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Maritime Security Concerns of the East African Community (EAC)

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Abstract

The maritime domain of the East African Community (EAC) is affected by a number of maritime security threats, including piracy, armed robbery against ships and an ongoing maritime border dispute between Kenya and Somalia. Neither the EAC nor its member States have long-term and holistic maritime security policies. Maritime security is dealt with in an ad-hoc, case-by-case manner, mainly by individual States. This study investigates why the EAC is not taking a leading role in regional maritime security governance. The study has found that the lack of regional maritime security policies, more importantly maritime security strategy, and the absence of a maritime institutional framework at the Community level, appear to be major setbacks to regional maritime security efforts. Additionally, the EAC depends on its member States, inter-regional and international maritime security programmes which currently offer a significant boost to EAC maritime security governance. Nonetheless, an EAC maritime security strategy would formalise and customise all of these strategies to match with regional maritime security needs. Moreover, it would provide a forum for communication and cooperation among maritime stakeholders.

Keywords: East African Community, maritime security, Kenya, Tanzania, maritime security strategy.

Introduction

The East African Community (EAC) is an Intergovernmental Organisation (IGO). It currently comprises the States of Burundi, Rwanda, Kenya, South Sudan, Tanzania and Uganda. Kenya and Tanzania are the only coastal States of the Community; the rest are landlocked. Through Kenya and Tanzania, the EAC has a coastline of approximately 1,950 kilometres and an Exclusive Economic Zone (EEZ) of 383,541 square kilometres (UNCTAD, 2005; Hamad, 2016). In its current state, the EAC is not a federation. However, according to Article 5(2) of the EAC Treaty, the ultimate goal of the Community is to have a federal government (political unification). The EAC's ambition to be a supranational organisation is propelled by, among others things, a desire to be able to enforce regional peace and security mandates, including maritime security initiatives.

At the EAC level, the issue of maritime security has not yet received proper attention despite being a prerequisite for social, economic and security integration.

In the absence of centralised maritime security policies at the EAC level, unilaterally and on some occasions bilaterally, Kenya and Tanzania are taking leading roles in the safety and security of their own maritime domains, which also form the EAC maritime domain. However, given the sheer size of the EAC maritime domain, Kenya and Tanzania struggle with the security threats within it. As an alternative, the EAC and its member States use some of the international and inter-regional maritime security strategies/projects to fill the existing vacuum.

The 2050 Africa's Integrated Maritime Security Strategy (2050 AIMS), the Djibouti Code of Conduct (DCoC), and the Maritime Security Programme (MASE) are good examples of wide-scale security projects applicable in the region. To a large extent, these maritime security projects strengthen maritime security governance of the EAC, and are currently the first line of defence against common maritime security threats in the EAC maritime domain. However, the EAC needs to customise these strategies to fit into

its own maritime security parameters and considers them as a bench mark for creation of its own set of maritime security policies.

This study investigates why the EAC is not taking a leading role in regional maritime security governance. In order to answer this question, there are three subsidiary questions to be explored. Firstly, is the centralised maritime security strategy going to be a permanent solution to the EAC's maritime security issues, compared with individual efforts? Secondly, does the existing institutional framework within the EAC supports maritime security initiatives? Lastly, how do states' overlapping memberships in different IGOs improves the EAC maritime security governance?

The study is expected to be add impetus to efforts by the EAC to speed up peace and security integration in the area of maritime security. The study starts by conceptualising maritime security and the maritime domain, followed by important discussions concerning the EAC maritime domain and its maritime security challenges. It continues by discussing maritime security governance in the EAC and makes a case for an EAC centralised maritime security strategy. Lastly, inter-regional maritime security cooperation is discussed.

Maritime security and the maritime domain in context

At its most simple, maritime security relates to all the measures a country or region as a whole takes to prevent unlawful acts in the maritime domain (Gilpin, 2007). As defined by Bueger (2015) "maritime security refers to threats that prevail in the maritime domain including maritime inter-state disputes, maritime terrorism, piracy, trafficking of narcotics, people and illicit goods, arms proliferation, illegal fishing, environmental crimes or maritime accidents and disasters". The 2050 AIMS regards the maritime security threats and vulnerabilities in the African Maritime Domain (AMD) as including: trans-national organised crime in the maritime domain, illegal fishing, over-fishing, marine environmental crimes, natural disasters and climate change, strategic communications systems, vulnerable legal frameworks, and maritime safety issues.

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

(US National Strategy for Maritime Security, 2013). For economic reasons the 2050 AIMS regards Africa's inland waters (rivers and lakes) as part of the maritime domain and includes them in the "blue economy", and considers them as important pillars of Africa's economic and social development (2050 AIMS). According to the 2050 AIMS, a blue economy is a sustainable way of using Africa's maritime domain to improve African citizens' wellbeing while also significantly reducing marine environmental risks, as well as ecological and biodiversity deficiencies. It also recognises that the African continent has a coastline of about 26,000 nautical miles from its 38 coastal states including islands (2050 AIMS).

Potgieter (2013) regards Africa's maritime domain as "all areas and resources of, on, under relating to, or bordering on an Africa sea, ocean, or other African lakes, inter-coastal and inland navigational waterways". The nexus between maritime security, the maritime domain and the blue economy is complex and highly interrelated. Without a secured maritime domain, the notion of the blue economy cannot be implemented. Equally, a secure maritime domain needs a holistic ocean governance strategy that brings together neighbouring states and non-state actors in a war against common maritime security threats. Roe (2013) sees ocean governance or maritime governance as "overarching structures and relationships that direct, control and influence the shipping and ports sector". As a part of ocean governance, maritime security governance, at its most simple, relates to all the measures a country or a region as a whole takes to prevent unlawful acts in the maritime domain (Gilpin, 2007).

The EAC maritime domain: Its importance and security challenges

The EAC maritime domain

Because the EAC is not yet a federation, the maritime domains of Kenya and Tanzania constitute what is considered to be the EAC maritime domain. As can be seen in Table 1 and Figure 1, the EAC maritime domain has a coastline of approximately 1,950 kilometres and an EEZ of 383,541 square kilometres. Potentially, in the future, there is the possibility of extending the EAC's maritime zone, taking the outer limit of the continental shelf (OCS) to 350 nautical miles. This extension would give the Community an extra 163,520 square kilometres of maritime waters (UN, 2009; UN, 2012).

