

**THE ROLE OF AFRICAN UNION IN ADDRESSING MARITIME PIRACY IN
EASTERN AFRICA**

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Abstract

Africa reports the highest incidences of piracy as ICC International Maritime Bureau (2012) reported highest figures of actual attacks and attempted attacks from Africa. Piracy on the Eastern Coast of African has being on the raise over the years as a result of increase in the number of recent piracy activities off the Somali coast. This research describes the problem of maritime piracy and why it is an important area of study, investigates how African Union (AU) is responding to the threat of piracy and assesses the existing mechanisms within the AU and its member states that can be utilised for coordinated action against maritime piracy. The primary purpose of the study is to investigate the way in which the AU is responding to the threat of piracy and to assess how existing mechanisms within the AU and its member states can be utilised for coordinated action against piracy.

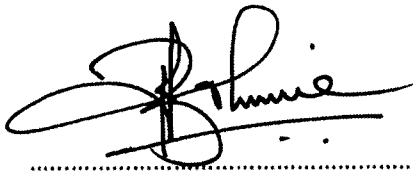
Three research questions are fronted, namely; (1) How are member states of the AU responding to the threat of piracy; (2) what capacity does the AU and its member states have to effectively combat piracy; and (3) what coordination mechanisms within sub-regional security and economic bodies could be utilized to combat piracy?

The methodology applies a qualitative approach where snowballing techniques of data collection are applied. A select group of ten key informants, with expertise in the area of study are subjected to a questionnaire that will be prepared to provide responses to the research questions. The literature review examines the AU, its genesis, purpose for creation and reason for being was discussed. A conceptual study of seaborne piracy was undertaken, generally on the Eastern coast of Africa, and in particular in Somalia.

Data was analysed guided by themes established from the objectives of the study. In the key findings, the respondents acknowledged that the three UNSCRs are inadequate for the UN member nations to combat piracy off the Gulf of Eden and the Red Sea, the AU was not doing enough to address the problem of piracy off the Eastern coast of Africa and there is not sufficient mechanisms or political will among member states of the AU to enable them respond effectively to the threat of maritime piracy.

DECLARATION

I, John M. Waweru, declare that this research report is my own work except as indicated in the reference and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Master of Management in the field of Security, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.



.....

John M Waweru

Signed at MOMBASA.....

On the 13TH day of January 2014

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Acryoms and Abbreviations

AU	African Union
ASF	African Standby Force
AMISOM	African Union Mission in Somalia
CGPCS	Contact Group on Piracy off the Coast of Somalia
EAC	East African Community
EASBRICOM	Eastern African Standby Brigade Coordination Mechanism
ICPAT	Intergovernmental Capacity Building Program Against Terrorism
IGAD	Inter-governmental Authority on Development
IMO	International Maritime Organisation
MDA	Maritime Domain Awareness
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
OAU	Organization of African Unity
REC	Regional Economic Communities
SADC	Southern African Development Community
SLOC	Sea Lanes of Communication
TFG	Transitional Federal Government
UNISOM	United Nations Mission in Somalia
US	United States
UNCLOS	U N Convention on the Law of the Sea
UNSCRs	United Nations Security Council Resolutions
WFP	World Food Program
\$	United States Dollar

1.0 CHAPTER ONE: BACKGROUND

1.1. Introduction

Maritime piracy is a threat in Africa, and more dominant on the Western, Eastern and Southern African coastline. Maritime piracy exerts a great toll on commercial shipping which ply the Sea Lanes of Communication (SLOCs) in this region because the impact on the economies of the littoral states and other nations dependent on the sea is significant. From ancient times man has always used the sea as a means of communication and a source of earning livelihood, with Africa having fifteen out of fifty four African nations that are landlocked (Okere, 1981). The impact of the maritime domain is therefore significant in most countries of Africa either socially, economically or environmentally, and in particular as an extension of sea power since the sea provides a link to other continents of the world.

The world's reliance on the sea remains true today, with ninety (90) per cent of global trade by bulk moved by sea. In the era of globalization, arguably the SLOCs along which this trade flows represent the world-wide web in another format (Willett, 2007). Although fifteen out of fifty-four African countries are landlocked they are also dependent on maritime trade. But the sea can also be a source of conflict. The majority of littoral and hinterland states of the Indian Ocean are still developing economically, socially and politically, with great potential for local conflicts. The manifestation of the conflict is evidenced by fighting in Somalia where the Islamist Al Shabaab movement is engaging members of the African Union Mission in Somalia (AMISOM) in a bid to re-establish control over South Eastern Somalia (House, 1984).

Roughhead (2007), points out that a thorough appreciation of global maritime security exists in the United States (US) and sea power is seen as of critical

importance to US security and prosperity. Creating and maintaining security at sea is essential to mitigating threats short of war, including piracy, terrorism, and weapons proliferation, drug trafficking, dumping of toxic waste and other illicit activities. US strategy therefore provides for cooperation in this sphere between the Navy, the Coast Guard and the Marine Corps, as well as with international partners, to secure maritime links and security at sea.

Potgieter & Pommerin (2009) argue that the International Maritime Organisation (IMO) understands maritime security in terms of a comprehensive security regime for international shipping, various mandatory and non mandatory measures and security related requirements for states, ports and shipping companies, as well as a series of guidelines about how to achieve these. Within the apparatus of the state, maritime security could have a distinctly departmental focus. This is seen with the Australian government (Department of Infrastructure and Transport) where maritime security is about safeguarding Australia's maritime transportation system and offshore facilities from terrorism (Potgieter & Pommerin 2009: 7). The definition of maritime security is therefore debateable depending on the national interests of the littoral state.

Chapter One provides a brief history of piracy on the Eastern and Southern African coastline while reiterating the importance of the sea to both littoral and non-littoral states on the African continent. The issues of maritime security and maritime interests of several littoral states are also discussed to provide examples of the variations of views by states regarding their maritime security and maritime interests as discussed by various scholars. A brief definition of piracy is also included in the Chapter. Thereafter the problem statement, as seen by the researcher, is discussed which eventually leads to the purpose of the research, culminating to the research questions regarding the manner in which the African Union is responding to the threat of maritime piracy off the eastern seaboard of the African continent, hence the justification of the study.

Chapter Two discusses the research methodology used by the researcher. A qualitative approach is adopted for this study through the use of maritime experts who were invited to complete a standard questionnaire.

Chapter Three examines the relevant literature that was reviewed by the researcher. An examination of the African Union, its genesis and purpose of creation and *raison de'tat* are provided. The Constitutive Act of the African Union is examined to establish the birth of the African Union from its predecessor, the Organization of African Unity (OAU), its various organs and how they may be organized to combat piracy off the Eastern Coast of Africa. Literature by other scholars regarding the piracy definitions, naval coalitions to counter maritime piracy and best management practices are also discussed in this Chapter.

Chapter Four is dedicated to the collection and examination of data. Ten maritime experts responded to the set questionnaire and their individual responses are discussed and summarized in this Chapter.

Chapter Five is the consolidation of the opinions/proposals by the various experts that enabled the researcher to construct recommendations regarding how the AU may be able to deal with the menace of maritime piracy on the eastern coast of Africa.

1.2 Objectives of the Study

The objectives of the research report will be:

- (1) to find out the appropriate coordination and cooperation measures necessary to combat piracy along the East Coast of Africa through the African Union's existing mechanisms, such as its Peace and Security Council (PSC).

- (2) to analyze the relevant theoretical framework regarding the coordination of activities to combat seaborne piracy and robbery at sea.
- (3) to examine maritime piracy and its effects on the economic, safety and socio-economic impacts on Eastern coast of Africa.
- (4) to offer recommendations that would serve to ensure the use of the sea as a common good for the littoral nations along the East Coast of Africa, and the larger African continent.

1.3 Justification of the Study

The Indian Ocean is vital to global energy flows and therefore has a major place in the supply side of global energy security. This importance will expand considerably in future years. More than half of world oil production is transported by sea through the Indian Ocean and 36 per cent of oil originates from the IOR (Indian Ocean Region), (primarily the Gulf States), with the proportions set to significantly increase. More than 80 per cent of this oil passes through the three Indian Ocean straits: Hormuz, Malacca and Bab-el-Mandeb. Large quantities of coal also pass through the Indian Ocean to Northeast Asia and increasingly to India (Cordner, 2010).

The world energy scene is forecast to change markedly into the near future. World energy consumption is projected to grow significantly with the most rapid growth in demand projected for states outside the Organisation for Economic Cooperation and Development (OECD). More than 80 per cent of the increase in energy liquids consumption is projected for non-OECD Asia and the Middle East. China and India are the quickest growing non-OECD economies and are forecast to be the key world energy consumers into the future; their proportion of world energy use has greatly increased (Energy Information Administration, 2009). The Indian Ocean Region

(IOR) is a major transport route and export supply area for oil and gas from the Middle East, and coal from Australia and South Africa.

In addition, the current exploration of oil and gas resources in the Indian Ocean waters of Eastern Africa, namely Mozambique, Tanzania, Seychelles and Kenya has further increased the risk of piracy attacks on such ships and subsequently onto oil and gas rigs as soon as the extraction process commences. A US Geological Survey's (USGS) World Oil and Gas Assessments estimates that East Africa's coastal waters hold approximately 441 trillion cubic feet of natural gas. Petroleum reserves are estimated at 600,000 barrels per day. The protection of such resources from incidents of maritime piracy is the concern for individual nations, sub-regional bodies and the African Union.

1.4 Problem Statement

Africa reports the highest incidences of piracy with ICC International Maritime Bureau (2012) reporting highest figures of actual attacks and attempted attacks from Africa. Table 1 below shows incidences of attempted and actual piracy attacks in Africa, with the highest figures reported in East Africa from the year 2008 to 2012.

Table 1: Attempted and Actual Piracy Attacks in Africa

Location	2008	2009	2010	2011	2012
Algeria					1
Angola	2			1	
Benin		1		20	2
Cameroon	2	3	5		1
Demo. Republic of Congo	1	2	3	4	2
Egypt			2	3	7
Equatorial Guinea	1				
Ghana	7	3		2	2
Guinea		5	6	5	3
Guinea Bissau		1			

Gulf of Aden*	92	117	53	37	13
Ivory Coast	3	2	4	1	5
Kenya	2	1		1	1
Liberia	1		1		
Morocco	1				
Mozambique	2				2
Nigeria	40	29	19	10	27
Red Sea**		15	25	39	13
Sierra Leone				1	1
Somalia	19	80	139	160	49
Tanzania	14	5	1		2
The Congo	1		1	3	4
Togo	1	2		6	15

Gulf of Aden*

Red Sea**

These attacks are attributed to Somalia Pirates.

Although in recent times maritime piracy has become rampant of the Western Coast of Africa, and in particular the Gulf of Guinea, incidences of piracy along the East Coast of Africa have reduced significantly although not completely eradicated. Somalia continues to record high number of attempted, actual piracy and armed robbery against ships.

The response by the United Nations (UN) member states, and the European Union (EU) countries including the United States of America (USA), United Kingdom (UK), Germany, Romania and Turkey, and other South-East Asian nations such as Japan, Malaysia and even China was to send naval vessels to the coast of Somalia during the last quarter of 2008, in response to Paragraph 7(a) of UN Resolution 1816 of 2008 which allows warships of all nations to enter Somalia territorial waters with the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law.

Furthermore, Paragraph 9 of UN Resolution 2015 of 2011 strongly urges States that have not already done so to criminalize piracy under their domestic law, and reiterates its call on States to favourably consider the prosecution of suspected, and imprisonment of convicted pirates apprehended off the coast of Somalia, consistent with applicable international law including international human rights law. The problem, however, is the lack of co-ordination and adequate response from regional organisations and the African Union (AU) in operationalising such actions against the perpetrators of piracy.

The response from African member states of the African Union (AU) has so far been conspicuously absent, even though there are mechanisms within the Union that may be used to combat piracy, and instead largely relies upon the UN to provide the legal framework for any plausible response through the naval forces of its member states. Likewise regional organisations in the area of study, namely the East African Community (EAC), and the Inter-governmental Authority on Development (IGAD), including the individual member states have not been able to respond in a coordinated manner against the threat of piracy.

1.5 Purpose of the Research

The primary purpose of the study is to investigate the way in which the AU is responding to the threat of piracy and to assess how existing mechanisms within the AU and its member states can be utilised for coordinated action against piracy.

This study seeks to understand the lack of extended coordination among the African Union member states. This is regardless of the fact that piracy is a nuisance both in Africa and internationally since it has the inherent tendency to disrupt trade along international shipping routes wherever it occurs. This is in addition to a real security threat of armed violence by the pirates towards crew members of ships and

embarked passengers on hijacked vessels in the case of cruise liners and private yachts.

1.6 Research Questions

This research is seeking to answer the following questions:

- a. How are member states of the AU responding to the threat of piracy;
- b. What capacity does the AU and its member states have to effectively combat piracy; and
- c. What coordination mechanisms within sub-regional security and economic bodies could be utilized to combat piracy?

2.0 CHAPTER TWO: RESEARCH METHODOLOGY

2.1 Research Design

This chapter describes the procedures that were followed in conducting the study. It entails a description of the study site, sampling design, data collection and the operationalization of the research questions into the questionnaire.

A research design is the program that guides the investigator as he or she collects, analyzed and interprets observation. It is a logical model of proof that allows the researcher to draw inference concerning causal relations amount the variables under investigations (Nachmias and Nachmias, 1996).

The study undertook a qualitative approach, which is naturalistic, not experimental, triangulated, using a variety of methods, context-sensitive, emergent, rather than hypothesis confirming/disconfirming, and essentially interpretive (Rossman & Rallis, 2003). Qualitative research provides detailed description and analysis of the quality of the substance, or the human experience (Maruasti, 2004).

The data that qualitative researchers seek and value, consist of images, sounds, words, and sometimes even numbers, but are predominantly verbal. The qualitative researcher can be seen as distinct from other researchers as they exhibits; holistic views of the social world, self-reflexivity, sensitivity to personal individuality, and complex reasoning (Rossman & Rallis, 2003).

In qualitative research, researchers finds out what happens and how it happens and why it does happen the way it does. This research has freedom and natural development of action and representation that the qualitative paradigm provides by

positing to understand, and explain in argument, by using evidence from the data and literature, what the phenomenon or phenomena that the study is about. Understanding is not placed within the boundaries of an instrument designed beforehand because it limits data to those boundaries. In this way, understanding will be dependent on these boundaries (Henning, Rensburg & Smit, 2004).

The reason for selecting this methodology was to focus on a specialised field with clearly defined parameters and stakeholders. There was limited number of knowledgeable participants approached to contribute to the study. Sykes (1991) states that the main reason for the potential superiority of qualitative approaches for obtaining information was that the flexible and responsive interaction was possible between interviewer and respondent(s) allowed meanings to be probed, topics to be covered from a variety of angles and questions made clear to respondents.

2.2 Sampling Procedure

A non-probability sample design was adopted for the study. The sampling procedure was a purposive sample, in which the researcher selected sampling units subjectively in an attempted to obtain a sample that is representative of the population. The chance that a particular sampling unit was selected, for the sample depended on the subjective judgment of the researcher, (Nachmias et al, 1996).

Sampling procedures in qualitative research are sometimes referred to as purposive, meaning that the theoretical purpose of the project, rather than a strict methodological mandate determines the selection process (Maruasti, 2004).

