African Security Review

vol 18 no 3

September 2009

African maritime security
## Features

**Maritime piracy in Africa:**  
*The humanitarian dimension*  
Donna Nincic  

**Bad order at sea:**  
*From the Gulf of Aden to the Gulf of Guinea*  
Francois Vrey  

**Sea piracy and maritime security in the Horn of Africa:**  
*The Somali coast and Gulf of Aden in perspective*  
Freedom C Onuoha  

**Enhancing regional maritime cooperation in Africa:**  
*The planned end state*  
Paul Musili Wambua  

**Maritime security and international law in Africa**  
John Gibson  

## Africa Watch

**Coups d’état in Africa between 1958 and 2008**  
Compiled by David Zounmenou  

**The battle for Mogadishu:**  
*Revealing Somalia’s fluid loyalties and identities*  
Paula Cristina Roque  

**Financial disclosure in three African countries:**  
*All bark and little bite*  
Rosemary Vickerman  

## CONTENTS
Essays

The legal challenge of civil militia groups in Kenya  
H Nanjala Nyabola

Whose security?  
Understanding the Niger Delta crisis as a clash of two security conceptions  
Ufo Okeke Uzodike and Christopher Isike

Commentaries

Distance education and e-learning: The SANDF should get it right!  
Abel Esterhuyse

To patrol is to control: Ensuring situational awareness in Africa’s maritime exclusive economic zones  
O S Ibrahim

Book Reviews

Qaddafi’s Libya in world politics  
Yehudit Ronen

Contemporary piracy and maritime terrorism: The threat to international security  
Martin N Murphy

Africa: Altered states, ordinary miracles  
Richard Dowden
ABSTRACTS

Features

Maritime piracy in Africa: The humanitarian dimension
Donna Nincic

Until the recent attacks off the coast of Somalia, maritime piracy in general – and in Africa in particular – has received scant scholarly attention. While this gap is being remedied with increased study of the current increase in attacks, most of it has focused on the problem from the point of view of the nations whose vessels are targeted (whether merchant vessels should be armed, the role of the international community in combating piracy, etc). What has received little attention to date is the profound social, economic and political costs pirates can impose on the people of their own
countries. This article presents a study of the impact maritime piracy has had on the peoples of Nigeria, Somalia, and Kenya and Tanzania, with a particular emphasis on its humanitarian implications.

Bad order at sea: From the Gulf of Aden to the Gulf of Guinea
Francois Vreý

Piracy at sea not only features prominently in the current news media, but has also come to depict much of what analysts and decision-makers view as bad order at sea. Although piracy represents only one threat to good order at sea, it appears to be misused as a general term for a spectrum of maritime threats and vulnerabilities. It should be noted, however, that bad order at sea stems from more than piracy, which occurs along both the African east and west coasts. Closer scrutiny shows that piracy against the shipping trade accounts for much of the threat–vulnerability interface off the coast of Somalia. To the west, in the Gulf of Guinea, the situation is more complex and the threat–vulnerability continuum more extended and politicised, although the salience of piracy is lower. Nonetheless, developments in the Gulf of Guinea portray more progress on arrangements and activities to prevent bad order at sea.

Sea piracy and maritime security in the Horn of Africa: The Somali coast and Gulf of Aden in perspective
Freedom C Onuoha

Regrettably, Africa’s waters now represent one of the world’s most dangerous waterways for vessels and their crew members in terms of pirate attacks. In the last few years the Somali coast and the Gulf of Aden in the Horn of Africa have emerged as Africa’s – and by extension the world’s – most dangerous waters. This article examines the dimension that maritime piracy has assumed in the region, identifies the factors contributing to the upsurge of piracy in the area, and gives an overview of the responses to the growing piracy in the region. It concludes with suggestions on how to effectively and sustainably combat the scourge of piracy.

Enhancing regional maritime cooperation in Africa: The planned end state
Paul Musili Wambua

Africa has many maritime interests, including trade and the use of its marine resources, which it can use to support development on the continent. Unfortunately, these resources are illegally plundered by others (illegal, unreported and unregulated fishing is an example) and free trade is hampered by phenomena such as piracy and organised crime. This is to the disadvantage of the people of the African continent. At the same
time, little is being done in Africa to protect these interests and resources. The Common African Defence and Security Policy pays little attention to the maritime dimensions in addressing threats to peace, security and development. The African Standby Force, as an instrument for the implementation of the policy, also does not address maritime forces or the contribution they could make to African security and development. Africa needs to become more maritime conscious and consider maritime matters at a continental and sub-regional level and not only as national issues.

**Maritime security and international law in Africa**

John Gibson

Ships and those who sail in them face many potential dangers, both from the natural perils of the sea and from the results of human conduct, which demand a precautionary response from seafaring nations. The promotion of maritime security in Africa depends on an international legal framework that provides both opportunities and constraints. Traditional principles of the law of the sea are not always appropriate to current needs, but they have been supplemented by more specific measures dealing with maritime search and rescue, weapons proliferation, piracy and terrorism against ships. Although good laws are a necessary pre-condition for the achievement of maritime security, they will only be effective if there is also the political will and the practical capacity among states to implement them. While much remains to be done, recent developments in Africa provide some positive grounds for encouragement.

**Africa Watch**

**Financial disclosure in three African countries:**

*All bark and little bite*

Rosemary Vickerman

Many countries use financial disclosure to manage conflicts of interest. This article examines disclosure in three African countries: Cameroon, Ghana and South Africa. These countries fall on a continuum that sees South Africa as the relative success story, Ghana as occupying the middle position, and Cameroon as failing thus far. Disclosure regulations detailing who discloses, how often this occurs and what and when sanctions are to be taken for breaching regulations are presented in brief. Three key recommendations are made in relation to the legislation and the implementation thereof. First, it is suggested that in South Africa and Ghana the process of instituting sanctions be streamlined and, second, that those tasked with keeping the registers of financial interests are provided with the necessary investigatory powers. Finally, it is recommended that Ghana and Cameroon practise annual disclosure.
Essays

The legal challenge of civil militia groups in Kenya
H Nanjala Nyabola

The proliferation of civil militia groups across Africa poses one of the greatest security tests not only to African nations, but to the greater international community. Given that international criminal law is constantly evolving in response to new and ever more complicated issues, it is important to evaluate the role that this can play in addressing the challenge of civil militia groups. In the case of Kenya, the dual concerns of the rising strength of civil militia groups and a crumbling police and judicial system continue to undermine the ability of the nation to secure lasting peace and thus development. There is a palpable tension between the need to bring civil militias to book over their crimes and the need to respect national judicial sovereignty, particularly in a state that is viewed as failing rather than failed. To gain a better understanding of these legal challenges, it is necessary to develop a framework to assess which crimes committed by civil militia could potentially fall under the mandate of the International Criminal Court. This article makes suggestions for a rudimentary basis for such a framework, and discusses the challenge that civil militias pose to national and international judicial organs. Finally, it evaluates the value that prosecution of such groups could add to the national judicial tradition. It argues that the potential benefits of a prosecution far outweigh the risks, and that a complementarity regime offers opportunities for cooperation between international criminal law organisations such as the International Criminal Court and the national judicial system of Kenya.

Whose security?
Understanding the Niger Delta crisis as a clash of two security conceptions
Ufo Okeke Uzodike and Christopher Isike

This article takes an in-depth look at the Niger Delta crisis from two divergent but mutually reinforcing security conceptions, namely national versus people security. It contends that while the Nigerian government views security from the traditional state-centric viewpoint and accordingly acts to ‘secure’ the region, the people view security from a broader human-centric perspective, and thus responds negatively to state securitisation/militarisation. This clash of security perspectives sets the stage for and perpetuates armed conflict in the region as the net result of both sides’ insistence on ‘securing’ their interests, resulting in a situation of mutual antagonism as they bring to bear their often considerable coercive capacities. Therefore, the broad question the paper grapples with is whose security is paramount, and against what threats is it aimed. It reaffirms the need for a paradigm shift in the focus on security by the Nigerian state from a state-centric perspective that views the people’s agitation/resistance as
terrorism’, to a human-centric perspective that will justify its Lockean essence. This is essential, because the federal government’s militarisation of the region fans the flames of ethnic-nationalism, exacerbating violence and perpetuating criminality with attendant destabilising consequences for Nigeria’s economy and statehood.

Commentaries

Distance education and e-learning: The SANDF should get it right!
Abel Esterhuyse

Distance education (DE) and e-learning are becoming important for the education of militaries worldwide in an era in which electronic and other forms of communication make distance increasingly irrelevant. The South African military faces a number of problems in this regard and the article challenges the South African National Defence Force (SANDF) to address these issues as a matter of urgency. What are the issues to be addressed? The article highlights the need to address the educational ethos at professional military education (PME) institutions through the appointment of a proper academic faculty as is the practice worldwide. A meritocratic approach should at the same time determine who are allowed access to these institutions. The SANDF should be using DE and e-learning on a grand scale in the education of its cadres. Successful implementation of a DE system requires the appointment of personnel who are well qualified in the educational field in general and who have specialised in DE. Technology is a key feature in the use of DE and e-learning. The SANDF should, however, empower its members in the use of technology as a means to educate. At the same time, the SANDF should carefully consider the cost, financially and otherwise, inherent in the use of DE and e-learning.
Maritime piracy in Africa:
The humanitarian dimension
Donna Nincic

Bad order at sea:
From the Gulf of Aden to the Gulf of Guinea
Francois Vrey

Sea piracy and maritime security in the Horn of Africa:
The Somali coast and Gulf of Aden in perspective
Freedom C Onuoha

Enhancing regional maritime cooperation in Africa:
The planned end state
Paul Musili Wambua

Maritime security and international law in Africa
John Gibson
Maritime piracy in Africa: The humanitarian dimension

Donna Nincic

Introduction

Maritime piracy has been a challenge for mariners as long as ships have gone to sea. In ancient times, Julius Caesar was captured and held for ransom by pirates. More recently, but still in the historical past, pirates have challenged merchant shipping from the Spanish Main to the Barbary Coast, and in Asia the famous ‘pirate queen’ Cheng I Sao commanded a fleet of hundreds of vessels. However, until the much-publicised attacks off the coast of Somalia in recent months, few were aware that maritime piracy has continued into current times, with an estimated 5,9 merchant ships attacked for every 1,000 voyages. In 2008, there was, on average, one reported pirate attack roughly every 31 hours; in 2009 this increased to roughly one attack every 29 hours.

Keywords: maritime piracy, humanitarian assistance, fisheries, Nigeria, Somalia, Kenya, Tanzania
Until very recently, maritime piracy has been largely concentrated in Asia (figure 1). However, in 2007, for the first time since statistics on pirate attacks have been kept, the number of pirate attacks in Africa surpassed those in Asian waters. This continued into 2008, with attacks in Africa double those in Asia; and the trend is likely to continue into the rest of 2009 as well.

**Maritime piracy in Africa: recent trends**

Maritime pirate attacks in Africa, while concentrated in Nigeria and Somalia, are by no means limited to these countries. Of the thirty-three littoral countries in sub-Saharan Africa, twenty-four experienced pirate attacks during 2001-2008 (the years for which the International Maritime Organisation and the International Maritime Bureau have collected detailed country-specific data) (see table 1).

As can be seen in table 1, maritime piracy in Africa has not been evenly distributed. Between 2001 and 2008, the majority of attacks (54 per cent) occurred in West Africa (31 per cent in Nigeria alone), and only eleven nations experienced ten or more attacks during these years. Nigeria and Somalia, with 213 and 206 attacks respectively, stand out as the most significant, followed by Tanzania with 58. Eight littoral African nations experienced no reported pirate attacks at all during this timeframe. In the last three years, between 2006 and 2008, the geographical concentration has been even starker: four countries (Somalia, Nigeria, Ghana and Tanzania) accounted for 85.8 per cent of all pirate attacks in Africa (table 2), with the vast majority (73 per cent) occurring in Somalia and Nigeria.
### Table 1 Pirate attacks in littoral sub-Saharan Africa, 2001–2008

<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Central Africa: 10</strong></td>
<td>Democratic Republic of Congo</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Republic of Congo</td>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>East Africa: 274</strong></td>
<td>Kenya</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tanzania</td>
<td></td>
<td>58</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Djibouti</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Eritrea</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Somalia</td>
<td></td>
<td>206*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sudan</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Southern Africa: 21</strong></td>
<td>Angola</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mozambique</td>
<td></td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Namibia</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>West Africa: 370</strong></td>
<td>Benin</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cameroon</td>
<td></td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Côte d'Ivoire</td>
<td></td>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Equatorial Guinea</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gabon</td>
<td></td>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gambia</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ghana</td>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Guinea</td>
<td></td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Guinea-Bissau</td>
<td></td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Liberia</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mauritania</td>
<td></td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>213</td>
</tr>
<tr>
<td></td>
<td>Nigeria</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>Other Africa</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>365</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Includes Gulf of Aden and Red Sea

Source: International Maritime Bureau, Piracy and armed robbery against ships; International Maritime Organisation, Reports on acts of piracy and armed robbery against ships

### Table 2 Recent piracy trends in Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghana</td>
<td>3</td>
<td>1</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>Nigeria</td>
<td>12</td>
<td>42</td>
<td>40</td>
<td>94</td>
</tr>
<tr>
<td>Somalia</td>
<td>20</td>
<td>44</td>
<td>110</td>
<td>174</td>
</tr>
<tr>
<td>Tanzania</td>
<td>9</td>
<td>11</td>
<td>14</td>
<td>34</td>
</tr>
<tr>
<td>Other Africa</td>
<td>13</td>
<td>21</td>
<td>18</td>
<td>52</td>
</tr>
<tr>
<td>Total</td>
<td>365</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: International Maritime Bureau, Piracy and armed robbery against ships; International Maritime Organisation, Reports on acts of piracy and armed robbery against ships
The pattern of pirate attacks in Africa has tended to be different from that in Asia, with mariners more likely to be kidnapped for ransom and more likely to be victims of violence in African waters than in Asian waters. Of the 889 crew members taken hostage in 2008 worldwide by pirates, 815 were taken in Somalia and the Gulf of Aden. Pirates operating in Africa are more frequently armed with automatic weapons, rocket-propelled grenades (RPGs) and AK-47s than the crowbars and knives more typical of Asian attacks: of the 139 attacks in 2008 in which guns were reported being used, 122 (87.8 per cent) occurred in Africa (120 in Nigeria and Somalia alone), compared with 12 in South-East Asia. Of the 32 crew members reported injured globally, 14 were in Nigeria. Of the 11 crew members reported killed by pirates in 2008, four were in Somalia and Nigeria.

While most pirates operate very close to shore, if not actually within the port areas while ships are at anchor or berthed, Somali pirates have been known to venture well over 200 nautical miles offshore in search of their targets. Pirates in Nigeria are increasingly operating farther offshore as well, with at least one incident reported 80 kilometres from the coast.

While attention has been paid to the violence of current pirate attacks in Africa (Nigeria) and the hijacking for ransom phenomenon (Somalia), very little has been done in the way of highlighting the humanitarian causes and costs of maritime piracy in this part of the world. Humanitarian crises, under certain conditions, can be a breeding ground for maritime piracy (and all kinds of criminal activity), and maritime piracy itself can exacerbate already dire humanitarian conditions.

**The full costs of maritime piracy in Africa**

The costs imposed by maritime piracy are significant. In 2006, the International Maritime Bureau estimated that maritime piracy resulted in US$13–15 billion a year in losses in the Pacific and Indian oceans alone. Costs stem from stolen goods and cargo (and sometimes the theft of the ship itself), and also from delays in port and increases in insurance rates when transiting known pirate waters. For example, insurance rates have now increased up to ten-fold for ships transiting the Gulf of Aden. Costs can also include alternative routes – this is the case for shippers who avoid the Gulf of Aden by voyaging around the Cape of Good Hope. For those shippers for whom the longer route is not feasible, increases in crew wages impose an additional cost: some crews now demand double wages to sail near Somali waters. These costs typically are added on to the value of the goods being shipped, resulting in higher prices for consumers.

While the cost of maritime piracy to the international community is important, the costs maritime piracy can impose on the countries in which the piracy occurs is less frequently considered, and can be significant as well. Maritime piracy frequently has its
roots in weak or fragile states, where humanitarian conditions are dire and economic opportunities are limited. In turn, piracy can itself worsen humanitarian conditions. This is particularly true in Nigeria and Somalia, where maritime piracy is exacting a toll on weak and fragile economies, exacerbating or threatening the well-being of the countries’ citizens. Of future concern is the spread of maritime piracy to the increasingly fragile states of Kenya and Tanzania.

The domestic costs of maritime piracy in Nigeria

Maritime piracy in Nigeria is directly linked to oil development and the resulting economic, social and environmental conditions in the Niger Delta. Some pirates – particularly those from the Movement for the Emancipation of the Niger Delta, or MEND – claim to be fighting for a fairer distribution of Nigeria’s vast oil wealth, and as a protest to the damage caused by oil production in the Delta. While the federal government of Nigeria and the oil companies split profits roughly 60–40, and the federal money is supposed to be disbursed to local authorities to benefit the Delta inhabitants, this rarely occurs. As a result, destitution is rampant. Pollution from oil-production facilities has decimated local fisheries and farmland and gas flaring has caused chronic respiratory problems, especially among children. A 2006 report called the Niger Delta ‘one of the five most severely petroleum damaged ecosystems in the world’. By some estimates, 1.5 million tons of oil has been spilled in the Delta over the last fifty years, or the equivalent of one Exxon Valdez spill per year.

*Figure 2 Maritime pirate attacks in Nigeria, 2002–2008*

![Bar chart showing maritime pirate attacks in Nigeria, 2002–2008.](source)

Not all pirate attacks in Nigeria are politically motivated. Massive unemployment and the lack of meaningful economic opportunities, especially in the Delta region, have drawn young people into all sorts of maritime criminal activities, including bunkering (oil theft), kidnapping and piracy. There are many armed groups in the Delta region that view maritime crime as a purely money-making endeavour. In a country where the majority of the population live on less than a dollar a day, kidnapping for ransom has become a lucrative business. Pirates are often young unemployed men without job opportunities who admit they were enticed into pirate gangs by promised riches, fancy cars, luxury consumer goods and weapons.

As recently as 2004 Nigerian waters were declared ‘the most deadly in the world’ due to the increasing intensity of attacks in the Niger Delta region. Since 2006, the majority of attacks have been motivated by financial and not political gain, and attacks in Nigerian waters have only increased (see figure 2).

The costs of maritime piracy to Nigerian society and the economy have been significant, not only to the oil industry, but to local fisheries and regional trade as well.

**Impact on oil production**

As a result of pirate attacks on vessels and other incidents, oil production in Nigeria has dropped 20 per cent since 2006 and piracy and other illegal maritime activities have cost the Nigerian economy US$202 million between 2005 and 2008. A recent report commissioned by Royal Dutch Shell estimates that 10 per cent of Nigeria’s daily oil output (about 100 000 barrels) is stolen every day. This is worth about US$1.5 million and would buy enough weapons and ammunition to sustain a 1 500-strong fighting force for two months. Over the last fifty years, the value of the oil stolen or wasted has amounted to between US$300 and US$400 billion. While much of this cost is borne by the oil companies and the federal government, the loss in revenue also means less for the social and economic development so necessary for the Delta region.

**Impact on fishing**

Maritime piracy also imposes significant costs on the country’s important local fishing economy. Fishing is the second highest non-oil export industry in Nigeria, and pirate attacks on fishing trawlers have reached the point that many fishing boat captains refuse to sail. The attacks range from minor harassment to theft of fish cargoes, engines and other material on board; financial shakedowns; and the killing of fishermen. Pirate attacks worldwide are considered to be vastly under-reported, and Nigeria is no exception, particularly when it comes to attacks on fishing vessels. The Nigerian Maritime Security Task Force on Acts of Illegality in Nigerian Waters (IAMSTAF) reported at least 293 documented sea robberies and pirate attacks between 2003 and 2008 on the country’s
fishing vessels alone; the International Maritime Bureau reported 177 attacks during these years. Another source reports 100 attacks on fishing vessels just in 2007.

As of March 2008, over 170 fishing trawlers were idle because fishing boats were afraid to put to sea, threatening approximately 50,000 jobs. All told, Nigeria stands to lose up to US$600 million in export earnings due to piracy threats to its fisheries.

In addition to the impact on Nigeria’s export economy, seafood prices have skyrocketed due to the scarcity of fish caused by fewer fishing vessels being willing to put to sea. Prices have more than doubled and even quadrupled in some places, placing this important protein source out of the reach of most of the average citizens. Increasingly, Nigerian pirates are reported to have effectively taken over the coastal waters of the country, and similar piracy problems are reported among fishermen elsewhere in the Gulf of Guinea region.

Regional impacts and effects on shippers

Nigeria accounts for over 60 per cent of the total seaborne traffic for the 16 nations in the West Africa sub-region. As warnings to mariners in and near Nigerian waters become more common, increased shipping costs for Nigerian and Gulf of Guinea destinations are likely as shippers begin to factor higher insurance premiums into their pricing. Because increased shipping costs are typically passed on to consumers, there are likely to be inflationary pressures for vital goods and services throughout the region as long as Nigerian piracy persists.

Despite the attacks on Western oil interests, piracy in Nigeria receives less attention than in other regions of the world. Without external pressure, and with a federal government either unwilling or unable to act, piracy is likely to increase; as a result, conditions in the Delta region will continue to deteriorate for many of its inhabitants, providing more incentive for individuals with limited economic opportunities to turn to maritime crime.

Somalia: relief aid in the Horn of Africa

While the first pirate attacks in Somalia of any significant number were only recorded in 2000, the roots of the current crisis date back to 1991 when Mohammed Siad Barre was overthrown, leaving the country without an effective central government and locked in civil conflict. Taking advantage of the power vacuum, rival warlords have carved out influence over regional territories – first on land, and then increasingly at sea. Fishermen, dismayed at the inability of the central government to protect their country’s exclusive economic zone, and at the number of foreign fishing vessels illegally
exploiting their traditional fisheries, took matters into their own hands. Initially arming themselves to chase off the foreign invaders, they quickly realised that robbing the vessels was a lucrative way to make up for lost income. Seeing their success, land-based warlords co-opted some of the new pirates, organising them into increasingly sophisticated gangs.

As can be seen in figure 3, pirate attacks have increased dramatically from 7 in 2000 to a staggering 111 in 2008, over three times the number in 2007, making Somali waters the most dangerous in the world last year.

Despite a 2005 IMO resolution encouraging UN member states with naval vessels in the region to be ‘vigilant’ for piracy incidents, prior to 2006 the international community took little interest in addressing the piracy problems in the region. Vessels supporting the US-led coalition in the global ‘war on terror’ patrolled the area in support of anti-terrorist operations (for example, firing missiles at suspected al-Qaeda terrorists) but were often visibly reluctant to become involved in anti-piracy operations.

This began to change with the rise to power of the Islamic Courts Union (ICU) in 2006 and its subsequent ouster in early 2007. While the ICU was in power, the US and other Western nations began to fear links between the ICU and al-Qaeda and subsequently between piracy and terrorism. After the collapse of the ICU, there was a substantial increase in the violence and incidence of pirate attacks culminating in over 100 attacks in 2008, and including an attack on a US-flagged and -crewed vessel in early 2009. Lastly, there were persistent and unrelenting attacks on UN-chartered relief vessels responding to the humanitarian crisis in the country.
During their brief tenure in power, the ICU took a firm stand against maritime piracy. They were also able to extend their military control over the known ‘pirate bases’ of Harardheere and Hobyo. The capture of Harardheere was particularly significant: the Somali Marines pirate group operating there had the most sophisticated capabilities of any of the pirate groups operating in the country. With the ability to operate the furthest offshore, they were believed to be responsible for most of the attacks on larger vessels, including hijackings for ransom.19 As the ICU exerted its control, they declared piracy a crime and imposed strict penalties (including cutting off both hands); as a result, piracy dropped to only ten attacks in 2006.

After the ICU was ousted and the Transitional Federal Government (TFG) returned to nominal power, Somalia soon became one of the world’s major piracy ‘hot spots’ and came to be considered a safe haven for al-Qaeda. Calls for the United States to take a larger role in combating maritime piracy were made in the context of fighting terrorism, or preventing terrorists from gaining a stronghold in the deteriorating region. While not all analysts agree on the pirate–terrorist link, others began to argue that piracy should be seen as a form of terrorism. As al-Qaeda operatives are widely believed to have remained in Somalia in support of the ICU and its continued efforts against the UN- and Ethiopian-backed TFG, the United States began to take a more active role in the region, paying closer attention to maritime piracy.

After the ouster of the ICU and the restoration to power of the TFG, there was a sharp increase in the number and violence of the attacks. Attacks resumed up to and beyond the 200 nautical miles warning given by the IMO, leading many to conclude the Somali Marines were back in action. Supported by a suspected ‘mother ship’, they began attacking vessels with a vengeance, sometimes up to three or four vessels in a 48-hour period. More and more mariners began to heed the UN warning to stay beyond 200 nautical miles from the Somali coast when transiting. Nevertheless, by Autumn 2008, the situation took a dramatic turn, with the pirates becoming bolder and more audacious. In September, the MV Faina, a Ukrainian tanker carrying tanks and weapons, was captured off the Somali coast, and in December, the Saudi-flagged MV Sirius Star was hijacked – the 330 m very large crude carrier (VLCC) was the largest vessel ever captured by pirates and was attacked over 400 nautical miles from shore.

The humanitarian crisis and attacks on relief vessels

Civil war, combined with a series of devastating droughts, has created a dire humanitarian crisis in Somalia. There are more than one million internally displaced persons in the country, with the conflict pushing more than 20 000 people from their homes in Mogadishu per month.20 At the height of its relief efforts, the United Nation’s World Food Programme (WFP) was carrying 32 000 tons of food each month into the country. More than 2,6 million people in Somalia were dependent on food aid in 2008
alone.21 This number now stands at 3.25 million people, or one third of the country’s population. Life expectancy at birth is 46.2 years. A quarter of children die before they reach the age of five. One in six children under the age of five is acutely malnourished. Combined with record high food prices, hyperinflation and continued drought, the humanitarian situation in Somalia is now believed by some experts to be worse than that in Darfur.

Between 80 per cent and 90 per cent of food aid for Somalia arrives by sea, as land-based alternatives are problematic; for example, it can take three weeks for a truckload of food to arrive in Mogadishu from Mombasa and drivers and their escorts are often attacked. The World Food Programme is one of the major food suppliers to the country; the International Committee of the Red Cross, CARE International, Catholic Relief Services, Oxfam and other NGOs are also active in providing much-needed humanitarian assistance. However, in 2005, pirates began targeting WFP-chartered ships carrying relief supplies, forcing the UN agency to suspend all deliveries of food assistance by sea to Somalia for weeks and further exacerbating the humanitarian crisis in the country. All told, more than half a dozen vessels carrying relief aid have been attacked off the Somali coast (see table 3 on page 12).

Because of the increased dangers faced by humanitarian relief vessels in Somali waters, the WFP reported in 2007 that the number of ships willing to carry food aid to the country had been cut by half.23 In March 2007 the WFP had over 2 400 tons of food supplies waiting on a dock in Tanzania ready for delivery and was having difficulty finding ships to hire. Ship owners feared their vessels would be seized by pirates and their crews held for ransom. Relief agencies began to warn of ‘an impending humanitarian catastrophe’ and the secretary general of the IMO and the executive director of the WFP warned that piracy off the coast of Somalia could seriously threaten the supply line for food assistance to the country.24 In March 2008, some 40 relief agencies including World Vision and Oxfam said they were unable to help millions of Somalis due to dangers and other impediments to their work.25

Due to the highly publicised attacks on relief vessels, and the deteriorating conditions within the country, the international community agreed to provide military escort to vessels carrying WFP aid. Between November 2007 and June 2008, French, Danish and Dutch frigates escorted enough WFP food assistance to Somalia to feed nearly one million people for six months.26 In June, the WFP asked for additional security assistance, and military escorts for the humanitarian relief vessels were taken over by the Canadian Navy in August 2008.

