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IIRE Journal of Maritime Research and Development

Maritime sector has always been influencing the global economy. Shipping facilitates the bulk transportation of raw material, oil and gas products, food and manufactured goods across international borders. Shipping is truly global in nature and it can easily be said that without shipping, the intercontinental trade of commodities would come to a standstill.

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MARITIME POLICY AND STRATEGY FOR AFRICAN COASTS

Dr Fikile Portia Ndlovu¹

Abstract

In modern African coastal and all other waterborne navigation, there have definitely been success stories and also harrowing moments which have raised concerns about the safety of coastal personnel, cargo and the ship. However, it is important to highlight that there is a continent wide, purposeful maritime strategy and vision for industry participants engaged in trade, commerce, supply chain and logistics. This paper seeks to highlight Africa's ambitious and achievable Maritime Strategy, the policy around the vision of the strategy and how its goals will be achieved, and the significant bodies committed to making this possible for the African Continent. The maritime industry is global in nature, and it is every important to perceive the African maritime policy voice more and more going forward and to consider data on the relationship between the African continent, the future success vision the continent has for itself and the international treaties to make the industry successful for its participants around the globe. What is evident in this paper is that just like the silver mines of Laurion saved ancient Greece by providing great funding for the Greek navy, military power on the waters is still going to be the force behind making any coasts safe and successful for maritime trade and other ocean and water related positive activities, therefore collaboration in the exercising of such power by the developed world with African States is still going to be the secret sauce of global equitable, peaceful trade African navigation. This conversation is even more important as scientists inform us that the Nubian tectonic plates are moving in Somalia to reveal another ocean in Africa, even though these phenomena will take many more millennia.

Keywords: Maritime, Insurance, Risk management, Controlled Tonnage, Arbitration, IMAA.

1. INTRODUCTION

Africa is one as a continent and this is demonstrated, not only geographically but also through various African regional developmental community bodies such as the African Union (AU). The AU being the biggest regional body represents that oneness of the African continent while having due regard to the sovereignty of each of the member nations Africa represents. The goals of the

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AU of supporting peaceful trade and economic development are not too different from the economic goals of the Western post-World War II Bretton Woods Conference, which was created to among other things, to enable creating a dynamic global economy in which ‘peoples of every nation will be able to realize their potentialities in peace and joy increasing the fruits of material progress of an earth infinitely blessed with natural riches.’ The trade and economic prosperity of the African continent and the world is directly linked to shipping and the rules that support safe navigation of vessels. These are the aspects that will be deliberated on in this paper, particularly with the very serious commitment by the AU to Africa’s Integrated Maritime Strategy (The 2050 AIM Strategy).

Since Africa, for the purposes of this paper, is represented by 55 member States of the AU, although some States may be facing suspension because of ongoing conflicts, it is important to note the following points. It would be unmanageable to account for all single African country’s navigation rules and regulations in an in-depth manner without writing a tome. This paper is not intended to be a thorough tome on all African navigation rules. Therefore, a more contextually practical approach of discussing the African perspective on navigation will necessitate looking at a systematic selection of some African nations and their commitments to international rules of navigation. It is submitted that this approach will capture the African perspective in a more appropriately succinct manner for a work of this nature. The system employed in the selection of nations (for the sake of sampling) to be discussed in this paper will involve a consideration of regulations around topics such as warship passage, nuclear waste carrying ships passage, and the controversies around navigating, for example, areas on African coasts such as the now historical Libyan ‘Line of Death’ in the Gulf of Sidra.

Parts of this paper are also intended to inspire further discussion and more reading about African navigation in similar papers, books, and other material from research all over the continent and world so that African navigational interests are discussed specifically with the unique attributes of the continent being noted. See, for example, Figure 1 below, tonnage and vessel registration statistics by Clarksons Research for the United Nations Conference on Trade and Development (UNCTAD), placing Africa in Developing Economies grouping which does not have much tonnage when compared to nations such as Germany, Japan, and Greece.

The second point to note that while we will be considering navigation from an African continental perspective, ship registration and vessel ownership is influenced by factors that may create uncertainty as to the true numbers of African vessels since vessels can easily change nationalities

through the practice of registering vessels under flags of convenience (FOC) States and other dynamic sale and purchase agreements of ships. Further, navigation around Africa is greater than just merchant shipping or vessel ownership, there is also aspects of port services (consider for example, the importance of the Port of Kamsar in Guinea which is such an important bauxite bulk port that a special vessel, the Kamsarmax ship, was created with specific reference to that port), naval activity, fishing, cruise shipping and private pleasure cruising with aspects of national safety and other environmental concerns which form part of the navigation exchange of ideas.

Figure 1 Table: Sources: UNCTADstat (UNCTAD, 2020a); Clarksons Research.

