



Nahodha

THE OFFICIAL KENYA MARITIME AUTHORITY E-NEWSLETTER

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Maritime safety compliance Inspections kick off



Nahodha

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Kenya Maritime Authority

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Message from the Director General's Desk



“I Am On Board with gender equality”

Every year, the International Maritime Organization (IMO) observes the Day of the Seafarer in the month of June aimed at highlighting and recognizing the unique contribution of seafarers from all over the world to international seaborne trade, the world economy and the civil society. This year's Day of the Seafarer was marked on 25th June, 2019, with the theme “I am on board with gender equality.”

This year's theme is linked to the World Maritime Day theme “Empowering Women in the Maritime Community” and has a strong and far-reaching resonance with many people. It provides a good opportunity to highlight opportunities for women in the maritime sector and their contributions in a wide range of maritime careers and professions with the main focus on seafaring.

KMA recognizes and appreciates the integral role of Kenyan seafarers in shaping the nation's maritime industry and their huge potential to contribute towards the growth of the national economy. KMA is also cognizant of the challenges braved by seafarers in their course of duty and remains committed to improving the conditions for Kenyan seafarers as it relates to the 'human element' and decent treatment at sea, which is encompassed in the International Labour Organization's (ILO) Maritime Labour Convention, 2006

Finally, KMA reaffirms its commitment to progressing Seafarers welfare and implementing the IMO programs aimed at the integration of women in the maritime sector as required by the Sustainable Development Goal number 5 and Millennium Development Goal number 3 which calls for “Promoting Gender Equality and Empowerment of Women” in the maritime sector.

“.....KMA recognizes and appreciates the integral role of Kenyan seafarers in shaping the nation's maritime industry and their huge potential to contribute towards the growth of the national economy”

Major (Rtd.) George Nyamoko Okong'o
DIRECTOR GENERAL

Maritime safety compliance Inspections kick off

By A. Munga, E. Mulongo & M.W

The Kenya Maritime Authority (KMA) began conducting its country wide maritime safety compliance drive from May 2019 in the Lake Victoria region and commenced in Lamu County on 11th June, 2019. The compliance operations also spread to Kwale and Kisumu Counties and are set to continue throughout the year. This follows the issuance of a public notice by KMA on April 23rd, 2019, requiring all boats and water crafts to be licensed before 20th May, 2019.

“The main aim of conducting vessel inspections during the exercise is to ascertain the maritime safety compliance levels by checking whether the vessel is registered and licensed, the coxswain is certified and the vessel has the minimum mandatory safety requirements,” said Maj (Rtd) George Okong'o, KMA's Director General, during the launch of the maritime safety compliance operation.

KMA is working with the national government enforcement agencies, county governments and key stakeholders in the enhancement of maritime safety and security on Kenyan territorial and inland navigable waters in order to enhance maritime safety compliance levels, reduce water incidents and accidents, protect the lives and property of Kenyan seafarers and the general public.

KMA statistics indicate that Maritime accidents on Kenyan waters have been progressively increasing in the past 10 years in which 50% of the accidents have involved capsizing of vessels and 40% drowning cases related to unseaworthy vessels which are linked to low levels of compliance to maritime safety regulations by vessel owners and operators.

In an address to the public, Maj (Rtd) George Okong'o emphasized that KMA will continue to strengthen the maritime regulatory framework and ensure compliance to maritime safety regulations in order to reduce the number of water related accidents and protect the lives of Kenyan seafarers and the general public who use water transport daily.

“The Authority urges all vessel owners and operators to cooperate and ensure their vessels are duly licensed in line with the Merchant Shipping Act, 2009, section 57 (1), he said, “ Operating a vessel that is not licensed is an offence and failure to comply will lead to prosecution.”

One of the Authority's key mandate is to ensure maritime safety and security on Kenyan waters in line with the Merchant Shipping Act, 2009.

KMA and Maritime Police Unit officers conduct compliance checks on vessels on Lake Victoria.



KMA receives new Board of Directors

By M.W



The Kenya Maritime Authority (KMA) has received a new Chairperson and a vibrant Board of Directors (BOD) to provide strategic direction to the organization in the regulation of maritime affairs and enhancement of the sector's contribution to the GDP. Geoffrey Ngombo Mwango was appointed the Chairperson of KMA's Board of Directors by His Excellency, the President of the Republic of Kenya and Commander-in-Chief of the Defence forces for a period of three (3) years with effect from the 8th of February, 2019.

KMA's new Board of Directors include John G. Msafari, Roselyn Vugutza Amadi, Salaah S. Balala, Eng. Charles Kombe Charo, Rev. Joseph Kariuki Gatimu and Malika Omar who were appointed by James Macharia, the Cabinet Secretary for Transport, Infrastructure, Urban Development and Public Works for a period of 3 years. The newly appointed team joins the existing Board of Directors who are: Justice Paul Kihara Kariuki – the Attorney General, Mrs. Nancy W Karigithu, the Principal Secretary- State Department of Shipping and Maritime, Mr. Hezbourne Mackobongo- Alternate Director to the Cabinet Secretary- National Treasury, Mr. Francis M. Muraya - Alternate Director to the Principal Secretary- State Department for Shipping and Maritime Affairs, Mr. Charles Mutinda - Alternate Director to the Attorney General, Major (Rtd) George Nyamoko Okong'o, Ex - officio member of the B.O.D and Director General, KMA and Mrs. Jane Florence Otieno, Corporation Secretary and Head of Legal Services - KMA.