In October 2008, the UN Security Council and Secretary-General Ban Ki-moon called for the deployment of more international forces in the region to ensure that UN food aid reaches the more than three million people threatened with starvation in Somalia. The
Table 3 Humanitarian relief vessels attacked in Somalia, 2005–2009

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2005</td>
<td>The MV <em>Semlow</em> was chartered by the WFP and carried 850 tons of rice, food aid for victims of the Indian Ocean tsunami in Somalia. After taking control of the ship, the pirates stole US$8 500 from the ship's safe, ransacked the crew's cabins, and demanded US$500 000 in ransom for the return of the vessel. Diplomats from Kenya, Sri Lanka, Tanzania and the UN negotiated with the transitional government and clan elders and warned that food aid could be halted unless the <em>Semlow</em>'s crew was released. The ship and crew were eventually released in September. The WFP denied paying any ransom, but the shipping agency responsible for the vessel admitted they had paid US$135 000 to the pirates.</td>
</tr>
<tr>
<td>October 2005</td>
<td>The MV <em>Miltzow</em> was carrying over 800 tons of food aid for the Lower Juba Valley, which had been repeatedly affected by droughts, floods and civil conflict. It had offloaded about half of its cargo of 703 tons of maize, 108 tons of beans and 30 tons of vegetable oil in the port of Merca when it was stormed by pirates and forced to leave port. Less than two days later, the vessel and its ten crew members were released after negotiations with a Somali businessman. No ransom was reported paid.</td>
</tr>
<tr>
<td>February 2007</td>
<td>The MV <em>Rozen</em>, a vessel charted by the World Food Programme to deliver UN food aid to Somalia, and its twelve-member crew were hijacked by armed pirates off the Somali coast. The Somali authorities were notified and intercepted the ship, but despite a heavy exchange of gunfire, the authorities were not able to board the vessel and the pirates escaped. After intervention by tribal elders in Puntland and subsequent mediation efforts, the <em>Rozen</em> was subsequently released in early April, with its crew unharmed.</td>
</tr>
<tr>
<td>May 2007</td>
<td>The MV <em>Victoria</em> was attacked 60 nautical miles from the port of Merca. It issued a distress call, resulting in two boats dispatched by the ship contractor. While these boats were able to intercept the pirates before they could board the <em>Victoria</em>, one guard was wounded in a gunfire exchange and later died.</td>
</tr>
<tr>
<td>March 2008</td>
<td>Two UN World Food Programme boats were stolen from the southern Somali port town of Merca. Police said they had arrested five suspects and found one of the boats crashed in Jazeera (pirates sometimes steal boats to use in their operations).</td>
</tr>
<tr>
<td>May 2008</td>
<td>The cargo ship MV <em>Victoria</em> was attacked again; this time it was hijacked off Mogadishu. The vessel was carrying a cargo of sugar from India donated by Denmark and was bound for Somalia.</td>
</tr>
<tr>
<td>October 2007</td>
<td>Pirates attempt to hijack the Comoran-flagged MV <em>Jaikur II</em> some sixty miles off the coast of the port of Brava, south of Mogadishu in Somalia. The cargo ship, which had just offloaded over 7 000 tons of food aid from the UN World Food Programme, was able to evade the pirates and return to Mombasa.</td>
</tr>
<tr>
<td>April 2009</td>
<td>The US-flagged and -crewed MV <em>Maersk Alabama</em> was carrying food aid for Somalia, Kenya and Uganda where the WFP is attempting to feed almost eight million people in 2009 because of drought and high food prices. The ship was attacked on its way to Mombasa, Kenya, a port critical for WFP programmes throughout the Horn of Africa since it serves as a point of entry for food aid for Somalia, Kenya, Uganda, southern Sudan and the eastern Democratic Republic of Congo. In 2008, more than 500 000 tons of WFP food assistance was delivered onboard more than 200 ships through the port. This was the first time a Mombasa-bound ship was attacked, raising concerns about security for relief supplies distributed through Kenya.</td>
</tr>
<tr>
<td>April 2009</td>
<td>The Togo-flagged vessel MV <em>Sea Horse</em> was attacked 700 kilometres from Mogadishu on its way to pick up 7 000 tons of maize for the WFP from Mumbai, India.</td>
</tr>
<tr>
<td>Apr 2009</td>
<td>The US-flagged MV <em>Liberty Sun</em> was carrying 27 000 tons of food for the WFP for relief efforts in Somalia, Southern Sudan and Kenya, and 3 000 tons of food for World Vision and for NGOs in Uganda (Eagle). It was attacked by pirates after it had made a food delivery at Port Sudan. While damaged by rocket propelled grenade fire, it was not boarded and it headed to Mombasa under US escort.</td>
</tr>
</tbody>
</table>

Source: Compiled by the author.
resolution also called on all countries with naval vessels and military aircraft operating off the Somali coast to use ‘the necessary means’ against acts of piracy. In response, seven NATO warships were deployed off the Somali coast as part of ‘Operation Allied Provider’ to help combat piracy, and specifically to protect UN World Food Programme ships transporting humanitarian relief supplies to the country.

While military escorts have provided some level of security for relief vessels bringing humanitarian assistance to Somalia, it is clear they are not a solution to the complex problem of maritime piracy. As we have seen in Nigeria, without economic opportunities offering viable alternatives to the lucrative business of maritime piracy, with ransoms paid for hijacked vessels ranging between half a million to three million dollars, and without law and good governance to act as a deterrent, there will be strong economic incentives for an impoverished and destitute people to turn to maritime crime. Also, as we have seen in Nigeria, while maritime piracy in Somalia imposes much-publicised costs on the shipping community, it also extracts a deep toll from the population itself. Food aid stolen by pirates, or left rotting because it is being held for weeks or months on hijacked vessels, does not reach those who need it most.

Emerging concerns: Kenya and Tanzania

According to the World Food Programme, the Horn of Africa is currently facing its worst humanitarian crisis since 1984. Despite the decline of prices of key commodities on global markets, food prices continue to increase, particularly in Somalia, Kenya and Ethiopia. In addition, lower than average rainfall, livestock diseases, conflict throughout the region, deteriorating infrastructure and hyperinflation will contribute to ‘increased malnutrition, heightened vulnerability, school drop outs, displacement, resource conflicts, and migration of pastoralists in search of water and pasture’. All told, some 16 million people in the region will require emergency food and nutrition assistance in 2009, most of which will have to be delivered by sea.

Kenya and Tanzania, while not experiencing the levels of piracy anywhere near that seen in Somalia, are nonetheless affected by piracy in that country. Many of the pirate attacks reported in these two countries are actually committed by Somali pirates operating farther and farther from their own shores. For example, as already mentioned, the *Sirius Star* was captured off the Kenyan coast and the *Maersk Alabama* was attacked en route to Mombasa. After an attempt on a Dutch container ship over 500 nautical miles east of Dar es Salaam, the International Maritime Bureau issued an alert to all ships off the coast of Tanzania to be on a strict anti-piracy watch. The attackers, believed to be Somali pirates, were armed with rocket-propelled grenades and automatic weapons. The Dutch vessel managed to repel the attack, but it caused concern as it showed the pirates were becoming bolder and extending their reach further from their base in Somalia.
While most of the attacks are currently reported in Tanzania, Kenya is also a concern due to the importance of Mombasa as a regional humanitarian assistance distribution hub. According to the WFP, if food assistance cannot arrive through Mombasa for Somalia, Kenya, Uganda, southern Sudan and the eastern Democratic Republic of Congo, millions of people will go hungry and the already high malnutrition rates throughout the region will rise.

Concerns for Kenya and Tanzania go beyond the impact on humanitarian food distribution networks. Increased piracy on the Tanzanian sea route is jeopardising commercial shipping in general due to increased costs of operations. The shipping company Maersk Tanzania has already introduced an emergency risk surcharge for sea-borne cargo destined for Tanzania to compensate for any piracy incident. Insurance premiums, which are on the increase throughout the region due to piracy, can lead to hyperinflation in vulnerable economies like Tanzania. It is a normal practice by shippers in the country to pass the extra transportation costs they incur to consumers, making the domestic market inflationary. This is at the same time that the country’s export trade, led by traditional exports commodities like cotton, cashew nuts, and coffee, has been hit by the global economic downturn that has depreciated the international prices of the commodities. Additionally, oil companies have warned that Tanzania may suffer a fuel shortage (with a subsequent rise in fuel prices) as a result of maritime piracy off the coast of East Africa, since petroleum shippers do not want to risk having their tankers hijacked and held for ransom. As mentioned previously, decreased export earnings and the increased price of imports threaten to weaken an already fragile economy.
Conclusion

Maritime piracy imposes direct costs on the immediate victims of the attacks – the crews, the ships and their cargoes, and the shipping companies. Merchant seamen may be injured or killed; ships and cargoes stolen, and higher insurance rates and operating costs borne by companies. At the same time, the indirect costs of maritime piracy are substantial, particularly in humanitarian terms. Nowhere is this more true than in Africa. In Somalia, maritime piracy impedes the delivery of relief aid necessary to sustain and nourish a substantial part of the population. In Nigeria, piracy threatens the vital fishing industry and regional trade, and along with bunkering, reduces oil revenue and therefore potential financial support for the Delta region. At the same time, while piracy in both countries threatens the fragile living conditions of some of the world’s poorest people, piracy itself has its roots in these fragile economies. Maritime piracy cannot adequately be addressed and eradicated unless it is seen as both a cause of social and economic hardships and an effect of social, political and economic destitution as well.

Notes

4 Nincic, Maritime piracy.
7 Nincic, Nigeria.
14 Nincic, Nigeria.
15 Akinsanmi, Nigeria.
18 Nincic, Nigeria.
24 Ibid.
25 Relief agencies.
28 Ibid.
Bad order at sea: From the Gulf of Aden to the Gulf of Guinea

Francois Vreÿ

Background

At the dawn of the 21st century – in particular as a result of increasing bad order at sea – maritime matters have increasingly edged their way upwards on national and international security agendas. Kaplan recently reiterated the conflict–commerce and resource connections in an essay published in *Foreign Affairs* in which he depicted the Indian Ocean as the future battleground between the rising powers of India and China.¹ In a similar vein, Forrest and Souza² pointed to the Gulf of Guinea in the western Atlantic as a maritime zone of international strategic importance, but one showing growing disorder at sea.

In 2009, events off the Horn of Africa, as well as off the West African shoreline in the arc of the Gulf of Guinea, continue to draw international attention due to, among other...
things, a steep rise in maritime threats grouped broadly under the rubric of piracy. Subsequently, both these African maritime arenas reflect a growing maritime awareness and cooperation to prevent or deal with the threats to humanitarian and commercial interests and the endangerment of important resources and seaways. Together with international attention turning back to Africa, African seas are increasingly assuming new importance as actors stake their maritime claims.

This article attempts to set the current piracy scourge off the African coast within the ambit of good order at sea and explain the insecurity off the west and east African coasts. The first section covers good order at sea and the general deterioration of security at sea and gives a wider classification of threats at sea. The following section highlights the growing insecurity off the Horn of Africa and introduces the reader to an important African maritime threat landscape. The third section outlines threats in the Gulf of Guinea in particular before suggesting alternatives for promoting maritime security in this region. The discussion closes with a brief comparison between the eastern and western seaboards.

**Bad order at sea: towards maritime insecurity**

Since the last decade of the 20th century Till has warned repeatedly about the growing problem of disorder at sea – a threat that is bound to commandeer the attention of naval and other maritime agencies. Resources, transportation and trade, and the sea as a means for exchanging information to further human development represent matters that cannot be ignored. Elements of Till’s warning rang true for Africa as by the middle of 2008, maritime insecurity along stretches of the coast of sub-Saharan Africa began to dominate the news, in particular the daring raids on shipping by pirates off the coast of Somalia.

The growing threat to good order at sea off Somalia compelled the United Nations to announce on 7 October 2008 an amendment to its earlier resolution to fight piracy. This amendment called for even stern military action by countries to eradicate piracy. The constituent elements of good order at sea, however, reside at the heart of the threats and vulnerabilities unfolding along the African coast and represent much more than the piracy hype that tends to obscure the scope of the emergent insecurity.

The African case reflects a geographic manifestation of a general upsurge in maritime insecurity. It also shows a need to establish conceptual and legal order to deal with the threatening events that now taint the African maritime landscape. In retrospect and at the global level, the UN through the United Nations Convention on the Law of the Sea (UNCLOS, 1982) went some way towards demarcating threats at sea, and piracy in particular. The International Maritime Organisation (IMO) went further and set
outlines for acting against illegal and threatening events at sea, but the matter remained unsettled and the vulnerabilities became ever more visible off the Horn of Africa. At the 2009 Sea Power for Africa Symposium in Cape Town, South Africa (8–11 March), the idea was mooted that UNCLOS had been in need of urgent revision for more than twenty years. Taking action against dangerous threats at sea – even against blatant attacks such as those off the coast of Somalia and in the Gulf of Aden – has become a thorny problem.

Some classification of threatening events at sea has become vital. Although piracy is currently the most visible of the threats to good order at sea, it is hardly a credible collective term for such threats. That most threats are conveniently grouped under piracy is a misconception pointed out by Till, who depicts the threats to good order at sea as a spectrum of local wars, terrorist attacks and piracy. Once the inaccurate use of the concept piracy is analysed, a clearer picture of the maritime threat cluster emerges.

An indiscriminate approach to piracy makes it difficult for governments and their security agencies to respond to maritime threats, as the responsibility to react to such threats or prevent them becomes confusing. A clearer framework is required, and Dillon suggests a typology (see table 1) to mitigate some of the difficulties that stem from these threats being labelled piracy.

**Table 1 Expanded categories of maritime insecurity**

<table>
<thead>
<tr>
<th>Current format</th>
<th>Suggested format: expanded categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Piracy as the cover-all term</td>
<td>Corruption: Acts of extortion or collusion against marine vessels by government officials and/or port authorities</td>
</tr>
<tr>
<td><em>Piracy: An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act</em></td>
<td>Sea robbery: Attacks that take place in port while the ship is berthed or anchored</td>
</tr>
<tr>
<td></td>
<td><em>Piracy: Actions against ships under way and outside the protection of port authorities in territorial waters, straits and on the high seas</em></td>
</tr>
<tr>
<td></td>
<td><em>Maritime terrorism: Crimes against ships by terrorist organisations</em></td>
</tr>
</tbody>
</table>


The sudden increase in the number of incidents off the African coast, while littoral states are displaying little capacity or political will to police or defend their maritime domains, requires a more systematic classification, as set out in table 1. In a sense, the above typology calls for an appropriate response hierarchy to guide policing and other security agencies. What is needed is a hierarchy of agencies capable of dealing with threats from the land to the high seas. It is therefore not surprising that literature on piracy and other maritime insecurities sometimes calls for closer attention to the research agenda in order to better understand the complexities involved. Apparently, stemming the tide of piracy
off the African coast does not automatically translate into stemming the bad order at sea continuum depicted in table 1 and emphasised by Till.

The frequency of the 2008 and 2009 maritime incidents off the African coast and the slow responses from littoral African governments reflect elements of some maritime regime on paper, but a weak or inappropriate operational capability that falters when good governance by the appropriate authorities is called for. By April 2009, piracy remained the ‘flavour of the month’, and one embedded in an array of threats and vulnerabilities flowing between the land and the sea.

Ultimately, African governments have to secure their maritime domains through good governance. It is therefore not surprising that good governance at sea underpinned the 2009 Sea Power for Africa Symposium in South Africa but, as delegates pointed out, it ultimately remains the responsibility of African governments to accept and react to the resolutions put forward by African navies.

**Bad order at sea off East Africa**

Ninic identifies piracy incidents off the African coast, and in particular events along the coast of Somalia and into the Gulf of Aden, as the outfall of not maintaining good order at sea around Africa. Neglecting the protection of maritime resources, transport of goods by sea, communication and dominion individually or collectively promotes maritime and eventually national insecurity. The seas off the Horn of Africa and the attention they attract coalesce with landward matters in no uncertain way. Simply put, the international attention directed towards the seas off the Horn of Africa revolves around threats to commerce while on land, international attention is largely focused on humanitarian vulnerabilities in Somalia, Sudan, and perhaps in Kenya as failed or weak states. Nonetheless, landward and maritime insecurity are interdependent, as insecurity on land eventually causes maritime insecurity. In turn, the latter obstructs the potential benefits from good order at sea to flow to communities on land through order, vibrant trade, safe sea lanes and effective dominion.

Lloyds daily bulletins reflect a determined response by non-African states to redirect naval resources to tackle piracy off the east coast of Africa. However, this laudable and in no way insignificant response became entangled in a conundrum created by a patchwork of international law, politically correct rules of engagement, and sovereignty issues that collectively obstructed actions to defend the growing number of vessels being attacked at sea. With African political will and naval capacity lacking, and with too many state and private enterprise rules disrupting or preventing rapid and effective international action against pirates, disorder at sea off the Horn of Africa continues. In a sense, the international armada assembling off the coast of Somalia created expectations of quickly mitigating the
piracy threat through deterrence and intervention. In contrast, however, the pirates quickly sensed and exploited the opportunities created by the asymmetry of the international response of modern navies attempting to clamp down on maritime piracy.

The laudable naval response has been crippled by the apparent inability of naval contingents to quickly adapt to international rules and to overcome (self)imposed obstructions; the tendency of navies to depart when their own interests or citizens are no longer under threat; and maritime transgressors not being significantly deterred by the naval show of force.17 The fact that the international naval task force only took shape in response to direct threats to the international shipping trade is also significant. For some time a general lack of law and order has characterised a large swath of the African east coast from the Red Sea southwards to South Africa, where the South African Navy probably represents the first credible African maritime buffer against disorder at sea. Commercial and bio-piracy along the coast and on the high seas, even as far south as Tanzania, are thus not surprising.18 Both commercial shipping and fishing stocks are raided, as no East African littoral state has the maritime means to prevent or terminate the scourge. In a sense, the navy–pirate asymmetry and lack of an African response have been benefiting the pirates, but indications are that as the naval response and cooperation gather momentum, the naval noose is bound to curb the freedom enjoyed by the pirates. As more actors step in and master the challenge, naval successes are bound to increase.

The controversial but perhaps practical option of self-help assumed growing importance after reports that a private security contractor was preparing to fill the gap by protecting merchant vessels along the Horn of Africa.19 In response, the matter of private contractors helping to establish good order at sea emerged as a parallel debate in the saga of maritime threats and vulnerabilities.20 As the positive results of naval coercion seemed to take effect very slowly, shipping off the coast of Somalia and in the Gulf of Aden remained under threat and in need of protection. By April 2009, regular interference with shipping around the Horn of Africa and further south continued, with 60 attacks reported by April 2009 and 16 ships remaining in the hands of pirates.21

In effect, a triad of dilemmas unfolded: the incapacity of littoral countries to combat the scourge; responses hindered by rules imposed by the international community; and ongoing controversy on whether private actors should be employed to help stem the wave of piracy. In a sense, each have a role to play, as was demonstrated during the attack upon the Melody passenger vessel on 25 April 2009 when Israeli security guards on board helped to fight off the pirates and a nearby naval vessel escorted it to Jordan. A day later, Yemeni security forces rescued a hijacked oil tanker by killing two pirates and arresting 11 others.22 Almost simultaneously the Seychelles coast guard intercepted pirates at their northern maritime boundary after receiving an early warning from a French naval vessel. Collectively, some success transpired through multiple agencies cooperating, although the hijacking of vessels continues unabated.
Reports on piracy tend to reflect technical details about the incidents, placing them in categories. What often remains unsaid is the wider setting in the Horn of Africa, where the cover-argument remains that instability on land is merely finding its way to sea, but the continuum of insecurity that stretches from the land to the sea is not recognised. The fact is that weak regimes on land eventually give rise to weak maritime regimes. The resultant maritime insecurity then extends from the harbour to the high seas, the latter being the most visible. For example, Somalia, Eritrea, Aden and Djibouti show little capacity or political will to deal with maritime matters, and the arc formed by their ungoverned maritime domains constitutes the hub of pirate attacks against international vessels.

Pirates in the Somali–Aden–Eritrea triad thus focus on opportunities presented by heavy shipping in nearby lanes. In addition, pirates adapt rapidly to tactical events such as naval escorts and local maritime control. One lesson that emerges from the insecurity off Somalia is how quickly the perpetrators shift their operations to greener pastures. The ungoverned seas to the south offer transgressors room to quickly extend the maritime theatre of bad order to an even larger tract of sea. In a sense, the almost unprecedented international response to commit a significant number of naval vessels to secure the seas off the Horn of Africa is a mere interim arrangement to establish some order at sea off the Somali coast. As pirates continue to expand their area of operations off the African coast further south, events off the west coast of Africa cannot be ignored. For this emergent maritime domain of international importance – albeit for different reasons than the seas off the Horn of Africa – bad order at sea holds equally dire consequences. It is, however, important to learn from the eastern seaboard just how rapidly instability at sea can unfold if matters on land continue to regress and are allowed to become embroiled with maritime matters.

**Bad order at sea off the coast of West Africa**

The Gulf of Guinea is fast emerging as an important region because of its landward as well as its maritime domain. Its large population offers a potential market combined with abundant energy resources typified by the proximity of large oil producers (Angola and Nigeria), maturing oil producers (Congo Brazzaville), mature producers showing signs of decline (Cameroon and Gabon), and new producers (Equatorial Guinea and Chad).

Located off the Gulf of Guinea, West African countries border an important sea lane that shows a visible connectivity with local energy commodities. Different from the seas off the Horn of Africa, the West African region is located in a major consumer market. It also has no narrow straits confining shipping and thereby increasing vulnerability. Furthermore, the region is nearer to Europe and the US than the Middle East and Asia.
In addition to the maritime sphere and energy resources, other commodities are also important. Important minerals like diamonds, the region’s rain forest habitat, agricultural commodities such as cocoa, and tourism all form hubs of economic importance with international appeal. In effect, the Gulf of Guinea region depicts what Murphy calls a ‘scramble for the sea’, as the Gulf is viewed increasingly as a partial solution to ever-increasing needs regarding energy, population, food and territory. But such a hub of activity also draws crime and other competition with maritime activities (good and bad) increasingly entering the fold. When the focal point of growth, wealth and power is situated offshore, maritime boundaries are disputed and interstate tensions tend to escalate quickly. These volatile conditions also favour insurgent-styled activities at sea, but these are merely elements of a larger set of events amidst a rising disorder at sea.

**West Africa: a rising maritime threat landscape**

In Africa, the bastions of regime security and political power cannot be readily challenged from the sea, but are definitely at threat from the land. This is quite apparent in the Gulf of Guinea region. Nigeria is combating a rebellion in its southern Delta region while the religious North–South divide regularly lapses into violence. Cameroon finds itself confronted by a threat from the Bakassi Peninsula where local inhabitants have felt excluded and unhappy since Nigeria handed the territory back to Cameroon. The ongoing government–rebel stand-off in Chad, simmering tensions in the Republic of Congo, the legacy of civil war in Angola with the Cabinda secession in the north not yet settled, fighting in the Democratic Republic of Congo, and a recent mercenary-style coup attempt in Equatorial Guinea all attest to real threats to incumbent regimes. It is therefore not surprising that decision-makers in the Gulf of Guinea generally perceive their threat landscape as predominantly continental and largely emanating from within their own territories.

In a sense, the tendency to perceive threats as predominantly landward and armies (land forces) at the forefront of opposing such threats is now changing. This shift in the nature of threats to national security is characterised by an emerging maritime threat domain for countries bordering the Gulf of Guinea. In contrast to the seas around the Horn of Africa, where the threat is to some foreign entity and the reaction configured by a foreign response, the maritime threats in the Gulf of Guinea hold real dangers for the countries of the Gulf of Guinea and their dependency on the resources and commerce originating from the Gulf. While much of the insecurity off the Somali coast stems from the collapse of governance and law and order in Somalia, in the Gulf of Guinea the situation is somewhat different. The wider nexus between disorder at sea and continued order on land holds dire consequences for the littoral countries. The maritime landscape in the Gulf of Guinea is more closely integrated with the well-being of littoral states and encompasses much more than threats to shipping.
Events such as the attack by the Movement for the Emancipation of the Niger Delta (MEND) on the Shell Bonga oil platform (June 2008) and by the Bakassi Freedom Fighters on the tug Bourbon Sagitta (October 2008)\(^\text{37}\) pose a threat to offshore oil operations and have a direct impact on the land when operations are shut down. Aggressors like MEND use a deliberate campaign at sea to influence decisions about landward matters, and the oil industry with its maritime footprint offers lucrative opportunities. Dependency on oil – bearing in mind that the oil reserves now coming on line are located offshore, in the Gulf of Guinea – demonstrates the benefits for Gulf of Guinea states to have jurisdiction, surveillance and the capability to defend and assert sovereignty at sea. However, the abundant resources in the Gulf of Guinea do not augur well for the region, as the income derived from them is bound to sustain conflict-prone and authoritarian governments.\(^\text{38}\)

The Gulf of Guinea recently featured prominently as a result of insecurity at sea through attacks on ships, hostage taking and destruction of energy infrastructure by rebels that extended their political agendas offshore. The mix of actors and their interests is driven by a combination of greed or grievance that holds various strands of conflict potential for the region:

- Local or regional conflicts resulting from socio-political matters as in Chad
- Criminal-related activities stemming from attacks against oil installations as in Nigeria and Equatorial Guinea
- Oil production causing separatist insurgencies as in Cabinda, Angola
- Oil production playing a role in civil wars as in Congo Brazzaville
- Interstate conflict resulting from resource location and exploitation demonstrated by Nigeria and Cameroon regarding the Bakassi case\(^\text{39}\) and between Equatorial Guinea and Cameroon about a maritime boundary and islands\(^\text{40}\)

One important matter that draws the attention is that in some way every strand outlined above has some connection to the Gulf of Guinea (directly or indirectly) and thus demands good order at sea.

In the Gulf of Guinea, there are several examples of how good order at sea is threatened. First, shipping in the Gulf’s sea lanes is threatened. Although attacks are not as frequent as those off Somalia, the Gulf of Guinea is still seen as a hub of threats to shipping – as shown in the records of the International Maritime Bureau.\(^\text{41}\) Second, companies that exploit resources are threatened by attacks on offshore oil infrastructure and the vessels that service this industry. Not only the lucrative offshore oil industry is threatened, as the fishing industry in Ghana is already hiring private security agents to protect it.\(^\text{42}\)
As for dominion, with the exception of Nigeria, few if any of the littoral states in the Gulf of Guinea have the means to enforce governance over their maritime sovereignty. Hence – and not unlike events in the eastern littoral – the good order at sea in the Gulf of Guinea is strained.

**West Africa: reviewing maritime security arrangements**

Although navies are generally viewed as being at the forefront of efforts to promote or defend maritime security, two observations suffice. First, naval limitations became apparent from events off the east coast and, second, matters in the Gulf of Guinea are more complex than that off the Horn of Africa. Therefore, the wider one stretches the norm of maritime security, the more challenging a naval solution. In this vein Till argues for defending good order at sea in broader terms: having a multi-agency approach, integrated regional approaches, and navies acting in a constabulary manner. In essence, Till envisages a lesser role for navies, but anticipates that the role of navies will become more cooperative and will involve other security agencies and partners below the war-fighting level.

States bordering the Gulf of Guinea need decisive action to promote maritime security, as events off the African east coast clearly show the consequences of continuous neglect of or weak responses to maritime threats. From a national and regional perspective, some progress has been made in maritime awareness in the Gulf of Guinea region: local naval forces providing surveillance of territorial waters; local maritime administrations enforcing the maritime code; compliance with the International Ship and Port Facility Security (ISPS) Code; and port state control. Gaps remain, however: there is a limited visible presence in the exclusive economic zone; joint search and rescue is not yet well developed; and the Suppression of Unlawful Acts Convention is not yet being implemented. As far as piracy is concerned, there is no regional arrangement for hot pursuit across national maritime boundaries.

Nonetheless, the Gulf of Guinea also portrays some movement towards Till’s suggestion that intended as well as unintended threats and threatening cargoes need to be taken care of. In a sense, the inclusiveness implied by Till has featured prominently in the Sea Power for Africa conferences (2006 and 2009) where delegates cited the imperative of collaboration on a range of measures to secure the maritime domain. A clear understanding of and commitment to maritime security by African players is evident, but progress towards an operational capability appears intermittent and weak and unfortunately shows a foreign rather than African presence.

Projects entailing maritime partnerships seem to be the envisaged arrangement for maritime domain awareness in the Gulf of Guinea. Examples are the implementation of the
ISPS code, port state control and search and rescue alongside maritime rescue coordinating centres, sea-basing in partnership with the US, and a sub-regional coastguard network. However, inter-agency cooperation among numerous countries presents its own set of difficulties – one being that maritime domain awareness in Africa remains wanting.

Till also points out the difficulty for navies in particular to operate in a new strategic milieu where maritime forces are occupied with an ever-increasing range of duties – duties not always amenable to what navies are trained and equipped to do. The latter difficulty is currently aptly demonstrated off the Somali coast where a rather strong international (non-African) naval task force is attempting to protect merchant vessels against acts of piracy and other threats on a lawless sea. Entertaining the naval option in the Gulf of Guinea must therefore consider the difficulties of turning to a naval solution – whether individually or collectively – as this step constitutes only a partial solution.

Although much is being said about intra-African partnerships (from the Gulf of Guinea in particular), other actors are at play as well. The growing role of the US in this Western maritime region can no longer be ignored or labelled mere interference or a presence raising hostility and scepticism. An early US contribution to assist in and contribute to safety, order and security in the maritime landscape is becoming all the more visible. The US has simultaneously established a permanent US naval presence for training and operational purposes that constitutes a vibrant multilateral maritime partnership in the Gulf of Guinea. In a similar vein, it appears that countries from the region realise the importance of cooperation to stem threats and vulnerabilities through partnerships and cooperative endeavours.

While interstate arrangements still dominate, cooperation with non-state actors are prevalent as well. Public-private partnerships to improve maritime awareness and security show promise, despite being somewhat controversial. Such partnerships can enhance the all-important but limited maritime surveillance over the Gulf of Guinea – of which the significance grows alongside the value of the Gulf itself. Providing a consistent and dependable information stream is vital and is made possible by sub-contracting. Good information about their maritime domains is not only the basis for sound decisions by states in the Gulf of Guinea, but also represents the softer and less controversial asset for national and regional decisions. A lack of maritime domain awareness remains an issue – a matter acknowledged by two speakers from West Africa at the 2009 Sea Power for Africa Symposium in Cape Town.