Network sampling also known as snowball sampling was used for the study. It is a strategy in which a preceding individual names successive participants. Referrals of participants are the basis for choosing a sample (McMillan and Schumacher 2001). This method relied on referrals from initially sampled respondents to other persons

believed to have the characteristic of interest. In the case of this study the researcher will ask participants to suggest others who have knowledge and information on the African Union and Sub-Regional organisations.

2.3 Sample Size

This research was limited to a small, select group of key informants with expertise in the area of study. This was in line with Miles and Huberman (1994) who state that qualitative researchers work with small samples of people, nested in their context and studied in-depth – unlike quantitative researchers, who aim for larger of context stripped cases and seek statistical significance The research interviewed ten experts in the maritime environment from Kenya, South Africa, United States of America and France.

As this study was based on perceptions arising from the experience of the participants within the maritime environment, and in particular, as concerns the mechanisms within the AU to combat piracy and armed robbery at sea, the researcher used a qualitative perspective, which emphasised a phenomenological view in which reality inheres in the perceptions of individuals (Mc Millan in Glatthorn 1998:34) and which focused understanding people from their own frames of reference and experiencing reality as they experience it (Taylor and Bogdan 1998:7).

The researcher's experience by virtue of being a naval officer enabled identification with the participants and was a factor in choosing a qualitative approach. Taylor and Bogdan (1998) point out the necessity for qualitative researchers to be able to empathise and identify with the people being studied in order to understand how those people see things. By observing people in their daily lives and listening to them talk, the qualitative researcher obtains firsthand knowledge of their situation unfiltered through operational definitions or rating scale.

A total number of ten select group of experts in maritime piracy responded to the questionnaire. The data was collected over a period of slightly over one and a half years, the earliest having been submitted in May 2010 and the latest in October 2011.

2.4 Methods of Data Collection

Two qualitative data collection methods were used namely a literature study and the interview method. A literature review consisted review of published papers. This enabled the research gain background information, which enabling the researcher to clearly formulate the research problem and hypotheses pertaining to the research topic (Bless and Smith 1995). Thus expert interviews and open-ended questionnaires were used for the collection of information.

Literature was reviewed from primary resources such as policy documents and legislation relating to the AU, EAC, SADC and IGAD. Secondary sources, involved reviewed unpublished papers and research reports, monographs, masters' dissertations, magazines, journals, newspaper articles and textbooks on local and international maritime activities, reactions and opinions regarding piracy and armed robbery at sea. Interviews were conducted with maritime experts and members of the EAC, Combined Maritime Force in Bahrain, Kenyan commercial shipping, academics, the Kenya Maritime Authority and Kenya Ports Authority in Mombasa.

2.5 Techniques and Tools Used for Data Collection

Data collection for the research was done using the qualitative methodology, where a scheduled structured questionnaire was used which has fixed wording and sequence of presentation.

Eleven questions were presented in the questionnaire, which was structured such that opinions from respondents are provided to respond to the three research questions, namely:

- a. How is the African Union and its member states responding to the threat of piracy along the Eastern African Coast;
- b. What capacity does the AU and its member states have to effectively combat piracy; and
- c. What coordination mechanisms within sub-regional security and economic bodies could be utilized to combat piracy?

In this study an interactive qualitative mode of inquiry using face-to-face techniques to collect data from the participants was used. Qualitative techniques to collect data in the form of words rather than numbers range from the less structured in-depth interviews in which the researcher may use a general interview guide but not a set of specific questions worded precisely the same for every interview (McMillan and Schumacher 2001:42) to the more structured interviews in which an interviewer asks each respondent a series of pre-established questions with a limited set of response categories.

There was generally little room for variation in response except where an infrequent open-ended question may be used (Denzin and Lincoln 1994:363). The method used by the researcher employed a scheduled structured interview as a structured way of getting information directly from respondents.

This method was based on an established questionnaire. Although the questions were structured, responses were expected to be open (unstructured), to allow participants to explain their perceptions and views on coordination mechanisms to combat piracy and robbery at sea. The disadvantages however, of using structured

questions are that important categories may be left out, thus producing bias (Bless and Higson-Smith 1995:122).

The questions were relevant and in such a manner that the answers were not influence subsequent questions (Steffens and Botha 1999).

2.6 Operationalization of the Research Questions

In order to conduct a pragmatic analysis of the responses provided by the respondents, questions in the questionnaire were derived from the research questions that this paper is attempting to answer.

The first research question was *“how is the African Union and its member states responding to the threat of piracy along the East Coast of Africa”*, the questionnaire presented this research question in four parts as follows. The first question established the respondent’s *“view of maritime piracy off the Eastern coast of Africa”*. This question was tailored to get the respondent’s view of maritime piracy activities taking place of the Eastern Coast of the African seaboard. It served to prepare the respondent for related subsequent questions on maritime piracy and also provide a geographical orientation of the respondent regarding the area of study, the regional and international organizations involved and the specific littoral nations affected by the menace of maritime piracy.

The second question sorts the respondent’s opinion whether *“the United Nation Security Council (UNSC) Resolutions 1838, 1846 and 1851 are effective in combating piracy off the Gulf of Aden and the Red Sea?”* This question narrowed down to the specific UNSC Resolutions enacted to combat piracy off the Somali coast. Resolution 1838, which was adopted on 7th October 2008 during the 5987th meeting of the UNSC, urges ‘nations with military capacity in the area, to “actively fight piracy” on the high seas off Somalia (UNSC Resolution 1838; 2008). Resolution 1846 was

adopted on 2nd December 2008 during the 6026th meeting of the UNSC. It decided that States and Regional Organizations 'may use "all necessary means" to fight piracy off Somali coast' (UNSC Resolution 1846; 2008). The third Resolution 1851, which was adopted on 16th December 2008 'authorized States to use land-based operations in Somalia, as part of fight against piracy off the coast of Somalia' (UNSC Resolution 1851; 2008). The respondents were therefore asked whether the three UNSC Resolutions can be effective instruments to be used to combat piracy if UN member States in the Region, and by extension members of the AU, are open to use them.

The third question in the questionnaire determined if "*the African Union is doing enough to address the problem of piracy on the Eastern African seaboard?*" The respondents gave views whether the AU is doing enough to combat piracy off the Eastern coast of Africa. The fourth question, "*is there are mechanisms and sufficient political will among the member states of the African Union to enable them to respond effectively to the threat of piracy?*" The two questions were designed to explicitly interrogate the respondent's opinion of the political willingness and mechanisms, if any, of AU member states to address the maritime piracy menace off the Eastern African Coast.

The second research question wishes to examine whether '*the AU and its member states have the capacity necessary for them to effectively combat piracy?*' The questionnaire presented this question in two parts. The first focused on the respondents' views on "*what should the AU be doing, which they are not doing*" to combat piracy off the coast of Eastern Africa. The second part goes further to query the respondents' opinion on whether "*the AU and its member states have the capacity necessary for them to effectively combat piracy?*" The two parts of the questionnaire intended to examine the respondents understanding and expert opinion regarding the capacity of the AU collectively and individual member state capacities to combat the menace of piracy.

The third research question provided an expose on *'what coordination mechanisms within sub-regional security and economic bodies including the Djibouti Code, the EAC, SADC and IGAD, could be utilised to combat piracy?'* In order to address this query, the questionnaire presented the four questions. The first part is asking the respondents to indicate *"what coordination mechanisms within sub-regional security and economic bodies including the Djibouti Code membership, the East African Community (EAC), the Southern African Development Community (SADC), and the Inter-Governmental Authority on Development (IGAD), could be utilised to combat piracy?"* The respondent's knowledge of these regional security and economic bodies to combat the menace of piracy was taken on account so as to establish whether there exist any coordination mechanisms that can be used by member states. The second part of the questionnaire extended the question of coordination between member states by seeking the respondent's opinion whether *"regional states are using those mechanisms optimally or can coordination be improved?"* The third part was *"how coordination can be improved."* The fourth part examined the respondent's knowledge of the *"legal understanding of maritime piracy; whether there are any shortcomings therein; if yes, what they are; and how the legislation may be altered to compensate for them?"* The question of legality, as posed to the respondents, interrogated whether the lack of an explicit legal undertaking by AU member states is what is hindering effective coordination mechanisms to be enacted to combat maritime piracy off the Eastern Coast of Africa.

The final question in the questionnaire was seeking other considerations that the respondents may have regarding this study which they may wish to be included in the research.

In the next Chapter, the research will examine the African Union and its various organs while discussing the literature that was used in this research. Furthermore, the legal definitions of piracy and armed robbery at sea, as defined by the United Nations will be examined. Thereafter, incidences of piracy in Eastern Africa and

other parts of Africa and the world shall be discussed so as to provide a deeper understanding of piracy and the toll it has taken on the economies and societies that have experienced it. The Chapter will finally propose a theoretical framework which will provide the academic platform to empirically analyse the threat of maritime piracy.

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3.0 CHAPTER THREE: LITERATURE REVIEW

3.1 The African Union

The Constitutive Act of the African Union (AU) was established on 26th May, 2001, enabling the establishment of a new political, economic and judicial organization for the African continent (Packer & Rukare, 2002). This marked the end of the Organization of African Unity (OAU) which had provided a platform for political engagement between African nations since 1963. Fifty three (53), African nations came together in Lome, Togo and endorsed the formation of the AU in July 2000 (Ibid: 365).

The OAU was constituted around the idea of 'Pan-Africanism' where all member states were to be equal partners and respect for the sovereignty of member nations was paramount. Member States declared and affirmed their adherence to the principle of non-interference in the internal affairs of States (Umozurike, 1979). It was a grandiose plan at the time considering that most African nations had just gained independence from their colonial masters. But the plan invariably served to entrench dictators and protect them from external interference by neighboring African nations, and in effect rendering the OAU incapable of dealing with internal conflict situations in Africa. The establishment of the AU, therefore, was an attempt to provide mechanisms through which the issues of internal conflict would be dealt by member states using the new African Peace and Security Architecture (APSA). Recently the deputy chairperson of the AU Commission, Erastus Mwencha reiterated that 'Africa has made great progress in establishing the institutional architecture for the promotion of peace and security on the continent through the establishment of APSA. APSA was established by the African Union, in collaboration with the Regional Economic Communities (RECs). Its role is to deal with prevention, management and resolution of conflicts in Africa. The operationalization of the APSA will be achieved through the Panel of the Wise, the

Continental Early Warning System to monitor the Regional Mechanisms with a view to anticipation of conflicts, the African Standby Force (ASF) and African Common Defence Policy. Furthermore, the African Union has deployed significant efforts towards addressing some of the root causes of conflict, and thus promoting the prevention of conflicts’ (Vines 2013: 90).

The APSA provides for a holistic approach for the promotion of peace and security in Africa, and that its main objective is to prevent the occurrence of conflict and where conflict is ongoing, the aim is to prevent it from escalating (Bam, Deputy Director of the AU Peace and Security Council (PSC) at the International Peace Support Training Centre (IPSTC) in February 2012). Furthermore, the APSA also aims to prevent countries that have emerged from conflict from relapsing back to conflict by carrying out post-conflict reconstruction and development activities (Bam, 2012).

The APSA is indeed a significant step forward towards prevention and resolution of intra-state conflicts in Africa. This is a complete paradigm shift from the former OAU structures for conflict resolution in Africa since it empowers other member African states to intervene in an internal conflict situation in another member state, and thus deviating from the non-intervention approach of the OAU. However, there is still very little being done with regard to threats emanating from the maritime domain within the APSA. This shall be discussed later in this research paper.

In order to understand better whether the African Union has the ability to deal with the menace of piracy, it is important to examine the various organs within it. Thus the African Union has the following organs;

3.1.1 Assembly of the Union:

Is composed of the Heads of States and Government or their duly accredited representatives, to be the supreme organ of the Union. Article 7 of the Constitutive

Act mandates the Assembly to meet at least once a year in ordinary session and at the request of any Member State, and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session. The Office of the Chairman of the Assembly shall be held for period of one year by a Head of State or Government, elected after consultations among the Member States (AU Act 2000: Art 7).

Its functions include; the determination of common policies, establishment of priorities and adoption of the annual programme; monitoring of the implementation of policies and decisions; political and socio-economic integration of the continent; provide directives to the Executive and the Peace and Security Councils on the management of conflicts, war, acts of terrorism, emergency situations and restoration of peace; decide on intervention in a member State, on request by another member State in order to restore peace and security; decide on sanctions to be imposed on a member State; consider decisions from other organs of the Union; membership and establishment of organs of the Union; appointment and termination of the judges of the Court of Justice, and; adoption of the Union's budget (Ibid: Art 9).

3.1.2 The Executive Council:

Composed of Ministers of members States, and is responsible to the Assembly to takes decisions and monitor implementation of policies in areas of common interest. Its functions include; the preparation of the sessions and determination of the issues to be submitted to the Assembly for decision; coordination and harmonization of policies, activities and initiatives in areas of common interest; elect Commissioners to be appointed; promote cooperation and coordination with RECs; and the promotion of gender equality in all programmes of the Union (Ibid: Art 10-13).

3.1.3 The Specialized Technical Committees:

The Specialized Technical Committees are composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence. They are responsible for preparing projects and programmes of the Union and submit it to the Executive Council. They also have the duty to ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union and the coordination and harmonization of projects and programmes of the Union;

There exists seven Committees as stated in the Constitutive Act whose membership is unlimited, these include: Committee on Rural Economy and Agricultural Matters; Committee on Monetary and Financial Affairs; Committee on Trade, Customs and Immigration Matters; Committee on Industry, Science and Technology, Energy, Natural Resources and Environment; Committee on Transport, Communications and Tourism; Committee on Health, Labour and Social Affairs; and Committee on Education, Culture and Human Resources (Ibid: Art 14).

The functions of the Specialized Technical Committees include:

- a. Prepare projects and programmes of the Union and submit it to the Executive Council;
- b. Ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
- c. Ensure the coordination and harmonization of projects and programmes of the Union;
- d. Submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and
- e. Carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act (Ibid: Art 15).

3.1.4 The Pan-African Parliament (PAP)

Located in Midrand, Johannesburg, Republic of South Africa. It was inaugurated on 18th March 2004, and its establishment was inspired by a vision to provide a common platform for African peoples and their grass-roots organizations to participate more in discussions and decision-making on the problems and challenges facing the continent. The ultimate aim of PAP is to 'evolve into an institution with full legislative powers, whose Members are elected by universal adult suffrage' (AU Act 2000: Art 8). At present, the PAP current membership of 230 parliamentarians exercises advisory and consultative powers (Ibid: Art 17).

The functions include; to facilitate the effective implementation of the policies and objectives of the AU/AEC and, ultimately, of the African Union; to work towards the harmonization or co-ordination of the laws of Member States; to make recommendations aimed at contributing to the attainment of the objectives of the AU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them; to request officials of the AU/AEC to attend its sessions, produce documents or assist in the discharge of its duties; to promote the programmes and objectives of the AU/AEC, in the constituencies of the Member States; to encourage good governance, transparency and accountability in Member States; to familiarize the peoples of Africa with the objectives and policies aimed at integrating the African continent within the framework of the establishment of the African Union, and; to promote the coordination and harmonization of policies, measures, programmes and activities of the parliamentary fora of Africa (Ibid).