KMA Board of Directors



Mr. Geoffrey Mwango
*Chairman,
Board of Directors- KMA*



**Justice Paul Kihara
Kariuki**



Mrs. Nancy W. Karigithu, CBS
*PS – State Department of
Shipping and Maritime*



**Mr. Hezbourne
Mackobongo**
*Alternate Director to the Cabinet
Secretary National Treasury*



Mr. Francis M. Muraya
*Alternate to the Principal Secretary
State Department for Shipping
and Maritime Affairs*



Mr. Charles Mutinda
*Alternate Director to the
Attorney General*



**Major (Rtd) George
Nyamoko Okong'o**
Director General



**Mrs. Jane Florence
Otieno**
*Corporation Secretary and
Head of Legal Services*



**Mr. John Gerin
Msafari**
FICS, CRG (Gambia)



Roselyn Amadi
Director



Salaah S. Balala
Director



**Eng. Charles
Kombe Charo**
Director



**Rev. Joseph
Kariuki Gatimu**
Director



Ms. Malika Omar
Director



Coast Guard Officials Visit Kenya

By C. Chongwo & M.Zighe

A team of the United States Coast Guard (USCG) visited Kenya from 18th to 22nd March 2019 in preparation of the USCG biennial International Ship and Port Facility Security (ISPS) Audit that was scheduled for 13th to 17th May 2019. The USCG delegation was led by CDR Ron Caputo and Tony Mercado.

The USCG in company of officers from the Kenya Maritime Authority (KMA), Kenya Ports Authority (KPA), Maritime Police Unit (MPU) and Recognised Security Organisations (RSO) visited the General Cargo Terminal, Kipevu Container Terminal, Kipevu Oil Terminal, Container Terminal, SGR-KPA interface zone, Joint Operation Centre, Joint Port Control Unit, KPA Main Control Room (Surveillance), Joint Monitoring Centre for the SGR train Cargo and Base Titanium Port Facility.

KMA invited all Port and Flag State Officers (PFSOs) to a session that saw attendees taken through draft International Standard Organization (ISO) procedures for Maritime Security implementation, Port Facility Security Plan Audit and Verification Form and Port Facility Security Plan Template. The aim of the session was to familiarize attendees with maritime security procedures as stipulated in the Maritime Security Regulations, 2015, and to obtain feedback before internal approval of the procedures and forms.

KMA's Director General, Major (Rtd) George Nyamoko Okong'o assured the participants on Kenya's commitment to comply with the ISPS Code and making our ports safer and secure for international shipping. He also assured of KMA's continued support to the United States Coast Guard (USCG) International Ship and Port Facility Security (ISPS) programme and the upcoming USCG biennial ISPS Audit in May, 2019.



The United States Coast Guard (USCG) delegation led by CDR Ron Caputo and Tony Mercado during a meeting with KMA's Director General, Major (Rtd) George Nyamoko Okong'o and participants from various Government Agencies.

“KMA will take a leading role in working with all Ministries, Departments and Agencies (MDAs) to eliminate the illegal presence of persons, fishing vessels and dug-out canoes in securing the channel, he said, “ In the Implementation of the Maritime Security Regulations, the Authority will continue its mandate of enhancing security at our ports. KMA will work together with all Port and Flag State Officers (PFSOs) to raise the compliance level of the port facilities.”

Major (Rtd) George Nyamoko Okong'o also sought cooperation of the Port and Flag State Officers (PFSOs) in ensuring approval of Facility Security Assessment, Port Facility Security Assessment Plans and continued compliance.

KMA's Director General also lauded all MDAs who participated in the meeting. Kenya Ports Authority (KPA) was also lauded for facilitating boat transport for all participants, Maritime Police Unit (MPU) for increasing patrols in the channel that has led to a reduction in security incidents, Base Titanium Limited for continued improvements on the security system that has seen them implement over and above recommendations raised previously, Southern Engineering Company (SECO), COMARCO and African Marine for their support in the recently concluded Port Facility Security Assessments. He also welcomed the Kenya Coast Guard Services to the Maritime Security implementation activities and assured them of the Authority's support and cooperation.

Stakeholders set to take up Blue economy opportunities

By M. W



Participants during the KMA sensitization workshop on the Blue Economy at the Mombasa Beach Hotel.

The Kenya Maritime Authority (KMA) held a workshop on 20th May, 2019, at the Mombasa Beach Hotel to educate its coastal stakeholders on opportunities in the Blue economy and the Presidential Big Four Agenda, in order to empower them to play active roles in the Blue economy agenda and enable them take up and benefit from opportunities in the Blue economy. The coastal stakeholders included key gate keepers from the Interreligious Council of Kenya, Mombasa Council of elders, the youth, women and community members from various constituencies in the Coast who are expected to cascade and disseminate issues of the blue economy to the grassroots in their communities.

The KMA stakeholder engagement exercise involved discussions on creating more employment opportunities and improving welfare for Kenyan seafarers, improving access to maritime education and training for all, the significance of the revival of the Kenya National Shipping Line to the Kenyan maritime sector and the Kenyan economy as well as on how local communities can position themselves to benefit from the opportunities in the blue economy and optimize the use of the natural resources in the blue economy.

“If we maximize the use of our resources at sea and support the revival of the Kenya National Shipping Line, our people will get jobs, our country's economy will grow,” said Geoffrey Ng'ombo Mwangi, the Chairman, KMA Board of Directors, “As a country, as organisations, let us not be left behind, let us take up opportunities in the blue economy”

Whilst the country's strategic location along the Indian Ocean Coast and its inland waters bestows it with good prospects for becoming a major maritime economy, the full economic potential of Kenya's over 600km of coastal ocean and the inland waters remain largely untapped. If well optimized and developed, Kenya's blue economy has the potential to be the nation's major contributor of economic transformation and growth. According to the African Union's 2050 Integrated Maritime Strategy, development of the African Maritime Domain (AMD) through the advancement of the Blue economy agenda will boost growth opportunities and a network of significant sea-lanes for Africa's sustainable economic affluence, all-encompassing utilization of our natural resources and energy, trade and industry, scientific and leisure activities. In addition, the strategic development and use of our vessels, ports, shipyards and maritime investments will generate career opportunities for Kenyans.





Participants during the KMA sensitization workshop on the Blue Economy at the Sun set Hotel in Kisumu.