However, this depends on how the Kenya-Somali maritime border dispute as discussed in section 3(e)

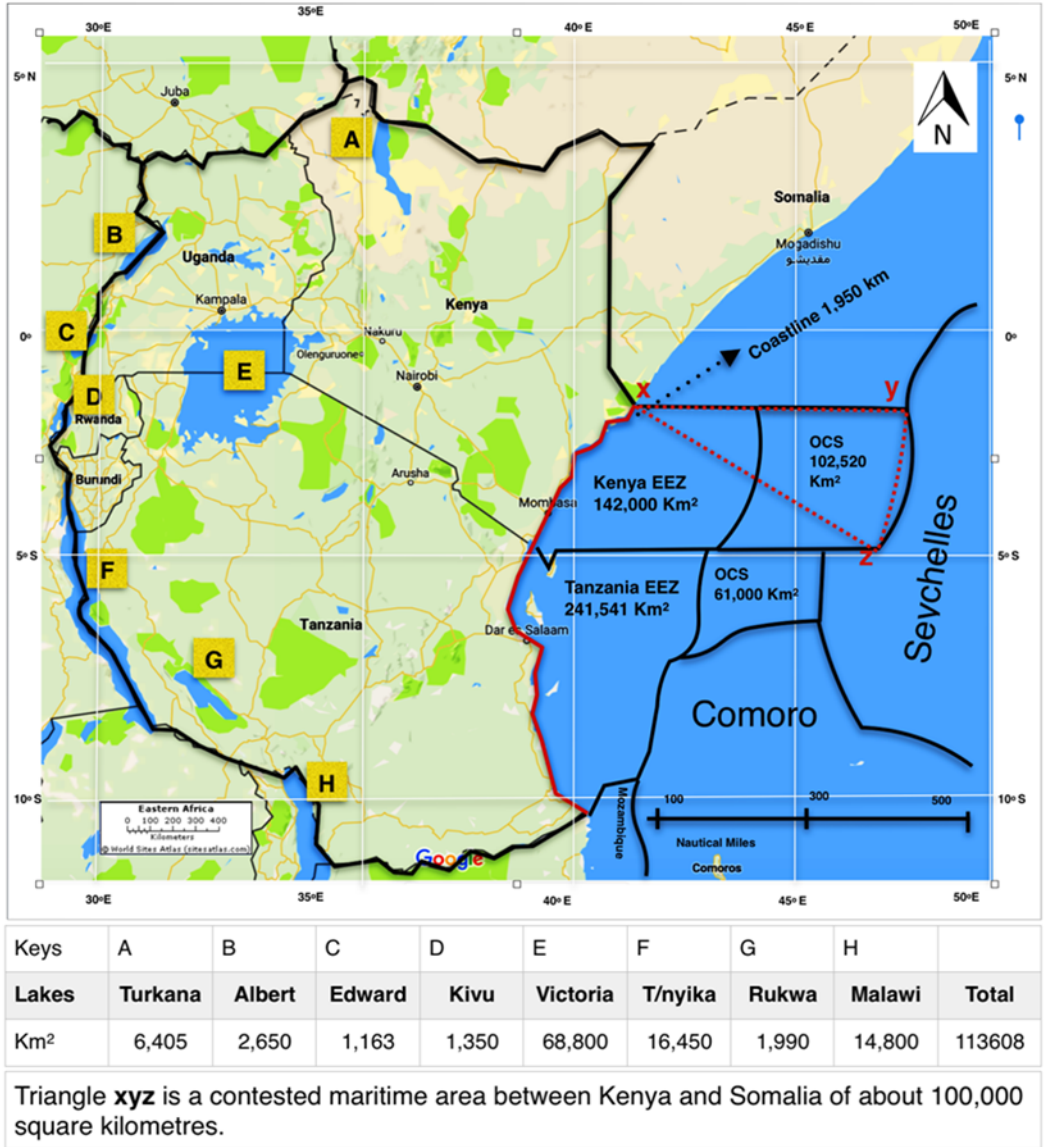


Figure 1. The EAC maritime domain. Map modified from Google maps.

will be resolved, and how Tanzania will settle its internal disagreement with the semi-autonomous island of Zanzibar over extension of its territory to the OCS. As noted, for economic reasons, inland waters are part of the broad meaning of maritime domain in Africa. For that reason, inland water bodies marked A to H in Figure 1 (excluding those of South Sudan), give the EAC approximately an additional 114,000 square kilometres of waters for economic development.

Importance of the EAC maritime domain

The globally connected economy relies on the oceans and adjoining littoral zones for fishing, access to natural resources, and the movement of much of the world’s commerce (Herbert-Burns, 2012). Insecurity in the maritime domain has a huge impact on the cost

of production, transportation, exporting and importing. Therefore, effective governance of the maritime domain has become essential for economic growth (the blue economy), the marine environment, human security and national security. The EAC region is no exception to this and on average, over 95% of EAC international trade is seaborne and passes through Kenyan and Tanzanian seaports.

In recent years, there have been large oil and gas discoveries in the EAC maritime domain. These discoveries offer potential energy security assurance to the Community and the wider region. In addition, these discoveries have made the world superpowers, such as the EU, China, India and the US, see the EAC as a potential future energy supply region. However,

Table 1. Area of the EAC maritime domain. Source: (Ruitenbeek *et al.*, 2005; UNCTAD, 2005; Hamad, 2016)

States	EEZ Km2	Outer Continental Shelf Km2 (possibility)	Total	Coastline
Kenya	142,000	102,520	244,520	536
Tanzania	241,541	61,000	302,541	1,414
Inland waters	-	-	114,000	-
Total	383,541	163,520	661,061	1,950

their race for the EAC's resources has potentially turned the EAC into a complex security region. China, for example, is currently investing in mega ports in Mombasa and Lamu in Kenya, and Bagamoyo in Tanzania. This is in addition to massive transport infrastructure investments in the region through the EAC's Central and Northern corridors infrastructure upgrade projects. In this regard, China directs its assistance to the individual EAC's member states with no recourse from the EAC. This is however, widely seen at the EAC level as a Chinese polarisation policy over its members in economic and security integration areas (Mathieson, 2016).

The port projects will see regional ports' capacity and efficiency increase which is important to support the regional blue economy initiatives. More importantly, they will guarantee China a steady supply of energy and will probably also act as logistical hubs for its ambitious navy. In the meantime, the US Navy has for a long time been stationed at Manda Bay in Kenya. In situations like this, the EAC's intervention is absolutely necessary. The EAC does not seem to recognise the escalating polarisation of its members. This is surprising given that in accordance with Article 123 of the EAC Treaty, Kenya and Tanzania will be subject to the unified defence, security and foreign policies of the EAC federation.