3.1.5 The Court Of Justice

The African Court on Human and Peoples' Rights (the Court) is a continental court established by African countries to ensure protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The Court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the

Establishment of an African Court on Human and Peoples' Rights, (the Protocol) which was adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol came into force on 25 January 2004 after it was ratified by more than 15 countries. To date, only the following twenty six (26) States have ratified the Protocol: Algeria, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the (the Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned (Ibid: Art 18).

According to the Protocol (Article 5) and the Rules (Rule 33), the Court may receive complaints and/or applications submitted to it either by the African Commission of Human and Peoples' Rights or State parties to the Protocol or African Intergovernmental Organizations. Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights and individuals from States which have made a Declaration accepting the jurisdiction of the Court can also institute cases directly before the Court. As of October 2012, only five countries had made such a Declaration. Those countries are Burkina Faso, Ghana, Malawi, Mali, and Tanzania (Ibid).

The Court is composed of eleven Judges, nationals of Member States of the AU. The first Judges of the Court were elected in January 2006, in Khartoum, Sudan. They were sworn in before the Assembly of Heads of State and Government of the African Union on 2 July 2006, in Banjul, the Gambia. The Judges of the Court are elected, after nomination by their respective States, in their individual capacities from among African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human rights. The judges are elected for a

six year or four year term renewable once. The judges of the Court elect a President and Vice-President of the Court among themselves who serve a two year term. They can be re-elected only once. The President of the Court resides and works on a full time basis at the seat of the Court, while the other ten (10) judges work on a part-time basis. In the accomplishment of his duties, the President is assisted by a Registrar who performs registry, managerial and administrative functions of the Court (Ibid).

The Court officially started its operations in Addis Ababa, Ethiopia in November 2006, but in August 2007 it moved to its seat in Arusha, the United Republic of Tanzania, where the Government of the Republic has provided it with temporary premises pending the construction of a permanent structure. Between 2006 and 2008, the Court dealt principally with operational and administrative issues, including the development of the structure of the Court's Registry, preparation of its budget and drafting of its Interim Rules of Procedure. In 2008, during the Court's Ninth Ordinary Session, judges of the Court provisionally adopted the Interim Rules of the Court pending consultation with the African Commission on Human and Peoples' Rights, based in Banjul, the Gambia in order to harmonize their rules to achieve the purpose of the provisions of the Protocol establishing the Court, which requires that the two institutions must harmonize their respective Rules so as to achieve the intended complementarities between the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights. This harmonization process was completed in April 2010 and in June 2010, the Court adopted its final Rules of Court (Ibid).

3.1.6 The Financial Institutions:

The African Union has created three financial institutions in a bid to facilitate trade within the continent. They are: the African Investment Bank (AIB), the African Monetary Fund (AMF) and the African Central Bank (ACB) (Ibid: Art 19).

a. **African Investment Bank (AIB)**

The African Investment Bank is one of the three financial institutions planned for in the Constitutive Act of the African Union. The mandate of the African Investment Bank was envisioned to aid in fostering economic growth and accelerating economic integration in Africa in line with the broad objective of the African Union.

To achieve these objectives, the Bank will carry out the following tasks:

- a. Promote investment activities of the public and private sector intended to advance regional integration of the member States of the African Union;
- b. Utilize available resources for the implementation of investment projects contributing to the strengthening of the private sector and the modernization of rural sector activities and infrastructures;
- c. Mobilize resources from capital markets inside and outside Africa for the financing of investment projects in African countries; and
- d. Provide technical assistance as may be needed in African countries for the study, preparation, financing and execution of investment projects.
- e. The Headquarters of the African Investment Bank is Tripoli, Great Socialist People's Libyan Arab Jamahiriya. A formal agreement with the host country to establish a Steering Committee in order to commence technical studies on the institutional and organization aspects of the Bank was signed. The mission of the technical steering committee is to spearhead studies leading to the setting up of the bank, including working out the fine-print details of its sources of funding, management and institutional framework.

b. **African Monetary Fund (AMF)**

The African Monetary Fund (AMF) is stipulated in the Abuja Treaty in the Constitutive Act of the African Union, Article 19, in a bid to facilitate the

integration of African economies, through the elimination of trade restrictions and enhance greater monetary integration.

The main objective of the African Monetary Fund is to:

- a. Provide financial assistance to AU Member States;
- b. Act as a clearing house as well as undertake macro-economic purveyance within the continent;
- c. Coordinate the monetary policies of Member States and promote cooperation between the monetary authorities in these states; and
- d. Encourage capital movements between member states; amongst others.
- e. The Headquarters of the African Monetary Fund is in Yaoundé, Republic of Cameroon.

c. **African Central Bank (ACB)**

The African Central Bank was created following the 1991 Abuja Treaty and reiterated by the 1999 Sirte Declaration that called for the speeding up of the implementation process. The ACB, just like the other African financial institutions, is aimed at building a common monetary policy and create the African currency as a way for accelerating economic integration in Africa.

The objective of the African Central Bank would be to:

- a. Promote international monetary cooperation through a permanent institution;
- b. Promote exchange stability and avoid competitive exchange rates depreciation;
- c. Assist in the establishment of a multilateral system of payments in respect of current transactions between members and eliminate foreign exchange restrictions which hamper the growth of world trade. The Headquarters of the African Central Bank is Abuja, Republic of Nigeria.

3.1.7 The Commission

The Commission is the Secretariat of the Union entrusted with executive functions. It is composed of 10 Officials: A Chairperson, a Deputy Chairperson; Eight (8) Commissioners and Staff members. The structure represents the Union and protects its interest under the auspices of the Assembly of Heads of State and Government as well as the Executive Committee. The AU Commission is made up of Portfolios. They are: Peace and Security; Political Affairs; Trade and Industry; Infrastructure and Energy; Social Affairs; Rural Economy and Agriculture; Human Resources, Science and Technology; and Economic Affairs (Ibid: Art 20).

3.1.8 The Permanent Representatives' Committee (PRC)

Composed of Permanent Representatives of Member States accredited to the Union and other duly accredited plenipotentiaries of Member States resident at the Headquarters of the Union. The Permanent Representatives Committee is charged with the responsibility of preparing the work of the Executive Council. The functions include the following:

- a. Act as an advisory body to the Executive Council;
- b. Prepare its Rules of Procedure and submit them to the Executive Council;
- c. Prepare the meeting of the Executive Council, including the agenda and draft decisions; Make recommendations on the areas of common interest of Member States particularly on issues on the agenda of the Executive Council;
- d. Facilitate communication between the Commission and the capitals of Member States;
- e. Consider the Programme and Budget of the Union as well as administrative, budgetary and financial matters of the Commission, and make recommendations to the Executive Council;

- f. Propose the composition of the Bureaus of the organs of the Union ad-hoc committees and sub-committees;
- g. Consider matters relating to the programmes and projects of the Union particularly issues relating to the socio-economic development and integration of the Continent, and make recommendations thereon to the Executive Council;
- h. Participate in the preparation of the programme of the activities of the Union as well as the preparation of the calendar of meetings of the Union (Ibid: Art 21).

3.1.9 The Economic, Social and Cultural Council of the African Union (ECOSOCC)

On the occasion of its inauguration in Durban, South Africa in July 2002, the African Union embarked on a course to transform and integrate the Continent. The aims and aspirations of the new Union were a response to the calls for democracy and development from Africa's vibrant civil society institutions. The Continent's leaders were determined to build a Union that was people-oriented. Aware of the rich and diverse human and institutional resources at the grassroots level, the new Union, then, would be devoted to building strong partnerships between the governments and all segments of the society. The impulse is not for the African Union to organize civil society. Rather the organizing principle of the ECOSOCC of the African Union is one in which civil society would organize themselves to work with the Organization (Ibid: Art 22).

The distinctive character of the African Union's ECOSOCC is that it is an opportunity for African civil society to play an active role in charting the future of the Continent, organizing itself in partnership with African governments to contribute to the principles, policies and programmes of the Union.

Established under the provisions of Articles 5 and 22 of the African Union's Constitutive Act, ECOSOCC is the vehicle for building a strong partnership between

governments and all segments of African civil society. The Statute of ECOSOCC, adopted by the Heads of State and Government at the Third Ordinary Session of the Assembly in July 2004 defines it as an advisory organ of the African Union composed of different social and professional groups of the Member States of the African Union (Assembly/AU/Dec.42 (III))

These Cultural and Social Organizations include but are not limited to the following:

- a) Social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;
- b) Professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organizations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups;
- c) Non-governmental organizations (NGOs), community-based organizations (CBOs) and voluntary organizations;
- d) Cultural organizations, and;
- e) Social and professional groups in the African Diaspora in accordance with the definition approved by the Executive Council.

Launch of the First Permanent General Assembly - Dar es Salaam, September 9th 2008, the African Union (AU) took a decisive step in its efforts to consolidate the institutional architecture of the Organization with the Launch of the Economic, Social and Cultural Council of the Union (ECOSOCC) on 9 September 2008 in Dar es Salaam, Tanzania, President Jakaya Mrisho Kikwete, the Chair of the Union and President of the United Republic of Tanzania, presided over the event. In his keynote address at the launching, the Chair of the Union, President Kikwete noted that “with the establishment of ECOSOCC we are creating a people-oriented, people-centred and people-driven community in the African Union in which all stakeholders are

effectively represented". Moreover, he added "this event today has its uniqueness and significance in the annals of international organizations. This is the first time that an institution such as the African Union that began as an intergovernmental organization is incorporating non-state actors as full partners in the policy making process. In following this path, the African Union has gone beyond the mere processes of consultation that other institutions still adhere to. Africa therefore, has given the values of democratization and inclusiveness, a more holistic and enduring meaning and significance.

Since the launching of the Permanent General Assembly in 2008, the challenges of ECOSOCC is to build its own institutions, establish an appropriate format for partnering with other units and organs as it fulfils its main function of providing advisory opinions to the AU in close collaboration with cognate departments of the Commission. These are the issues that have engaged and continue to engage ECOSOCC as a young institution of the AU.

The functions of ECOSOCC, as an advisory organ, are as follows:

- a) Contribute, through advise, to the effective translation of the objectives, principles and policies of the Union into concrete programmes, as well as the evaluation of these programmes;
- b) Undertake studies that are recommended or deemed necessary by any other organ of the Union and submit recommendations accordingly;
- c) Carry out other studies as it deems necessary and submit recommendations as appropriate;
- d) Contribute to the promotion of popularization, popular participation, sharing of best practices and expertise, and to the realization of the vision and objectives of the Union;
- e) Contribute to the promotion of human rights, the rule of law, good governance, democratic principles, gender equality and child rights;

- f) Promote and support efforts of institutions engaged in review of the future of Africa and forge Pan-African values in order to enhance an African social model and way of life;
- g) Foster and consolidate partnership between the Union and CSOs through effective public enlightenment, mobilization and feedback on the activities of the Union;
- h) Assume such other functions as may be referred to it by any other organ of the Union.

3.1.10 Peace and Security Council (PSC)

The Protocol Relating to the Peace and Security Council (PSC) of the African Union entered into force on 26th December 2003, after being ratified by twenty-seven out of the fifty-three Member States of the AU. It is made up of fifteen Member States (Williams, 2009: 607).

The functions of the PSC include:

- a) To promote peace, security and stability in Africa;
- b) Anticipate and prevent conflicts;
- c) Promote and implement peace-building and post-conflict reconstruction activities;
- d) Coordinate and harmonise continental efforts in the prevention and combating of international terrorism in all its aspects;
- e) Develop a common defence policy for the Union; and
- f) Encourage democratic practices, good governance and the rule of law, as well as protect human rights and fundamental freedoms (Ibid: 614).

Moreover, the organisation is to be supported by a variety of institutions, including the AU Commission, a Panel of the Wise, a Continental Early Warning System (CEWS), an African Standby Force (ASF), and a Special Fund. (Ibid).

When we examine the various organs of the AU, the most relevant organ with regard to addressing the research questions is the Peace and Security Council, and in particular how it fits within the African Peace and Security Architecture (APSA).

3.2 Piracy

Piracy emphasizes the illegality of any violence, detention, or acts of depredation committed by a person on board a vessel or aircraft. The definition is confined to the described illegal acts committed either in the high seas or outside the jurisdiction of any state (Mo, 2002). Article 101 of UNCLOS therefore provides a definition for piracy outside the jurisdiction of a State, taking into consideration the mandate of the UNCLOS to regulate international relations and cooperation between nations. However, it does not prevent a State from taking action if the described illegal acts take place within its jurisdiction. The International Maritime Organization (IMO) realized the technical omission within the UNCLOS Article 101 definition, and classified violent and illegal acts against ships, or property and persons on board ships, taking place in ports or territorial waters as armed robbery" (Ibid).

Maritime piracy as an illegal act of boarding a vessel or aircraft for the purpose of committing a crime as defined by either an international treaty or a domestic law against the vessel or aircraft, property or persons on board the vessel or aircraft by a person or persons who are capable of using force or violence when committing the said crime." (Ibid). The illegal act is always committed for personal gain by the person or persons perpetrating the crime, whether there is an ideological connotation to justify the act or not. This point is important since there may be an inclination to accept the explanation provided by proponents of the acts of maritime piracy committed in the Horn of Africa and off the Somali coastline as retaliations to illegal fishing by European and Asian fishing fleets.

3.3 Armed Robbery Against Ships

Armed robbery against ships is any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of *piracy*, directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offence (IMO, 2000). An indication that armed robbery against ships or at sea can only occur within the jurisdiction of the State, which is within the twelve nautical miles limit for littoral State, with direct relation to similar acts committed on land. Therefore acts of robbery at sea are considered to be similar to acts of violence committed on the landmass territory of a State.

3.4 Piracy In Eastern Africa

Piracy in English usage today refers to water-borne brigandage against commodities and other valuables including humans, themselves the values of which originate and are expended upon land. Application of "pirates" and "piracy" across cultures can be misleading. Pirates in fifteenth century Chinese experience were not synonymous with English usage, least of all modern English. This is not simply a matter of lexical detail. This distinction can make a considerable difference in our understanding of the history of piracy (Chenoweth, 1999).

Piracy began to be a prominent historical feature in Southeast Asian history only when Raffles and his contemporaries were writing about the region, and the reason is that the withering of local economic power compelled seafaring peoples to eke out a living by violent means at the expense of the Europeans who had forced the local rulers to conclude restrictive trading treaties. In earlier times, piracy was chronic only in intervals between the fall of one important trading center and the rise of another in the same neighbourhood (Ibid).

