An examination of the Lomé Charter

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1   Introduction

Described as the common heritage of humanity by Arvid Pardo in 1967,[1] the sea has always been unanimously recognised as a source of life. Hosting most of the world's living and non-living resources, the sea has always attracted human's attention. From organised expeditions in search of new land to fishing, the sea has contributed to the economic, social and cultural development of many nations.

Despite extensive developments made in the road and air transportation systems to facilitate trade, the sea still plays an active part in international trade. According to the United Nations Conference on Trade and Development (UNCTAD), 80% of goods traded worldwide are carried by sea and as per the UNCTAD Review of Maritime Transport 2020, the volume of seaborne trade for 2019 reached 11.08 billion tons.[2]

Along with trade, the oceans and seas represent a pool of opportunity for the development of various industries, such as: fishing, tourism, the pharmaceutical

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[1]   UNGA, *Twenty-second session*, First Committee, 1515th Meeting, Doc. No. A/6695, 1 November 1967, 2, available at <https://www.un.org/Depts/los/convention_agreements/texts/pardo_ga1967.pdf> on 28 February 2021.

[2]   UNCTAD, *Review of maritime transport 2020*, 1 & 20, available at <https://unctad.org/topic/transport-and-trade-logistics/review-of-maritime-transport> on 28 February 2021.

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industry and mining. With the worldwide expansion of these industries and their resulting financial gains, the sea not only contributes to the prosperity of societies but is also being used as a means to damage the stability and welfare of countries.

Maritime piracy, illegal, unreported and unregulated (IUU) fishing and overexploitation of marine resources have become threats to the peaceful enjoyment of the sea and its resources. In order to combat those activities, the international community has taken several legal as well as institutional steps. The setting up of the International Maritime Organisation (IMO), the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) 1982, the Safety of Life at Sea (SOLAS) Convention 1974 and Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) 1988 provide states with the necessary tools to tackle these illegal maritime activities. Despite the presence of the legal and institutional frameworks, over the past decades, the number of illegal maritime activities have been increasing. On 5 February 2019, discussions during the United Nations Security Council meeting revealed that illegal maritime activities and crimes are on the rise globally. Particularly, the illegal maritime activities in the waters of the Gulf of Guinea, South Africa, Sri Lanka and Japan posed dangers on these countries' and regions' peace and security.[3]

Currently, many countries and regional blocs are converging towards this concept of maritime security in order to restore peace and stability at sea. In Africa, for instance, maritime security is expressly defined in Africa's Integrated Maritime Strategy 2050 (2050 AIM Strategy) as focusing on

> enhancing sustainable socioeconomic development, the condition that reflects the freedom of public and private entities to conduct legitimate activities such as the exercise of sovereign and jurisdictional rights, resource extraction, trade, transport and tourism, free of threats or losses from illegal acts or aggression, for an integrated and prosperous Africa.[4]

Later, in 2016, the AU adopted the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter). The Lomé Charter aims at creating a secure maritime environment, which will be beneficial for the development of countries and protection of the marine environment. This paper examines the extent to which the Lomé Charter has been able to reach these objectives and provides recommendations about how to improve its implementation.

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3   United Nations, 'High seas crime becomes more sophisticated, endangering lives, international security, speakers tell Security Council' Security Council 8457th Meeting, 5 February 2019, available at <https://www.un.org/press/en/2019/sc13691.doc.htm> on 28 February 2021.

4   Annex B, *2050 Africa's Integrated Maritime Strategy*, January 2014, available at <https://au.int/en/documents-38> on 28 February 2021.

2 Continuum on norm-setting on maritime security in Africa

Pieter Brits and Michelle Nel argue that African States have, in the past, concentrated their defence and security concerns towards the protection of the land rather than the sea.[5] During colonial times and even post-independence, the sea was used mainly as trade routes for the carriage of goods. Today, the African States view the sea as a pool of resources, and if sustainable exploited, can lead to the economic and social development of a country.

