



## International Peace Support Training Centre Nairobi, Kenya

### **REPORT ON IPSTC MARITIME SECURITY LEARNING AND EXPERT SHARING WORKSHOP**



Held at Westwood Park Road, Karen  
30th November, 2017  
Nairobi, Kenya

*"Enhancing Strategies and Policies for Maritime Security"*

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## 1. Executive Summary

The International Peace Support Training Centre (IPSTC) is a training and research institution whose focus is capacity building at strategic, operational and tactical levels for peace operations within the context of the African Peace and Security Architecture (APSA). The mission of the centre is to conduct applied research, training and education of military, police and civilian personnel in all aspects of peace operations.

The Centre endeavours to address the complexities of contemporary United Nations and the African Union integrated peace support operations by exposing actors to the multidimensional nature of operations. The training and research undertaken cuts across the broader spectrum of conflict prevention, management and post conflict recovery. The Peace and Security Research Department of IPTSC undertakes research and conducts thematic workshops for two main purposes; the first being to design training curricula to support operations and the second being to contribute to the policy and praxis debate towards enhancement of regional peace and security. The Workshop Agenda was *“Enabling Strategies and policies for Maritime Security”*.

The Workshop held on the 30<sup>th</sup> of November 2017, aimed at tapping into subject matter experts’ knowledge and insight into:

- The complexity of maritime security
- Maritime security threats and practices in order to inform training in IPTSC
- National and regional maritime security policies and strategies

Experts presented a number of papers on strategies to enhance maritime security. These papers and strategies were discussed at length. Invited participants then made recommendations on the various ways to ensure implementation of the agenda of the workshop. This report succinctly documents the activities of the Workshop.



## 2. The Workshop Concept

The learning and experts sharing workshop is part of the Peace and Security Research Department (PSRD) of International Peace Support Training Centre (IPSTC) planned activities under the Japan/UNDP funded project for the year 2017. In this context, the Centre organized the Maritime Security workshop which was informed by the overarching theme of *Enhancing Strategies and Policies for Border Security and Counter Violent Extremism*. The theme reflects IPSTC focus on Countering Violent Extremism (CVE) in Kenya and Border areas as a contribution to regional security and stability.

Every year the PSRD begins its calendar by formulating an agenda to inform its research activities as one of its key responses to emerging issues in conflict, peace and security in Eastern Africa. This is done through a Research Agenda workshop.

The IPSTC Maritime Security Learning and Expert Sharing Workshop was organized to provide a forum for discussing pertinent knowledge in the area of Maritime Security on the topics below:

- Maritime domain, governance and leadership in Eastern Africa
- Conceptualization of Maritime Security
- Existing legal framework on maritime security in East Africa
- Current and emerging threats to maritime security
- Maritime Security in Eastern Africa; Challenges, opportunities and strategies
- Enhancing Regional Co-operation in Maritime Security within Eastern Africa

### 2.1 Specific Objectives of the Maritime Security Workshop

The Workshop aimed at fulfilling the following objectives:

- a. Review and analyse the existing regulatory frameworks of Maritime Security for contextualization.
- b. Provide Critical input to Maritime Security and border security conceptualization, strategies and policies in order to improve effectiveness.
- c. Sharing knowledge and experience in Maritime Security practices.

### 2.2 Expected Outcome

The workshop intended to have three major outcomes:

- a) Provide information for the development of a strategy on Maritime and border security for use in training and operations of stakeholders.
- b) Consolidate views from stakeholders such as practitioners and academia who will help inform policies and strategies in through training.
- c) Strengthen networks of collaborations with different organizations, institutions and partners in Maritime Security.

## **2.3 Participants**

The workshop brought together distinguished representatives from International Organizations, Government Institutions, Non-Governmental Organisations, Academia and Practitioners

## **2.4 Venue and Date**

The workshop took place at the International Peace and Training Support Centre, Westwood Park Road, Karen, Nairobi, Kenya on the 30<sup>th</sup> November, 2017.

### 3. Publications by IPSTC

The Peace and Security Research Department produces applied research products related to informing policy, and capacity building training on peace and security in eastern Africa.

Applied Research is one of the major branches of the Peace and Security Research Department at IPSTC, which seeks to provide intellectual input to inform theory and practice through training and policy development. .

The Centre has made considerable contribution in training and research on peace support issues in the Great Lakes region and the Horn of Africa through the designing of training curriculum, field research, publication of Occasional Papers as well as the publication of the Africa Amani Journal.

*Occasional papers* are the Centre's research products aimed at informing the IPSTC training as well as policy on regional peace and security. Occasional papers produced annually and consist of research papers developed by the Centre's researchers.

*Issue Briefs* are short discussion papers which are demand led. They aim at shedding more light on current peace and security issues in the region. The publications are informed by secondary data.

*The Africa Amani Journal* was launched in December 2014. It is anchored on the strong desire of IPSTC to share research findings of peace and security, as a way of diversifying and improving the Centre's research products. The purpose of the journal is to report on critical research findings that continue to impact peace and security in the region. The journal also expands the Centre's horizons in sharing knowledge and best practices in peace and security. IPTSC seeks to ensure that the Journal will be the key medium for scholars in Africa to exchange innovative ideas on emerging peace and security trends and dynamics. The sharing of knowledge will boost the IPSTC standards of research in peace and security. The Centre strongly encourages all relevant stakeholders in peace and security and those from related disciplines to contribute to the development of this very crucial academic instrument.

## 4. Opening Remarks



Major Misiani Geoffrey began by welcoming guests and briefly highlighting the significance of Workshop. He mentioned that participants included speakers drawn from academia, civil society organizations, international organizations, practitioners as well as government agencies. The diversity of the participants present would ensure that the objectives of the workshop were effectively met.

Major Misiani finally invited the IPSTC Director Brigadier Patrick Nderitu to make his welcoming remarks and officially declare the workshop open.



## 5. Welcoming Address



### **Brigadier Patrick M. Nderitu – Director, IPSTC**

Brigadier Patrick Nderitu welcomed all participants and presenters to the Maritime Security Learning and Expert Sharing Workshop. He thanked all those present for finding time out of their busy schedules to come and share their knowledge and experience during this very important workshop. He stated that this indeed demonstrated the strong and mutually beneficial relationship that the International Peace Support Training Centre (IPSTC) has with the different stakeholders in the security sector. He then requested participants to extend the Centre's gratitude to their various institutions that were represented in the Workshop.

He explained that IPSTC is a training and research institution whose focus is capacity building at strategic, operational and tactical levels for peace operations within the context of the African Peace and Security Architecture (APSA). Brigadier Nderitu then highlighted the Centre's mission, which is to conduct training, education and research that will inform military, police and civilian personnel in all aspects of peace support operations in order to improve their effectiveness of the response to complex emergencies. It is a great delight that many distinguished Scholars/Practitioners/Actors from the various institutions and organizations working on maritime security and other related aspects had honoured the invitation to attend this workshop. The participants had been drawn from the following institutions; Regional Mechanisms, Inter-state and governmental bodies, Humanitarian and Non-Governmental Organizations, United Nations Agencies, Government, Civil Society Organizations, Faith Based Organisations; among others.

He stated that the concept of maritime security is now wider and more diverse than the traditional notion of defence against military threats and the protection of national interests and sovereignty at sea. It now includes non-traditional security threats and challenges such as maritime terrorism, natural disasters, climate change, illegal fishing, marine pollution, maritime safety and the smuggling of drugs, arms and people among others.