The terms "pirate" and "piracy" were incorporated into English within political context of a rising monarchy and nation state. As part of this development, English

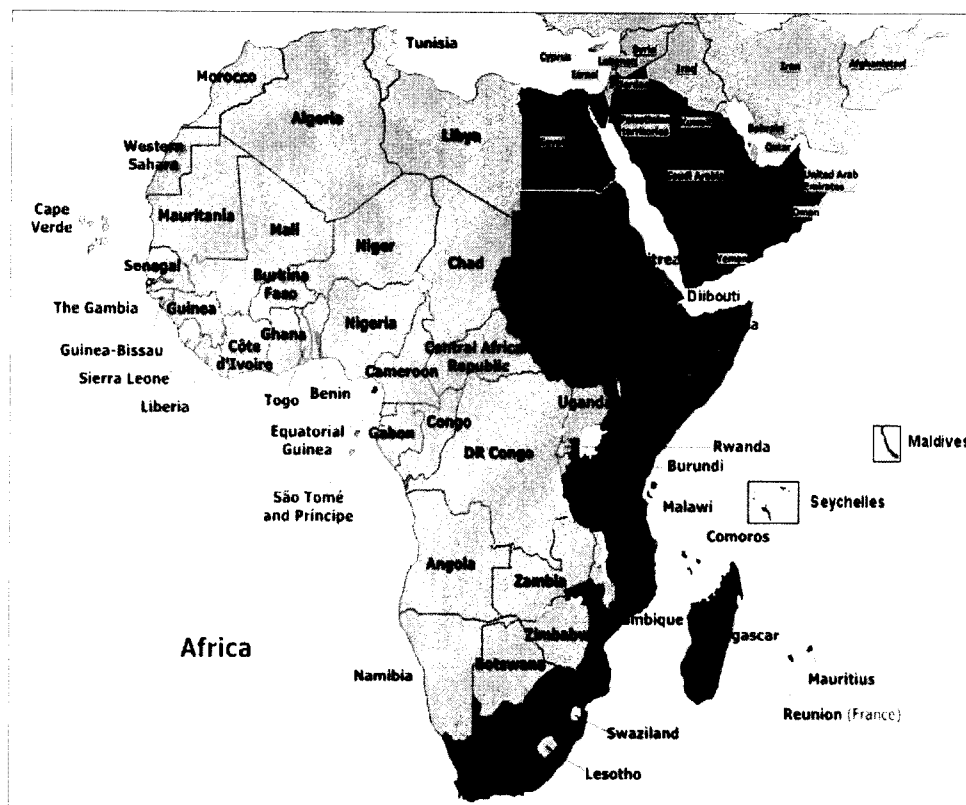
legal experts sought legitimacy for their opinions and rulings by reference to Roman usages. The use of the word piracy by Roman and British empire-builders was a vehicle to classify the equally disdainful depredations of those whose political organizations lay outside the imperial jurisdiction. Hence piracy was incorporated in government policy accepted by regional organizations at the time (Chenoweth, 1999).

The focus of this research is centred on the Eastern African seaboard where piracy incidents regularly occur. However, for the purposes of clarity it is important to identify both the geographical area as well as the nation states which are affected by the menace. The map below displays (in red) the nations that have so far signed up for the Djibouti Code of Conduct which was enacted on 29th January 2009 through the sponsorship of the International Maritime Organization (IMO) during a meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States, held in Djibouti (IMO 2009).

The Djibouti Code of Conduct currently has 18 signatory States including the Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Oman, Saudi Arabia, Seychelles, Somalia, Sudan, United Arab Emirates, United Republic of Tanzania and Yemen. These member states have pledged to cooperate in measures aimed at suppressing piracy, including investigation, arrest and prosecution of persons, who are reasonably suspected of having committed acts of piracy and armed robbery against ships; the interdiction and seizure of suspect ships and property on board such ships; the rescue of ships, persons and property subject to piracy and armed robbery and the facilitation of proper care, treatment and repatriation of seafarers, fishermen, other shipboard personnel and passengers; the conduct of shared operations both among signatory States and with navies from countries outside the region such as nominating law enforcement or other authorized officials to embark on patrol ships or aircraft of another signatory ; and the sharing of related information (IMO 2009). These member States include

countries on the Eastern African seaboard, namely Comoros, Kenya, Madagascar, Mauritius, Seychelles, Somalia and the United Republic of Tanzania. Two other countries on the Eastern African seaboard eligible to sign the Code are Mozambique and South Africa. The Djibouti Code of Conduct therefore brings together nations on the Western Indian Ocean that are directly affected by endemic piracy and armed robbery at sea and facilitates this research with a clear geographical demarcation of the area of study.

DJIBOUTI CODE OF CONDUCT - MAP DENOTING MEMBER STATES



Source: International Maritime Organisation, Djibouti Code of Conduct.
<http://www.imo.org/OurWork/Security/PIU/Pages/DCoC.aspx>

Piracy is a recent phenomenon in the Horn of Africa and thus the region suffers a great deficit in terms of scholarly literature that addressed the problem. Due to this reason this research borrows a lot from literature from other parts of the world where the problem of piracy has been experienced for a long period. Since acts of

piracy are similar the literature reviewed will help and guide this study along the Horn of Africa. The literature will assist in looking at piracy at the Horn of Africa through the eyes of other scholars.

The U.S. Navy has increased its operations against pirates who use small boats off the Coast of Somalia. The waters off Somalia and the Horn of Africa are part of the area under the responsibility of Combined Task Force (CTF) 150, one of the three task forces under Combined Maritime Forces, a 20-nation coalition based in Manama, Bahrain. The key mission of the Coalition is conducting Maritime Security Operations (MSO). MSO help to set the conditions for security and stability in the maritime environment and complement the counter-terrorism and security efforts in regional nation's littoral waters.

Coalition forces also conduct MSO under international maritime conventions to ensure security and safety in international waters so that commercial shipping and fishing can occur safely in the region. The Coalition includes representation from Australia, France, Germany, Italy, Pakistan, United Kingdom, and United States among other states (ASIL, 2010). What is the role of the African Union (AU) in these operations? Are the CTF Navy personnel answerable to AU? Is there a partnership between the CTF and the AU?

Best Management Practices (BMP) in piracy assists companies and ships in avoiding piracy attacks, deterring attacks and delaying successful attacks in the Gulf of Aden and off the Coast of Somalia. (BMP, 2010). The purpose for the BMP as stipulated in BMP4 (Version 4 of 2011) is to 'assist ships to avoid, deter or delay piracy attacks in High Risk Area (HRA) where pirate activity and/or attack has taken place (BMP4, 2011:1). For the purpose of the BMP, the HRA is the area between the Suez Canal and the Straits of Hormuz to the North. The BMP also cautions mariners to practice BMP even to the South of the Southern limit which is 10 degrees South (BMP4, 2011:4).

Chalk (2009) gives the scope and dimensions of maritime piracy. Though he enumerates acts of maritime piracy across the world, he focuses on the piracy around the Horn of Africa and the Gulf of Aden. He has also listed factors accounting for the emergence of piracy in the contemporary era. The article highlighted the dangers of piracy including death, injuries, direct economic impact and undermining of a state's maritime trading ability. The article has also highlights the current international response to piracy off the Horn of Africa. He has listed counter-piracy actions that have been undertaken by the international community, (Chalk, 2009). However, there is no mention of whether the AU has any counter-piracy measures along the Gulf of Aden and the Coast of Somalia.

According to Africa Partnership Forum (APF), piracy in Africa has become an international problem, (APF, 2009) while being intrinsically linked to the economic and political crisis in Somalia. Piracy in the Horn of Africa has become a sophisticated and lucrative form of multifaceted international organized crime and has become big business through demands of outrageous ransoms. Some of this money has ended up in Somalia; millions have been laundered through back accounts overseas. Somali pirates greatly rely on the "hawala" system of money transmission, a system which makes it possible for vast sums of money to be transmitted globally with little or no documentation at all, (Africa Partnership Forum, 2009). The article, however, has not mentioned whether the African Union has participated in countering the piracy by even attempting to monitor this system of transferring money nationally, regionally or internationally. This study seeks to research as to whether the AU is involved in the counter piracy measures in Somalia.

Piracy in Somalia dates back to the 20th century, the emergence of which was due to the need for economic survival by traditional Somali fishermen against large foreign commercial fishing vessels. The absence of government authority interventions encourages the growth of piracy. Initiatives taken by the international community to

fight piracy in the Horn of Africa, do not include any involvement by the AU, thus leaves a gap in the literature which questions the AU's role in the counter-piracy initiatives taken by the international community in the Gulf of Aden and off the coast of Somalia (Weir 2010).

Traditional areas of maritime security include territorial claims, dangers of sea-borne invasion and threats to seaborne trade routes. Power vacuum resulted from the end of the Cold War left the door open to regional powers with the wealth, military potential or political ambition to propagate the imposition of their own military-political agendas. This argument can only apply to areas which are highly militarized, but not to countries such as South Africa or the region. Developed and developing nations have a clear need to protect the international maritime system for their own use, (Mills 1996).

South African countries depend on seaborne trade and the importance of such countries to safeguard their trade routes. Piracy and smuggling pose a threat to such trade, and appear to be on the increase internationally, again particularly in the South China Sea. These range from highly organised commando-style raids, to those of the more opportunistic plunderer, (Mills, 1996). Though there has reportedly been an increase in minor incidences of piracy against yachts in Southern African waters, smuggling posed a far more serious threat. Small arms and especially drug smuggling, together with cargo fraud, create an increasing problem worldwide which requires new protective measures, such as comprehensive intelligence and tracking facilities, and improved enforcement through regional and international co-operation (Ibid).

Nigeria, has one of the most sophisticated navies in Africa, with a demonstrated capability to sail to Europe and South America. Most of African navies are not designed to combat maritime armed robbery and piracy and that they are just essentially brown-water navies, which are capable of shelling enemy positions but

remained powerless to deal with local crime, (Vogel 2009). Of the 33 independent maritime nations in sub-Saharan Africa, only five Cape Verde, Liberia, São Tome and Principe, the Republic of Mauritius, and the Republic of Seychelles have maritime forces that identify themselves as coast guards rather than navies. Yet, Africa's maritime security challenges were most often comprised of threats such as illegal fishing, narco-trafficking and maritime disaster response threats requiring the technical skills and collaborative action (Vogel 2009).

In its resolution known as the Durban Resolution on Maritime Safety, Maritime Security and Protection of the Marine Environment in Africa, the African Union stated that it considers the importance of cooperation and capacity building in the implementation of maritime instruments, particularly in the areas of safety, security, protection of the marine environment and facilitation of international maritime traffic (African Union, 2009). It further recognized the roles and contributions of United Nations agencies, international and regional organizations, States and other stakeholders who made and continued to make towards the enhancement of safety of navigation, security and the protection of the marine environment.

The AU further acknowledged that there were numerous challenges that faced the African continent in maritime safety and security including incidents of piracy and armed robbery, and the protection of the marine environment and that there was need for prioritization in favor of providing the necessary financial resources to advance the strategic maritime transport development agenda, the need to establish and/or strengthen Maritime Administrations of the Member State of the African Union to be at the forefront of the development of the maritime transport portfolio in Africa (Ibid). The resolution ends by the AU condemning all acts of piracy and armed robbery against vessels in waters off the coast of Somalia and the Gulf of Aden without mentioning how the AU was going to solve the problem of piracy, this research will investigate the role of the AU in combating piracy.

In order to manage maritime security, the international maritime legislation is a means to the corpus of legal precepts regulating the maritime domain. This includes, in the main, custom, conventions and recommendations. Custom is a source of law but not a deliberate act of legislation. Thus, adoption of maritime recommendations and the adoption and amendment of maritime conventions, their legal effect and their role in the evolution of maritime customary law is important (Okeke, 1981).

The formulation of maritime recommendations requires the adoption of two technical methods. The first formula designates the aim to be achieved without insisting on, or specifying the means. The second formula not only stipulates the aim but also specifies the means for its attainment. This formula is employed either in urgent cases or where there is a pressing need for harmonization. This is notably true of all the recommendations concerning conformity with arrangements for maritime traffic separation routes. For instance, Resolution A. 228 (VII) adopted by IMCO General Assembly on October 12, 1971 recommended governments to forbid ships flying their flags from sailing otherwise than on the charted and recommended routes in the English Channel. This was because the volume of traffic posed a real danger of frequent collisions, (Okeke, 1981). It seemed like at that time the main danger was accidents in the sea hence the pressing issue by then, which is not the current problem of piracy which this research hopes to address.

The trans-national threats in the sea, such as narco-terrorism, sea piracy, marine degradation, illegal immigration and natural disasters such as cyclones, famine, poverty and HIV/AIDS, have spawned a multitude of additional roles for navies in what is described as out of sea operations. Other peacetime operations may include monitoring non-military threats, delineation of maritime boundaries, prevention of illegal migration and monitoring resources such as oil, food, water and non-renewable energy in order to diffuse conflicts, particularly in the Indian Ocean region. This has not only subjected those involved in the sea to everyday economic, political and scientific pressures, but has also added new responsibilities to the Coast

Guard, the Naval Forces and general maritime resource protection assets. Due to this, countries should avail themselves of communal ship plots and linked communication facilities in the Indian Ocean to enable rapid response in times of crises. The analysis offered here emphasizes the role of individual countries in the security of their coast without mention of whether the African Union could or has played any role in combating crimes such as piracy (Roy, 1995).

In the conference held in Mombasa on maritime security, various presenters expressed their worry over the rising incidents of piracy on the East African coast. Africa has many maritime interests, including trade and the use of its marine resources, particularly fish, to support development on the continent. But unfortunately, these resources were illegally plundered by illegal, unreported and unregulated fishing activities and that free trade is hampered by phenomena such as piracy and organized crime at sea. (Drakensberg, 2007).

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. And one worries whether AU has a Common African Defence and Security Policy which should be addressing threats to peace, security and development. Also, whether the AU has the necessary maritime forces to contribute to African security and development at sea.

The Indian Ocean Region as an inherently unstable region where instability manifested most profoundly in the maritime domain. Terrorism, piracy and drugs and arms smuggling are well-entrenched phenomena within the region. There is also evidence of military brinkmanship in trouble spots of inter-state conflict. The major threats to the Indian Ocean Region are threats to the sea lines of communication especially at the maritime choke points; maritime terrorism; warlordism, gun-running; illegal immigration; piracy; smuggling and trafficking and illegal exploitation of ocean resources. In order to combat these threats and overcome the

challenges posed, maritime and naval authorities have to cooperate more closely in their collective peacetime roles of maritime policing in harbours, coastal areas and at sea. Although the suggestions are plausible there is no mention of whether the African Union will play any role to implement these suggestions (Mukala, 2007).

Traditionally, the roles of the navy could be classified into four broad categories of policing, diplomacy, crisis response and military. All these roles were oriented and weighted to meet the maritime interests in the prevailing environment. With changes in the political and geo-strategic environment, some of these roles become predominant. The end of the Cold War and consequent mitigation of threats of general and limited wars shifted the focus of the navies away from the military role, but political situations could change rapidly, faster than the rate at which a navy can re-orientate itself and it may therefore not be prudent to side-track the military role (Kohli, 1996).

The policing role entails the protection of resources, enforcing national maritime laws relating to merchant shipping, fishing, fiscal, marine environment, contraband control, drug running and immigration. The world is likely to witness increasing crises and states should establish an operational philosophy to enable them to deal with such situations. From this point of view, it seems states such as members of the African Union should move to create operational coordination mechanisms which should protect their sea routes (Kohli, 1996). The question then is whether the members of African Union are willing to act in line with this proposal?

In 2010, the President of the United States of America gave an order that piracy constituted an unusual and extraordinary threat to the national security and foreign policy of the United States. The President was prompted by the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which had repeatedly been the subject of United Nations Security Council resolutions including Resolution 1844 of

November 20, 2008; Resolution 1846 of December 2, 2008; Resolution 1851 of December 16, 2008; and Resolution 1897 of November 30, 2009, and violations of the arms embargo imposed by the United Nations Security Council in Resolution 733 of January 23, 1992, and elaborated upon and amended by subsequent resolutions including Resolution 1356 of June 19, 2001; Resolution 1725 of December 6, 2006; Resolution 1744 of February 20, 2007; Resolution 1772 of August 20, 2007; Resolution 1816 of June 2, 2008; and Resolution 1872 of May 26, 2009.