Before the Lomé Charter, there were earlier treaties concerned with regulating maritime activities within the continent's waters. In 1993, member states of the Organisation of African Unity introduced the African Maritime Transport Charter to encourage cooperation among African states to develop their maritime transport sector. Due to a lack of signatures, this Charter did not come into force.

In 2010, the Revised African Maritime Transport Charter was adopted. Just like its predecessor, the guiding principle of the Revised Charter is to promote cooperation among African states in the development of their maritime transport sector. Along with this, the Revised Charter addresses the need for mutual assistance and cooperation in maritime safety, security and protection of the marine environment.[6]

However, for the past few years, there has been a rise in maritime piracy and other illegal activities at sea. At Somalia's coast, maritime piracy has been a menace for many states in the western Indian Ocean region. Illegal activities such as: drug and human trafficking, IUU fishing or armed robbery at sea are spreading on the western coasts of Africa. Many African states have felt the urge to take the necessary steps to combat those activities at sea.

Consequently, in 2014, championed by the AU, the 2050 AIM Strategy was adopted. The 2050 AIM Strategy has the following objectives:

- Creating policies and strategies to improve maritime security in African waters
- Exploring and sustainably exploiting African maritime resources for wealth creation, socio-economic development and the well-being of Africans
- Sustainable governance of African seas and protection of the marine environment

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[5]   Pieter Brits and Michelle Nel, 'African maritime security and the Lomé Charter: Reality or dream?' 27(3-4) *African Security Review*, 2018, 226-244.

[6]   Article 3 (9), *Revised African Maritime Transport Charter*, 26 July 2010.

- Regional coordination of actions and cooperation

The 2050 AIM Strategy takes on a multi-dimensional approach towards ensuring maritime security.[7] By examining the goals of the strategy, four main concepts can be identified namely: maritime security, blue economy, sea and ocean governance, and regional cooperation.

This multidimensional approach, I argue, provides for a holistic way of ensuing maritime security and maritime development in Africa. In order for African states to start or boost their blue economy (which will result in wealth and job-creation and promote human well-being) and to ensure the protection of their marine environment, the maritime domains of these states should be free from any danger or illegal activity. This is where regional cooperation becomes an asset.

Not all coastal and island African states have the means to combat illegal or dangerous activities within their maritime territories, thus, regional cooperation among neighbouring states becomes essential. Regional cooperation as well as national political will can boost the development of an ocean economy among African states, which will lead to the outcomes set out in the 2050 AIM Strategy.

Before arriving at this level of regional cooperation, harmonisation and socio-economic development which the 2050 AIM Strategy targets, various challenges need to be addressed. Reconciling the development of the blue economy with maritime security, while taking into consideration ocean governance strategies as well as ensuring regional cooperation might be overwhelming and challenging for many African states. The strategy has not been fully implemented because many states do neither have the resources needed nor the political will to do so.[8]

3   Lomé Charter

The 2050 AIM Strategy is an AU policy framework and does not have the binding force of law. In 2016 the AU adopted the Lomé Charter. Made up of seven chapters and 56 articles, the Lomé Charter combines the need to ensure maritime security in Africa while at the same time promotes development among member states. The 2050 AIM Strategy supplements the Lomé Charter.

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[7]   Edwin Egede, 'Maritime security: Implementing the AU's AIM Strategy' Africa Portal, 8 June 2018, <https://www.africaportal.org/features/maritime-security-implementing-aus-aim-strategy/> on 28 February 2021.

[8]   Timothy Walker, 'The successes and struggles of multilateralism: African maritime security and strategy' in Lisa Otto (ed) *Global challenges in maritime security: An introduction*, Springer, 2020, 173-190.