Table 1 | Merchant fleet registration by group of economies

Group of economies	2015				2020			
	Tonnage		Vessels		Tonnage		Vessels	
	(Millions of dwt)	Share in world (Percentage)	(Thousands)	Share in world (Percentage)	(Millions of dwt)	Share in world (Percentage)	(Thousands)	Share in world (Percentage)
World	1 753	100.0	90	100.0	2 069	100.0	98	100.0
Developing economies	1 333	76.1	59	65.6	1 607	77.7	67	68.4
Developing economies: Africa	230	13.1	6	6.9	294	14.2	7	7.6
Developing economies: America	450	25.7	16	17.8	446	21.5	16	16.3
Developing economies: Asia and Oceania	654	37.3	37	40.9	867	41.9	44	44.4
Transition economies	11	0.6	4	4.2	12	0.6	4	4.1
Developed economies	405	23.1	25	28.1	447	21.6	26	26.1
Selected groups								
Developing economies excluding China	1 255	71.6	55	61.0	1 506	72.8	61	62.1
Developing economies excluding LDCs	1 104	63.0	53	58.5	1 316	63.6	60	61.2
LDCs	229	13.1	6	7.1	291	14.0	7	7.2
LLDCs	5	0.3	1	1.2	3	0.1	1	1.1
SIDS (UNCTAD)	279	15.9	8	8.8	361	17.5	9	8.9
HIPCs (IMF)	220	12.6	5	5.8	284	13.7	6	6.3
BRICS	106	6.1	9	10.0	134	6.5	12	12.0
G20	527	30.0	45	49.2	612	29.6	50	50.5

Note: Commercial ships of 100 GT and above. Figures refer to the beginning of the year.

The second point to note that while we will be considering navigation from an African continental perspective, ship registration and vessel ownership is influenced by factors that may create uncertainty as to the true numbers of African vessels since vessels can easily change nationalities through the practice of registering vessels under flags of convenience (FOC) States and other dynamic sale and purchase agreements of ships. Further, navigation around Africa is greater than just merchant shipping or vessel ownership, there is also aspects of port services (consider for example, the importance of the Port of Kamsar in Guinea which is such an important bauxite bulk port that a special vessel, the Kamsarmax ship, was created with specific reference to that port), naval activity, fishing, cruise shipping and private pleasure cruising with aspects of national safety and other environmental concerns which form part of the navigation exchange of ideas.

FOC States allow the owner of the ship and the ship not to be registered for shipping business in the same country therefore the question of, 'How many African nations own ships?' is a question we can assess from these examples of FOC States (Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Bolivia, Cambodia, Cayman Islands, Comoros, Cyprus, Equatorial Guinea, Faroe Islands (FAS), French International Ship Register (FIS), German International Ship Register (GIS), Georgia, Jamaica, Lebanon, Liberia, Malta, Madeira, Marshall Islands (USA), Mauritius, Moldova, Mongolia, Myanmar, Netherlands Antilles, North Korea, Panama, Sao Tome and Príncipe, St Vincent, Sri Lanka, Tonga, Vanuatu) but these will not always show the actual African ship ownership strictly speaking and this must be taken into account when conversing about African ship related matters. This also means that, indeed true to the nature of the rules of the shipping world, and the 1982 United Nations Convention on the Law of the Sea (LOSC) African economic activity, trade, navigation and other maritime activity can be given priority in many ways to support its study and development, but it cannot strictly be studied in isolation from the rest of the world.

Further, in the age of wildly viral, 'fake news' and other wild conspiracy theories, we all have to become even more discerning about the literature we consume, this is why by way of introduction, this paper submits that it is intended to create a positive discourse that encourages understanding between Africa and the rest of the world with respect for just rules of law.

There are many theories on the prosperity building and proposal for mutually beneficial peace proposed under the ideals of Pan-Africanism such as those discussed in the book, *Peacebuilding in the African Union: Law, Philosophy and Practice* by author Jeng Abou where the author discusses the history and theories on the development of African unity ideals, a necessary reading among many others to help us understand the international political and trade environment Africa has grown and continues to grow under. This paper therefore concentrates more on the legal aspects of supporting African trades and navigation in the modern world on the basis that rules of law must maintain justice.

Justice must be strived for even though it is not possible to find a utopia or a perfect government or intergovernmental structure. This is because human nature does have a dark side and the strong can bully the weak. It is also possible for big organizations to be looked at suspiciously as crimes, unfairness, competing interests or genuine misunderstandings find their way into many aspects of life all over the world. Therefore, equitable rules of justice are reinforced and advocated in this

paper on aspects of navigation focusing on practices that relate specifically to advancing participation, representation and supporting economic stability from the African perspective.

2. VESSEL NAVIGATION AND AFRICAN NATIONS

When discussing navigation in Africa, we must specifically mention each of the nations that are directly affected by their commitment to the African Union big picture and maritime strategic road map as mentioned in the 2050 AIM Strategy. However, it must be noted that the current list can be affected by changes such as AU sanctions against a listed country by the organization because of political activities such as military coups or nonpayment of AU dues. Further, navigation is directly linked to aspects of geography. By mentioning involved nations specifically as they currently appear the paper is emphasizing and impressing upon their commitment to the AU maritime policy while keeping in mind each nation's attributes in terms of access, control and management of their waterways, whether inland or coastal. Further, since we are discussing African matters of unity and maritime cooperation, we must have a general introduction to nations involved specifically so that we have a wider understanding of who the stakeholders are in African navigation are and which nations have committed to a better maritime future for Africa. Not only that, but it is also important to note how these listed nations through the AU are expected to cooperate in terms of military strategy and intelligence gathering to assist in maritime regional threats. Of course, it would be impossible to discuss every single nation in an in-depth manner in this paper, however starting with this general acknowledgment list of stakeholder nations and many excellent tomes on the subject, the discourse of African navigation is herein placed in the forefront.