The US President, further determine that, among other threats to the peace, security, or stability of Somalia, acts of piracy or armed robbery at sea off the coast of Somalia threatened the peace, security, or stability of Somalia. The US president prohibited any acts that would support piracy (US Presidential Executive Order Concerning Somalia, 2010). The US presidential executive order seemed to illustrate the US government position on piracy with little mention of African Union. Although the order was strong, this research is interested to know if AU has any obligation to respond to such an order through the resolutions imposed by the UN Security Council.

The achievement of human security and development in Africa cannot be attained if Africa's maritime interests and the threats thereto are ignored. Piracy is a real and serious threat to the continent and is slowly but surely creeping towards Southern and South Africa. Early recognition of the problem and development of collective strategies and associated capabilities were essential in confronting the threat, (Roux, 2007).

Combating piracy requires effective early warning and intelligence systems, credible deterrent and reaction forces capable of delivering firepower effectively, high mobility, flexibility and reach, and the ability to sustain operations for long periods. However, these capabilities are unfortunately sorely lacking in Africa. Africa lacks maritime air surveillance and reconnaissance capabilities. African navies have few

combat ships capable of sustained operations and even fewer fast patrol or strike craft that can operate from secondary ports. The argument is that no African country, on its own, can successfully combat the increasing threat of piracy. Doing so successfully requires collective strategies and sharing of information and responsibilities. It is therefore important to re-think the logic of the force design of African militaries, and in this case navies, based on the sole concept of defending the sovereignty and territorial integrity of the state against external military aggression (Roux, 2007).

The focus by African militaries is almost totally on land forces, with scant or little attention given to the maritime dimension. This phenomenon is also evident in the Common African Defence and Security Policy and the design of the African Standby Force and its regional brigades. Combating piracy requires collective maritime early warning and intelligence mechanisms, maritime air surveillance and reconnaissance capabilities and fast-reaction naval vessels that can support law enforcement agencies in apprehending and combating heavily armed pirates. Developing these capabilities collectively will do more for human security in Africa than conventional armed forces designed to combat non-existent enemies (Roux, 2007).

According to Guyo (2010), protecting Somalia's waters from the illegal foreign vessels has given pirates a source of inspiration, legitimization and justification for their actions. Although the reasons for their alleged action, that is, protecting Somalia's waters appears rational, their actions over the years have increasingly cast doubt about their patriotism. For instance, on many occasions, pirates have targeted the ships carrying humanitarian supplies that are a lifeline for many people, especially the displaced persons in Somalia. The delays in humanitarian services delivery has impacted significantly on human security. In addition, the demand of ransom by pirates has pushed up the cost of humanitarian aid in Somalia. Furthermore, the financial benefit could be used to fuel local conflict in Somalia

given that pirates benefit extensively from the chaotic situation that has been prevailing in Somalia.

While the international community is expected to take immediate and radical action to eradicate piracy along the busy sea route, much would depend on the methods used to address the menace. There is also need for a major paradigm shift by the international community to one that is guided more by the realities in the Horn of Africa rather than by perceptions. The military solution as proposed by the TFG and the European Union to establish anti-piracy security operations off the coast of Somalia are likely to be of limited significance. Instead, there is need to spice the state-driven security measures with some human security ingredients. Amongst the priorities should be the orderly withdrawal by all external forces and the formation of a genuine, all inclusive government in Somalia regardless of the content of governance and the labels. The emerging government will thus be obliged to contribute to international peace and security at least within the jurisdiction of Somalia territory (Guyo, 2010).

As argued in the introductory remark, there is scarcity in the literature on piracy in the Horn of Africa hence literature reviewed is from around the world and in particular areas affected by piracy. The literature is therefore largely aimed at giving direction or informing the study on issues of piracy. Although not from the Horn of Africa the literature is important to the intended study.

3.5 Theoretical Framework: International Regime Theory

The main theory that governs this study is the International Regime Theory. The central question of the theory is "how is co-operation possible between states claiming sovereignty but competing for power and influence in a situation of anarchy?" The answer is international regimes. Definition of this regime is: "principles, norms, rules, and decision-making procedures around which actor

expectations converge in a given issue-area (Krasner, 1983). These principles, norms and rules are agreed upon by governments and take the form of institutions.

According to this view, this theory uses an institutional causal framework to analyse international relations. Specifically, it considers international institutions like the UN and EU as the “major sites of global governance.” This explanation shows that there are definite similarities between regime theory and neoliberal institutionalism.

It is important to understand that regime theorists acknowledge the existence of anarchy, just like realists. However, they believe that regimes can reduce it. Specifically, a regime can help foster interstate collaboration and coordination in an anarchic world in several ways.

First, the regime’s rules and procedures provide predictability in state behaviour. This is especially important in international politics, especially considering the saliency of the prisoner’s dilemma. Second, it discourages free riding because no single state will be expected to provide a solution to a collective problem. Third, it provides a standardized road map for dealing with a specific issue.

However, there are obstacles to this theory. The biggest challenge for the success of regimes is the nebulosity of international law. Regime theorists and international lawyers are closely linked. What this means is that a regime must provide its participants (i.e. nation states) a notion of being bound by a particular set of rules. This assurance will provide the framework for collaboration and coordination among states. The problem, as explained in the Theoretical Framework, is that creating an international legal framework is incredibly complex because it is hard for nations to agree on an international convention. That is why the role of an institution like the UN is so important.

It is also worth noting that based on this close relationship between law, institutions and states, regime theorists would say that Waltz's criticism of international institutions is invalid. These institutions are largely ineffective because they cannot act independently of nation states and their actions are therefore constrained. Regime theorists would argue that a regime's success is in fact dependent on the interdependency between an institution and a state. In other words, it is states, with the addition of laws, which create and maintain successful institutions according to these theorists this interdependence will reduce anarchy and foster inter-state cooperation.

It is also important to understand when regimes come about. Similar to realists, regime theorists view states as rational and self-seeking. However, the behaviour of states in solving global dilemmas is markedly different. Stein (Stein, 1997), explains that states are "self-interested actors [who] rationally forgo independent decision making and construct regimes." While Stein acknowledges the realist view of international politics and accepts that independent decision-making does occur, he says that there are situations in which all actors prefer joint decision-making. He refers to these situations as "dilemmas of common interests and dilemmas of common aversions." In these dilemmas, states either have a "common interest in *ensuring* a particular outcome" or a "common interest in *avoiding* a particular outcome." Ultimately, regimes help states to deal with these dilemmas. In the case of piracy, all states have the common interest in insuring that this illegal act is brought under greater control.

With regards to Somali piracy, this theory would argue that an international regime is needed to resolve the problem. Based on the above analysis, the regime would involve supranational organizations that would help coordinate state action. The organizations would provide a legal and operational framework for engaging and eliminating the problem of piracy attacks in the Gulf of Aden and in Africa, as a whole, but in particular, on the Eastern Coast of Africa.

However, regimes are not created overnight. Regime creation occurs at times of fundamental discontinuity in the international system, such as the conclusions of major wars. Therefore, any 'recommendation' by regime theorists would have to take into consideration the degree of disruption to the international system that piracy has caused.

This will help in addressing whether conditions are optimal for the emergence and functioning of a regime. Part of the analytical portion of this thesis will deal with this issue.

CHAPTER FOUR : DATA ANALYSIS AND INTERPRETATION

4.1 Introduction

The following purposively selected respondents in maritime piracy were interviewed:

- David. J. Mackay, Vice President Inchcape Shipping Services, East Africa.
- Capt Chris Chambers (US Navy), Chief of Staff, Combined Maritime Forces, Bahrain.
- Captain (French Navy) Jerome BERTRAND, Director PLANS, Combined Maritime Force, Bahrain.
- Gichiri Ndua, Chief Executive Officer, Kenya Ports Authority, Kenya.
- Harjit S Kelly, Maritime Consultant, United Nations, Kenya.
- Maj (Rtd) Nishit D Maru, Maritime Lawyer, Mombasa, Kenya.
- Jane Elizabeth Wanyonyi, Deputy Director - Training & Capacity Development, Ministry of State for Public Service, Government Training Institute, Matuga, Kenya.
- Professor Ademun Ademun-Odeke, Visiting Professor In International Maritime Law and Policy, Southampton Solent University, UK.
- DR Paul Musili Wambua, Lecturer, University of Nairobi, Kenya.
- Frank Charles van Rooyen, Security Fellow: Senior Researcher, South African Institute of International Affairs, South Africa

The data was collected over a period of slightly over one and a half years, the earliest having been submitted in May 2010 and the latest in October 2011. The responses to the questionnaire were analysed and consolidated in relation to the research questions as follows:

4.2 Maritime Piracy off the Eastern Coast of Africa

All the ten respondents acknowledged that maritime piracy is a problem that has escalated to alarming levels in the past three years. One respondent portends that it has made history by its intensity and the fact that large vessels have been hijacked far off the coast of Somalia and near the coasts of other coastal states.

It is unique in many respects and has given piracy a new meaning. Another respondent intimated that maritime piracy is largely the symptomatic manifestation of a failed state (Somalia), where the causes lie ashore. The region's history and present state of instability contributes to the phenomenon.

The African Union as the continental governing body appears to be unable to give effect to any plans it may have to combat the scourge and negate Somalia's failed state status. The United Nations has a plan for turning the situation on land in Somalia around, but the UN is unable to effectively implement the plan sustainably.

A third respondent stated that piracy is a serious threat to human life, lacking proper strategies and capacity to address the problem from concerned governments, causing political anarchism, indiscipline, political instability, lawlessness, disunity of government leadership and loss of human life, thereby causing shame to the continent.

Another of the respondents view was that piracy is inevitable considering its history and underlying courses in the geopolitical and socio-economic sphere. Its impact on regional security, maritime transport and international trade is therefore regrettable if not a nuisance. Its solution lies in addressing and tackling those underlying problems rather than half-hearted legal solutions. Piracy off Somalia coast is clearly a

difficult one as the roots are ashore. The international effort has been responsive under various organizations but needs assistance ashore. It is not the place for international forces from Combined Maritime Force (CMF), US, EU, or NATO to venture ashore to combat this issue, but should be handled by those with a presence ashore. Due to the initial neglect and complete disregard by the international community, the piracy off Somalia has grown into a profitable business not only for the Somalis but also for security respondents, lawyers and insurance firms in the developed world.

The problem is not at sea and the world must realize that the solution is to find lasting peace in the country now called Somalia. The general feeling by the respondents was that piracy is a mess, curtailed and made maritime trade to be very expensive through longer voyage days and higher insurance premiums let alone the high cost of armed guards embarked onboard. Maritime piracy off the Eastern Coast of Africa is a major concern because of the unacceptable human impact on innocent people (killed people, hostages for long captivities), for the dangerous economic impact both to regional countries (including Somalia itself) and external ones.

The fact the world is unable to stop that piracy since several years despite important operational efforts is also dangerous because it could encourage similar criminal activities in other parts of the world, as currently observed in the Guinea Gulf area. Finally its important to remember that piracy roots and support are ashore. As a consequence, effective maritime operations are limited to containment; the only consistent solutions could only be undertaken on land, in order to build a country able to implement law enforcement and decent life conditions. These have been effective as far as maintaining of secure corridors within Somali waters is concerned but there are limitations given the vast expanse of the pirates area of operation, economic constraints and availability of limited naval assets.

4.3 United Nations Security Council Resolutions 1838, 1846 and 1851 an Effective Solution in Combating Piracy off the Gulf of Aden And The Red Sea

All the ten respondents to the questionnaire were unanimous in concluding that the three United Nations Security Council Resolutions (UNSCRs) are inadequate for the UN member nations to combat piracy off the Gulf of Eden and the Red Sea. One of the respondents indicated that as long as the UNSCRs are designed to circumvent/compliment the requirements of international law in combating piracy in Somalia's territorial sea and mainland it is theoretically sound as it fulfils the requirement of consent of the Transitional Federal Government (TFG) and restricts intervention only to the situation in Somalia. However in practise no state has ventured to pursue the pirates in the mainland, thus hampering the fight against piracy. The intervention of the UNSCRs is commendable as it provides legality to the ongoing operations.

Another of the respondents views were that the resolutions grant broad top cover to forces operating in the area and provide a vehicle to hang the mission on, but alone cannot help in resolving piracy. More must be done to make it financially and legally a great risk to conduct acts of piracy. Yet another of the respondents claims that like most UN declarations, they are just that and nothing else. They go on to suggest that although they are Security Council Resolutions made under Chapter 7, there are other Resolutions that came before such as 1816 and 1818 as well those after such as 1859, 1897 and 2000 that are also relevant. However, the respondents believe that they do not give enough power and authority to the Navy operations trying to protect Merchant vessels and that nothing in these resolutions effectively addresses the legal problem of dealing with the pirates after they are caught.

4.4 Is AU Doing Enough To Address The Problem of Piracy In Eastern African Seaboard?

Only one of ten respondents indicated that the AU is doing something to address problem of maritime piracy off the Eastern African seaboard. However, the respondent was convinced that more could be done and achieved. The AU has already set up the African Standby Force (ASF) and is now using the Regional Economic Communities (RECs) to address the issue of insecurity. The Eastern African Standby Brigade Coordination Mechanism (EASBRICOM) is one such regional effort which recently introduced the maritime component in its operations. Under the Intergovernmental Authority on Development (IGAD) there is the Intergovernmental Capacity Building Program Against Terrorism (ICPAT) which also addresses maritime insecurity. However all these efforts are hampered by lack of resources, lack capacity and lack of political will.

Nine respondents stated that the AU was not doing enough to address the problem of piracy off the Eastern coast of Africa. They maintain that although the intentions are good, AU member countries are doing too little, too late. One respondent confirmed attending the AU Commission's workshop on maritime security in early April, 2010 in Addis Ababa. The AU was still at the point where they are producing a maritime safety and security strategy (the final document is yet to be accepted and adopted by the AU). Another respondent is of the opinion that the AU does not have the will and means to address the problem even if they wanted to. Some of their suggestions such as calling for Security Council blockade of Somali are incompetent. The only people willing do anything are permanent members of the Council and traditional maritime powers. For now, these are bogged down elsewhere such as in Iraq and Afghanistan. They are, for the moment, quite content with patrolling the area as an excuse for freedom to conduct exercises in the Indian Ocean.

Other respondents maintain that the AU sluggish and even indifferent to the problem and that member countries should contribute to the stabilization of the political, economic and security situation in Somalia. Lack of resources was seen as

the major problem in dealing with the matter, although one of the respondents feels that a country like South Africa should be doing more as it has the Naval capability to do considerably more than it is presently doing. The AU also needs to develop a coordinated regional maritime security system, by encouraging African nations to unify their action, synchronize their effort and share information on piracy activities. One of the respondents insists that the AU should pressurize coastal states to cooperate with the international forces countering piracy at sea through exchange of information and alerts, actions in own territorial waters and authorization granted to external forces to access coastal states territorial waters when needed to counter a pirate act or a pirate action group.