Article I of the Lomé Charter defines maritime security as 'the prevention of and fight against all acts or threats of illicit acts against a ship, its crew and its passengers or against the port facilities, maritime infrastructure, maritime facilities and maritime environment.'[9]

The Lomé Charter, recognising that the source of maritime insecurity is not at sea but on land[10] takes a proactive approach by requesting States to adopt measures, on land, that will counter and reduce illegal activities at sea. Article 5(a) and (b) of the Lomé Charter requests states to create productive jobs and implement fair, inclusive and equitable policy to address socio-economic issues. Addressing issues such as unemployment, corruption and discrimination onshore, reduces the risk of people turning to the sea to undertake illegal activities which threaten the peaceful enjoyment of the sea and its resources.[11]

To ensure socio-economic progress and development, the Lomé Charter puts forward the creation of an ocean-based economy or blue economy. Blue/ocean economy is defined as the

> sustainable development of oceans using such technics as regional development to integrate the use of seas and oceans, coasts, lakes, rivers, and underground water for economic purposes, including, but without being limited to fisheries, mining, energy, aquaculture and maritime transport, while protecting the sea to improve social wellbeing.[12]

Chapter IV of the Lomé Charter is dedicated to the development of the blue economy by proposing sectors, which will contribute in wealth creation for member states. These sectors include fisheries and aquaculture (Article 20), coastal and maritime tourism (Article 21), integrated human resource strategy for maritime development (Article 22) and development of infrastructure and equipment relating to maritime activities (Article 24). The Lomé Charter also provides for the protection of the marine biodiversity and ecosystem in Africa.[13]

The Lomé Charter emphasises on the importance of protecting maritime territories to enable the economic development of a country. When put together, the exclusive economic zones (EEZ) of all African states become the biggest EEZ in the world. The panoply of marine resources available, either living or non-living, if sustainably exploited, can contribute to massively changing

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9   Article 1, *African Charter on Maritime Security and Safety and Development in Africa* (Lomé Charter), 15 October 2016.

10   João Coelho, *African approaches to maritime security: Southern Africa*, Friedrich-Ebert-Stiftung, 2013, 8.

11   João Coelho, *African approaches to maritime security*, 8.

12   Article 1, *Lomé Charter*.

13   Article 26, *Lomé Charter*.

the economic and financial outlook of African states. In order to achieve this objective, it is important to secure the maritime space. The Lomé Charter has given states the guidance needed to reach this objective. For example, Chapter III and Chapter V deal with maritime governance and cooperation respectively. By setting up local or regional maritime security institutions such as coast guards or maritime intelligence agencies, these institutions act as guardians of the sea monitoring, reporting and even punishing illegal activities at sea.

Despite the fact that it sets out the steps states should undertake to secure their maritime territories, the Lomé Charter faces various challenges in its implementation. Currently, even though some states are making efforts to secure their maritime territories, many other African states are not prioritising their maritime security related interests.[14] There are various factors which can be attributed to this, such as: lack of political will, lack of financial resources or corruption of government officials.[15]

Harmonisation of regional actions presents another challenge to the implementation of the Lomé Charter. The Lomé Charter praises the importance of regional cooperation in ensuring maritime security across the African waters. However, states would mainly collaborate to combat activities which represent a common threat to them. One example would be the collaboration among many eastern African states in combatting maritime piracy in the western Indian Ocean region. These states collaborated to stop piracy as these were threats to the states' maritime trading activities and tourism industry. Yet, for other illegal activities, for example IUU fishing in the region, this collegial approach and dynamism is lesser than in combatting piracy.

Finally, for the Lomé Charter to be fully implemented and operational across the continent, more states have to sign and ratify it. At present, only 35 states out of the 55 AU member states have signed the Lomé Charter and only Togo and Benin have ratified it.[16] Compared to other existing treaties which focused on maritime transport in Africa and the 2050 AIM Strategy which is a

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[14] Observer Research Foundation, 'West Africa is becoming the world's piracy capital: Here is how to tackle the problem' World Economic Forum, 28 June 2019, <https://www.weforum.org/agenda/2019/06/west-africa-is-becoming-the-world-s-piracy-capital-here-s-how-to-tackle-the-problem/> on 28 February 2021.