Some of the nations are coastal States, having control directly over various vital international waterways while some nations are landlocked but also participating on the oceans as part of the international trading community and signatory members to various navigation related treaties. It is important to mention here that statistically the geographic location of an African nation in relation to the sea and port access shows that coastal nations tend to have a higher developmental growth than landlocked countries, from research provided by Africa Country Benchmark Report (ACBR) however according to the same report, there are countries such as Rwanda, Uganda and Zambia seem not to be held back by their landlocked geographical location. Exchange of ideas and sharing sound business practices which has helped these landlocked nations is possible under

the AU forum. It is clear that coastal locations and waterways has a direct impact on the development and economic success of African nations, now let us consider navigational rules.

3. NAVIGATIONAL RIGHTS OF AFRICAN STATES IN MARITIME ZONES

The study of African commitment to the conventions that regulate navigation in this paper will start with the LOSC, 1982. The LOSC, has specific navigational rights provisions for States concerning internal waters, territorial seas, rights in what is termed the Exclusive Economic Zone (EEZ) and navigational rights in the high seas, where public international law and regulation is paramount. We will look into these provisions in order to understand how these rights operate in African navigation while also considering important aspects of national security and control such as the application of Cabotage laws.

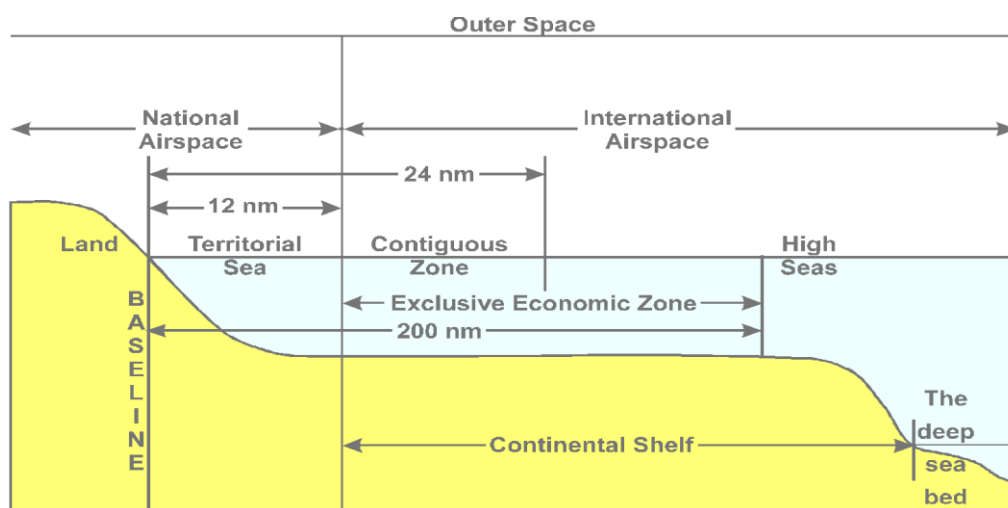
The provisions of the treaty clearly show first of all the extent to which a coastal State has control and it can be summarized as seen in Figure 2 below capturing Articles 2 to 14 of the LOSC. Many countries in the AU are not only part of the LOSC but also signatory to Part XI of the LOSC which established the International Seabed Authority (ISA) which superintends the process of exploration and exploitation of mineral resources in the 'Area' of the sea which is beyond the territorial waters of any nation but forms part of the common heritage of mankind (the high seas). Therefore, according to the LOSC treaty, this means that there is no nation that does not have an interest in the high seas since it is the common heritage of mankind. As we are discussing navigational rights of African States it is therefore essential to establish that the existence of the high seas and the laws pertaining to its navigation, exploration and exploitation also means that African navigation is not a matter that is solely and exclusively only on the shoulders of coastal States.

Article 138 of the LOSC further provides that all actions taken in the Area must bear in mind peace, justice, international interests, cooperation and understanding which means that there is no room for tolerating misuse of navigational aids, unlawful passages and other illicit conduct.

With regard to internal waters: African States who are signatory to the LOSC are guided by the spatial geography of their location of their baselines and continental shelves in terms of the guidance provided by Figure 2 above which captures the essence of the rights to control and navigation of internal waters. Article 8 is also particularly helpful in expressing the rights of

nations over their territorial waters by expressly providing that, with the exception of Part IV (which deals with the special circumstances concerning archipelagic States), ‘waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.’