In addition, state controlled armed security teams should be provided to protect Sea Lanes of Communication (SLOCs) and World Food Program (WFP) maritime flow, while member states contribute to the prosecution, conviction and detention of pirates through the development of judicial agreements with flag countries of units operating in the area to facilitate international cooperation. Development of judicial agreements with Somali authorities should also be undertaken so as to transfer Somalia convicted citizens back to Somali prisons. There should also be increased efforts, including but not limited to enforcing the UN embargo on arms proliferation into Somalia, towards establishing peace and a functional government in Somalia.

4.5 Mechanisms and Sufficient Political Will present Among The Member States Of The AU To Enable Them To Respond Effectively To The Threat Of Piracy

All the respondents were unanimous in accepting that there are insufficient mechanisms or political will among member states of the AU to enable them respond effectively to the threat of maritime piracy. They indicated that there is a need for the politicians and military leadership to work together more closely so that policy makers are integrated in the fight against piracy. The respondents agree that there is a great deal of ignorance about maritime issues by the political elite, as

Africa's struggles have largely been in the landward domain. The proper and proactive management of maritime zones, granted in terms of international law by the United Nations Convention of the Law of the Sea (UNCLOS 1982) has not been enacted by a number of states in Africa. Maritime zones are not under most states' control and the last word of phrase Maritime Domain Awareness (MDA) ought to be changed to 'unawareness'.

Some mechanisms exist but these are often paper tigers or are being executed at the tactical rather than the strategic level. The respondents are of the opinion that AU member states, and in particular coastal states on the Eastern African seaboard should volunteer to patrol and accept arrested suspects for prosecutions in their own jurisdictions, instead of leaving the burden to countries such as Kenya and the Seychelles. The respondents believe that anything that grants broad authority to conduct operations ashore would be helpful. Some of the respondents again raised the issue of shortage of funds and resources to address the problem, coupled with a serious lack of political will despite the well known damage the piracy menace is causing many African countries.

4.6 What Should the AU Be Doing, Which They Are Not Doing

The respondents were of varied opinions regarding what the AU should be doing which it was not. One respondent believes that sufficient political will should be cultivated and that there should also be a harmonization of policy, legal and institutional frameworks, in addition to the operational aspects. The respondent noted that it is with great regret that even if the AU produces an outstanding maritime safety and security strategy, it would rapidly run into the wall that states 'hereto and no further'. This is because there are hopelessly too few maritime/naval/coast guard/MDA [radars, regionally integrated AIS, patrols, exchange of intelligence and information, satellite coverage] resources in Africa to give any effect to such a strategy. The respondent goes on to allude that the AU would have to in the short term swallow its pride and continue to request the

international community (via the UN) to render maritime assistance to combat piracy, but more importantly to solve – on a sustainable basis – the issue of Somalia failed state status.

The respondent proposes that in this respect, a policy of ‘divide and rule’, i.e. breaking up Somalia into semi-autonomous regions – Somaliland, Puntland etc, may be a solution. In the long term, the AU would need to educate African states (via UNCLOS, IMO, IHO mechanisms) nations with respect to their maritime responsibilities and also the long lasting benefits that they can derive from positive control of maritime zones. These benefits would include the standing up of professional coast guard fleets, graduating to proper navies that are commensurate with their economic status.

Another respondent felt that the most urgent and important strategic problem is to create synergy among member states. The respondent stated that there is lack of strategic leadership, initiative and proper mobilization of resources to address the problem in a proper coordinated manner. Furthermore, there is little political support by member states let alone international support.

One respondent is of the opinion that the AU should be pro-active by passing clear policies, supporting the patrolling powers, updating anti-piracy legislations and accepting suspects for investigations, detention, prosecution and imprisonment. Member states should be encouraged to build up their capacities to secure their maritime resources.

One respondent believes that a twofold approach is needed, these is more funding, and more political pressure to achieve a land-side solution. This respondent predicted piracy ransoms to reach approx US\$ 120 mill in 2011, and yet probably 15 times more is spent on the Naval operations trying to protect merchant ships. Secondly a change of Naval engagement rules so that if pirates are actually caught committing an attempted hijack then a much more “robust ” response must be

allowed. Kenya and Tanzania as well as Mozambique, Mauritius and Seychelles should be funded and encouraged to accept more prisoners and given support to pursue vigorous charges against them.

The remaining respondents were of the opinion the member states of the AU should pool resources together and be at the forefront lobbying the rest of the world. They should seize every opportunity to shout about the menace in all international fora. There should also be increased efforts, including but not limited to enforcing the UN embargo on arms proliferation into Somalia, towards establishing peace and a functional government in Somalia.

4.7 Does AU and Its Member States Capacity to Effectively Combat Piracy

Three out of the ten respondents are of the opinion that the AU member states do not have the capacity necessary to effectively combat piracy. One respondent believes that to gain such capacity, they should coordinate with the myriad forces currently operating in the area. Another respondent feels that AU member states cannot gain any capacity without significant funding and assistance from Donor partners and supporting countries.

The other seven respondents believe that AU member states do have the capacity to deal with the menace of piracy. However, the necessary prioritisation is necessary. Another stated that they lack military capability, but can deal with the problem. Other respondents were of the opinion not all AU member states have requested for additional capacity to combat piracy on their own. This statement also applies to any other state or organization, whatever their own capacities are. The best effect would be realized when member states synchronize all their capacities and efforts. In addition, the AU must endeavour to be the most legitimate organization to address African crises, to influence African states actions and to implement direct actions

inside Somalia. Capacity in terms of human resource and technical expertise is in abundance and existing assets, if found inadequate, can be acquired.

4.8 Coordination Mechanisms within Sub-Regional Security and Economic Bodies

Seven out of the ten respondents provided suggestions regarding coordination mechanisms within the sub-regional security and economic bodies (EAC, SADC And IGAD) that could be utilized to combat piracy. One respondent gave a general overview of what coordination mechanisms should be put in place as follows:

- a. Avoid overlap and duplicity of roles
- b. Harmonise and coordinate operations
- c. Harmonise the policies, laws and institutions

Another respondent proposed that each sub-regional security and economic body should have a Maritime Committee under Defence and Security. They should go beyond paper exercises and commit to practical exercises and even operations, since this is the only way that some form of political will can be coaxed, i.e. when a nation is potentially embarrassed by non-participation when it had committed itself to do so. Furthermore, these regional efforts should be enforced by the AU, with sanction for those states who do not perform adequately. The 'Seapower for Africa' Symposium, sponsored by the South African Navy, is a good example of such a mechanism.

Another respondent emphasizes on the need for cooperation among member countries, sharing of security information among them, mobilization of resources, sharing of intelligence and security matters and training of security personnel to tackle piracy.

Another respondent believes that the EAC should be at the forefront in view of the proximity and damage caused by piracy, but was concerned by the silence by the

organization regarding the maritime security. SADC also contains powerful states such as South Africa, Mozambique and Tanzania who could coordinate to combat piracy.

One respondent had various contributions to what the AU and sub-regional bodies should do to combat piracy off the Eastern seaboard of Africa as follows:

- Contribute towards the stabilization of the political, economical and security situation in Somalia.
- Contribute to develop a coordinated regional maritime security system, by encouraging African nations to unify their action, synchronize their effort and share their information.
- Pressure coastal states to cooperate with the international forces countering piracy at sea through exchange of information and alerts, actions in own territorial waters and authorization granted to external forces to access coastal states territorial waters when needed to counter a pirate act or a pirate action group.
- Contribute to provide state controlled armed security teams in order to protect World Food Program maritime flow.
- Contribute towards the prosecution, conviction and detention of pirates, develop judicial agreements with flag countries of naval units operating in the area to facilitate international cooperation and develop judicial agreements with Somalia's authorities in order to transfer Somalia convicted citizens to Somali prisons.
- Suppression of piracy must also be approached subjectively where the State parties to a regional economic block must endeavour to coordinate their efforts since effects thereof are more economical than threats to national or regional peace. This would yield better surveillance results and avoid overlap of effort.

Three out of the ten respondents indicated that they were not familiar with any existing mechanisms within sub-regional bodies to combat piracy. They also indicated that the sub-regional bodies were all commercial and economically orientated. However, they concur that a focused plan with all states standing together and supporting each other is needed. At the moment the whole thing appears to be very “ad hoc” and unfocused.

4.8 Are Regional States Using Those Mechanisms Optimally Or Can Coordination Be Improved?

All the ten respondent respondents are of the opinion that the existing coordination mechanisms should be improved. They are convinced that these mechanisms are performing seriously sub-optimally. At best, these are paper tigers and talk shops that meet regularly. Inadequate resources are to blame and often some navies do not even have sufficient funds to travel to regional maritime meetings, let alone have ships and exercise them regionally.

To date there is no effective military alliance in any part of Africa. Coordination can always be improved through common communications, regular contact, scheduled interactions and information sharing. It therefore can and must be improved, especially in order to generate a real coordinated regional response that will be more efficient than any isolated national effort. Mutual mistrust and selfish agendas amongst regional States are the main stumbling blocks towards achieving a common suppression strategy.

4.8.1 How Can Coordination Be Improved

The ten respondent respondents all agreed that coordination can and must be improved. Presidents, Cabinets, Ministers of Defence, Chiefs of Defence and Navy Chiefs need to explain the critical importance of maritime issues and the

requirement for adequate resources to their national parliaments, and if need be to the regional defence and security mechanisms. Also, the member nations of the AU must get the media on side of the seafarers. The public must also be educated. In their role as taxpayers, it is critical that they are onboard.

The respondents agreed that coordination can also be improved by having more inter-country exercises, combined operations and exchange of military personnel for training. Common communications, regular contact, scheduled interactions and information sharing between member states' navies can also improve coordination.

Other ways of improving coordination include:

- A focused funding policy.
- Appeals to Donor nations to possibly donate naval hardware. Retired fishery protection vessels from North Europe that are still in good condition would allow the Kenyan and Tanzanian Navy to get more assets to sea to combat piracy.
- Additional funds to support this initiative.
- Member countries could nominate a body of five (5) members of parliament (MPs) each as a think-tank on initiatives, funding and coordination.
- By regular meetings aiming at establishing a common view on the tasks to be executed.
- The repartition of the responsibilities between states and organizations monitoring of the process.
- By having a non-governmental agencies to lobby for improved coordination founded on common economic interests.
- Creation of AU Committee on Piracy.
- Creation of Eastern African Body on Piracy

4.8.2 Short Comings of the Legal Definition Of Maritime Piracy and Suggestions of Altering the Legislation

Four out of the ten respondents believe that the legal definition of piracy, and in particular the definition in UNCLOS, is insufficient. Some respondents offer suggestions for enhancement of these definitions through avenues such as the definition in Article 3 of the Suppression of Unlawful Acts (SUA) Convention against the Safety of Maritime Navigation, which lists several maritime offences and requires states (under Article 6) to create the same under their domestic laws. Article 11 requires states to either prosecute or extradite offenders. Other respondents portend that the main problem lies in the fact that international law does not factor in failed states that are incapable of effectively carrying out their responsibilities. Although it may be a long and laborious process, relevant sections of UNCLOS will need to be revised.

Some respondents would like to adoption of the legal processes first start with political cooperation, legitimacy of government leadership and fight against lawlessness, before commencement of the legal process, while other respondents recommend that the nations who have been prosecuting pirates convene through a Working Group 2 of the Contact Group on Piracy off the Coast of Somalia (CGPCS) in order to compare challenges and results in piracy prosecutions. The respondents are convinced that the legislation is presently too loose and needs a tighter definition to describe what has become a very serious and life threatening crime, while the economic effects are catastrophic.

However, another four out of the ten respondents are convinced that the legal definition of maritime piracy is adequate enough to address the issue, and that maritime piracy is one of the threats for which UNCLOS authorize to have the most extended legal possibilities. The challenge is often the national transcriptions of that international legislation that need to be amended and improved, while bilateral or

multilateral judicial agreements are developed in order to facilitated international cooperation. The respondents reiterate that the international codified definition of the offence of piracy in UNCLOS was arrived at after years of deliberation and consultation, and thus, given the customary rules of the sea, the definition is complete. The problem therefore is domestic and not with the international definition of the offence. The following improvements are proposed:

- Nations need to move away from outdated customary law definitions regarding piracy. Piracy *Jure gentium* (piracy by the law of nations) in favour of a more modern and truly international definition.
- Piracy should not be confused with armed robberies against ships, which are new creatures.
- We need to identify kidnapping for ransom as a separate offence.
- Finally Maritime Security in implementing SUA should be clearly demarcated from piracy.
- There is need for distinction between piracy in municipal courts and those giving rise to international jurisdictions

4.8.3 Opinion on the Objective of This Study

Respondents were asked if they had any other contribution to the objectives of the study. One respondent reiterated that the legal prosecution of pirates captured off failed states' maritime zones needs to be clarified. The respondent asked why on earth the International Criminal Court cannot deal with pirates. Pirates are, after all, alleged international criminals. Another respondent emphasizes that maritime anti-piracy patrols need to be coordinated through all navies operating under the same doctrine; very disparate at present.

One respondent strongly feels that although the study is admirable, they do not hold out much hope on the AU or anybody solving the problem of maritime piracy unless

there is a complete change of approach. The focus should be on a global approach rather than piecemeal solutions.

4.9 Summary of Data and Findings

The responses that were received from the respondents can be summarized as follows:

- a. In response to Question 1, all the ten respondents acknowledged that indeed maritime piracy is a problem which has escalated to alarming levels in the past three years. This accounts for 100% response that maritime piracy is a problem.
- b. In response to Question 2, all the ten respondents to the questionnaire were unanimous in concluding that the three UNSCRs are inadequate for the UN member nations to combat piracy off the Gulf of Eden and the Red Sea. This accounts for 100% response that the three UNSCRs are inadequate to combat piracy.
- c. In response to Question 3, only one of ten respondents indicated that the AU is doing something to address problem of maritime piracy off the Eastern African seaboard. The remaining nine respondents were categorical that the AU was not doing enough to address the problem of piracy off the Eastern coast of Africa.
- d. All the respondents were unanimous in accepting that there are insufficient mechanisms or political will among member states of the AU to enable them respond effectively to the threat of maritime piracy.
- e. One respondent believes that sufficient political will should be cultivated and that there should also be a harmonization of policy, legal and institutional frameworks, in addition to the operational aspects. Another respondent felt that the most urgent and important strategic problem is to create synergy

among member states. Yet another respondent is of the opinion that the AU should be pro-active by passing clear policies, supporting the patrolling powers, updating anti-piracy legislations and accepting suspects for investigations, detention, prosecution and imprisonment. One respondent believes that a twofold approach is needed. More funding, and more political pressure to achieve a land-side solution. The remaining respondents were of the opinion the member states of the AU should pool resources together and be at the forefront lobbying the rest of the world.

- f. Three out of the ten respondents are of the opinion that the AU member states do not have the capacity necessary to effectively combat piracy. The other seven respondents believe that AU member states do have the capacity the deal with the menace of piracy.
- g. Seven out of the ten respondents provided suggestions regarding coordination mechanisms within the sub-regional security and economic bodies that could be utilized to combat piracy. Three out of the ten respondents indicated that they were not familiar with any existing mechanisms within sub-regional bodies to combat piracy.
- h. All the ten respondent respondents are of the opinion that the existing coordination mechanisms should be improved.
- i. The ten respondent respondents all agreed that coordination can and must be improved.
- j. Four out of the ten respondents believe that the legal definition of piracy, and in particular the definition in UNCLOS, is insufficient. However, another four out of the ten respondent respondents are convinced that the legal definition of maritime piracy is adequate enough to address the issue, and that maritime

piracy is one of the threats for which UNCLOS authorize to have the most extended legal possibilities.