This area of the Indian Ocean is also a vital Sea Lane of Communication (SLOC) between Europe and the Middle and Far East. In 2013, approximately 2,500 international and 1,500 local flagged vessels called into EAC seaports. EAC seaports serve numerous landlocked states, including Malawi, Zambia, Congo, Democratic Republic of Congo, Burundi, Rwanda, Uganda and South Sudan. The regional ports are also used for international humanitarian missions for the Great Lakes region, including Somalia. Mombasa Port, for example, has been named the UN's major humanitarian supply gateway in the Eastern African region

(KPA, 2014). According to Potgieter (2008) "over 1.5 million Somalis are depending on humanitarian aid, 80% of which are delivered by sea through Kenyan ports". Despite all of these factors, the EAC maritime waters are not safe and are vulnerable to a number of conventional and non-conventional maritime security threats.

Maritime security challenges in the EAC maritime domain

In Africa, the issue of maritime security receives little attention from policy makers (Bueger, 2013). This makes the African maritime domains especially vulnerable. The notion of maritime domain negligence applies to Kenya and Tanzania, as well as the EAC. Most African states, including those in the EAC, are unable to govern their own maritime domains. Instead, they depend on international partners' security projects for their security. This is in addition to a heavy reliance on outside naval forces to protect SLOC. However, because of financial constraints, many of these international maritime security projects are of short duration. The EAC maritime domain is mostly affected by piracy, armed robbery against ships, the smuggling of illicit drugs, small and light weapons, human trafficking, maritime terrorism, illegal fishing, environmental destruction, and a Kenya–Somali maritime border dispute (Bichou *et al.*, 2013). There is also a possibility of the EAC shore to be hit by maritime terrorism (Barnett, 2013; Hamad, 2016).

Piracy and armed robbery at sea

Kenya and Tanzania are among the Eastern and Southern African States directly and indirectly affected by Somali-based piracy. Pirates operating in EAC maritime waters have their roots in the neighbouring failed state of Somalia. In fact, the failed state of Somalia is the main source of all of the EAC's maritime security issues (Vrey, 2013). According to the International Maritime Bureau (IMB), there were 16 reported incidents of piracy and armed robbery against ships

in Kenyan and Tanzanian maritime waters between 2009 and 2015.

Although the epidemic of Somali piracy seems to have stabilised, the piracy problem in the region has been paused rather than ended. This is because the root causes of Somali piracy have not yet been completely addressed. Among these strong root causes are: the absence of the rule of law in Somalia, insecurity, a high rate of unemployment, poverty, and illegal fishing in Somali waters (Beri, 2011). On 14 March 2016, a Sri Lank flagged ship was hijacked off the Somalia coast, most likely by Somali pirates (BBC, 2017). This marks the first successful hijacking since 2012 and it is a clear indication that the piracy problem is not over yet.

It is difficult to quantify the exact economic costs of piracy in the region. Nevertheless, the economic costs incurred are significant. For example, piracy has negatively impacted maritime trade, tourism, and, in extreme cases, national stability, mostly in Kenya. In 2011, it was estimated that piracy cost the EAC's economy about US\$ 1.8 billion, which is approximately 2% of regional GDP. The economic costs of piracy to Kenya's and Tanzania's economies account for 3.26% and 1.28% respectively (Hamad, 2017). These costs are based on revenue lost in the tourism sector and extra shipping costs to and from the region. Ultimately, the whole burden goes down to the final consumers through commodity price inflation. The evidence suggests that, in 2012, the prices of commodities imported into the region by sea rose by 10% (Otto, 2012; EAC, 2014; CMA CGM, 2011; Bowden & Basnet, 2011; World Development Indicator, 2016; EAC, 2015a).

In 2013, a report issued by the World Bank and Interpol ruled out pirate cash inflows as being behind Kenya's real-estate boom, as was previously believed (World Bank, 2013). The report further clarified that, on average, the ransom money raised through piracy is approximately \$59 million per annum. Even if the entire sum of piracy money was invested in Kenya's real-estate sector, which is worth \$491 million per annum, it could not influence the industry as was previously thought. Obviously, while the report denies the influence of piracy money on Kenya's real-estate sector, it does not rule out the possibility of piracy money entering Kenya's economy. The report does, however, acknowledge that piracy money is behind the boom of khat 'miraa' business between Kenya and Somalia. Because khat is an unmonitored business in Kenya, it

provides an open door for maritime criminals, including 'kingpin' piracy financiers, to launder dirty money.

Maritime terrorism

While there have been no purely maritime terrorist attacks in the EAC's waters, such attacks are far from impossible (Hamad, 2016). Al-Shabaab, a declared enemy of the EAC, probably lacks the necessary maritime combat capabilities to deliver maritime terrorist attacks on its own. Nevertheless, al-Qaeda, of which al-Shabaab is an affiliate member, might be able to deliver some attacks from the sea, probably at the Dar Es Salaam and Mombasa ports (Barnett, 2013). A nexus between Somali piracy and al-Shabaab is not something to be ignored completely (Leonard & Ramsay, 2013). Although the evidence does not support the idea that the two are working together, there is a chance that al-Shabaab might use pirates to deliver attacks at sea (Leonard & Ramsay, 2013; Hamad, 2016).

The EAC ports appear to be easy targets for terrorist attacks. This is due to slack security measures at the region's ports. For example, two audits of the port of Mombasa highlighted glaring shortcomings that make the premier port a soft target for terrorist attacks (AllAfrica, 2016). The audits were carried out independently; one by the US Government through the Anti-Terrorism Assistance Office, and the second by the Kenya Maritime Authority.

Following the audit reports, the Kenyan Government improved security at the port of Mombasa with assistance from the US Government (Vrey & Mandrup, 2015). Security improvements were made in electronic surveillance systems and physical security systems, as well as by increasing the police and security presence at the port. Nonetheless, there are some concerns that the security measures taken are not tough enough to scare terrorists. While security appears to have been improved at Mombasa Port, corruption is yet another problem that might weaken its security (Akwiri, 2016).

Illegal, unreported and unregulated (IUU) fishing

The EAC's fishing industry contributes about 4% to regional GDP. It is estimated to directly support over 5 million people, with a total annual catch of 878,000 tonnes of fish (EAC, 2015b). However, illegal fishing is seriously affecting the industry. Illegal, unreported and unregulated (IUU) fishing refers to illegitimate fishing practices (Drammeh, 2015). Due to its sheer size, the EAC maritime domain remains largely un-policed all year round. This is partly explained by the lack of

proper surveillance mechanisms and the inability of law enforcement agencies to patrol maritime waters. The law enforcement agencies do not have enough resources and lack the technical capability to stop illegal fishing boats, which are mostly foreign vessels.