Figure 2 - Illustration: Source (2021). New Zealand Environmental Guide Illustration of LOSC, 1982



The Sovereignty of a nation over its internal waters that form part of the territory of a nation is well established within those national laws of many African States. For Example, Algeria, through its Constitution, international law and national (including customs) law exercises, ‘sovereignty over all the different areas of the maritime spaces that fall under her jurisdiction’ through the authority conferred and vested in the Wilayas (authorized political subdivisions and powers) national municipalities. Exercising powers over internal waters may take the form of making laws regarding that area, signing treaties that may impact that territory, protecting biodiversity, regulating various fishing and other types of maritime activities, maritime security and surveillance.

There are several examples of African States have adopted this approach particularly as independent modern nations who are taking charge of their own coasts and resources, see for example, Angola’s Maritime Zones Act 2010 (MZA) and the Angolan rules on ship navigation within territorial and internal waters which must comply with Angola’s rules on ship registration and the Presidential decrees on navigation promulgated in 2016. Beninese law, a further example also shows adherence to international law as captured under its Water Management Law of 2010 defining internal waters in which Benin exercises sovereignty as waters, ‘constituted by standing water and running water on the surface of the soil and ground water upstream of the baseline used for measuring the breath of territorial waters.

From these few examples of African States, we see an express involvement, representation and maritime power being exercised by the States over their own territories with a general express commitment to international law.

With regard to the territorial waters, we can say that internal waters are part of a state's territory therefore in a sense we have already established some understanding as to the power of an African State over its territorial waters. However, in order to have a sound comprehension of the language of the LOSC which goes further in defining internal waters and the general sea as demarcated or delimited by a special distance as shown in Figure 2, above. The African State which is signatory to the Convention recognized that, 'Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.' Articles 3 to 16 of the Convention go further to explain aspects of territorial waters such as roadsteads, reefs, ports etc., all which fall under the control of the Coastal State with a few exceptions, such as those explained in Article 15 where, for example, States have opposite or adjacent coasts. Coastal States have sovereign power over territorial waters subject to permitting rights of innocent passage over areas that have subsequently become part of territorial waters, after the application of Article 7 baselines delimitation but were not deemed to be such traditionally.

With regard to the Exclusive Economic Zone (EEZ), Figure 2 above is most helpful in creating a visual summary of what forms part on a State's EEZ. More importantly, the EEZ is defined as, 'The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.' Every African State has rights in the EEZ as described under Article 56 of the Convention, which includes, inter alia, 'sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone...' With regard to navigation, this means that African States can permit any vessels to pass through and navigate their EEZs provided such passage is done within the international comity rules of the Convention as well as giving respect to the rights of the Coastal State in exercising their article 56 rights in the EEZ.

With regard to cabotage laws, it is essential to make mention of cabotage as a practice among nations. Cabotage is a practice that is a type of protectionism as it allows the domestic market of

carriage of goods and passengers to be exclusively left to domestic companies and entities. We see this in the United States Jones Act, which provides, 'all goods transported by water between U.S. ports be carried in U.S.-flag ships, constructed in the United States, owned by U.S. citizens, and crewed by U.S. citizens and U.S. permanent residents.' In this paper the merits or demerits of this law is not the focus but that it is used as an example of showing how Cabotage works and is particularly relevant to navigation in that, an African State which does not have Cabotage will not have a protected domestic market on the use of its waterways or airways. Interestingly the State of Mauritania practices Cabotage by allowing vessels to go through the process of Mauritanisation, which means the process where the ship is conferred the right and privileges to fly the flag of Mauritania. The vessel must meet the following conditions, the vessel must be built in Mauritania or imported on a regular basis. The vessel ownership must show a majority shareholding by Mauritania nationals. What is clear is that cabotage gives these States practical sovereignty in the use of their territorial seas which can only boost navigation rights and presence on national waters.

The issue with the territorial sea as pronounced by the LOSC is that not all nations are a party to the treaty (though all nations are affected by the application of the treaty). The United States of America (USA) for example, though not a party to the LOSC due to reasons such as having to pass the treaty through Congress which can be a difficult and long process, before adoption, the USA does recognize the customary implications of the application of the LOSC.

According to the LOSC, the territorial sea of nations may produce boundary clashes of interests between nations because of the spatial geography of certain land masses and sea. These cases often end up being settled as a maritime delimitation case in an international court or the matter can be sent for arbitration at an international forum.

One of the sensitive maritime delimitation cases involved the South China Sea disputes where nations in that area, because of maritime delimitation were also having navigational problems in that area as certain vessels were simply confiscated under the suspicion of encroaching on neighboring territorial seas and finally the Philippines sought a decision.

The Philippines, launched an arbitration case against China on 22 January 2013 in *The Republic of the Philippines v The People's Republic of China* in a matter concerned with 'with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.'

In this paper we are drawing special attention to the African world which also benefits from the dispute resolutions on delimitation decisions as provided for by the LOSC. This is because African countries also have competing territorial interests. Authors Ntola and Vrancken delve deeply into the area of maritime delimitation using the Eastern Seaboard of Africa as a case study demonstrating the impact of the LOSC. In the case study, the authors consider two African case studies (Eritrea v Yemen and Kenya v Somalia) and afterwards suggest practical steps as to how to approach delimitation conflicts before they are contested in the international court.