Lake Victoria prepares for Blue Economy activities

By Stella Maris M. & M. W

The Kenya Maritime Authority (KMA) organised a workshop on Lake Victoria's preparedness for revamped Blue Economy activities at SunSet Hotel in Kisumu on 17th April, 2019. The aim of the workshop was to prepare various stakeholders in the Lake region to benefit from the revamped blue economy activities in the Lake Victoria region and sensitize them on maritime safety, security and marine pollution prevention. The workshop also provided an opportunity for KMA to educate the Lake region stakeholders on their role in progressing the Lake maritime transport system.

The workshop was officially launched by the Principal Secretary, Shipping and Maritime Affairs, Mrs. Nancy Karigithu, CBS. The workshop also drew participation from Government agencies, County Governments, Beach Management Units, vessel owners and operators and non-governmental organizations with roles in maritime safety, pollution control & prevention and maritime search & rescue. These included the County Governments of Kisumu, Homabay, Busia, Siaya and Migori,

Kenya Coast Guard Service, Kenya Ports Authority, National Environment Management Authority, Kenya Wildlife Service, State Department of Fisheries, Aquaculture and Blue Economy, Kenya Forest Service, Kenya Marine Fisheries Research Institute, Ministry of Tourism, Lake Victoria Basin Commission, (Lake Victoria Environment Management Programme, Kenya Red Cross, Mbita Ferry Services, Nyanza Cargo Service, Triton International, Oil Spill Mutual Aid Group, Kenya Pipeline Company.

It is expected that the increase in economic activities on the Lake due to the development of the Blue economy and maritime sector in the region will increase vessel traffic and expose it to a higher risk for oil spills, water accidents and incidents. Notably, several other Blue economy and maritime related projects are currently underway in the Lake region which include the commissioning of Kisumu Port modernization project in which a hundred (100) metres of shoreline will be dredged to a depth of eight (8) metres to accommodate large vessels, the construction of the Kisumu Oil Jetty, and the formation of the Lake Region Economic Bloc.

The planned workshop is one of the KMA's forward looking strategy to sensitize stakeholders in the Lake region on their roles in ensuring safety of navigation, search & rescue and pollution prevention & control. The Authority also expects to increase its collaborative networks with Lake Region stakeholders in order to advance the Blue Economy and Maritime Agenda in the region. This is expected to benefit local communities as it minimises the risks and impacts of safety and pollution. This will also ensure that the country is adequately prepared to tackle emergencies occurring on Lake Victoria to avoid disruption of the revamped Blue Economy activities in the Lake region.

The workshop recommended that innovative techniques be adopted for the safety of navigation, search & rescue and pollution prevention in the Lake region to support blue economy activities. Participants also requested for more Government intervention to provide security to caged fishing farmers and resolve the Water Hyacinth menace on the Lake Victoria.

The review of nautical charts for Lake Victoria to incorporate new developments in the region was also recommended. It was further recommended that Seafarers' Training programmes be improved to create more employment for youth.

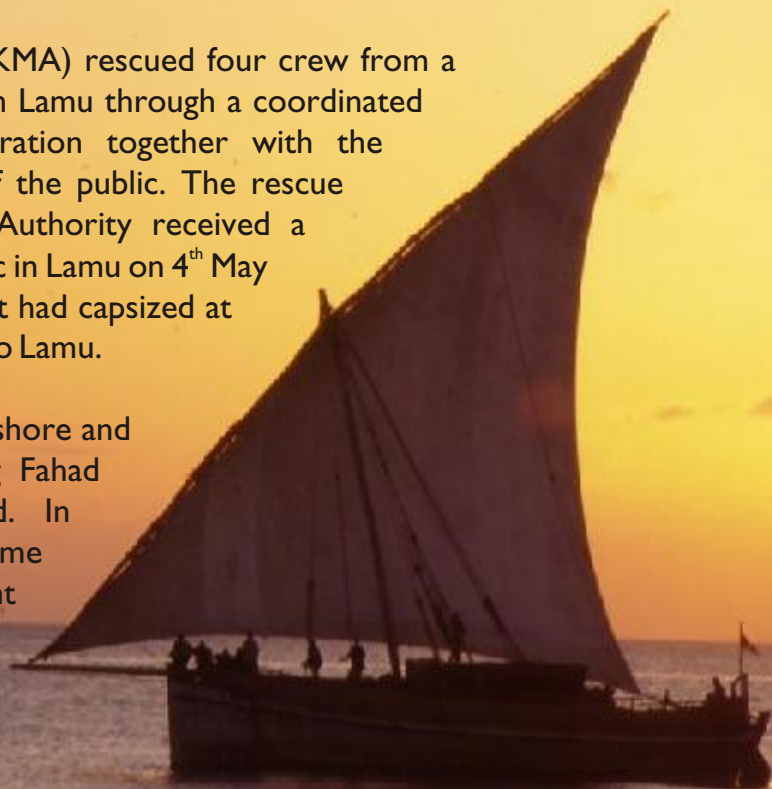
Lake Victoria is an important economic resource to the nation and the East Africa community as it serves as a crucial source of water, food, income and recreation to the local communities in the region as well as boosting the Country's economy. The Lake Victoria Basin is currently under-developed and struggling with numerous challenges including increased population growth, frequent occurrence of diseases, land degradation, sewage discharge and water hyacinth. Several attempts have been made to restore the Lake Victoria back to its glory including the removal of water hyacinth.

KMA rescues sailors in Lamu

By. A. Munga

The Kenya Maritime Authority (KMA) rescued four crew from a capsized fishing boat Qas-Wara in Lamu through a coordinated Search and Rescue (SAR) operation together with the Maritime police and members of the public. The rescue operation was done after the Authority received a report from members of the public in Lamu on 4th May 2019 at about 1500hrs that a boat had capsized at Ras Kitau in the channel entrance to Lamu.

The capsized boat was towed to shore and the victims were taken to King Fahad hospital where they were treated. In line with the Authority's maritime regulatory enforcement oversight function, KMA in partnership with the Maritime Police Unit in Lamu is investigating the incident.



