

**ASSESSMENT OF LEGAL FRAMEWORK FOR SHIPS AND PORT  
FACILITY SECURITY IN TANZANIA**

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REQUIREMENTS FOR THE DEGREE OF MASTERS OF LAWS (LL.M)**

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### **CERTIFICATION**

The undersigned certifies that he has read and here by recommends for acceptance by The Open University of Tanzania a dissertation entitled Assessment of Legal Framework for Ships and Port Facility Security in Tanzania. In partial fulfillment of the requirement for the award of Degree Master of Laws (LL.M).

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Date

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**DEDICATION**

This work is dedicated to my beloved family not only for their frequent encouragement and inspiration to upgrade my academic status but their role in exposing me to the academic field is also highly appreciated. They will forever be my icon in academic matters and all aspects of life.

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**ABSTRACT**

Tanzania's maritime legal framework is essential for regulating national waters, trade and security. However, inconsistencies and overlapping mandates among the various laws and enforcement agencies create challenges in implementation and coordination. This assessment examines the key legal contradictions, jurisdictional overlaps, and gaps in enforcement focusing on the various laws governing maritime security in Tanzania. The study also highlights on the regulatory and operational weaknesses in the inter-agency coordination, legal enforcement, and regional cooperation. The study employs both doctrinal legal research methodology and comparative legal research methodology analyzing primary and secondary data in a qualitative approach which helps the researcher to venture analysis in legislation and scholarly work. Then came through with several findings such as inconsistency with the governing laws, contradicting provisions in granting supervisory mandate over maritime security, conflicts of provision in some of the maritime offences and punishments set thereto as well as operational weaknesses in regulating the port and port facilities as well as aligning to international benchmarks. It is clear that Tanzania's maritime security framework plays a critical role in safeguarding national waters, economic activities, international trade, port facilities and national security. Despite the contradictions within existing laws and weak enforcement mechanisms at times undermine the maritime security efforts. Thus, this study proposes legal reforms, institutional restructuring, and increased investment in technology to enhance maritime security and compliance to international standards.

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## **LIST OF STATUTES**

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Ballast Water Management Convention, 2004

Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct), 2009

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988

IMO's International Convention for the Control and Management of Ships' Ballast Water and Sediments

The International Convention for the Safety of Life at Sea (SOLAS), 1974

The International Ship and Port Facility Security (ISPS) Code

The Protocols to the Suppression of Unlawful Acts Against the Safety of Maritime Navigation Convention, 2005

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), 2006

The United Nations Convention on the Law of the Sea (UNCLOS), 1982

The Yaoundé Code of Conduct (YCoC), 2013

### **Domestic Instruments**

Anti-Money Laundering Act [Cap 423 R.E 2022]

Anti-Trafficking in Persons Act, 2008

Constitution of the United Republic of Tanzania 1977, (As amended from time to time)

Deep-Sea Fishing Authority Act, 2020

Economic and Organized Crime Control Act [Cap 200 R.E 2022]

Extradition Act [Cap 368 R.E 2022]

Fisheries Act, 2003

Merchant Shipping Act, 2003

Mutual Assistance in Criminal Matters Act [Cap 254 R.E 2022]

Penal Code [Cap 16 R.E. 2022]

Prevention of Terrorism Act, 2002

Proceeds of Crime Act [Cap 256 R.E 2022]

Tanzania Ports Act, 2004

Tanzania Revenue Authority Act, 1995

Tanzania Maritime Zone Act, 1989

## LIST OF ABBREVIATION

ACI	-	Advance Cargo Information
AIS	-	Automatic Ship Identification Systems
CSO	-	Company Security Officer
DCoC	-	Djibouti Code of Conduct
DMGP-		Dar es Salaam Marine Gateways Projects
DPP	-	Director of Public Prosecutions
EEZ	-	Exclusive Economic Zone
EU	-	European Union
HSOP	-	Harmonized Standard Operating Procedure
IMB	-	International Maritime Bureau
IMF	-	International Monetary Fund
IMO	-	International Maritime Organization
ISP Code	-	International Ship and Port Facility Security
IUU	-	Illegal, Unreported Unregulated
MLEAs	-	Maritime Law Enforcement Agencies
MRM	-	Maritime Resource Management
MSA	-	Merchant Shipping Act
MTSA	-	Maritime Transportation Security Act
MoT	-	Ministry of Transportation
MSC	-	Maritime Safety Committee
NII	-	Non-Intrusive Inspection
NIMASA	-	Nigeria Maritime Administration and Safety Agency
NN	-	Nigerian Navy

PSC	-	Port State Control
PPA	-	Public Procurement Act
PPR	-	Public Procurement Regulations
ReCAAP	-	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
SAR	-	Synthetic-Aperture Radar
SSI	-	Sensitive Security Information
SSO	-	Ship Security Officer
SOLAS	-	Safety of Life at Sea
TPA	-	Tanzania Ports Authority
UAE	-	United Arab Emirates
UN	-	United Nations
UNCLOS	-	United Nations Convention on the Law of the Sea
VSA	-	Vessel Security Assessments
VSP	-	Vessel Security Plan
VDRs	-	Voyage Data Recorders
WCO	-	World Customs Organization
YCoC	-	Yaoundé Code of Conduct
ZMA	-	Zanzibar Maritime Authority



## **CHAPTER ONE**

### **INTRODUCTION AND BACKGROUND TO THE STUDY**

#### **1.0 Introduction**

In the contemporary global environment, maritime security, particularly the menace of maritime crimes like piracy, human trafficking, illegal fishing, smuggling goods and marine terrorism, poses a significant threat to safe navigation and the overall safety and welfare of both seafarers, passengers aboard vessels and port workers. The implications of such threats extend beyond immediate safety concerns, they can disrupt international trade routes, resulting in substantial financial losses and economic repercussions for numerous countries.

Tanzania, being strategically positioned along vital shipping lanes, has become increasingly vulnerable to these security challenges. The country's extensive coastline and key port facilities make it a focal point for maritime traffic, yet they also expose it to risks associated with piracy and other maritime crimes. The potential for maritime crimes incidents not only jeopardizes the lives of those onboard ships but also impacts the broader economic stability of Tanzania, as disruptions in maritime trade can ripple through various sectors of economy<sup>1</sup>.

Furthermore, the presence of maritime crimes can deter investment in maritime infrastructure and shipping activities, leading to reduced economic growth and development opportunities. The challenges faced by Tanzania are reflective of a

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<sup>1</sup> Kasanda P (2023) Legal Frame Work on the Port and Shipping Sector in Tanzania, ( p 1) Clyde & Co LLP

larger trend observed in regions where maritime crimes are prevalent, nations with limited resources and regulatory frameworks often struggle to combat these threats effectively. This situation underscores the urgent need for a comprehensive approach to maritime security that includes enhanced legal frameworks, collaboration among regional governments, and partnerships with international organizations<sup>2</sup>.

By addressing maritime security issues, Tanzania can work towards reinforcing its maritime security measures, thereby safeguarding ship and port security, its economic interests and promoting the welfare of all individuals who depend on safe and secure maritime navigation.

The security of maritime operations is paramount in today's interconnected world, where the threats posed by terrorism, piracy, cybercrimes, smuggling dangerous weapons, human trafficking, illicit drug trafficking, vandalism, arson and criminal activities at sea continue to evolve. In Tanzania, a nation endowed with a significant coastline and strategic port facilities, the importance of robust security measures for ships and port facilities cannot be overstated.

The International Maritime Organization (IMO) has set forth guidelines and conventions, such as the International Ship and Port Facility Security (ISPS) Code, to which member states, including Tanzania, are expected to adhere. This framework is designed to enhance the security of ships and ports from potential threats. However,

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<sup>2</sup> ibid

the successful implementation of these regulations is contingent upon a comprehensive legal infrastructure and a collaborative approach among various stakeholders, including government agencies, port authorities, and shipping companies<sup>3</sup>.

This introduction sets the stage for a detailed assessment of Tanzania's legal instruments, policies, and practices concerning maritime security. It will also highlight current challenges and areas for improvement, ultimately contributing to the development of more resilient security Legislations that protect maritime interests and ensure the safety of the region's waters.

### **1.1 Background to the Study**

Tanzania's maritime security has evolved over time due to its strategic location along the Indian Ocean and its historical interactions with trade, colonial powers, and modern security challenges. Influenced by colonial-era legal systems and post-independence developments. The country's coastline along the Indian Ocean has been a hub for maritime activities, including trade, fishing, and transportation. The colonial era saw the development of maritime regulations based on the laws of British and German powers, primarily focusing on trade and shipping activities along the coast After Tanzania's independence in 1961, the government gradually shifted

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<sup>3</sup> Ibid p.2

towards developing a more comprehensive and indigenous maritime legal framework.<sup>4</sup>

After independence in 1961, Tanganyika, under its then president Mwalimu Julius Kambarage Nyerere, adopted socialist policy famously known as 'Ujamaa'. That was accompanied by Nationalization of the maritime sector which led to the establishment of government-controlled shipping agencies. The government focused on coastal security for resource protection, especially against illegal fishing and foreign exploitation. However, limited naval capabilities and infrastructure meant maritime security remained weak.

In year 1964 Tanganyika united with islands of Zanzibar (Unguja and Pemba) which resulted to newly nation of the United Republic of Tanzania. Where matters concerning harbors as well as defense and security were included as union matters under the Constitution.<sup>5</sup>

In the year 1967 the Merchant Shipping Act and in 1977 Tanzania Harbors Authority Act were established to regulate merchant shipping but did not cover offences like damage to ships and port facilities. The Merchant Shipping Act was repealed in 2003, expanding its application and creating maritime offences to ensure port security and navigation safety.

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<sup>4</sup> Streit V.K, (2021)Transport in Tanzania, (P1) Oxford University Press

<sup>5</sup> Ibid

However, the MSA only prohibits destruction and damage to ships, The Tanzania Ports Act was established in 2004, but it lacks all offences from previous Acts. From year 2003 Tanzania witnessed the legislative reforms in the maritime security through the enactment of the Merchant Shipping Act, 2003 which established regulations on ship registration, safety and security. A year later Tanzania enacted the Ports Act, 2004 which established the ports authority and among many mandates gave it mandate to regulate maritime security at port facilities. Two years later Zanzibar also enacted the Maritime Transport Act, 2006 which created a separate maritime framework for Zanzibar despite maritime security being a union matter, and thereafter in 2017 witnessed enactment of the Tanzania Shipping Agencies Act, 2017 which was enacted to strengthen port security and maritime administration.

The existing friction between the Merchant Shipping Act<sup>6</sup> and the Ports Act<sup>7</sup> draws an inference from historical trends, which when promptly addressed will comprehend the efforts for legal reforms and structural advances for port security – centered on legal regimes.<sup>8</sup>

Key developments in Tanzania's maritime institutional framework include the establishment of the Zanzibar Maritime Authority (ZMA) and the Tanzania Ports Authority (TPA), which oversee maritime activities and ensure compliance with international standards.

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<sup>6</sup> [CAP 165 R.E 2019]

<sup>7</sup> No. 17 of 2004

<sup>8</sup> Nicolini B (2021) Migration Patterns and Economic Interconnections in the India Ocean During the Nineteenth Century (p2) Open Edition Journals

Legal developments in the Maritime regime in Tanzania are hereunder expounded; The Ports Act was the founding document of the Tanzanian Ports Authority (the TPA) as the principal regulator of all ports in Tanzania, as a parastatal public corporation operating under the Ministry of Transportation (MoT).<sup>9</sup>

The Public Procurement Act<sup>10</sup> (the PPA) and Public Procurement Regulations (the PP Regulations) of 2013; These were brought to provide specific guidance on the circumstances relating to procuring authorities in ports and competitive bidding process and contractors or suppliers reasonably undertaking the required works or supplying the required goods or services with safety.

Despite these efforts, and several amendments which tried to fill some gaps, however there are gaps which are still persisting including multiplication of laws, the country still needs to amend and create new offences like smuggling dangerous weapons, piracy, vandalism, terrorism and cybercrimes to cover port security and ship safety. This study focuses on examining the adequacy, gaps, and implementation challenges of Tanzania's legal framework for maritime security, by analyzing existing laws, policies, and regulations, as well as the level of compliance with international standards such as the ISPS Code, the research aims to provide insights into the effectiveness of the legal and institutional arrangements in safeguarding Tanzania's maritime sector. Addressing these challenges is not only vital for national security but also for attracting investors, fostering trust and

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<sup>9</sup> Ibid

<sup>10</sup> [CAP 410 R.E. 2022]

competitiveness in Tanzania's ports as reliable hubs for regional and international trade.

## **1.2 Statement of the Problem**

The maritime industry plays a crucial role in Tanzania's economy, facilitating trade, transport and contributing to national development. However, the security of ships and port facilities has become a significant concern due to the increasing threats of piracy, terrorism, and other illicit activities in regional waters. Ensuring a robust legal framework for ships and port facility security is essential to protect national interests, enhance trade efficiency, and comply with international maritime security standards, such as those outlined by the International Ship and Port Facility Security (ISPS) Code<sup>11</sup>.

Despite Tanzania's efforts to implement the ISPS Code and related international standards, there are gaps and challenges within its legal and institutional frameworks that hinder effective enforcement and coordination. Issues such as limited regulatory oversight, inadequate enforcement mechanisms, and the need for modernized legislation raise concerns about the country's preparedness to secure its ports and vessels adequately. Moreover, insufficient integration of advanced security technology, alongside legal ambiguities, creates vulnerabilities that could be exploited by illegal actors, ultimately affecting Tanzania's standing in the global maritime sector. While piracy and smuggling being considered as major threats to the

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<sup>11</sup> Ojode M.J (2021) Analysis of The United Republic of Tanzania Maritime Policy to Overcome Challenges Facing Seafarers Toward Maritime Transportation in Tanzania (p1) IJECM UK.

maritime security in Tanzania, it is the penal code that provide for an end-to-end control for the offences under section 66 and 90 respectively. However, the threats to maritime security are vast especially today where the world is experiencing major advancement of scientific technology especially in the maritime sector. The major Acts leaves a gap for threats like organized crime, pollution, climate change, arm proliferation and many other threats that even extend beyond marine environment to the beneficiaries of the marine environment. All of these noted pose serious threats to the maritime security due the lack of integrated end-to-end legal mechanism that seeks to regulate and control maritime safety in Tanzania<sup>12</sup>.

Furthermore, the unique political structure of Tanzania, comprising Mainland Tanzania and the semi-autonomous Zanzibar, presents challenges in maritime governance. Each of the two has its own maritime administration and legislation, leading to potential overlaps and inconsistencies. For instance, the Main land operates under the Merchant Shipping Act of 2003, while Zanzibar enforces the Maritime Transport Act of 2006. These parallel systems can complicate the uniform application of maritime laws across the nation.

The Deep-Sea Fishing Authority Act,<sup>13</sup> provides for licensing and management of fisheries in Exclusive Economic Zone (EEZ), under a joint authority between Zanzibar and Mainland Tanzania while on the other hand the Fisheries Act,<sup>14</sup> gives the Ministry of Livestock and Fisheries (Mainland) control over fisheries regulation,

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<sup>12</sup> Ibid

<sup>13</sup> Section 6 of the Deep-Sea Fishing Authority Act, 2020

<sup>14</sup> Sections 4 and 7 of the Fisheries Act, 2003



leading to overlapping jurisdiction. This creates confusion on licensing and enforcement in the EEZ, leading to inefficiency in monitoring illegal fishing. The Merchant Shipping Act,<sup>15</sup> gives Tanzania Shipping Agencies Corporation (TASAC) control over shipping regulations, vessel registration, and maritime security while on the other hand the Tanzania Ports Act,<sup>16</sup> establishes the Tanzania Ports Authority (TPA) with control over port security, operations and management. This overlapping mandates creates enforcement gaps, as both agencies claim authority over port security and ship monitoring leading to delays in addressing maritime crimes.

The Tanzania Maritime Zone Act<sup>17</sup> defines Tanzania's territorial waters (EEZ), and continental shelf, regulating activities in these zones while on the contrary the Environmental Management Act,<sup>18</sup> gives the National Environmental Management Council (NEMC) power to regulate environmental protection in marine areas. This lack of clear enforcement authority between maritime security agencies and environmental regulators leads to weak control over pollution, oil spills, and illegal dumping in Tanzanian water.

Furthermore, the Tanzania Revenue Authority Act<sup>19</sup> gives to the Tanzania Revenue Authority mandate for enforcing customs and Tax collection on goods passing through Tanzanian ports. On the opposite the Tanzania Ports Authority Act<sup>20</sup> gives

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<sup>15</sup> Section 7(1) of the Merchant Shipping Act, 2003

<sup>16</sup> Section 5 of the Tanzania Ports Act, 2004

<sup>17</sup> Section 4 of the Maritime Zones Act, 1989

<sup>18</sup> Section 16 of the Environmental Management Act, 2004

<sup>19</sup> Section 4 of the Tanzania Revenue Act, 1995

<sup>20</sup> Section 5 of the Tanzania Ports Act, 2004

the TPA mandate to manage operations, including security and cargo handling. This causes delay in cargo clearance due to disputes between TRA and TPA over inspection authority and also leads to loopholes for smuggling when responsibilities overlap, allowing criminals to exploit weak coordination.

Moreover, the Penal Code<sup>21</sup> criminalizes offences of human trafficking but provides general penalties for related crimes while on the contrary the Anti-Trafficking in Person Act,<sup>22</sup> categorically defines human trafficking offence and prescribes stricter punishments. Courts sometimes apply lesser penalties under the Penal Code instead of stricter trafficking law weakening deterrence against maritime human trafficking.

This study seeks to assess the effectiveness of the current legal framework governing ship and port facility security in Tanzania. It aims to identify gaps, analyze their implications on national and regional security, and recommend improvements to align Tanzania's maritime security regime with international standards, thereby fostering a safer and more secure maritime environment.

### **1.3 Objectives of the study**

The following are the objectives of this study;

#### **1.3.1 General Objective**

The general objective of this study is to evaluate the effectiveness and adequacy of the legal framework governing the security of ships and port facilities in Tanzania.

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<sup>21</sup> Section 254 of the Penal Code [Cap 16 R.E. 2022]

<sup>22</sup> Section 5 of the Anti-Trafficking in Persons Act, 2008

### **1.3.2 Specific Objectives**

This study is guided by the following specific objectives.

- i. To review the current laws and regulations in Tanzania that pertain to the security of ships and port facilities with a view of identifying gaps, weaknesses, or inconsistencies.
- ii. To assess the level of compliance with international standards as enshrined in the international conventions related to maritime security, such as the International Ship and Port Facility Security (ISPS) Code, United Convention on the Law of the Sea (UNCLOS).
- iii. To evaluate the effectiveness of enforcement mechanisms and the roles of different agencies responsible for implementing maritime security laws.
- iv. To provide recommendations for improving the legal and institutional framework to enhance the security of ships and port facilities in Tanzania.

### **1.4 Research Questions**

This study is guided by the following research questions: -

- i. What are the weaknesses and inconsistencies in the current laws and regulations in Tanzania that pertain to security of ships and port facilities, and what legal or regulatory gaps, weaknesses, or inconsistencies can be identified?
- ii. What are the factors hindering compliance of Tanzania legal framework on maritime security to the international law and standards?

- iii. How effective are the current enforcement mechanisms, and what are the roles and capacities of various agencies involved in implementing maritime security in Tanzania?
- iv. Which recommendations can be provided for improving the legal and institutional framework to enhance the security of ships and port facilities in Tanzania?
- v. How does the current institutional and regulatory framework impact the efficiency and effectiveness of maritime security operations in Tanzania?

### **1.5 Literature Review**

In order to have a sufficient knowledge on the area of study and for the purpose of identifying the knowledge gap that calls for the research, a researcher was compelled to painstakingly go through various literatures relating to the area of study. In doing so, a researcher reviewed several important literatures which appeared to be relevant to this study. The literatures reviewed hereunder has depicted issues of legal and policy frameworks for ships and port facility security and ability of Tanzania to prosecute maritime offences. So far, the reviewed literatures have comprehensively analyzed matters pertaining to maritime security in Tanzania and beyond hence positively contributing to the triumph of this research as demonstrated hereunder: -

Joel,<sup>23</sup> makes a critique of the legal framework for Maritime security in Tanzania. The challenges faced by merchant officers and maritime policy in Tanzania,

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<sup>23</sup> Joel M. (2021) Analysis of The United Republic of Tanzania Maritime Policy to Overcome Challenges Facing Seafarers Toward Maritime Transportation in Tanzania Vol. IX, *Licensed under Creative Common* at pp. 320

particularly in relation to the growing maritime transportation sector. It examines the impact of a lack of maritime policy on seafaring employment and the specific structures of seafarers' maritime policy, focusing onshore and offshore employment. The study uses a qualitative research approach, using questionnaires, documentary reviews, group discussions, and field observations from institutions specialized in marine activities in Mtwara and Dar es Salaam. The findings suggest that the maritime policy in Tanzania faces various challenges for seafarers' employment benefits and recommends resolving these issues.

The author focuses on the challenges and solutions related to seafarers' employment and maritime policy in Tanzania, while the proposed study focuses on the legal aspects of enforcement power to prosecute damage to port facilities or ships. The writer based on the broader context of maritime policy and employment, while the proposed study delves into the specific legal frameworks and enforcement mechanisms.

This book is relevant to the problem because the author's analysis focuses on Tanzania's maritime policy and its impact on seafarers and maritime transportation challenges. The second title explores the legal framework surrounding enforcement power for prosecuting damage to port facilities or ships in Tanzania. The work may explore the challenges faced by seafarers due to deficiencies in maritime policy and regulations, examining legislation, court decisions, and enforcement mechanisms.

Rajab<sup>24</sup> critically provides a comparative analysis of Tanzania's maritime legislation, focusing on the Merchant Shipping Act of 2003 and the Maritime Transport Act of 2006. Both Acts represent key legislative instruments regulating maritime activities in the United Republic of Tanzania, including merchant shipping, maritime safety and transportation. The study intended in examining historical context, scope of application, definitions, Ship Registration and Regulatory Authorities of maritime legislations. The study identified the areas of inconsistencies between the two Acts and the challenges on application of dual maritime legislation in the United Republic of Tanzania. Recommendations for legal reforms to harmonize and modernize Tanzania's maritime laws were provided.