This is particularly important on matters of African navigation and the general maritime activities in disputed areas. A country that is awarded greater rights over a territory can then exercise navigational sovereignties, control and naval activity in the area, this is why decisions from the international court are essential especially since not all nations will have a simple LOSC territorial delimitation.

Since we are dealing with African States and navigational rights, another important case which was decided on by A Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) involved a delimitation dispute between Ghana and Côte d'Ivoire as they disputed over an area of the territorial sea found to be rich in hydrocarbons.

The tribunal made a ruling following the strict application of the LOSC rules and the equidistance line applied in conclusion to this case ended up favoring Ghana. This does mean that with respect to navigation, Ghana would have the right to detain, question and even confiscate assets of offenders who still dare to exercise sovereign rights and navigational rights reserved for Ghana in that area.

It is submitted however that for African unity purposes these matters be dealt with in a diplomatic manner. Author, Maria Gavouneli, after deliberating on the rationale followed by the tribunal in its decision, submits that one of the great lessons we can glean from the Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire) Case Number 23 is that the tribunal used a methodology and approach that can be justified to be sound following the approach of other similar cases on delimitation while respecting that some adjustments and deviation from the strict interpretation of the LOSC provisions may be called for sometimes only because of the special circumstances of those cases otherwise if there are no special circumstances, the outcome can be quite predictable as clear rules

are applied. This gives hope to nations that they will be able to control the areas that belong to them rightfully.

4. HIGHLIGHTS OF REGULATIONS AND PROCEDURES FOR PASSAGE IN AFRICAN STATE NAVIGATION PRACTICE

Representing the northern areas of the African continent, the State of Morocco which has in its regulatory archives navigational law and practice in the form of Act No. 1-81 of 18 December 1980, promulgated by Dahir No. 1-81-179 of 8 April 1981, establishing a 200-nautical-mile Exclusive Economic Zone off the Moroccan coasts (the Act) in line with the United Nations LOSC serves as a helpful starting point in sampling African State navigational. Morocco is a nation geographically close to European trade partners and having rich history with links to ancient trading cities such as Carthage long before it became modern day Tunis. With regard to freedom of navigation in Morocco Article 6 of the Act in subsection 1 permits freedom of navigation for ordinary lawful uses of the Moroccan EEZ with an explicit prohibition in subsection 2 of the Article of foreign vessels from fishing, research, pollution and any other activities that go against Moroccan maritime interests.

With regard to the innocent passage of warships, the very idea of the existence of such a right has always been blanketed with controversy. On the passage of warships, the modern LOSC created by four conventions, one of which was the Geneva Convention on the High Seas of 1958, provides in its Article 17 that, 'ships of all States...enjoy the right of innocent passage through the territorial sea,' Article 19 defines what innocent passage is and shows that it is concerned with the national interests and safety of the coastal States. The modern LOSC Article 17 however differs from the 1958 Geneva Convention which had an Article 17 and 23 which required that foreign ships had to comply with a coastal State's rules and regulations, particularly warships had to comply or they could be asked to leave the territorial waters of the coastal State. This means a coastal State under the 1958 Geneva Convention could require notification from passing warships so that the State could prepare for compliance aspects from that passing warship.

Author Shao Jin, in his article titled, 'The Question of Innocent Passage of Warships' has successfully outlined the historical trends that have influenced what the innocent of warships would look like for superpower nations when compared to countries in Latin America or African

States and showed that for countries such as Morocco and others such as Yemen, Oman and Malaysia they were in the camp of nations that fought for prior notification for warships seeking to pass innocently on their States. However, Morocco today has Law 37.17 which was adopted by its Parliament on January 22, 2020 and promulgated by Dahir on March 5, 2020 acknowledging that the sovereign rights of the State are affected and somewhat limited by the Article 17 LOSC right to innocent passage so long as such passage of course is in line with peace, good order and security of Morocco.

With regard to nuclear waste ships, the nation we could look into for highlights in regulation is South Africa, representing the Southern parts of the African continent. The problem of nuclear waste dumping and the general transportation on ships of toxic materials has been alarming. According to author, J.M. Van Dyke, 'in November 1992, Japan shipped 2,200 pounds (one metric ton) of plutonium in a refitted freighter called the Akatsuki Maru from France to Japan, going around the Cape of Good Hope in Africa and then south of Australia and New Zealand before turning north to traverse the Pacific to Japan.' The implications of mishandled nuclear waste are a major concern for African States who do not wish to become a dumping ground or an accident area. The Bamako Convention is clear about the commitment to keeping Africa States safe. In South African ship navigation practice, the law to look to, inter alia, is the Marine Traffic Act 2 of 1981, particularly the regulations section which give the minister powers to promulgate on matters of warships, nuclear waste carrying ships and any other class of ships.

The South African Marine Traffic Act of South Africa not only enforces the LOSC standards but it also provides in section 14 that, '14. (1) The Minister may make regulations— (a) regulating marine traffic in the territorial and internal waters, including the prescribing of ship reporting procedures, sea lanes and traffic separation schemes for ships in general or for any class of ship or for ships carrying nuclear or other dangerous or noxious substances;' According to the latest Government Gazette proclamation 88 No. 45536 GOVERNMENT GAZETTE, dated 26 November 2021, the South African Government is working on a specific project under various nuclear energy laws of the nation. This means for ships and ship navigation and nuclear energy, the government will also deal with this on a case by case basis while taking input and comments from the public on major projects.