Brigadier Nderitu further explained that the workshop provided an opportunity and platform for sharing best practices, collaboration, networking and building a body of knowledge from the experiences of maritime security practitioners, actors and stakeholders. It also aimed at tapping subject matter experts' knowledge and insights into complex maritime security threats and practices in order to inform training at IPSTC to develop national and regional security policies and strategies and enhance collaboration by building a network of Maritime Security actors. He assured participants that the collated information would form a part of the curriculum and syllabus to be used in an Integrated Maritime Security Course that the centre has developed.

He then after mentioned that he looks forward to objective presentations and healthy discussions that would culminate to recommendations that could be used for the development of a maritime security strategy that will be used in training and operations of stakeholders in the sector.

Lastly, he took the opportunity to most sincerely thank the Centre's partners UNDP and the government of Japan, for their support in making the event possible.



## 6. Introductory Remarks

### **Col Evans Oguga - Head of Research**

Col Oguga began by welcoming all participants to the workshop and gave a quick overview of IPSTC with special emphasis the research department. As a way of introduction he stated that IPSTC was formed as a result of the need to have a Centre of Excellence in the Eastern Africa region as stipulated in the African Peace and Security Architecture (APSTA) which established the African Stand-by Force. As a training centre, he mentioned that IPSTC provides training for the region that aim at achieving the following:

- Doctrinal analysis in order to create harmonization amongst member states
- Attaining regional critical mass for peace keepers
- Creating networking forums

He mentioned that IPSTC has two training platforms; namely the Humanitarian Peace Support School and the Peace and Conflict Study School as well as the Peace and Security Research Department. PSRD is further divided into different sub sections; which are Applied Research, Curriculum Design and the Training and Simulation Centre.

Applied research focuses on policy issues related to initiatives that contribute to knowledge through conducting research work that will inform the Eastern African Peace and Security Architecture. It does this through publishing of the following products:

- Occasional papers
- Issue Briefs
- Africa Amani Journal
- Workshops and Symposiums

He explained that the occasional papers were the department's flagship products and are intensive as well as demand led. Applied research products are aimed at informing the IPSTC training as well as policy on regional peace and security. Issue briefs on the other hand are short discussion papers based that developed based on secondary data. Their aim is to assist in shedding more light on current peace and security issues in the region.

PSRD is also responsible for facilitating workshops and research symposiums. These focus discussion groups aimed at brainstorming on the initial research areas of the occasional papers and topical contemporary issues.

He mentioned that symposiums were forums aimed at

- Serving as a platform for dissemination of the results of the research conducted
- Strengthening networks of collaborations with different organizations, institutions and partners in peace and security
- Serving as a forum for the Research Department to identify possible Research Areas for the subsequent year

The Curriculum Design section on the other hand, is responsible for institutionalizing the IPSTC Systems Approach to Training as a mechanism that ensures continuous improvement of IPSTC products.

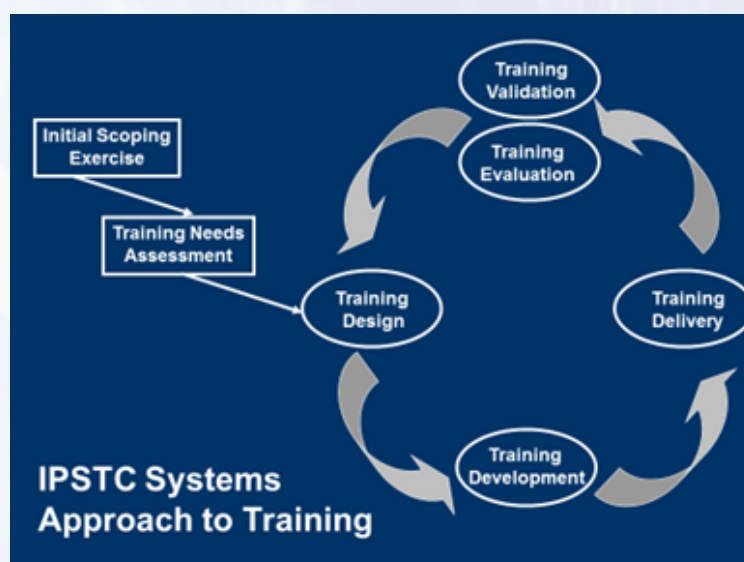


Fig. 1 IPSTC System Approach to Training

Maritime Security being a new field that the Centre is venturing on, there was need for the curriculum design department to conduct an initial scoping exercise with the aim of promoting conversation and dialogue among the key Subject Matter Experts (SMEs), the Government of Japan through UNDP and IPSTC representatives on the issue of maritime security in the region. The deliberations further informed the International Peace Support Training Centre (IPSTC) on the key areas of focus on for the Training Needs Assessments (TNA). The TNA was guided by the following specific objectives:

- (a) Conceptualization of maritime security
- (b) Identification of the maritime security challenges and vulnerabilities in the region
- (c) Identification of the knowledge and capacity building gaps in maritime security
- (d) Identification of the appropriate training methodology
- (e) Establish the policy and legal frameworks for maritime security that exist in the region
- (f) Finding ways that IPSTC would help promote regional collaboration and cooperation among stakeholders

Further to that, IPSTC was invited to participate in the 5<sup>th</sup> International conference on Strategic theory for landward and maritime security governance that was held in Addis Ababa – Ethiopia (September 2017). This conference did not only understate the importance of regional collaboration when it comes to dealing with maritime and landward security threats but also aimed at informing peace and security practitioners on the close nexus between landmark and maritime security governance. The key focus of the conference was on:

- a. Understanding difficulties facing Africa's leaders
- b. Exploring case studies on landmark and maritime security governance
- c. Conducting landmark and maritime security workshop

It is based on this backdrop that that the IPSTC is now in its final stages of coming up with the Integrated Maritime Security Course which will be held in February and March 2018. The course aims to promote a comprehensive understanding of the maritime domain and the benefits of an integrated approach to maritime security among national and regional stakeholders from Eastern Africa in line with AU 2050 AIM Strategy and Agenda 2063.

Col Oguga concluded by referring participants to the overarching theme of the Workshop which was, “Enhancing strategies and policies of Maritime Security”. He stated that he hopes that this workshop will help enrich the Maritime Security courses that the centre is developing and thanked all those present. He proceeded to invite Prof Timothy Gatara to moderate the rest of the program.

Prof Gatara mentioned the next issue of the IPSTC Africa Amani Journal would be devoted to the thematic area up for discussion during the workshop. He elaborated that the journal would be the fifth issue and it would be published early next year and welcomed all participants to submit articles. He then made a few remarks on Maritime Security and lastly invited the key note speaker, Col Jimson Mutai to give the key note speech.



## 7. Keynote Speech: Maritime Domain, Governance and Leadership in Eastern Africa



### Col Jimson Mutai - Deputy Fleet Commander, Kenya Navy

The maritime domain has a significant impact on our lives and is the cornerstone to the livelihood of humanity. Approximately 90% of the world's commerce moves by sea, 44% of the world's population lives within 150 km of a coastline and some of the largest cities in the world are also located near the coast. Additionally, about 95% of the world's data and voice communications travel via undersea cables. The maritime domain is also vulnerable to threats brought about by

- Criminal activities – piracy, Illegal, Unreported and Unregulated (IUU) fishing, trafficking of narcotics, arms, people ...
- Safety of life at Sea (SOLAS)
- Environmental safety – pollution, ecosystem destruction ...
- Maritime accidents and natural disasters
- Shipping, maritime Zones/jurisdictions, ports, Customs, laws and regulatory frameworks

The maritime domain is defined as all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances

### 7.1 Governance

Governance in this context involves the conduct of policy, actions and affairs concerning the oceans. The UN is the lead institution on matters of international security. The UN system is well placed to rally member states to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace globally. The state is not the only power to influence policy, influence of non-state actors. Rules on the conduct of the ocean can only be implemented through international agreements. Maritime governance derives from an institutional framework with jurisdictions at international, regional, national, and local levels. At the international level – the International Maritime Organization (IMO) focuses on safety, the environment and security. The International Labour Organization (ILO) dwells on issues affecting maritime labour

Other stakeholders in the Eastern Africa region with regards to piracy include:

- UN System
- IMO
- Shipping industry – BMP
- AU/IGAD
- Naval Deployments – NATO, EU, Independents
- States

Good order at sea ensures the safety and security of shipping and permits countries to pursue their maritime interests and develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law.

