

**ADVANCING SECURITY IN EAST AFRICA COASTAL**

**REGION THROUGH MARITIME STRATEGY:**

**CASE OF KENYA**

**BY**

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**A research proposal submitted to the Institute of Diplomacy and International Studies in partial fulfilment of the requirement for the conferment of a degree of Master of Arts in International Studies**

**University of Nairobi**

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**DECLARATION**

I, Kombo Kitimo Modest, do hereby declare that this is my original work and has never been submitted to any institution of higher learning.

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Kombo Kitimo Modest

The research proposal has been submitted for examination with my approval as university supervisor.

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## **ABBREVIATIONS AND ACRONYMS**

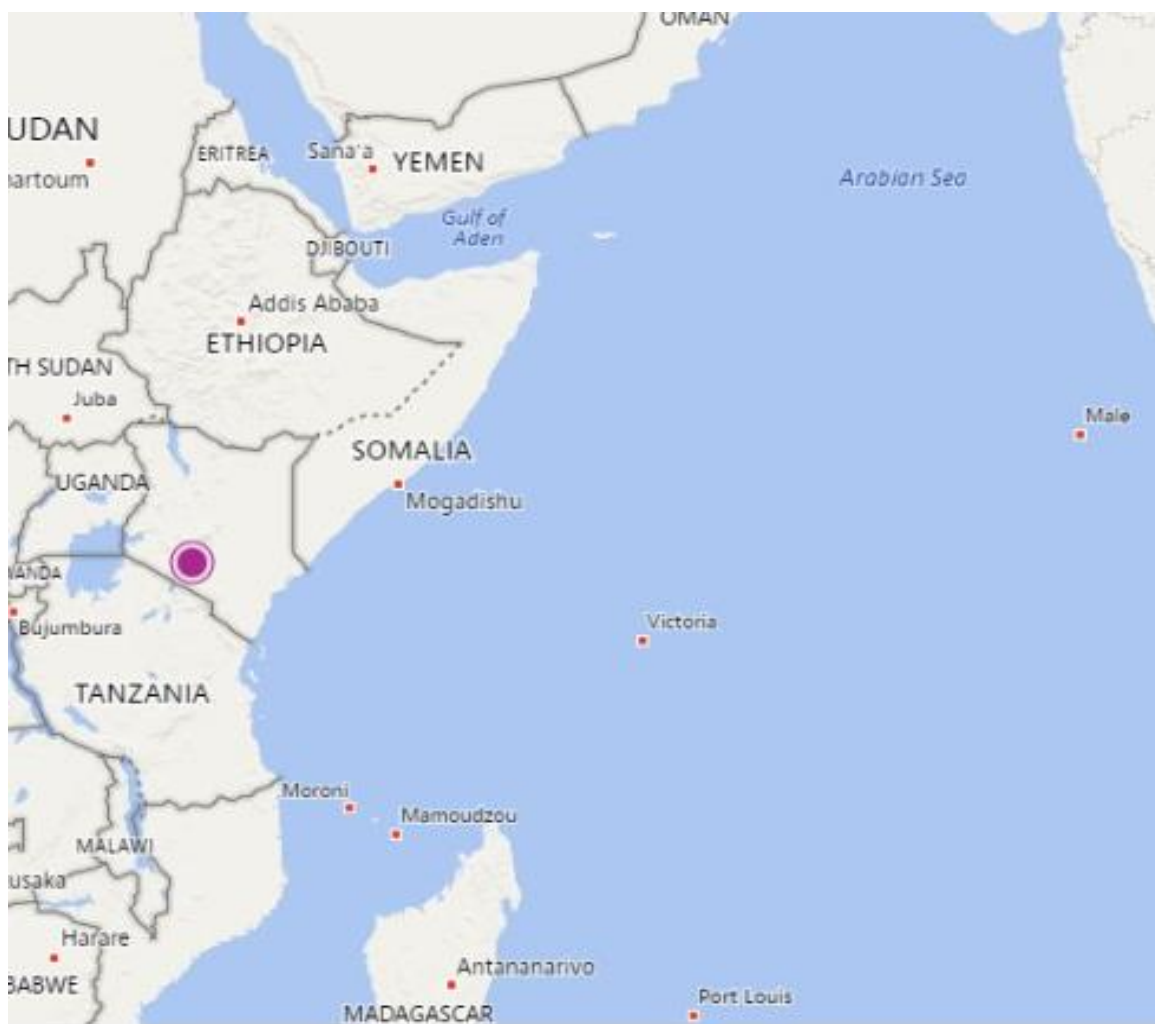
AMISOM	African Union Mission in Somalia
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
AQ-AP	Al-Qaeda in the Arabian Peninsula
CS	Continental shelf
EEZ	Exclusive economic zone
EU NAVFOR	European Union Naval Task Force
HRA	High risk area
ICZM	Integrated Coastal Zone Management
ISM	International Safety Management
ID	Identification
IMO	International Maritime Organization
IOR	Indian Ocean Region
IRTC	Internationally Recognized Transit Corridor
ISPS	International Ship and Port Facility Security
IUU	Illegal, Unregulated, Unreported
LOS	Law of the Sea
LRIT	Long-Range Identification and Tracking
LRQA	Lloyd's Register Quality Assurance
MDA	Maritime Domain Awareness
MPA	Maritime Patrol Aircraft
MSO	Maritime Security Operations
P&I	Protection and Indemnity
PCASP	Privately contracted armed security personnel

PMSC	Private Military Security Company
SALW	Small Arms and Light Weapons
SAR	Search and Rescue
SID	Seafarers' Identity Documents
SNMG	Standing Naval Maritime Group
SOLAS	Convention on Safety of Life at Sea
SLOCs	Sea Lines Of Communications
SUA	Suppression of Unlawful Acts
SSP	Ships Security Plan
SIRC	Seafarers International Research Centre
TV	Television
UNSC	United Nations Security Council
UNCTAD	United Nations Conference on Trade and Development
UNCLOS	United Nations Convention on the Law of the Sea
USCG	United States Coast Guard
WBIED	Water-borne implemented explosive device
VBSS	Vessel Boarding, Search, and Seizure
VLCC	Very-large crude carrier
PCASP	Private Contracted Armed Security Personnel
RSL	Returned and Services League

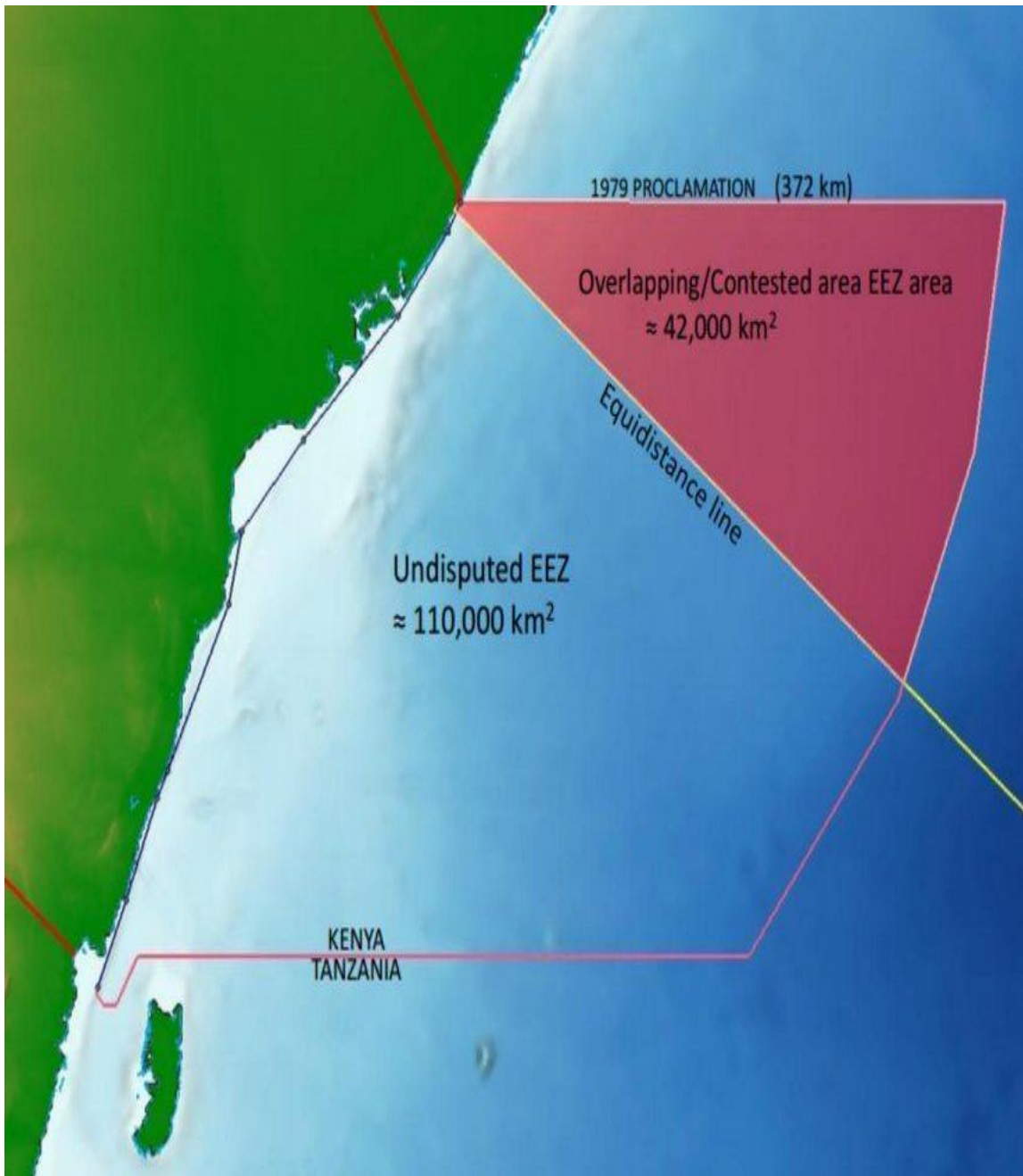
## **Abstract**

There exist multilateral initiatives on maritime security in place of which the UNSC; the European Union; the G8 Associates of the Gulf of Guinea Marine Experts Group; Interpol; the Atlantic Initiative and the African Union 2050 AIM Strategy are adopting. The fact ought to be made that definite activities have been taken at the state, regional, and international echelons in undertaking measures on marine safety challenges (African Union, 2009). Thus, there is need to place in African and sub-regional approaches for the protection of brinies and oceans, for armistice, stability and security for African marine space to be the key influence for sustainable development economically. There is necessity to encourage regional collaboration and raise mindfulness of key seafaring safety challenges transversely in Africa and proceed actions to combat the contests. The poor execution at national level on legitimate provisions scours off at the regional nonexistence of an integral framework to discourse marine safety contests. This gap is somewhat because of the failure and disinclination of discrete African Countries to bring under control international maritime security accords to which they willingly consented to. Countries should complement their state legislations to reinforce regional ability to engross with marine security contests. Several establishments have supported African States in tackling maritime security challenges. The African Countries should upsurge to address the legislation and policy fissure in maritime security. Countries in the region should work to consolidate discrete and collective strategies on marine security in reference to document framework, similar to a maritime security blue print. Maritime safety has no commonly accepted connotation, but it refers to fears such as inter-state maritime disagreements, piracy, marine terrorism, narcotics trading, proliferation of individuals, unlawful goods and arms, environmental crimes, illegitimate fishing, marine disasters and accidents. Two key areas are involved in the issue of marine security: maritime security and development for regional and intercontinental cooperation. Commending determinations like the Codes of Conduct for Djibouti and Gulf of Guinea, though calling for African States commit resources in combating profusely maritime threats. The case of AIM 2050 strategy offers a general understanding of marine safety encompassing the social, commercial, and environmental and safety scopes.





**Figure 1: High Risk Piracy Attack**



**Figure 2: Disputed maritime border between Kenya and Somalia**

## CHAPTER ONE

### INTRODUCTION

#### 1.0 Background to the study

Alfred Thayer Mahan (1860-1914) acknowledged the connotation of the marine in the theory of Sea and Naval strategy with the influence of Sea Power, 1660-1783” and ‘The Impact of Sea Power, 1793-1812 upon the French Uprising and the Empire,’. He notes that given the relation between affluence and maritime commerce, the sea is unavoidably the major dome of rivalry and conflict among nations seeking wealth and power.<sup>1</sup> Mahan supposed that national enormity was indissolubly linked with the sea, its viable use in peace and control in war. Therefore, the capacity to move freely on the sea and to constrain as need be is a critical consideration.

The oceans are enormous, complex, and dangerous, encompassing approximately 75% of the world surface. Historically they executed two significant functions: as a communication medium and as a pool of living and non-living resources<sup>2</sup>. In today’s ecosphere there are few places as pertinent to national security or as possibly perilous as the uncluttered ocean. In relation to maritime commerce, more than 90% of trade globally moves on the waters, conveyed in millions of vessels on an estimated 184,000 ships flagged by approximately 150 nations, navigating the oceans for more than 10,000 ports internationally, carrying more than twenty million shipping container and one million seafarers on board. Furthermore, there are many vessels used for military, research, fishing, recreation and other special purposes, muddling the maritime picture exponentially.

The UNCTAD notes that the manoeuvre of commercial ships has been on the increase throughout the last century leading to upsurges in total trade volume as shippers explore potential of the high seas. This viewpoint is fuelled by the increasing development and the national economies liberalization due to free trade and a growth in call for buyer products. This notwithstanding, expansions in knowledge

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<sup>1</sup> Alfred Thayer Mahan, 1660–1783, The Influence of Sea Power Upon History

<sup>2</sup> Malcolm N. Shaw, 2008, International law, Maritime Delimitation, Cambridge University

have made shipping an increasingly efficient and quick system of transportation. Additionally, the increasing size of ships, growing amount of cargo, more advanced operating systems, and swelling numbers of ships that ply the waters give rise to opportunities for abuse by criminal groups much as it complicates security requirements for concerned actors.

The African maritime territory covers around 26,000 kilometres which includes the sea bed and the air above it<sup>3</sup>. This enormous jurisdiction offers challenges to African countries meeting the obligations of coverage as itemised in the United Nations Convention on the law of the sea. Continentally, there are thirty-three (33) coastal states, islands, and 15 landlocked countries which all depend on the well-functioning of the maritime sphere. There are also multiple resources and international shipping lines dependent on this maritime sphere for their business, thus raising the need for effective protection.

From around the year 2005, there has been an increased scholarly debate on African maritime security with the indication of the growing recognition of the vast potential which the sector holds<sup>4</sup>. The 2009 African Maritime Transport Charter and Action Plan and the resolutions on maritime safety, security and protection of maritime domain, indicates growing sectorial concern. Since 2005 African navies have enhanced their maritime awareness through the biannual Sea Power for Africa symposium. In 2010 African countries agreed on a common Integrated Maritime Security Strategy (IMSS) towards 2050. The entire global oceans depend on both international and national jurisdictional enforcement to ensure maximum utilization of maritime realm. As recognition of the value and wealth in the maritime domain increases, there is bound to be increased maritime boundary disputes catalysed by marine resources including oil and gas.

East African maritime domain stretches from all the way from the Gulf of Eden and South Africa and the Red Sea. By 2011, Kenya, Somalia, Tanzania and Mozambique had recorded some form of

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<sup>3</sup> Francois Very, (2016). African maritime security: A time for good order at sea, Aust J Merit Ocean

<sup>4</sup> Ulrik Trolle Smed (2015). Navigating Narrow Seas – Strategic Culture and Small State Influence Seeking on the International Counterpiracy Agenda

attacks in their maritime domain. The region faces a number of maritime security threats namely, piracy, terrorism, illegal, unreported and unregulated fishing, pollution, drugs trafficking, armed robbery, and states instability with active rebel groups using the sea for economic and military purposes. Occasional piracy along the Somali coast continues to pose threats to international sea trade<sup>5</sup>. There have been a number of piracy and kidnapping incidents together with trading in illicit goods, trafficking of women and narcotics across international waters. Al Shababu and other international terrorists spread insecurity from sea to land attacking civilians and undermining transport routes. Kenya shares land and sea border with Somalia, a situation that increases vulnerability to cross border insecurity.

Currently, there is no East African Community (EAC) maritime strategy and joint operations program. A number of measures for effective response to Somali piracy were put in place by the African Union (AU), the Development Inter-Governmental Authority and the Government of Kenya have not been fully effective hence leaving a gap. The IMO supported the 2009 Djibouti Code of Conduct created a framework for international cooperation among the 20 signatories with naval forces in the region<sup>6</sup>.

Kenya has a coastline of about 536 kilometres which is scarcely policed. A maritime multi-pronged security approach is required to address sea and land based insecurity. This would bring political, military, diplomatic and financial resources including international cooperation to bear on policing of sea along the East African region. Article 2 (6) of the Kenya constitution 2010 made international laws ratified by the government of Kenya thus automatically making them applicable in the domestic law<sup>7</sup>. Bilateral agreements such as that between Kenya and the US on handling maritime security threats are not based on domestic law and therefore cannot stand legal challenge in courts of law. The 200 nautical miles Kenya's Exclusive Economic Zone too, has not been researched and gauged its

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<sup>5</sup>Francois Vreÿ, 2015, Good Order at Sea off West Africa, in Towards Good Order at Sea: African Experiences, ed.

<sup>6</sup> Bueger C.,2014,Piracy Studies: Academic responses to the return of an ancient menace, cooperation conflict

<sup>7</sup> Kenya Constitution 2010

potential. This zone is natural resources rich with minerals such as oil and gas, exclusive marine species, bio diversity and tuna fish. The zone is usually sparsely governed thereby opening space for illegal exploitation. Though Al Shabab does not have maritime capability to pose significant threat, its counter-part, Al Qaeda can deliver attacks on the sea<sup>8</sup>.

Some of the causes attributed to EEZ vulnerability in Kenya are; jurisdiction and legal weakness, geographical proximity, threatened security, maritime skills, safe base areas, fascinating and active leadership and state provision. Given the strategic importance of the sea ports in Somalia such as Barawe and Kismayo and the presence of the above conditions, Al Shabab attacks in the sea are not far-fetched. Ports such as Mombasa have been found to be vulnerable to maritime attacks. However, with assistance from US government, security at the port was enhanced. These improvements centred on electronic and physical surveillance systems and increased police and security presence<sup>9</sup>. Corruption like any other menace is a threat to Kenyan port too and this is a serious problem. Kenyan ports also lack apparatus and training needed to spot divers using optic netting and port radars.

Kenya is a state party to the code on International Ship & Port Security (ISPS) but its implementation is still doubtful perhaps due to lack of funds to comply with the code<sup>10</sup>. Given evidence of Al Shabab and ISIS recruitment and radicalization in Mombasa County, maritime terrorism cannot be ignored<sup>11</sup>. Al Shabab infiltration in Kenya's North-Eastern Somali speaking region is also well documented. Al Shabab is said to be directly benefitting from Somali diaspora remittances through Kenya and Somali local businesses to finance their activities. With global remittances to Somalia averaging US\$ 500 million – US \$ 1 billion, Al Shabab has managed to recruit non-Somali ethnic groups in Kenya making its operations more discreet and difficult to detect.

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<sup>8</sup> Barnett R.M, 2013. Next terrorist attack: AL Qaeda's Maritime History and ambitions, Africa Consultancy Intelligence

<sup>9</sup>Hamad, B, 2016. Maritime Security Concerns of the East African Community.

<sup>10</sup>UNCTAD 2007. Maritime security: International Ship and Port Facilities Security code implementation, costs and related financing. United Nation Publication

<sup>11</sup> Botha, A. 2014. Assessing the Vulnerability of Kenyan Youths to Radicalization and Extremism. Institute for Security Studies (ISS) Paper, No. 245

There are a number of factors that make Kenya vulnerable to maritime insecurity mainly the conflict in the neighbourhood of Somalia which provides easy operations and movement of Al Shabab resources and military hardware, in addition there is no effective regional or national maritime security strategy and Maritime Domain Awareness (MDA) advocacy program. This all refers to actual understanding of anything related to maritime domain that can have an influence on safety, security, economy or even environment. Though Kenya does police its EEZ, the sheer size of the domain and low capacity of enforcement agencies makes effective surveillance difficult. The Navy performs both policing and warfare roles with the already available maritime assets which might not be adequate. This notwithstanding, there is also limited sharing of maritime intelligence with neighbouring countries. In order to boost its capacity, the Kenyan Navy acquired a new Spanish-made Offshore Patrol Ship named JASIRI in 2012 to add to its fleet to patrol and watch over its territorial waters<sup>12</sup>. The Kenyan navy's successful liberation of Kismayu in 2012 from Al Shabab through an amphibious assault proves that there is potential for actual regional maritime security. Though Kenya passed the anti-terrorism law in 2002 with subsequent amendments, there are still challenges of effective deterrence, judicial convictions leading to extra-judicial methods and money laundering has not been curtailed<sup>13</sup>. Kenyan courts can try piracy crimes committed within and outside Kenya's jurisdiction and from any nationality. The establishment of the international crimes division at the High Court in 2012 has enhanced determination of such cases. Judicial officers have not had adequate training on international maritime law and other relevant laws and conventions. Kenya's judicial initiatives against piracy are not complemented by a comprehensive anti-piracy policy and no money laundering law to facilitate seizure of proceeds from piracy.