Representing the North-Eastern regions of Africa, it is worth discussing Libya and the controversy of the Line of Death established by former Libyan leader Muammar Qaddafi in 1973. The Line of Death drawn in the Gulf of Sidra allowed Libya's leader to claim the entire gulf as the territory of

Libya which was against the LOSC. This led to clashes with the United States who wanted to exercise various naval drills and activities in what should be international waters. There are many lessons to be gleaned from the history and modern operations of Libyan shipping and most importantly it is clear that without a strongman to enforce the Line of Death or any other controversial territorial delimitation, this means that the enforcement of the LOSC regulations is more possible. All those navigating African coasts must be aware of these examples of regulation and be able to plan their voyages with full awareness of histories and concerns of the area being sailed through while making sure that compliance with modern peaceful rules is carefully considered. What we can learn from this period in history is that only a powerful naval force may lay claims against the LOSC.

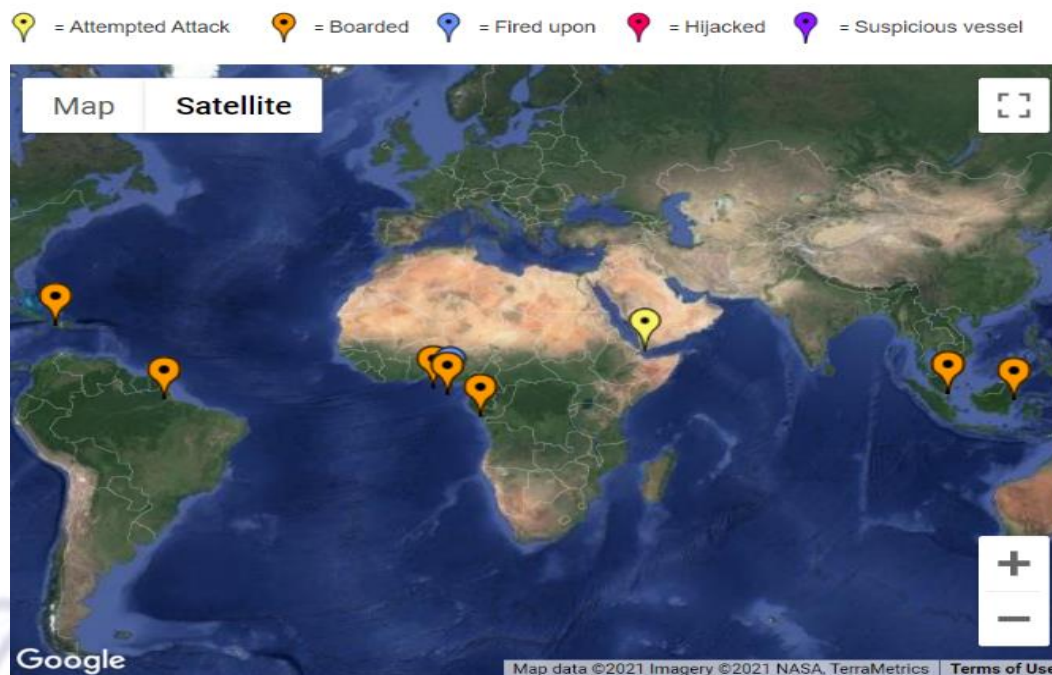
5. THE LOSC AND AFRICAN INTERESTS

Having established that the LOSC protects the territorial seas of nations in an open and declared manner, it is critical to briefly consider whether or not, the actual language of the treaty supports the modern African world. If the language does so then it is safe to conclude that African interests are represented, African nations do have a voice and can participate meaningfully in the world economic stage. If this is found not to be happening, then the international forums are there for grievances to be heard allowing pragmatic solutions to be sought. This, of course, will take commitment from the nations themselves through their leaders and citizens. It may seem daunting but it can certainly be done. Figure 3 below shows one of the biggest challenges to maritime security and navigation around the African continent. Piracy seems to have moved from the east coast to the west coast. The fact that many AU nations are parties to the LOSC, 1982, shows that there is a commitment to eradicating threats such as piracy and armed robbery to navigational interests around African coasts.

On emphasizing the point on African challenges, author Rodrigue Akohou, on his commentary on Beninese maritime laws and the law of the sea reminds us that safety in navigation will always be a multi-faceted use of the maritime space. He shows us that like most African States, legislation seems to have done all it can to address maritime safety issues but the reality is that the serious piracy crimes that keep happening have and keep harming the nation's maritime interests particularly in 2011 and 2012 but the President of the nation did not give up but set up a strategy to deal with the enforcement of Beninese powers at sea. It is submitted that strategies of this

nature can after many years be measured through data for effectiveness so that other African States and any other nations having the same problems can adopt these strategies as well and improve individual national maritime interests.