The United Nations Convention on the Law of the Sea 1982 provides the framework for good order at sea, supported by numerous other international conventions that provide subsidiary regimes for maritime security, safety and marine environmental protection. These include:

- Safety of Life At Sea 1974 which gave rise to the ISPS code,
- The 1979 Convention on Maritime Search and Rescue (SAR);
- The Convention for the Suppression on Unlawful Acts against the Safety of Maritime Navigation(The SUA Convention)

## **7.2 Maritime Domain Awareness**

Maritime domain awareness (MDA) is defined by the International Maritime Organization as the effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or environment. The understanding of all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances.

To achieve good order at sea we must first deal with ‘sea blindness’ i.e. ships location and movement; obtain their last port of call, cargo, crew, nationality (flag) and next port of call as well as enforce laws and regulations (international, regional, national)

Proper Maritime Surveillance requires:

- Coastal radars
- EO Devices
- AIS and Sat-AIS
- Communications
- Mobile units
- Interception capability – assets (Air, Surface and Land)
- Operation Centers
- Integration Systems – inter-Agency, sensors
- 

Unfortunately, the East African region lacks most of the above capabilities.

## **7.3 Conclusion**

Developing a maritime security strategy for the region requires that the Maritime Domain Awareness is achieved for the nations to plan for the developmental activities. Maritime Domain Awareness supports the development of the blue economy. The nature of the maritime domain greatly facilitates its utilization for illegal purposes or may simply hinder its free use in the advancement of legitimate interests. It is therefore a space that offers many opportunities for prosperity and development, but the difficulty of controlling it is conducive to the emergence of risks and threats to security and safety.



## 8. Introduction of Workshop Participants



### **Professor Timothy Gatara - IPSTC Senior Researcher & Workshop Moderator**

Prof Gatara invited all participants to introduce themselves. Thereafter, he spoke briefly on the history and impact of Maritime Security. He stated that the question to keep in mind is how to deal with the other contributing factors such as pollution and climate change, specifically global warming and how it contributes to maritime insecurity. He then briefly highlighted the key topics that were to be presented in relation to the thematic area of Maritime Security.

Thereafter he invited Assoc. Professor Martin R. Rupiya to make his presentation.



A section of the workshop participants following proceedings



## 9. Presentations

The Speakers made five presentations which sought to address maritime security. The moderator, Professor Timothy Gatara requested the audience to keenly make observations and note the important issues raised by the presenters, and welcomed the audience to raise substantive issues during the plenary session.

### 9.1 Applied Academic Perspective: Conceptualizing Maritime Security



**Assoc. Professor Martin R. Rupiya- Executive Director, the African Public Policy & Research Institute (APPRI)**

The aim of this presentation is to provide the academic, conceptual and policy perspectives, that respond to the Maritime Security expectations of Commerce & Trade from the state in Kenya. The scope of the presentation will revolve around:

- Global perspective focusing on the generic notions of Maritime Security
- The Domain of Kenya's Maritime Security in the Horn of Africa
- What are the expectations of International; regional and national Commerce & Trade towards Kenya's Maritime state capacity
- Defining the roles beyond the 99 Call

The definitions of maritime security are fuzzy, in the sense that they go beyond what exists in the books. One definition incorporates unhindered trade, safe navigation, the safeguarding of coastal communities and their livelihoods, national development, protection of the food chain and preservation of the oceanic contribution to the health of the planet. Maritime security has been conceptualized in two key dimensions, the intrinsic and extrinsic (Onuoha 2009: 32, 33). *Intrinsic/ (Non-Security)* dimension incorporates the biological and environmental safety of the oceans, their ecological processes and life forms; *extrinsic (Security)* dimension incorporates the “foreign objects existing in or making use of the maritime domain” people, vessels, infrastructure and human utilization of water sources.

A parallel definition of maritime security encompasses the critical combination of the economic and commercial utilization of waters (seas, oceans, lakes, rivers and so on), environmental security, its importance as a source of nutrition and livelihood and also the safety or protection from illegal or criminal activities (Brenthurst Foundation, the African Union Commission and the African Centre for Strategic Studies, 2010: 10-12).

There are several challenges revealed in the many faces of traditional & Global Maritime Security, they include:

- Traditional Trade-legal and illegal
- Piracy- violence & armed robbery
- Sea/oceanic terrorism
- Theft- cargo
- Fishing and human trafficking and taking advantage of info & technology by Developed Nations on the weak

### **9.1.1 Maritime Domain- Elements**

Maritime Domain awareness refers to the understanding of all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances. It provides an integrated approach to Fresh Water and the Sea/Oceanic environments. These elements include;

- a) Ensure and maintain Territorial Integrity
- b) Pursue and preserve entry & participation – freedom of Seas – fresh water
- c) Facilitate and Defend Commercial activity within International law statutes
- d) Train, fit and refit for complimentary state facilitation of exploitation of international, regional (Horn) and national political, socio-economic and Security with land and water jurisdictions Sub-Sahara

### **9.1.2 What do the Commercial and Trade Sectors expect in relation to International standard Maritime Security?**

First is to ensure international and national peace and security sovereignty in addition to territorial, political independence and interdependence. Maritime and port fields level unique security stakes. Due to economic and geopolitical reasons, security threats are a major stake. In fact, hampering ports and shipping should have major effects on States and their economies due to the role of shipping in their economies. Besides, the relative isolation of ships at sea involves them furthermore to these topics. Maritime and port security is first of the States' responsibility due to their sovereign mission of guarantee of public order. The implementation of security allows to struggle against criminality in general and needs for collaboration of various services of the State such as port State inspectors and police. Security is also of public interest because of the major role that shipping had in the economy of a country. Secondly capacity beyond the distress, rescue call Domain & Elements Sea/Ocean/ (inland and fresh water ways) is highly essential and lastly contribution to the development of trade and commerce along the coastlines.

### **9.1.3 Key recommendations and Conclusion**

The following were the recommendations made:

- a) Awareness of notions: academic knowledge production identifying entry points of national Maritime Security role at home, in the Horn and internationally. This is because it brings about effective prosperity of the people
- b) Plan and prepare to execute the 42% mainland role that links with the 90% Sea/Lakes based national political, socio-economic activities.
- c) Prepare Public Policy engagement platforms; Monitoring and Evaluation – facilitating the industrial development of the sector—boat-building, maintenance and infrastructure development.

## 9.2 Legal Frameworks: an Assessment of Legal framework on Maritime Security in East Africa

Ms Nancy Kairaria - International Maritime Law Consultant

### 9.2.1 Maritime Security Law

Maritime Security entail measures employed by owners, operators and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to protect against maritime security threats.