KMA hosts Trade Facilitation Workshop

By E. Kiyangu

The Kenya Maritime Authority (KMA) held a Trade facilitation workshop in partnership with key maritime stakeholders who included the Kenya Ports Authority (KPA), Kenya Revenue Authority (KRA), Kenya Trade Network Agency (KENTRADE), Northern Corridor Transit Transport Coordination Authority (NCTTCA), Inter-governmental Standing Committee on Shipping (ISCOS), Kenya Bureau of Standards (KEBS), Shippers Council of East Africa (SCEA) and the Insurance Regulatory Authority (IRA). The workshop was held from 21st and 22nd March, 2019 at the Sovereign Hotel, Kisumu.

The workshop was aimed at improving the quality of logistics services in the country. Improved logistical services will increase trade volumes and attract investments. The topical issues discussed in the workshop included: the Convention on Facilitation of International Maritime Traffic (FAL), Cargo inspection processes, management of empty containers, customs services, compliance with verified gross mass weight (VGM) requirements and marine cargo insurance. The participants also brainstormed on the implication of the outcome of the Sustainable Blue Economy Conference held in Nairobi in November 2018.





Lake Region benefits from Maritime Transport Logistics Curriculum workshop

By E. Kiyangu

The Kenya Maritime Authority (KMA) held an awareness workshop on the Land based Maritime Transport Logistics (MTL) curriculum from the 20th to 22nd March, 2019 at the Sovereign Hotel, in Kisumu.

The MTL curriculum awareness workshop sensitized training institutions in the Lake region on the content of the curriculum, its interpretation, the teaching methodology and the linkage of the curriculum to topical industry issues. The awareness workshop is projected to increase the uptake of the curriculum among the middle level colleges and Universities in the Lake Region. Facilitators for the awareness workshop were drawn from collaborating partner institutions in the development of the curriculum which included the Kenya Institute of Curriculum Development (KICD) and the Institute of Chartered Shipbrokers (ICS).

Having been rolled out in 2016, the MTL curriculum has received interest from 11 training institutions. The institutions certified to run the Maritime Transport Logistics (MTL) are Mount Kenya University (Mombasa Campus), the Kenya School of Revenue (Mombasa Campus) and the Coast International College. Institutions whose approval is still under progress include Pioneer International University- Nairobi, Riara University- Nairobi, Technical University of Mombasa, Shipping Transport college of East Africa, The Zonal Training Institute, Maritime Management Institute, Platinum School of Business Management and Equip Institute.

Maritime Education and Training (MET) has been identified as a key enabler towards the realization of the Kenyan's Blue economy strategy particularly as it relates to job creation, employment and poverty eradication. The curriculum was developed to address challenges in the existing land based maritime training programs characterized by un-harmonized content that vary in time and coverage and also lack key aspects on professional delivery of services.



Understanding Aids to Navigation

By E. Agak & M.W

1. What are Aids to Navigation (AtoN)?

Unlike the roads and highways that we drive on, waterways do not have road signs that tell us our location, the route or distance to a destination, or of hazards along the way. Instead, waterways have AtoN, which are important tools of navigation that enhance safety. AtoN are used by mariners to determine positions, safe courses or to warn mariners of dangers to navigation while on move.

AtoN also assist mariners in making a safe landfall (arrival/ docking), mark isolated dangers, enable pilots to follow channels and provide a continuous chain of charted marks for precise piloting in coastal waters.

2. What constitutes Aids to Navigation?

For hundreds of years, maritime authorities have marked safe water with buoys and beacons. Lighthouses, buoys and beacons are some of the maritime physical traditional AtoNs. AtoN also include day beacons, lights, lightships, radio beacons, fog signals, marks and other devices used to provide "street" signs on the water. They include all the visible, audible and electronic symbols that are established by Government and private authorities for piloting purposes. In maritime travel, AtoN System is intended for use with nautical charts, which provide valuable information regarding water depths, hazards, and other features that are not found in an atlas or road map.

3. What is the importance of Aids to Navigation?

Any sort of marker that guides by demarcation safe water routes and helps mariners determine their position with respect to land or any navigational hazard or hidden danger is crucial in water transport.

Besides supporting commerce, these buoys and beacons help ship navigating officers safely navigate even a narrow channel in a wide expanse of water. They also provide efficient economic and comfortable travel of vessels in rivers, channels, harbours, lakes and ocean shores.

4. What are the requirements of construction of Aids to Navigation?

In order to construct AtoN, risk assessment approach is used to identify and rank hazards in :

- Position Fixing;
- Hazard identification and warning; and
- Indication of traffic arrangements. Additionally, relevant matters considered when carrying out the risk assessment to determine the AtoN requirement would include:-
 - a) **Geographical features and foreshore structures:** Headlands, Points, Low Coastlines, Islands, rocks, outcrops, piers, jetties, quays, locks, bridges, marine farms, future development in the area.
 - b) **Hydrographical Features:** Shoals, depth of water, Harbour approaches, Wrecks, fairways (Shoaling).
 - c) **Traffic Conditions:** Volume, Size and mix of shipping (dry cargo, passenger, high speed vessels, Fishing, hazardous cargoes, inland waterway crafts, Traffic separation schemes.
 - d) **Weather Conditions:** Frequency and direction of storms, gales, fog and other factors causing reduced visibility.
 - e) **Environmental Factors:** Areas of high population density, Number of vessels carrying hazardous cargoes and number of vessels carrying the hazardous cargoes.

- f) **Traffic Management Resources:** Availability and limitations of all present traffic management resources, including routing measures, anchorages, pilotage, availability of tugs, local rules and ship reporting requirements.

5. Roles & Responsibilities of Kenya Maritime Authority as it relates to Aids to Navigation

The relevant statutory provisions with regard to AtoN are drawn from the Kenya Maritime Authority Act, 2006 which mandates the Kenya Maritime Authority (KMA) to administer and enforce the provisions of the Merchant Shipping Act, 2009, and any other legislation relating to the maritime sector. The Merchant Shipping Act, 2009, empowers the KMA Director General to exercise general supervision over all AtoN. The Act notes that AtoN's may be constructed, established and maintained privately.

