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# Enhancing regional maritime cooperation in Africa: The planned end state[1]

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## Introduction

Maritime affairs involve cooperation to a degree that does not fit in easily with the staunchly defended concepts of sovereignty and jurisdiction. However, issues of maritime governance transcend national, geographical and political boundaries. The best illustration of its transnational nature is the recent hijacking of vessels in the increasingly dangerous waters off the coast of Somalia. The Ukrainian-owned MV *Faina*, for instance, was hijacked in October 2008 and remained in the hands of the pirates until February 2009. Aboard the ship was a lethal cargo of 33 T72 tanks and an assortment of ammunition destined for the Port of Mombasa in Kenya. Another ship, the MV *Sirius Star,* was taken by the same pirates in November 2008. The oil supertanker was flying

a Saudi Arabian flag and was carrying about two million barrels of crude oil worth US$100 million destined for the United States. The effect of the hijackings was felt not only by the Ukrainian and Saudi owners of the vessels but also the would-be recipients of the ship's cargo in Kenya and the US – and it has repercussions for Somalia as well.

Another incident that demonstrates the trans-boundary nature of maritime governance is the June 2000 oil spill by the MV *Treasure* that sank between Dassen and Robben islands off the coast of South Africa. The ship released about 1 300 tonnes of bunker oil into the ocean, extensively damaging the breeding habitats of the African penguins which are native to South Africa and Namibia. Approximately 20 000 penguins nesting at the time were covered in oil and it took a concerted effort to clean some of them and release them back into the wild.

Maritime accidents are yet another illustration of how issues of maritime governance defy territorial, jurisdictional and geographical boundaries. When a ship founders, the impact is likely to be threefold: It will affect the countries whose nationals were aboard the ship and whose flag the ship was flying; the country for which the ship's cargo was destined; and the country in whose jurisdiction the ship foundered.

The transnational nature of maritime issues highlights the need for regional maritime cooperation between maritime states. The need for regional maritime cooperation is further accentuated by the lack of capacity by most African coastal states to individually address maritime governance issues that present any degree of complexity. Although there have been efforts aimed at fostering regional maritime cooperation between African maritime states – a case in point being the establishment of the Maritime Search and Rescue Co-ordination Centre (MRCC) in Mombasa, Kenya, with sub-Centres in Victoria, Seychelles, and Dar es Salaam, Tanzania, which is sponsored by the International Maritime Organisation (IMO) – much remains to be done to establish real and effective regional maritime cooperation in Africa. With the much publicised move towards a United States of Africa championed by the recently elected AU head, Libya's president Colonel Mummar Gaddafi, it is imperative that regional maritime cooperation be synchronised with this goal of the planned end state. However, there is a need for a more integrated regional approach and cooperation between African states with regard to maritime governance.

Against this background this article seeks to provide an appraisal of regional maritime cooperation among African maritime nations. It analyses existing maritime regional cooperation agreements and institutions set up by African nations, particularly with regard to their efficacy. The article also examines flaws in the national policies, legislation and institutions that hinder regional maritime cooperation. Finally, the article seeks to explore new avenues that can be used to forge regional cooperation between African maritime nations.

# The global framework for maritime cooperation under the Law of the Sea Convention

The Law of the Sea Convention (LOSC), which is the *loci cadre* in ocean governance, is a classic illustration of what African states can achieve through maritime cooperation. At the first two UN conferences on the law of the sea there were no African representatives, because few African states had attained self-rule by then. However, at the Third United Nations Conference on the Law of the Sea (UNCLOS III) African states, who felt that the previous two conferences had not adequately, if at all, addressed their maritime interests, eagerly participated in the proceedings. Though African states had only just achieved independence from colonial rule during the preceding decade, their participation in the ensuing LOSC left its mark. Cameroon, Kenya, Nigeria, Senegal, Tanzania, Zambia and Uganda were some of the African states that had a great influence on the outcome of UNCLOS III. Part XI (international seabed area and the institutional framework for deep seabed mining); part XV (dispute settlement); part V (Exclusive Economic Zone or EEZ), part X (rights of access to the sea and freedom of transit of landlocked states); part XII (protection and preservation of the marine environment); part XIII (marine scientific research) and part XIV (development and transfer of marine technology) of the LOSC all reflect the contribution by African states to the global ocean regime.[2]