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<sup>12</sup> Martin, G. 2013. Kenyan Navy's newest Warship takes its Fight to Somalia.

<sup>13</sup> Hamad, H.B 2016. Maritime Terrorism: Why the East African Community is the next Potential Target of Maritime Terrorism University of Greenwich: London, UK

## **1.2 Statement of the problem**

It is estimated that 90% of world trade is steered through maritime domain which is faced by insecurity in the form of restricted sea lines of communication, safety of maritime operators ( sailors, seafarers), safety of sea vessels/crafts, illegal fishing in territorial waters and pollution of the sea environment. The African Union's Africa Integrated Maritime Strategy (AIMS) which was recently drafted recognizes the centrality of maritime security within the AU's Common African Defence and Security Policy (CADSP) of the Security Architecture of Africa Peace. AIMS provide albeit, ambitious and loose strategic framework for security achievement in the continental maritime domain.

East Africa maritime space is subjected to a number of threats which include terrorism, piracy, illicit trading, Small Arms and light weapons proliferation, illicit drugs smuggling, human trafficking, environmental degradation among others. Kenya on its part and more so the east African countries does not have a maritime security strategy and therefore the maritime domain is not formally integrated into the national security policies and strategies. Similarly other states Tanzania and Somalia do not have a coast guard that can boost contributions of their national Navies, maritime police, customs and border security, private security companies, Kenya Wildlife Service, Kenya Forest Service among others to enhance maritime security. Lack of a maritime strategy increases this domain vulnerability, inefficiency and ineffectiveness of security sector organizations. This factor also militates against optimal exploitation of the proposed Kenya's blue economy.

Given Kenya's commitment to develop its blue economy, research focused on information necessary for improving maritime domain awareness and mainly the security is timely. The study will have both academic and practical value through the introduction of new pathways for up to date data on maritime awareness and security in Kenya. Stable and secure Kenya maritime domain will promote national interests as well as facilitating movement of international vessels along the Indian Ocean. Policy makers lack reliable information for risks assessment and mitigation in the complex and



uncertain maritime environment<sup>14</sup>. Timely information is crucial for enforcement of existing laws and regulations on maritime security.

### **1.3 Purpose of the study**

The study is intended at finding out how maritime strategy can assist in advancing security in East Africa's coastal region generally and Kenya in particular.

### **1.4 General objective**

The study aims at examining how to advance maritime security through maritime strategies in Kenya's coastal region.

#### **1.4.1 Specific objectives**

- i. To evaluate the contemporary maritime environment and its vulnerability to threats especially after the September 11 attacks in the US.
- ii. To assess the implications, realities, and maritime security effects on merchant shipping.
- iii. To analyse the international pacts dealing with armed robbery, piracy, and maritime terrorism touching on maritime vessels and structures.
- iv. To evaluate strategies and legal framework to improve maritime security
- v. To conclude and explore possible recommendations.

### **1.5 Research questions**

- i. What is the influence of regional and national agencies that have maritime responsibilities?
- ii. Are there mechanisms for interagency cooperation and coordination on maritime matters?
- iii. Is there any impact on national security through maritime security policies and strategies?
- iv. What are challenges and options available for effective implementation of the policies?

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<sup>14</sup> Rosenau, W. (2013). Piracy, Illegal Fishing and Maritime Insecurity in Somalia, Kenya and Tanzania. Center for Naval Analysis, Washington, DC.

## **1.6 Significance of the study**

The study will be useful in various maritime security stakeholders and maritime policy makers whose aim is to advance maritime security strategies in the East Africa's coastal region. Policy makers and security stakeholders will similarly profit from the study outcomes by directing them in formulating new policies on advancing maritime security in the region, particularly Kenya. The study is also useful to Kenya Maritime Authority because it will shed some light on the type of challenges maritime security face, and the way forward in order to improve regional maritime security. The policy makers such as the ministry responsible for maritime security will find this valuable in their objectives to provide quality marine security in the area, precisely Kenya. With the inevitable significance of marine business to the reliability of the international economy, safety in the maritime system remains of dynamic interest to practitioners alike in commercial and governmental scopes. Extensive piracy, criminal trading and violence complex the infrastructure susceptibility, vessels and chains of supply in this enormous environment. As a concern, coast guards and navies are acclimatizing themselves to challenge irregular and criminal fears in the conservation of their crucial function in helping achieve marine security. They affect an indebtedness of the fears and susceptibilities within this setting as the dominant criterion for conducting operations for Marine Security.

## **1.7 Literature Review**

Inclusive marine security has been over and done with conducting of essential deviations in the past decades. Many variations were obligatory and long outstanding, though others seeming to have generated situations where only beneficiaries seem to be safety services and apparatus providers. This backdrop through this thesis sets to offer a realism check. Bringing together an array of diverse viewpoints of key marine concerns from all over but focusing in East Africa coastline. It includes sections that sightsee the policy, effective and lawful realities in the newfangled marine security processes prompted by the post 9/11. The study is intends at capacitating those with concern in the

facet of the safety measures. The concern may be overall in marine security such as implementing the ISPS Code, executing and devising practical measures on maritime security in port and at sea, or in considering security fears and jeopardies intrinsic in the enormous and regularly impervious dominion of global shipping.

### **1.7.1 Measures in Marine Security**

The innovative measures on marine security encompass those in the international, regional, and domestic heights. At the international height, the ISPS Code, the SOLAS Convention (1974), the 2005 Protocol to the Convention for the SUA besides the Safety of Marine Navigation, the revised SID Convention 2003, and tactics to present a universal system for the LRIT of ships are important. There are measures prompted straight by the United States, predominantly the Customs Trade Partnership against Terrorism, the Container Security Initiative and the 24-hour manifest regulation. Regionally measures include the Asia-Pacific Economic Cooperation forum for attainment of Secure Trade in the Asia-Pacific Region, North Atlantic Treaty Organization's, the African Integrated Marine strategy and the Operation Active Endeavor. Utmost glitches have been met at the state level, relating to physical security endowment for ports and ships as well as to safety in the marine environs and of incoming freights. The national marine staff, managements have prolonged to managing and implementing new strategies to attain the security strains. Irrespective of the nation size, there is a first-rate on the efficacy of interagency direction. For developed countries it was comparatively easy to instrument the new international measures; predominantly the US that have an actual marine and coastline guard administration. Though, unindustrialized countries that profoundly involved in freight face greater problems. Most countries have proficient hitches in introducing actions to deliver secure and dependable documentation for workers in the maritime system. Additional barriers have been in place due to new measures in the global business and few refute that ship owners, shippers and port operators face increased costs. Shipping companies have laid off Seafarers of the Muslim faith as a concern of the restrictions levied on their vessels when they dock in ports in the American region.

### **1.7.2 Security**

This is a conversant question for planners in defense in defining how much security is enough. Likewise, there is a task by means of provision of marine security in contradiction of the risk of marine terrorism to find the correct poise between valuations of jeopardy and realistic costs. It is not just the identification of threats and possible scenarios, but the need to evaluate likelihoods of risk to direct policy in achieving a realistic resources distribution. It is a standard practice for control divisions to proposition for more capitals than their budget can permit. In security organizations, comprehensive methodical procedures assess new acquisition bids. Conversely, due to distrust about acuities of a crucial necessity resulting to 9/11 to make a key enhancement in marine security, there appears to be little testing on maritime risk valuations and antiterrorism actions. These were proclaimed by the regime, prompting the private division to conform. This condition was not satisfactory, predominantly for a lengthier term. There is a necessity for more transparency in the procedure to avoid extreme blames positioned to the industry.

### **1.7.3 Beneficiary in Maritime Security**

This is a query at the state level of allotment the weight between the private and public sectors. At a global arena, the condition becomes complex with matters of globalization and further impartiality, between the industrialized and the emerging domains. Though, the elementary norm applies of the one benefitting from enhanced marine security to meet the outlays of supplementary security. Expecting the concerned industry to endure the full outlays on new safety measures, the government treats these measures as if the benefits ensue singularly the shipper, ship owner, port, and the operator of port facilities. Nevertheless it is the public that ultimately is made safe. At least, the novel marine security processes exhibit lots of features of a “public good” with benefits that are indivisible. If the measures are solely treated as “private goods” with profits for the industry entirely, then certainly the industry will do the slightest possible to comply with principles. A discrepancy can be drawn amid the physical measures outlays to a ship protection evident through the outlays of meeting the ISPS

Code requirements or a port and port facilities through the physical safety enhancement with access controls, edge fencing and closed circuit television and other operational processes allied with averting such as patrolling of harbors, responding to terrorist attack in the maritime system. The previous encompasses the outlays of doing trade and primarily be borne by the proprietor, ship operative or facility. However, the final display more of the public good attributes. Their goal is not to guard the ship, the public from an enormous disaster and its magnitudes calling for national administrations to bear these outlays. At the international scale, the circumstances are more difficult, being a matter of problem sharing, and debatably the greatest recipients are the industrialized countries to the new security processes. Largely, less concerned about the terrorist threat have been exhibited by developing countries, though they also face bigger costs with elevation of port facilities to conform to the Code of ISPS and in providing new government apparatus to superintend the new provisions in seafarers training and licensing. Definitely, there are great outlays for the nations in the developed scale as well, though they are the major beneficiaries.

### **1.8 Theoretical Framework**

This study is informed by Regional Security Complex theory (RSCT) which was advanced in 2003 by Buzan and Weaver work on Regions and Power focusing on The Structure of Global Security. The idea of regional security multiplexes covers how safety is bundled in physically formed regions. Safety fears do not foldaway well over spaces and coercions are therefore in record likely to be regional. The safety of regional actors interacts with other actors, with deep safety interdependence in a region, though not amid regions, hence defining regional safety and security as an interesting area of study. This theory will support the recommendation of the best way forward for a combined East African countries strategy to develop maritime policies to guide operations in the maritime domain. Integration contests will revolve around how best to reconcile top down maritime integration contained visions in the Regional Economic Communities (RECS) ant the African Union (AU), through strategies incorporating the bottom-up realities of working together among member states on

issues touching on joint resource extraction, boundary demarcation, sharing information especially sensitive information on naval capability. Reconciliation between the visions and realities is obliging interstate collaboration at the crucial stage of implementing maritime strategy, through creating and reinforcing a common unwillingness to review sovereignty to either pooling or sharing. 2050 AIMS contain potentially transformative and innovative concepts like the Combined Exclusive Maritime Zone of Africa CEMZA, that need urgent and better research and implementation.

Maritime safety conventionally refers to prevention and management of maritime natural disasters and threats while maritime security addresses threats caused by man-made activities. Maritime security threats can be brought by natural weather conditions such as floods, storms, hurricanes or man-made interventions such as access to sea denial by states or non-state armed groups, pirates, smugglers, poachers, polluters and illegal immigrants. Maritime security includes resource utilization, protection of maritime trade, jurisdiction of accountable authorities and environmental protection. Security in the Maritime includes the performed military actions and other government agencies to counter illegal activities in the maritime environment. Maritime security is also predicated on the concept of ocean governance where states accede to international agreements on secure exploitation of resources, protection of maritime environment and open access to international trade routes

### **1.8.1 Limitation of the study**

The study will be conducted within the East African region in general, and Kenya in particular. The study will be limited to the use of existing literature which includes books, journals, periodicals, and other publications from reputable sources. Internet will also be used sparingly.

### **1.8.2 Assumptions of the study**

The study assumes that there exists maritime strategies and policies that govern the advancement of security maritime system in the East Africa's coastal region and that those charged with the responsibility of implementing the same, are aware of the existence of such strategies and policies.

The study also assumes that there is adequate funding towards the implementation of the same policies and strategies in the context of safeguarding marine life the East Africa's coastal region.

### **1.9 Organization of the study**

The research study will be structured into 5 sections. The first section will entail the background to the study, the statement of the problem, the purpose of the study, research objectives and research questions. Instruments to be used in data collection, validity and reliability will also be covered. The limitation and delimitation of the study will be outlined, along the significance of the study with the basic assumption. Chapter two give account on the assessment of maritime security. Chapter three will highlights maritime threats to the different types of ships and the necessary responses. Chapter four will focus on the existing legal framework and maritime strategies. Chapter five will have the summary, conclusion and recommendations.

### **1.10 Research Methodology**

The section describes the research design, population targeted, the size of population to be sampled, and procedure in sampling, research data collection instruments, instruments used in the research validity and reliability, the procedure used in collecting the data, what techniques will be used to analyze the data, and the ethical issues involved in research. The study will engagement a descriptive survey design which adopts a mixed methods approach of quantitative and qualitative data. However, it will mainly concentrate on qualitative data. Descriptive survey designs are used in preliminary and exploratory studies to allow the researchers to gather information, summarize, present, and interpret for the purpose of clarification<sup>15</sup>. Another perception of descriptive research is determining and reporting the ways things are without manipulating the variables<sup>16</sup>.

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<sup>15</sup> Orodho A.J, 200, Techniques of writing research proposals and reports in Education and Social Sciences. Nairobi: Masola Publishers.

<sup>16</sup> Mugenda and Mugenda, A.G, 1999. Research Methods: Quantitative and Qualification Approaches. Nairobi: Acts Press.

### **1.12 Target population**

Target population is the complete set of individuals, cases, objects with mutual observable characteristics. The target population is Kenya, one of the countries in East Africa region with a special interest in exploring advancing security in East Africa's coastal region through maritime strategy. The study population is considered appropriate because of the modern example it depicts about maritime strategy concept which is already in existence but not well practiced. Besides, the population is endowed with resources which incidentally do not seem to be fully exploited in order to benefit the public.

### **1.13 Sampling Procedures**

Sampling will be restricted to persons working in the maritime industry mainly Kenya Port Authority, maritime police, the Kenya Navy, Kenya Maritime Authority, Kenya fisheries, Kenya marine wildlife services and officials of Seafarers' Association of Kenya. Sampling will involve focused group discussion of pilots, sailors, and maritime security practitioners. However, this is a qualitative research which is essentially grounded on theory in the study of the advancing security in East Africa's coastal region through maritime strategy. Hence, the literature will be obtained through non-probability sampling from past works by various scholars in form of books, periodicals and reports, various credible internet sites and documents from international organizations. Sampling procedure describes the selection of literature that will be used as synthesis and narratives for the analysis in the study. The literature will be obtained through non-probability or purposive sampling from past works by various scholars in form of books, various periodicals and reports, various credible internet sites and documents from international organizations. The non-probability sampling will then be used for the analysis of the study.

### **1.14 Data Processing**

In this case study, the researcher will use questionnaire to guide in collecting data from maritime operations practitioners. Past documents will be analyzed to unveil past and historical facts in order to



understand circumstances that will lead to the advancing security in East Africa coastal region through maritime strategy. Non-probability sampling will be used to collect data. This will be grounded in existing literature which will be used to explain and advance acumen and understanding of the phenomenon through exhaustive collection of narrative data. Since it is inductive and subjective, holistic and procedure oriented, it is evolving, tentative and based on the potential of advancing security in East Africa's coastal region through maritime strategy. Since it will be grounded on theory, document analysis guide will be used and will involve synthesis and narratives. Informal interaction with persons who have interacted with the Kenya's maritime security organs and other stake holders through informal interviews will form part of the primary data. The data will then be corroborated with other written work in form of secondary data. This will be through collection of data from various sources including library books, manuals, periodicals, and internet. Secondary data in this study will be through the existing literature to be obtained through the library in form of books, journals, and manuals, periodicals, which will be corroborated with primary data. Extensive use of the internet will also be made to supplement the available data from different scholars. Data analysis entails reducing raw data into a manageable data for ease of analysis through coding into categories for ease of interpretation. In this study, raw data will consist of informal interviews and written literature involving synthesis and narratives. To explore the advancing security in East Africa's coastal region through maritime strategy will then be established using narrative method. Data from existing literature will then be organized, interpreted, and presented. Conclusions will be general and the findings will be transferable.

## CHAPTER TWO

### CHARACTER OF MARITIME SECURITY THREATS

#### 2.0 Overview of Maritime Security

Threats in the Marine security are presently branded by attacks and unlawful deeds, involving piracy and extremism as the two utmost extensively used. The need aimed at media to simplify argument, makes these deeds as being conducted by “pirates” or “terrorists.” Profound consideration of maritime domain safety pressures are much more complex, calling for a necessary careful analysis of the potential perpetrators<sup>17</sup>. These pressures ought to be understood in a whole viewpoint where every pertinent security pressures are talked about and the identification of gray areas amid these intimidations explained. Concentrating on specific and individual measures of these pressures can be speculative concern, though may not provide a beneficial basis for managing of risk methodology for the individuals responsible for chartering, tasking, operating, guarding containers and amenities in the offshore and shipping field. Relevant security threats have been labelled to assist the shareholder understand the eventual goal of the association behind the dangers and thus, intent, inspiration, and strategies choice. In the course, the design discloses that most of today’s maritime crime deeds are executed by planned crime syndicates, organizations and insurgency assemblages rather than the terrorists or traditional pirates. Investigation in the recent past, has been motivated by the terrorist threat attacks in contradiction of seafaring aims branded “maritime terrorism”<sup>18</sup>. Acts of terrorism against maritime targets have majority been perpetrated against vessels meant for passenger carrying such as cruise ships and ferries. These targets have resulted in the highest publicity level intended for the cause of the fanatics where the goal is basically governmental in nature. Occurrences of such occurrences take account of the 1961 Santa Maria, the 1985 Achille Lauro off Somali Coast, the 1998 City of Poros, the 2000 Our Lady of Mediatrix, and the 14 in 2004 Super Ferry. Further outbreaks have stood focused in contradiction of army goals like the 2002 USS Cole in Yemen. However,

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<sup>17</sup> Dr Boaz Ganor, ICT (International Institute for Counter-Terrorism), Israel

<sup>18</sup> Howard Abadinski, 1994, Organized Crime, Nelson-Hall, Chicago

reasonably few attacks have been conducted on profitable shipment containers, however, distinguished instances of attacks in contradiction of non-passenger commercial shipment comprises the 1971 Liberian-registered transporter Coral Sea, the 1974 Greek freighter Vory and the 2002 Limburg violation directed to the VLCC tanker<sup>19</sup>. Naval goals have had a stumpy terrorist group's pull as of the low publicity they offered and a fewer intense influence net addition relative to the complex planning level of implementation required. However, extremism has stood a dominant component in modelling of the project and the sole drive behind, improvement and the execution of the **ISPS** Code. Since the 2000, it has been the mostly conversed naval safety danger by experts and global broadcasts. Great restricted and open readings have been fashioned conversing numerous systems of naval bombing, emerged from hypothetical threats and case revisions, constructed logical causes, or in exceptional instances, to deliver a precise preparation and applied plan basis<sup>20</sup>. Similar revisions have trailed the American One Percent Policy with analysed worst-case settings on atomic missiles of diverse sorts, willingly resisting that such an occurrence is tremendously low-slung. Terrorism, therefore, is possibly the utmost analysed risk amongst the safety alarms antagonizing commercial and governments segment. Readings and attentive procedural case study breakdown focus on evaluating worst situation settings at the corporation or rather vessel while at a similar stretch, equally, emphasizing very little possibility levels<sup>21</sup>. Though, the depiction in the naval field entails a number of threat stages that are specific and embody diverse sorts of unlawful deeds in the naval segment. Accepting the stages and the interrelationship amid them is significant; this general tactic will effect beneficial threat intellect. Similarly, this tactic can clue to better risk and threat valuations for the profitable sector, leading to a more refined safety risk managing at the level of operation. At the political and strategic points, a more nuanced and classy consideration of naval

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<sup>19</sup> Michael D. Chalk, Peter et al. *Maritime Terrorism. Risk and Liability*. Santa Monica, CA: RAND Corporation, 2006.

<sup>20</sup> Herbert-Burns, Rupert, 2003, "Terrorism in the Early 21st Century Maritime Domain

<sup>21</sup> Owen, *The Pirate Wind. Tales of the Sea-Robbers of Malaya*. Singapore, Oxford and New York: Oxford University Press, 1986

extortions will empower improved harmonised countermeasures and the capability to precisely regulate the outcomes of such events in the medium, short and long-lasting. This chapter presents a logical prototype that has been established by Risk Intellect to enlighten the charisma of naval safety threats and relative to the naval field.

