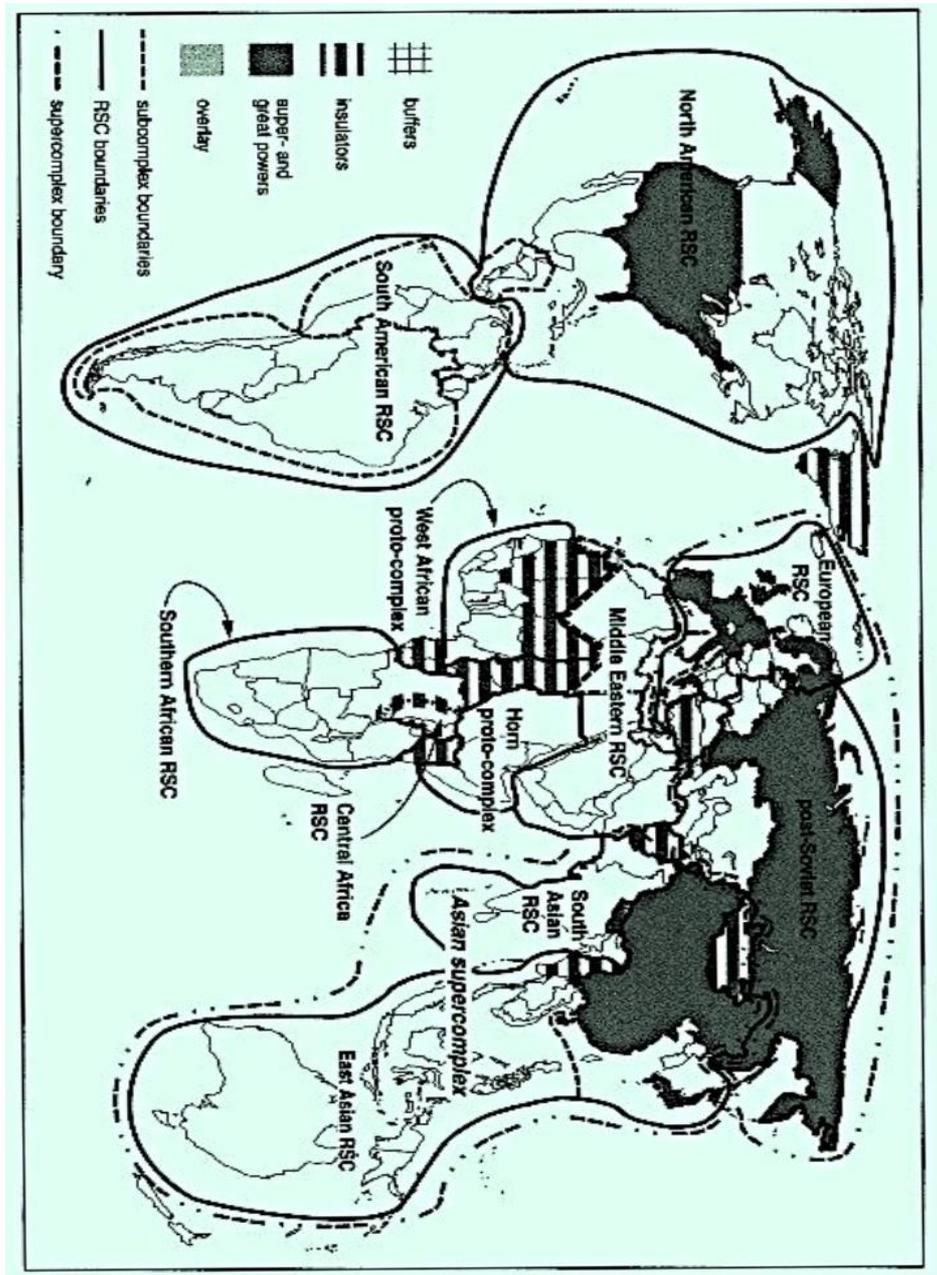
“adjacency is potent for security because many threats travel more easily over short distances than over long ones”.<sup>154</sup>

As has been discussed previously, liberalism, as one of the IR theories, insists on regional/international cooperation without associating a region with any physical region. Liberalists consider regions as functional regions, perceiving them as preferential trade areas. Realism, as an opposing IR theory, considers regions as physical regions. This concurs with the realist ideology holding that states are responsible for their territories and their own survival.

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<sup>154</sup> Ibid. p. 45

Figure 2-3: Patterns of Regional Security Complex Post-Cold War as seen by Buzan and Wæver in 2003<sup>155</sup>



<sup>155</sup> Figure 2-3 is an electronic version taken from Buzan and Wæver's online book which represents their interpretation of post the Cold War RSCs. The author however, has challenged the Buzan and Wæver's interpretation of post the Cold War RSCs as it does not represent the real security situation at the time of writing this thesis. This is particularly important to the EAC region where both land and maritime boundaries as used by Buzan and Wæver do not necessary representing those of the EAC as a region. See section 2.4.4 and Figure 2-4 for more detail analysis on the failure of Buzan and Wæver's Figure 2-3 to capture the EAC as a security region.

### **2.3.2 Reasons for integration**

Literature on Regional Integration places great stress on the reasons for it. As previously explained, economic, political and security reasons are the three main incentives for integration:

- **Economic reasons**

Generally, economic integration refers to the process whereby the economic barriers between two or more economies are eliminated. At later stages, economic integration involves the design and adoption, by governments, of specific policy decisions aimed at reducing or removing barriers to the mutual exchange of goods, services, capital and people.<sup>156</sup> Many economic-orientated IGOs limit their scope to this stage. This stage is otherwise referred to in the literature as the cooperation stage, which involves some cooperation on customs and a common market. Any further cooperation would open the doors to a monetary union, which is an important gateway to full political cooperation. Examples are the Custom Union which preceded German unification in the 19<sup>th</sup> Century and the European Economic Community (EEC) which preceded the EU.

- **Political integration**

Political integration is the highest integration level IGOs could reach. This question critical to this thesis has been extensively examined by scholars like Haas, Deutsch, Mitrany and others.<sup>157</sup> According to Haas, a founding father of Neo-functionalism, supranational organisations are created at the later stages of integration. Member states would then be required to surrender all of their sovereignties to the supranational organisation.

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<sup>156</sup>Ogbeidi (2011)

<sup>157</sup>Gilpin(2001).

However, some scholars are not convinced by the theory that political unification means creating a federal government that would serve as a supranational organisation. The scholars argue that fully-fledged political unification is a spill-over process. Deutsch views regional integration differently from Haas; regional integration does not necessarily have to create a supranational body.

According to Deutsch, regional integration is “a relationship among units in which they are mutually interdependent and jointly produced system properties which they would lack separately”.<sup>158</sup> Ilievski, for example, argued that the political integration could always be connected and based on several conditions and elements.<sup>159</sup> Ilievski continued by saying that, within the political unification itself, there are various stages to pass through, such as: a) establishing a unified law frame; b) creating common institutions; c) developing a decision-making centre; and, finally, d) projecting identity.<sup>160</sup>

The same views were taken by Karl Deutsch when he emphasised fully-fledged political unification.<sup>161</sup> Deutsch said that, if integration is intended to achieve fully-fledged political unification, it must then aim to: a) maintain peace; b) attain greater multipurpose capabilities; c) accomplish some specific tasks; and d) gain a new self-image and role identity.<sup>162</sup> The projecting identity stage is where the fully-fledged political union will be realised. At that stage, the member states will have to lose most or all of their sovereign status in favour of the IGO. This is the direction in which the EAC is headed.<sup>163</sup> Deutsch and Ilievski are clearly advocating Haas’ ‘Neo-functional theory’, although they are taking a slightly different angle.

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<sup>158</sup>Deutsch (1968.p159)

<sup>159</sup>Ilievski (2015. p.12)

<sup>160</sup> Ibid

<sup>161</sup> Deutsch (1968.p.158)

<sup>162</sup> Ibid

<sup>163</sup> Interviewee no. 48

## **‘Political will’**

Political will is a term that is often used but rarely defined. It is one of the most intriguing concepts in contemporary political theory. Very often, the term political will is mentioned negatively, that is, when it is absent. It is normal to hear the public argue that a project has failed because there was no political will among politicians. However, very few can put the term political will in a clear enough context to link it to how the project in mind has failed.

According to Hammergren, political will means “likelihood of reform”.<sup>164</sup> Brinkerhoff, defines political will as “the commitment of actors to undertake actions to achieve a set of objectives”.<sup>165</sup> Post et al, see political will as “the extent of committed support among key decision-makers for a particular policy solution to a particular problem”.<sup>166</sup> In this research, however, the term political will means a strong desire or determination on the EAC’s member States to advance regional integration processes toward a fully fledged political unification. For this reason, political will to achieve EAC political integration, is even more important than in any other regional organisations discussed in this research. That is because, unlike the EAC, none of them has a Federation as a specific, albeit perhaps long-term, goal.

In regional integration, ‘political will’ means ‘political power game’. Very often, political will is associated with how member states would be

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<sup>164</sup> Hammergren, L. (988. p. 12). Political will, Constituency building, and public support in rule of law programs. Centre for Democracy and Governance Bureau for Global Programs, Field Support, and Research US Agency for International Development. Available at:

<http://issat.dcaf.ch/content/download/2200/19056/file/Hammergren%20Political%20Will.pdf> [Accessed on: 27 March 2017]

<sup>165</sup> Brinkerhoff, D. W. (2010. p. 1). Unpacking the concept of political will to confront corruption. U4-CMI. NO.1. Available at: <http://www.u4.no/publications/unpacking-the-concept-of-political-will-to-confront-corruption/downloadasset/185> Accessed on: 27 March 2017]

<sup>166</sup> Post, et al, (2010. p. 659). Defining Political will. Politics & Policy. Vol. 38, Issue 4. pp. 653-676

required to surrender some, or all, of their sovereignties to a supranational organisation. It is also a test of how willing member states are, to enforce the directives of a supranational organisation into their own territories. However, political will is not only about the willingness of governments to deliver their promises. It is also about the government's capacity to deliver those promises and how civil societies are involved in the whole political processes.<sup>167</sup>

The EAC's political integration processes have not gone as smoothly as its founders expected. As noted in section 2.3.3, the EAC's founders thought that once initial agreements to form a political federation had been signed off, a federal government would come by default. However, that has never been the case. The EAC intends to gradually progress from a customs union towards a common market and monetary union, finally culminating in a political federation. This integration process appears to follow the 'neo-functionalism' pattern. Neo-functionalism believes that cooperation in one field has a knock-on effect on the next field of cooperation; ultimately making further steps towards integration inevitable (see section 2.3.3).

For the EAC to achieve the political integration goal, would require a strong secretariat that would push member states to comply with the agreements. Furthermore, the secretariat would be expected to bring together civil society organisations with member States, toward regional political unification as stated in Article 5(2) of the EAC's Treaty. Apart from the lack of political will amongst the member States that would have pushed the community into a federation, the EAC's Secretariat is structurally flawed.<sup>168</sup> The EAC's Secretariat does not have enough power to push agreements into action on member States.<sup>169</sup> It does not have the necessary powers, for example, to penalise member States or

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<sup>167</sup> Ibid.

<sup>168</sup> Hamad (2016)

<sup>169</sup> Ibid.

institutions within the member States, upon their failure to deliver or enforce agreements.<sup>170</sup> The EAC's Secretariat is often blamed for ignoring the role of EAC citizens in the political integration process. This ignorance has caused great difficulties in developing a customs union and a common market, even in the earlier states of integration.

Political will is a major factor that limits the ability of the EAC to form a federation. According to Kamili and Namusonge, "Lack of trust among EAC people, different economic setups and fear of losing sovereignty in respective member States were reasons behind the lack of political will in the EAC's political integration".<sup>171</sup> However, where exactly within the political will spectrum has the EAC failed, is a matter of confusion within the region. While many blamed politicians within the EAC's States, they often forget about the role of the public in transforming the region into a supranational organisation. Ignorance of the British public opinion on free movement of people in the EU region, for example, contributed to the "Brexit" vote, which took place on the 23<sup>rd</sup> of June, 2016.<sup>172</sup> Therefore, this possibility cannot be ruled out in the EAC.<sup>173</sup>

As noted in section 2.3.3; in 2013, some of the EAC's States formed a 'Coalition of the Willing (CoW)' in an attempt to revive the missing political will.<sup>174</sup> However, 54 per cent of the EAC's citizens were against the CoW and thus, it did not achieve anything tangible.<sup>175</sup> In International Relations, CoW, means a group of countries whose leaders

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<sup>170</sup> Ibid.

<sup>171</sup> Kamili, C. and Namusonge, G. S. (2015. p.1). *International Journal of Innovation and Scientific Research*. Vol. 16, issue 2. pp. 465-480.

<sup>172</sup> Clarke, et al., 2016.

<sup>173</sup> Kirara, J. (2016). Lessons EAC can learn from Brexit. Dailnation. Available at: <http://www.nation.co.ke/oped/Opinion/Lessons-EAC-can-learn-from-Brexit/440808-3206118-5yad7ez/index.html> [Accessed on: 27 March 2017]

<sup>174</sup> The East African, (2013). Tanzania officially renounces 'coalition of the willing'. Available at: <http://www.theeastafrican.co.ke/news/Tanzania-govt-renounces-coalition-of-the-willing/2558-2042692-gl2igv/index.html> [Accessed on: 27 March 2017]

<sup>175</sup> Kamili and Namusonge (2015).

have been persuaded by another to take up a specific task.<sup>176</sup> In the EAC, the 2013 CoW was designed to fast-track regional political integration, by motivating the states within the CoW (Kenya, Uganda and Rwanda) to fully comply with EAC's political federation's roadmap.

The CoW had two serious shortfalls. On the one hand, it was designed so that the States would take a leadership role in the processes of transforming the EAC into a federation, without considering the roles of the EAC's citizens. This anarchistic behaviour is clearly against its operational principles as stipulated in the Article 7(a), which states that the community is a 'people-centred and market-driven cooperation'. On the other hand, it was a huge mistake to side-line Tanzania, which is the largest member State in the community, in terms of land size and population.<sup>177</sup> It is also the second fastest growing economy in the region, after Rwanda (see Table 2-1).<sup>178</sup>

**Table 2-1: EAC's Demographical and Economical Statistics<sup>179</sup>**

|          | Land size as proportion of total EAC | Population | Economic growth |
|----------|--------------------------------------|------------|-----------------|
| Burundi  | 2%                                   | 7%         | 4.5%            |
| Tanzania | 52%                                  | 33%        | 7.0%            |
| Uganda   | 13%                                  | 24%        | 6.5%            |
| Kenya    | 32%                                  | 29%        | 5.0%            |
| Rwanda   | 1%                                   | 7%         | 8.0%            |

<sup>176</sup> Ibid

<sup>177</sup> EAC (2012). EAC Facts and Figure, 2012. Available at: <https://www.meac.go.tz/sites/default/files/Statistics/EAC%20facts%20and%20figure%20report.pdf> [Accessed on: 28 March 2017]

<sup>178</sup> Giginishvili et al., 2014. How Solid Is Economic Growth in the East African Community? The International Monetary Fund. IMF Working Paper WP/14/150. Available at: <https://www.imf.org/external/pubs/ft/wp/2014/wp14150.pdf> [Accessed on: 28 March 2017]

<sup>179</sup> Ibid

More importantly, the EAC's Secretariat has not yet made it clear how the political unification would actually be achieved. Will it be a one-tier system (a federation) with a single president and common policies across the region; or will it be a two-tier system (intergovernmental organisation), more similar to Germany, with a single president and federal/regional States (German Länder), with considerable autonomy and their own governments?

### **2.3.3 Neo-functionalism as a leading political integration theory**

Neo-functionalism is a theory of regional integration that places major emphasis on the role of non-state actors and social interest as dynamic force for integration.<sup>180</sup> In IGOs, for example, neo-functionalism considers the secretariat as the ultimate power behind a fully-fledged political integration. The secretariat allows an IGO to be governed separately from its member states. While member states remain an important part of the integration process, they do not yet influence the direction and extent of changes.<sup>181</sup>

For that reason, member states are not as important as the secretariat in the regional integration process. Once member states have signed the initial agreements, it is up to the secretariat to execute the enforcement and management functions of the IGO. Unfortunately, the EAC Secretariat appears to not have necessary enforcement capability.<sup>182</sup> The EAC secretariat does not have any mandate to penalise any member state or institution within the Community following the latter's failure to enforce agreements. There are some proposals to transform the Secretariat into a commission with full autonomy, not only to make

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<sup>180</sup> Schmitter (2002. p.45)

<sup>181</sup> Mkenda (2001).

<sup>182</sup> Ihucha, A. 2013. Does EAC Secretariat need greater powers? *The EastAfrican*. Available at: <http://www.theeastafrican.co.ke/news/2558-2057506-uyxvjcz/index.html> [Accessed on: 08 August 2016]. See also interviewees 48, 49, 50 and 51.

decisions on regional matters, but also to reprimand rogue partner states.<sup>183</sup>

One of the concerns of this research over the EAC Secretariat is on its failure to establish a maritime institution that would be dedicated to the regional maritime affairs including maritime security. As note in section 1.3.2 on page 14 and footnote 59, there are eight semi-autonomous intuitions within the EAC dedicated to various activities of the Community but none to maritime security. However, this is one of justifications for undertaking this research. Recently, a maritime bench has been established at the EAC.<sup>184</sup> While this is taken as one step ahead, the bench does not have full mandate to execute major decisions on its own. It is in fact, outside the EAC Secretariat spectrum.<sup>185</sup>

As pioneered by Haas in his book *The Uniting of Europe* in 1968,<sup>186</sup> neo-functionalism is an extended version of functionalism. It attempted to resolve some of the flaws of the concept of inbuilt integration propagated by functionalism. While functionalism trusts the member states of an integrated organisation, neo-functionalism believes that the secretariat and social groups are those who must push for full political integration.<sup>187</sup> Unlike functionalists, who believe in global integration, neo-functionalists focus on regional integration using a 'bottom-up' approach.

The bottom-up approach means that cooperation (in this case, economic cooperation) should start right from the bottom line and that, through time and trust, member states should proceed into political cooperation. The bottom-up approach, as it was described by Haas, is a 'spill-over' process whereby cooperation in one field necessitates cooperation in

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<sup>183</sup> Ibid.

<sup>184</sup> Interviewee 45 and 47.

<sup>185</sup> Ibid.

<sup>186</sup> Haas (2004)

<sup>187</sup> Rosamon, 2005.

another.<sup>188</sup> According to Haas' concept, spill-over is an essential way of increasing cooperation between states, necessitating integration in one policy area, which subsequently has a knock-on effect, creating pressure for further integration in neighbouring policy areas.<sup>189</sup>

Eventually, through the spill-over process, the member states of a regional organisation would find themselves integrated to the extent of being unable to stop a full political integration.<sup>190</sup> Neo-functionalism focuses on the immediate process of integration among states, that is, regional integration. Initially, states integrate in limited functional or economic areas. Thereafter, partially integrated states experience increasing momentum for further rounds of integration in related areas, which will later open the way to fully-fledged political unification.<sup>191</sup>

Like the EU, the EAC is adopting the Neo-functional ideology.<sup>192</sup> The EAC's requirement of fully-fledged political unification has been stipulated in its 1999 Treaty. Through the 1999 EAC Treaty, a full-fledged political federation will be achieved through cooperation on three stages: a) stage one – political affairs, which involves common foreign and security policies;<sup>193</sup> b) stage two – regional peace and security prevention, better management and resolution of disputes and conflicts between them;<sup>194</sup> and, lastly, c) stage three – defence affairs, the creation of a single defence zone.<sup>195</sup>

These stages were meant to represent a final move towards a fully-fledged federal government. It is claimed that the failure of the EAC to realise a customs union and common market has been partly caused by

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<sup>188</sup> Ibid. See also Cini (2003.p.81)

<sup>189</sup> Rousamund (2000. p. 59)

<sup>190</sup> Ibid.

<sup>191</sup> Rosamon, 2005.

<sup>192</sup> Interviewee 48.

<sup>193</sup> 1999 EAC Treaty, Art. 123.

<sup>194</sup> 1999 EAC Treaty, Art. 124.

<sup>195</sup> 1999 EAC Treaty, Art. 125.

a lack of political will.<sup>196</sup> On account of this, the EAC has, in recent years, changed its course by introducing some features of political unification in an attempt to boost political will.<sup>197</sup>

As a solution, the EAC suggests a ‘top-bottom’ approach; whereby some features of political unification are introduced in order to fast track the earlier stages.<sup>198</sup> This approach has been fully supported by Rwanda, Kenya and Uganda, but has been met with strong opposition from Tanzania and Burundi.<sup>199</sup> Tanzania and Burundi want the EAC to maintain and agree a ‘bottom-up’ approach on which spill-over would be achieved; thus, political unification would be characterised by a process rather than distinct stages.<sup>200</sup>

The EAC’s new approach to pre-empt some of the political unification goals lies with Bach’s ideology of a fully-fledged federation. These discussions have been analysed in an article published by the author.<sup>201</sup> Bach suggests that political integration involves the strengthening of a political system, with particular reference to the scope and capacity of its decision-making process.<sup>202</sup> The EU, for example, does not have full political unification as an immediate goal. However, over time, the EU will find itself a federal state by gradually pulling parts of its member states’ sovereignties into the union in order to gain the benefits of increased strength and size. This is one of the reasons why some scholars believe that the EU is nearly a supranational organisation.<sup>203</sup>

According to the 2014 report *How the European Union works*, issued by the EU, “the EU thus sits between the fully federal system found in the United States and the loose, intergovernmental cooperation system

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<sup>196</sup> Interviewees 48, 49 and 52 see also Hamad (2016)

<sup>197</sup> Ibid.

<sup>198</sup> Interviewees 48 and 49.

<sup>199</sup> Ibid.

<sup>200</sup> Interviewees 48 and 49. See also Hamad (2016)- Article no. 3 in appendix 6.

<sup>201</sup> Ibid

<sup>202</sup> Bach (2000).

<sup>203</sup> Schmitz (2004) see also Lindesth (2015) and Archick (2015)

seen in the United Nations”.<sup>204</sup> The perception on that the EU was moving towards fully federal status was clearly a factor in the campaign leading to the UK’s 23 June 2016 vote to leave the EU (Brexit).<sup>205</sup>

Karl Deutsch defined regional integration as “a relationship among units in which they are mutually interdependent and jointly produce system properties which they would separately lack.”<sup>206</sup> Deutsch views regional integration differently from Haas; according to Deutsch, regional integration does not necessarily have to create a supranational body. When analysing Deutsch’s ideology of regional integration, it becomes apparent that he probably meant economic integration.

Deutsch continued further by saying that it is also possible for regional integration to result in political integration, but that this has to be agreed from the outset by imposing four strategies: a) maintaining peace; b) attaining greater multipurpose capabilities; c) accomplishing some specific tasks; and d) gaining a new self-image and role identity.”<sup>207</sup>

The main difference between Haas’ and Deutsch’s approaches to regional integration lies in the fact that Haas assumes that a supranational body would emerge gradually and by default, whereas Deutsch insists that such a union would only be realised through prior agreements and would never come about by default. It is important to understand that all regional integration starts at the level of economic cooperation. It is up to the member states to agree on whether they would like to move on to further stages or stop at economic cooperation.<sup>208</sup>

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<sup>204</sup> EU (2014. p.3).

<sup>205</sup> On 23 June 2016, the British voters went to the polls to cast their vote in the historic EU referendum. On 24 June 2016, the declaration of the Brexit victory was followed by the resignation of Mr. Cameron as Prime Minister. See at: <http://www.express.co.uk/news/politics/644178/EU-referendum-dates-European-Union-Brexit-David-Cameron-Brussels> [Accessed on 20 October 2016].

<sup>206</sup> Deutsch(1968. p.159)

<sup>207</sup> Ibid

<sup>208</sup> Ibid.

Neo-functionalism, as it was used by Haas, elaborates on how the European Union could one day wake up to find itself the 'United States of Europe'. Nevertheless, this has never happened. The process took longer than Haas expected.<sup>209</sup> This is said to be one of the flaws of Neo-functionalism; its assumption of spill-over is wrong. On account of his failure to put a time limit on how long spill-over would take, Haas finally had to abort his own regional integration ideology on the assumption that it was no longer viable.<sup>210</sup> Despite the failure of the Neo-functionalist philosophy in the case of the EU, on an academic basis; it is still of key relevance to the EAC and to this thesis. However, the realists argue that national interests could prevail and prevent/slowdown integration. Therefore, in the EAC, a strong secretariat is needed to not just push, but also highlight the benefits of cooperation against nationalist positions, Indonesia and Malaysia are good examples.

### **What Can the EAC Learn from 'Brexit'?**

It is impossible to discuss regional integration without mentioning the EU as a role model. Other regional organisations, the EAC in particular, follow in the footsteps of the EU, which is a role model in terms of how it enforces regional agreements on free trade, oversees free movement within the EU region, controls the factors of production (such as people and capital), and uses a single currency (the Euro). All of this progress has nearly made the EU a supranational organisation. The EU has a single voice on international politics and it also has a significant influence on the world economy and security. Despite these great achievements, the EU is far from being a flawless institution. There is a huge concern that in the EU there are few mechanisms allowing citizens to get involved in major decisions affecting their daily lives. Brexit is just

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<sup>209</sup> Dosenrode( 2010)

<sup>210</sup> McGowan, L. 2007. Theorising European Integration: revisiting neo- functionalism and testing its suitability for explaining the development of EC competition policy? European Integration Online Papers. Available at: <http://eiop.or.at/eiop/pdf/2007-003.pdf> [Accessed on 29 August 2015]

a symptom of the EU's flaws in the democratic arena. The British public decided to leave (Brexit) the EU in a June 2016 referendum, principally because the EU was not paying attention to the social problems caused by the right of free movement within the EU region.<sup>211</sup> Brexit is a wake-up call for the EAC, reminding it to consider the involvement of the EAC's citizens at every integration stage if it really wants to be a people-centred organisation, as stipulated in its Treaty. It also needs to stick together if it wants to gain better bargaining power in international trade. However, there are concerns that some of the EAC's member states may not comply with EAC decisions. For example, on 20 June 2016 the EAC signed an Economic Partnership Agreement (EPA) with the EU that will give the EAC's member states preferential trade deals with the EU region.<sup>212</sup> Very suddenly, Tanzania said it would not sign an EPA with the EU following Brexit.<sup>213</sup> This is not the first time that Tanzania has disappointed other member states. For example, Tanzania is the only EAC member to also be a member of SADC. Like the EAC, the SADC's economic integration involves the creation of a single currency in the future. This clearly creates a conflict of interest among the EAC's members, and this is perhaps one of the reasons why Tanzania is slowing down economic and political integration in the EAC. Other things to be considered by the EAC are:

- The Community is speeding up the political integration process without having realized the previous states of

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<sup>211</sup> Karuhanga, J. 2016. What does Brexit mean to East African Community? *The NewTimes*. Available at: <http://www.newtimes.co.rw/section/article/2016-06-25/201122/> [Accessed on: 9 August 2016]

<sup>212</sup> See Press release 357/16, East African Community: EU to sign economic partnership agreement with Burundi, Kenya, Rwanda, Tanzania and Uganda. Available at: [http://www.consilium.europa.eu/press-releases-pdf/2016/6/47244642892\\_en.pdf](http://www.consilium.europa.eu/press-releases-pdf/2016/6/47244642892_en.pdf) [Accessed on: 8 August 2016]

<sup>213</sup> Namkwehe, J. and Ubwani, Z. 2016. Tanzania backs out of EAC deal with EU over Brexit. *Daily Nation*. Available at: <http://www.nation.co.ke/news/Tanzania-backs-out-of-EAC-dealwith-EU-over-Brexit/1056-3287032-2bh4taz/index.html> [Accessed on: 8 August 2016].

integration (customs union, common market and monetary union). It is hard to see any evidence of the people's involvement in this course. For example, according to Article 48(1) of the EAC Treaty, the member states are required to choose nine members of the EAC's parliament without the involvement of the general EAC public. This is one of the many inbuilt flaws within the EAC's democratic processes that have to be addressed before it is too late.

- In recent times, there has been pressure from some of the member states to speed up federation. However, neither the EAC nor its member states have been open with the general public about what model the federation will adopt. As noted above, will it be a one tier system (supranational organisation) or will it be a two-tier system (intergovernmental organisation)? While the EAC is presumably in favour of a one-tier federal system, most of the heads of states prefer a two-tier system for sovereignty reasons. Although the EAC's citizens will make a decision through a referendum on the federation's model, there has been no effort to educate the people on the pros and cons of the different models. There is a further concern that the EAC's jurisdiction does not support referendums.
- The issue of the free movement of people and factors of production has been, for a long time, a flash point in the Community. This is a more serious issue between Kenya and Tanzania, the Community's largest economies. On the one hand, Kenya has excess capital and manpower that need to be invested somewhere else, probably in Tanzania. On the other hand, Tanzania has a less skilled workforce but abundant and undeveloped arable land, which it fears could

be taken away, mostly by Kenyans.<sup>214</sup> While this disagreement and mistrust continue, the EAC's citizens are caught in the middle. Freedom of movement, as stipulated in Article 104 of the EAC Treaty, depends on the achievement of the goal of a common market, which is yet to be fully realised.

- **Security Integration**

As has been previously discussed, IGOs can be formed for economic, political or security reasons, or all three. Many IGOs might have some security elements imposed on their treaties as part of their responsibilities, despite their not being specialised in security. Indeed, the EU traces its origins beyond the economic-based EEC to the European Coal and Steel Community (1948) which was designed to prevent France and Germany going to war again, and pre-dates NATO as a century device.

There are, however, some IGOs specialising in security, such as NATO and the Council of Europe (CoE). These security-specialised IGOs have security as their main agenda and are not directly involved in promoting the economic activities of their regions. The Economic Community of West African States (ECOWAS), the EAC, and the Southern African Development Community (SADC), just to mention a few, are examples of general purpose IGOs that have security as a general goal.

The existence of general purpose IGOs with some security elements in their scope has made IGOs the facilitators of conflict resolution between states. They also deal with intractable conflicts within states.<sup>215</sup> An

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<sup>214</sup> Balongo, S. 2015. Support for the formation of a federation of East African States: Citizens' attitudes in Kenya and Tanzania. Afrobarometer Policy Paper No. 16. See also Tanzania: Slowing down EAC integration over Land Concern? Available at: <http://www.globalexchange.org/news/tanzania-slowing-down-eac-integration-over-landconcerns> [Accessed on: 8 August 2016].

<sup>215</sup> Brahm, E. (2005). Intergovernmental Organizations (IGOs). Beyond Intractability. Available at: <http://www.beyondintractability.org/essay/role-igo> [Accessed on: 26 August 2015]

example here is the Organisation for Security and Cooperation in Europe (OSCE) which has acquired specialist expertise in monitoring elections.

Regional integration increases intra-regional trade and investment and also links countries in a web of positive interactions and interdependency.<sup>216</sup> However, the full benefits of integration might not be realised without regional peace and security. The EAC, for example, recognises peace and security as prerequisites for the success of the region's integration process.<sup>217</sup> Although security was not a main motive of the EAC at the time of its inception in 2000—due to its geographical location- peace and security—have now become a discussible agenda at nearly every regional meeting.<sup>218</sup> This is due to the fact that the EAC is located in the middle of regional security conflicts. South Sudan, the Democratic Republic of the Congo and Somalia presented the main security issues facing the EAC since its inception in 2000.<sup>219</sup>

In relation to these threats, the EAC has established sectorial councils and committees to give direction and policy guidance on various areas relating to security cooperation. These include: a) Sectorial Council on Cooperation in Defence; b) Sectorial Council on Inner State Security; c) Sectorial Council on Foreign Policy Coordination; and d) Joint Sectorial Council on Defence.<sup>220</sup> Additionally, in 2006, the EAC adopted the Strategy on Regional Peace and Security and seven years later, in 2013, the Protocol on Peace and Security was also adopted. The ratification of these two security instruments has been perceived as a big step forward toward regional peace and security although they are blinded on maritime issues.<sup>221</sup>

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<sup>216</sup> Edblud (1996)

<sup>217</sup> Boulden (2013) see also 1999 EAC Treaty, Art. 124.

<sup>218</sup> Interviewees 45, 46, 48, 47,50 and 51

<sup>219</sup> Ibid.

<sup>220</sup> Boulden (2013. p. 60.) See also Law (2007)

<sup>221</sup> Interviewees 45 and 47.

The objectives of the strategy are to promote peace, security, and stability within the Community and good neighbourliness among the partner states.<sup>222</sup> This will ultimately lead to a single defence territory. Through the Protocol, cooperation among the member States, and between the EAC and its neighbours, would be possible on areas such as irregular immigration, small arms trafficking, piracy and terrorism.

There is a long way to go, however, until the EAC realises the benefits of the Peace and Security strategy.<sup>223</sup> According to GIZ, as noted above, the EAC's security efforts are being hindered by weak institutional structures within the EAC secretariat, particularly the lack of a Directorate for Peace and Security, and inadequate implementation of regional strategies and standards within the partner countries.<sup>224</sup> There are claims that the security priorities of the EAC member states do not even align.<sup>225</sup>

While the EAC States' leaders have appeared to be optimistic about integration, the attitudes of social groups and the general public toward full-fledged political integration are fragmented, especially on the Burundian and Tanzanian sides. Rwanda, Kenya and Uganda came up with a 'coalition of the willing' security arena in 2014.<sup>226</sup> This is a signal that the 2006 Peace and Security Strategy is not going to work any time soon at the Community level despite the many hopes attached to it.

It has to be remembered that these States were those which established a 'coalition of the willing' on political integration back in 2009 after suspecting that Burundi and Tanzania were not as pessimistic about

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<sup>222</sup> 1999 EAC Treaty, Art. 3.

<sup>223</sup> Interviewees 45 and 47.

<sup>224</sup> GIZ (2014). Promotion of peace and security in the East African Community (EAC). GIZ. Available at: <https://www.giz.de/en/worldwide/15668.html> [Accessed on 26 August 2015]

<sup>225</sup> Interviewees 45, 46, 48, 47, 50 and 51.

<sup>226</sup> The Citizen (2014). Coalition of the willing emerges again in EAC. Available at: <http://www.thecitizen.co.tz/News/Coalition-of-the-willing-emerges-again-in-EAC/-/1840360/2144030/-/IhM19z/-/index.html> [Accessed on: 28 August 2015]

integration as they were. Burundi and Tanzania were said to be unhappy with the speeding up of the development of a single tourist visa, the establishment of a single customs territory, the progress of the EAC political federation, and the use of national ID cards as travel documents for EAC nationals.<sup>227</sup>

## **2.4 Security Studies**

### **2.4.1 The context of security in International Relations**

‘Security’ is an English word that has its roots in the Latin word ‘securus’; meaning “free from care”.<sup>228</sup> Generally, security “implies a stable, relatively predictable environment... without disruption or harm and without fear of disturbance or injury”.<sup>229</sup> However security in IR studies has a much wider scope than the definitions previously mentioned. In the previous discussions, realism and liberalism were articulated as two major IR theories and its nexus to world politics was tested.

On the one hand, as we have seen (section 2.2.1), realists believe that the security of a state can only be existentially threatened by another state and that military power is a solution. The types of threats discussed by realists are sometimes known as traditional security threats, whereby two or more sovereign states enter into conflicts. Liberalists, on the other hand, argue that non-state actors and other issues can cause security threats to a state and thus that the conflict can be resolved through cooperation, mitigation and dialogue. These kinds of threats, caused by non-state actors, include piracy and terrorism. Furthermore, issues such as global warming and marine environmental degradation can also be ‘security’ threats, known as ‘non-traditional’ security issues. Such threats are currently shaking up the world. The coming part of the examine will be on how regional security integration, as part of liberalism theory, shapes regional and international world security.

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<sup>227</sup> Sylvanuswekesa (2015). See also interviewees 45 and 47.

<sup>228</sup> Craighead, (2003, p. 21), Bellamy (2013 b)

<sup>229</sup> Fischer and Green (2004.p.21)

Security is an important sub-discipline of IR studies.<sup>230</sup> In fact, the study of security is what influences world politics and world security behaviour and as noted was the prime motivation for the creation of IR as a discipline in 1919. IR allows interaction among states over matters that they consider being of vital interest.<sup>231</sup> At the international level, matters concerning the security and survival of the state are priorities for every state. IR deals with the nature of the changing relations between states, and changing relations with non-state actors.<sup>232</sup>

There is therefore a strong nexus between security studies and IR. Collins argues that the study of security as part of IR is considered a vital part of preventative measures to stop the recurrence of large-scale wars, such as World Wars I and II.<sup>233</sup> However, the term 'security' is itself very dynamic, changing with time. What is a security threat today possibly as a result of recent 'securitisation' might not necessarily be a security threat in the future or equivalent to what constituted a security threat in the past.

#### **2.4.2 What is security?**

Defining the term 'security' has never been easy, and it is perhaps the most difficult aspect of security studies. The word has multiple definitions and its meaning fluctuates across disciplines.<sup>234</sup> Following the global financial crisis in 2007–2008, for example, many countries suffered enough damage from economic turbulence to the extent of categorising it as a national security threat, although it had not been before.<sup>235</sup> In 2014, the Russian Federation has raised its gas and energy bill to

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<sup>230</sup> Collins(2010).

<sup>231</sup> Ibid. p. 493.

<sup>232</sup> Guilhot (2014. p. 43).

<sup>233</sup> Collins( 2010. p. 2)

<sup>234</sup> Rothschild (1995. p.712-717.) See also Manunta(1999)

<sup>235</sup> Randall, M.,(2009). World economic crisis is top security threat: U.S. *Routers*. Available at: <http://www.reuters.com/article/2009/02/12/us-security-usa-economy-idUSTRE51B64820090212>. [Accessed on: 16 September 2015]. See also Rehem (2013).

Ukraine by about 30 per cent, leaving the fragile Ukrainian economy struggling.<sup>236</sup> Its effects were regarded as not only a Ukrainian national security threat, but an energy security threat to the European Union, as 30 per cent of the EU's gas is sourced from Russia.<sup>237</sup> These are just some examples that show how dynamic security is and how security perceptions impact the national security level.

Security theorists argue about what constitutes a clear definition of the term security. Some believe that it is not possible to define what security is.<sup>238</sup> Baldwin, for example, argues that security has recently become something of a cottage industry; and thus political and social changes are major factors that influence any attempt to define what security consists of.<sup>239</sup> These are some of the reasons why security scholars prefer to discuss the contexts of security, avoiding defining it on the basis of assumptions; therefore, there is no consensus on its definition.<sup>240</sup> Nevertheless, the arguments that security cannot be defined are not accepted by this study, and this is in line with the majority of security scholars, who believe that security can be placed into context despite the vagueness of the term. Unless it can be clearly defined, it would be difficult to have security as part of IR studies.

Manunta came to conclude that security can be put into clear context because it can be defined.<sup>241</sup> Manunta said that, unless the term security can be put into clear context, it is difficult to discuss. Because it can be said that security in a particular country or place has been

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<sup>236</sup> Henley (2014). Is Europe's gas supply threatened by the Ukraine crisis? Russia supplies about 30% of Europe's gas – should we be worried? Available at; <http://www.theguardian.com/world/2014/mar/03/europes-gas-supply-ukraine-crisis-russia-pipelines>. [Accessed on: 30 August 2015]

<sup>237</sup> Ibid.

<sup>238</sup> Baldwin (1997).

<sup>239</sup> Ibid.

<sup>240</sup> Ibid. p. 57. See also Griffith, Brooks and Corkil (2010).

<sup>241</sup> Manunta (1999, pp.57). Baldwin (1999. p.57)

compromised or restored, security is known and can be defined.<sup>242</sup> Adding to that, Allan Collins, in his book *Contemporary Security Studies*, said that a consensus on what constitutes security has been reached.<sup>243</sup> “The good news, he said, is that a consensus has emerged on what security study entails – it is to do with threats to survival-....”<sup>244</sup> Furthermore, he managed to cite more than eight definitions of what constitutes security in very clear terms.<sup>245</sup> He further continued by saying that the term security can be applied virtually everywhere, referencing environmental security, social security, epidemic disease security, business security, technological security, maritime security, national security, and international security.<sup>246</sup>

Having discussed the paradoxical theories of whether security can be defined, it is now the right time to highlight some of the most commonly used definitions of the term ‘security’. Perhaps the simplest definition of security is that included in the *Oxford Dictionary*: “The state of being free from danger or threat”.<sup>247</sup> Alex Bellamy, as cited by Collins, said: “Security itself is a relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur.”<sup>248</sup> Bellamy believes that, when articulating a realist theory, national security threats are perceived to appear only in the form of war between two sovereign states.<sup>249</sup> For this reason, national security threats to one country can only be triggered by other states and can only be solved militarily.

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<sup>242</sup> Ibid.

<sup>243</sup> Collins (2010).

<sup>244</sup> Ibid. p. 2.

<sup>245</sup> Ibid.

<sup>246</sup> Collins (2010. p.2)

<sup>247</sup> Oxford dictionary (2009).

<sup>248</sup> Bellamy (1981). Cited by Collins (Ian B.(1981), “Towards a Theory of International Security”, (1981), *Political Studies*. Vol. 29(1).

<sup>249</sup> Ibid. See also Makaleler (2010).

Langer challenges Bellamy's security definition by saying that it does not portray a big picture of security; in fact, some other non-state actors can also influence the security of the state.<sup>250</sup> As has been previously highlighted, Langer's option is based on a liberalist theory holding that non-state securities are part of national security. Ullman describes national security as "total security", on which there must be a clear balance of what constitutes military security and non-military security, which will then create a "total security balance".<sup>251</sup> Ullman argues that it is absolutely wrong for a state to concentrate on military threats as its sole security risk, omitting other non-military threats from the national security equation. Ullman presented the following definition: "A threat to national security is an action or sequence of events that; a) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or b) threatens significantly to narrow the range of policy choice available to the government of a state or private, nongovernment entities (persons, groups, corporation) within the state."<sup>252</sup>

Stout introduced a pragmatic theory of what security is by saying that anything can be considered a security threat so long as it can trigger the national security threat level.<sup>253</sup> It can be concerned with economic security, human security or even military security.<sup>254</sup> The UN's *Human Development Report 1994*, for example, emphasises that the issue of national security does not depend solely on military security, but also relates to human security.<sup>255</sup> The report emphasised further that "it will not be possible for the community of nations to achieve any of its major goals – not peace, not environmental protection, not human rights or

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<sup>250</sup> Langer. (2010).

<sup>251</sup> Ullman (1983.p. 129).

<sup>252</sup> Ibid, p.133.

<sup>253</sup> Scout (2013). What is National Security <http://warontherocks.com/2013/12/what-is-national-security/> [accessed 30 March 30, 2014]

<sup>254</sup> Ibid.

<sup>255</sup> UNDP (1994). *Human development report*.

democratisation, not fertility reduction, not social integration – except in the context of sustainable development that leads to human security”.<sup>256</sup>

According to Edward A. Kolodziej, ‘security’ can be classified according to three levels.<sup>257</sup>

- a) **State-to-state level:** This is a type of security whereby only nations are responsible for bringing about world peace. This realist school of thought holds that there is no supreme power in the world above nations. Every nation has to struggle and defend its sovereignty on its own or through alliances through military power.<sup>258</sup>
- b) **Trans-state security:** Under this approach, which is advocated by liberalism, state and non-state actors (international organisations and civil societies) can bring about world peace together. Therefore, cooperation is considered a fundamental prerequisite for world peace.<sup>259</sup>
- c) **International security:** This is the relationship between regional organisations (supranational organisations) and states. Regional security cooperation has only become possible through IR studies. The purpose of regional security cooperation is to govern the world collectively and peacefully.

### 2.4.3 Regional security integration

We have examined the important theories underpinning IR and how world politics and security fit in. Regional security integration is the product of regionalism and security philosophies,<sup>260</sup> and assumes that world security can best be managed at the regional level or through clusters.<sup>261</sup> While security is a sub-discipline of international studies, it

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<sup>256</sup> Ibid, p.1.

<sup>257</sup> Kolodziej (2004.p.27)

<sup>258</sup> Ibid.

<sup>259</sup> Ibid, p. 30

<sup>260</sup> Engel and Porto (2010.p.13)

<sup>261</sup> Buzan and Wæver (2003)

remains a decisive part of world politics.<sup>262</sup> This section focuses on how international institutions, in particular IGOs and regimes, influence regional peace and security.

- **National security**

The *Macmillan Dictionary* provides a very simple yet clear definition of what national security is: “the protection or the safety of a country’s secrets and its citizens”.<sup>263</sup> There is no a universally accepted definition of the term ‘national security’, and every country perceives national security in its own way.<sup>264</sup> However, the protection of a state and its citizens from all kinds of crises and threats forms the basis of any national security policy. Initially, national security was associated with military crisis. One of the reasons why national security has not been formally defined is to allow enough room for countries to have the flexibility necessary to ensure that they and definition can adapt to changing circumstances.<sup>265</sup>

The context of national security has been extended to include anything that might destabilise a nation. This encompasses economic security, monetary security, energy security, environmental security, military security, political security, and energy and natural resources security.<sup>266</sup> What triggers a national security threat in one country might not necessarily be the same in other countries. Moreover, national security parameters are not static; they change with time and with the security perceptions of a particular state.

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<sup>262</sup> Baldwin (1997). Collins (2010)

<sup>263</sup> Macmillan Dictionary

<sup>264</sup> Katzenstein and Okawara (1993)

<sup>265</sup> See Security Service MI5, What is National Security. Available at: <https://www.mi5.gov.uk/home/about-us/what-we-do/protecting-national-security.html> [Accessed on: 14 November 2015].

<sup>266</sup> The USLegal, Inc. National Security Law & Legal Definition. Available at: <http://definitions.uslegal.com/n/national-security/> [Accessed on 10 September 2015]. See also Collins (2010).

- **Regional security**

As suggested by liberalists, world peace and security can only be achieved through cooperation among states and with the extensive involvement of international institutions. International institutions, such as IGOs, NGOs and MNCs, are non-state security actors and have big roles to play in shaping world politics, particularly regional security. Regional security cooperation offers a range of security guarantees to members, especially around human and military security.

Many states cannot guarantee their own security in the international spectrum. This is partly due to the fact that maintaining a reasonable level of security (maintaining security at a level that is sustainable and extensive enough to scare your enemies) is extremely costly and requires long-term strategies. This also leads to the security dilemma where defensive measures may appear threatening to neighbours, triggering a defensive response leading to escalation.<sup>267</sup> For this reason, many states find themselves with no option but to join regional organisations in order to benefit from the security guarantees they offer.<sup>268</sup> This is key relevance to this study.

As noted, some of the world's IGOs and regimes have been created specifically for security reasons. They are explicitly and primarily responsible for security issues relating to their regions. The North Atlantic Treaty Organization (NATO), the Organization for Security and Cooperation in Europe (OSCE), and the ASEAN Regional Forum (ARF), are examples. General purpose regional organisations also have some security responsibilities within their mandates.

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<sup>267</sup> Collins (2010. pp. 24-25)

<sup>268</sup> Polachek (1988). Conflict and trade: an economics approach to political international interactions. *Economic Report of the President*, Table B-77, pp. 338-9. Available at:

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.198.953&rep=rep1&type=pdf> [Accessed on 10 September 2015].

As previously mentioned, security issues do not always have to be military security issues; food, human and economic securities are some of the important security areas tackled by general purpose IGOs. The EAC, the ECOWAS, the SADC, the Arab League and the African Union (AU), just to mention a few, are examples of general purpose IGOs that have security as a secondary objective.

Liberalists agree that, through cooperation, the danger posed by traditional security threats, principally conflict between sovereign states is always kept minimal. Unfortunately, it is difficult to contain security threats caused by non-state actors, such as piracy, terrorism, organised crimes, and the like. This is because non-state criminals keep on changing their attack tactics on a regular basis. Unlike traditional security, where states can talk each other, it is almost impossible to establish dialogue with non-state criminals, who happen to be the most dangerous and do not respect states' borders.

Because of non-traditional or transnational security threats, the nexus between national security and regional security is very strong. This nexus is due to regional integration. This implies that a strike or security threat in one part of the region would automatically spread and affect the rest of the region. Security threats travel faster over short distance than over longer ones, and thus adjacency (contiguity) is a very important factor in regional security.<sup>269</sup> A threat to a partner state, neighbour or ally is also perceived as a regional security threat.

#### **2.4.4 Regional Security Complex Theory (RSCT)**

As noted, in IR, regions are not strictly associated with physical locations. Regions are spatial and temporal constructs, contingent on a variety of interests and agendas".<sup>270</sup> The ideology of regionalism becomes relevant as a new way of governing world security.

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<sup>269</sup> Buzan and Wæver (2003)

<sup>270</sup> Deepak (2009.p.112)

Regionalists believe that clusters bound together by shared identities, value and culture tend to cooperate more easily toward countering the common security threats of their region.

Security threats by their very nature are regionalised and as noted political and or military threat travels faster over short distances than over long ones.<sup>271</sup> Therefore elimination of regional security threats needs involvement of all units within the region.<sup>272</sup> The units are actors such as national-state, nongovernmental organisations, transnational firms and international bodies.<sup>273</sup>

As pioneered by Buzan and Wæver, a Regional Security Complex (RSC) is defined as “a set of units whose major processes of securitisation, desecuritisation, or both are so interlinked that their security problems cannot reasonably be analysed or resolved apart for one another.”<sup>274</sup> RSC theory addresses how world security issues can be resolved in regions or clusters. The national security of a particular state, for example, cannot be put into a real context without considering the security issues of its neighbours.<sup>275</sup>

As previously noted, security threats are dependent on geographical proximity. But, conversely these regional actors are able to interact more easily and quickly against those same regional security threats. In the international security arena, states have been grouped into superpower, powerful and weak states.<sup>276</sup> Only superpowers (States such as the US and possibly Russia and China) who have power projection capability all over the world could influence the world security interaction on their own. That is sometimes known as external power projection capability.

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<sup>271</sup> Buzan and Wæver (2003.p.12).

<sup>272</sup> Ibid.

<sup>273</sup> Gupta (2010)

<sup>274</sup> Buzan and Wæver (2003.p.44).

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

While powerful states such as the UK, France and the like have regional power projection capacity the weaker states such as the EAC States really only have internal power projection capability within their own nations. However, through RSC, international security threats can be resolved regionally. That is because security actors within the regions can be deeply interdependent but not necessarily have to depend on outsiders. For that reason, RSCs, according to Buzan and Wæver, act as middle security facilitators between national and international security mediators.

Previously, as shown in Figure 2-3 on page 42, Buzan and Wæver have portrayed part of the EAC in the Southern African RSC.<sup>277</sup> While, the Southern African RSC as portrayed by Buzan and Wæver involves 15 countries, Kenya is not part of it.<sup>278</sup> Kenya is a prominent actor in east African regional security especially in the war against piracy and armed robbery at sea and terrorism. Buzan and Wæver admitted that the situation in Africa was evolving and plotted the situation as they saw in 2002 (see Figure 2-4 below).<sup>279</sup>

Tanzania, for example, was shown as part of Southern African RSC, Kenya as an insulator and Somalia and Sudan as part of a Horn proto-Complex. Burundi, Rwanda and Uganda formed a small 'Central African RSC' which had significant interregional security interaction, in the Southern African and Horn-Complex.<sup>280</sup> With the accession of new state of South Sudan to the EAC in 2016, the EAC therefore falls into two of the RSCs and a proto-Complex, with one insulator.

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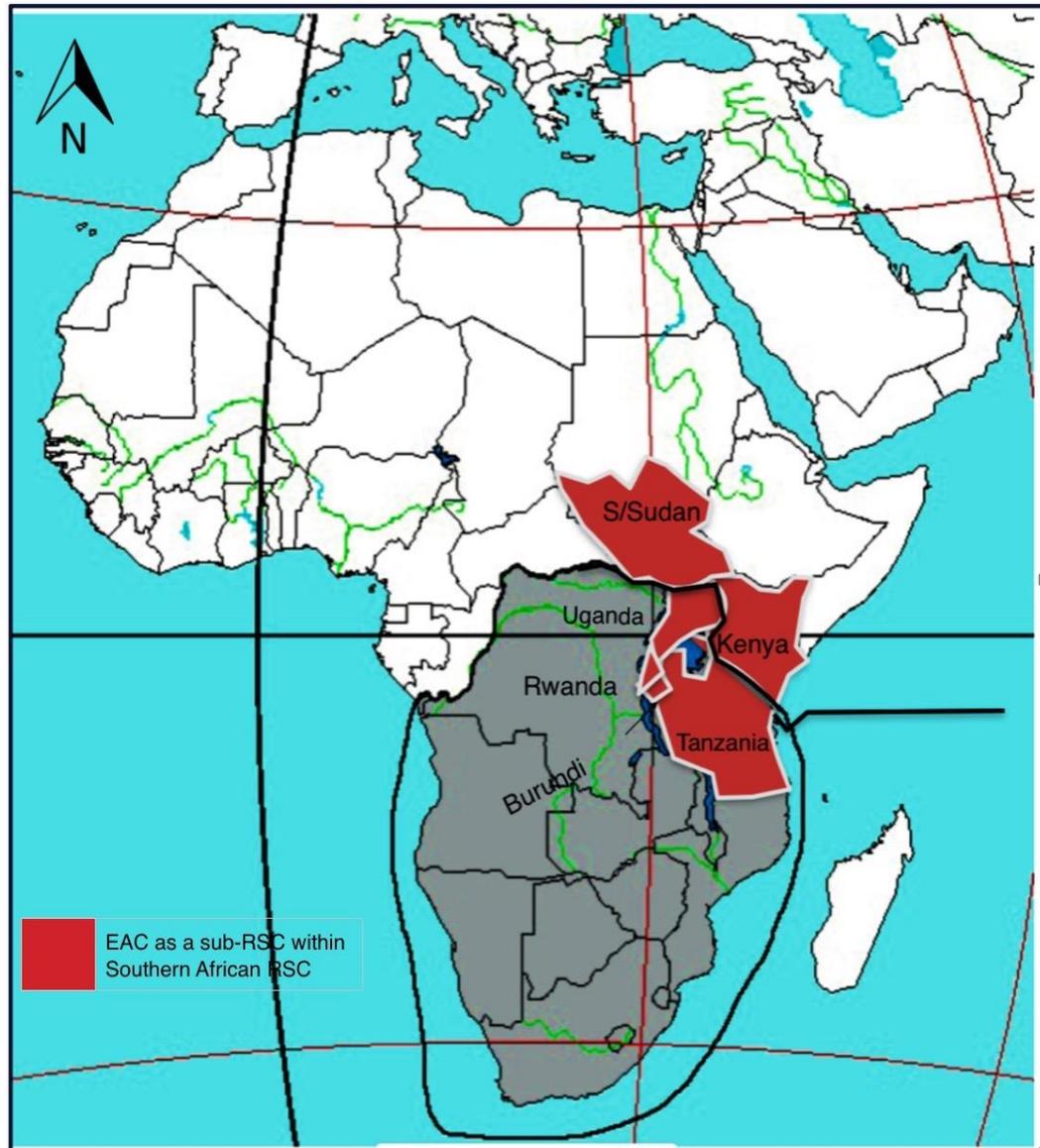
<sup>277</sup> Ibid. see also Gupta(2010)

<sup>278</sup> Da Silva (2012.p.31) 15 countries in the Southern African RSC; South Africa, Angola, Botswana, Burundi, DR Congo, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

<sup>279</sup> Buzan and Wæver (2003, p. 231) Map 7.

<sup>280</sup> Ibid.

**Figure 2-4: Patterns of Regional Security Post-Cold-War as defined by Da Silvia with modification by the author<sup>281</sup>**



Elsewhere, Buzan and Wæver resolve such problematic issues by creating 'sub-complexes' such as the three sub-complexes (Magahreb, Levant, Gulf) in the Middle Eastern RSC.<sup>282</sup> Iraq belongs to both Levant and Gulf sub-Complexes.<sup>283</sup> There is therefore a strong argument to make the EAC States a sub-complex of an RSC, and of which one? Furthermore, there are also some strong arguments that there is no

<sup>281</sup> Modified by author from Da Sliva(2012. p.21)

<sup>282</sup> Ibid. p. 189.

<sup>283</sup> Ibid. p. 52.

'Southern African RSC' in reality.<sup>284</sup> That is partly explained by the facts that units in the so called Southern African RSC do not securitised and de-securitised on regional security threats as suggested by Buzan and Wæver.

There have been dramatic changes of the Southern African RSC's boundaries between the Cold War and post-Cold War periods. Nevertheless, the author would agree with these boundary changes up to 2002 when Buzan and Wæver published their book. Post 2003, a number of regional security threats have arisen that are not reflected in the Southern African RSC as defined by Buzan and Wæver. Somali based piracy and terrorism threats that affect the Gulf of Aden, the Horn of Africa and Western Indian Ocean are not reflected in the 2002 Southern African RSC. Additionally, and as can be seen in Figure 2-4, RSC architectures suggested by Buzan and Wæver do not consider the broader terms of regional maritime security issues.

The maritime limits of the RSCs illustrated in Figure 2-3 on page 42 and further enshrined in Figure 2-4 on page 71 by Da Silva, appear arbitrary and do not accurately represent the boundaries of component states' EEZs. Both maps (Figure 2-3 and Figure 2-4) do not accurately reflect the real maritime boundary between Kenya and Tanzania as shown in Figure 1-2, and indeed, the boundary shown cuts right across the island of Zanzibar which is part of Tanzania. The author's suggested update is sketched in Figure 2-5 below.

RSCs' boundaries are perceived to be affected by security, security interdependence and securitisation. These factors would then have spillover effects of regional security threats that would make the region to act as one unit because their security problems cannot be resolved without considering one another. There is a long way before the EAC can be a regional security complex of its own; perhaps it is an

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<sup>284</sup> Da Silva (2012)



As suggested by Buzan and Wæver, building a functional RSC depends on four essential variables; boundary, anarchic, polarity and social construction.<sup>285</sup>

- a) Boundary: There must be a clear boundary that would differentiate members of one RSC from another. This is absolutely important as security actors within the RSC interact but not with actors outside the region. RSC boundaries changes over time and the outer boundaries do not have to be physical boundaries.<sup>286</sup> In 2007, the EAC boundaries changed to include the States of Burundi and Rwanda. In 2016 the boundaries were changed again when South Sudan was admitted into the Community. These States are probably not the last to join the EAC, and therefore, we are expecting the boundaries to be expanded again.<sup>287</sup>
  
- b) Anarchic structure: There must be at least two or more autonomous units (security actors) within the RSC otherwise there would be power interference from outside the RSC. In the EAC all State actors are autonomous. However, they are all weak States and that they do not have capacity to project any powers outside the EAC without financial and technical assistance from the superpowers outside the EAC region such as the US, the EU and China. This is obvious in the African Union Mission in Somalia (AMISOM) where military deployment of the EAC's military units in Somalia is largely depending on these superpowers (see 8.5.3 on page 319). For that reason, power projection of the EAC is internal and that condition potentially invites interference from the world superpower and great powers

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<sup>285</sup> Buzan and Wæver (2003.p. 53).

<sup>286</sup> Ibid. p.53.

<sup>287</sup> Interviewees 45, 47, 48 and 49.

(see 8.5.1).<sup>288</sup> While Kenya is a strong ally of the US, Tanzania is an associate to China. Kenya and Tanzania are, relatively speaking, the EAC 'superpowers' but their security policies are polarised toward their external allies.<sup>289</sup>

- c) Polarity: There must be a distribution of powers among the security actors within the RSC. and
- d) Social construction: There must be patterns of amity and enmity among the units.

#### **2.4.5 Inter-Governmental Organisations (IGOs) as facilitator of regional peace and security**

Regardless of their formation, IGOs provide a framework for cooperation that could help to eliminate the risk of security competition between states and promote peace and stability.<sup>290</sup> Because IGOs feed states information relevant to the areas of security, they can reduce uncertainty and other risks that could emerge out of anarchy.<sup>291</sup> IGOs have many concerns connected to regional peace and security because this is a key to the integration process in their regions.<sup>292</sup> Without it, the spill-over process would not be achieved and the integration would remain at large. It is further argued that, by their nature, most security problems are regional and thus can only be solved perfectly at the regional level through regional organisations.<sup>293</sup>

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<sup>288</sup> Ibid.

<sup>289</sup> Ibid.

<sup>290</sup> Buyeh (2006)

<sup>291</sup> Nathan (2010)

<sup>292</sup> Law (2007)

<sup>293</sup> Buzan and Wæver (2003. pp.10-14).

## 2.4.6 Regional security cooperation

Bailes and Cottey suggest four forms of regional security cooperation: alliances, collective security, security regimes and security communities.<sup>294</sup>

- a) **Alliances:** An alliance is a security relationship among states in which each state undertakes to assist (or at least consider assisting) its partners if they are threatened militarily.<sup>295</sup> The overall aim of any alliance is to ensure that members provide mutual military support to protect against outside threats. Nevertheless, some internal threats or opponents are also taken as regional security threats that have to be dealt with by an alliance.<sup>296</sup>

As defined by Snyder, alliances are “formal associations of states for the use (or non-use) of military force, in specified circumstances, against states outside their own membership”.<sup>297</sup> Walt defines an alliance as a “formal or informal arrangement for security cooperation between two or more sovereign states”.<sup>298</sup> An alliance is one of the collective defence mechanisms on which member states can collectively attack and defend themselves against any external threats. As one of the oldest forms of security cooperation, a state can join an alliance because it does not have enough resources and military powers to defend its own sovereignty. An alliance is also considered as one of the best methods of balancing world powers. One of the advantages of an

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<sup>294</sup> Bailes and Cottey (2006. pp. 199-211).

<sup>295</sup> Rolfe, J. ( 1997). *New Zealand's Security: Alliances and other Military Relationships*. Centre for Strategic Studies- Victoria University of Wellington. Working paper 10/97. Available at: [victoria.ac.nz](http://victoria.ac.nz) [Accessed on: 16 September 2015]

<sup>296</sup> Collins (2010.p.175). See also Bailes and Cottey (2006.p. 199).

<sup>297</sup> Snyder (1997. p.4)

<sup>298</sup>Walt (1987.p. 12)

alliance is that the chances of military conflicts among state members are always zero.

Within an alliance, conflicts are resolved on a table and in an amicable way.<sup>299</sup> NATO and the ASEAN are typical examples of alliances. Alliances are usually formed in peace time and can be an important means to preserve peace. States may also find themselves at war alongside others, without a formal 'Alliance'. Such states are 'co-belligerents', for example the US, the British Empire and the Soviet Union in World War II.<sup>300</sup>

- b) **Collective security:** Collective security is one type of coalition strategy in which a group of nations agree not to attack each other and to defend each other against foreign attack. One of the most important prerequisites for collective security to be effective is for all nations in a region to be members of a collective security organisation. This is, however, a very difficult scenario to meet.

Unlike an alliance, which is for defence and attack, collective security is primarily for defence and conflict prevention purposes, it is not designed to attack. The UN, the AU, the OAS and the OSCE are considered examples of collective security cooperation. Under a collective security arrangement, an aggressor against any one state is considered an aggressor against all other states, which act together to repel the aggressor.<sup>301</sup> Nevertheless, this form of security cooperation has seldom worked effectively for many reasons, including conflict of interest, especially when it comes to superpower nations.<sup>302</sup>

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<sup>299</sup> Ibid.

<sup>300</sup> Bellamy (2007. p. 485)

<sup>301</sup> Ebegbulem (2011. p. 23). The Failure of Collective Security in the Post World Wars I and II International System.

<sup>302</sup> Ibid.

In collective security organisations, such as the UN, consensus is important. However, reaching a consensus is not an easy task. Superpowers always have a say over the weaker states.<sup>303</sup> The system of having five veto nations (P5) in the UN Security Council shows how hard it is to reach consensus. Some states may refuse to support others in some cases (if they do not have an interest in that war or if they feel it would be very expensive to go to war). This definitely goes against the overall objectives of the collection of security organisations.

- c) **Security regimes:** A security regime is regarded as one of the most important modes of IR and security interaction. This is because security regimes do not require much involvement from the ‘anarchistic’ elements beloved of realist. It is more like a decentralised version of a security organisation that allows non-state actors or pressure groups to be members as well. Unlike an alliance, which is a defensive and attacking organisation, or collective security, which is a defensive organisation, a regime is a preventative/cooperation coalition that uses politics and diplomacy to support conflict resolution.<sup>304</sup>

Stephen Krasner defined a security regime as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations”.<sup>305</sup> A security-related regime may cover broad prescripts for behaviour, such as the non-use of force and respect for existing international borders, or may more concretely regulate certain types and uses of weapons, or activities like military movements and transparency.<sup>306</sup>

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<sup>303</sup> Ebegbulem (2011)

<sup>304</sup> Jervis(1982).

<sup>305</sup> Krasner (1982. p. 186)

<sup>306</sup> Ibid,102. p. 200.

According to Jervis, regimes are harder to establish in the security arena than they are in the economic realm.<sup>307</sup> This is because of the inherently competitive edge of many security concerns, the unforgiving nature of the problems, and the difficulty inherent in determining how much security the state has or needs.<sup>308</sup>

d) **Security communities:** A security community is an extended version of collective security where members are absolutely assured of their security from any external threats, but they are also eliminating the chance of themselves being involved in fighting.<sup>309</sup> As pioneered by Karl Deutsch in 1957, a security community is defined “as a group of states that had become integrated to the point at which there is ‘real assurance that the members of that community will not fight each other physically, but will settle their disputes in some other way’”<sup>310</sup>. This explanation of security today, the EU is the best possible security community that is practising this, though its practicability is obviously in doubt.

#### 2.4.7 Factors contributing to better regional security cooperation

According to Bailes and Cottey, there are three important factors that contribute to regional security cooperation: a) state size and balance of power; b) intra-regional relations; and c) history and culture.<sup>311</sup>

a) **State size and balance of power:** It is generally accepted that a security group consisting of many giant members will find it difficult to prosper. While the giant states will not accept dictates on their own territory, the others will be wary of simply accepting the giant states’ model. Nevertheless, for the sake of balancing

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<sup>307</sup>Jervis(1982).

<sup>308</sup> Ibid.

<sup>309</sup> Adler, Greve (2009).

<sup>310</sup> Krasner (1982. p. 201). See also Ulosoy, H. 2012. Revisiting security communities after the cold war: the constructivist perspective. Available at: <http://sam.gov.tr/wp-content/uploads/2012/01/Hasan-Ulusoy3.pdf> [Assessed on: 18 September 2015]

<sup>311</sup>Bailes and Cottey (2006. 219-221)

power, smaller states attach themselves to giant states to gain security assurances by balancing their power with that of their rivals.

NATO and the former Warsaw Pact were true examples of security communities during the Cold War.<sup>312</sup> In the EAC, for example, the demographic and military strength of the member States, with the exception of Burundi and Rwanda (which are relatively small States),<sup>313</sup> are just about right to allow security cooperation. Table 2-2 shows the demographic and military strength of the EAC. Based on those indicators, there is a high chance of the EAC becoming a sub-complex of RSC as we suggested in 2.4.4.

**Table 2-2: Demography and Military Strength in the EAC**

|          | Population (2014) | Servicemen |         | %Defence budget (2014) | % of GDP (2015) | Military powers: World ranks out of 126 |
|----------|-------------------|------------|---------|------------------------|-----------------|---|
|          |                   | Active     | Reserve |                        |                 |   |
| Kenya    | 46 mil.           | 24,150     | 5,000   | \$595m                 | 1.5             | 75                                      |
| Tanzania | 51 mil.           | 30,000     | 80,000  | \$220m                 | 1.14            | 96                                      |
| Uganda   | 37 mil            | 45,000     | 2,000   | \$280m                 | 1.25            | 92                                      |

**b) Intra-regional relations:** A region with minimal financial difficulties, conflicts and tensions tends to have workable regional security cooperation.<sup>314</sup> Common security problems can bring regional states together and see them move toward security cooperation.<sup>315</sup> The EAC, through Kenya and Tanzania, has a number of maritime security problems, which are partly caused by

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<sup>312</sup> Luke A. Nichter.(2009). Review of Heiss, Mary Ann; Papacosma, S. Victor, eds., NATO and the Warsaw Pact: Intrabloc Conflicts.

<sup>313</sup> Military Balance (2016. p. 21). Chapter Two: Comparative defence statistics, The Military Balance, *The International Institute of for Strategic Studies*, Vol. 116(1), pp. 19-26.

<sup>314</sup> Acharya (2014). See also Bhatta (2004).

<sup>315</sup> Ibid.

Somalia-based piracy, armed robbery, terrorism, marine environmental destruction and illegal fishing, just to mention a few factors.<sup>316</sup> The existence of these common maritime security issues, together with less tension among the five member states, creates a high possibility of having a workable maritime security regime (MSR).<sup>317</sup>

The 1978–79 Tanzania–Uganda war, for example, was one of the worst military conflicts in the region. However, its aftermath has now become history; and the war had little impact on regional integration. The 100-day civil wars in Burundi and Rwanda in 1994, which claimed approximately 800,000 lives, were the most serious civil conflicts to ever happen in the region. Both the Tanzania–Uganda war and the Burundi–Rwanda Genocide are now perceived as motivators for the EAC to come up with a regional security regime that will attempt to prevent the recurrence of such events in the future.<sup>318</sup>

**c) History and culture:** A region that shares some common history and cultural attributes has a high chance of forming regional security cooperation.<sup>319</sup> As claimed by Bhatta, the huge diversity in religions, cultures, ethnicities and languages is said to be the main factor slowing down the integration process in Southeast Asia.<sup>320</sup>

The EAC's history is another positive motivator of regional security cooperation. Kenya, Tanganyika (now Tanzania mainland) and Uganda, which are the EAC's founding members, have similar colonial histories. All are Commonwealth members and speak the English language. Burundi and Rwanda are former Belgian

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<sup>316</sup> See Chapter Three for detail analysis on this.

<sup>317</sup> Interviewees 45, 47,48, 50 and 51.

<sup>318</sup> Ibid.

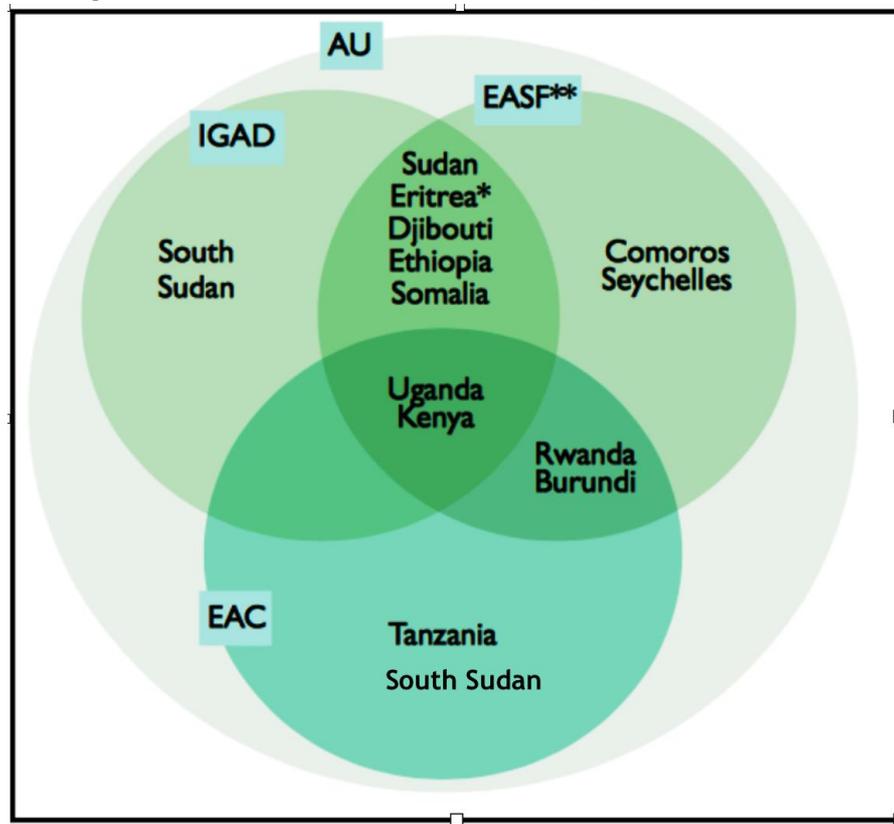
<sup>319</sup> Bhatta (2004).

<sup>320</sup> Ibid. p.7.

colonies with similar cultures; they are dominated by two ethnic groups: Hutus and Tutsis. For these reasons, the EAC could have a workable MSR, should one be established.<sup>321</sup> The big issue is how the EAC would use those factors mentioned in 2.4.7 (a-c) to achieve regional security integration as proposed by the author is Figure 2-5 on page 73. This is also a requirement of Article 117 of the 1999 Treaty insists on social and cultural activities.<sup>322</sup>

Through the AU, for example, Figure 2-6, shows how IGAD and EAC as general security IGO contribute to Eastern African Standby Force.

**Figure 2-6: State members of IGAD, EAC and EASF<sup>323</sup>**



<sup>321</sup> Interviewees 45, 47, 48, 50 and 51.

<sup>322</sup> Art. 117, 1999 EAC Treaty.

<sup>323</sup> Modified by the author from Jacobsen and Nordby (2012)

## 2.5 Maritime Security

The tragic 11 September 2001 terrorism event, while apparently air-and land-based, had some influence on maritime security. It prompted the introduction of the 2004 International Ship and Port Facility (ISPS) Code.<sup>324</sup> The latter, together with the rise of Somali piracy as an issue from about 2005, has given rise to a growing new body of literature. The later was a manifestation of very old problem,<sup>325</sup> and had many of the same causes and characteristics.

### 2.5.1 What is maritime security?

Defining the term 'maritime security' has never been an easy task. It means different things to different groups of people: each group sees it in its own way.<sup>326</sup> It is perhaps somewhat easier to explain what triggers the need for maritime security than to define it.<sup>327</sup> 'Security' in a maritime context means man-made risks and hostile acts such as piracy and terrorism, while 'safety' applies to accidental, dangerous or potentially dangerous events such as pollution and the safety of crews or a ship.<sup>328</sup>

Is it the mixed perception of maritime 'security' that creates different levels of understanding of what constitutes 'maritime security'? This is perhaps the reason why in 2015 Bueger, for example, considered maritime security as the latest 'buzz word' of international relations.<sup>329</sup> Maritime security by itself is not a single profession. Instead, it is a combination of many professions and disciplines encompassing security, technology, scientific, legal, maritime and international relations

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<sup>324</sup> IMO (2004). Available at: [http://www.imo.org/en/OurWork/Security/Guide to Maritime Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx](http://www.imo.org/en/OurWork/Security/Guide%20to%20Maritime%20Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx) [Accessed on 16 May 2015].

<sup>325</sup> Bellamy (2011)

<sup>326</sup> (Klein, 2011)

<sup>327</sup> Ibid.

<sup>328</sup> (Polo, F. D., et al, 2010, p. 43)

<sup>329</sup> Bueger. (2015. p. 1)

knowledge. Together, these professions form the big picture of what maritime security is all about.

It is why maritime security is regarded as a global problem which needs many actors to work together. The actors are threefold: i) national actors through coastal state initiatives such as the navy, coastguard, flag states and port states; ii) international actors such as the UN and the IMO; iii) regional actors such as the EU, NATO and EAC; iv) non-state actors, that is NGOs such as the International Maritime Bureau (IMB), and international conventions such as the Djibouti Code of Conduct (DCoC) and the like.<sup>330</sup>

In order to understand maritime security, there is a need to already understand what the terms 'security', 'maritime domain' and 'International Relations' mean. As we saw section in 2.4.2 on page 63, 'Security itself is a relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur.'<sup>331</sup> Nevertheless, from a maritime perspective, security has a much wider meaning than this.

According to Bueger, those who discuss maritime security, "frequently do so by pointing to threats that prevail in the maritime domain. They refer to threats such as maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes or maritime accidents and disasters".<sup>332</sup> Maritime security involves the issues of state sovereignty through the state's maritime domain (which we have chosen to include its EEZ), national security and relations to the outside world, normally on the uses of the high seas.

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<sup>330</sup>(Carolin, 2013)

<sup>331</sup>(Bellamy, 1981 cited by Collins, 2010, p.3)

<sup>332</sup> (Bueger, 2015.p.159)

As noted in section 1.2.2 on page 6, ‘maritime domain may be described as ‘all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime related activities, infrastructure, people, cargo, and vessels and other conveyances.’<sup>333</sup> However, in this research, maritime domain means ‘maritime zones falling into the jurisdiction of Kenya and Tanzania, the only two Coastal states of The EAC (see section 1.2.2 on pages 5-6). That extends a state’s maritime domain to include its EEZ and also includes any ships flying its flag.