To enhance regulation in the construction, establishment, alteration, discontinuance and maintenance of AtoN, the Merchant Shipping Act, 2009 provides that the KMA Director General shall provide prior written consent to ensure that they conform to prescribed specifications.

In addition to the above, KMA as an institution responsible for safety of navigation shall ensure:-

- a) that all AtoN's that have been established are maintained;
- b) that AtoN's are established in compliance with the prescribed conditions and specifications and are in proper working order;
- c) that inspection and audits are carried out in respect of all AtoN's;
- d) to approve the establishment, removal, or alteration of all AtoN's;
- e) to notify the public on changes or deficiencies of AtoN's; and,
- f) receive reports of AtoN outages.

6. Aids to Navigation and Buildings

AtoNs are built in places which do not favor other building constructions. Building constructions should be such that they don't obstruct the visibility of the AtoN and also not interfere with the flashing characteristics of the AtoN, e.g. colour of the AtoN and its corresponding flashing light.

7. Why is it important that buildings be constructed away from Aids to Navigation?

If buildings or constructions do not comply with the requirements of building or constructing away from AtoN, the AtoNs will be obstructed which eventually endangers the safe passage of vessels around these points and may result in incidences or accidents.

8. What are the dangers of building structures obstructing Aids to Navigation?

Obstructing AtoN could lead to vessel incidences or accidents due to obstruction and confusion since the vessels will not be able to:

- a) avoid dangerous zones;
- b) follow the proper harbour approaches;
- c) locate ports, piers, jetties, etc. during night and bad weather conditions;
- d) locate channels and entrance demarcation buoys; and
- e) identify the beaconing lights coming from the AtoN at night.

9. Any other important information on Aids to Navigation/ obstruction to Aids to Navigation?

- i) Fishermen or any vessel should not be allowed to be fastened at any AtoN, especially, for the floating type, as this act may shift the position of the AtoN. Additionally, the fastened vessel may obstruct an on-coming vessel which may need to use the AtoN at the time.
- ii) An AtoN should be operational at all times.
- iii) The AtoN paint should not fade and for clarity, it should be maintained regularly.
- iv) Any anomaly detected with the AtoN should be reported to the Authority immediately



Implementation of the International Maritime Organization (IMO) Instruments In Kenya



By A. Haki Bashiru-Dine & N. Wakoli

Introduction

The mention of oceans is inevitable in discourses on international trade and economic development and the importance of the oceans cannot be gainsaid. The world is referred to as a 'global village' due to its interconnectivity, thanks to the great strides made in the technological advancement that has seen to it that parts of the world that are far apart have connecting means of transport be it by air, road, rail or even sea, all in the quest to facilitate economic advancement.

Water bodies play a major role in international trade. According to data by UNCTAD, seaborne trade accounts for about 90% of international trade. Kenya is not an exception to the growing interest by the world at large in the resources of the ocean, especially with the advent of the blue economy; a concept looked at as 'untapped bag of goodies'. Indeed, research has shown that the oceans' potential is far from being fully realized. Although it is only in recent times that the potential of the oceans has been emphasized and hyped, especially with the knowledge that the once unknown and/ or unreachable resources can now be accessed, especially on the seabed, the utilization of the resources of the ocean is not new to man, so is the need to regulate the shared resources in the interconnected water bodies to ensure their sustainable utilization, equity and maintenance of peace.

The International Maritime Organization

It is unheard of for the oceans to be discussed without mentioning the International Maritime Organization (IMO). The IMO is a United Nations specialized body whose membership is comprised of 174 Member States and 3 Associate Members. Its mandate is to ensure the peaceful co-existence of states in their utilization of the resources in the oceans and its primary purpose is to develop and maintain a comprehensive regulatory framework for shipping including safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.

Kenya is a Member State to the IMO by virtue of its ratification of the Convention on the International Maritime Organization (1948). Not only has it ratified the IMO Convention but many other Conventions under the IMO aegis. The IMO expects State Parties to international instruments, as a show of good faith, to honour their obligations arising from the respective international instruments by fully domesticating and implementing the provisions therein.

The IMO relates to State Parties and for most countries, states appoint institutions to deal with maritime matters and for Kenya, the Kenya Maritime Authority (KMA) is the official institution mandated to administer and enforce the provisions of the Merchant Shipping Act, 2009 and regulate the Kenyan maritime industry.

Kenya's Legal Framework in Relation to International Instruments

The Constitution of Kenya is the paramount law in Kenya on which all other laws applicable in the Kenyan jurisdiction are hinged.

In the previous constitutional dispensation (pre 2010), Kenya was considered a dualist state; ratified instruments not automatically becoming Kenyan laws until incorporation into national legislation. This approach to international instruments ratified by Kenya meant that international treaties, conventions and other instruments were treated as mere interpretative aids, or only used in circumstances where they do not conflict with domestic legislation, hence inferior to Kenyan domestic laws.

Article 2(5) and 2(6) of the Constitution of Kenya, 2010 recognize international law as a valid norm within the Kenyan legal system. This implies that these international laws have a clear well defined place within the Kenyan Legal system. However, this is not the case. This is due to the fact that it is not practical to directly apply these laws without first domesticating them.

It is worth noting that most international instruments, including the IMO instruments are not self-executing. This is a major paradox in the 'direct application' of international instruments in Kenya as premised by the Constitution as challenges may arise with regards to their enforceability. For a majority of the Conventions, ratifying them is not sufficient to fully give effect to them. Most give minimum standards and State Parties are expected to domesticate them to suit their peculiar legal regime while ensuring that the ensuing legislations conform to the specific international instrument.

Domestication of Laws

Kenya has so far ratified 32 IMO-related Conventions and even under the new constitutional dispensation (post 2010), there has been a challenge in their application and enforcement.