Maritime Security threats form the subject of maritime security law and these threats include:

- a) Piracy
- b) Hijacking and armed robbery against ships
- c) Pilferage and theft
- d) Stowaways, human smuggling and human trafficking (the human element)
- e) The trafficking of illicit drugs
- f) The trafficking of illicit arms; and
- g) Terrorism;
- h) Fisheries crimes; and
- i) Environmental crimes

### 9.2.2 Objectives of Maritime Security

- a) Providing defence against wilful and unlawful acts against the ship.
- b) The protection of people (passengers and crew), property (the ship itself and its cargo) and the environment (marine environment).

### 9.2.3 Classification of Maritime Security Law

There are two classifications of maritime security law, namely, Public Maritime Security Law (UNCLOS and other Conventions on Maritime Security) and Private Maritime Security Law (SOLAS AND ISPS Code)

### 9.2.4 International Law on Maritime Security

These include:

- a) Customary International Law and Treaties
- b) The United Nations Conventions on the Law of the Sea, 1982 (UNCLOS)
- c) International Convention on the Safety of Life at Sea, 1974 (SOLAS)
  - Chapter XI-2 – Special Measures to enhance maritime security
  - The International Ship and Port Security Code (ISPS Code)
  - The Recognised Organizations Code (RO Code) – Surveys and Certification of ships for compliance with Chapter XI-2 of SOLAS and the ISPS Code



- d) United Nations Convention against Transnational Organized Crime, 2000 (Palermo Convention) and the Palermo Protocols
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000
  - Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000
  - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001
- e) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention on Drugs);
- f) The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 [the SUA Convention]
- g) International Convention Relating to Stowaways 1957
- h) The International Convention on the Facilitation of Maritime Traffic, 1965 (2002 amendments on Stowaways)
- i) IMO Resolution A.871 (20): 1997 Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases.

## **9.2.5 Regional Agreements and Treaties Codes on Maritime Security**

These include the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden 2009 (the Djibouti Code of Conduct) and the Jeddah Amendment to the Djibouti Code of Conduct, 2017 (adopted in January 2017)

### **9.2.5.1 The Jeddah Amendment**

The amendment requires all signatory States to:

- Cooperate to repress transnational organized crime in the maritime domain, maritime terrorism, human trafficking, migrant smuggling, illegal, unregulated and unreported (IUU) fishing and other illegal activities at sea.
- Develop national maritime security policies; and national legislation to ensure safe and secure operation of port facilities, protection of the marine environment and sustainable management of marine living resources.
- Establish multi-agency, multidisciplinary national maritime security and facilitation committees, with similar arrangements at port level, to develop action plans and to implement effective security procedures.

With regards to the scope of cooperation the amendment requires:

- Information sharing;
- Interdicting ships and/or aircraft suspected of engaging in such crime;
- Apprehension and prosecution of persons committing or intending to commit illicit activity at sea; and
- Facilitating proper care, treatment, and repatriation of victims of crime.

The developments under the transnational organized crime definition extended to include illegal trade in wildlife; crude oil theft and illegal dumping of toxic waste.

#### 9.2.5.2 The African Maritime Transport Charter, 1993

Article 23 of the Charter requires cooperation in the implementation of maritime security laws and, if necessary, updating of the existing national legislation. Mutual Assistance and information sharing is provided for under Article 24 of the Charter. State Parties are required to enact legislation to give effect to the charter and all relevant international instruments, codes and regulations on, *inter alia*, maritime security under as well as improvement of the Safety and Security of Maritime and Inland Waterways Transport under Article 26 and 32 respectively. State Parties must endeavour to improve the safety and security of vessels not covered by IMO conventions, e.g., fishing vessels and non-conventional vessels.

#### 9.2.6 National Legislation on Maritime Security: Kenya

- a) The Constitution of Kenya, 2010- Article 2(6) (general principles of international law part of Kenyan law; Article 2(6) (conventions ratified by Kenya form part of national law); Article 240 (3) (National Security Council's supervisory power over security organs)
- b) Kenya Defence Forces, Act No. 25 of 2012 – Sec 41 (Application of UNCLOS in law enforcement power at sea – See Article 111(5) of UNCLOS)
- c) Kenya Maritime Authority Act, 2006 – Sec 5 (1) (pp) (implementation and coordination in maritime security)
- d) Merchant Shipping Act, 2009 – Part XVI (Maritime Security) – domesticates UNCLOS, SUA Convention, ISPS Code, RO Code
- e) The Merchant Shipping (ISPS Code) Regulations, 2005
- f) Counter- Trafficking in Persons, Act No. 8 of 2010 – Sec 3 (list of offences); Sec 7 (facilitating entry into or exit out of Kenya of trafficked persons by sea)
- g) Mutual Legal Assistance Act, No 36 of 2011 – Implemented by the AG's Office
- h) Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994 – sec 4, Sec 65
- i) National Police Service Act No 11A of 2011 - law enforcement powers
- j) National Security Council Act, No 23 of 2012 – Sec 4 (National Security Policy making)
- k) Office of the Director of Public Prosecutions Act, No 2 of 2013 – Sec 5 (2)(2) (exercise State's power of prosecution); Sec 5(2) (b) (direct investigations to be carried by investigative agencies)

### 9.2.7 Nexus between International and Regional Conventions and National Laws On Maritime Law

All international conventions and regional agreements on maritime security impose an obligation on state parties to:

- Promulgate legislation to domesticate those conventions and agreements into national law;
- Put in place measures to implement and enforce the provisions of the conventions and agreements at national level
- Cooperate in the implementation and enforcement of the provisions of the conventions
- Mutual legal assistance in enforcement

### 9.2.8 Duties and Obligations of Flag and Port States in the Implementation of Maritime Security Law on Board Ships and At Port Facilities

The Port State control inspections while the Flag State is responsible for:

- a) Security Assessment
- b) Approval of Ship and Port Security Plans
- c) Surveys (Initial, Annual, Intermediate; Renewal)
- d) Certification
- e) Recognition of classification societies
- f) Detention of vessels
- g) Conditional release
- h) Compensation for unlawful detention

### 9.2.9 Criminal Legislative and Enforcement Jurisdiction

#### 9.2.9.1 Jurisdiction under UNCLOS

The concept of jurisdiction in national law and international law is twofold:

- Legislative – Competence to make laws - by legislature or by courts
- Enforcement jurisdiction - competence to enforce laws – administratively, judicially or through diplomatic process

**Legislative Jurisdiction** may be limited to:

- Ratione loci
- Ratione personae
- Ratione materiae

Application of legislation subject to domestic rules of statutory construction which prohibits extraterritorial application of domestic law unless provided otherwise.



Application of law may not automatically imply enforceability; the latter may be limited in scope, e.g., Article 27 of UNCLOS prohibits arrest of foreign vessels passing through the territorial sea for offences committed prior to vessel's entry into the territorial sea.