The strength of regional cooperation by African states was first demonstrated at Montenegro Bay, Jamaica, in 1982. When a vote on the LOSC became inevitable at the end of UNCLOS III in 1982, the African states voted as a block and provided 27 of the required 60 ratifications to bring the LOSC into force. Individually, African states lacked the muscle to influence the outcome of UNCLOS III in the manner they did collectively. African states took advantage of regional institutions and forums – such as the Organisation of African Unity (now the African Union), the Group of 77, the Afro-Asian Legal Consultative Committee, conference circuits such as the meetings of the Seabed Committee of UNCLOS III, non-governmental circuits, such as the Pacem in Maribus conferences of the International Ocean Institute, and conference institutions and procedures, including the numerous UNCLOS III negotiating committees, subcommittees and informal working groups – to make their presence felt at UNCLOS III. The end result was that the world realised that Africa could no longer be taken for granted in governance of ocean issues.[3]

Currently 41 out of 53 African states are parties to the LOSC. Several of these countries are landlocked and are likely not to benefit from the exploitation of ocean resources unless they take advantage of the provisions of the LOSC regarding landlocked and geographically disadvantaged states.[4]

In its provisions the LOSC repeatedly calls for regional cooperation in the implementation of governance of ocean areas and its resources. It specifically calls for regional cooperation in:

- Exploitation of living marine resources[5]

- Scientific research[6]

- Control of marine pollution and conservation of the marine environment[7]

- Safety at sea[8]

- Maritime transport[9]

Other international conventions and instruments pertaining to ocean governance – such as the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the International Convention for the Safety of Life at Sea, 1974, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, the International Ship and Port Facility Security Code – all contain provisions requiring party states to engage in regional cooperation in order to realise the goals of the conventions and instruments. Regional conventions such as the African Maritime Charter also call for cooperation among African states with regard to various aspects of ocean governance so as to best achieve the desired result.

## Challenges facing African states in the governance of their maritime zones

Regional cooperation could have a direct impact on most of the national challenges affecting African maritime states. The challenges facing African states in their quest to bring order and sound governance to their maritime zones are:[10]

- Lack of appropriate frameworks for the delimitation of the maritime zones

- Lack of appropriate policy, legal and institutional frameworks for governance of the maritime zones

- Inadequate training facilities and institutions to develop a pool of competent human resources for the governance process

- Lack of funds for the exploration of and research on marine resources

- The ever-present threat of marine pollution from land-based and ship-based sources

- Illegal, unreported and unregulated (IUU) fishing from distant water fishing nation vessels

- Piracy and hostage taking

- Inadequate disaster preparedness to deal with maritime searches and rescues

- Illegal immigration

- Drug trafficking

- Smuggling of contraband goods and arms

- Inadequate port security

Of these challenges IUU fishing and maritime security issues stand out as the two main challenges that have had the greatest impact on the African nations and on the entire maritime world. Fishing in prohibited areas or without a licence are both classified IUU activities. Using banned fishing techniques such as bottom trawling or long line fishing or misreporting catches also fall in this category.[11] Many African maritime states provide licences for vessels from distant fishing nations such as China, Taiwan, South Korea, Russia and countries of the European Union for fishing in their waters, but many of these vessels are guilty of significant IUU fishing. Vessels guilty of IUU fishing do not respect national and international actions designed to reduce bycatch and mitigate the incidental deaths of marine animals such as sharks, turtles, birds and mammals and their fishing thus leads to significant collateral damage to ecosystems.[12]

The challenges facing African maritime states in the governance of their maritime zones are compounded by the escalating incidents of maritime hostile action off their coasts, particularly along the Somalia coast and in the increasingly volatile Gulf of Guinea. The situation along the East African coast is particularly worrying. According to the IMO, there were 11 piracy attacks off the East African coast in the first quarter of 2008, 23 in the second quarter, 50 in the third and 51 in the fourth quarter, bringing the total to 135 attacks, 44 hijackings and 600 kidnappings of seafarers. Two seafarers are reported to have lost their lives in these hijacking incidents.[13]