A second possible, but nevertheless emerging, partnership is the cooperation between governments and private enterprise to physically secure the offshore domain. Agreements between governments and non-state parties to assist with crucial security matters at sea remain an option, although these are being kept low-key. Training by private companies to bring about an indigenous capability for the future does take place.
MPRI (Military Professional Resources Incorporated) involvement in Nigeria and the leaders of Equatorial Guinea turning to MPRI and Israeli security agencies to assist with training are but two examples.54

A further step is cooperative partnerships with private security agencies to assist with security beyond mere training. As such, co-deployment of state and private capabilities take place where both parties contribute elements towards a common security concern. Whether part of a multinational corporation or an independent contractor, cooperation under strict rules offers opportunities where indigenous security forces are ill equipped and ill trained to protect, prevent and secure. Such partnerships do exist and extend offshore – for example in Nigeria – to secure, among others, vital oil infrastructure. Although controversial, public-private security arrangements between private security, multinational companies, police and military establishments continue to exist in order to augment defence and security services traditionally offered by the state.55

In West Africa, collective arrangements with a maritime imperative are growing. On a more military note (a domain preferably kept out of the privatisation debate) cooperative naval arrangements to ensure good order at sea are emerging. Being an arrangement squarely located in the state and interstate domain, naval cooperation remains important, but immature. The culture to protect matters maritime is weakly developed as cognition of the threat and suitable interstate arrangements has not yet progressed sufficiently.56 Regional integration must be accompanied by military integration, and this is not yet the case in West Africa – least of all in the maritime domain. Naval cooperation assumes an extraregional rather than intraregional profile with West African – US maritime cooperation being more salient than intra-African developments.

Towards good order at sea: comparing the East and West African maritime domains

Threats to good order at sea feature quite prominently along the African coast, and in particular off the Horn of Africa and in the Gulf of Guinea. Around the Horn of Africa, ungoverned or weakly governed continental spaces (Somalia in particular) are blending with an ungoverned maritime landscape. The area is almost totally deprived of naval means and has limited maritime agencies to establish some semblance of order. In this climate, disorder at sea is increasing rapidly with piracy merely reflecting a sector of the insecurity. The international naval response under the auspices of governments, regional and global bodies demonstrates the seriousness with which the international community views maritime disorder off the Horn of Africa. Nonetheless, events off the Horn and recently further south show the dangerous nexus of political collapse on land and economics-driven maritime disorder and illustrate just how expansive, threatening and costly bad order at sea can become.
For the Gulf of Guinea in particular, the picture is less disturbing but more complex, for it involves a triad of events on land, on sea, and below the surface of the sea. Although disorder at sea has not yet reached the levels found along the east coast, much more is at stake. Maritime insecurity in the Gulf of Guinea is more directly politically driven. In Nigeria politics on land directly result in offshore actions, causing the hub of insecurity on land in the Niger Delta region to spill into the Gulf to promote bad order at sea. Although many of the events take place on the surface, what is located below the surface underpins much of the involvement of state, sub-state, non-state and regional actors.

In contrast with the eastern seaboard, multiple arrangements to promote good order at sea are emerging between a plethora of security agencies in the Gulf of Guinea. Whilst piracy off East Africa has become a rallying call for international intervention to restore order, much is already being done off the West African coast. To the western seaboard, the costs of bad order at sea are more direct as a range of economic and political, ecological and societal sectors are threatened. Regime security (territorial disputes and terrorism), economic security (oil and gas disruptions), ecological matters (deliberate pollution and the tourism industry), and food security (threats to fisheries and arable land) ultimately stand to impact severely and threaten the densely populated littoral states.

Notes

4. During the Third Sea Power for Africa Conference at the International Convention Centre, Cape Town, attended by the author, cooperation and collaboration at sea to meet rising challenges became a refrain as speakers from African navies and security institutions without exception reiterated this theme.
11 Nincic, State failure and the re-emergence of maritime piracy, 3–4.
14 Nincic, State failure and the re-emergence of maritime piracy, 10.
15 Kaplan, Centre stage for the 21st century.
16 Stares, This is the man tasked with keeping pirates at bay.
22 News24, Cruise ship fights off pirates (AFP), Media24 News Channel (Africa), 26 April 2009; News24, Seized oil tanker freed, Media24 News Channel (International), 27 April 2009.
23 Petretto, Weak states offshore, 11.
26 Nigeria, Chad, Gabon, Cameroon, Equatorial Guinea, Republic of the Congo, Angola and São Tomé and Príncipe, although there is now a tendency to include Ghana and the DRC as well.
28 Mane, Emergence of the Gulf of Guinea in the global economy, 11.
29 Safe tourism off the east African coast is an important industry and interference and warnings to avoid this region if possible hold a potential ripple effect for Kenia, the Maldives, Seychelles and Zanzibar. See C K Daly, Somalia: pirates of the Gulf, ISN Security Watch, 12 March 2009.
31 Equatorial Guinea: shoot out at the presidential palace, Africa Research Bulletin 46(2) (March 2009), 17867–17868.
32 Murphy, Suppression of piracy and maritime terrorism, 33.
36 Forest and Souza, Oil and terrorism in the New Gulf, 213.
37 Musa, Cameroon says pirates repulsed in border peninsula.
38 N Jenson and L Wantchekon, Resource wealth and political regimes in Africa, *Comparative Political Studies* 37(7) (September 2004), 816–841.
39 Paes, Oil production and national security in sub-Saharan Africa, 96–97.
47 Addico, Maritime security threats and responses in the West and Central African Sub-region/Gulf of Guinea, 4.
48 Matter raised by Rear Admiral O S Ibrahim of the Nigerian Navy on 10 March 2009, at the Third Sea Power for Africa Symposium, Cape Town, 8–12 March 2009.
52 M N Murphy, The role of ‘public-private partnership’ in maritime awareness and security, Paper prepared for the State and Regional Intelligence Fusion: Experiences and Best Practices in Interdisciplinary Collaboration, Medford, USA, 16 October 2007, 4.
53 Speakers from Nigeria as well as Ghana pointed out the lack of maritime awareness, the need for its enhancement and the fact that the undue embracement of sovereignty obstructs the required wider cooperation, Sea Power for Africa Symposium, Cape Town, South Africa, 8–11 March 2009.
54 Dare, The curious bonds of oil diplomacy.
Sea piracy and maritime security in the Horn of Africa: The Somali coast and Gulf of Aden in perspective

Freedom C Onuoha

Introduction

The security of national and international waterways cannot be overemphasised, for obvious reasons. The ocean serves as a medium of transportation, a source of economic exploitation of such mineral resources as crude oil, and a source of food in the form of fishing and shrimp fishing. This has made the issue of the security of waterways (maritime security) a subject of serious concern to states, international organisations and other stakeholders in the maritime domain.

Regrettably, Africa’s waterways have in recent times emerged as some of the world’s most dangerous routes for vessels and their crew members in terms of pirate attacks.
Of particular concern is the increase in piracy and sea raids off the coast of Somali and in Gulf of Aden around the Horn of Africa. The situation has become particularly worrisome in the past three years, leading observers to conclude that ‘piracy and its fruits have become the largest, single industry of that impoverished country’.2

How do we characterise the serious dimensions that sea piracy has assumed along the Somali coast and in the Gulf of Aden? What factors contribute to the upsurge of piracy in the region? What has been the response of various stakeholders in promoting maritime security in the region? What measures could be adopted to combat piracy in the region? This article attempts to address these and related questions.

**Conceptual framework**

There is no single definition of sea piracy that is accepted by all states, organisations and scholars.3 This article adopts the definition of sea piracy of the International Maritime Bureau (IMB), namely that it is ‘the act of boarding any vessel with the intent to commit theft or other crime and with the capability to use force for furtherance of the act’.4 Although this definition does have some loopholes, it serves the useful purpose of providing a context for finding evidence and statistics on reported attempts or actual boarding of a vessel by an individual or group with the intent of stealing the vessel’s contents or for achieving other personal benefits.5

As with sea piracy, it is easier to explain what the concept of maritime security entails than it is to provide a definition that is generally accepted. The term ‘maritime security’ is defined here as the freedom from or absence of those acts which could negatively impact on the natural integrity and resilience of any navigable waterway or undermine the safety of persons, infrastructure, cargo, vessels and other conveyances legitimately existing in, conducting lawful transactions on, or transiting through territorial and international waterways. In other words, maritime security incorporates unhindered oceanic trade, safe navigation, the safeguarding of coastal communities and their livelihoods, protecting the food chain and preserving the oceanic contribution to the health of the planet.6 Gilpin defines it simply as the ‘prevention of unlawful acts in the maritime domain, whether they directly impact the country or region in question, or the perpetrators are in transit’.7

The maritime domain covers all areas and things of, on, under, relating to, adjacent to or bordering on a sea, ocean or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo and vessels and other conveyances.8 Geographically, the maritime domain of a coastal state includes territorial waters, measured as 12 nautical miles from the coast, the contiguous zone or coastal waters, calculated as 24 nautical miles from the coast, the exclusive economic zone, which is 200 nautical miles from the coast, and last, the continental shelf, which can extend out to 350 nautical miles from the coast.9
Maritime security has two principal dimensions. The first is the intrinsic dimension, which is concerned with the natural integrity of all elements that form the basic and essential features of the maritime domain, such as the pristine quality of the waters and the quantity of fish and other marine resources. Logically, the degradation of the natural integrity of the marine ecosystem by such activities as dumping/leakage of toxic waste and poaching constitute threats to the intrinsic dimension of maritime security. The second dimension, the extrinsic dimension of maritime security, covers the safety of all ‘foreign’ objects existing in or making use of the maritime domain. This then concerns the safety of among others vessels, persons and infrastructure, which do not form part of the basic and essential features of the marine ecosystem but which are of value to a state or entity which has the legal right to make use of the maritime domain.

Against this backdrop it becomes easier to appreciate how sea piracy impinges on maritime security. As shown in figure 1 below, both international and territorial waterways provide the environment for piracy. Hence, the potential for sea piracy

*Figure 1 Links between sea piracy and maritime security*
exists along almost all waterways, whether of advanced or developing countries. This assumption is based on the fact that increased economic activities in coastal areas tend to give rise to piracy. However, the degree of its manifestation in a particular location is basically a product of the nature of measures put in place to ensure maritime security. In this light, the state of maritime security and piracy are directly related. This is what is indicated by the thick straight line (a) dividing the two variables into two equal parts in figure 1. Thus, when piracy increases (+), it reduces maritime security (-). Conversely, increase in the level of maritime security (+) usually translates to decrease in the level of sea piracy (-), as indicated by the movement of the broken line (b).

In this sense, sea piracy threatens the two observed dimensions of maritime security. In terms of the intrinsic dimension, an environmental disaster resulting from pirate violence against oil-laden ships would undermine the marine ecosystem and in turn threaten a country’s food supply and local livelihoods. With regard to the extrinsic dimension, piracy poses common risks to those who use the maritime environment, irrespective of their nationality or activity – among others vessels and their crews, tourists, workers on oil rigs. Therefore the task facing coastal states is to design and implement robust and sustainable measures that would buoy up maritime security and reduce sea piracy.

**Piracy in Africans waters: overview of attacks along the Somali coast and in the Gulf of Aden**

Piracy in Africans waters is not new. For instance, the Barbary Coast in North Africa (Morocco, Algeria, Tunisia and Libya) was a notorious area for piracy from the 17th century to the early 19th century. In recent times, however, Africa has featured prominently in the global map of violence at sea.

An observer of piracy in Africa will notice two major developments. First is the concentration of pirate violence in three main regions, namely the Somali coast and the Gulf of Aden along the east African coast, Nigeria’s territorial waters in West Africa, and the Mozambique Channel / Cape sea route in Southern Africa (see figure 2).

Second is the increase in the frequency and sophistication of pirate attacks. In this regard the Somalia coast and the Gulf of Aden are extreme danger zones for shipping in Africa’s waters (see table 1). According to statistics from the IMB, piracy has become much more dangerous in the last few years. The latest annual report by the IMB shows that in 2008, a total of 293 incidents of piracy and armed robbery against ships were reported worldwide, which is an increase of more than 11 per cent on 2007. Africa accounted for the highest incidence of global piracy, with 189 cases. The region was followed by South Asia with 55 cases. The Indian subcontinent recorded 23 cases, while America and Far East Asia witnessed 14 and 10 attacks, respectively. The report attributed the increase
to the unprecedented number of attacks in the Gulf of Aden (92 cases) carried out by Somali pirates.11

Around the Somali coast, pirate attacks have increased both horizontally and vertically. Horizontally, pirates have acquired the weaponry and high-tech gadgetry that enabled them to expand the range of their attacks up to the Gulf of Aden and deep into the Indian Ocean. They now make use of automatic weapons, rocket-propelled grenades,
faster attack craft with longer ranges, satellite phones, and global positioning systems (GPS) in their attacks. Their mode of operation involves the use of large ‘mother ships’, which follow the targeted ship by means of GPS devices. On approaching their target, they dispatch smaller speedboats that move in to enable the pirates to board the target and navigate the ship and its crew to any destination they choose. Attacks now take place right up to the Yemeni coastline. It is estimated that of the 16 000 vessels that pass through the Gulf of Aden every year, around 40 are hijacked.12

Vertically, attacks have increased in the sense that all kinds of vessels – including general cargo ships, bulk carriers, tankers, fishing vessels, sailing yachts and tugboats – are targeted, attacked and hijacked. Even cargo coming into Somalia as part of the United Nations World Food Programme (WFP) aid are not spared from pirate attacks. In October 2005, for instance, Somali pirates hijacked a UN food cargo ship which was in the process of unloading 850 tons of corn and rice at a Somali port.13 In 2008 alone, pirates operating off Somalia’s coast, in the Gulf of Aden and the Indian Ocean carried out over 130 attacks against ships, turning the region into the world’s most dreaded waters.

The most brazen incident in the region took place on 18 November 2008 when Somali pirates hijacked a Saudi vessel, the MV *Sirius Star*, laden with oil worth over US$100 million. The attack took place about 500 miles off the coast of Kenya, deep to the Indian Ocean. According to Pottengal Mukundan, the director of ICC-IMB, the hijacking of the *Sirius Star* is significant on two levels: ‘Firstly, [it] is the largest vessel to have been hijacked. Secondly, the distance from the shore would suggest a highly organised operation.’14 The hijackers had demanded US$25 million for the release of the vessel and on 9 January 2009 did in fact release it, but the ransom amount was not disclosed.15

The extension of pirate attacks beyond the Somali coast into the Gulf of Aden seriously threatens the vital international trade route between Africa and Europe, and by extension Asia. The Gulf of Aden is a key maritime trade route, where thousands of ships navigate the Red Sea before passing through the Suez Canal which links Europe to Asia.

---

Table 1 Pirate attacks in Africa’s waters, 2003–2008

<table>
<thead>
<tr>
<th>Location</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulf of Aden</td>
<td>18</td>
<td>8</td>
<td>10</td>
<td>10</td>
<td>13</td>
<td>92</td>
</tr>
<tr>
<td>Somalia</td>
<td>3</td>
<td>2</td>
<td>35</td>
<td>10</td>
<td>31</td>
<td>19</td>
</tr>
<tr>
<td>Nigeria</td>
<td>39</td>
<td>28</td>
<td>16</td>
<td>12</td>
<td>42</td>
<td>40</td>
</tr>
<tr>
<td>Rest of Africa*</td>
<td>33</td>
<td>35</td>
<td>19</td>
<td>29</td>
<td>34</td>
<td>37</td>
</tr>
</tbody>
</table>

* The waters of 22 African states.

Why the upsurge of piracy in the region?

Various factors contribute to the upsurge of piracy along the Somali coast and in the Gulf of Aden. These include, but are not limited to, the historical failure of governance in Somalia, proliferation of small arms and light weapons, large profits from the payment of a ransom, worsening poverty and the absence of a joint maritime security strategy.

The historical failure of governance that resulted in the collapse of the Somali state is at the root of pirate violence in the region. Since the ousting of President Siad Barre in 1991, the country has been in virtual anarchy. The absence of a functional national government has led to the proliferation of warlords and armed militias, and consequent fragmentation of Somalia into a patchwork of rival fiefdoms. The result is that Somalia’s coastline has been divided among militia groups and warlords who engage in piracy or provide information, protection and support to criminal gangs involved in piracy. The confession of one notorious Somali pirate, Mohamed Abdi Hassan, or ‘Afweyne’, shows that warlords are behind pirate attacks reported in Somali waters. According to Africa Confidential:

Security officials for the Transitional Federal Government (TFG) say that Afweyne led the group of pirates that hijacked the MV Rozen on 25 February 2007 and linked him to a network importing arms from Eritrea for former warlord Hussein Mohamed Farah ‘Aydeed’. Another Haradheere-based pirate is another warlord, General Garaad Mohamud Mohamed, whom the UN investigators link to the hijacking of the South Korean-flagged fishing vessels Mavuno I and Mavuno II. Garaad publicly admitted his role on Shabelle Radio.16

The failure of governance has in other words resulted in a climate of insecurity in Somalia, which led to the development of a criminal economy. The reign of terror which has plagued Somalia on land created the environment for the extension of violence to the sea, and the profit from piracy in turn again sustains the insurgency in the country as a whole.

The failure of the Somali state has meant that its territory has been saturated with small arms and light weapons. Africa harbours an estimated 30 million illicit weapons, and 75 per cent of the world’s conflict occurs on this continent. The Horn of Africa, which is characterised by porous borders, weak governments and ineffectual national security systems, figures prominently in the continent’s map of regions with a high circulation of illicit weapons. The civil wars in Uganda, Ethiopia, Somalia and Sudan have sustained the illegal market in, and illicit use of, small arms and light weapons.17 With a substantial volume of these arms circulating in an environment of worsening poverty, it is little surprise that Somali youths have turned to piracy to make a living.
The payment of ransom to secure the release of vessels or seafarers hijacked by pirates adds to the complexity of the piracy activities along the Somali coast. The cost of piracy globally is estimated at between US$13 and US$16 billion annually. Because of the absence of an effective central government in Somalia, intervention and rescue is unlikely and the payment of the ransom is almost the only way out. Ship owners, knowing that no rescue is likely, pay up, and the increased success rate of hijacking of vessels in the area lead to even more hijackings. It is estimated that in 2008 alone about US$30 million was probably paid by ship owners to free their vessels and crews hijacked by Somali pirates. The Kenyan government has admitted to paying ransom in excess of US$150 million to pirates operating in the region in 2008.

The payment of a ransom has two major implications. First, any time a ransom is paid to a kidnapper, it produces obvious short-term benefits but much larger, hidden, long-term costs. The obvious benefit is the release of the hostage(s), but the hidden cost is that it encourages all organisations that specialise in hostage taking, immediately and in the future. Hostage taking is like any other type of business – if it is profitable enough, kidnapping organisations will expand and new kidnapping organisations will appear. Second, it provides pirates with finance to procure sophisticated weapons and high-tech gadgetry. This has contributed to the frequency of their attacks, the expansion of the range of their onslaught and the success rate of their forays. This further emboldens the pirates and even worsens the situation.

Further, the task of ensuring the security of waterways, especially strategic chokepoints, is beyond the capacity of one littoral state. The positive effects of intensified joint naval policing of Indonesian waters and the Malacca Strait since 2004 attest to the importance of cooperative maritime security frameworks. Therefore, in a globalised world where non-state actors like terrorists, pirates and militias to a large extent have the same access to arms, high-tech equipment and information (intelligence) as states, the range of maritime threats requires collaboration among national navies in defense of their shorelines, to the common benefits of the global system.

In the Horn of Africa, however, most of the littoral states not only suffer from poorly equipped and trained navies, they also fail to engage in collaborative security measures or combine their resources to address common maritime threats. The reason for this is partly their weak economies, but more fundamentally the political problems like international boundary disputes. The experiences of Eritrea and Djibouti in the Horn of Africa, and Nigeria and Cameroon in the Gulf of Guinea, where mutual relations between regional neighbours have been negatively affected by simmering border and oil disputes, are insightful in this regard. Nevertheless, they continue to suffer from various maritime threats which could be controlled by means of collaborative measures. Even where there are genuine intentions among regional neighbours to cooperate, it will be very difficult to achieve joint maritime security framework with the current navy
capabilities. In the absence of effective navies, coupled with a lack of regional maritime security cooperation among littoral states in the region, piracy has proliferated and there is a risk that it will spread to new areas.

**Responses to the degenerating security situation**

The security threats posed by growing piracy and sea raiding along the Somali coast and in the Gulf of Aden have attracted varying responses from various stakeholders. Credible responses and interventions have come from international organisations, multinational forces, regional networks and private security organisations. The nature and thrust of some of these responses are discussed briefly below.

**The International Maritime Organisation and the United Nations**

Since the degeneration of maritime security in the Somali waters, the International Maritime Organisation (IMO) has lead the way in pushing the agenda for addressing the security challenges at international fora. The IMO is an autonomous body, operating within the UN network, whose main function is to regulate commercial shipping and tackle marine pollution. In line with its remit, the body has intensified efforts to bring the threats posed by growing piracy in Somali waters to the attention of both the TFG in Somalia and the United Nations Security Council (UNSC) since 2005.

The growing number of reported attacks on ships off the coast of Somalia prompted the IMO assembly to adopt a resolution, which resulted in the UN Secretary-General bringing the matter to the attention of the UNSC in 2005. In July 2007 the IMO and WFP issued a joint communiqué expressing grave concern over the degenerating maritime security situation along the Somali coast and calling on the UN to act to prevent and suppress acts of piracy in the region. Similar pressure was exerted through IMO Resolution A1002/25 of November 2007, which requested the TFG to take any action it deemed necessary to prevent and suppress acts of sea raiding originating in Somalia’s waters, and to advise the UNSC on the request by the IMO council that foreign warships and military aircraft be used to combat piracy in its territorial waters. These interventions ensured that issues of pirate violence remained on the agenda of UN deliberations on the Somali situation, and led to many of the UN interventions in suppressing piracy in the region. Thus the response of the IMO to the Somali situation has mainly taken the form of agenda-setting for the TFG and the UN.

On 20 August 2007, for instance, the UNSC adopted Resolution 1772 on the situation in Somalia, in which it among others expressed its concern about the upsurge in pirate violence off the Somali coast and took note of the joint communiqué issued by IMO and the WFP on 10 July 2007. A more resolute response by the UN on suppressing piracy along the

Somali coast and in the Gulf of Aden came in October 2008, when it adopted Resolution 1838 which calls upon ‘States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to use on the high seas and airspace off the coast of Somalia the necessary means, in conformity with international law, as reflected in the Convention, for the repression of acts of piracy’. Since then the UNSC has passed other resolutions aimed at providing a legal platform for intervention by foreign navies to ensure the security of merchant shipping along the coast of Somalia and in the Gulf of Aden.

**Intervention of foreign navies**

The deployment of foreign navies to patrol the area is one attempt to ensure the security of merchant shipping along the Somali coast and in the Gulf of Aden. Intervention by foreign navies arose partly from the need to protect their states’ maritime interests and partly in response to the UN’s call for the suppression of acts of piracy in the area.

In recent times, navies from the US, China, Russia, the North Atlantic Treaty Organisation (NATO) and the European Union (EU) have intervened to protect merchant shipping in the region. In August 2008, for instance, the US Naval Central Command set up a Maritime Security Patrol Area (MSPA) in the Gulf of Aden, involving coalition navy warships and aircraft which patrols the waters and airspace of the area. Before the establishment of the MSPA, efforts were focused on Combined Task Force 150, a multinational operation which patrolled the Gulf of Aden, Gulf of Oman, Arabian Sea, Red Sea and Indian Ocean and whose main aim is to counter terrorism. Its main contributors are Britain, France, Germany and the US. However, the MSPA is expected to focus on countering destabilising activities in the region and improving security while long-term initiatives mature.

In mid-2008, the EU also initiated a Close Support Protection System for vessels passing through the Gulf of Aden. The French navy was the first to render the service, by providing protection teams on board two merchant vessels. The other ships that formed part of this ‘group of protected vessels’ did not have on-board protection teams. The idea is that the presence of the leading warships will deter pirates from attacking any vessels in the group. The vessels can also call on the accompanying warships for assistance if they are attacked by pirates. On 5 December 2008 the close protection escort provided by the French navy was replaced by a new EU operation named ATALANTA. This operation involves arranging the passage of ships in groups through a special (UKMTO) transit corridor, based on their transit speed. Both naval and air surveillance are then deployed within the area to ward off attacks and provide support to ships.

**Entry of private security firms**

Private security firms have also stepped in to provide protection for merchant ships transiting the Somali coast and Gulf of Aden. Prior to the growing interest among
private security companies to offer their services for the protection of ships transiting Somali waters, the three different entities that exercised political authority within this geographically defined territory, namely the Transitional Federal Government, Puntland and Somaliland, also contracted private security companies to provide protection services. In their case the primary reason was to prevent piracy and illegal fishing in their coastal waters. For instance, in 1999 the Somali government hired a British firm, Hart Security, to act as a coast guard. In December 2008 the managing director of the private Somali Coast Guard (Somcan) security firm, Abdiweli Ali Taar, ‘requested the UN and EU to allocate $30 million per year to his company to improve its ways of dealing with Somali pirates’. Somcan is based in Bosaso in Puntland, which is where most Somali pirates are based.

Other private security firms such as Blackwater Worldwide (recently renamed Xe) and the Mississippi-based Hollowpoint now view the Somali’s unruly waters as a potential lucrative market for their services. Blackwater recently announced that ‘it was hiring a ship fitted with helicopters and armed guards for escorting vessels past Somali’s pirate-ridden coast’. Unfortunately, some of these private security firms jostling for the task of providing security along the pirate-ridden coasts have a reputation of being very quick on the trigger. The record of a private security company like Blackwater – which is being investigated for its role in the fatal shooting of 17 Iraqi civilians and for improperly importing arms to Iraq in 2007 – raises concerns about the unregulated activities of private security firms in conflict zones.

**Proposed regional anti-piracy centre**

Another notable response to the growing piracy problem is the move by states in the region, and in cooperation with the IMO, to establish a regional centre for combating piracy in the Gulf of Aden and Arabian Sea, to be located at Sana’a in Yemen. Apart from the Sana’a centre, two other centres will be established, in Tanzania and Kenya.

Consequently, a high-profile meeting of states from the western Indian Ocean, Gulf of Aden and Red Sea areas, held in Djibouti on January 2009, adopted a code of conduct dealing with the repression of piracy and armed robbery of ships in the western Indian Ocean and the Gulf of Aden. The meeting was attended by representatives of the maritime and port authorities of Comoros, Djibouti, Egypt, Eritrea, Ethiopia, France, Jordan, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Oman, Saudi Arabia, Seychelles, Somalia, South Africa, Sudan, the United Arab Emirates, Tanzania and Yemen as well as other IMO member states. The adoption of the code of conduct is undoubtedly a starting point for successful anti-piracy cooperation and coordination in the region.

The proposed regional anti-piracy centres will operate in a similar fashion to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against
Ships in Asia (ReCAAP). They will contribute to the suppression of piracy through regional cooperation by means of information exchange, joint patrolling and capacity building for navies of the coastal states.

**Conclusion and recommendations**

That the growth in piracy along the Somali coast and in the Gulf of Aden threatens the interests of states and peoples both within and outside Africa is no longer in doubt. However, what remains doubtful is the extent to which spontaneous responses to piracy in the region can address the problem in a sustainable manner. The following recommendations, although hardly exhaustive, would contribute to suppressing piracy in the region.

- **First**, the UN must assume its full responsibilities in Somalia, in particular by authorising without any further delay the establishment of an international stabilisation force. It should build on an enhanced AMISOM (the African Union Mission to Somalia) and further the cause of peace, security and reconciliation in Somalia, as well as facilitate the urgent deployment of a UN peacekeeping operation that could take over from AMISOM and support the long-term stabilisation and reconstruction of Somalia. 31

- **Second**, the stabilisation of Somali should include the establishment of a special crime commission to investigate the activities of warlords, militia leaders and other criminals who have contributed to the Somali crisis, with a view to recommending and implementing appropriate sanctions.

- **Third**, there is a need for the African Union, regional organisations, national governments, civil society organisations and grassroots communities to intensify collaborative networks and strengthen mechanisms to control the proliferation of small arms and light weapons in the Horn of Africa.

- **Fourth**, the AU together with other stakeholders should intensify its collaboration with the regional economic communities (RECs) to ensure that the concepts of the African Standby Force and the Sub-Regional Standby Brigades become functional in June 2010 as envisaged in the roadmap. Also, efforts must be made to develop the capacity of the regional brigades to protect Africa’s maritime interests within a clearly defined holistic maritime security strategy for Africa.

- **Fifth**, foreign navies operating along the region’s coast should establish cooperative partnerships with navies of coastal states in the region. Without cooperation by these African coastal states it will be difficult, if not impossible, to legalise an isolated intervention much less a sustained systematic anti-piracy campaign in the region. 32
Such cooperation would serve the dual purpose of attaching legitimacy to foreign-led operations and offer African navies the opportunity to build their capacities for policing their waters. The scope of cooperation must go beyond merely fighting piracy to include emphasis on effective protection of the marine resources of African states from liberal pillaging and the dumping of toxic wastes by foreign (and local) fleets.

Finally, there is a need to tackle the root causes of piracy in Africa rather than reacting to this symptom of a deeper malaise. Most security challenges confronting Africa have their origin in the progressive failure of governance and internal contradictions that serve to undermine human development. The factors are legion, but corruption, marginalisation and injustice figure as the most prominent causes of insecurity onshore, which have now been extended offshore.

Good governance is therefore absolutely fundamental to achieving sustainable maritime security and development in Africa. Hence, efforts must be made to address bad governance by strengthening and networking all institutions and mechanisms at national, regional and continental levels that are fighting corruption and undemocratic tendencies. The importance of policies designed to curb corruption in African states, ensure transparency and accountability in the management of national resources, greater investment in human development, and the strengthening of the democratic (especially the electoral) processes to ensure the emergence of credible leaders cannot be over-emphasised.