Maritime security, at its most simple, ‘relates to all measures a country as a whole takes to prevent unlawful acts in the maritime domain, whether they directly impact the country or region in question, or the perpetrators are in transit’.<sup>334</sup> The Centre for International Maritime Security articulates maritime security as an international problem and has therefore defined it as ‘freedom from the risk of serious incursions against a nation’s sovereignty launched from the maritime domain, and from the risk of successful attack against a nation’s maritime interests’.<sup>335</sup>

From the shipping industry’s perspective, the industry regards ‘maritime security’ as focusing on the safety of ships and their crew at sea and when entering ports. This type of security encompasses a broad range of issues such as sovereignty, routing and navigational conditions, and responses to illegal acts like piracy’.<sup>336</sup> Steven Jones explains in his book *Maritime Security* that the concept of security for ship owners is “the state of a shipping company/ vessel/crew/port, being of feeling

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<sup>333</sup>The National Strategy for Maritime Security-US. (2005)

<sup>334</sup>(Gilpin, 2007)

<sup>335</sup>Doyle. (2012) *What is International Maritime Security?* [online] Available from: <http://cimsec.org/what-is-international-maritime-security/2698> [Accessed on 16 May 2015]

<sup>336</sup>Miles, A. (2012) *The meaning of Maritime Security.* [online] Available from: [www.ehow.com/facts\\_7620962\\_meaning-maritime-security.html](http://www.ehow.com/facts_7620962_meaning-maritime-security.html) [Accessed on 16 May 2015]

secure“, or “the safety of a shipping company/vessel/crew/port against such threats as terrorism, piracy, and other criminal activities”<sup>337</sup>

The UK, according to its National Strategy for Maritime Security (NSMS), sees maritime security as ‘the advancement and protection of the UK’s national interests, at home and abroad, through the active management of risks and opportunities in and from the maritime domain, in order to strengthen and extend the UK’s prosperity, security and resilience and to help shape a stable world’.<sup>338</sup>

Based on the above definitions, it is very clear that there is no international consensus on the definition of maritime security.<sup>339</sup> Nevertheless, there is no doubt whatsoever that maritime security, however it might be defined, is a global problem. It relates to actions done intentionally to harm an economy, environment and or lives.<sup>340</sup> However, the magnitude of maritime threats differs according to a country’s perceptions and the level of international interests that the nation has.<sup>341</sup>

The UK<sup>342</sup> and the US,<sup>343</sup> for example probably, have a wider and deeper understanding of maritime security than many other nations. This is because of the level of security they perceive their countries to need, and their worldwide economic interests. For example, the South China Sea disputes involve the interests of the US, particularly with regard to freedom of navigation, international norms and law, relations with

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<sup>337</sup> Jones (2009.p.1)

<sup>338</sup> Great Britain HM Government (2014) *The UK National Strategy for Maritime Security*. p.15

Available at:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/310987/20140508\\_NSMS.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310987/20140508_NSMS.pdf) [Accessed on: 20 September 2015]

<sup>339</sup>(Bueger, 2015)

<sup>340</sup>(Menon, 1988)

<sup>341</sup>(Doyle, 2012)

<sup>342</sup>(Great Britain HM Government, 2014, p.9)

<sup>343</sup>(Doyle, 2012)

important partners and allies, and the expectation of the peaceful resolution of the disputes.<sup>344</sup>

## 2.5.2 Classification of maritime Security

In common with security in general, maritime security can be divided into two broad areas; traditional and non-traditional maritime security.<sup>345</sup>

- a) **Traditional maritime security** considers threats posed by one sovereign state to another. These either result from large-scale hostilities which originate on land or triggered by maritime border disputes or conflicts over maritime resources at the adjacent areas among littoral states.<sup>346</sup> In order to understand what traditional maritime security looks like, the South China Sea maritime conflict and the Kenya-Somalia maritime border dispute are perfect examples. While the Kenya-Somalia border dispute will be explored in detail in Chapter Four (see section 4.2.5); China and several South-East Asian nations are, at the time of writing, embroiled in a territorial and maritime dispute in the South China Sea over an area that includes a cluster of resource-rich islands and important trade routes (Chapter Four in section 4.3.2).<sup>347</sup>

The Paracels and the Spratlys are the disputed islands and are at the centre of the South China Sea conflict. The islands may have reserves of natural resources around them. The area is also a

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<sup>344</sup> Bader, J., Lieberthal, K., and McDevitt, M. (2014) *Keeping the South China Sea in Perspective*. Foreign Policy Briefing. Brookings. [online] Available from: [www.brookings.edu/~media/research/files/papers/2014/08/south-china-sea-perspective-bader-lieberthal-mcdevitt/south-china-sea-perspective-bader-lieberthal-mcdevitt.pdf](http://www.brookings.edu/~media/research/files/papers/2014/08/south-china-sea-perspective-bader-lieberthal-mcdevitt/south-china-sea-perspective-bader-lieberthal-mcdevitt.pdf) [Accessed on: 20 September 2015]

<sup>345</sup> Burger(2015) sea also Chatterje(2014)

<sup>346</sup> BBC. (2014) *Q&A: South China Sea dispute*. Available from: [www.bbc.co.uk/news/world-asia-pacific-13748349](http://www.bbc.co.uk/news/world-asia-pacific-13748349) [Accessed on: 20 September 2015]

<sup>347</sup> FlorCruz, M. (2015) *Japan Gets Involved In South China Sea Territorial Dispute: Tokyo Offers Maritime Support To Philippines, Vietnam*. International Business Times. Available from: [www.ibtimes.com/japan-gets-involved-south-china-sea-territorial-dispute-tokyo-offers-maritime-support-1844102](http://www.ibtimes.com/japan-gets-involved-south-china-sea-territorial-dispute-tokyo-offers-maritime-support-1844102) [Accessed on: 20 September 2015]

major shipping route and home to fishing grounds that supply the livelihoods of people across the region.<sup>348</sup> As one can see from this maritime conflict, it not only involves around seven coastal states in the disputed area, but also countries like the US, Japan and Australia (among others), which have clear concerns over that space. Therefore, this is further proof that there is a clear overlap between maritime security and global security.

b) **Non-traditional maritime security** is the other form of maritime security which overlaps with transnational maritime security or and is some time referred to, rather sloppily, as contemporary maritime security.<sup>349</sup> This type of maritime security is triggered by threats from non-state actors including nature and is one of the most serious problems in today's world. While piracy and maritime terrorism are in historical terms, traditional, undocumented migrants, illegal fishing, illegal drugs and small weapons trafficking and maritime environmental damage and disasters are examples of 'non-traditional' maritime security issues.<sup>350</sup>

Compared to traditional maritime security threats, non-traditional threats are very hard to control and are mostly deadly. Reflecting on the above analysis about traditional and non-traditional maritime security, it is clear that the notion of the state as the sole provider of security is being seriously challenged in many parts of the world.<sup>351</sup> New actors such as IGOs, NGOs and private businesses are playing ever-more important roles in providing security.<sup>352</sup>

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<sup>348</sup> Ibid.

<sup>349</sup> Masys (2016. p. 60).

<sup>350</sup> (Chatterjee, 2014)

<sup>351</sup> (Carolin, 2014)

<sup>352</sup> (Bateman, 2005)

### 2.5.3 Maritime security versus maritime safety

After surveying the history of maritime security and shedding some light on its definition, it is vital at this juncture to differentiate between maritime security and maritime safety may require different and even contradicting solutions. The two terms are closely related and very often used interchangeably. Nevertheless, they are obviously different and address two different areas within maritime affairs.<sup>353</sup> Maritime security and safety depend on the words 'security' and 'safety' respectively.

'Security' in a maritime context means man-made risks and hostile acts such as piracy and terrorism, while 'safety' applies to accidental, dangerous or potentially dangerous events such as pollution and the safety of crews or a ship.<sup>354</sup> To put it in a clear context, maritime security is a primary role of the government of a coastal state and is aimed at responsive and reactive actions towards maritime threats. Maritime safety, on the other hand, is a civilian responsibility specifically designed to ensure safe navigation on the part of ships, crews and their environment.<sup>355</sup>

Maritime security is more concerned with 'deliverable and recurring threats' whereas maritime safety pays much more attention to incidental threats. More precisely, maritime safety involves the combination of preventive and responsive measures intended to protect the maritime domain against, and limit the effect of, accidental or natural danger, harm and damage to environment, risks or loss.<sup>356</sup> In the SOLAS Convention, maritime safety is best explained in Chapter V, Safety of navigation, while maritime security is covered in Chapter XI-2, Special

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<sup>353</sup> (Polo, F. D., et al, 2010)

<sup>354</sup> Ibid. p 43.

<sup>355</sup> Ibid.

<sup>356</sup> (Feldt, Roell and Thiele, 2013)

measures to enhance maritime security, which includes the ISPS Code.<sup>357</sup>

#### **2.5.4 Maritime security threats**

Maritime security threats in maritime domains are manifold, including (but not limited to) maritime inter-state disputes, maritime terrorism, piracy, the trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes, and maritime accidents and disasters.<sup>358</sup> The threats vary in magnitude depending on the vulnerability of the maritime domain in question.

In Chapter Four, the maritime domain of the EAC will be examined to determine how vulnerable it is to the maritime security threats previously mentioned. Maritime border disputes between Kenya and Somalia, piracy, terrorism, armed robbery at sea; maritime environmental destruction and illegal fishing are the main concerns of the EAC in relation to its maritime domain. In this chapter, only piracy, armed robbery and maritime terrorism will be explored. This is due to their significance to the maritime insecurity of the EAC region.

##### **2.5.4.1 Piracy and armed robbery at sea**

Although the terms piracy and armed robbery at sea are often used interchangeably, the two are different. While armed robbery at sea is known to be a maritime crime within Territorial Seas and under the jurisdiction of the sovereign state, piracy takes place on the high seas (outside the 12 nm- Territorial Sea limit). The importance of the distinction lies in whether a merchant vessel can seek protection from

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<sup>357</sup>IMO. (1974) *International Convention for the Safety of Life at Sea (SOLAS), 1974*. Available

from:[www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx) also The ISPS Code was added as Chapter X1-2 on 1 July 2004. Available at: [http://www.imo.org/en/OurWork/Security/Guide to Maritime Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx](http://www.imo.org/en/OurWork/Security/Guide%20to%20Maritime%20Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx) [Accessed on: September 2015] see

<sup>358</sup> (Bueger, 2015.p.159)

the navy and or coastguard of the coastal state or from the navy/coastguard of the vessel's flag of registry.<sup>359</sup>

Article 101 of the UNCLOS and IMO resolution A.1025 (26) of 2009 provide definitions of piracy and armed robbery at sea respectively.<sup>360</sup> However, the armed robbery definition has not been generally accepted in the maritime world.

Article 101 of the UNCLOS defines piracy as:

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c) any act of inciting or of intentionally facilitating an act described before.<sup>361</sup>

The definition of armed robbery against ships was pioneered by the IMO, and covers all of the following acts:

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<sup>359</sup> Chan, C. 2015. Asia piracy and sea robbery differences not recognized, says Singapore Shipping Association. *IHS Maritime 360*. Available at: [http://www.ihsmaritime360.com/article/18358/asia-piracy-and-sea-robbery-differences-not-recognised-says-singapore-shipping-association?from\\_rss=1](http://www.ihsmaritime360.com/article/18358/asia-piracy-and-sea-robbery-differences-not-recognised-says-singapore-shipping-association?from_rss=1) [Accessed on: 21 February 2015]

<sup>360</sup> IMO (2009). Code of practice for the investigation of crimes of piracy and armed robbery against ships. Available at: [http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A\\_1025.pdf](http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A_1025.pdf) [Accessed on: 7 October 2015]

<sup>361</sup> UNCLOS, Art. 101.

- a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against a person or property on board such a ship, within a state's internal waters, archipelagic waters and territorial sea;
- b) any act of inciting or of intentionally facilitating an act described above.<sup>362</sup>

The article 101 places very strict criteria on to both navies and law enforcement when it comes to apprehending offenders. Also in the maritime commercial world, in particular in the insurance industry, the definition offers little help. Article 101 of the UNCLOS stipulates four hard to meet conditions that are necessary for offence to qualify as piracy: i) the act should only take place in the high seas otherwise it would be an armed robbery if takes place in Territorial Seas; ii) two commercial ships have to be involved; iii) the vessel is privately owned; and iv) the attackers have private motivations- should not be associated with any political group or receive any support from any state.

In an attempt to break those obstacles imposed by the article 101, in 2003 the International Maritime Bureau (IMB) issued a softer definition of piracy which has made it easier to cope with a variety of threats. The IMB defines piracy as “an act of boarding or attempting to board any ship with the apparent intent to commit theft or *any other crime* and with the apparent intent or capacity to use force in furtherance of that act”.<sup>363</sup> The IMB definition abolishes the need for two commercial ships to be involved and the act to occur on the High Seas in order to be qualified as practical act.<sup>364</sup> Furthermore, by saying ‘any other crime’, the IMB definition is wide enough to embrace maritime terrorism as well.

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<sup>362</sup>International Maritime Organization (IMO), Assembly 26th session, Resolution A.1025, 18 January 2010, 4.

<sup>363</sup> Chalk (2008.p.3) See IMB annual report of 2003.

<sup>364</sup> Ibid.

#### 2.5.4.2 Maritime terrorism

For many years, terrorists have largely targeted land sites. Nevertheless, evidence suggests that maritime terrorism may become terrorists' a new focus. This is partly due to the fact that international commercial ships appear to be easy targets and vulnerable to maritime terrorism. Maritime terrorists target maritime infrastructure with the goal of causing significant damage to human life and the environment and triggering big financial losses. For example, the act of blowing up an LNG ship, an oil tanker, a passenger ship or a mega port will have devastating effects on the maritime supply chain and the economy; in an extreme case, there could be massive loss of life.

As with maritime security, the term terrorism does not have an internationally agreed upon definition. However, the Council for Security Cooperation in the Asia-Pacific (CSCAP) Working Group has offered an extensive definition of maritime terrorism: "...the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities".<sup>365</sup> This definition is in addition to the IMB definition just mentioned.

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) is also one of the few maritime frameworks used to address maritime terrorism (see 2.6.3). There are some concerns that the SUA Convention does not refer to terrorism specifically.<sup>366</sup> According to the SUA Convention, maritime terrorism is defined as: a) any attempt or threat to seize control of a ship by force; b)

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<sup>365</sup> Council for Security Cooperation in the Asia-Pacific, Memorandum 5; Cooperation for law and order at sea, See also CSCAP, available at: <http://www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%205%20--%20Cooperation%20for%20Law%20and%20Order%20at%20Sea.pdf>

[Accessed on: 7 October 2015]

<sup>366</sup> Johnson and Valencia (2005)

to damage or destroy a ship or its cargo; c) to injure or kill a person on board a ship; or d) to endanger in any way the safe navigation of a ship that moves from the Territorial Seas of one state into those of another state or into international waters.<sup>367</sup>

Based on the records of worldwide terrorist attacks up to the time of writing, maritime terrorism is considered insignificant compared to land-based terrorism. According to the RAND Database of Worldwide Terrorism Incidents, maritime terrorist incidents accounted for two per cent of the worldwide records between 1968 and 2007.<sup>368</sup> There have only been two notable maritime terrorist incidents in the wider Indian Ocean region, and none in the EAC Maritime Domain.

On 12 October 2000, two suicide bombers in a boat loaded with explosives attacked *USS Cole* in the Yemeni port of Aden. Seventeen American sailors were killed, and 39 were injured. The attack caused US\$250 million in damage to the warship, which took 14 months to repair; The second incident involved the French oil super tanker, the *Limburg*, was rammed by an explosives-laden dinghy on 6 October 2002 in a suicide attack. Approximately 90,000 barrels of oil leaked into the Gulf of Aden. One crew member was killed and 12 others were injured in the attack.<sup>369</sup>

In the late 1990s, Al-Qaeda, is believed to have used up to 15 ships sail internationally to transport weapons, explosives, terrorists and money to be used in their terrorist operations (as well as in their ordinary business operations).<sup>370</sup> The evidence suggests that, some of Al-Qaeda's ships were used to transport explosives used in the 1998 bombing of two US

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<sup>367</sup> Ibid and SUA Convention, Art. 3 and 4.

<sup>368</sup> Chalk (2008), see also Nicncic(2012)

<sup>369</sup> Korin, A. and Luft, G. 2004.

<sup>370</sup> Mitz, J. 2002. 15 Freighters Believed to Be Linked To Al Qaeda. The Washington Post. Available at: <https://www.washingtonpost.com/archive/politics/2002/12/31/15-freighters-believed-to-be-linked-to-al-qaeda/faa25696-123e-45a0-a528-7c1ffb0dd541/> [Accessed on: 7 October 2015]

Embassies in East Africa.<sup>371</sup> At the time of writing, use of ships by ISIL cannot be ruled out.

### **Nexus between piracy and maritime terrorism**

Very often, sea piracy is associated with maritime terrorism; however, the two are different maritime crimes that require different countermeasures from policy makers. As argued by Nelson, “the overlapping characteristics and marked similarities between pirates and terrorists operating at sea make it difficult to tell them apart. Such ambiguity has significant implications and serves as an impediment to effectively countering these threats”.<sup>372</sup>

In an attempt to differentiate between piracy and maritime terrorism, Chris Bellamy uses the UNCLOS Article 101 to argue that piracy differs from maritime terrorism because it is organised crime, and is primarily motivated by financial gain.<sup>373</sup> Terrorism, like piracy, is also a highly organised crime; however, it is conducted with political motivations. Therefore as argued by Joubert, “the motive determines whether an incident should be classified as an act of piracy or an act of terrorism; piracy is for financial gain while terrorism is for political gain”.<sup>374</sup>

Judging criminal motives is one of the most difficult tasks faced by law enforcement. Motives are inner intentions that are difficult for law enforcement agencies to distinguish, hence causing some difficulties when trying criminals. While the ultimate motives behind an attack are different, the choice of target, the tactics used, and the use of violence are other factors that differentiate between piratical and terrorist acts.

Murphy, for example, said that terrorists choose targets that fall into four categories: “a) Ships as iconic targets; b) ships as economic targets; c)

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<sup>371</sup> Bevy (2006).

<sup>372</sup> Nelson (2012. p. 15).

<sup>373</sup> Bellamy (2012. p. 78).

<sup>374</sup> Joubert (2013. p. 111)

ships as mass casualty targets; d) ships as weapons.”<sup>375</sup> As has been said previously, the two forms of criminality pose difficulties to law enforcement agencies. This is partly due to their operational similarities. Both pirates and terrorists launch their attacks on the maritime domain and use boats or ships.<sup>376</sup> Chris Bellamy acknowledges that piracy might sometimes take a maritime terrorism approach, which makes it very difficult to differentiate between the two.<sup>377</sup> In the case of Somalia, cooperation between these groups is unproven, but it is not impossible and could be dangerous, especially in vulnerable areas such as the coast of Somalia, the Red Sea and the Gulf of Aden.<sup>378</sup>

Law enforcement agencies and the international community consider terrorism a severe form of criminality. Because of its political and sometimes apocalyptic agenda, Compared to pirates, law enforcement agencies give terrorists little mercy. This is one of the reasons why some negotiations with pirates can be established, eventually allowing victims to pay a ransom, whereas negotiations with terrorists are almost impossible. Terrorism is perceived to be more deadly, a politically motivated act of war led by well organised international criminals such as ‘jihadists’. Piracy, however, is regarded as less contagious, since it is a privately motivated and profit-orientated form of maritime criminality.

As previously explained, terrorists target the international maritime supply chain and infrastructure; for example, sinking a ship at a narrow strait and transit passage used for international navigation in order to disturb the world economy. Due to their geographical positions, the Strait of Hormuz in the Middle East and the Strait of Malacca in Asia are considered the world’s most important choke points in relation to

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<sup>375</sup> Murphy (2008.p. 199)

<sup>376</sup> Bellamy (2012).

<sup>377</sup> Ibid.

<sup>378</sup> Rusli (2011).

economic and security concerns. The world's energy supply chain depends on them.<sup>379</sup>

There are over 114 major straits in the world that are used for international navigation through agreed cooperation among neighbouring littoral states, and the world economy is dependent on them.<sup>380</sup> For example, in 2011, 20 per cent of the world's supply of oil and 90 per cent of Persian Gulf oil passed through the Strait of Hormuz which is 3.2 km (2 nm) wide at its narrowest point.<sup>381</sup> Therefore, any attempt to close the Strait of Hormuz for whatever reason, including terrorism, could have serious security and economic repercussions for the world's security and economy.

### **2.5.5 Why is maritime security important?**

Maritime security is therefore important because of the need to: a) preserve the freedom of the seas; b) facilitate and defend commerce; and c) maintain good governance at sea, among other reasons.<sup>382</sup> The seas and oceans account for 71 per cent of the earth's surface, and in fact 98 per cent of the available water on the globe is salt water that is, the seas and oceans.<sup>383</sup> Two thirds of the oceans are considered the 'high seas', beyond any state's sovereignty or jurisdiction (the maritime domain more narrowly defined).<sup>384</sup> This huge and interconnected body of waters is the lifeblood of the global economy and therefore leaving the seas and oceans waters unsecured, is not an option.

Maritime security is governed largely by the international customary law in collaboration with the UNCLOS, SUA Convention, Proliferation

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<sup>379</sup> Lubin, G., 2011. A Brief Tour Of The 7 Oil Chokepoints That Are Crucial To The World Economy. *Business Insider*, published on FEB. 5, 2011, 7:41 AM. Available at:<http://www.businessinsider.com/oil-chokepoints-suez-canal-2011-1?op=1&IR=T> [Assessed on: 25 September 2015]

<sup>380</sup>Rusli (2011)

<sup>381</sup> Oral(2012)

<sup>382</sup>(Feldt, Roell and Thiele, 2013, p.2)

<sup>383</sup>(Pidwirny, M., 2006)

<sup>384</sup>(Jares, 2013)

Security Initiative (PSI) and the ISPS Code. One of the most serious threats to traditional maritime security is maritime border disputes.<sup>385</sup> Therefore, the peaceful distribution mechanism of maritime borders established by the UNCLOS is a key contribution to maritime security. The seas are part of the state maritime boundaries, as much as the land. The 1982 UNCLOS established that more than 600,000 nm (1.2 million kilometres) of coastline abuts onto states' maritime domains and that those 152 coastal states are entitled to 138 million square kilometres or 74 million square miles of EEZ.<sup>386</sup> More specifically, maritime security is necessary for the reasons outlined below.<sup>387</sup>

- **Preserving the freedom of the seas**

The idea of the 'freedom of the seas' is specifically applied to the high seas which sometimes referred to as the 'freedom of navigation'.<sup>388</sup> The high seas are open to all nations including landlocked states.<sup>389</sup> The notion of freedom of the seas is separate from that of innocent passage.<sup>390</sup> 'Innocent passage' refers to a ship or aircraft's right to enter and pass through another state's Territorial Seas as long as it is not prejudicial to the peace, good order or security of that state.<sup>391</sup>

The threshold between freedom of navigation and innocent passage depends on the legal extent Territorial Sea. The meaning and distinction between the high seas and Territorial Seas has always been a flashpoint. Article 55 of the UNCLOS specifies very clearly that, the EEZ

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<sup>385</sup>FlorCruz, M., (2014) *South China Sea Dispute: Philippines and Vietnam Allies In Position Papers Against China*. International Business Times. 13 December 2014. [online] Available from: <http://www.ibtimes.com/south-china-sea-dispute-philippines-vietnam-allies-position-papers-against-china-1753722> [Accessed on: 7 October 2015]

<sup>386</sup>See the CIA Factbook. Available at:<https://www.cia.gov/library/publications/the-world-factbook/fields/2060.html> [Accessed on: 7 October 2015]

<sup>387</sup>(Feldt, Roell and Thiele, 2013)

<sup>388</sup>UNCLOS, Art. 87. The term originate with the Dutch jurist Hugo Grotius (1583-1645) in his book *Mare Liberum* (1609).

<sup>389</sup>The UNCLOS, Art. 87, gives the rights of the high seas to all nations. 'The high seas are open to all States, whether coastal or land-locked.'

<sup>390</sup>UNCLOS, Art. 19

<sup>391</sup>(Hollis, 2010)

is an area beyond and adjacent to the Territorial Sea<sup>392</sup>. Over this area, a coastal state has some limited jurisdictions if compared to absolute jurisdiction powers on its Territorial Seas<sup>393</sup>.

Nevertheless, the notion of freedom of navigation, as it was pioneered by Dutch jurist Hugo Grotius in the 17<sup>th</sup> century, does not specifically include the resources of the high seas.<sup>394</sup> It was mainly concerned with the jurisdiction of a ship sailing on the high seas, which is now left to the flag state.<sup>395</sup> The natural resources of the high seas are for all mankind and are subject to sustainable use.<sup>396</sup>

- **Facilitating and defending commerce**

The oceans are an important facilitator of international trade. At the time of writing, more than 90 per cent of world trade by volume is transported by sea.<sup>397</sup> For example, in 2014 the UK, as an island, conducted over 92 per cent of trade by sea through her ports, including energy, food and manufactured goods.<sup>398</sup> For this reason, if the world's oceans, in particular the high seas, were not free for shipping lines to operate, then the entire world would be affected.<sup>399</sup>

- **Maintaining good governance at sea**

All nations on the globe (both coastal and landlocked states) have equal rights over the high seas. However, the high seas are under increasing

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<sup>392</sup> UNCLOS, Art. 55

<sup>393</sup> UNCLOS, Art. 56

<sup>394</sup> Hugo Grotius 1609. *Mare Liberum*. Lugduni Batavorum: ex officinâ Ludovici Elzevirij. (Warner, 2009).

<sup>395</sup> The UNCLOS, Art. 90, defines the right to navigation as the right of every state 'to sail ships flying its flag on the high seas'. This means that the freedom of navigation relates not to the right of individuals but to the right of states.

<sup>396</sup> UNCLOS, Art. 119–120

<sup>397</sup> (IMO, 2012) See also International Chamber of Commerce. (2013) *Shipping and World Trade*. Available from: [www.ics-shipping.org/shipping-facts/shipping-and-world-trade](http://www.ics-shipping.org/shipping-facts/shipping-and-world-trade) [Accessed on: 07 October 2015].

<sup>398</sup> Maritime UK. (2014) *Maritime security and defence*. Available from: [www.maritimeuk.org/2012/01/maritime-security-and-defence/](http://www.maritimeuk.org/2012/01/maritime-security-and-defence/) [Accessed on: 07 October 2015].

<sup>399</sup> (Akimoto, 2001)

threat from over-exploitation, destructive fishing methods, pollution and the impacts of climate change. While the governance of Territorial Seas and EEZ are the responsibility of individual coastal states,<sup>400</sup> the governance of the high seas is an international, collective role.<sup>401</sup> This involves international organisations, governments, institutions and NGOs alike. Hence their governance remains a collective responsibility.<sup>402</sup>

One of the aims of the governance of the high seas is to maintain their resources sustainably for future generations. The evidence shows that mankind is the main source of the destruction of the high seas, through shipping, fishing, and other pollution and dumping.<sup>403</sup> Luckily, both shipping and fishing activities on the high seas are controlled to a large extent by flag states.<sup>404</sup> For that reason, the role of flag state administrations in the maritime security of the High Seas is significant.

Through the UNCLOS, there are a number of multinational bodies, agreements and treaties to support better uses of the high seas. These include the International Seabed Authority (ISA),<sup>405</sup> the Commission on the Limits of the Continental Shelf (CLCS)<sup>406</sup> and the International Tribunal for the Law of the Sea (ITLOS).<sup>407</sup> On the other hand, the IMO plays a big role in reducing the adverse impact of shipping on the High Seas through a number of initiatives. It does this through framework of cooperation and negotiation through member states. The most

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<sup>400</sup>(Rahman, 2009)

<sup>401</sup>ibid. p.33

<sup>402</sup>(Pardo, A., 1975 as cited in Global Ocean Commission. (2015) *Governing the high seas*. [online] Available from: [www.globaloceancommission.org/the-global-ocean/the-global-governance-gap/](http://www.globaloceancommission.org/the-global-ocean/the-global-governance-gap/) [Accessed on: 07 October 2015]

<sup>403</sup>(Raaymakers, 2003)

<sup>404</sup>ibid.

<sup>405</sup>UNCLOS, Arts. 156–185

<sup>406</sup>UNCLOS, Art. 76 and Annex II, Commission on the Limit of Continental Shelf

<sup>407</sup>UNCLOS Part XV, Settlement of disputes

prominent tool issued by the IMO is the maritime pollution convention, MARPOL 73/78 as amended.<sup>408</sup>

## **2.6 Legal and regulatory Framework for maritime security**

As has been discussed previously, maritime security is a global challenge that needs international attention.<sup>409</sup> Because of the interconnectivity of the world's oceans, maritime insecurity in one part of the world would have serious repercussions on the rest of the global maritime supply chain.<sup>410</sup> In an attempt to ensure that the world's oceans received proper governance, the responsibilities of the high seas were left to the international Community, while coastal states are responsible for their maritime zones.

For that reason, the IMO and the UN are the main organisations that have responsibility for maritime security at the international level. In this section, the analysis will focus on the UNCLOS and the SUA as legal instruments of maritime security and the SOLAS Convention, in particular the ISPS Code, as a regulatory instrument.

### **2.6.1 The 1982 United Nations Convention of the Law of the Sea (UNCLOS 1982)**

The UNCLOS 1982 is the largest-ever (in context of member states) international maritime treaty, which laid down some basic foundations of the governance of the world's oceans. It is also therefore, a primary source of this research. The 'constitution of the sea' and the law of the seas Treaty', are other names for the UNCLOS 1982. It is called the

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<sup>408</sup> Available at:

[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) [Accessed on: 07 October 2015]

<sup>409</sup>(Barnett, S., 2013)

<sup>410</sup>Jumat, W. (2014). Available at: <http://www.igd.org.za/home/8784-quadrilateral-cooperation-angola-brazil-nigeria-and-south-africa-> Institute of Global Dialogue. [Accessed on: 07 October 2015]. See also NATO Parliamentary Assembly. (2010) *207 CDS 10 E BIS - Maritime Security: NATO and EU roles and co-ordination*. Available at: [www.nato-pa.int/Default.asp?SHORTCUT=2087](http://www.nato-pa.int/Default.asp?SHORTCUT=2087) [Accessed on: 07 October 2015]

constitution of the sea because 'it seeks to regulate all aspects of the uses and resources of the world's seas and oceans. Its underlying philosophy is that ocean space should be treated as an ecological whole'.<sup>411</sup> Further to that, UNCLOS 1982 lays out all the legal norms pertaining to the sea and applicable to relations between states. It contains rules on the delimitation and exploitation of maritime areas as well as provisions on the protection and exploration of the ocean.

The UNCLOS 1982 was opened for ratification at Montego Bay, Jamaica, on 10 December 1982 and entered into force on 16 November 1994.<sup>412</sup> By 2016, 166 states had ratified it.<sup>413</sup> The treaty has made an incredible journey this far without any serious threat of being reversed.<sup>414</sup> Its guidance is being followed by almost every country, even those which are not signatories of the convention such as Iran, Israel, the US and Venezuela.<sup>415</sup> Table 2-3 shows details of ratification of

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<sup>411</sup> See the speech of Professor Tommy Koh (2002).

<sup>412</sup> Hollis, D. (2013) United Nations Convention on the Law of the Sea 1982. *The Encyclopaedia of Earth*. Available at: [thediplomat.com/2014/09/why-we-must-defend-unclos/#disqus\\_thread](http://thediplomat.com/2014/09/why-we-must-defend-unclos/#disqus_thread) [Accessed on: 07 October 2015]

<sup>413</sup>(Oral, 2012) See also United Nations Division for Ocean Affairs and the Law of the Sea. (2015) *Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014*. Available at: [www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm) [Accessed on: 07 October 2015]. See also Kamal, W. (2006) *Address By H. E. Amb. Dr. Wafik Z. Kamil, Secretary-General Aalco At The Inaugural Session Of The Meeting Of Experts On The Emerging Issues On The United Nations Convention On The Law Of The Sea 24<sup>th</sup> November 2006, New Delhi*. Available at: <http://www.aalco.int/sgaddresslos241106.pdf> [Accessed on: 07 October 2015].

<sup>414</sup> See the speech of Professor Tommy Koh (2002) President of the 3rd UN Conference on Law of the Sea on the Commemoration of the 20th Anniversary of the Opening for the Signature of the UNCLOS, 9 Dec 02. '... I have been asked whether it is time to review the convention. My answer is that there is no need to do so. The convention has stood up well to the test of time. We have also been able to evolve pragmatic processes to cure the convention's imperfections and to provide solutions to problems which were left unresolved by the convention.' Available at: [https://www.mfa.gov.sg/content/mfa/overseasmission/newyork/archive/miscellaneous/2002/200212/press\\_200212.html](https://www.mfa.gov.sg/content/mfa/overseasmission/newyork/archive/miscellaneous/2002/200212/press_200212.html) [Accessed on: 07 October 2015]. See also Hollis

(2013): the US want some revisions over the issue of governance of sea-bed mining.

<sup>415</sup>(Malone, 1983) The US reservations about the UNCLOS only concern 'deep-sea mining'. The US argued that the treaty would jeopardize private access to sea-bed resources and establish adverse precedents in necessary conflict with the interests of

the UNCLOS by the EAC member States.

**Table 2-3: EAC State Parties to UNCLOS 1982**

|             |               | Ratification      | In national laws |
|-------------|---------------|-------------------|------------------|
| Kenya       | Coastal State | 2 March 1989      | ✓                |
| Tanzania    | Coastal State | 30 September 1985 | ✓                |
| Uganda      | Landlocked    | 9 November 1990   | ×                |
| Burundi     | Landlocked    | ×                 | n/a              |
| Rwanda      | Landlocked    | ×                 | n/a              |
| South Sudan | Landlocked    | ×                 | n/a              |

Before the 1982 UNCLOS, the burning maritime security issues were Territorial Seas beneath and rights to resources on the high seas.<sup>416</sup> Until then, coastal states were only allowed to have sovereign rights over a small belt of sea: an area usually not exceeding three nautical miles as their Territorial Sea.<sup>417</sup> By the 1960s, 34 states had claimed a 12-mile limit and this became the international norm under UNCLOS.<sup>418</sup> As weapons technology developed, the three miles breath of Territorial Sea was considered not enough by the coastal states. The coastal states also had underground races to exploit and sea bed.

Long before 1945, coastal states had already established a unilateral juridical relationship with the resources of the seabed and subsoil below the Territorial Sea as well as to the physical seabed.<sup>419</sup> For instance, on

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industrialized nations. Practically, the US is observing the norms of the UNCLOS despite not being a signatory. See also Patrick, S. M. (2012) (Almost) Everyone Agrees: The U.S. Should Ratify the Law of the Sea Treaty. *The Atlantic*. 10 June 2012. Available at: [www.theatlantic.com/international/archive/2012/06/-almost-everyone-agrees-the-us-should-ratify-the-law-of-the-sea-treaty/258301/](http://www.theatlantic.com/international/archive/2012/06/-almost-everyone-agrees-the-us-should-ratify-the-law-of-the-sea-treaty/258301/) [Accessed on: 07 October 2015]. See also Houck (2012). Both researchers argue that it does not make a big difference for the US not being a signatory to the UNCLOS because the UNCLOS has become international customary law.

<sup>416</sup>(Suarez, 2008)

<sup>417</sup> *ibid.* p.21

<sup>418</sup> Major Thomas E. Behuniak (Fall 1978). "The Seizure and Recovery of the S.S. Mayaguez: Legal Analysis of United States Claims, Part 1" (PDF). *Military Law Review*. Department of the Army. 82:114-121. Some states had long claimed wider Territorial Seas. In the 18<sup>th</sup> Century, for example, Spain had claimed six nautical miles.

<sup>419</sup>(Remy, 1992, p.1213)

28 September 1945, through the Truman Proclamation the US proclaimed a new maritime zone, giving it rights over the continental shelf surrounding the US.<sup>420</sup> The Truman Proclamation is believed to be a benchmark for legislation affecting the EEZ's relation to the continental shelf.<sup>421</sup> Therefore, fighting for the rights of waters beyond Territorial Seas for security reasons and reasons of resource exploitation were big threats to maritime security, which have been neutralised by the UNCLOS1982.<sup>422</sup>

- **Contribution of the UNCLOS 1982 to maritime security**

The UNCLOS 1982 has brought some significant changes and improvements in ocean governance, resource management and maritime security. The UNCLOS sets out the rights and duties of a state (coastal or landlocked) with regard to the various uses of the oceans (part II-V). It also prescribes in very clear terms the regime of maritime zones that establishes the nature of a coastal state's sovereignty and sovereign rights over ocean space and resources. Furthermore, the UNCLOS provides the principles and norms for freedom of navigation, innocent passage, flag state responsibility, piracy counter-attack mechanisms, rights of visit, hot pursuit and regional cooperation, all of

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<sup>420</sup>Truman, H. (1945) *150 - Proclamation 2667 - Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf*. Available at: [www.presidency.ucsb.edu/ws/?pid=12332](http://www.presidency.ucsb.edu/ws/?pid=12332) [Accessed on: 07 October 2015].

<sup>421</sup>(Truman, 1945) On 28 September 1945, President Harry S. Truman signed what has become commonly known as the Truman Proclamation. The proclamation set out a claim of sovereignty by the United States to the outer continental shelf (OCS) and the resources therein as well as establishing the right of the U.S. to establish conservation zones 'in areas of the high seas contiguous to the coasts of the United States.'

<sup>422</sup>Council on Foreign Relations. (2013) *The Global Oceans Regime*. Available at: [www.cfr.org/oceans/global-oceans-regime/p21035](http://www.cfr.org/oceans/global-oceans-regime/p21035) [Accessed: 22 March 2015] The world's oceans and seas are interconnected: maritime security threats, especially transnational crime such as piracy, drug smuggling, and illegal migration all occur in waters around the world. Therefore, to be good stewards of the oceans, nations around the world need to embrace more effective multilateral governance in economic, security and environmental realms.

which are relevant to the maintenance of security and good order at sea.<sup>423</sup>

## **2.6.2 The International Ships and Port Facility Security (ISPS) Code**

Unlike the UNCLOS 1982, which is a legal instrument, the ISPS Code is a maritime regulatory instrument directly applicable in the state that have signed it. The ISPS Code is a maritime security strategy adopted by the IMO in December 2002 and which came into force on 1 July 2004. The move to create the ISPS Code came directly after the 11 September 2001 terrorist event on US soil.<sup>424</sup> The ISPS Code derives its power from Chapters V and VI of the SOLAS Convention.<sup>425</sup>

The Code is applicable to passenger ships and cargo ships of 500 gross tonnage (GT) and above (see glossary) that are engaged on international voyages, including high speed craft, mobile offshore drilling units and port facilities.<sup>426</sup> The ISPS Code has two parts: Part A is mandatory and contains detailed, security-related requirements for

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<sup>423</sup>(Bateman, 2007)

<sup>424</sup>In the wake of the terrorist attacks of September 11, 2001, port security has emerged as a significant part of the overall debate on US homeland security. Many security experts believe ports are vulnerable to terrorist attack because of their size, easy accessibility by water and land, and the tremendous amount of cargo they handle.'Frittelli, J. F. (2003) Maritime Security: Overview of Issues. *CRS Report to Congress*. Available at: <http://www.fas.org/sgp/crs/RS21079.pdf> [Accessed: 4 February 2015]

<sup>425</sup>The SOLAS Convention, 1974, was adopted on 1 November 1974 and came into force on 25 May 1980. It is the general maritime safety convention that specifies minimum standards for the construction, equipment and operation of ships. Currently the SOLAS Convention has 12 chapters, including chapter XI-2: Special measures to enhance maritime security together with some amendments to chapter V to capture maritime security needs such as voyage data recorders (VDRs) and automatic ship identification systems (AIS). See the IMO web available at :

[www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\)-1974.aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS)-1974.aspx)

<sup>426</sup> Ibid. See also the IMO website:

<http://www.imo.org/ourwork/security/instruments/pages/ispscode.aspx> The ISPS code stipulates certain mandatory security requirements to be applied by the signatory governments, ports states, flag state administrations, ship owners and operators, masters and crews.

implementation by governments, port authorities and shipping companies; Part B is non-mandatory and contains a series of guidelines about how to meet these requirements.<sup>427</sup>

### **2.6.3 The 1988 Convention for the Prevention of Unlawful Acts Against the Safety of Maritime Navigation (SUA)**

As opposed to the SOLAS Convention and the ISPS Code which are regulatory instruments, the UNCLOS and the SUA Convention are international maritime legal frameworks. The SUA Convention was initially enacted to address maritime terrorism, and therefore, it does not use the term 'piracy' when referring to the offences it regulates.<sup>428</sup> The SUA Convention came out in the wake of a terrorist attack on an Italian-flagged ship, the *Achille Lauro*, on 7 October 1985.<sup>429</sup> Right after the event, the maritime world realised that there was not sufficient maritime legislation in place to try the perpetrators as maritime terrorists. Therefore, the UNCLOS did not help to punish the *Achille Lauro* attack's perpetrators.<sup>430</sup>

There was some confusion among the interested parties in the case, particularly the US, as to whether the offence qualified as an act of piracy or terrorism and whether the UNCLOS would be of help.<sup>431</sup> Unfortunately, the UNCLOS could not help because it was not intended to address maritime terrorism. The UNCLOS was purely enacted to deal with maritime piracy and the situation on board the *Achille Lauro* did not meet criterion.<sup>432</sup>

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<sup>427</sup> IMO (2004) *SOLAS amendments and ISPS Code enter into force on 1 July 2004*.

Available at: : [www.imo.org/blast/mainframe.asp?topic\\_id=848&doc\\_id=3692](http://www.imo.org/blast/mainframe.asp?topic_id=848&doc_id=3692)

<sup>428</sup>SUA, Art. 3

<sup>429</sup>(Halberstam, 1988)

<sup>430</sup>(Tuerk, 2012) The terrorism event on 7 October 1985 was politically motivated, which is contrary to Article 101 of the UNCLOS. Four men representing the Palestine Liberation Front (PLF) hijacked the Italian MS *Achille Lauro* liner off the coast of Egypt, as she was sailing from Alexandria to Ashdod, Israel.

<sup>431</sup>(Liput, 1985)

<sup>432</sup>(Nelson, 2012) The UNCLOS does not offer a satisfactory definition for terrorism or piracy. There are growing concerns within the international Community that pirates and

As mentioned previously, Article 101 of the UNCLOS stipulates four conditions that are necessary to qualify an offence as piracy: i) it takes place on the high seas; ii) it involves two commercial ships; iii) the vessel is privately owned; and iv) the attackers have private motivations.<sup>433</sup> From the facts, it can be seen that the *Achille Lauro* case failed to satisfy the Article 101 conditions on two of the four counts. The perpetrators were working on behalf of the Palestine Liberation Organization (PLO) and were on the same ship.<sup>434</sup>

This was clearly a wake-up call to the international Community that the then-existing legal frameworks were not sufficient to address maritime security issues.<sup>435</sup> This gap in the maritime security legal framework led to the adoption of the SUA Convention on 10 March 1988. It entered into force on 1 March 1992.<sup>436</sup> The SUA Convention was further strengthened by the 2005 SUA Protocol.<sup>437</sup> The SUA Convention aimed to fill the gap in the legal framework left by the UNCLOS 1982<sup>438</sup> and the Proliferation Security Initiative (PSI).<sup>439</sup>

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terrorists are colluding with one another to achieve their separate aims. For that reason, in order to formulate and implement effective countermeasures, policymakers must be able to distinguish maritime terrorism from piracy. Some organisations have come up with their own definitions of what distinguishes piracy from terrorism but these definitions do not have legal backing. The IMB and the Council for Security Cooperation in the Asia Pacific (CSCAP) are some of them.

<sup>433</sup>UNCLOS, Art. 101

<sup>434</sup>(Bohn, 2004) The hijackers were tried in Italy after their plane, bound from Egypt to Tunis, was forced to land in Italy by US fighter jets. In 1986, an Italian court accepted the fact that the hijackers were not 'terrorists' instead were Palestine freedom fighters.

<sup>435</sup>ibid.

<sup>436</sup>IMO. (1998) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Available at:

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx> [Accessed:17 May 2015]

<sup>437</sup>IMO. (2005) Protocol of 2005 to the Convention for the suppression of Unlawful Acts against the safety of Maritime Navigation. LEG/CONF.15/21

<sup>438</sup>(Amir, 2014)

<sup>439</sup>(Tomas, 2009) The PSI has acquired a place of prominence, especially as the 2005 Protocol to the Convention on Suppression of Unlawful Activities against the Safety of Maritime Navigation has not yet entered into force. Even though the PSI is supposedly

The PSI which is essentially began as a political understanding between the US and its like-minded allies, at the time of writing, has attracted 105 state parties including non-US allies such as Russia.<sup>440</sup> These countries have accorded themselves the power to board vessels and craft and interdict any shipment of Weapons of Mass Destruction (WMD).<sup>441</sup> The PSI, which came into force in 2003, has the objectives of preventing the spread of WMD by stopping trafficking of the same at sea, in the air, and on land.<sup>442</sup> Under international law however, 'the PSI is often described as an informal agreement or as a coalition of like-minded states without any legal foundations'.<sup>443</sup>

Nevertheless, the PSI is generally perceived to be an important tool that overlaps the other recent initiatives designed to address terrorism and WMD and paved the way to the SUA Convention.<sup>444</sup> For these reasons, as with the UNCLOS, the PSI give states powers to apprehend and trial perpetrators of piracy and terrorism. It is limited solely to seizing shipments of WMD.<sup>445</sup> Therefore, these are the areas where the SUA Convention has been trying to fill the gap in maritime security.

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only a political initiative of the US, supported by a coalition of willing countries, the implications of the PSI for the existing law of the sea are significant.

<sup>440</sup> US. Department of State (2016). Proliferation Security Initiative Participants. Available: <http://www.state.gov/t/isn/c27732.htm> [Accessed on: 20 October 2016].

<sup>441</sup> *ibid.*

<sup>442</sup> *Ibid.* The majority of the world's maritime fleet has been supportive of the PSI. See also NTI (2014) *Proliferation Security Initiative (PSI)*. Available at: [www.nti.org/treaties-and-regimes/proliferation-security-initiative-psi/](http://www.nti.org/treaties-and-regimes/proliferation-security-initiative-psi/) [Accessed: 17 May 2015]

<sup>443</sup> (Malirisch and Prill, 2007, p.232)

<sup>444</sup> (Klein, 2012, p.150) Klein also recognised that the PSI is an important cooperative and collaborative approach to addressing maritime terrorism and WMD, but the PSI does not properly fit into the international law despite its good intent.

<sup>445</sup> *ibid.*

**Table 2-4: Status of Treaties of the EAC member States<sup>446</sup>**

|          | SOLAS <sup>447</sup> |             | SUA |             |               | OTHERS                                  |                                     |
|----------|----------------------|-------------|-----|-------------|---------------|---|-------------------------------------|
|          | 74                   | Protocol 78 | 88  | Protocol 88 | Protocol 2005 | Proliferation Security Initiative (PSI) | Container Security Initiative (CSI) |
| Kenya    | ✓                    | ✓           | ✓   | ✓           | x             | x                                       | x                                   |
| Tanzania | ✓                    | x           | ✓   | x           | x             | x                                       | x                                   |

## 2.7 Regional maritime security cooperation

### 2.7.1 The concept of regional maritime security cooperation

Regional maritime security cooperation can be seen as outcome of the liberal ideology that international institutions, such as IGOs, and regimes, use to influence world politics and security behaviour. Transnational maritime crimes, such as piracy, terrorism and the illicit trafficking of weapons, drugs, money, animals and humans, are not just potential threats to coastal states, since those responsible do not respect state borders and can be deadly.<sup>448</sup> For this reason, collective efforts at the national, regional and international levels are needed to address maritime security threats.

Responding to maritime transnational threats within the territorial sea has long been seen as an exclusive role of coastal states.<sup>449</sup> In recent years however, that has been proved wrong. The act of involving non-state actors in the war against maritime transnational threats, in particular piracy and armed robbery against ships, has proved very

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<sup>446</sup> IMO (2015)

<sup>447</sup> Kenya accession of the 1988 SOLAS Protocol on 7 July 2015. PSLS. 6/Cirl. 71.

Available at: [http://www.ics.org.ir/Downloads/CLD/News/PSLS.6-Circ.71%20-%20Accession%20by%20Kenya%20\(Secretary-General\).pdf](http://www.ics.org.ir/Downloads/CLD/News/PSLS.6-Circ.71%20-%20Accession%20by%20Kenya%20(Secretary-General).pdf) [Accessed on 19

November 2015].

<sup>448</sup> Liss(2013)

<sup>449</sup> Ibid.

successful across the globe.<sup>450</sup> Legitimate non state actors fall into three main categories;<sup>451</sup>

- a) For-profit actors such as shipping companies, insurance companies and Maritime Security Companies (MSC).
- b) Not-for-profit actors; NGOs such as International Maritime Bureau (IMB) Ocean Beyond Piracy (OBP) and others, provide some valuable information and statistics that help in the war against maritime security threats.
- c) Multilateral institutions actors: The UN, the IMO, DCoC, EU and others.

The good example of profit oriented actors is the uses of Privately Contracted Armed Security Personnel (PCASP) onboard commercial ships when navigating in the high risk areas.<sup>452</sup> Despite a significant reduction in piracy threats off the Somalia coast by 2015, 35-40 per cent of commercial ships still used armed guards in transit.<sup>453</sup> Together with Best Management Practice (BMP) 4 and the presence of multinational naval forces at the Horn of Africa, PCASP have proven successful in combating Somalia-based piracy. As previously explained, the practice is now applied all over the world by allowing commercial ships transiting through high-risk areas to be armed. This is particularly important when we see deployments of naval assets to enforce the freedom of

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<sup>450</sup> Ibid.

<sup>451</sup> Ibid.

<sup>452</sup> BIMCO (2015). Piracy, armed robbery and other violent criminal acts at sea.

Available at:

[https://www.bimco.org/en/About/Viewpoint/06\\_Piracy\\_Armed\\_Robbery\\_and\\_other\\_Violent\\_Criminal\\_Acts\\_at\\_Sea.aspx](https://www.bimco.org/en/About/Viewpoint/06_Piracy_Armed_Robbery_and_other_Violent_Criminal_Acts_at_Sea.aspx) [Accessed on: 15 November 2015]. See also Michel and Sticklor (2012)

<sup>453</sup> Mungai, C. How East African piracy ended, and lessons West Africa can learn to end crime on its waters. *Main & Guardian Africa*. Available at:

<http://mgafrica.com/article/2015-02-20-how-somali-piracy-was-ended-unusual-military-collaborations-and-5-very-ingenuous-inventions> [Accessed on: 15 November 2015].

navigational and security of the Sea Lines of Communication (See 1.3.1 on page 12).

### **2.7.2 Maritime Security Regime (MSR)**

Compared to an IGO, or an alliance, a MSR is perhaps the best means of executing maritime security cooperation at the regional level. This is because MSRs do not place harsh compliance conditions on coastal states.<sup>454</sup> One of the most useful attributes of MSRs is that they accept non-state actors as members.<sup>455</sup> This condition is rarely seen in other regional security cooperation, such as those under IGOs. The involvement of non-state actors in MSRs is said to be one of the factors that reduces tensions among state members and improves transparency. Non state actors can play a wide range of roles in MSRs including advocacy, direct provision of support to any security system, and the provision of security services themselves.<sup>456</sup>

A MSR is defined as a group of states and/or organisations acting together, with an agreed framework of rules and procedures, to ensure security within their Maritime Domain.<sup>457</sup> Tubbs and Truver define an MSR as:

“a chartered collaborative framework where the nations working together to address their maritime security interests, contribute to collective engagement on the shared maritime security interests of regional neighbours and international partners through information sharing, exchange of a common operational picture,

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<sup>454</sup> Chapsos and Kichen (2015)

<sup>455</sup> Ibid, Liss(2013)

<sup>456</sup> Chapsos and Kichen (2015. pp. 26-32)

<sup>457</sup> Multinational Experiment 7 (2013). Outcome 1: Maritime Security Regimes (MSR) the Enterprise Implementation Proposal and MSR Manual. Available at: <https://www.hsdl.org/?view&did=754697>[Accessed on: 25 September 2015]

conduct of cooperative operations and the development and exercise of international and regional agreements”.<sup>458</sup>

Through a MSR, conflicts among the regime’s member states that would lead to wars are always kept at a minimum. This eliminates the need to solve maritime disputes through wars. By doing so, MSRs promote regional and international maritime security. The South China Sea’s territorial disputes are perhaps the best example of how MSRs help in creating regional security.

Despite the fact that the disputes involve nine neighbouring, conflicting littoral states, war in the South China Sea is not seen as likely at the time of writing. The existence of the ARF is said to be one of the factors that has helped to reduce the need to have a regional military conflict. As a regional MSR, the ARF has 27 members in total. There are 10 member states, 10 dialogue partners, including world superpowers such as Russia and the US, and seven observers.<sup>459</sup>

By their very nature, maritime security threats are regionalised. This means that maritime criminal behaviours vary depending on the area in question. Piracy and armed robbery, for example, are perceived to be the same across the globe, but in reality they are not. For example, the operational modes of the piracy and armed robbery of west and east Africa are different. On the one hand, the West African piracy model is ship hijacking for stealing oil, ship’s stores and sometimes crew members’ personal belongings. On the other hand, the Somalia-based piracy model involves ship hijacking for ransom. In this case, the regionalisation of security efforts is not only obvious, but absolutely essential.

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<sup>458</sup>Tubbs and Tuver (2010.p.11).

<sup>459</sup> ASEAN Regional Forum (ARF). Available at: <http://aseanregionalforum.asean.org/about.html>. [Accessed on: 26 September 2015]

MSRs are specifically crafted to deal with regional maritime security issues in more specialised ways. The experiences of the Djibouti Code of Conduct (DCoC) in eastern Africa, the Maritime Organization of West and Central Africa (MOWCA) in western Africa, and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery (ReCAAP) in Southeast Asia are the most relevant examples of MSRs. It is important to note that, although MSRs work according to a precise and agreed-upon set of rules, codes and principles, they all derive most of their best practices from the UNCLOS. The UNCLOS provides the basic foundations for global and regional maritime security cooperation.

As argued by Bateman: “A stable maritime regime, under-pinned by agreement on fundamental principles of the law of the sea, is an important contribution to regional maritime security.”<sup>460</sup> Additionally, there are a number of IMO conventions that support MSR formation. The IMO conventions that emphasise maritime security are the International Convention for the Safety of Life at Sea (SOLAS) and its maritime security amendments, the International Ship and Port Facility Security (ISPS) Code, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) together with its Protocols, and the International Convention on Maritime Search and Rescue (SAR).

### **2.7.3 The regional MSRs recognized by UNLCOS**

The UNCLOS recognises navigation regimes simply as ‘maritime regimes’. Nevertheless, due to their strategic geographical locations, regimes became world economic choke points, which subsequently influenced the establishment of regional MSRs in those areas. The 1982 UNCLOS emphasises the three navigational regimes as: a) innocent passage applying to Territorial Seas and archipelagic waters; b) transit passage through straits used for international navigation; and c)

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<sup>460</sup>Bateman (2005)

archipelagic sea lanes passing through archipelagic waters. Because of the geographical and economic importance of these areas, the UNCLOS encourages security cooperation. These maritime security regimes will be analysed further in Chapter Three.

#### **2.7.4 Port State Controls (PSCs) as Maritime Security Regime (MSR)**

PSCs involve the inspection of foreign ships by the port governing state so that the condition of the vessel can be verified and the status of its equipment checked to ensure it meets the requirements of international conventions and is managed and operated in accordance with international law.<sup>461</sup> PSC as a maritime security regime has an important role to play in maritime safety and security. In maritime safety, the PSC ensures that the vessels calling at local ports are thoroughly inspected as to their seaworthiness and compliance with maritime international conventions, such as MARPOL, STCW and the SOLAS.<sup>462</sup>

From a maritime security perspective, the PSC procedures ensure that both ships and ships' operators properly comply with the maritime security requirements as stipulated by the ISPS Code. As explained previously, ships themselves are among the potential threats to the maritime security of coastal states, ports and offshore installations. This threat can take the form of marine pollution, or a ship might be used as a weapon by terrorists to facilitate deadly attacks.

It is important to note that a seafarer might be a terrorist concealing his or her true identity. Therefore, PSC inspection procedures are absolutely important in order to diffuse the potential threats that might be brought

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<sup>461</sup> De Larrucea, J.R. and Mihailovice, C.S. (2010). The Port state Control Inspections and their role in Maritime safety: Specific case-Romanian Naval Authority. Available at <http://upcommons.upc.edu/e-prints/bitstream/2117/9656/1/PORT%20STATE%20CONTROL%20INSPECTIONS%20AND%20THEIR%20ROLE%20IN%20MARITIME%20SAFETY.pdf>. Accessed on 08 July 2015.

<sup>462</sup> Bateman (2012)

ashore through ships.<sup>463</sup> Worldwide, there are nine Port State Control regimes that help to eliminate substandard ships that are potential threats to the safety and security of coastal states.<sup>464</sup>

### **2.7.5 Regional maritime security architecture (MSR)**

According to a study undertaken by Multinational Experimental-7, there are six main factors that influence the formation of a good and functional MSR.<sup>465</sup> These are: a) Level of complexity within the region, b) Level and type of challenges or threats, c) Response to challenge, d) Capabilities, e) Ownership of the challenges, and f) Trust. These factors will be explored in the context of the EAC MSR in chapter seven.

## **2.8 Governance of maritime domains**

Maritime domain governance is part of global ocean governance. It may be described:

“as those formal and informal rules, arrangements, institutions and concepts which structure the ways in which seas space is used , how ocean problems are monitored and assessed, what activities are permitted or prohibited, and how actions and other response are applied”.<sup>466</sup>

Maritime domain governance gets much of its legal framework from the UNCLOS. Through the UNCLOS, maritime spaces have been divided into two major parts. The one part, there are maritime spaces that are under coastal states jurisdictions. The other parts comprise maritime spaces falling under international jurisdictions. Furthermore, for security

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<sup>463</sup>Yilmazel and Asyali (2005).

<sup>464</sup> The nine PSCs of the world: 1) the Paris MOU , 2) Tokyo MOU , 3) Indian Ocean MOU , 4) Mediterranean MOU , 5) Acuerdo Latino, 6) Caribbean MOU, 7) Abuja MOU, 8) Black Sea MOU and 9) Riyadh MOU.

<sup>465</sup>Multinational Experiment 7 (2013. p. 3-6). Maritime Security Regimes-a regional comparative study of some of existing regimes. Available at: <http://mne.oslo.mil.no:8080/Multinatio/MNE7produkt/MARITIMESE> [Accessed on: 26 September 2015]

<sup>466</sup> Rothwell and Stephens (2010. p.462) Sea also Juda and Hennessey (2001)

and economic purposes, the UNCLOS defined four maritime zones over which a coastal state has some sovereign rights and jurisdiction.

The four maritime zones are Territorial Sea,<sup>467</sup> the Contiguous Zone,<sup>468</sup> the EEZ<sup>469</sup> and the Continental Shelf.<sup>470</sup> This division of the sea waters has made the world's oceans better managed and reduced clashing interests among coastal states over the areas.<sup>471</sup> Perhaps, in fairness to all states, the UNCLOS gives equal rights to both coastal and landlocked states over the use of the high seas, including the right to access deep-sea resources.<sup>472</sup>

### **2.8.1 Maritime Domain Awareness (MDA)**

Governance of the Maritime Domain depends on effectiveness of Maritime Domain Awareness (MDA) plans. MDA is a term first used in the United States in 2005 and was subsequently adopted by the IMO In 2010. MDA is taken as an important and underlying foundation of ocean management and, increasingly, the regulation of shipping in coastal waters. In other words, MDA is a key to maritime security.<sup>473</sup> The IMO defines MDA as 'the effective understanding of anything associated with the Maritime Domain that could impact the security, safety, economy, or environment'.<sup>474</sup>

Traditionally, governance of the maritime domain was perceived to be a primary role of the coastal states only, in other words, through navies

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<sup>467</sup> UNCLOS, Art. 2.

<sup>468</sup> UNCLOS, Art. 33.

<sup>469</sup> UNCLOS, Art. 55.

<sup>470</sup> UNCLOS, Art. 76.

<sup>471</sup> (O'Rourke, 2014)

<sup>472</sup>(Mwenda, 2000) See also the UNCLOS, Part X - Right of access of land-locked States to and from the sea and freedom of navigation.

<sup>473</sup> Nimmich and Goward (2007)

<sup>474</sup> IMO (2010). Amendments to the international aeronautical and maritime search and rescue (IAMSAR) manual. MSC.1/Circ.1367. Available at:

[http://www.imo.org/blast/blastDataHelper.asp?data\\_id=29093&filename=1367.pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=29093&filename=1367.pdf)

[Accessed on: 15 October 2015].

and coast guards.<sup>475</sup> However, this has now been proved otherwise. Some civilian institutions such as maritime authorities and port authorities have collaborative roles in the governance of their national maritime domains. Depending on their work mandates, port authority has maritime security roles in internal waters, coast guards within Territorial Seas and navy in the EEZ and beyond.<sup>476</sup> States' Maritime authorities' roles in maritime security usually centre on security of ships flying its flag, including the security of the marine environment.<sup>477</sup> Those roles are also extended to include Port State Control (PSC) inspections. As can be seen in Figure 2-7 below, MDA is a combination of an intelligence gathering and situational analysis. It can be at national, regional and international level.<sup>478</sup>

Within a regional security context, threats in one state's maritime domain could well trigger regional insecurity. That is because most maritime security issues do not respect maritime borders, in particular non-traditional maritime security issues. That could lead to regional blockages on the free flow of international trade, rising of maritime transportation costs, and foreign investors being scared to invest in the region. The escalation of Somalia-based piracy between 2009 and 2013, for example, created significant international trade disruptions, increased transportation costs due to ships re-routing and extra insurance costs.

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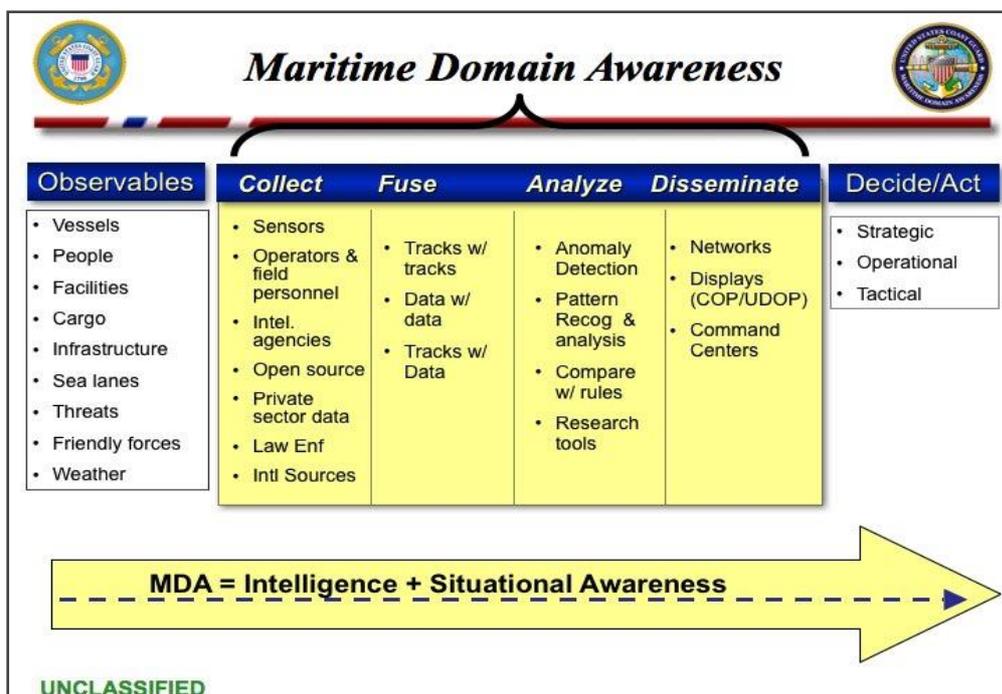
<sup>475</sup>Sandoz (2012)

<sup>476</sup> Vogel (2009)

<sup>477</sup> McNicolas (2008).

<sup>478</sup> The US National Plan to Achieve Maritime Domain Awareness. Available at: <http://www.virginia.edu/colp/pdf/NSMS-National-Plan-to-Achieve-Maritime-Domain-Awareness.pdf> [Accessed on: 15 November 2015].

**Figure 2-7: Maritime Domain Awareness- as defined by the US Coastguard in 2010<sup>479</sup>**



It is estimated that in this period the trade passing through the Gulf of Aden fell by 4.1 per cent,<sup>480</sup> and the shipping costs for dry bulk goods rose by around 8 per cent.<sup>481</sup> The Eastern African States, including the EAC States were those most affected.

### 2.8.2 Importance of Maritime Domain Awareness (MDA)

MDA is rather a process that designed to enable maritime community to avoid maritime threats by furnishing them with timely information

<sup>479</sup> US Coastguard (2010) Available at: <http://www.uscg.mil/hq/cg5/docs/MDA%20101%20Jan07.ppt> [Accessed on: 9 November 2015].

<sup>480</sup> Burlando, A., Cristea, A. and L.M.(2015). The Trade Consequences of Maritime Insecurity: Evidence from Somali Piracy. Available at: [http://pages.uoregon.edu/cristea/Research\\_files/PiracyTrade.pdf](http://pages.uoregon.edu/cristea/Research_files/PiracyTrade.pdf) [Accessed on: 15 October 2015]

<sup>481</sup> Besley, T., Fetzer, T and Mueller, H. (2012). The Welfare Cost of Lawlessness: Evidence from Somali Piracy. Available at: [http://www.dartmouth.edu/~neudc2012/docs/paper\\_121.pdf](http://www.dartmouth.edu/~neudc2012/docs/paper_121.pdf) Accessed on: 15 October 2015]

appropriated for right decision making. Specifically, MDA improves maritime security by:

- a) Quickly identifying an actual or potential event
- b) Making informed decisions
- c) Taking effective action
- d) Sharing knowledge with appropriate partners

### **2.8.3 Tools and Technologies that help to create MDA**

As has been explained previously, maritime domain Awareness is the effective way of understanding what is happening in the maritime domain in real time. For the maritime domain picture to be obtained, highly sophisticated hardware and software are needed. In case of commercial vessels, Automatic Identification System (AIS), Long Range Identification and Tracking of ships (LRIT) and Vessel Monitoring System (VMS) are widely used tools to create situational analysis. Both AIS and LRIT are parts of the IMO's safety and security requirement under SOLAS regulation V/19 and regulation V/19-1 respectively. A brief Explanation of each is given here.

#### **2.8.3.1 Automatic Identification System (AIS)**

Having the AIS transponder onboard ship is a mandatory requirement for all SOLAS commercial (non-fishing) ships over 300 gt, as well as passenger ships (regardless of size and weight).<sup>482</sup> AIS is a Very High Frequency (VHF) radio podcasting system that enables the exchange of information between ships and shore-based stations. Its coverage is up to 10-15 nautical miles ship-to-ship and up to 30-50 nautical miles shore-to-ship. The main purpose of a ship-to-ship AIS function is to

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<sup>482</sup> IMO (2003). Guideline for the Installation of a Ship-borne Automatic Identification System (AIS). Available at: <http://www.imo.org/en/OurWork/Safety/Navigation/Documents/227.pdf> [Accessed on: 15 November 2015]. The regulation requires AIS to be fitted aboard all ships of 300 gross tonnage and upwards engaged on international voyages, cargo ships of 500 gross tonnage and upwards not engaged on international voyages and all passenger ships irrespective of size.

assist in the avoidance of collision. It also increases the safety of shipping as a whole. AIS transponders are VHF systems which transmit the identity Maritime Mobile Service Identity (MMSI), IMO number, position, course and speed of the vessel along with a number of other parameters.

#### **2.8.3.2 Long Range Identification and Tracking of Ships**

The Long Range Identification and Tracking (LRIT) system is a designated IMO system designed to collect and disseminate vessel position information received from IMO member States ships that are subject to the SOLAS convention. SOLAS regulation V/19-1 requires every commercial vessel of 300 gross tonnage (gt) or upward (excluding fishing vessels), all passenger vessels regardless of their sizes, and mobile offshore drilling units to be fitted with the LRIT equipment.<sup>483</sup>

LRIT provides an enhanced level of MDA that is the first of its kind by providing the identity of the ship (IMO number), position (latitude and longitude), time and position. Having this information, the end user can build an exact track and audit track of the ship in equation for quite a long period of time. LRIT is a satellite-based, real-time reporting mechanism that allows unique visibility to position reports of vessels that would otherwise be invisible and potentially a threat to maritime security.

#### **2.8.3.3 Vessel Monitoring System (VMS)**

VMS is monitoring technics specifically designed for fishing vessels. Unlike other commercial vessels, fishing vessels are subject to far more regulations than ordinary vessels. While the IMO, for example, is responsible for safety and security of fishing vessels; the UN's Food and Agriculture Organisation (FAO) is primarily responsible for fishing controls and the International Labor Organisation (ILO) is concerned

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<sup>483</sup> Available at: <http://www.imo.org/en/OurWork/Safety/Navigation/Pages/LRIT.aspx> [Accessed on: 15 November 2015].

with seafarers' safety onboard fishing vessels. One of the great disadvantages of the VMS is that it is not governed by any universal agreement.

Unilaterally, coastal states and some Regional Fisheries Management Organisations (RFMOs) have made the VMS mandates to their fleets. The EU, for example, requires every fishing vessel of 12 metres or more to be fitted with VMS equipment and report its position every 2 hours.<sup>484</sup> VMS itself only monitors the position, and in some cases speed, while saying nothing about vessel activity and identity. However the modified VMS can transmit other information such as electronic catch reports, boarding and inspection information, permanent vessel data and so on, to fisheries management.

## **2.9 Roles of Navies and Coast Guards in the governance of the Maritime Domain**

Navies and coast guards are two non-civilian institutions of a coastal state. Although they have different roles, their work is complementary and may overlap. In some other countries such as Kenya and Tanzania, for example, navy and coast guard roles are almost inseparable when navies assume both roles.<sup>485</sup> Although coast guards report to civilian administrations, they are non-civilian institutions.

In the US, for example, the US Coast Guard (USCG) is one of the five armed forces of the United States that reports to the Department of Homeland Security. During war time, the USCG reports to the DoD.<sup>486</sup> It is important to understand that, traditional maritime security (inter-state conflicts) is a primary role of navies.<sup>487</sup> However, when it comes to non-

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<sup>484</sup> Marine and Management Organisation (2013). Vessels Monitoring System (VMS+) Guidance. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315662/vmsplus.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315662/vmsplus.pdf) [Accessed on 2 August 2015]

<sup>485</sup> Interviewees 5,9,10,11,17,18,19,45 and 47.

<sup>486</sup> USCG. Available at: <http://www.uscg.mil/top/about/> [Accessed on: 15 October 2015].

<sup>487</sup> Vogel (2009).

traditional maritime security threats, navies take some collaborative roles with other civilian and individual institutions.<sup>488</sup> That makes navies, as international operators, primarily concerned with national defence outside the coastal state Territorial Seas. Coast guards, on the other hand, function more as maritime police, preventing crime and promoting public safety.<sup>489</sup>

Because of financial and capacity limitations, most of the coastal states, African in particular, do not keep their Navy and Coast Guard separately. Instead, the Navy assumes Coast Guard's roles, although with some difficulties. The difficulties are partly caused by the training differences between navy and coast guard.<sup>490</sup> A Navy trains its sailors in the skills needed to perform foreign policy missions including peace keeping and to defend the nation in a real war. Coast Guard training focuses among other areas, on fisheries management, law enforcement and search and rescue.<sup>491</sup>

In the 21<sup>st</sup> Century, the demands for maritime law enforcement have increased due to escalation of non-traditional maritime security threats such as piracy, terrorism, and illegal fishing. These threats have outweighed the traditional ones such as conflicts among coastal states. For that reason, involvement of civilian and private institutions in the war against non-traditional maritime security threats is absolutely important. This is one of the key areas that are yet to be addressed in the EAC.<sup>492</sup>

Whilst Navies of the EAC's States are hardly collaborating with civilian institutions which have important roles to play in regional maritime security governance; perhaps this is due to the lack of regional maritime

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<sup>488</sup> Ibid.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid.

<sup>491</sup> Ibid.

<sup>492</sup> Interviewees 45 and 47.

institution both at the Community and national level.<sup>493</sup> As argued by Stubbs, “The likelihood of major combat operations at sea has diminished significantly for the next two to three decades. In its place, maritime security operations against numerous non-military, non-traditional, asymmetric threats-terrorists, criminals, pirates, smugglers, and assorted miscreants-are highly likely”.<sup>494</sup> That is perhaps advocating the need to engage navies in non-traditional maritime security issues.

## 2.10 Conclusion

The literature review reveals that the maritime security issues relating to the EAC maritime domain have not yet been researched and explored as they should be. Maritime security threats in the EAC maritime domain are taken for granted as being the same as those threats facing the Indian Ocean. That perception has long been proven wrong, because maritime security threats tend to be regionalised.<sup>495</sup> Geographical features, history, culture, and regional dependence on maritime activities are all factors differentiating the magnitude of maritime security threats.

Based on the literature review’s findings and some of the facts carried over from Chapter One, it becomes apparent that responsibility for EAC regional maritime affairs presently lies in the hands of the two coastal States, Kenya and Tanzania, but with little guidance from the EAC. Unilaterally, and sometimes through bilateral agreements with international actors, Kenya and Tanzania are responsible for their own maritime domains and regional maritime affairs.<sup>496</sup> While the EAC has all the necessary mandates to direct and supervise the EAC maritime

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<sup>493</sup> Ibid.

<sup>494</sup> Stubbs, B.B. 2005. Smarter Security for Smaller Budgets: Shaping Tomorrow's Navy and Coast Guard Maritime Security Capabilities. The Heritage Foundation. Available at: <http://www.heritage.org/research/lecture/smarter-security-for-smaller-budgets-shaping-tomorrows-navy-and-coast-guard-maritime-security-capabilities> [Accessed on: 14 October 2015]

<sup>495</sup> Bateman(2010).

<sup>496</sup> Interviewees 45 and 47.

domain, the lack of maritime experts at a regional level is one of the biggest challenges faced by the Community.<sup>497</sup>

The literature review together with Chapter one, found some flaws in the EAC's institutional framework. While there are eight institutions within the EAC to administer important development and infrastructure (see sections 1.3.2 and 2.3.3 on pages 14 and 50 respectively), the issue of maritime security in particular is floating freely without being attached to any of the EAC institutions. The recent move to create a maritime bench at the EAC head office in Arusha signifies that there is some awareness of the issue (see section 2.3.3 on page 50). Nevertheless, as noted it is hardly appropriate for the regional maritime affairs of an unsecured maritime domain that is full of economic activities to be run from a maritime bench.<sup>498</sup>

Therefore, and as identified in Chapter One, the lack of a steering maritime institution within the EAC is a 'lacuna' highlighted in this research, and for which it will suggest remedies. Through the literature review and fieldwork, the researcher discovered some surprising facts indicating that regional inland waters affairs are governed by two institutions (Lake Victoria Basin Commission (LVBC) and Lake Victoria Fisheries Organisation (LVFO)), but that no equivalent institutions exist to govern maritime affairs in the Territorial Seas, the Contiguous Zone and the EEZs. The next chapter, Chapter Three, will discuss research methodology adopted by this research. That will include informant selection processes, data collection techniques and data analysis procedures.

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<sup>497</sup> Ibid.

<sup>498</sup> Ibid.

### **3 Chapter Three: Research methodology**

#### **3.1 Introduction**

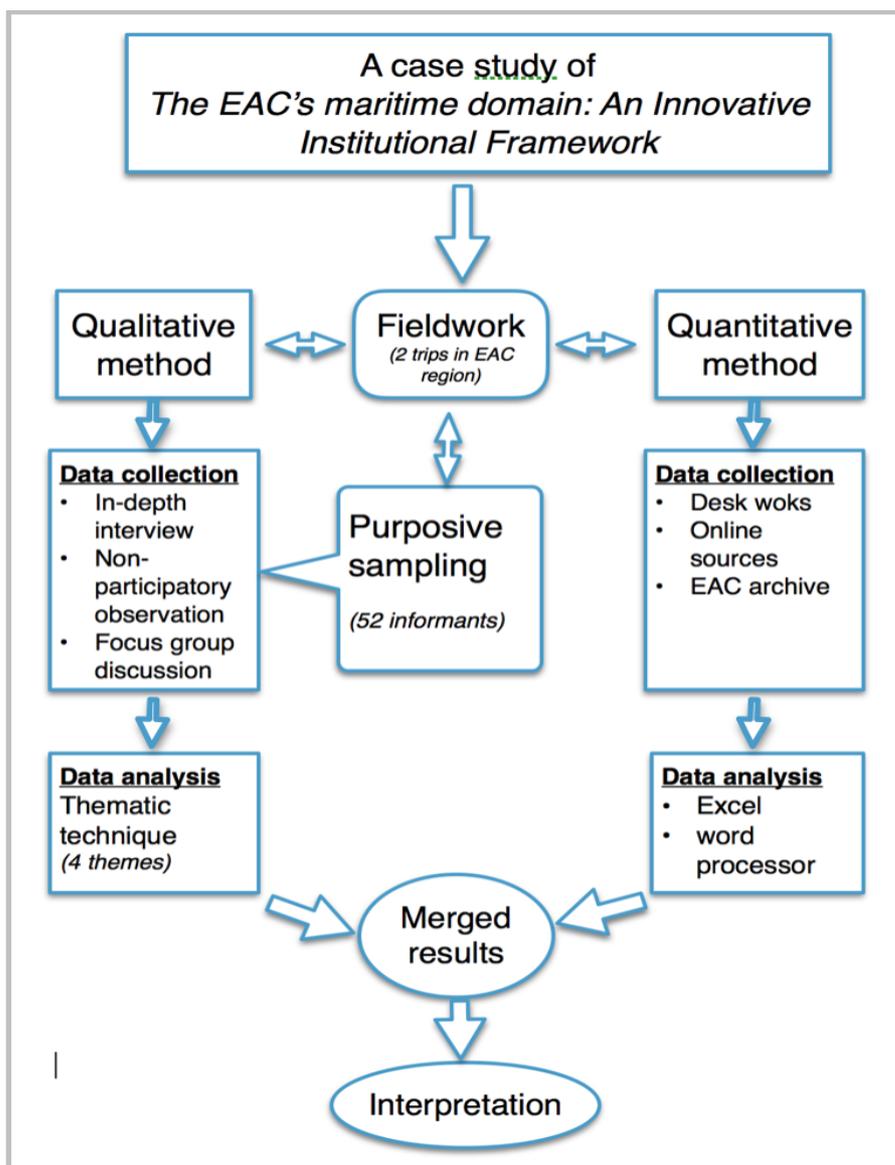
Previously in Chapter two, gaps and inconsistencies in the literature review relating to the EAC's maritime security governance were revealed. The literature review shows that the EAC maritime domain and its affairs have not been adequately researched. The existing literature available in international sources and even the EAC's own database do not provide any meaningful and ready-made information in the area of the EAC maritime security governance. This however, had an advantage that the methodology of this study had to be designed to depend on first-hand information by interviewing local maritime experts and stakeholders as see in Appendix 1.