## 2.1 Piracy

Piracy could be understood as per a form of organization, whereby the whole group is systematized for piracy actions through monetary gain being the remarkable goal, or a method to get funding generated by establishments through other targets, for instance insurgence groups or systematized crime syndicates<sup>22</sup>. The International Maritime Bureau (IMB) definition for piracy includes confident low-level offences like theft. Though, it defines the action in itself other than the intent of the criminal.

- A deed of attempting to board or boarding any vessel with the seeming determination to obligate robbery or offence and with the deceptive intent, ability to use energy in the continuance of that deed.

The 1982 IMO definition in the UNCLOS (article 101) clearly highlights piracy as actions conceded out for sequestered ends, excluding deeds of insurgency, extremism or eco-friendly protestors. Piracy contains several of the following actions

- Unlawful act of violence, detention, despoliation, dedicated for personal gains by the troop, commuters of a reserved ship, plane and fixed
- To high oceans against alternative vessel, airplane, individuals, possessions on board such as ship or aircraft
- Contrary to a person, vessel, plane or belongings outside the authority of any state
- Any deed of contribution voluntarily in the work of a vessel, plane with understanding of details making it a pirate vessel/plane

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<sup>22</sup> Bartley, Tom, "Sri Lanka Battles Tigers at Sea," Aljazeera.net, 11 June 2007

In the Code of Preparation for the Research of the Delinquencies of Piracy and Equipped Raid, robbery alongside vessels is presented as following:<sup>23</sup>

- Unlawful violence act or detention, despoliation or risk thereof, save for “piracy”, rapt against a vessel, individuals, belongings on board of like vessel, inside a Country’s authority over such felonies.

In accordance to the IMO:

- Piracy includes a felonious deed of detention, ferocity or despoliation
- Piracy is steadfast on the high oceans, dwellings outside the authority of any municipal.
- Piracy includes using a vessel to attack a different vessel, in the “two-ship rule”
- Piracy is devoted for personal gains.

For this model’s the purpose, which emphasizes on the inspiration for the occurrences, the definition by IMO does not relate as per this custom of seafaring crime is endorsed by groups that are similarly diplomatically inspired at a tactical level, for chiefly economic reasons. Piracy contains the succeeding key forms of illegal activity

- Anchorage and harbour attacks
- Attacks on ships at marine “Asian piracy”
- Sea capture convoyed by the nullification of the troop
- Kidnap for purpose of ransom

## **2.2 Terrorism**

Terrorism is a sort of grouping whereby the whole crowd is ordered for extremist doings thru a radical intention, a ploy to comprehend firm goals, insurgency groups and or organized crime syndicates<sup>24</sup>. Extremism is a struggle formula in which ferocity is purposely used against citizens to achieve governmental ends and intentionally and explicitly directed at citizens. Extremism is ferocity,

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<sup>23</sup> Crimes of Piracy and Armed Robbery against Ships (resolution A.922 (22), Annex, paragraph 2.2)

<sup>24</sup> Record of Violence, The High North News Extra, No. 7,

threat of ferocity, dedicated to generate a dread and terror atmosphere. These deeds are intended to coerce others to engagements they would assume if not refrain from activities they anticipate to yield. All terrorist actions are crime. Many are regarded as desecrations of the rules of war<sup>25</sup>. This ferocity is commonly focused in contradiction of citizens. The intention of assassins is normally radical and extremist activities are largely conceded in a manner that will realise supreme publicity. Contrasting to other unlawful actions, extremists habitually claim recognition for their actions. Lastly, extremist actions are projected to effects away from the speedy corporal loss of the operation or attack, having lasting mental consequences on a specific audience. The dread shaped by extremists might be envisioned to cause persons to amplify the fortes of the extremists and significance of their reason, incite administrative overreaction, intimidate, depress conflict and thus impose submission with their strains.

### **2.3 Organized Crime**

Criminal actions relevant to the idea embrace an extensive array of ranges with prohibited undertakings for a monetary purpose. The events included human trafficking, rustling, robbery, burglary, drugs and arms proliferation, fake and scam. Planned criminality is a non-ideological initiative including people in closed societal dealings, ranked in basis for the drive of fortifying yield and rule through engaging in unlawful and lawful actions<sup>26</sup>. Positions in the grading and efficient specialty are allotted conferring to expertise. Perpetuity is presumed by the affiliates who endeavour to retain the initiative central and dynamic in quest of goals. It shuns antagonism and endeavours for domination over specific events on territorial and business grounds. There is disposition to practise ferocity and subornment to accomplish objectives and uphold discipline. Participation is limited, though non-members might be convoluted on a likelihood basis.

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<sup>25</sup> Pelkofski, James, December 27, 2005, "Before the Storm: Al Qaeda's Maritime Campaign," Proceedings, Annapolis, MD: U.S. Naval Institute,

<sup>26</sup> Bohn, M. K. Achille Lauro Hijacking. Lessons in the Politics and Prejudice of Terrorism. Washington: Brassey's, 2004

### **2.3.1 Insurgency**

Insurgents carry out an insurgency. They engage in rebel battle alongside the fortified militaries of an well-known government, expert or management. Rebels typically are in disapproval to a municipal authority, government aimed at primarily overthrowing or obtaining autonomy or independence within a given terrestrial area, obtain a portion in rule, to supplement a pro-independence and ground-breaking schema and advance their state. Insurgents to army movement might use terrorist bouts to upsurge attentiveness of their grounds, illegal deeds related to planned criminality organizations. Besides, rebellious organizations in immediacy to seaside regions and channels have been vigorous in piracy as a fiscal approach. Rebellion can be defined as:

- A political-military protraction movement focused to wholly/partly control the capitals of a republic by the practice of asymmetrical soldierly forces and governmental organisations that are illegal

### **2.3.2 Organizational Characteristics**

Federations reflected in the resulting sorts can be beheld as something amid an unplanned, slackly linked organisation of persons to a vastly organized unit. Low level of organizational structure include the “subsistence pirates,” they function as fishermen but come together to spasm objectives of chance. Similarly, “criminal syndicates” in Asia and several of the regional terror assemblages. The intention of the group and its undertakings define the crowd’s typology of bandits, insurgents, organized felony groups or extremist unions.

### **2.4 Port and Shipping Security**

Since the terror attacks of 9-11, port security has heightened besides the successive battle on terror. The docks and freight operations in this environment need consideration because of their susceptibility to terror attack<sup>27</sup>. Ports and harbours are of specific concern because of their vulnerability to security related incidents. Ports and Shipping Security are on the lead to security

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<sup>27</sup>Mr John Hirst, AMDC, Transcript, p. 89.

initiatives taking place. In Kenya, the Department of Transport has been given mandate by government to handle maritime security<sup>28</sup>. These are initiatives agreed to by the IMO, providing a chains of compulsory measures and strategies for seaports and for shipment setups. IMO regulations, ISPS come in to consequence focusing on:

- Safeguarding the routine of ship safety duties
- Regulatory on the access to the vessels
- Regulatory the embarkation of the individuals and their possessions
- Watching over controlled areas to safeguard access only certified persons
- Watching over regions adjoining the vessel and deck areas
- Overseeing the shipment and vessel's stocks management
- Confirming to safety communication

Australian Ship-owners Association maritime strategies, sponsored an Independent Review of Shipping regulations in Australia (IRAS), noting that most of the ISPS necessities would by this time be fulfilled by in effect operatives, though the ISPS program 'might need rather a substantial amalgamation of security-related eventuality and evading preparation processes and credentials. **Seafarer ID** was an ISPS code dire part. Currently, seafarer's documents of identity do not frequently convey photos. Therefore, the ISPS will need passports for seafarer's. IRAS distinguished that 'Australia has separately proceeded to elevate, the diminutive tenure, a constraint that seafarers ingoing Australia need to bring a passport<sup>29</sup>.

#### **2.4.1 Port Security Risks**

It is vibrant for vessels incoming in a port to identify possible safety threats afore arrival. The Ships Security Officer, Company Security Officer and master ought to be conscious of the fears posed and

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<sup>28</sup> Rear Admiral Rowan Moffitt, Chairman, AMDC, Transcript, p. 83

<sup>29</sup> Independent Review of Australian Shipping (IRAS), A Blueprint for Australian Shipping, p. 28.



be able to contravene any essential arrangements<sup>30</sup>. Most threats curtail from extensions to the usual risks to course-plotting. Zones which involve shallows, tight turns with high vessel movements need customary security administration measures and through the link group assets. Though, it is all the time useful for personnel be watchful to security inferences and threats that outward when the ship lines the harbor, which are far detached as of ones tackled during marine shipments. Such fears can include the small craft movement, issues of close to ships public access or adjacent to regions of steering and the “tourist or terrorist” issue. There are matters adjacent to dock regions, and exact riverine systems or low marine danger and occurrences of piracy, people and drug trafficking, and fugitives. These concerns the port and the PFSO ought to assist all ships. Failure of port authorities to offer adequate management and sustenance, then master, the SSO and CSO ought to facilitate a demonstration, since this may influence the in effect security endowment.

## **2.5 Security of Merchant Vessels**

Safety in word is becoming popular including the maritime industry. Since 2004, the embracing of the ISPS Cipher, stresses of naval safety to be seen with a surge of unconcern and in some spheres even with antagonism<sup>31</sup>. Several of this antipathy is feasibly fathomable, but nonetheless it is unsatisfactory that in most corporations security appears to be tolerated, instead of to discover, cultivate and positively connect. It is hence imperative to recall that apart from the profitable and governing imperious, seeing different seafarers land home sound, innocuous and uninjured cannot be bad.

Embracing of the ISPS Cipher and the intensified worldwide concentration on seafaring safety introduces a diverse of innovative responsibilities, title role and relations in shipment corporations and aboard vessels. In evaluating the implications, certainties and outcomes of merchant shipping in seafaring safety, it is significant to contemplate the entire parts of the series, looking not only at the

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<sup>30</sup> Amendments to STCW Convention and STCW Code security officers, 2006.

<sup>31</sup> Steven Jones, 2006, Maritime Security: A Practical Guide, (London: The Nautical Institute)

placed necessities to corporations and ships, but the management and leadership of the safety rules, capitals devoted to executing the security wants.

### **2.5.1 Security check on Liquefied Natural Gas Cargo tanker**

In the United States, the distress has long been on the “weapon of mass destruction” concealment in a vessel and trafficked into the state for detonation. Shipment, has a prodigious demeanor on the way a ship is regarded by the docks of entrance, and the notch of care it is given by the safety amenities. There also has been increased care given to the entrance into harbors of tankers with LNG (Liquefied Natural Gas) though there might be debates on the amount of risk imaginable, it is fascinating to see how a ship can distress the docks safety in terms of response. Boston’s harbor is a fascinating case in point<sup>32</sup>. Arrival of LNG transporter hooked on the Distrigas natural gas storage facility, it heralds an implausible flurry of security activity. When the transporter stretches around 2 miles waters from the dock, five USCG ships encounter it to launch a 500-yard border round it. The twofold forward ships get prepared to strike a felonious ship herding dubious ships away from the keel of the transporter. The twofold ships are armed with heavy artillery and are well charged with incapacitating a suspicious ship. The fifth USCG ship is the command vessel (OTC) from where all resolutions are made concerning the safety of the transport. This ship may move anywhere it needs then again mostly stay at the rear of the transport tanker. An additional security limit is established at the 1000-yard mark off the carriage transporter. It consist of four Massachusetts State Police boats, one Boston Police Department boat and one conservation police yacht on the right-hand side. These ships approach a suspect ship and dash it away from the region. These ships function under prevailing instructions of assignation with reverence to the usage of lethal dynamism proven by relevant interventions. On marine resources, the Massachusetts State Police is responsible of shutting traffic flow on the Tobin Bridge whereas the truck is in immediacy. A national police plane offers surveillance from the time the transporter is off the anchorage until it is docked. They have the

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<sup>32</sup> LNG Security at Distrigas Facility. US Department of Homeland Security.

responsibility to close every nearby wharfs and roads that link to the port. Police units are located at each and every entree stations from the time the transporter arrives the port to the time it anchors.

### **2.5.2 The Ship Security Plan**

Structures established and confined in the SSP are the basis at which any active safety organization is fabricated. Nonetheless, it may be an uncertain lump for those who flop, with several SSPs being in position, troop and colonels are gradually becoming contented with their responsibilities with a better safety cognizant mindset. Although, there exists a number of “bad” SSPs from place to place. Whilst with ISM Code SMSs may take significant period to ascertain and eradicate hitches. Deplorably, other workers, seldom, overlook the basic element that their structures are futile. If a troop is fraught with deprived, abstruse, and unfitting intelligence they can misuse a lot of effort and time trying to interpret it, and will inexorably see to faults as they progress. In the ISPS first eras of espousal there were several strategies drawn together, which solely redrafted long-standing assistance set to safe guard cruise ships, with diminutive appreciation, considerate or edition set to create relevance to the massive figure of other conventional trade ships. The SSP obliges to speech subjects like:

- Procedures to avoid hazardous materials, weapons and diplomacies from entering the ship
- Processes for reacting to safety hazards withdrawal
- Duties of safety personnel and responsibilities on ship
- Checking safety training measures for trainings and drills
- Interfacing with harbor flair Procedures and periodic safety undertakings review

Within the ISPS Code the outline of what should be achieved inside the SSP is comprehended, dynamic to evaluate every responsibility justly observed with the daily precise vessel operations and its troop assessed. One of the key hitches is amid SSPs imposing exceedingly harsh safety procedures on ships on safety stages raise<sup>33</sup>. Many ships are putting much effort on potential and

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<sup>33</sup> Louise Richardson. 2006. What Terrorists Want: Understanding the Enemy, Containing the Threat. New York: Random House, p. 1

reliable operational Safety Level 1, bringing incredibility to absorb procedures identified in ingenious SSPs. When a ship with lesser sum of individuals debates on expanding gangplanks deck guards, lookouts and bridge watches, there are curiosities whether the CSO and specialists really take the opportunity to sum the individuals boarding the ship. The SSP is the best ally in a vessel and its troop, but a deprived scheme can be a trap, more harmful than a bandit or extremist attack. The way to safety is enabling it to function, and develop a scheme that is proficient. However, several SSPs are not fit for drive and the SSO, CSO, major and Flag Municipal ought to ensure the vessel cannot only submit, but credibly react in case of an occurrence. This pragmatic and honest opinion of a ship's safety necessities can benefit the vessel regardless of attacks and in the occasion that harbor State control (PSC) reckons there to be flawless surroundings for SSP.

It echoes the point that SSP ought to be a functional manuscript, preserved, kept up-to-date. When the PSC general issues a declaration and is consequently allowed right of entry by the chief and the Flag State several ideas need to be recalled in application. Several corporations are not sentient that the SSP need be upheld in a modern and valid state to the ship's transaction routes and pattern. It is dynamic that the SSP mirrors the vessel's maneuver and the vulnerabilities and threats it encounters. Within the ship's safety command there is need of gaining access to current risk info because devoid of the PSCO could reckon the SSP to be rebellious. As per the necessities of the SSP cipher there is need to take in information of safety accounts that cover:

- Training, workouts and exercises
- Safety incidents and threats
- Security gaps
- Safety levels Fluctuate.

Communications related to safety of ship like specific threats inside the harbor amenities, the vessel or Failure to preserve the SSP in custom will subsidize to the detention likelihood and postponement. Taking a grouping culture or ratified SSP does not conclude that the idea is valid and current. It only

means that the procedures drawn in the plan were satisfied and acceptable according to obedience desires as at the consent time<sup>34</sup>. Like the situation of nomination of the exact persons, and the provision of the essential funds, it is vibrant that the SSP is acknowledged as part of the safety of the ship. ISPS is not an exercise rag and therefore it ought to be properly succeeded via practical, operational and representative system.

## **2.6 Surveillance of Merchant Vessels**

Trade crafts do not travel in organized waterways. In relation to stable strictures in the approach that aircraft and communication circulation do. Various vessels, mainly bulk container crafts that fulfil long-term commodity supply charters and in the liner trades, nevertheless, follow conventional sea routes and trail other expectable patterns. Nonetheless, the proposition that if a vessel diverges from a known array of “motion” it need be for a worthy commercial motive that the charterer or owner is ready to disclose, and if one does not have good reason then the vessel must be ready for harm. While LRIT, AIS and MDA appear to offer security and reliability, this is at odds with the commotion and sea variability and the individuals using it<sup>35</sup>.

Indisputably, each of the three provides aid to seafarers; if a vessel gets into woe, for better chance that SAR amenities will locate them, though in various areas this may not essentially mean that the likelihood of assistance will upturn. It may likewise imply that vessels that put up with the instructions are often likely to have efficient harbor incomings and partings while those that do not will have delays. Seashore safety officers shall have better sight of vessels arriving to their coastlines. If fleet and port directors are allowed LRIT right to use to records, it will facilitate effective management of traffic flows. From the seafarer’s view conversely, there is an intrinsic conflict amid the “free-to-air” openness of AIS and emphasis to the ISPS Code places on information confidentiality. AIS was primarily and precisely built as a utility to collision avoidance and safe map

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<sup>34</sup> Martin N. Murphy. 2007. *Contemporary Piracy and Maritime Terrorism*. Adelphi Paper No. 388. Abingdon and New York: Routledge for the International Institute of Strategic Studies

<sup>35</sup> Brian Tetreault. 2006. “Automatic identification system; the use of AIS in support of maritime domain awareness.”

reading. It was not intended to support to naval protection. Hitherto, it has increasingly become for states that are aim at fulfilling their surveillance needs<sup>36</sup>. LRIT was deliberated to seal the transatlantic security gap. Hence, seafarers are requested to capitulate the customary obscurity that habitually relics the first defense line. Claiming that ‘the acquitted have nil to hide’ is a deceitful contradiction. Hesitancy to give facts is not liable on guiltiness nonetheless on the privacy need. At the center of the subject is belief: Can seafarers be assured that data they put on the table will be discrete and respected, truthful and accurate? Although there will no lack of bit of compulsion, it cannot work efficiently short of acknowledgment by all revelries that there are shared remunerations. This is where seafarers’ distresses come to be acute. If obscurity is to be uncovered, then coastline management must agree to take accountability for transiting ship guard through provision of supplementary guards and the capitals for investigation of anonymous targets. Data fusion and surveillance which yield better consciousness are the first phases in a four-stage procedure that terminates in verdict and act. Several federations, including those in the industrialized sphere, have not capitalized adequately in the process of verdict making and provision of sufficient aircraft, boats and recruits to undertake ample effective naval safety operations. In many towns and cities where investment in closed circuit TV systems has been done, scrutiny technology has not been harmonized by additional filches on the beat<sup>37</sup>. Furthermore, the expectation that states may have been organized to lead in their radical variances in search of a corporate concern in the dominance of felonious action, seems to have been hampered in various sections of the world such as the North Pacific and Baltic through the re-emergence of the “Cold War” attitudes yet muted.

## **2.7 Different Perspectives on Maritime Security**

During the September 11 outcome of the attacks on the United States, various international and local controlling powers reacted to universal security attention through commencing a procedure of

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<sup>36</sup> William R. Cairns. 2005. “AIS and long range identification & tracking.” *The Journal of Navigation*

<sup>37</sup> Lewandowski and Pietraszewski. “Automatic Identification System: A General Discussion of Development, Application, and Implementation,” p. 2; USCG Navigation Center.

safeguarding their stock chains, homelands and job. Clarity from this outbreak in the seafaring sphere is that there are numerous perceptions on the matters of seafaring safety that has become particularly evident in the security context<sup>38</sup>Strait of Malacca. Using the example of Strait of Malacca, it is latent to evaluate these contradictory perceptions, though the attention will be on waterway specifically, it is possible that these differing perceptions are echoed in other parts of the sphere.

The prioritization of measures in maritime security; directs to the precise query of to what level is piracy and terrorism a hazard to shipment in the waterway? Further, whose accountability is it to instrument the safety measures, relating to the argument on “burden sharing?”<sup>39</sup> Lastly, precisely how do these precautions get implemented and in specific, what cooperation step is necessary? The diverse views in this discussion mirror the many values, urgencies and distresses of interested parties. The various prioritization views of safety regarding other concerns of importance in the seafaring field were patent at the IMO in September 2006 meeting convened, in Kuala Lumpur, Malaysia meant to develop programs and mechanisms to enable co-operation in protection the channels of Malacca open to triangulation and safe, not excluding the likely burden sharing choices. Three coastal states gave outline on several schemes they desired have collaboration and enactment involving concerned shareholders. Yet, not any of the schemes drawn linked to sinking the risk of piracy and naval extremism, dominant in the safety schema through the 9/11 policy of the United States. All projects relatively engrossed on safety improving and conservation defense in the channels. For instance, one suggestion was the replacement and preservation of **navigation utilities** in the straits, while the last was the wrecks elimination in the **Traffic Separation Scheme** (TSS) in the channels. This underscores the opinion of the coastal states of Malaysia and Indonesia, which address the threats of maritime terrorism and piracy being of minimal significance than refining **navigational welfare** in the channels and seafaring capital protection. It similarly mirrors the opinion of these

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<sup>38</sup> Sudha Ramachandran, June 16, 2004, Divisions over terror threat in Malacca Straits, Asia Times.