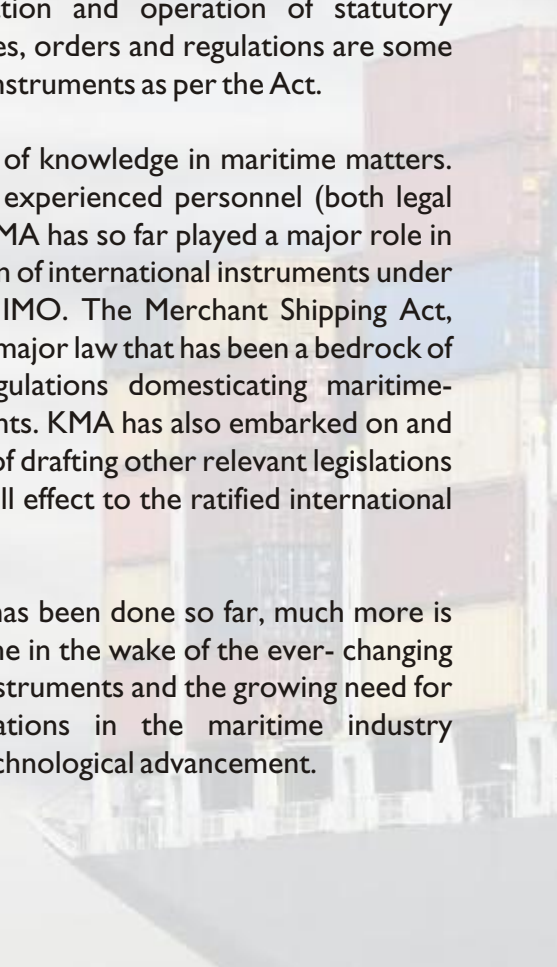
The Constitution, read together with the Treaty Making and Ratification Act No. 45 Of 2012 presupposes that an international instrument that has been proposed for ratification passes through the necessary checks being the national assembly and senate prior to ratification. On ratification, the practice in Kenya has been that even with a ratified international instrument in place and the instrument deemed to have entered into force in Kenya, therefore considered as binding Kenya, there is need for further action in a bid to domesticate the international instruments by further enacting

statutory instruments to facilitate the enforcement of the provisions therein with ease.

The Statutory Instruments Act No. 23 of 2013 provides a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments. Rules, orders and regulations are some of the statutory instruments as per the Act.

KMA is a wealth of knowledge in maritime matters. Having qualified, experienced personnel (both legal and technical), KMA has so far played a major role in the domestication of international instruments under the aegis of the IMO. The Merchant Shipping Act, 2009 is one such major law that has been a bedrock of many other Regulations domesticating maritime-related instruments. KMA has also embarked on and is in the process of drafting other relevant legislations in a bid to give full effect to the ratified international instruments.

Although much has been done so far, much more is still yet to be done in the wake of the ever-changing nature of IMO instruments and the growing need for improved regulations in the maritime industry occasioned by technological advancement.



The Relationship between the Regimes: Exclusive Economic Zone (EEZ) and the Continental Shelf (CS)

By A. Haki Bashiru-Dine & N. Wakoli

I. Introduction

The entitlement of a State to the EEZ or Continental shelf is based on the principle that land dominates the sea and having a coast is a decisive factor for jurisdiction over adjacent waters.

The relationship between the EEZ and CS will be discussed in light of the judgments delivered in the Bangladesh/Myanmar decision of International Tribunal for Law of the Sea (ITLOS), 2012 and the Bangladesh/India award given by an arbitral tribunal in 2014, both of which had to contend with the problem of overlaps in the CS and EEZ. The solution in both matters is the so-called 'grey zone' area; an attempt to deal with the overlapping CS of one State with the EEZ of another.

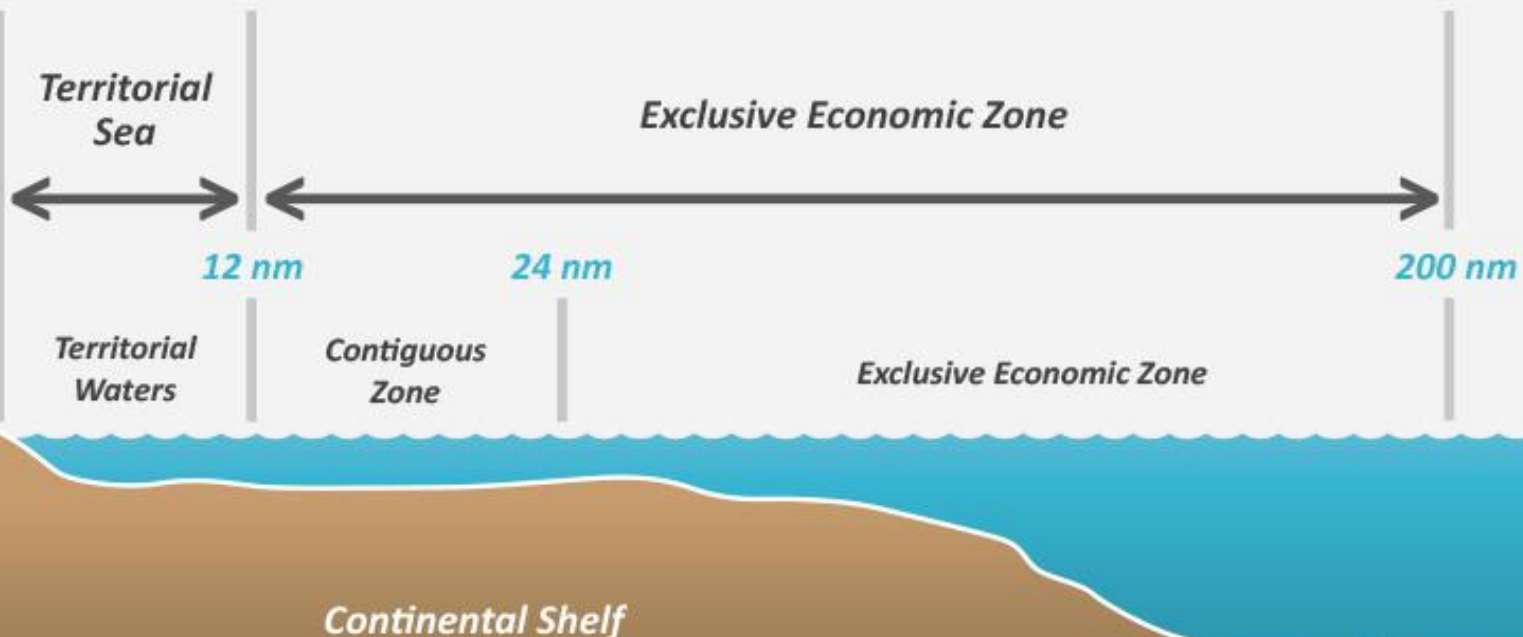
It is worth noting that the above cases were not the first and only instance that States opted for this approach in dealing with an overlap between the continental shelf claim of one State and the maritime jurisdictional claim over superjacent waters of another State.