The author offers Tanzania overview of maritime legislation, focusing on the Merchant Shipping Act of 2003 and the Maritime Transport Act of 2006, discussion on inconsistencies which includes overlapping provisions under the scope of application of the two Acts which considered to hinder the effective implementation of the law and create misunderstandings. However, it may not specifically address enforcement powers for port facilities or ship damage in Tanzania.

Chamberlain, Colaco, and Neylon<sup>25</sup> offers a comprehensive overview of shipping law, covering topics such as maritime regulations, shipbuilding contracts, charter

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<sup>24</sup> Rajab Z. K (2024) Maritime Legislation in The United Republic of Tanzania: A Comparative Analysis Between Merchant Shipping Act, 2003 & Maritime Transport Act, 2006: International Institute of Academic Research and Development

<sup>25</sup> Andrew Chamberlain, Holly Colaço, and Richard Neylon, *The Shipping Law Review*. (2023), United Kingdom: Law Business Research Limited. 8<sup>th</sup> Edition, Accessible at <https://www.hfw.com/insights/the-shipping-law-review-edition-8/>.

parties, marine insurance, and environmental regulations. It also discusses recent trends and challenges in the shipping industry, such as piracy, sanctions, and climate change. The book is divided into chapters, each written by a legal expert or practitioner, ensuring authoritative and up-to-date content. The aim is to provide practitioners, academics, and students with a thorough understanding of shipping law and its practical implications.

This literature provides a global overview of maritime law but does not specifically address enforcement powers for port facility or ship damage in Tanzania while the problem focuses on the ‘Enforcement Power to Prosecute Damage to the Port Facility or of the Ship’ focuses on specific aspects of maritime law within Tanzania or similar jurisdictions, highlighting the gap between the two.

Malcom (2020)<sup>26</sup> critically argues that *Security and the Law of the Sea* explore the rights and duties of states in addressing various maritime security threats. It covers various dimensions of maritime security, including military activities, law enforcement, information sharing, intelligence gathering, armed conflict, and naval warfare. The author also addresses contemporary threats like terrorism, weapons of mass destruction, piracy, drug trafficking, environmental damage, and illegal fishing. While sovereignty and national interests are crucial, there is growing acceptance of a common interest among states in responding to modern maritime security threats.

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<sup>26</sup> Malcolm E. D (2020). *Maritime Security and the Law of the Sea*. United Kingdom: Oxford University Press.

The author suggests that security interests should be given greater scope in understanding the law of the sea, considering the changing dynamics of exclusive and inclusive ocean use claims. More flexibility may be needed in the interpretation and application of the UN Convention on the Law of the Sea to ensure appropriate responses to maritime security.

The author offers a global overview of maritime security issues, including piracy, maritime terrorism, and maritime boundaries. However, it may not specifically address enforcement powers for port facilities or ship damage in specific jurisdictions, like Tanzania.

Kraska and Pedrozo,<sup>27</sup> provides a comprehensive analysis of maritime security issues, including piracy, armed robbery, and maritime terrorism. It explores the legal frameworks, conventions, and regulations that govern maritime security and the intersection of maritime law with international law. The text is divided into chapters, covering topics like piracy legal definition, jurisdictional aspects of maritime security operations, the use of force in combating maritime crimes, and the role of international organizations like the United Nations and the International Maritime Organization in promoting maritime security.

In general, the authors of the book analyze international maritime security frameworks, covering topics like piracy, terrorism, and marine resource protection

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<sup>27</sup> Kraska, J., and Pedrozo, R. (2023). *International Maritime Security Law*. Netherlands: Brill.



but does not focus on prosecuting damage to port facilities or ships in specific contexts.

Noyes,<sup>28</sup> observes that Port State Control (PSC) is a process that involves inspecting foreign ships in national ports to ensure they comply with international regulations. Although the International Maritime Organization (IMO) acknowledges that flag states are responsible for enforcing global maritime standards, it recognizes the importance of PSC in ensuring consistent implementation on ships of different nationalities. The sub-committee on flag state implementation has developed a framework to promote global harmonization and coordination of PSC activities, leading to the adoption of resolution A.1052 (27) in November 2011.

The author of the book provides only guidelines for ship inspections to comply with international regulations, which focus on safety standards and pollution prevention, but he does not provide enforcement powers to prosecute damage to port facilities. Bejan<sup>29</sup> focus was on the intersection of international law, regional security, and emerging maritime threats. The book provides a global overview of maritime security. It explores both theoretical and practical aspects of maritime security, examining a wide range of threats, such as piracy, terrorism, and smuggling, and their impacts on international trade. The book highlights security challenges faced by different regions and presents strategies for improving maritime safety and security.

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<sup>28</sup> Noyes P.J. (2023) **Procedures for Port State Control**, IMO Publishing

<sup>29</sup> Bejan L.B (2025) *Handbook of Maritime Security*: Routledge

It features contributions from multiple experts in the field, making it a valuable resource for scholars, practitioners, and policymakers. Our study is different as it concerns more with ability to prosecute maritime offences with regard to the relevant legal framework of Tanzania.

Sharma<sup>30</sup> explores the legal and operational measures to protect vessels and port facilities from a variety of security threats. It covers the implementation of international security frameworks such as the ISPS Code, and how these regulations are enforced in different maritime regions. The author also delves into practical measures for preventing piracy, terrorism, and illegal activities at sea, emphasizing the importance of cooperation between maritime authorities and international organizations. The book explores the differences and similarities in state practices and legal cultures affecting ocean legislation and activities.

The author puts emphasis on security measures adaptability in response to the devastating terrorist acts connected to maritime environment. On the other hand, connection with the international community is recognized very crucial to protect the international maritime transport sector against the threat of terrorism; this can therefore be a product of cooperation between Governments, Government agencies, local administrations and shipping and port industries. The author provides only guidelines for legal and operational measures to protect vessels and port facilities

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<sup>30</sup> Sharma S. (2023) Maritime Security: Protection of Vessels and Port Facilities: Springer

from a variety of security threats, but he does not provide enforcement powers to prosecute damage to port facilities.

Kraska<sup>31</sup> critically analyzes maritime security in the context of the law of the sea, it addresses contemporary threats like piracy, terrorism, and illegal trafficking. The author critically examines the legal frameworks that govern maritime operations, including conventions and treaties, and offers insights into the roles of states, international organizations, and private stakeholders in ensuring maritime security. The book is a key resource for understanding how international law can mitigate security risks in the maritime domain, our study differs from his work in that our emphasis is particularly on Tanzania, an area out of his purview of his publication.<sup>32</sup> Wright,<sup>33</sup> examines the vital role that international cooperation plays in enhancing maritime security. It explores the effectiveness of global treaties and regional security mechanisms, such as the United Nations Convention on the Law of the Sea (UNCLOS) and the ISPS Code, in mitigating threats to maritime navigation. The author analyzes case studies and provides practical recommendations for improving collaboration between states actors and international organizations to ensure secure seas. The author further analyses developments and identifies possibilities for future action to minimize the impact of maritime offences.

However, he does not discuss what states or governments should consider while developing preventative measures. For example, the government should evaluate both the advantages to be received from the measures and the expenses associated

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<sup>31</sup> Kraska J. (2022) *Maritime Security and the Law of the Sea*: Oxford University Press

<sup>32</sup> *Supra* note 6 at p. 17.

<sup>33</sup> Wright D.A (2021) *Maritime Security and the Role of International Cooperation*: Routledge.

with their formulation. Our study varies from Wright's in that it tries to evaluate maritime legislative framework in relation to the marine sector security in Tanzania. Joseph,<sup>34</sup> tried to discuss the evolving strategies and technologies necessary to secure the global maritime domain. He explores current threats such as cyber-attacks, piracy, and geopolitical tensions, and the technological and diplomatic responses to these challenges. The author offers insights into future trends and strategies for international cooperation, risk management, and the use of emerging technologies to enhance maritime security. He made an overview of the numerous illegal acts of violence that occur at sea, as well as the limits of present legal frameworks in dealing with them properly on a worldwide scale. Unlike our research, the book focusses on the 2005 Protocol to the Suppression of Unlawful Acts Convention of 1988. They provide a critical evaluation of the Convention's efficacy in combating maritime crime. The book states that some violent criminal actions occurring in coastal maritime zones remain neglected and proposes ways to fix the gaps in the overall legal regime of violent maritime crime.<sup>35</sup>

White<sup>36</sup> focuses on the increasing risks of cyber threats to the maritime industry, including attacks on shipping systems, port facilities, and vessels. It examines the regulatory frameworks surrounding maritime cybersecurity, including the IMO's guidelines and regional legislation, and outlines practical strategies for safeguarding maritime infrastructure against cyber-attacks. This book is crucial for understanding

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<sup>34</sup> Joseph M (2024) *securing the Global Maritime Domain: Strategies for the 21st Century*: Palgrave Macmillan

<sup>35</sup> See Mejia M., '*Law and Ergonomics in Maritime Security*' published doctoral thesis, Lund, Sweden: Department of Design Sciences, Lund University, 2007.

<sup>36</sup> White M. (2023) *Cyber Security in Maritime: Risks, Regulations and Challenges*: Wiley

how technology and law intersect to address cyber security challenges in the maritime domain. According to the author, maritime security terms regions with such nations have also demonstrated a lack of capabilities such as intelligence, early warning, maritime air surveillance and reconnaissance. Also, countries have shown to have no credible indigenous maritime forces with sufficient mobility, flexibility and the fire power necessary for sustainable operations and deterrence. The author observes further that coast guards and civilian maritime agencies are also needed while no single agency or coordinating body exists that cooperate on maritime security issues.

However, the aforementioned author's proposals cannot be implemented by states without a complete marine strategy and maritime security legislative framework. For example, while establishing and executing a control strategy, it must be remembered that while cybercrimes against ships, for example, result in losses to society, the elimination measures adopted to combat these unpleasant social phenomena do not come without a cost. The operation of police and prisons may be quite costly to society. To achieve economic efficiency in combating these crimes, a balance must be maintained between the losses produced by offences against ships and the expenses created by control programs in order to minimize the total social costs.<sup>37</sup>

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<sup>37</sup> See Becker, G. S., 'Crime and Punishment: An Economic Approach,' *Journal of Political Economy*, 76 (2), [2022], at pp. 169-217.

Searle,<sup>38</sup> critically analyzes the role of the International Maritime Organization (IMO) in establishing global maritime security standards. It focuses on the IMO's regulatory frameworks, such as the ISPS Code and SOLAS Convention, and further evaluates the organization's efforts to address emerging maritime security issues. The author also explores the IMO's influence in promoting international collaboration to address threats like piracy, terrorism, and illegal trafficking in maritime areas. It states factors which could help in solving some of the problems is a spirit of cooperation between the territories in the world. Unfortunately, the author in this work fails to point out how State actors can promote security at sea.

He does not address the implications of maritime security or the necessity for a comprehensive maritime security legal framework, as well as other critical problems such as maritime policy and improved marine administration. Thus, this study's analysis related to that of author's but not precisely the same since, among other things, this study deals primarily with Tanzania in terms of the trajectory of its marine industry and the possible threat if the subject of maritime security is not recognized.

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<sup>38</sup> Searle R.L (2022). The International Maritime Organization's Role in Maritime: IMO Publishing

Denman,<sup>39</sup> provides a detailed exploration of the legal frameworks governing maritime security, focusing on how regulations are enforced and the role of international cooperation in ensuring the safety of international waters. It covers various aspects of maritime law, from environmental protection to the regulation of shipping and port facilities, and offers recommendations for enhancing global maritime security through legal and regulatory reforms. However, this research focusses on maritime security in general, with the goal of identifying gaps in the current legislative framework in Tanzania.

Mwakalonge<sup>40</sup> critically evaluates Tanzania's legal framework for addressing maritime terrorism. The study identifies weaknesses in the Tanzania's legal system regarding compliance with international conventions such as the ISPS Code and UNCLOS. The author suggests specific legislative reforms for combating maritime terrorism more effectively. He focuses on the examination of marine zones falling under the jurisdiction of the country and the enforcement of the enacted municipal laws. He is therefore more focused on the issues of maritime terrorism. However, the author's work does not adequately discuss on the practical evidence in Tanzanian context leaving an obvious gap that this study intends to examine.

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<sup>39</sup> Denman R.L (2024) *Maritime Security Law: Regulation, Enforcement, and International Cooperation*: Edward Elgar Publishing

<sup>40</sup> Mwakalonge A.J (2024) *Maritime Security in Tanzania: Evaluating the Legal Framework Against Terrorism*: CSP Academic Press

Nombo <sup>41</sup> examines the legal and political challenges surrounding the Lake Nyasa border dispute between Tanzania and Malawi. The publication discusses the historical origins of the conflict and its impact on maritime security in the region, while offering strategies to improve security and foster regional cooperation. He takes a different approach in analyzing public international law in the shipping practices of selected African countries namely, the United Republic of Tanzania, and Malawi. His work basically addresses the conflict that face the mentioned countries. He also dwells on the commercial aspect of shipping regulation as analyzed from international law perspective. Our study is different as it concerns more with maritime security with regard to the relevant legal framework of Tanzania. Hence his area of expertise differs from this study.

### **1.6 Significance of the Study**

The findings of this study address overlap in our legislations regarding existing overlap which hinders prosecution of damage to the port facility or to a ship offence. The findings will help the legislature to adopt legal reforms to fill the gaps in our laws which will enable prosecution of all forms of damage to a port facility or a ship offence.

### **1.7 Research Methodology**

This research is guided by the following methods namely doctrinal and Comparative Legal Research Method

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<sup>41</sup> Nombo B.C (2021) Challenges of Sustainable Maritime Security in Africa: A Case of the Tanzania-Malawi Dispute: University of Nairobi Press.



### **1.7.1 Doctrinal Research Method**

Relevance of using doctrinal legal research is due to the nature of this research because it involves rigorous analysis and creative synthesis of multiple doctrinal strands. Doctrines are central to juridical treatment of concepts. Since legal propositions have roots in an interdisciplinary approach it becomes essential because of the need to overarch changing values, social mores and economic factors. Doctrinal research collaborates with historical comparative analytical methods of the research that has also been adopted by the researcher in conducting this study. The researcher employs both primary and secondary sources of information while obtaining the enabling data, and data is collected under the respective areas of each source. Because the study involves documentary research, data is acquired from a number of sources. The data collection includes journals, papers, books, and electronic sources with material relevant to the present study's subject. Furthermore, main source data from legislation and case laws are acquired, while secondary data from textbooks, journal articles, online resources, and other relevant materials will be employed in this research. Secondary data is information that already exists in the public domain. These materials allow the researcher to obtain a complete grasp of the study's history and be aware of past literature on the issue.

Data under this methodology was collected through analysis of the statutes, cases and international instruments that provide and govern maritime and port facility security in Tanzania and under international law.

The study is qualitative, with data collected from secondary sources and then analyzed to see whether the findings supported the study's purpose and premise. In contrast, qualitative research includes gathering information from the source as well as explaining the study's findings, from which a researcher might draw practical suggestions and conclusions. In addition, the research study interpreted the data using both deductive and inductive reasoning strategies. A researcher who uses the deductive style of thinking collects data from general to particular, whereas an inductive researcher collects data from specific to general. Deductive arguments use laws and regulations, but inductive arguments rely on experience and observation.

### **1.7.2 Comparative Legal Research Method**

A comparative legal research method is another fundamental means through which a researcher makes an analysis of the obtained data. In this approach, a researcher makes a comparative analysis by examining the data from various jurisdictions in support of the study. This approach seeks to help a researcher in examining and formulating recommendations for the maritime regimes in Tanzania in comparison to the selected developed or best practice jurisdictions globally such as Nigeria, United Arabs Emirates, the United States of America, Korea, Germany and China. The researcher decided to choose countries from continents of Africa, Asia, and Europe that will be put to the comparison to Tanzania with the aim of influencing the best approach that Tanzania can adopt in the governance of the maritime regime.

### **1.7.3 Scope of the Study**

The study aims to critically analyze Tanzania's legislation and enforcement power in prosecuting damage to port facilities or ships. It examined Tanzanian laws and regulations, compared them with international maritime laws, assess the available enforcement mechanisms, study past legal cases, identify challenges and gaps in the current legal framework, and provide recommendations for improving Tanzania's legislation and enforcement power in this area.

## **1.8 Chapter Overview**

This study ventures to critically examine the legal framework governing maritime security in Tanzania, through an assessment of the laws and institutional practices in the governance of maritime security in Tanzania as well as making a comparative analysis of Tanzania with other developed jurisdictions. The study takes form of five main chapters as follows:

Chapter one presents the introduction part, background of the problem, statement of the problem, objectives of the study, research questions, significance of the study, research methodology and chapter overview.

Chapter two deals with the conceptual framework of the study where a researcher expound and ground key concepts and definitions in the spectrum of maritime security. Secondly, it presents the theoretical framework whereas a researcher has discussed theories founding the maritime security regime and thirdly, it discusses on the body of literatures projecting the scholarly works that a researcher has consulted in conducting this study.

Chapter three deals with International Legal Framework, the Best practice and Lessons from other jurisdictions. Whereas, a researcher discusses on the body of law at the international level that is responsible for governance of maritime security which Tanzania is signatory and party to as well as discussing the best practice from other jurisdictions that are considered to have made a step further in governance of maritime security.

Chapter four presents the discussion on the maritime security in Tanzania making an assessment upon the efficacy of the legal framework protection mechanisms. In this chapter a researcher critically discusses on the overlaps and challenges posed by the maritime security legal framework in Tanzania. Also, a researcher in this chapter high light on contemporary trends that interlink with maritime security and requires special attention.

Lastly, chapter five presents the study's findings extracted from the discussion in the previous chapter, makes conclusion and give recommendations.

## **CHAPTER TWO**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK**

#### **2.0 Introduction**

A strong conceptual and theoretical foundation is essential for understanding the complexities of maritime security. This chapter provides a structured analysis of the key concepts, theoretical perspectives and scholarly literature that underpin the study of maritime security in Tanzania. By establishing a clear conceptual framework, this chapter defines key terms and principles that shape the discourse on maritime governance, security threats, and legal mechanisms. In addition, the chapter explores relevant theoretical framework that offer insight into maritime security dynamics. Theories such as realism, liberalism and securitization theory will be analyzed to explain the role of state and non-state actors in maritime security governance. These theoretical perspectives provide a lens through which Tanzania's maritime security challenges and responses can be critically examined and what Tanzania can learn from other countries. This chapter ultimately serves as the foundation upon which subsequent discussion on Tanzania's maritime security legal framework are built.

#### **2.1 Conceptual Framework of Maritime Law**

Primarily, an assessment of maritime security and the law of the sea requires an initial examination of fundamental questions such as what is meant by maritime security and to what extent maritime security relate to the basic legal structure of the law of the sea. This part therefore presents the key, basic and fundamental concepts governing maritime security. These concepts are as follows:

### 2.1.1 The Concept of Maritime Security

The term ‘maritime security has different meanings depending on who is using the term or what context it is being used. Consistent with broadening of interests related to security, defense perspectives on maritime security encompass a greater range of threats than traditional notions of sea power. The goals of maritime security operations were described as ensuring the freedom of navigation, the flow of commerce, and the protection of ocean resources, as well as securing the maritime domain from nation-state threats, terrorism, drugs trafficking and other forms of transnational crime, piracy, environmental destruction, and illegal seaborne immigration.<sup>42</sup> For operators in the shipping industry, maritime security is particularly focused on maritime transport system and relates to the safe arrival of cargo at its destination without interference or being subjected to criminal activity.<sup>43</sup>

Similarly to this perception, some scholars define maritime security as ‘those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine organizations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance, or surprise.’<sup>44</sup> For the shipping industry, maritime security comprise of avoidance of ‘maritime violence’,

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<sup>42</sup> Chief of Naval Operations-Commandant of the Marine Corps, ‘Naval Operations Concept 2006’ 14 [http://www.quantico.usmc.mil/seabasing/docs/Naval\\_Operations\\_Concept\\_2006.pdf](http://www.quantico.usmc.mil/seabasing/docs/Naval_Operations_Concept_2006.pdf) Accessed on October 7, 2024.

<sup>43</sup> Catherine, Z., Raymond and Arthur M., (2008). ‘Security in the Maritime Domain and Its Evolution Since 9/11’ in Herber-Burns, R., Bateman, S., and Lehr P., (eds), *Lloyd’s MIU Handbook of Maritime Security* CRC Press, London at p. 3, 4.

<sup>44</sup> See Mejia M. Q., ‘Maritime Gerrymandering: Dilemmas in Defining Piracy, Terrorism and Other Acts of Maritime Violence’ (2003) 2 *Journal of International Commercial Law* at pp. 153, 155.

which allows for a general reference to acts of piracy, armed robbery, or terrorism without needing to delve to into the legal definitions involved for each specific act.<sup>45</sup>

Maritime security is also one of the latest additions to the vocabulary bank of international security. Initially coined in 1990s, the concept has received growing attention due to the intensification of concerns over maritime terrorism since 2000, the rise and modern piracy off the coast of Somalia and elsewhere, maritime crimes such as human trafficking, and the increasing significance in recent years of the blue economy and issues relating to maritime environmental protection and resource management.<sup>46</sup>

A vital number of states and other international actors place maritime security high on their security agendas. This priority is reflected in several governmental and intergovernmental strategies for marine security published in the past decade including those of the United States, United Kingdom, France, India, NATO, the European Union (EU) and the African Union (AU) as well as in multilateral statements such as the G7 declaration on maritime security, and in the work of the annual international Our Ocean conference on the theme.<sup>47</sup> Seen in this way, the new strategic documents provide important considerations for security studies scholars concerning the nature of maritime security. Accordingly, the contemporary maritime

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<sup>45</sup> *Ibid* at pp. 156

<sup>46</sup> Tepp, E., *The Gulf of Guinea: Military and non-military ways of combating piracy. Baltic Security and Defence*, 1(14) [2012] pp. 181-214 at 197.