<sup>39</sup> Sam Bateman, Burden Sharing in the Straits: Not So Straight Forward, RSIS, March 20, 2006

federations that the hitches of terrorism and piracy are inland matters; best diminished through internal hard work, while in some conditions, narrowed to local aid. One specific development, emphasized the contrary opinions on naval safety in the channels, predominantly in terms of accountability to safe guard the sea routes, through the Regional Maritime Security Initiative (RMSI) proposal by the United States which envisioned placing Exceptional Operations Forces on high-speed crafts to undertake operative interdiction in the marine ranks that have communication prone extremists attacks.

This possibility was not practical as it viewed as Islamic fundamentalism encouragement who is traditional US enemies. Moreover, the former political affairs director general in the Indonesian Ministry of Foreign Affairs listed that external powers deployment in Indonesia's sea territories would pledge a single basic Indonesian alien strategy principles of independence. This corn was similarly mirrored in a speech by the Indonesian Foreign Ministry spokesperson, stating that "It is the supreme obligation and right of the coastline federations of Malaysia and Indonesia to ensure navigation welfare and safety in the Malacca Channel. Though the coastal federations desire to edge the "**internationalization**" of the passages that will continue to avert every unswerving involvement in its preservation through peripheral authorities, they do not entirely desire to take up the costs affliction linked with this accountability, mainly as it contains safeguarding the sea routes compared to the dangers of maritime terrorism and piracy, additionally in the provision of environmental protection and maritime safety. Current demands by the coastal federations for "**burden sharing**" in the passages steered yet again to a condition wherein it is said that the United States tried to "internationalize" safety in the shipping canal. In September 2005 at a gathering in Jakarta, cosponsored by the Indonesian government and IMO, it was approved that "a device need to be proven by the three coastal federations to gather regularly with **user states**, the shipment business and other concern groups in custodian the Straits of Singapore and Malacca free for steering"<sup>40</sup>. The law

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<sup>40</sup> IMO Press Briefing



of the Sea and Security in East Asia points out Problem Involvement in the Straits: Not So Conventional, this step by the United States seems like it neglects the Jakarta Statement as it anticipates the documentation of regions of aid by the coastal federations and “assigns a foremost title role to the user states<sup>41</sup>. Contrary nationwide priorities and concerns correspondingly command the maritime security measures enactment at the regional level, predominantly on the acceptable level of cooperation. For instance, marine guards in the pathways of Malacca have been restricted to being only synchronized guards and not what other operative routine is arguably: combined duties with an endowment for cross-border pursuit. The Regional Cooperation Agreement on Combating Piracy (ReCAAP) is another instance with the point that the treaty has stood not signed and approved by Indonesia and Malaysia, notwithstanding the point that they were amid the 16 states that sprang the agreement in 2004<sup>42</sup>. Broadcast information, indicate that the Indonesian regime is indomitable to defer consent of Regional Cooperation Agreement on Combating Piracy with the believes that it impinges on the three coastal states sovereignty that protect the Strait of Malacca. <sup>43</sup> Nonetheless, reportedly the Malaysian regime is apprehensive that the ISC is situated in Singapore a solid devotee of the pact although the deep-rooted International Maritime Bureau’s Piracy Reporting Centre (PRC) that provide comparable amenity, is located in Kuala Lumpur.

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<sup>41</sup> S.Bateman, 2005 Security and the law of the Sea in East Asia: navigational regimes and exclusive economic zones

<sup>42</sup> Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia 2005, 44 ILM 829

<sup>43</sup> Indonesia determined to postpone ratification of Malacca Strait pact, Sept 2006, BBC Monitoring Asia Pacific,

## CHAPTER THREE

### MARITIME INDUSTRY SECTORS AND ACTORS

#### 3.0 Maritime Environment

The mainstream maritime domain is in international waters and has conventionally been categorized by a lack of regulation bordering on the anarchical. It has consequently demonstrated to be the perfect environment for individuals involved in multinational wrongdoing such as terrorism and piracy, as well as those pursuing a revolution contrary to inordinate power<sup>44</sup>. The M/V Limburg attacks in 2002, effected through the usage of volatile laden speedboats, disclosed that Al-Qaeda, the global terror network, had advanced the competency of carrying out assaults in the marine sphere. In 2002, the government of U.S. declared to have identified about 15 consignments around the realm believed to be controlled by Al-Qaeda for generating profit and aiding terrorist operations.

In Iraq April 2004, the marine domain was subjugated by rebels in the war counter to the United States and three U.S. servicemen were killed in the marine interdiction action in the endeavored offshore attacks on Iraqi oil depots in the Persian Gulf<sup>45</sup>. A old dhow alongside two powerboats were used to undertake the assaults; the dhow blasted in the Oil Terminal in the locale of the Khor Al Amaya when in the process of boarding by the U.S. military workforces, while the powerboats wretched when security forces fired to avert them from triumphing the Al-Basrah Oil Terminal. The assaults underscore the simplicity with which the marine environment can be applied with marginal operative competency in an attack on a latent target.

In Southeast Asia, piracy attacks have been a major problem, with the Indonesia waters being piracy prone in the world. The Jemaah Islamiah radical group is alleged to utilize the marine domain through conveying its workforces to drill camps in the Philippines from Malaysia, while the Abu Sayyaf Cluster conducts terror attacks on maritime targets and Philippine ferries.

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<sup>44</sup>David Rosenberg, April 13, 2005, Dire Straits: Competing Security Priorities in the South China Sea.

<sup>45</sup> Martin N. Murphy. 2007. Contemporary Piracy and Maritime Terrorism. Adelphi Paper No. 388. Abingdon and New York: Routledge for the International Institute of Strategic Studies

In the US the wake of the September 11 assaults, saw the exposure of the world's conveyance system to terror was brought to limelight prompting the introduction of new conventions and laws most of them executed with the inspiration of the U.S. designed to boost marine security in explicit locale and key modules of the marine industry estimated to suffer from intrinsic weaknesses, subjugated by criminals<sup>46</sup>.

This study analyzes such measures of which one is the important growths and the ISPS Code overview implemented at the diverse levels. This will lead to a scrutiny of the differing perceptions reserved by practitioners and the states' strategy designers on how they view marine security, exhibited itself in several situations in years.

### **3.1 Ports and harbours**

Security is not perceived be a real priority in most ports. However, in given foremost ports, security reliability has become an arcade asset applying the ISPS Code letter and spirit. Such ports consist of the ports with container security creativity scheme and various large gas and oil terminals<sup>47</sup>. In the nimble of arcade imperious for some segments to exhibit excellence in security, LRQA, an international autonomous auditing organization, has been sponsoring its security auditing structure, auditing terminals for global standard ISO/PAS 28000:2006 Compliance.

### **3.2 Sea Lines of Communication (SLOCs)**

In view of the hefty trade volumes and value conveyed by sea, the security and monitoring of SLOCs is crucial. The pressures to SLOCS can be both from civilian and military sources<sup>48</sup>. Military sources include activities arising from struggles between countries and the ocean mines use<sup>49</sup>. Civilian sources arise from accidents, natural catastrophes and piracy. In the East African region some of the key SLOCs include the gulf of Eden, the Arabian Sea and the Indian Ocean. Estimates indicate that over half of the domain's mercantile convoy navigates through these channels and the Indian Ocean.

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<sup>46</sup> Murphy. Contemporary Piracy and Maritime Terrorism, p. 74

<sup>47</sup> Container Security Initiative, US Customs and Border Protectio.

<sup>48</sup> Weeks, S., 'Sea Lines of Communication, Security and Access', p. 33

<sup>49</sup> Rear Admiral Rowan Moffitt, Chairman, AMDC, Transcript, p. 82

More than 100 ships on average, a day pass through the gulf of Eden. It is only prudent during the study to maintain the security of SLOCs<sup>50</sup>. Maritime trade is crucial to transport task in East African countries for interstate, international trade and the essential goods supply. Assuming the regions topographical isolation from key trading associates, continuous and safe SLOCs have been vital for security and economic affluence. Recent strategic environment, the continuation of the Somalia battle and its neighbor is likely to continue and this calls for the secure supplies for materials in manufacturing domestically and to allies to sustain the region's export income.

SLOCs is critical to the national economy and need to be protected and monitored. The RSL, in relation to the preservation of SLOCs, remarked that State strategic faults and the manner through which the state might ameliorate, evade or stun them need to be encompassed in the marine strategy of Kenya's<sup>51</sup>. Studies on security acknowledge the significance of shipping to region's economy, placing limitations on the protection levels. The engagement of regional marine assets in the shipping security would be discerning.

Key determinations would be dedicated to the fortification of tactically imperative cargoes. It is acknowledged that there is an important challenges in the provision of an ample fortification of SLOCs in specific, offensive capabilities categories that could be cast-off and the key problem. In response to pressures to SLOCs it is indispensable to have expanse defence that in today's marine warfare, includes air warfare competence. Correspondingly, the region would be lacking zones where an attacker had far reaching aircraft and could inaugurate antishipment missiles<sup>52</sup>. It is impractical and impossible for one country to protect and monitor SLOCS. Protection and monitoring can be achieved through regional cooperation and joint operations. There is lot more scope for regional cooperation and joint operations to defend Indian Ocean sea lanes<sup>53</sup>. More can be done touching on

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<sup>50</sup> Weeks, S., 'Sea Lines of Communication, Security and Access,' in Bateman, S. & Bates, S. (eds.), Shipping and Regional Security, CSCAP and Canberra Papers on Strategy and Defence No. 129, Canberra 1998, p. 33

<sup>51</sup> Dr John Reeve, Transcript, p. 102.

<sup>52</sup> Rear Admiral Ken Doolan (Retd), Transcript, p. 332.

<sup>53</sup> Commodore Alan Robertson (Retd) , Transcript, p. 176

hostage on piracy, in concurrence and collaboration with other stakeholders to help convey control of the sea lanes<sup>54</sup>. It is essential to think in relations to the projecting marine capabilities beyond the initial area. SLOCs protection is superlative tackled at the global level through collaboration with marine allies. Protection and monitoring of SLOCs is a constabulary duty and cannot adequately be policed through a single power<sup>55</sup>.

### **3.3 Merchant Shipping**

Historically, mercantile shipping has delivered nations with essential proficiency to care for defence aims. For instance, Britain during World War II, relied on mercantile shipment for re- supply. During the Falklands War Britain, once again relied upon mercantile shipment for essential equipment supply and movement of troops<sup>56</sup>. In both, mercantile shipment was embattled by rivals in order to destabilise Britain's war determination. In the regional perspective and in Kenya, mercantile shipment has played a part in the Somalia KDFs actions through providing the necessary supplies.

In 2007, merchant shipping provided lift of Ugandan troops in the launch of the Somali operations, carrying heavy lift capability for troops, supplies and equipment. Kenya uses commercial ships for the purpose of heavy lift of goods since it doesn't have its own. The Kenya Ship-owners Association (ASA) is advocates for the establishment of Kenya's shipping line like Ethiopia although land locked and the government is in the process of initialling a blue economy through its own shipping.

#### **3.3.1 The Shipping Company Responsibilities: Under the International Ship and Port Facility Security (ISPS) Code**

The ISPS Code is adopted in all the SOLAS vessels with over 500 gross registered tons affianced on international passages and port amenities attending to such ships<sup>57</sup>. Beneath the ISPS Code terms, shipping companies are obligatory to have in place a Company Security Officer and a Ship Security Officer for each of its ships. The CSO's tasks include:

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<sup>54</sup> Australian Department of Defence, Submission 29, p. 11

<sup>55</sup> Dr John Reeve, Transcript, p. 102.

<sup>56</sup> Australian Ship-owners Association, Submission 10, p. 2.

<sup>57</sup> International Ship and Port Facility Security Code. 2004, Maritime Safety, The International Maritime Organization,

- Certifying that there is proper ship security assessment (SSA)
- Preparation of Ship Security Plans (SSPs) and submission for endorsement by the administration and placement on board each ship.

The SSP should designate the physical and operational security processes, which the ship should take to warrant its functioning at security level 1 minimally. The disposition should designate the intensified, security processes of the ship to move and operate at level 2 of security. Furthermore, the disposition should show the elementary arrangements the ship could take to consent to the hasty retort to instructions to enable the ship operate at security level 3.

After satiating the SOLAS chapter XI-2 and ISPS Code part A requirements, ships get dispensed with a Certification on International Ship Security<sup>58</sup>. The certificate needs to be on board and all times presented for inspection. The certification is prima facie proof of passivity to be scrutinized by port National officials. Such scrutiny will not usually extend to inspection of the SSP itself, but in specific conditions in which “clear grounds” are recognized to point out that the vessel is not in compliant and the mere means to validate non-compliance is to appraise the pertinent necessities of the SSP. Limited access in this circumstance to the specific segments of the disposition linked to noncompliance may be permissible, with the approval of the flag state marine administration<sup>59</sup>. Under regulation XI-2/9, ships expending port facilities may be subject to port National control reviews and control actions, considering that the contracting government can exercise various security measures with reason that the security of the vessel or the port amenities have been compromised. Authorities may demand the provision of information about the ship, passengers, cargo and ship’s workforces before entry of the ship’s into port<sup>60</sup>. Situations have ascended where entrance into port gets overdue or even to some point denied.

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<sup>58</sup> Peter Moth, 2004 edition, ISPS Code: A Practical Guide, Foreshore Books.

<sup>59</sup> Ship Security ISPS Code Briefing,” Signals (special issue), North of England P&I Association, 2003

<sup>60</sup> John Ramage, 2004, *Creating a Security Culture*, , Managing Director, International Registries (UK) Ltd

### 3.3.2 Ship's Owners and Operators Responsibilities

It is imperative to appreciate that the requirements of regulation have a moral duty to the ship owner or operator to arrange for suitable security for passengers, seafarers, machinery, hull and cargo, being a vibrant duty not dissimilar from the traditional obligation to offer adequate and correct safety actions. In this case, the ship owner, operator and the captain must be aware of the likelihood of a spasm, feasible nature of the spasm and the best way to provide concrete protection within the necessities of legislation in the commercial budget. Owners and managers of ships have the autonomy to infer security on an ad hoc based on pre 2004 to the contemporary situation. Apart from this commercial and moral obligation, ISPS necessitates that the “company,” to assure that vessels fulfill the part A of the ISPS Code requirements and that in realizing this they have reserved into the regulation confined in part B<sup>61</sup>. For ISPS tenacities, the accountabilities apply to the ship owner, organization, manager, or bareboat charterer to assume the obligation and duties linked with the ship operation imposed by the ISPS Code. Appointment of CSOs and SSOs by the company to ensure each vessel undergoes a Ship Security Assessment (SSA), whereas increasing an SSP for respective vessels is important. The company should provide proper training and ensure that security commands are offered all essential means. In the past decade, ship owners have been under intense pressure to respond to the global legislation on making the shipping industry harmless, cleaner, and protected. Many of the complying lessons learnt on ISM code have been shifted within many corporations to safety commands<sup>62</sup>. Companies with the ability to implement the ISM code in an all-encompassing and thorough method have structures and processes that enable workforces to engross new security necessities in logical and straightforward way. Such corporations have established that, though the goals of security and safety are diverse, there is a huge verge and harmonization fundamentals amid

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<sup>61</sup> ISPS: International Ship and Port Facility Security Code, *IMO Maritime Safety*, 2004

<sup>62</sup> The IMO. Amendments to the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974, pp. 10–11.

the two. The ISM lessons can be conveyed to training, security, reporting and onboard resource basics meshing well with the requirements of ISPS.

### **3.4 Control of Port by the State**

The PSC structure development to police principles on vessels incoming into given geographic areas has remained to be the real success of current times<sup>63</sup>. Although the systems in the domain may be far from flawless, certainly they have set groundwork to strengthen substandard operators and ships from the seas to comply with some rules. This role of scrutiny has been stretched to include safety and screening same as to the PSC targeting progressions, developed and executed in areas targeting vessels for safety risk and compliance examination linked to ISPS. Originally the PSCO could look into an ISSC production, if this was not in place, there would be deepened inspection and prohibitions imposition. Such prohibitions possibly include control measures such as:

- Vessel inspection and noncompliance rectification
- Vessel delay and denial into port
- Vessel detention and operations restriction
- Vessel eviction from the port
- Contracting government application of substitute lesser administrative measure

This epitomizes recommended control actions promulgated in the U.K. to PSCO, constituting the retorts to be given to safety violations. These are emulated across other systems and the stigma and fallout of such prohibitions affect a vessel for a given duration of time<sup>64</sup>. There are dynamics that affect the essential security of companies and seafarers being sidestepped by the ISPS Code. Vessel profiling on a security angle is still not the model with admittance to most targeting possessions spread over several organizations and sections.

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<sup>63</sup> US Coast Guard Port Security Advisory (2-05), May 20, 2005

<sup>64</sup> MSC 82, The Joint MSC/MEPC Working Group on Human Element, 2006.



There are given security organizations, which will control and monitor definite data fragments and information although, due to the sensitivity of the organizations, information and potential responses, have not ever been fully trained as to what is likely to elicit a security potency. The view of security screening parameters reveals certain fundamentals, which owner or operator of ships need to be advised on. Several of these, mirror the targeting factors regarding security and the sensible operator needs structures to ensure that vessels are not undeservedly distraught on arrival into harbor.

#### **3.4.1 Vessels movement management by Coastal State role**

Since the ISPS Code adoption, several coastal States have contended to advance access to marine domain information concerning to the undertaking of vessels in purlieu. Hefty pressure has been from the U.S. in allowing observing of vessels transitory in, or close to U.S. coastal waters. In April 2007 The U.S. Coast Guard met its time limit directed by the 2006 Act on SAFE Port to track large viable vessels inside the U.S. waters<sup>65</sup>. Conventionally, the free passage privileges handed down over time and classified in the UNCLOS kept that vessels be allowed free, unmolested passageway over such waters, though not for considerably longer. The dawn of automatic identification schemes, the manner of vessel movements has stirred into the mainstream, and the LRIT adds to the observing of every shipment and the establishment of far reaching identification. Littoral States play an extensive role in the security administration on vessel whereabouts. This may eventually see the old-style navigation freedoms battered when littoral states deny admission to certain shipments into their waters.

#### **3.4.2 The Port Security Structures: The Port Facility Security Officer**

In observance of ships and companies security, the ISPS Code presented a function in the ports, the PFSO. Complete particulars of the detailed necessities and itemized minimum PFSO responsibilities and role are instituted in the ISPS Code, although in quintessence these reflect the CSO role

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<sup>65</sup> Alexandros M. Goulielmos, Agisilaos A. Anastasakos, Worldwide security measures for shipping, seafarers and ports: An impact assessment of ISPS code, September 2005

necessities, but with a natural port-based emphasis. The PFSO basic requirement for any is to act as first contact point for security. This naturally inflicts a level of liaison and contact with the SSOs and CSOs of incoming and docked shipments. There is nevertheless, an emergent directory of circumstantial indication to submit that many SSOs have not ever got in contact with a PFSO, let alone sustaining pre-arrival interchange with the CSO. As a matter of inordinate concern, possibly some ports should be forced to reconsider their roles, security tactics and tasks.

### **3.5 Flag State Performance on Maritime Security**

A vessel's Flag National performance will distress a shipment under scrutiny by PSC, by law enforcement, the immigration facilities and customs administrators. Flags that have a meager safety, security and environmental outline, will get all their shipments higher up the aim database entering the port of a specific dominion. If a Flag Nation makes embattled list, it can majorly cause ramifications to the shipment flying the flag. Hence, the shipment may be imperiled to state scrutiny in the port resulting from the adverse standup of the Flag Nation. Minimally, time will be lost and a likelihood of enforcement of the measures.

#### **3.5.1 Private Security Guards**

Ships, while certain geographic zones, are consistently obligatory to use supplementary defensive security from coastline based providers. This is done minus much believed to the values of the corporations in use. This lapse must be looked into, as it is vibrant that contextual scrutiny are performed on contractors in the third party security. PFSO in some docks have a slant of scrutinized suppliers. However, this may not constantly be the situation. Therefore, corporations are fortified to present processes to certify that isolate security suppliers meet values of service with workforces fit for determination. The International Association for Marine Contractors has formed a modest worksheet of audit to assess the suitability of a security service provider afore being contracted. The worksheet includes matters touching on the security corporation structure, training procedures, staffing standards and the aptitude of guards. The list ought to be sent to the shipment representative's

company for conclusion and returned to the CSO in advance on vessel arrival in anchorage; when supplementary safety measures and contracted guards use are employed at sea. Additionally, it is also vibrant for the SSO to understand the precise extent and nature of safety provided by external corporations. The SSO needs satisfaction of the areas of the vessel to be covered, and main security focus, whether tasked to halt access of the vessel by people or virtuously meant to warrant seafarers do not leave.