The operations of the pirates seem to have become more sophisticated. Somalia has the longest coastline in Africa, measuring some 3 898 kilometres, of which 1 204 kilometres is in the Gulf of Aden. This coastline acts as an ideal base from which pirates can launch piracy expeditions and also provides good hideouts for them. The pirates are increasingly using so-called 'mother ships', typically converted fishing vessels, to launch attacks into deeper waters hitherto considered safe from pirate attacks. Previously, vessels keeping at least 50 nautical miles from the coast were considered safe but the range has now increased to at least 200 nautical miles. The supertanker *Sirius Star* was captured more than 400 nautical miles off the coast of Kenya, well to the south of Somalia.[14] The

operations of the pirates in the Horn of Africa region and elsewhere in the waters off the African coast are launched from land bases. The pirates take advantage of the instability in the region to create hideouts from where they conduct their criminal activities with impunity, because it is near impossible to track them down.

The incidents affecting maritime security in waters off the African coast are not a preserve of the Horn of Africa and East Africa region. The west coast of Africa, the Niger Delta and by extension the Gulf of Guinea have also acquired the dubious reputation of being among the most dangerous maritime zones in the world. The activities of the Nigerian rebel forces in the oil-rich Niger Delta have extended to the sea,[15] and Nigeria alone is said to be losing at least US$1,5 billion per year in cargo of stolen crude oil.[16]

This escalation in maritime attacks in waters off African coastlines have attracted the attention of not only African states (including landlocked African states that depend on the oceans for transport of essential goods), but also the world at large. Maritime insurance premiums have skyrocketed and the cost of maritime transport increased significantly as ships are forced to take longer routes in an attempt to evade the so-called choke points.[17] The persistent and brazen acts of piracy off the coast of Somalia prompted no less than four meetings of the UN Security Council in the second half of 2008.[18] Resolutions 1816 and 1838 of the UN Security Council sought to address the piracy problem by calling on states to take an active part in fighting piracy by deploying naval vessels and aircraft to the Horn of Africa region and to cooperate with the transitional federal government of Somalia towards this end. On 16 December 2008 the Security Council acted again, authorising the employment of 'all necessary means' by states for intervention in Somalia to address the problem of maritime piracy.[19]

## Appraisal of regional cooperation agreements and institutions in the governance of African maritime zones

Several regional organisations are active in a number of African states in the sphere of maritime governance. These institutions deal with a variety of issues ranging from management of marine resources, education, training and research and maritime transport. They are either intergovernmental organisations or non-governmental bodies. The intergovernmental organisations include:

■ The South West Indian Ocean Fisheries Commission

■ The Maritime Organisation of West and Central Africa (MOWCA)

■ The Sub-regional Integrated Coastguard Network[20]

■ The South African Development Community which, although focusing mainly on economic matters, is extensively involved in the governance of ocean areas of member states

■ The Indian Ocean Tuna Commission

The two most important non-governmental organisations are the Ocean Data and Information Network for Africa and the Oceanographic Research Institute.

Several agreements have also been entered into between African states and treaties signed for regional cooperation in ocean governance. Most notable among the treaties is the African Maritime Transport Charter of 1994, which calls upon African states to cooperate in enhancing maritime transport and ensuring that maximum benefits are reaped from it.[21]

The non-treaty agreements include the Indian Ocean memorandum of understanding which deals with ship and port security. In terms of the memorandum the signatory states are obliged to inspect 15 per cent of all the ships that call on their ports in order to enhance safety of shipping.[22] The Djibouti Code of Conduct[23] signed on 30 January 2009 by eight African States (Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia and Tanzania) and Yemen in Djibouti at a special meeting organised by the IMO, is yet another regional agreement on ocean governance between African states.[24] The regional agreement on combating piracy allows the signatory states to send navies into the territorial waters of other signatories to pursue pirates and in certain instances sanction joint anti-piracy operations. The code of conduct also calls on member states to enact legislation or amend existing ones to facilitate the arrest and prosecution of suspected pirates.