<sup>47</sup> Tepp, E., *The Gulf of Guinea: Military and non-military ways of combating piracy. Baltic Security and Defence*, 1(14) [2012] pp. 181-214 at 197.

security complex consists of four domains, each of which incorporates a series of variously cross-cutting security concerns which are

One, National Security as the first fundamental domain, corresponding largely to long-established traditions of naval strategy and sea power.<sup>48</sup> The national security component of maritime security involves the development and application of naval power, which includes military power projection and homeland defense at sea, as well as the use of warships to protect maritime trade routes and commerce through functions such as deterrence, surveillance, and interdiction.<sup>49</sup> Such concerns, remain a latent or extant importance in many parts of the world, most notably in regions of current geopolitical rivalry.<sup>50</sup>

Two, Marine Environment, this incorporates a diverse range of issues such as maritime pollution, vessel safety and regulation, maritime search and rescue, the state of ocean health, pollution and the impact of climate change. The marine environment is similarly long-established concern in the maritime sphere, with its genesis in international efforts to regulate shipping and other activities at sea through intergovernmental organization such as the International Maritime Organization (IMO) or coordination bodies such as the UN Oceans. Marine environment issues relate to maritime security concerns at sea and in coastal areas. They also concern the position of commercial shipping as potential target for criminals, terrorists or pirates,

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<sup>48</sup> *Op cit* note 19.

<sup>49</sup> See Bueger C., (2014). '*What is maritime security?*', Marine Policy, vol. 53, at p. 4.

<sup>50</sup> *Ibid.*



and as a medium for trafficking in person, illicit goods or weapons.<sup>51</sup> Environmental degradation caused through fishery crimes or other environmental crimes, moreover, has the potential to increase the grievances of coastal populations and leads to maritime instability.<sup>52</sup>

Three, Concept of Blue Economy, the blue economy sometimes referred to as ‘the economic development domain of the marine environment underpins much of the maritime security agenda. Approximately 90 per cent of global trade takes place by water, and marine resources such as fisheries and offshore oil are important economic assets. Piracy, crime, and other types of maritime disruption can pose a danger to global trade, and coastal nations frequently prioritize marine resource conservation and development. Indeed, it is significant in this regard that the African Union’s 2050 M plan placed ‘blue growth’ at the center of its narrative, while the European Union (EU) established its own particular ‘blue growth’ plan in 2012.<sup>53</sup>

Four, Human Security, this is a final domain which addressed in the sense of the insecurities experienced by individuals and local communities as well as those affecting states.<sup>54</sup> Human security issues penetrate much of the maritime security agenda. The protection and sustainability of fisheries, for example, underpin the livelihoods of millions of people living in the coastal regions, while these same groups are often the most vulnerable to the adverse impacts of climate change or

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<sup>51</sup> *Supra* note 21 at p. 5.

<sup>52</sup> Tanaka Y., (2012). *The International Law of the Sea*, 1st Ed , Cambridge University Press , at p. 18

<sup>53</sup> Bueger C., and Edmunds, T., (2017). ‘*Beyond Seablindness: A New Agenda for Maritime Security Studies*’, International Affairs, at p. 96

<sup>54</sup> *Op cit* note 25.

maritime pollution. Such concerns relate not only to the security of the individuals and coastal communities themselves, but also to the role of human insecurity in facilitating the emergence of activities such as piracy or criminality as alternative sources of employment in regions of significant economic deprivation or breakdown.

The term ‘human security’ has been increasingly referred to as a way of focusing attention on the needs of individual human beings, rather than looking at the security needs of the state alone.<sup>55</sup> Human security is defined as the freedom from fear and hunger, and it can be endangered in any of the following interconnected domains of security such as, economic, food, health, environmental, personal, communal, and political.<sup>56</sup> While the concept of human security has been much debated,<sup>57</sup> at the very least these discussions may be credited by providing a vehicle to consider security beyond the confines of defensive or aggressive military policy of a state.<sup>58</sup>

### 2.1.2 The Concept of Mare Liberum

In seeking to establish foundational principles for the law of the sea, Grotius argued that the very nature of the oceans demanded that they be available to all users.<sup>59</sup>

Unlike terrestrial territory, which may be inhabited, controlled, and protected against

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<sup>55</sup> Klein, N., (2011) *Maritime Security and the Law of the Sea*, Oxford University Press, at p. 6

<sup>56</sup> United Nations Development Programme, (1994) *Human Development Report 1994* (OUP, Oxford at 23.

<sup>57</sup> MacFarlane, S.N., and Khong, Y. F., (2006). *Human Security and the UN: A Critical History* (Indiana University Press, Bloomington; Newman E., ‘A Normatively Attractive but Analytically Weak Concept’ 35 (2004) *Security Dialogue* 358; Roberts D., ‘Human Security or Human Insecurity? Moving the Debate Forward’ 37 (2006) *Security Dialogue* 249; Bellamy, A.J. and McDonald, M., ‘The Utility of Human Security’: Which Humans? What Security? A Reply to Thomas and Tow’ 33 (2002) *Security Dialogue* 373.

<sup>58</sup> See *Op cit* note 27 at 6

<sup>59</sup> *Ibid.*

invitation, the physical qualities of the waters do not allow for an equivalent level of control.<sup>60</sup> Grotius also saw the economic significance of the high seas, since the capacity of ships to convey people and products throughout the world without passing through a state's sovereignty would enhance international trade.<sup>61</sup>

This economic interest was also manifest in the desire to maintain fishing grounds in as wide an area as possible. The shared interest in the freedom of navigation would allow not only the movement of goods and people, but also permit unhindered passage of naval fleets of the maritime powers to areas of political and military influence. At a time when shipping provided the only means for states to communicate with overseas colonies and dominions, the importance of securing the means for this assertion of authority was evident.

Even with considerable technological advances, the common interest that prevailed was to permit the ongoing characterization of ocean areas as *mare liberum* and thus maintain the freedoms of the high seas. During one of the early major efforts to codify the law of the sea at the 1958 Conference on the Law of the Sea, the Soviet Union affirmed the continuing relevance of the traditional paradigm.

The principle of the freedom of the high seas had been for centuries reaffirmed in the effort to combat attempts by states to secure mastery over large maritime areas. The

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<sup>60</sup>See *supra* note at p. 13

<sup>61</sup> Grotius was particularly arguing the case of the Dutch East Indies Company at the time (as the very title of the work suggests), against Portuguese claims of sovereignty over the Indian Ocean. Grotius, *The Freedom of the Seas* Chapter V.

freedom of the high seas meant that they were open to all states on an equal footing, and that no state could claim sovereignty over them to the detriment of others; it was satisfactory to note that in modern times that principle had acquired a new and practical meaning for the people of countries which had recently won their independence.<sup>62</sup>

Whenever states have sought to extend their sovereignty or jurisdiction over greater reaches of maritime space, other states have resisted this threat to *mare liberum* in accordance with their preference for maintaining the high seas freedoms. Any new claims to exclusivity over space or resources have often been considered as a violation of the high seas' pre-existing freedoms and have been limited accordingly.<sup>63</sup>

For example, when governments discussed the status of the exclusive economic zone (EEZ), it was contended that high seas freedoms within this 200-mile zone should be qualitatively and numerically equivalent to those outside the zone.<sup>64</sup> This high sea freedoms co-exist with the exclusive rights of the coastal state in this maritime zone, provided that they are not incompatible with the legal regime of the EEZ.<sup>65</sup>

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<sup>62</sup> United Nations Conference on the Law of the Sea, *Official Records, Vol IV: Second Committee (High Seas: General Regime)*, Geneva 24 February–27 April 1958 (Summary Records of Meetings), UN Doc A/CONF.13/40, p. 9 para 10 (USSR).

<sup>63</sup> *Supra* note

<sup>64</sup> Richardson E. L., 'Power, Mobility and the Law of the Sea' (1979–1980) 58 *Foreign Affairs* 902, 907

<sup>65</sup> See UNCLOS art 58(2). In addition, the rights and duties located in arts 88 to 115 are deemed to apply to the EEZ provided they are not incompatible with Part V.

As currently defined, the freedoms of the high seas have encompassed not only the freedoms of navigation and fishing but also the right to construct underwater cables and pipelines and overflight.<sup>66</sup> There has not been exhaustive categorization of the high seas freedoms and a variety of military activities are typically regarded as other freedoms of the high seas.<sup>67</sup> States have generally accepted that the freedoms of the seas entail certain responsibilities or implied restrictions.<sup>68</sup> The main purpose of such regulation was to safeguard the exercise of freedom in the interest of the whole international community.’<sup>69</sup>

### **2.1.3 Concepts of Inclusivity and Exclusivity in the Development of Maritime Security**

The consequence of *mare liberum* has been the generation of tension between inclusivity and exclusivity in the claim to ocean space and its use. As discussed, prior in this chapter, the law of the sea has traditionally encapsulated an appropriate balance between inclusive claims (accommodating all states) and exclusive claims (those benefiting single states) in order to achieve a common interest.<sup>70</sup> McDougal

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<sup>66</sup>See *ibid* under Article 87(1).

<sup>67</sup> Military activities have usually been included among the traditional freedoms of the high seas, even if not explicitly stated. See O’Connell D.P. (Ed Shearer I.A.), *The International Law of the Sea*, 2 Vols (Clarendon Press, Oxford 1984) 809; Sreenivasa P. Rao, ‘Legal Regulation of Maritime Military Uses’ (1973) 13 *Indian JIL* 425, 435.

<sup>68</sup> See United Nations Conference on the Law of the Sea, *Official Records, Vol. IV: Second Committee (High Seas: General Régime)*, Geneva 24 February–27 April 1958 (Summary Records of Meetings), UN Doc A/CONF.13/40, p 24 para 10 (Czechoslovakia).

<sup>69</sup> United Nations Conference on the Law of the Sea, *Official Records, Vol. IV: Second Committee (High Seas: General Régime)*, Geneva 24 February–27 April 1958 (Summary Records of Meetings), UN Doc A/CONF.13/40, p 15 para 11. (USA)

<sup>70</sup> ‘[T]he common interest is an accommodation of exclusive and inclusive claims which will produce the largest total output of community values at the least cost. See McDougal and Burke, ‘*The Public Order of the Oceans*’ 52

and Burke described the common interest in a balance of exclusive and inclusive uses of the oceans:

The common interest of all states and their peoples in both exclusive and inclusive uses of the oceans of the world and in an economic accommodation of all uses is not difficult to demonstrate. All states which border upon the oceans have a common interest in those traditional exclusive assertions of control in nearby areas which permit a state both to protect its territorial base and organized social life from too easy invasion or attack from the sea and to take advantage of any unique proximity it may have to the riches of the sea bed and marine life...Each state, whether coastal or not, has an interest in the fullest possible access, either for itself or for others on its behalf, to all the inclusive uses of the ocean...for the richest possible production of values.

From this mutual interest of all states in all types of uses, it follows that each state has an interest in an accommodation of such uses, when they conflict, which will yield both an adequate protection to exclusive claims and yet the greatest possible access to inclusive uses. The net total of inclusive uses available for sharing among all states is directly dependent, further, upon the restriction of exclusive claims to the minimum reasonably necessary to the protection of common interest. If all states asserted and were protected in extravagant, disproportionate, exclusive claims, there would be little, if any, net total of inclusive use for common enjoyment. The

common interest is in an accommodation of exclusive and inclusive claim which will produce the largest total output of community values at the least cost.<sup>71</sup>

This approach has taken into account the security interest of states:

By appropriate accommodation and compromise, a public order of the seas has been maintained to permit states to send their argosies to all the four corners of the world and to take adequate account of both the general security interest of the community of the states and the special security interest of particular states<sup>72</sup>

The emphasis has thus been on the retaining inclusive enjoyment of the ocean space and only permitting exclusive claims to prevail if they ‘serve the common interest where the impact of the use are kept to the minimum.’<sup>73</sup> In the decade of subsequent to the above analysis, the allocation of competences has continued to emphasize the importance of inclusive interest while permitting recognition of certain exclusive claims. Although the predominant emphasis in the law of the sea has been that the common interest is achieved through maintaining the freedom of the high seas and respecting flag state authority in these areas, these central motivations may no longer be completely appropriate given the recent claims to undertake various measures for the enhancement of maritime security.<sup>74</sup>

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<sup>71</sup>‘The common interest is an accommodation of exclusive and inclusive claims which will produce the largest total output of community values at the least cost. See McDougal and Burke, *‘The Public Order of the Oceans’* at p. 52 – 2

<sup>72</sup> *Ibid* at p. 54

<sup>73</sup> See *Op cit* note at p. 749

<sup>74</sup> *Supra* note at 17

## 2.2 Maritime Security in United Republic of Tanzania

In the United Republic of Tanzania, the Government has deliberately invested into support and security infrastructure to invest in three major strategic seaports, namely; *The Dar es Salaam port* which is the Tanzania principal port with a rated capacity of 14.1 million (MT) dry cargo and 6.0 million (MT) bulk liquid cargo.<sup>75</sup> The Port has a total quay length of about 2,600 metres with eleven deep-water berths.<sup>76</sup> Dar es Salaam port handles about 95 percent of the Tanzania international trade. The port serves the landlocked countries of Malawi, Zambia, Democratic Republic of Congo, Burundi, Rwanda, Uganda and Zimbabwe. The port is strategically placed to serve as a convenient freight linkage not only to and from East and Central Africa countries but also to middle and Far East, Europe, Australia and America.<sup>77</sup>

Tanzania Ports Authority is implementing Dar es Salaam Marine Gateways Projects (DMGP) will improve the effectiveness and efficiency by converting the port as world class port with optimized efficiency to accommodate the calling and reception of larger vessels. But also, Port modernization projects include but not limited to strengthening and deepening of berths 1-7 and RORO terminal, dredging of entrance channel, turning circle and harbor basin, strengthening and deepening, and construction of a new terminal jet.

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<sup>75</sup> See Bendera, I., (2017). '*Admiralty and Maritime Law in Tanzania. Kenya*', Law Africa Publishing Limited at p. 127

<sup>76</sup> *Ibid.*

<sup>77</sup> Mahalu, C. R., (1984). '*Public International Law & Shipping Practices: The East African Aspirations*', Baden-Baden: Nomos Verlagsgesellschaft at p.73.



*Tanga and Other Northern Sea Ports* are another important strategic seaport. This is the longest-serving port in East Africa, having two shallow water berths. Visiting ocean-going boats are anchored to stream buoys, as a maritime safety requirement. A 354-km highway links it to sister port Dar es Salaam in the South. Tanga port is situated on the northern coast of Tanzania. Close to the Kenyan border. Port limits extend from Latitude 05 degree 00 5.8 long 039 degree 09.5'E to the meridian of Long 39 degree 15'E, thence 180 degrees to the parallel of Latitude 05'S, and thence 270 degrees to the mainland. The current upgraded capacity is 1,201,000 tons per annum.<sup>78</sup>

Mtwara and Other Southern Sea Ports, Mtwara port is one of the three major ports managed by Tanzania Ports Authority. The deep-water port at Mtwara was built between 1948 and 1954. Development of the deep-water port was accompanied by railway construction from Mtwara and Nachingwea.<sup>79</sup> With the failure of the groundnut scheme, the railway line fell into disuse and is now defunct. The port, however, continues to function but is underutilized. The port of Mtwara can handle up to 750,000 MT with the same number of births, the port is mainly designed to handle conventional cargo.<sup>80</sup>

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<sup>78</sup> *Op cit* note 147

<sup>79</sup> Abhyankar J., '*Piracy and maritime violence: a continuing threat to maritime industry*', Hong Kong, 2002.

<sup>80</sup> *Ibid.*

### **2.3 The National Maritime Policies Based on Safety, Security and Environment**

Tanzania's economy is facilitated through maritime commerce, thenceforth sustaining the maritime transportation and protecting against terrorists and criminals hence, facilitation of maritime trade by the government is a necessity for economic security. Moreover, to deter criminal incidents that may occur and foster the reduction of marine accidents, the following recommendations and rules for enforcement of maritime safety, security, and environment were adopted in Tanzania.

#### **2.3.1 Multilateral Approaches for Maritime or Port Security**

These are two critical instruments for nations to organize their marine transportation and port services networks. They implement regulation and enforcement through international treaties, bilateral or unilateral actions. Uncovering all aspects and linkages of marine safety, security, and environment through a grounded theory would help to design the correct maritime policies, making it easier to achieve the balance between commerce facilitation and safe and secure transportation.<sup>81</sup>

Improvement of training to reduce maritime accidents, increasing the efficiency of ship inspection and the number of control officer, building a high Maritime Resource Management (MRM) skilled crew by the companies, feasibility of inspection of the ships before passing Tanzania Ports Authority, risk analysis of Ship Master based on

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<sup>81</sup> See Kraska, J., and Pedrozo, R. (2013). *International Maritime Security Law*. Netherlands: Brill at p. 69

the number of passing vessels, establishing an emergency module in the organizations and development of e-maritime infrastructure.<sup>82</sup>

### **2.3.2 Creating an Infrastructure that the Carrier can see the Custom's Records and Vice Versa**

An increasing number of Non-Intrusive Inspection (NII) system and scanning operator for container scanning, development of a container risk analysis software with anomaly detection feature, loading containers at risky import countries under the supervision of loading surveys, establishing a marina tracking system, establishing national Synthetic-Aperture Radar (SAR) satellite system, improvement of underwater security of strategic infrastructure, establishing the infrastructure of cyber security for the future e-maritime and unmanned vessel operations.<sup>83</sup>

### **2.3.3 The Importance of Education and Culture on Protection of Marine Environment**

The potential of increasing number of drilling platforms to increase marine pollution in the East African affiliated ports, incentives for ships using alternative fuels, penalties including imprisonment by the amount of pollution instead of ship tonnage, improving the treatment plant capacity to reduce land-based pollution, improving the capacity of waste collection in ports, establishing the recycling facilities, waste collection vessel service in Mediterranean Exclusive Economic Zones.

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<sup>82</sup> *Ibid*

<sup>83</sup> See Catherine, Z., and Arthur M., (2008). 'Security in the Maritime Domain and Its Evolution Since 9/11' in Herber-Burns R., Bateman S., and Lehr, P., (Eds), *Lloyd's MIU Handbook of Maritime Security* CRC Press, London at p. 57.

### **2.3.4 Deterrent Penalties and Enforcement on Marine Pollution**

This emerges as two important elements of protection of marine environment in the grounded theory. Especially, the enforcement authority of coast guards (or equivalent agencies) and the use of marine pollution detection technologies like satellites; aerial units and radars have been come up.

### **2.4 Land-based Pollution**

This results in approximately 80% percent of all marine pollution, is also an important element of this grounded theory. Reception of waste from ships and recycling of waste are the other important issues, which the grounded theory reflects.

### **2.5 National Security Autonomy in Tanzania Mainland and Zanzibar**

Tanzania's key maritime location makes it vulnerable to a variety of security challenges, including piracy, illicit fishing, smuggling, and pollution. Piracy and armed robbery are currently recognized as the principal maritime security concerns to Southern Africa, having begun farther north and moved southwards over the last several years to reach the waters off both the East and West coastlines.<sup>84</sup> If not adequately addressed, some might grow into inter-state conflict and actual maritime security concerns, while others could jeopardize the economics, ecology, and public health of the communities and governments in the area.<sup>85</sup>

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<sup>84</sup> Coelho B., and Paulo J., (2023). *'African Approaches to Maritime Security'*, Southern Africa

<sup>85</sup> *Ibid.*

To protect the country's marine interests and maintain the continuing flow of commerce, the Tanzanian government and its partners must take a comprehensive and coordinated response to these concerns.

Maritime security ensures the protection of vessels both internally and externally through supervision, inspection and proactive procedures. The Tanzanian government does its best to minimize the threats to maritime security, both malicious and accidental. As the industry evolves and the marine sector grows, vigilance, enforcement, and training will have to keep up with technology and increased opportunities for threats.

Several United Republic of Tanzania agencies including the Drug Control Enforcement Authority (DCEA) Director of Public Prosecutions (DPP), National Prosecution Services (NPS), Office of the Attorney General (OAG); Immigration; Police Marine, Tanzania Ports Authority (TPA), Tanzania Revenue Authority (TRA) and Tanzania Shipping Agencies Corporation (TASAC) has to work together to ensure maritime security within the country.

Maritime security According to Lomé Charter,<sup>86</sup> maritime security refers to the prevention of and fight against all acts or threats of illicit acts against a ship its crew and its passengers or against the port facilities, maritime infrastructure, maritime facilities and Maritime environment.<sup>87</sup> Maritime and port security strategies are

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<sup>86</sup> The African charter on Maritime security, safety and development in Africa, 2016

<sup>87</sup> *Ibid* under Article 1.

crucial to ensure safer seas and, in turn, safer land.<sup>88</sup> Maritime security refers to the protection of vessels, both internally and externally.<sup>89</sup> The umbrella term covers issues related to national security, economic development, human security, and marine environment concerns. Monitored and protected areas include oceans and territorial waters, regional seas, rivers, and ports. Maritime security strategies aim to track down and respond to crimes such as piracy, trafficking of people and illicit goods, illegal fishing, marine pollution, and armed robbery at sea.

With regard to piracy committed in the high seas, Tanzania enacted a law known as Merchant Shipping Act,<sup>90</sup> covering both Tanzania Mainland and Zanzibar.<sup>91</sup> The law progressively incorporates the provisions of the UNCLOS into Tanzania's domestic laws. Because this is a direct absorption of the contents of a treaty accepted by the Government of the United Republic, the implementation of its provisions has passed from the executive to the legislative branches.