Research methods are generalised and established ways of approaching research questions. These include how informants are selected and how data are collected and analysed. Research methods can either be qualitative or quantitative. In some other cases research could take the form of mixed methods by combining both qualitative and quantitative approaches in a single study. The present research uses mixed methods. Once a particular research method is selected, it becomes a research design. A research design is as a blueprint for conducting a research using a selected research method.<sup>499</sup> In other words, the research design as shown in Figure 3-1, articulates what data are required, what methods are going to be used to collect and analyse the data, and how all of this is going to answer the research question.

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<sup>499</sup> Burns and Grove (2003. p.195)

Figure 3-1: Research design<sup>500</sup>



### 3.2 Research design

This study uses a mix of qualitative and quantitative methods in the form of a case study of the EAC maritime policy, maritime security and regional integration within the context of the Law of the Sea and International Relations. The research used a purposive sampling technique to select its informants. Primary data were collected through

<sup>500</sup> Author (2016)

two fieldwork trips in the EAC, during which non-participatory observations, and in-depth interviews were the main data-collection techniques. Focus group discussions and documentary reviews were additional methods used to gather important data for this study (see Appendix 1 and Figure 3-1). Data collected outside the EAC region were mainly used to improve the validity and reliability of primary source data. These data were then analysed through thematic techniques. Microsoft Excel software was used to analyse numerical data. Because a large portion of this study was qualitative, the results were also interpreted qualitatively.

### **3.3 Mixed methods research**

As noted, this study uses a mixed methods research approach. Mixed methods research involves qualitative and quantitative projects being mixed in more than one stage of the study (questions, research methods, data collection and data analysis, and the interpretation or inference process).<sup>501</sup> On the one hand, qualitative research is primarily exploratory research that uses words instead of numbers or statistical inferences in explaining the results.<sup>502</sup> Qualitative research largely depends on the researchers' experience, as opposed to quantitative research, which depends on the research instruments. Therefore, the ability of the qualitative researcher to pick up a right research design is extremely important. This is one of the many areas where the author had to capitalise on his more than 20-year experience of the EAC maritime industry in order to obtain relevant data and information to support the study.

On the other hand, quantitative research means testing objective theories by examining the relationship among variables. These variable,

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<sup>501</sup> Creswell (2009)

<sup>502</sup> (Matthews and Ross, 2010)

in turn, can be measured, typically on instruments, so that statistical data can be analysed using statistical procedures.<sup>503</sup>

### **3.3.1 Why the mixed research method?**

It was necessary for the Author to use the mixed research methods because none of the individual methods (qualitative or quantitative) could stand, unsupported on its own. This is because this research contains both descriptive and numerical data and information. Furthermore, and as previously noted, the study needed much of the primary data which were mostly in qualitative form. The qualitative-primary data were then compared with a few available secondary sources which mostly, were in numerical form. This process of data comparison, by itself, was a means to improve the validity and reliability of the results.

### **3.4 Selection of research informants**

Informant selection (sampling) is one of the cornerstones of effective research, be it qualitative or quantitative. While quantitative research uses the probabilistic method to select its informants, most qualitative researchers prefer a non-probabilistic method commonly known as purposive sampling.<sup>504</sup> However, a purposive sampling technique can be applied in purely quantitative research as well as in the mixed methods research employed in this research. Purposive sampling is sometimes known as judgmental sampling. Creswell describes purposive sampling as a sampling process of purposefully selecting informants, sites, documents or visual material that will best help the researcher understand the problem and the research question.<sup>505</sup>

The author recruited 67 potential informants from Tanzania, Kenya, Uganda, Burundi, Rwanda and at the EAC head office in Arusha-Tanzania. Additionally, the author also recruited nine potential

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<sup>503</sup> Creswell (2009. pp. 222-230

<sup>504</sup>(Marshall, 1998)

<sup>505</sup>(Creswell, 2009,178)

informants from Djibouti, London and Lisbon. That created a sample size of 76 potential informants drawn-out from 19 institutions of the EAC and three institutions outside of the EAC region (see Appendices 1 and 2). The recruitment process was carried out by sending e-mails to potential informants together with an introduction letter that described the overall objective of the research and the role of informants should they agree to participate in it as mandated by the University Research Ethics committee. Telephone calls were further made to remind those who did not reply the e-mails. For those institutions within the reach of the author, he contacted potential informants physically. Eventually, 52 recruits agreed to participate in the research. That number gives a turn-out rate of approximately 68 per cent which is a good rate for research of this type (see Appendices 1 and 2).

#### **3.4.1 Why purposive sampling?**

In order to gather sufficient primary data needed by the research, it was necessary to interview and question a number of information-rich civil servants within the respective institutions of the EAC member States and some executives at the EAC head office in Arusha-Tanzania.

This research targeted informants who are information-rich, knowledgeable and have the necessary experiences of EAC maritime affairs to enable them to participate in the research. More importantly, the selection process considered the possibility of picking up informants who would be willing to share their experiences and respond to the Author's calls as many times as possible. Those were the main reasons why the purposive sampling technique was preferred over random sampling.

It was not possible to randomly select informants because that could result in picking up those who do not possess the above mentioned qualifications, and because the later are few in number. Furthermore, there was also a chance that informants selected randomly would not have turned out or refused to talk altogether and consequently that could jeopardise the entire research project.

The purposive sampling may inevitable be subject to researcher's bias. It is therefore, heavily dependent on the researcher's experience to pick the right informants. This is yet another area where the author had to capitalise on his long time experience of the EAC region and regional maritime industry to pick the most suitable informants. Section 3.7.2 shows how the bias effects associated with purposive sampling have been dealt with.

### **3.5 Data collection**

#### **3.5.1 Primary data**

Primary data were collected during six-months of fieldwork in EAC region. The fieldwork took place between 23 July and 31 October 2014 and between 17 September to 3 October 2015. There were also additional visits to Djibouti, Lisbon and London in an attempt to gather collaborative information regarding EAC maritime security (see Appendix 1). During the fieldwork, the following EAC cities were visited: Mombasa, Nairobi, Kampala, Kigali, Bujumbura, Dar-Es-Salaam and Zanzibar (see Appendix 1 for the dates).

The Author's main data-collection techniques were: in-depth interviews, non-participatory observations and focus group discussions. The majority of informants were interviewed at their work places as shown in Appendix 1. On 15 October 2014 and 16 September 2015, the Author also had an opportunity to form two focus group discussions in Mombasa-Kenya where most of the informants previously interviewed, were present. A focus group can be defined as 'a group of individuals selected and assembled by researchers to discuss and comment on, from personal experience, the topic that is the subject of the research.'<sup>506</sup>

Initially, a focus-group discussion was not considered as a possible data-collection option for this research. This was due to the level of

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<sup>506</sup>(Powell, Single and Lloyd, 1996)

complexity of the informants targeted by this study. It was believed that the informants could only rarely be grouped and put into discussions. Nevertheless, and as noted, the focus group discussion took place on 15 October 2014 and 16 September 2015 in Mombasa Kenya during the regional workshop titled '*validation workshop for the baseline study and status report of the maritime transport and port sectors in East Africa*' (See Appendix 1). The workshop had 44 participants from all the EAC member States. The Author was invited as a student and was given a chance to discuss preliminary findings of his research

During these two focus group discussions, the Author had an opportunity to clarify and validating information collected earlier from individual informants. The information which came out of focus group discussions was considered valid and reliable following cross-talks among informants themselves. Non-participatory observations were mainly done at the Dar-Es-Salaam Piracy Information Sharing Centre (ISC) in Tanzania on 2 October 2014, the European Maritime Safety Agency (EMSA) in Lisbon-Portugal on 15 April 2015 and at the Fulcrum Maritime System in London in the UK between 3 November to 19 December 2014. (see Appendix 1).

### **3.5.2 Secondary data**

In addition to primary data collected through in-depth interviews, non-participatory observations and two focus group discussions during the fieldwork, secondary data were also regarded as a vital supplement to better understand and define the research questions.<sup>507</sup> The literature review (Chapter Two) revealed that the EAC maritime security governance has not been adequately researched. The existing literature covers the entire Eastern African region from Gulf of Aden, Horn of Africa, the Western Indian Ocean all the way down to South Africa. The

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<sup>507</sup>(Schensul, 1999)

following important policy documents in addition to other online sources were examined as listed in Table 3-1.

**Table 3-1: Policies and Conventions reviewed<sup>508</sup>**

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|---|--|
| 1 | 2000 EAC Treaty: The Treaty establishing the EAC, as amended   |
| 2 | The Maritime Transport Act of 2006, Zanzibar   |
| 3 | The Merchant Shipping Act, 2003, Tanzania Mainland   |
| 4 | The Merchant Shipping Act, 2009, Kenya   |
| 5 | The United Nations on the Law of the Sea Convention (UNCLOS)   |
| 6 | The 1988 Convention for Suppression of Unlawful Acts Against and its Protocols   |
| 7 | The International Ship and Port Facility Security Code (ISPS Code)   |
| 8 | 2050 Africa Integrated Maritime Strategy   |
| 9 | A special report of validation workshop for the baseline study and status report of the maritime transport and port sectors in east Africa |

None of that research provides a broad picture of EAC maritime security as it relates to the region as a whole. There was therefore, limited and fragmented secondary literature to support this research. Even the EAC archive did not provide any meaningful information to support the research finding. The author however, managed to get some collaborative information from online sources, at the International Maritime Organisation in London and at the Djibouti Regional Training Centre in Djibouti between 1 to 5 September 2014 that improved his understanding of EAC maritime security governance.

### **3.6 Data analysis**

Data analysis is the process of making sense out of data.<sup>509</sup> As noted this study uses a mix of qualitative and quantitative research methods. The data processing and analysing process must follow therefore, a similar pattern. Much of primary data were analysed through thematic technique while secondary data and some numerical data collected

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<sup>508</sup> Author (2016)

<sup>509</sup>(Merriam, 1988)

during the fieldwork were organised and analysed through Microsoft Word and Excel softwares.

### **3.6.1 Primary data:**

During the three years of full-time research, the Author gathered a voluminous amount of information, he then reduces it to certain patterns (themes) and then interprets this information by using some schema. Schema describes a pattern of thought or behaviour that organises categories of information and the relationships among them.<sup>510</sup> In order to do that, much of the primary data were analysed through thematic analysis technique while others were processed through Excel software. Thematic analysis is a method for identifying, analysing, and reporting patterns (themes) within data.<sup>511</sup> Creswell sees thematic analysis as helping to cluster ideas that arise during active involvement 'in the field' so they are transformed, translated or represented in a written document.<sup>512</sup>

The data analysis started during the fieldwork, almost simultaneously with the data-collection process. Once data had been collected using the methods previously mentioned, it was immediately read and then coded (into segments). The themes were then used to test the research hypotheses. Because this research uses both qualitative and quantitative data, Microsoft Word and Excel software were used to organise descriptive and numerical data respectively and obtained from primary and secondary sources.

The actual data-analysis process started with reading transcribed data, line by line, and dividing the data into meaningful analytical units or segments. Coding is the process of organising and sorting research data into chunks or segments of text before bringing meaning to the

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<sup>510</sup> DiMaggio (1997. p. 23)

<sup>511</sup>(Boyatzis, 1998). See also Braun and Clarke (2008).

<sup>512</sup>(Thorne, 2000)

information.<sup>513</sup> When meaningful segments were located, they were codified accordingly. At that stage, some 50 segments emerged. This was a difficult part of the data analysis, because the coding process was started while fieldwork continued; therefore, the coding process was subject to extensive revision and arrangement as new segments emerged.

50 segments or codes were then narrowed down to 20 categories. A category is the process of expanding or broadening the meaning of the segments to fit the research purposes. The researcher read the codes repeatedly and made sense of them with reference to the interview. This required the Author to contact the informants repeatedly because all the important informants refused to be taped during the interview. However, because they all agreed to be contacted again in future for clarifications, the Author made a number of telephone calls and sent some e-mails to the previously interviewed informants to seek clarification on some important issues. These steps helped the author to come up with even clearer categories.

After the categorising process took shape, the author used deductive techniques to narrow down the categories into themes. The themes were then tested against the main research questions. Through the deductive process, 20 categories were then narrowed into four themes as shown below and further enriched on page 340.

- a) EAC federation processes
- b) Nexus between maritime security and state sovereignty
- c) Legal and Institutional frame
- d) Structural flaws within the EAC Secretariat

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<sup>513</sup>(Creswell, 2009)

### **3.6.2 Secondary data**

Because this research uses both qualitative and quantitative data, Microsoft Word and Excel were used to organise the numerical and descriptive data obtained from secondary sources as well as some numerical and statistical data obtained during fieldwork. The Author made a deliberate effort whenever possible to compare primary data with available secondary data obtained during the fieldwork, desk work or from international online sources. That was also a part of triangulation processes adopted by this research.

### **3.7 Challenges and potential research basis**

No research has ever been challenge and bias-free. This research threw up a number of challenges and biases that could have potentially compromised its validity and reliability. The biases were inherited from the choice of research design adopted by the Author. The biases include those occurred in the processes of informant selection (purposive technique), data collection methods, data analysis method (thematic technique) and those associated with researcher himself.

Validity is described as the degree to which a research study measures what it intends to measure.<sup>514</sup> Reliability refers to the extent to which studies can be replicated.<sup>515</sup> It requires that a researcher using the same methods can obtain the same results as those of a prior research assuming that conditions have not changed.<sup>516</sup> Unless the validity and reliability of research can be guaranteed, the credibility of research results would be questionable and the entire research might not be trusted. Therefore, addressing biases was profoundly important.

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<sup>514</sup>(Ibid, p. 190)

<sup>515</sup>(Creswell, 2009)

<sup>516</sup> Ibid.

### **3.7.1 The researcher as threat:**

Although this study uses a combination of qualitative and quantitative methods, a large part of the research is qualitative. In the qualitative research, the researcher remains as the main data collection tool. That was also a case of this research. The Author himself, selected informants, collected data, analysed and interpreted the data. All of these activities carried along potential threats to validity and reliability on research results.

It has to be noted that the Author's home country is Zanzibar-Tanzania where primary data were collected in a very familiar environment. The Author is a senior coastguard officer in the Zanzibar Coast Guard department (KMKM) and he is a Board member of the Zanzibar Maritime Authority (ZMA). It was absolutely impossible for the Author not to adopt the prejudices and attitudes of an environment with which the Author is intimately familiar during the fieldwork. However, the Author's experiences of EAC's maritime industry, was also an added advantage in the entire process of informant selection as well as in the fieldwork.

The following mitigations were applied throughout the research to minimise those impacts associated with author being involved to a great extent in the above mentioned research activities:

- The Author has undergone tremendous and rigorous trainings as a researcher and more importantly, as an interviewer. These courses were both carried out during his Master's degree (MBA) and PhD programmes at the University of Greenwich. The training improved the author's independence, interviewing skills and enabled author to remain himself all the way through.
- The Author maintains a high level of vigilance while selecting informants and collecting data in order to avoid misleading information from the informants, some of whom were junior to the author.
- The Author visited the EAC region twice between 23 July and 31 October 2014 and between 17 September to 3 October 2015 in

attempt to validate his findings and some informants were re-interviewed.

### **3.7.2 The informant selection process as a threat**

As previously noted, research informants were selected through a purposive sampling technique. Great care was exercised by the Author that the research sample contained only information-rich informants who were willing to take part in the research and who would be available throughout the length of the study. In addition to what the Author had done to prevent bias in the informant selection process, the following mitigations were applied throughout the research to minimise the prejudicial impacts that might have occurred due to the informant selection process:

- All informants were properly informed of the research aims and that participation is voluntary. Thus, they had a right to participate or not. Furthermore, the issue of confidentiality was discussed with all informants beforehand.
- Interviewing the same informants on several occasions and making observations more than once and over time.
- Comparing the results obtained with other evidence, more importantly those obtained outside the EAC region. That process was particularly meaningful when analysing flag state data of the Zanzibar Maritime Authority. Those data were compared with those obtained at the Fulcrum Maritime Service database. The Fulcrum Maritime Service is an IT service provider of the Tanzanian flag state based in London. The Author had seven weeks internship at the Fulcrum Maritime Services in London from November to 19 December 2014.
- Informants were interviewed on an individual bases as well as in groups. That was the case of two focus group discussions that took place in Mombasa on 15 October 2014 and 16 September 2015.

### **3.7.3 Data collection and analysis process as threat:**

The Wrong selection of informants would have had a direct impact on data collection and analysis processes. In this research the Author exercised extra care when selecting informants and make sure that selected informants have the right qualities needed by this research. The following measures were taken to improve validity and reality data:

- Two-column fieldwork notebook techniques were used during the fieldwork, especially in interviews. One column was used to record the Author's own personal experiences on subject matter, while the other column was used to record what the informants were observed doing or saying. In the end, the two were compared for discrepancies and blended together to produce meaningful results.
- Informants were interviewed and asked questions on different places, more than once and their answers were monitored for any variations
- Data collected during the fieldwork were compared with other sources of evidence to see if there could be any significant variations.
- From 3 November to 19 December 2014, the Author had done an internship at Fulcrum Maritime Services where most of the primary data relating to Tanzanian Flag State were compared and any variations observed were reported back to the informants for clarifications.

### **3.7.4 Challenges**

- In this research, the majority of informants are civil servants, and some of them are very senior officers in their institutions. Therefore, the recruitment process and the choice of participants posed a great deal of difficult for Author. However, 20-years experience of the Author in the region played a big

role in acquiring a good number of information-rich participants.

- There were many occasions where informants refused to share their knowledge and experience although their consents had been obtained in the early stages of the research. Some of them were willing to talk on an individual basis but refused to contribute to the focus group meeting in Mombasa. The Author tackled this issue by interviewing them in different ways that suited their conditions. That included two group discussions in Mombasa-Kenya.

### **3.8 Ethical considerations**

Ethical issues arise at almost every stage in research. Research ethics is specifically interested in tackling ethical issues when people are involved, and in this research people were involved as well. This research is multinational, involving the six member States of the EAC. Therefore, due to its nature and complexity, ethical issues were taken as a matter of high priority in order not to harm the informants, Author or the good reputation of the University of Greenwich. The main ethical issues addressed by this study are voluntariness, informed consent and privacy.

All informants were properly informed about the objectives of the study and their consent was taken as a matter of priority. Thus, privacy of the informants will be maintained even now that the research has been concluded. By special agreement, however, some informants agreed for their identities to be disclosed in the research reports. All informants were aware that they have a right to refuse to participate at the recruitment stage and or at any point in time during the research. This is clearly demonstrated by turn-out rate of 68 per cent which indicates that about 32 per cent of those initially recruited, exercised their right not to participate.

A well-crafted informed consent form was given to each individual informant or individuals who represented their organisations as mandated by the University's Research Ethic Committee. The informed

consent documents used had a university logo and were meant to communicate information about the subject, risk and benefits of the study and explained that informants' participation would be confidential, should they decided to participate. For these reasons, all the informants were highly aware of what the research was about and had the right to participate in the research and the freedom to decline.

Using the informed consent form, the informants were also aware that the information they would provide might be used in the research and/or for publication in an anonymous form. The informants were also informed of the length and way their data would be maintained. Data will be stored electronically (word processor documents, Microsoft Excel spread sheets, etc.) in the Author's password-protected laptop with a copy on a memory stick.

### **3.9 Conclusion**

This chapter has described the research methodology and design. The purpose of this research design is to maximise the provision of valid answers to the research questions (See Chapter 9). This was achieved through the use of a mix of qualitative and quantitative methods. The Author was main data collection instrument. Primary Data were collected by means of interviewing. The Author made sense of the data by using a thematic technique to analyse it and also ensured that the data was trustworthy. The Author also made sure that informants were properly informed and their consent was respected. The research guaranteed the informants' privacy and confidentiality.

The next chapter, Chapter Four, will discuss maritime security threats affecting the EAC maritime domain in detail. It will then further examine what the challenges are facing the EAC in addressing those threats and why it does not have a leading role in regional maritime security governance.

## **4 Chapter Four: Problems and Challenges in the EAC Maritime Domain**

### **4.1 Introduction**

The literature review highlighted the Kenya-Somalia maritime border dispute as the only traditional inter-state maritime security threat in the EAC maritime domain at the time of writing. Additionally, piracy, armed robbery against ships, smuggling of illicit drugs and weapons, human trafficking, maritime terrorism, illegal fishing and environmental destructions were also identified as maritime security threats in the EAC maritime domain.<sup>517</sup>

In this chapter, those maritime security threats will be examined in detail in order to explore their impact on the security of the Community and, in particular in the EAC maritime domain. The chapter shows how the EAC member States unilaterally implement Maritime Domain Awareness programmes with assistance from the international community.

### **4.2 Maritime security threats in the EAC Maritime Domain**

Like most of the African states, the EAC's maritime domain does not receive sufficient attention despite its importance to the regional economy and security.<sup>518</sup> The 1,950 km of shoreline and EEZ of about 384,000 km<sup>2</sup> offer great opportunity to the EAC for trade, offshore oil and gas, fishing and tourism.<sup>519</sup> The only downside is that the maritime domain is highly exposed to maritime security threats with fewer counter-threat measures and no direction at regional level.<sup>520</sup>

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<sup>517</sup> (Bichou, Bell, and Evans, 2013); (Ukele, 2013), see also KMA (2009)

<sup>518</sup> Buerger (2013) see also Porgieter and Pommerin (2009)

<sup>519</sup> Interviewees 48 and 52, also conference proceedings 'Validation workshop for the baseline study and status report of the maritime transport and port sectors in East Africa held in Mombasa-Kenya. (See 9.1.2.)

<sup>520</sup> Interviewees 45 and 47.

#### 4.2.1 Piracy and Armed Robbery against ships at Sea

Kenya and Tanzania, the only two coastal States of the EAC, are among the Eastern and Southern African States seriously and directly affected by Somali-based piracy. Pirates operating in the EAC maritime domain and shore have their roots in the neighbouring failed State of Somalia. In fact some allege that the failed State of Somalia be the source of all the maritime security issues of the EAC.<sup>521</sup> There is a strong connection between Somalia-based piracy and the escalation of maritime security issues such as illegal fishing and smuggling of small weapons and drugs in the EAC maritime domain.<sup>522</sup>

Although the epidemic of Somali piracy seems to have been stabilised, at the time of writing, the piracy problem in the region may have paused rather than ended.<sup>523</sup> This is because the root causes of Somali piracy have not yet been completely addressed. Among those strong root causes of Somali piracy are: absence of rule of law in Somalia, endemic insecurity, the high rate of unemployment, poverty and illegal fishing in Somali waters.<sup>524</sup> Because the EAC borders Somalia both on land and at sea, it is vulnerable to Somalia-based piracy and also terrorism. The evidence suggests that Somali pirates have sometimes been operating deep into Tanzanian maritime domain. This shows the remarkable maritime capability of the pirates, who are capable of operating as far as 1,400 nm from the Somali coast, far out into the Indian Ocean.

For example, the Saudi Arabia owned super tanker *the Sirius Star* was captured on 15 November 2008 at 450 nautical miles off the Kenyan coast.<sup>525</sup> On 18 November 2009, *The Maersk Alabama*, the US flagged

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<sup>521</sup>Vrey (2013)

<sup>522</sup> Vermaas, Huber and Kapitanskay(2010), see also Reith and Boltz (2011)

<sup>523</sup> Venugopalan, U. 2013. Is Somali Piracy Over? *CNN*.

<sup>524</sup> Beri (2011).

<sup>525</sup> The Guardian (2008). Pirates anchor hijacked super tanker off Somalia coast.

Available at: <https://www.theguardian.com/world/2008/nov/18/somalia-oil>

[Accessed on: 8 November 2015].

ship was attacked en route to Mombasa, Kenya.<sup>526</sup> An attempt on a Dutch container ship was over 500 nautical miles east of Dar-es-Salaam.<sup>527</sup> In all of these incidences, Somalia-based pirates were involved in the attacks. According to the International Maritime Bureau (IMB), there were 16 reported incidents of piracy and armed robbery against ships in the Kenyan and Tanzanian maritime domains between 2009 and 2015.<sup>528</sup>

This figure represents actual and attempted incidents which were approximately 2.75 per cent of all incidents caused by Somali piracy in the West Indian Ocean. Six of those incidents were associated with high-seas piracy and ten were armed robbery against ships. The majority of the incidents in Tanzanian waters were armed robbery against ships.<sup>529</sup> Nevertheless, authorities in the EAC region do not report events like these to avoid giving the region a bad name again. For example, apart from the reported incidents mentioned earlier, in 2009 there were in fact 29 piracy and armed robbery incidences in the Tanzania waters but that have never been reported by the Tanzanian authorities.<sup>530</sup>

It is difficult to quantify the exact economic costs of piracy in the region; nevertheless, the economic costs incurred are significant. For example, piracy has negatively impacted maritime trade, tourism, and, in extreme

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<sup>526</sup> McFadden, R.D. and Shane, S. (2009). In Rescue of Captain, Navy Kills 3 Pirates. *The New York Times*. Available at:

<http://www.nytimes.com/2009/04/13/world/africa/13pirates.html> [Accessed on: 8 November 2015]

<sup>527</sup> CNN (2008). Cargo ship outruns pirates off Tanzania. Available at:

<http://edition.cnn.com/2008/WORLD/africa/12/07/tanzania.pirates.boat.outrun/index.html?iref=hpmostpop> [Accessed on: 8 November 2015].

<sup>528</sup> ICC International Maritime Bureau (2015). Piracy and Armed Robbery Against Ships. Available at: [www.hellenicshippingnews.com/wp-content/uploads/2015/01/2014-Annual-IMB-Piracy-Report-ABRIDGED.pdf](http://www.hellenicshippingnews.com/wp-content/uploads/2015/01/2014-Annual-IMB-Piracy-Report-ABRIDGED.pdf) [Accessed January 2016].

<sup>529</sup> Interviewees 17, 18 and 19.

<sup>530</sup> Trade Mark South Africa (2012). Tanzania, Mozambique, SA ink pact to fight piracy. Available at: <http://www.trademarksa.org/news/tanzania-mozambique-sa-ink-pact-fight-piracy> [Accessed on: 8 November 2015].

cases, national stability, mostly in Kenya. It is estimated that Kenya lost between US\$129 and US\$795 million in tourism revenue in 2011; similarly, approximately between 3 per cent and 20 per cent of tourism jobs were lost,<sup>531</sup> and shipping costs to the EAC region rose by approximately 8 per cent.<sup>532</sup>

To put it in a clear context, in 2011, it is estimated that piracy cost the EAC's economy about US\$ 1.8 billion which is approximately 2 per cent of the regional GDP.<sup>533</sup> The economic costs of piracy to Kenya and Tanzania's economy account for 3.26 per cent and 1.28 per cent respectively.<sup>534</sup> These costs are based on revenue lost in the tourism sector and extra shipping costs to and from the region. Ultimately, the whole burden goes down to the final consumers through commodity price inflation. The evidence suggests that in 2012, prices of the commodities imported in region by sea were raised by 10 per cent.<sup>535</sup>

In 2013, a report issued by the World Bank and Interpol ruled out pirate cash inflows as being behind Kenya's real estate boom as had previously been thought.<sup>536</sup> The report further clarifies that on average, piracy's ransom money is approximately \$ 59 million per annum. Even if the entire haul of pirate money were invested in Kenya's real estate sector which is worth \$491 million per annum, it could not influence the industry as was previously thought.

Obviously, the report denies influence of piracy money in Kenya's real estate sector, but does not rule out the possibility of piracy money

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<sup>531</sup> Oceans Beyond Piracy, Economic Costs of Piracy, 2011, Available at: [http://oceansbeyondpiracy.org/sites/default/files/economic\\_cost\\_of\\_piracy\\_2011.pdf](http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf) [Accessed December 2015]

<sup>532</sup> Samoitis et al., (2013).

<sup>533</sup> See Appendix 4 for calculation (calculation does not include South Sudan). The figure calculated by the author based on available data and a fair estimation. This is one of the contributions of this research. The figure has never been calculated before.

<sup>534</sup> Ibid.

<sup>535</sup> Otto (2012).

<sup>536</sup> World Bank (2013).

entering Kenya's economy. The report however, acknowledges that piracy money is behind the boom in the khat 'Miraa' business between Kenya and Somalia. Because Khat- a mild amphetamine like stimulant- is unmonitored business in Kenya, it provides an open door for maritime criminals including piracy financiers 'kingpins' to launder dirty money.

#### **4.2.2 Maritime terrorism**

As noted in chapter two, sea piracy is frequently associated with maritime terrorism (see article published by author).<sup>537</sup> However, as explained, the two are different maritime crimes that require different countermeasures from policy makers (see section 2.5.4.2 on pages 93-97).<sup>538</sup> Based on the records of worldwide terrorist attacks, maritime terrorism is considered insignificant compared to land-based terrorism. According to the RAND Database of Worldwide Terrorism Incidents, out of the 30,126 terrorist incidents recorded worldwide between 1968 and 2007, only 136 (0.34 per cent) were against the maritime domain.<sup>539</sup> However, that does not rule out the possibility of there being a maritime terrorism incident in the EAC maritime domain.

While there have been no purely maritime terrorist attacks in the EAC's waters, such attacks are far from impossible. Al-Shabaab, the EAC's number one enemy, probably does not have the necessary maritime combat capabilities to deliver maritime terrorism attacks on its own. Nevertheless, Al-Qaeda, of which Al-Shabaab is an affiliate member, might be able to deliver some attacks from the sea, probably, against the EAC's primary ports of Dar-es-Salaam in Tanzania and Mombasa in Kenya.<sup>540</sup> However, Al-Shabaab will not be attacking every port, in particular those well-secured. Al-Shabaab will only attack ports with limited security and surveillance.

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<sup>537</sup> Hamad (2016). See Appendix 7, article no. 4

<sup>538</sup> Bellamy (2012. p. 78).

<sup>539</sup> Nicncic (2012. p. 2).

<sup>540</sup> Barnet (2013).

The equipment and training needed to detect divers using port sensors and optic netting is both expensive and sophisticated. This technology and technical training is only utilised in a limited number of African ports.<sup>541</sup> In this case it is not inconceivable for a combat diver with the most rudimentary skill set to breach port security and attack vessels undetected in the EAC region. The EAC ports (Dar-es-Salaam and Mombasa) have been accused of investing too much on cargo security while paying less attention to serious security issues such as stowaways and terrorism that could have devastating impact on people, vessels and general economy of the states.<sup>542</sup>

A nexus between Somali piracy and Al-Shabaab is not something to be ignored completely.<sup>543</sup> Although the evidence does not support the idea that the two are working together at the time of writing, there is a chance that Al-Shabaab might use pirates to deliver attacks at sea or facilitate in one way or another to deliver such deadly attacks.<sup>544</sup> In 2013, Al-Shabaab through the group spokesman “praised its pirate’s ‘brothers’ as ‘*Mujahideen*’, because they are at war with the Christian countries”.<sup>545</sup> The act of Al-Shabaab praising pirates is yet another indicator that the two groups might be mobilised to work together since they all, are at war against non-Muslim countries. There are some speculations that Al-Shabaab in collaboration with Al-Qaeda, train their maritime militants diving techniques through leisure diving schools in different parts of the world.<sup>546</sup>

In 2013, security analysts confidently predicted that the next maritime terrorism incidence will take place in the East African ports, most likely

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<sup>541</sup> Ibid.

<sup>542</sup> Jones (2013)

<sup>543</sup> Leonard and Ramsay (2013).

<sup>544</sup> Ibid.

<sup>545</sup> Ibid. p.129.

<sup>546</sup> Interviewees 46 and 47.

Mombasa.<sup>547</sup> This is due to slack security measures at the region's ports. The EAC ports appear to be easy targets for terrorism attacks. This is due to slack security measures at the region's ports. For example, two audits taken at the port of Mombasa in 2007 highlighted glaring shortcomings that made the premier port a soft target for terrorist attacks.<sup>548</sup> The audits were carried out independently, one by the US Government through the Anti-Terrorism Assistance Office and the second by the Kenya Maritime Authority.

Following the audit reports, the Kenyan Government quietly improved security at the port of Mombasa with assistance from the US Government.<sup>549</sup> Security improvements were made in the electronic surveillance systems and the physical security systems, as well as by increasing the police and security presence at the port. Nonetheless, there are some concerns that the security measures taken are not tough enough to scare terrorists. While security appears to have been improved at the port of Mombasa, corruption is yet another problem that might weaken the security of the port.<sup>550</sup> Through special arrangements with some corrupt officials and security personnel at the port, terrorists might overrun the port and deliver a deadly attack at the port and on other maritime infrastructures.<sup>551</sup>

Al-Shabaab's long experience of regional maritime domains (including the EAC ports), gives the group the opportunity to launch its next attack at sea, or against ports and shore installations or deploy its combat militants onto EAC shores using small boats.<sup>552</sup> The group has in recent years made a number of successful terrorism attacks over land in

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<sup>547</sup> Barnett (2013).

<sup>548</sup> AllAfrica (2007), Kenya: Country Moves to Tighten Security at Mombasa: <http://allafrica.com/stories/200710021056.html>, 2007 [Accessed on: 10 March 2016]

<sup>549</sup> Very and Mandrup (2015)

<sup>550</sup> Akwiri, J (2016). Kenya replaces Mombasa port management amid smuggling probe: *Reuters*. <http://af.reuters.com/article/investingNews/idAFKCN0VP0KX>, [Accessed on: 10 March 2016].

<sup>551</sup> Interviewees 46 and 47.

<sup>552</sup> *Ibid.*

various parts of Kenya. Some of the weapons and explosives used in those attacks may have been delivered onto Kenya's shores by boat.<sup>553</sup> This could include the 2011 terrorist incident at a Kenyan beachside resort, the Kiwayu Safari Village in which a British man was killed and a British woman, Judith Tebbutt, was taken hostage for about six months inside Somalia (see section 1.3.1 on page 13).

At the time of writing, there are 20 licensed offshore oil and gas blocks in the region. The oil companies have invested heavily in these blocks and some companies have already discovered massive oil and gas. These oil and gas activities have already created direct and indirect jobs and more to come. However, these oil and gas cities are also vulnerable to maritime terrorists. Maritime terrorists choose targets that fall into four categories: "a) Ships as iconic targets; b) ships/offshore installations as economic targets; c) ships as mass casualty targets; d) ships/other vehicles as weapons".<sup>554</sup>

According to 2015 UNCTAD's review of maritime transport report, there were 717 vessels having 5,234,918 dead weight tonnage (dwt) whose ownerships are not known. As shown in Table 4-1, although the number of 'unknown' ships has been declining since 2011, yet there are some ghost ships engaging on international voyages. There is no evidence to link these ships with military groups such as Al-Qaida or Al-Shabaab. Nevertheless, as long as the true identities of these ships are not known, they might be used to deliver terrorism attacks anywhere on the globe, including at the EAC shore.

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<sup>553</sup> Ibid.

<sup>554</sup> Murphy (2007)

**Table 4-1: Ships whose owners are unknown<sup>555</sup>**

|                    | <b>2011</b> | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |
|--------------------|-------------|-------------|-------------|-------------|-------------|
| No. of Ships       | 6,815       | 7,179       | 750         | 649         | 717         |
| Dwt (000)          | 126,581     | 126,317     | 5,297       | 3,696       | 5,234       |
| % of world tonnage | 10%         | 9%          | 0.33%       | 0.22%       | 0.30%       |

### **4.2.3 Illegal, Unreported and Unregulated (IUU) fishing**

Illegal, unreported and unregulated (IUU) fishing refers to illegitimate fishing practices.<sup>556</sup> There is a strong connection between Somali-based piracy and the escalation of other maritime security issues in EAC maritime domain, such as illegal fishing and the smuggling of small weapons and illicit drugs.<sup>557</sup> Due to its sheer size (see section 3.2), the EAC maritime domain remains largely unpoliced all year round. This is partly explained by the lack of proper surveillance mechanisms and the inability of law enforcement agencies based along 1,950 km of shoreline to patrol 384,000 square kilometres of maritime domain.<sup>558</sup>

The law enforcement agencies do not have enough resources and technical capabilities to scare pirates. Pirates, therefore, capitalise on the loophole by operating at liberty, almost beyond any authorities' radars. Pirates in the region support foreign illegal fishing boats by providing them with cover in return for the trafficking of humans and narcotics.<sup>559</sup> They also prevent local fishermen from reaching the high seas, where pirates and illegal fishermen have virtually claimed control of the area.<sup>560</sup>

In 2014, it was assessed that IUU fishing in the EEZ of the EAC cost Kenya and Tanzania US\$111.4 and US\$220 million per year

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<sup>555</sup> UNCTAD annual report of (2011, p. 46), (2012, p.41), (2013, p. 43), (2014, p.37), and (2015, p.36).

<sup>556</sup> Boto, La Peccerella and Scalco(2009)

<sup>557</sup> Grossman-Vermaas, Huber and Kapitanskay (2010), Schbley and Rosemau (2013).

<sup>558</sup> Interviewees 12,13 ,14, 45 and 47.

<sup>559</sup> Schbley and Rosenau (2013. p.21)

<sup>560</sup> Interviewees 12,13 and 14, see also interview extract A.

respectively.<sup>561</sup> While these statistics represent lost revenue in fishing, they only represent 15 per cent of regional illegal fishing data. Some 85 per cent of regional fishing revenue comes from inland waters, where illegal fishing is also extremely common.<sup>562</sup> Fishing is an EAC dependable industry for thousands of coastal people on account of its provision of income, employment (direct and indirect from associated businesses and trades) and food security.<sup>563</sup> Nevertheless countering IUU fishing does not appear to be a priority for the respective authorities of the EAC member states.<sup>564</sup>

IUU fishing in the EAC is undertaken by both locals and foreigners. Locals run small-scale fisheries in reserved fishing grounds. That is done through overfishing and the use of dynamite and unauthorised fishing nets. Foreign fishing boats, however, are used for large-scale illegal fishing in the EEZ. While local fishermen do not have a mandate to fish in reserved areas, some foreign fishing boats engaged in illegal fishing appear to have been licensed by the appropriate government authorities to fish in the EEZ. While both practices are considered illegal, the authorities appear to be losing the war against illegal fishing in the EEZ.<sup>565</sup> The lack of Maritime Domain Awareness is a big factor leading to the escalation of illegal fishing in the region. Monitoring, control and surveillance are virtually non-existent or extremely ineffective.<sup>566</sup>

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<sup>561</sup> Razafandsionana, M. 2014. Mozambique, Tanzania and Kenya lose out in the global fisheries trade. *Indian Ocean Observatory*. Available at: <http://www.theioo.com/index.php/en/economy/item/407-mozambique-tanzania-and-kenya-lose-out-in-the-global-fisheries-trade/407-mozambique-tanzania-and-kenya-lose-out-in-the-global-fisheries-trade> [Accessed on: 15 December 2015].

<sup>562</sup> Interviewees 45 and 47.

<sup>563</sup> Mombasa Conference, see section 9.1.2.

<sup>564</sup> Anderson, J. 2012. Options to Reduce IUU Fishing in Kenya, Tanzania, Uganda and Zanzibar, *Indian Ocean Commission*. Available at:

[http://commissionoceanindien.org/fileadmin/projets/smartfish/Rapport/OPTIONS\\_TO\\_REDUCE\\_IUU\\_FISHING\\_IN\\_KENYA\\_TANZANIA\\_UGANDA\\_AND\\_ZANZIBAR.pdf](http://commissionoceanindien.org/fileadmin/projets/smartfish/Rapport/OPTIONS_TO_REDUCE_IUU_FISHING_IN_KENYA_TANZANIA_UGANDA_AND_ZANZIBAR.pdf) [Accessed on: 15 December 2015]

<sup>565</sup> Interviewees 12, 13 and 14, see also interview extract A for interviewees 12 and 13.

<sup>566</sup> Interviewees 12 and 13, interviewed together.

It is alleged that regional fishing authorities from Kenya and Tanzania, including Zanzibar, are not synchronised towards IUU fishing.<sup>567</sup> Kenya and Tanzania are both state parties to the Indian Ocean Tuna Commission (IOTC), but they rarely work together.<sup>568</sup> The IOTC is an organisation responsible for the management of tuna and tuna-like species through cooperation among state parties and non-state parties.<sup>569</sup> The lack of cooperation causes discrepancies in reporting catches and IUU fishing in the region; hence there is less effective control over fish stocks.

In Kenya, for example, responsibility for fisheries lies with the Ministry of Fisheries Development (KMFD), which is headquartered in Nairobi but has an important technical and monitoring office in Mombasa.<sup>570</sup> This dual-office practice allows fishing licences to be issued in Nairobi despite experts in Mombasa not having finished scrutinising processes. This often allows poachers to operate without a trace at sea.<sup>571</sup>

In Tanzania, fisheries are not a 'Union matter'. The words "union matters" and "non-union matters" are absolutely fundamental in the URT maritime domain. They indicate a borderline between authority and power of the URT government and that of Zanzibar.<sup>572</sup> Therefore, they are literally governed separately by the respective fishing authorities of the Tanzanian mainland and Zanzibar.

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<sup>567</sup> Ibid.

<sup>568</sup> Ibid.

<sup>569</sup> Ibid.

<sup>570</sup> Interviewees 14.

<sup>571</sup> Ibid.

<sup>572</sup> Initially, the "union matters" were agreed to be eleven (11); nevertheless, the list was inflated to twenty two (22) within a short while. Amazingly the maritime affairs are not in the list, hence regarded as "non-union matters". For that reason, fishing within Territorial Seas and the Flag State issue are just examples used in this thesis that are regarded as "non-union matters"; purely dealt with individually by Tanzania mainland and Zanzibar. See 1<sup>st</sup> Schedule of the constitution of the United Republic of Tanzania (Cap. 2) of 1977 as amended. See also Alexander et al., 2013.

In Tanzania, for example, through special agreements, fishing beyond 12 nautical miles is considered a 'Union matter'. Therefore, fishing in the EEZ is governed by the Deep Sea Fishing Authority (DSFA) on behalf of the United Republic of Tanzania. However, fishing within 12 nautical miles is governed individually by the fisheries authorities of the Tanzanian mainland and Zanzibar. This is said to be another obstacle in the war against IUU fishing, in particular fishing for tuna, since the region is well known for its large stock of tuna and tuna-like species.<sup>573</sup>

The surveillance systems used by the different authorities in the region are not compatible with each other, so data cannot be easily shared. The Vessel Monitory Systems (VMSs) used by the authorities are not compatible with the one used by the IOTC.<sup>574</sup> Hence, there is difficulty obtaining standardised statistics on the regional IUU fishing problem. The ability of the regional authorities to enforce law and regulations to the licensed fishing boats is absolutely limited. To make matters even worse, the Tanzanian flag has been found flying on a number of illegal fishing boats across the globe and in the region.<sup>575</sup>

#### **4.2.4 Illicit drugs trafficking**

The nexus between piracy and other transnational threats in the EAC region is very high.<sup>576</sup> Therefore, the existence of piracy in the EAC Maritime Domain influences among others threats, existence of illegal fishing and trafficking of narcotics and small weapons. The coasts of Kenya and Tanzania including that of Zanzibar are well known for illicit drugs trafficking, in particular heroin and cocaine.<sup>577</sup> While the EAC

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<sup>573</sup> Interviewees 12 and 13, interviewed together.

<sup>574</sup> Ibid.

<sup>575</sup> Ibid.

<sup>576</sup> Schbley, G. Rosemau, W. 2013. Piracy, Illegal Fishing, and Maritime Insecurity in Somalia, Kenya, and Tanzania. CNA Analysis & solution. Available at: [http://oceansbeyondpiracy.org/sites/default/files/attachments/CNA\\_Sep%202013\\_Piracy%2C%20Illegal%20Fishing%2C%20and%20Maritime%20Insecurity.pdf](http://oceansbeyondpiracy.org/sites/default/files/attachments/CNA_Sep%202013_Piracy%2C%20Illegal%20Fishing%2C%20and%20Maritime%20Insecurity.pdf) [Assessed on: 9 November 2015].

<sup>577</sup> Interviewees 10 and 11.

region is used as a transit for illicit drugs from Afghanistan to Europe;<sup>578</sup> the regional internal market for illicit drugs is also very big. It is estimated that, internal users of illicit drugs consume over \$160 million worth of heroin and cocaine per year.<sup>579</sup>

Drugs heading to Europe pass through Mombasa port in Kenya, and through Dar-es-Salaam, Tanga, Lindi and Zanzibar in Tanzania. Figure 4-1 shows the volume of heroin in kilograms forfeited in those areas. There are concerns that the central authorities in the EAC countries are weak results in ease for traffickers.<sup>580</sup> Surprisingly, traffickers use even airports and postal service to transport drugs without authorities being able to catch them. Corruption is also said to be additional factor fuelling mass illicit drugs in the EAC region.<sup>581</sup>

On 13 January 2001, the EAC head of States of Kenya, Tanzania and Uganda sign off the 'Protocol on Combating Drugs Trafficking in the East African region'.<sup>582</sup> However, its implementation has been met with many difficulties, more seriously, at operational level. The EAC borders lack equipment and skilled and honest staff to tackle the drug trafficking problem.<sup>583</sup>

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<sup>578</sup> Barons, L. 2015. Kenya's Drug Barons. Available at: <https://correctiv.org/en/investigations/mafia-africa/articles/2015/04/16/kenyas-drug-barons/> [Accessed on: 8 November 2015].

<sup>579</sup> UNODC (2013.p.25).

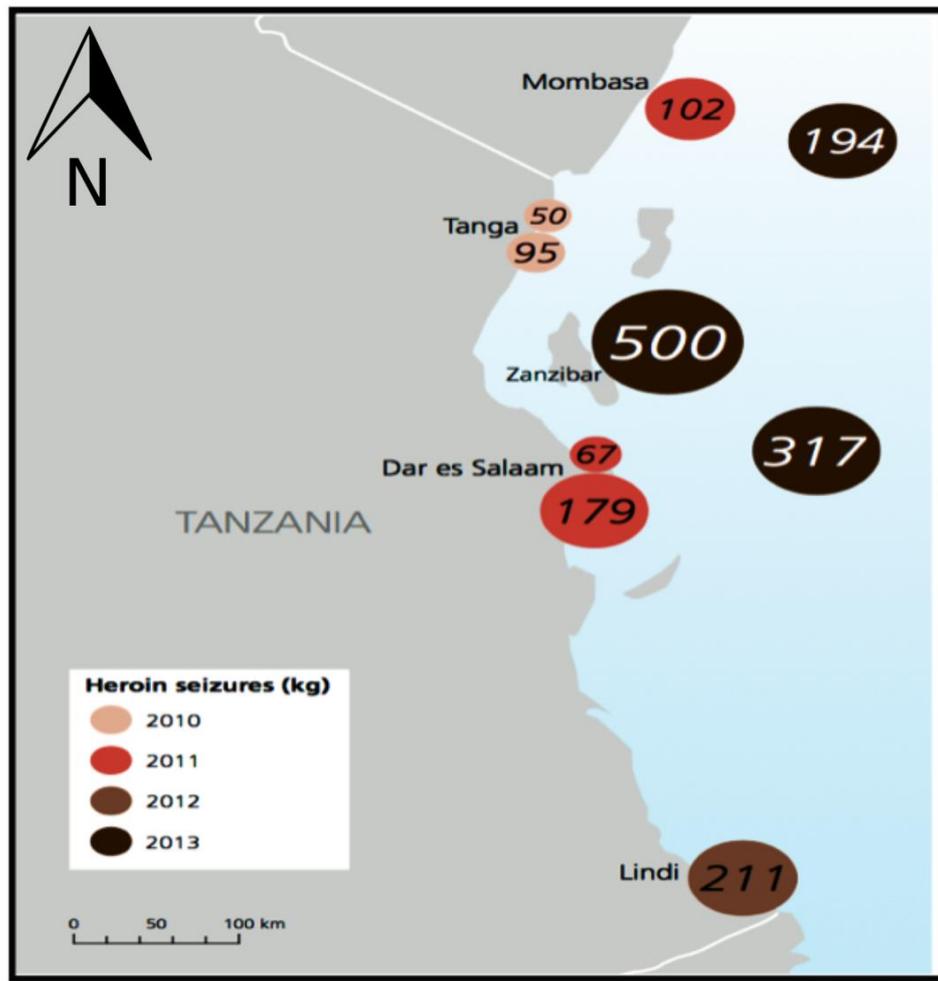
<sup>580</sup> Interviewees 10 and 11.

<sup>581</sup> Ibid.

<sup>582</sup> EAC (2001). Available at : [http://www.eac.int/legal/index.php?option=com\\_docman&task=doc\\_download&gid=170&Itemid=47](http://www.eac.int/legal/index.php?option=com_docman&task=doc_download&gid=170&Itemid=47) [Accessed on: 8 November 2015].

<sup>583</sup> Interviewees 45 and 47.

Figure 4-1: Location of Large Heroin Seizures, 2010-2013<sup>584</sup>



#### 4.2.5 Kenya-Somalia maritime border dispute

As noted in 1.3.1 page 12, there is an on-going maritime border dispute between Kenya and Somalia.<sup>585</sup> Following the failure of a number of diplomatic talks that attempted to end the conflict amicably, Somalia filed a case to the International Court of Justice (ICJ). Both parties in this dispute are state parties to the UNCLOS, and both countries have recognised the court's jurisdiction, which is a prerequisite for cases there to continue. However, Kenya challenged a case filed by Somalia to the International Court of Justice (ICJ) as invalid. Kenya objects to the court hearing the case, which it considers to have been instituted in violation

<sup>584</sup> UNODC (2013)

<sup>585</sup> Devan (2013), Mbaria (2014), Farah (2015)

of a 2009 Memorandum of Understanding (MoU) between Kenya and Somalia which insists on amicable solution to the disputed maritime border.<sup>586</sup> Hearings have taken place and (as on 23 September 2016) and on 2 February 2017, the ICJ issue a preliminary ruling in favour of Somalia.

Somalia filed the case following a failure of the two parties to reach an agreement over the disputed sea area according to the 2009 MoU. While Kenya was keener on amicable agreement, it already failed to meet the deadline set by the UN Commission on the Limits of the Continental Shelf (CLCS) which was in May 2009. Consequently, Kenya has to present to the CLCS evidence of what it believes should determine its sea boundary with Somalia.

The escalation of the Kenya–Somalia maritime border dispute is largely due to the possibilities of there being huge oil and gas reservoirs and massive fish stocks within the disputed area. While Kenya, for example, has already given seven exploration rights to “Total” and “Eni” oil companies in the disputed triangle,<sup>587</sup> Somalia claims that it has finished its oil and gas explorations in the disputed area. Plans are underway for Somalia to get some investors into its oil and gas industry.<sup>588</sup>

The triangle ABC in Figure 4-2, below, is a disputed area that stretches over 100,000 square kilometres. The line marked ‘AC’ is what is proposed by Somalia as the maritime border. Somalia’s claims are based on its own Jurisdictions, Law no. 37 of 10 September 1972 which

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<sup>586</sup> The 2009 MoU- see 9.2.5.

<sup>587</sup> Ibid. See also Jamah, A. (2015). Kenya, Somalia maritime dispute rages. *Standard Digital News*. Available at: <http://www.standardmedia.co.ke/article/2000169027/kenya-somalia-maritime-dispute-rages> [Accessed on 8 August 2015]

<sup>588</sup> Gridneff, I. (2015). Somalia may pay 90% of oil revenue to explorer under deal. *BloombergBusiness*. Available at: <http://www.somalia-oil-gas.com/soma-oil-gas-exploration-limited-soma-oil-gas-company-announces-sponsorship-2nd-somalia-oil-gas-summit/> [Accessed on 8 August 2015], See; <http://www.odinafrica.org/news/139-african-maritime-border-disputes.html> [Accessed on: 9 November 2015].

defines Somalia's Territorial Seas 200 as extending out nautical miles.<sup>589</sup> The law was reaffirmed on 24 July 1989 when Somali ratified the UNCLOS. Kenya argues that the current sea boundary with Somalia, the line marked 'AB', should stand because it is parallel to the Tanzania-Kenya sea border, which takes the same shape and has been in use since 1924.

**Figure 4-2: Kenya-Somalia Border Dispute<sup>590</sup>**



<sup>589</sup> National Claims to Marine Area. Law no. 37 of 10 September 1972, Available at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/SOM\\_1972\\_Law.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/SOM_1972_Law.pdf) [Assessed August 2015]

<sup>590</sup> Modified by author from Google maps

It has to be remembered that the Kenya–Somalia maritime border is also an EAC maritime border as shown in Figures 6-4 on page 237. For this reason, the conflict directly affects the security of the EAC region and the wider region, more importantly on regional ‘blue economy’ initiatives. For example, the border conflict could also affect the Manda Bay, where Kenya has a naval base, Camp Simba. In this area, the US operates the Combined Joint Task Force and a joint counter-terrorism initiative for the Horn of Africa. Therefore, this is clearly a security threat to the EAC as a whole. The economic effects of this border conflict are apparent to the regional ‘blue economy’ initiatives.

#### **4.3 Challenges in the EAC’s maritime domain**

Every state is responsible for the governance of its own maritime domain. Nevertheless, it is practically impossible for states to govern their maritime domains unilaterally. This is because most of non-traditional maritime security threats are transnational and the oceans and seas do not have physical fences to prevent criminals from crossing boundaries. Environmental threats and industrial accidents are even oblivious to such boundaries. For that reason, the governance of the maritime domain against maritime security threats caused by non-state actors—such as piracy, illegal fishing, trafficking of narcotics, weapons and humans, and environmental degradation—poses a great deal of difficulty for coastal states without some sort of cooperation.

The governance of the EAC maritime domain is in the hands of Kenya and Tanzania, which are the two coastal States of the Community. Although the EAC, in its current position, does not ‘own’ the regional maritime domain, it does have some authoritative powers over the regional maritime domain through Kenya and Tanzania. As with other IGOs, this presents an opportunity for the EAC to take a leading role in the governance of regional maritime security.

According to the 2050 AIMS, successful implementation of the blue economy concept depends on how regional organisations, such as the EAC, steer maritime governance.<sup>591</sup> Maritime governance is an essential element of that blue economy concept, set out in the 2050 AIMS. However, for the EAC to be able to demonstrate leadership, it really needs its own maritime security strategy, and authority to implement it, in the first place.

An EAC maritime security strategy, which currently missing, would be able to align regional maritime security needs with those of its member states, as well as those stipulated in the 2050 AIMS. An EAC maritime security strategy this is a short-term target of the 2050 AIMS that is to be met before 2018. At the time of writing, there is no evidence whatsoever to suggest that the EAC will meet this deadline.<sup>592</sup> This is in contrast to other African IGOs, such as the SADC, the IGAD and the ECCAS, which almost all have maritime security strategies in place. The IGAD has already launched a final draft of its strategy, which is compliant with the 2050 AIMS. The absence of any EAC maritime security policies, and, more importantly, a maritime security strategy, leaves the region with a disjointed maritime security approach that does not support cooperation at the national and regional levels,<sup>593</sup> (see also Chapter Eight for more detail on this).

The EAC's member States have overlapping memberships in other regional organisations, such as the SADC, the IGAD and the ECCAS. In these IGOs, there are already maritime security strategies in place, and the EAC's member States would be expected to implement their directives in the EAC's maritime domain (see Chapter Eight). Clearly, there are some foreign jurisdictions within the EAC's maritime domain that create further mismanagement of the regional maritime security

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<sup>591</sup> 2050 AIMS, Art 21 and 26.

<sup>592</sup> Interviewee 45 and 47.

<sup>593</sup> Ibid.

regime of the EAC.<sup>594</sup> These gaps in the EAC's maritime security governance are, however, the principal justifications for this research.

The EAC needs to strengthen its Maritime Domain Awareness (MDA) programme in order to have real maritime situation awareness. MDA, as a crucial part of any maritime security strategy, is a combination of intelligence information and situational awareness (see section 2.8.1). As seen in Chapter Two, MDA is an effective mechanism that empowers states/regions to understand anything associated with the maritime domain that could impact the security, safety, economy, or environment.<sup>595</sup> As a region, the EAC has two important Information MDA's Sharing Centres (ISCs) in Dar-es-Salaam, Tanzania and Mombasa, Kenya.<sup>596</sup> These ISCs are two of the three ISCs under the Djibouti Code of Conduct (DCoC); another is in Sana'a, Yemen.

As shown in Figure 4-3, the ISCs cover a wide area and could probably provide much-needed maritime situational awareness data for the entire Horn of Africa, Western Indian Ocean and Southern African region. However, situational awareness needs to be combined with intelligence information if MDA is to produce meaningful results. While intelligence information is a prerequisite for MDA, Kenya and Tanzania, like most coastal states, do not share their intelligence information as it should be shared. This is partly caused by their different political ideologies, economic rival, the lack of an internal maritime security strategy, and the absence of maritime security guidelines at the Community level.

Having these two ISCs is viewed as a big boost to the EAC's maritime awareness. However, the sustainability of these ISCs is the source of the most concern. To run these centres, funds and capacity are

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<sup>594</sup> Ibid.

<sup>595</sup> IMO (2010). Amendments to the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual. Available at:

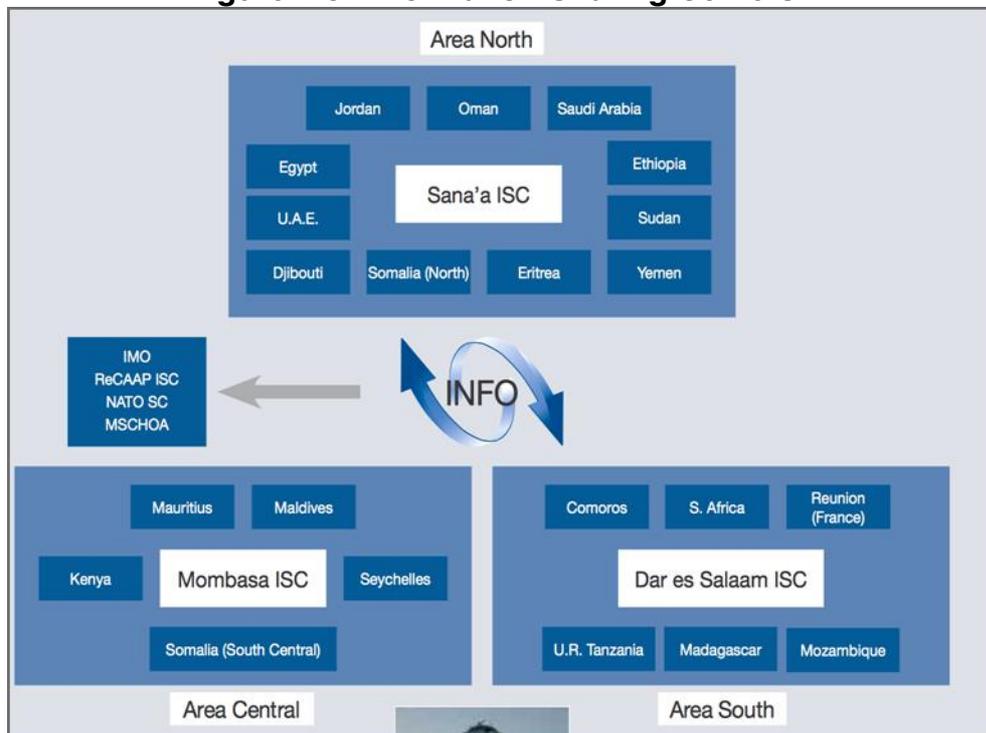
[http://www.imo.org/blast/blastDataHelper.asp?data\\_id=29093&filename=1367.pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=29093&filename=1367.pdf)

[Accessed on: 11 November 2015].

<sup>596</sup> Interviewees 9,10,11,14,15,17,18,19, 45 and 47.

needed.<sup>597</sup> Neither the EAC nor its members contribute to the DCoC's trust fund. Moreover, none of the DCoC's state parties contribute to the fund. This means that foreign aid is what is running the centres.<sup>598</sup>

**Figure 4-3: Information Sharing Centers<sup>599</sup>**



There are many of costs associated with buying data, especially data from Long-Range Identification and Tracking (LRIT) of ships' information.<sup>600</sup> Together with the Vessel Monitoring System (VMS) from fishing vessels and the Automatic Identification System (AIS), LRIT data provide an overall real-time picture of the maritime domain. Therefore, this is one of the areas that the EAC needs to think about carefully if it is not to lose these ISCs altogether in the future.

<sup>597</sup> Interviewees 45 and 47.

<sup>598</sup> Ibid.

<sup>599</sup> IMO. Available at: [https://ec.europa.eu/jrc/sites/default/files/IMO\\_presentation.pdf](https://ec.europa.eu/jrc/sites/default/files/IMO_presentation.pdf) [Accessed on: 19 November 2015].

<sup>600</sup> Interviewees 33, 34 and 37.

These gaps in regional MDA create discrepancies in the surveillance, response and enforcement capability of the EAC region in the war against non-traditional maritime security threats. Consequently, it allows criminals (mostly illegal fishermen) to capitalise on these governance loopholes by operating in the EAC's maritime domain with liberty.

- a) **Surveillance:** In an attempt to improve their surveillance capabilities, Kenya and Tanzania have recently improved their coastal surveillance assets with the assistance of partners such as China, the US and the EU. Unfortunately, given the sheer size of the EAC's maritime domain—200 nm of EEZ stretched over an area of 384,000 km<sup>2</sup> (approximately 111,956 nm<sup>2</sup>)—the ability of the region to cover such a vast maritime space is questionable. As previously explained, the region largely depends on the DCoC's ISCs at Dar-es-Salaam, Tanzania and Mombasa, Kenya for intelligence information gathering. However, these centres have their limitations when collecting information beyond 40 nm.<sup>601</sup>

The lack of coastal radars that would otherwise supplement ISCs is yet another limiting factor in the surveillance of the EAC's maritime domain.<sup>602</sup> The ability of these States to deploy air assets for maritime surveillance is almost non-existent. This is due to the lack of aircraft and, even more importantly, the costs associated with the processes. One of the main disadvantages of these centres lies with their failure to engage the local community as a source of intelligence information.<sup>603</sup>

Countries such as India have come up with indigenous short-term solutions to cover up the shortage of air and naval assets for

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<sup>601</sup> Interviewees 17 and 18.

<sup>602</sup> Ibid.

<sup>603</sup> Interviewees 17,18, 45 and 47.

maritime surveillance, using local fishermen as a main source of intelligence information gathering.<sup>604</sup> The Indian coastguard, for example, has some special arrangements with local fishermen, who use their own fishing boats while conducting their fishing activities at sea to detect and report any suspicious activities within the Indian maritime domain. In return, these fishing boats receive some fuel as compensation.<sup>605</sup> More importantly, the fishermen enjoy protection from the coastguard when they raise a distress call and gain freedom at sea by dispersing illegal foreign fishermen. Therefore, naval and coastguard assets are only deployed for a response when needed. In that arrangement, as a country, India saves many national resources in maritime surveillance.<sup>606</sup> Although this is a short-term solution, if it could be mirrored in the EAC, it would definitely provide some positive results.

The EAC, through Kenya and Tanzania, depends heavily on the international community to provide surveillance of its maritime domain. However, due to the reduction of the High-Risk Area (HRA) following the reduction of the risk posed by Somali piracy, this surveillance has been significantly reduced. HRA reduction and its effects on the EAC's maritime domain will be analysed in Chapter Eight (see section 8.5.3 on page 331). As Figure 4-4 shows, while the HRA has been reduced by 55 per cent, the maritime domain of Kenya is still entirely within the revised HRA, while Tanzania's are entirely outside it.<sup>607</sup> The line indeed appears to have been arbitrarily drawn along the EEZ boundary. This simply suggests that the EAC's waters are among the

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<sup>604</sup> Singh (2009).

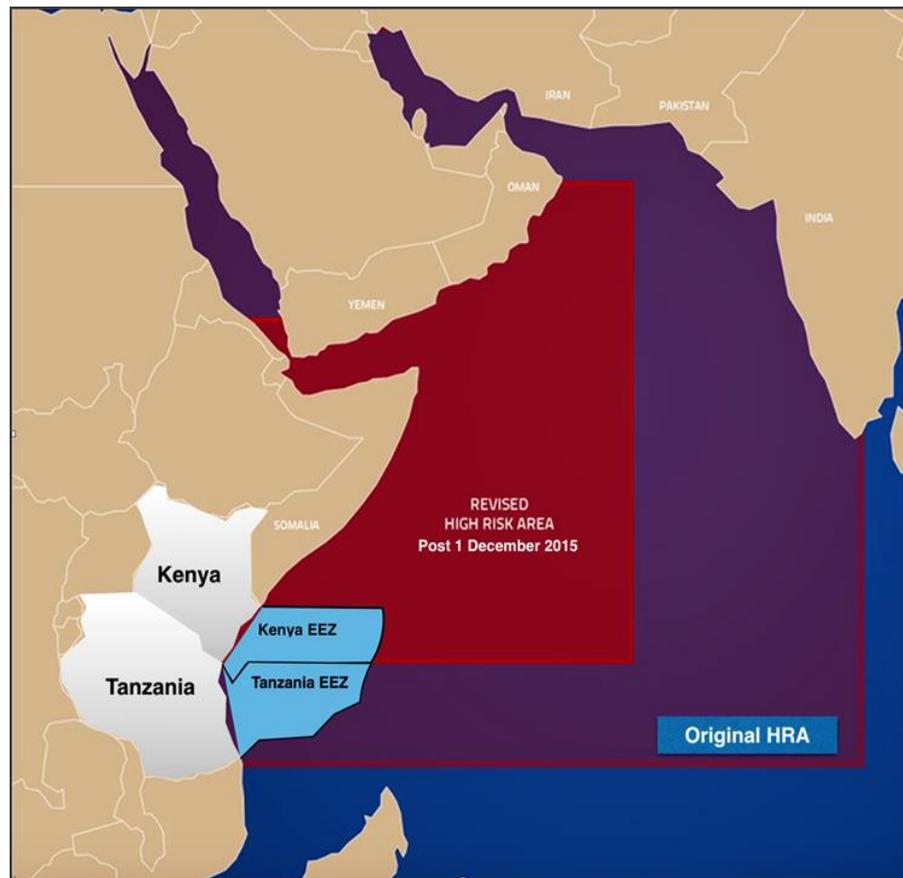
<sup>605</sup> Ibid.

<sup>606</sup> Ibid.

<sup>607</sup> DRYAD Maritime, BMP4 HRA Revision – Pragmatic Decision or Dangerous Gamble? 2015, Available at: <http://www.dryadmaritime.com/bmp4-hra-revision-pragmatic-decision-or-dangerous-gamble/> [Accessed May 2016].

riskiest in the Western and Southern African regions. For that reason, the EAC still needs to take a leading role in tackling regional maritime security threats.

**Figure 4-4: High Risk Area (HRA) before 1 December 2015 and revised HRA, showing how HRA at time of writing only includes Kenyan waters (EEZ)<sup>608</sup>**



b) **Response:** Generally, maritime response means the ability of coastal states to react once they have sufficient information to believe that threats are imminent. The response would require the deployment of naval and coastguard assets to diffuse the threats or apprehend the criminals. This is the most difficult element for

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<sup>608</sup> Amended and expanded by the author from DRYAD Maritime. 2015. BMP4 HRA Revision – Pragmatic Decision or Dangerous Gamble? Available at: <http://www.dryadmaritime.com/bmp4-hra-revision-pragmatic-decision-or-dangerous-gamble/> [Accessed May 2016].

the EAC region, given its shortage of naval and air assets. The Kenyan and Tanzanian navies have limited patrol capacity in terms of assets and personnel. More importantly, none of the coastal States has a coastguard unit. Individually, the Kenyan and Tanzanian navies undertake most of the coastguard duties for their nations. The absence of a coastguard is said to be one of the main obstacles in the war against maritime security threats in the region.<sup>609</sup> This is due to the fact that regional navies do not have law enforcement powers in many sensitive areas, such as illegal fishing, drugs and human trafficking.

Kenya and Tanzania have recently upgraded their naval assets. However, even if the whole current fleets were to be deployed, there would still not be enough vessel to support surveillance and response capacity to cover all of the EAC's maritime spaces. Table 4-2 shows the total number of the EAC's naval vessels over 20 tonnes and their displacement tonnages, as compared with the South African navy as of 2010. In addition to those vessels, the Kenyan and Tanzanian navies have recently upgraded their naval hardware. In 2012, for example, the Kenyan Navy added a brand-new Spanish-made destroyer to its fleet.<sup>610</sup> In 2015, Tanzania's navy added two Chinese-made offshore patrol boats to its young fleet.<sup>611</sup>

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<sup>609</sup> Interviewees 45 and 47.

<sup>610</sup> Martin, G. (2012). Kenyan Navy's newest warship takes the fight to Somalia. *DefenceWeb*. Available at: [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=28318:kenyan-navys-newest-warship-takes-the-fight-to-somalia&catid=108:maritime-security](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=28318:kenyan-navys-newest-warship-takes-the-fight-to-somalia&catid=108:maritime-security) [Accessed on 11 July 2015]

<sup>611</sup> Auger, N. (2015). Tanzania Inaugurates two new navy patrol ships. *Forecast International - International Military Markets*. Available at: <http://www.forecastinternational.com/news/index.cfm?i3=30107&recno=232200> [Accessed on 11 July 2015].

**Table 4-2: EAC navies' capacity in terms of assets and displacement tonnage**

|                       | 1986 | 1985 | 2010 | Displacement tonnage (2010) |
|-----------------------|------|------|------|-----------------------------|
| Kenya                 | 8    | 16   | 6    | 4,660                       |
| Tanzania and Zanzibar | 22   | 21   | 10   | 870                         |
| Total (EAC)           | 30   | 37   | 16   | 5,430                       |
| South Africa          | 46   | 33   | 23   | 42,840                      |

Based on these data alone, it appears that every single vessel that the EAC's two coastal State have needs to patrol approximately 4,600 nm<sup>2</sup> of the EAC's EEZ. This ratio is extremely high, and is impractical for the EAC. Most of the naval assets do not have 'blue water' capabilities: they are too small to venture from shore and remain at sea for a long time. Hence, they are less capable of delivering on the desired task. In the Gulf of Guinea, for example, the ratio of one craft to coastal water area is around 250 nm.<sup>612</sup> Even though this ratio is far lower than that of the EAC (one twentieth of the area), for quite a long time it has been impossible for the Gulf of Guinea regional states to patrol their maritime spaces using their assets alone.

To compensate for the lack of naval assets fill the resulting and law enforcement gaps, the Gulf of Guinea states make best use of Private Maritime Security Companies (PMSC) and their Privately Contracted Armed Security Personnel (PCASP) in the High Risk Area (HRA). That includes uses of their vessels to patrol the HRAs under the supervision of the local states. Nigeria, through the Nigerian Navy, for example, has come up with indigenous plans, under special arrangements,<sup>613</sup> to use some of

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<sup>612</sup> Millen, I. 2015. Combating Piracy in the Gulf of Guinea. Dryad Maritime. Available at: <http://www.dryadmaritime.com/combating-piracy-gulf-guinea/> [Accessed on 11 July 2015].

<sup>613</sup> These special arrangement are in the form of Memorandum of understanding (MoUs) signed on 23 November 2015 by the Nigerian Navy with 29 Private Maritime Security Companies (PMSC) to bridge security gap. Available at:

the PMSC vessels to improve its law enforcement capacity.<sup>614</sup> As can be seen in Figure 4-5, at the time of writing, HRA in Gulf of Guinea is applicable within 12 nm of Nigerian and Benin waters.

**Figure 4-5: High Risk Area in the Gulf of Guinea<sup>615</sup>**



However, the PMSC vessels would be crewed, flagged and armed by the Nigerian Navy. That includes the use of the Nigerian national Rules of Engagement and conduct escort

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<http://nanewsnigeria.com/navy-signs-mous-29-private-maritime-security-companies> [Accessed on 1 July 2016].

<sup>614</sup> Security Association for Maritime Industry-SAMI (2016). Will a private maritime security model work in the Gulf of Guinea? Available at: <http://www.westafricasecuritynetwork.org/will-a-private-maritime-security-model-work-in-the-gulf-of-guinea/> [Accessed on 1 July 2016]. See also Steffen, D. 2014. Trouble Waters? The use of the Nigerian navy and police in private maritime security roles. *Centre for International Maritime Security*. Available at: <http://cimsec.org/troubled-waters-use-nigerian-navy-police-private-maritime-security-roles/11918#comments> [Accessed on 1 July 2016].

<sup>615</sup> Author based on Google maps.

vessel operations coordinated by the PMSCs for commercial ships visiting Nigerian ports. Nigerian PMSCs have also established very effective Safe Anchorage Areas (SAA), Maritime Exclusion Zone (MEZ) and Ship-to-Ship Zone (STS).

Although SAA, MEZ and STS are outside the HRA, they are receiving enough attention of regional law enforcement in collaboration with Nigerian Navy.<sup>616</sup> At the time of writing, this mechanism is about to be adopted by the entire region following good results in Nigerian waters. While such an arrangement is an expensive undertaking for PMSCs, it is cost effective measures for coastal states with weak maritime law enforcement capacity such as the EAC.

At the time of writing, in the Gulf of Guinea, there was no well-defined and monitored HRA like the one applicable at the Horn of Africa, Gulf of Aden and the Western Indian Ocean (see Figure 4-4 on page 160). This is because in the latter HRA ships are attacked on the High Seas, whereas in the GoG ships tend to be attacked in the Territorial Seas of the coastal states. Anything that happens within Territorial Seas is under the jurisdiction of the adjacent coastal state, whereas on the High Seas the coastal states have no jurisdictional influence.

Turning to east Africa, Kenya has deployed its naval assets in Somali waters to support the African Union Mission in Somalia, as well as to defend its Territorial Seas against the threat posed by Al-Shabaab militants (with whom Kenya is at war at the time of writing). However, these operations are stretching the Kenyan

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<sup>616</sup> ITF-Seafarers (2016). Available at: <http://www.itfseafarers.org/files/seealsodocs/33553/IBF%20WARLIKE%20ANDHIGH%20RISK%20AREAS.pdf> [Accessed on 1 July 2016].

defence budget to the maximum.<sup>617</sup> Kenya has approximately 4,000 soldiers in Somalia under AMISOM. These soldiers receive \$1028 in the form of allowance per month for their services in Somalia.<sup>618</sup> That figure added up to about \$4 million a month or \$50 million per year which is approximately 9 per cent of Kenya's defence budget in 2015.

The entire costs of keeping these soldiers at the war zone, is financed by the EU who already cut the budget by 20 per cent and that budget cut will probably, continue in future.<sup>619</sup> The EU insists that budget gap which is equivalent to \$165 off the soldiers' pocket has to be covered the UN or African Union. Given the fact that these operations are open ended with no specific end date, it seems almost certain that Kenya's ability to fill these huge roles will soon come to an end.

On the other hand, in 2011, Tanzania, South Africa and Mozambique, through the SADC initiative, launched an operation, called 'COPPER', in the Mozambique Channel. This operation was a response to piracy activity.<sup>620</sup> In this operation, Tanzania failed to deploy its assets as it was supposed to. Among the reasons for this failure were: a weak fleet that was not compatible with the modern naval fleet of South Africa; a lack of resources

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<sup>617</sup> Miyandazi, L. (2012 p. 5). Kenya's military intervention in Somalia: An intricate process. *The African centre for Constructive Resolution for Peace*. Issue no. 19 (September).

<sup>618</sup> Mutambo, A. 2016. Kenya threatens to pull troops out of Somalia. *The Daily Nation*. Available at: <http://www.nation.co.ke/news/Kenya-threatens-to-pull-troops-out-of-Somalia/1056-3213588-lpjxwm/index.html> [Accessed on: 27 September 2016].

<sup>619</sup> DW(2016). Somalia: AMISOM plays down EU budget cut concerns. <http://www.dw.com/en/somalia-amisom-plays-down-eu-budget-cut-concerns/a-19293643> [Accessed on: 27 September 2016].