### **3.6 Marine Insurance**

Transversely in all fragments of the marine resource chain, risk is increasing and it is not exclusively due to the values conceded on bigger ships and on accumulative product amounts. Rather it respites with the significant inflation entitlements. Prerogatives are apparently to occur, and probable to be more expensive. The tactic of port experts, legal and regulatory changes and court abundant to simply source and mount the equipment: employees require to be suitably trained in the maintenance, set-up and faults documentation. To seafarers, various tools may not be obvious and if they are not given the essential instruction heights the apparatus may not be utilized to complete prospective. Good apparatus is as good as the support and training given to the staff for operation.

Decisions have efficiently increased charterers' legitimate liabilities across the range of seafaring incidents. It is a key concern charterers that they might be entangled in a row on given ISPS and safety omission. While it is stress-free to scrutinize owners for compliance, it is problematic to assess security, other than unearthing the ISSC, making it difficult to know what to do about security, or what they are undertaking. This has steered many charterers to conceal their third party charges, making P&I concealment to meet exposure. According to the P&I club of U.K., increasingly charterers are considering concealment custom-made to specific circumstances that incorporates structure and other concealments, providing wholesome obligation fortification for charters that are nonoperational and offering effluence obligation without sublimit. Seemingly, it may be sensible to seek concealment to guard the possible security liabilities effects. Devoid of attention and due care to

safety staples it would be too stress-free to uncover a charterer. Conferring to the Lawful Administrator, Thomas Miller P&I Ltd, Dr Chao Wu, “[a] charterer needs a standard P&I cover equivalent to the risks insured by the owner. Though, a charterer may widen the cover scope for direct liabilities if it agrees to take on contractual risks, which would not fall to it as a matter of law. It will need cover for liability where indemnifies the owner for such risks.”

### **3.7 ISM and ISPS Codes**

There are essential differences between ISPS and ISM Codes. Essentially, safety is concerned with the hazards on fortification against damage, purposeful acts of uproar or devastation. Safety, apprehensions on the risks related to guard against damage, unintentional uproar or obliteration. The ISM is an organization structure that contains the predominant ideologies covering the daily actions of a vessel and the corporations. The ISM Code is squeaky because it necessities to stay reserved from detail, being the ideologies of what to do. The future is an edge that gathers speed, through the ordinary synchronization of the codes. There is need to have sensible and cohesive protection and retreat management system in a corporation and aboard vessel with clearly identifiable and traceable compliance to demonstrate each Code. ISM assessments are not to substitute other appraisals so the codes authentication assessments must be discrete. The duo codes assessment cannot substitute each other assessment. ISPS authentication assessments can be done conspicuously and in the same vessel visit thru competent auditors, each assessment and audit done sequentially and distinctly. ISM Code rests to be the umbrella of all the vessel’s necessities ensuring personnel do what has to be done. These operational tenets need to be real to safety, pollution, security, manning, training and all characteristics of proper and operative vessel management, corporation and personnel. Operative safety regimes are capable to utilize the structure management tactic, to advance and instrument best practices and pat into the discipline that several across shipment have growth in advent of the ISM Code.

## **CHAPTER FOUR**

### **LEGAL FRAMEWORKS FOR MARITIME SECURITY**

#### **4.0 Overview**

The growth of contemporary international conventions for battling armed and piracy robbery on maritime vessels begins with piracy provisions analysis through the United Nations Convention on the Law of the Sea of 1982<sup>66</sup>. These examines the development background of: The 1<sup>st</sup> UN terrorism convention on the Safety of International Maritime Navigation. And the SUA Convention, 1988.

It then turns to the 2005 SUA Protocol, authored by the IMO Legal Committee to deal with maritime threats<sup>67</sup>. Similarly, the 1988 SUA Convention was to address the Fixed Platforms Safety<sup>68</sup>. Since the chapter focuses on the international maritime threats and conventions the SUA, 2005 will not be examined.

#### **4.1 SUA Convention 1988**

IMO, prepared the 1988 SUA Convention to respond to the hijacking of the Italian flag cruise ship Achille Lauro in 1985 in the Mediterranean Sea by extremists. The attack demonstrated the 1982 Convention weakness on piracy provisions. In the IMO's 14<sup>th</sup> assembly the problem was considered, leading to the support of the proposal by the United States on measures to prevent these unlawful acts. The Hague Convention was adopted as the models that to draft the new convention to ensure the Suppression of Unlawful Seizure of Aircraft, 1970<sup>14</sup> alongside the the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971<sup>15</sup><sup>69</sup>. The two, were the first of the UN terrorism conventions similar in schemes to the 1988 SUA Convention with the following features:

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<sup>66</sup> Maritime Affairs, 2006, Journal of the National Maritime Foundation of India, Vol. 2, No. 2, pp. 29–52

<sup>67</sup> Article 100, Nations Convention on the Law of the Sea, 1982, supra note 1.

<sup>68</sup> Australian Treaty Series 1993 No. 10.

<sup>69</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction, April 10, 1972, at Washington, London, and Moscow

- Acts defined in the pacts as criminal offense calling for state parties to agree and make them criminal wrongdoings under their municipal law and capital though serious penalties.
- States parties to agree on the establishment of jurisdiction over territorial offenses.
- Persons supposed to have stanch an offense under the pact in the territory of a state party, is supposed to take the wrongdoers into custody
- State parties settle on that the pact can serve as the lawful extradition basis for the offenders.
- States parties to cooperate with one another on criminal actions to arraign the offenders.

The justification behind these UN extremism conventions is meek. If all the countries in a region are parties to the pact, individuals who commit a transgression under that pact will have no domicile of refuge. If they enter the zone of any government party to the convention, they will be taken to custody, and they will either be arraigned in that state or repatriated to another state party.

#### **4.1.1 SUA Protocol 2005**

The 2005, SUA Protocol, was adopted after the 9/11 attacks, through the IMO Assembly Resolution A.924 (22)<sup>30</sup> that called for existing procedures and measures review to prevent terror threats to the crew and passengers safety on ships<sup>70</sup>. The Legal Committee of the IMO, in October 2001, reviewed the 1988 SUA Convention because of the United States raise in terrorist attacks, hence prioritizing the issue in the SUA Convention work program. The Legal Committee in April 2002, further established a short term United States led Correspondence Group that aimed at developing a working paper on the possible amendments scope for consideration at the October 2003, 85th session Legal Committee<sup>71</sup>. The longer-term aim was to amend the draft and recommend to the IMO Assembly to convene a diplomatic conference internationally to consider the adoption of the amendments stated in the 1988 SUA Convention. An invitation to all states and interested organizations internationally was done to ensure participation in the work of the group. The United States delegation, as lead country in

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<sup>70</sup> Security Council Resolution 1718, adopted on October 14, 2006.

<sup>71</sup> Maritime Affairs, 2006, the Journal of the National Maritime Foundation of India, Winter Vol. 2, No. 2, pp. 29–52.

the Correspondence Group, made a draft document containing with amendments to the 1988 SUA Convention as follows:

- Seven new offenses addition to Article 3 of the 1988 SUA convention.
- Law enforcement units be permitted to board and search a suspected vessel by officials of another state as a new provisions while the vessel is in international waters

For three years since inception, the Legal Committee worked on the draft protocol and the Correspondence Group received comments from states and organizations that participate, these revision was support by most delegates.

Although, concerns rose that the draft boarding provisions need not interfere with the principles on freedom of high seas navigation and the select jurisdiction of flag states over their vessels<sup>72</sup>. Delegations stated that the SUA protocol must not intrude on the commercial operation of international shipping. The articles subject of major the debate and disagreement were Article *3bis*, which sets new offenses to be added to the convention, and Article *8bis* to establish new provisions for the boarding and search of suspicious ships. Three years after the study and deliberation, in April 2005 the Legal Committee completed its exertion at its 90th session. On the SUA Treaties Revision in 2005 a Conference that saw the adoption of the SUA 1988 Convention amendments. Formally, the Protocol was adopted, officially taking effect 90 days after a dozen of states gave consent, notifying the secretary general for IMO on the provisions.

#### **4.1.2 Boarding of Ships Provisions**

The most controversial and significant aspect of the SUA Protocol in 2005 was that it initiated the boarding of ships provisions for the seaward of the outer border of the territorial sea with reasonable proof to suspect that the ship or individual on board intends to commit an offense outlined under the SUA Protocol of 2005. However, the in Article *8bis* on boarding provisions were contentious through their establishment of a new UN terrorism convention mechanism enforcement. A number of

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<sup>72</sup> Assembly Resolution A.924(22), Review of Measures and Procedures to Prevent Acts of Terrorism which Threaten the Security of Passengers and Crews and the Safety of Ships, adopted on November 20, 2001

states acknowledged the need for the endowment to allow a suspect vessels to be searched on the high seas, through a narrowly drafted detailed safeguards to avert abuse. States upheld the call that any provisions for new boarding<sup>73</sup> need to be observed through the 1982 Convention consistent and should not infringe on the rights of coastal states in their sea waters.

Article 8bis as a result, went through numerous revisions, as the US, being the head of the Correspondence Group, and having prepared the draft, tried to safeguards the consistency of the draft to the 1982 Convention. It outlined that the new boarding necessities should not inhibit the economic welfares of flag states, vessel owners or the civil rights of seafarers. The new boarding necessities contain comprehensive safeguards including:

- The avoidance of use of power except when necessary and not exceed the minimum required, reasonable situation.
- The need to analyze the difficulties and dangers of boarding a ship by the state in concern.
- Taking on due account by the boarding state of the necessity not to risk the safety of life at ocean, security of the ship, cargo and consider reasonable steps to avoid the ship from being unduly detained.
- The boarding state to consider not to predisposition the viable and permissible safeties of the flag state.
- The flag state to retain the right of jurisdiction for all boarding's, on a detained cargo, ship, or persons, through seizure, arrest, forfeiture and prosecution.
- The boarding state to be liable for harm, damage or loss associated to it<sup>74</sup>.

The boarding provisions had safeguards for human rights and the environment. Through the boarding state ensuring that persons on board are accorded desired treatment in line with the international

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<sup>73</sup> CDI Center for Defense information, Arms Control & Disarmament, August 25, 2003, The Proliferation Security Initiative: Naval Interception Bush-Style.

<sup>74</sup> Joseph E. Kramek, "Bilateral Maritime Counter-drug and Immigrant Interdiction Agreements," 31 U. Miami Inter-Am. L. Rev. 121



humanitarian rights and law. Given the wide-ranging safeguards, the boarding provisions are likely to be abused by the foremost powers.

#### **4.1.3 Sea Vessels Boarding and Interdiction**

Many elements develop the practical aspects of security in the maritime which include the port security measures and cooperation. The sea vessels boarding and interdiction, cannot be dispensed, leading to the governmental vessels interception, boarding and control of vessels at sea. This section looks at the pertinent international regulation regarding the prohibition and boarding of sea vessels, including growths to widen the situations where a boarding might occur. On the interdiction of marine vessels, the law has conventionally not been compassionate to processes meant for the prohibition of vessels apart from those of the flag nation, with limitation to circumstances<sup>75</sup>. The fact is the elementary standard of non-interference on vessels at ocean, except when flying on a state's flag or engaging in a conduct leading to universal prerogative. For many years, this has been the situation through a statement by Lord Stowell stating: In zones where there isn't local authority, the subjects of States meet on independence and equality. There should be no checkup on the unappropriated and common parts of the sea but only on the confrontational claim<sup>76</sup>. This section further sightsees the pertinent power dealing on the use of power in armistice through an array of by a commander to coerce compliance at sea.

#### **4.2 State Jurisdiction at Coast**

Jurisdiction of state at the Coastal region is resultant from immediacy to the coastal zone of a nation. The Sea Convention Regulation of classifies marine prerogative on a succession of marine zones, where prerogative increases. For instance, the waters enclosed thru bays and those close to the coastal state, fringing islands and harbors or roadsteads, offer jurisdiction to the littoral state equating to the land jurisdiction. Contrary, exclusive economic zone waters, there is limitation on the coastal state's jurisdiction and the vessels boarding for enforcement purposes.

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<sup>75</sup> Douglas Guilfoyle, 2009, Shipping interdiction and the law of the sea, Cambridge University Press, New York

<sup>76</sup> UNSC Resolution 1718, adopted on October 14, 2006.

Beforehand consideration on jurisdiction in marine zones, it is imperative to note vessel exemption from littoral national law procedure, irrespective of the marine zone. Warships and Governments engross in noncommercial service by sovereign immunity. In the breach of state laws by such vessels at the coast, the vessel may be requested to leave the state sea, however make a claim in ambiguity of the flag state. The state internal waters in jurisdiction receive equal treatment to to land. The waters are sovereign to the littoral state ensuring that the foreign vessels has no navigation guaranteed right. Vessels in interior waters are not invulnerable but opt to discern prerogative in a littoral state. Conventionally littoral nations however didn't apply internal vessel procedure laws and on economy<sup>77</sup>.

As a sovereignty prerequisite, the state sea is important, though a vessel from a foreign state may not categorically be topic to the complete littoral government authority, because the vessels has an acquitted route right through the regional ocean and the littoral nation, with limitations to specific subject areas variant dependent on the type of jurisdiction, individually consideration and regulation segment. The littoral state holds a "protection right" to deter passage over not innocent territorial and guarantee the vessels does not fissure entry conditions, that are addressed beneath Article 25 of the Sea Pact, that legitimizes determinations to remove vessels from territorial sea through coastal states when the passage is not cleared. Moreover, laws concerning innocence on the coastal state may be executed on the passage.

#### **4.2.1 Universal Jurisdiction**

States jurisdiction on the vessels from overseas is not legitimate under the international law afar the national jurisdiction except in situations limited as delineated in Article 110 of the Law of the Sea<sup>78</sup>: This is with exclusion on interloping arising from controls deliberated by the treaty stating that a warship on high seas stumbling upon a foreign ship, that is completely not entitled to immunity is not

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<sup>77</sup> Douglas Guilfoyle, 2009, *Shipping interdiction and the law of the sea*, Cambridge University Press, New York

<sup>78</sup> Devon Chaffee, "Freedom or Force on the High Seas?", IALANA Newsletter, Oct. 2003

in accord with Articles 95 and 96 justified in boarding, except when there is a coherent suspecting ground indicating that: The vessel engages in either or trading of slaves, piracy, unauthorized propagation, deprived of nationality and while the ship is flying a foreign flag it is authenticity, of the same nationality as the warship.

#### **4.2.2 Maritime Navigation Clampdown of Criminal Acts in contradiction of the Convention on Safety**

After the cruise liner *Achille Lauro* hijacking in the 1980s, a provision by the SUA pact through a framework was established to deal with terrorism targeting ships. Partly, it was conveyed with reasons that piracy through a reflection needed privately dedicated activities for a solitary end that may necessarily not include terrorist acts perpetration that are inspired through a partisan cause.

Signatories to the SUA pact received an extensive prerogative to covenant with transgressions relating to shipment that included ship clenching, violence actions performance touching on personalities on board, vessel damage or and cargo with a goal of jeopardizing the safety on navigation.

Authority to institute laws that create offences is extensively construed, centered on flag, vessel presence physically in the territorial sea, coercion attempted by the concerned state, on lodging of a vessel while at the sea is not authorized by the SUA Convention except by the flag state. Moreover, the SUA convention through its prologue offers unregulated staples through governance by the guidelines and values of the universal law<sup>79</sup> that seem to edge non-flag state intrusion as stated beneath the Article 110 of the Regulation of the Sea Pact, touching on piracy acts. Article 8 of the SUA pact gets to be the only mechanism that permits a state to have a function that provides hand to the vessel master and individuals to a state receiving rather than the flag nation. The embracing of the SUA pact through nationalities was deliberate primarily, but later again strongly assembled pace in the succeeding years after the September 11, 2001 radical attacks touching on the U.S. Later on,

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<sup>79</sup> The United Nations Law of the Sea Convention, Article 17

exertions to incorporate the range of the pact through intensive diplomacy have trailed in the IMO<sup>80</sup>, which led to the SUA convention protocol adoption later on in 2005. Weapons of Mass Destruction (WMD) and nonproliferation were the main focus of the 2005, SUA Protocol, but then again the amendments form brought about additional offences related to ship usage as a platform for terror activities and the space for the transportation of offensive individuals, as stated under the convention of SUA.

Hypothetically, item *8bis* enlarges the boarding range of third-party on vessels with explicit deliberations on operative requirements. Law enforcement provision to bump into a ship flying the flag sited on a state's seaward or territorial sea, with request, the party has to have rational grounds to uncertain the ship and or persons on board for being about or been intricate in the commissioning of an offence as set in Article 3 series that sets requests on party requirements to board:

- In accordance with the clauses 1 and 2 the first party indorse the nationality claim
- Upon nationality endorsement, the requesting party to seek first party approval to board and undertake appropriate measures with respect to the ship that includes stopping, entering and examining the ship, cargo and or persons in fortitude of a transgression as set out in Article series.

The flag nation in return, shall either;

- Approve, the board and examine request to the ship through its law enforcement and or with other officials and may even fail to approve the boarding and examine authorization.

No measures by the requesting party shall be undertaken through boarding without the authorization manifestation of the flag state. After the nationality ascertaining of a vessel this opens up a provision to a third state to board the alleged offensive vessel, by doing a notice to the flag state and obtaining of permission from the flag state. The lack of permission to board the vessel from the flag state, means that no boarding be executed. Even though, mechanism exist to circumvent inflexibility by the

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<sup>80</sup> Frederic L. Kirgis, Dec. 12, 2002, "Boarding of North Korean Vessel on the High Seas," ASIL Insight,

flag state, through the lodging of a declaration under Article 8bis that grant rights to board a vessel four hours after the request that permits boarding by other state parties<sup>81</sup>. On revelation of an offense evidence in the advance of a lodging, the flag nation still reserves authority, though authorizing the lodging nation to block the shipment, crew, and consignment pending and awaiting advance orders. From the text, it is clear that the flag nation is to keep on in control, noting that a lodging and consequent offence detection does not provide a foundation of taking over the matter by the lodging state.

In part Article 8bis states that: The flag state, in constant with other provisions of the SUA convention, may under paragraph 5 or 6 subject its consent to conditions that include the obtaining of further information from the party requesting, alongside conditions that relate to obligation for and the scope of actions to be taken. No further actions may be taken without the authorization expression of the flag state, though when necessary to discharge a looming danger to the lives of individuals or where those actions descend from pertinent multilateral and or bilateral agreements. Designed to this article, all boarding's pursuant have to observe that the flag nation has the right to apply power over an incarcerated vessel, consignment and on board persons, as well as penalize, seize, arrest and prosecute. Though, the flag state to its laws and constitution may substance approval to the application of jurisdiction through another state under Article 6 having jurisdiction. The practical effect of these actions is that SUA convention signatories and the 2005 SUA Protocol, outline that when the latter gets enforced, it will lodge each other's shipment at ocean, with consent other. This consensus may be advanced completed by assertions made, then will still be obligated to commence any advanced act. The general envision of the 2005 protocol gets to be on states cooperation with reverence to how those boarding's and consequent action might be undertaken.

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<sup>81</sup> Assembly Resolution A.924(22), Review of Measures and Procedures to Prevent Acts of Terrorism which Threaten the Security of Passengers and Crews and the Safety of Ships, adopted on November 20, 2001

### 4.3 Proliferation Security Initiative (PSI)

The PSI is identified to be an international informal understanding meant to provide ground for supportive accomplishments in the ocean to covenant with alleged WMD consigning vessels<sup>82</sup> and associated to non-state actors' equipment. The PSI is not a treaty hence, not binding, although it is a proclamation of purpose signposted through nations, demonstrating how states intend to collaborate with stages that might be observed to seize a consignment that is suspected.

An indication by a number of states strongly supports the PSI, with many more showing a concern in contributing. In the lodging and prohibition context, the PSI states Proclamation of Interdiction Values and a ration of this is relevant unswervingly to the lodging and prohibition of sea vessels: Taking explicit activities in sustenance of prohibition concerning WMD consignments, systems of delivery, related materials, to the scope their legal authorities nationally, consistent with their commitments beneath the frameworks and the international law to include:

- Not to carriage, assist in the carriage of cargoes or any such from or to states or non-state actors of concern in proliferation, and not to allow persons substance to their authority to do so.
- At their enterprise, or at the good cause and request shown through another state, to take act to board and examine vessels flying their flag in their territorial seas or beyond of any other nationality that is suspected reasonably of;
- Transporting shipments of proliferation disquiets, and to get hold of such shipments that are identified.
- To consider seriously provide approval under the applicable circumstances to the boarding and examining of its own flag vessels through other states and to the seizing of such WMD linked shipments in such vessels that may be recognized through such states<sup>83</sup>.