It should be noted that because the provisions of the Merchant Shipping Act merely define piratical offences, the manner in which pirates will be prosecuted and punished remains within the exclusive criminal regulatory framework of the two entities of the Union unless the matter finds its way to the Court of Appeals, which is a Union matter.<sup>92</sup>

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<sup>88</sup> *Op cit* note 153

<sup>89</sup> *Ibid.*

<sup>90</sup> [Cap 165, 2003]

<sup>91</sup> See Part XVII of the Merchant Shipping Act, [Cap 165 of 2003]

<sup>92</sup> *Ibid.*

## 2.6 Practices and Administration in Relation to Maritime and Port Security in Tanzania

Eradication of piracy in Tanzania and high seas cannot be solely achieved by the Penal Code and the Merchant Shipping Act<sup>93</sup>, rather the web of laws in place, such as the Anti-Money Laundering Act,<sup>94</sup> The Economic and Organized Crime Control Act,<sup>95</sup> Extradition Act,<sup>96</sup> The Proceeds of Crime Act,<sup>97</sup> Prevention of Terrorism Act,<sup>98</sup> and Mutual Assistance in Criminal Matters Act,<sup>99</sup> must be well coordinated to collectively tackle the socio-economic aspects of piracy.

Citizen of Tanzania, either from Mainland Tanzania or Zanzibar shall be guilty of the offence of piracy if he or she does any act of violence against any vessel.<sup>100</sup> Admittedly, Zanzibar is not a sovereign state and thus no one can be a *de jure* citizen of Zanzibar.<sup>101</sup> It is not clear, however, if the person committing piracy as such is the “citizen” of Tanzania Zanzibar and the act of piracy occurred outside Tanzania Mainland say in the coast of Zanzibar can be tried in the courts of Tanzania Mainland. The difficulty of determining jurisdiction particularly regarding courts of Tanzania Mainland arises because the provision of the Penal Code broadly stipulate

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<sup>93</sup> See *supra* note 156

<sup>94</sup> Chapter 423 of the Laws of Tanzania, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar

<sup>95</sup> Chapter 200 of the Laws of Tanzania, The Act applies to Mainland Tanzania only.

<sup>96</sup> Chapter 368 of the Laws of Tanzania, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar

<sup>97</sup> Chapter 256 of the Laws of Tanzania, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar

<sup>98</sup> Chapter 254 of the Laws of Tanzania, The Act applies to Mainland Tanzania as well as Tanzania Zanzibar

<sup>99</sup> Act No. 24 of 1991, the facilitation of the provisions of the Act is based on reciprocity. Therefore, its provisions are applicable only where the Minister is satisfied that similar provisions have been made by a foreign country. See Section 3-(1) of the Act

<sup>100</sup> See Section 66-(1)(b) of the Penal Code

<sup>101</sup> See *SMZ vs Machano Hamis Alli and Others* (Criminal Application No 8 of 2000)

that a citizen of Tanzania (from Tanzania Mainland or Zanzibar) can commit piracy as abovementioned, but the provisions of the same legislation which gives jurisdiction to courts of Mainland Tanzania narrowly confines itself to “*offences committed by a citizen of Mainland Tanzania in any place outside Mainland Tanzania*”.<sup>102</sup>

The Penal Code also criminalizes voluntary participation in the operation of a vessel or an aircraft for piratical purposes.<sup>103</sup> However, the legislation appears to give discretion to the judges and magistrates to determine what amounts to *unlawful act of violence* as it refrains to explicitly list acts that would, if directed against a ship, vessels, persons or property, amount to piracy.<sup>104</sup> In assigning meaning to unlawful meaning of violence the presiding magistrate or judge is supposed to be guided by principles of construction of written laws with regard to Tanzanian conditions.<sup>105</sup> In the course of the discretionary endeavor the magistrate should not apply any principle of strict construction relating to penal legislation.<sup>106</sup>

Refraining to explicitly list the acts that would amount to piracy may attract double jeopardy and thereby infringe one of the core criminal justice principles *ne bis in idem*. Furthermore, inference drawn from the vague expression *unlawful act of violence* suggests that there is an independent act or series of acts such as assault, breaking, murder or arson directed against a person, property or vessel which if done

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<sup>102</sup> See Section 6 (b) of the Penal Code

<sup>103</sup> See Section 66-(1)(c) of the Penal Code

<sup>104</sup> See Section 66-(1)(c) of the Penal Code in its entirety

<sup>105</sup> Ibid

<sup>106</sup> See Section 4 of the Penal Code



in the prescribed circumstances amount to piracy. As a result, there is no conduct in and of itself known as piracy, despite the fact that piracy is a crime. There is a significant risk that a prosecutor may add the allegation of piracy with other offences that are truly simply ingredients of piracy, subjecting the criminal to double jeopardy.

Punishment upon conviction of the person found guilty of piracy is liable for life imprisonment.<sup>107</sup> Since the Penal Code does not explicitly specify acts that would constitute piracy, it is not clear what would be the position in cases where the act constituting piracy would attract death penalty. It is likely, for example, that the offender, by his unlawful act of violence, inflicts grievous bodily injury on a person in a vessel registered in Tanzania and he or she is later charged for piracy and after 9 months<sup>108</sup> in the middle of the trial the victim dies of the wounds.<sup>109</sup> Obviously, the charges will be amended to include the charge of murder then the question arises what will be the position upon conviction of the offender on the two charges. It should be noted that murder is punishable by death penalty in Tanzania.<sup>110</sup>

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<sup>107</sup> See Section 66-(1) of the Penal Code

<sup>108</sup> According to Section 205 of the Penal Code [Cap 16 R.E. 2022], a person is deemed to have caused the death of another person if the death caused by the direct act or commission occurs within a year and a day from the day which the unlawful act contributing to the cause of death was done

<sup>109</sup> According to Section 203 of the Penal Code a person is deemed to have caused death if (a) s/he inflicts bodily injury on another in consequence of which that other person undergoes surgical or medical treatment which causes death; in this case it is immaterial whether the treatment was proper or mistaken if it was employed in good faith and with common knowledge and skill (b) if s/he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as his/her mode of living (d) if by any act or commission s/he hastens the death of a person suffering under any disease or injury which apart from that act or commission would have caused death.

<sup>110</sup> See Section 197 of the Penal Code [Cap 16 R.E. 2022]

As noted earlier, Tanzania substantially incorporated the provisions of Article 101 of UNCLOS through the Merchant Shipping Act.<sup>111</sup> It is a *prima facie* political progress in recognition and fulfillment of international obligation in combating the long-outlawed enmity of mankind - piracy. The provisions of the Act appear to operate as a general policy against piracy rather than drawing court attention to the issue. However, the Act just defines piracy and does not make it an offence or provide for punishment. Except for the overarching title, Offences against the Safety, which appears before the whole section of the act, nothing in the clause criminalizes piracy. According to Tanzanian legislative interpretation methodology, titles and introductory words do not constitute part of the act.<sup>112</sup>

If at all piracy is to be regarded as an offence in the statute is by its vague mention in section 344(2) (a) of “any offence under section 341 or 342”<sup>113</sup>, the former being the provision which covers piracy. Though as a matter of law and practice charges must point out the provision, which is contravened by the offender. For this case, it should be section 341 and relying on any other section would be defective in criminal proceedings. The vagueness of the legislation has exculpatory effect to persons who commit piracy and prosecuted under the legislation. This is in the light of the canon of construction of penal statutes, which requires interpretation to be in favor of the accused in case of such vagueness. The canon requires the judiciary to adhere to

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<sup>111</sup> [Cap 165, 2003]

<sup>112</sup> See Section 8 of the Interpretation of Laws and General Clauses (Act No. 30 of 1972) which reads “every section of an Act shall take effect as a substantive enactment without introductory words”

<sup>113</sup> Section 344 generally covers Master’s Powers of Delivery. The section confers powers upon the Master of a ship to deliver the person who committed offences in the ship to appropriate authorities in Tanzania.

precise prescription of the specific provision instead of to the meaning induced from the general purpose or legislative intention of the statute.<sup>114</sup>

It is manifestly obvious that the Merchant Shipping Act<sup>115</sup> was crafted in the light of UNCLOS and therefore refrains to extend jurisdiction beyond the high seas or international waters. It did not anticipate the situation where a state consents to the repression of piracy in its territorial waters like Somalia pursuant to UNSC Resolution 1846 (2008). The abstention is justifiable since the UNSC Resolution came into force five years after the enactment of the Merchant Shipping Act.

Prior to the UNSC Resolution, any state's enforcement authority could not legitimately extend to Somalia's territorial seas, even in circumstances of hot pursuit of a pirate vessel. Prior to the UNSC Resolution, state practice indicated that governments were opposed to extending enforcement authority to their territorial seas, which were primarily affected by piracy. Indonesia, for example, had previously rejected ideas of expanding other governments' enforcement power to deter piracy within those areas of the Malacca Straits lying within its territorial seas. The Merchant Shipping Act refrains to confer jurisdiction upon Tanzania's courts to try and punish piracy committed in the high seas by foreigners unless such an offence was committed on board Tanzanian ship.<sup>116</sup> This defeats the concept of

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<sup>114</sup> See Hall J., (2005). *General Principles of Criminal Law* (2nd Edition), The Law Book Exchange Ltd, New Jersey at p.38

<sup>115</sup> [Cap 165, 2003]

<sup>116</sup> See section 406 of the Merchant Shipping Act (Act No 21 of 2003).

universal jurisdiction, which has long been attached to the offence of piracy by law of nations.

The legislation chose to limit Tanzanian courts' jurisdiction to instances involving piracy on the high seas committed by a Tanzanian person. With piracy on the high seas rampant across the world, and only for victim ships of Tanzanian nationality, the act adds to impunity for pirates who might otherwise face universal prosecution under international law. This is an indicator of part fulfillment of Tanzania's international counter-piracy duties.

## **2.7 Maritime Security, National Jurisdiction and Ship Distress**

Internal waters, territorial seas, international straits and archipelagic waters are marine spaces under the territorial sovereignty of the coastal State. However, the use of the marine environment for the sea communication necessitates the freedom of navigation through those spaces. Consequently, marine spaces under territorial sovereignty are part of the territory of the coastal State and the highway for the sea communication at the same time. The dual nature of marine spaces gives rise to the fundamental questions of how it is possible to reconcile the territorial sovereignty of the coastal State and the freedom of navigation.<sup>117</sup>

For humanitarian and safety reasons, it is generally recognized that any foreign vessel in distress has a right of entry to any foreign port under customary

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<sup>117</sup> E. Tepp, *The Gulf of Guinea: Military and non-military ways of combating piracy*. *Baltic Security and Defence*, 1(14) (2012) pp. 181-214 at p. 225.

international law.<sup>118</sup> In the words of the *Eleanor case*, ‘real and irresistible distress must be at all times a sufficient passport for human beings under any such application of human laws’<sup>119</sup>. A ship in distress entering a port or a place of refuge enjoys immunity from local laws. The immunity applies to arrest of the vessel, to local health, criminal and tax laws, as well as to public charges levied for entry into port. The burden of proof to establish distress is on the party claiming exemption from local laws, namely the ship in question.<sup>120</sup>

A ship in distress is also exempted from certain rules regulating marine pollution because such rules apply only to ships that have voluntarily entered a port or an offshore terminal.<sup>121</sup> However, a ship in distress enjoys immunity only where local laws are breached for reasons of *force majeure*, and the ship cannot enjoy immunity from all local laws.<sup>122</sup> One can also say that a ship in distress that is engaged in any activity contrary to *jus cogens*, such as slave trading, should lose its immunity if it enters a place of refuge.<sup>123</sup>

## 2.8 Foreign Investments in the Marine and Port Facilities

Foreign direct investment (FDI) is another area that is interlinked directly with maritime and port security. This is because through the port’s gateways are where most of the investment indoors takes place. Thus, security of the maritime and port

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<sup>118</sup> *Ibid*

<sup>119</sup> *The Eleanor*, 15 U.S. 345 (1817), p. 1067

<sup>120</sup> *Supra* note 187 at p. 226

<sup>121</sup> *Ibid.*

<sup>122</sup> Tanzania Invest, ‘USD 250 Million Investment in Dar es Salam Port Signed’ available at <https://www.tanzaniainvest.com/transport/dp-world-250-million-investment-dar-es-salaam-port> Accessed on November 7, 2024.

<sup>123</sup> *Ibid.*

facilities is necessary to attract foreign investments and the safety of the marine vessels and ships that are used to carry out transit of goods through the ports and using the marine space of the respective coastal state. This significance is traced back to the colonial and early-trade era when the explorers and colonialists used the sea as a major means of entrance in search of raw materials and colonies. In that period, they established ports which most of them were used as passage to transfer various goods and invasion in the country. Soon after Independence, these ports were nationalized under the newly governments to be self-regulated.

As noted prior in this chapter, the Dar es Salaam Port acts as a major entrance and gateway to Tanzania and passage through other land-locked countries like Uganda, Burundi, Rwanda, Zambia, Zimbabwe and the Democratic Republic of Congo. Throughout these countries Tanzania has used massively the Dar es Salaam port as the major gateway for importing and exporting various goods and facilitating trade. This made the Dar es Salaam port the major economic gateway allowing foreign direct investments not only to Tanzania but to East and Central Africa.

Recently, the amid heated debate on the investment of the Dubai firm known as DP World with the Tanzania Ports Authority (TPA) in the development and improvement of Tanzania's sea and lake gateway, is a matter that attracted the public's attention. An initiative which faced great criticism from scholars, politicians, religious platforms and economists on the nature and scope of investment that was to take place.

Despite the initiatives of the government of Tanzania to explain the benefits of this investment, some legal concerns seemed contradictory leading to an increased level of disagreement between the governments of Tanzania on the one hand vis-à-vis the general public especially of the term and duration of the investment. Throughout this heated debate, the Tanzania Ports Act seemed to be isolated in providing the roadmap and footprints on the nature of how the Dar es Salaam port was to be operated under the newly investment plan.

Until now some concur with the government's position and some do not, but had the Tanzania Port Act provided a clear procedural and unambiguous position on the entering, operating and management of the port facility these concerns would have been minimized and cleared. A lot of worries were concerned who is the exact beneficiary of this investment and what is the extent of national security and other economic threats that Tanzania would suffer from this or similar investment. Section 12 of the Tanzania Ports Act mandates the Tanzania Ports Authority to promote local and foreign investment in the port services and facilities but the Act leaves out the question of how would this take place. Hence invite political and non-legal arguments to mislead the public about their political agendas.

## **2.9 Maritime and Port Security Linkage with Taxation Complexities**

In the mid-2023 and 2024 Her Excellency the President of the United Republic of Tanzania Dr. Samia Suluhu Hassan was compelled twice to make major changes in the office of the Commissioner General of the Tax Revenue Authority and the Tanzania Ports Authority due to what she referred to as lagging and complex linkage

between the two government offices following the poor performance in the collection of levies and taxes and swift administration of the port facility at the Dar es Salaam port.

These changes were also triggered largely by the traders' and businessmen and women in Kariakoo Market who orchestrated several demonstrations and closure of their shops and business for number of days forcing the government's intervention from what they referred to as severe tax liabilities imposed to them by the Tanzania Revenue Authority (TRA) through the Dar es Salaam port. Other claims were undue delays of clearing their goods from the port claiming to take more than the required time leading to increase of bonding duties and charges<sup>124</sup>.

These events forced the Prime Minister of the United Republic of Tanzania Hon. Majaliwa Kassim Majaliwa to meet with the traders as well as giving direct orders to the Ministers responsible with finance and business to find the common ground to resolve the matter at hand. Unfortunately, these efforts did not bear immediate fruits compelling Her Excellency the President to make minor changes to the cabinet announcing Hon. Selemani Jaffo as new minister responsible with Industry and Business and on the other hand changes of the Commissioner Generals for the Tanzania Revenue Authority and the Tanzania Ports Authority simultaneously.

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<sup>124</sup> The Citizen, 'Clearing agents' rift on tax evasion scam' available at <https://thecitizen.co.tz/tanzania/news/national/clearing-agents-rift-on-tax-evasion-scam-2543240> Accessed on November 8, 2024



During their inauguration, the President noted and gave direct orders to all of the newly appointed leaders to work on resolving the tax challenges that had been happening at the Port in lieu with tax collection mechanism so as to facilitate smooth trade and not hindering the operation of business. Similarly, seven workers of the TPA responsible for collection of wharfage charges and ICDs were arrested over the alleged loss while eight others were reported to have disappeared after realizing that investigations over the scam have zeroed in on them.<sup>125</sup>

These concerns are all rooted with the legal framework for operation of the Port and port facility, which if examined deeply they pose a security threat to the maritime regime because they take place and involve the key stakeholder of the maritime and port facility security.

## **2.10 Theoretical Framework Governing Maritime Security**

In this part, the study presents the theoretical framework founding the maritime and port security. Generally, security at sea has been theorized and interpreted from rather conservative viewpoints based on some fundamental theories which this study highlights and examine their contribution to the governing regime of maritime and port security today. These theories are as follows:

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<sup>125</sup> Ibid

### 2.10.1 Realism Theory

In the realist theory, the sea is the plain on which superpower or regional power rivalry takes place.<sup>126</sup> Recent discussion has focused on the rise of China as a nave power and the US Asian ‘pivot’, the investment in naval capabilities of emerging powers, or resource competition in the Arctic.<sup>127</sup> This study has been driven forward primarily by scholars of sea power. Generally understood as sub-branch of strategic studies, this field has long been concerned with questions of international interaction, influence and order at sea<sup>128</sup>.

Such an argument has been largely situated within the traditional realist and geopolitical frameworks of international relations, with a focus on historical study, the distribution of hard naval power, and military competition. As a result, this school of thought tended to prioritize observations of ‘top-down’ or structural impacts on international order at sea, such as ‘global power transfers, shifting threat perceptions, naval capabilities, and enforcement of the Law of the Sea’. It has paid less attention to the ‘bottom-up’ influence of maritime disorder on international order at sea, and the forms of interactions cooperation and conflict that emerge from such disorder<sup>129</sup>.

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<sup>126</sup> See Duffield M., (2001). ‘Global Governance and New Wars: The Merging of Development and Security’ London: Zed, at p. 78

<sup>127</sup> *Op cit* note 47.

<sup>128</sup> The common interest is an accommodation of exclusive and inclusive claims which will produce the largest total output of community values at the least cost. See McDougal and Burke, ‘*The Public Order of the Oceans*’ at p. 52 – 2

<sup>129</sup> See Duffield M., (2001). ‘Global Governance and New Wars: The Merging of Development and Security’ London: Zed, at p. 78

### 2.10.2 Liberalism Theory

Liberal views of security at sea emphasize the emergence of numerous international regimes controlling maritime operations, implying that the marine environment is more susceptible to collective public order and legal regulation. Liberal ideas have been promoted, especially in the work of marine law specialists.<sup>130</sup> In recent years international law has ‘evolved from a set of rules designed to avoid naval warfare by keeping maritime powers apart, toward a new global framework designed to facilitate maritime security cooperation by bringing countries together to reach common goals’.<sup>131</sup> Even so, such work has tended to focus on issues of technical regulation and formal international law, rather than maritime security governance more widely defined.

Indeed, we believe with Ian Speller that ‘the preservation of good order at sea has not historically been susceptible to theoretical examination in the same manner as warfare activities or even diplomatic missions’.<sup>132</sup> Certainly, newer security theorizing as it has been developed by constructivists since the 1990s and in critical security studies, for example in the form of securitization theory or the security as practice approach, has, with few exceptions, hardly influenced the debate on security at sea.<sup>133</sup> As we shall elaborate further below, understanding the contemporary maritime security agenda requires that such considerations be incorporated in the analysis.

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<sup>130</sup> See Geiss, R., and Petrig, A., (2011). *‘Piracy and Robbery at Sea: The Legal Framework for counter-piracy operations in Somalia and the Gulf of Aden’* Oxford: Oxford University Press,

<sup>131</sup> Krask, J., and Pedrozzo R., (2014). *International maritime security law*, Leiden: Nijhoff, at p. 10.

<sup>132</sup> See *Ibid.*

<sup>133</sup> See Ryan, B. J., ‘Security spheres: a phenomenology of maritime spatial practices’, *Security Dialogue* 46: 6, [2015], pp. 568–84;

The notion of maritime security, as a unique subset of security thought that includes but is not limited to current issues of sea power and maritime law, is a relatively new development. In many respects, maritime studies have trailed behind conventional security studies. Since the early 1990s, the latter discipline's traditional concentration on governments, armed forces, and war has been widely 'broadened' and 'deepened' to include a considerably broader collection of security challenges, domains, and activities. These have included so-called 'new' security issues such as terrorism, transnational organized crime or environmental degradation, affecting a diverse range of actors including but not limited to the state, and have been characterized by multi-sectoral responses such as the increasing tendency to link security with development.<sup>134</sup>

### **2.10.3 Constructivism Theory**

Another theory founding maritime security is constructivism theory. This theory is based on the notion that security is socially constructed concept. Rather than accepting maritime security as a given list of threats and means, the constructivist school of thought is interested in looking at the relation and how the concept of maritime security comes to be through actions, interactions and perception.<sup>135</sup>

Constructivists' look at how different understandings of maritime security are informed by different political interests and normative understandings. Professor

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<sup>134</sup> Buzan, B., Waever, O., and Wilde, J., (1998). '*Security: A New Framework for Analysis*', London: Lynne Rienner at p. 116.

<sup>135</sup> See Aradau, Claudia; Huysman, Jef; Neal, Andrew; Voelkner, Nadine, eds. (2015). *Critical Security Methods. New Frameworks for Analysis*. Abingdon: Routledge.

Christian Bueger has proposed three frameworks for how to deconstruct concepts of maritime security by various actors: the maritime security matrix that helps conceptualize relations, the securitization framework that looks at claims that are being made in relation to maritime security, and practice theory to analyze what is actually being done in the name of maritime security.<sup>136</sup> In maritime security constructivism theory explains how historical narratives, identities, norms and discourses shape the perception of threats and responses to them.

This school of thought believes that security threats are not fixed but socially constructed through interactions and shared understandings. It further propounds that norms, identities and historical narratives influence how states and actors perceive maritime issues. And that maritime security policies are shaped by ideas, culture and discourse, not just material power. That is, different states and actors interpret maritime threats differently based on historical, cultural and political contexts. States also justify their maritime claims based on historical interpretations<sup>137</sup>.