<sup>620</sup> DefenceWeb. 2014. Operation 'COPPER' now only with SA and Mozambique. Available at: [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=34071:operation-copper-now-only-with-sa-and-mozambique&catid=108:maritime-security](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=34071:operation-copper-now-only-with-sa-and-mozambique&catid=108:maritime-security) [Accessed on 1 July 2016].

(funds and personnel); and a lack of political will.<sup>621</sup> These are all indications that the EAC is not ready to protect its maritime domain without external influence and assistance.

The deployment of international navies in the region in response to the pirate threat is helping the EAC to respond to threats at the time of writing. There are three multinational maritime coalition operations that protect the HRA: the Combined Task Force (CTF-151), the EU's Operation Atalanta, and NATO's Operation Ocean Shield. There are also independent naval deployment from countries including such as China, India, Iran, Japan, Malaysia, and Russia. As shown in Table 4-3 the multinational navies have special mandates and security priorities that do not necessarily align with the EAC's security needs, and so do those of the independent navies.

**Table 4-3: Multinational naval operation off the Somalia coast<sup>622</sup>**

| Operation                        | Responsibilities                                       | Contributors  |
|----------------------------------|--|---|
| CTF-151<br>(based on UN mandate) | Counter piracy   | Australia, Canada, Denmark, Republic of Korea, Netherlands, New Zealand, Pakistan, Singapore, Turkey, the UK and the US |
| NATO<br>(Operation Ocean Shield) | Counter piracy   | Canada, Denmark, Greece, the Netherlands, Portugal, Turkey, Turkey, the UK and the US                                   |
| EU<br>(Operation Atalanta)       | Counter piracy, escort of WFP ships, support of AMISOM | 26 EU States, including the UK  |

<sup>621</sup> Ibid.

<sup>622</sup> MNE7 (2013), Maritime Regional Study- Western Indian Ocean. Available at: <http://mne.oslo.mil.no:8080/Multinatio/MNE7produkt/RegionalMa4> [Accessed on: 11 November 2015].

c) **Enforcement:** Having good laws does not necessarily mean good governance. Unless criminals such as pirates are prosecuted, their crimes will continue being repeated. This is one of the reasons why maritime law enforcement is said to have its roots on land. The absence of the necessary domestic laws for prosecuting criminals and, in other instances, weak penalties and judicial processes, is a bottleneck for proper maritime law enforcement.

In the EAC, as in many other regions, navies, coastguards, and maritime security agencies lack prosecution powers and rely on the police and other agencies for this vital element of the enforcement cycle.<sup>623</sup> There are some occasions where cases take an unnecessarily long time due to the challenges surrounding the preservation of evidence and the limitations of detention periods, which are often weighted in favour of the suspects, who regain their freedom soon after their arrest.<sup>624</sup>

In order to improve the enforcement capacity of Kenya and Tanzania, these States have participated in a number of capacity-building programmes initiated by the international community. The capacity-building programmes are twofold:

- Judicial capacity building.<sup>625</sup> The IMO, INTERPOL, UNDP and UNODC are the international organisations that have helped Kenya and Tanzania, as well as other Eastern African, Southern African and Indian Ocean (EA-SA-OI) states. The main goal of judicial capacity building is to develop capacity to apprehend, detain and prosecute suspected pirates in full respect of international norms and

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<sup>623</sup> Interviewees 20,29,30,31 and 32.

<sup>624</sup> Interviewees 6, 46 and 47.

<sup>625</sup> Interviewees 1,2,6,14,16,18,29,30,45 and 47.

standards. It also ensures that suspected pirates receive a fair trial and are imprisoned in a humane manner. In fact, these programmes deliver in four areas (law enforcement, prosecution, courts and prisons) and aim to leave a strengthened criminal justice system behind in the region.

- Maritime capacity building:<sup>626</sup> This is aimed at improving the capacity of the regional navies, coastguards and marine police units, alongside other law enforcement agencies in maritime security. The programme is mainly delivered through the Djibouti Regional Training Centre. However, the US, the EU and NATO have been delivering special courses to Kenyan and Tanzanian law enforcement agencies through their navies' ships while visiting the region.

The EAC could also use port state controls (PSCs) to improve the security of its maritime domain. Kenya and Tanzania are state parties to the Indian Ocean Memorandum of Understanding (IOMOU). The IOMOU is responsible for PSCs in the Indian Ocean the area where the EAC's maritime domain is located. This analysis will be more explored in Chapter Seven.

#### **4.4 Conclusion**

This chapter has examined some important maritime security issues in the EAC maritime domain. The Kenya–Somalia maritime border dispute, piracy, armed robbery against ships, the smuggling of illicit drugs and weapons, human trafficking, maritime terrorism and IUU fishing were revealed to be maritime security issues of the Community. The research reveals that, with the exception of the Kenya–Somalia maritime border dispute, there is a strong correlation between piracy and other maritime

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<sup>626</sup> Ibid.

security threats in the EAC maritime domain. Throughout the year, large parts of the EAC's maritime domain stay out of the reach of regional law enforcement agencies.<sup>627</sup> This state of affairs allows maritime criminals to operate in the EAC's waters with liberty. There is a concern that local fishermen do not go outside Territorial Seas for fear of piracy.<sup>628</sup>

The lack of assets such as boats and helicopters limits the ability of law enforcement agencies to reach remote parts of the region's maritime domain. Law enforcement personnel have low morale because of their low pay, as well as the poor equipment they have to work with.<sup>629</sup> They are frequently accused of taking bribes, stealing boats' fuel, and sometimes selling information to maritime criminals.<sup>630</sup> All of these factors make it difficult to apprehend the criminals and those who sponsor them. However, senior official at the EAC maritime headquarters in Arusha agree that the big issue in regional maritime security governance lies with the absence of maritime security strategies at the national and regional levels.<sup>631</sup> Unless the region comes up with its own maritime security strategy, there will always be a vacuum in the governance of the region's maritime domain. Having surveyed the principal problems and challenges in the EAC maritime domain, we shall now compare the EAC's maritime security governance with that of other regional organisations.

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<sup>627</sup> Interviewees 12 and 13.

<sup>628</sup> Interviewees 10 and 11.

<sup>629</sup> Interviewees 45 and 47.

<sup>630</sup> Ibid.

<sup>631</sup> Ibid.

## **5 Chapter Five: The EAC's Maritime Security Governance: An Analysis of the EAC Maritime Security Policies Alongside those of Other Regional Organisations**

### **5.1 Introduction**

Previously in Chapter Four, there were detailed explorations of the problems and challenges facing the EAC maritime domain. In this chapter, the analysis on how the EAC is responding to maritime security issues continues. The EAC's efforts will be measured against its maritime policies and then compared with other regional organisations that are in the same line of operation. These organisations are: the Association of Southeast Asian Nations (ASEAN), the European Union (EU), and the Economic Community of West African States (ECOWAS).

More importantly, the availability of a maritime security strategy will be considered as a positive indicator of how seriously a region is taking its own maritime security threats. Regional maritime security threats and how the regional organisation is cooperating with the international community in maritime security will also be examined in of this chapter. The chapter will briefly explore the history of each region, covering its maritime affairs, maritime security threats, and how the regional economy and security depend on the maritime sector. The chapter will start with the EU, followed by the ASEAN, the ECOWAS and the EAC.

### **5.2 The European Union (EU)**

#### **5.2.1 An overview of the EU's maritime affairs**

The EU is an intergovernmental organisation (IGO). In 2016, it comprised 28 member States, five candidate States and two potential candidates. The EU is the world's most successful IGO in terms of security and economic integration. In 2015, the EU as a region ranked as the world's largest economy, with a gross domestic product (GDP) of

over US\$18 trillion.<sup>632</sup> That makes the EU's economy stronger than those of the world's economic superpowers: the United States (US), Japan and China. The EU's coastal regions contribute 40 per cent to regional GDP.<sup>633</sup> Evidence suggests that the maritime sector contributes roughly 5.4 million jobs, generates almost €500 billion a year, and contributes approximately 2.6 per cent to the regional GDP.<sup>634</sup>

Out of the 28 EU member States, 23 (82 per cent) are coastal States and 26 (93 per cent) are flag states. The EU's shipping industry, as a subset of the maritime sector, contributed approximately 1 per cent to the EU's GDP in 2012.<sup>635</sup> The EU has a coastline of approximately 70,000 km.<sup>636</sup> This figure does not include the coastlines of candidate member states, potential member states, and overseas territories.

With such a long coastline, the EU's shores are vulnerable to a number of maritime security threats. Nonetheless, maritime safety, including refugees entering Europe on boats via the marine environment, is a priority of the EU in terms of its maritime domain. Some 90 per cent of the EU's external trade and 40 per cent of its internal trade passes through the seas.<sup>637</sup> Because of its strong commitments to world maritime affairs, the EU is the only IGO of its nature to be an observatory member of the International Maritime Organisation (IMO)

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<sup>632</sup> Bryan, B. 2015. Europe is bigger than the US. *Business Insider-UK*. Available at: <http://uk.businessinsider.com/charts-eu-economy-is-bigger-than-the-us-2015-6?r=US&IR=T> [Accessed on: 1 February 2016].

<sup>633</sup> Chapsos and Kitchen (2015.p.9)

<sup>634</sup> European Commission. 2014. Blue Growth. Available at: [http://ec.europa.eu/maritimeaffairs/policy/blue\\_growth/](http://ec.europa.eu/maritimeaffairs/policy/blue_growth/) [Accessed on: 1 February 2016], see also The EU's GDP in 2015 was €18,514.2 billion. Maritime sector contribution €500 billion; per cent of maritime sector to the EU's GDP = €500/18,514.2 = 2.7 per cent.

<sup>635</sup> ECCA (2014). The Economic value of the EU shipping industry. Oxford Economics. Available at: <http://www.safety4sea.com/images/media/pdf/Oxford-Economics-ECSA-Report-FINAL.pdf> [Accessed on: 13 June 2016]. Shipping industry contributes €145 billion in 2012/ €1745 billion-2012 GDP= 0.87 per cent

<sup>636</sup> Parisi (2015.p.19).

<sup>637</sup> Ibid.

and it has played an important role in initiating many of the IMO's policies. Figure 5-1 shows the EU members in 2016 including those EU's candidates (Albania, Macedonia, Montenegro, Serbia and Turkey).<sup>638</sup>

**Figure 5-1: Map of Europe**



<sup>638</sup> European Commission (2016). EU Candidate & Potential Candidate Countries' Economic Quarterly (CCEQ), 2nd Quarter 2016. Available at: [http://ec.europa.eu/economy\\_finance/publications/eetp/pdf/tp010\\_en.pdf](http://ec.europa.eu/economy_finance/publications/eetp/pdf/tp010_en.pdf) [Accessed on: 16 May 2016].

### 5.2.2 The EU's maritime governance

The EU's maritime domain is safer than those of the ASEAN, ECOWAS and EAC regions. The EU categorises its maritime security into two segments: internal and external. On the one hand, internal maritime security involves any threats that might affect the EU's own shores. On the other hand, external or global maritime security involves any threats that might affect the world's maritime domain, including the EU's overseas maritime interests.

- a) **Internal maritime security threats:** As noted, the EU's internal maritime security threats are minimal. Maritime security threats, such as piracy, armed robbery against ships and maritime terrorism, are rarely seen on the EU's waters thanks to its strong maritime governance policies and cooperation among member states. However, that does not necessarily guarantee that the EU's maritime domain is a risk-free area.

Refugees travelling by boat and illegal migration are creating humanitarian and security challenges for the EU. The following maritime policies are used to protect the EU's shores: a) the 2010 Internal Security Strategy (ISS); b) the 2007 Integrated Maritime Policy (IMP); and c) the 2014 European Union Maritime Security Strategy (EUMSS).

- b) **Global maritime security threats:** Because of its strong economy, the EU's overseas maritime interests are significantly high. This is partly due to the EU's trade and security interdependence on the outside world. For example, the ASEAN is the EU's third-largest trading partner outside Europe, after the US and China, with more than \$195.7 billion of trade in goods

and services in 2014.<sup>639</sup> Additionally, it is West Africa's biggest trading partner.<sup>640</sup>

Maritime security issues off the Somali coast, in the East Asian region, and in West Africa are taken seriously by the EU as part of its responsibilities. This is because maritime security threats tend to block international supply chains and threaten freedom of navigation. In extreme cases, there would be loss of life. Therefore, organised crime at sea is a direct concern of the EU, no matter where it takes place.<sup>641</sup> The EU participates in maritime security on a global level through its maritime security strategy, EUMSS.

### **5.2.3 The EU's maritime policies**

#### **a) The EU's Integrated Maritime Policy (IMP)**

Like any other IGO, the EU is subject to a number of limitations when it comes to establishing harmonised maritime policies. This is because the EU is not yet a supranational organisation with an exclusive jurisdiction on regional maritime safety and security. In their capacity as flag states, coastal states and port states, the EU's member states are responsible for complying with and enforcing regional and international maritime safety and security laws and regulations.

For example, the EU's mandates in maritime security are largely means of coordination. The member states are responsible for their own maritime safety and security. This includes the creation of relevant and effective maritime policies to govern their own maritime affairs. For example, the Treaty that the EU created gives exclusive responsibilities

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<sup>639</sup> Xianbai, J. 2015. Time to Revisit and ASEAN-EU FTA? *The Diplomat*. Available at: <http://thediplomat.com/2015/06/time-to-revisit-an-asean-eu-fta/> [Accessed on: 24 February 2016].

<sup>640</sup> See [http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/index\\_en.htm](http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/index_en.htm) [Accessed on: 24 February 2016]

<sup>641</sup> Papa(2013)

to the EU only in the area of fisheries policy,<sup>642</sup> as well as shared responsibility for transportation and the environment.<sup>643</sup> This maritime governance practice creates some fragmented maritime policies and duplication of work, leading to ineffective regional maritime governance.

In order to reduce those impacts while still leaving substantial governance powers to its member states, on 10 October 2007 the EU adopted the IMP.<sup>644</sup> The IMP (blue growth) is a maritime policy that links the seas and oceans to the EU's economy. It basically emphasises the sustainable use of the seas and oceans for development. The five key components of the IMP are: a) blue growth—maximising the sustainable use of the oceans and seas for the economy; b) marine data and knowledge—building a knowledge and innovation base for maritime policy; c) maritime spatial planning—delivering the highest quality of life in coastal regions; d) integrated maritime surveillance—facilitating maritime surveillance and exchange of information and data; and e) sea basin strategies—increasing cooperation between countries.<sup>645</sup>

Integrated maritime surveillance (IMS) is one of the most important pillars of the IMP, and has direct relevance to the EU's maritime safety and security. The main objective of IMS is to create a common information sharing environment (CISE) for the EU's maritime domain surveillance. That can only be done through the removal of the barriers between the different actors conducting surveillance of the EU's seas and oceans. IMS is a deliberate measure that allows for information exchange in real time or on demand between the public authorities responsible for maritime surveillance—in fields such as the environment,

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<sup>642</sup> Article 3 of the Treaty on the functioning of the European Union (TFEU).

<sup>643</sup> Treaty on European Union, July 29, 1992, 1992 O.J. (C 191) see also Article 4 of the Treaty on the functioning of the European Union (TFEU).

<sup>644</sup> Bondareff (2007)

<sup>645</sup> See European Commission, ,

[http://ec.europa.eu/maritimeaffairs/policy/index\\_en.htm](http://ec.europa.eu/maritimeaffairs/policy/index_en.htm) [Accessed on: 24 February 2016]

pollution prevention, fisheries, transport, customs, border control, law enforcement and defence—according to respective access rights. This is one of the EUMSS's components.<sup>646</sup>

### **b) European Union Maritime Security Strategy (EUMSS)**

The EUMSS was adopted on 24 June 2014 as a collective measure to safeguard the maritime security interests of the EU and protect its member states and citizens from a range of risks and threats in the global maritime domain.<sup>647</sup> This includes cross-border and organised crime, such as piracy and terrorism, threats to freedom of navigation, threats to biodiversity, illegal fishing, environmental degradation, and other similar threats.<sup>648</sup>

The main goals of the EUMSS can be grouped into three main areas: a) to redefine maritime 'threats' and link the fields of internal and external maritime security; b) to promote "rules-based good governance at sea"; and c) to enhance cooperation among organisations at multiple levels, from the local to the international, and construct new civil–military linkages with industry.<sup>649</sup>

The EUMSS is an important interface that allows the EU to interact with other law-enforcement agencies and navies across the world. This

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<sup>646</sup> European Commission (2012). Integrated Maritime Surveillance: A Common Information Sharing Environment for the European Union maritime domain, How data-sharing can increase knowledge, detect illegal activities and save cost. Available at: [https://ec.europa.eu/maritimeaffairs/marimeday/sites/mare-emd/files/20120521\\_15\\_programme\\_en.pdf](https://ec.europa.eu/maritimeaffairs/marimeday/sites/mare-emd/files/20120521_15_programme_en.pdf) [Accessed on: 13 June 2016].

<sup>647</sup> The Council of the European Union (2014). The EU Maritime Security Strategy. 11205/14. Available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011205%202014%20INIT> [Accessed on: 2 February 2016]

<sup>648</sup> See the EU Maritime Security Strategy and Action Plan- Information Toolkit. Available at: [http://eeas.europa.eu/maritime\\_security/docs/maritime-security-information-toolkit\\_en.pdf](http://eeas.europa.eu/maritime_security/docs/maritime-security-information-toolkit_en.pdf) [Accessed on: 24 February 2016]

<sup>649</sup> Council of the European Union (2014) "European Union Maritime Security Strategy", *General Secretariat of the Council*, 11205/14, Brussels, 24 June 2014. See also Parisi (2015)

includes the EU's cooperation with the UN, the IMO, NATO, the African Union (AU) and other regional organisations that have global maritime security interests. The EU uses its Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) to execute the EUMSS. Both of these policies have military and civilian features that are used to deliver the Union's military operations and civilian missions. Through the EUMSS, the EU has launched several maritime security projects across the world. The projects are not only for the protection of the EU's maritime interests, but also aim to help the international community to maintain law and order on the seas and aid regional maritime security capacity building. Africa has a number of successful maritime security projects entirely financed by the EU. Some of them are:

- a) Operation Atalanta, which was first launched in 2008 and originally had a mandate to protect the vessels of the World Food Programme from Somali piracy, and has since broadened to counter Somali piracy generally.
- b) The AU mission in Somalia.
- c) EUCAP Nestor-2012, which has a mandate to strengthen maritime capability in the Horn of Africa (HoA) and the Western Indian Ocean (WIO).
- d) The EU's Critical Maritime Routes (CMR) programme-2009. This programme is aimed at addressing the transregional problems with the issues of the security and safety of essential maritime routes, emphasising capacity building by providing legal assistance and training as well as information sharing at the regional level and implementation at the national level.
- e) The regional Maritime Security (MASE) programme-2010. This aims to fight piracy and promote maritime security by strengthening capacity in Eastern and Southern Africa.

- f) SmartFish programme-2011. This aims to increase the level of social, economic and environmental development and deeper regional integration in the Indian Ocean region through improved capacity for the sustainable exploitation of fisheries resources.

To a large extent, enforcing of the EUMSS remains with the EU's member states. Because of its cross-sectorial nature, both civilian and military institutions are involved. The EU largely remains as a coordinator in maritime security. The EU's institutions, such as the Directorate General for Maritime Affairs and Fisheries (also known in short as DG MARE) and the European Maritime Safety Agency (EMSA), have prominent roles in maritime safety. Member states' defence ministries and their maritime authorities, together with other civilian institutions such as border agencies, work with the EU to implement the strategy.

### **How the 'principle of subsidiarity' works in EU's maritime safety and security**

According to Article 5(3) of the EU Treaty and Protocol (No 2), the EU actions are subject to the 'principle of subsidiarity'.<sup>650</sup> This means that, except in the areas where it has exclusive powers, the Union only acts where action will be more effective at EU level than at national level.<sup>651</sup> The 'principle of subsidiarity' allows more freedom to member States to govern their own maritime affairs with minimum interference from the Union level. The Union would interfere only when the EU image is compromised or the issue in question is too technical and costly to be undertaken by individual member States.

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<sup>650</sup> See

[http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU\\_1.2.2.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_1.2.2.html)

[Accessed on: 31 March 2017]

<sup>651</sup> Ibid

Both IMP and EUMSS as previously discussed, have roles that depend on several institutions at local community, member States and at the Union level. Because maritime safety and security are the heart of the EU's economy and security, the 'principle of subsidiarity' ensures that the EU citizens are involved. For example, section 4.4 of the IMP requires the Union to take a leadership role in promoting the EU's leadership in international maritime affairs and ensuring member States are ratifying and nationalising international conventions.<sup>652</sup> The Union is also responsible for negotiating on maritime biodiversity in areas beyond national jurisdiction, thus championing the High Seas interests of the EU's member States. As can be seen in section 7.4, EMSA is yet another an overarching EU's maritime safety enforcement agency designed to assist member States in areas which are not competent. It also has some mandates to enforce international regulations within the member States' jurisdictions. The EMSA, makes six visits per year to selected ports within the EU region to ensure the Port State Controls (PSC) regulations are properly enforced. It also follows those members whose flag states have been doing badly or black listed on other PSC controls across the globe. Given that the EU region has more than 1,200 ports and over 8,100 EU flagged vessels, the role EMSA in quality control is important. This research recommends that the EAC should follow the footsteps of the EU in regional maritime safety and security. EMSA has proved extremely useful in EU maritime governance and is, therefore, an institution that the EAC should replicate. Use of subsidiarity helped the EU to overcome the tension between national and regional interests.

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<sup>652</sup> See the IMP, Available at;<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52007DC0575> [Accessed on: 31 March 2017]

#### 5.2.4 Challenges facing the EU in the implementation of its maritime policies

Implementing the EU's maritime policies has never been easy. As previously noted, the EUMSS and the IMP are the EU's two main maritime safety and security policies that are currently in use. Despite their great contributions to the EU's maritime affairs (as shown above), these strategies face a number of legal and operational obstacles. Some of these difficulties are the direct results of inbuilt flaws in the EU's maritime cooperation architecture, which uses a state-centred approach.

The EU member states have substantial control and authority over policy decisions. Consequently, the power and preferences of nation states are most important in explaining policy outcomes in the EU. The EU does not have mandates to enforce many of its own maritime safety and security policies. While the enforcement of maritime safety and security policies remains the responsibility of the member states, the EU acts as a coordinator. However, when it comes to global maritime security issues under the EUMSS, the EU's coordinating role becomes even broader. This is where the 'principle of subsidiarity' works in the EU maritime safety and security. This is because member states work on behalf of the EU even outside of its waters: even member states' naval ships fly the EU's flag alongside their own.

One of the reasons behind the creation of the IMP was the desire to unite fragmented maritime policies under one central EU umbrella.<sup>653</sup> However, this has, so far, failed to happen.<sup>654</sup> This failure is said to be one of the main challenges the EU has faced in implementing the IMP.<sup>655</sup> There are some claims that the idea that IMS is an important pillar of the IMP, as well as of the EUMSS, is a largely theoretical

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<sup>653</sup> Hoof, Leeuwen and Tatenhove (2012).

<sup>654</sup> Chintoan-Uta (2004)

<sup>655</sup> Papa (2013).

notion.<sup>656</sup> Practically, IMS has not been able to convince all member states to share important intelligence information, which is a prerequisite for IMS.<sup>657</sup> For this reason, a comprehensive real-time picture of maritime awareness in the EU domain cannot easily be obtained.<sup>658</sup>

This picture could only be obtained on demand and through special arrangement. There are some concerns that the EUMSS is overstretching the EU's defence resources, focusing on external threats more than internal ones.<sup>659</sup> It is also a concern of defence experts that the excessive involvement of civilian roles in the EUMSS, especially on overseas deployments, could compromise military integrity.<sup>660</sup>

### **5.3 Association of Southeast Asian Nations (ASEAN)**

#### **5.3.1 An overview of the ASEAN's maritime affairs**

The ASEAN is an IGO in Southeast Asia, established on 8 August 1967. It currently comprises 10 member States.<sup>661</sup> As can be seen Figure 5-2 on the next page, Lao PDR is the only landlocked member State of the ASEAN; the rest are coastal States. Through its nine coastal States, the ASEAN has a coastline stretching across approximately 173,000 km.<sup>662</sup> The nexus between the ASEAN's maritime sector and its regional economy is stronger than in any other part of the world. This is partly explained by the fact that the ASEAN region holds the world's most important Sea Lines Of Communication (SLOC).

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<sup>656</sup> Ibid

<sup>657</sup> Ibid

<sup>658</sup> Ibid.

<sup>659</sup> See Clingendael (2015). The EU Maritime Security strategy: Promoting or Absorbing European Defence Cooperation? Available at: <http://www.clingendael.nl/sites/default/files/Policy%20brief%20EU%20Maritime%20Security%20Strategy.pdf> [Accessed on: 25 February 2016].

<sup>660</sup> Ibid.

<sup>661</sup> ASEAN member states: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

<sup>662</sup> See, ASEAN Cooperation on Environment (2015). ASEAN Facts and Figure. Available at: <http://environment.asean.org/about-us-2/> [Accessed on: 4 February 2016]

More importantly, the region holds the Malacca and Singapore straits, which are widely regarded as world economic and energy chokepoints. The evidence suggests that the maritime sector in the ASEAN region contributes between 15 per cent and 20 per cent of the regional GDP of US\$2.9 trillion.<sup>663</sup> These figures are higher than in any other part of world—compare the EU's one per cent.

More than 200 vessels pass through the straits on a daily basis, and this gives an annual throughput of approximately 70,000 ships.<sup>664</sup> Each year, US\$5.3 trillion worth of goods or around one-quarter of the global export trade in merchandise, passes through the South China Sea. Of this sum, US trade accounts for US\$1.2 trillion. About one-third of global seaborne oil trade and over half of global trade in Liquefied Natural Gas—mostly originating from the Gulf—also travel via the South China Sea.<sup>665</sup> All these statistics simultaneously increase the importance of the maritime sector to the regional economy and the prevalence of maritime security threat

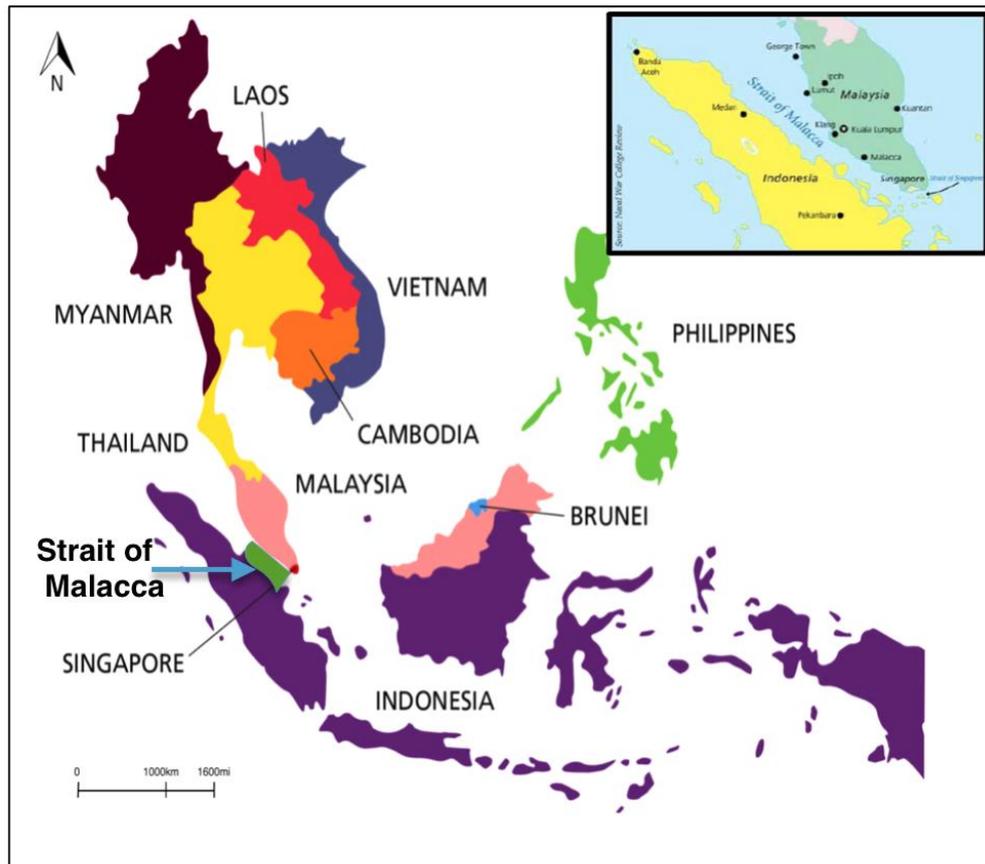
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<sup>663</sup> PAMSEA (2015. p.12). Blue Economy for Business in East Asia Towards an Integrated Understanding of Blue Economy. Available at: <http://pemsea.org/dev/sites/default/files/PEMSEA%20-%20Blue%20Economy%20for%20Business%20in%20East%20Asia.pdf> \_ [Accessed on: 4 February 2016] see also Khalid, Ang. and Joni (2009).

<sup>664</sup> Talmon and Jia (2014)

<sup>665</sup> Gilmartin, H., 2008. EU – U.S. –China: Cooperation in the Malacca Straits. Hamburg, Nov. 2008. Available at: [http://mercury.ethz.ch/serviceengine/Files/ISSN/94660/ipublicationdocument\\_singledocument/16cb520a-4a5d-41f1-83f9-021a307bfcf7/en/hb151.pdf](http://mercury.ethz.ch/serviceengine/Files/ISSN/94660/ipublicationdocument_singledocument/16cb520a-4a5d-41f1-83f9-021a307bfcf7/en/hb151.pdf) [Accessed on: 4 February 2016], see also Lin, K and Gertner, A.V. 2015.p.5. Maritime Security in the Asia-Pacific China and the Emerging Order in the East and South China Seas. Chatham House. Available at: [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20150731MaritimeSecurityAsiaPacificLinGertner-0.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150731MaritimeSecurityAsiaPacificLinGertner-0.pdf) [Accessed on: 4 February 2016].

Figure 5-2: ASEAN map<sup>666</sup>



### 5.3.2 Maritime security threats in the ASEAN region

Despite their importance to the regional and the world economy, the seas of Southeast Asia are also a source of regional tensions and are, therefore, subject to a number of conventional and non-conventional threats. The maritime security threats in the ASEAN region are twofold. On the one hand, the ASEAN region has a long outstanding maritime border dispute with China over the South China Sea.

On the other hand, the region is notorious for organised maritime threats, such as piracy, armed robbery against ships, and maritime

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<sup>666</sup> Asia Biomass Office, Available at: [https://www.asiabiomass.jp/english/topics/1111\\_04.html](https://www.asiabiomass.jp/english/topics/1111_04.html) [Accessed on: 4 February 2016].

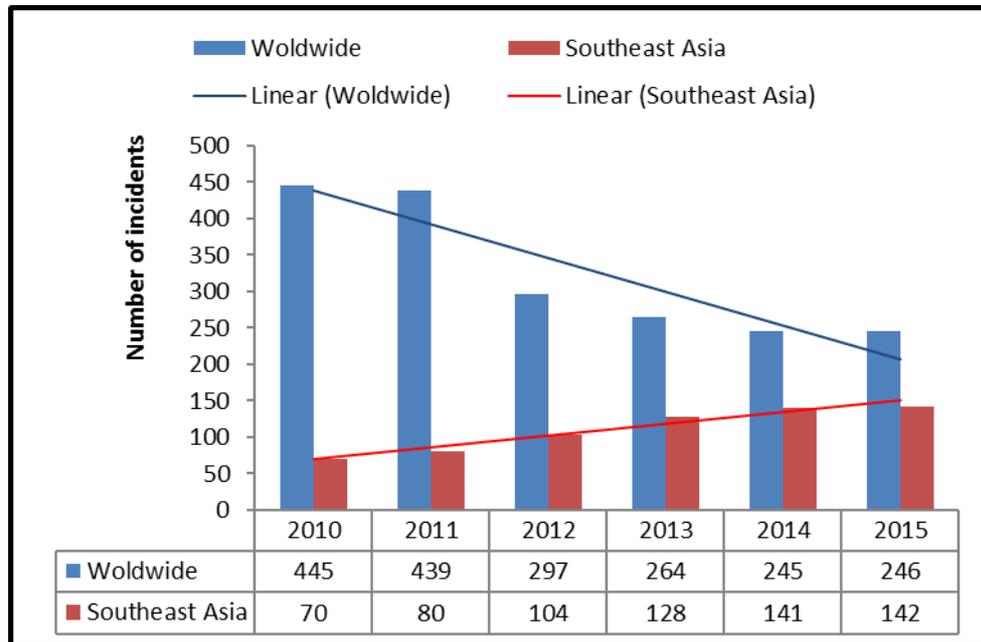
terrorism.<sup>667</sup> While maritime border disputes in the South China Sea appear to be a common problem demanding the attention of the entire ASEAN region, individual states are also terrified by transnational threats. Indonesia and Malaysia are the two ASEAN states bordering the Malacca Straits, and they are the most affected by the above-mentioned transnational threats. As shown in Figure 5-3 and 5-4, between 2010 and 2015, the total number of incidents of piracy and armed robbery against ships worldwide declined by approximately 45 per cent. This is partly caused by a significant decline of Somalia-based piracy. Nevertheless, in the ASEAN region, the situation is quite the opposite. In the same timeframe, the total number of incidents of piracy and armed robbery against ships in the ASEAN region increased by approximately 103 per cent. This is due to inadequate in maritime security governance in the region. This is mostly the case in Malaysia and Indonesia, where issues of state sovereignty discourage many of the regional maritime security initiatives (MSIs) from taking place as planned. For example, in 2015 alone, incidents of piracy and armed robbery against ships in the ASEAN region constituted approximately 56 per cent of all incidents worldwide. As shown in Figure 5-3 that is the highest regional figure for a decade.<sup>668</sup>

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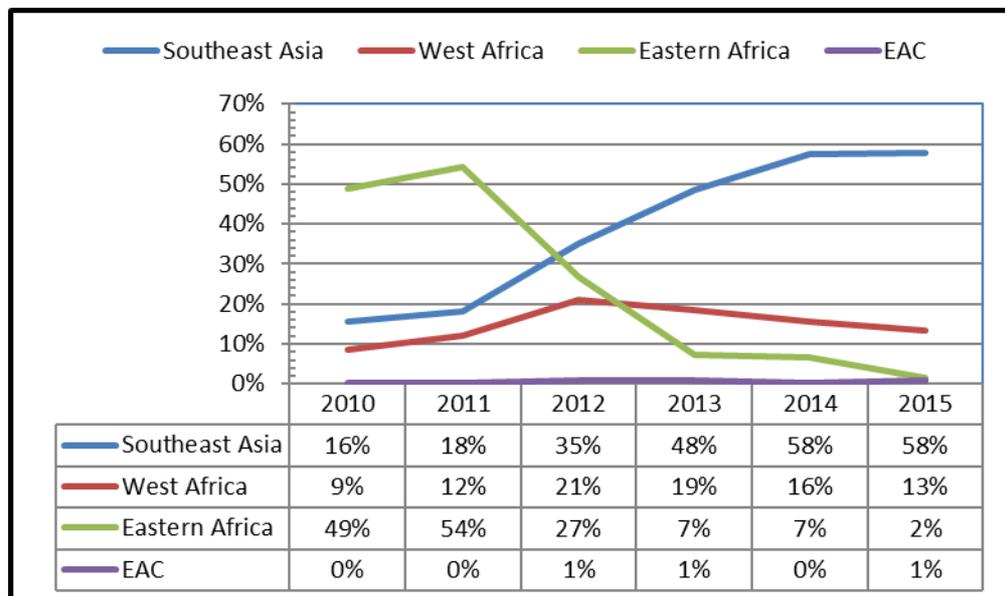
<sup>667</sup> Bradford (2005)

<sup>668</sup> IBM (2015).

**Figure 5-3: Trend analysis of piracy and armed robbery against ships in the ASEAN region<sup>669</sup>**



**Figure 5-4: Percentage of the total incidents (worldwide) of piracy and armed robbery against ships from 2010–2015<sup>670</sup>**



<sup>669</sup> Ibid  
<sup>670</sup> Ibid.

As can be seen in Figure 5-5 below, The Paracels and the Spratlys are the two chains of islands in dispute between four ASEAN States (Brunei, the Philippines, Malaysia and Vietnam) and China. This maritime territorial dispute is perhaps the most contentious in the world, and has attracted the attention of the world's superpowers. This is perhaps one of the reasons why the ASEAN region has more bilateral and multilateral maritime security agreements than any other part of the world.<sup>671</sup>

The 'nine-dash line' (in red) is what claimed by China as its outer limit of its Territorial Seas. However, the 'nine-dash-line' passes right inside EEZs of Brunei, the Philippines, Malaysia and Vietnams. The 'blue-dotted-line' shows EEZs of the respective states as determined by the 1982 UNCLOS. China considers those EEZs boundaries to be in its Territorial Seas.

On 12 July 2016, the ICJ at The Hague ruled out in favour of Philippines against China in the South-China sea dispute.<sup>672</sup> The ruling based on fact that rocky outcrops claimed by China - some of which are exposed only at low tide – cannot be used as the basis of territorial claims. The court said also that some of the waters were within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China.<sup>673</sup> China rejects the ICJ ruling by saying it will neither acknowledge it nor accept it.<sup>674</sup>

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<sup>671</sup> Bower (2010), see also Xinning (2005)

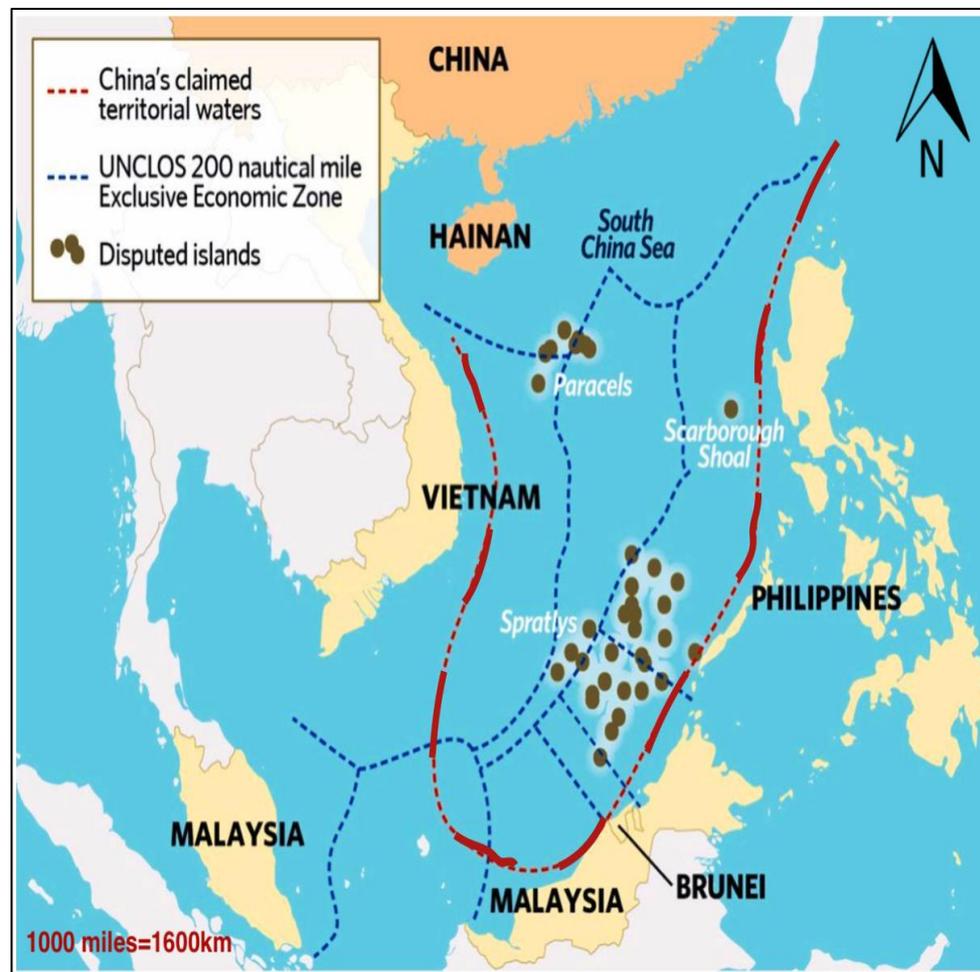
<sup>672</sup> Press Release (2016). Permanent Court of Arbitration, the South China Sea arbitration (the republic of the Philippines v. the people's republic of China, Available at: <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf> [Accessed on: 30 September 2016].

<sup>673</sup> Ibid.

<sup>674</sup> Phillips, T., Holmes, O, and Bowcott, O. 2016. Beijing rejects tribunal's ruling in South China Sea case. The Guardian. Available at: <https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china> [Accessed on: 7 October 2016].

Nevertheless, China insists that is willing to find a permanent solution with its neighbours.<sup>675</sup>

**Figure 5-5: Disputed maritime zones in the South China Sea<sup>676</sup>**



### 5.3.3 The ASEAN's maritime governance

Unlike the EU, the ASEAN's maritime policies, more specifically its maritime security policies, are heavily influenced by 'outsiders'.<sup>677</sup> In this context, 'outsiders' means international actors. While these international

<sup>675</sup> Ibid.

<sup>676</sup> IISS (2016). Chapter Six: Regional Maritime Security Initiatives. Available at: <http://www.iiss.org/en/publications/strategic%20dossiers/issues/asia-pacific-regional-security-assessment-2016-2288/rsa16-08-chapter-6-9273>. [Accessed on: 6 February 2016].

<sup>677</sup> Liss (2013)

actors have, to a large extent, tackled the urgent need to resolve the ASEAN's maritime security problems militarily,<sup>678</sup> they have also internationalised maritime governance, shifting it from a domestic (regional) to an international dimension.<sup>679</sup>

At the time of writing, the region has overwhelmingly multilateral agreements and institutional frameworks in maritime security. The following institutions have significant roles in the ASEAN's maritime security governance: the ASEAN, the ASEAN Regional Forum (ARF), the East Asia Summit, the ASEAN+3 and the Asia-Pacific Economic Cooperation (APEC). There are nine regional/multilateral agreements/institutional frameworks in the ASEAN region that have some overlapping economic and security interests. This is due to the geopolitical importance of the ASEAN region. The ASEAN is, however, at the centre of all these organisations, acting as the manager.<sup>680</sup>

The maritime border dispute between China and four of the ASEAN member States (Brunei, the Philippines, Malaysia, and Vietnam) appears to have attracted huge interest from many of these organisations. There are also a number of bilateral treaties and naval cooperation in the region involving main countries and organisations.

#### **5.3.4 Maritime policies in the ASEAN region**

While there are many maritime security policies/institutional frameworks in the ASEAN region, this research will only discuss four of them. This is due to their significant contributions to regional maritime security. These are: the Code of Conduct in the South China Sea; the ASEAN Regional Forum (ARF); the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), the

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<sup>678</sup> Ibid.

<sup>679</sup> Ibid.

<sup>680</sup> Sukuma (2008)

Regional Maritime Security Initiative (RMSI), and the Asia-Pacific Maritime Security Strategy.

- a) **Code of Conduct in the South China Sea:** The Code was agreed in 2002 and signed off by all ASEAN States and their main rival, China, on 17 October 2012.<sup>681</sup> The overall objective of the Code is to promote peace and stability in the region and prevent the region entering into military confrontations over regional territorial disputes. It further intends to resolve the long outstanding maritime border disputes amicably while building the necessary trust among them towards that end. The territorial disputes in the region involve the Paracel Islands, which are disputed by China, Taiwan and Vietnam. The Spratly Islands are disputed by China, Taiwan, Malaysia, the Philippines, Vietnam, and Brunei. The Scarborough Shoal, just to the west of the Philippines, which is sometimes considered to be part of the Spratly Islands, is claimed by the Philippines, China and Taiwan.

The Code is seen by many, especially outsiders, as yet another version of Chinese imperialism.<sup>682</sup> The evidence suggests that this Chinese-driven Code has not yet yielded any positive results, despite being in use for over a decade.<sup>683</sup> This is due to the inbuilt flaws within the Code itself. Through the Code, China insists on bilateral agreements with individual ASEAN member States as an ultimate solution to

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<sup>681</sup> See [http://asean.org/?static\\_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2](http://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2) [Accessed on: 7 February 2016]

<sup>682</sup> Shambaugh and Yahuda (2014)

<sup>683</sup> Pand, A. 2015. For the ASEAN-China South China Sea Code of Conduct, Ninth Time Isn't the Charm. *The Diplomat*. Available at: <http://thediplomat.com/2015/08/for-the-asean-china-south-china-sea-code-of-conduct-ninth-time-isnt-the-charm/> [Accessed on: 7 February 2016]

the conflict.<sup>684</sup> The Chinese drive to avoid any multilateral agreement is seen as an expression of China's desire to deliberately expel the world's big players, such as the US and the EU, from the conflict. This is said to be the Code's main flaw. The Chinese restrictions to the use of the United Nations Convention on the Law of the Sea (UNCLOS) to resolve the problem represent yet another flaw of the Code. While the UNCLOS appears to be at the centre of the problem in the contested maritime domain of the South China Sea, any attempt to sideline the UNCLOS is surely going to favour the Chinese side.<sup>685</sup>

While the Code is for the entire ASEAN region against China, only Brunei, Malaysia, the Philippines, Taiwan and Vietnam have direct conflicts over those islands. The rest of the states do not appear to be greatly concerned by the conflicts. Even those engaged in the real territorial dispute tend to have different positions. While Vietnam and the Philippines have outspokenly protested against China's 'aggression' over the disputed islands, Malaysia and Brunei keep a much lower profile. Malaysia, for example, continues to adopt a safe approach on the South China Sea issue, pursuing a combination of diplomatic, legal, economic and security initiatives that can secure its interests as a claimant state while being careful not to disrupt it via a bilateral relationship with China.<sup>686</sup> Ultimately, the Chinese appear to have the upper hand in this conflict. It is important to note that the Code is only meant for regional maritime border disputes. Unfortunately, the Code neglects transnational threats within the region on which Chinese contributions, in the form of

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<sup>684</sup> Shambaugh and Yahuda (2014)

<sup>685</sup> Ibid.

<sup>686</sup> Parameswaran (2015. p.4)

maritime powers and diplomatic influences, would have been seriously needed.

- b) **ASEAN Regional Forum (ARF):** The ARF is not a policy but rather an institution responsible for regional security. The ARF, which was established on 25 July 1994, is an Asia-Pacific political and security forum that involves 27 member States.<sup>687</sup> It is a comprehensive security landscape that caters to all the security and political needs of the ASEAN and beyond. Unlike the Code of Conduct in the South China Sea, which attempts to resolve maritime border disputes in the ASEAN region, the ARF covers the entire range of security, including maritime security threats of all kinds. The ARF goes even further by involving humanitarian assistance and disaster relief. Within the ARF, bilateral and multilateral agreements are possible and this is said to be an important feature that relaxes tensions among the ASEAN members, who very often happen to have different security priorities.

Although this is a general security landscape, it has nevertheless captured most of the ASEAN's maritime security needs. Through the ARF, for example, individual states can make diplomatic contact with the world's superpowers, which does not permit such relations. This is not possible through the Code of Conduct. Also, the ARF has been able to reduce, to a large extent, the possibilities of nuclear proliferation through ASEAN waters via the Proliferation Security Initiative (PSI).<sup>688</sup> In order to strengthen regional security cooperation, the superpowers, mostly the US, offer some invaluable

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<sup>687</sup> ARF member States include 10 ASEAN member States and China, South Korea, Japan, New Zealand, Australia, India, Bangladesh, Pakistan, Sri Lanka, North Korea, Mongolia, EU, Timor-Leste, Papua New Guinea, Russia, Canada and the US.

<sup>688</sup> Dickens (1998)

support to the ASEAN States. These support a focus on regional law enforcement and navies' capacity building. This will enable these States to work together without the international support in the future.

- c) **Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP):** The ReCAAP is the government-to-government agreement to promote and enhance cooperation against piracy and armed robbery targeting ships in Asia. Although the cooperation is between Asian countries, other countries, such as Denmark, the US, the Netherlands, Norway and Australia, take part in knowledge sharing and problem solving. It entered into force on 4 September 2006, and at the time of writing it had 20 member states: seven are ASEAN states.<sup>689</sup>

The ReCAAP runs an information-sharing centre (ISC) in Singapore. The ISC receives data from 21 national focal points across the region on a voluntary basis.<sup>690</sup> It also receives data from independent sources, such as the International Maritime Bureau Piracy Reporting Centre (IMB PRC), and even the media.<sup>691</sup> After verifying all the data, information is shared through an information network system (known as the IFN).<sup>692</sup> The IFN is open 24 hours a day; seven days a week and is a secured web-based system linking the ReCAAP ISC and all ReCAAP focal points together, serving

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<sup>689</sup>The twenty Contracting Parties to ReCAAP are Australia, Bangladesh, Brunei, Cambodia, China, Denmark, India, Japan, South Korea, Lao, Myanmar, Netherlands, Norway, Philippines, Singapore, Sri Lanka, Thailand, the UK, the US and Viet Nam

<sup>690</sup> See <http://www.recaap.org/UsefulLinks.aspx> [Accessed on: 8 February 2016]

<sup>691</sup> See ReCAAP ISC. Executive Director's Report 2015. Available at:

<http://www.recaap.org/LinkClick.aspx?fileticket=Rr8uH0molt8%3D&tabid=93&mid=542> [Accessed on: 8 February 2016].

<sup>692</sup> Ibid.

as a platform for information sharing.<sup>693</sup> Information is also available through a mobile app and via research publications.

The ReCAAP is not meant to provide any rapid-response services to piracy incidents. Instead, member states, through their security organs such as navies or coastguards, offer much-needed countermeasures or responses within their respective areas. The main function of the ReCAAP is awareness raising for combating piracy, as well as creating political consent on how the piracy situation is developing in the region. Specifically, the ISC's activities fall into three areas: a) collection, verification and dissemination of incident data; b) analysis and research on the basis of that data; and c) training, education and awareness raising.

Despite the numerous challenges facing the ReCAAP ISC, it has been a role model for maritime security cooperation, not only in the Asia-Pacific region, but also across the globe. The IMO, for example, has adopted the ReCAAP ISC model for both East Africa's Djibouti Code of Conduct (DCoC) and West Africa's Yaounde Code of Conduct.<sup>694</sup>

- d) **Regional Maritime Security Initiative (RMSI):** The RMSI is the US version of the maritime security cooperation in the Asia-Pacific region, created in 2004. The RMSI is claimed as an indirect means of introducing the PSI into the region. Both the RMSI and the PSI have met resistance from the ASEAN member states, mostly Malaysia and Indonesia.<sup>695</sup> While the PSI is blamed as an impediment to freedom of navigation, the

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<sup>693</sup> Ibid.

<sup>694</sup> Bueger, C. 2012. Regional information sharing II: A visit to the ReCAAP ISC. Available at: <http://bueger.info/regional-information-sharing-ii-a-visit-to-the-recaap-isc/> [Accessed on: 14 June 2016].

<sup>695</sup> Morada (2006)

RMSI is accused of undermining the sovereign status of the coastal states.<sup>696</sup>

Malaysia and Indonesia have long claimed that, under the UNCLOS, the Malacca Straits are not part of international waters. For this reason, Malaysia and Indonesia are the sole parties responsible for the security of the straits. The central concern of the international community is, however, for the capacity of Malaysia and Indonesia to safeguard the straits on a unilateral or bilateral basis.

The US, through the Pacific Fleet Commander-in-chief, Admiral Thomas B. Fargo, justified this by saying that “the RMSI is for develop a partnership of willing of regional nations with varying capabilities and capacities to identify, monitor, intercept transnational maritime threats under existing international and domestic laws”.<sup>697</sup> Further to this, the RMSI would leave significant freedom to the coastal states themselves, allowing them to respond to threats on their waters according to their own Protocols.<sup>698</sup> However, the prospect of US forces intervening in the Strait struck horror into both governments and galvanised them into laundering their own operation to counter piracy, operation Malindo which was highly successful. There had been 38 recorded attacks in 2004, and by 2011 there were down to one, although piracy in the area increased again thereafter.

Technically, the RMSI has failed to deliver any of its objectives. For that reason, in 2015, the US launched a new

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<sup>696</sup> Ibid.

<sup>697</sup> See Statement of Admiral Thomas B. Fargo, US Navy Commander. U.S Pacific Command before the house armed services committee on U.S pacific common posture, 31 March 2004. Available at: <http://www.dod.mil/dodgc/olc/docs/test04-03-31Fargo.doc> [Accessed on: 8 February 2016].

<sup>698</sup> Ibid.

MSI to replace the earlier version of maritime security cooperation in the ASEAN region. The five-year MSI had a price tag of US\$425, and was entirely financed by the US.<sup>699</sup> This could perhaps be one of the key motives for cooperation for the five main ASEAN states (Indonesia, Malaysia, the Philippines, Thailand and Vietnam), along with Singapore, Brunei and Taiwan. The aims are almost the same: to improve the ability of these countries to address a range of maritime challenges, including China's growing assertiveness in the South China Sea.

- e) **Asia-Pacific Maritime Security Strategy:** This strategy is also the US's maritime security approach to the Asia-Pacific region.<sup>700</sup> The objective of the strategy is to safeguard US interests in the Asia-Pacific region by creating a safe maritime atmosphere. It is also aimed at providing maritime security assistance to Southeast Asian states against Chinese assertiveness in the South China Sea.<sup>701</sup> The strategy has some direct benefits for all the ASEAN states that have territorial disputes with China.

Through the strategy and the RMSI, the US would, for example, be able to help the Philippines build its National Coast Watch Centre; assist Vietnam in constructing a coastguard training centre; and bolster the maritime surveillance and radar capabilities of Indonesia and Malaysia.

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<sup>699</sup> US Department of State, Bureau of Public Affairs, 'Fact Sheet: Southeast Asia Maritime Law Enforcement Initiative', 10 April 2015. Available at: <http://www.state.gov/r/pa/pl/240798.htm>. [Accessed on: 8 February 2016].

<sup>700</sup> Asia-Pacific Maritime Strategy. Available at: <https://news.usni.org/2015/08/21/document-pentagons-asia-pacific-maritime-security-strategy> [Accessed on: 15 June 2016].

<sup>701</sup> Parameswaran, P. 2016. America's New Maritime Security Initiative for Southeast Asia. *The Diplomat*. Available at: <http://thediplomat.com/2016/04/americas-new-maritime-security-initiative-for-southeast-asia/> [Accessed on: 8 February 2016].

Generally, the US initiatives in the ASEAN region are intended to build strong and long-lasting maritime domain awareness. This will help the region not only with its ongoing territorial dispute with China, but will also assist with the fight against transnational crimes.

The strategy insists on: a) resolving all regional maritime disputes in a non-military way and by sticking to international law; b) modernising military and maritime law enforcement and promoting freedom of navigation; and c) meeting all the remaining maritime challenges in the ASEAN region. While providing a diplomatic solution to the tensions in South China Sea is a cover story for the strategy, it also allows the US to continue its provocations in the disputed areas.<sup>702</sup> This is taken by China as a declaration of war that would have consequences to the entire region.

### **5.3.5 Lessons learnt and challenges facing the ASEAN in implementing its maritime policies**

Unlike the EU, the ASEAN as a region has both territorial border disputes and a number of transnational maritime security threats, including piracy, armed robbery against ships, maritime terrorism and marine environmental destruction. The most worrying scenario is that the ASEAN states themselves have long-term bilateral maritime territorial disputes. For example, disputes between Indonesia and Malaysia and between Thailand and Cambodia have occasionally become sources of tension in the region. This is in addition to regional territorial disputes involving China on one side and Brunei, Indonesia, Malaysia, the Philippines, Thailand and Vietnam on the other. These

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<sup>702</sup> Washington Post, 2016. Provocations in the South China Sea. Available at: [https://www.washingtonpost.com/opinions/provocations-in-the-south-china-sea/2016/05/15/65631304-1852-11e6-971a-dadf9ab18869\\_story.html](https://www.washingtonpost.com/opinions/provocations-in-the-south-china-sea/2016/05/15/65631304-1852-11e6-971a-dadf9ab18869_story.html) [Accessed on: 8 February 2016].

features make the ASEAN region a more complex security region than the EU, the ECOWAS or the EAC.

Because of the ASEAN's security complexity, with China on the one hand and Japan and the US on the other, the three super-powers polarising the ASEAN states and driving the region towards militarised threats. The ongoing provocations between China and the US over disputed maritime domain are further increasing the tensions among ASEAN states.<sup>703</sup> While the US provides a necessary grand-strategic balance of power against China in the region, the economic dependence of the ASEAN states on China is unprecedentedly high.<sup>704</sup> This makes it difficult for the ASEAN states to strike a meaningful balance between these two maritime giants. In fact, China and the US are behind the success or failure of any maritime policy in the region. While the ASEAN states see the US as a security provider, it has become very hard for them to let China go due to their economic dependence on that country.<sup>705</sup>

It is equally important to appreciate the role of the ASEAN in regional maritime security cooperation. ASEAN is sometimes referred to as a 'regional manager' due to its involvement in and facilitation of many bilateral and military security and economic agreements in the region.<sup>706</sup> For example, the ASEAN is at the centre of the ASEAN+3, the East Asia Summit and the ARF. The only downside is that the ASEAN tends to ignore the 'hard' regional security issues, such as territorial disputes and terrorism.<sup>707</sup> Mostly, the ASEAN plays a minimal role in these issues, leaving much of the power to individual states through bilateral and multilateral agreements with outsiders, such as the US and the EU.

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<sup>703</sup> Yoon (2013)

<sup>704</sup> Ibid.

<sup>705</sup> Ibid.

<sup>706</sup> Narine (1998)

<sup>707</sup> *Desker* (2008)

The ASEAN region appears to lack the maritime capacity necessary to more effectively challenge transnational maritime security threats or at least scare their main rival: China. Despite plans to modernise their navies and coastguards, the economic downturn has always impacted the region very hard. There are seven main factors hindering maritime security cooperation in the ASEAN. Without going into unnecessary detail, these are: a) hard-to-control domestic factors; b) China–US maritime rivalry; c) deficient policy guidelines and operational Protocols; d) third-party intervention and involvement; e) advanced missile technology and WMDs in regional seas; f) lack of new MSIs; and g) reluctance to resort to legal solutions.<sup>708</sup>

The ASEAN states, like all other maritime states, do not have the serious political will necessary to enforce regional agreements. This is fuelled by mistrust among them and was, as previously noted, the reality of the China–US tension hanging over the region. The biggest issue hindering states' compliance with the regional cooperation agreements would appear to be sensitivity about their sovereign status—an issue which, as we shall see, also applies to the EAC (see section 2.3.3).<sup>709</sup> While there have been a number of bilateral agreements between the regional coastal states, in particular Malaysia, Indonesia and Singapore, behind the scenes these states do not appear to be open to meaningful cooperation.

There are some concerns among states that the excessive involvement of third parties or international actors, in particular superpowers such as the US, Russia and China, would compromise their national security and therefore further endanger their sovereign status.<sup>710</sup> The successful story of the ReCAAP, as a regional ISC, has given the ASEAN a very good name, and it is widely considered a benchmark on maritime

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<sup>708</sup> Yoon (2013, pp. 119-136).

<sup>709</sup> Interviewees 45 and 47.

<sup>710</sup> Burns, Bateman and Lehr (2009)

domain awareness. The model has been adopted by the IMO through the DCoC and in West Africa through the Yaoundé Code of Conduct.<sup>711</sup>

#### **5.4 Economic Community of West African States (ECOWAS)**

The ECOWAS is an IGO established on 28 May 1975. Its main objective is to promote economic integration in all fields of activity within the West African region. The ECOWAS is an IGO of 15 states: some twelve are coastal states, and three are landlocked states.<sup>712</sup> Burkina Faso, Mali and Niger are the three landlocked states. As shown in Figure 5-6, through these 12 coastal States, the ECOWAS has a coastline of approximately 4,700 km stretching from Senegal all the way down to Nigeria.<sup>713</sup> However, the entire Gulf of Guinea (GoG) region, of which the ECOWAS is part, has a coastline of roughly 6,000 km.<sup>714</sup>

The availability of hydrocarbon resources, oil and gas, large fish stocks and forest products makes the region not only an African economic hub but also very attractive to maritime criminals. The region depends on the sea to transport most, if not all, of its exports. It has been stated that seaborne trade, which also constitutes a larger chunk of water transport trade, accounts for over 60 per cent of the total GDP of the region.<sup>715</sup> While 80 per cent of global oil is transported by ship, the ECOWAS states, in particular Nigeria, transport 100 per cent of their crude oil by sea.

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<sup>711</sup> Interviewees 17, 18 and 19.

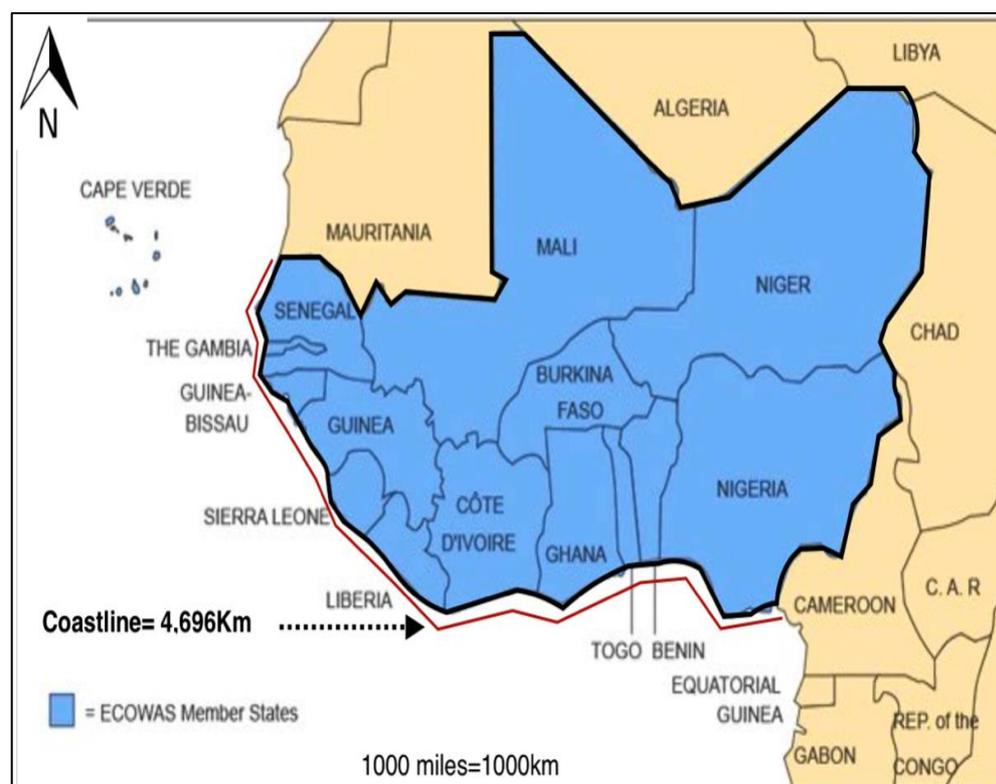
<sup>712</sup> Benin, Burkina Faso, Cape Verde, Cote d' Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo.

<sup>713</sup> See Data calculated from: <http://chartsbin.com/view/ofv> [Accessed on: February 2016].

<sup>714</sup> ECOWAS(2014). Press Release. Available at: <http://news.ecowas.int/presseshow.php?nb=112&lang=en&annee=2014> [Accessed on: February 2016].

<sup>715</sup> Peretomode (2014. p.45).

**Figure 5-6: Map of the ECOWAS<sup>716</sup>**



#### **5.4.1 Maritime security threats in the ECOWAS**

Like any other coastal region, the ECOWAS region is affected by a number of maritime security threats. These include maritime border disputes, piracy and armed robbery against ships, illegal fishing, trafficking of narcotics, and environment distractions.<sup>717</sup> There are maritime border disputes involving Nigeria and Cameroon over Bakassi Peninsula; Equatorial Guinea and Cameroon over the mouth of Ntem River; Gabon and Equatorial Guinea over Mbane Island and the boundaries of Carisco Bay; and Ghana and the Ivory Coast over the division of their oil-rich waters.<sup>718</sup>

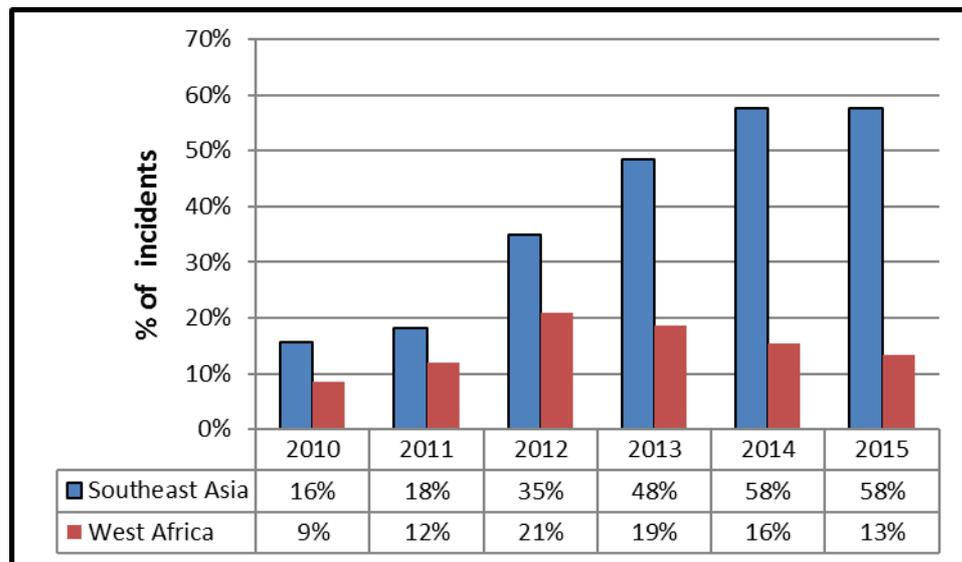
<sup>716</sup> See at: <http://www.inswa.biz/companyinfo.htm> [Accessed on: 16 May 2016].

<sup>717</sup> Ukeje and Ela (2013)

<sup>718</sup> (Ibid. p. 18)

Figure 5-7 shows a trend analysis of piracy and armed robbery against ships between 2010 and 2015. The analysis shows the number of incidents as a percentage of the total incidents worldwide. In 2015, it appears that incidents in West Africa accounted for approximately 13 per cent of all incidents worldwide.<sup>719</sup> This figure, however, is for the entire Western African region under the Gulf of Guinea Commission (GGC). Because the ECOWAS is part of the GoG region, its maritime security architecture cannot be analysed separately from the rest of the GoG region. Piracy and armed robbery against ships in the GoG are characterised by stealing oil and ship supplies and sometimes taking ship crews hostage for ransom. However, the recent fall of oil prices in the world market has seen Western African piracy change its tactics, moving from oil theft to kidnapping for ransom.<sup>720</sup>

**Figure 5-7: Trend analysis of piracy and armed robbery in West Africa<sup>721</sup>**



<sup>719</sup> Vircoulon, T and Tournier, V. 2014. Gulf of Guinea: A Regional Solution to Piracy? International Crisis Group. [Available at: 11 February 2016].

<sup>720</sup> Mungai, C. 2016. 'Another twist from the oil price crash - pirates off West Africa don't want to steal it, and they are more violent than Somalia's'. *Mail & Guardian Africa*. Available at: <http://mgafrica.com/article/2016-05-03-trends-in-piracy-2015-report> [Accessed on: 16 May 2016].

<sup>721</sup> IBM (2015).

#### 5.4.2 ECOWAS maritime governance

The EEZ in the GoG comprises the EEZs of the littoral states which are collectively governed by the ECOWAS and the Economic Community of Central African States (ECCAS). These two organisations form the GoG Commission (GGC). Figure 5-8 shows the GoG maritime domain divided into six governance-maritime zones: A, B, D, E, F and G. For unknown reasons, there is no maritime zone C.

This zonal governance is aimed at giving local states more power to govern their maritime Domains and providing a forum for cooperation around and improvement of Maritime Domain Awareness (MDA). The ECOWAS, through its IMS, is responsible for zones E, F and G. Zones E and F are considered the most dangerous of the entire coast of the GoG. In March 2015, the ECOWAS launched the Multinational Maritime Coordination Centre (MMCC) for a maritime zone known as Pilot Zone E.<sup>722</sup>

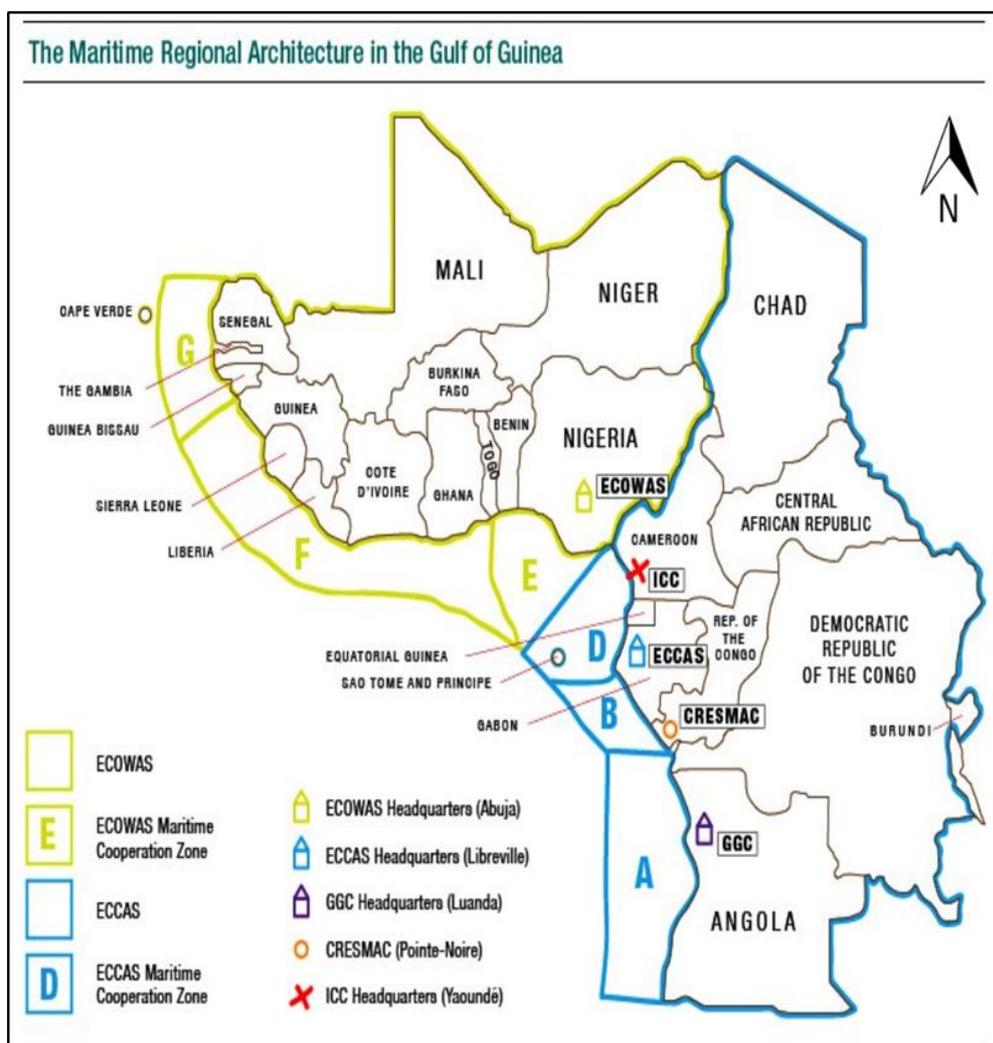
While Nigeria appears to have greater maritime security capacity, 55 per cent of the maritime security incidents occur in zone E, which falls under its jurisdiction.<sup>723</sup> Corrupt politicians and a lack of political will from regional governments to invest in maritime safety and security are said to be the main factors leading to the escalation of maritime incidents in the region, particularly in Nigerian waters.

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<sup>722</sup> DefenceNews (2015). Maritime Center To Fight Gulf of Guinea Piracy. Available at: <http://www.defensenews.com/story/defense/naval/coast-guard/2015/03/27/ecowas-launches-maritime-center-fight-gulf-of-guinea-piracy/70561604/> [Accessed on: 27 February 2016].

<sup>723</sup> Ifesinachi (2015)

**Figure 5-8: The regional maritime architecture in the Gulf of Guinea**<sup>724</sup>



### 5.4.3 Maritime security policies

The high number of incidents of piracy and other maritime crimes in the region has prompted several national, bilateral, regional and extra-regional engagements intended to improve maritime security. Nevertheless, there are some concerns that little has been achieved to stop or eliminate those threats in regional waters. There are three main organisations in the GoG that have some overlapping maritime safety

<sup>724</sup> Oceans Beyond Piracy. Available at: <http://oceansbeyondpiracy.org/sites/default/files/attachments/WestAfricaInfoSharingMap3.pdf> [Accessed on: 27 February 2016].

and security mandates. These organisations are the GGC, the ECCAS and the ECOWAS.

Additionally, world superpowers, such as France, China, the US, and the UK, contribute to the war against maritime security threats in the region. Individually, these superpowers have a number of bilateral agreements with either the aforementioned regional organisations or individual West African states of their choice. However, for national security and sovereignty reasons, many coastal states prefer to have their maritime security strategies aligned with regional organisations rather than multilateral agreements with superpowers.

#### **a) Maritime Organisation of West and Central Africa (MOWCA)**

The MOWCA acts as an institutional framework as well as a maritime policy. The MOWCA was first established in May 1975, but only became an effective maritime institution in August 1999.<sup>725</sup> Initially, maritime security was not among the core functions of the MOWCA. In the wake of the 11 September 2001 attacks on the US, the organisation started to assume some maritime security responsibilities through a number of Memorandums of Understanding (MoUs).<sup>726</sup>

At the time of writing, the MOWCA unifies 25 GoG states, five of which are landlocked. As noted, together, these states have approximately 6,000 kilometres of coastline stretching from Senegal all the way down to Angola. The primary objective of the MOWCA is to serve as the regional and international community for all maritime matters that are regional in character. Among the objectives of the MOWCA is to create an integrated coastguard network that would coordinate inter-regional maritime security policies and actions.<sup>727</sup>

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<sup>725</sup> Ali (2014)

<sup>726</sup> Ibid.

<sup>727</sup> Ukeje and Ela (2013)

The goal of the network is to initiate joint efforts to safeguard human life, enforce laws and improve the security, safety and protection of the environment. The MOWCA is also acting as an important interface with external actors such as the UN, the IMO, the AU, and other organisations of that nature.<sup>728</sup>

### **b) The ECOWAS Integrated Maritime Strategy (EIMS) and the ECCAS Maritime Security Strategy**

The EIMS was adopted on 29 March 2014. The strategy acts as a maritime security pilot project in zone E (see Figure 5-8 on page 205), which is considered a hotbed of piracy in the GoG. Five years earlier, the ECCAS adopted its maritime security strategy on 24 October 2009. The strategy is for zones A, B and D. These two maritime security strategies opened the way for the Yaoundé Code of Conduct, which combines the two regions under the GGC.

### **c) Yaoundé Code of Conduct (2013)**

The Yaoundé Code of Conduct is an MSI designed to suppress piracy and armed robbery at sea and all other illicit maritime activities in the West and Central African (the GoG) regions.<sup>729</sup> The main signatories of the Code are the ECCAS, the ECOWAS, and the GGC. The Code, which is a prototype of the DCoC, came into effect on 25 June 2013.

There are some concerns that, despite the many plaudits accorded to the Yaoundé Code of Conduct, it would not achieve its target as easily as was expected.<sup>730</sup> This is because the Code does not address the security threats at the source. Like Somali piracy, GoG piracy and armed robbery against ships have their roots on shore. The Code, therefore,

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<sup>728</sup> Ibid.

<sup>729</sup> See <https://195.24.195.238/en/multimedia/documents/437-sommet-sur-la-piraterie-code-de-conduite-english> [Accessed on: 11 February 2016].

<sup>730</sup> Ifesinachi (2015)

lacks important provisions that it could use to address maritime insecurity at the source.<sup>731</sup>

#### **5.4.4 Lessons learnt and challenges in maritime security cooperation in the ECOWAS and the GoG**

The EIMS, the ECCAS Maritime Security Strategy, and the Yaoundé Agreement on maritime security in the GoG all presage the 2050 Africa's Integrated Maritime Strategy (2050 AIMS) which is in line with them.<sup>732</sup> This is one of the great achievements of the region, at least on paper. One of the areas where the GoG is ahead of many other African IGOs is on the establishment of a sub-regional integrated coastguard network. This is one of many instructions of the 2050 AIMS in the area of law enforcement.<sup>733</sup> Nevertheless, good strategies and policies alone cannot eradicate maritime security threats. There must be a good level of maritime law enforcement, both at land and on the seas. Weak law enforcement is a big threat to compliance with many of these strategies.

The escalation of maritime security issues in West Africa is partly explained by a lack of political will and a lack of capacity among littoral states to govern their maritime spaces accordingly.<sup>734</sup> While some nations do not have the necessary capacity in the areas of surveillance, response and enforcement at sea, others, such as Nigeria, simply lack the necessary political will. It is true that the nature and connectivity of maritime domain in the GoG mean that maritime security threats cannot be addressed by a single nation. However, large states (such as

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<sup>731</sup> Ibid

<sup>732</sup> European Union-West Africa Regional Indicative Programme, 2014-2020. Available at: [https://ec.europa.eu/europeaid/sites/devco/files/eeas-2015-rip-west-africa\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/eeas-2015-rip-west-africa_en.pdf) [Accessed on: 11 February 2016].