5.0 CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Synopsis of the Research Paper

The research was premised on the need to identify the role of the African Union in combating maritime piracy off the Eastern coast of Africa. The First Chapter introduced the topic by examining the various definitions of maritime piracy as an attempt to clearly understand the subject matter. The internationally recognized legal definitions of maritime piracy and the limitations therein were also discussed. A basis for the discussion of maritime piracy was thus provided and which also facilitated the development of the key research questions.

A qualitative methodology was preferred to than the quantitative approach since the researcher intended to use scheduled structured interviews/questionnaires so that participants, who are experts in maritime issues, would be invited to complete a structured questionnaire based on their knowledge and experience regarding the role of the African Union in combating maritime piracy on the Eastern seaboard of Africa. The reason for selecting this methodology was to focus on a specialised field with clearly defined parameters and stakeholders. The invited experts included CEOs of national maritime organizations and commercial shipping companies, naval military officers and academics. A total of ten experts participated who provided a sound basis for the research questions to be addressed.

The literature review was primarily based on secondary research which was gathered from available books and journals. An extensive analysis of the organs of the African Union (AU) was carried out with the aim of identifying the whether the AU is established to deal with the menace of maritime piracy. Literature concerning the international definition of piracy, armed robbery at sea and the issues of maritime piracy in the Africa and in particular Eastern Africa was also reviewed. The various regional and sub-regional resolutions that have been adopted by various

African Nations to combat maritime piracy were also reviewed. The literature review culminates with the adoption of the International Regime Theory which questions how co-operation is possible between states claiming sovereignty while competing for power and influence in a state of anarchy.

The data collected from the ten experts was then analyzed and interpreted. Each of the eleven questions in the questionnaire was analyzed by reviewing the responses of the expert participants. A number of observations were made regarding the responses of the participants which enabled the researcher to come up with the recommendations indicated below.

5.2 Poor Maritime Domain Awareness

Most African littoral states suffer from poor Maritime Domain Awareness and Capacity Constraints. The African maritime seaboard consists of a complex fragmented environment with differing priorities for different agents and poorly capacitated actors, which includes several inadequate port facilities and a lack of over-the-horizon capability to monitor the Territorial Sea let alone the Exclusive Economic Zone (EEZ) due to inadequate investment by such Nations towards maritime security. Therefore there is need for conceptual clarity regarding sea blindness by African States. New discourses requiring greater dialogue is the way forward. Questions such as what/who is the referent; critique of narrow self-interested definitions must be made, especially those provided by non-African Nations in the West. African states must search commonalities for solutions, and include practitioners more often for capacity building with more integration of stakeholders, so as to improve maritime domain awareness and extend reach of national and regional maritime authorities incrementally. Leadership of key maritime countries in Africa is therefore necessary, and Regional Economic Communities (RECs) must strategize with the leadership of such Nations. Nations must set their own agendas, proper legal frameworks must be created and the Rule

of Law on operational and tactical levels should be made available to counter transnational maritime threats, such as piracy, and enforce the African Integrated Maritime Strategy (AIMS) 2050.

5.3 The PESTEL Analysis Model

Maritime education and data gathering should be done in a holistic manner covering political, economic, social, technological, environmental and legal (PESTEL) dimensions. The current limited maritime legal frameworks present in most African littoral states should be addressed regarding the problems of legislation in the high seas and territorial seas. The ratification, domestication and harmonization of such legal frameworks will confirm the collective, cooperative approach to maritime security while building on the different contexts of each individual State. Furthermore, the views of Island States should be incorporated.

5.4 Cooperation Amongst States

The maritime domain lends itself more to cooperation, than happens between States and communities on the land, thus the notion of the sea being part of the '*Common Heritage of Mankind*'. Emphasis should be on education of African States and their nationals regarding the common challenges and shared interests of the maritime domain. African littoral States can enhance their capabilities to patrol common maritime areas of interest to deter piracy through division of labour between Nations and amongst RECs. Maritime threats to international security should be identified and maritime interests valuable to all recognized. This will enhance responses to piracy, natural disasters or against an international conflict while minimizing intra-state conflict between African States because of scarcity. Furthermore, there is a growing international interest in Africa's maritime domain, especially regarding the exploration for oil/gas resources offshore, where Africa struggles to determine the agenda because of external actor dominance and

intervention. Thus there may be the possibility of increased incidents of piracy and conflict over jostling for control over the management of maritime security sub-regionally and on the continent. Therefore there is need for greater regional continental advocacy over maritime security issues. At present the problem is translating decisions into action.

5.5 Understanding the Maritime Security Challenge

There is need to have a better appreciation of the magnitude and scope of the challenges of piracy and maritime security as a whole in Africa, environmental issues and the need for increased African agency. An understanding of the economics of maritime security is critical if African Nations are to make tangible investments to secure their seas. The use of technological innovations such as Unmanned Aerial Vehicles (UAVs) is a workable option which can be negotiated and coordinated amongst RECs to minimize the operational cost to individual Nations. It is therefore important to address the implementation of RECs strategies, AIMS 2050 and other related maritime security frameworks. Thereafter, there is need to monitor and evaluate implementation while insisting on achieving milestones. Where the national imperatives might clash with combined integrated maritime security policies, there is need to address the larger common good for all. There should be a creation of partnerships that work.

5.6 Funding Maritime Security Initiatives

The funding of maritime security initiatives is critical for the development of a common strategy by African States either through the use of national sovereign funds, maritime taxes and levies or through dedicating/diverting taxes for funding initiatives. In theory African countries must ensure that a sufficient portion of the annual budget be diverted towards maritime security and counter-piracy initiatives. The challenge, however, is that countries that rely heavily on the International

Monetary Fund (IMF) to run their economies may face restrictions to include such initiatives in their budgets since it would depend on whether the IMF wishes to include such initiatives in their agenda.

5.7 Social Development Strategies

Social development deficits undermine maritime security initiatives. There is need, therefore, to include maritime security strategies, and particularly those concerning maritime piracy, as a fundamental part of articulation of the development strategy. Mainstream social development goals should include maritime strategy initiatives for littoral states and land-locked Nations that rely on the sea. To this end there is need to engage all stakeholders across the board, and in particular civil society in defining maritime strategic goals. Harmonization of goals should be undertaken in a bottom-up, top-down approach, integrating from national to regional strategies and policies. Furthermore, African Nations should work together at the sub-Regional and Regional levels to reduce duplication of effort when creating frameworks for cooperation to address the threat of piracy and related maritime security issues.

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APPENDIX 1: ACTUAL INDIVIDUAL RESPONSES TO THE QUESTIONNAIRE

Question	Respondent	Response
<p>1. What is your view of Maritime Piracy off the Eastern Coast of Africa?</p>	<p>David MacKay</p>	<p>It is probably the most dangerous menace facing the East African economies.</p>
	<p>Capt Chris Chambers</p>	<p>The problem of Piracy off Somalia is clearly a difficult one as the roots are ashore. The international effort has been responsive under various organizations but needs assistance ashore. It is not the place for international forces from CMF, US, EU, or NATO to venture ashore to combat this issue, but should be handled by those with a presence ashore.</p>
	<p>Captain (French Navy) Jerome BERTRAND</p>	<p>Maritime piracy off the Eastern Coast of Africa is a major concern because of the unacceptable human impact on innocent people (killed people, hostages for long captivities), for the dangerous economic impact both to regional countries (including Somalia itself) and external ones.</p> <p>The fact the world is unable to stop that piracy since several years despite important operational efforts is also dangerous because it could encourage similar criminal activities in other parts of the world, as currently observed in</p>

		<p>the Guinea Gulf area.</p> <p>Last, it's important to remind that piracy roots and support are ashore. As a consequence, maritime operations effects are limited to containment; the only consistent solutions are to be undertaken in land, in order to build a country able to implement low enforcement and decent life conditions.</p>
	Gichiri Ndua	<p>It is a mess. It has curtailed and made maritime trade to be very expensive through longer voyage days and higher insurance premiums leave alone the high cost of armed guards on board</p>
	Harjit Kelley	<p>Due to the initial neglect and complete disregard by the international community, the piracy off Somalia has grown into a profitable business not only for the Somalis but also for security experts, lawyers and insurance firms in the developed world. The problem is not at sea and the world must realize that the solution is to find lasting peace in the country now called Somalia.</p>
	Maj (Rtd) N D Maru	<p>These are organized maritime criminal acts fuelled by lack of governance in Somalia and have assumed status of a thriving economic industry.</p>
	Jane Elizabeth Wanyonyi	<p>It is a serious threat to human life, lacking proper strategies and capacity to address the problem from concerned governments, causing political anarchism, indiscipline, political instability,</p>

		lawlessness, disunity of government leadership and loss of human life, thereby causing shame to the continent.
	Professor Ademun Ademun-Odeke	Someone who both hails from the region and is currently conducting high-level research on the subject gives this view. The piracy is inevitable considering its history and underlying courses in the geopolitical and socio-economic sphere. Its impact on regional security, maritime transport and international trade is therefore regrettable if not a nuisance. Its solution lies in addressing and tackling those underlying problems rather than half-hearted legal solutions
	Dr. Paul Musili Wambua	It has escalated to alarming levels in the past three years. It has made history by its intensity and the fact large vessels have been hijacked far off the coast of Somalia and near the coasts of other coastal states. It is unique in many respects and indeed it has given piracy a new meaning.
	Capt (Rtd) Frank Charles van Rooyen	Largely the symptomatic manifestation of a failed state (Somalia), where the causes lie ashore. The region's history and present state of instability contributes to the phenomenon. The African Union as the continental governing body appears to be unable to give effect to any plans it may have to combat the scourge and negate Somalia's failed state status. The United Nations has a plan for turning the situation on land in

		Somalia around, but the UN is unable to effectively implement the plan sustainably.
<p>2. Do you think that United Nations Security Council Resolutions 1838, 1846 and 1851 are effective in combating piracy off the Gulf of Aden and the Red Sea?</p>	David MacKay	Presently No .They do not give enough “teeth” to the Navy operations trying to protect Merchant vessels.
	Capt Chris Chambers	These resolutions grant broad top cover to forces operating in the area and provide a vehicle to hang the mission on, but alone cannot help in resolving piracy. More must be done to make it financially and legally a great risk to conduct acts of piracy.
	Captain (French Navy) Jerome BERTRAND	According to me, subject UNSCR resolutions added to UNCLOS are effective in combating piracy. What is needed to be more effective is from one hand a stringer international political will to address the issue and, on the other hand, a real progress in building a stable, ruled and economically balanced Somalia.
	Gichiri Ndua	I don't know what the resolutions say.
	Harjit Kelley	No. Nothing in these resolution effectively addresses the legal problem of dealing with the pirates when they are caught.
	Maj (Rtd) N D Maru	These have been effective as far as maintaining of secure corridors within Somali waters is concerned but have their limitations given vast expanse of the pirates area of operation, economic constraints and availability of limited naval assets.

	Jane Elizabeth Wanyonyi	NO!
	Professor Ademun Ademun-Odeke	Not really. Like most UN declarations, they are just that and nothing else. Although they are Security Council Resolutions made under Chapter 7 of the Resolution 1838--and while Resolution 1846--. Resolutions before that such as 1816 and 1818 as well those after such as 1859, 1897 and 2000 are also relevant.
	Dr. Paul Musili Wambua	In so far as the UNSCRs are designed to circumvent/compliment the requirements of international law in combating piracy in Somalia's territorial sea and mainland it is theoretically sound as it fulfils the requirement of consent of TFG and restricts intervention only to the situation in Somalia. However in practise no state has ventured to pursue the pirates in the mainland which has hampered the fight against piracy. The intervention of the UNSC is commendable as it clothes the ongoing operations with legality.
	Capt (Rtd) Frank Charles van Rooyen	No. These are worthy attempts at introducing international law mandates for nations to assist in combating the scourge. Yet, individual nations and security organisations (eg NATO) interpret public international law differently. Some err on the side of caution, others go beyond the brief, some carry regardless.
3. In your opinion, is the AU doing	David MacKay	No. I feel South Africa should be doing more as it has the Naval

<p>enough to address the problem of piracy in Eastern African seaboard?</p>		<p>capability to do considerably more than it is presently doing.</p>
	<p>Capt Chris Chambers</p>	<p>I am not sure if AU is doing anything to address the problem, they will have a difficult time while the entirety of Somalia presents them numerous larger issues.</p>
	<p>Captain (French Navy) Jerome BERTRAND</p>	<p>AU is doing to address the problem. I think what AU could develop even more is</p> <ul style="list-style-type: none"> - AU contribution to stabilize the political, economical and security situation in Somalia - AU contribution to develop a coordinated regional maritime security system, by encouraging African nations to unify their action, synchronize their effort and share their information - AU pressure for coastal state to cooperate with the international forces countering piracy at sea: exchange of information and alerts, actions in own TTW and authorization granted to external forces to access coastal states TTW when needed to counter a pirate act or a pirate action group

		<p>- AU contribution to provide state controlled armed security teams in order to protect WFP maritime flow</p> <p>AU contribution to prosecute, convict and detain pirate, develop judicial agreements with flag countries of units operating in the area to facilitate international cooperation and develop judicial agreements with Somalia's authorities in order to transfer Somalia convicted citizens to Somalia's prisons</p>
	Gichiri Ndua	I doubt that AU is doing enough.
	Harjit Kelley	No and they don't have the resources to do anything about it. Making resolutions is not going to deter any acts of piracy.
	Maj (Rtd) N D Maru	Efforts to establish an EASF Maritime unit and the creation of task force for development of AU 2050 integrated maritime strategy are works in the pipeline.
	Jane Elizabeth Wanyonyi	NO! There is too much sluggishness, indifferences to the problem.
	Professor Ademun Ademun-Odeke	No. They do not have the will and means to do even if they wanted to. Some of their suggestions such as calling for Security Council blockade of Somali are frankly ill thought if not half-baked. The only people who will do anything are permanent members of the Council and traditional maritime powers. For now, these are bogged down elsewhere such as in Iraq and Afghanistan. There are for the moment quite content with

		patrolling the area an excuse for freedom to exercise in the Indian Ocean
	Dr. Paul Musili Wambua	Yes it is doing enough given the prevailing circumstances. However more could be done and achieved. AU has already set up the ASF and is now using the RECs to address the issue of insecurity. EASBRICOM is one such regional effort which recently introduced the maritime component in its operations. Under IGAD we also have ICPAT which also addresses maritime insecurity. However all these efforts are hampered by lack of resources, lack capacity and lack of political will.
	Capt (Rtd) Frank Charles van Rooyen	No, although the intentions are good, they are doing too little, too late. I attended the AU Commission's workshop of experts on maritime security in early Apr 10 in Addis Ababa. The AU is still at the point where they are producing a maritime safety and security strategy - the draft document has not even been produced.
4. Are there mechanisms and sufficient political will among the member states of the AU to enable them to respond effectively to the threat of piracy?	David MacKay	Probably not. Shortage of funds is a problem and there is still a lack of serious political will despite the well known damage the piracy problem is causing many African countries.
	Capt Chris Chambers	I am not familiar with member state political mechanisms, but anything that grants broad authority to conduct operations

		ashore would be helpful.
	Captain (French Navy) Jerome BERTRAND	I think mechanism and political will should be improved among AU member states, but I must say that this comment could apply to many other states and organizations
	Gichiri Ndua	I doubt whether a good number of the members appreciate the impact
	Harjit Kelley	No. AU's thinking is land based and the maritime environment is alien to them.
	Maj (Rtd) N D Maru	Cannot state as a matter of fact.
	Jane Elizabeth Wanyonyi	NO! And this is the real cause of the challenge.
	Professor Ademun Ademun-Odeke	No, for above reasons. Otherwise, they could have volunteered to patrol and accept arrested suspects for prosecutions in their own jurisdictions. Instead the burden is left to Kenya and the Seychelles
	Dr. Paul Musili Wambua	It cannot be said that there is sufficient political will. The link between the suit and the uniform has not been strong. It is important that policy makers be integrated in the fight against piracy.
	Capt (Rtd) Frank Charles van Rooyen	Unfortunately not. There is a great deal of ignorance about maritime issues by the political elite, as Africa's struggles have largely been in the landward domain. The proper and proactive management of maritime zones, granted in terms of international law by the United Nations Convention of the Law of