Figure 3 - Source: International Maritime Bureau (IMB) showing piracy and armed robbery hotspots live as of 02/05/2021.



Here is clear language from the LOSC that shows commitment to supporting African nations (and all nations that have attributes to those similar to African nations) in the exercise of their maritime territorial rights and navigation. It is in many parts of the LOSC, starting with the preamble. Here are the examples of such provisions:

‘Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,

Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter.’

On matters of research, exploration and exploitation which involves international navigation, it would appear that some African States are active, this is promising for the continent and indeed for the progress of world. We see nations such as South Africa, as an example, which safely and successfully sends a research vessel, the S.A. Agulhas II, which is an ice breaking class polar supply and research vessel. This is a successful endeavor by South Africa's government, through the Department of Environmental Affairs (DEA) among other research endeavors such as the same country's naval vessel, a new hydrographic vessel which is lauded as, 'a marvel of maritime engineering...a most sophisticated vessel to be built by a local company.' The Nigerian navy also launched its new hydrographic vessel showing yet another example of African coastal nations committing to the full development, navigation and management of their territorial seas. When research vessels are listed by country, African nations still fall behind by far, therefore there is still much development work to do in Africa, but the LOSC supports this.

6. LOSC AND AFRICAN NAVIGATIONAL RIGHTS

It is submitted that the LOSC is essentially about navigation, so it will be necessary to highlight a selected few provisions of the LOSC to unlock the spirit of this law on matters of navigation. There are various important provisions for navigation granted by the LOSC to nations such as the right of innocent passage on territorial seas of other nations as shown in articles 17 to 26 and article 45. Further provisions also include the rights to transit passage which form PART III of the treaty that deals with straits used for international navigation.

The treaty gives a special legal status to these areas and nations navigating in these areas and based in these territories must respect this special legal status. An example of innocent passage straits through African States would be for example, the Straits of Gibraltar which have a long history and practice that provides a connection between Africa and Europe.

It is submitted that ship-owners and companies using these special legal status passageways must aim to be socially responsible so that they do not have the appearance of making the nations in international passageways appear to be treated like observing by-standers while their sea territories continue to benefit what looks like powerful entities who sometimes even permanently pollute their territories. David Jones wrote a book on companies winning out of being socially responsible and since the LOSC is encouraging this for the African world, through the language

that research and development and other technical assistance given to African States in assistance should be encouraged this ideology should be explored and pragmatically applied without abusing the businesses that trade in developing States.

In other words, African States through the human resource capital, knowledge and skills development can go back to fishing (for example some African nations have had their fishing stocks depleted by foreign overfishing or pollution from the natural consequences of ship navigation, thus devastating local economies and subsistence farming), even if it is aqua fishing for example, be taught to build ships etc. so that there is this social responsibility partnership of mutual development between the business of shipping and the African States that oversee the shipping routes.

Here are the navigational freedoms and rights in the international Straits under the LOSC as provided for in Articles 37 and 38:

6.1 Article 38

'Right of Transit Passage

1. In straits referred to in article 37 (those described as 'straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. '), all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.
2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.’

Another important navigational provision relates to naval vessels as a representation of a nation’s sovereign immunity. Coastal nations in Africa have navies and the navigation rules for national security assets are well provided for under the LOSC.

‘The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.

However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.’

The provision above was the rule considered in the case of NML Capital Limited (Appellant) v Republic of Argentina (Respondent). In the NML case, a Cayman Island company referred to as a ‘vulture fund’ managed to secure summary judgment in terms of New York law against the Sovereign state of Argentina for defaults in the payment of government bonds and interest thereon.

This led to a subsequent naval immunity controversy when NML arrested an Argentinean naval vessel to enforce the judgment in the Ghanaian jurisdiction while the vessel was innocently invited for a military drill. However, release of the Argentine naval vessel was immediately ordered by the International Tribunal on the Law of the Sea (ITLOS) in the “ARA Libertad” Case (Argentina v Ghana).

The ITLOS made the order stating that the detention of The “ARA Libertad” Frigata was, a violation of the international obligation of respecting the immunities from jurisdiction and execution enjoyed by such vessel pursuant to article 32 of the LOSC and article 3 of the 1926 Convention for the Unification of Certain Rules concerning the Immunity of State-owned Vessels as well as pursuant to well-established general or customary international law rules in this regard; Prevents the exercise of the right to sail out of the waters subject to the jurisdiction of the coastal State and the right of freedom of navigation enjoyed by the vessel and its crew, pursuant to Articles 18, paragraph 1(b), 87, paragraph 1(a), and 90 of the LOSC.

7. DIRECT IMPACT OF TREATIES ON NAVIGATION

Navigational freedoms are granted to nations under the LOSC typically these also work directly with a number of other international rules and regulations, especially those that are ship operation related, which countries in Africa and all over the world may adopt. These rules also influence how African nations will engage with their own internal law enforcement and navigation practices over their territories.