<sup>733</sup> See IMO, strengthening maritime security in west and central Africa, Available at: <http://www.imo.org/en/MediaCentre/HotTopics/piracy/Documents/west%20africa%20Maritime%20Security.pdf> [Accessed on: 11 February 2016].

<sup>734</sup> See DefenceWeb.Gulf of Guinea piracy down in 2015. Available at: [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=42106](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=42106) [Accessed on: 12 February 2016]

Nigeria) with fairly sufficient resources and capacity would be expected to lead the others in regional maritime security initiatives.

To demonstrate the importance of political will, Nigeria, for the first time in decades, did not see any maritime security incidents in its waters for five consecutive months from the middle of 2015 to January 2016.<sup>735</sup> Although this was due to the radical measures taken by the new president, who assumed power in 2015, it demonstrates the importance of political will in the area of maritime security. In fact, what is being done in Nigeria at the time of writing signifies the importance of governmental commitment or political will in maritime security, especially give the relative Maritime Domain Awareness generally. The lack of political will is one of great concerns of this research. Politicians of the EAC member states do not appear to prioritise maritime security despite its important regional security and economic growth (see sections 1.2.3 and 1.3.2).<sup>736</sup>

Weak law enforcement in the GoG region has led to oil companies in Nigeria, and even the Togolese Government, engaging private military security contractors (PMSCs) to provide security in the waters of the Niger Delta, as well as at oil rigs and guard ports.<sup>737</sup> While the act of hiring PMSCs has improved the results of the fight against maritime security issues in the GoG, massive deployment of PMSCs is seen as the commercialisation of anti-piracy efforts.<sup>738</sup> Furthermore, the issues of sovereignty, equity, and governance imperatives against PMSCs have always been causes of concern, not only for these two states but also for the region at large.<sup>739</sup>

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<sup>735</sup> Osinowo (2015)

<sup>736</sup> Interviewees 45 and 47.

<sup>737</sup> Ibid.

<sup>738</sup> Ibid

<sup>739</sup> Ibid.

Through a number of regional maritime security initiatives, most importantly the Yaoundé Code of Conduct, the issue of a lack of cooperation is expected to be resolved, though surely not anytime soon. There is also a concern that the judiciary capability to try maritime criminals is weak. As previously noted, most maritime threats cannot be dealt with effectively on a purely national basis. To be effective against these maritime threats, armed forces and coastguards require at least some level of regional MDA.

While in principle there are basic Maritime Domain Awareness (MDA) programmes in the region, shipping companies intentionally fail to report incidents to avoid being charged extra-risk insurance premiums. Governments, on the other hand, do not report such incidents in order to avoid giving the region a bad image. There are some concerns that hot pursuit is undertaken in West Africa in practice, although this is within the mandate of the Yaoundé Code of Conduct.

In 2016, the Ship-owners Association of Nigeria acknowledged that civilian maritime cadets who have graduated from the Maritime Academy of Nigeria (MAN) are actively participating in piracy operations in the GoG region.<sup>740</sup> This is a shocking observation. While Somali pirates lack the knowledge necessary to command a ship, Nigerian pirates have the knowledge to do this. This increases the region's vulnerability to piracy even further.

As noted, on average, piracy and armed robbery against ships in the GoG region account for 13 per cent of all the maritime incidents recorded worldwide between 2010 and 2015. These figures represent only a fraction of the actual attacks in the region, as ship-owners and governments downplay incidents to avoid increased shipping costs and

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<sup>740</sup> The Maritime Executive (2016). Nigerian Ship-owners Say Cadets Become Pirates. Available at: <http://www.maritime-executive.com/article/nigerian-shipowners-say-cadets-become-pirates> [Accessed on: 12 February 2016]

giving the region a bad name.<sup>741</sup> These threats cost the region approximately US\$2 billion annually in terms of revenue lost.<sup>742</sup>

### **5.5 East African Community (EAC)**

The EAC is an IGO of six countries in East Africa. It comprises the states of Burundi, South Sudan, Rwanda, Kenya, Tanzania and Uganda. Kenya and Tanzania are the only coastal States of the Community; the rest are landlocked. Through these two coastal States, the Community has approximately 1,950 km of coastline and approximately 384,000 km<sup>2</sup> EEZ in the Indian Ocean. There is, at the time of writing, no research to suggest how the EAC's maritime sector contributes to regional GDP.

The author, however, expects that the maritime sector's contribution to regional GDP is likely to be marginal. This is partly due to the fact that the maritime sector in the region is underdeveloped. The economic potentiality deriving from seaborne trade, port services, fishing, tourism and oil, gas and minerals has not been fully explored.<sup>743</sup> The author of this research, estimates that maritime sector, based on fisheries and tourism industries alone, contributes about 33 per cent to the regional GDP and supports 25 per cent of the region's employment.<sup>744</sup> These statistics would have reflected a higher contribution from the maritime sector if the author had been able to obtain data from shipping and oil and gas industries. However, the lack of reliable data in the EAC's maritime sector, is further justifying the rationale for undertaking this research.

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<sup>741</sup> Osinowo (2015).

<sup>742</sup> Gilipin (2007)

<sup>743</sup> Mbekeani and Ncube 2011.

<sup>744</sup> World Travel & Tourism Council (2015) <https://www.wttc.org/-/media/files/reports/economic%20impact%20research/countries%202015/tanzania2015.pdf> and <https://www.wttc.org/-/media/files/reports/economic%20impact%20research/countries%202015/kenya2015.pdf> [Accessed on: 1 April 2017]

At the time of writing, the world’s economic superpowers-China, US and EU, do not consider the EAC region as an attractive business destination as it is the case of ASEAN, ECOWAS and SADC. For example, in Table 5-1, China appears to be a major business partner in the EAC as it accounts for 25 per cent of the regional trade. However, in 2015, the Chinese trade in the EAC region, represented only 4 per cent of its US\$ 300 billion worth of trade in Africa, most it in South Africa.<sup>745</sup> India has US\$ 50 billion worth of investment in Africa, but 90 per cent of that is in Africa’s tax haven-Mauritius, and almost nothing in the EAC region.<sup>746</sup> The same applies to EU and the US.

The EAC has a large confirmed reserve of on-shore and off-shore oil and gas (see section 1.2.3). This is what made the super powers (the US) and the great powers such China, India and the EU see the EAC region as a potential energy future supplier (see section 1.2.3). This is therefore, a link which the EAC would like to use to bring along these super powers and hard powers in its proposed maritime security regime (see section 8.5.3).

| <b>Table 5-1: EAC trade with selected five top partners in 2016<sup>747</sup></b> |                             |                      |                |
|---|-----------------------------|----------------------|----------------|
|   | <u>Partners</u>             | <u>Value (mil €)</u> | <u>% World</u> |
| 1   | China                       | 11,332               | 25.1           |
| 2   | EU (28 states including UK) | 6,842                | 15.2           |
| 3   | India                       | 6,342                | 14.1           |
| 4   | United Arab Emirate         | 2,945                | 6.5            |
| 5   | US                          | 1,853                | 4.1            |

The EAC, like any other regional organisation that borders sea, suffers from a number of maritime security issues. The security threats that were previously discussed in detail in Chapter Three are piracy, armed

<sup>745</sup> ChinaDaily (2015). China-Africa trade approaches \$300 billion in 2015. Available at [http://www.chinadaily.com.cn/business/2015-11/10/content\\_22417707.htm](http://www.chinadaily.com.cn/business/2015-11/10/content_22417707.htm) [Accessed on: 2017]

<sup>746</sup> Cisse, D. 2015. China and India in Africa. The Diplomat. Available at: <http://thediplomat.com/2015/11/china-and-india-in-africa/> [Accessed on: 1 April 2017]

<sup>747</sup> European Commission (2017. p.8)

robbery, illegal fishing, the trafficking of narcotics, humans and weapons, and environmental destruction (see section 4.2). As noted, the evidence suggests that the nexus between Somali-piracy and other transnational maritime crimes is strong in the EAC (see 4.2.3 on page 152). This is primary due to the proximity of the region to the failed state of Somalia. This aligns with the Buzan and Wæver theory holding that security threats are sensitive to geographical proximity; threats travel faster over short distances than long ones (see 2.4.4 on page 68).

### **5.5.1 Maritime policies of the EAC: Challenges in maritime security cooperation**

Political will is likely to be behind the successful stories of maritime security cooperation in the EU, ASEAN and ECOWAS. As noted in section 4.4.4, piracy and armed robbery against ships at sea off the Nigerian coast have been brought under control following the swearing in of General Buhari, the new Nigerian president in 2015. Despite their strong senses of nationalism and disagreements on how to resolve maritime border disputes with China, ASEAN states have accorded themselves into strong maritime security cooperation. The ARF and ReCAAP are just examples of the successful maritime security cooperation in the ASEAN region. ReCAAP, for example, has already been mirrored by Djibouti Code of Conduct in east Africa as well by Yaounde Code of Conduct in west Africa (see section 4.3.4 (c)). This suggests that international cooperation can bring benefits to all involved, and that such cooperation can occur even when there are many other problems and rivalries.<sup>748</sup> This is what is the author of this research hoping for the EAC region.

However, the EAC differs from the rest of the world's IGOs. The EAC is aiming for full-fledged political unification, at least in theory. The political unification processes will eventually lead into an EAC Federal

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<sup>748</sup> Simon, (1995).

government. That is the reason why in the EAC, the issue of maritime security is excessively linked to the Community's goal of political unification. This is partly due to the inbuilt flaws of the 1999 EAC Treaty, which attach all peace and security provisions to the political unification processes.

For example, through the 1999 EAC Treaty, Article 123 (political affairs), Article 124 (regional peace and security) and Article 125 (defence) are all under the final stage of integration, which is cooperation in political matters.<sup>749</sup> For this reason, fully fledged political unification or federation is an important breakthrough that is needed for the EAC to be able to execute its peace and security policies (including its maritime security policies, which are currently not in place)-(see section 1.2.1 on page 3). This absence of national and regional maritime security policies at the EAC level is a core concern of this research.

The absence of maritime security policies in the EAC has led the member States, mostly the coastal states of Kenya and Tanzania, to rely on inter-regional and national maritime security policies and bilateral agreements with other maritime nations (see section 8.5.3). On the one hand, there are inter-regional/international maritime security policies/programmes, such as the DCoC, the MASE programme, the 2050 AIMS and the SADC maritime security strategy, among others. On the other hand, there are maritime user states that have some security and economic interests in the region and are willing to offer some assistance to the EAC's members, mostly individually.

These states include China, the US and India.<sup>750</sup> With the exception of the MASE programme, the EAC's participation is barely evident in most of these projects. The contributions of the DCoC, the MASE programme and the 2050 AIMS will be explored in Chapter Seven. There are huge

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<sup>749</sup> 1999 EAC Treaty.

<sup>750</sup> Interviewees 3,16,17,45 and 47.

concerns that these projects have not been specifically crafted to deal with the maritime security concerns of the EAC, despite their positive contributions to maritime security.<sup>751</sup> It has to be appreciated that these maritime security projects are—in addition to general maritime security frameworks, such as the UNCLOS, the ISPS Code, the SUA Convention and the like—being widely used in the region. Consequently, there are many maritime security projects in the region, which creates disjointed maritime governance.<sup>752</sup>

At the time of writing, there are some general peace and security policies at the EAC level, such as the EAC 2006 Peace and Security Strategy, the 2013 Protocol on Peace and Security, and the 2014 Protocol on Co-operation in Defence Affairs. The only downside is that these strategies appear to have a blind-spot when it comes to maritime issues.<sup>753</sup> In fact, they were never crafted to deal with the EAC's maritime security issues in broader terms.<sup>754</sup> Instead, it appears to be a general security strategy that largely covers peace and security initiatives on land, with little mention of maritime security. These policies will be analysed in Chapter Six.

The main challenge facing the EAC region would appear to be absence of a tailor-made regional maritime security strategy, and the key stakeholders interviewed confirm this.<sup>755</sup> As previously discussed, the EAC is currently using international and regional maritime security strategies. While helpful, these strategies are not meant to address the unique maritime security needs of the EAC. Furthermore, there are huge

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<sup>751</sup> Interviewees 45 and 47.

<sup>752</sup> Ibid.

<sup>753</sup> Ibid.

<sup>754</sup> Ibid.

<sup>755</sup> Ibid.

concerns that these international maritime security projects would not be sustainable due to the high running costs attached to them.<sup>756</sup>

The level of expertise required to run them is also a concern of the EAC.<sup>757</sup> There is an apparent danger of the projects ceasing operation or being significantly scaled down when the sponsors' support is withdrawn (see section 4.2.5 and further in section 8.5.3 where HRA has been reduced leading reduction of international support and naval patrol in the EAC maritime domain). The chance of having these projects fully supported by the donors for the unforeseeable future is next to impossible. There is no evidence to suggest how the EAC is participating in the SADC maritime security strategy or the 2050 AIMS.<sup>758</sup>

The 2006 Peace and Security Strategy is the largest general security initiative in the EAC. In fact, it was not meant to be part of the regional maritime security solution (see sections 1.3.2 and 8.4.3 on pages 16 and 306 respectively). Even definitions of piracy and terrorism as used in the EAC's 2006 Peace and Security Strategy do not necessarily capture two horrific life-changing and possibly fatal types of crimes at sea. This is a worrying situation, as the EAC seems to be more concerned with its land security problems than those on its maritime domain. The lack of strong cooperation between law enforcement agencies in Kenya and Tanzania is said to be another factor leading to the slowdown of maritime cooperation in the EAC region.<sup>759</sup>

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<sup>756</sup> Ibid.

<sup>757</sup> Ibid.

<sup>758</sup> Ibid.

<sup>759</sup> Ibid.

## 5.6 Conclusion

The ASEAN, the EAC, the ECOWAS and the EU are among the IGOs responsible for the maritime security governance of their regions. As a role model, the EU is far in advance of any other IGOs in terms of maritime security governance. This is due to its strong maritime security policies and institutional frameworks, at both the regional and national levels. For example, of these IGOs, only the EU has a blue economic policy that links its maritime affairs to the regional economy—this is achieved through the EU's IMP. This policy, among other things, depends on how a region is governing its maritime domain. This is due to the economic and security dependence of these regions on the maritime sector. For this reason, maritime security governance has become a priority matter for the EU, at both the regional and international levels.

The maritime domains of the ASEAN, the EAC and the ECOWAS are experiencing territorial disputes and transnational maritime crimes such as piracy, armed robbery, illegal fishing, terrorism, and the trafficking of narcotics, light weapons and humans. These IGOs do not have a holistic approach to protect their own maritime domains. The lack of law enforcement capability, sovereign sensitivity, and unwillingness to cooperate and share intelligence information are among the major setbacks that prevent these regions from governing their maritime domains as they should.<sup>760</sup>

Unfortunately, while all the other regions examined in this Chapter have their own maritime security strategy, the EAC lacks this important document. This omission of such an important policy has some serious effects on regional maritime security governance, especially given the geographical proximity of the EAC to the failed state of Somalia.

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<sup>760</sup> Ibid.

The lack of a regional maritime security strategy at the EAC level therefore leaves the issue of regional maritime security cooperation unresolved. Unilaterally, Kenya and Tanzania struggle to patrol their own maritime domain. Due to the sheer size of their maritime domains (see section 1.2.2 and Figure 1-2 and Table 1-1 on pages 6 and 7), large parts of them remain largely ungoverned all year round. The inability of Kenya and Tanzania to monitor their own maritime domains increases the likelihood of security threats in the region. As a result, the region has become less informed on what is happening in the regional maritime domain on a daily basis.

This situation leaves the EAC and its coastal States with no option but to exclusively rely on various international and regional maritime security strategies and projects as part of the solution to regional maritime security issues. This is in addition to heavily relying on outside forces to protect maritime communication lines. Within the EAC, and in the other regional organisations mentioned in this Chapter, in most cases, the criminal justice framework is not even able to cope with the necessary detention, prosecution, trials and imprisonment of piracy suspects.

While the EAC has just adopted the 2006 Peace and Security Strategy and its Protocol in 2013, these two instruments have been widely blamed for being blind to maritime security issues. It appears that the EAC has invested more heavily in tackling land-based security issues than maritime security issues.<sup>761</sup> Depending on the importance of the maritime domain, it would be in the interests of the region for the EAC to balance, if not prioritise, maritime security over land security. Further concerns are attached to the EAC's failure to cope with the 2050 AIMS.

As a regional organisation, the EAC has a number of directives in the 2050 AIMS to deliver on, but does not appear to have met the given deadlines. For example, one of the short-term targets of the 2050 AIMS

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<sup>761</sup> Ibid.

is for regional organisations to have their own maritime security strategy by the year 2018. This does not seem to be the case in the EAC. Neither the EAC nor the coastal states have openly acknowledged complying with this short-term target of the AIMS.<sup>762</sup> Compared with the ECCAS, the ECOWAS and the GGC, the EAC is far behind in terms of regional maritime security cooperation.

As summarised in Table 5-2, these organisations have a number of maritime security policies applicable in their regions in addition to their maritime security strategies. The maritime security strategies for the ESCCAS and the ECOWAS were adopted in 2009 and 2014 respectively. This is in addition to the Yaoundé Code of Conduct, which is applicable to the entire GoG region. The ASEAN and the EU also have maritime security strategies in place and functioning well.

**Table 5-2: A summary of the maritime policies and institutional frameworks of the ASEAN, the EAC, the ECOWAS and the EU**

| IGOs  | Instruments   | Institutional framework  |
|-------|---|--|
| EU    | <ul style="list-style-type: none"> <li>• Maritime Strategy, 2008</li> <li>• Integrated Maritime Policy, 2011</li> <li>• Maritime Security Strategy, 2014</li> </ul> | <ul style="list-style-type: none"> <li>• Directorate-General for Maritime Affairs and Fisheries (DG-MARE)</li> <li>• European Fisheries Control Agency (EFCA)</li> <li>• European External Action Services (EEAS)</li> <li>• European Maritime Safety Agency (EMSA)</li> </ul> |
| ASEAN | <ul style="list-style-type: none"> <li>• Code of Conduct in the South China Sea</li> <li>• Regional Cooperation</li> </ul>  | <ul style="list-style-type: none"> <li>• ASEAN Regional Forum (ARF)</li> <li>• ASEAN+3</li> <li>• East Asia Summit</li> </ul>  |

<sup>762</sup> Ibid

|        |  |  |
|--------|--|--|
|        | <p>Agreements on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)</p> <ul style="list-style-type: none"> <li>• Regional Maritime Security Initiative (RMSI)</li> <li>• Asia-Pacific Maritime Security Strategy</li> </ul> |  |
| ECOWAS | <ul style="list-style-type: none"> <li>• ECOWAS Integrated Maritime Strategy (EIMS)</li> <li>• Yaoundé Code of Conduct</li> </ul>  | <ul style="list-style-type: none"> <li>• Maritime Organisation of West and Central Africa</li> </ul> |

Having explored the maritime security governance practices of the ASEAN, the EAC, the ECOWAS and the EU, we shall now, in the coming chapter, examine the maritime security governance of the EAC's member states. Chapter Six will also explore why the EAC is not taking a leading role in regional maritime security governance.

## **6 Chapter Six: Maritime Governance in the East African Community: A Case Study of Maritime Security Governance in Kenya and Tanzania**

### **6.1 Introduction**

Previously in Chapter Five, the maritime security policies that are currently in force in the East African Community (EAC) were analysed. These policies and legislation were subsequently compared with maritime security policies and the legislation of other regional organisations, such as the Association of Southern East Asian Nations (ASEAN), the European Union (EU) and the Economic Community of West African States (ECOWAS).

In this chapter, the author analyses the maritime security governance of Kenya and Tanzania, which are the only two coastal states of the EAC. The chapter answers research question 1.5.2.2, 'What are the political, legal and economic challenges that are likely to be associated with the above process?' The chapter conceptualise maritime governance and maritime security governance and then explores maritime security governance in Kenya and Tanzania.

The chapter further analyses how ocean governance in the EAC supports the 'blue economy' concept. It shows that maritime security governance depends on three important aspects: legislation (maritime policies and laws), institutional framework (administrative mechanisms that support maritime security governance), and mechanisms for implementation (law enforcement). The chapter then investigates how these three aspects fit into Kenyan and Tanzanian maritime security governance.

## 6.2 Maritime governance

Maritime security is an integral sub-set of maritime governance (ocean governance).<sup>763</sup> By its very nature, governing the oceans and seas poses a great deal of difficulty to both coastal states and the international community.<sup>764</sup> This is because the seas and oceans are huge, as well as being the most dependable and cheapest mode of transportation in international trade. Moreover, the seas and oceans are potential sources of energy, food, and human and economic security.<sup>765</sup> Unfortunately, maritime insecurity on the oceans and seas—caused by issues such as piracy, maritime terrorism, illegal fishing and environmental degradation—spoils the potential economic benefits of the oceans and seas for humanity.<sup>766</sup>

The oceans and seas make up 71 per cent of the Earth's surface and 95.5 per cent of its waters,<sup>767</sup> and facilitate the transportation of 90 per cent of world trade by volume.<sup>768</sup> The high seas make up nearly two-thirds of the world's oceans and cover almost half of the planet. The high seas are out of the reach of any state jurisdiction and are the most difficult part of the ocean to govern.<sup>769</sup> On average, over 95 per cent of international trade by volume in the EAC is seaborne.<sup>770</sup>

It is practically impossible for any country to secure its own maritime domain unilaterally. Even world super-powers or great-powers such as the US, the UK and Russia find it difficult to govern their own maritime

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<sup>763</sup> Bateman(2016)

<sup>764</sup> Wambua (2009).

<sup>765</sup> UNEP (2012). Green Economy in a Blue World. United Nations Environmental Programme. Available at: [http://www.unep.org/pdf/green\\_economy\\_blue.pdf](http://www.unep.org/pdf/green_economy_blue.pdf) [Accessed on: 22 April 2016].

<sup>766</sup> Ibid

<sup>767</sup> Shiklomanov (1993.p. 13).

<sup>768</sup> Ibid.

<sup>769</sup> Lee (1977.p.20)

<sup>770</sup> Kenya Maritime Authority. 2015. Available at: <http://www.kma.go.ke/nmc2015/content/ConceptNoteNMC2015.pdf> [Accessed on: 20 March 2016].

spaces without some sort of international or regional cooperation.<sup>771</sup> This is because the seas do not have physical fences that would prevent criminals crossing borders while chasing their prey. Criminals such as pirates and illegal fishermen can easily cross maritime borders and jurisdictions to evade capture and prosecution.<sup>772</sup> Through international cooperation, however, maritime criminals can be challenged at the seas and freedom of navigation can be assured.

Maritime governance may be described:

“as those formal and informal rules, arrangements, institutions and concepts which structure the ways in which seas’ space is used, how ocean problems are monitored and assessed, what activities are permitted or prohibited, and how actions and other responses are applied”.<sup>773</sup>

Maritime governance gets much of its legal framework from the United Nations Convention on the Law of the Sea (UNCLOS 1982), which provides the legal framework for coastal states’ rights and obligations at sea.<sup>774</sup> It is also an important catalyst for regional security cooperation and dialogue.<sup>775</sup> For governance purposes, the UNCLOS 1982 divides maritime spaces into two major parts.

On the one hand, there are maritime spaces that are under coastal states’ jurisdictions. These comprise the 12 nm Territorial Sea and remaining 188 nm of the EEZ out to 200 nm, and depending on

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<sup>771</sup> Walker, T. 2015. How can Africa improve maritime security? The World Economic Forum. Available at: <https://www.weforum.org/agenda/2015/10/how-can-africa-improve-maritime-security> [Accessed on: 20 March 2016].

<sup>772</sup> Ibid. see also DefenceWeb (2015). South Africa now a member of the International Maritime Organisation. Available at: [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=41647:south-africa-now-a-member-of-the-international-maritime-organisation&catid=51:Sea](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=41647:south-africa-now-a-member-of-the-international-maritime-organisation&catid=51:Sea) [Accessed on: 14 April 2016]

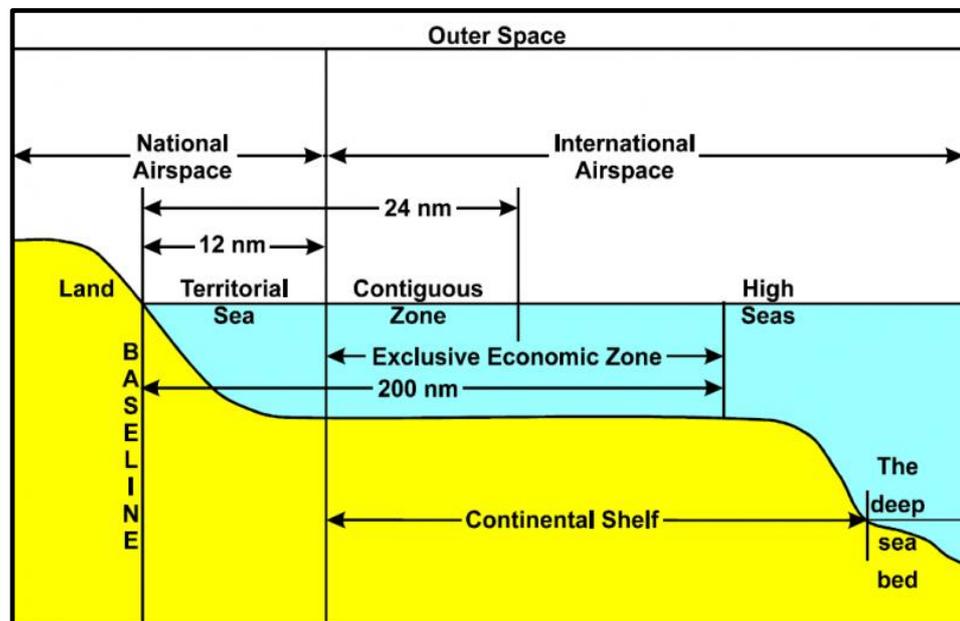
<sup>773</sup> Rothwell and Stephens (2010. p.462) See also Juda and Hennessey (2001)

<sup>774</sup> Bateman (2005)

<sup>775</sup> Ibid.

international agreement, the Outer Continental Shelf out to a maximum of 350 nm depending on a complicated formula relating to bathymetric depths and the configuration of the continental self. This area of sea is approximately one-third of the world's oceans and seas. On the other hand, there are maritime spaces that fall under international jurisdictions.

**Figure 6-1: Maritime Zones<sup>776</sup>**



Furthermore, for security and economic purposes, the UNCLOS defined four maritime zones over which a coastal state has some sovereign rights and jurisdiction. As shown in Figure 6-1, the four maritime zones are Territorial Sea,<sup>777</sup> the Contiguous Zone,<sup>778</sup> the Exclusive Economic Zone (EEZ)<sup>779</sup> and the High Sea.<sup>780</sup> This division of sea waters has

<sup>776</sup> MRAG(2010). Costs and benefits arising from the establishment of maritime zones in the Mediterranean Sea. Available at: <https://www.mrag.co.uk/experience/costs-and-benefits-arising-establishment-maritime-zones-mediterranean-sea> [Accessed on: 14 April 2016].

<sup>777</sup> UNCLOS, Art. 2.

<sup>778</sup> UNCLOS, Art. 33.

<sup>779</sup> UNCLOS, Art. 55.

made the world's oceans and seas better managed and reduced clashing interests among coastal states over these areas.<sup>781</sup> Although the UNCLOS has given coastal states governance responsibilities for their Territorial Seas, nearly two-thirds of seas and oceans are still high seas that fall outside any country's national jurisdiction.<sup>782</sup> This means the high seas are the largest unprotected and lawless region on Earth.

The lack of governance on the high seas is widely accepted as one of the major factors contributing to the escalation of maritime security threats in Territorial Seas.<sup>783</sup> This is because maritime security threats are interdependent<sup>784</sup> and, as noted earlier, sensitive to geographical proximity, and thus they threaten to travel very fast over short distances rather than longer ones (see 2.4.3). These are some of the reasons why maritime criminals nest themselves on the high seas, very close to coastal states' waters, just waiting for the opportunity to strike. This is the classic military tactic of ambush.

Perhaps in fairness to all states, the UNCLOS gives equal rights to both coastal and landlocked states over the use of the high seas, including the right to access deep-sea resources, innocent passage and freedom of navigation.<sup>785</sup> These issues necessitate cooperation in maritime spaces, regardless of who owns them. While these features are barely found on land, they make ocean governance a more nuanced and difficult process. As argued by Germond, ocean governance is a complex process because: a) the sea is shared between numerous states and jurisdictions; b) various actors are involved in ocean

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<sup>780</sup> UNCLOS, Art. 86.

<sup>781</sup> (O'Rourke, 2014)

<sup>782</sup> High Seas Alliance (2015). High time for the High Seas at the United Nations. Available at: <http://highseasalliance.org/content/high-time-high-seas-united-nations> [Accessed on: 16 April 2016].

<sup>783</sup> Ibid.

<sup>784</sup> Bueger (2015)

<sup>785</sup> (Mwenda, 2000) See also the UNCLOS, Part X - Right of access of land-locked States to and from the sea and freedom of navigation.

governance at different levels; and c) ocean governance is a multi-dimensional issue.<sup>786</sup>

### **6.3 What is maritime security governance?**

Maritime security governance, at its most simple, relates to all the measures a country or a region as a whole takes to prevent unlawful acts in the maritime domain.<sup>787</sup> Maritime security governance requires the cooperation of the main actors in maritime security, as well as their having relevant policies, mechanisms and instruments targeting maritime security threats at different levels and dimensions.<sup>788</sup> According to Tatenhove, maritime security governance involves

“the sharing of policy making competencies in a system of negotiation between nested governmental institutions at several levels (international, (supra) national, regional and local) on the one hand and governmental actors, market parties and civil society organisations on the other in order to govern activities at sea and their consequences”.<sup>789</sup>

Maritime security governance in Territorial Seas out to 12nm is an exclusive job for coastal states. This can be done through the cooperation of different security actors within the country, such as the navy, coastguard/marine police, flag state, and port authority. However, on the high seas beyond 12nm Territorial Sea limit and, more certainly, outwith to the 200nm limit of the EEZ, maritime security governance requires cooperation among national, regional and international actors as key stakeholders.<sup>790</sup>

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<sup>786</sup> Germond (2015).

<sup>787</sup> Gilpin, (2007)

<sup>788</sup> Klein (2014)

<sup>789</sup> Tatenhove (2011.p. 87)

<sup>790</sup> Ibid see also Tatenhove (2011)

The broad aim of wider ocean governance, certainly beyond the 200 nm EEZ limit, is to maintain the sustainable uses of the ocean's resources for economic development. This is sometimes known as the blue economy. In Africa as noted in sections 1.3.2 and 8.5.3 (b), the 'blue economy' has been made official by the 2050 Africa's Integrated Maritime Strategy (2050 AIMS). In order to reach a point where the ocean's resources can be fully used for economic development (blue economy), the oceans and seas need to be free from all maritime security threats in the first place.

Nonetheless, maritime security threats, such as piracy, armed robbery against ships, illegal fishing and environmental degradation, deplete the ocean's resources very quickly. For this reason, maritime security is an important catalyst between ocean governance and states' ability to explore ocean resources for development (blue economy). For example, this can easily be demonstrated through the ongoing Kenya–Somalia maritime border dispute (see section 4.2.5).

Because of this dispute, both sides have put on hold their investments in the disputed area, which is believed to have massive deposits of oil and gas. While maintaining stocks of certain fish species is a vital part of the blue economy, this cannot be achieved without addressing illegal fishing practices in the first place. Moreover, while illegal fishing depletes national or regional fish stocks, it also compromises human security, food security and the economy.

#### **6.4 The concept of the 'blue economy' in the EAC**

According to the 2050 AIMS, the 'blue economy' is a marine version of the green economy: it emphasises the sustainable use of oceans and seas for economic development.<sup>791</sup> The blue economy concept

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<sup>791</sup> The 2050 AIMS, See also the 2012's RIO+20 United Nations Conference on Sustainable Development (UNCSD). Available at:

promotes the need for the sustainable use of oceans and seas for economic activities in the area, such as fisheries, aquaculture, tourism, transport, shipbuilding, energy and underwater mining. “A sustainable ocean economy emerges when economic activity is in balance with the long-term capacity of ocean ecosystems to support this activity and remain resilient and healthy.”<sup>792</sup>

In Africa, the concept of the blue economy has a much wider scope than its ordinary sea-based economy meaning; for example, the concept includes freshwater resources such as lakes and rivers.<sup>793</sup> According to the United Nations Economic Commission for Africa, “the blue economy in Africa covers aquatic and marine spaces, including ocean, seas, coasts, lakes, rivers and underground waters”.<sup>794</sup> This gives African states more room to maximise the use of their internal water bodies, in addition to their maritime domain, to benefit their citizens, 40 per cent of whom are believed to be living below the poverty line.<sup>795</sup>

At the EAC level, there is no centralised blue economy policy. Nevertheless, like most African states, the EAC member States have adopted the 2050 AIMS as their economic blueprint. This is in addition to the international maritime conventions that are used to govern the oceans and seas. Some of the EAC’s most used maritime policies relating to the blue economy are:

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<https://sustainabledevelopment.un.org/content/documents/2978BEconcept.pdf>

[Accessed on: 22 April 2016].

<sup>792</sup> The Economist (2015. p.7). The blue economy: Growth, opportunity and a sustainable economy. An economist intelligence unity briefing paper for the world ocean summit 2015. Available at:

[http://www.economistinsights.com/sites/default/files/Blue%20Economy\\_briefing%20paper\\_WOS2015.pdf](http://www.economistinsights.com/sites/default/files/Blue%20Economy_briefing%20paper_WOS2015.pdf) [Accessed on: 22 April 2016].

<sup>793</sup> 2050 AIM strategy. p.10.

<sup>794</sup> UN Economic Commission for Africa (2016. p. 7)

<sup>795</sup> African Development Bank (2012). Poverty is on the retreat in Africa. Available at: <http://www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/poverty-is-on-the-retreat-in-africa-8996/> [Accessed on: 22 April 2016].

- a) The 2050 AIMS, which is a comprehensive African blue economy and maritime security strategy.<sup>796</sup> The main focus of the 2050 AIMS is to “foster increased wealth creation from Africa’s oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner”.<sup>797</sup> The EAC is part of the 2050 AIMS because it is one of the eight prominent African Regional Economic Communities (RECs) recognised by the African Union and has some special tasks assigned to it.<sup>798</sup>

With the exception of South Sudan which joined the Community in 2016, all other EAC States are also state parties to the 2050 AIMS. As noted, the 2050 AIMS extends its mandates to inland waters to include rivers and lakes. In the EAC, Lake Victoria and Lake Tanganyika are the main inland water bodies falling within the scope of the 2050 AIMS. Inland waters, together with marine spaces, give the EAC an area of approximately 497,000 km<sup>2</sup> for economic activities.<sup>799</sup>

- b) African Union Agenda 2063 (Agenda 2063), which charts a development route for Africa for the next 50 years as its objective. The idea behind Agenda 2063 is to encourage better usage of African resources to benefit all Africans. This includes the

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<sup>796</sup> 2050 AIM strategy

<sup>797</sup> 2050 AIM strategy. p. 11.

<sup>798</sup> The AU recognises eight RECs, the: 1) Arab Maghreb Union (UMA), 2) Common Market for Eastern and Southern Africa (COMESA), 3) Community of Sahel–Saharan States (CEN–SAD), 4) East African Community (EAC), 5) Economic Community of Central African States (ECCAS), 6) Economic Community of West African States (ECOWAS), 7) Intergovernmental Authority on Development (IGAD), and 8) Southern African Development Community (SADC). Available at:

<http://www.au.int/en/organs/recs#sthash.xLHt6WXq.dpuf> [Accessed on: 24 April 2016].

<sup>799</sup> Area in Kilometres squares: Marine spaces= 383, 541, Lake Vitoria= 68,800, Lake Malawi= (½ of 29,600) =14,800, Lake Turkana=6,405, Lake Albert= (½ of 5,300) = 2,650, Lake Kivu= (½ of 2,700) =1,350, Lake Tanganyika= (½ of 32,900) = 16,450, Lake Rukwa= 1,990 and Lake Edward = (½ of 2,325) = 1,163. Total= 496,149. The EAC shares lakes Malawi, Albert, Kivu, Tanganyika and Lake Edward with its neighbours.

sustainable use of resources, including African oceans and seas.<sup>800</sup>

- c) The African Maritime Charter, which articulates the need to harmonise maritime transport policies capable of promoting sustainable growth and the development of African merchant fleets, as well as fostering closer cooperation among the states parties within and between the regions.<sup>801</sup> More importantly, the charter advocates the need to give all landlocked states access to the ocean and seas and the right of transit.

Based on these policies and others, there are notable initiatives that support the blue economy concept in the EAC. The overall aims of these EAC blue economy initiatives are to give the landlocked states access to port facilities at Dar-es-Salaam, Tanzania and Mombasa, Kenya and, more importantly, to facilitate international trade at the best possible cost. The saving in international and regional trade would come through savings through an efficient supply chain system that would cut-down time and transport cost. Eventually, through infrastructure networks, trade linkages, resource interdependence and strategic partnerships, the benefits of a robust blue economy can contribute positively to the development of the entire region. Some of those initiatives are:

- a) The Northern and Central Corridors Integration Projects. These projects have been created to unlock unnecessary bottlenecks in the transportation of exports and imports in EAC member States and the wider region. They also give the landlocked States access to the sea, and, more importantly, to the Dar-es-Salaam and Mombasa ports, which, as noted in section 1.2.3, are the two main maritime gateways to the EAC. Poor interregional transport

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<sup>800</sup> See <http://agenda2063.au.int/en/vision> [Accessed on: 24 April 2016].

<sup>801</sup> Africa maritime Charter, art. 4

infrastructures and port inefficiency at Dar-es-Salaam and Mombasa increase trading costs.<sup>802</sup>

These projects aim to cut down the transportation costs significantly by connecting the landlocked States to an improved EAC transport network. They also aim to improve the capacity of the Dar-es-Salaam and Mombasa ports and eliminate unnecessary charges, including port demurrage. Demurrage charges are applied for storage of laden containers in a port, rail terminal, feeder terminal, inland depot or container yard.

Demurrage is applied after the designated free time has expired. Most of the time demurrage is due on reasons not associated with clients. Mostly, ports lack equipment to handle cargos on time and inefficient transport system to clear the cargo from ports. Demurrage charges add significant costs into the regional supply chains which ultimately, the costs have to be absorbed by the final consumers. This is clearly the aims of the Northern and Central Corridors Integration Projects. In 2016, for example, demurrage charges at the Mombasa port per 20 feet container (TEU) per day is \$25 and \$40 per 40 feet container.<sup>803</sup>

- b) Lake Victoria is the second largest freshwater lake in the world and the largest in Africa. It has a surface area of about 69,000 km<sup>2</sup>. Its waters are divided between Kenya (6 per cent), Tanzania (49 per cent) and Uganda (45 per cent).<sup>804</sup> Through the

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<sup>802</sup> Ligami, C. 2015. Northern Corridor transport rates drop. *Business Daily*. Available at: <http://www.businessdailyafrica.com/Corporate-News/Northern-Corridor-transport-rates-drop/-/539550/2957542/-/nwp3mwz/-/index.html> [Accessed on: 24 April 2016].

<sup>803</sup> Trade Mark East Africa (2016). Expiry of amnesty for overstayed cargo raises unease. Available at: <https://www.trademarka.com/news/expiry-of-amnesty-for-overstayed-cargo-raises-unease/> [30 September 2016].

<sup>804</sup> Kayombo, S and Seven, E.J. 2006. Lake Victoria Experience and lesson learnt. A case study for Preliminary Risk Assessment Report, pp. 431-446. Available at: [http://www.worldlakes.org/uploads/27\\_lake\\_victoria\\_27february2006.pdf](http://www.worldlakes.org/uploads/27_lake_victoria_27february2006.pdf) [Accessed on: 24 April 24, 2016].

EAC, Lake Victoria has been declared an economic zone that supports about 30 million EAC citizens. The lake is managed through the Lake Victoria Basin Commission (LVBC), which is a specialised institution of the EAC. The LVBC is responsible for coordinating the sustainable development agenda of the Lake Victoria Basin, which is part of the blue economy agenda of the EAC.

The annual fish yield in Lake Victoria exceeds 300,000 tonnes worth US\$600 million annually.<sup>805</sup> There are other Protocols and institutions dedicated to promoting the sustainable use of Lake Victoria in order to support regional economic development. The institutions and Protocols are: the Lake Victoria Fisheries Organization (LVFO), the Lake Victoria Environmental Management Programme (LVEMP), the Lake Victoria Fisheries Research Project (LVFRP), and a Protocol for the sustainable development of Lake Victoria. All of these institutions and Protocols are EAC initiatives geared towards the implementation of the blue economy concept.

### **6.5 Legal instruments and security policies at the EAC level**

As noted in Chapter five (see section 5.5.1), at the EAC level, there are a number of instruments that give the EAC's necessary powers to implement peace and security initiatives in the region. None of them has strong links to regional maritime security. More importantly the EAC misses a maritime security strategy. The following are the EAC's instruments that have peace and security initiatives:

- a) The 1999 EAC Treaty: The Treaty gives the EAC Secretariat guidelines on how to handle peace and security issues of the

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<sup>805</sup> Ibid.

Community. The main peace and security provisions in the Treaty are; Article no. 5 (Objectives of the Community), 123 (common foreign police and security), 124 (regional peace and security) and 124 (defence). However, implementation of the Articles 123, 124 and 125 largely depends on how the EAC integrates toward political unification something which has not been seen on the horizon yet.

- b) In 2006, the EAC adopted the Strategy on Regional Peace and Security and seven years later, in 2013, the Protocol on Peace and Security was also adopted. The ratification of these two security instruments has been perceived as a big step forward toward regional peace and security.<sup>806</sup> Nevertheless, the Strategy appears to be blinded on maritime issues. The strategy scarcely recognises that terrorism, piracy, the proliferation of illicit small arms, and cross-border crimes are threatening regional peace and security.<sup>807</sup>

The meanings of these threats have been used in the strategy, but it does not necessarily reflect the threats as they present themselves in the maritime domain. For example, while the 15<sup>th</sup> goal of the Strategy is to develop mechanisms to combat security challenges in the Lake Victoria, the strategy just ignores the importance of having same initiative at the EAC maritime domain.<sup>808</sup> This is yet another reason to support the hypothesis that the strategy is largely meant for land security issues. The biggest setback of the strategy lies on its failure to establish its own institutional framework. This is very unusual for a big security instrument of that size.<sup>809</sup>

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<sup>806</sup> Interviewees 45 and 47.

<sup>807</sup> Ibid.

<sup>808</sup> Ibid

<sup>809</sup> Ibid.

- c) The EAC Protocol on Co-operation in Defence Affairs: The Protocol came into force on 24 December 2014. It has specific provisions on cooperation amongst the EAC's defence forces. For example, it requires visits and exchange of information, joint military trainings, joint operations and technical cooperation amongst the region's defence forces. This is yet another excellent move made by the EAC toward regional security.

There are even some underground initiatives to establish an EAC standby force that would cooperate with the AU's standby Force.<sup>810</sup> If this initiative would hold on, it will give the EAC a means to organise standby naval force to protect and defend key Sea Lines of Communication at least in the region. That move would perhaps reduce to large extent dependence on international naval forces to protect regional maritime domain. Unfortunately, cooperation of the regional navies in the EAC is facing lots of difficulties.

While there have been approximately six successful joint military trainings and operations in other units of the regional defence forces, there is no evidence to suggest that regional navies have done the same.<sup>811</sup>

## **6.6 Maritime security governance in Kenya and Tanzania**

In addition to their own maritime security responsibilities, Kenya and Tanzania are also assuming many responsibilities of the EAC's maritime security governance. As noted, maritime security is a sub-set of maritime governance and a prerequisite for the blue economy concept. In Africa,

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<sup>810</sup> Ibid.

<sup>811</sup> Ibid. see also Jacobsen, KL and Nordby, JR. 2023. Danish Interest in Regional security Institutions in East Africa. DIIS Report. Available at: [http://pure.diis.dk/ws/files/68146/RP2013\\_14\\_Danish\\_interests\\_East\\_Africa\\_web.jpg.p df](http://pure.diis.dk/ws/files/68146/RP2013_14_Danish_interests_East_Africa_web.jpg.pdf) [Accessed 2 May 2016].

the relationship between maritime security, maritime governance and the blue economy concept has been enshrined in the 2050 AIMS. The strategy stresses the need for African states to address all maritime security issues if they are to realise the economic potentialities offered by Africa's oceans and seas.

To demonstrate the importance of maritime governance and security, for example, part 28 (j) of the 2050 AIMS requires African states to resolve the remaining maritime border disputes, including those on rivers and lakes, peacefully and in accordance with UNCLOS provisions.<sup>812</sup> Although border disputes in inland waters are part of international security concerns, the worry is that the UNCLOS jurisdiction does not apply to inland waters. Leaving border disputes to be resolved peacefully without legal guidelines, as suggested by the 2050 AIMS, is not going to produce positive results any time soon.

In the EAC, for example, there are two long disputed borders in inland waters. On the one hand, there is a disputed border between Kenya and Uganda over Migingo Island in Lake Victoria (see Figure 6-2).<sup>813</sup> This is between two EAC members. Although the disputed Island is only 50 metres long, it has a significant economic impact for both parties. This is because the waters surrounding the island are rich in Nile perch fish, which are a significant source of foreign income in both countries. Kenya's fishing industry, for example, is currently at 180,000 metric tonnes annually, 92 per cent of which are from the Lake Victoria, probably the area around the Island.<sup>814</sup>

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<sup>812</sup> 2050 AIMS. p. 22.

<sup>813</sup> Waseka (2010)

<sup>814</sup> Kisiangani, E. 2011. Dispute Over Migingo Escalates. Institute for Security Studies. Available at: <https://www.issafrica.org/iss-today/dispute-over-migingo-escalates> [Accessed on: 26 April 2016].

Figure 6-2: Dispute between EAC members Kenya and Uganda over Migingo Island (shown with red lozenge) in Lake Victoria<sup>815</sup>



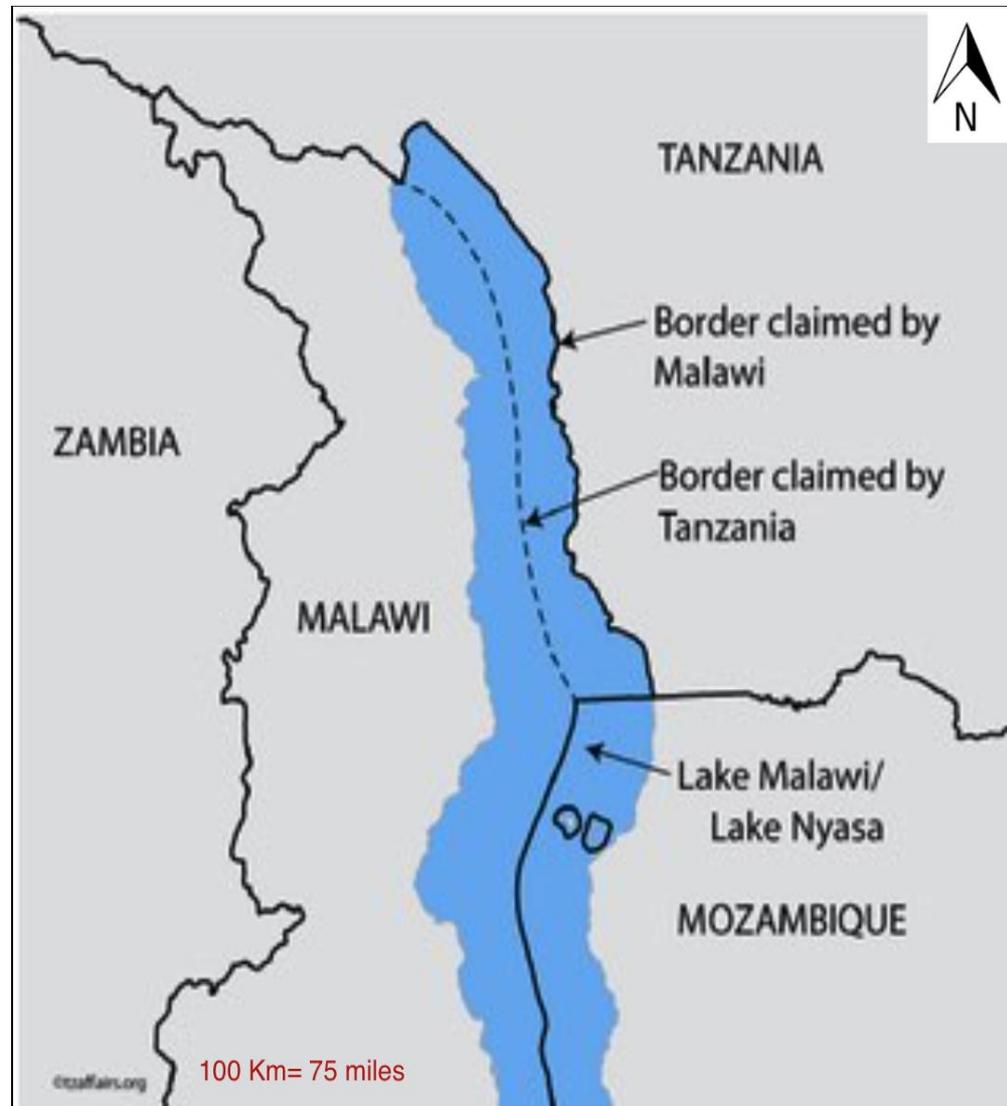
On the other hand, there is a Malawi–Tanzania border dispute in Lake Tanganyika (see Figure 6-3).<sup>816</sup> This is a dispute between a member of the EAC and an external contiguous party. The disputed area potentially

<sup>815</sup> Ibid. See also foot note 811

<sup>816</sup> A Lalbahadur, A. (2013). Malawi vs Tanzania vs SADC: regional dispute resolution bites the dust, South African Institute of International Affairs, *Opinion and Analysis*, [www.saiia.org.za/opinion-analysis/malawi-vstanzania-vs-sadc-regional-dispute-resolution-bites-the-dust](http://www.saiia.org.za/opinion-analysis/malawi-vstanzania-vs-sadc-regional-dispute-resolution-bites-the-dust) [Accessed on: 25 April 2016].

contains oil and gas. Both sides to this conflict have put their oil and gas explorations on hold in anticipation of a border dispute.

**Figure 6-3 : Dispute between EAC member-Tanzania and external state Malawi over waters of Lake Tanganyika<sup>817</sup>**



These two border disputes in the EAC have put economic development in the region, including fishing and oil and gas exploration, on hold.<sup>818</sup> Kenya, Malawi, Tanzania and Uganda are all state parties to the

<sup>817</sup> Ibid.

<sup>818</sup> Mahony, C. et al., 2014. Where Politics Borders Law: Malawi-Tanzania Boundary Dispute. Available at: <https://cdn.auckland.ac.nz/assets/humanrights/Research/MalawiTanzania-NZCHRLPP-final.pdf>. [Accessed on: 25 April 2016].

UNCLOS, and they could use it to resolve their problems. However, they instead place their hopes on regional organisations such as the EAC, the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC), seeking their help to resolve the issues.

As shown in Table 6-1, individually, Kenya and Tanzania each have an EEZ of 200 nm that stretches over areas of approximately 142,000 km and 242,000 km<sup>2</sup> of sea area, respectively. They also have 536 km and 1,414 km<sup>2</sup> of coastline respectively. These two States share a maritime border, which was officially delimited and agreed on 9 July 1976. It runs from the shore, due to east (see Figure 1-2 and Table 1-1 on page 6 and 7 respectively).<sup>819</sup> Kenya shares its second maritime border with Somalia on the north. The Kenya–Somalia maritime border delimitation has not yet been agreed, and the two states are currently in dispute over the border.

This is the biggest traditional maritime security challenge to face Kenya since it achieved independence in 1963. The challenge prevents economic activities within the disputed area. Because Kenya and Tanzania share a maritime border, they tend to have similar non-traditional maritime security threats in their maritime domain. As noted, these include piracy, armed robbery against ships, illegal fishing, the trafficking of narcotics, small arms and humans, and environmental degradation.

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<sup>819</sup> Maritime Boundary, Kenya-Tanzania. Geographer Bureau of Intelligence and Research of the US Department of State n.92. Available at: <http://www.state.gov/documents/organization/58819.pdf> [Accessed on: 21 March 2016].

**Table 6-1: Governance of the maritime spaces of Kenya and Tanzania<sup>820</sup>**

|                               | <b>Kenya</b>  | <b>Tanzania</b>  | <b>Total(km<sup>2</sup>)</b> |
|-------------------------------|---|--|------------------------------|
| <b>Territorial Sea (TS)</b>   | 12 nm   | 12 nm  |                              |
| <b>Contiguous Zone(CZ)</b>    | 12 nm   | 12 nm  |                              |
| <b>EEZ</b>                    | 200 nm  | 200 nm   |                              |
| <b>Continental shelf (CS)</b> | 150 nm  | 150 nm   |                              |
| <b>Sea area – EEZ</b>         | 142,000 km <sup>2</sup>   | 241,541km <sup>2</sup>   | 383,541                      |
| <b>Sea area – OCS</b>         | 103,520 km <sup>2</sup>   | 61,000km <sup>2</sup>  | 164,520                      |
| <b>Jurisdiction</b>           | Cap. 321: Maritime Zone Act No. 6 of 1989. Responsible for governance of TS, EEZ and CS | Cap. 238: Territorial Sea and Exclusive Economic Zone Act No. 12 of 2009 |                              |

Unlike Kenya, which only has two maritime borders, Tanzania shares four maritime borders with Comoros,<sup>821</sup> Mozambique,<sup>822</sup> Seychelles,<sup>823</sup> and Kenya) see Figure 6-4 which also shows all maritime borders of the EAC). Tanzania has all of its maritime borders properly delimited and agreed with its neighbours. To a large extent, these agreements have reduced the chance of Tanzania entering into traditional maritime security conflicts that would be likely to require military confrontations with its neighbours. Because of its calm maritime borders, Tanzania, unlike Kenya, is only concentrating on contemporary maritime security threats in its maritime domain, in spite of the potential for conflict with Malawi over Lake Tanganyika.<sup>824</sup>

<sup>820</sup> Data organised by author

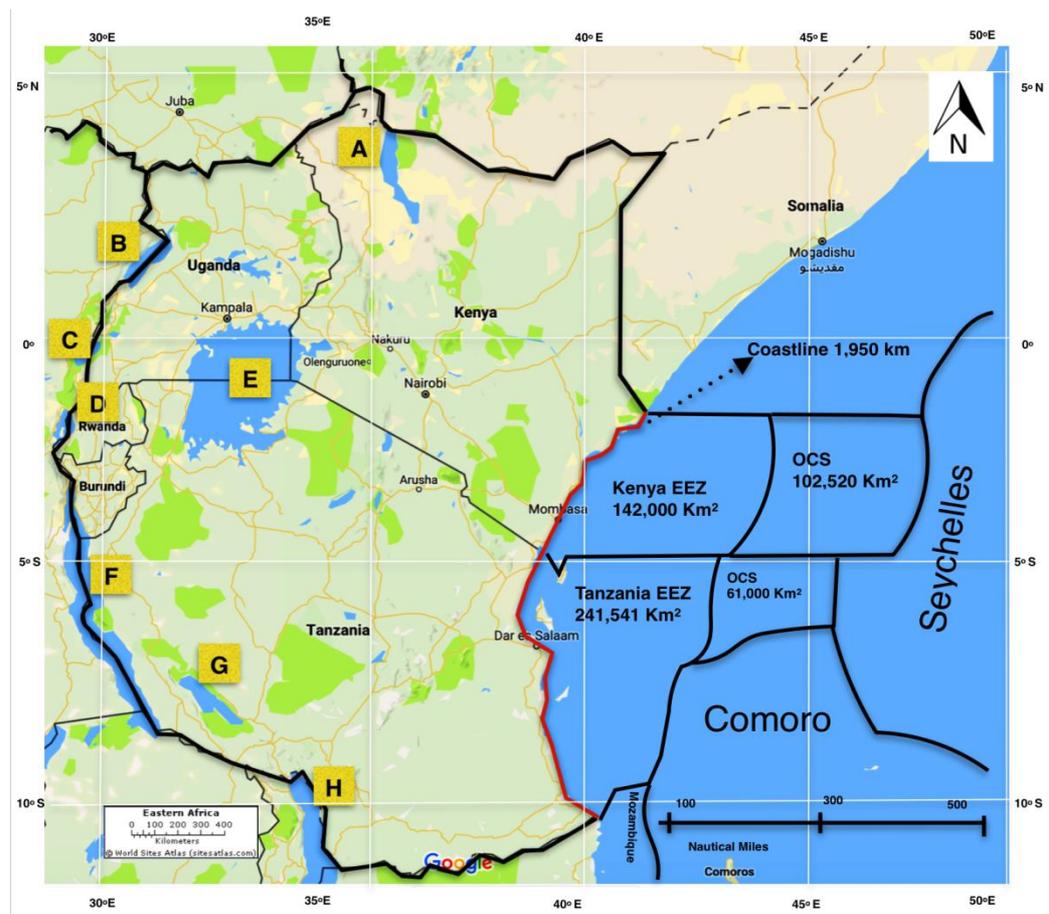
<sup>821</sup> Maritime Boundary, Tanzania-Comoros. United States Department of State. Bureau of Oceans and International Environmental and Scientific Affairs. Limits in Seas no. 134. Available at: <http://www.state.gov/documents/organization/224317.pdf> [Accessed on: 21 March 2016].

<sup>822</sup> Ibid.

<sup>823</sup> Maritime Boundary, Tanzania-Comoros. United States Department of State. Bureau of Oceans and International Environmental and Scientific Affairs. Limits in Seas no. 132. Available at: <http://www.state.gov/documents/organization/221872.pdf> [Accessed on: 21 March 2016].

<sup>824</sup> Interviewees 45 and 47.

**Figure 6-4: Maritime Borders of the EAC**



Apart from contemporary maritime security threats, maritime governance in Tanzania has a unique political challenge. This is due to its two-tier political governance system. Tanzania, which is officially known as the United Republic of Tanzania (URT), is a union of two sovereign States, formally made in 1964 between the (then) Republic of Tanganyika and the People’s Republic of Zanzibar. The union was not meant to be all-encompassing; it only deals with specific matters, known as “union matters”, and maritime affairs is not among these (see section 4.2.3 and foot note 572 on page 151). Based on the formation of the union, the URT was expected to be a federation. A federation involves a three-tier governance system, in which there would be one federal government of the URT and two other governments, one for each member State. However, the URT chose a two-tier governance system instead.

The terms 'union matters' and 'non-union matters' are absolutely fundamental to maritime governance in the URT. They basically indicate the limits of the authority and power of the governments of the URT government and Zanzibar. Because maritime affairs are regarded as 'non-union matters', they therefore have to be dealt with by mainland Tanzania and Zanzibar individually. 'Maritime affairs' is itself a very broad term that encompasses everything within a country's maritime domain, as well as the foreign policies of a country over the uses of the seas. It includes all the issues relating to maritime polices, maritime borders, the ocean environment and resources, maritime safety and maritime security.

For example, this maritime paradox has created the dual-flag-state system in the URT (see article published by the Author).<sup>825</sup> One of the flag states is for the URT and on behalf of Tanzania's mainland, while the other is for Zanzibar's government. Surprisingly, they both use the same URT flag.<sup>826</sup> The the dual-flag-state system in the URT will be analysed in Chapter Seven. Fishing is another controversial area in the URT. Within 12 nm, fishing is not a union issue. However, illegal fishing, wherever it takes place, is a union issue because of its connection to national security (see section 4.2.3). Consequently, in the URT there are a number of institutions on both sides of the union that are literally dealing with the same issues. This creates overlapping maritime jurisdictions.<sup>827</sup>

### **6.7 Legislation, institutional frameworks and mechanisms for implementation**

The maritime governance architecture of Kenya and Tanzania will be examined through three important aspects that shape the maritime

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<sup>825</sup> Hamad (2016), appendix 7, article no. 2

<sup>826</sup> Interviewees 2, 6, and 17.

<sup>827</sup> Ibid.

security governance of any coastal state: legislation, the institutional framework and mechanisms for implementation.<sup>828</sup>

### 6.7.1 Legislation

Legislation means a law or set of laws suggested by a government and made official by a parliament or other law-making body.<sup>829</sup> Legislation is perhaps the first step in setting maritime security governance strategy. At a national level, it involves the process of developing a number of maritime polices and laws that can be used to govern the maritime affairs of a state. This includes the ratification and nationalisation of important regional/international maritime conventions that have maritime safety and security provisions.

For a nation's maritime legislation to have credibility, it must be underpinned by provisions from international and regional maritime conventions, as well as agreements and programmes. As argued by Bateman, "a stable maritime regime, under-pinned by agreement on fundamental principles of the law of the sea, is an important contribution to regional security".<sup>830</sup> The international conventions not only provide a basic background for a nation's maritime jurisdiction, but also make regional and international maritime security cooperation possible.

Kenya and Tanzania are among the 'dualist' countries.<sup>831</sup> While they recognise the international legal system, they also have their own domestic legal system.<sup>832</sup> For that reason, in Kenya and Tanzania, international/regional conventions, agreements or treaties do not apply

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<sup>828</sup> Bateman (2016).

<sup>829</sup> Stevenson (2010).

<sup>830</sup> Bateman (2005.p.1).

<sup>831</sup> Sloss (2011 .p.4). "The key distinguishing feature of dualism is that no treaties have the formal status of law in the domestic legal system unless the legislature enacts a statute to incorporate the treaty into domestic law. Such statutes must be distinguished from legislative acts that authorize the executive to make a binding international commitment".

<sup>832</sup> Ibid.

automatically. After being ratified by legislative, the procedure is to enact a law to enforce an international convention or agreements that would not otherwise be enforceable. Table 6-2 shows some of the important regional and international maritime conventions and agreements that have been ratified by Kenya and Tanzania. The evidence suggests that most of these conventions and agreements have been ratified by the national legislative, although their enforceability is the greatest cause for concern.

**Table 6-2: International conventions/agreements ratified<sup>833</sup>**

| Conventions/agreements                               | Kenya | Tanzania |
|--|-------|----------|
| 1982, UNCLOS   | ✓     | ✓        |
| 1974, SOLAS  | ✓     | ✓        |
| 1978, SOLAS Protocol                                 | ×     | ×        |
| 1988, SOLAS Protocol                                 | ×     | ×        |
| 1988, SUA Convention                                 | ✓     | ✓        |
| 1988, SUA Protocol                                   | ✓     | ×        |
| 2005, SUA Protocol                                   | ✓     | ×        |
| MARPOL 73/78 (Annex I–VI)                            | ✓     | ✓        |
| 1972, London Convention                              | ✓     | ×        |
| 1996, London Convention Protocol                     | ✓     | ×        |
| Nairobi Convention Protocol                          | ✓     | ✓        |
| 1979, SAR Convention                                 | ✓     | ✓        |
| 2009, Djibouti Code of Conduct                       | ✓     | ✓        |
| 2011, SADC Maritime Security Strategy <sup>834</sup> | ×     | ✓        |
| 2050 Africa's Integrated Maritime Strategy           | ✓     | ✓        |
| ✓ = Ratified and nationalised                        |       |          |

The Kenyan Merchant Shipping Act of 2009, as amended in 2012,<sup>835</sup> and the Tanzanian Merchant Shipping Act of 2003<sup>836</sup> are examples of

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<sup>833</sup> Status of Convention by Country-IMO; Coelho (2013); AU <http://pages.au.int/maritime> [Accessed on: 22 March 2016].

<sup>834</sup> Kenya is not a SADC state party; however it has ratified the SADC maritime security strategy.

<sup>835</sup> The Merchant Shipping Act 2012 [2009]. Available at: <http://faolex.fao.org/docs/pdf/ken94222.pdf> [Accessed on: 25 March 2016].

how international maritime conventions have been ratified in Kenya and Tanzania. These Acts have many maritime safety and security provisions directly adopted from the above-mentioned international/regional conventions and agreements. The maritime security issues relating to piracy, armed robbery against ships, ship-based marine pollution, terrorism, safety of navigation and port security are all addressed in these Acts and transgressions are thereafter criminalised under national Law.

The definitions of piracy and armed robbery against ships provided by Article 369 of the Kenyan Merchant Shipping Act and Article 341 of the Tanzanian Merchant Shipping Act conform with those stipulated in Article 101 of the UNCLOS and IMO Resolution A. 1025(26) respectively. These Merchant Shipping Acts use a universal 'zonal' approach to differentiate piracy from armed robbery against ships at sea, as used in the UNCLOS. This alignment of national maritime jurisdictions with international ones is absolutely important when it comes to regional and international cooperation. Furthermore, both states confirm that they have the judiciary capacity to try pirates and armed robbers, regardless of where they have been captured.<sup>837</sup> Both present a danger to safe navigation and there categories of crime, as well as ship-based pollution, have been recognised as offences that are punishable under these Acts.

Both States, Kenya and Tanzania, have anti-terrorism laws holding that maritime terrorists can be criminalised within national jurisdictions or, through special arrangement, extradited to other states. Anti-terrorism

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<sup>836</sup> The Merchant Shipping Act, 2003. Available at:

<http://faolex.fao.org/docs/pdf/tan61354.pdf> [Accessed on: 25 March 2016].

<sup>837</sup> Kimboy, F. 2010. Pirates may be tried in Tanzania. *The Citizen*. Available at:

[http://www.hiiraan.com/news4/2010/Oct/16370/pirates\\_may\\_be\\_tried\\_in\\_tanzania.aspx](http://www.hiiraan.com/news4/2010/Oct/16370/pirates_may_be_tried_in_tanzania.aspx) [Accessed on: 25 March 2016] and BBC. 2012. Kenya rules courts can try Somalia pirates. Available at: <http://www.bbc.co.uk/news/world-africa-19992273> [Accessed on:

25 March 2016].

laws in Kenya and Tanzania support the SUA convention. The SUA convention as noted in section 2.6.3, is one of the few international conventions dealing with maritime terrorism, though the word ‘terrorism’ does not appear anywhere in it. *Maritime* terrorism is a crime that is punishable in the Merchant Shipping Acts of both Kenya and Tanzania, in addition to wider anti-terrorism laws.

While the Tanzanian anti-terrorism law is still in use, that of Kenya has been in serious trouble in recent years. In 2012 Kenya passed a controversial ‘Prevention of Terrorism Act, no. 30’, which perfectly captures the meaning of maritime terrorism and imposes a penalty.<sup>838</sup> The jail terms are between 30 years and a life sentence, depending on whether death occurred or not.<sup>839</sup> However, in Kenya much of the Muslim community blames the Act for not considering the potential conflicts between state powers and civil liberties. As a result, the Kenyan Supreme Court has recently declared that some parts of the Terrorism Act are unconstitutional.<sup>840</sup> This is said to mark the downgrading of Kenyan efforts against terrorism.<sup>841</sup>

More recently, Tanzania has endorsed the East African and Indian Ocean littoral states’ anti-piracy Protocol on the condition that the EU will help Tanzania to construct prisons that meet international standards for accommodating pirates and will provide training for investigating departments and security agencies on how to handle piracy-related

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<sup>838</sup> The Prevention of Terrorism Act, no. 30 of 2012.

<sup>839</sup> Ibid. Arts. 4 (1 and 2)

<sup>840</sup> See Jurist. 2015. Kenya high court declares portions of anti-terrorism law unconstitutional. Available at: <http://jurist.org/paperchase/2015/02/kenya-high-court-declares-portions-of-anti-terrorism-law-unconstitutional.php> [Accessed on: 9 March 2016]

<sup>841</sup> Horowitz, J. 2013. Kenya Needs to End Human Rights Abuses by its Anti-Terrorism Police Unit. Open Society Foundations. Available at: <https://www.opensocietyfoundations.org/voices/kenya-needs-end-human-rights-abuses-its-anti-terrorism-police-unit> [Accessed on: 9 March 2016].

cases.<sup>842</sup> The Protocol intends to create a good environment that will allow pirates to be prosecuted in the countries of the Protocol state parties. This includes modernising prisons to meet international standards.

### **Gaps in the legal framework**

In addition to ship-based pollution, which is extensively covered in the above-mentioned Merchant Shipping Acts, Kenya and Tanzania have a number of legislative instruments that address marine pollution from land-based sources. However, there are some concerns that much of the environmental legislation is old and no longer sufficiently robust to cope with current anthropogenic pressures, such as increasing coastal populations.<sup>843</sup> The legislation is characterised by many gaps and inconsistencies. Some of the legislations and policies need to be amended to keep pace with the fast-changing circumstances of the region.

One of the main concerns is that the legislation gives powers to different institutions, which results in overlapping roles across different institutions that should have been harmonised. Furthermore, as stakeholders have confirmed, a number of institutions have long since ceased to exist, despite some environmental roles still resting on them. These institutions cease operations for many reasons, ranging from changes made to laws or policies and a lack of financial resources, to a lack of manpower to run them. The key policies and legislation governing maritime governance in Kenya and Tanzania are set out in Table 6-3 and Table 6-4 without a maritime security strategy is missing. Key stakeholders say

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<sup>842</sup> Kadoya. J. 2014. Tanzania finally endorses EAC anti-piracy Protocol. IPPMedia. Available at: <http://www.ippmmedia.com/frontend/index.php?l=73214> [Accessed on: 17 March 2016].

<sup>843</sup> Rocliffe (2010.p.21).

this is the reasons why these States have disjointed policies and legislation in maritime security.<sup>844</sup>

| <b>Table 6-3: Key policies and legislation relating to maritime governance in Kenya<sup>845</sup></b> |   |
|---|---|
| <b>Police and law</b>   | <b>Relevance</b>  |
| <b>Policies and frameworks</b>  |   |
| National Environmental Action Plan (NEAP)   | Overarching national environmental policy, approved in 1999   |
| National Biodiversity Strategy and Action Plan (NBSAP)  | National framework of action for the implementation of the Convention on Biological Diversity   |
| <b>Legislation</b>  |   |
| Merchant Shipping Act of 2009 [2012]  | The Act and its regulations provide for, among other things, pollution prevention and the protection of the marine environment and maritime security through Port State Controls  |
| Kenya Port Authority Act of 1979 [2012]   | Maritime safety and security in the Territorial Seas and internal waters. ISPS code implementation, MARPOL 73/78  |
| Kenya Maritime Zone Act of 1989   | Consolidates the law relating to the Territorial Seas and continental shelf of Kenya; provides for the exploration, exploitation, conservation and management of the resources of the maritime zones; and provides for connected purposes |
| Environmental Management and Coordination Act 1999 (EMCA)   | Legal and institutional framework for the management of Kenya's environment   |
| Wildlife Conservation and Management Act 1976   | Designation of marine protected areas   |

<sup>844</sup> Interviewees 45 and 47.

<sup>845</sup> Data organised by author

|                                      |   |
|--------------------------------------|---|
| Fisheries Act                        | Development, management, exploitation, utilisation and conservation of fisheries' resources         |
| Coast Development Authority Act 1990 | Sets up an authority to oversee and plan the implementation of coastal and EEZ development projects |
| Maritime Zones Act 1989              | Consolidates the laws relating to the Territorial Seas and continental shelf                        |
| Local Government Act                 | Regulates local authorities, including waste water and sewerage treatment and disposal              |

| <b>Table 6-4: Key policies and legislation relating to maritime governance in the Tanzanian mainland and Zanzibar<sup>846</sup></b> |   |
|---|---|
| <b>Police and law</b>   | <b>Relevance</b>  |
| <b>Policies and frameworks</b>  |   |
| National Environmental Policy (NEP, 1997)<br><b>(Tanzanian mainland)</b>  | Overarching national environmental policy focused on the conservation of the environment and the effective use of natural resources |
| National Integrated Coastal Management Policy (2003)<br><b>(Tanzanian mainland)</b>   | Outlines the commitment to sustainable coastal governance and champions integrated coastal management                               |
| National Wildlife Policy<br><b>(Tanzanian mainland)</b>   | Sets out simple, transparent procedures for stakeholder participation in the wildlife-based tourism industry                        |
| National Tourism Policy<br><b>(Tanzanian mainland)</b>  | Aims to promote environmentally friendly tourism in protected areas   |
| National Fisheries Policy (1997)<br><b>(Tanzanian mainland)</b>   | Promotion of sustainable exploitation, utilisation and marketing of fish resources  |

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<sup>846</sup> Data organised by author

|  |  |
|--|--|
| National Environmental Policy (1992)<br><b>(Zanzibar)</b>  | Overarching national environmental policy focused on sustainable protection and management of Zanzibar's natural resources   |
| <b>Legislation</b>   |  |
| The Merchant Shipping Act of 2003 and the Maritime Transport Act of 2006<br><b>(Tanzanian mainland)</b>            | The Acts provide for, among other things, pollution prevention and the protection of the marine environment and maritime security  |
| The Territorial Sea and Exclusive Economic Zone Act of 1989<br><b>(Applies in Tanzanian mainland and Zanzibar)</b> | A legal instrument that gives Tanzania the sovereign right to the EEZ up to 200 nm. It also binds the country to the conservation and management of marine resources, as well as the protection of the environment |
| The Deep Sea Fishing Authority Act of 1998<br><b>(Applies in Tanzanian mainland and Zanzibar)</b>                  | Provides sustainable uses for deep sea water. Promotes responsible fisheries that provide economic opportunities while ensuring the conservation of living marine resources  |
| The Port Act of 2004<br><b>(Tanzanian mainland)</b>  | Maritime safety and security in the Territorial Seas and internal waters. ISPS code implementation, MARPOL 73/78   |
| The Zanzibar Ports Act of 1997 and the Zanzibar.<br><b>(Zanzibar)</b>  | Maritime safety and security in Territorial Seas and internal waters. ISPS code implementation, MARPOL 73/78   |
| Environnemental Management Act (EMA, 2004)<br><b>(Tanzania Mainland)</b>   | Overarching legal framework for the management of mainland Tanzania's environment  |
| Marine Parks and Reserves Act (1994)<br><b>(Tanzanian mainland)</b>  | Provides for the establishment, monitoring and management of marine protected areas  |
| Fisheries Act (2003)<br><b>(Tanzanian mainland)</b>  | Regulates the fishing industry, especially in marine protected areas   |
| Environmental management for Sustainable Development Act (1996)<br><b>(Zanzibar)</b>                               | Overarching legal framework for the management of Zanzibar's environment   |
| Fisheries Act (1986)<br><b>(Zanzibar)</b>  | Provides for the formation of marine protected areas in Territorial Seas   |

### 6.7.2 Institutional framework

An institutional framework is generally understood to mean the systems of formal laws, regulations, and procedures—as well as informal conventions, customs and norms—that shape socioeconomic activity and behaviour.<sup>847</sup> In maritime affairs, the institutional framework is composed of the administrative mechanisms that are required to establish systems of coordination and cooperation between all the actors that have a role in ocean governance.<sup>848</sup> An institutional framework—the aim of this thesis—is an interface among the different institutions/agencies that have roles in maritime security governance. Care must be taken to ensure that overlapping and conflicting jurisdiction is minimised among the institutions/agencies and that there are no important issues for which there is not a responsible institution/agency. The important issue is maritime governance and security and EAC, at the time of writing has no responsible institution or agency.

Like most coastal states, the issue of maritime security governance in Kenya and Tanzania is in the hands of a wide range of institutions. Nonetheless, spreading maritime security governance roles to different agencies is not a problem as long as there is an institutional framework that allows the agencies to cooperate. In fact, the nature of maritime security governance itself requires a wide range of institutions to work together on different security areas, such as those relating to national security (sea power/navy), the maritime environment (maritime safety, flag state, port state control and other law enforcement agencies),

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<sup>847</sup> Donnellan, Hanrahan and Hennessy, (2012. p. 1)

<sup>848</sup> Roe (2013).

economic development and human security (resilience/law enforcement agencies).<sup>849</sup>

The institutional frameworks in these two States follow a similar pattern. On the one hand, there are ministries of defence (MoD) that are responsible for the navy and other armed forces. The navy is responsible for maritime security threats associated with inter-state disputes, arms proliferation, acts of terrorism and piracy, among others. On the other hand, there are law enforcement agencies in the ministries of transport and infrastructure and the ministries responsible for environmental issues. For many years, the Kenyan and Tanzanian navies were largely concerned with the security of national maritime territories. However, because of widespread contemporary maritime security threats, such as piracy, illegal fishing and illegal drugs trafficking, and in the absence of any clear need for naval combat forces in the region, these navies have now actively engaged in law enforcement roles in Territorial Seas.<sup>850</sup>

In the absence of separate coastguard units in these two States, their navies undertake both law enforcement and warfare roles. While it is practically possible for any navy to undertake some maritime law enforcement roles, this is an overwhelming task for young navies, such as those of Kenya and Tanzania. Kenya is currently responding to the international outcry against the Al-Shabaab insurgents in Somalia by deploying the Kenyan navy's most reliable assets to support the African Union Mission in Somalia (AMISOM). While this is an understandable decision taken by the Kenyan government for its own security, it is stretching its naval assets and personnel to the maximum, leaving almost no capacity to fill the maritime law enforcement roles in Kenyan Territorial Seas (see section 4.3 (b)).