Notes

8 Ibid.

11 International Maritime Bureau, Piracy and armed robbery against ships, 26.


15 James Ume, Somali pirates free tanker after ransom, Leadership, 11 January 2009, 11.

16 Somalia: pirates of the Horn, 8.


26 International Maritime Bureau, Piracy and armed robbery against ships, 24.


32 Menefee, Foreign naval intervention in cases of piracy, 370.
Enhancing regional maritime cooperation in Africa: The planned end state

Paul Musili Wambua

Introduction

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

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

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

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

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

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

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

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

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

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

Scientific research

Control of marine pollution and conservation of the marine environment

Safety at sea

Maritime transport

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

Challenges facing African states in the governance of their maritime zones

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

- Lack of appropriate frameworks for the delimitation of the maritime zones
- Lack of appropriate policy, legal and institutional frameworks for governance of the maritime zones
- Inadequate training facilities and institutions to develop a pool of competent human resources for the governance process
- Lack of funds for the exploration of and research on marine resources
- The ever-present threat of marine pollution from land-based and ship-based sources
- Illegal, unreported and unregulated (IUU) fishing from distant water fishing nation vessels
Piracy and hostage taking

Inadequate disaster preparedness to deal with maritime searches and rescues

Illegal immigration

Drug trafficking

Smuggling of contraband goods and arms

Inadequate port security

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

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

The operations of the pirates seem to have become more sophisticated. Somalia has the longest coastline in Africa, measuring some 3,898 kilometres, of which 1,204 kilometres is in the Gulf of Aden. This coastline acts as an ideal base from which pirates can launch piracy expeditions and also provides good hideouts for them. The pirates are increasingly using so-called ‘mother ships’, typically converted fishing vessels, to launch attacks into deeper waters hitherto considered safe from pirate attacks. Previously, vessels keeping at least 50 nautical miles from the coast were considered safe but the range has now increased to at least 200 nautical miles. The supertanker *Sirius Star* was captured more than 400 nautical miles off the coast of Kenya, well to the south of Somalia. The
operations of the pirates in the Horn of Africa region and elsewhere in the waters off the African coast are launched from land bases. The pirates take advantage of the instability in the region to create hideouts from where they conduct their criminal activities with impunity, because it is near impossible to track them down.

The incidents affecting maritime security in waters off the African coast are not a preserve of the Horn of Africa and East Africa region. The west coast of Africa, the Niger Delta and by extension the Gulf of Guinea have also acquired the dubious reputation of being among the most dangerous maritime zones in the world. The activities of the Nigerian rebel forces in the oil-rich Niger Delta have extended to the sea, and Nigeria alone is said to be losing at least US$1.5 billion per year in cargo of stolen crude oil.

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

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

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

- The South West Indian Ocean Fisheries Commission
- The Maritime Organisation of West and Central Africa (MOWCA)
- The Sub-regional Integrated Coastguard Network
The South African Development Community which, although focusing mainly on economic matters, is extensively involved in the governance of ocean areas of member states

The Indian Ocean Tuna Commission

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

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

The non-treaty agreements include the Indian Ocean memorandum of understanding which deals with ship and port security. In terms of the memorandum the signatory states are obliged to inspect 15 per cent of all the ships that call on their ports in order to enhance safety of shipping.22 The Djibouti Code of Conduct23 signed on 30 January 2009 by eight African States (Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia and Tanzania) and Yemen in Djibouti at a special meeting organised by the IMO, is yet another regional agreement on ocean governance between African states.24 The regional agreement on combating piracy allows the signatory states to send navies into the territorial waters of other signatories to pursue pirates and in certain instances sanction joint anti-piracy operations. The code of conduct also calls on member states to enact legislation or amend existing ones to facilitate the arrest and prosecution of suspected pirates.

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

Benefits of regional cooperation in the governance of African maritime zones

Regional cooperation is perhaps the only avenue through which African states can achieve order in the governance of their ocean areas. The challenges of governing ocean spaces can be daunting if handled unilaterally by individual states. Issues such as maritime
attacks that have occurred in the waters off the coast of Africa cannot be addressed by a single maritime state acting in its national interest. Indeed, the transboundary nature of the challenges posed by most maritime issues call for integrated regional cooperation.

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

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

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

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

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

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

- Expansion of national maritime zones under the LOSC and the attendant complexity of boundary limits
- The overlap of maritime jurisdictions which necessitate clarification of intergovernmental title, jurisdiction and authority over these expanded zones
Scientific advancement and discovery of new uses of marine resources and increasing intensity of existing uses, such as off-shore petroleum and mineral exploitation and transportation, coastal areas development, recreation and tourism, aquaculture and sea ranching and renewable off-shore energy production

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

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

**Marine spaces are virtually common property with no exclusive rights of ownership**

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

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

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

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

National legislation, such as the Kenya Maritime Zones Act (chapter 371 of the Laws of Kenya), is not designed to facilitate regional integration in the governance of ocean areas
and present bottlenecks to regional cooperation. The legislation predates the LOSC and even in cases where it does not, it is not necessary in line with the provisions of the LOSC. The Kenya Maritime Zones Act, for instance, purports to give Kenya the right to regulate the passage of warships and military exercises in the EEZ. The basis for claiming such a right, to which US objects, is not clear. The LOSC confers such rights on coastal states for the regulation of the passage of warships, but only within the territorial sea area. In fact, in terms of the LOSC the regulation does not apply to the passage of ships along international navigation routes that pass through EEZs, without a distinction being made between warships and other ships. Kenya therefore has no legal basis for extending her sovereign jurisdiction to her EEZ; this is furthermore contrary to the provisions of the LOSC. However, the argument can be made that military exercises may be viewed as causing a disturbance to the marine life and are as such well within the ambit of LOSC provisions.

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

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

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

African states need to identify a forum in which they can chart modalities for regional cooperation in the governance of their ocean areas. No forum would be better suited to this matter than the AU, given the goodwill it enjoys among African states. It also has established organs through which the agenda can be handled. It would, for example,
be easier to set up an organ within the AU to deal with the coordination of maritime cooperation than it would be to set an independent entity, and also less expensive.

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

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

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

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

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

A fund administered by the AU should be set up to finance the operations of regional maritime cooperation organisations. The fund can be financed through contributions
from member states out of the collection of licencing charges on distant water fishing nation vessels and ships that fly their flags as well as port charges.

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

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

**Conclusion**

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

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


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

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


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

5 See LOSC, articles 61–70.

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

7 Ibid, articles 94 and 211.

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

9 Ibid, article 43.


23 This agreement is similar to the multinational regional agreement signed by South-East Asian states in 2005, known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which has more than a dozen signatories and is credited with helping to reduce the number of successful pirate attacks at the Malacca Straits choke point.
26 Ibid.
27 These include 23 Pacific Island states and territories – American Samoa, the Cook Islands, Easter Island (Rapa Nui), the Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, the Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna. See R A Herr, Small island states of the South Pacific: regional seas and global responsibilities, in D Vidas and W Ostreng (eds), *Order for the oceans at the turn of the century*, The Hague: Kluwer Law International, 1998.
28 See Vina Ram-Bidesi, Sustainable use of marine resources: lessons from the Pacific islands, UNU Global Seminar, oceans: interaction between man and maritime environments, 5th Shimane session, held at the University of Shimane, Japan, 2–5 August 2004. There are ten regional intergovernmental institutions under the Council of Regional Organisations of the Pacific (CROP) which focus on regional strategies for sustainable development. CROP consists of the Pacific Islands Forum Secretariat, the Secretariat of the Pacific Community, the Forum Fisheries Agency, the South Pacific Regional Environment Programme, the South Pacific Applied Geoscience Commission, the University of the South Pacific, the South Pacific Tourism Organisation, the Fiji School of Medicine and South Pacific Board of Educational Assessment, and the Pacific Islands Development Programme. The ocean-related activities of these organisations are coordinated by the Marine Sector Working Group which was created in 1997 and consists of technical experts from the CROP members. The aim of the group is to promote better coordination of activities among the regional organisations on marine-related issues. See also R Teiwaki, *Management of marine resources in Kiribati*, Suva: University of the South Pacific, 1988.
31 In Kenya, there are various land tenure systems which are governed by different pieces of legislation. For example, the Government Lands Act (cap 280) governs government (public) land; private land is *inter alia* governed by the Registration of Titles Act (cap 281), the Land Titles Act (cap 282) and Registered Land
Act (cap 300); and trust land is governed by the Land (Group Representatives) Act (cap 287) and Trust Land Act (cap 288).

32 Sections 5–6 of the Maritime Zones Act.


34 LOSC, article 30.


36 Ibid, article 56.

37 Maritime security issues on the east coast of Africa.


Maritime security and international law in Africa¹

John Gibson

Introduction

Ships and those who sail in them face many potential dangers, both from the natural perils of the sea and from the results of human conduct, which demand a precautionary response from seafaring nations. The promotion of maritime security, however, takes place within a context of international law that provides both opportunities and constraints. This article reviews the international legal principles affecting maritime security in Africa, and highlights some of their strengths and weaknesses.

The law of the sea is based on both custom and treaty. The customary principles have evolved over the centuries from the accepted practice of nations, and they have balanced

Keywords piracy; Somalia; maritime security; search and rescue; law of the sea
the desire of maritime states for freedom of navigation against the interests of coastal states in the security and resources of their inshore waters. Customary law has the advantage that it binds all states that have not persistently objected to it (that is, they must opt out rather than in), but it also often suffers from uncertainty. The main principles of customary law have now been codified in the 1982 UN Convention on the Law of the Sea,\(^2\) which came into force in 1994, and has been ratified by 159 states around the world.

### UN Convention on the Law of the Sea

The effect of the UN Convention on the Law of the Sea upon maritime security depends on a variety of factors, including crucially where the threat occurs and the nationality of the ships involved. The seas are divided into a network of maritime zones in which states have different powers and duties. Ships remain under the jurisdiction of their flag state (where they are registered) wherever they may go in the world, but at the same time they may fall under the concurrent jurisdiction of a coastal state in one of its maritime zones.

#### Territorial sea

The territorial sea of a coastal state (which in most cases is now 12 nautical miles wide) is under the sovereignty of that state, but foreign ships have a right of innocent passage to navigate through it, provided that their presence is not prejudicial to the peace, good order or security of the coastal state.\(^3\) The threat or use of force by foreign ships (among other behaviour) would not be innocent, and so they would forfeit their right of passage. Coastal states can also pass legislation affecting foreign ships in the territorial sea for various purposes, including navigational safety, fisheries, environmental protection, customs and immigration control. However, there are restrictions on their ability to enforce their criminal laws against foreign ships, unless the consequences of the crime affect the coastal state, the ship is engaged in drug trafficking, or the coastal state has been asked to intervene by the flag state.

#### Contiguous zone

Beyond their territorial sea, states may claim a contiguous zone up to 24 nautical miles from the coastal baseline.\(^4\) They do not have legislative jurisdiction over foreign ships there, but they have policing powers to enforce breaches of some of their laws committed inside their territory or territorial sea, including customs and immigration laws, although not security measures.

#### Exclusive economic zone

The UN Convention on the Law of the Sea also endorsed the more recent claims to an exclusive economic zone (EEZ) extending from the limit of the territorial sea up
to a maximum of 200 nautical miles from the coastal baseline. About 120 states have declared EEZs, while another 30 have limited their claims to exclusive fishery zones. Although coastal states do not have complete sovereignty over an EEZ, they have sovereign rights there for the purpose of exploiting and managing natural resources, including fish stocks. Foreign fishing boats must comply with the conservation laws of the coastal state, which is entitled to take enforcement measures against them, including boarding, inspection, arrest and judicial proceedings. Interception of foreign vessels is therefore legitimate in the EEZ, provided that it is undertaken by the coastal state to protect its natural resources. Otherwise, the coastal state must respect the rights of other states there, including the freedom of navigation.

High seas

Waters beyond the EEZ constitute the high seas, which are traditionally open to all nations. The customary laws governing the high seas were first codified in the 1958 Geneva Convention on the High Seas, which identified examples of the freedom of the high seas, including the freedoms of navigation and fishing. The provisions of the 1958 convention are largely repeated in the UN Convention on the Law of the Sea, with some additions to reflect later developments. Ships on the high seas are under the exclusive jurisdiction of their flag state, which has a corresponding duty to exercise effective control over them. Although the convention requires there to be a genuine link between a flag state and the ships to which it grants its nationality, it is common practice for many ships to register under flags of convenience issued by states with which they have no other connection, and which may have little incentive or capacity to supervise them.

Boarding

Despite the primacy of the flag state on the high seas, there are a few exceptional situations when ships may legally be boarded there by other states. Under article 110 of the UN Convention on the Law of the Sea, warships and military aircraft are permitted to board foreign ships on the high seas if there is reasonable ground to suspect that they are engaged in piracy, the slave trade or unauthorised broadcasting, or if the ship is stateless, or if (despite flying a foreign flag or refusing to show its flag) it is in reality of the same nationality as the intercepting warship or aircraft. However, if the suspicions prove unjustified, the ship must be compensated for any loss or damage due to the boarding. These boarding powers also apply to other authorised ships and aircraft that are clearly marked and identifiable as being on government service.

Hot pursuit

Another exception to flag state primacy on the high seas is the right of hot pursuit under article 111 of the convention. If the authorities of a coastal state have good reason to
believe that a foreign ship has violated its laws and regulations, its warships, military aircraft or other ships and aircraft on government service may undertake the hot pursuit of that foreign ship on the high seas. Hot pursuit must normally be commenced when the foreign ship or one of its boats is still inside the territorial sea limits of the coastal state, but the power will also apply to a foreign ship in the contiguous zone, EEZ or continental shelf, provided that the violation relates to the laws applicable to that area. The pursuit may only be begun after a visual or auditory signal to stop has been given at a distance that enables it to be seen or heard by the foreign ship. Hot pursuit on the high seas must be continuous, the pursuit must cease if the foreign ship enters the territorial sea of its own or another state, and a ship that is unjustifiably stopped or arrested must be compensated for any loss or damage.

The right of hot pursuit, like most of the other exceptions to exclusive flag state jurisdiction on the high seas, has its origins in long established customary law, and many of its conditions are redolent of another era. It evokes the traditional chase of smugglers seeking to escape from customs officers in inshore waters, and it is designed to protect the interests of the coastal state rather than the mutual concerns of all nations. Consequently, it does not explicitly provide for cooperative action involving pursuit by more than one state. Also, the requirement of continuity in pursuit excludes the situation where a suspected ship is intercepted at long range by a vessel arriving from another direction, and it also raises the question whether it is legitimate for one ship to take over a pursuit from another.

**Maritime search and rescue**

Subject to the general framework of the law of the sea described above, there are many more specific principles and measures affecting maritime security, including those relating to search and rescue. The duty of ships’ masters to render assistance to persons and vessels in distress has for centuries been one of the fundamental principles of the customary international law of the sea. Today, it is enshrined in treaty, and is codified in article 98 of the UN Convention on the Law of the Sea. However, historically this legal responsibility for mutual support depended on the ability of mariners to assist each other, and until the invention of radio at the end of the 19th century it was contingent on ships sighting visual distress signals; even radio was limited in range, and only ships in the vicinity would be able to respond.

When the International Maritime Organisation (IMO) was founded in 1959, its first important task was to update the International Convention for the Safety of Life at Sea (SOLAS), and the 1960 version of that treaty contained detailed provisions on radio communications for distress and safety at sea. The SOLAS Convention was revised again in 1974 and its text has been regularly amended to reflect new technical developments.
Nevertheless, it was not until the adoption of the International Convention on Maritime Search and Rescue (SAR) in 1979 that an international framework was agreed to coordinate national search and rescue operations.\textsuperscript{11} Previously, although some states had established institutions to respond to maritime emergencies, these reflected national concerns and resources, and there was no consistency between them; in many other countries there were no such arrangements at all.

The 1979 SAR Convention came into force in 1985. Its objective was to develop an international search and rescue plan, so that irrespective of where an accident happened, the rescue of people in distress at sea would be coordinated by a search and rescue organisation, with cooperation from neighbouring organisations when necessary. The oceans were divided by IMO into 13 search and rescue areas. However, the original wording of the convention imposed inflexible duties on coastal states in terms of the measures that they were required to take and the installations that they had to provide, which were seen as too burdensome by many developing countries, and so participation by such nations was initially limited. As a result, in order to increase the membership on which the effectiveness of the convention crucially depends, the text was amended in 1998 to provide more discretion, and these revisions came into force in 2000. There are now 95 state parties, which represent nearly 60 per cent of the world's merchant shipping, and 18 of those countries are in Africa.\textsuperscript{12}

The current version of the SAR Convention requires states, to the extent that they are able, to participate in the development of search and rescue services either individually or in cooperation with other states and IMO. The basic elements of a search and rescue service are specified as a legal framework, a responsible authority, available resources, communication facilities, coordination and operational functions, and processes to improve the service. As far as practicable, states should follow the minimum standards and guidelines specified by IMO, which (together with the International Civil Aviation Organisation) has published the \textit{International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual}.\textsuperscript{13}

The revised convention clarifies the responsibilities of governments and places more emphasis on a regional approach and on coordination between maritime and aeronautical search and rescue operations. Parties must establish search and rescue regions within their sea areas by mutual agreement, and then accept responsibility for providing search and rescue services in a particular sector. The convention requires states to coordinate their search and rescue organisations (and where necessary their operations) with those of their neighbours; they should also allow rescue units from other countries to enter their territorial sea. Operating procedures in emergencies (including the appointment of an on-scene coordinator) are specified for rescue coordination centres and rescue sub-centres, and the convention also makes recommendations on the use of ship reporting systems to minimise delays in responding to distress incidents.
In 2004, further amendments were made to the SAR Convention to ensure that refugees, asylum seekers, migrants and stowaways in distress at sea are not excluded from its protection, but also to guarantee that ships’ masters are relieved of responsibility for them once they have been delivered to a place of safety. These amendments came into force in 2006.

Although the SAR Convention supports a global plan for carrying out maritime search and rescue operations, it does not itself improve the vital communications systems on which those operations depend. That is the task of the Global Maritime Distress and Safety System (GMDSS). The GMDSS provides a network of automatic emergency communications for ships throughout the world, using a combination of satellites and terrestrial radio to alert search and rescue authorities (as well as other vessels in the area) about a ship in distress. It was introduced through amendments to the SOLAS Convention in 1988, which came into force in 1992, and were phased in by 1999. It requires cargo ships of at least 300 tons and all passenger ships on international voyages to carry prescribed equipment, including ‘emergency position indicating radio beacons’ and ‘search and rescue transponders’ to identify their position and improve the chances of rescue.

Another critical issue for the success of the SAR Convention is the willingness and capacity of coastal states to discharge their responsibilities. While the convention provides a legal framework, its implementation depends crucially on the political will and the human and economic resources of coastal states. At an IMO conference in Florence in 2000, a resolution was adopted inviting African countries to establish five regional rescue coordination centres and 26 sub-centres around their Atlantic and Indian Ocean coasts. It was also recommended that an International Search and Rescue (ISAR) Fund should be established to support these services; the ISAR Fund, which is a multi-donor trust fund administered by IMO, was created in 2004. Since then, multilateral agreements have been signed by four groups of African nations, and the first Maritime Rescue Coordination Centre (MRCC), involving Kenya, Tanzania and Seychelles, was inaugurated in Mombasa in May 2006. In January 2007, Cemoros, Madagascar, Mozambique and South Africa established a similar regional centre in Cape Town, and in May 2008 nine West African states launched the third at Lagos; a fourth MRCC was commissioned at Monrovia by five states in April 2009. Although the whole of the African coast is not yet covered, these important developments represent a major step forward for maritime safety in the region.

Piracy and terrorism against ships

While the international law on search and rescue is primarily concerned with protecting people from the accidental and natural hazards of the sea, in recent years attention has
concentrated more on the risks posed by deliberate human violence. After the attack on the World Trade Center in September 2001, the International Maritime Organisation recognised the vulnerability of shipping to terrorist action, and undertook a review of existing international measures to protect ships and ports. In November 2001, the IMO Assembly adopted a Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships,16 together with a resolution on Measures to Prevent the Registration of ‘Phantom’ Ships that have false identification documents.17 These were followed in December 2002 by amendments to the 1974 SOLAS Convention, which came into force in July 2004, and included the incorporation of an International Ship and Port Facility Security (ISPS) Code.18

**International Ship and Port Facility Security Code**

The ISPS Code is designed to provide standard mechanisms for assessing the threats faced by individual ships and port facilities, in order to enable appropriate security measures to be determined. For ships, the minimum security requirements include the preparation of ship security plans, the appointment of ship security officers and company security officers, and the provision of certain onboard equipment. Similarly, port facilities must have port facility security plans and port facility security officers. In addition, in the case of both ships and port facilities, access must be monitored and controlled, the handling of cargo and stores must be supervised, and security communications must be readily available. Training, drills and exercises are also important requirements.

Contracting governments or their designated authorities must set the security level applicable at any particular time on a three point scale covering Security Level 1 (normal), Level 2 (heightened risk of a security incident) and Level 3 (probable or imminent risk). Passenger ships, cargo ships of 500 tons or more and mobile offshore drilling units engaged on international voyages must have ship security plans, approved by their national administration, which set out the operational and physical measures for each security level. Company security officers must ensure that a ship security assessment is undertaken, and a security plan prepared for each of their ships; it is the role of the ship security officer to see that the plan is implemented. Ships must also carry an International Ship Security Certificate, which will be subject to port state inspection, to prove that they have complied with the ISPS Code. The mandatory fitting of automatic identification systems for ships has been accelerated, and there is also a requirement for ship security alert systems to notify authorities and other ships of terrorist hijackings.

In the case of ports that are used for international voyages, governments are responsible for undertaking port facility security assessments. These assessments provide the basis for the preparation by port facility security officers of port facility security plans, which specify the precautions required there at each of the three security levels. These plans must be approved by governments, and implemented by the port facility security officers.
The provisions of the ISPS Code were required to be fulfilled by July 2004, and the degree of compliance has been remarkably high.

**Proliferation Security Initiative**

Most of the international instruments that have been discussed so far are of a legally binding nature. In contrast, the Proliferation Security Initiative is a non-statutory arrangement launched by the United States in 2003 as part of its strategy to combat weapons of mass destruction (WMD). It aims to promote proactive cooperation to prevent trafficking in WMD, and is supported by 95 states, although few of them are in Africa. In September 2003, the participants adopted a statement of interdiction principles, which calls on all states to board and search their own vessels in their maritime zones or on the high seas, if they are reasonably suspected of transporting WMD, and to seriously consider giving consent to boarding, searching and seizure by other states. Since these principles depend on flag state consent, they do not infringe existing international law. The US has also entered into bilateral ship boarding agreements with nine states, including Liberia, which prescribe procedures whereby one party may authorise the other to board its vessels beyond the territorial sea if they are suspected of involvement in proliferation.

**The legal distinction between piracy and hijacking**

The oldest exception to the principle of exclusive flag state jurisdiction on the high seas arises in the context of piracy, which has been a global problem since classical times. Article 100 of the UN Convention on the Law of the Sea requires all states to cooperate to the fullest possible extent in the repression of piracy on the high seas, thus recognising that this is a shared responsibility for a matter of common concern.

Every state is empowered to seize pirate ships on the high seas, irrespective of their nationality, and may try the pirates in its courts. Piracy is defined in article 101 of the convention as any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship, and directed against another ship, persons or property on the high seas. Thus, the seizure of a ship by its own crew or passengers is not considered to be piracy. Paradoxically, the archetypal fictional pirate, Long John Silver in the novel *Treasure Island*, would not have committed piracy under the convention, as he was already employed as a cook on the ship that he seized; he was in modern parlance a hijacker, but hijacking is not piracy. This principle posed a dilemma when the Italian cruise ship *Achille Lauro* was hijacked by passengers belonging to the Palestine Liberation Front in 1985. The UN Convention on the Law of the Sea also confines piracy to events on the high seas, whereas most piracy today occurs closer inshore. Moreover, the condition that piracy must be committed for private ends presumably excludes politically motivated or state-sponsored terrorism. The convention has merely codified a customary law principle rooted in the traditions of the 18th century that is imperfectly adapted to current concerns.
SUA Convention

The definitional problems revealed by the *Achille Lauro* incident led to the adoption by IMO of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention). This convention and its associated 1988 Protocol on Fixed Platforms Located on the Continental Shelf entered into force in 1992 and have been widely ratified; 153 states have joined the SUA Convention and 141 are party to the Protocol.

The SUA Convention obliges contracting states to make various acts on or against ships punishable as offences under their national laws (including seizure by force, acts of violence and placing explosive devices), and they must punish or extradite those who commit them. Unlike piracy under the UN Convention on the Law of the Sea, there is no requirement for two ships to be involved. The 1988 Protocol applies similar requirements to actions on or against offshore installations. However, there is no provision in the original texts for boarding foreign ships on the high seas.

After 11 September 2001, the adequacy of the SUA Convention and its Protocol was reviewed by IMO, and new protocols to amend them were adopted at a diplomatic conference in October 2005. The amendments will extend the range of offences to include threats from the transport or use of nuclear, biological and chemical weapons or material; they will also allow for the boarding of vessels suspected of involvement in terrorist activities. While boarding foreign vessels on the high seas will still depend on consent, flag states could elect to give a general permission in advance, or could allow permission to be presumed if they did not respond to a request. Offences under the revised SUA Convention may not be regarded as political in order to prevent extradition, although a person may not be extradited if the motive is to persecute them for racial, religious or other reasons. Another amendment governs the circumstances in which a prisoner may be transferred to a different state in order to give evidence. However, the amended SUA Convention has so far received only eight of the 12 ratifications needed to bring it into force, and so it remains ineffective at present. Although the amended protocol on fixed platforms only needs three ratifications, which have already been achieved, it cannot come into force before the amendments to the convention itself.

Somalia

In its latest annual report on piracy, the International Maritime Bureau recorded 187 actual and attempted attacks on ships in African waters during 2008, including 92 in the Gulf of Aden, 40 off Nigeria and 19 off Somalia. The incidents in the Gulf of Aden were attributed to Somali pirates, and attacks in Africa amounted to 64 per cent of the global total. The situation in Somalia is exacerbated by the lack of capacity of the Transitional Federal Government to interdict and prosecute pirates itself, and
in February 2008 the government asked the United Nations for urgent assistance to safeguard shipping.

Chapter VII of the Charter of the United Nations empowers the Security Council to take measures, involving the use of armed force if necessary, to maintain or restore international peace and security. In June 2008, the Security Council adopted Resolution 1816 (2008), which called on member states with naval and military capabilities in the region to coordinate their efforts to deter piracy and armed robbery at sea in cooperation with the Transitional Federal Government. It also authorised those states (with the consent of the government and for an initial period of six months) to enter Somali territorial waters for the purpose of repressing piracy and armed robbery there, in the same way that such action is already permissible on the high seas under international law.

Since then, three further resolutions have been adopted in October and December 2008, which repeat the call for military assistance, invite measures to facilitate the prosecution of pirates, and encourage coordination and the establishment of an international cooperation mechanism; they also urge states to implement the SUA Convention, protect the World Food Programme’s maritime convoys, and advise their registered ships about self-protection. In particular, Resolution 1846 (2008) has extended the period for international intervention until December 2009. However, the resolutions are also careful to stress that these special measures are restricted to Somalia, and they do not create general principles of customary international law that apply elsewhere. Canada, Denmark, France, India, the Netherlands, Russia, Spain, the United Kingdom and the United States have all responded with naval assistance. NATO has deployed seven warships from its Standing Maritime Group 2, and the European Union has undertaken Operation EU NAVFOR-ATALANTA to escort humanitarian aid convoys off the Somali coast.

**Conclusion**

This article has sought to show how international action to promote maritime security in Africa, whether the hazards are natural or man-made, depends both on fundamental principles of the law of the sea and on a range of specialised modern agreements. Law is essential to maritime security, because it determines what nations may or may not do, and it provides mechanisms to facilitate cooperation between states. At the same time, however, international law is fallible because it depends ultimately on the principle of consent; if nations do not wish to assist each other or conform to international legal standards, there is little that can be done to enforce participation. Ultimately, the successful implementation of international law is contingent on the willingness of states to collaborate and on the availability of the technical skills and economic resources to fulfill their legal commitments.
Good laws are a necessary pre-condition for the achievement of maritime security, but they will only be effective if there is also the political will and the practical capacity among seafaring nations to carry them out. While much still remains to be done, recent developments in Africa provide some positive grounds for encouragement.