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<sup>82</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction, done at Washington, London, and Moscow on April 10, 1972, entered into force on March 26, 1975

<sup>83</sup> Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and their Destruction, done at Paris on January 13, 1993, implemented on April 29, 1997

- To take apposite actions to:
- Stop or pursuit in their territorial seas, internal waters or contiguous zones upon declaration on vessels that are suspected reasonably of carrying such cargoes from or to states or and non-state actors of concern in proliferation and to seize the identified cargoes
- To impose conditions on vessels leaving or entering their internal waters, ports or territorial seas that are suspected reasonably of carrying WMD cargoes, requiring such vessels be substance to boarding, examination and cargoes seizure before entry

The provision of this statement is on dual distinct jurisdictional boarding bases on a shipment. The primary is the flag national jurisdiction, which requires a flag nation to undertake a lodge and examine on a vessel that reasonably fly its flag and is alleged of transporting WMD and or associated material. This requires the seizure of such cargo when found. The seizure is consistently clear with the international law because such execution is limited to the waters of a flag state or waters that are past its dominion, though freestanding the state sea of the other state<sup>84</sup>. The jurisdiction of flag nation is also obtainable to third state through the flag nation ensuring it assumes the provision of approval to the lodging nations to pursuit and seize if required the suspected consignment. It is important that despite the fact the probability contemplation of third nation action is clear, nations that support the declaration are to be indebted serious considerations, a part from the consent to boarding of a third nation.

The subsequent jurisdiction foundation for lodging and prohibition is the prerogative, where the vessel flag nation apprehensive is not pertinent. This has the littoral nation jurisdiction proclaiming over a shipment with reasons that its manifestation in the regional marine, without obtaining essentially the approval of the flag nation. Academic debates have significantly arisen above the validity of this regional foundations for stopping and lodging ships and the get hold of consignments. Undoubtedly, it would not prima facie appear be dependable with the innocent passage right and the

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<sup>84</sup> U.S. bilateral ship-boarding agreements.

limitations on the implementation of unlawful prerogative by a littoral nation over shipments passing their regional sea. Though a quantity of urgings can be upraised in legality backing of such seizure, including the littoral nation right to act in collective outlined in the UNSC<sup>85</sup>. The UNSC pursuant to chapter VII of the UN Charter, may make a resolution, feeling the claim of force would contribute in contending of a threat for the sake of achieving international security and peace, and consequently could offer appropriate authority for a littoral nation to stop and board a vessel suspect in its territorial sea and even beyond it.

UNSC 1540 Resolution impulses states to proscribe the WMD transit to non-state actors, though it does not provide any positive duty to be undertaken by states in the prohibition of such shipments. The resolution approves such action as only being in line with the universal law, and therefore, a suspicious vessel boarding in the state sea may not be appropriate. In the PSI, one advancement that has ensued is the ship boarding agreements conclusion<sup>86</sup> that was between a quantity of open registries flag states and the United States. These arrangements permit the United States to sojourn and board flagged vessels in the contributing states, with short-term often notice and periods of permission, to seize and search for WMD, linked materials and system of transfer. Mostly, the arrangements are reciprocal and therefore, supposedly the participating nations could apply identical supremacies over suspicious U.S. flagged shipments, though virtually, the view of this happening is isolated. Consequently on script, seven of such pacts had been determined, with nations such as the Marshall Islands, Panama, Belize, Liberia, Malta, Croatia and Cyprus.

#### **4.4 Ships Interdiction in high Seas**

A serious issue subsists in relativity to the use of force contrary to vessels in peacetime. State owned warships or other vessels affiliated to government, under international law, may be able to declare a

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<sup>85</sup> Yoshifumi Tanaka, 2012, *The International Law of the Sea* (Cambridge University Press,)pg. 151

<sup>86</sup> Bipartisan Security Group, September 2003, "The Proliferation Security Initiative: The Legal Challenge," Policy Brief.



right to lodge on a vessel while at sea<sup>87</sup>. This may be done in declaration of authority over the vessel, obtained through the flag state permission, or by a meager right for vessel visit. If the suspected vessel refuses to conform to authorization on boarding, questions may arise as to what amount of force may be obligated to compel compliance. The Sea Convention Law of states the very little and the level of force that may be executed by a state to endorse its jurisdiction and rights at sea. The jurisdiction exercise is noted through the convention to be through a warship or any other patent government vessel that may infer that some amount of force might be applicable as vessels fitting these descriptions most are armed, though it is acquiesced that this is too much to deliver into the convention. In situations where the convention does not compact the issue, application of the older principles touching on international law is necessary.

Numerous cases that deal with maritime enforcement in offshore have been in existence alongside the use of force. In the *I'm Alone* case, a dual commission dealt with issues surrounding the tracking down and obliteration of a Canadian vessel that was suspected of alcohol smuggling during U.S. Coast Guard prohibition. After dealing with issues, the hot pursuit commission, held on the matter on the *I'm Alone* sinking, which had no threat present to the coast guard vessels pursuing, that was different to international law. The satisfaction of the commission was that a pursuing vessel may necessarily use reasonable force for boarding purposes to search, seize and bring to port a vessel. If in such conditions the vessel was meant to sink, then it could be acceptable, provided that the sinking was subsidiary to necessity and reasonable action. Though, where a vessel considered to be unarmed had deliberately been sunk, to the international law such, action would be contrary<sup>88</sup>. In the international inquiry on the *Red Crusader*, between Denmark and the United Kingdom there had to be a consideration in an incident amid a Scottish trawler and a Danish patrol fisheries vessel in the Faroe Islands waters. After being stopped by *Neils Ebbesen* the Danish patrol vessel on notion of

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<sup>87</sup> P. Clark, 1980, "Criminal Jurisdiction Over Merchant Vessels Engaged in International Trade", Journal of Maritime Law and Commerce Vol. 11, No. 2.

<sup>88</sup> United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, (1989) 28 ILM 497

fishing, these saw the *Red Crusader* flee with two Danish crewmembers. The *Neils Ebbesen* chased, and eventually fired on the *Red Crusader*, primarily with 40-mm gunfire that was directed at the radar scanner, mast, the vessel's stern and to the lights<sup>89</sup>. When this became ineffective, the *Neils Ebbesen* fired its solid shot 127-mm at the *Red Crusader* from its main armament. The happening was brought adjacent with the Royal Navy ship intervention through interposing itself amid the two vessels.

The inquiry court said that the force that was used on the *Red Crusader* was in contradiction to international law. The court considered the firing of dense shot to the *Red Crusader* to be human life endangering, since it didn't have a warning, and the firing had exceeded the authentic use of force. The *M/V Saiga (No. 2)* is the significant and most recent international case on the use of force in the execution of actions at sea witnesses before the International Tribunal in charge of the Law of the Sea. *M/V Saiga* was a tanker, which was registered in the Grenadines and St. Vincent, which was involved in fishing vessels bunkering off the Guinea coast. A patrol vessel affiliated to Guinea pursued the *Saiga* firing at it, though it was later disputed before the tribunal on the caliber of weapon that were used. On the level of force, the tribunal held on Guinea use of excessive force stating that: Considering the level of force used in the arrest of the *Saiga* by Guinea, there is need to take into account by the tribunal the circumstances that led to the arrest in the framework of the pertinent rules outlined in the international law. Even though the convention does not comprise of use of force express provisions meant to aid the arrest of ships, by virtue of application, the international law, through the conventions Article 293, requires the need to avoid the use of force as much as possible and, in occasions where the use of force is unavoidable, use of force must not go beyond the circumstances that are considered to be necessary and reasonable. Humanity considerations must apply in regard to the law of the sea, as applicable in other international law areas. Over the years, these principles have been applicable leading to law enforcement in numerous operations at sea.

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<sup>89</sup> Rohan Gunaratna, September 2004, Terrorist threat to shipping is 'imminent and growing'

The normal ship stopping practice used at sea is to first to giving of a visual or an auditory signal to stop, through the use of signals that are internationally recognized. Upon failure of these actions, a diversity of actions may considered, including the cross firing of shots to the ship bows. The last resort on the use of force may only be appropriate after all the initial actions fail in the vessel pursuing. This places a considerable constraint in maritime enforcement on the use of force. Apart from an exclusion in line to self-defense; touched upon in *M/V Saiga (No.2)*, though deemed irrelevant in the circumstances by the Tribunal, it definitely makes it clear that the use of force is only acceptable after a multiplicity of other measures implemented, including utility of across bow warning shots fail.

Together with *I'm Alone* and *Red Crusader*, it is most improbable that the application potential physical harm causing force could cause harm to humans in the seizure of a vessel at sea and can be used lawfully. In the 2005 protocol toward the SUA convention, such an approach is most likely duplicated<sup>90</sup>. Article 8bis(9) have provisions that outline: When undertaking authorized actions there is need to avoid the use of force except when essential to ensure officials and individuals on board safety, or in occasions where there is obstruction of officials in the performance of the authorized activities. Use of force of any kind in the pursuant to this article is not required to exceed the minimum scope of force that is set out, reasonable and necessary in the circumstances. It is important to note out that the language the used in this paragraph's last sentence is alike to the phrase that is used by the International Tribunal focusing on the the Law of the Sea<sup>91</sup> relating to the *M/V Saiga* in the joint judgment of paragraph 155.

Beneath Article 8bis(10) of the 2005 SUA Protocol, Notably, the scope of duty where a boarding is undertaken is described in detail, reflecting perhaps the sensitive worry of states regarding to the application of a power to board and seizure against vessels that are theirs and flagged:

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<sup>90</sup> Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, opened for signature 14 October 2005, IMO Doc LEG/CONF 15/21 (entered into force 28 July 2010) ('2005 SUA

<sup>91</sup> Philipp Wendel, 2007, State Responsibility for Interferences with the Freedom of Navigation in Public International Law, Springer, pg 27.

Safeguards where a state party is tasked on measures on a ship in line with this article, and the state shall take outstanding account of the need not cause danger and harm the safety of life at sea, ensure all persons on ship are treated in a way that upholds the fundamental human dignity through compliance with the international law applicable provisions that the law on international human rights, the state to ensure that a boarding and examine pursuant in line to this article conducts the actions in accord with the appropriate international law, the state to take security and safety due account of the ship and the cargo on board.

Further, ensure no prejudice on the legal or commercial interests of the flag state, ensure, within obtainable means, that any ration taken with respect to the ship and or cargo is environmentally suitable under the conditions, ensure that on board persons to whom actions may be commenced in association with offences outlined in any of Article 3 series are given protection as outlined in Article 10 of paragraph 2 irrespective of their location, the state to ensure that the ship master is guided on the intentions to board and is afforded the prospect to contact the flag state and ship's owner as soon as possible. Lastly, the state to install reasonable efforts aimed at avoiding a ship from being unduly delayed or detained. These requirements reinforce the fundamental position with reverence to the use of force, but then again flesh out features on how a vessel and the vessel's crew must be handled. The detail level may seem to go well beyond cases that were previously discussed.

#### **4.5 LRIT Systems for Vessels**

When the ISPS Code and amendments to the International Convention for the SOLAS, 1974 were taken to consideration by the IMO in 2002, an issues that lingered to be resolved was LRIT of ships<sup>92</sup>. The 2002 SOLAS resolution 3 of conference entitled on the IMO to undertake as a matter of urgency, an assessment of the impact of the proposals that were meant to implement the ships LRIT, develop and adopt proper performance guidelines and standards for the functioning of the LRIT system. The

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<sup>92</sup>International Centre for Advancing the Legal Protection of Seafarers, 23 December 2011, ICS reminds ship owners to comply with STCW from the New Year.

LRIT system establishment aims at complementing and offering support to the execution of the ISPS Code through detecting threats on security and taking measures that are preventive against incidences of security that affect port facilities or ships that are used in trade internationally.

Since the ISPS Code assumption, noteworthy progress has been achieved in the developing of technical, legal and administrative mechanisms suitable for the LRIT system adoption for vessels. The Maritime Safety Committee (MSC) adopted the resolutions through the IMO in 2006 in regard to the SOLAS chapter V amendments, standards of performance and practical requirements for the LRIT for ships application alongside arrangements for the appropriate LRIT system establishment. Contrast to the ISPS Code adopted under chapter XI of the SOLAS on maritime security, the introduction of the LRIT system as directive 19-1 under the SOLAS chapter V on amendments on the navigation safety emphasizes not only its safety in maritime but also safety, its SAR and environmental submissions. An elaboration on the SOLAS explicit provisions with regard to MSC resolutions of 2006 and regulation V/19-1, the IMO *ad hoc* Business Working Group drafted six procedural documents on the LRIT structure for embracing in the Marine Safety Committee (MSC) of the IMO. They are the draft methodological specification for the transnational LRIT info exchange, draft methodological stipulations for the LRIT transnational data epicenter, revised draft communication methodological stipulations for the LRIT system, the draft LRIT methodological billing and costing standard, LRIT system draft protocols on its development testing by the incorporation of new data centers for LRIT into the system, draft direction on establishing a data distribution plan and maintaining it.

Policy, legal and technical debates after the adoption of methodological specifications, continued. In May 2008 at its 84<sup>th</sup> session, the MSC ratified the standards and practical necessities for the LRIT of ships and saw the adoption of documents that offered direction on the LRIT system enactment, including the LRIT information receipt thru SAR facilities and ships compliance to transmission of LRIT information. It also revised the provisional methodological specifications for LRIT Infor

Exchange Internationally, the Transnational LRIT Info Centre, LRIT system of communications and the distribution Plan for LRIT Data.

IMO negotiations have resulted to a sum of key concerns resulting to predominantly, the kinds of vessels to be pursued, LRIT data supposed to be conveyed, individuals to obtain LRIT information and the recommendable time-frame and distance, for the LRIT system implementation, fundamental aspects in relation to the LRIT system methodological and administrative necessities, LRIT information confidentiality and LRIT information access cost.

There are still distresses on facets of these concerns requiring illumination and determination among the astringent IMO governments for purposes of ensuring the operation of the LRIT structure effectively. The concerns contain the LRIT data sharing of among states, with measures to undertake in the rise of breach of information confidentiality, states cost sharing and penalties to be imposed in case of states nonpayment of dues. This section provides an examination of the LRIT structure status and the directorial, legal and real repercussions of LRIT operation for states. Further, it discusses distresses in line with the draft methodological criterions for the LRIT structure and offers conclusions through emphasizing on the key processes that contracting governments and the IMO need to work on in advancing of the LRIT system implementation.

#### **4.6 International Regulatory Legal Framework for Seafarers**

The 2001 fanatic attacks on the United States have unquestionably transformed the environment on international security with the changes unavoidably extending to the maritime realm. Concerns on marine security encompass not only the marine spaces security but also the vessels and ports. Safety in reverence is to those charged with marine environment operation and facilitation of international seafarers' sea-borne trade<sup>93</sup>. The world industry on seafaring is considered to be a vulnerable area in the maritime and the transport sector.

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<sup>93</sup>Gianni, M. and Simpson, 2005, The Changing Nature of High Seas Fishing - How Flags of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing, 33-34, Australian Govt. Dept. of Agriculture Fisheries & Forestry & ITF

The vulnerability stems from research, conducted by Cardiff University at the SIRC, indicating that most international seafarers are in possession of fraudulent documentation<sup>94</sup>. In the case of 2001 alone, there were approximately 12,635 detected forgery cases in certificates of proficiency and correspondent certifications. These figures and the potential ships vulnerability and ports on the security of maritime risks have triggered concerns indicating no difficulty for a fanatic to shoulder the seafarer distinctiveness to advance the required services in the operation of a vessel or travel around the domain. Maritime security current concerns relating to issues touching on marine have also aggravated the responsiveness of media. In 2007, for instance, on the eve of a leader's conference in the region in Australia, a report though a newspaper cautioned of about 1500 explosives were being dispatched in and out of seaport amenities in closeness to the Aerodrome in Sydney, on vessels that were "unregulated" and operated by crews who had undertaken no contextual checks<sup>95</sup>.

While the reported news was sensationalist to some extent in tone, it nevertheless assists to further acme a significant concern on marine security ensuring seafarers' safety. Consequently, in response to the 9/11 and in particular terror attacks, the IMO meeting at its 22nd sitting adopted a determination requiring states to undertake procedures and review measures to prevent terror acts and terrorism that tend to threaten crews and passengers security alongside the ships safety. Moreover the safety of crews and passengers aboard vessels, there were concerns that arose on the associated terrorist attacks risks on ports, marine environment and offshore terminals inclusive of the individuals on seashore and in the port areas locality. Further, the determination provoked the International Labor Organization to undertake actions aimed at enhancing marine security by improving the seafarers' safety alongside the documentation and measures on complementary port security<sup>96</sup>. These important distresses have seen the establishment of efforts meant to improve security in the maritime environment through ensuring that there are verifiable identifications for seafarers in attainment of

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<sup>94</sup> **International Regulatory and Legal Framework for Seafarers:** Adopted in Montego Bay on December 10, 1982, entered into force on November 16, 1994.

<sup>95</sup> Adopted in Rome on March 10, 1988, implemented in March 1, 1992. See Australian Treaty Series 1993 No. 10

<sup>96</sup> International Convention for the Safety of Life at Sea of 1 November 1974, 1184 UNTS 3.

positive documentation. This section therefore shapes the pre 9/11 transnational seafarer identification supervisory framework before scrutinizing the post 9/11 expansions, especially on the conclusion of the 2003, SID Pact of 2003.



## CHAPTER FIVE

### MARITIME STRATEGIES

#### 5.0 Overview of the Strategy

A **strategy** is a high profile blueprint meant to attain given goals or objective under uncertain conditions. In the field of military science, the therein referred term strategy includes numerous skills subsets and tactics, barricade craft, without limit to logistics and the term has widely been in use from the times of the Roman Empire rule in the 6th century. On the other hand strategy denotes a comprehensive manner that try to pursue partisan ends, through the use of intimidation and or use of potency in an actual way, in an interaction of wills in a military conflict, both adversaries get to interact. Strategy is significant considering that resources available to attain these goals are regularly limited and as such involving the setting of goals generally that are considered to be, determining actions towards achievement of desired goals, and resources mobilization to aid the execution target actions. A strategy designates how the goals will be realized through the utilization of available resources. In this studies, maritime strategies that are discussed advance on how to eliminate and mitigate security threats in the maritime domain.

#### 5.1 Concepts of Maritime Strategy

In the context of military planning, maritime strategies get to be important as they offer the ways to utilize control to interest zones in the inland and along coastlines<sup>97</sup>. This interest area is known as the littoral, defined to be the seaward areas to the coast that are vulnerable to influence the terrestrial and the inland areas from the shoreline that are vulnerable to getting impact from the sea. Actions that are defence linked in the littoral require joint operations that are and unique in nature. The littoral harbours more than three quarters of the population in the world and hosts more than 80% of the capital cities in the world with nearly all marketplaces linked to international trade. The influence and functions of maritime strategies therefore are a important features of most reliable military

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<sup>97</sup> US Government, 2005, The National Strategy for Maritime Security (Washington DC,)

strategies in the world. In appreciation of this fact it is indispensable to understand entirely the crucial structures of a marine strategy. This section offers the contextual data on the crucial fundamentals of a marine strategy with the impending influence it offers in the field of military science.

A contemporary maritime strategy encompasses the sea, air and land forces that jointly operate with an aim of influencing littoral events alongside the traditional concept on blue water marine of sea control and ocean denial.<sup>98</sup> The main essentials of a classical marine strategy comprises of ocean denial, regulation and plan of power. Ocean Denial main focus is on the prevention of the sea use by other forces against a given states. This is identified through conditions, which exist when an opponent is deprived of the ability to utilize the sea area for given sole purposes within a given length of time.

Ocean denial infers to an added inactive carriage with prominence on defence. Sea proclamation engages plane carriers featured with Inflight Early Warning planes and air units equipped with military airborne missiles that are poised in a mighty show off. In summary Sea Control gets to be defined as the situation that occurs when there is autonomy of action by a state to utilize a zone for sole purposes within a given duration, if obligated, to deny the use of the area to an opponent and Projection of Power, while entirely not a concept on maritime strategy, sea control recognizes the fact that maritime forces, by means of Ocean Control, they can impact on the control and shape the tactical environment, and have the ability to deliver ashore combat force if necessary ‘and where the ingenuity is possible to endure to the offensive power. The Sea denial elements therefore, entails the laying of both anchored and bottom mines through submarines. The use of an armed fast patrol boat that contain anti-ship missiles, armed surface ship, torpedoes, gunfire, surface ship with homing torpedoes that are ship-launched that include long distance delivery through submarines, aircraft carriers that are fixed and with rotary wing aircraft including aircraft that is land based with anti-ship missiles and bombs.