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<sup>849</sup> Bueger (2015).

<sup>850</sup> Potgieter and Pommerin (2009).

The naval officers in these States lack authority to undertake law enforcement in Territorial Seas.<sup>851</sup> Mostly, it becomes difficult for naval officers to enforce law and order in areas such as illegal fishing and armed robbery against ships on Territorial Seas.<sup>852</sup> This is due to the fact that law enforcement in these areas has been allocated to civilian institutions, such as maritime authorities, who are incapable of filling their mandates.<sup>853</sup> The lack of special judiciary knowledge and training are yet other limiting factors for most naval officers. As a consequence, this leads to flawed evidence collection and preservation.<sup>854</sup> Such a failure according to key stakeholders interviewed in the fieldwork, enables the criminals to walk away freely from legal institutions most of the time.<sup>855</sup>

The Kenya Maritime Authority (KMA), the Surface and Marine Regulatory Authority (SUMATRA) and the Zanzibar Maritime Authority (ZMA) are the frontline institutions that deal with maritime safety and security. Nonetheless, there are huge concerns that these institutions do not have enough capacity to deliver their maritime security roles despite their best attempts.<sup>856</sup> For example, these institutions are expected to have coastguard units. However, none has such an important law enforcement tool.<sup>857</sup>

There are legal debates in the region on whether coastguards are, or should be part of the armed forces or not. While maritime authorities favour the idea that coastguards are not part of the armed forces, they need to be armed by their very nature.<sup>858</sup> In the US, for example, the coastguard is one of five branches of the US Armed Forces, although in

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<sup>851</sup> Interviewees 10, 11, 18 and 19.

<sup>852</sup> Ibid.

<sup>853</sup> Ibid.

<sup>854</sup> Ibid.

<sup>855</sup> Ibid.

<sup>856</sup> Ibid.

<sup>857</sup> Interviewees 6,17 and 18.

<sup>858</sup> Interviewee 14

peacetime, it is placed in the jurisdiction of the US Department of Homeland Security. Many African coastal states do not have coastguards. Instead, navies assume law enforcement roles in addition to their warfare roles.<sup>859</sup> The following key institutions have maritime security governance roles in Kenya: Kenya Navy, Kenya Maritime Authority, Kenya Port Authority, and the marine police.<sup>860</sup> Additionally, there are a wide range of public institutions dealing with land-based environmental issues and, to a lesser degree, the maritime environment.<sup>861</sup> Some of these institutions are: National Environment Management Authority (NEMA), National Environment Council (NEC), Fisheries Department and Marine Fisheries Research Institute (KMFRI). In Tanzania, the following institutions are responsible for maritime security governance: Tanzania navy, marine police (applicable to both the Tanzanian mainland and Zanzibar), Tanzania Port Authority and the Surface and Marine Regulatory Authority (SUMATRA).<sup>862</sup>

In Zanzibar, there are the Zanzibar Maritime Authority, the Zanzibar Port Authority and the Zanzibar coastguard (KMKM).<sup>863</sup> This is in addition to a wide range of ministerial institutions that have some responsibilities in the marine environment. Some of these are the National Environmental Advisory Committee, the ministry responsible for environmental issues in the Tanzanian mainland and Zanzibar, and the National Environment Management Council (NEMC).

### **Gaps in the institutional framework**

Kenya and Tanzania therefore have a large number of disjointed ocean governance policies and laws, which very often overlap with each other.

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<sup>859</sup> See

<http://www.uscg.mil/international/affairs/Publications/MMSCCode/english/Chap1.htm>  
[Accessed on: 24 March 2016].

<sup>860</sup> Interviewees 14 and 15.

<sup>861</sup> Ibid.

<sup>862</sup> 10,1, 17, 45 and 47.

<sup>863</sup> Ibid.

This is often the case in environmental legislation, where there are several institutions that literally perform the same tasks. Maritime security governance requires a near perfect blend of cooperation among military and civil organisations and better clarification on the roles and responsibilities to be filled at each level.<sup>864</sup> Nevertheless, the overarching authority responsible for national/regional maritime security needs a clear code of cooperation to avoid duplication of works and inefficiency. Otherwise there would be inefficiency in the spending of public resources and, more importantly, ineffective maritime security governance.

In Kenya and Tanzania, the evidence suggests that some of the institutions no longer exist due to legislation changes, and some simply do not operate because of a lack of resources. In Tanzania, for example, the environmental institutional framework suffers from: a) weak institutional cooperation, collaboration and exchange of information; b) insufficient capacity of regulatory authorities; and c) lack of involvement of financial institutions in promoting environmental compliance.<sup>865</sup>

### **6.7.3 Mechanisms for implementation, or an operational framework**

Law enforcement measures comprise all the processes and actions that enable the application of the law and make sure that it is observed.<sup>866</sup> Generally, they include the arrest and search of suspected offenders and the seizure of any means used to commit the offence or means to

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<sup>864</sup> Ibid.

<sup>865</sup> Daffa, J. M. 2011. Policy and Governance Assessment of Coastal and Marine Resources Sectors within the Framework of large marine ecosystems for ASCLME in Tanzania. Available at: <http://www.asclme.org/reports2013/Policy%20and%20Governance%20reports/32%20Tanzania%20Policy%20and%20Governance%20Final%20Report%20ASCLME.pdf> [Accessed on: 24 March 2016].

<sup>866</sup> Randrianantenaina, J. E. 2013. Maritime Piracy and Armed Robbery Against Ships: Exploring the legal and the operational solutions-The case of Madagascar. The United Nations-Nippon Foundation Fellowship Programme 2012-2013. Available at: [http://www.un.org/Depts/los/nippon/unff\\_programme\\_home/fellows\\_pages/fellows\\_papers/Randrianantenaina\\_1213\\_Madagascar.pdf](http://www.un.org/Depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/Randrianantenaina_1213_Madagascar.pdf)

prosecute the offenders.<sup>867</sup> Good law alone does not guarantee good law enforcement. There must be the capacity building means to enable maritime law enforcement agencies to enforce law at sea. Like other African states, weak law enforcement increases the vulnerability of Kenya and Tanzania to maritime security threats.<sup>868</sup>

Weak law enforcement is demonstrated through a lack of surveillance of maritime space, the incapacity of the coastguard and navy, inadequate intelligence collection and prosecution capabilities on land, and an inefficient judicial sector that does not allow for the proper prosecution of piracy.<sup>869</sup> The maritime law enforcement of a coastal state has its roots both on land and in Territorial Seas. If, for example, pirates are being caught and released because of a lack of jurisdiction to try them, that would further fuel the escalation of piracy. The lower the risk of pirates being caught and punished, the higher the chance that piracy occurs.

In recent years, Kenya and Tanzania have been receiving substantial capacity-building training aimed at upgrading their maritime law enforcement capability.<sup>870</sup> That has included naval training and improving the juridical capacity to try pirates. These training sessions were mainly conducted through UNODC initiatives and the DRTC in Djibouti, as well as via international navies visiting the region while on missions off the Somali coast.<sup>871</sup>

The main focus of the UNODC is on upgrading the judiciary capacity of law enforcement agencies. This includes helping Kenya to construct, prefabricate and renovate prisons. Both Kenya and Tanzania have received training in information technology, which is necessary to support the trial of pirates. This includes some electronic special skills in

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<sup>867</sup> Ibid.

<sup>868</sup> Verÿ (2013).

<sup>869</sup> Bueger (2015).

<sup>870</sup> Interviewees 29, 30, 45 and 47.

<sup>871</sup> Ibid.

investigation, evidence handover and general capacity building for prosecutors and judges.<sup>872</sup>

The Djibouti Code of Conduct and the EU's Maritime Security (MASE) programme, in collaboration with the US Navy and US Coastguard and the EU's naval forces, have also provided on-site training for the Kenyan and Tanzanian law enforcement agencies and navies. In 2009, Kenya entered into agreements with the EU, the US, the UK, Canada, China and Denmark for the transfer of suspected pirates for prosecution and trial.<sup>873</sup> Through the training and the agreements, Kenya prosecuted 164 pirates and 147 were convicted as of December 2015.<sup>874</sup> As of July 2012, Tanzania has prosecuted 12 pirates, six of whom were convicted.<sup>875</sup> These pirates were all captured by the Tanzanian authorities, either in its Territorial Seas, or on the high seas, primarily, within its EEZ.

For a long time, Tanzania did not have any kind of international agreement to try pirates captured by international anti-piracy task forces off Somalia's coast. Tanzania has only recently agreed to accept pirates brought into the country by the authorities of other states.<sup>876</sup> This has been seen by the international community as yet another step forward in the war against piracy.<sup>877</sup> As for Kenya, the Tanzanian legislation allows the prosecution of pirates caught anywhere by international anti-piracy task forces. The only thing missing is cooperation in the form of agreements with the states that formed the anti-piracy task forces.<sup>878</sup> As previously mentioned, as part of the pirate transfer agreements, the EU has agreed to help Tanzania modernise its judiciary system and courts

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<sup>872</sup> Ibid.

<sup>873</sup> Randrianantenaina (2013. p.57).

<sup>874</sup> UNODC (2015. p. 10).

<sup>875</sup> Scharf, Newton and Sterio (2015.p. 197).

<sup>876</sup> Kadoya. J. 2014. Tanzania finally endorses EAC anti-piracy Protocol. *IPPMedia*.

Available at: <http://www.ipppedia.com/frontend/index.php?!=73214> [Accessed on: 17 March 2016].

<sup>877</sup> Interviewees 45 and 47.

<sup>878</sup> Ibid.

and, more importantly, upgrade its prisons to meet international standards.

### **Gaps in the operational framework**

Like most African states, Kenya and Tanzania have weak maritime legislation characterised by a number of institutions that are designed to enforce this legislation at sea. Furthermore, enforcing this legislation has never been an easy task. There are a number of operational difficulties when it comes to enforcing maritime security policies and legislation in Kenya and Tanzania. Some of the difficulties are: the lack of naval hardware for patrolling and monitoring; the lack of logistical support infrastructure (bunkering facilities and repair); the lack of financial resources for law enforcement agencies (tiny budgets); obsolete knowledge of law enforcement; and the lack of a formal system for the collection, exchange of information between Kenya and Tanzania and co-operation between navies and other civilian institutions in war against contemporary maritime security threats.<sup>879</sup>

As noted, the navies of Kenya and Tanzania do not have 'blue water' capabilities and their capacity to patrol their own maritime domains is not sufficient for them to police entire areas. This is demonstrated by their weak naval hardware and software (see section 4.4). Some serious political will is required if the countries' limited financial resources are to be channelled into the acquisition of those naval assets and software. For example, military costs alone needed per year to patrol and monitor the entire 384,000 km<sup>2</sup> maritime domain of the EAC would be about US\$ 134,000 per day which is about 49,000,000 per annum. This represents approximately 36 per cent of annual military budget of Kenya, Tanzania and Uganda combined.<sup>880</sup>

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<sup>879</sup> Madel (2013).

<sup>880</sup> See Appendix 6

Kenya and Tanzania hold important Information Sharing Centres (ISCs) at Mombasa and Dar-es-Salaam respectively. These ISCs are used for search and rescue and as piracy ISCs at the entrances to the Eastern and Southern regions as shown in Figure 4-3. Currently, the running costs of these ISCs are paid by the IMO. In order for these ISCs to provide a comprehensive picture of what is happening at sea, there is some information to acquire.

The costs include acquiring ships' tracking information—for example, from Long Range Identification and Tracking of Ships (LRIT) and Automatic Identification System (AIS). Tracking information from the EU states' flagged ships is completely free of charge. However, flag states outside the EU charge for the information. Because getting this information requires financial resources, there are some concerns that Kenya and Tanzania contribute nothing when it comes to buying information. This may be a cause for concern when the IMO withdraws its financial support. Furthermore, while a coastguard is deemed as an important part of maritime law enforcement and a prerequisite for maritime security governance, Kenya and Tanzania do not have their own coastguards. Indeed, the constitutions of these two countries do not allow for the establishment of a coastguard. However, Kenya very recently officially announced that it will establish its own coastguard to supplement the Kenyan navy.<sup>881</sup> There is no such initiative currently underway on the Tanzanian side.<sup>882</sup> On both sides, there are marine police units that are characterised by very weak capacity to deliver their roles. The incapacity of marine police is evident in terms of both hardware and software.

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<sup>881</sup> Mwakio, P. 2014. Kenya plans to form marine guard. *Standard Media*. Available at: <http://www.standardmedia.co.ke/article/2000103374/kenya-plans-to-form-marine-guard> [Accessed on: 17 March 2016].

<sup>882</sup> Interviewees 17 and 18.

Intelligence information sharing is a prerequisite for effective maritime domain awareness (MDA). Nevertheless, there are some concerns that Kenya and Tanzania do not share their intelligence information despite having common maritime security threats.<sup>883</sup> There are various factors causing these states to withhold from sharing their intelligence information. The first reason comprises differences in political ideologies, since Kenya is an ally of the West, whereas Tanzania is an ally of China; the even naval assets and trainings of these States follow the same pattern (see section 2.3.3).<sup>884</sup> The countries also have an economic rivalry, and the lessons learnt from the failed versions of the EAC are also, to some extent, keeping these two States apart (see section 8.5.1).<sup>885</sup>

Although not sharing intelligence information is a common problem across the globe, in the EAC it is partly caused by the lack of any formal arrangements for information sharing at the EAC level.<sup>886</sup> The central concern in these two EAC coastal States is the lack of cooperation between their law enforcement agencies. While either of them has a maritime security strategy, the EAC also lacks this important strategy. The absence of any centralised maritime polices leaves these States with ineffective and highly fragmented policies and laws that have little effect on maritime security governance. One of the consequences of not having a maritime security strategy is this lack of coastguard units.

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<sup>883</sup> Interviewees 45, 46 and 47.

<sup>884</sup> See interviews extract B

<sup>885</sup> Ibid.

<sup>886</sup> Interviewee 45 and 47.

## 6.8 Conclusion

As noted, Kenya and Tanzania are the only two coastal States of the EAC; the rest are landlocked States. Together, Kenya and Tanzania have a coastline of about 1,950 km and approximately 384,000 km<sup>2</sup> of EEZ. Because they share a maritime border, these States essentially share the same maritime security threats. With the exception of the maritime border disputes between Kenya and Somalia, they are both affected by piracy, armed robbery against ships, illegal fishing, the trafficking of narcotics, light weapons and humans, and maritime environmental degradation. Despite having common maritime security threats, their cooperation in maritime security is unfortunately at a low level. This is partly explained by the lack of any formal arrangements to achieve this.

According to Mr. John Mungai, the head of maritime bench in the EAC, it was expected that the EAC could set a maritime security strategy that would be used to bring Kenya and Tanzania together into serious maritime security cooperation for the benefit of the region.<sup>887</sup> Both States participate in a number of international and regional maritime security projects that have given a much-needed push towards the eradication of their maritime security issues. These projects include the DCoC and the MASE programme. Through these projects, there have been extensive international naval operations in the region, as well as maritime security capacity building efforts. While these projects are helpful, they were never intended to be a permanent solution to regional maritime security threats. The EAC needs to own the maritime security governance initiative if it is to be sustainable. Both individually and through the EAC initiative, Kenya and Tanzania need to come up with a permanent solution to their maritime security issues.

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<sup>887</sup> Interviewee 47.

Further, the research found that both States have a number of fragmented maritime policies and legislation. Most of them are out-dated and non-enforceable; this is particularly true of those relating to marine pollution from land-based sources. There are further concerns that a weak institutional framework poses a big threat to the region when it comes to the enforceability of maritime laws. The lack of coastguards and incapacitated marine police create significant challenges in law enforcement in the maritime domain. The Kenyan and Tanzanian navies are stretched to fulfil both their warfare and law enforcement roles. This analysis takes us to the next chapter, where the role of the EAC's flag states in maritime security governance is explored. Chapter Seven will also analyse the importance of the EAC harmonising regional maritime transport policies for security and economic reasons, probably through flag state administrations of the member States. It will also explain why the EAC is not taking a leading role in regional maritime transportation, when it has already done so in inland waters.

## **7 Chapter Seven: Possible Solutions: An East African Community Flag State: Its Feasibility and Stakeholders' Attitudes**

### **7.1 Introduction**

Previously in Chapter Six, the author analysed the East African Community (EAC)'s maritime governance. The main focus of that analysis was on the maritime laws and policies available in Kenya and Tanzania, and how they promote maritime security governance in the EAC region. In this chapter, we focus on the flag state administration of the member States and the roles of the EAC in ship registration. The chapter examines how it could be possible for the EAC to harmonise regional maritime transport policies in accordance with Article 93 of the 1999 EAC Treaty.

The chapter examines the contributions of regional flag states to the governance of the safety and security of regional maritime transport. This is also among the requirements of the 2050 Africa's Integrated Maritime Strategy (2050 AIMS). The 2050 AIMS intends to use flag states to strengthen regional maritime security governance to support Africa's blue economy concept. The chapter also explores why the EAC is not taking a leading role in flag state administration. More importantly, the analysis answers research question 1.5.2.2, which is based on the political, legal and economic challenges facing the EAC, by considering how these challenges reduce the chance of the EAC taking a leading role in regional maritime safety and security.

The analysis starts by contextualising the concept of the flag state, following this with an overview of the five flag state administrations of the EAC and an exploration of stakeholders' attitudes on the possibility of unifying the regional flag states. Lastly, the chapter examines the roles of the Kenyan and Tanzanian flag states in maritime governance, including those of the Port State controls (PSCs). The author has published two articles related to the chapter (see Appendix 7 article 1 and 2)

## 7.2 Flag states in context

'Flag state' is a professional term used to describe the process of registration of commercial ships. A country that allows ships to fly its flag is then known as a flag state.<sup>888</sup> For that reason, the flag a ship flies legally indicates its nationality.<sup>889</sup> Once a certain ship is documented and registered it is allowed to fly a Tanzanian flag. It becomes a Tanzanian ship, regardless of where it belongs or who owns it. A ship, like a citizen, holds a nationality. In international customary law, this nationality is absolutely essential for the ship to sail on the high seas.<sup>890</sup> A ship with no particular nationality is regarded as a stateless ship. Equally, it enjoys no protection on the high seas and will be denied access to foreign ports. Eventually the ship will not be able to trade internationally.<sup>891</sup>

In today's world, the stateless ship suffers even more severe consequences by being regarded as a criminal's ship that tries to evade jurisdiction.<sup>892</sup> Because the high seas are for all mankind including landlocked states and out of any state jurisdiction reach<sup>893</sup>; ships sailing on the high seas fall exclusively under their flag state's jurisdiction.<sup>894</sup> In 2015, the world's commercial fleet consisted of 89,464 vessels; with a total tonnage of 1.75 billion dwt.<sup>895</sup> The fleet is registered in over 150 nations and is manned by over a million seafarers of virtually every nationality<sup>896</sup>

The legislation of states for registration of commercial ships is divided into three categories. These are a closed registry, an open registry and a second registry.

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<sup>888</sup> Mansell (2010, pp. 18-19). See also (UNCLOS, Art. 91)

<sup>889</sup> (UNCLOS, Art. 91)

<sup>890</sup> (Coles and Watt, 2009)

<sup>891</sup> Ibid.

<sup>892</sup> Klein (2011).

<sup>893</sup> (UNCLOS, Art. 87)

<sup>894</sup> (UNCLOS, Art. 94)

<sup>895</sup> UNCTAD (2015, p. 30)

<sup>896</sup> IMO (2015)

### **7.2.1 Closed registry:**

Closed registry or traditional registry as it used be known, is the one registered in the ship's homeland and these ships fly a local flag.<sup>897</sup> Closed registries typically require a ship be owned and constructed by national interests, and at least partially crewed by its citizens.

### **7.2.2 Open registry:**

Open registration is the process of allowing foreign owned ships to fly a national flag for some genuine reasons.<sup>898</sup> These reasons might be to obtain some business opportunities and economy in shipping operations. Through savings in the shipping overhead costs, open registration would make the shipping companies competitive in the industry and enable them to boost their private revenue. Open registration offers potential economic benefits for both open registry states and ship-owners.

Economic benefits to a state operating an open registry could be realised in the following ways: lower tonnage taxes and registration fees; franchise and/or royalty fees; and reduced government expense due to outsourcing. However, if the flagging-out reason is to evade international shipping standards, then the process becomes what is known as the 'flag of convenience'. Flag of convenience (FOC) is a nickname for the open registry or the international registry. In fact it is allegedly considered as a dark side of the open registry.

There are some paradoxes, however, as to whether the open registry and FOC carry the same meaning and where exactly a line can be drawn between the two.<sup>899</sup> FOCs are notoriously known for their ignorance of, or flouting of, international maritime norms and therefore are regarded as part of the broad spectrum of maritime security problems posed by ships. More importantly, FOCs have repeatedly been

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<sup>897</sup> (Coles and Watt, 2009).

<sup>898</sup> (Egiyan, 1990).

<sup>899</sup> (Egiyan, 1990).

seen engaging in illegal fishing and marine degradation. This is out of the scope of this research, however and will not be pursued further.

### **7.2.3 Second Registry:**

A second registry is an intermediate version of ship registry that lies between a national (closed) registry and an open registry. 'Second registries' or 'international registries' as they sometimes used to be known may be described as "registries that allow for use of the national flag, albeit under conditions which are different for those applicable for the first national registry".<sup>900</sup> Flag states maintain second registries simultaneously with their closed registries in attempt to claim back parts of their national fleets which have been flagged out to open registries.

The second registry also aims to encouraging ship owners not to flag out by offering them slightly more flexible regulations compared to a closed registry. These include some tax reliefs and, more importantly, fewer employment restrictions. Eventually, under second registries, foreign crews could be employed at international wages.<sup>901</sup>

The shipping industry is the most highly competitive and globalised industry of all (apart, possibly from aviation), yet it is undeniable that it is also one of the highly regulated industries. Ship owners have flexibility to choose where to register their vessels based on cost, convenience and the international and domestic regulations that would govern their operations.<sup>902</sup> Nevertheless, this freedom is sometimes abused and somehow ship owners end up in the hands of flag states that are incapable of enforcing international and national jurisdictions over their ships. Once again, these failed flag states are what are referred to as the FOCs.<sup>903</sup>

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<sup>900</sup> Tanaka (2015. p. 162).

<sup>901</sup> (Carlise, 2009).

<sup>902</sup> (Goodman, 2009)

<sup>903</sup> (Mansell, 2010).

### **7.3 The flag state administrations of the EAC**

At the time of writing, the EAC is not yet a federation. For that reason, each of its six members has its own flag state administration. Only Kenya and Tanzania are flag states whose meanings fit the context of this research. This is because they are coastal States, IMO state parties, have ships on the seas and have ratified a good number of international maritime conventions. These conditions are absolutely essential for a country to be a flag state.

The EAC's landlocked States have some ships on rivers and lakes; none of them has any ship on the seas. According to Article 90 of the United Nations Convention on the Law of the Sea (UNCLOS), landlocked states can be flag states and sail ships on the high seas through their own flags.<sup>904</sup> However, that would require landlocked states to have the necessary jurisdictions and capacity to put ships on the high seas in the first place. None of the EAC's landlocked states appears to have such capacity at the moment.

#### **7.3.1 Kenya**

The Kenya Maritime Authority (KMA) is the official flag state administration of Kenya. In January 2015, there were nine Kenyan flagged ships on the sea of 19,000 dwt in total.<sup>905</sup> The Kenyan fleet comprises tugs and pontoons, mostly working in the Kenyan internal waters. The fleet is predominately owed by the Kenyan government. For that reason, the fleet falls under the category of non-SOLAS vessels. According to SOLAS XI-2 and the ISPS Code, SOLAS vessels are; a) passenger ships of any size that engage on international voyages and b) cargo ships of 500 Gross Tonnage (GT) and upward that engage on international voyages. There are three Kenyan flagged ships on Lake

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<sup>904</sup> UNCLOS, Art. 90.

<sup>905</sup> UNCTAD (2014,p.35).

Victoria of 2,200 gt. These are Kenya registered ships through the Merchant Shipping Act of 2009, as amended in 2012.<sup>906</sup>

The Kenyan Railway Corporation also has a mandate to register ships in inland waters. The Merchant Shipping Act of Kenya does not allow for international registration.<sup>907</sup> This is one of the reasons why Kenya does not have an international registry. In addition to ratifying the UNCLOS and the Maritime Labour Convention (MLC), Kenya has already ratified 33 IMO conventions.<sup>908</sup>

### **7.3.2 United Republic of Tanzania (URT) and its the dual-flag system**

The URT has a dual-flag-state system. The dual-flag-state system in the URT is the result of a union taking the form of a two-tier governance system instead of a federation. The URT is a union of two sovereign states, formally made in 1964 between the (then) Republic of Tanganyika and the People's Republic of Zanzibar. The union was not meant to be all-encompassing; it only deals with specific matters known as "union matters", of which maritime affairs is not one. As a result, flag state administration, as an important part of the URT's maritime affairs, has been seriously affected by the two-tier governance system.

For that reason, the URT finds itself with two maritime administrations using two different sets of maritime law. Eventually, in the URT, there are two flag states, two local ships' registries and one international ships' registry, all of which fly the same URT flag. Notably, one of these flag states is under the Tanzania Mainland maritime administration, known as the Surface and Marine Transport Regulatory Authority (SUMATRA) and the other is run by the semi-autonomous islands of Zanzibar through the Zanzibar Maritime Authority (ZMA).

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<sup>906</sup> See Merchant Shipping Act of 2009, part IV- Registration and Licencing of ships.

<sup>907</sup> Art. 25, Merchant Shipping Act of 2009.

<sup>908</sup> See Status of IMO Conventions.

Having two flag states and three registries in a single country has never been easy. With respect to local registries, the SUMATRA and the ZMA work largely in harmony through a high level of technical cooperation between themselves. However, the international registry poses many of the administrative, diplomatic and political problems within and outside the URT. The URT is the only body recognised by the IMO with respect to Tanzanian maritime affairs, but sadly it does not have a flag state of its own. Instead, the SUMATRA wears two hats by assuming both the URT's role and that of Tanzania Mainland. To ease the situation, the URT, SUMATRA and ZMA, through IMO supervision, have all tacitly agreed to allow the SUMATRA to represent the URT (including Zanzibar) on all flag state issues that need international attention.<sup>909</sup>

- **Tanzania Mainland flag state**

The SUMATRA is Tanzania Mainland's multi-sector regulatory agency, established by Act of Parliament CAP 413 in 2001, to be a regulator of rail, road, ports and marine transport services.<sup>910</sup> Because it is responsible for maritime transport services, it has become the flag state representing the URT and Tanzania Mainland. In executing its ship registration role, the SUMATRA uses the provisions of the Merchant Shipping Act no. 21 of 2003.<sup>911</sup>

At the time of writing, Tanzania the local register at the SUMATRA does not have any SOLAS vessels (that is, vessels of more than 500 gt engaged on international voyages). About 57 of its 97 (58 per cent) vessels operate on inland waters and 42 per cent predominately operate within URT Territorial Seas.<sup>912</sup> The average age of the Tanzanian Mainland fleet is approximately 30 years with a total tonnage of

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<sup>909</sup> Interviewee 6.

<sup>910</sup> SUMATRA, Surface and Marine Transport Act, 2001. Available at: <http://www.sumatra.or.tz/index.php/legislation/acts> [Accessed on: 4 April 2016].

<sup>911</sup> The Merchant Shipping Act no.21 of 2003 (Tanzania),

<sup>912</sup> Baseline Study and Status Report on East African Maritime Transport and Port Sector (2014).pp. 67-72).

approximately 70,000 dwt.<sup>913</sup> Tanzania has ratified 21 IMO conventions in addition to the UNCLOS. At the time of writing, has not yet ratified the 2006 Maritime Labour Convention (MLC) which is an important convention to support the seafarers' welfare.<sup>914</sup>

- **Zanzibar flag state**

The ZMA is specifically crafted to deal with the maritime transportation issues of Zanzibar. Since it does not deal with multi-sector tasks like the SUMATRA, it is therefore perceived to be more efficient than its mainland counterpart. The ZMA came into force on 30 March 2009 through the Zanzibar Maritime Authority Act no. 3 of 2009.<sup>915</sup> The ZMA uses the provisions of the Maritime Transport Act 2009 in all of its ships' registration processes.<sup>916</sup> The Merchant Shipping Act which applies to SUMATRA allows only local registry. The provisions of the Maritime Transport Act allow the ZMA to run both a local and an international registry.<sup>917</sup>

### **The local registry**

The Zanzibar-based local registry is known as the Tanzania Zanzibar Register of Shipping (TZRS). As of December 2014, the TZRS had 70 vessels having approximately 54,175.8 dwt in total.<sup>918</sup> Despite having dual flag states and, of course, two local registries, the running of two local registries in the URT does not pose many serious problems. The two registries maintain very close cooperation on virtually everything relating to maritime safety and security, including technical cooperation. Since all the ships under the two local registries sail within Tanzanian

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<sup>913</sup> Ibid.

<sup>914</sup> See Status of IMO Conventions. Available at: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx> [Accessed on: 4 April 2016].

<sup>915</sup> Zanzibar Maritime Authority Act No 3, 2009. Available at: <http://www.agc.go.tz/pdf/2009-3-01-05.pdf> [Accessed on: 4 April 2016].

<sup>916</sup> Maritime Transport Act No 5, 2006

<sup>917</sup> Maritime Transport Act, S. 8(1)(b)

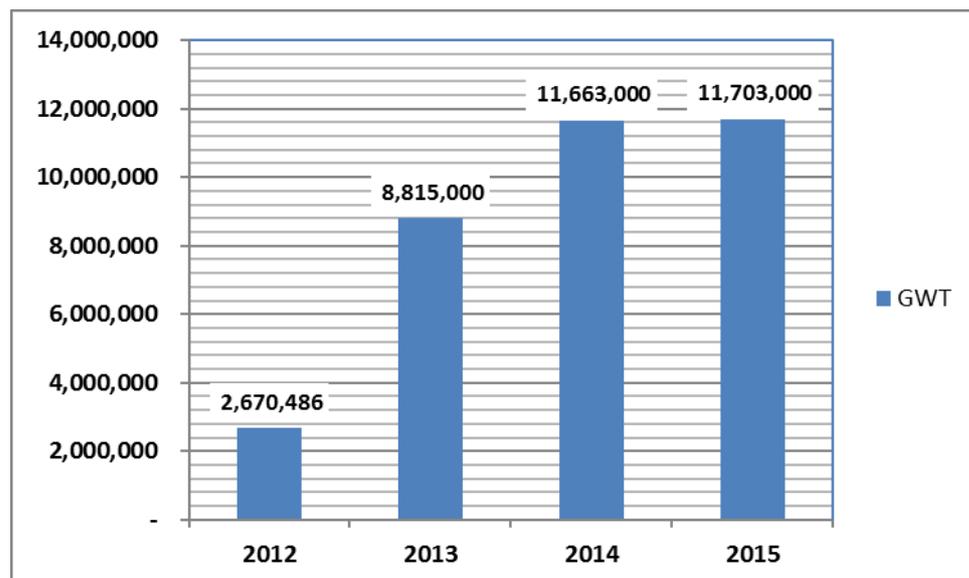
<sup>918</sup> Interviewees 3, 4 and 5.

maritime domain, the act of flying the same flag does not create any significant problems. However, this is absolutely impossible for the international registry.

### The international registry

In addition to the local registry, the ZMA operates the international registry, which is known as the Tanzania Zanzibar International Registry of Shipping (TZIRS). In 2015, TZIRS was named by UNCTAD's review of maritime transport report as the world's 23<sup>rd</sup> largest registry by tonnage and the second largest in Africa after Liberia's.<sup>919</sup> As shown in Figure 7-1, by January 2015 the TZIRS had 1,313 ships, with 11,773,000 dwt (data sourced from UNCTAD's Annual Reports of 2012 to 2015).

**Figure 7-1: Tonnage movement in TZIRS registry, 2012-2015<sup>920</sup>**



The evidence suggests that while the TZIRS tonnage is increasing, the flag quality is decreasing. For many years, the Tanzanian flag has been blacklisted and marked as being among the high-risk flags on every

<sup>919</sup> UNCTAD, (2015. p. 42)

<sup>920</sup> UNCTAD's Annual Reports of 2012 to 2015.

PSC regime. A lack of manpower capacity and excessive reliance on business agencies to run the flag have been pointed out as the main factors leading to the flag's bad performance. The non-ratification of important maritime conventions such as the MLC is also a factor that undermines flag quality.<sup>921</sup>

To analyse the risk profile of the TZIRS, the author decided to use the Port State Control (PSC) regimes of Tokyo and Paris because they are using the same evaluation criteria (excess factor as risk factor), which allows good comparison. Table 7-1 shows the performance of the Tanzanian flag as measured by the Paris and Tokyo MoUs in the period of 2012 to 2014 (data sourced from the 1982 Paris MoU and 1993 Tokyo MoU's Annual Reports of 2012 to 2014).

**Table 7-1: Tanzania PSC Performance on Paris and Tokyo MoUs, 2012-2015<sup>922</sup>**

|      | 1982<br>Paris MoU | 1994<br>Tokyo MoU |      |
|------|-------------------|-------------------|------|
| 2015 | Blacklisted       | ✓                 | ✓    |
|      | High risk         | ✓                 | ✓    |
|      | Excess factor     | 3.34              | 3.33 |
| 2014 | Blacklisted       | ✓                 | ✓    |
|      | High risk         | ✓                 | ✓    |
|      | Excess factor     | 3                 | 4.18 |
| 2013 | Blacklisted       | ✓                 | ✓    |
|      | High risk         | ✓                 | ✓    |
|      | Excess factor     | 3.58              | 4.26 |
| 2012 | Blacklisted       | ✓                 | ✓    |
|      | High risk         | ✓                 | ✓    |
|      | Excess factor     | 2.78              | 3.1  |

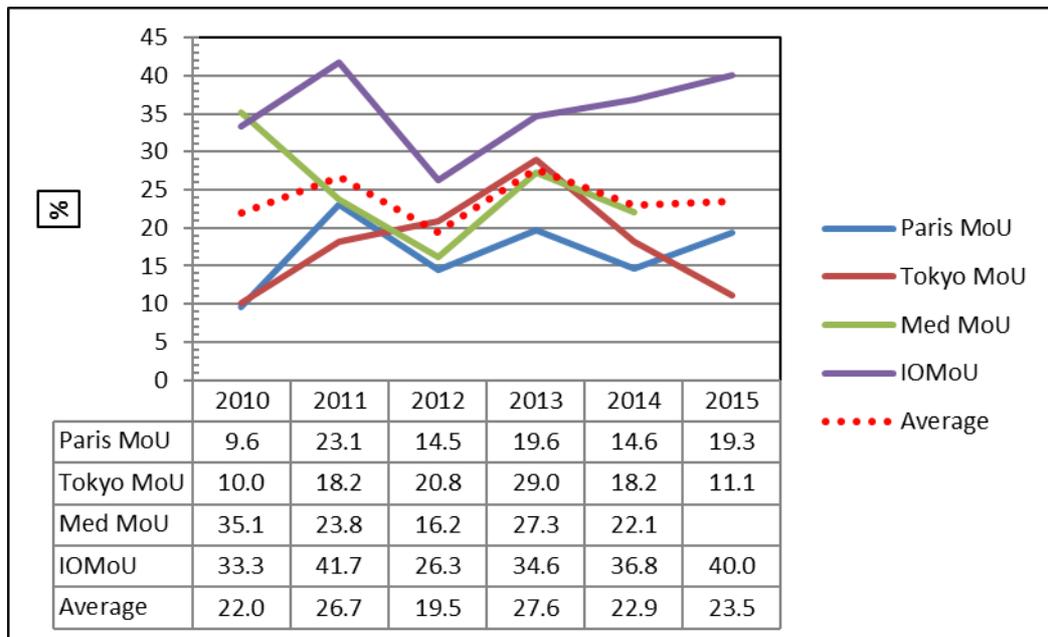
<sup>921</sup> Interviewees 1, 3,4,5,6 and 17.

<sup>922</sup> Author's Figure based on data on Annual Reports (2012-2015) of the 1982 Paris MoU (<https://www.parismou.org/publications>), the 1993 Tokyo (<http://www.tokyo-mou.org/publications/>), [Accessed on: 2 June 2016].

The Excess Factor (EF) is used in PSC regimes to make flags' performances comparable. The EF values indicate the approximate relations of the number of inspections and resultant detentions, as well as the risk profile of a specific flag ship. The higher the excess factor, the riskier the flag is.

The statistics in Figure 7-2 support the allegation that the TZIRS is one of the riskiest flags in the maritime world. On average, 24 per cent of TZIRS ships are detained on PSC inspections across the world. As previously explained, despite these deficiencies, the TZIRS is the second largest register in Africa after Liberia's.

**Figure 7-2 : % Inspection with detention of TZIRS, 2010-2015<sup>923</sup>**



Ship registration is a national pride and business too. It generates many jobs and earns foreign income for many developing countries. For example, the Liberian ship registry contributes about 5.1 per cent to

<sup>923</sup> Author's Figure based on data on Annual Reports (2012-2015) of the 1982 Paris MoU (<https://www.parismou.org/publications>) and the 1993 Tokyo (<http://www.tokyo-mou.org/publications/>), 1997 Meditation MoU (<http://www.medmou.org/>) and the 1999 Indian Ocean MoU (<http://iomou.org/armain.htm>). [Accessed on: 2 June 2016].

national GDP.<sup>924</sup> In the EAC's shipping industry, ship registration in particular could be developed to realise the regional ambitions of the blue economy.

### **7.3.3 Uganda**

Despite being a landlocked State, Uganda has been a member of the IMO since 2009 and has already ratified the UNCLOS 1982, although it has not been incorporated in national law yet. Ship registration in Uganda is managed through a number of out-dated and disjointed legislations.<sup>925</sup> The Uganda National Roads Authority (UNRA) is responsible for the registration of Ugandan ships through the Traffic and Road Safety Act, which is under the Transport Licensing Board. There are currently seven Ugandan flagged vessels on Lake Victoria of 3,800 dwt. Lake Victoria is the main navigable water body in Uganda. The other navigable water bodies in Uganda are Lake Albert, Lake Edward and Lake Kyonga.<sup>926</sup>

### **7.3.4 Burundi**

Ship registration in Burundi is undertaken by the Burundi Maritime, Port and Railway Authority (BMPRA). Burundi currently has 24 vessels in Lake Tanganyika, with approximately 11,000 dwt.<sup>927</sup>

### **7.3.5 Rwanda**

The maritime sector in Rwanda is relatively small compared with other EAC member States. This is due to the limited navigable water bodies available to Rwanda. The overall management of the sector is overseen by the Ministry of Infrastructure (MININFRA). However, day-to-day maritime activities are managed by the Rwanda Transport Development

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<sup>924</sup> MoF. (2011). *Republic of Liberia: Annual Fiscal Outturn, Fiscal Year 2010/1*. Available at: <http://www.mfdp.gov.lr/index.php/fiscal-outturn?download=25:final-quarter-4-outturn-20011-12>. [Accessed on: 2 June 2016].

<sup>925</sup> Interviewees 27 and 28.

<sup>926</sup> Ibid.

<sup>927</sup> Interviewees 23 and 24.

Agency (RTDA).<sup>928</sup> There is no evidence to suggest that Rwanda has any ship in Lake Kivu, which is the only body of water available to Rwanda.<sup>929</sup>

#### **7.4 Is it possible for the EAC to form a unified flag state?**

The multiplicity of registration and other authorities within the EAC States, and the relatively small number of seagoing ships suggests that some rationalisation is needed. Furthermore, Article 5(2) of the 1999 EAC Treaty has the stated long-term ambition to become Federation- a single state. While that aspiration may be a long time in coming, a unified EAC flag state might be a useful step on that road, as well as resolving the complexity of the current maritime framework and the lack of co-operation between agencies with and between states.

According to Article 93(a) of the 1999 EAC Treaty, the Community is supposed to “promote the co-ordination and harmonisation of their maritime transport policies and establish a common maritime transport policy”.<sup>930</sup> Furthermore, Article 93(f) insists on the establishment of a harmonious traffic organisation system or a Vessel Traffic Service (VTS) for the optimal use of maritime transport services.<sup>931</sup> The VTS is the equivalent of air traffic control in aircraft. The objectives of the VTS are to ensure safety of life and navigation at sea, enable vessel traffic movement, protect the marine environment, and contribute to maritime security.<sup>932</sup>

At the time of writing, the VTS is within the individual flag state administrations of the EAC. Based on the provisions of Article 93 of the 1999 EAC Treaty, author has impression inferred that the long-term aim

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<sup>928</sup> Interviewees 25 and 26.

<sup>929</sup> Ibid.

<sup>930</sup> 1999 EAC Treaty., art. 93 (a).

<sup>931</sup> 1999 EAC Treaty.art. 93 (f).

<sup>932</sup> See Dover Port Control, available at:

[https://www.doverport.co.uk/administrator/tiny\\_mce/source/PDF/Dover%20VTS%202015.pdf](https://www.doverport.co.uk/administrator/tiny_mce/source/PDF/Dover%20VTS%202015.pdf) [Accessed on: 7 June 2016].

is to unify regional flag states. Is it legally and practically possible for the EAC to form a unified flag state? This is among the most important concerns of this chapter.

An IGO such as the EAC does not qualify to be a flag state. In fact, there is no IGO flag that serves as an official “ensign” on commercial ships in the world. This is because IGOs do not have a statehood qualification, which is a prerequisite for a flag state. Furthermore, a flag state must be able to ratify and enforce international and regional maritime instruments on the ships flying its flag. IGOs do not have such ratification and enforcement capabilities on their own, so instead serve as rule-making bodies.<sup>933</sup> In international law, the discussions of statehood are dominated by two competing theories of state recognition: declaratory” and constitutive.<sup>934</sup>

On the one hand, declaratory theory aligns with the 1933 Montevideo Convention.<sup>935</sup> Declaratory theory suggests that an entity automatically becomes a state in the moment when it satisfies all the conditions set out in the 1933 Montevideo Convention. The four Montevideo conditions for statehood are: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states.<sup>936</sup> On the other hand, the constitutive theory of statehood defines a state as a person of international law if, and only if, it is recognised as sovereign by other states. The theory holds that recognition of an entity as a state is not automatic.<sup>937</sup> In declarative theory, an entity’s statehood is independent of its recognition by other states, and that recognition is just a matter of confirmation.<sup>938</sup> However, in constitutive theory

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<sup>933</sup> Lillie (2006).

<sup>934</sup> Worster (2009).

<sup>935</sup> Ibid.

<sup>936</sup> Montevideo Convention, Art. 1.

<sup>937</sup> Worster (2009).

<sup>938</sup> Latmon (2004).

recognition has to be created for a state if it is to become a state in international law.

Whatever the outcome of these highly contentious theories, in its current form, the EAC is neither a state nor a supranational organisation; hence, it cannot be a flag state. However, the EAC's unified flag state will come into existence by default when the goal of political federation is fully realised.

Despite the lack of statehood and enforcement capabilities, IGOs have a powerful and influential position over their members when it comes to the ratification of important international maritime conventions and their enforceability. Because of the influential powers they have, IGOs are allowed to be IMO observatory members. The African Union (AU) and EU are the best examples of IGOs that have are observatory members of IMO. Nevertheless, they cannot be flag states and their flags have never been flown on commercial ships as an official 'ensign'.

In 2004, for example, there were massive pressures for the EU to establish its own ship registry, which would allow its flag to be flown on commercial ships. The initiative was, however, rejected by the European Parliament because it was using the EU flag as an 'ensign' on commercial ships, which would contradict the provisions of Article 91 (1 and 2) of the UNCLOS.<sup>939</sup> Article 91 insists that all ships have a particular nationality, which should be demonstrated through the flag that is flown by them.<sup>940</sup> The EU had good reasons to reject this proposal because it is technically, neither a state nor a supranational organisation.

Under certain circumstances, such as a ship on a peace-keeping mission, a ship offering humanitarian assistance or a ship seeking

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<sup>939</sup> Schmöger, M. (2004). Rejected proposal of an European civil ensign. Available at: <http://areciboweb.50megs.com/fotw/flags/eu~eun.html#pro> [Accessed on: 06 April 2016].

<sup>940</sup> UNCLOS, Art. 91.

protection and the like, Article 93 of the UNCLOS allows ships to fly the flags of the United Nations or its specialised agencies and other IGOs.<sup>941</sup> A commercial ship may opt to fly the UN flag, for example, alongside its own flag or a UN flag alone. Whatever the case, the jurisdictions of that ship are always determined by its flag state.

While the EAC is waiting or aspiring to become a state, and therefore, by default, a flag state, the flag states of Kenya and Tanzania (the only coastal States of the EAC) remain vital contributors to regional maritime security efforts. The vessels of 100 gt and over flying EAC member States' flags number over 1,600 and have approximately 12,000,000 gwt.<sup>942</sup> These figures include vessels on the seas and those on inland waters. They also show how the EAC's flag state would look if the member States were to combine their registries.

The region receives approximately 2,500 foreign ships annually. This further suggests that the EAC's maritime domain is busy and vulnerable to ship-borne maritime security threats, such as pollution, illegal fishing and human and drugs trafficking (which includes the possibility of terrorists using ships to get onto the EAC's shores).

As noted, at the time of writing, the EAC cannot be a flag state. However, this could be an influential institution on regional maritime affairs in the same way as other IGOs, the EAC in particular. Unfortunately, the EAC has so far failed to take a lead role in regional maritime affairs. It has, however, taken nearly complete responsibility for inland water transportation affairs, mostly on Lake Victoria. If the influence and involvement of the EAC on inland water transportation

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<sup>941</sup> UNCLOS, Art. 93.

<sup>942</sup> Figure is based on data obtained in the EAC Baseline Study and Status Report on East African Maritime Transport and Port Sector, UNCTAD-Review of Maritime Transport of 2012, 2013, 2014 and 2015, the ZMA database and other online sources. It also includes researcher estimates based in his experience of the region and through three trips visit to the region while in fieldwork.

could be mirrored in regional maritime affairs, this would definitely move the EAC one step closer to flag state status.

Unlike the governance of inland water transportation, in the maritime arena there are a number of obstacles that prevent the EAC taking a leading role in regional maritime affairs, including flag state administration. These include: a) a lack of regional maritime institution; b) a lack of standardised maritime legislation; and c) an existing strong sense of sovereign status among member states.

- a) **Maritime institution:** For the EAC to harmonise its maritime policies relating to flag state administration, it needs a maritime institution in the first place. Examples of maritime institutions that have influencing powers are the European Maritime Safety Agency (EMSA) in the EU and the Maritime Organisation for West and Central Africa (MOWCA). These maritime institutions are acting as liaisons between regional organisations and member states. Unfortunately, these kinds of maritime institutions are currently absent in the EAC. While the EAC has the Lake Victoria Basin Commission (LVBC), a prototype institution of this kind that deals with inland water transportation, there is—for some unknown reason—no institution dedicated to handling the EAC's maritime affairs.

The LVBC is one of the eight semi-autonomous institutions of the EAC that help the Community to deliver its missions. The Lake Victoria Transport Act of 2007 (LVTA), which establishes a single legislation for transportation on Lake Victoria, nearly gives the LVBC the status of a flag state on Lake Victoria.<sup>943</sup> The LVTA gives the EAC a big credit on way which it handles inland water

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<sup>943</sup> Lake Victoria Act, art. 247: the Act takes precedence over any national legislation as regards any matter to which the Act relates.

transportation.<sup>944</sup> Unfortunately, this kind of authoritative institution above the flag states of Kenya and Tanzania, which could potentially lead to these flag states working unilaterally, is missing.

Through the EMSA, for example, the EU is closely monitoring its members' flag states by providing technical and scientific assistance in areas related to maritime safety, security, the prevention of pollution by ships, and maritime transport administration. The EMSA is not only a maritime enforcement agency of the EU, but is also a liaison between the EU and international institutions, member states' administrations, and the maritime industry.<sup>945</sup> The EMSA is responsible, among other tasks, for making sure that member states comply with PSC requirements.<sup>946</sup>

In order to enforce the PSC requirements, the EMSA makes four to six visits to member states per year.<sup>947</sup> For those EU flags that have done badly on PSC inspections, the EMSA is doing everything possible to help them rectify their deficiencies so they can improve by the time of the next round of inspections.<sup>948</sup> Also, the EMSA ensures that the member states maintain a standard of PCS throughout the region. There is no institution to undertake such tasks in the EAC.

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<sup>944</sup> Interviewees 45,46,47 and 48.

<sup>945</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0021&from=EN>

<sup>946</sup> Directive 2009/16/EC of the European Parliament and the Council of 23 April 2009 on Port State Control. L.11/57. Official Journal of the European Union. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0057:0100:EN:PDF> [09 April 2016].

<sup>947</sup> Interviewees 37 and 38.

<sup>948</sup> Ibid.

- b) **Existing nexus between maritime affairs and states' sovereignty:** One of the reasons that have led to the failure of the EAC to launch a maritime institution is the strong existing perception that maritime affairs form a nexus with state sovereignty. While this might be true, it needs not prevent the EAC coordinating maritime cooperation in the region. If the EAC is aiming at full-fledged political cooperation, maritime cooperation should not be a big problem at all. Very recently, the EAC launched the e-passport, which will replace all other passports within the EAC by December 2018.<sup>949</sup> This is a more serious test of state sovereignty than harmonising maritime institutions. But if the EAC has a single passport, then, one might argue why not, a single flag?
- c) **Lack of standardised maritime legislation:** The need for the coordination and harmonisation of regional maritime transport policies and the establishment of a common maritime transport policy has been enshrined in Article 93 of the 1999 EAC Treaty and is also a concern of the 2050 AIMS. At the time of writing, ships registered in the EAC take the nationalities of the member states through Kenya's Merchant Shipping Act of 2009,<sup>950</sup> mainland Tanzania's Merchant Shipping Act of 2003,<sup>951</sup> and Zanzibar's Maritime Transport Act of 2006.<sup>952</sup>

With the exception of the Zanzibar Maritime Transport Act, the jurisdictions of these acts are extended to inland waters. These acts have many things in common, which makes harmonisation

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<sup>949</sup> Ibid.

<sup>950</sup> Available at:

[http://kenyalaw.org/Downloads/Acts/The\\_Merchant\\_Shipping\\_Act\\_2009.pdf](http://kenyalaw.org/Downloads/Acts/The_Merchant_Shipping_Act_2009.pdf) [Accessed on: 4 June 2016].

<sup>951</sup> Available at: <http://parliament.go.tz/polis/uploads/bills/acts/1454072386-ActNo-21-2003.pdf> [Accessed on: 4 June 2016].

<sup>952</sup> This Act is not available online.

more achievable. Nonetheless, there are some discrepancies within these acts that need to be addressed before any harmonisation attempts are made.

As shown in Table 7-2, ships' nationality, trade restrictions and registries are among the discrepancies that require the attention of the EAC.

- i. A ship, like a person, holds a nationality. While a person's nationality is demonstrated through a passport, a ship's nationality is indicated through the flag it flies. Although the EAC is not a state in the eyes of law, it has already issued a regional passport that will phase out all member states' passports by December 2018. However, the EAC's nationality does not apply to ships. The Merchant Shipping Acts of Kenya and the Maritime Transport Act of Tanzania and Zanzibar would not recognise an EAC ship. This means that a Kenyan ship is recognised as a foreign ship in Tanzania and the reverse is also true.

**Table 7-2: Discrepancies in EAC member States' shipping laws<sup>953</sup>**

| <b>State</b>                                | <b>Ship nationality</b> | <b>Trade restrictions</b>   | <b>Registries</b>                                    |
|---|-------------------------|---|--|
| Kenya<br>Merchant Shipping Act, 2009 [2012] | Kenyan(Art. 17(1))      | Only Kenyan ships can trade in or from Kenyan waters (Art. 14(1)) | A local registry for all ships in Kenya (Art. 25(1)) |
| Tanzania<br>Merchant                        | Tanzanian               | Only Tanzanian ships can trade in or from the                     | A local registry for all ships in                    |

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<sup>953</sup> Data organised by author

|                                       |                                     |  |   |
|---------------------------------------|-------------------------------------|--|---|
| Shipping Act, 2003                    | (Art. 13(1))                        | Tanzanian waters (Art. 10(1))  | Tanzania (Art. 20(1))   |
| Zanzibar Maritime Transport Act, 2006 | Zanzibari and Tanzanian (Art. 9(1)) | Only Zanzibari and Tanzanian ships can trade in or from the Zanzibar waters (Art. 56(1)) | a) A local registry for all ships in Zanzibar and Tanzania (TZRS)<br><br>b) An international registry for foreign ships (TZIRS) (Art. 8(1)) |

- ii. Additionally, because they are foreign ships, they cannot trade in the region as local ships. These trade restrictions with the EAC are against the blue economy concept promoted by the 2050 AIMS and endorsed by both the EAC and its members.
- iii. The Maritime Transport Act of Zanzibar, for example, allows the Zanzibar flag state to run both a local and an international registry. Nonetheless, the Merchant Shipping Acts of Kenya and the Tanzanian mainland support an international ship registry. These are some of the provisions that need a great deal of work before a single set of merchant shipping legislation can be achieved.

Harmonising the EAC maritime laws and regulations to be applied on seas appears to be an impossible task.<sup>954</sup> Nonetheless, on

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<sup>954</sup> See Appendices 2 and 4.

Lake Victoria there is already a single piece of legislation dealing with all the transportation issues on inland waters. This is thanks to the LVBC, which initiated the LVTA.<sup>955</sup> The standardisation has only been possible through the LVBC, which is an EAC institution dealing with all the matters on Lake Victoria. The LVTA gives the LVBC almost the same rights as the maritime authorities of the member states.

Through the LVTA, all the vessels on the lake are registered, surveyed and administered through this Act, regardless of their nationality. The LVTA is virtually replacing the Merchant Shipping Acts of the member states on Lake Victoria.<sup>956</sup> For that reason, all issues relating to the construction, registration, surveying, safety and security of ships on the lake are governed by the LVBC.<sup>957</sup> While the maritime authorities of the member states have some enforceable powers, the LVTA has repealed most of the powers of the member states' Merchant Shipping Acts on Lake Victoria.<sup>958</sup>

It is therefore a recommendation of this research that the harmonisation of maritime policies be enacted to fast-track the EAC's goal of political unification. In fact, this would give the member states a real test of how ready they are to give up some or all of their sovereignties to the supranational institution that is the EAC.

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<sup>955</sup> Lake Victoria Act, art. 247.

<sup>956</sup> Interviewees 45, 46, 47 and 48.

<sup>957</sup> Ibid.

<sup>958</sup> Ibid and Wakiaga (2010).

## **7.5 Stakeholders' attitudes to the idea of creating a unified EAC flag state**

The idea of a unified flag state is partly supported by research question 1.5.2.3, which is designed to explore the possibilities of the EAC creating a maritime security regime. This is also enshrined in the 2050 AIMS and its Plan of Action, which suggests that African states should strengthen their flag states.<sup>959</sup> The 2050 AIMS recognises the importance of the flag state and PSCs in Africa's maritime governance.

The EAC is not unique in this; it currently lacks any unified regime or at least an institution to support regional maritime governance. The EAC's maritime security regime would not only be an institution responsible for the EAC's maritime security issues, but would also be a liaison in maritime security cooperation between the EAC and its global partners.

These global partners have some economic, security and even political interests in the EAC region (see 1.2.3). Huge natural resources recently found in EAC maritime domain and on land have created a tug of war between the West on the one hand and China and India on the other (see 1.2.3 on page 9). This situation not only benefits the EAC's economy, but also compromises its security integrity. The situation has the potential to militarise the EAC's maritime domain. The main concerns are how the EAC's shipping industry, in particular its flag states, is it going to cope with the massive movement of commercial ships and naval assets in the region while working unilaterally? Would a unified flag state help in this scenario?

In order to explore the EAC stakeholders' attitudes to the possibility of realising an EAC maritime security regime through flag state unification, 35 regional experts were interviewed.<sup>960</sup> The results were: about 85 per

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<sup>959</sup> See the 2050 AIMS Plan of Action, short-term goal B.S. 1. Available at: <http://pages.au.int/sites/default/files/Annex%20C%2C%20PoA%20%28Eng%29.pdf> [Accessed on: 3 June 2016].

<sup>960</sup> See Appendix 5

cent of the interviewees disagreed that a unified flag state would be an important component of the proposed EAC maritime security regime. They all, however, agreed that when the EAC becomes a federation, the unification of members' flag state processes would be inevitable.

However, the stakeholders expressed the concern that, at the moment, the idea of flag states unification is both legally and practically impossible to realise. Approximately 65 per cent of the interviewees agreed on the proposition that the EAC can harmonise its maritime safety and ship security in its current form. Overwhelmingly, 90 per cent of the research participants acknowledged the need for the EAC to have its own maritime institution dedicated to regional maritime affairs. Nevertheless, they all insisted that the institution should not be realised through flag state unification.<sup>961</sup>

#### **7.6 The contributions of the Kenyan and Tanzanian flag states to maritime security**

Traditionally, flag states' roles were limited to ensuring the safety and security of ships flying their flag while on the high seas. In recent years, however, the nexus between flag state and maritime security has been expanded and become an important issue in the maritime world and, of course, international relations.<sup>962</sup> As argued by Goodman, the rights of flag states have remained largely unchanged since the original evolution of the concept.<sup>963</sup> However, the list of their responsibilities has grown exponentially in areas ranging from ship safety standards and crew training to marine pollution, maritime security and seafarers' welfare.<sup>964</sup>

This is partly due to the escalation of the maritime security threats caused by non-state actors, such as piracy, terrorism, illegal fishing, and the trafficking of narcotics, light weapons and humans. The criminals in

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<sup>961</sup> Ibid

<sup>962</sup> (Hosanee, 2008).

<sup>963</sup> Goodman (2009. p. 157).

<sup>964</sup> Ibid.

these categories of maritime security threats use ships as either potential targets or a means to deliver their attacks. This suggests that most maritime crimes that take place at sea involve ships in one way or another. For this reason, flag states are taken as important institutions in the war against maritime security threats, at both the national and international levels.<sup>965</sup>

A flag state has an overall responsibility for the implementation and enforcement of international maritime regulations for all ships granted the right to fly its flag. However, that would require a flag state to have a maritime authority that is capable of executing those responsibilities, as stipulated by Article 94 of the UNCLOS. A flag state is required to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”.<sup>966</sup> It is further required to maintain a register of all the ships flying its flag, also assuming jurisdiction under its national law for both the ship and its crew in relation to administrative, technical and social matters.

In addition to the general roles that flag states have under the UNCLOS and SOLAS, there are some specific roles relating to maritime security through a range of international maritime conventions. Some of these conventions are: MARPOL 73/78, for the marine environment; the SOLAS conventions for the safety of life at sea, including ship and port security; the SUA conventions for maritime terrorism; and the MLC for the welfare of seafarers and the like.

The EAC’s flag states of Kenya and Tanzania are responsible for almost all the civilian maritime security of the region. Through their Merchant Shipping Acts, they are responsible for vigilance against maritime security threats such as piracy, armed robbery against ships, illegal fishing and marine environment degradation. The only downside is that

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<sup>965</sup> (Murphy, 2007).

<sup>966</sup> (UNCLOS, Art.94).

the capability of these flag states to enforce those regulations is rather low.<sup>967</sup> These flag states, for example, are the ones supposed to have coastguard (or equivalent) units for maritime law enforcement.<sup>968</sup> Unfortunately, the region does not have a single coastguard unit. In the absence of coastguard units, regional navies assume both warfare and law enforcement roles. This is an overwhelming task for young navies, such as those of Kenya and Tanzania, given their assets and manpower capacities (see section 4.3 (b)). Additionally, navies find it difficult to work with civilian institutions such as the KMA, the SUMATRA and the ZMA.<sup>969</sup>

Perhaps the biggest contribution of the KMA and the SUMATRA to regional maritime security governance comes in the form of maintaining the information sharing centres (ISCs) at Mombasa, Kenya and Dar-es-Salaam, Tanzania. The KMA and the SUMATRA operate the Regional Maritime Rescue Coordination Centre (RMRCC) in Mombasa, Kenya and the Maritime Rescue Coordination Centre (MRCC) in Dar-es-Salaam, Tanzania.<sup>970</sup> These ISCs serve as regional coordinators on search and rescue missions, as well as piracy ISCs. These centres make a big contribution to the war against piracy and armed robbery in the EAC and the wider region.

Kenya and Tanzania are two of the 19 member states of the Indian Ocean Memorandum of Understanding (IOMOU). Table 7-3 shows that Kenyan and Tanzanian contributions to Port State Controls (PSCs) constitute 6 per cent of the total PSC inspections undertaken by the IOMOU from 2010 to 2015.<sup>971</sup> As a region, 6 per cent is not a bad number given the number of ships calling at ports in the Indian Ocean.

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<sup>967</sup> Interviewees 1,2,3, 6, 16,17 and 18.

<sup>968</sup> Ibid.

<sup>969</sup> Ibid.

<sup>970</sup> (IMO, 2016)

<sup>971</sup> IOMoU's annual reports of 2010 to 2015. Available at: <http://www.iomou.org/armain.htm> [Accessed on: 4 May 2016].

However, concerns surround the ability of Tanzania to undertake PSC inspections.

Tanzania has only conducted 3 per cent of the total inspections conducted in the EAC region; the rest (97 per cent) were carried out by Kenya. In those inspections, a total of 683 ships were found to have deficiencies and 83 were detained in the EAC region. This is one step forward in regional maritime security governance and is one of the most important requirements of the 2050 AIMS.

**Table 7-3: PSC efforts by the KMA and the SUMATRA, 2010-2015<sup>972</sup>**

|                          | 2010      | 2011      | 2012     | 2013     | 2014     | 2015     | Total     |
|--------------------------|-----------|-----------|----------|----------|----------|----------|-----------|
| <b>Kenya</b>             | 168       | 258       | 123      | 443      | 446      | 456      | 1,894     |
| <b>Tanzania</b>          | <u>29</u> | <u>23</u> | <u>2</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>54</u> |
| <b>EAC</b>               | 197       | 281       | 125      | 443      | 446      | 456      | 1,948     |
| <b>Total of IOMoU</b>    | 5,513     | 5,550     | 5,051    | 5,320    | 5,575    | 6,253    | 33,262    |
| <b>EAC as % of IOMoU</b> | 4%        | 5%        | 2%       | 8%       | 8%       | 7%       | 6%        |

In recent years, following the escalation of Somalia-based piracy, the world has seen the task of a flag state as being to provide security to the commercial vessels flying its flag. This can be regarded as the primary obligation of the flag state, but it is increasingly being transferred to ship owners, who are allowed to hire privately contracted armed security personnel (PCASP) on board their ships while transiting high-risk areas.<sup>973</sup> The IMO has issued general guidelines applicable to PCASP practice in relation to embarkation, disembarkation and vessels calling at ports.<sup>974</sup> However, the overall management of the practice rests with the coastal state in collaboration with the flag state and the port state.

Both Kenya and Tanzania have strict regulations applicable to armed commercial ships calling at regional ports. The regulations are also

<sup>972</sup> Ibid.

<sup>973</sup> (Schechinger, 2014)

<sup>974</sup> (IMO, 2014)

applicable to a ship that intends to make a transit passage through EAC waters while armed. Prior notice is required before a ship can make a call to EAC Territorial Sea. The governance of a ship carrying armed guards is coordinated by the Kenyan and Tanzanian flag states with close cooperation from their respective armed forces.

Among the important pieces of information required by these authorities are: a) authorisation from a flag state that a ship has been allowed to be armed; b) verification from the private maritime security companies in relation to adequate training procedures; and c) security clearance/a certificate of good conduct from Interpol/the police.

## **7.7 Conclusion**

With the exception of South Sudan, all other members of the EAC have maritime/inland waters administration units. Only Kenya and Tanzania have flag state administrations whose meaning is accepted by this research. In its current state, it is clear that the EAC cannot form a unified flag state. This is because it is neither a state nor a supranational organisation. Through its influential powers, however, it can persuade the member states, through the provisions of the Treaty, to harmonise maritime transport policies. Eventually, the regional flag states would become inseparable. Nonetheless, that would require the EAC to have a maritime institutional framework in the first place. While appreciating the roles of flag states in regional maritime governance, the lack of cooperation among them and the non-involvement of the EAC are central concerns of this research. Kenya and Tanzania are State parties to the IOMoU, which is a PSC regime. The EAC region, through the Kenyan and Tanzanian flag states, conducted 1,948 PSC inspections from 2010 to 2015. These inspections represent 6 per cent of the total inspections undertaken by the IOMoU. As a region, this is a good contribution to maritime security given the number of ships calling into its ports or Territorial Sea. The maritime administrations of Kenya and Tanzania are also key players in regional maritime law enforcement. The Tanzanian flag state, Africa's second largest registry, shows that there is the possibility of implementing the blue economy concept through ship registration. Through some special arrangements, an international registry could provide training and employment for EAC citizens and support the regional economy. The only downsides are that the EAC does not have strong maritime policies or a robust institutional framework to support maritime security; more importantly, it lacks maritime security governance, which is a prerequisite for the blue economy concept. This research next addresses the establishment of a maritime security regime through the harmonisation of the regional flag states' policies. This would strengthen these flag states, improving their capacity to implement their law enforcement roles via a holistic approach.

## **8 Chapter Eight: Possible Solutions-The EAC as a Security Region: Can it be a Regional Maritime Security Regime?**

### **8.1 Introduction**

Previously in Chapter Seven, the author investigated how the EAC could, as an institution, use the flag states of its member States to help create its own flag state. It further examined how the harmonisation of those flag states could help to fill the vacuum in regional maritime security governance. It also showed that strengthening flag state administration is one of the most important recommendations of Africa's Integrated Maritime Strategy (2050 AIMS). However, the success of that ambition, among others, would require the EAC to have full command of its maritime security governance in the first place. This is the core concern of this chapter. Given that the future of the EAC federation is not certain, and the need for it to take full control of regional maritime security governance is escalating, a maritime security regime (MSR) appears to be the best possible option at the time of writing.

The chapter starts by contextualising the MSR, following this with an investigation of how a region such as the EAC could contribute to regional peace and security initiatives. It shows how the EAC's MSR would be formed. It also analyses the importance of the EAC having its own maritime security strategy. This will be followed by an examination of how external maritime security actors influence and complicate the EAC's maritime security governance. The chapter highlights some of the challenges faced by the EAC in its maritime security governance struggles.

## 8.2 Maritime Security Regime (MSR)

A MSR is a group of states and/or organisations acting together, with an agreed-upon framework of rules and procedures, to ensure security within the maritime domain.<sup>975</sup> A MSR opens the doors for states to cooperate and coordinate among themselves, as well as with outsiders, on common security threats through a unified institutional framework. For the MSR to be able to achieve such a complex alignment, it must have norms, rules and procedures for decisions that have been underpinned by regional and international maritime agreements/conventions, such as the UNCLOS, the SUA Convention and the ISPS code.

The regional and international maritime agreements have inbuilt features that make regional cooperation more realistic. As argued by Bateman, a stable MSR, underpinned by agreement on the fundamental principles of the law of the sea, is an important contribution to regional security.<sup>976</sup> In a MSR, norms and rules are agreed sets of laws and regulations that guide the regime on how to share important intelligence information and how it would cooperate and coordinate with others on the surveillance and patrol of the regional maritime domain.

More importantly, there should be clear rules on how regime members would improve their capability to respond to threats individually or collectively when they are required to do so. In order for norms and rules to work, the regime should have to act as an institutional framework that would allow the formation and creation of policies, capacity- building mechanisms, and conditions on how states would share the burden of running the regime.

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<sup>975</sup> Maritime Security Regime Manual and Enterprises proposal (2013. p. 5). Available at: <https://www.hsdl.org/?view&did=754697> [Accessed on: 14 May 2016].

<sup>976</sup> Bateman (2005)

As shown in section 2.4.6, pages 76-79, depending on security needs, regional security can take the form of a security regime, alliance, collective security arrangement, or security community.<sup>977</sup> Unlike a MSR, the motives of other regional security architectures are mainly for defensive or attack purposes, or both. Because of those motives, they tend to be state-centric. A MSR, however, does not need to have many anarchistic features in its formation. This is because a MSR is a preventative and cooperative coalition that uses political and diplomatic strategies more than military force in conflict resolution.

The membership body of a MSR, for example, not only includes both state and non-state actors within the regime itself, but also encompasses state and non-state actors who are not part of the regime.<sup>978</sup> The involvement of non-state actors—such as donors, civil societies, research institutions, IGOs, NGOs, shipping companies, insurance companies and private maritime security companies (PMSCs), just to mention a few—reduces reliance on state-centric actors. This is also a requirement of the 2050 AIMS that Africa’s maritime governance system should be inclusive of all stakeholders.<sup>979</sup>

In fact, the formation of a MSR allows for two-way communication. That is, by combining the top-down approach, which is state-centric, with the bottom-up approach, which is people-centric, all stakeholders can be carried along.<sup>980</sup> This blend of the top-down and bottom-up approaches passes the ownership of regimes to all stakeholders and builds the necessary trust among them. This is also an approach of the 2050 AIMS.<sup>981</sup> In order to build trust and cooperation, the 2050 AIMS recognises its stakeholders as AU state parties, local communities, specialised regional institutions, private maritime sectors, developing

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<sup>977</sup> Bailes and Cottey (2006. pp. 199-211).

<sup>978</sup> Maritime Security Regime Manual and Enterprises proposal (2013).

<sup>979</sup> 2050 AIMS, p. 12, part IX- Stakeholders of the AIMS.

<sup>980</sup> Dabugat, (2014.p. 4).

<sup>981</sup> 2050 AIMS, p. 12.

partners, regional economic communities (RECs), and the international community at large.<sup>982</sup>

The Djibouti Code of Conduct 2009 (DCoC) is an excellent example of an MSR that uses more diplomatic than military means to suppress Somalia-based piracy. The diplomatic approaches to breaking the piracy business model, reinstating maritime law enforcement in Somalia, and building the capacity of existing law enforcement agencies in neighbouring states are commendable steps taken by the DCoC. These steps were carefully blended with shipping industry initiatives, such as Best Management Practice 4 (BMP4) and the international naval presence in the region.

### **8.3 The roles of regional organisations (ROs) in promoting peace and security: How does the EAC fit in?**

There is a scholarly debate as to whether ROs have any role to play in the promotion of world peace and security (see section 2.4.5). However, the debate is purely theoretical. In reality, maintaining peace and security is one of the most important roles of ROs such as the EAC. For example, in their regional security complex theory, Buzan and Wæver argue that security threats are sensitive to geographical proximity, and note that world security issues can only be resolved in regions or clusters.<sup>983</sup>

For that reason, neighbouring states tend to have common securitisation and desecuritisation processes that make their security problems reasonably unresolved apart for one another.<sup>984</sup> Further to that, Article 52(2) of the United Nations Charter stipulates the need to resolve conflict at the regional level before having recourse to the Security

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<sup>982</sup> The 2050 AIMS. p. 13.

<sup>983</sup> Buzan and Wæver (2003). esp. pp. 4,12,,45-46.

<sup>984</sup> Ibid. p. 44.

Council.<sup>985</sup> The UN's reliance on ROs is manifest in the fact that ROs are more flexible and have local knowledge that can be used to resolve local conflicts more quickly than the bureaucratic mechanisms of the UN's Security Council.

There are two schools of thought as to whether ROs make any contribution to regional peace and security. On the one side of the arguments, liberals see ROs as an alternative to having military powers compete to shape world politics. That can be done by breaking norms, overcoming problems via collective action (which individual states cannot facilitate on their own), and mediating conflicts between party states.<sup>986</sup> Eventually, the ROs provide a perfect forum for states to communicate and cooperate and avoid unnecessary competition that would subsequently open the doors for military confrontation.

On the other side, realists argue that ROs have no particular roles in the international system, and are of limited relevance. Moreover, realists argue that ROs are created by the state, work on behalf of the state, and depend on the state for their survival. Therefore, the existence of ROs has no effect on world politics; moreover, they jeopardise state sovereignty (see section 2.2.1 on pages 26).

While ROs have proved themselves important catalysts for regional peace and security, their roles in maritime security are perhaps manifestations of what appears to be a new phenomenon. Many ROs in Africa, including the EAC, have not had maritime security as part of their security agenda. More importantly, they lacked institutional frameworks to support regional maritime security cooperation. As also noted, Bueger argues that, in Africa, the issue of maritime security receives little attention from policy makers (see section 1.3.1. on page 11). This

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<sup>985</sup> United Nations, *Charter of the United Nations*, 1 UNTS XVI, 24 October 1945.

Art. 52 (2).

<sup>986</sup> Ataman (2003).

makes African maritime domains especially vulnerable. Most of the African states, including EAC States, depend on international partners' security projects for the protection of their own maritime domains.

However, because of financial constraints, many of these international maritime security projects do not last long. Issued in 2012, the 2050 AIMS, is the latest attempt to claim back Africa's maritime security and is a wake-up call for Africa's ROs to step up their own regional maritime security efforts.<sup>987</sup> The 2050 AIMS considers maritime security a prerequisite for wealth creation through the sustainable use of seas, oceans and inland waters the 'blue economy' concept.<sup>988</sup>

The EAC is one of the eight ROs recognised by the AU for its role in regional peace and security.<sup>989</sup> Article 124 of the 1999 EAC Treaty, for example, regards regional peace and security as prerequisites for the achievement of its objectives in the areas of social, economic and security integration.<sup>990</sup> The EAC believes that regional integration through the movement of people, goods and factors of production would be impossible without peace and security. The main peace and security provisions in the 1999 EAC Treaty are: Article 5 (objectives of the Community), Article 123 (common foreign policy and security), Article 124 (regional peace and security) and Article 125 (defence). However, the implementation of Articles 123, 124 and 125 largely depends on how the EAC integrates with a view towards political unification. At the time of writing, in 2016, this is still very far off.

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<sup>987</sup> Stockbruegger (2014).

<sup>988</sup> 2050 AIMS.

<sup>989</sup> AU (2015). Communiqué of the Peace and Security Council of the African Union (AU), at its 523rd meeting on the situation in Burundi. Available at: <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-523rd-meeting-on-the-situation-in-burundi#sthash.9foTkUQB.dpu> [Accessed on: 12 June 12, 2016].

<sup>990</sup> 1999 EAC Treat, Art. 124.

In 2006, the EAC adopted the Strategy on Regional Peace and Security and, seven years later, in 2013, the Protocol on Peace and Security was also adopted. The ratification of these two security instruments by its members has been perceived as a big step forward towards regional peace and security. Nevertheless, the Strategy appears to be blind to maritime issues.<sup>991</sup> The Strategy scarcely recognises that terrorism, piracy, and the proliferation of illicit small arms and cross-border crimes are threatening regional peace and security. The names of these threats have been used in the Strategy, but it does not necessarily reflect the threats as they present themselves in maritime domain. This is yet another reason to support the hypothesis that the Strategy is largely meant for land security issues. The biggest setback of the Strategy lies in its failure to establish its own institutional framework. This is very unusual for a security instrument of this size.

The EAC Protocol on Co-operation in Defence Affairs, which came into force on 24 December 2014, provides a forum for cooperation among the EAC's defence forces. For example, it requires visits and exchanges of information, joint military training, joint operations and technical cooperation among the region's defence forces. This is yet another excellent move made by the EAC towards regional security. Unfortunately, the cooperation of the regional navies and other maritime law enforcement agencies in the EAC is facing many difficulties. While there have been approximately six successful joint military training programmes and operations in other units of the regional defence forces, there is no evidence to suggest that regional navies and other maritime regional law enforcement agencies have done the same.<sup>992</sup>

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<sup>991</sup> Interviewees 45 and 47.

<sup>992</sup> Jacobsen, KL and Nordby, JR. (2013). Danish Interest in Regional security Institutions in East Africa. DIIS Report. Available at: [http://pure.diis.dk/ws/files/68146/RP2013\\_14\\_Danish\\_interests\\_East\\_Africa\\_web.jpg.p df](http://pure.diis.dk/ws/files/68146/RP2013_14_Danish_interests_East_Africa_web.jpg.pdf)[Accessed on May 2016].

These facts support the hypothesis that the EAC's peace and security initiatives are mainly land based. Unfortunately, the EAC has so far turned a blind eye to its own regional maritime security governance. The issue of maritime security governance has been left entirely to the individual coastal States: Kenya and Tanzania. This is in contrast with other IGOs, such as the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC) (see Chapter four). These IGOs have leading roles in regional maritime security governance, and this includes having maritime security strategies. The author therefore recommends the establishment of a maritime security regime for the EAC as an alternative to its current disjointed and ad-hoc approach to dealing with regional maritime security, on the one hand, and the currently unattainable metamorphosis of the EAC into a state (see Chapter Six) on the other.

#### **8.4 Formation of MSR: What will the EAC's MSR be like?**

There is no 'off-the-shelf' model for building a MSR. Creating a MSR is a case-by-case process that depends on regional security needs and how willing states are to cooperate. Bateman regards member states having common security interests and a political framework as prerequisites for building a MSR.<sup>993</sup> A study undertaken by Multinational Experimental-7, concerning the level of complexity within the region, cites levels and types of challenges or threats, response to challenges, capabilities, ownership of challenges, and trust as important factors that can produce a good MSR.<sup>994</sup>

Whatever the approach a region might take in building its MSR, it should be able to create unified rules and procedures in information sharing,

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<sup>993</sup> Bateman (2007. p. 109).