IUU fishing in the EEZ of the EAC costs Kenya and Tanzania US\$111.4 and US\$220 million per year, respectively (Razafandsonana, 2014). While these statistics represent lost revenue in fishing, they only represent 15% of regional illegal fishing data. 85% of regional fishing revenue comes from inland waters, where illegal fishing is extremely common. This is due to the lack of effective control measures in place to address the problem and the failure of previous initiatives. Nevertheless, IUU fishing does not appear to be a priority for the respective authorities of the EAC member states (Anderson, 2012). The low level of cooperation among the law enforcement agencies of Kenya and Tanzania in the Indian Ocean is among the factors leading to the escalation of IUU fishing in the region.

Kenya–Somalia maritime border dispute

There is an ongoing maritime border dispute between Kenya and Somalia (ICJ, 2016). Following the failure of a number of diplomatic talks that attempted to end the conflict amicably, Somalia filed a case to the International Court of Justice (ICJ). Both the parties in this dispute are state parties to the UNCLOS, and both countries have recognised the court's jurisdiction, which is a prerequisite for cases to continue. However, Kenya challenged the case with two objections. On the one hand, it argued that the ICJ do not have jurisdictional mandate to hear his case. On the other hand, it argued that the conflict should only be resolved amicably based on the 2009 Kenya-Somalia Memorandum of Understanding (MoU) which was signed by both parties on 7 April 2009.

On 2 February 2017, the ICJ issued its preliminary ruling in favour of Somalia. The ICJ confirms that it has the necessary mandates to hear the case and that the Kenya-Somalia's MoU does not restrict amicable resolution of the border conflict to the MOU only. The escalation of the Kenya–Somalia maritime border dispute is largely due to the possibilities of there being significant oil and gas reservoirs and massive fish stocks within the disputed area.

The triangle 'XYZ', shown in Figure 1, is the disputed area that stretches over 100,000 square kilometres. The line marked 'XZ' is what is proposed by Somalia as the

maritime border. Somalia's claims are based on its own jurisdictions, in particular law no. 37 of 10 September 1972, which defines Somalia's territorial seas as spanning 200 nautical miles. The law was reaffirmed on 24 July 1989, when Somali ratified the United Nations Convention on the Law of the Sea. Kenya argues that the current sea boundary with Somalia, the line marked 'XY', which follows a perpendicular line to the land boundary into the sea, should stand because the Tanzania–Kenya sea border has the same shape. It has to be remembered that the Kenya–Somalia maritime border is also an EAC maritime border. For this reason, the conflict directly affects the security of the EAC and the wider region. For example, the border conflict could also affect Manda Bay, where Kenya has a naval base, Camp Simba. In this area, the US operates the Combined Joint Task Force and a joint counter-terrorism initiative for the Horn of Africa. More importantly, the blue economy activities in the disputed area are likely to be put on hold for a long time while the case is at the ICJ.

Inter-regional Cooperation

It is practically impossible for any country to secure its own maritime domain unilaterally. Even world super-powers such as the US, the UK, China and Russia find it difficult to govern their own maritime domains without some sort of regional or international cooperation (Walker, 2015). This is because the seas do not have physical fences that would prevent criminals crossing borders while chasing their prey. Criminals such as pirates and illegal fishermen can easily cross maritime borders and jurisdictions to evade capture and prosecution.

This is also relevant in the case of the EAC. The individual States of the EAC appear to be no match to the above-mentioned transboundary maritime security threats. There is little maritime policy and no maritime security policies to govern the regional maritime waters. In the absence of any formal maritime security cooperation at the EAC level, individual States opt for bilateral agreements with the world's superpowers, such as the US, China, India and the EU. They also rely on inter-regional maritime security projects and strategies, such as the Maritime Security Programme (MASE), the DCoC and the 2050 AIMS. This includes surveillance, response and on some occasions law enforcement services offered by the international navies stationed at the Horn of Africa.

The international institutions such the UN, IMO, AU and IGOs such as EU and SADC offer significant assistance to the EAC in governing its maritime waters.

To a large extent, these institutions and their security projects have helped the EAC States to raise maritime security awareness by attracting political will from heads of state, achieving capacity building through training, and raising maritime domain awareness through cooperation. Nevertheless, for the EAC as a region, and federation to be, these security projects were never designed to address its maritime security challenges completely. In the future, the EAC needs to step up and assume a leading role in regional maritime security governance, at least in the same manner it has already done on issues of land security.

The Maritime Security Programme (MASE)

The MASE programme, which was adopted on 7 October 2010 in Mauritius, is jointly run by the EU and the United Nations Office on Drugs and Crime (UNODC). It is, however, entirely funded by the EU and collectively implemented by the IGAD, the COMESA, the EAC and the IOC. The objective of the programme is to strengthen the maritime security capacity of Eastern and Southern Africa and the Western Indian Ocean (ESA-IO) region in order to implement the Regional Strategy and Action Plan Against Piracy

(European Commission, 2013). As can be seen in Table 2, each of these RECs has specific roles to fill. These roles are commonly known as results or components.

The EAC is responsible for ‘result two’ which is dealing with final treatment of pirates. This is one of the long-term missing elements in the war against piracy. Result two is responsible for capacity building of national/regional legislative and infrastructural capability in relation to the arrest, transfer, detention and prosecution of pirates. This is what is known as ‘piracy legal finishing’. This is an underdeveloped area in the war against maritime security threats in the ESA-IO region. This is perhaps one of the reasons why the EAC has been granted a large fund to spearhead the legal finishing part of the MASE project. Unless pirates are prosecuted, they will continue to repeat the crime. Through the MASE and the DCoC, Kenya and Tanzania have been receiving tremendous capacity building training aimed at upgrading maritime law enforcement. This includes upgrading countries’ judiciary capacity. Most of the training was conducted through the UNODC; this included constructing, prefabricating and renovating regional prisons.

Table 2. MASE’s components.

Result/ component	Focus	Funds (Euros)	Organisation
1	Somalia inland action	7.8m	IGAD
2	Developing or strengthening the national/ regional legal, legislative and infrastructural capability for the arrest, transfer, detention and prosecution of pirates	11.6m	EAC
3	Regional capacity to disrupt the financial networks of pirate leaders and their financiers	5.4m	COMESA
4	National and regional capacity for maritime tasks and support functions	9.5m	IOC
5	Regional coordination and information exchange	1.3m	IOC
	Start-up of the MASE	2.0m	
	Total	37.5m	

Both Kenya and Tanzania have received training in information technology relating to investigation, evidence handover and general capacity building for prosecutors and judges. In 2009, Kenya entered into agreements with the EU, the US, the UK, Canada, China and Denmark for the transfer of suspected pirates for prosecution and trial. Through the training and agreements, Kenya has been able to prosecute 164 pirates; 147 were convicted as of December 2015 (UNODC, 2015). As of July 2012, Tanzania has prosecuted 12 pirates, of whom six were convicted. Unlike Kenya, Tanzania only recently agreed to accept pirates brought into the country by the authorities of other states. This has been seen by the international community as yet another step forward in the war against pirates.