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<sup>98</sup> Peter D. Haynes, 2015, *Toward a new maritime strategy: American naval thinking in the post-Cold War era* (Annapolis, MD: Naval Institute Press.), p. 197

In Sea Control there is the entire use of surface ships that are armed with and air missiles set for the area surface such as Close in Weapons Systems, guns, electric combat, and missiles for point defence, anti-submarine warfare surface ships use profundity charges, the sonar and homing ruins and submarines to offer intellect of an opponent on air, flung from terrestrial bases and provision of anti-submarine defence on a warfare as Hunter-Killer submarines, ASW that are ship-borne aircraft, with fixed and rotary wing. The Sea Control further contains the use of aircrafts that are Land-based to conduct patrols on a long range maritime, maritime strike aircrafts and fighters that are land-based when within minesweeping and range, clearance divers and mine hunters.

To the projection power, additional capabilities, substantial projection of power is delivered through the submarines aptitude to launch cruise missiles for terrestrial attack. Therefore, a maritime strategy aids a state to subsidize on significant ways that are aimed at containing a projected instability at a range from the state's littoral side. These form of a strategy assists a state to aid regional friendly states especially the island countries with geographic locations of control tend to approach a given maritime state.

In the case of littoral states, the maritime strategy aids in the development and control of the imperative offshore resources, that including gas and oil<sup>99</sup>. A maritime state needs to have the competency to rheostat unlawful immigration, fisheries, smuggling, piracy and other general security issues wherever around the state's off-shore isles and coasts. The maritime strategy enables a state to develop and have control on its significant offshore resources, including gas and oil. These capabilities not only and always get exercised by the Defence Force though through engagement of other state agencies. As another step up, Sea Control is from sea repudiation through the provision of presence elements, reach and control power within an area of ocean for the purpose of pursuing given strategic interests. Sea control is not an exercise that is continuous but rather an exercise that is founded on the attainment of given goals through the available means meant to implement it.

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<sup>99</sup> Admiral Michael Mullen, 2012, *Toward a new maritime strategy*, p. 201.

Projection of power in relative to marine strategy, is about the utilization of marine power to impact on land affairs. The IRS remarked that the accessibility, composure, and tractability of the marine forces aid them in the striking at the terrestrial right from unexpected directions, this makes them through Liddell-Hart arguments that the utmost tactical asset in a marine state can ever own. As an inquiry indication, the urgings for a need in transferral in the marine strategy from the primary focus on marine methodologies to another littoral operations basic focus were examined. For instance, Dr Michael Evans states that when looking through the military perspective the state is better prioritized in the developing a joint maritime strategy that is considered to be genuine<sup>100</sup> being at the centre as a critical piece of future planning on issues that touch on defence. An imperative maritime strategy needs to be flexible, multidimensional with best integral aspects on the special proficiencies of all three services through a manner that is efficient.

In an effort to create a system on national security with the main aim being the military component on maritime strategy, there will be need for Kenya to shift the national deliberate thinking from the rigid strategic enquiry that is solely centred on territory defence towards situation based enquiry, which grosses much and more justification of the defence interests that are non-territorial. Critics of this proposition, and those in sustenance of the lengthy Government plans, would contend that the capacity to sustain littoral actions are sustained through existing and deliberate force organisation. To this level the maritime strategy debate has concentrated more on martial objectives related to marine strategy. Although, maritime strategies may embrace the general objectives on maritime.

## **5.2 Maritime Strategy National Concept**

The maritime strategy through the national concept takes into account the consideration and importance of a marine strategy set a few steps in advance. While the marine strategy through the military concepts on as described are part of a maritime strategy nationally, the broad national security elements need to be considered. The considerations include the state's economic, societal,

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<sup>100</sup> Council of the EU, 2014, The European Union Maritime Security Strategy (Brussels,) p. 3.

political and environmental security. In the concept of maritime strategy through the military there is encompassment of constabulary, diplomatic and elements of warfighting. The concept suggests that the seafaring strategy is a subsection of wider martial strategy. The maritime strategy whose focus is national incorporates the state approach to the safety that is either maritime-focused or continentalism and tends to consider responsibilities, not limited to military forces but further across a wide range of sectors in the security industry.

The concept of maritime strategy has a clear discrepancy that is amid military maritime strategy and national outlines<sup>101</sup>. While the two seem to be interrelated they are however not similar. The national marine strategy for instance integrates all government divisions and is typically engrossed on aquatic areas including the outside control of the seabed boundary or limited economic zone.

The military marine strategy symbolises the engrossment of all divisions that include land, sea and inflight that can power the marine environment actions. This strategy is basically more concerned with the government policy implementation where it is considered that there are National interests lie: for instance, in the coast line adjacent waters, through the region or certainly through the world. Similarly, suggestions by the Navy Confederation of Australia are that the marine strategy is required to be implemented and should not impartial partially to defence matters but then take in an array of marine actions comprising of the development of a systematic data of the economic, physical, traditional, strategic and political qualities of the islands and oceans belonging to countries and littoral state nearby areas.

Solely marine strategies can link to military goals or on extensive state security goals. For the sake of this study, considerations on the definitions of maritime strategy are imperative<sup>102</sup>. A supplementary feature of the significance on the need to recognize national security goals through the deliberation of maritime strategy will explore in detail this area. There is need for a more focus in military goals concerned with the maritime strategy. Wherever reference is made on a modernized marine strategy,

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<sup>101</sup> AU, 2050 Africa's Integrated Maritime Strategy (2012).

<sup>102</sup> James Kraska and Raul Pedrozzo, 2014, International maritime security law (Leiden: Nijhoff), p. 10

the connotation gets to express to a strategy that involves ocean, land and air militaries that conjointly operate to impact the littoral events, together with the traditional concepts on blue water maritime of sea control and sea denial.

### **5.3 Military (Navy) Capability Development**

There is need for military strategies that are determine towards capability development. In return, the military capabilities development should influence to the strategy. The Kenya Navy Base establishment at at Mtongwe alongside the second navy base in Manda, Lamu is a good case. Recent events in line with the formation of the coast guard in Kenya is another attractive national instrument on advancing maritime security.

#### **5.3.1 Sea Power**

On Kenya's maritime strategy, generally the current debate emphasizes on a mutual methodology to proficiency and actions. This methodology pursues to conglomerate the Inflight Force, the Navy and the Army forces towards ensuring that there are no issues of conflict that arise between the divisions of the armed forces. The triple services require a unified and well connected system that eases mutual fighting competency<sup>103</sup>. In relative to the sea power role, there has been a minimal attention on the blue water navies' role and more prominence on the littoral operations. The Kenya Navy has significantly increased its attention to joint littoral operations and the future concepts on warfare envisaging maritime forces in the provision of defence and sustainment of boarded terrestrial forces although enrooted and whereas the terrestrial forces continue camping in the littoral<sup>104</sup>. While shoreline operations are getting a greater devotion, the classical impressions of sea control, oceanic denial, and estimate of power are still significant. The capabilities type required comprise of submarine, excavation warfare, air and surface. Kenya Navy consist of the special boat, surface ships and hydrographic survey, interceptor boats and amphibious logistic landing ships.

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<sup>103</sup> John Mack, *The sea: a cultural history* (London: Reaktion, 2011), p. 74.

<sup>104</sup> Daniel Moran and James A. Russell, eds, 2014, *Maritime strategy and global order: markets, resources, security* Washington DC: Elliott & Thompson,

### 5.3.2 Amphibious Lift Capability

The Army capability and role is influenced by its Defence on state as outlined in the policies on Defence and through the offshore operation need that is in support of humanitarian operations and peacekeeping. The operation of East Timor, for instance, established the need to have in place short notices on operations that are supported through sea and air lift capabilities. Doctrines on defence have acknowledged the necessity for greatening capability in offshore managing operations. In an effort to poise the demands amid coastal region defences, reinforces the significance of a lift capability that is amphibious through committing to maintain and retain the Kenya Navy logistic Support Ships and amphibious landing, in the case of Tana and KNS Galana. The combination of this alongside the special boat operation unit squadron of to operate from logistic Support Ships offers Defence a restricted amphibious capability. With the growing amphibious tasks emphasis on the cumulative Army role in the marine strategy, there is the demonstration of the doctrine of army through the documented concept on Littoral Environment Manoeuvre Operations. The IRS privileges that the maritime<sup>105</sup> methodologies to the littoral territory in nature and posing the fact that the capacity to conduct tasks jointly in the shoreline is vital towards attaining of a maritime strategy that is effective.

In no sense maritime strategy tends to exclude the function of land forces. The strategy is all about being able have control maritime over methodologies. The controls include, amongst other strategies, having control on what goes on in land bits on maritime approaches. There is a significant function in the maritime strategy for land forces, predominantly for the interior operations arch in the isles in within the close Kenyan vicinity. For the case of Kenya Defence Forces, there is the existence of land forces that are deployed adjacent to maritime channels in the defence of the coastal region.

Nations require an amphibious capability that is limited though adequate to consent on land lodgement of militaries to land in an un-opposed manner. Access that is forced from the ocean as

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<sup>105</sup> HM Government, The UK National Strategy for Maritime Security (London, 2014).

experienced recently in the port of Kisimayo capture greatly proved that the KDF amphibious capability currently requires great advancement. In relation to the possible offshore operations KDF limited its force projection, surface air warfare capability and sea control, through combining the lack of fortitude associated with air power, requiring the modernisation of assets associated with the maritime in situations where the force has to contemporary meet with security issues.

#### **5.4 Merchant shipping use for Defence purposes**

Lack of native ship ownership and appropriately trained workforces has made Kenya to rely on other state owned crude vessels in the undertaking of heavy sea lift tasks, which tend to be beyond Kenya's capacity on the present marine forces. There is the inherent need to recognize that for Kenya, it may be further problematic for the government to acquire resources that are foreign owned as equated to the domestic needs. Scholars in the maritime field indicate that they wish to see developments being part of Kenya's maritime strategy along the coastal and further to the international shipping<sup>106</sup>. It is significant to recognise the merchant shipping support towards the defence objectives though the foreign flagged shipping issue tends to be a global problem.

In regard to the issue of merchant shipping that are foreign owned, flags of expediency predominate across the world. Only few nations tend to have own shipping lines that are significant hence most shipping is international genuinely and proceeds globally<sup>107</sup>. Kenya's priority is to warrant the provision of an environment that is secure for trade to flow for purposes of prosperity<sup>108</sup>. Kenya government has acknowledged that it was important to develop own shipping line and provide competitiveness but our trade policy was restricting incentive. It is important to note that defence cannot be separated from the merchant navy interests. There exists issues in developing Kenya's own credible merchant navy which can compete with other merchant navy vessel from other flag states. Although Kenyan shipping vessels might be expensive, it is important to have own shipping lines.

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<sup>106</sup>Commodore Alan Robertson, Transcript, p. 182.

<sup>107</sup>Rear Admiral Rowan Moffitt, Chairman, AMDC, Transcript, p. 83.

<sup>108</sup> Mr Lee Cordner, Future Directions International, Transcript, p. 130.



Merchant navy in Kenya has not been developed due to lack of policy. Using foreign flagships is only short term because they are slight as they have no trade accountability as they avoid tax and only operate specific countries for purposes of avoiding any regulatory scrutiny.

Defence will always have an added advantage when has a resilient association with the mercantile navy, although the level of provision to be delivered to the industry towards achieving a defence value may be tremendously difficult. Currently Kenya can achieve a substantial requirement on lifts through a chartering program that is successful. There are instances when Kenyan gear has been shipped to the UN operations on peacekeeping to countries like Liberia and Sierra Leone. If Kenya had its own sea lift capability, then the UN could have compensated on the cost as matter that could give benefit to the country. Considering the rising sealift needs, it is vital that the Kenya starts thinking along the need to develop a Shipping line of its own.

### **5.5 Maritime Air Surveillance**

Aerospace associated power incorporates the air arms which have been derived from the Navy, the Army and the Air Force. Most considerably, it is notable that air combat gets to have a single ability as compared to the maritime nation, because of the fact that it simply has the control of the air through any territory and utilizes the maritime methodologies that are critical in all operations typologies<sup>109</sup>. The role of air combat in Kenya, is provided through the F5 fighter plane. Additionally, the, Kenya Airforce can undertake the maritime patrol over the EEZ and the territorial waters and has the ability to launch an anti-ship missile and bombs. This is not only a singular approach but in the support of these abilities there are airborne and surveillance maritime strategies along the coastal area that through radars, provide early warnings and are referred to as Maritime Surveillance Radar Stations. As Kenya yearns to progress military wise, it will have the ability to obtain maritime based patrol aircrafts alongside guided munitions. Aerospace power similarly, gets to be predisposed by the expansion of Unguarded Inflight Vehicles and Unguarded Battle Inflight Vehicles, which survey the

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<sup>109</sup> Philip E. Steinberg, 2001, The social construction of the ocean, Cambridge University Press.

ocean's surfaces compiling clear images<sup>110</sup>. The responsibility to monitor the water zones, is significant as tasked to the maritime patrol. The patrols are generally conducted through the engagement of military alongside given agencies on law enforcement with the exercise usually being meant for illegal activities conducted by human identification.

Therefore, the concept of maritime patrol denotes to an active patrol in an area, opposed to the passive monitoring systems which may include the sound detection fixtures and the land based spotters. A comprehensive patrol consists of a submarine, an aircraft, a ship, or and satellite that examines the patrolled area in efforts to seek out illegal activities to be reported. This exercise is critical in wartime circumstances for personalities in the navy to locate enemies on and defend against. Further, peacetime patrols are significant for the interdiction of criminal actions and in ensuring legal waters usage<sup>111</sup>.

Patrols in the maritime zones can be conducted over and done with the use of submarines and surface ships, by in-flight vehicles and aircrafts and through the use of satellites<sup>112</sup>. It is important to realize that human spotting is still significant as part of military activity towards the detection of illegal activities in the world, although its practice through the utilization of electronic systems is becoming more increased. There are several maritime patrol types and missions that exist including the Military that comprises of the: air force and the navies who employ patrols that are meant to locate or identify an opponent or even probable enemy submarines and ships. The findings of the patrols are reported to the combat vessels that are tasked with the taking of appropriate actions. Features applied to identify include the numbers and vessels types, as well as speed and bearing information meant to assist in the tracking the units. Patrols that are anti-submarine often deploy sonobuoys to assist in the

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<sup>110</sup> Air and Marine Operations Center (AMOC), August 8, 2013 Office of Air and Marine U.S. Customs and Border Protection

<sup>111</sup> Maritime Security and Surveillance, January 2011, Centre for strategy and Evaluation Services, Kent, UK

<sup>112</sup> DHS/CMB-011-US Customs and Border Control Protection TECS (December 19,2008,73 FR 77778).

tracking. All through peacetime, there are maintained patrols by the military forces in practice towards preventing the enemies surprise deployments.

The other component is on law enforcement that has seen: Countries that have extensive coastlines become more vulnerable to those exiting and or entering country being undetected. This trickles down more particularly to smuggling which is often carried out over by means of waters. Agencies on law enforcement often engage the maritime patrols towards the assisting of seizure of such activities.

The economic perspective is another significant maritime surveillance undertaking: Water areas, with those near the coast in particular, are high potential areas of economic activities. This activities are not only meant for shipping but also incorporates tourism and even fishing activities that are significant economic activities to most coastal countries. The need to patrol these waters is obligated to the maritime patrols units and these to some level assists customs agencies through monitoring of traffic in commercial shipping on controlled waters.

Coast defence is also a significant component that identifies and seizes threats to coastal areas. Coastal defence may include the prevention of infiltrations on enemy surveillance of coastal installations. Through the use of law enforcement agency patrols the aim gets to be the prevention of criminals from getting close to the shoreline.

Rescue mission although not that necessarily, it is a primary maritime patrol mission and asset, often used to aid the maritime rescue operations, for searching and extraction of survivors.

## **5.6 Oceans Policy**

Policies formulation for all maritime states is ideally needed on oceans that seek to promote development that is ecologically sustainable and aims at encouraging of internationally viable marine industries, with the protection of biological diversity in the marine ecology. There is need for Kenya to endeavor in the development of a policy on oceans that states out the Strategic Policy through defining the attacks defeat against Kenya's territory as the core force structure. The Ocean Strategic Policy should also advance on the need to have a strategic control for potential aggressors not to be

able to cross the marine jurisdictions<sup>113</sup>. Further, the KDF should be tasked to contribute to an array of responsibilities that add to the Policy on state Oceans: contingency planning and Vigilance, law enforcement on fisheries, marine surveillance and retort, Pursuit and save, hydrographic amenities provision and the Oceanographic Information Centre Creation.

There is need for the marine strategy to be corresponding with essentials of national policy<sup>114</sup>. The oceans Policy 'is a important in the implementation of the maritime strategy since it proposes the states leadership hence, helping in the ensuring that regimes on ocean management are internationally effective, and are well implemented around region in the oceans. As an outline of the Ocean Policy any given maritime state should provide regional and international leadership in the management of oceans, through the recognizing of the possibilities that national actions may, and that draw effects on the jurisdictions marine touching on neighboring countries<sup>115</sup>.

In view of Kenya's developed Oceans Policy, its status and significance on recognition is required in ensuring the stability of the states maritime strategy. For the case of Kenya, the plan should explicitly identify the importance of regional marine interests and the probable loopholes for Kenya to exercise its leadership role, especially in the Indian Ocean rim towards assisting regional states in the capacity building of their maritime interests. Through this endeavor, Kenya would have contributed majorly in the region to the stability through helping in the prevention of arising threats. Further, the Kenya air force can also easily embark on infrequent surveillance flights on the the Indian Ocean and further establish a coast service in the region as a lead an enhancement of regional surveillance<sup>116</sup>.

Considering that the operation of aircrafts is expensive or maritime surveillance, there could be a possibility to explore Kenya's in cooperation with Tanzania opportunity, alongside the Seychelles, Djibouti and Somali when it gains stability. This will be meant to establish aid the establishment of a regional air scrutiny unit through the possible use of cheaper aircrafts that are similar to those that are

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<sup>113</sup> Environment Australia, Australia's Oceans Policy, Vols. 2, 1998, p. 37.

<sup>114</sup> Centre for Maritime Policy (CMP) at the University of Wollongong, Submission 8, p. 5.

<sup>115</sup> Centre for Maritime Policy (CMP) at the University of Wollongong, Submission 8, p. 6.

<sup>116</sup> Environment Australia, Australia's Oceans Policy, Vols. 2, 1998, p. 37.

operated under contract to ensure the Coast watch. Similarly there could be a consideration of the regional Ocean guard through the use of vessels that have a better endurance and seakeeping abilities rather than the Kenya Navy Patrol Boats that are in existence. For the Indian Ocean countries, an Oceans Policy is a staple of great international importance strategically<sup>117</sup>. The transnational dimension that are associated comprises of the geo-political insinuations for the municipal controls of Kenya, Seychelles and Tanzania particularly. This is with the consideration of the fact that as foreign fishing vessels survey on opportunities to adventure on primary resources such as minerals and fish need an obvious consideration towards assisting the countries that border the Indian Ocean in the protection of their sovereign rights and national interests, considering that they do not have the resources and infrastructure to attain this<sup>118</sup>.

### **5.7 Awareness on Maritime Domain**

Automatic Identification System and LRIT have been furnishing the states with data on ships surveillance. The duo can help to deliver the primary component of vessel monitoring, through the provision of a ship's geospatial track. These are significant trackers of which the radar alone cannot do. Analysts have the capability to use the anomalies that result from the evaluation of vessel tracks to similar vessels historical tracks in the assessment of risks. Pattern and Track inquiry are convenient logical tools; although in practice, there exists a multitude of motives that are legitimate as to why mercantile vessels diverge from premeditated tracks, further speeding up or slowing, or even making seaport calls that are unscheduled. Changes in navigation can be prompted for numerous reasons including medical emergencies, bunker replenishment, the taking shelter from extreme weather environments, mechanical complications and even the changes in chartering details. However, the surveillance schemes cannot be able to put the generated information into context. Hence, cannot divulge its purpose. This has therefore, driven the interest in the Maritime Domain Awareness

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<sup>117</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, June 2003, New Zealand Parliamentary Committee Exchange, pp.56-59.

<sup>118</sup> Cozens, Peter, Security in Oceania: An Oceans Policy, IPS Policy Newsletter, No. 71, November 2002, p. 18

development as a way to describe a concept that brings together activities on Search and Rescue (SAR), environmental response planning and law enforcement. Its aim was to develop a common operating picture through, a real-time understanding of water areas happenings. These has been engaged by coast guards and fleets for an extended time, right from the Cold War, when fleets concentrated on tracking and finding Soviet mercantile alongside marine vessels, especially submarines. Maritime police and Coast guard armies have an equivalent focus that is on the pursuing of unlawful activities at ocean, especially on drugs smuggling<sup>119</sup>. In mutual cases, Maritime Domain Awareness comprises of two elements that touch on situational awareness and the finding out what the radar screen blips were, why they were there and what they were doing.