Constructivism explains how international norms influence maritime security policies. For example, United Nations Convention on the Law of the Sea (UNCLOS), the idea of Exclusive Economic Zone (200 nautical miles) became widely accepted, shaping how states define their maritime boundaries. Even though the UNCLOS lacks strict enforcement mechanisms, states comply because of shared normative pressure.

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<sup>136</sup> Bueger, C., (2015). "What is maritime security?". *Marine Policy*. 53: 159–164.

<sup>137</sup> Ibid

Some critics argue that constructivism lacks concrete policy recommendations because it focused on ideas and perception rather than material realities. While norms matter, military power and economic interest still dominate maritime security policy thus considered to ignore power politics and unlike realism or liberalism, constructivism does not provide quantifiable metrics to assess threats hence becomes difficult to measure<sup>138</sup>.

Constructivism explains how maritime security is shaped by ideas, identities and historical narratives rather than just material factors. It highlights the role of norms and discourse in shaping international maritime law and cooperation and it helps to understand why states interpret maritime disputes differently and how narrative influence policy decision.

#### **2.10.4 Securitization Theory**

Another school of thought founding maritime security is the securitization theory. This school of thought explains how certain issues become security threats through disclosure and political training. Maritime threats such as piracy, illegal fishing and environmental hazards are framed as urgent security concerns which require extraordinary measures. Securitization theory or as sometimes referred to as Copenhagen School, looks as who is making claims (using some form of language) in the name of security to carryout measures that would otherwise not easily be

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<sup>138</sup> Aradau, Claudia; Huysman, Jef; Neal, Andrew; Voelkner, Nadine, eds. (2015). *Critical Security Methods. New Frameworks for Analysis*. Abingdon: Routledge.

justified and accepted.<sup>139</sup> Securitization is a ‘speech act’ where a political actor such as government, international organization or military labels an issue as an ‘existential threat’ to justify extraordinary measures beyond normal political procedures. The Securitization theory grew after the ‘September Eleven’ (9/11) event in the United States, the US securitized maritime transport, leading to the stricter port security laws under the International Ship and Port Facility Security (ISPS) Code.

With regard to Piracy and Maritime Crimes, governments portray piracy as a major security threat justifying military interventions while media and policy makers frame pirates as terrorists. For example, the Somali pirates in the Gulf of Aden. This leads to increased naval patrols and maritime industry adopts stricter security protocols such as armed guards on ships. However, the root cause of piracy whether poverty or political instability remain to unaddressed. Another vivid example is how the EU’s Operation Atalanta (2008 to present) in the Horn of Africa which deployed naval forces to combat Somali piracy.<sup>140</sup>

With regards to Illegal, Unreported and Unregulated (IUU) Fishing, countries frame IUU fishing as national security threat rather than just an economic or environmental issue. This is because Illegal fishing is linked to organized crime and even terrorism in some narratives.<sup>141</sup> With regards to Maritime migration and Human Trafficking,

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<sup>139</sup> See Buzan, Barry; Wæver, Ole; de Wilde, Jaap (1998). *Security: a new framework for analysis*. Boulder, Colorado: Lynne Rienner Publishers.

<sup>140</sup> See Buzan, Barry; Wæver, Ole; de Wilde, Jaap (1998). *Security: a new framework for analysis*. Boulder, Colorado: Lynne Rienner Publishers.

<sup>141</sup> See Ryan, B, J., ‘Security spheres: a phenomenology of maritime spatial practices’, *Security Dialogue* 46: 6, [2015], pp. 568–84 at 576.

governments frame irregular migration as a security crisis rather than a humanitarian issue. Refugees and migrants crossing the Mediterranean are depicted as potential threats. Regarding Climate Change and Maritime Security, climate-induced sea level rise and extreme weather events are framed as security threats. Small island nations argue that climate change threatens their very existence.<sup>142</sup>

Some argue that securitization leads to excessive reliance on military solutions instead of addressing root causes, there are also human rights concerns that migrants, small fishers, and local communities may suffer from security-driven policies. Although, governments may exaggerate threats for political gain for example using piracy as a reason to expand naval presence in strategic waters. Focusing on security ignores deeper issues like poverty, governance failure, and environmental degradation<sup>143</sup>.

Therefore, Securitization theory is a double-edged sword in maritime security whereas, it brings attention to real threats such as piracy and illegal, unprotected, unregulated fishing and can justify necessary actions to combat the same. However, on the other hand it can also lead to over militarization and neglect of economic and human security factors.

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<sup>142</sup> See Ryan, B. J., 'Security spheres: a phenomenology of maritime spatial practices', *Security Dialogue* 46: 6, [2015], pp. 568–84 at 576.

<sup>143</sup> Ibid



### 2.10.5 Blue Economy and Human Security

Another theory is known as the Blue Economy and Human Security Theory. This school of thought focus on economic and environmental dimension of maritime security whereas it views maritime security as essential for sustainable development, livelihood protection and food security. This school of thought represents a shift away from traditional, state-centric marine security. Instead of focusing on naval power and geopolitical competition, this perspective emphasizes sustainable development, environmental protection and well-being of coastal communities.<sup>144</sup> The blue economy refers to the sustainable use of ocean resources for economic growth, improved livelihood, and environmental health. It is based on the idea that economic prosperity and environmental conservation can move hand in hand.

The key pillars of the blue economy are sustainable fisheries and aquaculture covering ensuring fish stock are not depleted by overfishing; Renewable Marine Energy which includes harnessing wind, tidal and wave energy instead of fossil fuels; Another pillar is Tourism and Coastal Development which covers promoting eco-friendly tourism while preserving marine ecosystems; and another pillar being Shipping and Port Management which covers reducing pollution from maritime transport.

On the hand, Human Security refers to the people-centered approach to security that focuses on protecting individuals and communities from threats such as poverty,

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<sup>144</sup> Buzan, B., Waever, O., and Wilde, J., (1998). '*Security: A New Framework for Analysis*', London: Lynne Rienner at p. 221.

climate change, and human rights violations. It contrasts with traditional security, which prioritizes state sovereignty and military power.<sup>145</sup> Pillars of Human Security are Economic security, which covers sustainable fisheries to protect coastal livelihoods. Food security which covers preventing overfishing and ensuring food supply from the ocean. Health security which covers protecting marine biodiversity to prevent disease and pollution related health risks. Environmental security which covers combating climate change, ocean acidification and plastic pollution. Personal security which covers addressing piracy, human trafficking, and forced labour in fisheries. Community security which includes supporting indigenous and coastal communities affected by marine policies, and Political security which encapsulates ensuring fair maritime governance and participation of marginalized groups.

Summarily, the Blue Economy and Human Security perspectives offer a more comprehensive and just way to address maritime security. Instead of focusing solely on military threats, they emphasize economic resilience, environmental sustainability and social justice<sup>146</sup>.

#### **2.10.6 Critical Security Theory**

This school of thought challenges traditional, state-centric views of maritime security. It emphasizes non-traditional security threats, including climate change, illegal fishing and human trafficking. Critical Security Studies (CSS) challenges traditional security paradigms, arguing that security should not be limited to military

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<sup>145</sup> *Op cit* note 64.

<sup>146</sup> Buzan, B., Waever, O., and Wilde, J., (1998). '*Security: A New Framework for Analysis*', London: Lynne Rienner at p. 222.

threats and state sovereignty. Instead, it emphasizes human security, economic justice, and environmental sustainability. CSS is influenced by post-structuralism, Marxist, feminist, and post-colonial perspectives, questioning who defines security, for whom, and why<sup>147</sup>.

The core themes of this school of thought are Human Security at sea, which encapsulates traditional maritime security focusing on states and naval power, however the CSS shifts attention to individual and communities affected by insecurity at sea. On the other hand, issues like piracy, illegal fishing and human trafficking as well as forced labour in the fishing industry fall within this particular theme.

Another theme in this theory is Securitization of maritime issues whereby in this theme CSS examines how threats are socially constructed by power actors. Maritime piracy, migration, and IUU are often framed security threats, justifying military responses rather than addressing underlying socio-economic problems. Another theme covered by CSS is Climate change and Environmental Security whereas, traditional maritime security focuses on naval competition, but the CSS highlights how climate change and environmental degradation pose existential threats. For instance, the sinking of Tuvalu due to climatic change poses a real security crisis, yet international policies prioritize economic interests over environmental justice.<sup>148</sup>

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<sup>147</sup> See Ryan, B. J., 'Security spheres: a phenomenology of maritime spatial practices', *Security Dialogue* 46:6, [2015], pp. 568–84 at 581

<sup>148</sup> Ibid

Lastly another theme encompassed within the Critical Security Studies Theory is known as Maritime Labour Exploitation. The theory critiques how global supply chain exploits maritime labour, particularly in fisheries and shipping. Issues like modern slavery, forced labour and poor working conditions on fishing vessels are overlooked in traditional security approaches.

Some argue that critical security studies theory lacks clear policy solutions compared to traditional maritime security approaches. Critics say CSS is too idealistic and that it ignores the reality of power politics and national interests. Traditional security scholars argue that states remain the primary enforcers of maritime security, even when addressing non-traditional threats. While traditional security approaches focus on naval power and legal frameworks, CSS highlights the human, economic, and environmental dimensions of security at sea. It provides a more inclusive and just perspective, advocating for bottom-up solution that addresses root causes rather than symptoms<sup>149</sup>.

## 2.11 Conclusion

This chapter has established a foundational understanding of maritime security by examining key concepts, relevant theoretical perspectives, and existing literature. The conceptual framework provided clarity on essential terms and principles that shape maritime security governance, while the theoretical framework explored perspectives such as realism, liberalism and securitization theory to explain the role

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<sup>149</sup> See Ryan, B. J., 'Security spheres: a phenomenology of maritime spatial practices', *Security Dialogue* 46:6, [2015], pp. 568–84 at 581

of state and non-state actors in securing maritime domains. These theoretical lenses offer valuable insights into the complex nature of maritime threats and mechanisms used to address them. The literature review highlighted critical debates, policy approaches and best practice in maritime security from global, regional and domestic perspective. While existing research has provided substantial insight to maritime security challenges and responses, gaps remain in assessing the effectiveness of Tanzania's domestic legal framework. These gaps present opportunities for further research and police development to enhance Tanzania's compliance with international standards and strong maritime security regime.

Overall, this chapter has laid the intellectual groundwork for the subsequent discussion on Tanzania's legal framework for maritime security. The insight drawn from conceptual and theoretical perspectives, alongside the literature review, will guide the assessment of Tanzania's domestic and international legal approaches to maritime security in following chapters.

**CHAPTER THREE**  
**INTERNATIONAL LEGAL FRAMEWORK, BEST PRACTICES**  
**AND LESSON FROM OTHER JURISDICTIONS**

**3.0 Introduction**

Marine security is a global concern that requires a harmonized legal approach to effectively combat threats such as piracy, illegal fishing, smuggling as well as other emerging threats that take place in the maritime areas and port facilities due to the advancement of technology and operational reasons. This chapter examines the international legal framework governing maritime security, highlighting key conventions, protocols, agreements and regulatory mechanisms that shape enforcement efforts worldwide. Specifically, it analyzes the United Nations Convention on the Law of the Sea (UNCLOS), the International Maritime Organization regulations, and regional agreements relevant to Tanzania's maritime domain.

Beyond legal framework, the chapter explores best practices adopted in other jurisdictions, offering comparative insight that may reform Tanzania's policy and enforcement strategies. Case studies from nations considered with well-established maritime security mechanisms will be reviewed to identify successful approaches and potential lessons applicable to Tanzania's context. By understanding these international standards and experiences Tanzania can strengthen its maritime governance and enhance its security posture.

### **3.1 International Legal Framework on Maritime and Port Security**

This part presents the international legal framework governing maritime security. The instruments discussed in this part are instruments to which Tanzania has signed and that bound under international law to conform by way of ratification through its domestic legal framework. These international and regional instruments pose a standard benchmark to which Tanzania has to scale up its protection towards maritime security. The international legal instruments that cater for maritime security are as follows:

#### **3.1.1 The United Nations Convention on the Law of the Sea (UNCLOS), 1982**

The United Nations Convention on the Law of the Sea often considered the “Constitution of the Oceans,” UNCLOS provides the legal framework for all maritime activities, including security measures within territorial waters, exclusive economic zones (EEZs), and high seas. UNCLOS obligates states to collaborate on maritime security, prevent piracy, and ensure safe navigation.

Under this framework, piracy consists of any criminal acts of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship or aircraft that is directed on the high seas against another ship, aircraft, or against persons or property on board such ship or aircraft.<sup>150</sup> Although member states thereto are called to cooperate, the enforcement of such norms is hampered in practice. The predicament is associated with treaty exceptionalism and the soft law

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<sup>150</sup> See Article 101 of the United Nations Convention on the Law of the Sea, 1982.

effect of the same. Normally treaties are not binding except for parties thereto and treaty execution is fairly limited in dualist countries.<sup>151</sup>

Furthermore, the UNCLOS was shelved for twenty (20) years until its requirements on port security were gradually implemented into local legislation through the Merchant Shipping Act of 2003. Furthermore, Tanzania has ratified the SUA Convention of 1988 but not its Protocols of 1988 and 2005, or the SUA Convention of 2005.<sup>152</sup>

Except for the expansion proposed by the new protocols, Tanzania may exercise jurisdiction over pirates apprehended on the high seas or in international waters. Tanzania is additionally empowered with authority by virtue of ratifying the 1958 Geneva Convention on the High Seas, to utilize enforcement powers over private ships not belonging to the capturing state (executive jurisdiction).<sup>153</sup>

Piracy is defined under Article 101 as any illegal act of violence or detention, or any act of depredation, committed for private gain by the crew or passengers of a private ship or aircraft and directed on the high seas or in a place outside the jurisdiction of any State against another ship or aircraft, or against persons or property on board such ship or aircraft.<sup>154</sup> Participation in such activities, instigating or willfully assisting such acts, constitutes an international crime ‘piracy’.<sup>155</sup>

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<sup>151</sup> See Article 101 of the United Nations Convention on the Law of the Sea, 1982.

<sup>152</sup> See [http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D26857/status-x5.11.09.xls](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D26857/status-x5.11.09.xls) Last accessed September 5, 2024

<sup>153</sup> See Article 19 of the Geneva Convention on the High Seas of 1958.

<sup>154</sup> See the *supra* note 76

<sup>155</sup> *Ibid.*



This definition of piracy has limitations, since it applies only to attacks committed on the high seas (as well as exclusive economic zones or to another place outside the jurisdiction of any State) for private purposes, the involvement of two ships is necessary. In such a way, the attacks in the territorial sea or the internal waters of a coastal state, committed by stowaways or crew members, ship hijacking, attacks of criminals onboard and so on for political ends and national interests are excluded from the UNCLOS definition of piracy. This is considered a gap under international law since 80 per cent of all attacks recorded are committed by pirates within the jurisdiction and the territorial sovereignty of a coastal state.<sup>156</sup>

Furthermore, the ‘private ends’ requirement in the UNCLOS definition of piracy has a historical basis whereas, in the past, some states employed pirates and used them against their enemy states. Such privateers were permitted by their governments to pillage foreign ships to supplement their resources. However, these geographical and conceptual limitations of piracy definition contained in the UNCLOS do not disturb the efficiency and sufficiency of the rules of international law applicable to combat against piracy, since UNCLOS is complemented through other legal instruments.

### **3.1.2 The 1988 Convention for The Suppression of Unlawful Acts Against the Safety of Maritime Navigation**

Another international instrument to discuss in this part is the SUA Convention (1988) and its protocols (2005) which were designed to prevent unlawful acts against ships

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<sup>156</sup> *Ibid.*

and offshore platforms. They address issues like hijacking, sabotage, and violent actions on board vessels. The protocols also cover the illegal transport of weapons and hazardous materials by sea, further strengthening maritime security.<sup>157</sup>

Concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews grew during the 1980s, with reports of crews being kidnapped, ships being hi-jacked, deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed.<sup>158</sup>

In November 1985, the subject was discussed by IMO's 14th Assembly, and a suggestion by the United States that IMO establish measures to prevent such unlawful conduct was supported.<sup>159</sup>

The Assembly adopted resolution A.584(14) measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew, then in 1986 the Maritime Safety Committee (MSC) issued a Circular (MSC/Circ.443) on Measures to prevent unlawful acts against passengers and crews on board ships.

In November 1986, the Governments of Austria, Egypt, and Italy proposed that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation "to provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives,

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<sup>157</sup> See Klein, N., (2011) *Maritime Security and the Law of the Sea*, Oxford University Press, at p. 63

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as whole.”<sup>160</sup>

Later, In March 1988, a meeting in Rome approved the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention). The primary goal of the 1988 SUA Convention is to guarantee that appropriate action is taken against individuals who conduct unlawful activities against ships. These include the use of force to seize ships, acts of violence against people on board ships, and the placement of equipment on board a ship that has the potential to harm or damage it. Notably, the 1988 SUA Convention, like the ICAO Conventions preceding it, made no attempt to define the term “terrorism”. However, in East Africa, it appears that only Tanzania and Kenya have signed the 1988 SUA Convention.

The Convention obliges Contracting Governments either to extradite or prosecute alleged offenders. Important amendments to the 1988 Convention and its related Protocol, were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005. The amendments were adopted in the form of Protocols to the SUA treaties (the 2005 Protocols). Among the unlawful acts covered by the SUA Convention in Article 3 are the seizure of ships by force; acts of

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<sup>160</sup> International Chamber of Commerce International Maritime Bureau: Piracy and Armed Robbery Against Ships. Report for the period 1 January-30 June 2022 [Internet]. 2022. Available from: <http://www.icc-ccs.org>. Accessed on September 12, 2024

violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.<sup>161</sup>

The 2005 Protocol to the SUA Convention adds a new provision which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally; when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from any act; uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN (biological, chemical, nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage amongst other things.<sup>162</sup>

Further, it provides for discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage; uses a ship in a manner that causes death or serious injury or damage; transports on board a ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage to intimidate a population, or compelling a Government or an international organization to do or to abstain from doing any act.<sup>163</sup>

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<sup>161</sup> See Richardson E. L., 'Power, Mobility and the Law of the Sea' (1979–1980) 58 *Foreign Affairs* pp. 902, 907 at p. 904

<sup>162</sup> See Article 3bis of the Protocol to the SUA Convention, 2005

<sup>163</sup> *Op cit* note 88.

It further provides for transporting on board a ship any BCN weapon, knowing it to be a BCN weapon; any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement and transports on board a ship any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.<sup>164</sup>

The amendments to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf reflect those in the 2005 Protocol to the SUA Convention.

New article 2bis broadens the range of offences included in the Protocol. A person commits an offence if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or to abstain from doing any act, uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or discharges from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or

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<sup>164</sup> *Ibid.*

concentration, that it causes or is likely to cause death or serious injury or damage; or threatens, with or without a condition, as is provided for under national law, to commit an offence.

### **3.1.3 The 2005 Protocols to the SUA Convention**

The 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was approved in London on October 14, 2005. This Protocol is the most recent action taken by the maritime world to tackle global terrorism. The Protocol creates several new offences. At the same time, the 2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was approved to enhance the previously existing Protocol on Fixed Platforms located on the Continental Shelf.

While the 1988 SUA Convention, for the purpose of the Convention, only defined the term ship, its 2005 Protocol has brought in several new definitions. Primary amongst this is the definition of a ‘BCN weapon’ (biological, chemical and nuclear weapon). The term ‘toxic chemical’ has also been further defined. The scope of application set out in the Convention<sup>165</sup> and the exclusions from the scope of application-defined therein<sup>166</sup> remain the same as regards the 2005 Protocol as well.<sup>167</sup>

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<sup>165</sup> Article 4 of the 1988 SUA Convention.

<sup>166</sup> *Ibid.*

<sup>167</sup> Handeland I., ‘Navigational rights for warships in the northwest and northeast passages,’ 2(3) [2014] *Arctic Review on Law and Politics*.

An important amendment has been brought in by way of Article 2 of the 2005 Protocol to the 1988 SUA Convention. It makes clear that the measures contemplated in the SUA Convention and its Protocol supplement other obligations under international law.<sup>168</sup> This Article provides that the Convention does not affect other rights and obligations of States and individuals under international law, in particular the purposes and principles of the UN Charter, International Human Rights Law, International Refugee Law and International Humanitarian Law.<sup>169</sup>

#### **3.1.4 International Maritime Organization (IMO) Guidelines on Maritime Cyber Risk Management**

Given the increasing threat of cyber-attacks on maritime infrastructure, IMO has developed guidelines to address cybersecurity in the maritime industry. These guidelines encourage ship operators and port authorities to adopt cybersecurity management practices to protect maritime assets from cyber threats, an increasingly critical aspect of port security. These Guidelines provide high-level recommendations for maritime cyber risk management. According to the Guidelines, maritime cyber risk refers to a measure of the extent to which a technology asset is threatened by a potential circumstance or event, which may result in shipping-related operational, safety or security failures as a consequence of information or systems being corrupted, lost or compromised.

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<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

Stakeholders should take the necessary steps to safeguard shipping from current and emerging threats and vulnerabilities related to digitization, integration and automation of processes and systems in shipping. For details and guidance related to the development and implementation of specific risk management processes, users of these Guidelines should refer to specific Member Governments' and Flag Administrations' requirements, as well as relevant international and industry standards and best practices. Risk management is fundamental to safe and secure shipping operations.

Risk management has traditionally been focused on operations in the physical domain, but greater reliance on digitization, integration, automation and network-based systems has created an increasing need for cyber risk management in the shipping industry. Predicated on the goal of supporting safe and secure shipping, which is operationally resilient to cyber risks, these Guidelines provide recommendations that can be incorporated into existing risk management processes. In this regard, the Guidelines are complementary to the safety and security management practices established by this Organization.