The Djibouti Code of Conduct (DCoC)

Established on 29 January 2009, the DCoC is the International Maritime Organisation's (IMO) long-term strategy to suppress Somali-based piracy and armed robbery against ships. The DCoC provides a forum that makes regional maritime security cooperation and communication possible. Kenya and Tanzania are two of the 21 State members to the DCoC. Unlike the MASE programme, where the EAC has a leading role in component two, the EAC is not involved in this project in any way at the Community level. The DCoC plays a significant role in the suppression of Somalia-based piracy and armed robbery. This includes delivering national and regional training, enhancing national legislation and information sharing, and building counter-piracy capacity. In 2015, the DCoC mandates were amended to include other trans-national maritime security issues, such as marine terrorism, environmental crime, human trafficking and IUU fishing (IMO, 2015). These amendments make the DCoC a more useful maritime regime, as state parties can now align it with the 2050 AIMS mandates.

Two out of the DCoC's three piracy information sharing centres (ISCs) are in Mombasa, Kenya, and Dar Es Salaam, Tanzania. The Mombasa ISC serves Mauritius, the Maldives, Kenya, Somalia (south central) and the Seychelles. The Dar Es Salaam ISC serves Comoros, South Africa, Réunion, Tanzania, Madagascar and Mozambique. Having these two ISCs within the EAC is a big advantage for the region, as they constitute a crucial part of the regional institutional framework that supports the war against maritime security threats. The DCoC is entirely financed by the IMO through the DCoC trust fund. None of the African states in general, and the EAC states in particular, is donating

to the trust fund, despite them being the main recipients of the services offered by the DCoC.

In 2015, Djibouti, Kenya, Tanzania and Yemen signed the Mombasa Protocol in an attempt to strengthen the governance and long-term sustainability of the DCoC's ISCs and the Djibouti Regional Training Centre (DRTC) (EU, 2013). The overall aim of the Mombasa Protocol is to unite all the DCoC's State parties and reinforce their cooperation on an information sharing, training, and financial burden sharing level. This is one step forward taken by those pioneering states in an attempt to own regional maritime security governance with minimal assistance from donors. Nevertheless, the willingness and ability of the Protocol's State parties to share the financial burden of running the ISCs and the DRTC are big challenges. While the success of the Mombasa Protocol is expected to supplement the security governance needs of the EAC to a large extent (mostly on information sharing and capacity building), it is not intended in any way to remove the requirement for the EAC to govern its own maritime security.

The 2016 Djibouti Declaration on Maritime Safety and Security in the ESA-IO region stresses the importance of the regional organisations (the COMESA, the EAC, the IGAD and the IOC) supporting other international maritime security projects/strategies in the region, such as the DCoC, the MASE and the 2050 AIMS. This includes extension of regional maritime security mandates to inland water activities, as suggested by the Declaration's decisions C14 and C15. However, the Declaration does not rule out the need for regional organisations to play a leading role in their region in a specialised way. For example, the Declaration's decision C3 reaffirms the need for regional organisations (such as the EAC) to implement their maritime security strategies in line with the 2050 AIMS and the AU Maritime Transport Charter (Djibouti Declaration, 2016).

Reduction of High Risk Area off the Somalia Coast

As shown in Figure 2, in December 2015, the shipping industry's High Risk Area (HRA) off the Somalia coast was reduced by 55% (DRYAD Maritime, 2015). This signifies a significant reduction in piracy, thanks to the DCoC initiatives, the shipping industry's Best Management Practices 4 (BMP4), and international navies' patrols in the HRA. This is good news for shipping companies, as they can now reduce the operating costs associated with the additional security measures



Figure 2. Reduction of the high risk area (adapted from Dryad Maritime, 2016).

suggested by the BMP4. Ultimately, the costs of doing international trade in regions such as the EAC will fall. However, the security threat in EAC maritime waters still remains high because part of its maritime waters is still within the new HRA. The reduction of the HRA will result in a significant reduction of international naval operations in the region. The European Union's EUNAVFOR Operation Atalanta, the NATO's Operation Ocean SHIELD and the Combined Maritime Taskforce (CTF 151) are the three big naval operations patrolling in the HRA. While Operation Ocean SHIELD's mandate end on 31 December 2016, Operation Atalanta's mandate ends on 31 December 2018. While there is a high chance that CTF 151 will continue to operate in the area, but not in perpetuity. For that reason, there will be a gap to be filled by regional organisations such as the EAC. This is going to be a challenge for the EAC, as one part of its maritime waters is outside the HRA while the other is inside.

The 2050 Africa's Integrated Maritime Strategy (2050 AIMS)

The 2050 AIMS is the African Union's latest attempt to reclaim Africa's maritime sector for the development of African citizens. The overall objective of the 2050 AIMS is to improve the quality of life of African citizens through sustainable governance of Africa's maritime domain. This is also referred to as Africa's blue economy concept. The 2050 AIMS stresses the need to balance the sustainability and economic potentiality offered by Africa's maritime domain. On the one hand, the strategy is concerned with sustainable fishing and the dangers posed by climate change and pollution. On the other hand, the strategy insists on good ocean governance while exploring ocean resources, including offshore oil and gas, tourism, fisheries and shipping activities. Section 8 of 2050 AIMS stresses that maritime security, as a subset of maritime governance, is a prerequisite for a thriving blue economy.

Among the important features of the 2050 AIMS that are relevant to the EAC's security and economy are the strategy's philosophy of linking landlocked states and inland waters to the blue economy concept. The EAC holds four out of Africa's 16 landlocked States. In addition to Malawi and Zambia, the EAC ports serve 50% of Africa's landlocked States. The EAC has two important inland water bodies that are crucial for the implementation of the blue economy concept. These are Lake Victoria, Africa's largest lake, and Lake Tanganyika, the second largest freshwater lake in the world by volume, and the second deepest. Lake Victoria alone supports the livelihood of about 24% of the EAC's citizens. Fishing in Lake Victoria accounts for 0.5%, 2.5% and 2.6% of the GDPs in Kenya, Uganda and Tanzania respectively.