Notes

1 This article is based on a paper delivered by the author at the 3rd Sea Power for Africa Symposium, Towards Effective Maritime Governance for Africa, Cape Town, 8–12 March 2009.
3 Ibid, part II.
4 Ibid, article 33.
5 Ibid, part V.
7 UN Convention on the Law of the Sea, part VII.
8 The IMO was originally called the Inter-Governmental Maritime Consultative Organisation (IMCO), but was renamed in 1982.
12 Algeria, Angola, Cameroon, Congo, Côte d’Ivoire, Gambia, Kenya, Liberia, Libya, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Senegal, South Africa, Tanzania and Tunisia.
14 The nine states are Benin, Cameroon, Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon, Nigeria, São Tomé and Príncipe and Togo.
15 The five states are Côte d’Ivoire, Ghana, Guinea, Liberia and Sierra Leone.
16 IMO Resolution A922(22), 29 November 2001.
17 IMO Resolution A923(22), 29 November 2001.
19 The African participants are Angola, Djibouti, Liberia, Libya, Morocco and Tunisia.
26 Six states had ratified the 2005 SUA Protocol by June 2009.
Coups d’état in Africa between 1958 and 2008
Compiled by David Zounmenou

The battle for Mogadishu: Revealing Somalia’s fluid loyalties and identities
Paula Cristina Roque

Financial disclosure in three African countries: All bark and little bite
Rosemary Vickerman
### Coups d’état in Africa between 1958 and 2008

Compiled by David Zounmenou

<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Côte d’Ivoire</td>
<td>1999</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Gambia (The)</td>
<td>1994</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Guinea</td>
<td>1984, 2008</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Guinea Bissau</td>
<td>1980, 2003</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Liberia</td>
<td>1980</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Mali</td>
<td>1968, 1991</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Niger</td>
<td>1974, 1996</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Togo</td>
<td>1963, 1967, 2005</td>
<td>3</td>
</tr>
<tr>
<td><strong>Central Africa</strong></td>
<td>Burundi</td>
<td>1966 (x2), 1976, 1987, 1996</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Chad</td>
<td>1975, 1979, 1990</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Congo-Brazzaville</td>
<td>1968, 1999</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Democratic Republic of Congo</td>
<td>1965, 1994</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Equatorial Guinea</td>
<td>1979</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Rwanda</td>
<td>1973</td>
<td>1</td>
</tr>
<tr>
<td>Region</td>
<td>Country</td>
<td>Year</td>
<td>Total</td>
</tr>
<tr>
<td>--------------</td>
<td>---------</td>
<td>------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>East Africa</td>
<td>Somalia</td>
<td>1969</td>
<td>1</td>
</tr>
<tr>
<td>Southern Africa</td>
<td>Lesotho</td>
<td>1986, 1991</td>
<td>2</td>
</tr>
<tr>
<td>North Africa</td>
<td>Algeria</td>
<td>1965</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Libya</td>
<td>1969</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Tunisia</td>
<td>1987</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>77</td>
</tr>
</tbody>
</table>

Source: Adapted from *Jeune Afrique* 2516, March 2009, and Issaka K Souare (ed), *Civil wars and coups d’état in West Africa: an attempt to understand the roots and prescribe possible solutions*, Lanham, MD: University Press of America, 2006

**Notes**

- The number of coups only began to decrease in the late 1990s

- **West Africa** has had the highest number of coups, not only in each decade but also overall, and accounts for 44.4 per cent of Africa’s coups. Notably, most of the coups have occurred in French colonies, although two former British colonies, namely Ghana and Nigeria, have also made a significant contribution to the total for the region.

- Coups in **Southern Africa** have occurred almost exclusively in the Indian Ocean islands, with the exception of pre-independence coups in two TBVC homelands in South Africa and one coup in Lesotho. However, it is notable that most Southern African states gained independence by means of bitter armed rebellions and liberation struggles.

- With the exception of Ethiopia, governments in the **Horn of Africa** are either fairly young, not yet independent (Eritrea for example) or embroiled in ongoing conflict.

- **East African** coups are concentrated in the Great Lakes region and Comoros (sometimes referred to as the ‘Coup-Coup Islands’).

- All but one **Central African** state (Gabon) have experienced at least one coup since independence.
The battle for Mogadishu: Revealing Somalia’s fluid loyalties and identities

Paula Cristina Roque

Introduction

The period January–July 2009 has witnessed the descent of Somalia from a promising state of political accommodation and the success of the Djibouti peace process in January to a state of politico-military anarchy that was highlighted by the Al Shabaab and Hizbul Islam surge for Mogadishu in May 2009.

The Transitional Federal Unity Government (TFUG) headed by Sheikh Sharif Sheikh Ahmed was expected to herald an era of consensus for Somalia given that it had been brought about by the union of former enemies (the TFG and elements of the Islamic Courts Union, ICU) into one governing body entrusted with rebuilding the state.
Parliament became a legislative body composed of 550 members, which included seats for civil society organisations. The new cabinet continued to follow the 4:5 proportional representation formula (which allocates an equal number of seats to the four main clans – the Darod, Hawiye, Dir and Digil Mirifle – while assigning a smaller percentage to minority groups) and also accommodated the inclusion of the Alliance for the Re-liberation of Somalia. Under this new government the power-sharing arrangement was expected to depart from the tendency of the Transitional National Government (2000–2003) and Transitional Federal Government (2004–2009) to concentrate power in a narrow and exclusive clan coalition, by giving the unity government a more Islamist character and therefore greater national cross-clan appeal.

However, throughout the period of political optimism, the radical insurgent group Al Shabaab was making significant military gains in south-central regions and controlling more territory, including capturing the former seat of parliament, Baidoa, in late January.

What the battle for Mogadishu highlighted was that clans and sub-clans were continuing to build (and shift) allegiances. This, together with discord over Islam and its many strands, has led to structures, identities and loyalties being more fluid than ever, which as a result exacerbated the possibility of defining the needs, values and interests of the different groups. Clearly, building peace in this setting of faction, clan and religious mobility is extremely difficult. Given the obvious impediments to stability because of continued hostilities and the role of external actors in perpetuating the conflict, building alliances for peace agreements are almost impossible. One of the many paradoxes of this conflict is that the motivations for war is only now beginning to acquire ideological overtones, with what has been considered as the signs of an emerging sectarian civil war.

The third battle for Mogadishu

The fiercest attempt to topple the TFUG began as a coordinated offensive by Al Shabaab and the coalition Hizbul Islam on 7 May 2009 when insurgents clashed with government forces over control of the Mogadishu stadium. In the days that followed both sides began amassing large numbers of troops, with pro-government militias being mobilised on the one side and Al Shabaab being reinforced by fighters from Kismaayo and foreign jihadists on the other. Battles were being fought over strategic government-controlled areas of the capital. When the first round of the offensive ended on 14 May 2009, the rebels were in control of entire districts of the capital, including the stadium, the Wardhigley police station, the former defence ministry building and the Suk Ba’ad market. Government forces retreated to areas controlled by AMISOM, the African Union’s peacekeeping mission in Somalia.
Sheikh Sharif’s government managed to avert a coup, and then proceeded with the enactment of Islamic Sharia law in the country. At this stage, media and other open source reports highlighted the level of bargaining that was taking place during the lull in the combat. Attempts were made to reach an accord between the President and Sheikh Aweys, while unconfirmed negotiations were allegedly taking place to convince elements of Al Shabaab, in particular Mukhtar Robow, to join the peace process.

Exploiting the tendency for fragmentation and discord within the uneasy alliance that staged the attack on the government will be one way to weaken Al Shabaab and draw the more moderate elements of the Islamist insurgency and Hizbul Islam into the peace process. However, it will also be more difficult to negotiate with and control a fragmented opposition that lacks coherent agendas. The Hizbul Islam, a four-party coalition (Sheikh Hassan al’Turki’s Ogadeni Ras Kamboni group, the Hawiye Al Muqawama Islamiya, the Jabhat al Islamiyya and a lesser-known Marjerteen group, Anole, which is based in Kismayo) which was created in January 2009, fell apart two months later. On 26 May 2009 Sheikh Aweys replaced Omar Imam Abubakar as the leader of one of the factions of Hizbul Islam.

Al Shabaab also suffered leadership reversals. Sheikh Muktar Robow, a leading commander and the spokesperson for the group, was allegedly sidelined for allowing government ministers belonging to his Rahenweyne clan to escape unharmed from Baidoa when Al Shabaab seized the town in January. However, it was only on 21 May 2009 that Mukhtar Robow was replaced by Sheikh Ali Dheere as spokesperson, a few days after the Emir of Shabaab, Sheikh Ahmed Abdi Godane ‘Abu Zubayr’, was injured in an explosion in a safe house in Mogadishu.

On 22 May 2009 government forces launched a counter-offensive to recapture lost territory and managed to retake several areas from Hizbul Islam, including the Yaqshid police station. However, Al Shabaab began conquering several areas in the central Hiraan and Galgudug regions from pro-government Ahlu Sunna Wal Jamaah (an armed Sufi movement), managing to take several key towns. The national security minister, Omar Hashi Aden, was killed on 17 June 2009 in Beletweyne in a suicide attack. This was one of the biggest losses to the government’s military entourage and one of the events that led to the urgent request for foreign intervention. At the time of writing, the African Union was discussing the reinforcement of AMISOM and changing the mission’s mandate, while military assistance and arms shipments were being sent from the US and neighbouring African countries in support of the government in Mogadishu.
Fragmentation and fluid allegiances

The battle highlighted the pragmatic and opportunistic drive of key commanders and political figures who are quick to surrender or switch sides, emphasising how tenuous the hold on political, religious and lineage affiliations actually is. Sheikh Yusuf Mohamed Siad (Indha Adde), a notorious warlord who served as defence secretary for the Alliance for the Re-liberation of Somalia and whose militia at one point controlled Lower Shabelle, was part of Hizbul Islam when the offensive began. On 17 May 2009 he defected to the government, only to surrender to Sheikh Aweys days later, and then shifting his allegiance to the government once more. He is now the new Minister of Defence of the unity government. ICU commanders such as Abdulkadir Hamsa ‘Qataatow’, who was famous for his insurgency against Ethiopia and President Yusuf’s transitional federal government, and Ahmed ‘Lashin’ Sheikh Muhiyadin, who had fought with government troops, soon also defected and joined Hizbul Islam. During the initial stage of the offensive, the TFG commander, Muhammad Roble Godane, also surrendered to Sheikh Aweys.

The issue of legitimacy arises when the means by which the government fought this offensive are assessed. The use of warlords, particularly the notorious Muse Sudi Yalahow, to command government troops has been highly criticised. Yalahow was part of the warlord coalition, Alliance for the Restoration of Peace and Counter-Terrorism, in 2006 and fought the Islamic Courts Union and is accused of committing widespread atrocities, including the deliberately preventing medical assistance from reaching the civilian population during the clashes in mid-2006 in Mogadishu. On 11 May 2009 Sheikh Sharif conceded command of government troops to the police chief, Abdi Qeybdid, a highly unpopular former warlord. He had opposed the ICU in 2006 and had mobilised his Sacad clan to fight the ICU in the area of Galcayo.

The use of ex-warlords and their militias gave the Islamist opposition an important rallying point, by exposing the contradiction in government policy of using the same warlords the ICU had expelled from Mogadishu in 2006. Councils of elders have also denounced the President’s use of clan politics and unvetted security forces to hold the fronts, to the detriment of formal alliance building with the approval of the Cabinet and Parliament. A particularly awkward case was the return of warlord Mohammed Dheere, who had controlled Jowhar (a key strategic city in central Somalia and birth place of the President) and ruled over the second most important warlord stronghold in Hiraan, to Mogadishu. Sheikh Sharif had allegedly welcomed this former foe into the capital to mobilise his Hawiye sub-clan to support the government.

The declaration of a state of emergency on 21 June 2009, and the subsequent call by Parliament for the urgent intervention by the international community, further exposed its weakness and its reliance on external powers. This eroded the government’s already
failing credibility and strengthened the status of the armed opposition. It was the same ICU elements that years earlier had waged jihad on foreign occupiers that were now requesting their involvement. When the then TFG president, Abduulahi Yusuf, appealed to Ethiopia for assistance in 2006 and allowed neighbouring troops to restore ‘order’ in Somalia, he took what many consider to have been the first step towards his fall from power.

The stalemate that resulted when the Islamist coalition failed to topple the government and the TFG forces managed to keep control of the capital by retreating behind AMISOM, will provide the opportunity for further shifts in alliances and loyalties. Whichever way the balance will tilt, Somalia will certainly be facing a crisis of legitimacy in which the credibility of several actors for representing the different constituencies will be questioned by the populace. This could make many less willing to reach consensus through negotiation. When there is no clear enemy – as was the case in Ethiopia – the tendency to consolidate allegiances and unify under adversity fades. According to some analysts, the complete mobilisation of society to fight this war means that Somalia is facing one of the most challenging moments in its history. At the time of writing, Mogadishu had once again reverted to being carved up into fiefdoms controlled by different groups (in the past it was a warlord phenomenon and now it has been split into areas administered by Hisbul Islam, TFG and Al-Shabaab, with their respective governors).

The third battle for Mogadishu and the ensuing offensives in the central regions have highlighted several new realities in Somalia’s political dynamics. Political and military alliances are formed and disbanded because of convenience and their utility to different factions, who may actually have competing interests. No one unifying vision has emerged to provide the different clans and population with a roadmap to stability – not the Salafist-Wahhabist ideology of a pure society expounded by Al Shabaab, nor the reconciliation process of the new unity government. What has occurred instead has been a close to absolute fragmentation of all sides, providing a very dangerous entry point for radicalism and a foothold for forces of violence. Furthermore, in view of the level of mobilisation and fragmentation of the actors, compounded by opaque and complicated circumstances, it will become increasingly difficult to find a way to solve this conflict.

In an ethnically homogenous nation like Somalia, where communities are indistinguishable by language and culture, fluidity in loyalties has been engineered through the manipulation of cultural identities. In this particular case the breakdown into different segments occurred down to the sub-levels of clans because of contested interests and needs, groups benefiting from the state of war, institutional collapse, lawlessness and the breakdown in avenues of dialogue and reciprocity. However, just as identities are dynamic and change occurs not in isolation but through exposure to differences, ideology and dogmatism, so interests also change. What remains to be
seen is how the elements of militarised political Islam, its contending versions and the presence of foreign extremists (hundreds of jihadists have joined Al Shabaab’s ranks in recent weeks) will contribute to the shift in interests and loyalties – and by extension, what this will mean for any attempts at building peace.

**Notes**

1. The first battle for Mogadishu was the notorious ‘Black Hawk Down’ battle which involved US troops in 1993. The second battle for the control of the capital occurred in May 2006 when the Islamic Courts Union advanced against the warlord’s Alliance for the Restoration of Peace and Counter-Terrorism.

Financial disclosure in three African countries: All bark and little bite

Rosemary Vickerman

Background

Numerous countries use financial interest declarations to assist with managing conflicts of interest, which have seemingly become more commonplace in a world in which the divide between the public and private spheres is becoming increasingly blurred. Africa, in this regard, does not appear to have enjoyed great success. Despite the adoption of the African Union Anti-Corruption Convention in 2003, which requires members of the public service to declare their financial interests, many countries have not acceded to this. Only 28 of the 53 African Union states have signed and ratified the convention. In 2006, a survey was completed to determine how many of the 148 countries eligible for World Bank funding practised disclosure. Only 28 African countries required disclosure.
from public officials. The other twenty African World Bank client countries did not practise disclosure at all.

**Managing conflicts of interest**

A conflict of interest refers to a situation in which a public official’s private interest could have an improper influence on the execution of his or her official duties. If a public official is involved in a conflict of interest, this does not automatically mean that an infraction has occurred, what it does mean is that the potential for wrongful behaviour exists. To minimise this potential, conflict of interest management (COI management) seeks, as far as is possible, to prevent these kinds of situations from emerging. However, this is not always possible, as people invariably inhabit more than one type of social role. As such, when a conflict of interest has already occurred, the goal of effective COI management is to ensure that an established set of rules exist, which can be used to address the situation. A third feature of COI management is its intention to provide public officials with guidance to use, as protection against possible accusations of wrongful behaviour. By having a record of an individual’s financial assets, liabilities, gifts and other benefits, which is examined over time and against previous records, conflict of interest situations may be prevented and exposed. In addition, the filer is also reminded of the need to practice transparent and accountable behaviour.

**Why these countries?**

South Africa was chosen as it appears to be the success story in terms of disclosure in Africa. Cameroon is on the other end of the spectrum, in that it has failed to implement disclosure legislation. Ghana appears to occupy the middle position in that it seems to have a fairly institutionalised system of disclosure, but one that is known to suffer from serious shortcomings. The discussion points include such issues as who discloses, to whom, and how often.

**Cameroon**

The Cameroonian Constitution (part X11 – article 66) sets out the requirements for those who are to disclose. The President, Prime Minister, senators, members of government, members of parliament, general managers of public/semi-public enterprises, administrative personnel in charge of tax collection, judicial officers and legal officers, among others, are all required to disclose. These officials are only expected to disclose upon entry to and exit from office. No mention is made of the need to have declarations from the spouses of public officials or from their dependent children. Article 66 has been in the constitution since 1996 however, although passed by parliament, the President
did not issue the required decree and therefore, the law has not been implemented. No routinisation of disclosure is found in Cameroon.

**Ghana**

The Code of Conduct for Public Officers states that all appointed and elected officials included in Schedule One to the law are to disclose every four years. The appointed officials required to disclose are the Cabinet Secretary, who occupies the highest ranking on the list, and those who receive salaries equivalent to/more than the salary that a director in the civil service would receive. The list of elected officials includes the President, Prime Minister, ministers and presiding members. No law exists which requires officials to provide declarations for their spouses or for their dependent children. Disclosures are made to the Auditor General (AG) however; the AG does not have access to the contents of the documents. It appears that they are given to him for safekeeping.

Should public officials not declare their interests, or intentionally complete their disclosures incorrectly, it rests with the Commission on Human Rights and Administrative Justice (CHRAJ), or on law enforcement agencies, or on the courts, to enforce sanctions against them. Proactive investigation does not occur, as only after a complaint against an official has been made, do either of the listed authorities investigate. In 2007, the Deputy Attorney General, Mr Kwame Osei Prempeh, stated that many public officers in Ghana do not comply with disclosure regulations. He noted that he was in full support of working to change legislation so that it would enable the public to access the financial disclosures, as it is the case that this information is confidential.

**South Africa**

South Africa has a variety of legislation in place. At the executive level, the Executive Members Ethics Act stipulates that all members of Cabinet, deputy ministers and members of provincial executive councils are required to disclose to a designated official in the Presidency, or to the same in the Premier’s Office. The Code of Conduct for Assembly and Permanent Council Members requires all members of National Parliament to disclose to the Registrar. At provincial level, each province has its own code of conduct. In seven of South Africa’s nine provinces, the members of parliamentary legislatures disclose their financial interests to the Provincial Registrar. It is only in Gauteng and North West that Integrity Commissioners receive declarations. Municipal councillors under the Municipal Systems Act, 2000 (Act 32 of 2000) disclose to their municipal councils.

In terms of the civil service, the Public Service Regulations (2001) state that all members of the Senior Management Service as well as members of the Public Service Commission (PSC), are to disclose to the Minister, who then furnishes the office of the Chief Directorate of Professional Ethics and Human Resource Reviews with copies of the
declarations. Disclosure for these civil servants and for all three levels of government takes place annually. The disclosure documents for elected officials are divided into public and confidential sections. Information relating to monetary values and to spouses and dependent children is typically recorded in the confidential section however, after reviewing many of the public sections at the provincial and local levels in particular, this does not always prove to be the case. Chapter 3 of the Public Service Regulations states that the Director General is to keep a confidential register, known as the Register of Designated Employees’ Interests. With respect to accessing the disclosure forms of elected officials, members of the public are legally entitled to view the public sections of these documents at the respective offices during working hours.

Should elected officials intentionally provide incorrect information or fail to disclose, they are liable to sanctions that vary across both levels of government and between institutions within the same level. Sanctions at the executive level may differ from those at the provincial level, with the provinces in turn each having their own list of appropriate sanctions. These include reprimands, fines; suspension from office and in some instances the removal of an official from office. In some government institutions the compiler of the register may investigate irregularities after receiving an instruction to this effect from the respective ethics committee. Some ethics committees may call for investigations without an official complaint, others may only investigate after a formal complaint has been received. With regards to the civil service, no clear sanctions mechanism has been developed for dealing with persons who fail to disclose.

Rethinking disclosure

Streamlining sanctions: South Africa and Ghana

The lack of uniformity around the kinds of sanctions to be imposed and when to impose them does not facilitate the development of a national culture of ethical behaviour. South Africa’s provinces all have their own codes of conduct and thus no uniformity exists with respect to the imposition of sanctions. Provincial sanctions in turn differ from those prescribed and implemented at both the local and national levels of government. For example, officials in a particular province may get off with a reprimand for failing to disclose, whilst those in the National Assembly may be required to pay a hefty fine. This may lead to a situation in which ethical conduct is more important in some institutions than it is in others, thereby creating a patchwork of ethical behaviour across South Africa. It is suggested that uniformity with regards to the kinds of sanctions that exist and the situations in which they are implemented, be achieved both across and between the three levels of government. Whether it is a councillor, a member of a provincial legislature or a cabinet minister who is in breach, the same set of sanctions ought to apply in relation to the particular context.
With that said, it is noted that it would most likely not be as clear cut a process in practice. Consider this hypothetical example. Two officials have both committed the same infraction, that of failing to disclose their directorships in two different companies. However, this omittance appears worse on the part of the first official, as he was involved in a tendering process in which his company stood to gain and was therefore in a conflict of interest situation, where the second official was not. The question is; should the instituting of sanctions be solely dictated by the category of infraction, or should context also play a role in sanction deliberations? If context were to feature, it would necessitate the establishment of a set of guidelines for use by all levels of government. This would mean that the most likely contextual situations would need to be fleshed out, so as to be able to decide for example, when to fine an official R5 000 as opposed to R1 000.

Ghana is faced with a different challenge. Sanctions against public officials who have breached are instituted by multiple organisations. The CHRAJ, law enforcement agencies and the courts are all tasked with imposing sanctions. It would seem that with multiple enforcement agencies, there may be confusion around the mandates of each organisation, which could lead to a situation in which public officials who breach, fall through the cracks. Not only could the numerous enforcement agencies potentially allow for officials to be lost in the bureaucratic abyss, one might assume that they too have different interpretations around which kind of sanction to impose and when to do so.28

Investigation: South Africa and Ghana

In some of South Africa’s provinces, as well as in both the National Parliament and in the Executive, the officials tasked with keeping the register are not permitted to investigate perceived irregularities of their own accord. A similar situation exists in Ghana although to a more severe degree, with respect to the AG not having access to the contents of forms, thereby making it impossible for him to investigate. One would assume that the individual who has the most contact with the disclosure forms would be the first person to notice irregularities and not equipping them with investigatory powers seems to nullify the purpose of disclosure, which is that of holding public officials to account. For those tasked with keeping the register, it may seem like a bureaucratic exercise without meaning, as even if they do notice irregularities, they are not empowered to do anything about it. It is suggested that a more proactive role be given to those who keep the registers and that they be equipped with investigatory powers so as to promote the effectiveness of disclosure in curbing corruption.

Non-disclosure, spouses and dependent children: Ghana and Cameroon

In these countries the law does not require the spouses and dependent children of public officials to disclose. This is not desirable as public officials can hide dubious financial
interests behind their spouses’ names. With that said, it is noted that in South Africa, the disclosure of spousal and of dependent children’s financial interests is mandatory but that disclosure takes place in the confidential section. The Registrar is permitted to view the confidential sections, but even if a perceived irregularity is spotted, in some cases, the Registrar is compelled to wait until an official complaint has been lodged before any action may be taken. Thus even though Registrars have access to the confidential sections, they are not empowered to investigate of their own accord. The South African case suggests that having legislation that makes spousal and dependent children’s disclosure mandatory does not in and of itself promote transparency and accountability. It is imperative that those who are able to view the confidential sections be given the power to take action.

Irregular disclosure: Ghana and Cameroon

In Ghana officials disclose every four years. Even if the AG was permitted to review the disclosure forms, he would have an abundance of information to sift through, thereby stymieing the monitoring and oversight function. In addition, public officials could be involved in conflicts of interest for extended periods of time, which could prove costly to government.\(^{29}\)

The Cameroonian constitution states that disclosure occurs upon entry to and exit from office. This suggests that public officials could get away with a lifetime of corruption, as only when they leave office could their infractions be identified. The suggestion is that disclosure occurs on an annual basis, as this allows for the effective monitoring of changes in an individual’s financial circumstances.

Conclusion

Whilst disclosure legislation exists in all of these countries, not all of it promotes transparency and accountability, when or if implemented. South Africa seems to enjoy the most institutionalised disclosure regimen, however disunity appears to exist around the implementation of sanctions. In addition, challenges derive from the Registrar’s lack of proactive investigatory powers.

Ghanaian legislation, although very inclusive in terms of those who are required to disclose, does not seem to promote effective oversight.\(^{30}\) The AG is not permitted to view the forms and as such, no proactive investigation can occur. Financial declaration by spouses and dependent children is not required and furthermore, public officials are only expected to declare every four years. These legal requirements may allow for the extended continuation of conflicts of interest. In addition, the multiple agencies tasked with enforcement may overly complicate disclosure practice.\(^{31}\)
Although article 66 of the Cameroonian constitution has not been implemented, it does not appear that it will facilitate transparency and accountability when or if it is implemented. Public officials are only required to disclose upon entry to and exit from office. If a public official never left office he or she could get away with a lifetime of corruption. Furthermore, the constitution does not require declarations from spouses or from dependent children. It appears that the disclosure legislation in all of these countries requires revisiting, so that a higher degree of transparency and accountability may be achieved in practice.

Notes

5 F Malan and B Smit, Ethics and leadership in business and politics, Landsdowne: Juta, 2001, 9.
7 Ibid.
8 Ibid.
9 Ibid.
14 Ibid.
16 U4 Anti-Corruption Resource Centre, African experience of asset declarations.
18 Ibid.
19 Ghana Center for Democratic Development, Public disclosure of assets gets support.
20 Executive Members Ethics Act, 1998 (Act 82 of 1998), South Africa.
21 Code of conduct for assembly and permanent council members 1996, South Africa.
22 Code of Ethics for Members of the Legislature, Province of the Eastern Cape, 2000, South Africa; Revised Code of Conduct and Ethics for Members of the Gauteng Provincial Legislature, 2007, South

25 Public Service Regulations, 2001 (chapter 3, section 8).
28 Larbi, Between spin and reality.
29 Ibid.
30 Ibid.
31 Ibid.
The legal challenge of civil militia groups in Kenya
H Nanjala Nyabola

Whose security?
Understanding the Niger Delta crisis as a clash of two security conceptions
Ufo Okeke Uzodike and Christopher Isike
The legal challenge of civil militia groups in Kenya

H Nanjala Nyabola

Introduction

In early 2008, Kenya faced its most dire social and political crisis in 45 years. As international organisations and governments scrambled to establish reasons for the apparently sudden descent into chaos, a disturbing pattern began to emerge. Across the country the sometimes spontaneous expressions of frustration at a clearly imperfect election process quickly degenerated into ethnically targeted attacks that were countered by reprisals by ethnic militia groups, eventually leading to the displacement of up to half a million people and the deaths of close to a thousand.¹

The recurrence of political violence has become an unfortunate characteristic of the democratic experiment in Kenya, as civil militia groups who are typically composed of

Keywords civil militia, Mungiki, ICC, Kenya, jurisdiction
young males and are directly responsible for much of the carnage, increase in number. Yet debates on prosecution and accountability for the election violence continue to focus on the political leaders who are believed to have financed and overseen the violence. Certainly, it would be an enormous failure on the part of the judicial system if these individuals were not held accountable for their part in bringing the nation close to collapse. However, it is also an opportunity to address the threat of the civil militia that attack citizens not just during elections but also in ‘peace time’. The crimes committed by these gangs are grave enough that if they had occurred during a war, they would constitute war crimes, as per the definitions of the International Criminal Court (ICC). However, because Kenya is technically at peace, the possibility of initiating such a prosecution is not particularly clear.

**Understanding civil militia groups**

In part, the difficulty of developing an efficient prosecution against the gangs of young men terrorising civilians in Kenya is in categorising them in a way that adequately accounts for their origins, actions and effects. Existing definitions limit the ability to address the diversified nature of their activities. Whereas the groups in eastern Congo are labelled as ‘rebel groups’, legitimising, at least in part, their agendas and recognising them as a tangible threat to long-term peace and security, their counterparts in Nairobi are labelled ‘gangs’, implying a lack of a systematic core to their actions. The reality is that while their goals and agendas may differ, fundamentally these are groups of (typically) young people who have been locked out of the mainstream political process and are united by a common, if not always clearly articulated, social or political agenda that is expressed by violent means. It is this agenda that distinguishes them from criminal gangs. These groups are, at least in their own opinion, pursuing a valid goal; violence is not an end in itself but a means towards this end. Thus the term that best defines these groups is ‘civil militia’.

The term ‘militia’ comes from the Latin word *miles*, meaning soldier. A civil militia group may be defined as a ‘citizen army made up of free men between the ages of sixteen and sixty who [perform] occasional mandatory military service to protect their country, colony or state’. Over time the conceptual scope has broadened to include militarised groups operating in the private domain, or ‘a citizen self help force to provide security and defence and to be called up in case of emergencies’. More often than not, these groups position themselves to provide security and defend their perceived allies or fellow community members against threats from the state itself.

In Kenya, this has led to the emergence of community or interest-based groups, organised by a variety of stakeholders, including the regime in power. Community-based militia groups frequently emerge in response to a perceived threat against the
In the field of security studies, the preservation of territorial integrity – territorial, social or otherwise – of the community. The Sabaot Defence Force in western Kenya, for example, exists nominally to protect and defend land held by the Sabaot community while the Mungiki developed at first as defenders of the cultural heritage of the Kikuyu – the largest ethnic group in the country – in central Kenya. Interest-based groups also develop to protect specific political or economic interests and may include in their ranks individuals from a variety of social backgrounds. These groups in particular may have a defensive element in their origin and expansion, such as the Jeshi ya Mzee that ‘defended’ the political agenda of the Kenya African National Union (KANU) in 1992.