		<p>the Sea (UNCLOS 1982) has not been enacted by numbers of states in Africa. Maritime zones are not under most states' control, and the last word of phrase maritime domain awareness (MDA) ought to be changed to 'unawareness'. Some mechanisms exist -but these are often paper tigers or are being executed at tactical level.</p>
<p>5. In your opinion what should the AU be doing, which they are not doing?</p>	David MacKay	<p>A two-fold approach is needed. More funding, and more political pressure to achieve a land side solution. Piracy ransoms in 2011 will reach approx US\$ 120 mill. Probably 15 times more is spent on the Naval operations trying to protect merchant ships?????</p> <p>Secondly a change of Naval engagement rules so that if Pirates are actually caught committing an attempted hijack then a much more "robust " response must be allowed. Kenya and Tanzania as well as Mozambique, Mauritius and Seychelles should be funded and encouraged to accept more prisoners and given support to pursue vigorous charges against them.</p>
	Capt Chris Chambers	
	Captain (French Navy) Jerome BERTRAND	<p>I must confess I'm not enough aware of all the actions AU is undertaking to be able to say those AU should undertake more.</p>
	Gichiri Ndua	<p>Pool resources together and be at the forefront lobbying the rest of the world. Seize every opportunity to shout about the</p>

		menace in all international fora.
	Harjit Kelley	They should encourage member states to build up their capacities to secure their maritime resources.
	Maj (Rtd) N D Maru	Increase efforts, including but not limited to enforcing the UN embargo on arms proliferation into Somalia, towards establishing peace and a functional government in Somalia.
	Jane Elizabeth Wanyonyi	Create synergy, and consider this an urgent and most important strategic problem that needs to be addressed now! There is lack of strategic leadership, initiative and proper mobilization of resources to address the problem in a proper coordinated manner and political support leave alone international support.
	Professor Ademun Ademun-Odeke	They should be pro-active by passing clear policies, supporting the patrolling powers, updating their anti-piracy legislations and accepting suspects for investigations, detention, prosecution and imprisonment.
	Dr. Paul Musili Wambua	Cultivate sufficient political will and also harmonise the policy, legal and institutional frameworks not just operations.
	Capt (Rtd) Frank Charles van Rooyen	It is with great regret that one would note, that even if the AU produces an outstanding maritime safety and security strategy, it would rapidly run into the wall that states 'hereto and no further'. This is because there are hopelessly too few

		<p>maritime/naval/coast guard/MDA [radars, regionally integrated AIS, patrols, exchange of intelligence and information, satellite coverage] resources in Africa to give any effect to such a strategy.</p> <p>The AU would have to in the short term swallow its pride and continue to request the international community (via the UN) to render maritime assistance to combat piracy, but more importantly to solve - on a sustainable basis - the issue of Somalia failed state status (in this respect, a policy of 'divide and rule', ie breaking up Somalia into semi-autonomous regions - Somaliland, Puntland etc may be a solution).</p> <p>In the long term, the AU would need to educate African states (via UNCLOS, IMO, IHO mechanisms) nations wrt their maritime responsibilities and also the longlasting benefits that they can derive from positive control of maritime zones. These benefits would include the standing up of professional coast guard fleets, graduating to proper navies that are commensurate with their economic status.</p>
<p>6. Do the AU and its member states have the capacity necessary for them to effectively combat</p>	<p>David MacKay</p>	<p>Presently No. Not without significant funding and assistance from Donor partners and support countries.</p>

piracy?	Capt Chris Chambers	I do not think that AU member states alone have the capacity to face this issue and therefore need to coordinate with the myriad forces currently operating in the area.
	Captain (French Navy) Jerome BERTRAND	Definitely, AU and member states have not all requested capacity to combat piracy on their own. That statement also applies to any other state or organization, whatever own capacities are. The best effect is to be generated by synchronizing all capacities and efforts, should they be powerful or less powerful. AU unique added value is to be the most legitimate organization to address African crises, to influence African states actions and to implement direct actions inside Somalia.
	Gichiri Ndua	They can combat it. Does it mean that Somalia is better placed than all members of AU
	Harjit Kelley	Not all of them and not enough.
	Maj (Rtd) N D Maru	Capacity in terms of human resource and technical expertise is in abundance, existing assets if found inadequate....can be acquired.
	Jane Elizabeth Wanyonyi	Not at the moment.
	Professor Ademun Ademun-Odeke	Yes, if they wanted to although they would lack military capability

	Dr. Paul Musili Wambua	Yes they have but the necessary prioritisation is necessary. See answer above.
	Capt (Rtd) Frank Charles van Rooyen	With very few exceptions, no. The exceptions are South Africa, Egypt, Algeria, Libya and Morocco. A possible navy, Nigeria, would be hard put to justify its anti-piracy operations on the other side of the continent, whilst it has its own maritime insecurity issues to contend with.
7. What coordination mechanisms within sub-regional security and economic bodies including the EAC, SADC and IGAD, could be utilised to combat piracy?	David MacKay	I am not an expert on these bodies. However a focused plan with all states standing together and supporting each other is needed. At the moment the whole thing appears to be very "ad hoc" and un-focused.
	Capt Chris Chambers	I am not familiar with the mechanisms in existence but I believe SADC should have some strong say in coordinating the efforts of forces.
	Captain (French Navy) Jerome BERTRAND	<p>AU is doing to address the problem. I think what AU could develop even more is</p> <ul style="list-style-type: none"> - contribute to stabilize the political, economical and security situation in Somalia - contribute to develop a coordinated regional maritime security system, by encouraging African nations to unify their action, synchronize their

		<p>effort and share their information</p> <ul style="list-style-type: none"> - pressure for coastal state to cooperate with the international forces countering piracy at sea: exchange of information and alerts, actions in own TTW and authorization granted to external forces to access coastal states TTW when needed to counter a pirate act or a pirate action group - contribute to provide state controlled armed security teams in order to protect WFP maritime flow - contribute to prosecute, convict and detain pirate, develop judicial agreements with flag countries of units operating in the area to facilitate international cooperation and develop judicial agreements with Somalia's authorities in order to transfer Somalia convicted citizens to Somalia's prisons
	Gichiri Ndua	Socio-politico-economic
	Harjit Kelley	Non as they are all commercial and economically orientated.
	Maj (Rtd) N D Maru	Suppression of piracy must be approached subjectively where the State parties to a regional

		economic block (because effects thereof are more economical than threats to national or regional peace) must endeavour to coordinate their efforts which would yield better surveillance results and avoid overlap of effort.
	Jane Elizabeth Wanyonyi	Need for cooperation among member countries, then sharing security information among them, mobilization of resources, sharing of intelligence and security matters, training of security personnel to tackle piracy.
	Professor Ademun Ademun-Odeke	<ol style="list-style-type: none"> 1. EAC should be at the forefront in view of the proximity and damage; this organisation is conspicuous by its silence than anything 2. SADC contains powerful states such as SA, Mozambique and Tanzania who could do something 3. IGAD 4. DJIBOUTI ACCORD 5. ICTR
	Dr. Paul Musili Wambua	<ol style="list-style-type: none"> 1. Avoid overlap and duplicity of roles. 2. Harmonise and coordinate operations. 3. Harmonise the policies, laws and institutions.
	Capt (Rtd) Frank Charles van Rooyen	Each should have Maritime Committee under Defence and Security. They should go beyond paper exercises and commit to practical exercises and even

		<p>operations, for this is the only way that some form of political will can be coaxed - when a nation is potentially embarrassed by non-participation that it had committed itself to.</p> <p>These regional efforts should be enforced by the AU, with sanction for those states who do not perform adequately. The 'Seapower for Africa' Symposium is a good mechanism.</p>
<p>8. Are regional states using those mechanisms optimally or can coordination be improved?</p>	David MacKay	Definitely coordination needs improving.
	Capt Chris Chambers	Coordination can always be improved through common communications, regular contact, scheduled interactions and information sharing.
	Captain (French Navy) Jerome BERTRAND	Coordination can and must be improved, especially in order to generate a real coordinated regional response that will be more efficient than any isolated national effort.
	Gichiri Ndua	It can be improved massively
	Harjit Kelley	To date there is no effective military alliance in any part of Africa.
	Maj (Rtd) N D Maru	Mutual mistrust and selfish agenda's amongst regional States are the main stumbling blocks towards achieving a common suppression strategy.
	Jane Elizabeth Wanyonyi	No.
	Professor Ademun	Negative. There are actually no

	Ademun-Odeke	policies or coordination initiated by the AU or countries in the region.
	Dr. Paul Musili Wambua	It can be improved.
	Capt (Rtd) Frank Charles van Rooyen	These mechanisms are performing seriously sub-optimally. At best, these are paper tigers and talk shops that meet regularly. Inadequate resources are to blame - often some navies don't even have sufficient funds to travel to regional maritime meetings, let alone have ships and exercise them regionally.
9. How could coordination be improved?	David MacKay	<ol style="list-style-type: none"> 1) A focused funding policy. 2) Appeals to Donor nations to possibly donate Naval hardware (retired fishery protection vessels from North Europe that are still in good condition would allow the Kenyan and Tanzanian Navy to get more assets to sea to combat piracy.) 3) Additional funds to support this initiative. 4) Member countries could nominate a body of 5 MPs each as a think tank on initiatives, funding and coordination.
	Capt Chris Chambers	See above.
	Captain (French Navy) Jerome BERTRAND	<ul style="list-style-type: none"> - By regular meetings aiming at establishing a common view on the tasks to be executed. - The repartition of the responsibilities between states and organizations - The monitoring of the process

	Gichiri Ndua	Through recognition of a prefect
	Harjit Kelley	Having more inter-country exercises and combined operations and exchange of military personnel for training.
	Maj (Rtd) N D Maru	By having a nongovernmental agency to lobby for improved coordination founded on common economic interests.
	Jane Elizabeth Wanyonyi	
	Professor Ademun Ademun-Odeke	1. Creation of AU Committee on Piracy.
	Dr. Paul Musili Wambua	See answer above.
	Capt (Rtd) Frank Charles van Rooyen	<ul style="list-style-type: none"> - Presidents, Cabinets, Ministers of Defence, Chiefs of General Staff and Navy Chiefs need to explain the critical importance of maritime issues and the requirement for adequate resources to their national parliaments, and if need be to the regional defence and security mechanisms. - Get the media on side of the seafarers. - Educate the public. In their role as taxpayers, it is critical that they are on board.
10. Considering the Legal definition of Maritime Piracy, do you think there are shortcomings therein	David MacKay	The legislation is presently too loose and needs a tighter definition to describe what has become a very serious and life threatening crime. Its economic

<p>and if yes, which are they and how do you suggest we go about altering the legislation to compensate for them?</p>		effects are also catastrophic.
	Capt Chris Chambers	I would recommend that the nations who have been prosecuting pirates convene through Working Group 2 of the CGPCS in order to compare challenges and results in piracy prosecutions.
	Captain (French Navy) Jerome BERTRAND	<p>I think that the legal definition of maritime piracy is adapted enough to address the issue, and it's to be highlighted that maritime piracy is one of the threats that the UNCLOS authorize to counter with most extended legal possibilities.</p> <p>The international legislation seems adapted to me; it's often the national transcription of that legislation that are to be amended and improved, while bilateral or multilateral judicial agreements are to be developed in order to facilitated international cooperation.</p>
	Gichiri Ndua	I don't know the definition of maritime piracy
	Harjit Kelley	No.
Maj (Rtd) N D Maru	The international codified definition of the Offence of piracy in UNCLOS was arrived at after years of deliberation and consultation. In my opinion, given the customary rules of the sea, the definition is complete. However, the challenge lies with domestic legislations enacted by member	

		states and different jurisdictional approaches. The problem therefore is domestic and not with the definition of the offence.
	Jane Elizabeth Wanyonyi	There are shortcomings. Start with political cooperation, legitimacy of government leadership and fight lawlessness then tackle the others.
	Professor Ademun Ademun-Odeke	<ol style="list-style-type: none"> 1. We need to move away from outdated customary law definitions such as piracy jure gentium in favour of a more modern and truly international definition. 2. Piracy should not be confused with armed robberies against ships, which are new creatures. 3. We need to identify kidnapping for ransom as a separate offence. 4. Finally Maritime Security in implementing SUA should be clearly demarcated from piracy. <p>There is need for distinction between piracy in municipal courts and those giving rise to international jurisdictions</p>
	Dr. Paul Musili Wambua	The definition in UNCLOS has been found to be insufficient. However this has been corrected by the definition in Art 3 of the SUA Convention which lists several maritime offences and requires states (under Art 6) to create the same under their domestic laws. Art 11 requires states to either prosecute or extradite offenders.
	Capt (Rtd) Frank	Yes, there are shortcomings. The

	Charles van Rooyen	main problem lies in the fact that international law does not factor in failed states that are incapable of giving effect to their responsibilities. Although it may be a long and laborious process, relevant sections of UNCLOS will need to be revised.
11. Is there anything else you would like to mention with regards to the objective of this study?	David MacKay	I wish the study every success and feel that more public attention is needed to help address this scourge.
	Capt Chris Chambers	
	Captain (French Navy) Jerome BERTRAND	None.
	Gichiri Ndua	The objective is very noble though the product will come in a bit late
	Harjit Kelley	No.
	Maj (Rtd) N D Maru	
	Jane Elizabeth Wanyonyi	I support the findings of this study which could be disseminated to leader governments to address the recommendations made.
	Professor Ademun Ademun-Odeke	Admirable but wishing you luck as I do not hold out much hope on the AU or anybody solving the problem unless there is a complete change of approach. In my humble view, we need to focus on global approach rather than piecemeal solutions.
	Dr. Paul Musili Wambua	None.
Capt (Rtd) Frank Charles van Rooyen	Two issues: Legal prosecution of pirates captured off failed states' maritime zones needs to be clarified. Why on earth can the International Criminal Court not deal with pirates? Pirates are, after all, alleged international	

		<p>criminals.</p> <p>The maritime anti-piracy patrols need to be coordinated through all navies operating the same doctrine - very disparate at present.</p>
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