Another positive development in regional cooperation in the governance of ocean areas has been the establishment of the sub-regional Maritime Rescue Coordination Centre in Mombasa, Kenya. The centre is administered from Mombasa and has sub-centres in Victoria (Seychelles) and Dar es Salaam (Tanzania).[25] The Mombasa centre and the two sub-centres were funded by the International Search and Rescue Fund.[26] The Mombasa centre provides a much needed search and rescue capability along the coastline of East Africa and improved security for seafarers whose vessels transit the waters of the Indian Ocean along the African coast.

## Benefits of regional cooperation in the governance of African maritime zones

Regional cooperation is perhaps the only avenue through which African states can achieve order in the governance of their ocean areas. The challenges of governing ocean spaces can be daunting if handled unilaterally by individual states. Issues such as maritime

attacks that have occurred in the waters off the coast of Africa cannot be addressed by a single maritime state acting in its national interest. Indeed, the transboundary nature of the challenges posed by most maritime issues call for integrated regional cooperation.

Through regional cooperation African states can pool both financial and human resources for use in the ocean governance process. This will enable African to move in tandem with the rest of the world in implementing the provisions of the LOSC, which they played a key role in bringing into force.

A good example of nations that have set out to implement the provisions of the LOSC through regional cooperation is the Pacific Island states and territories.[27] These island nations have been able to manage their maritime zones with a considerable degree of success.[28] African states can be as successful if they improve regional cooperation in governing their maritime interests.

## Challenges of regional cooperation in the governance of African maritime zones

The efforts towards regional cooperation in the governance of African ocean areas have been seriously compromised by the disharmony in the regimes of African maritime states. States such as Benin, Congo-Brazzaville and the Democratic Republic of Congo have no legislative provisions for even a delineation of their maritime zones.[29] Others, such as Libya and Somalia, make extravagant claims to ocean areas off their coastlines, extending some 200 nautical miles. This disharmony has at times hindered meaningful regional cooperation in the governance of African ocean areas, with the focus being on maritime boundaries instead of cooperation. The issues of delimitation are further complicated by the following peculiarities of maritime interests.

**The legal frameworks for governance of ocean areas continue to evolve rapidly as more discoveries regarding their economic value are made**

The result is that these frameworks are often incomplete and contain more uncertainty than frameworks for land areas. The rapid changes may be attributed to, among others, the following factors:

■ Expansion of national maritime zones under the LOSC and the attendant complexity of boundary limits

■ The overlap of maritime jurisdictions which necessitate clarification of intergovernmental title, jurisdiction and authority over these expanded zones

■ Scientific advancement and discovery of new uses of marine resources and increasing intensity of existing uses, such as off-shore petroleum and mineral exploitation and transportation, coastal areas development, recreation and tourism, aquaculture and sea ranching and renewable off-shore energy production

■ A shift in focus to new issues, such as marine habitat and resource conservation and marine environmental risk and pollution reduction

■ An increased recognition of the rights of aboriginal and indigenous groups and other stakeholders to coastal and marine resources

## Marine spaces are virtually common property with no exclusive rights of ownership[30]

The three-dimensional rights aspect of a geographical zone is more apparent in the sea than on land and therefore rights are either allocated to specific portions, such as the seabed or water column, or specific activities, such as fishing or navigation. Although the interests usually coexist, this may change over time and some of the rights may even be time specific. This dual nature of the rights increases the number of stakeholders that must be considered when designing a legal framework for governance of any maritime zone. It also results in a multiplicity of boundaries of jurisdiction, administration, ownership and use with in some instances, with the boundary or limit that is set referring to each specific resource or activity.

## Interests in marine space are more fragmented than on land

This is related to the rapid evolution of legal frameworks for governance of ocean areas, and concerns the fact that the governance of marine interests tends to focus on specific resources or activities rather than geographic areas. On land interests are classified either as government (public) land, private land and trust land[31] or in terms of the extent of rights of surface ownership, such as freehold, leasehold or licensed land. This is not the case with marine spaces, where interests are classified with reference to specific resources such as fishing, off-shore petroleum and oil exploration and shipping rights.