**Enforcement Jurisdiction** on the other hand entails:

- Arrest
- Investigation (evidence collection)
- Prosecution
- Sentencing

Given the unique nature of mobility of vessels, it is important to understand the concept of enforcement jurisdiction. Enforcement jurisdiction on board ships and the crew engaged on board ships is established by UNCLOS. Two key factors determine the enforcement jurisdiction of a state, whether coastal or flag State, that is: kinds of jurisdiction is important in this regard, that is,

- Nationality of the vessel
- The maritime zone within which the alleged offence is committed

With regards to **criminal enforcement jurisdiction of the flag state**, Article 91 of UNCLOS provides that ships have the nationality of the State whose flag they fly. Article 92 (1) states that flag state has exclusive enforcement jurisdiction over its ships while they are in the high seas. The Flag state's criminal jurisdiction in the other maritime zones is subject to the enforcement jurisdiction of the coastal state on board foreign ships (e.g, Article 27 of UNCLOS)

When it comes to **criminal enforcement jurisdiction of coastal states over foreign vessels** this is dependent on:

- Maritime zone where the alleged offence is committed
- The alleged offence
- The rights of foreign vessels in various maritime zones while exercising their rights of passage through a coastal State's territory

Territorial Seas (TS) stretches up to 12NM. The general rule is that the TS, the coastal State has exclusive sovereignty and hence criminal enforcement jurisdiction over foreign ships in the TS. The exception to this rule comes about if the foreign ship suspected of a criminal is under innocent passage.

What is innocent passage? The **right of innocent passage** is provided for under Articles 17 & 18 of UNCLOS. Passage is defined as traversing the sea without entering internal waters or calling at a port. Passage must be continuous and expeditious (Article 18). The exception to this comes about in the instance of delayed passage incidental to navigation & force majeure or distress. Passage is considered innocent as long as it is not prejudicial to the peace, good order, or security of the coastal state (Article 19). Passage is considered prejudicial if the foreign ship engages in the activities set out under Article 19 of UNCLOS. Coastal States have the right to take necessary steps in its territorial sea to prevent passage which is not innocent as provided for under Article 25. Submarines and underwater vehicles are required to navigate on the surface and to show their flag as provided for in Article 20 and the immunity of warships and government ships operated for non-commercial purposes are set out under Article 32.

Laws and regulations of the coastal State relating to innocent passage, for protection of cables and pipelines, navigational aids, conservation of the living resources of the sea. Coastal states are required not to hamper innocent passage, by *inter alia*, imposing requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage under Article 24 (10 (a))

#### *When to Exercise Criminal Jurisdiction On Board Foreign Ships under Innocent Passage in the TS*

Article 27 (1) of UNCLOS provides that Criminal jurisdiction to be exercised on board a foreign ship under innocent passage to arrest any person or conduct investigation in connection with any crime committed on board, in only 4 circumstances:

- If the consequences of the crime extend to the coastal State;
- If the crime is of a kind to disturb the peace of the country or the good order of the TS
- If the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the Flag State
- If such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances

Under Article 27 (2), Coastal State may still exercise criminal jurisdiction on board a foreign ship in the TS if so authorised by its national law. Enforcement measures are limited to the scope of such law. Article 27 (5) sets out the limitation to exercise criminal jurisdiction on board a foreign ship by a coastal state where the offence was committed prior to the vessel's entry in the TS and the ship is only navigating under the right of innocent passage except for crimes under Part XII and regulations adopted in accordance with Part V (pollution and illegal fishing activities).

#### *Enforcement Jurisdiction of a Coastal State On Board a Foreign Ship in the Contiguous Zone (CZ)*

This is provided for under Article 33 of UNCLOS. The CZ established to facilitate criminal enforcement jurisdiction of coastal states on board foreign ships. To prevent or punish infringements of fiscal, immigration or sanitary laws and regulations within its territory or TS

#### *Enforcement Jurisdiction of a Coastal State On Board a Foreign Ship in the Exclusive Economic Zone (EEZ)*

The EEZ does not follow the concept of sovereignty prevailing in the TS or of freedom, which characterizes the high seas. Article 5 states that EEZ is not a 'legal category' but rather a list and allocation of rights and corresponding duties. Article 56 further provides for Sovereign rights- exploration and exploitation of natural resources; marine scientific research; artificial islands and installations (security zones); protection and preservation of the marine environment. Due regard must be had to the rights of other States in the EEZ. The coastal State has exclusive jurisdiction regarding artificial islands and other installations with regard to customs, fiscal, health, safety, security and immigration laws.

#### *Enforcement Jurisdiction of a Coastal State On Board a Foreign Ship in the High Seas*

The exclusive jurisdiction of the flag State is not absolute and there are several situations in which other States "are granted in varying degrees a share of enforcement jurisdiction with the flag State. Limitations to the exclusive criminal jurisdiction of the Flag State in the high seas include:

- Prohibition of the transport of slaves (Article 99)
- Repression of Piracy (Article 100)
- Illicit traffic in narcotic drugs or psychotropic substances (article 108) - cooperation of States in enforcement
- Unauthorized broadcasting from the high seas (Article 109)



### *The Right of Hot Pursuit*

This is provided for under Article 111 of UNCLOS. This is a right to be undertaken when the competent authorities of the coastal State have good reason to believe that the foreign ship has violated its laws and regulations. Pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, TZ, CZ and EEZ. Hot pursuit can only to be continued outside the TS or the CZ if the pursuit has not been interrupted. The Right of hot pursuit applies *mutatis mutandis* to violations in the EEZ, the CS (including safety zones around CS installations) of the laws or regulations of the Coastal State applicable therein. Commencement of hot pursuit subject to: Prior visual or auditory signal had been made to the offending vessels at a distance which it is heard or seen by the offending vessel To be exercised only by warships or military aircraft or other ships or aircraft clearly and identifiable as being on governments service and authorised to that effect. Compensation for loss for unjustified exercise of the right of hot pursuit.

### 9.2.10 Modern Treaties Dealing With Criminal Jurisdiction (Super Treaties)

These include:

- a) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna Convention on Drugs)
- b) The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 [the SUA (Rome) Convention]
- c) The United Nations Convention against Transnational Organized Crime 2000

### 9.2.11 Common Features of Modern Treaties

- **List of Offences** - The treaties establish a list of ‘relevant offences’, that is, the offences that will become the focal point for the implementation of the treaty. The Convention will contain a list of the relevant offences.
- **Criminalization** - One of the primary obligations imposed upon the parties to the Convention is that they are obliged to ensure that all these offences are offences under the criminal law of each party. It is thus ensured that they are offences under the domestic law of the parties. States parties must also impose on offenders serious penalties similar to those for similar offences under their criminal law.
- **Jurisdiction** - Establishment of the necessary jurisdictional basis for prosecution.
- **Prosecute or Extradite** - All States parties undertake to adopt the principle that requires them either to prosecute or to extradite the alleged offender. The State may have a choice which is either to prosecute or, if it does not prosecute, it is required to extradite thereby ensuring that the person does not escape prosecution.
- **Creation of a mechanism for extradition** - All States parties undertake to ensure that the relevant offences are in fact extraditable offences under their laws and ensure that there is a mechanism in place to extradite the alleged offender.
- **In the absence of one the Convention itself is to be treated as an extradition treaty** - The final and perhaps the most fascinating development is that the Convention establishes that the parties whose domestic legislation requires the existence of an extradition treaty before a person can be extradited, undertake to consider the Convention itself as the required extradition treaty in the absence of a bilateral treaty. Therefore, with the entry into force of this treaty suddenly a network of extradition treaties was established that would have otherwise taken decades to negotiate.

In conclusion, there is need to amend the law to extend the scope of application on non-convention and fishing vessels. Extension of scope of application to national seaports as well as the promotion of effective coordination of enforcement function is necessary.