The concept has expanded since the 9/11, to include possibly all boat and ship schedules. This huge growth has been catalyzed by the terrorist fears that they could board any ship to base spasms or rather carry provisions that are essential for a spasm ashore. It is also acknowledges that any unlawful action at sea has safety implications<sup>120</sup>.

The temptation to gather more data has accompanied the expansion making the units more aware and informed. Awareness on Maritime Domain pursues to take into justification vessel movements within an area, undoubtedly through the tracking of global vessel movements, depending largely on flag states and ships that supply the correct data while conforming to the set reporting obligations. The true intents, though, can be disguised with the situational representation being jumbled through fraud by deceiving. In a definite instance, a vessel left a harbor while conveying an AIS distinctiveness but shortly it changed its identity, when it was found and inspected, it was realized to be having two AIS masts that the master could swap between. This brought the realization that GPS equipment could also be worked out to transmit incorrect signals, with rudimentary information being changed an exercise that is against the perfectly and common permissible definite registries.

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<sup>119</sup> W. Gilmore (ed.), 2005, Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area (London: The Stationery Office,)

<sup>120</sup> Louise Richardson, 2006, What Terrorists Want: Understanding the Enemy, Containing the Threat. NY: Random House, p. 167.

On non-compliance issues, state can enforce sanctions although in the AIS case, there are complications through the fact that there are no guarantees that the AIS and LRIT equipment's are tamper proof since, some are transferrable to other ships<sup>121</sup>. Through the Chinese and North Korean ships, there have been reasons to indicate the purposeful deceptions undertaken through their ships, this is inclusive of the Vietnamese ships that are possibly under the ownership of the Chinese. Masters have more often and generally, silenced the AIS in situations where they feel that the transmissions tend to expose them to danger. Even in shipping lanes that are congested, particularly with the Strait of Malacca, most ships without limit to those that under major shipment lines create the passage while AIS spun off. Through these, the receiver is not able to detect whether it is a deliberate turn off or signals suffered from range lack or transmission inconsistency. With the cargo security measures and the port, the ISPS or CSI there is need for elements overlap. Therefore, the AIS needs to be supplemented through other technological means to ensure surveillance and monitoring, beyond the common radar. Ships sailing with AIS off when detected either visually or by radar, they need to be suspected. This is along the fact that when the radar coverage is nonexistent or patchy, also suspicion should be uttermost.

In case of substantial evidence linking criminal organizations to intelligence services that spoof techniques, there should be an understanding that some countries, with Canada in specific, invest in the technology on imaging through geospatial techniques and can provide surveillance, which is independent based on a ship's journey data alongside all other systems of imagery that are satellite-based, although this may not be a rigorous science since the essential examination is centered on man-power and it is time intense. Therefore, vessels that are used for illegal devotions tend to avoid exposure through not signing into prerogatives that implement requirements on reporting. If revealing illegal intents depends on identifying irregularities, then most likely, ships consider remaining undetected through remaining by the set procedures.

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<sup>121</sup> Defense R&D Canada Atlantic. December 2006, Technical Memorandum,–2232, p.3.

Fraud can be astounded only through the engagement of intellect that is reliable. Useful information can be provided through surveillance but can be effective only if the observers understand what they require. Locating every ship in the ocean can be possible though the use of surveillance alone, it may be difficult therefore posing a security challenge. The case of MV Nisha is a point of reference that stirred suspicion making the port to make calls in Eritrea and Djibouti. From the Indian Ocean, the authorities in the U.K. authorities tracked it with suspicion that it was transporting WMD materials. On arrival in the U.K. waters, it was boarded and examined however, there were no materials that were suspicious found. Succeeding inquiries indicate that the pattern of movement of the ship, primarily indicated that it had stirred concern, through being abnormal<sup>122</sup>through the draft outlines of the U.S. MDA technology road-map that makes it vibrant that: An operative transnational network on human intellect is an important constituent in ensuring a successful domain in the maritime awareness system without overemphasizing. The task scale indicates that it is hard to achieve success without the commercial sector close involvement, considering the industry's complex nature. For the MDA, there is a dual challenge: Primarily, because of the widespread spectrum of threat, that requires analysts to look further than the traditional sources of information to the open source broad range on reports touching on marine information from the flag states, the Network for Lloyd's Agents, signal intercepts and customs administrations. Secondly, the common operating picture transformation from specific to agency, sharing the unclassified levels with associates, commercial sector and agencies. This therefore, shall require substantial solutions for regulatory, inter-operability and legitimate problems. Further, it shall petition for the withhold predisposition rather than sharing of information, through deep ingraining within the intelligence communities and the military. Through the fusing of various sources of data, contacts that are unknown contacts can be sorted to prompt an alert. In the context of the U.S., Guy Thomas suggests that sorting not an insuperable task.

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<sup>122</sup> IMB Statement on Cargo Security International website September 23, 2004



In the U.S. customs services as of the year 2003, the Marine and Air Interdiction Coordination Center was tasked in the investigation of averagely 2900 irregular tracks per day. Watchful analysis indicated that most of them got cleared though some of them still required a boat or an aircraft to be dispatched for investigation. The intention since then, has moved from the North American surveillance of waters to the global intelligence on maritime integration. Conversely, the ocean size means that the investment scale requires the coverage through the use of more technical methods that are beyond a single country means. Tied to the recognition of absolute volume of the probable contacts means with possibility, the exhaustive MDA can only be attained in ranges of dire interest, for instance, in the core ports, vibrant marine lanes sections, choke-points like the Straits of Dover and Malacca and marine areas like the Horn of Africa and the Gulf of Guinea with high security concerns.

## **5.8 Coast Watch**

An array of government agencies tend to have interest in the management and provision of security for the environment in Kenya's maritime. In Kenya, coast watch is not well established requiring more establishment in the management of offshore and Kenya's coastal surveillance. This will therefore provide marine and air based civil surveillance alongside the response services to back up government agencies that deal with security. Its focus will be to identify, respond and report on potential and actual non-compliance that is in line with relevant coastal and offshore laws regionally. The key agencies of government to be served through the Coast watch include the Customs Service, Maritime Safety Authority, the marine Police, Inspection and Quarantine Service, Foreign Affairs and Immigration Department, Trade, Environment and Multicultural Affairs<sup>123</sup>. Coast watch, provides services through employing noncombatant airplane contractors and has the ability to call upon Defence resources including the Patrol Boats and Orion investigation aircraft and the Customs National Maritime Unit vessels. The maritime surveillance objectives alongside the execution regime

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<sup>123</sup> Security and Defence Solutions, Saab TransponderTech Låsblecksgatan 3 SE-589 41 Linköping, Sweden

is to plan the achievement of wide-ranging objectives that include: Execution of sovereignty and compilation of picture, protection and sustainment and of EEZ, foreign fisheries monitoring and license enforcement, illegal trafficking and drugs smuggling detection, resource and environment protection monitoring, refugee protection and illegal immigration detection, breaches quarantine and illegal activity detection, protection of national marine park enforcement, commonwealth and state laws monitoring alongside other breaches and security enhancement through engagements regionally. Coast watch is centered in the provision of defence services<sup>124</sup> through provision of crucial surveillance assets that include patrol boats and aircrafts. Defence further requires the sharing of intelligence between the military and the Coast watch alongside the review of the activities of Coast watch<sup>125</sup>. It is imperative to note that the scrutiny of patrol necessities of the Indian Ocean is that there is lack of the regional Coast watch services, thereby demanding for marine vessels that are capable of undertaking surveillance activities through a prolonged period<sup>126</sup>. In addressing this precarious issue, it is significant for the government to consider the funding on vessels that aid in the carrying out of activities aimed at fisheries enforcement with the consideration of the illegal fishing problem in the Indian Ocean. Considering the patrol challenges in the Indian Ocean, the east African maritime states defence needs to probe, with consequent guidance to the Government on the acquisition rate on arming vessels for patrolling remote areas and the Ocean and the viability of joint patrols mounting in the enormous Indian Ocean with the help from other countries that have interests in the region. As a process, options on requirements for patrol vessel will be produced forming the basis of defence and that incorporates relevant agencies in the determination of the size, cost, characteristics and type vessels that are required.

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<sup>124</sup> JCPAA Report No. 384, Review of Coast watch, Response by Government, 19 September 2002, pp. 4-5.

<sup>125</sup> Joint Committee of Public Accounts and Audit, Review of Coast watch, Report 384, p. 49.

<sup>126</sup> Bateman, S. & Bates, S (eds.), Regional Maritime Management & Security, CSCAP and Canberra Papers on Strategy and Defence No. 124, Canberra 1998, pp. 78

## 5.9 Intelligence and Information capability

Military capability discussions are incomplete without the mention of their intelligence and information significance. The key intelligence and information features include their collection, surveillance, command and control. In the intelligence of Kenya the public offers a vibrant part in the gathering of an array of intellect that can contribute in verdict making in defence<sup>127</sup>. This ability is provided by the military Intelligence at the National and Directorate level. Further surveillance ability is obtained through an array of sources that include the border and customs controls.

In the development of a strategy on advancement of maritime security, there is need for collaboration, cooperation, concern, coordination, coherent and building of trust for the littoral region and the maritime domain through efforts that are multi-layered as build blocks of the maritime sector in that improvement of governance elements in the maritime. This approach further, should aims at improving conditions in the maritime domain with socio-economic development and environmental respect and the capacity enhance sustainable governance through wealth generation using Africa's oceans and seas. There is need for a common template development for the AU on a maritime scheme, applicable further to the RECs/RMs and other Organizations considered relevant; Member States for purposes of guiding the maritime review, effective resources allocation and budgetary planning in for the enhancement of maritime practicality towards a prosperous and integrated Africa. There is further a need for a business plan to be developed through the maritime strategy specifying the milestones, targets on capacity building and requirements on implementation, involving the financial and technical support projected. In line with the principles of AU and the values that are deep-rooted and enshrined in the Constitutive AU Act with programmes that are applicable, the objectives of the 2050 AIM Strategy include: Civil society engagement and stakeholders towards the improvement of maritime issues awareness, political will enhancement at regional, national and

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<sup>127</sup> Jo Inge Bekkevold and Geoffrey Till, eds, *International order at sea: how it is challenged, how it is maintained* (Basingstoke: Palgrave Macmillan, 2016)

community levels, wealth creation enhancement for trade performance at the regional and international level through capability building and maritime-centric capacity, safety and security ensuring on the maritime transport systems, criminal and hostile acts prevention at sea and harmonization of prosecution to offenders, populations protection, assets, AMD heritage and infrastructure considered to be critical from maritime pollution, Integrated Coastal Zone Management improvement in Africa, domestication, ratification and international legal instruments implementation, sectorial policies synergies and coherence between and within the RECs/RMs and the protection of sea access rights and transit of goods freedom for countries that are landlocked.

## CHAPTER SIX

### CONCLUSION AND RECOMMENDATION

#### 6.0 Conclusion

Maritime security measures development and implementation calls for a high multilevel degree of coordination and close partnership of government agencies, stakeholders and the private organizations. The multilevel degree could be through an approach that is Multi-Pronged that requires a follow up that is close in nature to vessel owners, the enforcement agencies and the operators of port facility in the reviewing of security measures for ships and the port waters, considering that maritime security issues are not a one country issue that the country can address solely hence, requiring concerted efforts and cooperation from around the world, the approach works with maritime counterparts to establish stable regimes on maritime security and share best practices. Efforts to address threats in maritime security generally calls for further maritime domain, sub-regional and regional cooperation through numerous significant multilateral initiatives. Lessons adoptable from Asia Pacifica pursue on issues of maritime security and strategies are that, regional efforts and bilateral cooperation are paramount. There is need in the East African region, to start the engagement of member states in the deliberation of problems linked to maritime security though, the East Africa sub-region has a regional mechanism with a maritime component charged with the maritime security responsibility. The capacity of the mechanism is still low calling for capacity development alongside national capacities through bringing on-board Somalia, Tanzania, Seychelles and Mozambique maritime resources to address this issue.

The economic segregation zone in the regional East African coast is immense and offers a prosperity of wealth including fish stocks, gas and oil stashes hence highly reliant on the maritime zones for well-being economically. Active military presence in the zone, has seen the combating of organized crime for a number of years although in parallel with, other counterterrorist organizations, conventional exercises and missions. The Navy of Kenya has ideally been suited in the provision of

interdiction capacity task as of current in the Indian Ocean. If the navy is tasked properly with the direction and right policy in place, it could further the stemming of narcotics flow helping the eastern Africa region.

Additionally, proper managing of the EEZ, the East African region that has countries which are landlocked that rely heavily on sea transport and unhindered SLOCs for most of international trade will be benefited. Through the large volumes of trade quantities and value transported through ocean, the security besides monitoring of SLOCs is vital. Therefore, it is not conceivable for a single state to manage expansively and deliver SLOCS with safety. There is need for more to be done, in joint actions and collaboration regionally, to manage the SLOCs safety. Most counties agree on this view with recommendations that the respective Governments in the East African region that benefit from the Indian Ocean use, committing and contributing to the development of a regime that shall see joint operations development and cooperation regionally towards enhancing the security and vessels protection through the use of SLOCs.

Mainstream states in the maritime zone for instance Australia have Oceans Policy that are in existence that yarns to promote sustainable development through ecologically sound initiatives and the ocean resources through the inspiration of competitive sea industries internationally, whereas at the same time ensuring aquatic biological variety protection. It is only sensible that a Policy on Oceans meant to include the Defence role of protecting the interests of a state and sovereign rights is urgently developed. In the State's defence context, a strategy on maritime is indispensable since it refers and recognizes issues on the broader maritime linking them with other national policy aspects. It is significant for governments when developing Defence policies to take into account, explicit national Oceans Policy reference. There could be immense regional benefits on having a sole Ocean Policy. Kenya being a central state in the region needs to take a lead in the development of a ocean policy that covers the national and regional scope. The policy should go further in provision of regional leadership in the SLOCs management hence covering the east African coastal region

interests with recognition of the national activities that affects neighbouring countries marine jurisdictions. Kenya and neighbouring regional states need to have the ocean policies.

Merchant shipping has a role in the maritime strategy that is critical. Conventionally, merchant shipping have supported defence objectives. In the AU initial stages on operations in peacekeeping the Ugandan, Somalia troops and tanks were transported to the Kisimayo port of by the use of merchant ships across the Mombasa port in an aim to support the requirements on heavy lift. It is significant that in all defence planning to mind always of the heavy lift capability that is ready and available as offered through the merchant fleet to support the objectives on security.

Ship-owners associations and the Kenya seafarers have suggested to the government to create incentives meant to offshoot Kenya's growth of merchant fleet that is important in the blue economy growth. This should be a matter to concern the state that national security and defence can rely on non-Kenyan merchant ships to meet its objectives. An additional concern on merchant shipping and port security is on the vulnerability to terror attacks that has increased the risk through the use of vessels that are alien flagged. The US, for instance, in portion of its shipping and port security actions, limit the admittance for crews and ships that originate from states of high threat. Most states including Tanzania are open to the serious risks in accessing the US market because of dependence on low cost shipping that are foreign with foreign crew. Upon the eventuality of this situation, there shall be serious trade implications for trade regionally. Merchant shipping role of in defence objectives support is not apprehended in the Kenyan legislation. It is therefore important that the new Kenyan legislations and regulations to outline the merchant shipping role towards this form of support.

Conclusions by the KDF remarks in the industry of defence highlights on the need for better practices in business especially in the Defence reform and acquisition area. In the public debates recently, the subject that touches on defence has undergone further review on equipment acquisition program. The decision by Government to allow the auditing of defence procurement has opened the need to honesty

making it a prescribed agency that facilitates evolution under the Act of 1997 on Financial Management and Accountability to an identity that is more business oriented.

4000 tonne slipway is currently being constructed by the Kenyan Navy the key repairs of ships that provide essential roles in systems integration, ability provision, ongoing servicing and maintenance for KDF. The study on Kenyan maritime strategy, shall have insight on the provisions of the new slipway to small ships ability alongside major ships repair. The slipway offer an opportunity in the repairing of civilian ships, generating annexation in aid. Arguments by the Kenya Navy are that, there will ultimately be enough demand in the future to have the slipway sustained since it shall be unique in the region with such an ability. Therefore, the government plans to develop the blue economy, through a consideration into solutions for shipbuilding, the naval and industry repair that caters for ships repair hence, creating competitiveness.

## **6.1 Recommendation**

In quest to overcome the threats on maritime security the confrontation of coastal waters needs to address risks that are beyond approaches employed by the military. Problems on maritime security like armed robberies on ships and piracy, small arms proliferation, human trading and drugs handling basic causes that are deep and cannot be unravelled through armed means solely. In Eastern Africa, addressing of maritime security risks needs be learned through basis causes that necessitate economic, partisan and sociocultural resolutions.

### **Policies on Shipping**

There is need for the Kenya Government to urgently introduce and develops own policies on Shipping policies. KDF needs to focus on measures, which shall enhance allies' interoperability on implementation and development of maritime strategies that encompass the Sea control, denial and power projection elements ashore. The Government should further sketch its progress through joint set-ups and collaboration initiatives regionally, that pursue to increase the safety and vessels defence through the use of SLOCs. It is critical for Defence Department to develop and review a new policy



on Defence, which ensures that the maritime strategy has explicit and clear reference on Oceans Policy, explaining the interrelationship with the policy on Defence. There is need for the Government to initiate parliamentary bills outlining the progress that helps in the development of an Oceans Policy regionally. The merchant ship roles inclusion is an additional new defence policy on merchant shipping that supports defence objectives.

### **Government Regulations**

In the shipping industry an array of **government regulations** impede maritime strategies as catalysts. In the merchant fleet for Kenya, there is nonexistence while there are efforts meant to begin the reviving Kenyan shipping lines. The shipment industry view is that it should be a focus to a jurisdictional regime that offer collegial competition from alien fleets in littoral trade. This inhibits maritime sector investment<sup>128</sup>. By Kenyan seafarers getting to be involved in the trade internationally they pay taxation at a marked disadvantage as defined by the foreign country.

A country considered foreign where an individual can accumulate required days to be eligible for the exemptions on income tax is not inclusive of the high oceans. In contrast, a skilled and trained individual can labour in a company owning ships in a management level for 3½ months in Hong Kong and then qualify for tax exemption when paying tax to the authorities in Hong Kong.

In Hong Kong, a master of a ships can work on a ferry without leaving the confines that are now China's jurisdictional and would for 91 days qualify. However, an individual who operates on vessel in international trading passing through the high oceans as an intrinsic fragment of the trade, each moment the vessel passages on the high oceans and the 91 days clock marks off and each moment they pass through the territorial waters belonging to another state and the 91 days clock ticks again<sup>129</sup>.as a consequence to the seafarers they will not be eligible for tax exemption with reason that their service is Foreign. As a new view, the challenge in the Federal Court confirm that services while

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<sup>128</sup> Mr Paddy Crumlin, Maritime Union of Australia, Transcript, p. 211

<sup>129</sup> Maritime Union of Australia, Submission 12, p. 2.

on board of a ship while in transnational waters was not considered to be Alien Service, such a legislation introduction needs the introduction to prevent dual taxation.

### **Operation of Shipping Registration Act**

Regulatory concerns that relate to the shipping registration act need to be developed to provide the ships that are Kenyan owned an opportunity to be registered in Kenya. The Ship-owners Association points out a number of disadvantages that companies that have not registered their ships in Kenya face. However, lack of registration bodies most ship owners opt to transfer business outside Kenya.

### **Visiting Ships Security Checking**

The Immigration Department should set it clear that there should be security frisking of all visiting ships in a mandatory way. This should require the crew names to be cross checked with the alert list. Additionally, the most visiting ships need to be inspected through the ports Customs Service though not in all cases. With these security processes some concerns depend on the accuracy of the crew listing. In situations where the names are not real upon reconciliation with the vigilant list formerly they get taken to acquire an Exceptional Purpose Visa. More so, when the initial ship inspection is complete, the crew becomes unrestricted to go ashore and at whatever time they wish. Upon their missing, the ship's master through the system is relied upon in the alerting the authorities of the crew that is missing.

### **Review of maritime regulations**

Maritime regulations review in most maritime states indicates an increased frequency of Single and Continuous Voyage Permits that increases security risks that are associated with foreign vessels and ships. The government objective through the review process concludes in the acquisition of lowest cost transport gets to be inconsistent with measures to address increase security. Seeking of transport services that are of the lowest cost unavoidably leads to the usage of low cost alien ships that have foreign crew which potentially may weaken the protection measures for borders of a maritime state.

### **Restriction of high risk states originating ships**

In an aim to improve port, national and shipping security a recommendation on assessment of ships that are manned by high risk nation's crew is important. In an outline of these measures, it is implicative to expose Kenya to the solemn risk of losing its admittance to the US market with reason that Kenya depends on foreign shipping of lowest cost that have foreign crew that can be assessed by US authorities as high risk.

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