Attempts by African states at regional cooperation in the governance of maritime interests have been hindered by their national polices and legislation, which have often been conflicting and marred by duplicity. It is also not uncommon to find two or more regional bodies (whether inter-governmental or non-governmental) with a similar or near identical mandate which operates in the same area without any tangible effort to harmonise their operations.

National legislation, such as the Kenya Maritime Zones Act (chapter 371 of the Laws of Kenya), is not designed to facilitate regional integration in the governance of ocean areas

and present bottlenecks to regional cooperation. The legislation predates the LOSC and even in cases where it does not, it is not necessary in line with the provisions of the LOSC. The Kenya Maritime Zones Act, for instance, purports to give Kenya the right to regulate the passage of warships and military exercises in the EEZ.[32] The basis for claiming such a right, to which US objects, is not clear.[33] The LOSC confers such rights on coastal states for the regulation of the passage of warships, but only within the territorial sea area.[34] In fact, in terms of the LOSC the regulation does not apply to the passage of ships along international navigation routes that pass through EEZs, without a distinction being made between warships and other ships.[35] Kenya therefore has no legal basis for extending her sovereign jurisdiction to her EEZ; this is furthermore contrary to the provisions of the LOSC. However, the argument can be made that military exercises may be viewed as causing a disturbance to the marine life and are as such well within the ambit of LOSC provisions.[36]

The status of most African navies is also an obstacle to effective regional cooperation in the governance of African ocean areas. States that lack vessels, aircraft, communications systems, appropriately trained personnel or an appropriate legal infrastructure are unable to play a constructive role in solving regional maritime governance issues such as piracy.[37] Navies are not thought to be as necessary as the other branches of the armed forces and are often considered last in budgetary allocations. In terms of ranking the Kenya navy for example is in third position in the armed forces structure. The high cost of naval equipment worsens the situation.

States are often so fixated on national interests that it is to the disadvantage of the regional common good. A case in point is the standoff between the two East African sister states of Kenya and Uganda over a tiny island in the waters of Lake Victoria, Migingo Island. The island, barely an acre in size, has been the cause of friction, accusations and counter-accusations between the two states, who both claim ownership of it.[38] This situation is allowed to continue despite the much publicised move towards an integrated trade block and political union for the East African Community (EAC), which is to be reached by 2012. That the two states have not so far shown any credible efforts towards resolving this seemingly mundane but potentially explosive issue, illustrates how parochial national interests take centre stage while regional cooperation continues to be relegated to the background.

## Regional cooperation in the governance of African maritime zones: how should it be done?

African states need to identify a forum in which they can chart modalities for regional cooperation in the governance of their ocean areas. No forum would be better suited to this matter than the AU, given the goodwill it enjoys among African states. It also has established organs through which the agenda can be handled. It would, for example,

be easier to set up an organ within the AU to deal with the coordination of maritime cooperation than it would be to set an independent entity, and also less expensive.

A first requirement for enhancing such regional cooperation is the identification of the possible areas of cooperation. These should focus on the common challenges facing African states in ocean governance. Key among these are security and surveillance, and control of marine pollution.

The next step would be to identify the common goal and objectives to be reached by such regional cooperation. One of these objectives should be the integrated exploitation and governance of African ocean areas and its resources for the common good of the people of Africa. No distinction should be made between coastal states, landlocked states and the so-called geographically disadvantaged states with regard to inclusion in the regional cooperation strategy. All these states do after all in one way or the other benefit from the sea and its resources.

A strategic plan and policy for the regional cooperation should be developed at the continental level that maps out key actions to be taken in fostering regional cooperation. The strategic plan should outline the priorities of the cooperation as well as identify the structures and institutions, both at national and regional levels, through which the plan can be realised. For example, African navies should be encouraged to share information that could help to curb maritime security problems and reduce incidents of piracy. It is noteworthy that none of the African states have responded to the UN Security Council call to send navy patrols to combat piracy in the Horn of Africa. This is perhaps due to the lack of financial capacity by the African states that have navies for such operations – but this challenge could be overcome by a joint African state operation.