It is important to clarify what does not constitute a militia group. Spontaneous acts of vigilantism by communities out the legislative reach of government agencies, while they may have a criminal dimension, do not necessarily give rise to the emergence of a civil militia. The temporal dimension – that is, a sustained level of violence over time by the particular group – is a critical factor, particularly for the purposes of this article. It is the unchecked, repetitive expression of such spontaneous acts of violence that indicates the potential for the development of militia groups in these areas. The reaction of the state to these acts of vigilantism determines whether they remain spontaneous or signify the beginnings of a new civil militia. Militia groups emerge where state control is at its weakest, such as in failed states or failing states with a stunted ability to exercise power in its entire territory. Government responses that may lead to the development of militias include no response at all or an overzealous response. An excellent example of this over-reaction was the recent military action by the Kenyan government against the Somali (as an ethnic community of Kenya) community of Mandera following an incursion by the Somali (nationality) community of Mandera during which two Italian nuns working in the region were kidnapped. Such actions only served to legitimise the widely held belief that the government of Kenya cares little for the needs of the people of the region.

For the purposes of this analysis, therefore, a civil militia is a group that has either gone beyond its initial defensive function, taking on an offensive character, or one that did not have a defensive one to begin with. Understanding the impact of these groups with regard to the Kenyan situation is pertinent for two reasons. First, it will be impossible to achieve peace in Kenya without understanding the role that these groups have played and continue to play in obstructing any attempts at peace making. Second, the current situation in Kenya represents a critical juncture in the historical trajectory of the country, that will either see it emerge stronger or fatally weaker as a nation, and civil militias form a crucial element of this situation. In short, it is inconceivable that a true and lasting peace can be achieved in Kenya without understanding the potential for prosecution, and therefore, justice and reconciliation as part of a positive peace-building process. It is from this perspective that it is important that the civil militia groups that hold the greatest threat, particularly in terms of exporting their brand of violence across the region, must be addressed.
Civil militia groups and the state in Kenya

The emergence of civil militia groups can usually be traced back to the failure of the state to provide security, particularly in marginal areas of their territories. In some cases, this is a direct result of the collapse of the central state itself, but in the case of countries like Kenya the state apparatus does exist, but the state is unwilling or unable to extend its reach beyond large towns, major border points, etc. In Kenya, government authority is regularly challenged by militia groups in informal settlements, comprising the largest part of the urban population. Because of difficulties in gaining access to these areas even at the best of times, the central government provides no or very few services there. Critics have often accused successive governments of pursuing economic growth without addressing the inefficiency of the distribution mechanisms of the Kenyan economy, because it provides for the wealthy few at the expense of the poverty-stricken majority.

Furthermore, wealthier residents opt for private security arrangements while the residents of slum areas choose or are forced to rely on militia groups for their security.

With its limited capacity, coupled with a crumbling police force – corrupt, lacking in morale, understaffed and poorly equipped – the government of Kenya has often tacitly accepted the existence and growth of such informal security arrangements by reducing their workload and restricting their operations in the less affluent areas of the cities. In the face of this situation, it is not surprising that the groups have become stronger and have broadened their activities beyond simply filling the security vacuum. For example, both the Mungiki and Taliban militia groups have been accused of running extortion and protection rackets in the slums in which they operate. The reaction from the authorities in both cases has oscillated between the two extremes of apathy to heavy-handed attempts to stop the groups. The government seems only to challenge the militia groups when the interests of the ruling elite conflict with those of the militia groups, as in the build-up to and aftermath of the 2007 elections.

The situation is exacerbated by the fact that the government occasionally uses these militia groups to provide extra-judicial services, particularly during election periods. Because these groups have no legal standing, the state can attribute their violence to the democratisation process, or to criminal activities. Thus when the Mungiki allied themselves with the KANU/NDP alliance during the 2002 elections, its violent actions were to some extent tolerated because of its relationship with the government. The government used the militia movements as tools to maintain control in potential opposition strongholds or to ensure the survival of the current regime. The KANU regime relied heavily on particularly the Mungiki to undermine opposition support in urban areas by creating the impression that the opposition could not be trusted to maintain security even in their own strongholds.

This complex relationship obviously presents numerous legal problems for analysts and legal practitioners alike. On the one hand, if a civil militia group like the Mungiki is simply
a criminal gang, then the responsibility for apprehending and prosecuting members rests solely with the national legal system. On the other hand, if they are violent groups with ‘legitimate’ status, their actions constitute a violation of international criminal law: ‘… aimed at any civilian population … regardless whether they are committed in an armed conflict, international or internal in character’. Part of the distinction between such crime against humanity and a simple crime is that whereas simple crimes can be spontaneous expressions of the darker side of human nature, crimes against humanity are widespread and systematic. In fact, in terms of the Statute of Rome that led to the creation of the International Criminal Court, for a crime to qualify as a crime against humanity, it has to be either widespread or systematic, but not necessarily both.

Mungiki and other civil militias pose a direct threat to the justice system because their crimes are acknowledged as widespread but there is debate about the extent to which they are systematic. Moreover, the idea of systematic crimes is still contested in international criminal law, as the International Criminal Tribunal for the former Yugoslavia suggested that a ‘pattern or a methodical plan’ is enough while the International Criminal Tribunal for Rwanda argued that where such crimes are ‘thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources’ they can be regarded as being systematic. The former definition suggests that if enough evidence exists to prove that even one of the attacks orchestrated by Mungiki had been planned with the intent of inflicting grievous harm against a specific segment of the civilian population, its leaders may be held to be culpable for crimes against humanity. The latter suggests that where crimes form part of a broader and perhaps discriminatory policy advanced by the government or other interest groups, they are systematic. In terms of this definition, evidence would have to be found to corroborate speculation that the government or politicians directly bankrolled and supported the Mungiki group, or have been complicit in furthering their cause either by engendering police or judicial apathy.

In any case, the challenge to the national and international justice systems is how to deal with such a group in the context of a crumbling national judicial system, potential complicity by the political elite, difficult economic conditions and escalating levels of violence within the country. While the Kenyan legal system is theoretically attempting to prosecute militias, public confidence in the system is non-existent in the face of its near collapse. It calls into question the fundamental purpose of a prosecution in such a case as this: if the goal of the prosecution is to simply get bodies behind bars, the degree of confidence in the judicial system is no problem. If, however, the goal of justice is to actually get to the root of the phenomenon, then a prosecution must be perceived by those affected the most as being truly free, fair and efficient. Ultimately, for the purposes of building a true and lasting peace, justice must not only be done but should also be seen to be done.

The challenge to the international justice system is how to encourage, or even take on, a prosecution of civil militias without a misstep in the diplomatic minefield that is state
sovereignty. Currently, there is palpable tension between the position that any violations against international conventions are subject to universal jurisdiction, and that national jurisdictions must be given ‘rights to first refusal’ on any crimes against humanity occurring on their territory. The Treaty of Rome supports the latter interpretation, and the question in the case of Mungiki and other civil militia groups is whether the government of Kenya would under normal circumstances transfer jurisdiction over these crimes to the ICC. Apart from the logistical and financial difficulties that such a transfer would necessitate, it would also be an implicit acknowledgement of the failure and weakness of the judicial system in Kenya, something that a state would be loath to do. The ICC is, of course, free to pursue any prosecution brought to its attention by the Security Council or by a citizen of a state party. Given that a prosecution demands an investigation, however, such a move would be far easier if the ICC were guaranteed state cooperation.

In the case of Kenya the matter is further complicated by the ambiguous relationship between civil militias and the state. The militia groups fill a vacuum in state governance and as such any investigation and prosecution process will not only have to deal with the perpetrators of the crimes but also suggest pragmatic ways of filling this vacuum. The aim of prosecution must be to introduce accountability and transparency in the country, as well as to strengthen the position of the judicial system in dealing with similar groups in future. The aim should further be to highlight the international implications of the continued existence of militia groups in general, and particularly their influence on regional stability and their potential to develop into full-blown terrorist organisations. Undoubtedly, this would be a complex undertaking in the case of Kenya, particularly given the relationship between the state and the civil militia groups. Therefore, the next goal of this article is to suggest a method by which this can be accomplished using existing instruments.

**Efficient prosecution**

At this point, it is important to understand why prosecution against civil militias is such an important idea, particularly in Kenya. First, the prosecution of civil militias in Kenya has significant implications for the development of a strong judicial system and, in turn, strengthening of the general state apparatus. Particularly community militia groups – citizen based, located within communities and bound to them as part of their mandate – introduce a potential fracture line in an already weakened state. A state is by definition entitled to some degree of monopoly on the use of force, and any entity that challenges this by extension undermines its legitimacy, for it creates the impression that the state no longer has the support of the majority of its citizens for its goals and no longer has their confidence, or it can no longer assure their security in the face of the rising strength of the militia groups. This lack of support in turn results in an inability to control – whether it is the movement of people and goods across borders, including
illegal arms, or exploitation of resources. This further undermines the strength of the state, as neighbouring states then also lose confidence in that state’s ability to manage activities within its territory. The end result is that more and more militia groups appear to fill the growing state vacuum, which attracts criminal elements and could make the country a destination for terrorist groups and international criminals.

It may seem extreme, but this is the cycle that continues to play out throughout the Great Lakes region. Civil militias have been recurring features in the political history of for example the Democratic Republic of Congo (DRC) since independence, and in this country usually take the form of ethnic groups that try to undermine the successive authoritative regimes there. In the period preceding and following the coup that removed Mobutu from power, community militias protected the interests of particular ethnic groups in remote regions beyond the control of Kinshasa. It was one of these groups, the Mayi Mayi, that took the opportunity of growing Rwandese frustration about Interhamwe militias based in the eastern DRC to join a movement that eventually resulted in the toppling of Mobutu’s government. Kabila may have succeeded in deposing Mobutu, but failed to unite the groups that had briefly come together to support his agenda, a failure that quickly threatened his tenuous hold on the DRC. As minor insurgencies flourished, particularly along the eastern border, neighbouring nations grew increasingly frustrated and launched a series of cross-border military raids that have resulted in what is frequently dubbed ‘Africa’s World War’.

The situation in the DRC points to the need for a strong central state to prevent the proliferation of civil militia groups. Kabila actively encouraged the growth in militia groups because they served his interests in portraying himself as independent of the influence of Rwanda, Uganda and to some extent, the United States. Recognising that he did not have control over the entire territory of the DRC, he capitalised on the antagonism between various militia groups to fight proxy battles against his supposed enemies (Rwanda and Uganda) and give the illusion of strength. In the long run, the eastern border of the DRC became a virtual political free-for-all area, with powerful military groups violently competing to protect material and territorial interests. The DRC continues to exist as a sovereign state, but the reality is that most of its security interests are debated by the UN Security Council and the UN Mission to the DRC, while its internal security interests, particularly in the east, are secured predominantly by community militia groups.

Prosecution of the case of the DRC implies restoring order to the fractured eastern region by removing violent elements and enabling the state to restore its reach in the area. It is a call that has already been taken up by the international criminal law fraternity. The International Criminal Court has made significant headway towards this end, issuing warrants and initiating prosecutions against the leaders of various militia groups. While recognising the significance of this step, one wonders whether a prosecution at an earlier
juncture could have prevented the descent into chaos, and whether such a prosecution elsewhere could avert state disintegration.

The case of Kenya, in particular, which was once touted as an island of stability in a sea of chaos, raises pertinent questions with regard to the effect of prosecution on the development of civil militias. There is no question that civil militia groups operating in Kenya are responsible for perpetrating crimes against humanity, with a crime against humanity being defined as:

Murder, extermination ... and other inhumane acts committed against any civilian population ... or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.36

The Mungiki militia group is considered to be one of the greatest security threats in present-day Kenya. According to various news reports the group has been responsible for crimes ranging from murder and extortion in the city to undressing women wearing trousers as part of their campaign against indecent dress.37 The group is attempting to gain control of entire neighbourhoods where the central government has little or no impact. Further complicating the issue is the fact that clashes between the Mungiki and other groups are increasingly common, because individuals outside Mungiki’s ethnic base are trying to organise themselves into militia groups, too. On 3 March 2002 a violent clash between the Mungiki and the Taliban groups in Nairobi’s Kariobangi North estate left 20 local residents dead and 31 in hospital, highlighting the increasing gravity of the situation.38

The government approach to the militias has historically been inconsistent. After the 2002 violence in Kariobangi, for example, the government officially proscribed the Mungiki and other groups but they were allowed to resurface during the 2007 elections.39 The government, unable to deal with the threat through conventional channels, resorted to extrajudicial killings and disappearances.40 These actions reinforced the perception that the state is unable to control its territory and is forced to turn to violence to apprehend criminals. It implies that with enough force any objectives can be met, and in this way does not deter civil militias from forming but rather encourages them to choose even more violent methods to overpower the police.

Crimes have been and are acknowledged to have been committed by the civil militia. For the victims of these crimes, the need for justice raises the question of where and with whom the buck stops. Primarily, prosecution is about making individuals that perpetrate crimes accountable for their actions and making these accountability measures a lasting feature of the judicial system. Bassiouni suggests that accountability brings with it
three associated concepts, namely truth, justice and redress. It affords the nation an opportunity to construct a shared narrative on the crimes that have been committed, to prevent ambiguity and restore a sense of shared experience and therefore a national identity. In this way it also serves to prevent the perpetuation of those negative and destructive narratives which have characterised many post-conflict states. It gives the victims of the crimes an opportunity to gain closure regarding their suffering and finally offers them a basis on which to seek further redress, whether in the form of a prison sentence or reparations for survivors. Granted, as Bassiouni suggests, prosecution is not the only means of achieving these ends, but in the broader context of the Kenyan legal and political system, prosecution is perhaps the best way.

As has already been stated, the Kenyan judicial system is known the world over to have a high level of corruption and inefficiency. According to the 2008 Transparency International Survey, while interaction with the judiciary was limited, the likelihood of encountering a bribe when dealing with the judiciary is 62 per cent. Confidence in the judiciary is low and a culture of impunity, particularly among the political elite, is entrenched. There are accusations that civil militia groups are financed and supported by politicians, particularly during political transition periods (election years) when instability can be manipulated into political capital by politicians. (These politicians at the same time enjoy the protection of the police.) As Bassiouni notes, where the state fails to implement legal standards, amongst others by quashing prosecutions, impunity becomes the norm. A prosecution would thus serve the dual purpose of countering the perception of inefficiency and partiality by dealing with the culture of impunity and strengthening the position of the central state.

Ethnic tensions could also be eased by prosecution. It should be noted that most community militia in Kenya are organised along ethnic lines, as in the case of the Mungiki, which is associated with the Kikuyu. Although analysts of the 2007 post-election violence in Kenya went out of their way to portray the violence as ethnic, it should be noted that ethnic groups do not exist in a vacuum. Relationships between communities have been shaped and moulded by decades of systematic manipulation by ruling government elites and other leaders. In particular, while corruption has been a negative feature of the country throughout most of its history, the perception by citizens is that it favours the community that holds the presidency, which has been a Kikuyu two out of three times. It is beyond the scope of this article to evaluate relationships between ethnic groups, but it should be noted that an effective prosecution of a civil militia group in Kenya, particularly the Mungiki, would go a long way towards challenging the notion that one or more ethnic groups are favoured over others.

This article is not arguing for prosecution for the sake of prosecution. Reconciliation, particularly in the aftermath of events as cataclysmic as the post-election violence in Kenya, cannot occur without some form of accountability on the part of those who orchestrated
and executed the violence. Modern Hobbesian societies are founded on the premise that individuals partially give up their freedom in favour of security offered by the state.46 Thus where a state is unable or unwilling to provide security for its citizens, it is an indicator of not only social failure, but also moral failure on the part of the state to uphold its part of the bargain. As with any other breach of contract, such a failure cannot be allowed to go unpunished, for the very basic reason that it undermines any aspirations to modern statehood. By not prosecuting the militias consistently and objectively, the state is guilty of such failure. Furthermore, the perceived mishandling of the civil militias that led to the post-election violence meant that Kenya lost significant international legitimacy that once saw it regarded as one of the most stable and rapidly developing nations in Africa.

This article argues for an efficient prosecution, and it is in bridging this efficiency gap between a nominal and an efficient prosecution that international criminal law and its attendant institutions can play a role. The judiciary in Kenya requires a strong system of checks and balances and international criminal law institutions can bolster the Kenyan judiciary’s prosecution of civil militias by filling in technical gaps. The ICC enshrines this principle under its complementarity regime that recognises the primacy of national jurisdictions over international prosecutions but allows room for cooperation between the two.47 Bassiouni notes that international prosecutions as a matter of policy focus on the prosecution of decision-making officials, and if this were done in Kenya it would reduce the social tension such a prosecution can place on the already fragmented state.48 In the case of Kenya, speculation about the role that ethnic considerations play in the prosecution of civil militias could be reduced by an international prosecution of the ringleaders and/or financiers of the movements. This would also diffuse the potential for violence.

International support of prosecutions carried out by (and preferably in) Kenya would increase confidence in that country’s judicial process and offer the public the assurance of an objective prosecution. International prosecution for the organisers of civil militia groups within Kenya would also serve as a deterrent to future potential militia organisations, addressing the impunity in Kenya that has made citizens are less willing to report crimes for fear of retribution or out of a sense of helplessness. As Bassiouni notes, impunity is counterproductive to peace.49 It is worth noting at this point that contrary to the favourable view given of Kenya in international reports and media as a haven of peace, ethnic and other widespread forms of violence have been a recurring phenomenon in the country, as the frequent cross-border raids by Somali, Ethiopian, Sudanese and Ugandan armed cattle rustlers attest.50 Instability has often lurked just under the surface, as the rise of the phenomenon of civil militias and the increasing freedom with which they are operating attest. For long-lasting peace to be constructed in the country, it is of the utmost importance that these groups be prosecuted efficiently.

The fact that the activities of the civil militia groups only attract international attention when the situation is out of control is worrying. If such a situation is allowed to continue,
it might result in the perception by the locals that while the militia at least care about their day-to-day needs, international concern only emerges when things reach a crisis point. As has happened in Kariobangi and other slums in Kenya, individuals may then be more inclined to place their trust in civil militias and their brand of justice than in any legal system. Cooperation with any national or even international prosecution thus already diminishes before it even begins.

**Conclusions**

The pursuit of an efficient prosecution of Kenya’s civil militias offers significant opportunities for enriching Kenyan national and international judicial traditions, while strengthening the rule of law, and by extension the Kenyan state. The apparent toleration of these groups tests the role of judicial systems in peace-building in the developing world, and brings into question whether the state is fully in control of its territory. Given the uncertain relationship between militia groups and the state in Kenya, it raises doubts about the willingness and ability of the national judicial system to address the immediate security concerns of the Kenyan people. In the process it poses a challenge to the international criminal law tradition to devise a method of cooperation and complementarity that will not undermine the sovereignty of the state and the primacy of national jurisdiction but will at the same time increase the confidence of the people in international justice. Unchecked speculation over who was behind the 2008 violence could lead to the creation of a skewed narrative, most likely along ethnic lines, which could significantly hamper any prospects for long-term peace in Kenya and reinforce ethnic prejudices that already threaten the integrity of the state. An efficient prosecution will initiate a sense of accountability, and eventually justice will give all victims (not only those who suffered political violence) closure.

**Notes**

5 Ibid, 2.
11 Agony and tears as families come to terms with tragedy, *Daily Nation*, 6 March 2002, 5.
13 Ibid, 533.
17 Francis, Introduction, 4.
19 Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia.
22 Supra note 21, *Tadic* (Trial chamber judgment), paragraph 648.
23 Supra note 21 *Akayesu* (Trial Chamber judgment), paragraph 580.
27 The Rome Statute, articles 13 and 15.
32 Ibid, 244.
33 Ibid, 245.
34 Ibid.
36 International Military Tribunal for the Trial of Major War Criminals, Charter, article 6(c).
41 M Cherif Bassiouni, *Post-conflict justice*, International and Comparative Criminal Law Series, Ardsley,
43 Kagwanja, *Facing Mount Kenya or facing Mecca?*, 37.
45 IRIN, *It's the economy, stupid*.
47 The Rome Statute, articles 1 and 17.
49 Ibid, 52.
50 See various UN reports by the Office for the Coordination of Humanitarian Affairs at www.ochaonline.un.org/kenya/.
Whose security? Understanding the Niger Delta crisis as a clash of two security conceptions

Ufo Okeke Uzodike and Christopher Isike

Introduction

From a strict security perspective, there are two primary sources of violence in the Niger Delta of Nigeria. Driven by the federal government’s historical neglect of the development aspirations of the region while simultaneously extracting the vast bulk of Nigeria’s foreign exchange revenues – by centralising the ownership and control of oil resources in such a way that it impairs the interests and competitiveness of the region – the native population groups have become increasingly restive and uninclined to undertake anti-state and anti-social activities. Armed with little by way of a coherent, visionary or sustained economic and social policy, and heavily dependent on oil revenues from the Niger Delta, the alarmed federal government has responded (in recent years)
to the increasing level of tension and violent protests by suppressing dissent with brute force rather than addressing the more prickly and long-term demands of the people. This, in many ways, is at the heart of the complex and growing political wrangle and insecurity that has not only permeated the Niger Delta region but also now threatens to shatter the notional peace, security and integrity of the Nigerian state.

As it is constituted now, the Niger Delta is a powder keg of competing and sometimes irreconcilable interests. The principal actors in the crisis, the Nigerian government, its agencies and allies on one hand, and the people and their agencies (ethnic/communal militias) on the other, have grounded their positions and actions on a well-articulated need to secure their various interests. The clash of these divergent interests, which manifests in occasional violent clashes between federal government forces and various ethnic militias and armed gangs, defines and sums up the Niger Delta crisis as a clash of two divergent but mutually reinforcing conceptions of security. A state-centric conception is held by the state together with multinational oil corporations, while the human-centric conception is held by the deprived and displaced people of the Niger Delta and expressed through their militia forces. However, the question is whose security is the state obligated to protect, and against what threats is it aimed? Also, what are the constituents of these divergent security perspectives? And how does this security contention perpetuate conflict in the Niger Delta?

The article argues that these questions remain a dominant feature of the crisis, thus reaffirming the need for a paradigm shift by the Nigerian state with regard to its security focus from an authoritarian state-centric perspective that views citizen agitation and resistance as ‘terrorism’, to human-centric perspective that will justify its Lockean essence. This shift in perspective is particularly apt now that it is becoming obvious that the state’s militarisation of the region is only stoking the flames of ethnic-nationalism and exacerbating violence and criminality with attendant consequences for Nigeria’s political economy. Such a shift will help rebuild the confidence in the government and will serve to recreate the basis for the state (government) to reclaim legitimately its role as the primary mode of societal organisation and state building.

**Conceptual framework: traditional and non-traditional conceptions of security**

A conceptual clarification of national security and human security remain germane to the arguments presented in this paper. Traditionally, the notion of security is rooted in political realism which sees security from a state-centred perspective and which restricts the application of security to threats in the military realm. Traditionalist security scholars equate security with peace and the prevention of conflict by military means like deterrence policies and non-offensive defence through public policy and law. One such
scholar is Stephen Waltz, who sees security as ‘the study of the threat, use and control of military force. It explores likely conditions that make the use of force more likely, the ways that the use of force affects individuals, states and societies, and the specific policies that states adopt in order to prepare for, prevent or engage in war’.7

In the same realist vein, Buzan and his co-authors restrict the security discourse to state security, with insecurity being equated with threats to the existence of a designated referent object, often the state, incorporating government, territory and society.8 Although this conceptualisation of security includes society as a referent object, its state-centredness is clear as the threat to society refers to external and not internal threats to the existence of a state. Therefore, as Simpson argues, for traditional security scholars that state or governing regime was perceived to be secured, provided that the state was able to preserve its territorial borders, its governing regimes and structures from attacks or any threat to its existence, and its economic relations with the international community.9

Although these definitions to a large extent posit the state as the major actor within the international system, the post World War II global system – especially after the Cold War – altered and widened the nature of security significantly. With its new and relatively unmatched emphasis on the sovereign authority of states (and peoples) as well as its collective security claims through the authority of the United Nations Security Council – and, as some would argue, the net unintended benefits of a nuclearised bipolar system – the world experienced an unprecedented era of state emergence, security and stability. For many states – particularly those in the developing parts of the world – the change to a more benign international security environment meant a concern not for external threats but for internally based (albeit externally supported) security issues. Given this context, it seems that realist notions have changed over the years: in essence there has been a shift away from ideas about a state’s quest for surviving interstate wars to intrastate conflicts and wars that are fuelled not only by the imperatives of the global East–West ideological battles but also the challenges associated with nation-building in environments that are often marked by severe resource starvation and competing interests. This has been the experience in Nigeria, for example, where government dysfunctionality and ineffectiveness have led to an exacerbation of centrifugal tendencies and intrastate conflict.10 In these states, people have died in large numbers as a result of non-traditional threats such as poverty, disease, environmental hazards, unemployment and crime, rather than from guns and nuclear weapons used in interstate wars.11 This has given rise to a rethinking of the security concept beyond its traditional preoccupation with the state and it has broadened to encompass people as referent subjects, thus giving birth to the concept of human security.

The human security conceptualisation accommodates a wide range of issues that not only constitute threats to human existence, but also breed insecurity and societal
In anarchy. It views security from the perspective of human well-being and includes broad issues of human concern, such as security from poverty, disease, famine, illiteracy, environmental despoliation and unemployment, which singly or jointly contribute to impairments of human existence.\textsuperscript{12} According to the UN Development Programme, threats to human security occur in at least seven distinct areas of human existence, namely community, economic, environmental, food, health, personal and political threats.\textsuperscript{13} Kaul, in equating human security to the security of people and not just security of nations, underscores the primacy of human security in contemporary times thus: ‘[W]hat is needed today is not so much territorial security – the security of the state – but human security, the security of the people in their everyday lives, one that is reflected in the lives of our people, not in the weapons of our country.’\textsuperscript{14} Today, hazards from non-traditional sources are a greater threat to human existence, global peace and security than interstate war and aggression.

The analytical distinction between traditionalists and non-traditionalists is not meant to suggest that consensus among the latter has been reached either. Indeed, there is disagreement between two sub-groups – the so-called ‘wideners’ and the ‘deepeners’.\textsuperscript{15} The wideners, among them Mohammed Ayoob, argue that a predominantly military definition does not deny that there are other threats to state survival, such as environmental, social and economic threats, but that these must be sufficiently politicised to enter the national and international (humanitarian) security agenda.\textsuperscript{16} The deepeners, on the other hand, are concerned about those whose security is threatened and thus support the construction of a definition that allows for individuals or groups, for instance women, to be the referent subjects of security rather than the abstract entity called ‘state’.\textsuperscript{17} According to Thomas and Tow ‘this trend, in turn, spawned greater efforts to conceptualise and implement a more precise “human security” concept [because] if the human security is to be analytically useful, it must meet a fundamental criterion relative to threat definition: it must provide tangible threat parameters against which relative security environments and situations must be measured’.\textsuperscript{18} It is to satisfy this requirement as well as measure its applicability to the Niger Delta reality that this paper utilises Ayoob’s conceptualisation of the third world security predicament in both national and human security terms. According to Ayoob:

\begin{quote}
Security–insecurity is defined in relation to vulnerabilities, both internal and external, that threaten to have the potential to bring down or weaken state structures, both territorial and institutional, and governing regimes that preside over these structures and profess to represent them internationally.\textsuperscript{19}
\end{quote}

Though this definition is state-centric, it recognises that there are domestic sources of vulnerabilities that can be hazardous to the survival of the state and its peoples, provided that they are sufficiently politicised to enter the national security agenda. This condition gives Ayoob’s definition the flexibility to deepen security without taking away
its state-centred nature. Even then, he justifies this state-centredness by arguing that the state system remains the primary mode of organisation for Third World states in their move towards statehood. Other vulnerabilities, whether economic or ecological, become integral components of the definition of security only if they become acute enough to acquire political dimensions and threaten state boundaries, institutions or regime survival. This position reinforces the belief that national security and human security are mutually reinforcing and complementary, and therefore provides a basis for convergence as the one does not necessarily supplant the other. Indeed, as Hubert argues, building a developmental democratic state that values its people and protects minorities is a core strategy for promoting human security, just as improving human security of people strengthens the legitimacy, stability and security of a state.

There are a plethora of threats against the community, economic, environmental, food, health, personal and political security of the Niger Delta peoples. According to Simpson the integrated effects of oil production activities on human security in the region permeate the entire gamut of the human security indicators outlined above. While these are not analysed individually here, all the threats to human security in the Niger Delta to a large extent result from environmental hazards occasioned by the oil exploitation activities of oil companies in the region, as Simpson rightly observes. Therefore, this article is confined to a brief analysis of how environmental despoliation of the Niger Delta resulting from oil exploitation activities compromises the human security of the people, and how these affect their relationship with the Nigerian state.

**Oil exploration and environmental insecurity in the Niger Delta**

Oil exploitation in the region creates environmental hazards, including gas flaring, product spills, discharge of refinery effluents into fresh water sources, drill wastes and degeneration of forests. The extensive and systematic degradation of environmental resources have imposed a huge burden on much of the Niger Delta because of problems such as land degradation and food and water poisoning (food insecurity) which have led to extreme poverty, disease that is exacerbated by little or no access to social amenities such as electricity, health care services (health insecurity) and schools.

The greenhouse effect caused by gas flaring affects not only people in the Niger Delta, but also the wildlife in the area. The resultant food scarcity has contributed to the migration to urban centres as well as occupational displacement, as inhabitants of the region are mostly farmers and fishermen, a factor which intensifies the unemployment problem (economic insecurity). An environmental development strategy for the region in 1995 estimated that as much as 76 per cent of all associated natural gas from oil production in Nigeria is flared compared to 0.6 per cent in the United States, 4.3 per cent in the
United Kingdom and 21 per cent in Libya. This confirms reports that Nigeria (the Niger Delta) flares more gas than any other country in the world.