Part 28 (j) of the 2050 AIMS requires African states to resolve the remaining maritime border disputes, including those on rivers and lakes, peacefully and in accordance with UNCLOS provisions. The concern is that the UNCLOS jurisdiction does not apply to the inland waters. In the EAC, for example, there are two long disputed borders in inland waters. On the one hand, there is a border disputed between the EAC's State parties, Kenya and Uganda, over Migingo Island in Lake Victoria. Although the disputed island is only 50 metres long, it has a significant economic impact for both sides. This is because the waters surrounding the island are rich in Nile perch fish, which are a significant source of foreign earnings for both countries. Kenya's fishing industry, for example, currently harvests 180,000 metric tonnes annually, 92% of which is from Lake Victoria. On the other hand, there is a Malawi-Tanzania border dispute in Lake Malawi. The disputed area potentially contains oil and gas reserves. Both sides to this conflict have put their oil and gas explorations on hold to allow for resolution of the border dispute.

These two border disputes in the EAC have hampered economic developments in the region, including fishing and oil and gas exploration. Kenya, Malawi, Tanzania and Uganda are all state parties to the UNCLOS, but they cannot use it to resolve their inland waters' problems. Instead, they have placed their hopes in regional organisations such as the EAC, the COMESA, the IGAD and the SADC, in which they all have some overlapping memberships. The EAC has already taken many steps to put the blue economy concept into practice. These include increasing the capacity and efficiency of the ports at Dar Es Salaam and Mombasa, and constructing two new mega ports in Lamu, Kenya, and

Bagamoyo, Tanzania. There are also improvements in transport infrastructure being implemented through the Central and Northern Corridor Integration programmes. While maritime security is a prerequisite factor for the blue economy concept to prosper, there are no tangible maritime security initiatives in the EAC that would guarantee the security of regional maritime waters in the absence of the international community.

Maritime security governance of the EAC

Why does the EAC need its own maritime security strategy?

As noted, the EAC intends to form a federal government. In the future and in accordance with Article 123 of the EAC Treaty, the EAC's States will be subject to the unified defence, security and foreign policies of the EAC federation. The unified security policies will include those applicable to maritime security. One way for the EAC to demonstrate that it is in control of maritime security governance is through a maritime security strategy. This is however, currently lacking. An EAC maritime security strategy is needed to provide a common framework or platform for relevant authorities at the national and Community levels to promote communication and cooperation.

Although a maritime security strategy alone cannot deter criminals from the EAC's maritime waters, it is nonetheless an important starting point for raising maritime security awareness before seeking political will and resource allocation from member States. The need for the EAC to have its own maritime security strategy is further fuelled by its ambition to form a federal government through the political unification of its member States. The EAC's proposed federal government is expected to, among other tasks, take a leading role in regional maritime security governance. This can only be achieved through the creation of common maritime security policies, including a maritime security strategy that will be applicable across the region (Gilipin, 2007).

A regional maritime security strategy identifies regional priorities that require cooperation and creates an institutional framework on which states and regional institutions can interact. It also identifies gaps in capacity and creates a capacity building mechanism. More importantly, the EAC maritime security strategy would allow the States and the EAC to allocate the few resources they have into the most important areas, hence creating efficiency and effectiveness in maritime security governance. Above all,

the seriousness and ownership of maritime security efforts of a regional organisation are conveyed through it having a strong, practicable and affordable maritime security strategy.

Unfortunately, the EAC has so far not addressed its own regional maritime security governance. The issue of maritime security governance has been left entirely with the individual coastal States of Kenya and Tanzania. This is in contrast with other IGOs, such as the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC). These IGOs have leading roles in regional maritime security governance, and this includes having maritime security strategies. Creation of the EAC’s maritime security strategy will also have to comply with the 2050 AIMS’ short-term goal, among others, which requires member states and regional organisations to have their maritime security strategy set in place by the end of 2018.

If the EAC is to have a strong and practicable regional maritime security strategy, the member states would be required to have their own maritime security strategies in first place. Through these strategies, States would identify areas where they need assistance and cooperation. Unfortunately, none of its members has a maritime security strategy. This is one of the reasons why individual coastal states find it difficult to cooperate, despite attempts. Any regional maritime security strategy created without incorporating members’ security needs will not work.

Overlapping security interests of the EAC in other regional organisations.

The EAC is one of the five Regional Economic Communities (RECs) of the Eastern Africa, Southern

Africa and the Indian Ocean (EA-SA-OI) region. Other RECs are the Common Market for Eastern and Southern Africa (COMESA), the Indian Ocean Commission (IOC), the IGAD and the SADC. As shown in Table 3, the EAC’s member States have overlapping memberships in the ECCAS, the IGAD, the SADC and the COMESA. These RECs have different maritime security priorities, as indicated in their own maritime security strategies, which do not necessarily align with those of the EAC. Nevertheless, in the area of maritime security, the IGAD and SADC are the most important RECs whose maritime security initiatives benefit the EAC and are, in fact, the first line of defence measures in the EAC maritime waters. Because the EAC’s States are also state parties to the maritime security strategies of the IGAD and the SADC, the jurisdictions of these strategies are technically applicable to sections of the EAC maritime domain, and is beneficial to the EAC region despite some rivalry amongst the RECs, especial in the energy sector.

Tanzania is the only EAC member with SADC membership. Both the SADC and the EAC have a single currency as one of their major objectives in economic integration. This will make it difficult for Tanzania to decide on which agreement it should align with. Tanzania’s membership of the SADC has, for a long time, been a flashpoint between Kenya and Tanzania. It appears that Tanzania’s membership of the SADC contributes to the slow pace of the EAC’s economic and security integration (Hoestenberghé *et al.*, 2016). Tanzania, however, argues that the SADC has more to offer in terms of security and economic integration than the COMESA and IGAD and insists that it will not give up its SADC membership.

Tanzania is perhaps correct because the SADC already has a maritime security strategy. While the SADC’s strategy imposes obligations on Tanzania, it is well

Table 3. Overlapping memberships on the EAC States.

	EAC	SADC	COMESA	IGAD	ECCAS
Burundi	Yes	No	Yes	No	Yes
Rwanda	Yes	No	Yes	No	Yes
Kenya	Yes	No	Yes	Yes	No
South Sudan	Yes	No	No	No	No
Tanzania	Yes	Yes	No	No	No
Uganda	Yes	No	Yes	Yes	No

Table 4. Conventions/agreements and strategies ratified by 2016.