Training, research and exploration institutions must also be strengthened at a regional level, perhaps by means of an overall coordinating body that could ensure sharing of oceanographic data and information on marine resources. An African regional disaster response institution should be set up under the aegis of AU to coordinate responses to maritime disasters such as shipwrecks, oil spills and other pollution, as well as to enhance safety of life at sea.

The IMO/MOWCA initiative towards establishment of a sub-regional coastguard network could be expanded to cover the entire coast of Africa. Such an African coastguard network could coordinate coastguard services throughout all African ocean areas. The long-term objective should be the establishment of a standing African coastguard service to compliment the national coastguard services.

A fund administered by the AU should be set up to finance the operations of regional maritime cooperation organisations. The fund can be financed through contributions

from member states out of the collection of licencing charges on distant water fishing nation vessels and ships that fly their flags as well as port charges.

In view of their long coastlines and the ever-increasing challenges in the governance of their ocean areas, African countries must share naval intelligence and coordinate their maritime surveillance, reconnaissance and security enforcement activities. The AU should emphasise regional cooperation between member states to enhance maritime security. The Common African Defence and Security Policy and the African Standby Force (ASF)[39] should include a maritime strategy to combat the increasing incidents of maritime attacks that threaten the common good of the African region. Africa's naval capabilities need to be assessed and appropriate elements placed at the disposal of the AU Standby Force. To date no large peacekeeping operation within Africa has involved naval forces, even though maritime forces could be used to help bring peace to the Horn of Africa region. Legitimate governments should be supported to ensure that criminal gangs who operate on the seas do not have bases from which they can launch their operations.

African states should turn around the uncoordinated approach that has characterised regional cooperation in the governance of African maritime interests by putting in place a better planned and coordinated approach that guarantees better results in the move towards the 'planned end state'.

## Conclusion

Effective regional cooperation requires that decision-makers in the various national governments, particularly those with coastlines, come together to chart modalities for achieving this objective. Constant evaluation is also a key imperative, since the maritime sector is dynamic and constantly presents novel challenges. Institutions with a regional and inter-governmental mandate must be developed to ensure that common goals in maritime governance are achieved and set guidelines are adhered to. Regional cooperation is a process that requires a great deal of goodwill on the part of member states, who should avoid jingoistic appeals in favour of the common good of the region with regard to maritime governance.

There are numerous challenges facing the governance of ocean areas in Africa. If the situation is not controlled, these threats may grow to undermine political stability and economic development of the region and further undermine the African maritime reputation. It is for this reason that the African nations must cooperate with each other and avoid the tendency to make politically motivated decisions to address internal short-term and immediate priorities as opposed to long-term regional goals. The focus must shift to the regions and the continent and away from national frontiers.

# Notes

1  Paper delivered at the 3rd Sea Power for Africa Symposium, Cape Town International Convention Centre, 9–11 March 2009. The paper first appeared on DefenceWeb, http://www.defenceweb.co.za/index. php?option=com_content&task=view&id=1287 (accessed 12 July 2009).

2  The Kenyan delegation in particular played a crucial role in the development of the EEZ concept. At the Colombo session of the Asia-African Legal Consultative Committee (AALCC) in January 1971, Frank X Njenga, the legal advisor to Kenya's Ministry of Foreign Affairs, suggested the concept of an area in which coastal states exercised less than complete sovereignty. The area was to be called an exclusive economic zone (EEZ). The idea was presented to UNCLOS III and was accepted after much deliberation. A country can now claim 12 nautical miles of territorial sea and 188 nautical miles of EEZ, bringing the area of jurisdiction to 200 nautical miles.

   The concept of an EEZ has since come to be recognised as customary international law and has received judicial endorsement in a number of cases, including The Continental Shelf (*Tunisia v Libya*) ICJ Reports (1982), 72; The Gulf of Maine Case ICJ Reports (1984), 246 at 294–295; The Continental Shelf (*Libya v Malta*) Case ICJ Reports (1985) 13 and 33 and The Guinea Guinea Bissau Delimitation of Maritime Boundary Case ILM 251 (1985) 274. (See also R R Churchill and A V Lowe, *The law of the sea*, 3rd ed, Manchester: Manchester University Press, 1999, 133.) Some scholars have argued that it was not altogether novel but a modification of the earlier concept called the patrimonial sea, which was defined by the Specialised Conference of the Caribbean Countries at Santo Domingo de Guzman in June 1972 – see C O Okidi, *The Kenya draft articles on exclusive maritime economic zone concept: analysis and comments*, Working Paper 289, Nairobi: Institute of Development Studies, University of Nairobi, November 1976.