II. Review of the relationship between the EEZ and the CS

At UNCLOS III negotiations, the debate on the relationship between CS and EEZ was lengthy. States were of different opinions on how to deal with this obvious overlap. First view was to drop the CS and opt for a comprehensive EEZ. This view was particularly objected to by States such as Australia, which argued that if the CS was to disappear, they would

suffer prejudice as they had vested rights, which had developed under the 1958 Convention on the Continental Shelf. The other proposal was for abandoning the CS regime for the first 200 nautical miles (nm) and then implementing the CS regime basically beyond the outer limit of the EEZ.

The Conference in the end decided to retain the two regimes but made every drafting effort to harmonize the two important institutions. By so doing, the Convention recognized the inherited legal characteristics of the CS that existed ipso facto ab initio i.e. the CS rights were exclusive and a CS needed not be proclaimed for the enjoyment of the rights therein, the rights were automatic to a coastal state by



virtue of being a State bordering the same. Article 77 of the United Nations Convention on the Law of the Sea (UNCLOS) reiterates this point.

On the other hand, Part V of UNCLOS, a part dedicated to the EEZ, also a product of the deliberations of UNCLOS III essentially reflected the view first put before by Latin American States and thereafter juridically drafted by Kenya in the form of an economic zone. The superiority of this proposal is that it nationalized all economic resources and activities within 200nm but clearly protected the freedoms of navigation and communication in order to counteract the opposition of the maritime States. In the end this was the basis of Part V of UNCLOS, hinged on the Kenyan proposal.

Article 56 of UNCLOS, read together with Article 77 of the same establishes sovereign rights over the subsoil which is similar to Article 76 of UNCLOS on the CS. Be that as it may, it is simplistic to say that both regimes are fused as this is not the case.

The doctrine was developed to ensure that EEZ is a specific, independent regime under Article 55 of UNCLOS and as is confirmed by State practice, unlike the CS, this specific regime is not automatic. It has to be declared if a State wishes to enjoy the rights under it. Surprisingly, there are a number of State parties to UNCLOS, that are yet to declare an EEZ. This can be explained either because of complications of boundary delimitations or by sheer inefficiency. (Nothing is straightforward in the law of the sea; permutations do exist).

In spite of the text of the Convention setting out two autonomous institutions, tremendous drafting effort was employed to harmonize and ensure the co-existence of these related but distinct institutions in the doctrine of *cohabitation*.

III. Similarity of the CS And EEZ

In Article 76 of UNCLOS, the drafters included the distance principle where the legal title over the CS is identical to that of Article 57 on EEZ. This is in a bid to harmonize the two regimes.

Article 56(3) clearly states that the rights granted under the EEZ are those granted under the CS regime. In spite of the autonomy of the two institutions, there is one regime that is applicable: Part VI of UNCLOS as demonstrated through the application of Articles which apply to the EEZ and the CS, that involve both the water column and the seabed such as Article 60 dealing with artificial islands and the laying of pipelines. It is worth noting that whether or not an EEZ has been declared, the CS regime prevails over the seabed and subsoil of the EEZ.

IV. Maritime boundaries

Article 74 of UNCLOS establishes that the delimitation of EEZ shall be effected by agreement on the basis of international law in order to achieve an equitable solution.

UNCLOS thus establishes an 'equitable solution' as the final goal of delimitation, and if no agreement can be reached, it provides that States shall resort to the procedures provided within Part XV of UNCLOS

A question that has time and again arisen is whether there is an

obligation under international law to delimit a single maritime boundary. In the 60s, States opted for a continental shelf boundary as there was no EEZ- Anglo-French Arbitration (1977- 1978). Prior to 1984, many agreements particularly in the Mediterranean for delimitation were for CS boundaries. Then, the superjacent waters were considered the high seas. However, with the advent of the EEZ, states have had a preference for a single maritime boundary that delimits both the seabed and superjacent waters (CS and EEZ). This may be because States found it convenient and simple to delimit the two different zones (CS and EEZ) by a single maritime boundary. The recourse to this method is also supported by the fact of the parallel nature of the EEZ and CS.

The Gulf of Maine decision by a Chamber of the ICJ (1984) was the first judicial decision in which parties requested for a single maritime boundary. The chamber argued that they had to agree on what it termed to be mutual criteria. It came to the conclusion that these criteria had to be applicable both to the water column and seabed in order to be used. The tribunal decided that the only two mutual criteria left to it were geometry and geography.

While a single maritime boundary is a more practical approach, there is no obligation under international law to have a coincidental single boundary when a delimitation involves both the EEZ and CS.



V. Delimitation dispute- Bangladesh/Myanmar

Bangladesh is located at the Northern Bay of Bengal in between India and Myanmar. The bay is rich in resources whose exploitation had been hindered by the maritime delimitation disputes between Bangladesh and Myanmar and Bangladesh and India.

In the two cases, both India and Myanmar insisted on the equidistance principle to be used in delimitation. This would however have resulted in the outward projection of the EEZ and CS of Bangladesh due to the concave nature of its coastline being cut off from an area it deemed to be its outer continental shelf.