Furthermore, these Guidelines present the functional elements that support effective cyber risk management. These functional elements should be incorporated appropriately into a risk management framework. The first element is 'Identify' which means the ability to define personnel roles and responsibilities for cyber risk management and identify the systems, assets, data and capabilities that, when disrupted, pose risks to ship operations. Second element is 'Protect' which requires



implementation of risk control processes and measures, and contingency planning to protect against a cyber-event and ensure continuity of shipping operations. Third is to ‘Detect’ in this it calls for an initiative develop and implement activities necessary to detect a cyber-event in a timely manner.<sup>170</sup> Fourth being to ‘Respond’ whereas in this amounts to developing and implementing activities and plans that provide resilience and restore systems necessary for shipping operations or services impaired due to a cyber-event. And Lastly to ‘Recover’ which means ability to identify measures to back-up and restore cyber systems necessary for shipping operations impacted by a cyber-event.<sup>171</sup>

### **3.1.5 IMO’s International Convention for the Control and Management of Ships’ Ballast Water and Sediments**

Though primarily an environmental measure, this convention indirectly contributes to port security by ensuring that ships manage ballast water safely, reducing the spread of invasive species and other hazards that could impact port security and operations. Invasive aquatic species present a major threat to the marine ecosystems, and shipping has been identified as a major pathway for introducing species to new environments. The problem increased as trade and traffic volume expanded over the last few decades, and in particular with the introduction of steel hulls, allowing vessels to use water instead of solid materials as ballast. The effects of the introduction of new species have in many areas of the world been devastating. Quantitative data show the rate of bio-invasions is continuing to increase at an

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<sup>170</sup> *Op cit* note 95.

<sup>171</sup> See International Maritime Organization (IMO) Guidelines on Maritime Cyber Risk Management under Article 3(5).

alarming rate. As the volumes of seaborne trade continue overall to increase, the problem may not yet have reached its peak. However, the Ballast Water Management Convention, adopted in 2004, aims to prevent the spread of harmful aquatic organisms from one region to another, by establishing standards and procedures for the management and control of ships' ballast water and sediments<sup>172</sup>

Under the Convention, all ships in international traffic are required to manage their ballast water and sediments to a certain standard, according to a ship-specific ballast water management plan. All ships will also have to carry a ballast water record book and an international ballast water management certificate. The ballast water management standards will be phased in over a period of time. As an intermediate solution, ships should exchange ballast water mid-ocean.<sup>173</sup>

However, eventually, most ships will need to install an on-board ballast water treatment system whereas, parties to the Convention are given the option to take additional measures which are subject to criteria set out in the Convention and to IMO guidelines. Under Article 2 General Obligations Parties undertake to give full and complete effect to the provisions of the Convention and the Annex to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.<sup>174</sup>

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<sup>172</sup> International Maritime Organization (IMO) Guidelines on Maritime Cyber Risk Management under Article 3

<sup>173</sup> See O'Connell D.P., (1984). *The International Law of the Sea*, Vols. 2, Clarendon Press, Oxford at p. 809

<sup>174</sup> *Op cit* note 98

Parties are given the right to take, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, consistent with international law. Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

### **3.1.6 Best Practices from the International Maritime Bureau (IMB) and Regional Agreements**

To govern maritime piracy through state cooperation, three agreements have been set up in different regions of the world. The members to these regional agreements agree to arrest, investigate, and prosecute pirates on the high seas, and to suppress armed robbery in their respective territorial waters.<sup>175</sup> In Asia, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was established in 2006. 14 regional states as well as six extra-regional states are currently contracting parties. In East Africa, the Djibouti Code of Conduct (DCoC) was agreed on in 2009. To date, 20 states from the Indian Ocean region have signed this agreement on the repression of piracy and armed robbery in the western Indian Ocean and the Gulf of Aden. In 2017, the DCoC's piracy-only focus was expanded to include maritime crimes more generally when the so-called Jeddah Amendment was adopted by a subset of DCoC member states. Finally, the Yaoundé

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<sup>175</sup> Menzel A., Regional Maritime Security Governance and the Challenges of State Cooperation on Piracy, CIMSEC available at <https://cimsec.org/regional-maritime-security-governance-and-the-challenges-of-state-cooperation-on-piracy/> Accessed on November 7, 2024

Code of Conduct (YCoC) to combat illicit maritime activities in West and Central Africa was signed in 2013 by 25 regional states.<sup>176</sup>

The International Maritime Bureau (IMB) provides practical guidelines for preventing piracy, armed robbery, and other security incidents. Additionally, these regional agreements encourage cooperative measures in combating piracy and fostering regional security cooperation.

As these agreements were successively established, policymakers were able to utilize insights from already developed setups elsewhere, a learning process that was actively sponsored by the International Maritime Organization. As a result, the agreements' institutional structures are strikingly similar. This is most obvious in the agreements' information-sharing structures. All agreements have Information Sharing Centers (ISCs) which collect data on maritime crimes and provide infrastructure for information exchange. The regional agreements also have a system of national focal points designated by each member state, which manage piracy and armed robbery incidents within the respective state's territorial waters, report incidents to the ISCs, and coordinate surveillance activities with neighboring states.<sup>177</sup>

### **3.1.7 World Customs Organization (WCO) SAFE Framework of Standards**

This framework focuses on securing and facilitating global trade by standardizing customs practices. It promotes security in the international supply chain, which

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<sup>176</sup> Duffield, M., (2001). *'Global Governance and New Wars: The Merging of Development and Security'* London: Zed, at p. 78.

<sup>177</sup> *Op cit* note 101.

includes container security, advance cargo information, and cooperation between customs administrations and the maritime industry. The SAFE Framework has emerged as the global Customs community's concerted response to threats to supply chain security, equally supporting facilitation of legitimate and secure businesses. It prescribes baseline standards that have been tested and are working well around the globe. This unique international instrument endeavors to usher in a safer world trade regime and also heralds a new approach to working methods and partnership for both Customs and business towards a common goal based on trust.<sup>178</sup>

The Framework has been regularly updated to effectively address new and emerging developments in international supply chains. Notable additions were provisions on AEO Programme, Coordinated Border Management and Trade Continuity and Resumption, Pillar 3 (Customs-to-Other Government and Inter-Government Agencies), and Pre-loading Advance Cargo Information (ACI) for air cargo.<sup>179</sup>

### **3.1.8 Code of Conduct Concerning the Repression of Piracy and Armed**

#### **Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct)**

The Djibouti Code of Conduct emphasizes cooperative action in the fight against piracy and armed robbery at sea, particularly in the East African and Indian Ocean

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<sup>178</sup> WCO, 'World Custom Organization tools to Secure and facilitate global trade' available at [https://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe\\_package.aspx](https://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx) Accessed on November 7, 2024.

<sup>179</sup> International Chamber of Commerce International Maritime Bureau: Piracy and Armed Robbery Against Ships, Report for the period 1 January-30 June 2022 [Internet]. 2022. Available from: <http://www.icc-ccs.org>. Accessed on October 8, 2024

regions. It promotes information sharing, capacity building, and joint enforcement measures among member states. These international instruments and best practices provide a comprehensive framework that supports Tanzania and other nations in building resilient and secure maritime and port infrastructure, ultimately safeguarding global maritime trade.<sup>180</sup>

The Djibouti Code of Conduct was adopted on 29 January 2009 at sub-regional meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States that was held in Djibouti from 26 to 29 January 2009. During the meeting, four resolutions were adopted whereas Resolution 1 concerns the adoption of the Code of Conduct and resolutions 2, 3, and 4 deal with technical cooperation and assistance, enhancing training in the region and expression of appreciation, respectively. So far, the Code of Conduct has been signed by 20 of the 21 States that are eligible to sign it including Tanzania.<sup>181</sup>

The Code defines piracy in the same terms as UNCLOS. Article 101 provides that ‘armed robbery against ships’ in very similar terms to those in article 1(2)(a) of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia 2005 (ReCAAP).<sup>182</sup> In its article 4(2), the Code defines a pirate ship as ‘a ship intended by the person in dominant control to be used for the purpose of

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<sup>180</sup> *Ibid.*

<sup>181</sup> See *Op cit* note 104.

<sup>182</sup> Article 1 of the Code of Conduct concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct), 2009

committing piracy, if the ship has been used to commit any such act, so long as it remains under the control of those persons'. Similar to the definition stipulated under article 103 of UNCLOS.<sup>183</sup>

The signatories to the Code have agreed, inter alia, to cooperate, in a manner consistent with international law in areas of investigation, arrest and prosecution of persons reasonably suspected of having committed acts of piracy of armed robbery against ships; the interdiction and seizure of pirate ship and of property on board; rescue of ships, person and property subject to piracy and armed robbery and the facilitation of proper care, treatment and repatriation of seafarers, fishermen, other shipboard personnel and passengers; the conduct of shared operations, both among signatory States and navies from countries outside the region.<sup>184</sup> The code of Conduct takes into account and promotes the implementation of those aspects of United Nations Security Council resolution 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008).<sup>185</sup>

The Code also provides for the sharing of related information through a number of centers and national focal points, the importance of which is stressed further below.

Moreover, the signatories of the Code of conduct also undertook to review their

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<sup>183</sup> *Supra* note 106

<sup>184</sup> UNCTAD, (2014). '*Maritime Piracy*, Part II, An Overview of the International Legal Framework and Multilateral Cooperation to Combat Piracy', Report of the United Nations Conference on Trade and Development, New York and Geneva at p. 137

<sup>185</sup> For instance, resolution 1851 (2008) encourages ship-rider agreements. The Code of Conduct in its article 7 contains a corresponding provision on embarked officers whereby, subject to authorization, law enforcement or other officials may embark patrol ships of the "host participant" and assist, as well as conduct operations, if expressly requested and in the manner requested by the host participant. Resolutions adopted by the Security Council can be accessed at <http://www.un.org/en/sc/documents/resolutions/index.shtml> Accessed on November 6, 2024

national legislation criminalizes piracy and armed robbery against ships, and make adequate provisions for the exercise of jurisdiction, conduct of investigations and prosecutions of alleged offenders.<sup>186</sup>

The Djibouti Code of Conduct continues to deliver results in all its areas namely information sharing, training, national legislation and capacity-building. Three information-sharing centres have established in Sana'a, Yemen, Mombasa-Kenya, and Dar es Salaam-United Republic of Tanzania to manage a network of national focal points throughout the region, including in Puntland and Somaliland. The network assist international naval forces in identifying pirate mother vessels by providing information on the activity and movements of pirates.<sup>187</sup>

In addition, by virtue of being one of the founding signatories to the Djibouti Code of Conduct, Tanzania recognized the extent of the problem of piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden and declared its intention to cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships. Thus, it offered to fully cooperate in the arrest, investigation, and prosecution of persons who have committed piracy or are reasonably suspected of having committed piracy. Despite the willingness, the extent of achievement remains to be measured as available resources at disposal are known

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<sup>186</sup> IMO (2009). *Subregional 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*. Note by the Secretary-General. C 102/14, at p. 3.

<sup>187</sup> United Nations (2013). Report of the Secretary-General on the situation with respect to piracy and armed robbery at sea off the coast of Somalia. S/2013/623, paragraph 31. See further <http://www.imo.org/OurWork/Security/PIU/Pages/Project-Implementation-Unit.aspx>. Accessed on November 6, 2024.



to be scarce in the country. The main investigation machinery-the Police Force- still retains its colonial model and its mandate is not incorporated with human rights ideals.<sup>188</sup>

Although there are progressive laws in place to criminalize piracy and armed robbery against ships,<sup>189</sup> the enabling trend is not adequate and does not, in several aspects, coincide with the standard of international law.<sup>190</sup>

The condition of prisons and detention centers, for example, are reported to be harsh and inmates complained of inadequate food and medical services. Attributable to the unwarranted delays of prosecutions the overcrowding amounts up to 193 percent in Tanzania Mainland.<sup>191</sup> With such shocking statistics it is doubtful whether the means employed by Tanzania to arrest and prosecute pirates as pursuant to the Code of Conduct would be consistent with international law.

### **3.1.9 International Convention for the Safety of Life at Sea (SOLAS), 1974**

The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in

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<sup>188</sup> Commonwealth Human Rights Initiative, *'The Police, the People, the Politics: Police Accountability in Tanzania'*, (2006), available at:

[http://www.humanrightsinitiative.org/publications/police/tanzania\\_country\\_report\\_2006.pdf](http://www.humanrightsinitiative.org/publications/police/tanzania_country_report_2006.pdf).

Accessed on October 8, 2024

<sup>189</sup> The Merchant Shipping Act (2003).

<sup>190</sup> The Djibouti Code of Conduct requires the means used to suppress piracy and armed robbery against

Ships to be consistent with international law.

<sup>191</sup> See The 2009 Report of Amnesty International: State of the World's Human Rights; Tanzania available at <http://thereport.amnesty.org/en/regions/africa/tanzania> Accessed on October 8, 2024.

1929, the third in 1948, and the fourth in 1960. The 1974 version includes the tacit acceptance procedure which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties<sup>192</sup>.

The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done. Control provisions also allow Contracting Governments to inspect ships of other Contracting States if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of the Convention - this procedure is known as port State control.

In a nutshell, the Convention addresses navigation safety among other elements, as key to maritime and port security. Chapter V of the Convention identifies certain navigation safety services which should be provided by Contracting Governments and sets forth provisions of an operational nature applicable in general to all ships on all voyages. This is in contrast to the Convention as a whole, which only applies to certain classes of ship engaged on international voyages. The subjects covered include the maintenance of meteorological services for ships; the ice patrol service; routing of ships; and the maintenance of search and rescue services.

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<sup>192</sup> *ibid*

This Chapter also includes a general obligation for masters to proceed to the assistance of those in distress and for Contracting Governments to ensure that all ships shall be sufficiently and efficiently manned from a safety point of view. The chapter further makes mandatory the carriage of voyage data recorders (VDRs) and automatic ship identification systems (AIS).

#### **3.1.10 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention) and its 2005 Protocol**

The SUA Convention provides a basis for States to establish jurisdiction over acts of terrorism at sea, including, among others, the seizure of a ship by force or intimidation, and damage to ships from acts of violence against persons on board that likely endanger the safe navigation of such ships.

#### **3.1.11 The International Ship and Port Facility Security (ISPS) Code**

Adopted under the International Convention for the Safety of Life at Sea (SOLAS), the ISPS Code is a comprehensive framework for maritime and port security. It sets minimum security requirements for ships, ports, and government authorities to detect and respond to potential security threats. It also mandates security assessments, planning, and risk management to prevent security incidents.

The Code provides for ships and port facilities to have in place security plans approved by the flag State or national Administration and applied at varying levels of security threat risk, which is set by the national authorities for the ports and by the flag States for ships. Practical measures that ships can apply toward off piracy threats

and armed robbers are outlined in guidance known as “Best Management Practices”, circulated by IMO. These are especially relevant in the light of recent reports on the resurgence of piracy in the Red Sea, with actors taking advantage of the current volatile security situation.

The ISPS Code states that it is the sole responsibility of the Company Security Officer (CSO) and Company to approve the Ship Security Officer (SSO). This process must be approved by the administration of the flag state of the ship or verified security organization with approval of the Ship Security Plan or Vessel Security Plan (VSP).<sup>193</sup> The ISPS Code ensures that before the VSP is set in place that Vessel Security Assessments must be taken (VSA).<sup>194</sup> The Vessel Security Plan must address every requirement in the Vessel Security Assessment.<sup>195</sup> The VSP must establish a number of important roles and steps to provide safety for the marine vessel.

Therefore, the VSP must include procedures to allow necessary communication that shall be enforced at all times.<sup>196</sup> The VSP has to include procedures that assessed for the performance of daily security protocols. It also must include the assessment of security surveillance equipment systems to detect malfunctioning parts.<sup>197</sup> ISPS code requires that the Vessel Security Plan must have strict procedure and practices for the

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<sup>193</sup> ‘FAQ on ISPS Code and maritime security’. Available at [www.imo.org](http://www.imo.org) Accessed on November 6, 2024

<sup>194</sup> *Ibid.*

<sup>195</sup> Tanaka Y. (2012). *The International Law of the Sea*, 1st Ed, Cambridge University Press, at p. 114

<sup>196</sup> *Ibid.*

<sup>197</sup> Tanaka Y. (2012). *The International Law of the Sea*, 1st Ed, Cambridge University Press, at p. 114

vital protection of Sensitive Security Information (SSI) that is either in the form of electronic or paper. Observation of procedures has to include timed submissions, and assessments of security reports pertaining to heightened security concerns.<sup>198</sup> ISPS code requests that the VSP maintain an updated inventory of dangerous or hazardous goods and substances that are carried aboard the ship.<sup>199</sup> The location of the goods or substance must be stated in the inventory report. The ISPS Code is implemented through chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS).

Regulation XI-2/3 ensures that administrations establish security levels and guarantee the provisions of strict security level data to ships that fly their flag.<sup>200</sup> Ships that are prior to docking in port must immediately comply with all requirements for security levels that are determined by that contracting government.<sup>201</sup> This also pertains to the security level that is established by the Administration for that ship.

Regulation XI-2/6 makes sure that all ships are equipped and fitted with a Ship Security Alert System.<sup>202</sup> The alarm system works from the ship to administration ashore with transmitted signals that are communicated via satellite.<sup>203</sup> The advanced

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<sup>198</sup> *Supra* note 117.

<sup>199</sup> Bueger, C., and Edmunds, T., (2017). 'Beyond Seablindness: A New Agenda for Maritime Security Studies', International Affairs, at p. 96

<sup>200</sup> See Hill C., (1998). *Maritime Law*, 5<sup>th</sup> Ed., London: Lloyds of London Publishers (LLP) Ltd at p. 221

<sup>201</sup> *Ibid*

<sup>202</sup> Herbert-Burns, Rupert; Bateman, Sam; Lehr, Peter (24 September 2008). Lloyd's MIU Handbook of Maritime Security. CRC Press.

<sup>203</sup> Herbert-Burns, Rupert; Bateman, Sam; Lehr, Peter (24 September 2008). Lloyd's MIU Handbook of Maritime Security. CRC Press.

security alarm system shall send a signal indicating the ship name, location, and the security threat that the ship is undergoing. The ships alarm system may be activated from the navigation bridge by the captain without alarming the crew on-board.<sup>204</sup>

The Regulation XI-2/8 establishes the main role of the Sea Master, which allows him to maintain order and conduct decisions for the sake of the personnel and security of the ship. Regulations XI-2/8 states that the Sea Master must not be challenged or withheld from completing his duties.<sup>205</sup>

The Code is a two-part document describing minimum requirements for security of ships and ports. Part A provides mandatory requirements. Part B provides guidance for implementation. Some contracting governments have elected to also treat Part B as mandatory.

The ISPS Code applies to ships on international voyages (including passenger ships, cargo ships of 500 GT<sup>206</sup> and upwards, and mobile offshore drilling units) and the port facilities serving such ships. The Code does not apply to warships, naval auxiliaries, or other ships owned or operated by a contracting government and used only on government non-commercial service.

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<sup>204</sup> *Supra* note 124 at p. 225.

<sup>205</sup> *Op cit* note 124.

<sup>206</sup> See 'The ISPS Code for Ships-An Essential Quick Guide'. [www.marineinsight.com](http://www.marineinsight.com) Accessed on November 6, 2024

### **3.2 Best Practices in Maritime Security from other Jurisdictions**

Recently, global shipping carrier of 80 per cent of world trade has faced numerous threats that challenge the long-established right to freedom of navigation for all merchant ships. Piracy, hijackings, armed robbery, regional conflict and the COVID 19 pandemic have put seafarers' lives and well-being at risk – and, by extension, threatened to disrupt world trade and supply chains. More recently, a new danger to international shipping has emerged: un-crewed aerial devices aimed at ships that are simply going about their lawful business.

#### **3.2.1 Example from the Republic of Nigeria**

Nigeria, located on latitude 9.0820° N and longitude 8.6753° E, is a country in West Africa along the Atlantic Ocean's Gulf of Guinea. Located at the extreme inner corner of the Gulf of Guinea on the west coast of Africa, the country occupies an area of 923,768 sq. km (356,669 sq mi), extending 1,127 km (700 mi) E-W and 1,046 km (650 mi) N-S (Folami, 2017). Its land borders are with Benin to the west, Cameroon and Chad to the east, and Niger to the north. With a population of about 216 million people, Nigeria is the most populous country in Africa, and the 6th in the world<sup>207</sup>. It has a maritime area of 46,500 km<sup>2</sup> and an exclusive economic zone of 210,900 km<sup>2</sup>. Nigeria is advantageously placed to benefit maximally from maritime trade along the coast of West Africa and within the Gulf of Guinea.

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<sup>207</sup> Olatunji, S. & Adejoro, L.). Nigeria's population hits 216 million. (2022, November 16) Punch Newspaper. Retrieved from <https://punchng.com/nigerias-population-hits-216-million> Accessed on October 8, 2024.

Nigeria's economy over the years has been heavily depending on crude oil export for economic development. With this, crude oil exports account for Nigeria's major source of foreign exchange earnings representing about 90% of export products. IMF (2016) reported that while some countries have ample reserves, hydrocarbon resources in a number of oil-rich countries could be depleted in the foreseeable future. The challenge, therefore, is to grow truly self-sufficient non-oil sectors that will provide sustainable sources of growth and employment even when oil resources are depleted. The maritime sector can be considered as one economically auspicious sector that has over the years remained largely untapped, thereby depriving the nation invaluable economic potentials and benefits. Nigeria, being a littoral nation, possesses great potentials to generate huge revenues from both local and international transportation of persons and goods on water<sup>208</sup>.