### 9.3 Current and Emerging threats to maritime security: Eastern Africa

#### Mr Inko-Tariah - CVE Expert

Africans did not draw up their national borders therefore as a continent we must endeavour not to create more problems for ourselves as we strive to resolve them. The ethno-religious strife in Africa can be partially traced to the above notion. Some of the emerging threats in Eastern Africa maritime domain will arise from the above and others will emerge from the battle for supremacy in Islam. The existing threats from 'terror-crime nexus', and the emerging threat of petro-piracy, are the basis for the Jeddah Amendment. To mitigate the emerging threats in Eastern Africa's maritime domain, we must understand the '*otherness of the other*'. This means the divide caused by tribalism, ethnicity, and clannishness among others. We must understand where we all come from and that we are all different.

Pirate attacks are taking place in the world over; however, Africa is the heaviest hit. This takes place mostly off the coast of Nigeria, Guinea as well as the Indian Ocean. This is because pirates operate in regions with;

- Large coastal areas
- High levels of commercial activity
- Inadequate or minimal naval presence, and
- Weak regional security cooperation mechanisms

In a memo written in 1973 to the U.S secretary of State, Henry Kissinger, and the Director of the CIA he was asked to discuss the prospect over the next five years of strife between Somalia, Ethiopia and Kenya as well as examine the prospects for an accord between Somalia and its neighbours as well as any US role in encouraging such an accord. About four years later there was an Ethio-Somalia war which contributed to the collapse of Somalia government in 1991. Piracy and terrorism then took a toll horn of Africa region from 2005, and with the numerous Al- Shabaab attacks; it led to the development of the Djibouti Code of Conduct; and the Kenya-Somalia MOU on Maritime Boundary Mediation in 2009. In 2011 Al- Shabaab attack became such an issue that it led to operation *Linda Nchi*. In 2012 the Kismayu port was basically captured and in 2014 the MOU was set aside and in 2017 we had the Jeddah Amendment.

Maritime Insecurity involves **threats in the maritime domain** including;

- Maritime inter-state disputes
- Piracy
- Trafficking of narcotics, people, & arms
- Illegal Unregulated, Unreported fishing
- Environmental crimes, accidents, & disasters
- Maritime terrorism

These are all included in the Jeddah Amendment. The Jeddah Amendment can be broken down into four parts, that is:

- Piracy
- Illegal, Unregulated, Unreported Fishing (IUUF)
- Trans-national Organized Crime (TOC)
- Maritime Terrorism

A few questions come to mind on closer inspection of the Jeddah Amendment. For instance:

- (a) Why was Maritime Terrorism mentioned in the Jeddah Amendment but the particulars of what it entails and how to deal with it not defined like Piracy, IUUF, and TOC?
- (b) What is the implication of adding Illegal oil bunkering and crude oil theft in the particulars of TOC?
- (c) Is it because future threats in Eastern Africa Maritime Domain will revolve around these issues?

Maritime Terrorism can be defined as the undertaking of terrorist acts within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities. There are seven conditions for Maritime Terrorism. They include:

- (a) Legal and jurisdiction weakness
- (b) Geographical proximity
- (c) Inadequate security
- (d) Secure base areas- Maritime Terrorists would find the east African region very conducive because of the isolated archipelagoes
- (e) Maritime skills- Al Shabaab has been very keen on this. They send people to training schools all over the world to acquire Maritime capabilities. Ahmed Omar in an interview with Al Jazeera stated that one of his overarching goals was to set up an abominable maritime terrorism brigade.
- (f) Charismatic and effective leadership; and
- (g) State support

Other conditions are:

- a) Ethno-religious strife
- b) Marginalized communities
- c) Challenges posed by colonial boundaries
- d) Corruption
- e) Radicalization & recruitment
- f) Availability of soft targets - Terrorism is not about the victim or the target; it is about using the victim or the target as a basis to send a message to the wider community. They do this with the intention of impacting psychological trauma to societies. Soft targets may include gas facilities; gas fields as well as pipelines which if destroyed would have adverse effects. The USS Cole bombing was planned as part of Al Qaeda's millennium attacks. It was successful because of failure of Sullivan's attack was reviewed at Al Qaeda world summit, 5-8 Jan, 2000 in Kuala Lumpur. 17 US sailors were killed, 39 injured, and the cost of repairs was \$250 million dollars.

Osama Bin Laden stated that by exploding the oil tanker in Yemen, the holy warriors hit the umbilical cord and lifeline of the crusader community, reminding the enemy of the heavy cost of blood and the gravity of losses they will pay as a price for their continued aggression on our community and looting of our wealth. In Islamic Jurisprudence wealth and land is very crucial. We must understand just how important this is to tackle this issue.

### **9.3.1 Oil & Gas/Territorial rights as a catalyst for Jihadi terrorism**

If Somalia ends up winning the border dispute between Kenya; according to Timothy Walker, it may affect all the other boundaries from Tanzania to South Africa. If Kenya wins, there might be a typhoon of jihadi terrorism under the Muslim Legal Doctrine of Fard-al-Kifayah which is a communal obligation in Muslim legal doctrine that must be discharged by the Muslim community as a whole, such as military struggle [Jihad]. This is made worse by the argument of 'Pwani si Kenya' which applies to most of the coast. Al Qurtubi stated that when the Kuffar



[unbelievers/non-Muslims] attack and control a country, the Ummah [Muslim community] is endangered in its religion and it becomes susceptible to doubt in its belief. Fighting then becomes an obligation to protect their religion, lives, and wealth.

### 9.3.2 Preparing for emerging threats

- a) Turkey has completed its \$50M base in Somalia (began 2015)
- b) China has sent troops to its new base in Djibouti (\$20M, PA. began 2015)
- c) India has almost completed its base on Assumption Island, Seychelles (began 2015)
- d) KSA is set to start its base in Djibouti 2018
- e) UAE to open another base in Somaliland 2018
- f) France base (hosts German & Spanish troops)
- g) Japanese base
- h) Italian base
- i) US have renewed its lease for Camp Lemonnier for another 20 years @ \$63 million PA. All in Djibouti

There is a battle for supremacy in the Middle East and the same is highly likely to spill into Africa.

### 9.4 Maritime Security in Eastern Africa: Challenges, Opportunities and Strategies



#### **Mr Browne Nathans - International Maritime and Peace Security Consultant**

Mr Nathan began his presentation by posing a question to the participants.

1. What is the real meaning of the International Community?
2. Who are Al Shabaab and Al Qaeda?

According to him, Al Shabaab and Al Qaeda do not exist but it's a thought that has been inculcated into our minds through the culture of fear. Thus, any person who breaches the provisions of the law is a criminal of international law but normally we brand people with titles they do not deserve and these people end up making themselves a team hence

an authority to reckon with.

In order for IPSTC come up with a strategy, it must have a clear objective. As a drafter, one of the key formulation rules is to come up with a policy. Therefore, he stated that Kenya does not currently have a policy on maritime security. In 1995, there were meetings at the UNEP to come up with ways to combat illegal trade of Ivory. He mentioned that all wildlife is Trans-boundary therefore a cooperative agreement framework was required within the region to tackle the issue. Apart from the three land locked countries i.e. Uganda, Rwanda and Ethiopia all other countries within the IGAD region have access to the Sea. It makes sense that if we have a partnering, collaborative and cooperative relationship within East Africa and the whole of Africa all issues would be easier to tackle.

At the regional level, IGAD has formulated a strategy that puts together all countries that have access to the sea but are yet to do their own policy formulation within their jurisdictions. There will be need to stakeholder mapping within the Eastern Africa in order to and assess the capacity with the region. This will help us understand the geostrategic interests of these countries and plan for them effectively. Until politicians across these regions work as a team, we will continue to have fragmented priorities among the leadership of these countries. Furthermore,



we must analyse why we term Somalia as problem ridden. It has a Parliament, President and Public Service like any other country. The only challenges they may have as a country is the lack of capacity in terms of understanding terms of training. Somalia essentially has a trust fund but do not have access to this trust fund.