	Kenya	Tanzania
1982, United Nations on the Law of Sea Convention	√	√
1974, International Convention for Safety of Life at Sea (SOLAS)	√	√
1978, SOLAS Protocol	×	×
1988, SOLAS Protocol	×	×
1988, Convention for the suppression of unlawful acts against the safety of maritime navigation (SUA Convention)	√	√
1988, SUA Protocol	√	×
2005, SUA Protocol	√	×
Convention for the Prevention of Pollution from Ships (MARPOL 73/78)	√	√
1972, London Convention	√	×
1996, London Convention Protocol	√	×
2007, Nairobi Convention	√	√
1979, SAR Convection	√	√
2009, Djibouti Code of Conduct	√	√
2011, SADC Maritime Security Strategy	n/a	√
2050 Africa's Integrated Maritime Strategy	√	√

supported by an institutional framework. COMESA, IGAD and the EAC lack anything like this. Furthermore, political will and financial commitments in terms of investments in naval assets and infrastructure are higher in the SADC than they are in the other RECs. For example, Mozambique has spent €200 million on ordering 30 fisheries patrol ships from France (Louw-Vaudran, 2014). The South African navy is upgrading its fleet by acquiring three offshore vessels and three in-shore vessels in an attempt to boost its maritime capability. The MoU between South Africa, Mozambique and Tanzania (all SADC members) led to an operation, called 'COPPER', in the Mozambique Channel, in response to piracy activity. In this operation, Tanzania and Mozambique contributed almost nothing, with South Africa financing the entire operation, including the deployment of its naval vessels in the region. None of the other RECs has had such a collaborative maritime operation.

While the EAC appears to be unprepared to establish its maritime security strategy, the IGAD has already finalised its draft Integrated Maritime Security Strategy 2030 (IMSS-2030) and an associated action plan, which will impose some responsibilities on Kenya and Uganda (IGAD, 2015). This is yet another incentive for the EAC to step-up its involvement in the maritime security arena. Without an EAC maritime security strategy that can take into account all of these difficulties, the future of maritime security governance in the EAC will remain in the hands of individual States and international donors.

Maritime institutional framework in the EAC

In maritime security, an institutional framework is defined as the administrative mechanisms that are required to establish systems of coordination and cooperation between all the actors that have roles in ocean governance (Roe, 2013). In fact, the institutional

framework is an interface among the different institutions/agencies that have roles in maritime security. Article 9 of the EAC Treaty gives the Community powers through the EAC Secretariat to establish institutions and organs to run the Community's affairs independently from its member states. Equally, it is worth noting that the lack of organs and institutions in the previous versions of the EAC Treaty was among the main reasons that led to their collapse.

Currently, there are eight semi-autonomous institutions within the EAC. These are designed to give the Community independence in the running of its business. These institutions are: The Civil Aviation Safety and Security Oversight Agency (CASSOA); the East African Development Bank (EADB); the East African Health Research Commission (EAHRC); the East African Kiswahili Commission (EAKC); the East African Science and Technology Commission (EASTECO); the Inter-University Council for East Africa (IUCEA); the Lake Victoria Basin Commission (LVBC); and the Lake Victoria Fisheries Organization (LVFO). Unfortunately, there is no institution dedicated to regional maritime affairs that could be allocated maritime security mandates. This is an important omission, and it suggests that the EAC has so far done very little to boost regional maritime security in the region. The lack of a maritime institution prevents the EAC from being more focused on how to address the maritime security issues of the region.

Furthermore, and as argued by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), peace and security efforts are being hindered by the weak institutional structures within the EAC Secretariat, in particular the lack of a directorate for

peace and security and the inadequate implementation of regional strategies and standards within the partner countries (Heidtmann, 2014). While the EAC is not taking a leading role in maritime security, it has already had some leading security roles in the Lake Victoria area and on regional safety and security in the aviation industry.

An institutional framework depends on a legal framework and enforcement capability. This is because what is happening at sea is always a reflection of either positive or negative law enforcement capability on land.

Legal framework

Legislation is perhaps the first step in setting up a maritime security governance strategy. At a national level, this involves a process of developing a number of maritime polices and laws that can be used to govern the maritime affairs of a state. As can be seen in Table 4, Kenya and Tanzania have ratified and domesticated several important regional and international maritime conventions in an attempt to strengthen their own maritime security governance, as well as facilitate regional maritime security cooperation. Mostly, these conventions are reflected in civilian maritime security legislation, which are Kenya's Merchant Shipping Act of 2009 [2012], Tanzania's Merchant Shipping Act of 2003, and Zanzibar's Maritime Transport Act of 2006.

At the EAC level, there are a number of instruments that give the EAC the necessary powers to implement peace and security initiatives in the region. None of them, however, has strong links to regional maritime security. More importantly, the EAC lacks a maritime security strategy. The following are the EAC instruments that have peace and security initiatives:

Table 5. Number of vessels and total displacement of the EAC navies compared with some other navies in the EAS-IO region.

	1986	1985	2010	Total displacement tonnage (2010)
Kenya	8	16	6	4,660
Tanzania	22	21	10	870
Total (EAC)	30	37	16	5,530
South Africa	46	33	23	42,840
Djibouti	3	3	5	152
Seychelles	6	5	3	568
Mauritius	3	4	5	1,988

- a. The EAC Treaty: The Treaty gives the EAC Secretariat guidelines on how to handle the peace and security issues of the Community. The main peace and security provisions in the Treaty are: articles 5 (objectives of the Community), 123 (common foreign policy and security), 124 (regional peace and security) and 124 (defence). However, the implementation of articles 123, 124 and 125 largely depends on how the EAC integrates with a view towards political unification.
- b. In 2006, the EAC adopted the Strategy on Regional Peace and Security, and seven years later, in 2013, the Protocol on Peace and Security was also adopted. The ratification of these two security instruments has been perceived as a big step forward towards regional peace and security. Nevertheless, the Strategy does not include maritime issues. The Strategy scarcely recognises that terrorism, piracy, the proliferation of illicit small arms, and cross-border crimes are threatening regional peace and security. The meanings of these threats have been used in the Strategy, but it does not necessarily reflect the threats as they present themselves in maritime waters. For example, while the 15th goal of the Strategy is to develop mechanisms to combat security challenges in the Lake Victoria area, the Strategy simply ignores the importance of having the same initiative at the level of the EAC maritime domain. This is yet another reason to support the hypothesis that the Strategy is largely meant for land security issues. The biggest setback of the Strategy lies in its failure to establish its own institutional framework. This is unusual for a security instrument of this size.
- c. The EAC Protocol on Co-operation in Defence Affairs: The Protocol came into force on 24 December 2014. It has specific provisions on cooperation among the EAC's defence forces. For example, it requires visits and exchanges of information, joint military training, joint operations and technical cooperation among the region's defence forces. This is yet another excellent move made by the EAC towards regional security. There are even some initiatives to establish an EAC standby force that would cooperate with the AU's standby force. If this initiative survives, it will give the EAC a means to organise a standby naval force to protect and defend key Lines of Communication, at least in the region. This move would perhaps reduce,

to a large extent, dependence on international naval forces to protect regional maritime waters. Unfortunately, the cooperation of the regional navies in the EAC is facing many difficulties. While there have been approximately six successful joint military training programmes and operations in other units of the regional defence forces, there is no evidence to suggest that regional navies have done the same (Jacobesen & Nordby, 2013). Equally, it is worth noting that in the EAC, the navies of both Kenya and Tanzania have warfare and maritime law enforcement roles.