[15] Observer Research Foundation, 'West Africa is becoming the world's piracy capital: Here is how to tackle the problem' World Economic Forum, 28 June 2019, <https://www.weforum.org/agenda/2019/06/west-africa-is-becoming-the-world-s-piracy-capital-here-s-how-to-tackle-the-problem/> on 28 February 2021.

[16] *See* Status List, available at <https://au.int/en/treaties/african-charter-maritime-security-and-safety-and-development-africa-lome-charter> on 28 February 2021.

non-binding policy framework, the Lomé Charter is binding and aims at ensuring maritime security and safety across African waters. The low ratification rate of the Lomé Charter is an indication of the level of interest states have in using the Lomé Charter as a pillar to combat illegal maritime activities. This current state of affairs begs the following questions:

- What is the perspective of African states on the concept of maritime security and safety?
- Are African states ready to cooperate, as emphasised by the Lomé Charter, to ensure maritime security and safety across the continent?
- Are states committed to the principles and objectives of the Lomé Charter?
- Do the states have the resources needed to achieve the objectives of the Lomé Charter?

The answers to these questions rests on the following:

- The importance of understanding the need for maritime security and safety laws
- Short and long term financial gains associated with maritime security
- Investment in resources to ensure maritime security and safety

The Lomé Charter will take years before it enters into force unless states change their perspective about the importance of maritime security.

4   Recommendations and conclusion

The Lomé Charter is the first binding legal instrument which deals with maritime security for the African continent. It guides states on how to ensure the protection of their maritime domains and provides tools, which can assist states in their socio-economic developmental process. Through the 2050 AIM Strategy and the Lomé Charter, the AU is taking the necessary steps to secure the maritime space across the continent. It is now up to states to take over and implement the rules and recommendations provided in the Lomé Charter and the 2050 AIM Strategy.

While many countries are doing the needful to implement the Lomé Charter and the strategy, this includes signing and ratifying the Lomé Charter, there is still a long way to go before the full implementation of both instruments. Therefore, I recommend the following:

- National governments should recognise the importance of the sea for their socio-economic growth and take the necessary steps to protect their maritime territory. This can only be achieved with a high level of political will from governments.

- In order to reduce illegal activities at sea, the root cause of the problem should be addressed. As João Coelho stated, illegal maritime activities, for example piracy, do not originate from the sea but on land.[17] Governments are encouraged to address onshore illegal activities like drug trafficking, money laundering, human trafficking and land-based pollution, which in turn result in illegal activities at sea.

- The different legal instruments governing maritime security should be harmonised. One example of a discrepancy in the rules relates to the definition of maritime security in the 2050 AIM Strategy and the Lomé Charter. The former's definition of maritime security embraces elements of socio-economic development and sovereignty and jurisdictional rights while the Lomé Charter focuses mainly on the protection and prevention of certain acts. Furthermore, African regional blocs should as far as possible work together in combatting the different types of illegal activities at sea. Hence, in order to work towards a common goal, it is important that there is the harmonisation of rules and actions.

- Finally, the AU as an authority should promote the creation of maritime intelligence agencies. These bodies would monitor activities at sea in order to combat illegal acts and take actions when needed. By doing so, the risk of threats at sea will be reduced resulting in more investment in exploiting maritime resources.

The sea has always been and will always be a source of livelihood for humanity. It is our duty to protect this invaluable resource for the common good. African states have the opportunity to boost their economy and improve their citizens' livelihoods by protecting and sustainably exploiting the sea.

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[17] Some commentators argue that maritime insecurity in Africa does not result from African citizens' or states' actions. Many cases of maritime insecurity also emanate from foreign vessels invading and committing illegal activities in the maritime territory of African states.