<sup>994</sup> Multinational Experiment-7 (2013. pp. 3-6). Maritime Security Regimes-a regional comparative study of some of existing regimes.

surveillance, patrol and response, together with an institutional framework that would result in policy creation, capacity building and burden sharing.<sup>995</sup> In this research, the author decided to examine the formation of the proposed EAC Maritime Security Regime through the following parameters: geographical complexity, membership, legal and institutional frameworks, response to challenges, ownership of challenges, and trust.

#### **8.4.1 Geographical complexity**

Geographical location has a significant influence on the formation of regional MSRs. As argued by Buzan and Wæver, for security reasons “adjacency is potent for security”.<sup>996</sup> This is particularly relevant where state actors have limited technological means. A state with Submarine-Launched Ballistic Missiles can threaten anyone, anywhere. This is however, not the case for the EAC States. Some regions have different physical characteristics such as straits and other choke points, which can make it very hard for a security regime to prosper. Therefore, a MSR made up of close neighbouring states with similar physical characteristics has a higher chance of being successful than a MSR consisting of dispersed member states.

The physical characteristics of the maritime domain in the EAC region provide a perfect opportunity for the EAC to kick off swiftly with a MSR. The complex physical characteristics found in the Asia-Pacific and ASEAN regions, for example, do not exist in the EAC region. The EAC does not have any straits that qualify for regime cooperation apart from the Mozambique Channel. As can be seen in Figure 8-1, the Mozambique Channel abuts the EAC maritime domain and is not something to be ignored completely by the EAC maritime security policy makers.

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<sup>995</sup> Batmen (2007).

<sup>996</sup> Buzan and Wæver (2003. p.45)

The Mozambique Channel is approximately 1000 nm long and 250 nm wide at its narrowest point.<sup>997</sup> The Comoros Islands, the French Island of Mayotte, Mozambique and Madagascar are located directly within the Mozambique Channel. However, Tanzania as part of the EAC and SADC, have economic, social and security concerns over the Mozambique Channel as well.

**Figure 8-1: The Mozambique Channel<sup>998</sup>**



<sup>997</sup> Bergeron, I. 2014. The forgotten chokepoint: the Mozambique Channel's rich past and bright but insecure future. Centre for Maritime Security. Available at: <http://cimsec.org/forgotten-chokepoint-mozambique-channels-rich-past-bright-insecure-future/14071> [Accessed on: 2 October 2016].

<sup>998</sup> Map available at: <http://www.worldatlas.com/aatlas/infopage/mozchann.htm> [Accessed on: 2 October 2016].

At the time of writing, there have been huge discoveries of oil and gas in the cities bordering the Channel and neighbouring states such as Tanzania.<sup>999</sup> These activities will increase economic dependence of the Channel to the Eastern and Southern African regions, in which the EAC is one of them. There is also a chance of terrorists to recruit majority of 'moderate Muslims' communities living across the Mozambique Channel.<sup>1000</sup> All of these facts suggest that the EAC too need to consider security arrangement with its neighbour within and around the Mozambique Channel (see section 8.5.2).

In addition, the absence of maritime disputes between the EAC member States provides a perfect avenue allowing the EAC to come up with a regional MSR. With the exception of the ongoing maritime border disputes between Kenya and Somalia, the EAC has good relationships with those of its neighbours that share its maritime domain. In fact, all the maritime borders of the EAC have been properly delimited and agreed upon, with the exception of the Kenya/Somalia border. Although the EAC's proposed MSR would probably be expanded in the future, to start with it should be confined to the EAC region. This will help the regime to grow while its members, especially Kenya and Tanzania, build the necessary confidence and trust to continue working in the regime.

#### **8.4.2 Membership**

There are two types of membership of a MSR: the first includes regime member states that are regional partners; and the second includes non-regime states that reside outside the geographical area of the regime but also have some maritime security interests in the region. In both cases, members can be state or non-state actors. While the roles of Kenya and Tanzania, the only coastal States of the Community, would

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<sup>999</sup> Bergeron, I. 2014.

<sup>1000</sup> Alpers, E. A. 2011. A Complex Relationship: Mozambique and the Comoro Islands in the 19th and 20th Centuries. Available at: <https://www.cairn.info/revue-cahiers-d-etudes-africaines-2001-1-page-73.htm> [Accessed on: 2 October 2016].

be important in the proposed MSR, the involvement of the landlocked states of the EAC is crucial for the survival of the regime. The landlocked states have both economic and security interests in regional maritime domain.

The EAC has access to approximately 114,000 km<sup>2</sup> of inland waters. Some of these waters form the EAC's borders with neighbouring states. It would be in the interests of the EAC to see that the rules, norms and procedures of the MSR are extended to inland water bodies. It is also a requirement of the 2050 AIMS that inland water security issues are resolved to allow those waters to be used for wealth creation. It will also avoid the need for the Community to create another regime specifically to deal with security issues in inland waters. Money laundering, for example, is a significant component of maritime crime that could be carried out in nearby landlocked states if they were left outside the spectrum of the regime.<sup>1001</sup>

In the future, there is therefore a need to include neighbouring states, such as Seychelles and Mozambique, in the regime. Their inclusion would also facilitate law enforcement and agreements, such as those involving hot pursuit and the right of foreign-flagged vessels to visit. However, persuading Seychelles and Mozambique to join the EAC's security regime is not going to be easy. Together with Tanzania, Seychelles and Mozambique are SADC state parties. The SADC has a legal and institutional framework to support regional cooperation, including its own maritime security strategy. In fact, the SADC is further ahead in terms of maritime security cooperation, than the EAC. For this reason, it would be difficult for the EAC to encourage Seychelles and Mozambique to formally join its regime as members.

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<sup>1001</sup> EAC (2012). Partner States Urged to Take Concrete Steps Against Money Laundering, Terrorism, press release, Available at: [http://www.eac.int/news/index.php?option=com\\_content&view=article&id=685:concrete-steps-against-money-laundering&catid=48:eac-latest&Itemid=69](http://www.eac.int/news/index.php?option=com_content&view=article&id=685:concrete-steps-against-money-laundering&catid=48:eac-latest&Itemid=69)> [Accessed on: 26 May 2016].

However, overlapping membership of regional organisation is common- (see Figure 2-6 and Table 8-1 on pages 82 and 314 respectively). The EAC should think clearly about how to include the big maritime players in the region, such as the EU, China and the US. The US, for example, has a number of maritime security regimes it might like to impose on the states in the region should it be invited to join the EAC regime. The Proliferation Security Initiative (PSI), the Container Security Initiative (CSI) and the Regional Maritime Security Initiative (RMSI) are examples of MSRs that were initiated by the US and are applicable across the globe. However, none of them is applicable in the EAC region. This is one of the areas where the EAC needs to be careful when inviting the US to become a stakeholder. Despite their undoubted international importance, these US-sponsored regimes would put too much pressure on the newly formed regime of the EAC.

The size and balance of power among the actors in any MSR are extremely important factors to its success.<sup>1002</sup> The combination of these two factors must be just right for a MSR to prosper, since it would not work without the right balance. Size indicates the number of members in a regime, while power indicates anything from the wealth, geographical size or location of a state to its military power. For instance, a regime with fewer actors is more likely to prosper than one with many actors. Although it is quite hard to determine what constitutes a big number, it is generally accepted that groups encompassing many large members will find it difficult to integrate properly. This is due to the fact that large and powerful states will not accept dictates pertaining to their own territories, and other states will be wary of simply accepting more powerful states' models.<sup>1003</sup>

The EAC has high chances of embarking on a MSR successfully given its geographical position, history, powers, security needs and number of

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<sup>1002</sup> Bailes and Cottey (2006)

<sup>1003</sup> Ibid

state parties. Compared with other ROs, the EAC is less crowded and its members have lots in common. Out of its six State parties, only two are coastal States; the rest are landlocked. This combination gives the coastal States an upper hand in controlling the regime, so there will be fewer confrontations. The size and power of these two coastal States mean they are almost within the same range.

At the time of writing, by comparison, Kenya is a fairly rich nation with a better navy than Tanzania (Kenya provides 33 per cent of the EAC's GDP, whereas Tanzania provides 26 per cent) and they differ significantly in terms of their foreign policies. However, the gap between Kenya and Tanzania is not that wide when compared with the gaps among the DCoC member States. The DCoC, for example, comprises 21 member States with varying degrees of power and wealth. More importantly, they have different security needs. These are some of the operational difficulties facing the DCoC despite its achievements.<sup>1004</sup>

### **8.4.3 Legal and institutional frameworks**

Hansen, Mitchell and Nemeth argue that international organisations will be more successful conflict managers if they are highly institutionalised and if they have members with homogenous preferences, and if they have more established democratic members.<sup>1005</sup> While these features are mostly noticeable in the EAC, neither the EAC nor its members has a proper maritime institutional framework to support the creation of a MSR. More importantly, there is no regional maritime security strategy at the national or EAC level. These gaps in maritime security governance are therefore the justification for doing this research.

At the EAC level, there is some legislation that needs to be adopted into maritime security. This includes the 2006 Peace and Security Strategy, the 2013 Protocol on Peace and Security and the 2014 Protocol on Co-

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<sup>1004</sup> Bueger and Saran (2012), *Military Balance* (2016).

<sup>1005</sup> Hansen, Mitchell and Nemeth (2008)

operation in Defence Affairs. As explained later in this chapter, although these instruments are blind to specific maritime security concerns, they can be adopted for the purposes of maritime security with minor amendments. What is seriously missing in the EAC is an institutional framework through which to execute maritime security cooperation. In maritime security, an institutional framework is defined as the administrative mechanisms that are required to establish systems of coordination and cooperation between all the actors with roles in ocean governance.<sup>1006</sup>

It is important for the EAC to encourage its members to create their own maritime security strategies before embarking on a regional solution. Through the Strategy, the states will identify areas where they need assistance in the form of cooperation and coordination and filling gaps in capacity building. Such a process would also attract the political will of the member States to participate in regional maritime security cooperation. Consequently, the process will eliminate the sense of mistrust among the regime's state parties.

The MSR should strike a clear balance between military and civilian roles in regional maritime security cooperation, and should avoid militarising the regime. The EAC navies of Kenya and Tanzania are currently performing both warfare and law enforcement tasks. This is partly due to a lack of coastguard units and incapacitated marine policies although many countries armed forces do undertake 'Military Aid to the Civil Power'.<sup>1007</sup> The maritime authorities of Kenya and Tanzania, through their Merchant Shipping Acts, have many provisions that deal with maritime security. However, they do not have the necessary enforcement capabilities.

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<sup>1006</sup> Roe (2013).

<sup>1007</sup> See the PhD study done by Haines (1993) entitled 'Provision of Military Aid to Civil Authorities in Britain's Maritime Domain'.

The EAC has the added advantage of having a DCoC institutional framework in place. As noted, there are two DCoC information sharing centres at Mombasa, Kenya and Dar-es-Salaam, Tanzania. These centres and their networks would be good starting points for the proposed MSR. Furthermore, through the DCoC and the MASE programme, there are many capacity-building programmes that would be helpful for the EAC's MSR. It is up to the EAC to formalise these capacity-building initiatives so they can be made sustainable.

#### **8.4.4 Response to challenges**

This is perhaps one of the areas where the EAC would definitely require assistance from non-regime members for an extended period of time. The contributions of China, the US and the EU, among others, would make the difference between success and failure for the EAC's MSR. A MSR requires stakeholders' capabilities and readiness to respond or take action at the right time to address maritime security challenges. This would sometimes require a state or a stakeholder in a MSR to cooperate with outsiders in order to address the threats. In order to be able to respond to the maritime security issues facing the EAC, the member States' political will is essential. Only through political will can the Community create the necessary regulations, policies and strategies to enforce those agreements in practice. As noted, this is what is currently missing from the EAC, and it is a core concern of this research. Responding to challenges also requires capacity.

Capability is taken to mean the physical capacity (hardware, like ships, aircraft, etc.) and competence (software, made up of education, training and concepts) required to exploit the available platforms in an efficient way. Like other African states, navies and maritime law enforcement agencies in the EAC lack the competence to execute maritime security roles effectively on their own without external forces. This is, however, one of the reasons why the EAC needs a MSR to supplement those deficiencies through cooperation.

In terms of competence, the maritime law enforcement agencies of the EAC States have been receiving short-term and on-site naval training from international naval forces visiting the region. The Djibouti Regional Training Centre provides a tailor-made training programme in the region in an attempt to upgrade the maritime security capacity of regional actors, including Kenya and Tanzania.

As for hardware, while both the Kenyan and Tanzanian navies have recently upgraded their naval hardware, these assets are not sufficient to conduct surveillance all year round. The navies' tiny budgets and burden sharing are going to be big obstacles to regional maritime security cooperation. Despite being young and relatively less capable, the Kenyan and Tanzanian navies would make a big difference on the EAC's waters if they synchronised their assets for deployment against common regional maritime threats.

#### **8.4.5 Ownership of challenges and trust**

Maritime security threats originating within a MSR are a purely internal issue that has to be dealt with by both the state and non-state parties of the MSR. However, maritime security threats may sometimes originate from outside the MSR. In this case, significant involvement from external actors is needed to address the problems. This is often the case in the EAC, where most of the maritime security threats originate from the neighbouring failed State of Somalia. The lack of proper organisation in regional maritime security in the EAC is perhaps the biggest challenge of all. This is due to the lack of a maritime institution—in the form of a MSR—that would coordinate maritime security cooperation in the region.

The Community is heavily dependent on international efforts to address its own maritime security issues. While cooperation is insisted upon, it has to be regional for it to be sustainable. For example, the lack of a regional maritime security strategy indicates a lack of ownership. As will shortly be discussed, there are several disjointed maritime security initiatives in the region, which were mainly established by the coastal

states, with little coordination at the Community level. This is one of the areas that this research must address.

Trust may be a crucial factor for the success of maritime security cooperation, albeit not at the first stage. Trust always starts with dialogue and is a function of time and stability. Bateman defines trust as the firm belief that the other side will do what is right.<sup>1008</sup> Trust is a difficult concept that means different things to different people in different contexts.<sup>1009</sup> Trust is built up over time when actors cooperate and work together on different security projects where they get to know and gain confidence in each other.

The most important experience gained by cooperating over time is predictability. Actors that trust each other can safely assume that the other actors will not negatively surprise them during their cooperation. Trust is, therefore, not as important when starting up an MSR. However, it is crucial for the success of the maritime security cooperation, as well as its eventual sustainability and possible expansion.

### **8.5 Why is it so important for the EAC to have its own MSR?**

The need for maritime security cooperation in the EAC, probably in the form of a MSR, is unquestionable. This is because the current state-centric approach to dealing with regional maritime security threats does not appear to be effective or sustainable. Kenya and Tanzania struggle to govern their own maritime spaces—and those of the wider region—individually, and the EAC appears to have little influence on regional maritime security.

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<sup>1008</sup> Bateman, S. (2015). The Future of Maritime Security in East Asia: Alternative Scenarios and the Importance of Trust. Piracy studies- Research Portal for Maritime Security. Available at: <http://piracy-studies.org/the-evolution-of-the-maritime-security-environment-of-east-asia-alternative-scenarios-and-the-importance-of-trust/> [Accessed on: 26 May 2016].

<sup>1009</sup> Ibid.

The lack of regional maritime security policies, most importantly a maritime security strategy, is a main factor preventing the EAC from intervening in regional maritime security governance.<sup>1010</sup> This lack of EAC intervention creates vacuums in regional defence, security and foreign policy. The individual States adopt different maritime security policies propagated by different states, including inter-regional and international maritime security programmes.

There are a number of disjointed policies in the region that do not necessarily support maritime security cooperation among the EAC States. The EAC is currently facing the following challenges in the governance of its maritime security: the effects of the world's superpowers in the region, rivalry among ROs, and the mixing up of inter-regional and international maritime security programmes in the region. Unfortunately, there is no holistic approach to dealing with these impacts at the EAC level.<sup>1011</sup> Perhaps creating the MSR would bring together all maritime security shareholders and stakeholders towards a holistic and proper method of protecting the EAC's maritime domain.

### **8.5.1 Effects of external security policies**

As noted in Chapter Five, imperatives of trade and business have made numerous states around the world, regional organisations and international institutions cooperate against maritime security challenges facing the ASEAN and ECOWAS states, individually and as regions. This is one of the reasons why these regions have MSRs with an open membership to non-regional member states and organisations. For example, the ARF and ReCAAP in ASEAN are MSRs whose members connected by business and security. This further supports the research's proposal of creating the EAC's MSR as to do so would attract business partner into the region.

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<sup>1010</sup> Interviewees 45 and 47.

<sup>1011</sup> Ibid.

As can be seen in Table 7-3, the EAC has several business partners who have long time experience in maritime security. This is in addition to their maritime power projection in east Africa. On the one hand, the US as the world's superpower and great powers such as the EU, China and probably India, are important stakeholders that the EAC would like to invite into its proposed MRS (see section 9.4 (b)). On the other hand, SADC and IGAD are the EAC's close business IGOs whose maritime security experiences and business connections are regarded as important ingredients in the EAC's proposed MSR (see section 8.5.2).

The EAC has a Tripartite Free Trade Area agreements with SADC and COMESA.<sup>1012</sup> It is also at the final stage of deciding whether to sign off or not an Economic Partnership Agreement (EPA) with the EU, or not.<sup>1013</sup> Among the other important agreement of these trade agreements, is to keep the regional maritime domain safe and Sea Lines of Communication open for international business. These agreements allow individual states either to do business with IGOs or a member state in other IGOs, as the case may be. Thus, anarchy is actually going along with liberalism in this regard.

As noted in Chapter Six, the lack of robust maritime security policies at both national and Community level, and a dedicated maritime institution at the EAC, put the EAC in a desperate position compared with EU, SADC, IGAD, and to some extent COMESA. This is perhaps, one of the reasons why the EAC would need these IGOs in its proposed MRS despite their economic rivalry (see section 8.5.2 and 8.5.3). The inability of the EAC to take a leading role in regional maritime security

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<sup>1012</sup> Trade Mark East Africa (2016). SADC, EAC and COMESA Seek to implement Tripartite Free trade Area. Available at: <https://www.trademarkea.com/news/sadc-eac-and-comesa-seek-to-implement-tripartite-free-trade-area/> [Accessed on: 23 March 2017]

<sup>1013</sup> European Commission (2014). Economic Partnership Agreement Between the EAC's partners States and EU and its Member States. Available at: [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153845.compressed.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153845.compressed.pdf) [Accessed on: 23 March 2017]

governance due to the lack of maritime security strategy and institutional framework, have allowed the superpower (the US) and great powers (China, India and the EU) to deal with the EAC's member States individually. This in fact, corrodes the liberalist potential benefits of IGOs as promoters of regional peace and security (see section 8.3).

The existing maritime policies at state level were revealed to be too old and scattered, across different institutions. Some of the institutions no longer exist due to ministerial structural changes and or budget cuts. These policies do not support maritime security cooperation, even within the same state. The research found that together, Kenya and Tanzania have approximately 27 maritime policies/frameworks or legislation. About 85 per cent of those policies deal with land-based pollution. Sea-based pollution caused by ships, oil and gas exploration, and other ongoing blue economy activities in the region, are definitely, threats to the EAC maritime domain.

The research found that the EAC's maritime domain is full of blue economy activities. However, there are few maritime security policies in place to ensure their sustainability. As noted in Chapter Four, the EAC's maritime domain is affected by illegal fishing, drugs trafficking, piracy and maritime terrorism. At the time of writing, about 37 per cent of the EAC's maritime domain remains within an internationally declared piracy High Risk Area (See Figure 4-4 on page 163). This is one of the reasons why this research advocates the need for the EAC to have its own set of maritime security policies to govern its domain. More importantly, it needs maritime security strategy. According to local maritime security experts interviewed in this research, the lack of EAC's maritime security strategy reduces the chances of donors, international stakeholders and investors dealing with the EAC directly on issues relating to maritime security.<sup>1014</sup> Instead, they prefer to align themselves with individual

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<sup>1014</sup> Interviewees 45 and 47

states. This increases anarchistic features in the organisation that is clearly heading into a fully-fledged federation.

### **8.5.2 Overlapping security interests of the EAC in other regional organisations**

The EAC is one of the five Regional Economic Communities (RECs) of the Eastern Africa, Southern Africa and the Indian Ocean (EA-SA-OI) region. Other RECs are the Common Market for Eastern and Southern Africa (COMESA), the Indian Ocean Commission (IOC), the IGAD and the SADC. The EAC's member States have overlapping memberships in the ECCAS, the IGAD, the SADC and the COMESA. These RECs have different maritime security priorities, as indicated in their own maritime security strategies, which do not necessarily align with those of the EAC.

Because the EAC's States are also state parties to the maritime security strategies of the ECCAS, the IGAD and the SADC, the jurisdictions of these strategies are technically applicable to the EAC maritime domain. This creates foreign legal and institutional frameworks in the EAC region. As a result of this overlapping membership, there have been elements of rivalry, mistrust and conflict of interest among Regional Economic Communities (RECs), including their members. Even the EU, the main supporter of maritime security in the EA-SA-OI region, finds it difficult to cope with this situation.<sup>1015</sup> Table 8-1 shows overlapping membership of the EAC member across four regional organisations.

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<sup>1015</sup> Regional Indicative Programme (RIP) for Eastern Africa, Southern Africa and the Indian Ocean (EA-SA-IO), Available at: [https://ec.europa.eu/europeaid/sites/devco/files/rip-ea-sa-io-signed-20150604\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/rip-ea-sa-io-signed-20150604_en.pdf) [Accessed 16 May 2016].

**Table 8-1: Overlapping memberships of the EAC States<sup>1016</sup>**

|             | <b>EAC</b> | <b>SADC</b> | <b>COMESA</b> | <b>IGAD</b> | <b>ECCAS</b> |
|-------------|------------|-------------|---------------|-------------|--------------|
| Burundi     | <b>Yes</b> | <b>No</b>   | <b>Yes</b>    | <b>No</b>   | <b>Yes</b>   |
| Rwanda      | <b>Yes</b> | <b>No</b>   | <b>Yes</b>    | <b>No</b>   | <b>Yes</b>   |
| Kenya       | <b>Yes</b> | <b>No</b>   | <b>Yes</b>    | <b>Yes</b>  | <b>No</b>    |
| South Sudan | <b>Yes</b> | <b>No</b>   | <b>No</b>     | <b>No</b>   | <b>No</b>    |
| Tanzania    | <b>Yes</b> | <b>Yes</b>  | <b>No</b>     | <b>No</b>   | <b>No</b>    |
| Uganda      | <b>Yes</b> | <b>No</b>   | <b>Yes</b>    | <b>Yes</b>  | <b>No</b>    |

For example, Tanzania is the only EAC member with SADC membership. Both the SADC and the EAC have a single currency as one of their major objectives in economic integration. This will make it difficult for Tanzania to determine with which agreement it should align. Tanzania's membership of the SADC has, for a long time, been a flashpoint between Kenya and Tanzania. Kenya insists that Tanzania's membership to the SADC contradicts economic and security integration efforts in the region. Tanzania, however, argues that the SADC has more to offer in terms of security and economic integration than the COMESA and insists that it will not give up its SADC membership. Tanzania is perhaps correct because the SADC already has a maritime security strategy. While the SADC's strategy imposes obligations on Tanzania, it is well supported by an institutional framework; COMESA and the EAC lack anything like this.

Furthermore, political will and financial commitments in terms of investments in naval assets and infrastructure are higher in the SADC than they are in the other RECs. For example, Mozambique has spent €200 million on ordering 30 patrol ships from France.<sup>1017</sup> The South African navy is upgrading its fleet by acquiring three off-shore vessels and three in-shore vessels in an attempt to boost its maritime

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<sup>1016</sup> Author (2015)

<sup>1017</sup> Louw-Vaudran, L. 2014. What does ensuring SADC's maritime security mean for South Africa? *Institute for Security Studies*, Available at: <https://www.issafrica.org/> [Accessed 16 May 2016].

capability.<sup>1018</sup> The 2012 MoU between South Africa, Mozambique and Tanzania (all SADC members) led to an operation, called ‘COPPER’, in the Mozambique Channel; this operation was a response to piracy activity. In this operation, Tanzania and Mozambique contributed almost nothing, leading to South Africa financing the entire operation, including the deployment of its warships in the region. None of the other RECs has had such a remarkable achievement in maritime security.

While the EAC appears to be unprepared to establish its maritime security strategy, in May 2016, the IGAD has already finalised its draft Integrated Maritime Security Strategy 2030 (IMSS-2030) and an associated action plan, which will impose some responsibilities on Kenya and Uganda.<sup>1019</sup> This is yet another conflicting force in the EAC maritime security arena. At the same time, Burundi and Rwanda are also members of the ECCAS, where there is a maritime security strategy in addition to the Yaoundé Code of Conduct. Without an EAC maritime security strategy that can take into account all of these difficulties, the future of maritime security governance in the EAC will remain in the hands of individual States and international donors.

### **8.5.3 Role of the ‘hard-powers’ in the EAC maritime security governance.**

Like most of the Africa’s regional organisations, the EAC does not have the capacity to govern its own maritime waters all year round. The EAC lacks the necessary means to provide surveillance over its waters or to deploy naval and, or air assets to respond to imminent threats at sea (see section 3.3). That makes the EAC highly dependent on the world

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<sup>1018</sup> Campell, K, 2014. Start of acquisition process for six new SA Navy patrol vessels confirmed. *Creamer Media*. Available at: <http://www.engineeringnews.co.za/article/start-of-acquisition-process-for-six-new-sa-navy-patrol-vessels-confirmed-2014-03-20> [Accessed 16 May 2016].

<sup>1019</sup> IGAD. 2015. Draft IGAD Integrated Maritime Safety and Security Strategy (2030). Available at: [http://igad.int/index.php?option=com\\_content&view=article&id=1049:draft-igad-integrated-maritime-safety-and-security-strategy-2030-&catid=45:peace-and-security&Itemid=128](http://igad.int/index.php?option=com_content&view=article&id=1049:draft-igad-integrated-maritime-safety-and-security-strategy-2030-&catid=45:peace-and-security&Itemid=128) [Accessed 16 May 2016].

super power-the US- and great powers with oceanic capability (the so-called 'hard powers') to enforce law and order in its maritime waters. The US, UK, EU, China and India are the superpowers and great powers who have economic and security interests in the EAC region and in the wider region (see section 1.2.3). The term 'hard power' describes a nation or political body's ability to use economic incentives or military strength to influence other actors' behaviours.<sup>1020</sup>

The EAC has massive reserve of off shore oil and gas. This has made the 'hard-powers' to see the EAC as a potential future energy supplier. With escalation of the Iranian aggression in the Strait of Hormuz and Chinese imperialist in the South China Sea, the importance of the EAC as a future energy supplier, is obvious. However, the race over the EAC natural resources and business opportunities, has militarised the region (see section 1.2.3 on page 9.) This is in fact, a concern of the local maritime security experts who were interviewed during the course of this study.<sup>1021</sup>

As can be seen in Table 5-1 on page 213, in 2016, these so called 'hard-powers', are among the five top business partners with the EAC, China on the top position.<sup>1022</sup> China has a one-quarter business stake in the EAC against only 4 per cent for the US. This trend supports the hypothesis that the China is in the region for economic reasons and perhaps, that the US is security motivated to be in the region in order to prevent recurrence of piracy and islamist terrorism. However, when it comes to the EAC's natural resources, the competition between China and the US might be expected to be tense.

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<sup>1020</sup>Copeland, D. (2010) "Hard Power Vs. Soft Power | The Mark." *Canada News, Commentary, Analysis, Blogs | The Mark*. The Mark, 2 Feb. 2010. Web. 05 Feb. 2012. <http://www.themarknews.com/articles/895-hard-power-vs-soft-power> [Accessed on: 18 March 2017]

<sup>1021</sup> Interviewees 45 and 47

<sup>1022</sup> European Commission (2017. p. 8). East African Community- Trade-European Community. Available at:[http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151901.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151901.pdf) [Accessed on: 18 March 2017]

### **a) US military and security strategies in the EAC region**

The US has direct and indirect security interests in the EAC region. The US is concerned with security threats posed by terrorist groups of al Qaida and al Shabaab, piracy off the Somali coast, drugs trafficking and proliferation of Weapons of Mass Destruction (WMD). These threats are within the US national security agendas (for example, PSI) as they would either compromise its homeland security or overseas interests. The EAC region is prone to all of these threats. It has to be noted that, at the time of writing, none of the EAC States has endorsed the Proliferation Security Initiative (PSI) or Container Security Initiative (CSI), see section 2.6.3 and Table 2-4 on page 109. These American invested security initiatives, are intended to stop the WMD reaching the US's shore and other parts of the world through international cooperation. However, the costs and technology associated with these security initiatives, have stopped Kenya and Tanzania from being state parties to these agreements.

Following the fall of the Somalia government in 1993 and simultaneous bombing of the US embassies in Nairobi and Dar-Es-Salaam on 7 August 1988, which killed more than 200 people, the US decided into move in Djibouti and Kenya, permanently.<sup>1023</sup>

#### **i. Djibouti: Camp Lemonnier in Djibouti City**

Somalia does not have a proper functioning government. Its political and economic system has become so weak that the government is no longer in control.<sup>1024</sup> It is a lawless state. Even the internationally backed

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<sup>1023</sup> Kelley, K. J. (2013). Pentagon to boost its Kenya, Djibouti military bases. The EastAfrican. <http://www.theeastafrican.co.ke/news/Pentagon-to-boost-its-Kenya-Djibouti-military-bases/2558-2079606-15nymr7z/index.html>. See also, Mark, B. (1990). Strengthening U.S. Ties With Kenya. Report no. 766. Available at: [http://s3.amazonaws.com/thf\\_media/1990/pdf/bg766.pdf](http://s3.amazonaws.com/thf_media/1990/pdf/bg766.pdf) [Accessed on: 21 March 2017].

<sup>1024</sup> Rotberg, R. I. (2002). Failed States in a World of Terror. Council on Foreign Relations. Available at: <http://www.cfr.org/fragile-or-failed-states/failed-states-world-terror/p4733> [Accessed on: 21 March 2017]

government, the so called 'the Federal Government of Somalia' it does not have control of the entire country. It only has a minimum control over Mogadishu, a capital city. This lawlessness created a governance vacuum that allowed pirates and terrorist groups such as al Qaida and al Shabaab to prosper for many years in Somalia. This had created a big shockwave on international security. Piracy, for example, came close to closing the intentional Lines of Communication at the Gulf of Aden and Horn of Africa through which approximately 20 per cent of the international trade passes.<sup>1025</sup> This includes about 19 per cent of the US oil imported from Saudi Arabia annually.<sup>1026</sup>

Therefore, that was clearly a threat to the US national security. The US took a drastic decision to station its military on two of the Somalia's borders, those with Djibouti and Kenya in an attempt to ensure that the SLOCs are kept open. Furthermore, the US needs to eliminate the possibility of WMD proliferation along these routes from the war-torn state of Yemen to EAC region via Somalia. The EAC region, Kenya in particular, has been affected by Somalia based piracy and terrorism, however, WMD has yet to reach the EAC region, thanks for the US security support in the region.

On 1 October 2007, the US established a permanent military command in Djibouti, known as 'United States Africa Command' (AFRICOM) in Camp Lemonnier in Djibouti.<sup>1027</sup> The AFRICOM mission "disrupts and neutralises transnational threats, protects U.S. personnel and facilities, prevents and mitigates conflict, and builds African partner defence capability and capacity in order to promote regional security, stability

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<sup>1025</sup> Maritime Security Horn of Africa-MSCHOA (2016). Available at:<http://www.mschoa.org/on-shore/about-us> [Accessed on: 21 March 2017]

<sup>1026</sup> Peele, R. B. (1997). Maritime Chokepoints: Key Sea Lines of Communication (SLOCs) and Strategy. US Army War Collage. Available at: <https://www.hsdl.org/?view&did=457788> [Accessed on: 21 March 2017].

<sup>1027</sup> Interviewees 45 and 47. See AFRICOM website, Available at: <http://www.africom.mil/about-the-command> [Accessed on: 18 March 2017]

and prosperity”<sup>1028</sup> Camp Lemonnier accommodates about 4,000 US soldiers and civilian contractors.

Through AFRICOM, the US organises a number of training, capacity building programmes and logistical support to a number of African states including all of the EAC States. This follows several years of US military and financial backing for the 22,000-strong African Union force (AMISOM), which fights on behalf of the relatively weak Somali government.<sup>1029</sup> These African troops and the Somali government army rely largely on the US for the logistical support and trainings that allow them to operate. For example, airlifting of the EAC’s military personnel and their equipment to and from Somalia is one of the big contributions of the AFRICOM in the region. It has to be remembered that the war against so called islamic “terrorists’ was mainly conducted in the EAC. This is because, through Kenya, the EAC borders Somalia on land and at sea. Furthermore, Kenya, in particular, is at war with the Somalia based terrorist group, al Shabaab.

There are some concerns, expressed by the key stakeholders interviewed that the Camp is more of a land based security platform than maritime.<sup>1030</sup> The lack of a long term anti piracy strategy at the Horn of Africa, for example, is a big concern of regional maritime experts.<sup>1031</sup> However, the view of this author is that what happening off Somali coast is just a reflection of security problems on land. Thus, AFRICOM might be on the right track by starting to address security threats in Somalia’s hinterland. Nonetheless, many of EAC maritime experts interviewed in

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<sup>1028</sup> Ibid.

<sup>1029</sup> Interviewees 45 and 47. See BBC (2014). US gives details of its military presence in Somalia. Available at:<http://www.bbc.co.uk/news/world-africa-28145502> [Accessed on: 18 March 2017].

<sup>1030</sup> Interviewees 45 and 47

<sup>1031</sup> Ibid.

this study, would like to see that AFRICOM takes greater responsibility in the war against piracy and make it one of its long term goals.<sup>1032</sup>

## **ii. Kenya: Camp Simba in Manda Bay**

As noted, following the collapse of the Somali government in 1993, the US, nearly simultaneously, moved into Djibouti and Manda bay in Kenya. Manda Bay is on the Eastern coast of Kenya just close to the Kenya-Somalia border (see Figure 1-2 on page 6). In this area, the Kenyan navy camp, the Camp Simba, hosts American elite forces and an intelligence unit. The US has a small number of military personnel, just around 120. Nonetheless it is conducting significant high-tech operations such as aerial surveillance and intelligence gathering aimed at knowing what is actually taking place inside terrorists' stronghold cells in Somalia. This information is then passed to Camp Lemonnier in Djibouti for action.

In Manda Bay, the US provides training to the Kenyan navy and has routinely, been undertaking a number of combined military manoeuvres to simulate how these navies may one day provide humanitarian assistance in the region in the event of natural disasters. They also rehearse how they would prevent terrorists gaining access to Kenya's maritime waters to deliver deadly attacks in the region. As noted in section 3.2.2, EAC maritime waters, Kenya's waters in particular, are vulnerable to maritime terrorism. Although there has not yet been any purely maritime terrorism incident in the EAC, such a possibility cannot be ruled out.<sup>1033</sup> Al Qaida has been operating in the EAC region for decades.

The simultaneous bombing of America's Embassies in Nairobi and Dar-Es-Salaam in 1998, is just an example of al Qaida operations in the EAC region. The EAC is still on high alert for the possibility of similar incident

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<sup>1032</sup> Interviewees 45 and 47.

<sup>1033</sup> Hamad (2016)

recurring in the future. The presence of the US in Djibouti and Manda Bay has reduced the possibility of proliferation of WMD in or through the EAC region to large extent. The US has upgraded the Kenyan naval combat capability to a fairly high level. This is in line with Kenya's determination to modernise its navy by upgrading its assets and technology.

For example, on 28 September 2012, the Kenyan navy, with the collaboration of AMISOM forces and technical assistance from the US, did what was previously thought to be impossible for a young African navy, when it launched its first ever amphibious attack on the city of Kismayo, an al-Shabaab stronghold.<sup>1034</sup> Al-Shabaab was almost caught by surprise, leading to their defeat. In this camp, Simba, the US coordinates military and logistical support through Combined Task Force 151. These operations provide a significant boost in the war against Somali-based piracy.

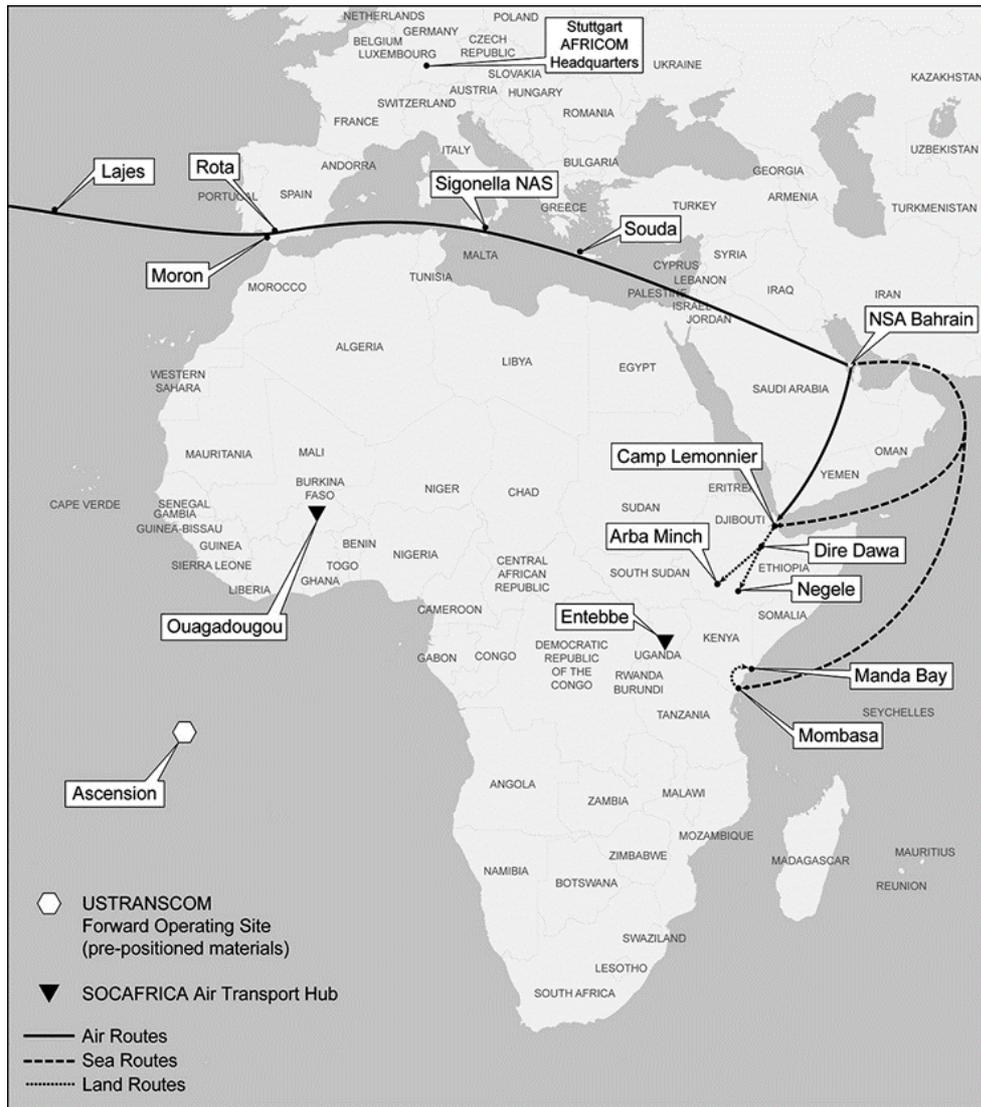
At the time of writing, the US is spending about \$100 million to upgrade the runway in the Camp Simba so as to accommodate bigger cargo planes. However, there are some speculations that the US is using both the Camp Simba and the Camp Lemonnier in Djibouti to launch Predator drones which are notoriously known for human rights violation.<sup>1035</sup> As can be seen in Figure 8-2, Manda Bay is the Eastern African region key logistical support unit.

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<sup>1034</sup> BBC (2012).

<sup>1035</sup> Whitlock, C. 2012. U.S. expand secret intelligence operations in Africa. The Washington Post. Available at:[https://www.washingtonpost.com/world/national-security/us-expands-secret-intelligence-operations-in-africa/2012/06/13/gJQAHyvAbV\\_story.html?utm\\_term=.fec498a1cc9e](https://www.washingtonpost.com/world/national-security/us-expands-secret-intelligence-operations-in-africa/2012/06/13/gJQAHyvAbV_story.html?utm_term=.fec498a1cc9e) [Accessed on: 19 March 2017]

Figure 8-2: Tracing the US Military's Presence in Africa<sup>1036</sup>



**b) The US presence in other parts of the EAC**

The US has several 'Cooperative Security Location' (CSL) outposts in the EAC region. CSL is a US military term for temporary facilities or posts in a foreign country used for training in the war against terror and proliferation of WMD and drug trafficking and also used as a platform for

<sup>1036</sup> Moore and Walker (2016)

contingency activities.<sup>1037</sup> Through AFRICOM, the US has access to 11 CSL's in Africa, some of them are in Kenya, Tanzania, Uganda and South Sudan.<sup>1038</sup> However, the research could not established the exact number of the CSL in the EAC region. These CSL are in form of bases, camps, compounds, port facilities and fuel bunkers. All major sea ports and airports of Kenya and Tanzania are parts of the US's CSL in the region.

### **c) The US-Chinese interest in the EAC natural resources**

It is impossible to examine the US trail in the EAC region without also examining the Chinese presence in the region. As noted in section 1.2.3, both the US and China are eager to secure the Indian Ocean's natural resources, including those of the EAC region.<sup>1039</sup> Their strategies to achieve that end, however, differ. On 5 June 2013 in California, the US and Chinese presidents 'agreed to disagree' on their strategies about Africa's natural resources.<sup>1040</sup> They also insisted that their states are not in a 'zero-sum-game' over Africa's resources. Furthermore, they agreed that they should not interfere with each other over strategy in Africa in the way they are currently contesting boundaries in the South China Sea.

In Chapters Three to Seven, there has been analysis of how international institutions such the UN and IMO, IGOs such as the EU and individual states support the EAC maritime security governance of the EAC. While incapable of securing its own maritime domain, the EAC will continue to depend on the international community as stakeholders

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<sup>1037</sup> Szayna, T. et al. (2015. p. 12). *Army Global Basing Posture: An Analytic Framework for Maximizing Responsiveness and Effectiveness*. Santa Monica, CA: RAND Corporation, 2015. [http://www.rand.org/pubs/research\\_reports/RR158.html](http://www.rand.org/pubs/research_reports/RR158.html).

<sup>1038</sup> Turse, N. (2015). *The US Military's Best-Kept Secret*. *The nation*. Available at: <https://www.thenation.com/article/the-us-militarys-best-kept-secret/> [Accessed on: 20 March 2017].

<sup>1039</sup> Hanauer, L and Morris, L. (2013). *Agree to Disagree About Africa*. *USNews*. Available at: <https://www.usnews.com/opinion/blogs/world-report/2013/06/05/us-and-china-dont-need-to-compete-in-africa> [Accessed on: 18 March 2017].

<sup>1040</sup> Ibid

in maritime security. Apart from international institutions, the stakeholders are twofold. On the one hand, there is the US and its Western allies. On the other hand, there is China and probably India.

While the contributions of the US and its allies such the EU are clear, it is quiet hard to establish what China has done to boost the EAC maritime security governance.<sup>1041</sup> Perhaps, this justifies the picture shown in Table no 15 that China is in the region to protect its own economic interests. In the future, China, like the US, needs a permanent residence in Africa and in the EAC in order to defend its economic interests. At the time of writing, China struggles to protect its overseas economic interests due to lack of reliable logistical support for its ambitious navy. This is a strong reason why China is building a state of the art naval base in Djibouti just close to the American military base, the Camp Lemonnier (see Figure 8-3).<sup>1042</sup>

China supports construction of mega ports in Lamu in Kenya and Bagamoyo in Tanzania. This include capacity upgrading of Mombasa port in Kenya and Dar-Es-Salaam in Tanzania. It also supports rail and road infrastructure projects through Northern and Central Corridor in the region (see section 5.4), and is developing the Dar-Es-Salaam airport. While these projects intends to improve logistical capacity in the region, they would probably also used to support the Chinese military operation in the region. For example, Capt. Liu Jianzhong, a former political officer of a Chinese destroyer plying the Gulf of Aden, said the lack of a dedicated port in the region took a toll on personnel forced to spend long stretches at sea.<sup>1043</sup>

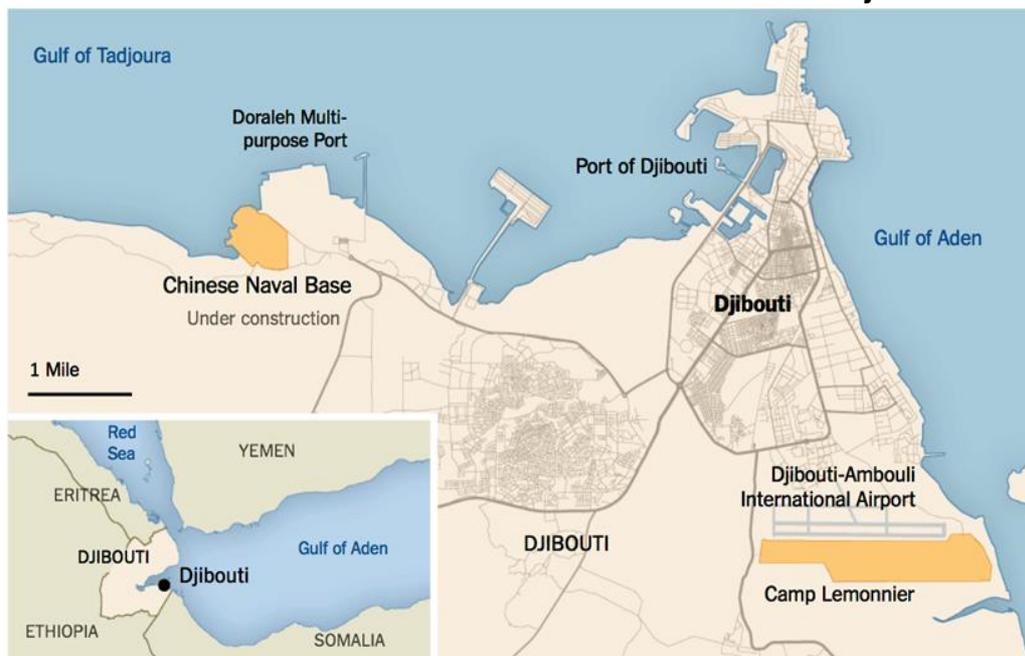
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<sup>1041</sup> Interviewees 45 and 47

<sup>1042</sup> Straziuso, J. 2017. U.S. Wary of Its New Neighbor in Djibouti: A Chinese Naval Base. The New York Times. Available at:[https://www.nytimes.com/2017/02/25/world/africa/us-djibouti-chinese-naval-base.html?\\_r=0](https://www.nytimes.com/2017/02/25/world/africa/us-djibouti-chinese-naval-base.html?_r=0) [Accessed on: 20 March 2017]

<sup>1043</sup> Ibid.

**Table 8-3: Chinese and American Militaries Bases in Djibouti<sup>1044</sup>**



According to the local maritime security experts interviewed in this research, the presence of the US and China in the EAC region, is an unavoidable scenario.<sup>1045</sup> The Western navies, for example, are literally a first line of defence in the EAC maritime waters. They provide surveillance and assist in keeping law and order at sea. This is because, up to December 2015, the entire maritime zone of the EAC was within the piracy High Risk Area (HRA). At the time of writing, the entire Kenyan waters are still regarded as HRA (see Figure 4-4 on page 163). More importantly, in addition to the Chinese navy operating off the Horn of Africa, the Western navies play the important naval traditional role of keeping the SLOCs open for business, of humanitarian assistance missions and guaranteeing freedom of navigation purposes.

The research interviewees were concerned not only that the US and China do not work together toward the EAC maritime security governance, but that they also rarely work with the EAC at a Community level in the area of maritime security. The US and China only deal with

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<sup>1044</sup> The New York Times (2017)

<sup>1045</sup> Interviewees 45 and 47

individual States. This increases the polarisation of the region and limits the already fragile maritime security cooperation. However, this lack of cooperation is also partly explained by the lack of a robust maritime policy and maritime security strategy at the EAC level. A robust EAC maritime policy and strategy would mitigate the friction between the competing hard-powers stakeholders and encourage those 'hard-power' to work together within the EAC.<sup>1046</sup> It was further noticed that the US's assistance comes with attached conditions. Most of the conditions relate to political issues in EAC States such as improvements in the rule of law, democracy and human rights. China however, does not bother to attach conditions to any assistance given out to any African states. This has made the EAC leaders see China as a true and less partial stakeholder in the region than the US.<sup>1047</sup>

#### **d) India's economic and security interest in the EAC**

India has the fastest economic growing rate amongst the world's emerging economies.<sup>1048</sup> It is estimated that in 2017, India GDP's growth rate will reach 8 per cent, just ahead of China and Vietnam.<sup>1049</sup> India is a great power too.<sup>1050</sup> Following the ongoing move to reform the United Nations Security Council (UNSC), for example, India has a high chance of getting a permanent seat in UNSC.<sup>1051</sup> However, in spite of Indian military and economic strength, India finds it very hard to penetrate in

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<sup>1046</sup> Ibid.

<sup>1047</sup> Ibid.

<sup>1048</sup> Smith, H. (2016). Why India is the most promising of all emerging markets. The Globe and Mail. Available at:<http://www.theglobeandmail.com/globe-investor/investment-ideas/the-most-promising-of-all-emerging-markets/article31143218/> [Accessed on: 31 March 2017]

<sup>1049</sup> Ibid.

<sup>1050</sup> Kitchen, N. (2012). India, The Next Superpower? London School of Economy. Available at:  
<http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR010/LSE%20IDEAS%20India%20Superpower.pdf> [Accessed on: 31 March 2017]

<sup>1051</sup> Center for the UN Reform Education. Available at:  
<http://www.centerforunreform.org/?q=node/496> See also Rivera, J.D (2017). The agony of hope: India and its UN Security Council bid. Available at  
<http://www.atimes.com/agony-hope-india-un-security-council-bid/> [Accessed on: 31 March 2017]

the EAC region. Unlike the US and China, India, has a little political influence in the region. This poses difficulties for India in influencing maritime security governance of the EAC which is, predominately, controlled by the US and its Western allies. This is perhaps one of the reasons why India had chosen Mauritius and Mozambique as destinations for its navy. India's investment in Africa was worth US\$ 50 billion in 2014, 90 per cent of which was in Mauritius.<sup>1052</sup> The statistic also shows that Mauritius is the single biggest source of foreign direct investment (FDI) in India - amounting to US \$534 million in 2002-03 (about one-third of all FDI).<sup>1053</sup> The Indian navy, amongst the top ten navies on the globe, is actively engaging in patrolling the EEZs of Mauritius and Mozambique.<sup>1054</sup> For the reasons just explained, such security activity has never taken place in the EAC waters.

#### **8.5.4 Inter-regional cooperation**

In the absence of any formal maritime security cooperation at the EAC level, individual States opt for bilateral agreements with the world's super and great powers, such as the US, China and the EU. They also rely on inter-regional maritime security projects and strategies, such as the MASE, the DCoC and the 2050 AIMS. To a large extent, these security projects have helped the EAC States to raise maritime security awareness by attracting political will from heads of State, achieving capacity building through training, and raising maritime domain awareness through cooperation. Nevertheless, these security projects were never designed to address the maritime security challenges of the EAC completely.

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<sup>1052</sup> Cisse, D. (2015). China and India in Africa. *The Diplomat*. Available at: <http://thediplomat.com/2015/11/china-and-india-in-africa/> [31 March 2017]

<sup>1053</sup> Sridhar, V. (2003). Mauritius as a tax haven. *India's national Magazine*. Volume 20, Issue 23. available at: <http://www.frontline.in/static/html/fl2023/stories/20031121002108900.htm> [31 March 2017]

<sup>1054</sup> See Top ten naval forces in the world. Available at: <http://www.atimes.com/agonny-hope-india-un-security-council-bid/> [31 March 2017]

### **a) The Maritime Security Programme (MASE)**

The MASE programme, which was adopted on 7 October 2010 in Mauritius, is jointly run by the EU and the United Nations Office on Drugs and Crime (UNODC). It is, however, entirely funded by the EU and collectively implemented by the IGAD, the COMESA, the EAC and the IOC. The objective of the programme is to strengthen the maritime security capacity of the Eastern and Southern Africa and Western Indian Ocean (ESA-IO) region in order to implement the Regional Strategy and Action Plan Against Piracy.<sup>1055</sup> As can be seen in Table 8-2, each of these RECs has specific roles to fill. These roles are commonly known as ‘results’ or ‘components’.

The EAC is responsible for ‘result two’, dealing with final treatment of pirates. This is one of the long-term missing elements in the war against piracy. Result two (closure on pirates) is responsible for the capacity building of the national/regional legislative and infrastructural capability in relation to the arrest, transfer, detention and prosecution of pirates. This is known as ‘piracy legal finishing’, here in referred to as closure on pirates. Unless pirates are prosecuted, they will continue to repeat the crime.

Through the MASE and the DCoC, Kenya and Tanzania have been receiving tremendous capacity building training aimed at upgrading maritime law enforcement. This includes upgrading countries’ judiciary capacity. Most of the training was conducted through the UNODC; this included constructing, prefabricating and renovating regional prisons. Both Kenya and Tanzania have received training in information technology relating to investigation, evidence handover and general capacity building for prosecutors and judges.<sup>1056</sup>

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<sup>1055</sup> European Commission. 2013. Programme to Promote Regional Maritime Security (MASE). Available at: [https://ec.europa.eu/europeaid/sites/devco/files/aap-financing-africa-india-af-20130508\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/aap-financing-africa-india-af-20130508_en.pdf) [Accessed May 2016].

<sup>1056</sup> Interviewees 45 and 47.

**Table 8-2: The MASE's components (results)<sup>1057</sup>**

| <b>Results</b> | <b>Focus</b>   | <b>Funds (Euros)</b>    | <b>Organisation</b> |
|----------------|--|-------------------------|---------------------|
| 1              | Somalia inland action  | 7.8m<br>(21%)           | IGAD                |
| 2              | Developing or strengthening the national/regional legal, legislative and infrastructural capability for the arrest, transfer, detention and prosecution of pirates | 11.6m<br>(31%)          | EAC                 |
| 3              | Regional capacity to disrupt the financial networks of pirate leaders and their financiers   | 5.4m<br>(14%)           | COMESA              |
| 4              | National and regional capacity for maritime tasks and support functions  | 9.5m<br>(25%)           | IOC                 |
| 5              | Regional coordination and information exchange   | 1.3m<br>(3.5%)          | IOC                 |
|                | Start-up of the MASE   | 2.0m<br>(5.5%)          |                     |
|                | <b>Total</b>   | <b>37.5m<br/>(100%)</b> |                     |

In 2009, Kenya entered into agreements with the EU, the US, the UK, Canada, China and Denmark for the transfer of suspected pirates for prosecution and trial. Through the training and agreements, Kenya has been able to prosecute 164 pirates; 147 were convicted as of December

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<sup>1057</sup> Indian Ocean Commission

2015.<sup>1058</sup> As of July 2012, Tanzania has prosecuted 12 pirates, of whom six were convicted.<sup>1059</sup> Unlike Kenya, Tanzania only recently agreed to accept pirates brought into the country by the authorities of other states. This is seen by the international community as yet another step forward in the war against pirates.<sup>1060</sup>

### **b) The 2009 Djibouti Code of Conduct (DCoC)**

Established on 29 January 2009, the DCoC is the International Maritime Organisation's (IMO) long-term strategy to suppress Somalia-based piracy and armed robbery against ships.<sup>1061</sup> The DCoC provides a forum that makes regional maritime security cooperation and communication possible. Kenya and Tanzania are two of the 21 State members to the DCoC. Unlike the MASE programme, where the EAC has a leading role in component two (closure on pirates), the EAC is not involved in this project in any way at the Community level.

The DCoC plays a significant role in the suppression of Somalia-based piracy and armed robbery. This includes delivering national and regional training, enhancing national legislation and information sharing, and building counter-piracy capacity.<sup>1062</sup> In 2015, the DCoC mandates were amended to include other transnational maritime security issues, such as marine terrorism, environmental crime, human trafficking and IUU fishing.<sup>1063</sup> These amendments make the DCoC a more useful maritime regime, as state parties can now align it with the 2050 AIMS mandates.

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<sup>1058</sup> (UNDOC, 2015. p.10).

<sup>1059</sup> (Michael, Michael and Sterio, 2015. p.197).

<sup>1060</sup> Ibid.

<sup>1061</sup> IMO. 2015. Djibouti Code of Conduct. Available at: <http://www.imo.org/en/OurWork/Security/PIU/Pages/DCoC.aspx> [Accessed May 2016].

<sup>1062</sup> Ibid.

<sup>1063</sup> IMO. 2015. Available at: Regional agreement on maritime piracy to broaden scope to other illicit maritime activity. Available at: <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/46-DRTC-DCOC.aspx> [Accessed May 2016].

Two out of the DCoC's three piracy Information Sharing Centres (ISCs) are in Mombasa, Kenya, and Dar es Salaam, Tanzania. The Mombasa ISC serves Mauritius, the Maldives, Kenya, Somalia (south central) and the Seychelles. The Dar es Salaam ISC serves Comoros, South Africa, Réunion, Tanzania, Madagascar and Mozambique. Having these two ISCs within the EAC is a big advantage for the region, as they constitute a crucial part of the regional institutional framework that supports the war against maritime security threats. The DCoC is entirely financed by the IMO through the DCoC trust fund. None of the African States in general and the EAC States in particular, is donating to the trust fund, despite their being the main recipients of the services offered by the DCoC. Clearly, such an arrangement cannot continue permanently.

As shown in Figure 4-4 on page 163,<sup>1064</sup> on 8 December 2015, the shipping industry's high risk area (HRA) off the Somali coast was reduced.<sup>1065</sup> This signifies a significant reduction in piracy, thanks to the DCoC initiatives, the shipping industry's Best Management Practices 4 (BMP4), and international navies' patrols in the HRA. This is good news for shipping companies, as they can now reduce the operating costs associated with the additional security measures suggested by the BMP4.

Ultimately, the costs of doing international trade in regions such as the EAC will fall. However, the security threat in the EAC maritime domain still remains high because part of its maritime domain is still within the reversed HRA, as noted in section 4.3 on page 162. The reduction of the

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<sup>1064</sup> Amended and expanded by Author from DRYAD Maritime. 2015. BMP4 HRA Revision – Pragmatic Decision or Dangerous Gamble? Available at: <http://www.dryadmaritime.com/bmp4-hra-revision-pragmatic-decision-or-dangerous-gamble/> [Accessed May 2016].

<sup>1065</sup> DRYAD Maritime. 2015. BMP4 HRA Revision – Pragmatic Decision or Dangerous Gamble? Available at: <http://www.dryadmaritime.com/bmp4-hra-revision-pragmatic-decision-or-dangerous-gamble/> [Accessed May 2016].

HRA will result in a significant reduction of international naval operations in the region.

The EUNAVFOR Operation Atalanta, the NATO's Operation Ocean Shield and the Combined Maritime Taskforce (CTF 151) are the three big naval operations patrolling in the HRA whose mandates finish in 2016.<sup>1066</sup> For example, NATO made it clear that will terminate Ocean Shield on 15 December 2016, but will remain engaged in the fight against piracy by maintaining maritime situational awareness and continuing close links with other international counter-piracy actors.<sup>1067</sup> While there is a high chance that these three operations will be extended, their new mandates would definitely be at a reduced scale. For that reason, there would be a gap to be filled by regional organisations such as the EAC. This is going to be a big challenge for the EAC, as one part of its maritime domain on Tanzanian side, as noted is, is outside the HRA while the other is inside.

### **c) The 2050 Africa's Integrated Maritime Strategy (2050 AIMS)**

The 2050 AIMS is the African Union's latest attempt to reclaim Africa's maritime sector for the development of African citizens.<sup>1068</sup> The overall objective of the 2050 AIMS is to improve the quality of life of African citizens through sustainable governance of Africa's maritime domain. This is also referred to as Africa's blue economy concept.

The 2050 AIMS insists on balancing the sustainability and economic potentiality offered by Africa's maritime domain. On the one hand, the strategy is concerned with sustainable fishing and the dangers posed by climate change and pollution. On the other hand, the strategy insists on

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<sup>1066</sup> Maritime Security Review (2016). After Operation ATALANTA (<http://www.marsecreview.com/2015/03/after-operation-atalanta/>) See EUNAVFOR Somalia (<http://eunavfor.eu/mission/>), and [Accessed on: 2 October 2016].

<sup>1067</sup> NATO (2016). counter-piracy operations. Available at: <https://combinedmaritimeforces.com/ctf-151-counter-piracy/> [http://www.nato.int/cps/en/natohq/topics\\_48815.htm](http://www.nato.int/cps/en/natohq/topics_48815.htm) [Accessed on: 2 October 2016].

<sup>1068</sup> 2050 AIMS

good ocean governance while exploring ocean resources, including offshore oil and gas, tourism, fisheries and shipping activity. Maritime security as a subset of maritime governance is considered a prerequisite factor for the blue economy concept if it is to flourish.

As important feature of the 2050 AIMS its relevant to the EAC's security and economy, is its linking landlocked States and inland waters to the 'blue economy'. The EAC includes four out of Africa's 16 landlocked States. In addition to Malawi, Zambia, Congo and the Democratic Republic of Congo, the EAC ports serve 50 per cent of Africa's landlocked States. The EAC has two important inland water bodies that are crucial for the implementation of the 'blue economy'. These are Lake Victoria—Africa's largest lake—and Lake Tanganyika—the second largest freshwater lake in the world by volume, and the second largest by depth. Lake Victoria alone supports the livelihood of about 24 per cent of the EAC's citizens. Fishing in Lake Victoria accounts for 0.5 per cent, 2.5 per cent and 2.6 per cent of the GDPs in Kenya, Uganda and Tanzania respectively.<sup>1069</sup>

Part 28 (j) of the 2050 AIMS requires African states to resolve the remaining maritime border disputes, including those on rivers and lakes, peacefully and in accordance with UNCLOS provisions.<sup>1070</sup> The worry however, is that the UNCLOS jurisdiction does not apply to inland waters. In the EAC, for example, there are two long disputed borders in inland waters. On the one hand, there is a border disputed between the EAC's State parties, Kenya and Uganda, over Migingo Island in Lake Victoria as shown in Figure 6-2 on page 237.

Although the disputed island is only 50 metres long, it has a significant economic impact for both sides. This is because the waters surrounding

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<sup>1069</sup> (Aliro, E.B. nd) Lake Victoria fisheries. First Magazine-EAC. Available at: <http://www.firstmagazine.com/DownloadSpecialistPublicationDetail.486.ashx> [Accessed May 2016].

<sup>1070</sup> 2050 AIMS

the Island are rich in Nile Perch fish, which are a significant source of foreign earnings for both countries. Kenya's fishing industry, for example, is currently at 180,000 metric tonnes annually, 92 per cent of which are from Lake Victoria, probably around the island. On the other hand, there is a Malawi–Tanzania border dispute in Lake Tanganyika. The disputed area potentially contains oil and gas reserves. Both sides to this conflict have put their oil and gas explorations on hold to pave the way for the border dispute.

These two border disputes affecting the EAC have put economic developments in the region on hold, including fishing and oil and gas exploration. Kenya, Malawi, Tanzania and Uganda are all state parties to the UNCLOS, but they cannot use that, predominantly pelagic convention to resolve their inland waters' problems. Instead, they have placed their hopes in regional organisations such as the EAC, the COMESA, the IGAD and the SADC, in which they all have some overlapping memberships.

The EAC has already taken many steps to put the blue economy concept into practice. These include increasing the capacity and efficiency of the ports at Dar es Salaam and Mombasa and constructing two new mega ports in Lamu, Kenya and Bagamoyo, Tanzania. There are also improvements in transport infrastructure being implemented through the Central and Northern Corridor Integration programmes. While maritime security is a prerequisite factor for the blue economy concept to prosper, in the EAC there are no tangible maritime security initiatives that would guarantee the security of the regional maritime domain in the absence of the international community's assistance.

#### **8.5.5 Maritime security governance's lessons learnt from ASEAN, EU and ECOWAS: How do they fit in the EAC region?**

As noted in Chapter Five, challenges and successes in the regional maritime security governance of ASEAN, EU and ECOWAS were analysed. Some useful learning experiences relevant to the EAC's maritime security governance were also observed. In this part, we will

examine how those experiences associated with regional maritime security governance could be mirrored in the EAC region.

- All regions have common maritime security threats and challenges in their maritime domains, whose solutions depend on cooperation based on some common strategies. With the exceptions of the EU, piracy, armed robbery against ships at sea, illegal fishing and drugs trafficking are common threats to all regions. In the EU, these threats are categorised as global maritime security threats. This is because they threaten its overseas interests and pose a danger to freedom of navigation. These are, for example, some of the reasons why the EU created the European Union Maritime Security Strategy-EUMSS (see section 4.2.2). These regional organisations, although on different scales, struggle to address those maritime security threats in their maritime domain unilaterally. This is however, a common scenario in maritime security governance, as oceans and seas do not have physical boundaries to prevent intruders from crossing borders, or aquatic resources, from migrating. The EU, ASEAN, ECOWAS (and SADC shown in section 8.5.2), all have common maritime security policies and institutional frameworks to support maritime security governance in their regions and to the wider areas. However, this kind of regional cooperation in the area of maritime security is missing from the EAC at the time of writing this thesis, missing from the EAC. In order for the proposed EAC's MSR to prosper, the EAC needs robust maritime security policies and institutions. This is however, not the only the concern of this research (see Chapter Five).
- All regions have their differences at both national and regional level. Nationalist ideologies manifested by a high sense of state sovereignty, are common in every region. However, through political will amongst the politicians in those regions, national interests have been taken onboard, and thus, it

coexists with regional interest in their maritime security governance. The EU, for example, through its Integrated Maritime Policy and EUMSS, sets specific areas which are the only ones where the Union would interfere with maritime security governance of its members. The only exception to this rule occur when it is in the best interest of the Union to intercede or where the member is incapable of delivering to the Union's standard. This protocol is based on the EU's principle of subsidiarity as discussed in section 5.2.3 on pages 181-182. Like Kenya and Tanzania, Malaysia and Indonesia, are the two ASEAN members who have some security and economic rivalry amongst themselves over the Malacca Straits.<sup>1071</sup> Despite their differences, together however, they have common standing against the US's imposed security policies, such as PSI and RMSI in the Malacca Strait and to the wider region (see section 5.3.4 (b)). The lack of political will in the EAC, propelled by differences in political ideologies, economic rivalry and a strong sense of nationalism, do not have to be obstacles in forming an MSR. As noted, all regions have some sort of disagreement, but common security problems need common efforts.

The research noted that in ASEAN and ECOWAS, there are security and economic interests of several international stakeholders, as explained in sections 5.5 and 8.5.3). These international stakeholders appear to polarise the regions. However, they are the ones who provide the much needed security support to those regions. This case also applies in the EAC's maritime security governance and, thus, these international stakeholders would be an important ingredient in the formation of the EAC's MSR

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## **8.6 Conclusion**

Neither the EAC nor its members have strong and long-term maritime policies. More importantly, the region does not have a maritime security strategy that would have formalised the region's maritime security governance. In the absence of this important document, regional maritime security governance has been left drifting, with no agreed course of action.

On the one hand, the coastal States have maritime security policies. However, the lack of maritime security strategies, at both the regional and the state level, prevents the coastal States from working together towards common maritime security threats. Moreover, in these circumstances, the EAC's intervention in maritime security becomes almost impossible.

On the other hand, there are individual states, inter-regional and international maritime security programmes that impose foreign maritime institutional frameworks on the region. There are also individual States, such as China and the US, that have some economic and security interests in the region. While the presence of outsiders has proven helpful in many ways, particularly in dealing with the specific problem of Somalia-based piracy, their security priorities are not necessarily aligned with long-term regional needs. More importantly, the EAC does not want to see these outsiders polarise the region. This is why the EAC's intervention, in the form of a MSR, is desperately needed to coordinate maritime security activities in the region and also maintain good and consistent relationships with international stakeholders.

The EAC's MSR is going to involve all stakeholders and avoid being fully state-centric or militarised. It will probably provide a forum for its members to communicate and cooperate. It will also allow coordinated interactions with third parties for the benefit of the region. In order to realise this, the EAC needs to have a strong maritime security strategy

that would pull regional resources together towards regional maritime security governance.

The EAC needs to think about the possibility of welcoming its neighbours into the regime. States such as Mozambique and Seychelles are important partners in regional maritime security, so leaving them out is not the best option. In order to build trust within the member states, the MSR could start with some soft maritime security issues, such as cooperation in the marine environment to fight illegal fishing and the trafficking of humans and drugs. Through time and experience, members would gain confidence and embark on harder maritime security issues that would normally require some serious political will and the involvement of the navy.

In the coming chapter, a conclusion will be presented summarising the findings of the research, as well as recommendations on how the EAC could take a leading role in regional maritime security continuing to pursue its stated overall aims and recommendation for further research.

## **9 Chapter Nine: Conclusions and Recommendations**

### **9.1 Introduction**

This research set out to study the principal maritime policy and security challenges facing the six East African Community (EAC) States individually and collectively. It also sought to understand how the EAC could take a leading role in regional maritime security governance, given its current status. The research further examined the legal, political and economic challenges associated with the establishment of an EAC maritime security regime. The maritime security regime is anticipated to be an institution that would provide a forum to facilitate regional maritime security cooperation and to foster common vision among member state. In doing so, the EAC would then be in a position to play an effective and dynamic role across the wider region.

The EAC is one of the few (perhaps the only) remaining regions whose maritime security issues, challenges and governance have never been explicitly addressed before. Generally, as shown in the Literature Review (Chapter Two), the theoretical literature covering the EAC's maritime affairs, including security, is very limited, fragmented and inconclusive. However, these were not only the 'lacuna' that this research sought to fill. Consequently, in order to fill in these gaps, the research sought to answer the following questions:

1. To what extent does the establishment of the EAC make it feasible for the EAC to take primary responsibility for maritime policy and security issues in the EAC maritime domain?
2. What are the political, legal and economic challenges that are likely to be associated with the above process?
3. Will it be possible to establish a maritime security regime that will enable the EAC to cooperate with other coastal states in the region, as well as with other global stakeholders, in addressing maritime security threats and improving maritime safety?

The answers to these questions were obtained through the investigations conducted in Chapters Four through Eight. These chapters were based on Chapter Two, which was the literature review. Most of the primary data, that supports the results of this research, was collected during two periods of empirical fieldwork to the EAC. Interviews and consultations were held with 52 local and foreign experts identified in the references and bibliography (see Appendix 1). When necessary, e-mail follow-ups were also utilised to consolidate the survey. As shown in Appendix 2, the following is a summary of the themes explored through first-hand information during interviews with stakeholders:

- a) The impact of the EAC's goal of political unification on regional peace and security integration;
- b) The nexus between state sovereignty and maritime security;
- c) The lack of a legal and institutional framework to support maritime security governance and cooperation at both the national and Community levels; and
- d) Structural flaws within the EAC Secretariat.

This chapter summarises the empirical findings, the contributions of this research to knowledge and its policy implications, and ends with future directions for further research and recommendations.

## **9.2 Findings with regards to the research questions**

The main empirical findings were examined in the relevant chapters of the research. Those findings are summarised as follows:

### **9.2.1 Research question 1.5.1**

*What are the principal maritime policies and maritime security challenges facing the six East African Community States, individually and collectively and how the EAC can play a role in resolving these challenges while staying within its stated overall objectives?*

#### **a) Principal maritime policies**

The research established that, at the State level, there was no (or very little) policy relating to maritime issues generally, or maritime security issues specifically. This exposed the individual States to a number of vulnerabilities and the position was further compounded by an absence of any clear integrated Community policies or strategies at EAC level. This absence of maritime security strategies has led to fragmented and uncoordinated maritime security practices in the region (see sections 5.5.1 and 6.71). This defeated some of the main advantages of regionalism explored in the literature review.

The absence of maritime security strategies is also against Article 93 (a) of the 1999 EAC Treaty which insists on harmonisation of member States maritime policies and establishment of a common maritime transport policy. Furthermore, it is against the short-term requirements of the 2050 Africa's Integrated Maritime Security Strategy (2050 AIMS) which requires African states and regional organisations to formulate national and regional maritime strategy by the end of 2018 (see section 6.4 and 8.5.3).

All EAC States on the one hand and the EAC as a regional organisation on the other, have some commitments on the 2050 AIMS requirements although at different capacities. National and regional maritime security strategies, for example, are expected to be the important ingredients of

the 'African maritime security strategy' which is due any time after 2018.<sup>1072</sup> This suggests that there is a possibility of the EAC maritime security challenges to be left out of the AU's over-arching maritime security strategy if the EAC fails to create its own integrated maritime security strategy by the end of 2018. Other African regional organisations such as ECCAS, ECOWAS and SADC have already created their maritime security strategies and IGAD, is in the final stages of doing so.

The research concludes that the absence of regional maritime security strategies and the lack of a regional maritime institutional framework are the main factors preventing the EAC from taking a leading role in, or making any effective contribution to, regional maritime security governance. Member States are heavily dependent on individual efforts and inter-regional and international maritime security projects for the governance of their maritime domains (see Chapter Eight in section 8.5.3). The fieldwork has shown that the individual States, even the two relatively large coastal States of Kenya and Tanzania lack the institutional framework and expertise necessary to govern their own maritime domains.

There are also individual states with a big influence on the regional maritime security of the EAC. These states include China, India and the US. In addition, the European Union (EU) is a donor and main player in the EAC's maritime security governance (see section 8.5.1). The security projects offered by the different organisations and states with a stake in the EAC region do not necessarily align with the EAC's security needs, but are more concerned with their own self-interest and, in some cases, protecting their extensive investments in the region.

This misalignment creates mismanagement in the governance of the EAC's maritime domain. This is also a concern of this research. These

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<sup>1072</sup> See Annex C of 2050 AIMS (Plan of Action) on page 5.

analyses were substantiated in Chapters Five and Eight. Misalignment is further influenced by the fact that the EAC States have overlapping memberships in other regional organisations which already have regional maritime security strategies in place. For that reason, these foreign maritime security strategies are obviously applicable in the EAC maritime domain (see section 8.5.2)

### **b) Maritime security challenges**

The research found that the main maritime security challenges in the EAC's maritime domain are: piracy, armed robbery against ships at sea, maritime terrorism, illegal fishing, and the trafficking of narcotics, light weapons and humans. Of these, Somali-based piracy, armed robbery against ships at sea, and illegal fishing proved to be the principal security challenges in the EAC's maritime domain.

**Table 9-1: Percentage of the total incidents (worldwide) of piracy and armed robbery against ships at sea (2010-2015)<sup>1073</sup>**

|                | <b>2010</b> | <b>2011</b> | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |
|----------------|-------------|-------------|-------------|-------------|-------------|-------------|
| ASEAN region   | 16%         | 18%         | 35%         | 48%         | 58%         | 58%         |
| West Africa    | 9%          | 12%         | 21%         | 19%         | 16%         | 13%         |
| Eastern Africa | 49%         | 54%         | 27%         | 7%          | 7%          | 2%          |
| EAC            | <1%         | <1%         | 1%          | 1%          | <1%         | 1%          |

As can be seen in Table 9-1, in 2015, the EAC region had reported approximately 1 per cent of worldwide piracy incidences. Whilst this is at first sight reassuring, it is equivalent to 50 per cent of the total piracy incidents reported in the entire Indian Ocean piracy High Risk Area (HRA), which covers an area of approximately 2.5 million square nautical miles (See Figure 4-4 on page 163). As noted, the EAC maritime domain covers only 8 per cent of the HRA but in 2015, had 50 per cent of all reported piracy incidents in the HRA. This is a shocking

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<sup>1073</sup> Data based on IBM as shown in Figure 5-4

observation as in 2015, the EAC there had a much higher piracy incidence rate than any other regions within the HRA. This is a clear indication that the EAC's maritime domain is highly vulnerable to piracy. This is partly explained by the fact that the EAC borders Somalia. It also lacks robust maritime security governance mechanisms, at both national and community levels.

The research found that, on average, piracy costs the EAC's economy about US\$ 1.8 billion per annum.<sup>1074</sup> This is approximately 2 per cent of the regional GDP.<sup>1075</sup> The figure only includes revenue lost on tourism and extra costs in shipping. The figure could be higher, but that is if the researcher could collect more statistical data to support the calculation of the economic cost of piracy in the EAC region. For example, illegal fishing is estimated to cost the EAC region about US\$ 331 million per year (see section 4.2.3). While the author believes that this figure under-represents the real situation in the region, it is already close to 2 per cent of the global revenue loss on illegal fishing practices which is US\$ 20 billion per annum.