There are a number of reasons to explain why it is so difficult for the EAC's navies to work together in maritime security:

- Lack of maritime security strategies at national levels that would identify hard security areas for cooperation that would need presence of navies, and those soft areas which do not, and establish institutional frameworks for smooth cooperation.
- Strong sense of states' sovereignty and the roles of navy.
- Naval capacity and political ideology might be other factors keeping these regional navies apart. Kenya is the West's ally, whereas Tanzania has a long-term friendship with China. Even their naval assets and training follow this pattern. Both the Kenyan and Tanzanian navies have recently upgraded their naval hardware. In 2012, for example, the Kenyan navy added a brand-new, Spanish-made destroyer to its fleet. More recently, Tanzania's navy added two Chinese-made offshore patrol boats to its young fleet. These assets, in addition to naval assets shown in Table 4, make Kenya one of the best equipped and most powerful navies in the EAS-IO region, with its superiority deriving from the quality and quantity of its naval assets and the level of expertise of its personnel.

Enforcement mechanisms

Law enforcement measures comprise all the processes and actions that enable the application of the law and ensure that it is observed. Having good law alone does not guarantee good law enforcement. There must be capacity building to enable maritime law enforcement agencies to enforce law at sea. The maritime law enforcement of a coastal state has its roots on land.

If, for example, pirates are being caught and released because of a lack of jurisdiction to try them, this would further fuel the escalation of piracy. As with other African states, weak law enforcement increases the vulnerability of Kenya and Tanzania, as well as the EAC region, to maritime security threats.

Gaps in enforcement mechanisms

The main challenges facing the EAC's maritime law enforcement agencies are: lack of coastguard units, mistrust, out-dated laws and policies, incapacity of the law enforcement, and a lack of clear coordination from the EAC.

Currently, none of the EAC's coastal States has a coastguard unit. Individually, the Kenyan and Tanzanian navies undertake most of the coastguard responsibilities of their nations. The absence of coastguard units in the EAC is one of the obstacles in the war against the maritime security threats in the region. This is due to the fact that regional navies do not have many law enforcement powers in numerous sensitive areas, such as illegal fishing and the trafficking of narcotics and humans.

Like other young African navies, the Kenyan and Tanzanian navies are characterised by a lack of sufficient assets and financial resources to conduct surveillance all year round. Kenya's navy is the only African naval force to be deployed in Somali waters to support the African Union Mission in Somalia (AMISOM). It also supports Operation Linda Nchi, which is Kenya's security initiative against the threats posed by al-Shabaab militants. These two operations stretch Kenyan navy capacity to the limit, leaving little capacity to support law enforcement efforts in its maritime waters.

Mistrust between Kenya and Tanzania has its roots in economic rivalry, history and differences in the political ideologies between the two States. Kenya and Tanzania are the EAC's biggest economies, holding about 40% and 26% of the EAC's GDP respectively. While economic and historical rivalry fuel mistrust when it comes to maritime law enforcement, on land these two states have excellent cooperation, thanks to the EAC's Protocol on Military Cooperation. Although the Protocol's mandate covers all military areas, for various reasons it is difficult to apply at sea. Trust always starts with dialogue and is a function of time and stability. Over time, actors working together on different security projects will get to know each other better and gain confidence in each other. However, this would require

the EAC's intervention. Ultimately, these states are unable to share important intelligence information, which is a prerequisite for successful piracy operations.

Conclusion

The EAC needs to develop a holistic approach to dealing with its own maritime security. This should include the establishment of strong regional maritime security policies, a maritime security strategy, and an institutional framework to support regional maritime security governance at both the national and the Community levels. The EAC needs to mobilise its member States, particularly Kenya and Tanzania, to have their own maritime policies, including maritime security strategies that will recognise their needs and the areas in which they require cooperation. At the EAC level, there should be a maritime security strategy that will take into account all of the member states' needs, including security challenges in the inland waters, as well as inter-regional needs in maritime security cooperation. The EAC's maritime security cooperation, which should be formalised by a maritime security strategy, should start with soft security issues, such as the marine environment, illegal fishing and all aspects of human security. This will allow enough time for state parties to build confidence and trust before gradually moving to hard security issues that will require the presence of navies. While awaiting the creation of its own set of maritime policy and maritime security strategy, the EAC should make the best use of the existing inter-regional and international security projects to govern its maritime waters. The challenges caused by issues such as the overlapping security interests of the EAC with those of other regional organisations, the lack of a maritime institutional framework in the EAC, over-reliance on inter-regional security programmes (such as the 2050 AIMS, the DCoC and the MASE), and leaving the entire responsibility for maritime security to individual states, would be greatly reduced if the EAC were to formalise its maritime security policies in the form of a maritime security strategy.

Recommendations

While the EAC is not yet a federation, it should detach the notion of maritime security from its political unification process. The execution of maritime security does not require the EAC to possess all the attributes of a supra-national organisation, as is widely believed in the region.

The EAC should create its own maritime security strategy, which should include state and regional

needs while aligning with the 2050 AIMS and the 2016 Djibouti Declaration. The strategy should be based on a holistic approach by including state and non-state actors in the development processes. This should include accommodating landlocked states' demands, resolving inter-regional rivalry, and avoiding making the strategy a military doctrine. This will also avoid the need for the Community to have another security instrument specifically for inland waters.

The local community should be engaged in the process of maritime security. This would also be a source of intelligence for the information-gathering process that will support the information sharing centres in the region.

The EAC should think of including neighbouring states such as Mozambique, Comoros and Seychelles in its maritime security cooperation. This will help to reduce the existing inter-regional rivalry among regional organisations and member states within the EAS-IO region.

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