The region requires a maritime security finance mechanism that would assist in the harmonization of training and aid in needs assessment on maritime issues. In the IGAD Strategy, they suggested the formation of a Commission made of all member States and be represented not through the Ministers. A maritime trust fund which would be channelled into training and education to tackle issues of capacity building would be a step in the right direction. In 2015-2016, 12 workshops were held on countering violent extremism and terrorism in all member states of IGAD. The necessity for capacity for judicial and public servants was an issue raised.

Finally, Mr Nathan concluded by challenging IPSTC to also come up with a mechanism for the accreditation of peace and conflict resolution practitioners. This is to help in capacity building on dispute settlement with an example being that of Somalia and Kenya maritime boundary dispute.

## **9.5 Enhancing Regional Co-operation in Maritime Security within Eastern Africa**



### **Mr King N Chiragi - Maritime Security Consultant**

Maritime security has in recent years increasingly become an important issue attracting attention, discussions and action both at national and international levels. The concept of 'maritime security' gained initial salience after the terrorist attacks of September 11th and the associated fears over the spread of maritime terrorism. Maritime security has also emerged as a security issue over the past years in the Eastern African Region because of piracy activities in the Western Indian Ocean and Gulf of Aden and also due to the fact that most of the trading goods to this region are transported by ships. Countries in this region must be committed to play their part in ensuring the safety and stability of the sea lanes connecting the region to other markets for the benefit of

trade and regional development. Additionally, freedom of transport and protection of the marine environment is of high importance to the Eastern African Region given its big exclusive economic zone rich in fish and other resources including oil and gas and marine tourist attractions.

At the Tokyo International Conference of Africa's Development (TICAD VI) held in Nairobi (August 2016), maritime security featured prominently. The Conference advocated the importance of upholding regional and international synergies that are related to maritime security in accordance with the principles of international law. As stated in the 2050 AIM Strategy, the Africa Maritime Domain (AMD) draws attention to a broad array of real and potential threats that could result in mass casualties and inflict catastrophic economic harm to African States. Besides the security of the sea lanes and the Exclusive Economic Zones (EEZ) waters, the region should be concerned over the exploitation and preservation of the maritime ecosystems as well as the increasing transnational crimes. The African Union through 2050 AIM Strategy recognizes the importance of inter-agency/transnational cooperation and coordination when it comes to issues of maritime safety and security.

Peace and Security has been acknowledged as critical to creation of the right environment upon which regional integration in all aspects can be fostered. Strategies on the control of cross border crime ensure security of persons and goods as they move within the region are continually being developed (EAC).

The final DRAFT of the IGAD Integrated Maritime Safety and Security Strategy (2030) [IMSSS] and an associated Action Plan has been completed. The strategy underlines the dedication of the ISSP Maritime Pillar team to assist IGAD member states to respond to maritime threats and incident. At the Tokyo International Conference of Africa's Development (TICAD VI) held in Nairobi, maritime security featured prominently. The Conference

advocated the importance of upholding regional and international synergies that are related to maritime security in accordance with the principles of international law.

### **9.5.1 Cooperation within the Eastern African Region**

The Eastern African Region requires a cooperative mechanism in dealing with maritime threats and conflict resolution. In order for cooperation to work:

- International law on the sea has to be strengthened and enforced.
- Regional institutions have to be established or strengthened as they help to build trust and confidence.
- We must see the importance of sharing experiences from other regional groupings on conflict management and confidence-building.

Piracy, maritime terrorism and other maritime crimes are threats to the stability and development of the Eastern Africa region. Dealing with these transnational challenges requires close regional cooperation. In this context, Maritime Domain Awareness is a key aspect that offers possibilities for a close practical cooperation among Eastern African countries. It must also be understood that there are extra-regional powers that have an interest in the security of the regional sea lanes.

Based on the IPSTC Training Needs Assessment (TNA) for Maritime Security in the Eastern African Region (2017), maritime threats in the region include piracy and armed robbery at sea; smuggling and trafficking; marine pollution; terrorism and violent extremism; maritime disaster; risks of natural disasters; and illegal, unreported and unregulated fishing. In order to tackle these issues, the Eastern African Region must update its capabilities and become more active in maritime domain awareness.

Managing maritime security is a challenging endeavour. It requires cooperation between regional countries, and between those with a stake in regional security. With more non-military agencies now involved, maritime security is no longer the sole prerogative of navies. There is clearly a need for enhanced civil maritime security cooperation which could include coastguards and equivalent national agencies of regional members.

### **9.5.2 Cooperation within the Eastern African Region at National Level**

A multilevel approach to maritime security is a key factor to solving interagency problems that often hinder effective implementation and co-operation among maritime security stakeholders. Surveillance, prevention and prosecution in terms of piracy and other maritime crimes can be carried out better if done in a coordinated manner. This requires continued capability and capacity building for the individual agencies, and an effective maritime security policy and legal framework. Agencies involved may include but not limited to Defence Forces, Marine Police, Fisheries, Customs, Immigration, Prisons, Public Prosecution, Local Government Authorities, Maritime Authorities and Ports Authorities. Efficient coordination and collaboration at national level will be beneficial to regional cooperation.

National maritime authorities could be better placed to coordinate national maritime security endeavours through a National Maritime Security Committee with mandate to discuss, coordinate and advice on relevant matters related to maritime security. Members of the Committee could include among others the agencies listed above. On the operational side, maritime authorities operate Maritime Rescue Coordination Centres (MRCC), information sharing centres, LRIT data centres, etc. All such centres with the associated response contingency plans, drills and exercises are very useful tools for crime prevention and marine disaster response coordination.



National maritime authorities could be better placed to coordinate national maritime security endeavours through a National Maritime Security Committee with mandate to discuss, coordinate and advice on relevant matters related to maritime security. Members of the Committee could include among others, the agencies listed above. On the operational side, maritime authorities operate maritime rescue coordination centres, information sharing centres, LRIT data centres, etc. All such centres with the associated response contingency plans are very useful tools for crime prevention and marine disaster response coordination.

A good example is the role played by Kenya Maritime Authority (KMA) whose mission is “To ensure sustainable safe, secure, clean and efficient water transport for the benefit of stakeholders through effective regulation, coordination and oversight of maritime affairs.” In terms of maritime security the Authority regularly audits implementation of International Ship and Port Facilities Security (ISPS) Code as contained in the International Convention on Safety of Life At Sea (SOLAS) to ensure that the implementing institutions and companies comply with the required standards.

### **9.5.3 Djibouti Code of Conduct (DCOC) – An Example of Sub-Regional Cooperation**

The DCOC has four pillars namely: Information sharing, Legislation, Capacity-building and Training. 21 nations cooperate in this network with three different centres in Sana'a, Mombasa and Dar es Salaam. The DCOC initially aimed at promoting greater regional co-operation between the Participants, and thereby enhance their effectiveness, in the prevention, interdiction, prosecution, and punishment of those persons engaging in piracy and armed robbery against ships on the basis of mutual respect for the sovereignty, sovereign rights, sovereign equality, jurisdiction, and the territorial integrity of States. This Code has been instrumental in repressing piracy and armed robbery against ships and its scope has now been broadened to cover other illicit maritime activities, including human trafficking and illegal, unreported and unregulated (IUU) fishing. This is in recognition of the important role of the “blue economy” including shipping, seafaring, fisheries and tourism in supporting sustainable economic growth, food security, employment, prosperity and stability. The transnational organized crime referred to in this Code includes arms trafficking; trafficking in narcotics and psychotropic substances; illegal trade in wildlife; crude oil theft; human trafficking and smuggling; and illegal dumping of toxic waste.