According to Agbo, the Rivers, Bayelsa and Delta states experience more than 300 major product spills annually, with each discharging about 2 300 cubic metres of oil. Oil spills degrade farmlands, forests and aquatic fauna and flora, with attendant harmful effects on not only the primary farming and fishing occupations (economic insecurity) of the people, but also on their health. Furthermore, in several oil-producing communities across the Niger Delta, high-pressure pipelines carrying crude oil, diesel and gas criss-cross roads that children step across on their way to school. Often corrosion and other factors lead to leakages as some of the pipelines are over 30 years old. These pipelines and other oil installations are rarely maintained by the oil companies and the government, thus resulting in leakages and spills which destroy wildlife, farmlands, forests, aquatic and human lives as evidenced in the inferno that gutted Egborode in 1998, Jesse in 2003 (Delta state) and Onicha-Amiyi in 2003 (Abia state).

The discharge and dumping of refinery effluents (harmful liquid waste from the refineries during the process of refining crude oil) into freshwater sources and farmlands are also a major concern. There is no doubt that it destroys the environment and contributes to food shortages. According to IDEA studies, ‘these effluents contain excessive amounts of very toxic materials like chromium and mercury which can be stored in the brains of fishes for a long time thus causing food poisoning’.

In the final analysis people’s health security is threatened by oil exploitation-related environmental despoliation; their economic security is threatened by the resulting health insecurity and disassociation from their traditional economies of farming and fishing; their community security is threatened by the resultant poverty, which gives rise to social unrest and erosion of cultural values. Compared with other oil-producing regions of the world, the Niger Delta region’s human development index score, a measure of well-being encompassing longevity, knowledge and standard of living, remains at a low value of 0,564 (with 1 being the highest score). This compares poorly with the score of, for example, Saudi Arabia, which was 0,800 in 2000 and 0,815 in 2008, and those of the United Arab Emirates, Kuwait, Libya, Venezuela and Indonesia, which also achieved increased scores of 0,818, 0,864, 0,896, 0,886 and 0,834 respectively between 2003 and 2008.

Indeed, oil exploitation has harmed the Niger Delta environment, causing severe damage to flora and fauna, degrading water quality and impairing the aesthetic value and utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes, all of which serve to degrade the quality of life of local communities (community security). For the people of the Niger Delta, these security needs and issues are all related to environmental degradation which constitutes the most
dominant threat to human existence and security in the region. In many ways, the government’s neglect of the human security needs of the Niger Delta people has served to exacerbate conflict in the region. The government’s failure to guarantee these needs has compromised the essential legitimacy of the state, and the people, convinced that their security interests are different from those of the government and will be better served by alternative authorities, have resorted to mobilising themselves in protest against the state, its agents (state security forces) and allies (oil companies) thus creating a climate of antagonistic relations between the people and the state. The question that remains is how has the government responded to the people’s discontent?

State-centric securitisation, militarisation and armed conflict in the Niger Delta

Present and past Nigerian federal governments have continually chosen to regard the people’s agitations as threats to ‘national security’ and ‘state survival’ and have accordingly declared war against those they label as ‘criminal’, ‘terrorist’, ‘dissident’ or ‘rebels’ elements within the Niger Delta to ‘secure’ the region and Nigerian state. The government has often responded to the anti-state activities of militant groups such as the Niger Delta People’s Volunteer Force, the Movement for the Emancipation of the Niger Delta (MEND), and the Coalition for Militant Action in the Niger Delta (COMA) with force, usually by deploying a joint task force of the army, police and navy to curb anti-state violence, inter- and intra-communal conflicts and prevent oil theft. These militarist actions have served to exacerbate armed conflict in the region, for such a violent response exacerbates the very conditions that gave rise to it in the first place, creating a classic ‘conflict trap’ from which escape is extraordinarily difficult.

It is not easy to understated the importance of the Niger Delta to the Nigerian economy. The oil-rich region accounts for over 40 per cent of the gross national product and about 80 per cent of Nigeria’s export earnings. It is therefore of strategic importance to the survival of the nation and its governing elites, including the multinational oil corporations (mainly Shell, Chevron, Exxon Mobil, Texaco, Agip and Totalfina Elf), and other transnational actors. It is understandable that any attempt by the local people and their agencies such as COMA or MEND to challenge the status quo is regarded not merely as a threat to ‘national survival’ and by implication ‘national security’, but also as an act of war. To the state, security in the Niger Delta is defined in terms of an uninterrupted production of crude oil. There can be no doubt that these actions have resulted in a well-documented militarisation of the region.

The construction of a naval base in the Niger Delta, the government’s invitation to US marines to help secure oil installations in the region and the subsequent military cooperation between Nigeria, the US and the UK to provide training to help halt the
incessant kidnappings in the Niger Delta, confirm that this traditional security approach to dealing with the Niger Delta crisis dominates the state’s thinking. The question is, what impact has state militarisation had on conflict in the region?

**State militarisation and armed conflict: Gramsci’s explanation**

Antonio Gramsci’s theory of hegemony and counter-hegemony is useful for explaining the armed conflict between the state and the people’s militias in the Niger Delta. Gramsci builds on the theory of Marxism, using it to explain the struggles for positions and the maneuver characteristics of social formations, and to depict the relationship between the state and civil society in a neo-liberal political system. According to Gramsci the bourgeois state cannot depend only on economic power (usually assisted by the use of force) to ensure its continuation and ultimate survival, but must seek to obtain the consent of a majority of its citizens in order to legitimise and maintain itself. Therefore the state assumes a dominant position of hegemony; a process by which ‘spontaneous consent is given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group’ so that it not only justifies the position of the dominant group and helps it to maintain its domination but also succeeds in obtaining the active consent of other groups.

Hegemony as social control therefore takes two forms, namely domination and direction. Domination is the state’s overt or external control of the people’s behaviour and is usually
achieved through law enforcement, while direction concerns the state’s control of the people’s minds through the implantation of values and norms which they accept as their own. Direction operates through such institutions as the media, religious bodies and political parties. Accordingly, a state is hegemonic if it succeeds in making direction the primary instrument of its rule, and only occasionally resorts to domination. This stage of the hegemonic process, where the ruling class has succeeded in persuading other classes in society that its class interests are synonymous with the interests of all other classes, is referred to as ‘the universalisation of the particular’.48

However, hegemony does not preclude opposition and resistance, as according to Gramsci it dialectically creates its opposite, in the form of counter-hegemony. This is because there is the likelihood that not all citizens will unquestioningly consent to the state’s imposition of dominant values. As people become more conscious of the ‘universalisation of the particular’ fiction, they develop counter-hegemonic tendencies and establish movements that challenge the state and its ability to direct the actions of the people. If such a failure of direction occurs, the state may resort to domination which further intensifies the people’s counter-hegemony. This happens because with each act of coercion, the bourgeois state reveals its true nature and alienates an ever-increasing number of people. This eventually creates genuine grounds for anarchy, for the state’s violent response to the people’s counter-hegemony activities perpetuates a cycle of violence and conflict.

Although Gramsci’s theory points to the fact that the state is an important site for the political struggle between contending groups in society, it does not escape the general criticism of economic reductionism levelled against Marxism. Gramsci, too, accepts that economic factors are primary in determining political outcomes.49 This theory can nevertheless also be used to analyse intergroup relations in a state, because the state is not an oppressive organ of one class, but an oppressive organ per se that can be used by different groups, including ethnic groups, within society to leverage power.50 In line with this perspective Ibeanu has described the Nigerian state as essentially a repertory of violence used against specific groups, instead of a repository of all the interests of the people-nation.51

Taken as a whole these arguments reveal that the Nigerian state, as an instrument of domination by particular ethnic groups within Nigerian society,52 has failed in its hegemonic bid to make direction (nationalism) the instrument of its rule, since the Niger Delta minorities have seen through the state’s ‘universalisation of the particular’ fiction. The people have accordingly sought to counter state hegemony by means of various militia groups who by their actions question the legitimacy and sovereignty of the state. For example, human security threats, such as environmental despoliation and its attendant negative effects on the livelihoods and health of the Niger Delta people, have contributed to the indignation, social discontent and frustration the people feel. These
feelings are directed at the state, leading to what Nafziger describes as the mobilisation of deprivation into collective violence by militias against the state. The state has in turn often responded with military force (domination) to these militia outbursts and this has further militarised the region and perpetuated a cycle of violence with attendant negative consequences for social stability, peace and development in the Niger Delta region.

In short, the combination of environmental despoliation, the economic, health, personal and communal insecurities it creates, plus the people’s anti-state activities emerging from these insecurities as well as the government’s militarist response to the people’s agitation, have exacerbated armed conflict in the Niger Delta leading to a ‘conflict trap’ or cycle of endless conflict and violence.

Between state security and people security: whose security is paramount?

Third World states, especially those in Africa, have a peculiar security predicament given their historical colonial background and its implications for state-making. According to Ayoob, the major underlying cause of conflict and insecurity in the Third World is the early stage of state making at which postcolonial states find themselves. In their move towards statehood, the state and national security are of vital importance, as the state is the primary mode of organisation.

As a third world state struggling with issues of nation building, legitimacy and state collapse, and emboldened by a successful effort in dealing with a rebellion (the Nigerian civil war of 1967–1970), successive Nigerian governments have not only taken positions and acted in ways that reflect realist considerations of state survival, but have also used state violence to ‘protect core national interests’ which masquerade as group interests.

However, in the light of emerging threats to national and global security, and considering that people are the means and end of the development process, a people-centred approach to securing the Niger Delta has become imperative, all the more so because state securitisation of the region has served to fan the flames of conflict. In the face of this no-win situation for both the state and the people, a convergence of security interests through dialogue is the best way to achieve sustainable peace and development in the region. This is where Ayoob’s conceptualisation of security becomes relevant: it underscores the need for a paradigm shift in the security conception and practice by the Nigerian state. Indeed, environmental despoliation occasioned by oil exploitation activities in the Niger Delta has become sufficiently politicised not only to threaten, but potentially bring down the Nigerian state and its structures, both territorial and institutional, as well as the governing regimes that inform these structures. Therefore, as Hubert contends, for the state to survive, be stable and secured, it must become
legitimate by improving the human security of its people.\textsuperscript{60} The people cannot enjoy human security in the face of the violent conflict, criminality and social anarchy which pervade the Niger Delta. Concisely, while state and people security are important in any security equation in the Niger Delta and in Nigeria as a whole, they converge in ways that make them mutually reinforcing for bringing about those peaceful conditions in which development can thrive.

**Conclusion**

In spite of the divergence in security conceptions held by the major stakeholders in the Niger Delta crisis, two realities stand out and provide a basis for mutual dialogue to resolve a complex crisis. First, in a developing and plural state like Nigeria, the government remains the primary mode of organisation, nation-building and development, and this should be recognised by the Niger Delta people. Second, because people are the means and end of development, the chronic human and infrastructural underdevelopment in the Niger Delta region is a legitimate basis for discontent, especially given the region’s strategic relevance to Nigeria’s survival. The federal government needs to confront this reality for peace to reign and for development to thrive. This is particularly relevant as it is clear militarising the Niger Delta has not secured it.

Accordingly, we suggest first that the security approach be rethought. The federal government must demilitarise the Niger Delta to prove that it is ready for genuine dialogue on the human security issues that underlie the anti-state activities of the people’s movements and militias as well as those of criminal elements within society. This gesture will allow the Niger Delta people to tone down their belligerent attitudes and meet the federal government at the negotiation table. Second, the government and the multinational oil corporations should show serious commitment to environmental security by enforcing existing environmental protection laws as well as putting in place and implementing a new regime of environmental protectionism that will involve oil-producing communities. Last, the government must show that it is serious about democratising and decentralising the Nigerian state through a review of the 1999 constitution and by addressing the key issues of power devolution, self-determination and resource control (including land and its resources), in line with the practice of true federalism. Although this is a long-term solution, these are core issues in the neglect and marginalisation that the Niger Delta people experience within the Nigerian federation.

**Notes**

1 A Ikelegbe, *The perverse manifestation of civil society: evidence from Nigeria*, *Journal of Modern African Studies* 39(1) (2001), 1–24, describes the activities of these groups as the perverse manifestation of civil
society in that they play negative roles through the construction of platforms for ethnic militancy and
violent confrontation with other groups and the state, which combine to undermine democracy, as
opposed to playing the vital role of democratisation and democratic consolidation of civil societies.

2 C Isike, Emerging threats in the Niger Delta and Third World security conception: implications for
Nigeria's national security, in S Orobator, I Feturi and E Enaruna (eds), Federal, state and resource control in
Nigeria, Benin: F Parker Publishing, 2005. See also O Ibeanu, Oiling the friction: environmental conflict

3 Isike, Emerging threats in the Niger Delta.

Studies (14)2 (2005), 230, asserts that the massive force and repression associated with the state's handling
of the economy of conflict is furthering violence in the Niger Delta.

5 According to the report of the Special Security Committee on Oil-producing Areas set up by the
government in 2001, the disruption of oil operations by community disturbances, pipeline vandalisation
and illegal bunkering reduced production by 15–20 per cent (300 000 to 400 000 barrels per day) on
an ongoing basis. In 2006, this figure had gone up to 500 000 barrels per day (25 per cent of the total
production) (Military asks for go-ahead to attack militants, Vanguard, 8 March 2006). According to
the report of the Niger Delta Technical Committee set up by the Yar Adua government in 2008, the
situation is worsening and this figure now stands at almost 30 per cent valued at about US$20,7 billion.
This excludes another estimated US$3 billion lost to oil bunkering over the first seven months of 2008


7 S Waltz, The renaissance of security studies in a changing world, International Studies Quarterly 35(2) (June
1999), 212.


9 I Simpson, The paradox of resource wealth and human insecurity: reflections on the Niger Delta area of
Nigeria, Africa Insight 38(2) (September 2008), 62–76.

10 Centre for Advanced Social Science (CASS), Enhancing the capacity of women leaders of community organizations


12 For more on the human security paradigm, see the United Nations Development Programme, Human
salutes international workshop on human security in Mongolia, Two-day workshop held in Ulaanbaatar
27 January 2008).


14 I Kaul, Peace needs no weapons: from military security to human security, Ecumenical Review 47(3)

15 S Tarry, ‘Deepening’ and ‘widening’: an analysis of security definitions in the 1990s, Journal of Military

16 M Ayoob, The Third World security predicament: state-making, regional conflict and the international system,

17 S Peterson, Feminist (re)visions of international relations theory, Boulder, Colo: Lynne Rienner, 1992.

18 N Thomas and W T Tow, The utility of human security: sovereignty and humanitarian intervention,

19 Ayoob, The Third World security predicament.

20 M Ayoob, Defining security: a subaltern realist perspective, in K Krause and M Williams (eds), Critical

21 Ayoob, The third world security predicament, 9.

22 D Hubert, Human security: safety for people in a changing world, in R Akindele and A Bassey (eds),

23 See E Akpofure, L Efere and P Ayawei, The adverse effects of crude oil spills in the Niger Delta of Nigeria,
Urhobo Historical Society, 2000; A Onduku, Confronting the human security dilemma: towards

25 Ibid.
28 Studies have shown that gas flaring has a negative effect on agricultural production – see UNDP Niger Delta Development Report; Simpson, The paradox of resource wealth and human insecurity.
30 Ibeanu, Oiling the friction; see also the World Bank Report on indiscriminate gas flaring in Nigeria.
32 Obi, Oil, environment and conflict in the Niger Delta; Akpofure et al, The adverse effects of crude oil spills; International Institute for Democracy and Electoral Assistance (IDEA), Democracy in Nigeria, Continuing dialogue(s) for nation-building, 2000.
33 Agbo, The dying Delta, 58.
35 IDEA, Democracy in Nigeria, 147.
37 Simpson, The paradox of resource wealth and human insecurity, 66.
38 Rosenau calls this a pervasive authority crisis which occurs when a people lose faith in the existing social, political and economic order. According to Rosenau they then transfer authority to ethnic minorities, local governments, religious and linguistic groups, and environmental and political organisations (in C Ukeje, Oil communities and political violence: the case of ethnic Ijaws in Nigeria’s Delta region, Terrorism and Political Violence 13(4) (Winter 2001), 15–36.
40 See Ibeanu, Oiling the friction, 25.
41 IDEA, Democracy in Nigeria, 142
42 In an interview with journalists, the public affairs officer of the US consulate in Lagos, Tim Gerhardson, while speaking on the Niger Delta crisis, reiterated that ‘Nigeria’s strategic importance to global economy made it imperative for the US to be involved in protecting people’s investments’ (The Nigerian Punch, 10 August 2007).
43 Ibeanu, Oiling the friction, 26.
47 Ibid, 238–239.
48 Ibid, 239.

50 Ibid, 39.

51 Ibeanu, *Oiling the friction*.


55 Ojakorotu and Uzodike, *Oil, arms proliferation and conflict in Niger Delta of Nigeria*.

56 Ibeanu, *Oiling the friction*.

57 Ibeanu (in *Oiling the friction*) argues that the Nigerian state has not proved itself to be popular/national as “instead of appearing as the representation of the general interests of the people/nation, the Nigerian state has been “privatized” and “parcelled-out” as “means of production” for regional, ethnic, religious, class, and other special interests”.


59 See excerpts of Air-Vice Marshall Gbadebo’s testimony to the Committee on Defense of the House of Representatives in 2006. According to Gbadebo ‘it is possible for the whole of Bonny town to be wiped off the face of the earth as it would take more than six months to put off any fire ignited by the militants … they [militants] have gone beyond oil bunkering. They now collude with foreigners to undermine the country. They have unlimited access to sophisticated weapons and they enjoy press coverage’ (*Vanguard*, 8 March 2006). See also the Special Security Committee on Oil-producing Areas, Report, 2001.

60 Hubert, *Human security: safety for people in a changing world*. 
Distance education and e-learning: The SANDF should get it right!

Abel Esterhuyse

To patrol is to control: Ensuring situational awareness in Africa’s maritime exclusive economic zones

O S Ibrahim
Distance education and e-learning: The SANDF should get it right!

Abel Esterhuysen

Introduction

Education in South Africa is a controversial issue. In the military context, education is even more complex. The South African military struggled and is still struggling to develop an educational ethos at those Education, Training and Development (ETD) institutions primarily responsible for education. This specifically concerns the Military Academy and its Faculty of Military Science, the National War College and the National Defence College. Worldwide military education faces an era that is primarily information driven, in which electronic and other forms of communication has made distance almost irrelevant, and in which there is a growing demand for well-educated soldier-diplomats and soldier-scholars. These considerations necessitate the development and roll-out of a
distance education (DE) and e-learning system in the SANDF as a matter of urgency. This has indeed become the rule for militaries worldwide. Why has it not been done by the South African military as yet? The answer is rooted, to some extent, in the general educational problems in the South African military and its efforts to roll-out a system of DE and e-learning. The observations about the SANDF in this commentary should, however, be seen as tentative and exploratory in nature.

**Educators, students and curriculums**

From a general educational perspective there is little doubt that the directing staff at most ETD institutions work extremely hard. At the same time, one is often left with the impression that the work of the directing staff at most ETD institutions is – in Foster’s words – more consumptive than productive. More specifically, at the War and Defence Colleges, the work pace of the directing staff is more in line with the training culture of the military than the educational culture that is required to install a higher order holistic and cognitive understanding of policy, war and strategy that falls within the ambit of these ‘educational’ institutions. There are a number of reasons underpinning this particular problem. The most obvious is the general lack of (civilian) academic faculties that has become the rule at such institutions the world over. Of particular interest is the absence of postgraduate academic qualifications among the directing staff. Together with a shortage of any military experience of note in the South African military at present, these institutions face a certain amount of institutional paralysis – a willingness to educate and train, but an inability to do so.

Educational institutions, in general, are discriminatory by nature. The principle that not everybody has the aptitude for higher education and training is widely accepted. Militaries have a triangular and hierarchical system of command which implies that not all officers have the propensity for high command and that not all officers should be accepted, as a rule, at the most senior military courses. Militaries normally have a system in place whereby the most competent of their officers are accepted for attendance of the more senior academic programmes and, consequently, promotion to high command and staff positions. Militaries normally apply the principle of ‘up or out’. Yet, it is difficult to find the traces of such a merit-based system in the SANDF. This means that officers who do not have the aptitude for academic studies or high command often end up in the educational programmes of the senior ETD programmes in the SANDF – and they are promoted to high rank.

The curricula of ETD institutions often reflect more of a foundation in training than education. The approach is a mile wide and an inch deep, to be precise! The intensity of the programmes is very high. Students are overburdened with an extensive amount of information. At the same time, though, very little time is spent on rigorous debate,
reflection and, eventually, the internalisation of knowledge. As a result, not much learning is taking place, in spite of the overload of information students are exposed to. With the exception of the Military Academy, it is difficult to identify an SANDF ETD institution where information is processed into knowledge, and where the focus is on debate, reading and writing – the critical ingredients of any learning process. Like the military in the 1980s, the SANDF neither reads nor writes and is suffering from a certain amount of mental stagnation. In the 1980s, Heitman identified three possible reasons for this organisational culture: the bureaucratic process to obtain security clearance for anything that was written, the absence of suitable local military journals, and the absence of any professional, financial or other incentive. Not much has changed in this regard over the last twenty years.

Cost and structural support

Until now, the SANDF has not used DE and e-learning on a grand scale in the education of its cadres. A number of factors seem to stand out with regard to DE and e-learning in the SANDF. The SANDF, obviously, views DE as a means to save money. Yet, money needs to be spent to roll-out a proper DE system before money can be saved on the ETD budget. DE in the SANDF has never received the kind of budgetary support necessary for a full roll-out of a workable DE system. Instead, the SANDF is simultaneously trying to save money on the instrument that is supposed to be the money saver in the ETD environment.

Different ETD institutions in the SANDF have at different times tried to implement a system of DE. One of the reasons why DE does not proceed beyond the point of an experimental phase is the lack of structural support from the SANDF. There is no central structure in the SANDF that is principally responsible for the development of a DE system, that budgets for the implementation thereof and that is responsible for the organisation-wide roll-out or implementation of such a system. The lack of such structures leads to an inability to learn from the experimental phases of DE in some of the ETD institutions in the SANDF. Consequently, the SANDF does not seem to build up an institutional memory concerning DE. The South African State Information Technology Agency (SITA) is testing a learning management system designed for the SANDF, which will hopefully be distributed throughout the SANDF as a stepping-stone to a broader basis for DE and e-learning.

People in uniform are normally well-developed as ‘managers of violence’, to use the Huntingtonian phrase, and not as DE and e-learning specialists. Successful implementation of a DE system requires personnel with special expertise – people who are well qualified in the educational field in general and who have specialised in DE. Any DE-based university, such as the University of South Africa (Unisa), is proof of the need to build these special knowledge and skills. No educational institution can expect from its lecturing or directing staff to take care of the logistical and communication requirements that underpin a
successful DE system as well. Time is a scarce commodity and not much time will remain for quality research and teaching if directing staff also became responsible for logistical and other interactions with DE students. A total lack of knowledgeable personnel to implement DE and who understand the benefits of such a system is most probably the most important reason underpinning the inability to implement a DE system of education in the SANDF. In short, a proper DE system will have to be implemented by DE experts as DE is qualitatively different from ‘residential’ education. Most DE universities have dedicated DE units or structures just to monitor, evaluate and hone the own processes.

**Technology as the key factor**

The SANDF seems to display a certain aversion to technology, and specifically a reluctance to become web-connected. The use of a paper-based system for DE is without doubt a possibility. However, the ability to communicate with students via e-mail is the most basic technological requirement for successful DE. It would even be more critical in the training environment. At the Military Academy, for example, lecturers communicate with more ease with colleagues on the other side of the world than with their own students in the SANDF. One has some appreciation and sympathy for the concerns about operational security in the SANDF if it becomes web-connected. At the same time, though, for any organisation not to be web-connected in the present age is a scary thought. Certainly, there should be a system – such as WebCT – that could facilitate e-based DE without endangering organisational or operational security.

IT infrastructure and support in the SANDF in general are inflexible, time-consuming and reactive. Computers in the SANDF are not allowed to be connected to both internal networks and the Internet. The SANDF should consider decentralising the management of certain IT and software in the SANDF, investing in a larger IT infrastructure to facilitate broader access to the internet which will also improve capabilities for computer-based simulation and training, and provide good-quality and user-friendly Internet security and anti-virus software to the SANDF as a whole with automatic online updates. Armed forces the world over make use of Internet services. What underpins the SANDF’s reluctance to afford its members access to computer and web-based services?

**Organisational considerations and attitudes**

In spite of the high emphasis on student-based education at most higher education institutions in South Africa, many teachers and lecturers will testify to the growing need for more contact time between students and lecturers. The problems in our present school system are a definite factor to consider. Underlying this question is the general issue of whether we have a student body in the SANDF that is conducive for the
successful implementation of a DE system. This question has many dimensions of which some may be (politically) controversial. However, academics have a responsibility to place these issues on the table for debate in spite of their controversial nature. Consider, for example, the number of enlisted members in the SANDF who are not IT literate. IT is a threat to them.12 Or, consider the number of SANDF members of junior rank who have access, specifically after hours, to a web-connected computer.

What about the organisational attitude of the SANDF towards ETD in general? All people who have studied on a part-time basis will testify to the personal sacrifices part-time studies require – much more than in the case of full-time studies. This issue has two sides: the question of the willingness of DE candidates to persevere in order to be successful, and the question of organisational support and whether the organisation is willing to create the environment (in terms of time, for example) to facilitate successful pursuance of DE studies. The money saved by not attending residential learning opportunities must be critically compared against the cost of working time lost during participation in DE. The more senior the learner, the more significant this effect. ‘Cost’ must also be considered in terms of the reduced contribution of the learners to the operational readiness of the unit where they are working.13

There is a huge difference between education and training. To what extent is DE an appropriate tool for training? DE is after all precisely what it says – distance education. Besides, education has always been a side-issue for the SANDF. Training is a group-oriented activity to developed practical skills. This raises questions about the suitability of DE in the military regimentalised training environment. Stated differently, DE may be very effective in those ETD institutions in the SANDF that are more educational in their orientation, such as the Military Academy and the National War and Defence Colleges. There is real doubt whether it can be effective at all at institutions that function on the tactical level and that are oriented towards the provision of skills-based development. One can imagine that it can be done; however, it will be techno-intensive.

On a more positive note, though, DE will make training opportunities more accessible for reserve force members. This will have positive spin-offs for the SANDF and the broader civil community. At present, a lot of lip serve is being paid to the importance of the reserve forces. In reality, the Defence Force has allowed the disintegration of the reserve forces to a point where there is real doubt whether the SANDF has the capacity to revive the reserve force system in South Africa.

**Concluding remark**

What should be done to develop an ETD system based on DE and e-learning? The SANDF will not be able to develop and implement DE and e-learning as long as it
remains an ‘over and above’ assignment for the directing staff at the ETD institutions. The SANDF needs to plan and resource the implementation of DE and e-learning in the organisation as a whole properly. Penny pinching when implementing DE and e-learning at ETD institutions is the surest path to failure. Proper resourcing implies *inter alia* the appointment of personnel with the appropriate DE and e-learning skills and knowledge, creation of the necessary structures to roll out DE and e-learning at organisational level and the willingness to provide both the electronic systems and the training that is needed to empower people to use these systems to their own benefit. Only if the SANDF follows such a holistic approach will DE and e-learning grow into the powerful tool that it could be for the development of people.

**Notes**

1. Based on a paper read at the Defence Academies and Colleges International e-Learning Conference with the theme ‘Network Centric Learning: Towards Authentic ePractices’ presented at Stellenbosch University in cooperation with the University of New South Wales and Cranfield University, 25–27 March 2009, Stellenbosch, South Africa.
3. The SANDF: Midwifes of peace in Africa: an evaluation of the SANDF involvement in peace support operations, Paper presented by Dr Thomas Mandrup at SA Army Seminar 21, 26–28 February 2009, provides a more detailed exposition of the lack of a meritocratic system in the South African military.
4. A well-educated SA Army member noted that there is a tendency to overload students at training institutions without focusing on the quality of learning. Many theoretical DE assignments are short answers straight from the textbooks. Such assignments often do not involve effective learning. Tactical courses increasingly contain learning objectives that should be addressed in educational institutions rather than in training courses (civil education, etc). He noted that the SANDF ‘is trying to nurse the symptoms of a poor educational system in the country and unscientific recruitment in the SANDF’ (e-mail correspondence, 16 February 2009).
7. E-mail correspondence with an SA Army major, 16 February 2009.
9. E-mail correspondence with a senior SA Army colonel, 18 February 2008.
10. Remarks by Professor Renfrew Christie, Dean of Research, University of the Western Cape, at the 3rd Sea Power for Africa Symposium, Cape Town, 12 March 2009.
11. E-mail correspondence with a senior SA Army colonel, 18 February 2008.
12. Ibid.
To patrol is to control:
Ensuring situational awareness in Africa’s maritime exclusive economic zones

O S Ibrahim

‘… African navies presently cannot protect African trade for lack of sea power’
– Renfrew Christie

Threats in Africa’s exclusive economic zones

A variety of threat situations exist in Africa’s waters, most of which are well known, while others such as maritime terrorism are still emerging. The contemporary threats are manifest in the form of piracy and sea robbery; organised crime; including gun-running, smuggling, human and drug trafficking; illegal exploitation of marine resources; and the destruction of marine resources through dumping and pollution. These threats cut across

Keywords exclusive economic zones, terrorism, toxic waste dumping, situational awareness, cooperation
virtually the entire African maritime domain. For instance, instability in states in the Horn of Africa arising from persistent intra-state and inter-state conflicts has generally led to neglect of security in the maritime domain, which is largely characterised by illegal fishing, dumping of hazardous waste and piracy. In 2008, no fewer than 60 vessels were attacked by pirates off the coast of Somalia. This led to international action with the adoption of UN Security Council Resolution 1846 on 2 December 2008 to fight piracy and armed robbery at sea off the Somali coast. Similarly, the Indian Ocean region has been described as an inherently unstable region where piracy, drugs and arms smuggling are well-entrenched phenomena. Threats in the Mediterranean region encompass arms smuggling to fuel conflict in North and Central Africa’s troubled spots as well as the infamous illegal migration of thousands of Africans into the southern fringes of Europe annually. It is estimated that up to 3,000 African migrants have died en route to Europe through the Mediterranean in the last five years. Additionally, available data on emerging threats in the Gulf of Guinea region indicates a rise in the phenomenon of militancy, particularly in the Nigeria–Cameroon–Equatorial Guinea maritime corridor. The activities of the criminals in this area, notably, piracy/sea robbery, kidnapping/hostage taking and oil theft, if left unchecked, could threaten the sea lines of communication; disrupt commerce as well as access to energy supplies in the region. Perhaps it is in recognition of this that foreign powers have now increasingly sought to play more active role on security issues of the region.