For example, here is a list of the International Maritime Organization (IMO) treaties which are adopted by many African States. Moreover, it is imperative that these instruments must be read together with the AU's Revised African Maritime Transport Charter, 'Resolved to implement Decision N° EX.CL/Dec.358 (XI) of the Executive Council of the African Union which endorses the Abuja Declaration and Plan of Action on Maritime Transports in Africa, particularly point 1 relating to the updating of the African Maritime Transport Charter adopted in 1993.' This revised charter confirms that African States are not retreating from the position of strong commitment to the future of the African coasts.

A treaty like the COLREGS for instance, which is considered to be a very important treaty for, inter alia, collision prevention, maintenance of navigational aids, keeping safe distances and speeds, seaworthiness, all have to do with successful navigation.

Then there are treaties developed under UN agencies such as the UNCTAD and others designed to regulate private international law, such as the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules"), 1924 and others like it which deal with navigation from the perspective of ship-owner liability, exonerating the ship from errors in navigation for instance.

Then there's issues of navigation pertaining to vessels being permitted to enter or not enter certain ports because of the types of fuels they burn. For example, Emission Controlled Area (ECA) ports strictly do not permit certain fuels to be burned in their port limits and therefore a ship that is perfectly seaworthy may be prevented from navigating in ECA areas if it does not have compliant fuel or some technology on board to manage its SO_x and NO_x emissions, Sulphur and Nitrogen oxides respectively.

8. CONCLUSION

With navigation being a sensitive balance between many rules and regulations from an international and national perspective, it is clear that an African State must not only read into the AU maritime strategies on smooth and economically viable navigation but prepare to work towards reaching the highest goals in navigation management in order to position its own economy for the blue economy. Here are some recommended best practices.

An African State whether coastal or landlocked must have a strong government based Maritime or Shipping Authority that is highly active in organizations that create national and international law as well as participates in discussions on creating and adopting international law. This should not be left to big costal economies like South Africa, Kenya, and Nigeria to name just three examples.

If one studies landlocked countries like Botswana, Zimbabwe and Zambia, they do, to a limited extent, sign treaties that affect shipping, thus showing interest in the sea territory and may one day as a nation invest in the exploration and exploitation of The Area of the oceans and benefit their local economies. The theme that 'a nation still benefits and can further benefit from the sea without living next to the sea' is something that should be explored as a partnership between States in the AU to take advantage of all the LOSC supported research, educational, economic activity that is proposed as the future for the African coasts.

Other best practices is for AU nations to cooperate with one another and the international community to deal not only with suppressing crimes at sea and in ports but to actually invest in looking at actual source causes for maritime crimes so that that maliferous culture can be changed at the source. Successful economies can build successful individuals and families and thus discourage crimes.

Further, States in Africa should look at all the business activities of shipping and invest in those that have the greatest return and sustainability for their special situations. Because of shipping cycles and the dynamic nature of the global economy, mega-size ship ownership is not the only way that an African State can be successful in the maritime industry but it can be one of the businesses. What is important is that whatever business is engaged in the maritime sector must involve practices that will keep the navigation of vessels operating successfully and all international obligations of signatory parties to various treaties properly met. Finally, nations in

the AU should consider short-sea shipping and the use of inland waterways as a way to boost local economies in those regions. There are many statisticians and economists that can team up to make some of these proposals a reality.

Notes/Thanks/Other declarations (Conflict of Interest Declaration)

To the future of the oceans and all the children of the earth being supported by it. A special thanks to industry and research representatives who granted me interviews and literature to learn more about their involvement in navigational policies and maritime strategy for the African continent. The author declares that the writings in this paper were research based and the author does not represent any conflicting special affiliations nor is there any conflict of interest. The information shared here is also in the public domain herein synthesized to give educational, strategic and visionary inspiration with an intense focus on international regulatory compliance tools for readers.

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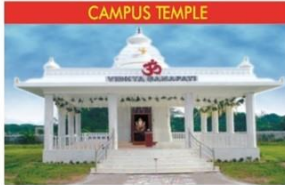


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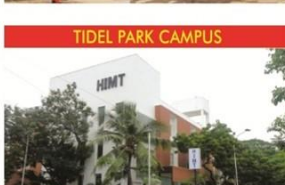
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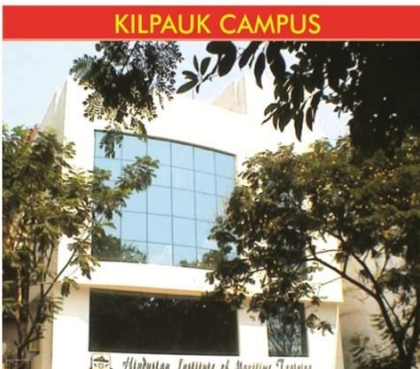


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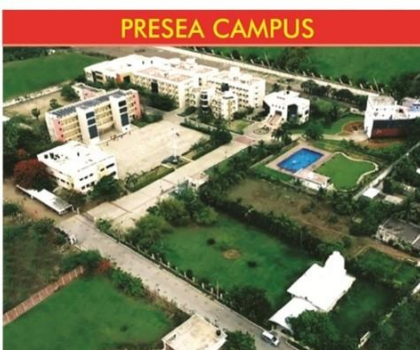


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