3  Aldo Chircop, David Dzidzornu, Jose Guerreiro and Catarina Grilo, The maritime zones of East African states in the law of the sea: benefits gained, opportunities missed, *African Journal of International and Comparative Law* 16(2) (September 2008), http://www.eupjournals.com/doi/abs/10.3366/E0954889 008000145 (accessed 3 March 2009).

4  See articles 70(3) and 148 of the LOSC which confer rights on landlocked and geographically disadvantaged states in the exploitation of marine resources. The provisions of the LOSC also allow states, including landlocked ones, to have ships flying their flags on the high seas and to engage in maritime transport. More than 90 per cent of the world trade is transported by sea. See Go to the sea! A campaign to attract entrants to the shipping industry, http://www.imo.org/includes/blastDataOnly.asp/ data_id%3D23804/Gotosea!campaigndocument.pdf (accessed 3 March 2009).

5  See LOSC, articles 61–70.

6  Ibid, articles 123, 143, 200 and part XIII.

7  Ibid, articles 94 and 211.

8  Ibid, articles 14(2), 41 and 262.

9  Ibid, article 43.

10  *Maritime security issues on the east coast of Africa,* Report of conference held on the SAS *Drakensberg*, Mombasa Harbour, 26 November 2007.

11  Foundation for International Environmental Law and Development: 'Illegal, unreported and unregulated Fishing', 2008 http://www.field.org.uk/work-areas/biodiversity-and-marine-environments/marine-envi ronments/illegal-unreported-and-unregulated-iuu-fishing (accessed 3 March 2009).

12  David J Agnew, John Pearce, Ganapathiraju Pramod, Tom Peatman, Reg Watson, John R Beddington and Tony J Pitcher, Estimating the worldwide extent of illegal fishing, PLoS One, http://www.plosone. org/article/info:doi/10.1371/journal.pone.0004570 (accessed 3 March 2009).

13  See Reports on piracy and armed robbery attacks against ships, http://www.imo.org/Circulars/mainframe. asp?topic_id=334 (accessed 3 March 2009).

14  See Robert F Worth, Pirates seize Saudi tanker off Kenya, 18 November 2008, http://drp2p.gnn.tv/ headlines/18812/Pirates_seize_Saudi_tanker_off_Kenya (accessed 3 March 2009) and also Regional communities: 'Think local planet, act regionally', 11 February 2009, http://www.voanews.com/english/ 2009-01-30-voa33.cfm/ (accessed 3 March 2009).

15  See for example http://www.javno.com/en/world/clanak.php?id=226416 (accessed 3 March 2009) and also http://www.234next.com/csp/cms/sites/Next/News/2815854-147/Nigeria_oil_union_threatens_strike_ over.csp (accessed 3 March 2009).

16 Reuters, US urges African navies to improve surveillance, 30 May 2006. http://www.redorbit.com/news/international/520073/us_urges_african_navies_to_improve_surveillance/index (accessed 3 March 2009).

17 Maritime Terrorism Research Centre: 'African Nations Working for Maritime Security' http://www.maritimeterrorism.com/2008/06/24/african-nations-working-for-maritime-security/ (accessed 3 March 2009).

18 Think Maritime, Somalia: Tackling piracy off African shores, http://www.thinkmaritime.com/2009/01/31/somalia-tackling-piracy-off-african-shores/ (accessed 3 March 2009).

19 James Kraska and Brian Wilson, Diplomatic efforts against the Gulf of Aden pirates, *Harvard International Review,* http://harowo.com/2009/02/11/diplomatic-efforts-against-the-gulf-of-aden-pirates-james-kraska-brian-wilson-the-harvard-international-review/ (accessed 3 March 2009).

z21    Adopted at the then Organisation of African Unity in Addis Ababa on 26 July 1994.