### **9.5.4 Challenges to Maritime Security in the Eastern Africa Region**

There are many challenges with developing effective cooperation in the Eastern African Region which need to be considered and overcome.

- a) There is no common understanding on what encompasses maritime security.
- b) Diversity of interests among regional countries
- c) Countries in the region are more likely to be concerned with local issues of governance, poverty, disease and internal security than the broader strategic issues that concern the wider region.

Obstacles to effective cooperation may include:

- a) Lack of capability, capacity and political will
- b) a potential rise of maritime boundary and sovereignty disputes
- c) Another hurdle is that countries may place too much focus on naval cooperation risks, diverting



attention from real requirements. These include maritime governance, capacity-building, and developing national legislation. A regional forum of civil agencies involved in maritime security might help overcome this challenge.

- d) The involvement of extra-regional countries in regional arrangements is also a challenge. The major powers of the United States, United Kingdom, China and Japan have legitimate interests in regional maritime security. But there are sensitivities as to how involved they should be.

### **9.5.5 Eastern African Regional Cooperation in Maritime Security**

Given the noted challenges, regional cooperation may be essential and achievable as this could be the most effective way of taking regional maritime security management forward. The 2050 Africa's Integrated Maritime Strategy makes a clear link between maritime security and human security. It does this by drawing attention to threats in the maritime domain. This strategy, the African Peace and Security Architecture (APSA) and Agenda 2063 provide a framework for cooperation but much more still needs to be done. The region:

- a) Should be committed to the priorities of advancing public safety and security and promoting social justice to improve the lives of the citizens.
- b) Underscore the importance of implementing policies to promote security, continuing efforts through regional integration mechanisms, and financing national and regional public safety and security institutions;
- c) Underscore the value of international partner support and the need to improve coordination and reduce duplication of efforts to maximize the effectiveness of that support towards advancing common security objectives in the Region

Security cooperation requires a deeper sense of partnership in dealing with the multifaceted nature of contemporary maritime security issues that transcends borders. Traditional partners and the IMO must continue to work alongside the Eastern African Region as partners in the region. What is required is a general framework for regional maritime security collaboration. This collaborative effort must be looked at as a process, which depends on the various sub-sets of the region coming together using a sequential approach that begins with an examination of the political, social and economic environment and establishing conceptual clarity of internal and external dynamics.

Regional security cooperation would embrace regional politics, regional economics, and regional history within the geopolitical climate with external partners with shared interest. Regional security cooperation in this age of terror must utilise the best possible use of institutions, mechanisms, techniques and procedures already at the disposal of the region. It is not enough to prescribe desirable new agencies. Each and every intervention must be required to generate a cumulative flow of new resources for effectively taking operations to higher levels in successive stages. In conclusion, the world today consist of interdependence, a world where all things are connected, overlap and interact, therefore regional security cooperation to deal with traditional and non-traditional threats must consider the influence of the actors in the environment in which it has to exist and function. Regional security cooperation must not be left to chance but must be as a result of a systemic process that seeks to identify commonalities of interests and threats in a building block approach to deal with the issues. At this juncture in history, the Eastern African Region must become responsible for its own maritime security. As the world continues to change dramatically, countries in Eastern Africa need to redefine and reconceptualise threats to regional security from an African or regional perspective and as such be prepared to implement appropriate measures to deal with traditional and non-traditional maritime security issues from within a coordinated and cooperative approach.

The vehicle to move this process forward could be the integration movement through, two regional organizations i.e. IGAD and EAC in collaboration with wider continental or international Indian institutions under the umbrella of the AU. This could develop a collective consciousness among the region's politicians to instil the political will required to give legitimacy to the institutions required to pursue regional maritime security cooperation in the Eastern African Region. IGAD and EAC could broaden this endeavour to include all the other countries within the Western Indian Ocean littoral. Together these institutions could support the architecture that is needed for African security cooperation.

The question of working together to solve maritime security issues in the Eastern African Region therefore, will always be a fundamental aspect as to how we do business as long as these security issues continue to exist in this form and the people of the region continue to seek ways of providing a safe and secure environment that is conducive to the development of the region.

## 10. Summary of Plenary Session

After the presentations by the various speakers, Professor Gatara invited participants to provide feedback and air their various views on how to tackle violent extremism. Some of the issues raised included:

- Inland waters ways must be included with regards to developing policies in this area on matters of security, preservation and safety.
- A question was posed to one of the presenters on how to incorporate the current threat of maritime terrorism into a curriculum of disaster management for the training of all member states so that if something happens the way to approach it is already in place. The response to this was that it was actually the basis for homeland security in the US which is an all hazards approach to disaster management.
- An observation was made that based on all the presentations Maritime Security was a creature of its own. However there are various external factors that contribute to this state of affairs. The political and economic challenges i.e. food security and the youth bulge specifically, are not taken into account.
- Maritime Security is often separated from maritime safety and this should not be the case since they go hand in hand.
- A concern was raised on search and rescue specifically with regards to inland waters. At least 5000 people have drowned in Lake Victoria. This is brought about by lack of life jackets, not listening to weather forecast and no training on life saving in these areas. There is a need to come up with a law to make the use of life saving jackets compulsory for those involved with commercial use of inland waters. Currently there is a search and rescue centre in Kisumu and two others under way in Budalangi as well as Kendu Bay.
- A question was also raised as to whether there was an overlap of bodies dealing with Maritime security in the East African Region and whether this affected the strides made in addressing the issue of Maritime Security and enhancing integration. The response to this was that the best starting point is to agree to enhance maritime security as a region and deal with the greater issue of political will. The ideal situation would be to have one well constituted body dealing with Maritime Security in the region however this may take time.
- An issue of the blue economy involving not only the seas and oceans but inland water as well. Not too many cases of piracy in inland waters have been brought forth however cases of fishermen in these waters are robbed of their produce while fishing are becoming more rampant.
- Another issue was raised as to whether it was premature for Kenya to come up with a Coast Guard or is it something that is long overdue. The response to this was that the duties that would be carried out by the coast guard are already being carried out by other bodies therefore the issue is to consolidate these functions under one law.

Prof Gatara summarised the issues discussed during plenary and gave the audience feedback on the steps that the centre would take in reviewing the suggestions made by the discussants and the audience.

Prof Gatara proceeded on to invite Col Oguga, the Head of Research, to give the Closing Remarks.



## 11. Closing Remarks

Col Oguga passed on the Director's IPSTC sincere apologies for not being available to give closing remarks as he has to rush to an impromptu meeting in Embakasi. He took the opportunity to thank all participants for attending the workshop and for the various contributions made. He thanked all the speakers for their educative and informative presentations. He thanked IPSTC sponsors for making the workshop possible. He mentioned that the DA Japan was to be present but unfortunately had a commitment in Nakuru and passed his sincere apologies as well.

He stated that all that had been mentioned during the workshop would go a long way in informing training in IPSTC and informing national strategies and policies. He concluded by thanking all institutions present once again and wished everybody a Merry Christmas and a Happy New Year.

## 12. Appendix

### 12.1 Attendance List



### PARTICIPANT LIST

### MARITIME SECURITY LEARNING & EXPERT SHARING WORKSHOP

#### International Peace Support Training Centre

#### Karen, Nairobi, Kenya

#### 30 November, 2017

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