The maritime sector of Nigeria's economy holds great potentials for the growth of the country's economic development.<sup>209</sup> The sector boasts of numerous resources, which cover both aquatic and marine spaces, including oceans, seas, coasts, lakes, rivers and underground waters. It is on this basis that the maritime sector is being repositioned by the Federal Government of Nigeria to take a lead as one of the viable alternate sources of revenue for growing the economy.<sup>210</sup>

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<sup>208</sup> Ibid

<sup>209</sup> Lloyd, C., Onyeabor, E., Nwafor, N., Alozie, O.J., Nwafor, M., Mahakweabba, U. & Adibe, E. (2020). Maritime transportation and the Nigerian economy: matters arising. *Commonwealth*

<sup>210</sup> Salau, S. & Falaju, J. (2018, August 29). Maritime sector critical to economic diversification agenda, Buhari reiterates. *The Guardian*. Retrieved from <https://guardian.ng/news/maritime-sector-critical-to-economic-diversification-agenda-buhari-reiterates/> Accessed on October 3, 2024



Considering the enormous budgetary and legal provisions made over the years to secure and sustain the oil sector, for potentials of the Nigerian maritime resources to be fully harnessed, there is also the need for the maritime sector to be secured and sustained. And institutional framework, as well as the use of important enablers for sustainability like ecosystem-based management, Marine Spatial Planning, and innovative financing mechanisms. It is in line with said point that the Federal Ministry of Transport and the Nigeria Maritime Administration and Safety Agency (NIMASA) have been given the responsibility to coordinate and administer the maritime sector of the economy to ensure maximal benefits.<sup>211</sup>

Security has been in the list of factors influencing the performance of the Nigerian maritime sector over the years. Security in any objective sense, measures the absence of threats to acquired values and in a subjective sense the absence of fear that such values will be attacked.<sup>212</sup> The definition of the term maritime security varies and while no internationally agreed definition exists, the term has often been used to describe both existing, and new regional and international challenges to the maritime domain. Maritime security is an umbrella term informed to classify issues in the maritime domain that are often related to national security, marine environment, economic development, and human security.

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<sup>211</sup> Anozie, C., Umahi, T., Onuoha, G., Nwafor, N. & Alozie, O.J. Ocean governance, integrated maritime security and its impact in the Gulf of Guinea: a lesson for Nigeria's maritime sector and economy, (2019) *Africa Review*.

<sup>212</sup> Limo, I. Impacts of maritime insecurity on peace and stability in the Indian Ocean region. *Unpublished Masters Thesis*, (2012). University of Nairobi (Institute of Diplomacy and International Studies (IDIS)).

Nigerian Navy (NN) has remained at the forefront of efforts to build synergy necessary for strengthening maritime security and law enforcement within Nigeria and the GoG, through bilateral and multilateral efforts. Subsequently, there has been the promulgation of the Harmonized Standard Operating Procedure (HSOP), which seeks to resolve the lack of common understanding and limited synergy among the Maritime Law Enforcement Agencies (MLEAs) while providing guidelines for collaboration against sea crimes. Furthermore, through the signing of a Memorandum of Understanding (MoU) between Chiefs of Naval Staff of Benin, Togo, Niger and Nigeria under the auspices of the Multi-National Maritime Coordination Center in Benin Republic for Zone E Member States, there has been continuous joint multilateral patrol by member countries through joint maritime and air patrol and active collection and dissemination of information. Further the increased presence of the Nigerian Navy at sea has led to a 50 per cent reduction of acts of piracy between 2018 and 2019.

These interventions have been faced with a number of challenges, some of which are documented. For instance, provisions of the Yaoundé Declaration are still merely declaratory – with deadlocks in obtaining necessary equipment and personnel, funding problems, and inoperability across communication systems. Many Member States are yet to implement the Code of Conduct in establishing National Maritime Security Strategies, National Maritime Security Committees and designating National Focal Points.<sup>213</sup>

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<sup>213</sup> Olufowobi, I. (2022). Towards maritime security in the Gulf of Guinea: Nigeria in perspective. *UNILAG Law Review*.

### 3.2.2 Best Practices in United Arab Emirates (UAE)

The United Arab Emirates (UAE) has long been a hub for maritime activities, with its strategic location and bustling ports making it a key player in global trade. As the maritime industry continues to evolve, the demand for reliable and efficient marine services has become paramount.

One of the key aspects of marine services in the UAE is the emphasis on defense and security. With the geopolitical importance of the region and the ever-present threat of maritime incidents, a specialized branch of marine services is dedicated to defense and security. The Defense Security Service ensures the protection of the UAE's maritime interests, both commercial and strategic through the following;

Port Security, ports are crucial points of vulnerability, and safeguarding them is a top priority. The Defense Security Service collaborates with port authorities to implement stringent security measures. This includes thorough checks of incoming and outgoing vessels, surveillance of port facilities, and the deployment of security personnel to deter any illicit activities. Surveillance and Monitoring maritime borders, surveillance and monitoring are paramount. The defense security service employs state-of-the-art technology, including radar systems and satellite monitoring, to keep a constant watch over the waters surrounding the UAE. This proactive approach enables quick response times to any potential security threats<sup>214</sup>.

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<sup>214</sup> Salau, S. & Falaju, J. (2018, August 29). Maritime sector critical to economic diversification agenda, Buhari reiterates. *The Guardian*. Retrieved from <https://guardian.ng/news/maritime-sector-critical-to-economic-diversification-agenda-buhari-reiterates/> Accessed on October 3, 2024

Anti-Piracy Measures, piracy remains a persistent threat in certain maritime regions. The Defense Security Service employs anti-piracy measures to safeguard shipping lanes and protects vessels from potential hijackings. This includes the deployment of naval forces, the establishment of secure transit corridors, and coordination with international maritime security efforts. This is done through collaborative efforts with public and private partnerships in Maritime Security the success of marine services in the UAE, particularly in defense and security, is greatly attributed to collaborative efforts between the government and private sector entities. Public-private partnerships have proven to be effective in leveraging the expertise and resources of both sectors to enhance maritime security<sup>215</sup>.

### **3.2.3 Example of best Practices by USA**

The United States has one of the largest and most complex maritime systems in the world, with over 360 commercial ports handling more than 95% of its international trade by volume. This reliance on maritime transport makes securing ports essential not only for economic stability but also for national security. A successful attack on a major port could disrupt supply chains, cause economic losses, and threaten public safety. Maritime and port security is a critical component of the United States' national security infrastructure. Given the vast expanse of the U.S. coastline and its reliance on maritime trade, safeguarding ports and shipping lanes has become increasingly important in the wake of global terrorism, piracy, and other threats<sup>216</sup>.

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<sup>215</sup> Ibid

<sup>216</sup> Chidowu, D L., '*The Law of Maritime Safety: Tanzania Perspectives in the Light of the New Merchant Shipping Act, 2003*', LLM Dissertation project, at the International Maritime Law Institute, (mimeo), 2004 at p. 68.

The foundation of maritime and port security in the U.S. is established through various laws and regulations. The Maritime Transportation Security Act of 2002 (MTSA) was a direct response to the 9/11 attacks, mandating the development of security plans for ports and vessels. The act requires facilities to conduct vulnerability assessments and implement security measures to mitigate identified risks.<sup>217</sup>

The United States promotes and develops a cooperative mechanism for coordinating regional measures against maritime threats that span national boundaries and jurisdictions. By reducing the potential for regional conflict, maritime security is enhanced worldwide. The United States also works closely with other governments and international and regional organizations to enhance the maritime security capabilities of other key nations by Offering maritime and port security assistance, training, and consultation, coordinating and prioritizing maritime security assistance and liaison within regions, allocating economic assistance to developing nations for maritime security to enhance security and prosperity, promoting implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its amendments and other international agreements and expanding the International Port Security and Maritime Liaison Officer Programs, and the number of agency attaches<sup>218</sup>.

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<sup>217</sup> Tribeck A. Introduction to MTSA: The Maritime Transportation Security Act, U. S. Coast Guard, (2004) at p.20

<sup>218</sup> Ibid

### 3.2.4 Example of best Practice from Republic of China

China's maritime power can be segmented into six interconnected aspects: developing the blue economy, safeguarding maritime rights and interests, strengthening maritime administrative and law enforcement, enhancing maritime environmental protection and technology, participating in maritime governance, and building a strong naval power. This aspect encompasses military, economic, and technological dimensions in a typical concept of maritime power. As previously discussed, while China portrays naval development as 'strategic support', the navy has been heavily involved in China's maritime strategy. The aim of bolstering naval strength to protect overseas interests echoes concepts from maritime thinkers like Mahan and Booth, emphasizing maintaining order at sea and naval.<sup>219</sup>

As a growing economy, China has increasing needs for trade, export, and utilization of marine resources.<sup>220</sup> The expansion in maritime industries indicates a concerted effort to optimize sea-based activities to accrue maritime influence. As with any typical maritime power, the economic facets of China's maritime strength still include maritime trade, sea routes, ports, and access of resources. As Till suggests, Chinese investment in transportation infrastructure and maritime trade routes through

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<sup>219</sup> Chidowu, D L., '*The Law of Maritime Safety: Tanzania Perspectives in the Light of the New Merchant Shipping Act, 2003*', LLM Dissertation project, at the International Maritime Law Institute, (mimeo), 2004 at p. 68.

<sup>220</sup> Sakhuja, V., 'Maritime Power of People's Republic of China: The Economic Dimension', *Strategic Analysis* 24, no. 11 (2001): pp. 2019–33.

the BRI mirror historical strategies employed by European and American powers to control major sea.<sup>221</sup>

Similarly, China's pursuit of marine technology for advancing the blue economy follows historical trends. The aim is still to enhance capabilities in maritime space utilization and exploration. While other maritime powers focused on developing technology specifically for activities on the sea, China has chosen to emphasize technology in different maritime domains. This subtle distinction highlights the evolving nature of marine technology in the modern era<sup>222</sup>.

Additionally, China's strong civil-military integration challenges claims of its exceptional maritime power status. For example, China conducts maritime navigation technology research mainly for civilian cargoes and fisheries, but the technology can be shared with the navy deep sea scientific research also helps to develop undersea vessels such as submarines and unmanned underwater vehicles.<sup>223</sup> Another prominent example is China's activities in the Polar Regions, where the military has been heavily involved under the guise of scientific research. These interlinked technological, military, and economic dimensions align with patterns seen in the typical understanding of maritime power<sup>224</sup>.

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<sup>221</sup> Wang W., and Jiang F., 'Tuijin Haiyang lingyu junmin ronghe shendu fazhan [*Promote in-depth development of civil-military integration in the maritime field*]', *Zhongguo Guoqing Guoli [China's national conditions and national strengths]*, no. 10 (2018): pp. 26–28.

<sup>222</sup> Caizhi S et al, *Obstacles to the Development of China's Marine Economy: Total Factor Productivity from resource mismatch* (2024) p.10

<sup>223</sup> *Op cit* note 74

<sup>224</sup> *Ibid*

China's assertion of safeguarding maritime rights and interests, rather than merely expanding them, is also not unique. Maritime powers naturally assert rights, aiming to exercise their own privileges in specific sea territories and exclude others. The notion of asserting sovereign rights over a particular sea area, while a general claim, remains vague and lacks specificity. In fact, most maritime rights highlighted in official documents or proposed by Chinese scholars can be classified by Till's four attributes of the sea a resource, a medium of transportation, sovereignty and environment.<sup>225</sup>

China integrates the legal concept of rights with the political concept of interest, reflecting a 'complex connection in China's political-legal system'.<sup>226</sup> It's worth noting that these rights are not conferred under the international law of the sea, beyond the limited territorial seas. In other words, the term 'safeguarding maritime rights and interests' appears to be political rhetoric used by the Chinese government to advance its national interests.

### **3.2.5 Best practices from Germany**

The German economy relies heavily on its international sea trade and Germany is home to the world's biggest container shipping companies. On one hand, authorities and stakeholders have been eager to improve risk assessment and implement international agreements. On the other hand, the different interests of ship-owners,

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<sup>225</sup> Brady A, (2017). *'China's expanding Antarctic interests: implications for New Zealand' (Small states and the changing global order: New Zealand faces the future, University of Canterbury, Christchurch; Doshi R, Dale-Huang A, and Zhang G., (2021). 'Northern Expedition: China's arctic activities and ambition', The Brookings Institute at 221.*

<sup>226</sup> *Op cit* note 152.



seafarers and insurers, as well as a lack of agreement between the different ministries, are major challenges for German maritime security governance.

The German Armed Forces have the task to provide national security and defense against any threat from outside enemies. In accordance with a recent Supreme Court ruling concerning the Aviation Security Act, protection against imminent terrorist attacks may be considered as grave threats to security and the Armed Forces may act to prevent such threats.<sup>227</sup> In particular it is the task of the German Armed Forces to monitor all German Air and Water Space and to support other agencies in exercising sovereign rights. Rescue operations, evacuation operations and surveillance missions are also within the scope of tasks of the German Armed Forces'.<sup>228</sup>

### 3.3 Conclusion

Maritime security is critical component of national and regional stability, requiring robust legal framework and effective enforcement mechanisms. This chapter has revealed that Tanzania faces significant challenges in aligning its maritime security governance with international standards. The gaps in compliance with global treaties and best practice hinder its ability to effectively combat maritime threats such as modern piracy, organized crimes, illegal fishing and smuggling. A key observation from this chapter is the outdated nature of much of Tanzania's domestic legislation governing maritime security. These laws as will be discussed in the next chapter fail to address contemporary and emerging threats, leaving enforcement agencies reliant

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<sup>227</sup> Article 35 German Constitution

<sup>228</sup> *Ibid.*

on mechanisms that are often inadequate for modern maritime challenges. Consequently, this legal and institutional lag weakens the nation's ability to safeguard its maritime domain effectively.

Furthermore, comparative analysis with other jurisdictions such as Nigeria, the UAE, US, China and Germany illustrates the disparity in Tanzania's investment in maritime security infrastructure and technology. Countries with more comprehensive legal framework and well-resourced enforcement agencies demonstrate greater success in mitigating maritime threats. Tanzania relatively minimal level of investment, both in regulatory reforms and operational capabilities, limits its ability to adopt best practice observed in these nations.

To address these setbacks, this study recommends a strategic approach to maritime security reform. First, Tanzania must modernize its legal framework to ensure alignment with international conventions such as UNCLOS and best regulatory practices, Second, there is a pressing need to enhance institutional capacity by investing in maritime security infrastructure surveillance technology and personnel training. Third, regional and international cooperation should be strengthened to leverage collective security efforts and intelligence-sharing mechanisms. By adopting these measures, Tanzania can bridge existing gaps and build a resilient maritime security framework that effectively addresses current and future challenges.

Ultimately, enhancing Tanzania's maritime security requires commitment to legal, institutional, and operational reforms. With more robust and internationally

compliant approach, Tanzania can safeguard its maritime interests, strengthen regional security and contribute effectively to global maritime security agenda.

## **CHAPTER FOUR**

### **MARITIME SECURITY LEGAL FRAMEWORK IN TANZANIA**

#### **4.0 Introduction**

Maritime security governance relies not only on international legal instruments but also on the effectiveness of domestic legal frameworks that regulate national waters. In Tanzania, the ability to combat maritime threats such as piracy, illegal fishing and illicit trafficking depends largely on the adequacy of its national legislation and enforcement mechanisms. However, the evolving nature of maritime security threats raises concern about whether Tanzania's current legal framework is sufficient to address modern challenges. This chapter critically examines the domestic legal framework governing maritime security in Tanzania. It assesses key legislation, institutional mandates and enforcement mechanisms to determine their effectiveness in ensuring maritime safety and security. Furthermore, it identifies existing gaps and enforcement challenges as well as overlapping jurisdictional mandates that hinder effective implementation. Through this assessment, the chapter highlights areas requiring legal and institutional reform as well as emerging trends to better enhance Tanzania's capacity to safeguard its maritime interests.

#### **4.1 Domestic Legal Framework for Maritime and Port Security**

The following are the domestic legislations that are enacted and applicable in management and governance of the maritime affairs and port facility security in Tanzania. These legislations are as follows:

## **4.2 The Constitution of the United Republic of Tanzania, 1977**

The Constitution of the United Republic of Tanzania, 1977 contains several articles that indirectly or directly touch on matters related to national security, including maritime security. The following are the Articles dealing with national security maritime security inclusive

Article 1 declares Tanzania as a sovereign state. This sovereignty extends to its land, airspace, and territorial waters, which include the maritime zones such as territorial sea and Exclusive Economic Zone (EEZ).

Article 4 provides for the division of powers between the Union Government and the Revolutionary Government of Zanzibar. Maritime and port security falls under the Union matters, particularly for the regulation and security of territorial waters and ports.

Article 9 outlines the principles of state policy, including ensuring national security and economic development. Protecting ports and the maritime sector contributes to achieving these objectives.

Article 28 (1) mandates every citizen to safeguard and defend the sovereignty, independence, and territorial integrity of Tanzania, this provision includes protecting maritime zones and ports against external threats like piracy, smuggling, terrorism and illegal activities.

Article 28 (2) authorizes the government to take appropriate measures to protect the country, including defense of its territorial waters and maritime resources.

Article 33 declares the President as the Head of State, Head of Government, and Commander-in-Chief of the Armed Forces. The President has the ultimate authority over national defense and security, including maritime security.

Article 36(1) empowers the President to declare war or a state of emergency when the nation's security, including maritime zones, is threatened.

Article 63(3) (e) empowers the Parliament to deliberate and ratify international agreements and conventions. This includes treaties related to maritime security, such as the United Nations Convention on the Law of the Sea (UNCLOS) and the International Ship and Port Facility Security (ISPS) Code.

Article 27(1) Places a duty on every citizen to protect and conserve public property and resources. Maritime resources and infrastructure, such as ports, fall under public property that must be safeguarded.

Article 27(2) obligates the government to ensure proper utilization and protection of natural resources. This includes combating illegal fishing, pollution, and other threats to the marine environment.

### 4.3 The Penal Code

The Penal Code<sup>229</sup> is a major penal legislation in the United Republic of Tanzania. It provides and establishes acts or omission which amount to criminal liability well known as crimes and offences before the Tanzanian legal environment. Furthermore, it provides for the elements of these offences and punishments that suits to particular established offence. Regarding maritime security, the Penal Code provides for an offence of ‘Piracy’<sup>230</sup>. As noted earlier, the offence of Piracy (in relation to maritime security) is one of the oldest crimes in Tanzania since it was incorporated in the Penal Code upon its enactment in 1945. Under the Penal Code.<sup>231</sup>

The Offence was retained from the Penal Code of 1980 as amended by Act no. 14, 1980 whereas, the current Penal Code contains a similar provision with the substitution of the word Tanganyika with that of United Republic of Tanzania. The position of Piracy remained to exist until 2010 when it was repealed and replaced by Act No.11 of 2010.<sup>232</sup> Before 2010 Piracy was not covered under the Penal Code as the Penal Code restricted or limited itself with the territorial jurisdiction.<sup>233</sup>

The criminalization of the piracy pursuant to the Penal Code<sup>234</sup> was and still is, however, with considerable territorial limits.<sup>235</sup> This means that, the courts of

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<sup>229</sup> [Cap 16 R.E. 2022].

<sup>230</sup> See *ibid* under Section 66.

<sup>231</sup> *Ibid.*

<sup>232</sup> Written Laws (Miscellaneous Amendment (No. 2) Act no.11 of 2010.

<sup>233</sup> Section 66 of the Penal code should be read together with section 6 of the same Act with regard to application of the Penal Code particularly on the matter of territorial jurisdiction.

<sup>234</sup> *Supra* note 66.

<sup>235</sup> *Ibid.*

Tanzania shall have jurisdiction only if the offence of piracy is committed within the territorial waters of Tanzania. However, where the offence is committed outside Tanzania, Tanzanian courts will have jurisdiction if the offence directed in the ship is registered in Tanzania or where the perpetrator or victim is a national of Tanzania. In addition to that, according to section 7 of the Penal Code, the territorial limits of the courts may be extended where the offence was partly committed in Tanzania and partly committed in elsewhere beyond the jurisdiction of Tanzania.

Under this circumstance, the Law assumes as if the offence was wholly committed in Tanzania. However, Tanzania departed from this bogus position in 2010 upon the amendment of Sections 6 and 66 of the Penal Code.<sup>236</sup> By this amendment the scope of section 6 extended as to cover all the offences committed in the high seas regardless of the nationality of the offender or victim.

Despite the development envisaged from the most recent amendment of the Penal Code Section 66(3) provides that, *“where a pirate ship is not registered in Tanzania, no prosecution shall be commenced unless there is special arrangement between the arresting state or agency and Tanzania.”* This typically means if there is not arrangement as demonstrated in this clause is made, despite the crime of having been committed no prosecution shall be made against such crime. This is as equally as buying time and allowing room to temper with more offences of the similar nature under the shield of lack of arrangement being made.

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<sup>236</sup> Section 6 and 66 of the Penal Code amended by section. 18 and 19 of the Written Law (miscellaneous Amendments), (No.2) of 2010. Act no.1



Another threat to justice posed by the Penal Code is drawn from the provision of section 66(4) which provides that “*Prosecution shall not commence under this section without the consent of the Director of Public Prosecutions*”. This provision gives all the power to prosecute to the DPP in the effect that if he or she does not consent even without giving any reason stopping him to prosecute then the offence of piracy having been committed shall not be prosecuted. The term used in this clause is ‘shall’ which means it shall be strictly impossible to prosecute under any circumstances without the consent of the DPP.

It is to be noted at this juncture that matters of piracy are concerns that touches the heart of the national security and also in accordance to international law maritime security is regarded *jus cogens* which means it is a customary global concern. Posing the prosecuting mandate solely to the DPP may threaten the maritime security as well as putting at risk the national security at the expense of the DPP’s discretion.

#### **4.4 The Merchant Shipping Act, 2003**

The Merchant Shipping Act is a creature of the parliament of the United Republic of Tanzania that was enacted in 2003 for the purposes of domesticating UNCLOS as well as SUA Conventions. This Act came to repeal the Merchant Shipping Act of 1967 and Inland Waters Transport Ordinance for the purpose of providing registration and licensing of ships, to regulate proprietary interest in ships and terms of engagement of seafarers and matters ancillary thereto.