The matter was brought to the judicial attention of ITLOS in the Bangladesh/Myanmar case and the tribunal applied the corrective equity approach in their delimitation in line with the Black Sea Case (Romania v. Ukraine, 2009) to delimit the territorial sea, EEZ and CS. The approach is in three stages:

- Drawing of a provisional equidistant line (while taking into account the concavity of the Bangladesh Coast);
- Adjustment of the equidistant line to reach an equitable solution as reiterated severally in UNCLOS; and
- Verification that there is proportionality in the delimitation.

A complication arose with regards to the outer limits of the CS as Myanmar argued that the parties had made submissions to the Commission on the Limits of the Continental Shelf (CLCS) as per Article 76 and that the Tribunal

was not the proper forum to determine the matter. While opting to proceed with the matter, the Tribunal cited Article 76, 83 and Part XV of UNCLOS that pointed to the distinct but complimentary roles both Tribunal and CLCS played with regard to the outer limit of the CS. The tribunal determined that the adjusted equidistant line progressed in the same direction beyond the 200nm limit of Bangladesh until it reached the area where it may interfere with rights of third parties.

VI. Grey Area

The application of a delimitation method other than equidistance line results in the creation of a 'grey area'. The grey area refers to a geographic area that is the focus of overlapping claims in the EEZ, the CS or the extended CS of two or more coastal States.

The grey zone majorly results from the adjustment of the provisional equidistant line. If at all the equidistance method was employed in delimitation as the sole method, then there would probably be no grey zones as equidistance refers to equal distance from the coast.

The decision in both the Bangladesh and Myanmar case of 2012 and Bangladesh and India case of 2014 resulted in such a 'grey area' in the northern Bay of Bengal involving intersecting and overlapping rights and responsibilities in terms of the EEZ and CS regimes. In the case of Bangladesh and Myanmar, it was an area beyond 200nm from Bangladesh coast but within 200nm of Myanmar's coastline. The decision did not affect the right of Myanmar to the EEZ but

created rights for Bangladesh and guaranteed Bangladesh the entitlement to a CS beyond the 200nm.

The provisional equidistant line that was adjusted resulted in an area that Myanmar's EEZ rights coincided with Bangladesh's rights-outer limit of the CS. Therefore, it can be rightly said that in the grey area, rights pertaining to the CS belong to Bangladesh and those pertaining to EEZ belong to Myanmar.

The same grey area approach was taken in the Bangladesh/India arbitration. This approach was taken because the EEZ and CS boundary established by the tribunal gave rise to the dispute. The grey area although criticized heavily by Judge Raw has so far received wide scholarly attention.

VII. Due Regard Rule

In the judgment, the Tribunal emphasized on the need to exercise due regard in the state's utilization of their respective zones to avoid any further conflict.

The Tribunal's judgment was innovative for it thereafter asked the parties to come up with appropriate cooperative arrangements (words borrowed from the provisional arrangements of Article 83 of UNCLOS). Essentially what the tribunal did was to identify the area of overlap and hand the problem back to the parties by telling them that was a grey area that needed a cooperative arrangement.

Indeed, this seems to be a wise call noting that the exploitation of the continental shelf involved using the superjacent waters, whose economic activities could interfere

with the exploration and exploitation of the CS. This demonstrates that in spite of the possible conflict potential of the two regimes, States, when need arose were prepared to create mechanisms in case of overlapping jurisdiction between the two regimes.

VIII. Conclusion

Some states prefer not to claim an EEZ at all because they rely on their fishing zone for fishing resources and the continental shelf for their living and non-living resources. This however, leaves out a bundle of rights like the 1976 French law on Exclusive Fisheries Zone (EFZ).

In some cases, delimitation problems of the EEZ make it difficult for states to declare an EEZ. Some States opt for the selection of the EFZ rights on

fisheries and CS for geographical, economic or even political reasons and for avoidance conflicts on delimitation of EEZ. This may however not be a lasting solution for sooner or later, without developing an agreement of sorts, there is potential of conflicts arising over EEZ boundaries.

The drafting of the provisions of UNCLOS concerning EEZ and CS suggest that the rules used are similar or that the delimitation formula is similar, this however does not necessarily lead to a coincidental boundary.

There is also the issue prominence between the two institutions. The existence of examples in State practice suggest that there is no *opinio juris* with regard to the State practice of favouring a single maritime boundary. The existence of the grey area seems to indicate

this. In the ultimate analysis much depends on the priorities of the specific States.

Under the two regimes the basis of entitlement is distance from the coast and of course here we see the influence of geography. As the Indian award and decision shows us you can have geographical situations where the EEZ of one State cannot go beyond and therefore there is this grey area where you attempt to cohabit these two regimes.

In the end the position in the late 80s is still the position today. Although there are proponents of a coincidental boundary between the two institutions there is no obligation to have a coincidental boundary but a presumption given the great advantages of a coincidental boundary.





KMA hosts a delegation from the Nigerian Naval Warfare Course 3 led by Rear Admiral A. O. Ayobanjo.



KMA officers and stakeholders from Government agencies participate in an oil spill exercise.



Students of Mama Ngina High School pose for a photo with KMA staff Ellah Kiyangu after a mentorship session at KMA offices.



A delegation from the Nigerian Naval Warfare Course 3 led by Rear Admiral A. O. Ayobanjo pay a courtesy call to Maj (Rtd) George Nyamoko Okong'o KMA's Director General



KMA staff Alphonse Kioko during a mentorship session with pupils from Mwahima Secondary School.



KMA staff warm up before the Mater Heart Run 2019



KMA staff and stakeholders plant mangroves at Mkupe jetty as part of the Corporate Social Responsibility marine environment protection program.



KMA and Maritime Police Unit officers during maritime safety compliance inspections in Lamu.



KMA staff pay a courtesy call to the crew of MV Earth Ocean





KMA staff join other Kenyans during the Mater Heart Run to run for a cause to support cardiac surgeries for needy Kenyans.



KMA staff Irene Victor and Dorothy Mose during the filming of a KTN feature on Women in the Maritime Sector.



KMA hosts the Regional Indian Ocean Memorandum of Understanding (IOMOU) meeting at the Sarova Whitesands Beach Hotel, Mombasa.



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