22 Indian Ocean Memorandum of Understanding (IOMOU), http://www.iomou.org/moumain.htm (accessed 28 February 2009).

23 This agreement is similar to the multinational regional agreement signed by South-East Asian states in 2005, known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which has more than a dozen signatories and is credited with helping to reduce the number of successful pirate attacks at the Malacca Straits choke point.

24 Alisha Ryu, Nine countries sign agreements to combat Africa piracy, VOA News, 30 January 2009, http://www.voanews.com/english/2009-01-30-voa33.cfm/ (accessed 28 February 2009). See also Efthimios E Mitropoulos, Opening address at the sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for states from the Western Indian Ocean, Gulf of Aden and Red Sea areas, International Maritime Organisation, Djibouti, 26 January 2009, http://www.imo.org/About/mainframe.asp?topic_id=1774&doc_id=10929 (accessed 28 February 2009). This meeting followed a meeting held in December 2008 in Nairobi, Kenya, to address the same issue of the lack of maritime security in the West Indian Ocean region.

25 International Maritime Organisation, http://www.imo.org/about/mainframe.asp?topic_id=1320&doc_id=6291 (accessed 28 February 2009).

26 Ibid.

27 These include 23 Pacific Island states and territories – American Samoa, the Cook Islands, Easter Island (Rapa Nui), the Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, the Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna. See R A Herr, Small island states of the South Pacific: regional seas and global responsibilities, in D Vidas and W Ostreng (eds), *Order for the oceans at the turn of the century,* The Hague: Kluwer Law International, 1998.

28 See Vina Ram-Bidesi, Sustainable use of marine resources: lessons from the Pacific islands, UNU Global Seminar, oceans: interaction between man and maritime environments, 5th Shimane session, held at the University of Shimane, Japan, 2–5 August 2004. There are ten regional intergovernmental institutions under the Council of Regional Organisations of the Pacific (CROP) which focus on regional strategies for sustainable development. CROP consists of the Pacific Islands Forum Secretariat, the Secretariat of the Pacific Community, the Forum Fisheries Agency, the South Pacific Regional Environment Programme, the South Pacific Applied Geoscience Commission, the University of the South Pacific, the South Pacific Tourism Organisation, the Fiji School of Medicine and South Pacific Board of Educational Assessment, and the Pacific Islands Development Programme. The ocean-related activities of these organisations are coordinated by the Marine Sector Working Group which was created in 1997 and consists of technical experts from the CROP members. The aim of the group is to promote better coordination of activities among the regional organisations on marine-related issues. See also R Teiwaki, *Management of marine resources in Kiribati,* Suva: University of the South Pacific, 1988.

29 Chircop et al, The maritime zones of East African states.

30 J W van der Schans, *Governance of marine resources: conceptual clarifications and two case studies*, Delft: Eburon, 2001.

31 In Kenya, there are various land tenure systems which are governed by different pieces of legislation. For example, the Government Lands Act (cap 280) governs government (public) land; private land is *inter alia* governed by the Registration of Titles Act (cap 281), the Land Titles Act (cap 282) and Registered Land

Act (cap 300); and trust land is governed by the Land (Group Representatives) Act (cap 287) and Trust Land Act (cap 288).

32 Sections 5–6 of the Maritime Zones Act.

33 See DoD 2005, 1-M, http://www.dtic.mil/whs/directives/corres/20051m_062305/Kenya.doc (accessed 3 March 2009).

34 LOSC, article 30.

35 Ibid, article 36.

36 Ibid, article 56.

37 *Maritime security issues on the east coast of Africa*.

38 See reports on this in the local dailies, such as the *Daily Nation*, 4 March 2009, http://www.nation.co.ke/News/-/1056/541592/-/u328xk/-/ (accessed 4 March 2009), and *Business Daily*, 4 March 2009, http://www.bdafrica.com/index.php?option=com_content&task=view&id=13069&Itemid=5854 (accessed 4 March 2009).

39 AU, Policy Framework for the Establishment of the African Standby Force and Military Staff Committee, adopted by the African Chiefs of Defence Staff, Addis Ababa, Ethiopia, 15–16 May 2003.