The cost of piracy figure, does not include illegal fishing in the EAC's inland waters in where 85 per cent of regional fishing revenue comes from. The research found that some foreign trawlers licensed to fish in Kenya's waters, cross the border to fish illegally in the Somali waters. Iranian, South Korean, Spanish and Yemenis flagged trawlers have been named to be behind this practice (see section 4.2.4).<sup>1076</sup> Tanzanian flagged vessels have also been caught doing illegal fishing in the EAC's maritime waters and elsewhere across the globe.<sup>1077</sup> The research further found that there is a strong connection between

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<sup>1074</sup> Figure is based on the author estimations shown in Appendix 4

<sup>1075</sup> Ibid

<sup>1076</sup> Hatcher (2015). Illegal overfishing and the return of Somalia's pirates. Aljazeera. Available at: <http://www.aljazeera.com/indepth/features/2015/10/illegal-overfishing-return-somalia-pirates-151006111159994.html> [8 November 2015].

<sup>1077</sup> Interviewees 12 and 13

Somalia based pirates and illegal fishing and drugs trafficking in the EAC's maritime domain. This has bad consequences for the regional blue economy initiatives, and food security, in the region where over 22 per cent of its population depends on the sea for their lives (see section 1.2.2.).

The EAC's maritime domain is well known as an important drugs trafficking route in the world. Even though the EAC region consumes over US\$ 160 million worth of cocaine per year, it is estimated that about 22 tonnes of cocaine/heroin pass the EAC's maritime domain annually (see section 4.2.2).<sup>1078</sup> Kenya and Tanzania have recently taken strong anti-drugs trafficking measures in the region. The efforts, however, appear to be only focused on land while much of drugs are trafficked by sea. Figure 4-1 on page 149, shows 1.7 tonnes of Heroin seized in the EAC's maritime domain between 2010 and 2013. That is, however, only 2 per cent of drugs being trafficked annually through the EAC's waters. The research confirmed the high probability that the EAC's premium ports of Dar-Es-Salaam, Tanzania and Mombasa, Kenya are potential targets of maritime terrorism.<sup>1079</sup> The following reasons were articulated as the main ones why the EAC is likely to be hit by maritime terrorism:

- Kenya, one of the EAC's member State is at war with al Shabaab, a Somali based terrorist group. At the time of writing, al Shabaab, an al Qaida affiliate, did not have the maritime combat capability to deliver attacks on the EAC's shore on its own. However, in collaboration with al Qaida, such a possibility cannot be ruled out.
- Al Shabaab has long experience of operating in the EAC's maritime domain, mostly in the waters that border the Kenyan cities of

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<sup>1078</sup> Obuya, P. and Menya, W. (. 2013) East Africans spend Sh13bn yearly on cocaine, says UN drugs agency. *Daily nation*. <http://www.nation.co.ke/news/East-Africans-spend-Sh13bn-yearly-on-cocaine/1056-1984584-tpcknpz/index.html> . Available at: [Accessed on: 8 November 2015]

<sup>1079</sup> Hamad (2016. p.130). See Appendix 7, article no. 4.

Mombasa, Malindi and Lamu. In these cities, the research showed that al Shabaab and al Qaida have some support of the local community and of Somali refugees living there. This is the link that worries even the Kenyan authority that terrorists may use it to terrorise the region.<sup>1080</sup>

- Slackness in maritime securing governance, especially on the major ports of Mombasa in Kenya and Dar-Es-Salaam in Tanzania.<sup>1081</sup>

The research highlighted that there is also an ongoing maritime border dispute between Kenya and Somalia. The case is at the International Court of Justice (ICJ).<sup>1082</sup> On 2 February 2017, the ICJ had issued a preliminary ruling in favour of Somalia. While Kenya and the EAC at large are likely to lose in this case, the ruling would not affect the research results in any way. While the EAC waits for the ICJ to resolve the dispute, all blue economic activities in the contested areas, an area of about 100,000 square kilometres, have been put on hold (See Figure 4-2 on page 165). The research noted that this is the only inter-state maritime security threat to face the EAC that involves a maritime borders dispute. All other EAC's maritime borders, have been properly delimited. Detailed analysis on this issue can be found in Chapter Four in section 4.2.5 on pages 155-157.<sup>1083</sup>

The research found that apart from maritime security threats/challenges discussed above, the EAC does not have the necessary capacity to

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<sup>1080</sup> Wesunga, D. (2017). Rights groups welcome court ruling to block Kenya refugee camp closure. the guardian. Available at: <https://www.theguardian.com/world/2017/feb/09/kenyan-court-quashes-government-order-close-refugee-camp> [Accessed on: [25 March 2015]

<sup>1081</sup> Detailed analyses on this issue can be found in Chapter Four in section 4.2.2 on pages 118-121 and in a journal article published by the author.

<sup>1082</sup> ICI (2016). *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)* '. Available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=161> [Accessed on: 20 October 2016]

<sup>1083</sup> Hamad (2016), See Appendix 7, article no. 4.

police its waters all year around. The inability of the EAC to provide surveillance over its waters, respond to imminent threats at sea and enforce law and order there, are still serious challenges in regional maritime security governance.

- **Surveillance:** The EAC's maritime domain of about 385,000 square kilometres largely remains unpoliced all year round. Maritime criminals capitalise on this by remaining undetected and poach natural resources with liberty. Research found that there are not enough coastal radars to scan the EAC's coast. The EAC utilises two of three piracy Information Sharing Centres (ISCs) established, coordinated and financed entirely by the IMO through the Djibouti Code of Conduct. According to the local maritime experts interviewed by this research; sustainability of these ISCs (in Mombasa and Dar-Es-Salaam) is questionable.<sup>1084</sup> This is because none of the EAC's member State is donating to the trust fund.
- **Respond:** The EAC lacks naval and air assets to respond to imminent danger at sea. Available naval assets as shown in Table 4-2 on page 165 do not have capacity to patrol the entire waters. EAC's navies do not have 'blue waters' vessel that are capable of staying out at sea for a long period.
- **Enforcement:** The entire region does not have coastal guard units. Navies are performing both warfare and law enforcement roles. This in an ineffective and inefficient way to govern the regional maritime waters.

According to the head of the maritime bench at the EAC, John Mungai, surveillance, response and enforcement are the EAC's most striking requirements. These would need issues that would need the help of the

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<sup>1084</sup> Interviewees 4, 16,19, 45 and 47.

international community for a very long time.<sup>1085</sup> However, this is what this research is suggesting, that the inclusion of regional and international stakeholders in the proposed EAC's maritime security regime is absolutely important.

### **9.2.2 Research question 1.5.2.1**

*To what extent does the establishment of the EAC make it feasible for the EAC to take primary responsibility for maritime policy and security issues in the EAC maritime domain?*

The research found that 90 per cent of the regional key stakeholders interviewed in this research believed that it is legally possible but practically impossible for the EAC, in its present state, to take a leadership role in regional maritime security governance while waiting for the political unification goal to be realised (see Appendices 3 and 5 and a journal article published by the author).<sup>1086</sup> However, for the EAC to take a leading role in regional maritime security governance that would require serious changes to regional and national maritime security governance in the first place. These include creation of maritime security policies and strategy at both the EAC and at national level, steering maritime security institution at the Community level and improve regional maritime security capacity building mechanism.<sup>1087</sup>

Despite having excessively linked the EAC's security integration processes to its ultimate goal of political unification, the EAC has some influential and authoritative powers over its members in terms of regional security integration. This is a link that the EAC may wish to exploit to spearhead regional maritime security governance. While the EAC hesitates to take a leading role in maritime security, it has already facilitated a number of positive initiatives on land-based security

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<sup>1085</sup> Interviewee 45

<sup>1086</sup> Hamad (2016), See Appendix 7, article no. 3

<sup>1087</sup> See appendix 4 and interviewees 45 and 47.

integration. This is further proof of the EAC's legal capacity to spearhead regional peace and security. The only downside is that it has done nothing in the area of maritime security (see section 7.5 and Appendices 3 and 5).

The primary data from key stakeholders, shows that they are generally in favour of the EAC assuming a leading role in regional maritime security (see Appendices 3 and 5). The biggest question raised was the manner by which the EAC could accomplish this. This research proposed the establishment of a regional maritime security regime. This is because the formation of a regional maritime security regime does not require all the attributes associated with a federation/supranational organisation, which the EAC currently lacks (see Chapter Eight). And because the EAC is not as yet a federated 'state', it cannot be a flag state (see Chapter Seven in section 7.4 and in Appendix 5. It also supported by the article published by the author).<sup>1088</sup>

The research identified a number of regional organisations with nearly similar structural features to those of the EAC that assume leadership roles in regional maritime security despite lacking supranational status. Some of these organisations including the EU, the Association of Southeast Asia Nations (ASEAN), the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), (see Chapter Five).

Furthermore, the research found that the 1999 Treaty establishing the EAC supports the idea of the Community taking more responsibility on maritime security. It is acknowledged, however, that eventual political unification will provide even greater powers for enhanced security governance (see section 1.2.3 and on page 67 in article published by author).<sup>1089</sup> It is clear that under the terms of the 1999 EAC Treaty,

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<sup>1088</sup> Hamad (2016. p. 99). See Appendix 7, article no. 2

<sup>1089</sup> Hamad (2016. p. 67), See Appendix 7, article no. 3.

Article 5 (3) (f) (objectives of the Community), Article 93 (maritime transport and ports), Article 123 (political affairs), Article 124 (regional peace and security), and Article 125 (cooperation in defence) all grant to the EAC the necessary powers to take a leadership role in regional maritime security governance.

Despite the fact that key participants interviewed believe that the EAC could take a leading role in regional maritime security governance, the research found that at the time of writing there were no legal and institutional frameworks to support such initiatives. These findings were substantiated in Chapters Six and Eight. The lack of a legal and institutional framework is a concern of research question 1.5.2.2.

### **9.2.3 Research question 1.5.2.2**

*What are the political, legal and economic challenges that are likely to be associated with the above process?*

The research found that although there is an appetite for the EAC to take a leading role in regional maritime security, there are no sufficient legal and institutional frameworks, at both the national and Community levels, to support that initiative. Kenya and Tanzania, the only coastal States and ‘big players’ in the EAC’s maritime security, do not have mechanisms that support cooperation (see Chapter Six). The lack of individual maritime policies—specifically maritime security strategies at the national and Community levels— inhibits any further attempts to cooperate at the regional level.

The research also found that the coastal States’ maritime policies are out-dated and fragmented across different national institutions that barely work together. The existing national maritime policies, as explained in Chapter Six, do not even support cooperation among institutions within the same State. Furthermore, the research revealed that some of those institutions no longer even exist. This state of affairs was largely due to a lack of the resources necessary to run the

institutions or changes in ministerial structures that rendered those institutions redundant (see Chapter Six).

All these misalignments arise from the lack of an integrated maritime policy at the national level that could have the capability to bring these institutions together and harmonise the fragmented maritime policies to allow for cooperation.<sup>1090</sup> That was found to be particularly relevant to the issues relating to the protection of the marine environment, where some of the many institutions that have governance responsibilities no longer exist, as detailed in Chapter Six.

Furthermore, the research found that State law enforcement agencies sometimes side-line each other at the national level. This is particularly relevant to the case of regional navies side-lining other institutions. Because there are no designated coastguard units in the region, the navies of Kenya and Tanzania fill both the naval warfare and coastguard roles. That makes it very hard for the navies to cooperate with civilian institutions when it comes to maritime law enforcement, as explained in Chapter Six (see 6.6.2).

The research also found that differences between the political ideologies of Kenya and Tanzania not only prevent these States cooperating on regional maritime security governance, but also reduce the chance of the EAC intervening.<sup>1091</sup> While Kenya is an ally of the West, Tanzania is a long-term ally of China which is pouring development aid into the country (see sections 1.2. and 8.5.1). This foreign relationship pattern has been deeply embedded in how these states acquire their naval hardware and train their naval personnel.

Consequently, these discrepancies make it hard for the Kenyan and Tanzanian navies to synchronise their assets and staff towards a common exercise or operation as stipulated in the 2014 Protocol on Co-

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<sup>1090</sup> Interviewees 45 and 47.

<sup>1091</sup> See interviews extract C in section H.

operation in Defence Affairs (see section 6.5). There is also an element of economic rivalry between Kenya and Tanzania, the EAC largest economies. This rivalry is further influenced by an ongoing competition for energy security these two States have to offer to the Community and to the wider region. Both States have potential large quantities of offshore oil and gas reserves (see 1.2.3).

At the EAC level, the research found that the EAC's 2006 Peace and Security Strategy and 2013 Protocol on Peace and Security are blind to maritime issues and do not have much to offer in terms of regional maritime security cooperation. The Strategy does not have its own institutional framework (see section 6.5 on page 234). While there are eight specialised institutions in the EAC (see section 1.2.3 on page 14), unfortunately there is no such institution dedicated to regional maritime affairs with responsibility for regional maritime security (see section 1.3.2 and footnote 59 on page 14). This is a major omission, and it suggests that the EAC is not greatly concerned with its maritime security, despite its importance to the region's security and economy.

The research found that in terms of positive economic development, the EAC has done some commendable work at the regional level.<sup>1092</sup> This includes linking landlocked states through a regional logistic network via regional ports. The infrastructure of the Northern and Southern Corridors connects all of the EAC's landlocked States, as well as some non-EAC states, to the ports of Mombasa, Kenya and Dar-es-Salaam, Tanzania. These major development projects, include capacity expansion of these ports.

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<sup>1092</sup> Interviewees 48,49 and 52. The World Bank (2012. p. 20). 'Special Focus: Deepening Kenya's Integration in the East African Community (EAC)'. Edition no. 6. Available at: <http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1335471959878/kenya-economic-update-june-2012-special-focus.pdf> [Accessed on: 1 October 2016].

There are several new mega ports under construction, in locations such as Lamu in Kenya, and Bagamoyo, Mwambani and Zanzibar in Tanzania. This is one of the areas where the EAC, as a regional organisation, has aligned its development projects with the 2050 Africa's Integrated Maritime Strategy (2050 AIMS). The research found that the EAC, through Zanzibar, has Africa's second-largest ship registry (see section 7.3.2 on page 271). This is one of the areas that could be used to improve the regional economy (through generating employment and investment), as well as maritime security governance, and is among the requirements of the 2050 AIMS. This is explained in more detail in Chapter Seven and in a related article published by the author.<sup>1093</sup>

#### **9.2.4 Research question 1.5.2.3**

*Will it be possible to establish a Maritime Security Regime that will enable the EAC to cooperate with other coastal states in the region, as well as with other global stakeholders, in addressing maritime security threats and improving maritime safety?*

The research found that the EAC has the potential to establish a Maritime Security Regime (MSR). However, that would require the EAC and its member States to address the above-mentioned deficiencies. These include the availability of an integrated maritime security strategy at the EAC level and the availability of individual maritime security strategies at the national level. This research has shown that the establishment of a regional maritime security regime would not be dependent on, or happened by, the competitive tendencies of the component national states features which currently, the EAC do not have. For instance, the inclusion of non-state actors in a regional Maritime Security Regime reduces the excessive need for nation-state-what realists would call 'anarchic'-features in the governance of regional maritime security. The EAC's MSR needs less political will that what is

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<sup>1093</sup> See Appendix 7, article no. 2:

needed in the formation of proposed EAC's Federation. There is a high chance that the EAC's politicians would support the formation of the MSR as it will not compromise their sovereignties.

The EAC's Maritime Security Regime will provide a forum for member states to cooperate among themselves and will open the door for regional and inter-regional cooperation in maritime security. The absence of a regional institution that governs maritime security cooperation creates a loophole for different jurisdictions to be applied to the EAC's maritime domain. Mozambique, Comoro Islands and perhaps Seychelles are potential neighbouring States that the EAC would like to consider their involvement in the proposed MSR. This is in addition to the international partner states and a wide range of IGOs and NGOs that already have big impact on the EAC maritime security governance. The EU and the International Maritime Bureau are good examples of IGOs and NGOs that have significant impact in the EAC maritime security governance. As noted in section 8.5.3, the US, China and EU military presence in the EAC region, provides a first line of defence in the EAC maritime domain. Therefore, their involvement in the proposed EAC's MSR, is extremely important. However, the EAC should create a proper system whereby those hard powers would line with the EAC's security needs and avoid polirastion of its member states.

Initially, the study had examined the possibility of the EAC forming a unified flag state as part of its proposed MSR (see 7.4 on pages 275-284). By itself, the unified flag state would have been a maritime institution to support further integration in EAC's maritime security governance. However, the idea of using a unified flag state as a common maritime institution in the EAC was seen as practically impossible by 85 per cent of regional maritime experts interviewed in this study, (see section 7.5 on pages 285-286 and Appendix 4). In fact, no one supported the unification of regional flag state as a part of the proposed MSR.

As shown in section 7.4, the lack of political will amongst the EAC's politicians was behind the failure of the EAC to form the unified flag state. The author noticed that there is a strong sense of nationalism in Kenya and Tanzania. There is a strong nexus between flag state status and state sovereignty and thus, those nations cannot unify their flags. That view, was supported by majority of the interviewees from Kenya and Tanzania, the only coastal States of the EAC whose flag States' data were available for analysis. The lack of maritime institutions and the standardised merchant shipping law were other reasons raised as obstacles in forming a unified flag state of the EAC. While the author agrees, at least for now, with the stakeholders' attitudes toward the formulation of the EAC unified flag state, it is against Article 93 of the 1999 EAC Treaty. This Article requires member States to create a unified maritime transport policy and a unified Vessel Traffic Service (VTS). The Treaty does not link either of these two issues with state sovereignty as many interviewees were afraid of. This is yet another area where the EAC Secretariat has failed to execute the clear provisions of the Treaty over member State.

While the study noted further that sovereignty and economic benefits of unified flag state were matters of concern, none of them have been an issue in inland water transport. Here, there is almost a common transport policy and a VTS in Lake Victoria. The author was shocked by the level of political will obtained and clearly evident in the processes of harmonising inland waters security and safety issue, and the contrast with the lack of it in maritime issues. This study was in favour of a unified flag state because it could be a first test of how member States would feel when they would be required to surrender their sovereignties to the EAC. The EAC has already tested this in other areas such use of a common passport which will phase-out all individual passports of the member States by the end of 2017.

The research found that the EAC States have overlapping memberships in other regional organisations, such as the SADC and the IGAD (see section 8.5.2 and section 9.2.1(a) above). Through those regional

organisations, the EAC States are obliged to implement maritime security initiatives in the EAC's maritime domain. This is one of the strongest reasons why the EAC should have its own maritime security regime to counter threats in those waters.

On the one hand, Tanzania is a signatory of the 2014 SADC Maritime Security Strategy, Kenya and Uganda will shortly be State parties to the IGAD Integrated Maritime Safety and Security Strategy (2030) which is in its final stage of being created. This overlapping membership of the EAC States in other regional organisations is clearly importing foreign jurisdictions in the EAC maritime domain. This is something that EAC would definably not want see escalating.

### **9.3 Contribution of the research to the fields of Maritime Security, Regional Studies and International Relations.**

The available literature on the maritime security issues and challenges facing the EAC is limited, fragmented and inconclusive. More importantly, the EAC's archives (which the author was given permission to access) contain very little relating to regional maritime security.<sup>1094</sup> The available literature is mainly concerned with discussion of the maritime security issues facing the entire Indian Ocean region,<sup>1095</sup> Eastern Africa, Southern Africa and Indian Ocean (EA-SA-OI) region,<sup>1096</sup> and, on some occasions, Kenya and Tanzania individually.<sup>1097</sup>

Prior to this research, there has never been an over-arching analysis covering the maritime security of the EAC as a region. For this reason,

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<sup>1094</sup> The EAC archive in Arusha-Tanzania and through online sources.

<sup>1095</sup> Michel and Sticklor (2012), Ghosh (2004), Sing (2015), Masala, Tsetsos and Tepel (2015)

<sup>1096</sup> Coelho (2013), Sekemo (2013), Potgieter (2009).

<sup>1097</sup> Musili (2011), Salama Fikira, Available at:

<http://www.kma.go.ke/nmc2015/content/notes/SALAMA%20FIKIRA%20Presentation.pdf> [Accessed on: 23 June 2016], Memmjudi, AM, (2013). Regional Maritime Security-Tanzania perspective. Maritime Security Conference- Djibouti. Available at: [https://www.eucap-nestor.eu/data/image\\_db\\_innova/TZ-Presentation-Day-1.pdf](https://www.eucap-nestor.eu/data/image_db_innova/TZ-Presentation-Day-1.pdf)

[Accessed on: 26 June 2016]

previous researches did not provide a meaningful picture of the maritime security issues and challenges facing both the EAC and the regional stakeholders. This research has attempted, for the first time, to contribute to the existing literature dealing with the EAC's maritime security issues. This research will act as a platform for future research on the EAC's maritime security governance.

When addressing the EAC and its security challenges, it was necessary to consider Regional Security Complex (RSC) theory as set out in Buzan and Weaver's 2003 book *Regions and Powers*. While those authors defined those complexes and sub-complexes precisely with regard to land borders, the maritime edges were drawn arbitrarily and sometimes incorrectly (see Figure 2-3 on page 42). With developments since 2003, this author has proposed to re-draw their map of African RSCs post-Cold War as shown in Figure 2-5 on page 73 and thus to make a meaningful contribution to the existing literature.

Some findings relevant to this research have been published in articles in international peer-reviewed journals as shown in Appendix 7 including *the Africology: The Journal of Pan African Studies* and *Indian Ocean Journal* which have many African readers. These publications (as well as a number of conference papers) have helped to raise these issues at national, regional and international level even before full completion of the thesis. The author believes that the appearance of these open-access articles online has also marked an important contribution to the existing literature review. At the time of submitting this thesis, together, these publications had 554 reads. For example, the calculation of the economic cost of piracy as a percentage of the GDPs of Kenya (3.26 per cent), Tanzania (1.28 per cent) and the EAC (2 per cent) is an original contribution of this research. No previous research has attempted to estimate the costs of piracy to the EAC's economy as precisely as this

one (see section 4.2.1 on page 144 and Appendix 4 which shows how the author had arrived on those detailed calculations).<sup>1098</sup>

The research has also managed to sensitise the EAC Secretariat and regional experts to the importance of investing political will and investment in the maritime security governance of the EAC. For example, on 16 September 2015, during a two day *the EAC's Maritime Transport and Ports Experts* in Mombasa-Kenya, Mr. John Mungai, the Head of the EAC maritime bench-Arusha, publicly acknowledged the need of the EAC Secretariat to create an autonomous maritime institution. That was shortly after this author had finished presenting the interim findings of this research. As shown in the bibliography (Appendix 1), the themes of this research was presented at four international conferences.

#### **9.4 Recommendations of the research and directions for future research**

Based on the findings of this research, the author recommends:

- a) The creation of the EAC's integrated maritime security strategy:  
The EAC should mobilise its member States, particularly Kenya and Tanzania, to create their own integrated maritime security strategies. This is also a requirement of the 2050 AIMS that maritime security strategy of a regional organisation should be a sum of the maritime security strategies of their member states. Likewise, those inputs of maritime security strategies of the African regional organisations, will be important ingredients of the

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<sup>1098</sup> This figure is expected to appear in the '*Indian Ocean Journal*' a journal published by Taylor & Francis online. The article titled 'The East African Community Maritime Security Concern is, at the time submission of this thesis, had been accepted for publication.

proposed 'African Maritime Security Strategy' which is due post 2018.<sup>1099</sup>

The member States' strategies will explore individual countries' security needs and identify the areas where they require assistance and cooperation. This is one of the areas where the EAC might want to mirror the EU as a role model in regional maritime security governance. The EU's Integrated Maritime Policy (IMP)-blue economy policy and Maritime Security Strategy (EUMSS) are sums of the EU's member States policies (see section 5.2.3 on pages 177-181). For example, section 4.1 of the EU's IMP requires EU's member States to develop their own maritime polices that align with the EU's policy.<sup>1100</sup> It also requires coastal states to fully involve the local communities in governance of their maritime domains. Engagement of the local communities has particular importance when it comes to collection of intelligence information to support maritime domain surveillance. As noted in section 4.3 on page161, the surveillance operations in the EAC region, have completely ignored the importance of the local communities in providing first-hand information at an affordable cost. In this thesis, India was cited as a role model on how it collects intelligence information by using the local fishermen (see section 4.3 on page162).

More importantly, section 4.5 of the IMP limits the powers of the EU over its members' domestic maritime governance. Nonetheless, if members are unable to deliver as per the EU standard due to lack of capacity, finance or for any reasons that

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<sup>1099</sup> The 2050 AIMS is comprehensive Africa's blue economy strategy. For this strategy to work effectively accorss all Africa's states, the African Union, like the EU and ASEAN, has to come up with an integrated maritime security strategy. This proposed strategy would give the African continent a single voice over its resources on ocean, sea and inland waters.

<sup>1100</sup> Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52014DC0451>[Accessed On 6 April 2017]

would endanger the EU reputation, the EU must then be involved. This is what is, referred to as the principle of subsidiarity as discussed in this thesis in section 5.2.2 on pages 181-182. If this maritime governance pattern were mirrored in the EAC, that, potentially, would have unlock the much-needed political will from the member States. Thus, formation of an EAC's maritime security regime would have been possible. This could, therefore serve as a focus for international developmental aid and would probably limits international stakeholders, superpowers and great powers to insert their own interests on the EAC security priority as a region. Through these strategies, the EAC can create an integrated regional maritime security strategy that will take on-board all regional maritime security needs and challenges. This is possible because both at the national and EAC level, maritime priorities would have been identified. Therefore, any assistance or aid from international stakeholders, should be directed to the pre-identified weak areas, that would mean less polarisation of security policies in the region. By doing this, the EAC will also align its maritime security governance with the 2050 AIMS of 2012 issued by the AU, which is Africa's version of the maritime security governance approach.

- b) The creation of a regional Maritime Security Regime: Given the delay and obfuscation on the EAC's goal of political unification, the best possible solution to regional maritime governance would be to form a regional Maritime Security Regime. The regime should be careful made to include all regional actors, including navies and other civilian institutions, and even the possibility of involving commercial stakeholders. Great emphasis should be placed on the creation of coastguard units responsible for maritime law enforcement which would be in a position to work more effectively with civilian authorities than war-fighting navies. Involvement of hard power is extremely important given that the EAC does not have capacity to govern its maritime domain on its

own. Therefore, the model of maritime security governance presented in this thesis is a truly, 'innovative solution' that would have to be mirrored by other African regional organizations.

The proposed regime should be executed in three distinct stages: cooperation, enforcement and strategic.

- Stage one: This stage should be taken as a foundation for future maritime security cooperation. At the initial stage, the EAC should try as much as possible to avoid making the regime a purely military institution. It is advisable to have non-military cooperation on 'soft' maritime security issues, such as the marine environment, humanitarian activities, and measures to prevent illegal fishing and environmental degradation.

This stage will open the door for communication, information exchange, and intelligence sharing at the national and regional levels among states and agencies. This stage will also be a foundation for building trust and confidence among state and non-state actors. Eventually, it will open the door for the next cooperation stage, which is the enforcement of the harmonised laws and regulations laws and regulations.

The regime should be aligned with the 2050 AMIS (see section 6.4 and section K of the 2050 AIMS pages 22-32). Issues relating to law enforcement capacity building, burden sharing and using existing information sharing infrastructures, such as those in Mombasa and Dar-es-Salaam and the Djibouti Regional Training Centre (further assisting in the development of regional expertise), are among the important issues that should be discussed at this stage

- Stage two: This stage would allow the regime to enforce its norms, rules and regulations at the national and regional levels. It will also require other maritime users to observe

those norms. This stage would require capacity building in terms of the enforcement capability of states and how they should cooperate to deal with more contentious security issues, such as piracy, armed robbery and large-scale illegal fishing. It is likely that the involvement of the armed forces will be important at this stage. However, military–civilian relationships should be established at this stage so as to open the doors for further cooperation and coordination at stage three. There is a need at this stage to include all external maritime actors, including the commercial stakeholders, aid and humanitarian donors and inter-regional organisations. The contributions of countries such as China, India, and the US should be considered, as well as the EU and the UK (it is likely that, post-Brexit, the UK will continue its contribution to aid and development as an important donor State).

- Stage three: This is the final stage within the parameters of this research, where sea power projection will be needed. The roles of regional navies and how they can cooperate should be considered at this stage. Issues of maritime terrorism and piracy are still likely to be important matters. However, that would require the EAC and its members to first agree on a military/naval ‘doctrine’, as a model of cooperation.<sup>1101</sup>

Among the most important features of that cooperation is how civilian institutions would be given important roles in the war

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<sup>1101</sup> Latawski, P. 2011. ‘The Inherent Tensions in Military Doctrine’. Sandhurst Occasional Papers, No. 5. Available at:

[http://www.army.mod.uk/documents/general/RMAS\\_Occasional\\_Paper\\_5.pdf](http://www.army.mod.uk/documents/general/RMAS_Occasional_Paper_5.pdf)

Military doctrine is defined as ‘fundamental principles by which the military forces guide their actions in support of objectives. It is authoritative but requires judgement in application’.

against regional maritime security threats. The EAC, through its 2014 Protocol on Co-operation in Defence Affairs, has already acknowledged the need to invite the aid of civilian institutions in the so-called 'war against terror'.<sup>1102</sup> It is just a matter of doing the same in maritime security.

- c) The EAC Secretariat should create an institution that will be dedicated to regional maritime affairs, including maritime security.
- d) The EAC Secretariat should be given enforcement powers over member states and institutions (see in section 2.3.3 on page 47 and page on 72 in the article published by the author).<sup>1103</sup>

### 9.5 Recommendation for further research

The research has highlighted a number of topics on which further research would be beneficial. However, due to limitations in time, financial resources and the sometimes secretive behaviour of research participants both at the EAC and national level, acquisition of certain first-hand information was not possible. Whilst some of these challenges were addressed by the author, others remain. In particular,

1. It would have been of great significance if the eight inland water bodies in South Sudan would have been mentioned in the research.<sup>1104</sup> These inland waters stretch approximately 7,000 kilometres in length from their sources all the way down to the

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<sup>1102</sup> Ubwani, Z. 2016. EAC military urged to unite against terror attacks. The Citizen. Available at: <http://www.thecitizen.co.tz/News/EAC-military-urged-to-unite-in-war-against-terror-attacks/-/1840340/3143368/-/1mv67c/-/index.html> [Accessed on: 24 June 2016].

<sup>1103</sup> See Appendix 7, article no. 3.

<sup>1104</sup> While Nile River = 3,700 Kilometres, Bahr al-Ghazal River=716 Kilometres, Sobat River= 354 Kilometres, Baro River= Kilometres=306, Pibor River =320 Kilometres, Akobo River= 434 Kilometres, Bahr el-Arab = 800 Kilometres and Jur River/Sue River = 485 Kilometres: Total =7,115 Kilometres.

Red Sea. However, this research failed to establish how much of these waters belong to South Sudan and how could they be included in the 'blue economy' initiatives of the EAC.

This omission resulted from the fact that South Sudan joined the Community on 5 September 2016 when the research was in completion stage (see information cut-off date on page XVIII). Furthermore, while online sources provide little information on this regard, the EAC has not yet updated its information to include that of South Sudan.

2. There are a number of information gaps in the thesis. That is due to hesitation of some of recruited participants to be open about some of the research questions. These gaps include:
  - a) Why at the EAC there is no dedicated maritime institution and maritime security strategy as stipulated by the 2050 AIMS? (see interviews extracts)
  - b) Inconclusive data relating to SUMATRA tonnage (see interviews extract C in section C on page 409).

## **9.6 General conclusion**

The EAC's maritime security issues and challenges have, for a long time, been left out of scholarly debates. This is because the EAC, as a region, though established in its present form in 2000 and expanded in 2007 and 2016 has never been the subject of detailed research before. Despite the security and economic importance of the region's maritime domain which extends across the major Lines Of Communications along the East African coast and Western Indian Ocean, the EAC has never taken a leadership role in countering common maritime security threats. That has been partly caused by the lack of an integrated maritime security strategy or maritime institutional framework, as well as a weak Secretariat at the EAC level.

When this thesis was written, all the maritime security efforts of the EAC were the sum of the individual efforts of the coastal States of Kenya and Tanzania, with international assistance against the problems of Somali-based piracy and Al-Shabaab terrorism. The former problem owed something to Illegal, Unregulated and Unreported fishing and emanated from Somalia's position as a 'failed State'. These linkages underline the ultimate indivisibility of the sea and the adjacent littorals, and of the maritime domain as a whole.

The 'maritime domain' can be considered both in the sense used in this thesis, of the sea areas under some form of state jurisdiction or to which states have certain individual rights, out to the limit of states' EEZs, and in the wider sense used by the Americans, of the entire maritime space. These, too, are ultimately indivisible. The EAC has not, thus far, addressed the problems of, and opportunities provided by, its maritime domain in a coordinated way, or at Community, that is regional level. This thesis has examined the deficiencies and set out a practical way forward in the form of a Maritime Security Regime. In so doing the author hopes to not only to have made an original contribution to knowledge, but to set out a blueprint for the future.

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### Appendix 1: Primary research and Conferences;

| No | Name                | Position   | Contact details  | Date, time and place               |
|----|---------------------|--|--|------------------------------------|
| 1  | Khalifan Omar       | Maritime Bench;<br>Ministry of Transport and Infrastructure-Zanzibar | miungoni2008@gmail.com   | 11/08/2014,<br>Zanzibar,<br>10 am  |
| 2  | Zaidi Ussi          | Maritime Bench;<br>Ministry of Transport and Infrastructure-Zanzibar | <a href="mailto:target@zanlink.com">target@zanlink.com</a>                 | 11/08/2014,<br>Zanzibar,<br>10 am  |
| 3  | Abidi Omar          | Director General-Zanzibar Maritime Authority                         | <a href="mailto:abdiomaalim@gmail.com">abdiomaalim@gmail.com</a>           | 5/08/2014,<br>Zanzibar,<br>1pm     |
| 4  | Sheikha Muhammed    | Register-Zanzibar Maritime Authority                                 | <a href="mailto:sheikha_m@yahoo.com">sheikha_m@yahoo.com</a>               | 4-5/08/2014,<br>Zanzibar,10 am     |
| 5  | Msilimiwa Iddi      | Surveyor-Zanzibar Maritime Authority                                 | <a href="mailto:msilimiwa@yahoo.com">msilimiwa@yahoo.com</a>               | 4-5/08/2014,<br>Zanzibar,<br>10 am |
| 6  | Rashid Ali          | Lawyer-Zanzibar Maritime Authority                                   | <a href="mailto:rashidj1981@yahoo.com">rashidj1981@yahoo.com</a>           | 4-5/08/2014,<br>Zanzibar,<br>10 am |
| 7  | Mohamed haji Othman | Administrator-Zanzibar Maritime Authority                            | <a href="mailto:mohdhajiothman@hotmail.com">mohdhajiothman@hotmail.com</a> | 5/08/2014,<br>Zanzibar,<br>2pm     |
| 8  | Mansour Rashid      | Director of Planning-Zanzibar Port Authority                         | <a href="mailto:mansourrashid@hotmail.com">mansourrashid@hotmail.com</a>   | 6/08/2014,<br>Zanzibar,<br>11am    |
| 9  | Capt. Makame Ameir  | Harbor Master: Zanzibar Port Authority                               | ameir1158@live.com   | 6/08/2014,<br>Zanzibar,<br>3pm     |
| 10 | Capt. Khatib Khamis | Intelligent Officer: KMKM  | <a href="mailto:kikosimaalum64@hotmail.com">kikosimaalum64@hotmail.com</a> | 4/08/2014,<br>Zanzibar,<br>2.30 pm |
| 11 | Capt. Juma Haji     | Chief of Personnel-KMKM  | <a href="mailto:khatib_khamis@yahoo.com">khatib_khamis@yahoo.com</a>       | 4/08/2014,<br>Zanzibar,<br>2.30 pm |
| 12 | Zahor Mohamed       | Director General-Deep Sea Fishing Authority                          | <a href="mailto:elkharousy@dsfatz.org">elkharousy@dsfatz.org</a>           | 13/08/2014,<br>Zanzibar,<br>2 pm   |
| 13 | Christian Alphonse  | Compliance Officer Deep Sea Fishing Authority                        | <a href="mailto:christian.nzowa@dsfatz.org">christian.nzowa@dsfatz.org</a> | 13/08/2014,<br>Zanzibar,<br>2pm    |

|    |                          |   |  |                                       |
|----|--------------------------|---|--|---------------------------------------|
| 14 | Beatrice Nyamoita        | Principal Shipping and Maritime Officer<br>Ministry of Transport and infrastructure:<br>Kenya | <a href="mailto:bnnyamoita@yahoo.com">bnnyamoita@yahoo.com</a>               | 15/08/2014,<br>Nairobi,<br>10am       |
| 15 | Eng. Wilfred Kagimbi     | Director, Maritime Safety and Security-<br>Kenya Maritime Authority                           | <a href="mailto:wkagimbi@KMA.go.ke">wkagimbi@KMA.go.ke</a>                   | 18/08/2014,<br>Mombasa,<br>10am       |
| 16 | Tumaini Silaa            | Director, Legal Services<br>SUMATRA-Dar-es-Salaam   | <a href="mailto:tumaini.silaa@sumatra.or.tz">tumaini.silaa@sumatra.or.tz</a> | 2/10/2014,<br>Dar-es-Salaam,<br>10am  |
| 17 | Capt. Mussa Mandia       | Director, Maritime Safety and Security-<br>SUMATRA-Dar-es-Salaam                              | <a href="mailto:mussa.mandia@Sumatra.or.tz">mussa.mandia@Sumatra.or.tz</a>   | 2/10/2014,<br>Dar-es-Salaam,<br>11am  |
| 18 | Capt. Ken Chimwejo       | Senior Maritime Watch Officer<br>MRCC-SUMATRA   | <a href="mailto:ken.chimwejo@sumatra.or.tz">ken.chimwejo@sumatra.or.tz</a>   | 2/10/2014,<br>Dar-es-Salaam,<br>1pm   |
| 19 | Amos Ndoto               | Maritime Watch Office II  | <a href="mailto:amos.donto@suamtra.or.tz">amos.donto@suamtra.or.tz</a>       | 2/10/2014,<br>Dar-es-Salaam,<br>1pm   |
| 20 | Dr. Eliamin Kasembe      | Depute Director: Dar-es-Salaam Maritime Institute   | <a href="mailto:ekassembe@yahoo.co.uk">ekassembe@yahoo.co.uk</a>             | 2/10/2014,<br>Dar-es-Salaam,<br>3 pm  |
| 21 | Mussa Biboze             | Chief Fire and Safety Officer: Tanzania Port Authority  | <a href="mailto:mbimboze@tanzaniaports.com">mbimboze@tanzaniaports.com</a>   | 3/10/2014,<br>Dar-es-Salaam,<br>10 am |
| 22 | Lazaro Jacob Twange      | Security Officer: Tanzania Port Authority   | <a href="mailto:Twange2009@gmail.com">Twange2009@gmail.com</a>               | 3/10/2014,<br>Dar-es-Salaam,<br>12 pm |
| 23 | Ndayikengurukiye Emile   | Director of Port Operation: Global Port Services Burundi                                      | <a href="mailto:ndayemile2@yahoo.fr">ndayemile2@yahoo.fr</a>                 | 26/9/2014,<br>Bujumbura,<br>10am      |
| 24 | Sinzobakwira Banaventure | Director General: Global Port Services Burundi  | <a href="mailto:bonasi@gpsb.bi">bonasi@gpsb.bi</a>                           | 26/9/2014,<br>Bujumbura,<br>10am      |
| 25 | John Kizoto              | Infrastructure Projects Coordinator<br>MEAC- Kigali   | <a href="mailto:jkizito@minea.c.gov.rw">jkizito@minea.c.gov.rw</a>           | 22/09/2014,<br>Kigali,<br>10 am       |
| 26 | Emmanuel Butera          | Director of Waterway and Air Transport Unit-Kigali  | <a href="mailto:emmanuel.butera@rura.rw">emmanuel.butera@rura.rw</a>         | 22/09/2014,<br>Kigali,<br>1 pm        |

|    |                    |   |  |                                    |
|----|--------------------|---|--|------------------------------------|
| 27 | Mawa James Watson  | Senior Transport Officer-Water and Rail Transport Regulation                                    | <a href="mailto:iwmawa@gmail.com">iwmawa@gmail.com</a>                             | 24/09/2014, Kampala, 10 am         |
| 28 | George Muhenda     | Assistant Commissioner: Water and Rail Transport Regulation                                     | <a href="mailto:grukara@gmail.com">grukara@gmail.com</a>                           | 24/09/2014, Kampala, 10 am         |
| 29 | Mina Hussein       | Director: Djibouti Regional Training Centre (DRTC)  | <a href="mailto:mhausenitransport@gmail.com">mhausenitransport@gmail.com</a>       | 1/09/2014, Djibouti, 10 am         |
| 30 | Radra Hassan       | DRTC: Administrator   | <a href="mailto:moura313@hotmail.com">moura313@hotmail.com</a>                     | 1/09/2014, Djibouti, 10 am         |
| 31 | Clement William    | Director: Shipping, Ports and Freight Services- ISCOS   | <a href="mailto:william@iscosafri.org">william@iscosafri.org</a>                   | 9/10/2014, Mombasa, 10am           |
| 32 | Alex Kanyama zulu  | Director of Trade Facilitation and Policy Harmonisation-ISCOS                                   | <a href="mailto:zulu@iscosafri.org">zulu@iscosafri.org</a>                         | 9/10/2014, Mombasa, 10am           |
| 33 | Paul Devlin        | Director: Fulcrum Maritime Systems-London   | <a href="mailto:pdevlin@fulcrum-maritime.com">pdevlin@fulcrum-maritime.com</a>     | Nov-Dec-2014 London, Several times |
| 34 | Karen Day          | Business Development Manager Fulcrum Maritime Systems-London                                    | <a href="mailto:kday@fulcrum-maritime.com">kday@fulcrum-maritime.com</a>           | Nov-Dec-2014 London, Several times |
| 35 | Tracy Peverett     | Deputy Director: Maritime Security IMO, London  | <a href="mailto:tpeverett@imo.org">tpeverett@imo.org</a>                           | 15/12/2014, London, 11am           |
| 36 | Henrik Juhl Madsen | Associate Professional Officer: sub-division for Maritime Security and Facilitation-IMO, London | <a href="mailto:HMADSEN@imo.org">HMADSEN@imo.org</a>                               | 15/12/2014, London, 11am           |
| 37 | Marin Chintoan     | Head of Unit Satellite Based Monitoring Services-EMSA: Lisbon                                   | <a href="mailto:chntoan-uta@emsa.europa.eu">chntoan-uta@emsa.europa.eu</a>         | 15/04/2015, Lisbon, 11.30am        |
| 38 | Rui Silva Dias     | Senior Project Officer: Maritime Security Visit and Inspections-EMSA: Lisbon                    | <a href="mailto:ruil.Silva-Dias@emsa.europa.eu">ruil.Silva-Dias@emsa.europa.eu</a> | 15/04/2015, Lisbon, 11.30am        |

|    |                      |   |  |   |
|----|----------------------|---|--|---|
| 39 | Catrin Egerton       | Project Officer<br>Coordination and Innovation<br>Department C -<br>Operations: EMSA-<br>Lisbon | <a href="mailto:catrin.EGERTON@emsa.europa.eu">catrin.EGERTON@emsa.europa.eu</a> | 15/04/2015,<br>Lisbon,<br>11.30am   |
| 40 | Capt. Sultan Baalway | Shore Captain:<br>JAK Enterprises Co.<br>Ltd.<br>Zanzibar                                       | <a href="mailto:kwadana52@gmail.com">kwadana52@gmail.com</a>                     | 26/08/2014,<br>Zanzibar,<br>9.30am  |
| 41 | Yakoub Abdullah      | Operational Manager:<br>JAK Enterprises Co.<br>Ltd.<br>Zanzibar                                 | <a href="mailto:yakoubtrky@yahoo.com">yakoubtrky@yahoo.com</a>                   | 26/08/2014,<br>Zanzibar,<br>9.30am  |
| 42 | Khamis Rashid        | Director General:<br>JAK Enterprises Co.<br>Ltd.<br>Zanzibar                                    | <a href="mailto:rashid_kh21@hotmail.com">rashid_kh21@hotmail.com</a>             | 26/08/2014,<br>Zanzibar,<br>9.30am  |
| 43 | Capt. Abrahman       | Shore Captain: AZAM<br>Marine Zanzibar  |  | 27/08/2014,<br>Zanzibar,<br>3 pm  |
| 44 | Jokha Khamis         | Zanzibar Shipping<br>Corporation  | <a href="mailto:jokha_khamis@yahoo.co.uk">jokha_khamis@yahoo.co.uk</a>           | 28/08/2014,<br>Zanzibar,<br>10am  |
| 45 | Dr. Jovin Mwemezi    | Corridor Management<br>Advisor<br>EAC-Arusha  | <a href="mailto:jmwemezi@eachq.org">jmwemezi@eachq.org</a>                       | Several times<br>at Arusha,<br>Mombasa and<br>through online<br>communication                       |
| 46 | Eng. Hosea Nyanweso  | Principal Civil<br>Engineer<br>EAC-Arusha   | <a href="mailto:hnyangweso@eachq.org">hnyangweso@eachq.org</a>                   | Several times<br>at Arusha,<br>Mombasa and<br>through online<br>communication                       |
| 47 | John Mungai          | Head of the EAC<br>maritime bench-<br>Arusha  | <a href="mailto:JMungai@eachq.org">JMungai@eachq.org</a>                         | Several times<br>at Arusha,<br>Mombasa and<br>through online<br>communication                       |
| 48 | Eng. Abdillah Mataka | Ass. Director<br>Economic<br>infrastructure- DSM  | <a href="mailto:abdillah.matak@meac.go.tz">abdillah.matak@meac.go.tz</a>         | Several times<br>at Arusha, Dar-<br>es-Salaam and<br>Mombasa and<br>through online<br>communication |
| 49 | Judith Ngoda         | Economist- MEAC<br>DSM  | <a href="mailto:judith.ngoda@meac.go.tz">judith.ngoda@meac.go.tz</a>             | 21/09/2015,<br>Dar-es-Salaam,   |

|    |                        |   |  |                                 |
|----|------------------------|---|--|---------------------------------|
|    |                        |   |  | 1pm                             |
| 50 | Dr. Franklin Rwezijula | Maritime safety and Security officer-EAC-DSM    | <a href="mailto:rwezie@yahoo.com">rwezie@yahoo.com</a>               | 21/09/2015, Dar-es-Salaam, 11am |
| 51 | Patrick Mwantonoka     | Maritime safety and Security officer-EAC-DSM    | <a href="mailto:apmwatonoka@hotmail.com">apmwatonoka@hotmail.com</a> | 21/09/2015, Dar-es-Salaam, 11am |
| 52 | Dr. Rahma Mahfoudh     | Commissioner for Planning- Zanzibar Government. | <a href="mailto:rsmahfoudh@hotmail.com">rsmahfoudh@hotmail.com</a>   | 25/09/2015, Zanzibar +Mombasa   |

#### Conferences attended;

| Data                 | Place                                 | Theme   | Role                      |
|----------------------|---------------------------------------|---|---------------------------|
| 14-15 October 2014   | Mombasa (Kenya)                       | “Validation workshop for the baseline study and status report of the maritime transport and port sectors in East Africa”. | Participant and Presenter |
| 16 December 2014     | (MARSEC COE)- Aksaz- Marmaris- Turkey | Special Focus of Piracy and Armed Robbery: East and West Africa   | Presenter                 |
| 17 December 2014     | (MARSEC COE)- Aksaz- Marmaris- Turkey | Maritime Security Capacity Building efforts in East Africa  | Presenter                 |
| 14-16 September 2015 | Mombasa (Kenya)                       | “Meeting on the Maritime Transport and Ports Experts”   | Participant and Presenter |

## Appendix 2: Institutions visited

| No. | Institutions  |
|-----|---|
| 1   | The Ministry of Transport and Infrastructure: Nairobi-Kenya                             |
| 2   | The Kenya Maritime Authority: Mombasa-Kenya   |
| 3   | The EAC head office-Arusha and the EAC ministry in Tanzania (Dar-es-Salaam)             |
| 4   | The Surface and Marine Transport Regulatory Authority (SUMATRA) :Dar-es-Salaam-Tanzania |
| 5   | The Tanzania Port Authority: Dar-es-Salaam-Tanzania                                     |
| 6   | Dar-es-Salaam Maritime Institute (DMI) : Dar-es-Salaam-Tanzania                         |
| 7   | Maritime Rescue Coordination Centre (MRCC) : Dar-es-Salaam-Tanzania                     |
| 8   | The Ministry of Transport and Infrastructure : Zanzibar-Tanzania                        |
| 9   | The Zanzibar Maritime Authority : Zanzibar-Tanzania                                     |
| 10  | The Zanzibar Port Authority : Zanzibar-Tanzania   |
| 11  | The Zanzibar Coast guard (KMKM) : Zanzibar-Tanzania                                     |
| 12  | Zanzibar Deep Sea Fishing Authority (DSFA) : Zanzibar-Tanzania                          |
| 13  | Burundi Maritime, Port and Railways Authority : Bujumbura-Burundi                       |
| 14  | The Global Port Service Burundi : Bujumbura-Burundi                                     |
| 15  | The Rwanda Utilities Regulatory Authority(RURA) :Kigali- Rwanda                         |
| 16  | The Rwanda Transport Development Agency(RTDA) :Kigali-Rwanda                            |
| 17  | The Ministry of works and Transport: Kampala-Uganda                                     |
| 18  | Djibouti Regional Training Centre (DRTC)  |
| 19  | The Intergovernmental Standing Committee on shipping (ISCS) : Mombasa-Kenya             |
| 20  | Fulcrum Maritime System: London   |
| 21  | International Maritime Organization (IMO):London  |
| 22  | European Maritime Safety Agency(EMSA) Lisbon-Portugal                                   |

**Appendix 3: Interview extracts: Examples of four key stakeholders interviews undertaken by the author.**

**Interview extract A: Deep Sea Fishing Authority (DSFA)**

|                    |   |  |
|--------------------|---|--|
| Date               | 13 August 2014  |  |
| Person interviewed | Zahor Mohammed (Director general) and Christian Alphonse (Compliance Officer)   |  |
| Contact            | <a href="mailto:elkharousy@dsfatz.org">elkharousy@dsfatz.org</a> ; <a href="mailto:christian.nzowa@dsfatz.org">christian.nzowa@dsfatz.org</a> |  |
| Place              | Zanzibar-Tanzania   |  |
| <b>No</b>          | <b>Focus</b>  | <b>Remarks</b>   |
| A                  | Overview  | <ul style="list-style-type: none"> <li>• DSFA ACT 1998 as amended in 2007</li> <li>• Tanzania EEZ Act</li> <li>• Regulating fishing in the Tanzania EEZ, an area beyond 12 nautical miles; within 12 nautical miles of Tanzania main land and Zanzibar control fishing individual</li> </ul>   |
| B                  | International regulations   | <ul style="list-style-type: none"> <li>• FAO</li> <li>• Indian Tuna Commission</li> <li>• UNCLOS and</li> <li>• IMO</li> </ul>   |
| C                  | Illegal fishing   | <ul style="list-style-type: none"> <li>• Undetected foreign fishing vessels operating illegal fishing</li> <li>• The EEZ area is too wide-currently</li> <li>• Lack of proper law enforcement</li> <li>• Coast guard units and Navy both do not have enough capacity to deter illegal fishing</li> <li>• Unaccounted for catching</li> </ul>                             |
| D                  | Surveillance Cooperation  | <ul style="list-style-type: none"> <li>• Tanzania flag state and Illegal fishing; TZIRS vessels blamed for Illegal fishing; Vessel Monitoring System (VSM), Unethical vessels switched off the devices-go undetected; Air surveillance one in every month- very expensive and inefficient way</li> <li>• No formal cooperation with Kenyan authorities in EEZ</li> </ul> |
| E                  | EEC directive   | <ul style="list-style-type: none"> <li>• Fishing Competent authorities do not work together</li> <li>• No harmonisation policy in place at the EAC</li> </ul>  |
| F                  | Importance of EEZ fishing   | <ul style="list-style-type: none"> <li>• The fisheries sub-sector contributes about 3% to the GDPs of Uganda and Tanzania and about 0.4% to Kenya's GDP.</li> <li>• Fishing contributes US\$ 55 million for Kenya, US\$ 85 million for Uganda and over US\$ 100 million for Tanzania.</li> </ul>   |

## Interview extract B: Interview Extracts: EAC

| No | Focus  | Remarks   |
|----|--|---|
| A  | Regional<br>Maritime<br>Affairs+<br>maritime<br>security | <p style="text-align: center;"><b>Several times in 2014 and 2015</b></p> <ul style="list-style-type: none"> <li>• Maritime affairs mean inland waters + Indian Ocean (Kenya and Tanzania)</li> <li>• No centralised maritime directorate within the EAC</li> <li>• Only maritime bench at Arusha-largely dealing with inland water activities</li> <li>• Indian Ocean-maritime affairs in particular flag state, are individually handled by Kenya and Tanzania.</li> <li>• No harmonisation policies in place so far. Waiting for political federation,</li> <li>• Cooperation in areas involving port and port statistics are currently on harmonisation policies-Flag states not included</li> <li>• Big challenges for harmonisation policies in maritime affairs; sovereign issues; business opportunity; level of trust between Kenya and Tanzania; regional maritime affairs is less researched area;</li> <li>• EAC does not own Maritime Domain;</li> <li>• Kenya has 12nm of TW and 200nm of EEZ-has not reached to OCS</li> <li>• Tanzania has 12nm of TW and 200nm of EEZ-has not reached to OCS</li> <li>• Common maritime issues: piracy, armed robbery; illegal fishing; smuggling of illicit drugs, small weapons and human.</li> <li>• Piracy and armed robbery are most dangerous maritime issues within the region</li> <li>• Maritime border disputes between Kenya and Somalia; Kenya-Tanzania maritime border agreed but could also be affected by the ongoing Kenya-Somalia maritime border disputes should Somalia wins.</li> <li>• Maritime security projects; COMESA,IGAD, DCoC and IOC</li> <li>• Though Maritime Security (MASE) programme which is under Indian Ocean Commission and financed by the EU, the EAC is heading result 2: which aimed at National/Regional legal, legislative and infrastructure capability for arrest, transfer, detention and prosecution of pirates.</li> <li>• The EAC has received EUR 2.3 as part of EUR 11.6 package</li> <li>• Protocol on combating illicit drugs trafficking in EAC</li> <li>• what is the chance of an EAC unified flag state &lt;50%-subject to political federation</li> <li>• What is the chance of having the EAC maritime institution</li> </ul> |

|   |                            |   |
|---|----------------------------|---|
|   |                            | <p>&gt; 85% it's needed, pressure groups can give the EAC a wakeup call.</p> <ul style="list-style-type: none"> <li>• Participation of the EAC at the IMO: financial and capacity constraints</li> </ul> <p><u>Persons interviews/ contacted:</u></p> <ol style="list-style-type: none"> <li>1. <i>John Mungai- Head of the EAC Maritime Bench at Arusha: <a href="mailto:JMungai@eachq.org">JMungai@eachq.org</a></i></li> <li>2. <i>Dr. John Mwemezi: Corridor Management Adviser- EAC Arusha:<a href="mailto:jmwemezi@eachq.org">jmwemezi@eachq.org</a></i></li> <li>3. <i>Dr. Franklin Rwezijula: Maritime Safety and Security Officer: EAC-DSM: <a href="mailto:rwezie@yahoo.com">rwezie@yahoo.com</a></i></li> <li>4. <i>Partick Mwantonoka: Director Maritime Safety and Security Officer: EAC-DSM- <a href="mailto:apmwatonoka@hotmail.com">apmwatonoka@hotmail.com</a></i></li> <li>5. <i>Eng. Hosea Nyawezo: Principal Civil Engineer; EAC-Arusha. <a href="mailto:hnyangweso@eachq.org">hnyangweso@eachq.org</a></i></li> <li>6. <i>Beatrice Nyamoita: Principal Shipping and Maritime Officer Ministry of Transport and infrastructure: Kenya; <a href="mailto:bnyamoita@yahoo.com">bnyamoita@yahoo.com</a>; Nairobi.</i></li> </ol>              |
| B | EAC Integration progresses | <ul style="list-style-type: none"> <li>• Custom Union (CU) and Common Market (CM)</li> <li>• CU-Protocol signed 2004-was expected to be in full swing by the end of 2010. so far approximately 75% achievement;</li> <li>• Elimination of unnecessary Custom duties among state members; removal of non-tariff barriers; a common external tariff to protected community business.</li> <li>• CM-Protocol signed 2010; it was expected to be in full swing by the end of 2015-Now seemed not likely given the remaining time; Approximately 50% achievement</li> <li>• Free movement of factors of production: not much achieved in this area: Burundi and Tanzania are pessimistic and worried for Kenya's supremacy.</li> <li>• Inter states trade grows</li> <li>• regional GDP rises</li> <li>• Challenges: political will; Citizens haven't full be involved in the processes;</li> <li>• <u>Persons interviewed/contacted</u></li> <ol style="list-style-type: none"> <li>1. Eng. Abdullah Mataka:Ass. Director Economic infrastructure- DSM-<a href="mailto:abdillah.matak@meac.go.tz">abdillah.matak@meac.go.tz</a></li> <li>2. Judith Ngonda: Economist: <a href="mailto:judith.ngoda@meac.go.tz">judith.ngoda@meac.go.tz</a> : DSM</li> </ol> </ul> |

|   |                 |   |
|---|-----------------|---|
| C | Monetary Union  | <ul style="list-style-type: none"> <li>• CU and CM are the prerequisites for Monetary Union (MU)</li> <li>• Protocol for Monetary Union signed 2013</li> <li>• To be in full swing by 2050, single currency 2024.</li> <li>• Harmonisation of monetary and exchange rate policies through the Monetary Affairs Committee (MAC); Harmonisation of fiscal policies through the Committee on Fiscal Affairs (CFA); Harmonisation of Statistics through the Committee on Statistics; Harmonisation of financial sector through the Capital Markets, Insurance and Pensions Committee (CMPC)</li> <li>• Persons interviewed/contacted <ul style="list-style-type: none"> <li>1. Eng. Abdullah Mataka: Ass. Director Economic infrastructure- DSM-<a href="mailto:abdillah.matak@meac.go.tz">abdillah.matak@meac.go.tz</a></li> <li>1. Judith Ngonda: Economist: <a href="mailto:judith.ngoda@meac.go.tz">judith.ngoda@meac.go.tz</a> : DSM</li> <li>2. Dr. Rahma Mahfoud: <a href="mailto:rsmahfoudh@hotmail.com">rsmahfoudh@hotmail.com</a></li> </ul> </li> </ul>  |
| E | Political Union | <ul style="list-style-type: none"> <li>• Political federation based on three areas: Political affairs; Regional Peace and Security and Defence</li> <li>• It was expected come through spill-over process; but failed. Now Governments big initiatives to boost political federation-top bottom approach</li> <li>• Maritime security would be full considered at regional Peace and security initiatives, the state that has already started</li> <li>• <b>Challenges:</b></li> <li>• Noninvolvement of people in the processes</li> <li>• Leaders are to nationalistic and used to blame the Community</li> <li>• Youth employment and trust to the Community are low</li> <li>• Abolition of two term presidency limit; Burundi, Rwanda and Uganda have already violet the rule and there is a chance of having a life time president ship</li> <li>• Persons interviewed/contacted <ul style="list-style-type: none"> <li>Eng. Abdullah Mataka: Ass. Director Economic infrastructure- DSM-<a href="mailto:abdillah.matak@meac.go.tz">abdillah.matak@meac.go.tz</a></li> <li>1. Judith Ngonda: Economist: <a href="mailto:judith.ngoda@meac.go.tz">judith.ngoda@meac.go.tz</a> : DSM</li> <li>2. Dr. Rahma Mahfoud: <a href="mailto:rsmahfoudh@hotmail.com">rsmahfoudh@hotmail.com</a></li> </ul> </li> </ul> |

### Interviews extract C: Kenya Maritime Authority (KMA)

|                    |  |  |
|--------------------|--|--|
| Date               | 18 August 2014   |  |
| Person interviewed | Eng. Wilfred Kagimbi                                       |  |
| Position           | Director, Maritime Safety and Security                     |  |
| Contact            | <a href="mailto:wkagimbi@KMA.go.ke">wkagimbi@KMA.go.ke</a> |  |
| Place              | Mombasa-Kenya  |  |
| <b>No</b>          | <b>Focus</b>   | <b>Remarks</b>   |
| A                  | Overview   | <ul style="list-style-type: none"> <li>• Est. 2004:IMO membership since 1973; Ratified 27 IMO conventions</li> <li>• Statute: Kenya Maritime Authority Act, 2006; Merchant Shipping Act 2009; Continental Shelf Act; Maritime Zones Act; Carriage of Goods by Sea Act</li> </ul>   |
| B                  | Important conventions                                      | UNCLOS, SOLAS, STCW, MARPOL-Annex I-V; SAR, SUA 1988, Protocol to SUA 1988, ISPS Code  |
| C                  | Flag State roles   | <ul style="list-style-type: none"> <li>• Uses Merchant Shipping Act 2009</li> <li>• Maritime Safety and Security</li> <li>• Close registry-no international registry; in future open registry is possible.</li> <li>• No ships on Indian Ocean; all Kenyan owned ships fly Tanzanian Flag(registered in Zanzibar); three ships on Lake Victoria-total tonnage= 2,200;</li> </ul>   |
| D                  | Maritime Security  | <ul style="list-style-type: none"> <li>• Key issues; piracy and armed robbery, maritime terrorism, illicit trade, small weapons and maritime environmental concerns.</li> <li>• KMA collaborates with Kenya Defence Force and other international agencies in the war against maritime security issues in its Maritime Domain.</li> <li>• part of DCoC; IGAD, EAC and AU</li> <li>• Piracy declined but still active-not in large scale</li> </ul> |
| E                  | Cooperation in Maritime Security                           | <ul style="list-style-type: none"> <li>• Kenya holds Regional Maritime Rescue Coordination Center- RMRCC in Mombasa</li> <li>• Works for Kenya, Tanzania Seychelles and Somalia</li> <li>• It's also a Search and Rescue centre</li> <li>• it's also regional Information Sharing Centre (ISC)</li> </ul>  |
| F                  | Port State Control   | <ul style="list-style-type: none"> <li>• IOMOU; Lack of manpower;</li> </ul>   |

|   |                          |  |
|---|--------------------------|--|
| G | Challenges               | <ul style="list-style-type: none"> <li>• Non-SOLAS vessels-controlling of small boats</li> <li>• lack of enforceability of laws at sea</li> <li>• lack of coastguard unit</li> <li>• capacity building</li> <li>• Limited maritime security cooperation between Kenya and Tanzania</li> <li>• Limitation in Intelligence information sharing-reduces the chance of combating piracy</li> </ul> |
| H | Harmonisation policy-EAC | <ul style="list-style-type: none"> <li>• Sovereign issues</li> <li>• Lack of trust among member states</li> <li>• Lack of strong Maritime policy at regional level</li> <li>• Chance of an EAC unified Flag; very low</li> <li>• maritime patrolling-almost none</li> </ul>  |

### Interviews extract D: Surface and Marine Transport Regulatory Authority (SUMATRA)

|                    |   |
|--------------------|---|
| Date               | 12 October 2014   |
| Person interviewed | 1. Capt. Mussa Mandia (Director, Maritime Safety and Security); 2. Tumaini Silaa (Legal Officer); 3. Capt. Ken Chimwejo (Senior Maritime Watch Officer MRCC); 4. Amos Ndoto (Maritime Watch Office II).   |
| Contact            | 1. <a href="mailto:mussa.mandia@Sumatra.or.tz">mussa.mandia@Sumatra.or.tz</a> ; 2. <a href="mailto:tumaini.silaa@sumatra.or.tz">tumaini.silaa@sumatra.or.tz</a> ; 3. <a href="mailto:ken.chimwejo@sumatra.or">ken.chimwejo@sumatra.or</a> ; 4. <a href="mailto:amos.donto@suamtra.or.tz">amos.donto@suamtra.or.tz</a> ; |
| Place              | Dar-es-Salaam—Tanzania  |

| No | Focus                 | Remarks  |
|----|-----------------------|--|
| A  | Overview              | <ul style="list-style-type: none"> <li>• Est. 2004:IMO membership since 1974; Ratified 21 IMO conventions</li> <li>• Statute: SUMATRA Act, 2001; Merchant Shipping Act 2003. Part of the dual flag state system of the URT.</li> </ul> |
| B  | Important conventions | Ratified by the URT: UNCLOS, SOLAS, STCW, MARPOL-Annex I-V; SAR, SUA 1988, Protocol to SUA 1988, ISPS Code   |

|   |                                  |  |
|---|----------------------------------|--|
| C | Flag State roles                 | <ul style="list-style-type: none"> <li>• Uses Merchant Shipping Act, 2001</li> <li>• Maritime Safety</li> <li>• Coordinator for Tanzania maritime security issues within the TZ maritime domain</li> <li>• Close registry-no ships in the India Ocean</li> <li>• No open registry-Plans are underway to open international registry;</li> <li>• Ships on Lake Victoria=52 ships; Lake Tanganyika= 5 ships; Lake Nyasa= 2.<br/><i>"SUMATRA tonnage couldn't be established"</i>.</li> </ul>   |
| D | Maritime Security                | <ul style="list-style-type: none"> <li>• MRCC,</li> <li>• Piracy Information Sharing Center at Dar-es-salaam</li> <li>• Cooperation with Tanzania People's Defence Force and Police marine</li> </ul>  |
| E | Cooperation in Maritime Security | <ul style="list-style-type: none"> <li>• Part of maritime initiatives of the DCoC; Indian Ocean Commission; AU, IGAD; COMESA and EAC</li> <li>• The EAC Early Warning Mechanism and the Eastern and Southern Africa/Indian Ocean Maritime Security Strategy and Action Plan</li> <li>• EAC Peace and Security Strategy</li> <li>• Cooperation in maritime patrolling and naval exercises at the EAC maritime domain</li> <li>• Maritime security Training at DRTC-</li> <li>• Multinational navies conduct training with navy personnel</li> </ul> |
| F | Port State Control               | <ul style="list-style-type: none"> <li>• Part of IOMOU</li> <li>• SUMATRA undertakes less than 1% of the regional inspections-IOMOU</li> </ul>   |
| G | Challenges                       | <ul style="list-style-type: none"> <li>• Non-SOLAS vessels-controlling of small boats</li> <li>• Lack of Coast guard to enforcing law at sea</li> <li>• Lack of manpower and resources</li> <li>• Capacity building to key staff</li> <li>• Navy doesn't have enough capacity to patrol maritime domain- hardware and manpower</li> </ul>  |
| H | Harmonisation policy-EAC         | <ul style="list-style-type: none"> <li>• What is the chance of having a unified flag state &lt; 40%</li> </ul>   |

### Interview extract E: Zanzibar Maritime Authority (ZMA)

|                    |   |
|--------------------|---|
| Date               | 4-5 August 2014   |
| Person interviewed | 1. Abdi Omar (Director General); 2. Sheikha Mohammed (Registrar); 3. Msilimiwa Iddi (Director of Surveyor); 4. Rashid Ali (Lawyer); 5. Mohammed Haji (Administrator)  |
| Contact            | 1. <a href="mailto:abdiomaalim@gmail.com">abdiomaalim@gmail.com</a> ; 2. <a href="mailto:sheikha_m@yahoo.com">sheikha_m@yahoo.com</a> ; 3. <a href="mailto:msilimiwa@yahoo.com">msilimiwa@yahoo.com</a> ; 4. <a href="mailto:rashidj1981@yahoo.com">rashidj1981@yahoo.com</a> ; 5. <a href="mailto:mohdhajiothman@hotmail.com">mohdhajiothman@hotmail.com</a> |
| Place              | Zanzibar-Tanzania   |

| No. | Focus                            | Remarks   |
|-----|----------------------------------|---|
| A   | Overview                         | <ul style="list-style-type: none"> <li>• Est. 2006:IMO membership since 1974; Ratified 21 IMO conventions</li> <li>• Statute: Zanzibar Maritime Authority Act, 2006; Maritime Transport Act 2009. Part of the dual flag state system of the URT.</li> </ul>   |
| B   | Important conventions            | Ratified by the URT: UNCLOS, SOLAS, STCW, MARPOL-Annex I-V; SAR, SUA 1988, Protocol to SUA 1988, ISPS Code  |
| C   | Flag State roles                 | <ul style="list-style-type: none"> <li>• Uses Maritime Transport Act 2009</li> <li>• Maritime Safety</li> <li>• Maritime Security through the URT umbrella</li> <li>• Close registry (Tanzania Zanzibar Shipping Register), run by ZMA management; and an international registry(Tanzania Zanzibar International Shipping Register)through cooperation between ZMA and Dubai based Agent; Blacklisted on all PSC regimes; ships involved in illicit trade; less control from ZMA; less maritime regulations; MLC unratified-partly causing ships detentions;</li> <li>• Tonnage as at December 2013: local ships-87,500 grt; international-389,000 grt</li> <li>• As at December 2013 51% of TZIRS ships were active; 9% inactive; 35% sold to scrap and 5% deleted. Average age of TZIRS fleet =30-32 years</li> </ul> |
| D   | Maritime Security                | <ul style="list-style-type: none"> <li>• Through SUMATRA</li> <li>• Security of ships= Little has been done; TZIRS ships are not allowed to carry armed guards; maritime security companies are not working with TZIRS; many occasions where TZIRS have been caught with drugs; doing illegal fishing as far as Arctic region.</li> </ul>   |
| E   | Cooperation in Maritime Security | <ul style="list-style-type: none"> <li>• Through SUMATRA</li> <li>• Part of the MRCC-Dar-es-salaam</li> </ul>   |

|   |                          |  |
|---|--------------------------|--|
| F | Port State Control       | <ul style="list-style-type: none"> <li>• Never done in Zanzibar</li> <li>• Tanzania Mainland, approximately less than 1% of the regional inspections-IOMOU</li> </ul>  |
| G | Challenges               | <ul style="list-style-type: none"> <li>• Non-SOLAS vessels-controlling of small boats</li> <li>• Coast guard available but less capable of enforcing law at sea</li> <li>• Lack of manpower and resources</li> <li>• Capacity building to key staff</li> <li>• TZIRS fleet is old, inactive ships, ZMA cannot control the fleet</li> </ul> |
| H | Harmonisation policy-EAC | <ul style="list-style-type: none"> <li>• ZMA is not directly involved in the EAC process.</li> <li>• ZMA is represented in the EAC and the IMO by the SUMATRA</li> <li>• What is the chance of having a unified flag state &lt; 20%</li> </ul>   |

## Appendix 4: Economic Cost of Piracy to the EAC

### Notes and assumptions:

1. All figures are in US\$
2. Calculations are based on year 2011 where the piracy impact in the region was at its highest.
3. All Gross Domestic Product (GDP) are based on current market prices in US\$
4. Shipping costs including surcharges are uniformly applied in the EAC region.
5. The calculation does not include macro effects of piracy to the local economy.
6. Shipping and tourism are the two industries hit very hard by piracy; fishing is less developed in the EAC, hence less affected.
7. The EAC's landlocked states were not included in this calculation.

|   |  | Kenya       | Tanzania    |
|---|--|-------------|-------------|
| A | Costs to the shipping industry   | 400,000,000 |             |
| B | Costs to the shipping industry:<br>Calculation is based on a number of ships called in Tanzania with reference to the ships called in Kenya. In 2011, there were 1,169 ships called at Mombasa, Kenya. In the same year, 932 ships called in Dar es Salaam port. The assumption is that the shipping costs per ship remains the same in the entire region. Costs to Tanzania shipping industry [(932/1,169)* \$ 400,000,000] |             | 318,905,047 |
| C | Container Piracy Surcharge applied to ships calling at East African ports (Mombasa, Dar es Salaam, Nacala and Zanzibar) was \$ 225 per container.<br>Mombasa port: 770,804 containers X \$ 225   | 173,430,900 |             |
| D | Dar-es-Salaam port: 489,981 containers X \$ 225  |             | 110,245,725 |
| E | General cargo piracy surcharge was at \$ 20 per ton. Mombasa port: 19,953 X \$ 20  | 399,060     |             |
| F | Dar-es-Salaam port: 35,000 X \$ 20   |             | 700,000     |

|   |  |                  |             |
|---|--|------------------|-------------|
| G | Revenue lost in tourism industry:<br>The Ocean Beyond Piracy has estimated that in 2011, Kenya lost between \$ 129 and \$ 795. In this study, we decide to take the upper because we do not have any other Marco economic data to support the stress the Kenyan economy has taken as a result of piracy. The figure includes \$ 15,000,000 in loss of revenue caused by non-arrival of 50 cruise liner in that year. Each call generate on average \$ 300,000 from port duties, taxes, immigration, tourism activities and shopping. Total loss was 50 cruise liners X \$ 300,000= \$ 15,000,000.                | 795,000,000      |             |
| H | In Tanzania there is no indication to suggest how much revenue a cruise liner would generate on a single call. It is estimation of this study that the revenue could be 25% less than Kenya. This is due to that fact that tourists spend more time in Kenya then Tanzania, there are more coastal tourism attractions in Kenya than Tanzania, and the Kenya's tourism industry is more organised then that of Tanzania. In 2011, Tanzania expected to receive 20 cruise liners, because of piracy threats, none were turned out. For that reasons, revenue lost in tourism= 75% x \$300,000 X 20 cruise liners. |                  | 4,500,000   |
| I | Total economic costs as a result of piracy   | 1,368,829,960    | 434,350,772 |
| J | GDPs in 2011   | 41.95            | 33.9        |
| K | % of economic costs of piracy to Kenya and Tanzania's economies  | 3.26%            | 1.28%       |
| L | Total economic costs of piracy to the EAC (Kenya = 1,368,829,960 + Tanzania 434,350,772)   | 1,803,350,772    |             |
| L | EAC's GDP in 2011  | 112,518,000,000  |             |
| M | Economic costs of piracy to the EAC (1,803,350,772/112,518,000,000)  | <b><u>2%</u></b> |             |

### Appendix 5: Unified Flag state: Interviewees response

|  |            |           |                 |              |
|--|------------|-----------|-----------------|--------------|
| Total persons interviewed  | 52         | 100%      |                 |              |
| Total persons asked about the possibilities of the EAC to established a unified flag state   | 35         | 67%       |                 |              |
| <b>Question asked</b>  | <b>YES</b> | <b>NO</b> | <b>NOT SURE</b> | <b>Total</b> |
| a) Is it practical and legal feasible for the EAC to create the unified flag state in its current status?  | 0%         | 85%       | 15%             | 100%         |
| b) Is it practical and legal feasible for the EAC to harmonise its maritime safety and ship security policies?                                     | 65%        | 30%       | 5%              | 100%         |
| c) Is it legal and practical feasible for the EAC to establish a maritime institution that would be responsible for all regional maritime affairs? | 90%        | 5%        | 5%              | 100%         |

**Appendix 6: Costs estimate needed to patrol and monitor the EAC maritime domain per year**

|   | Description   | nm <sup>2</sup> | Costs in US\$            |
|---|---|-----------------|--------------------------|
| A | In 2012, Somali pirates were operating on sea area of about 2,500,000 square nautical miles (nm). The areas include the Gulf of Aden, the Somali Basin, the Arabian Sea, the Western Indian Ocean, the East African region including the EAC and Madagascar. Most of these areas were under previous High Risk Area (HRA) | 2,500,000       |                          |
| B | Military costs incurred by international military operation in 2012 to portal part of the HRA.  |                 | 1,090,000,000            |
| C | Costs per day per square nautical miles: (A/B)/365  |                 | 1.2                      |
| D | EAC maritime domain= 384,000 km <sup>2</sup>  | 112,000         |                          |
| E | Costs per day to patrol the EAC maritime domain: (C*D)  |                 | 133,786                  |
| F | Costs per annum to patrol the EAC maritime domain: (C*D)  |                 | <b><u>48,832,000</u></b> |
| G | Military budgets of Kenya, Tanzania and Uganda combined. (See Table 2 on page 71 )  |                 | 134,000,000              |
| H | % of military budget: (F/G)   |                 | <b><u>36%</u></b>        |

### Appendix 7: Author's Publications up to September 2016

| S/No. | Details  | Journal   | Status                          |
|-------|--|---|---------------------------------|
| 1     | Flag of Convenience Practice: A Threat to Maritime Safety and Security.  | <i>IJRDO-Journal of Social Science and Humanities Research</i>    | Vol.1 No. 8 (2016). pp. 207-230 |
| 2     | The Roles of Flag States in Maritime Security Governance: A Case Study of the East African Community.  | <i>Research on Humanities and Social Science Journal</i>          | Vol.6 No. 14 (2016). pp. 95-102 |
| 3     | "Neo-Functionalism": Relevancy for East African Community Political Integration?   | <i>Africology: The Journal of Pan African Studies</i>             | Vol.9 No. 8 (2016). pp. 67-79   |
| 4     | Maritime terrorism: Why the East African Community is the Next Potential Target of Maritime Terrorism  | <i>Research on Humanities and Social Science Journal</i>          | Vol.6, No.6 (2016). pp.126-133  |
| 5     | Corporate Social Responsibility (CSR) in the Shipping Industry: A Disturbing Mechanism Between Maritime Security Needs and Seafarers' Welfare. | <i>Studies of Organisational Management &amp; Sustainability.</i> | Vol. 3, No. 1 (2015). pp. 1-13. |
| 6     | Transformational Leadership Theory: Why Military Leaders are More Charismatic and Transformational?  | <i>International Journal on Leadership.</i>                       | Vol. 3, No. 1 (2015). pp. 1-8.  |