Terrorist groups have demonstrated a capacity to use the seas as a means of conveying and positioning their agents and logistics to wreak havoc including the use of explosives-laden suicide boats as weapons to ram other vessels, port facilities, or offshore platforms. The vastness of Africa’s maritime domain provides great opportunities for exploitation by terrorists. Terrorist activities therefore constitute a latent threat to Africa’s maritime domain.

The dumping of nuclear/toxic wastes in the sea area has become a multi-billion dollar enterprise involving various unscrupulous agencies. Besides that, oil spillage has also become a serious threat to the maritime environment. The resultant effect is the destruction of the natural habitat for several species of fish, thereby in turn threatening food security.

The economic and social consequences of the prevailing threats in African waters could be grave if they are allowed to persist, as they would flourish and ultimately undermine political stability and economic development of the region. In particular, piracy and armed robbery against ships present a serious threat to the lives of seafarers, the safety of navigation, the marine environment, the security of coastal states, and the right of innocent passage in areas under the sovereignty of a coastal state. In this regard, increased insurance cost of shipping or even outright boycott of some African ports by shipping lines cannot be ruled out. This scenario is already playing out in the Niger Delta where,
as a result of insecurity, the costs of development projects are almost double of what obtains for projects of similar quality internationally. In 2008, insecurity in this region, amidst a global energy crisis, reduced crude oil output by 25 per cent and oil prices rose to more than US$100 per barrel.

Likewise, the scourge of illegal and unregulated fishing by foreign fishing fleets constitutes a serious threat to the realisation of the benefits derivable by many African nations from these resources. In addition to the depletion of fish stocks due to illegal and unregulated fishing, there are also economic and social costs which include loss of foreign exchange earnings and the loss of livelihoods of several fishing communities in Africa. To address these threats, situational awareness of the maritime domain is of utmost importance as it would provide the knowledge base required to advise African leaders in taking the right decisions that would enhance maritime security in the continent.

The need for situational awareness in Africa’s exclusive economic zone

Modern-day transnational criminal groups are well organised and well equipped, often possessing advanced communications, sophisticated weapons, and high-speed craft for smuggling contraband goods, drugs and arms and for human trafficking, as well as for piracy. Also, systematic destruction of Africa’s marine resources and environment, conflict between African nations over maritime resources, and mass illegal migration flows through the seas all have potential security implications for Africa’s stability. Moreover, the sheer vastness of Africa’s EEZ makes it imperative for African nations to harness or develop the means to detect illegal activities, deter unscrupulous groups – African and foreign collaborators alike – from taking advantage of the maritime domain, and neutralise the threats posed by their activities or at least make it difficult for them to exploit the vulnerabilities of Africa’s maritime domain to further their illegal activities. Dealing effectively with these realities require a new mindset that sees the total threat through an understanding of situational awareness of the maritime environment. This is considered a sine qua non to developing a comprehensive system necessary to achieve security of Africa’s EEZ and African navies have an important peacetime function in support of efforts to combat these threats.

Challenges to effective situational awareness in Africa’s exclusive economic zone

Systems to enhance situational awareness in Africa’s EEZ would of necessity include the capacity to obtain adequate knowledge of events in the environment as well as the capability to prevent or contain any untoward event. Unfortunately, through the actions of several criminal gangs and inaction of governments both within and outside the
continent, the people of Africa are being denied the full benefit derivable from the seas to enhance development. At present, little is being done by African governments to protect their maritime interests and resources in the areas of adequate investment in systems and structures for effective maritime security. When such structures do exist, they are hardly effective for several reasons, which border mostly on lack of interest in the maritime domain and the subsequent lack of political will to act on issues concerning maritime security in the continent. Some of the challenges to effective situational awareness in Africa’s EEZ therefore include inadequate capacity to effectively cover the vast area of Africa’s EEZ; lack of political will by African governments; inadequate synergy between maritime security initiatives of various sub-regional organisations; and an increasing influence of extra-regional powers in the continent.

**Inadequate capacity to effectively cover Africa’s vast EEZ**

About 74 per cent of African countries are littoral states, which translates into a significant maritime EEZ. At least 40 of them have some form of law enforcement structure charged with maritime security. Added to this is the fact that there are no physical boundaries at sea in which the countries often claim sovereignty in accordance with international maritime law. More so, an assessment of Africa’s naval/coast guard capabilities indicates that their capacity and capability to effectively carry out enforcement duties within the maritime areas claimed by their countries are often weak. This vulnerability is often exploited by criminals to perpetrate illegal activities. Surmounting this challenge demands a re-assessment of the roles of maritime organisations and naval forces to develop a holistic approach in supporting Africa’s security efforts of the vast EEZ.

**Lack of political will by African governments**

Many African governments lack the will to adequately invest in measures and structures for maritime security. This stems from the poor maritime culture of many African nations and awareness of the maritime domain. For instance, investment in several African navies/coast guards is so insignificant that the effect of their presence is seriously undermined and they are therefore ineffective. Apart from the Economic Community of West African States Monitoring Group (ECOMOG) operations in Liberia and Sierra Leone in the 1990s, no large peacekeeping operation within Africa had involved naval forces.

**Inadequate synergy between maritime security initiatives of various sub-regional organisations**

There are various security initiatives in the different African sub-regions, many of which have not been operationalised due mainly to difficulties in surmounting the national claims of sovereignty. Members of the Gulf of Guinea Commission for instance have been
unable to operationalise the Gulf of Guinea Guard Force in order to secure the region. At the continental level, little attention has been given to the maritime dimensions in the Common African Defence and Security Policy (CADSP) aimed at addressing threats to peace, security and development of the continent. The African Standby Force, as an instrument for the implementation of the CADSP, also does not clearly address the roles and contribution of maritime forces to African security and development. An effective system of situational awareness of Africa’s maritime areas would assist in galvanising the collective will and capacity of sub-regional bodies to act in concert for the common good.

**Increasing influence of extra-regional powers in Africa**

There is a discernable increasing influence of foreign powers in the security of Africa’s maritime domain. The reason often adduced, perhaps justifiably, is the lack of capacity of national governments to exercise effective control over the maritime areas. However, African nations must recognise that the main driving force is the protection of the interests of these foreign powers, over and above every other consideration. This scenario is already playing out in Somalia and the Horn of Africa region in general. The United States, in furtherance of its global ‘war on terror’, has established the United States Africa Command (AFRICOM) and is maintaining a substantial naval presence in the Gulf of Guinea region. This tendency presents a challenge to African nations due to the propensity of foreign powers to come between African countries’ attempts to forge a common front.

**Systems for effective situational awareness in Africa’s exclusive economic zone**

Combating maritime threats in Africa’s waters requires the development of systems that would ensure that African countries have the capacity to exercise control over the continent’s maritime domain. Taking the challenges to effective situational awareness in Africa’s EEZ into account, integration of national and regional efforts are essential to exercising the desired level of control. Owing to the international nature of the sea and the general lack of maritime capacity in Africa, the support of extra-regional powers or institutions may sometimes be required. However, African nations must take the lead and ensure that such assistance is anchored in a well-articulated set of Africa’s interests and priorities. Accordingly, situation awareness aimed at controlling the maritime domain effectively should be based on developing and integrating civil and naval capacities at both the national and regional level.

**Cooperation and unity of efforts**

Situation awareness in the maritime domain requires a coordinated effort within and among African nations, including public and private sector organisations and international partners. The need for security is a mutual interest requiring the
cooperation of industry and government. The grave challenges to Africa’s maritime security demand that civil and naval authorities cooperate more closely in their collective peacetime roles of maritime policing and optimise resource management. To this end, the major role of African navies may have to be reviewed in order to advance Africa’s maritime interests. However, the effectiveness of the desired cooperation, both at national and regional levels, would to a large extent depend on the political will of African nations to embrace an integrated regulatory framework for maritime security. To this end and because of the enormous area of Africa’s EEZ, it is important that African countries share intelligence and coordinate their maritime surveillance and reconnaissance activities. Accordingly, regional cooperation must transit from policy and intent to action.

Command and control systems for situational awareness

Situational awareness in the maritime domain would, among other things, enhance early detection, which would allow for accurate decisions and responses to neutralise threats within the full spectrum of the maritime domain. African littoral states must individually and collectively upgrade and integrate their maritime Command Control Communications Computers and Intelligence (C4I) systems – including interoperable long-range communications – in order to improve situational awareness. The basic principle is to ensure that stakeholders at all levels know what they can do and how they can do it most effectively. They should also realise that situational awareness is in their best interest. However, this will demand a common purpose and agreed-upon procedures. Promoting awareness of maritime security threats and issues is necessary to inform decision-makers of the need to continuously build capacity. This, in turn, would enhance situational awareness, which is crucial to effective maritime control. Adequate maritime assets with the right capability, together with integrated C4I systems and procedures, are necessary tools for a holistic and near real-time approach to effective control of the maritime domain. Effective C4I systems would entail the development of standard reporting procedures, as well as the development of global and regional information bases.

The way forward

The way forward for African states is ‘multilateral naval cooperation’, which is defined by Joel J Sokolsky, Professor of Political Science at the Royal Military College of Canada, as follows:

… an instrument used by a coalition of nations who deem it in their national self-interests to make use of sea power. The same also applies to other contributors to coalition efforts at sea, including small and medium
power navies. Therefore, the tactical, strategic and above all political effectiveness of multilateral naval cooperation will always be dependent upon the cohesiveness of the coalition that stands behind, and especially upon, the will of the major contributing naval powers.7

Regional and sub-regional initiatives aimed at promoting regional action to address piracy and armed robbery against ships in the wider context of maritime security seem to be a viable option. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which was concluded in November 2004 by 16 countries in Asia and includes the ReCAAP Information Sharing Centre (ISC) for facilitating the sharing of piracy-related information, is a good example of successful regional cooperation which deserves commendation and could be replicated in Africa. Also in Asia, we have the Five Power Defence Agreement involving countries from South-East Asia and Oceania. It is pertinent to note the contributions of the ECOMOG Naval Task Force during the Liberia/Sierra Leone crises. One can safely conclude that having achieved this humble feat in the 1990s, Africa can actually achieve multilateral naval cooperation in this century. This could involve multilateral staffing and procurement of C4I systems which would be of mutual benefit. The acquisition of collective C4I systems, which would be held and operated at a combined headquarters is a cheaper and more realistic option to achieve situational awareness.

Mahan made a prophetic remark that ‘the ocean is the key to the seven seas. In the 21st century, the destiny of the world will be decided on its waters.’ It is time for Africa to rethink its destiny by embracing multilateral naval cooperation to secure the potential of its waters.

Conclusion

Africa’s EEZ should be safe for navigation, commerce, and sustainable exploitation of its natural resources. However, the challenge of securing Africa’s waters is enormous and requires great effort. Situation awareness in the maritime domain is a continuum that begins far beyond the borders of individual African nations and requires a critical blend of tangible resources such as equipment and personnel, along with intangible items such as useful intelligence and strong partnerships. Situation awareness provides the basis to make near-real-time strategic and tactical decisions on response to maritime threats in Africa’s EEZ. Effective control will include the use of, among others, sensors, rapid response capable maritime or land-based platforms, and effective command and control systems. Integration of situational awareness platforms in order to control Africa’s EEZ effectively and unifying the security initiatives of African sub-regions are critical to success.
Notes


4 UNSCR 1846 authorised states and regional organisations cooperating with the Somali Transitional Federal Government (TFG) to enter Somalia’s territorial waters and use ‘all necessary means’ such as deploying naval vessels and military aircraft, as well as seizing and disposing of boats, vessels, arms and related equipment used for piracy in accordance with relevant international law for 12 months from 2 December 2008.


6 It was recently reported that the cost of establishing a gas-to-liquid plant in Escravos is more that twice that of a similar plant in Dubai by the same company, having factored in what it called ‘costs incidental to the security environment’.

Qaddafí’s Libya in world politics
Yehudit Ronen

Contemporary piracy and maritime terrorism:
The threat to international security
Martin N Murphy

Africa:
Altered states, ordinary miracles
Richard Dowden
The need to understand Libyan foreign policy has never more pressing than at present, as Tripoli sheds its position as a pariah in Africa and as its eccentric leader presses on with his programme of African continental unification from his position at the head of the African Union. However, Libyan foreign policy has always been rather opaque, and the Arab journalist Ghassan Chebel rightly noted that Libyan politics can provide the most seasoned observer with the ‘mother of all surprises’.

Although there are several studies on Libyan foreign policy or Libyan politics, none is as comprehensive as this penetrating study by Yehudit Ronen, who seamlessly integrates domestic and foreign issues and shows how the one impacts on the other. In this authoritative study Ronen provides a sweeping and comprehensive overview of Qaddafi
since he came to power on 1 September 1969, through his relations with the United States, the Soviet Union and Arab states, his quest for unity and leadership in Africa and finally to the rise of his son Saif al-Islam. Ronen also discusses the reformist bloc around him, consisting of among others Foreign Minister ‘Abd al-Rahim Shulqam and Prime Minister Shukri Ghanem. An aspect of this book which contributes to its unique character is that the information to a large extent comes from Libyan and other primary Arab sources. Thus it should be no surprise that this book provides the reader with a unique insider-outsider perspective of Libyan foreign policy.

Immediately after the 1969 revolution, Libyan foreign policy was informed largely by ideological, political and emotional affiliations. Buoyed by its huge oil reserves and the charismatic personality of its leader, Tripoli’s foreign policy became ever more grandiose. However, given the ideological straitjacket (anti-West, anti-Israel, pan-Arab and now pan-African) in which Libyan foreign policy was acted out, this resulted in more reversals than success for Tripoli. Qaddafi allied with the Soviet Union to balance the growing hostility from Washington and certain Arab states, but the result was that Libya was caught up in the maelstrom of East–West relations. Ultimately the result was that the US designated Libya as a threat to its interests in the region, earning the ire of pro-Western Arab states in the process.

Moreover, its strategic dependence on the Soviet Union catapulted the Qaddafi regime into a major crisis situation after the disintegration of the USSR. In this time of crisis, and unable to change his ideological approach to foreign policy making, it was left to Saif al-Islam to steer Libyan foreign policy in the post-Cold War environment. Guided by more pragmatic national interest considerations, Saif al-Islam and his team of reformists successfully reoriented Libyan foreign policy along more pro-West lines. The settlement of the Lockerbie dispute, coming clean on its past nuclear ambitions and various economic initiatives to liberate Libya from its moribund socialist economic underpinnings, were all part of this process.

It is important to note that ideological considerations have not been eliminated in Libyan foreign policy. Rather, it is being used in more traditional ways to further the national interests of the Libyan state, as Qaddafi’s ‘United States of Africa’ vision and his quest for African leadership attest. While it fits into his pan-African perspective from an ideological point of view, it also served to rehabilitate Libya’s image. Qaddafi has for example been able to successfully mobilise African diplomatic support to press for the lifting of UN-imposed sanctions.

Despite Saif al-Islam’s success in reorienting Libyan foreign policy along more pragmatic lines, it is not certain whether the reforms will hold. In authoritarian political systems, personalities often matter more than institutions and policies and one can hardly predict the future of Saif al-Islam in Libya’s labyrinthine politics. As Yehudit Ronen notes, it is
still not clear whether Qaddafi will follow in the footsteps of Syria’s Hafiz al-Asad and bequeath Libya’s leadership to his son.

Ronen’s book is a veritable *tour de force* and a must-read for all who seek to understand Libya’s position in world politics as the regime prepares to celebrate the fortieth anniversary of the revolution in 2009.

*Reviewed by Professor Hussein Solomon,*

*Department of Political Sciences, University of Pretoria*
Contemporary piracy and maritime terrorism: The threat to international security*

Martin N Murphy

Martin Murphy asks what threat piracy and maritime terrorism poses to international security. This question has generated much interest recently, with the increased pirate activity around the Gulf of Aden. In exploring this question, Murphy examines the potential development of maritime terrorism through opportunities presented by piracy. He concludes that neither piracy nor maritime terrorism on their own represents a significant threat to global security, but that piracy can facilitate the development of those environmental factors which would make maritime terrorism plausible. Murphy suggests that the threat to regional security and the potential for overspill are sufficient to warrant concern about generalised maritime disorder, especially in the face of ‘increasing pressure on coastal waters’ (p 10).

Murphy begins by examining piracy and terrorism as two separate phenomena. He sketches the geographic, political and social factors favourable to the development of both, and then provides a breakdown of the methodology of piracy. Instead of focusing on maritime safety, Murphy examines the security threat posed by piracy. This includes a vulnerability assessment of states and regions as well as a threat assessment based on the possibility that piracy may extend beyond the borders of a littoral state, for instance through its effects on a fragile international shipping industry. These observations are ably supported by case studies of South-East Asia and Somalia. Murphy shows that the evaluation of piracy and its effects are problematic, but that taken as a whole, the financial cost of piracy is in itself not significantly damaging to the global economy.

According to Murphy (p 44), the international community has only been affected indirectly so far by piracy and this is unlikely to change. Common piracy is a menace to its victims and an irritation to littoral states and shipping companies, but is not usually a wider concern. This does not mean, however, that piracy does not pose a threat to international security, for the organised nature of crime required for sophisticated piracy does indeed constitute a threat that has a wider reach than only littoral states and the shipping industry.

In establishing the methodology and targets of maritime terrorism, Murphy categorises ships as iconic, economic or mass casualty targets, as well as potential weapons in themselves. He explores the possibility of terrorists making use of seaborne assets for weapons delivery, including weapons of mass destruction, and developing non-state ‘navies’ such as the ‘Sea Tigers’ (the naval force of the Liberation Tigers of Tamil Eelam in Sri Lanka). According to Murphy some of the actors involved in terrorism or insurgency activities at sea include the Abu Sayaf Group, who was responsible for the SuperFerry 14 bombing, and al-Qaeda, who was responsible for the attacks on the USS Cole and MV Limburg. While these attacks show that maritime terrorism is indeed possible, Murphy is sceptical of many of the scenarios put forward for potential acts of terrorism at sea because the ‘sinking of a large cruise ship or ferry, killing thousands of Westerners, the bombing of a warship, the successful delivery of a nuclear or radiological device to a major port, or the execution of multiple and harmful attacks on the world’s maritime transport system are all scenarios that are less easily brought about than equivalent events on land’ (p 69). Murphy is therefore of the opinion that maritime terrorism on the whole is an overstated threat.

At a local level, in contrast, he is of the opinion that the threat of terrorism at sea is understated – although this an argument that has lost some force recently, as many of the actors listed in this article have either split up and disappeared from the scene (the Abu Sayaf Group for instance), or have been destroyed (as in the case of the Sea Tigers). Nevertheless, Murphy notes the land-based link between terrorist and criminal organisations could manifest in the marine environment. In this regard he is especially...
concerned that piracy could cause regional instability, something that would obviously suit the purposes of a terrorist organisation. ‘Piracy might be a second-order problem on its own, but in its context of wider criminal networks, it is both cause and symptom of state-weakness, which in its turn helps terrorism and organised crime to flourish’ (p 86).

Murphy concludes that piracy alone does not represent a significant threat to international security – a rather interesting assessment, given the current international focus on the matter. He also provides a succinct picture of maritime terrorism which debunks many of the unrealistic ideas of container-bound nuclear weapons and hijacked supertanker-sized improvised explosive devices that contribute to an overstatement of the threat.

He nevertheless shows that piracy and maritime terrorism share similar requirements for sustainability. Chief amongst these is state and regional instability, which, if allowed, can lead to piracy becoming a threat to international security. Murphy concludes that the threat of piracy and maritime terrorism is a warning against the continued problem of maritime disorder. Although he explores some tentative international efforts to resolve this, Murphy ends with a more generalised complaint against weak states that are unwilling or unable to handle their responsibilities.

Reviewed by Conway Waddington, University of KwaZulu-Natal
Africa: 
Altered states, ordinary miracles*

Richard Dowden

In the past decade, a huge number of books and articles has been published on Africa in which its social and political environment has been depicted as rife with disease, wars, corruption and other failures. In contrast, Richard Dowden provides a more balanced view of African history and its future. He shows two sides to the history of every country that he analyses, contrary to the usual practice of portraying the more sensational side only. Dowden further highlights the idea that external assistance always ignores the internal realities of the various countries. Aid frameworks are replicated without taking into account the specificities of conflicts and peoples in the particular country. He states time and again that foreign interference by the United Nations and Western countries has on the whole had a negative impact on the African country in question.

Dowden begins by making the point that the social context and human values in Africa combine with a rich history and culture to define the continent. These complexities vary from country to country and region to region, and Dowden emphasises that the continent is not one homogenous entity but a landscape of varied experiences, attitudes and lifestyles. The one aspect that stands out is the humanity of people, their optimism in the face of tragedy and insecurity and the extremes of good and evil that characterise their societies.

The evil is epitomised by the violence that extends to relationships with autocratic leaders who are often forcefully removed and the foundations of which lie in a turbulent colonial history. The latter is still apparent in the Western agendas and lifestyles that continue to shape the direction which leaders and even ordinary people take. The leaders use politics as a personalised vehicle for gaining access to power and ordinary people sacrifice opportunities in the quest to be more Western and less African, under the false impression that this is the answer to the woes that plague the continent.

The good lies in the humanity that Africa offers to the world, in the welcoming embrace it gives to outsiders and in the communal process of decision making. ‘I think, therefore WE are’ constitutes the ‘African’ way of life. Because this does not fit the Western electoral pattern, it results in the failure of African governments to effectively implement a Western system of governance – it is in the final analysis a system that is not suited to Africa’s complex identities.

Dowden then explores the histories and political and social environments of specific countries, from Sudan to South Africa and Senegal to Somalia. The author shows that the history of no African country is the same as that of any other and no political transformation takes the same course. These differences result in different developmental paths for different countries. For example, Botswana, which is a model of democracy on the continent, has similar characteristics to Somalia with regard to the homogeneity of their peoples as most belong to one ethnic group. Nonetheless, their different contexts have produced very different results, with Somalia being regarded as the example of a failed state. However, as he does throughout the book, the author highlights positive aspects from Somalia, stressing the resilience of Somali people, the continued presence of doctors, drivers and non-governmental organisations who remain in the country to support their people. He also stresses the positivity of the Somali diasporas, stating that the little development that has occurred, has been possible thanks to remittances; making the claim that international interference has contributed to the war; and not to ending it. Unfortunately the author neglects to mention the important contribution that Somali women have made towards peace.

The chapter on Zimbabwe also breaks away from typical accounts of the country’s demise by focussing on the intertwined histories of South Africa and Zimbabwe. According to
Dowden the crux of the problem is not, as is usually postulated, mismanagement and corruption, but rather that truth and reconciliation is lacking in Zimbabwe. As proof of his argument he contrasts the Zimbabwe democratisation process with that of South Africa and the latter’s success in dealing with past injustices.

The discussion on largely ignored facets of African conflicts continues in the chapter on Sudan, where the author offers a comprehensive outlook of the various actors. In his view the ‘saviours’ of the people of the South are as authoritarian as the northerners that they are fighting. He delves into the complexities of the Darfur situation and the relationships between the North and the South, providing an insight into the tensions through his analysis of the factors contributing to the conflict. The sad reality is that civilians are caught in the middle and suffer the brunt of the fallout between elitist groups over access to power and resources.

The elitist battle also forms the central theme in the chapter on Angola and its long war. Again, the author departs from typical narratives by analysing the complex relationship between African states and their ex-colonial masters. This is a relationship which has since independence been characterised by external interference in leadership races which has in many cases contributed to the eventual conflicts. Again, civilians suffer the brunt of the impact of the wars which are fought in their name but not necessarily for them. The author also exposes the reality of rebel leaders who in their actions mirror the autocrats they are fighting to remove.

He further rebuts the claim that ethnicity is at the heart the problems experienced on the continent and demonstrates that bad leadership is to blame for the tensions and stresses. Africa’s wealth lies not in dollars but in its people, in their trust, their survival instincts, optimism and capacity for forgiveness even after the worst atrocities. In this lies also the solution to conflicts, according to Dowden. He further stresses that more attention should be paid to environmental concerns, as this would in the long term be more beneficial than becoming involved in political tussles for power and the economic effects that flow from it.

The author also uses the balanced view to provide an outlook for the future. On the one hand, he makes it clear that issues such as HIV/AIDS, poverty, corruption and the lack of an institutional infrastructure will continue to hamper progress on the continent. Other issues that negatively impact on progress are the ‘resource curse’ and the desire to emulate Europeans and a Western way of life. On the other hand the author highlights the leadership role that women and mechanisms such as the African Peer Review Mechanism could play in improving the lot of ordinary Africans. He makes the point that the focus appears to have shifted from ordinary people to regional bodies such as the African Union and Regional Economic Communities, but should return to grassroots level for this is where sustainable change will start.
Dowden states positively that Africa continuously surprises the world by countering the negative expectations of it. While he concedes that one cannot predict the direction the future will take with any degree of certainty, he ends on a positive note by suggesting practical solutions that would make a secure future a reality.

The easy style and simplicity with which Dowden sketches the realities of the continent make this book accessible to all, without detracting from the importance of the points he makes. This brilliant publication has a place in the bookshelves of scholars and laymen alike and provides a fresh outlook on a continent which is generally viewed with pessimism.

Reviewed by Nadia Ahmadou, junior researcher, Africa Security Analysis Programme at the Institute for Security Studies
If you would like to subscribe to ISS publications, please complete the form below and return it to the ISS with a cheque, or a postal/money order for the correct amount, made payable to the Institute for Security Studies (marked not transferable). Please note that credit card payments are also welcome. You can also deposit your payment into the following bank account, quoting the reference: PUBSPAY.

ISS bank details: ABSA, Brooklyn Court, Branch Code: 632005, Account number: 405 749 8921

Please mail, fax or email this form to:
ISS Publication Subscriptions, PO Box 1787, Brooklyn Square, 0075, Pretoria, South Africa.
ISS contact details: (Tel) +27 12 346 9500, (Fax) +27 12 460 0998, Email: pubs@issafrica.org
Website: www.issafrica.org

**PERSONAL DETAILS**
Title: ..................  Surname: ...................................................  Initials: .................
Organisation: ........................................................................  Position: ..........................................................
Postal Address: ..........................................................................................................................
Postal Code: ..........................................................................................................................
Country: ..........................................................  Tel: ..............................................  Fax:  .....................................  Email: ..........................................................
Method of Payment: Visa □ Master Card □ Other □ Specify: ..........................................................
Card Number: ..........................................................................................................................
Expiry Date: ................./ ..............................................
Cardholder Name: ..................................................................................................................
Signature: ...............................................................................................................................

**PUBLICATIONS**

<table>
<thead>
<tr>
<th>Publication</th>
<th>SOUTH AFRICA</th>
<th>AFRICAN COUNTRIES*</th>
<th>INTERNATIONAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>African Security Review (4 issues per year)</td>
<td>R 200.00</td>
<td>US$ 40.00</td>
<td>US$ 55.00</td>
</tr>
<tr>
<td>ISS Monographs (Approx. 15 per year)</td>
<td>R 370.00</td>
<td>US$ 75.00</td>
<td>US$ 95.00</td>
</tr>
<tr>
<td>ISS Papers (Approx. 12 per year)</td>
<td>R 150.00</td>
<td>US$ 30.00</td>
<td>US$ 40.00</td>
</tr>
<tr>
<td>SA Crime Quarterly (4 issues per year)</td>
<td>R 115.00</td>
<td>US$ 25.00</td>
<td>US$ 35.00</td>
</tr>
<tr>
<td>Comprehensive subscription (African Security Review, Monographs, Papers and SA Crime Quarterly)</td>
<td>R 800.00</td>
<td>US$ 160.00</td>
<td>US$ 210.00</td>
</tr>
</tbody>
</table>

**SUBSCRIPTIONS**

<table>
<thead>
<tr>
<th>Subscription</th>
<th>INDICATE COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>African Security Review only</td>
<td></td>
</tr>
<tr>
<td>ISS Monographs only</td>
<td></td>
</tr>
<tr>
<td>ISS Papers only</td>
<td></td>
</tr>
<tr>
<td>SA Crime Quarterly only</td>
<td></td>
</tr>
<tr>
<td>Comprehensive subscription</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>

* Angola; Botswana; Burundi; Congo-Brazzaville; Democratic Republic of the Congo; Gabon, Kenya, Lesotho, Madagascar; Malawi, Mauritius; Mozambique; Namibia; Reunion; Rwanda; Seychelles; Swaziland; Tanzania; Uganda; Zambia; Zimbabwe (formerly African Postal Union countries).