This Act was further intended to provide for the prevention of collision at sea, the safety of navigation and of life at sea, the regulation of load lines, the carriage of bulk and dangerous cargoes, unsafe ships, inland waterways, passenger ships, wreck salvage, the liability of ship owners and inquiries and investigations into maritime casualties. Furthermore, to provide for the pollution prevention and protection of marine environment and marine security to consolidate the law relating to shipping and connected matters.<sup>237</sup>

Section 4(1) of the Merchant Shipping Act mandates the Minister with the powers to undertake regulatory functions to maritime security. Section 4(3) further provides that “without prejudice to subsection (1), pending designation of any public authority to perform regulatory functions, all regulatory functions and powers relating to maritime safety and security shall be performed and exercised by the Minister. However, the Minister despite these powers mandated to him to ensure maritime safety and security he or she cannot regulate the control over offences that touch maritime security such as piracy because the Penal Code ousts such mandate solely to be of the DPP to determine whether or not there has to be prosecution over the offence of piracy.

Section 41(5) explicitly establishes the first offence under the Act concerning registration of the ship’s name. It provides that

Any person acts or suffers any person under his control to act in  
contravention of this section or omits to do or suffers any other person

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<sup>237</sup> See GN No. 212 of 2004

under his control to omit to do, anything required by this section, commits an offence and is liable a conviction to a fine of not less than the equivalent in Tanzania shillings of the United States dollars one thousand or to imprisonment for a term not exceeding six month or to both such fine and imprisonment and the ship may be detained until the provisions of this section are complied with.<sup>238</sup>

Section 44 further establishes an offence in relation to contravention of Section 41 of the Act. It provides that:

Any person who acts, or suffers any person under his control to act, in contravention of section 41, or omit to do, or suffers any person under his control to omit to do, anything required under that section, commits an offence and for each such offence is liable upon conviction to a fine of not less than the equivalent in Tanzanian shillings of the United States dollars five thousand or to imprisonment to a term not exceeding two years or both, and, except in the case of an application being made under that section with respect to a foreign ship has become a Tanzanian ship, the ship may detained until there is compliance with that section.<sup>239</sup>

The definition of piracy under the Act is similar to that of Article 101 of UNCLOS of 1982. Upon its enactment in 2003, the Act never criminalized piracy. Section 341 of

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<sup>238</sup> See Merchant Shipping Act [Cap 165 R.E. 2019] under section 41(5)

<sup>239</sup> See *Op cit* note under section 44

the Merchant Shipping Act defines ‘Piracy’ as “any act of violence or detention, or any act of depredation committed for private ends by the crew or the passengers of a private ship or private aircraft and directed either against another ship or aircraft, or against persons or property on board such ship or aircraft or directed against a ship, aircraft, persons property in a place outside the jurisdiction of any state;<sup>240</sup> Or any voluntary act of participating in the operation of a ship or of an aircraft with knowledge of facts making it private ship or aircraft; or any act of inciting of intentionally facilitating an act described in paragraph (a) or (b).”<sup>241</sup> This amendment was very fundamental since it not only criminalized piracy but also provided punishment for the same. The rationale of this amendment also brought about consistence of punishment for Pirates and hence takes away what is known as double jeopardy.<sup>242</sup>

However, there still remains a conflict of law between the provision of the Merchant Shipping Act <sup>243</sup> with section 66 of the Penal Code<sup>244</sup> to leave the prosecution of the offence of piracy in the discretion of the DPP whether or not the offence has been committed and on the other hand when it is committed by the ship which is not registered in Tanzania necessitating a special arrangement with the government so as to prosecute that means it may attract threat to the maritime safety and security using the Penal Code as shield to escape from justice.

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<sup>240</sup> See The Merchant Shipping Act [Cap 165 R.E. 2019] under section 341(1)(a).

<sup>241</sup> See *Ibid* under section 341(b) and (c).

<sup>242</sup> See *Ibid* under section 342.

<sup>243</sup> *Supra* note 79.

<sup>244</sup> [Cap 16 R.E. 2022]

#### 4.5 The Ports Act, 2004

The Ports Act, 2004 is the legislation that establishes the Tanzanian Ports Authority (the TPA) as the principal regulator of all ports in Tanzania, as a parastatal public corporation operating under the Ministry of Transportation (MoT). This entrusted the TPA with enhancing Tanzania's geographical advantages as a maritime nation by promoting the effective management and operations of sea and inland waterways ports; facilitating cargo and passenger services loading and unloading; developing, promoting and managing port infrastructure and superstructure; maintaining port safety and security; and contracting with other persons or bodies in order to secure port services.<sup>245</sup>

In order to achieve these objectives, the Act gave the TPA a wide variety of functions and powers, including in relation to the administration of port land and waters, the regulation of the port, contracting with third parties to perform any of the TPA functions, public emergencies within the ports and security within the ports. Tanzanian Ports Authority (TPA), currently wholly owns and operates all thirteen shipping ports in Tanzania, in line with the Government of Tanzania's policy to retain 100 per cent ownership of ports' major assets.<sup>246</sup> This includes the three main sea ports of Dar es Salaam, Tanga and Mtwara, the three smaller sea ports of Kilwa, Lindi and Mafia and all lake ports. The TPA has a seven strong board of directors,

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<sup>245</sup> See Section 12 of the Tanzania Ports Act, 2004

<sup>246</sup> *Op cit* note 70

responsible for its daily operations in addition to a management team of 23, who are responsible for the management of individual ports.<sup>247</sup>

#### **4.6 Legal Gaps and Contradictions in Prosecuting Maritime Offences**

Maritime law, plays a crucial role in maintaining global trade in Tanzania, however the prosecution of maritime offenses often reveals significant legal gaps and contradictions that undermine the effective enforcement of these laws. Jurisdictional conflicts, ambiguous definitions of maritime crimes, and inconsistent application of international conventions create challenges for law enforcement agencies and judicial systems worldwide. This discourse seeks to explore the existing shortcomings in the legal framework surrounding maritime offences, highlighting the contradictions and complexities that hinder justice. The researcher will address these offences and legal gaps which is crucial for ensuring accountability, enhancing maritime safety, and upholding the integrity of international maritime law.

Arson, is found under Section 319<sup>248</sup>, this offence is treated as a generic offence, the said offence is not found under Merchant Shipping Act. There is still a gap by not incorporating this offence under MSA and Tanzania Ports Act, No 17 of 2004.

Furthermore; Maritime crimes in Tanzania are covered by the MSA and PC, with some offences being treated as generic even if committed at a ship or port facility. The prosecutor files these offences in District Court, Resident Magistrate Court, or High Court depending on the treatment of the offence. District Courts and Resident

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<sup>247</sup> *Op cit* note 76

<sup>248</sup> Penal Code

Magistrate Courts have no original jurisdiction in Economic cases unless consent from the Director of Public Prosecutions is given.

Sabotage, it is a crime under the National Security Act (NSA)<sup>249</sup>, is not applicable to private properties or cyber sabotage. However, it can be prosecuted under Section 7 of the Cyber Crimes Act<sup>250</sup>, which includes illegal data interference such as damage, deletion, alteration, rendering data meaningless, obstructing lawful use, or denying access to authorized users. Both the NSA and the Cyber Crimes Act do not cover data in the cloud or satellite, but the Cyber Crimes Act specifically addresses hardware interference with computer data, not software.

Vandalism is an offence not specifically covered in legislation but can be prosecuted as malicious damage to property under Section 326 of the Penal Code. This section requires the malicious injury to result in the destruction or rendering the property useless, rather than less serious damage like writing, drawing, and painting, marking, or inscribing words, slogans, caricatures, drawings, marks, or symbols on public or private property. To be charged with vandalism, there must be willful behavior to destroy, alter, or deface property, and the accused must possess the means to commit the offence, such as tools or items capable of completing the task.

Additionally; there are overlaps between Sections 326(2a) of the PC and Section 342 of the MSA and Section 28 of Explosives Act for the definition and scope of

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<sup>249</sup> 1970

<sup>250</sup> 14 OF 2015

explosives. Both the MSA and EOCCA cover ship destruction, while the MSA focuses on damage to port facilities and an attempt to destroy a vessel. As well as the offence of hijacking has been incorporated into the destruction of a ship.

#### **4.7 Conclusion**

The effectiveness of Tanzania's maritime security largely depends on the strength and adaptability of its domestic legal framework. This chapter has assessed the extent to which existing laws and protection mechanisms address contemporary maritime threats. The analysis has revealed significant shortcomings, particularly in outdated legislation that does not fully align with international maritime security standards. These legal gaps, coupled with enforcement challenges, undermine the country's ability to effectively combat threats such as piracy, illegal fishing and smuggling. Moreover, weakness in institutional coordination and limited resource allocation further restrict the implementation of maritime security policies. This assessment has demonstrated that despite the presence of various laws and regulatory bodies, enforcement mechanism remains inadequate in addressing the evolving nature of maritime threats. Compared to best practice in other jurisdictions, Tanzania's investment in maritime security infrastructure, surveillance systems, and capacity building initiatives remains insufficient. Furthermore, the chapter also highlighted on the various events and trends that have occurred within the maritime sector and affecting the port operations at various times that are interlinked with the legal framework governing maritime, shipping and port facility security in Tanzania.



To bridge these gaps, legal reforms are necessary to update Tanzania's domestic maritime security laws in alignment with international conventions such as UNCLOS. Additionally, strengthening institutional capacity through better inter-agency coordination, increased funding, and investment in advanced technology will enhance the country's ability to safeguard its maritime domain. Addressing these issues is crucial for ensuring a more resilient and effective maritime security framework that protects national interest and contributes to regional stability.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATIONS

#### 5.1 Summary of Findings

Throughout the assessment and analysis made in previous chapters the researcher was able to observe the following as the findings of the study:

First the researcher observed that the legal framework governing maritime and port security in Tanzania, which are the Penal Code<sup>251</sup>, the Tanzania Ports Act<sup>252</sup>, The Merchant Shipping Act<sup>253</sup> does not adequately reflect the current and contemporary situations that takes place and surround the maritime sector. This is because in the recent times there are a lot of developments and advancements in the technology which affects the operations in the maritime sector. The researcher observed that the means enshrined under these laws are difficult to comprehend the current requirements to deal with offences of piracy, cyber sabotage or organized crimes that takes place today.

Secondly the researcher observed that the mechanisms laid down under the domestic legal framework to curb the challenges and situations in the maritime environment are bureaucratic to the extent of threatening the security of the maritime environment and port facilities security. This is because from the assessment of the trends taking place in the maritime sector in Tanzania, the researcher observed that some vital decisions are not guaranteed under the law rather they depend on the political decisions to have effect in the operation and management of the maritime and port

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<sup>251</sup> [Cap 16 R.E. 2022]

<sup>252</sup> [Cap 166, 2004]

<sup>253</sup> [Cap 165, 2003]

sector. This is a great threat to the maritime security because it is the law that ought to give direction and accountability to the individuals assuming responsibilities under the authorities for maritime and port facility security but it is quite the opposite.

The researcher further observed that the domestic legal framework governing maritime security in Tanzania lacks conformity to the international benchmarks as envisaged under the international law. This is because some of the international instruments have not been fully incorporated and domesticated within the domestic legal framework for governance of maritime and port security.

The researcher also observed that there is inadequacy in the means adopted by the authorities to control and protect the maritime space in Tanzania. This is because there are not clear criteria set by the law that show which forces are responsible for the maritime security and how they should be equipped with tools that will help them not only to deal with the offenders of crimes of piracy or organized crimes in sea but can also prevent and make sure that there are no threats directed towards the Tanzanian maritime space.

The researcher further observed that there is a loophole in the means of obtaining the individuals who are entrusted with protection of the maritime and port facility security. This is seen from the assessment of the trends that occurred under the port of Dar es Salaam where some of the port officials cooperated with the tax officers in mismanagement of the maritime and port sector hence reported to have disappeared. The ports authority in collaboration of the police ought to have solid intelligence

system that must be able to trace the whereabouts of these officials because they are persons that were enrolled in the port database<sup>254</sup>.

The researcher also observed that despite the existence of the legal framework governing maritime security, enforcement remains weak due to limited resources such as lack of adequate boats, surveillance technology and trained personnel to monitor its vast coastline effectively. A researcher found out that there are signs of corruption in the practice within law enforcement and port authorities as a result to unending trends of smuggling, illegal fishing and trafficking undermining maritime security.

A researcher found out that despite developments made in the maritime environment to ensure that there is maritime security, Maritime zone especially the Exclusive Economic Zone (EEZ) are poorly monitored, allowing illegal activities to thrive.

A researcher further observed that, while piracy incidents have reduced, Tanzania remains vulnerable, especially near the Zanzibar channel. Also, foreign vessels exploit Tanzanian waters due to weak enforcement of fishing regulations and also the weakness in the legal framework allows smugglers to use Tanzanian waters as a transit point for illegal trade.

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<sup>254</sup> Chidowu, D L., '*The Law of Maritime Safety: Tanzania Perspectives in the Light of the New Merchant Shipping Act, 2003*', LLM Dissertation project, at the International Maritime Law Institute, (mimeo), 2004 at p. 69.

A researcher also observed that Tanzania being part of regional initiatives such as Indian Ocean Rim Association (IORA) and the Djibouti Code of Conduct, yet the coordination with neighboring countries is still weak. Border disputes with neighboring countries, such as Kenya and Mozambique, create legal uncertainties over territorial waters.

A researcher through analysis observed that maritime security is often underfunded, leading to inadequate infrastructure, training and operational capacity. Many maritime security programs rely on the international funding, making sustainability a challenge. This extends to limited investment in the maritime surveillance technologies, such as satellites monitoring, which hampers the efforts to secure territorial waters.

Lastly the researcher observed that the government of Tanzania has put more focus on the income tax rather compared to the security of the port facilities. This is seen from the trends and incidents of the claims that were tabled before the Honourable Prime Minister and Sectoral ministers concerning the challenges occurring at the port. Even when it necessitated actions to be taken, the actions taken was due to the loss of income that the Trades demonstrated and led to decrease of the collections thus compel the government to effect changes for the purpose of harmonizing the situation but not for the improvement of the port and maritime security.

## 5.2 Conclusion

The stability for maritime security remains a puzzle not only for Tanzania, but also other States and actors in the international community. The rules of the international law do not provide to the warships the right to enter the territorial sea and international straits with violation of innocent or transit passage. These disputes shall be regulated with the assistance of the international legal mechanisms and increasing of the maritime security, and are not, recently a big concern as far as maritime security is concerned. Laws therefore need to address issues at the domestic levels that increase threats for piracy, migrant smuggling, trade safety measures and peoples' safety.

As the maritime industry continues to recover from the effects of organized crimes, ongoing crises pose more threats especially for Tanzania and the call for legal reforms to comprehend safety mechanisms.

The Port of Dar es Salaam is geographically well positioned to act as the main hub for the trade of goods between East and Central Africa and Europe, the Middle East, Asia, Australia and the Americas, however it is not currently taking full advantage of this position. Shipping costs remain 25 percent higher than average for the rest of sub-Saharan Africa and approximately 50 percent higher than the average for the rest of the world, primarily due to poor efficiency. The port's constant delays increase the inventory cost for goods, particularly high value goods. According to the World Bank, delays and additional monetary costs at the Port of Dar es Salaam are the equivalent to a tariff of 22 percent on container imports and approximately 5 percent

on bulk imports when compared to the Port of Mombasa in Kenya. In order to match Mombasa, the TPA needs to take action in order to improve the competitiveness and efficiency of the Port of Dar es Salaam, including improving cargo clearance delays, customs delays, shore handling operations, cargo and passenger safety and port security.

Maritime piracy and armed robbery and the associated crimes have been in existence for over 40 centuries, long before UNCLOS-1982. The crime of piracy and armed robbery, like any other crime, is driven by the motivators like the multimillion-dollar ships and lack of security guards and deterrent measures against attacks. The pirates have sponsors that stay in safe havens who manage and coordinate the actual act(s) of piracy at sea.

The phenomenon of piracy and armed robbery incidences in the Horn of Africa emerged after the fall of the Somali government in 1991 and peaked at 224 cases in 2011 thereafter it dwindled to no cases by the first quarter of 2019. This was due to concerted counter-piracy efforts by both regional and international communities on land and at sea. On the sidelines of piracy and armed robbery, other illicit maritime activities also recorded increase in the region such as drug and human trafficking.

The scourge of piracy and armed robbery in the Horn of Africa region had both economic and human costs in the region and internationally. Much of the costs affected the international community prompting them to respond actively to counter the phenomenon. The economic costs include insurance surcharges, increased cost of

exports/imports and decline in the revenues from tourism, fishing and port services among others. Several seafarers were taken hostage and detained for several months' others even died in the process. These costs prompted quick response from the East African states and foreign naval forces.

The counter piracy and armed robbery efforts in the region focused on tackling the vice both on land and at sea. AU deployed land and maritime forces into Somalia to address the problem from the source. The littoral states instituted regular maritime patrols and others went on to prosecute the pirates in the national courts. The foreign naval forces established bases in the region and dominated the territorial and high seas within the region's waters. The international community also supported counter-piracy efforts on land. The result was a marked decline in the prevalence of piracy and armed robbery in the East African region.

The merits of piracy and armed robbery such as increased internal investments and employment are far below the demerits. The regional states, as a short-term solution, should consider building the capacity and capability of their navies and the legal systems. The long-term solution, nevertheless, lies in stabilizing Somalia, establishing regional piracy prosecution courts and building a regional combined naval force preferably under the East African Maritime Security Strategy (EAMSS) framework<sup>255</sup>.

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<sup>255</sup> *ibid*



### **5.3 Recommendations**

The researcher recommends the following actions to be taken so as to improve the efficacy of the legal and policy framework governing maritime and port facility in Tanzania;

#### **5.3.1 Recommendations to the Parliament**

The parliament should amend the Tanzania Port Act, 2004 and Merchant Shipping Act, 2003 so as to make them relevant to the contemporary maritime situation. Due to major and huge advancement of technology in the maritime areas it is obviously that threats to maritime security are also peculiar and unprecedented thus the body of law regulating the security of the same must be updated to incorporate the contemporary circumstances and curb new maritime threats and challenges that may take place in the today's era.

The Merchant Shipping Act to make amendment by incorporating all maritime offences like cyber sabotage, sabotage against private ships, vandalism and smuggling, also amendment of Sections 341, 342, 343 and 344 to explicitly criminalize piracy, clearly stating acts constituting piracy, providing mandatory penalties and sentencing guidelines like life imprisonment or stiff penalties where loss of life occurs as well as expand jurisdiction beyond the high seas with consent.

Tanzania Ports Act to be amended by defining clearly and criminalize offences related to damage, sabotage, terrorism, and cyber attacks on port facilities, identifying clearly the division of security responsibilities between TPA, TRA and

TASAC. The researcher further recommends to the Parliament to amend the Act. Furthermore it is recommended the Act to be amended by incorporating within it the clause that carter for the holding accountable the officials who are entrusted with port facility security once they get involved in serious breach of their duty to protect the port facility because not only that they cause the country to suffer economic losses but the pose great threat to the national security because the port is a major gateway of all sorts of activities in the country. Thus, one being employed to oversee the port authorities must be treated with great cautiousness from the way they are obtained and how they operate.

Tanzania Maritime Zone Act, to be amended and clearly incorporating sections stating enforcement powers for Tanzanian authorities in Exclusive Economic Zone surveillance interdiction, stipulating jurisdiction over foreign vessels suspected of maritime crimes, and providing for inter agency coordination protocols within the maritime zones.

Harmonizing the Fisheries Act and Deep Sea Fishing Authority Act, 2020 by stating clearly zonal and agency mandates for fisheries enforcement. The researcher also recommends to the Parliament of the United Republic of Tanzania to domesticate by way of ratification international instruments governing maritime and port security. This is because as far as maritime concerns are considered matters falling under the umbrella of national sovereignty but the truth is maritime security is nothing but global concerns because it goes beyond piracy, shipping and port facility security to cover also issues of climate change which pose threats to the global environment

because of their effects being borderless. A researcher also recommends to the Parliament to see the need of introducing a Maritime Security Act that consolidates laws and ensures alignment with UNCLOS, the Djibouti Code of Conduct and IMO Conventions and which shall be the specific Act relating to maritime security in the United Republic of Tanzania.

A researcher recommends to the Parliament to introduce a single Environmental Regulation for Maritime Zones whereby it has to make reforms to the Tanzania Maritime Zone Act to integrate environmental protection provisions from the Environmental Management Act, 2004 reducing overlapping mandates.

### **5.3.2 Recommendations to the Ports Authority**

The researcher recommends to the Tanzania Ports Authority as principal government entity to take serious charge of the maritime and port security. This is because most of the security threats and offences in the maritime space takes place under their watch. Thus, they should be very keen in minimizing the risks of maritime security not only dealing with the offences but being able to stop the threats as well.

The researcher recommends to the Tanzania Ports Authority to cooperate with other developed agencies in management of port facilities so as to exchange the technical knowhow on the management of the ports and port facilities so as to smoothen the operations of the ports and minimize the risks upon maritime security.

The researcher recommends to the Tanzania Ports Authority to have a special force which will be specially trained to handle maritime threats and take responsibility upon safety of the maritime and port space. This will help the ports to have specialized forces with required skills related to maritime security and will be equipped with all the necessary tools for maritime security instead of depending to the general security forces who may happen to have lack of understanding on the maritime law and technical knowhow of the maritime discipline.

### **5.3.3 Recommendations to the Government**

A researcher recommends to the government of Tanzania to enhance regional and international cooperation. A researcher calls for Tanzania to strengthen its role in international initiative such as the Djibouti Code of Conduct and the Indian Ocean Rim Association (IORA), to sign bilateral agreements with neighboring countries for joint maritime patrols and intelligence-sharing as well as partnering with IMO, INTERPOL and UNODC to strengthen maritime law enforcement.

A researcher recommends to the government to improve budget allocations and Investment in Technology by increasing the government funding for patrol boats, radar systems, and enforcement personnel, and on the other hand invest in Automatic Identification System (AIS), satellite tracking, and drone surveillance as well as implementing digital cargo tracking and advanced technological monitoring systems.

By implementing these recommendations, Tanzania can eliminate the contradictions, overlapping, enhance law enforcement coordination, and strengthen maritime

security. These reforms will help safeguard Tanzania's territorial waters, protect port facilities, economic interests and ensure compliance with international security standards.

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