

UNCLOS AND GOOD ORDER AT SEA: A NORMATIVE FRAMEWORK*

í but the crucial matter is that in the end product, the Draft Convention had to balance the various economic, political, security and social interests delicately. And this is what makes UNCLOS III unique in the history of multilateral treaty negotiation. Almost each and every provision is so delicately balanced against others that most observers believe that reactivating one or two issues may in fact lead to a chain reaction that may reduce the monumental draft convention to a rubbleø (Prof Charles O. Okidi November, 1982)

Abstract

Hitherto the debate on piracy off the coast of Somalia has been confined to counter piracy operations. For almost a decade now, discussion at seminars have failed to progress the debate to encompass an in-depth discussion on the underlying causes of piracy and the overall concept of good order at sea. Equally there has not been satisfactory enquiry on the role, if any; the interests of regional hinterland landlocked states have on the good order at sea.

In order to objectively discuss the role of landlocked states in maintaining good order at sea there is urgent need to formulate a theoretical basis for the elements that constitute the broad concept. Without a theoretical basis the meaning of such broad concepts as good order at sea may be subjective and the discussion may lose objectivity. The new theoretical paradigm suggests that institutions and phenomena must adjust themselves to basic human needs. In constructing a conceptual and theoretical framework for the discussion the study adopts an expanded meaning of 'security' as a concept involving not just states, but also individuals and persons and the wider environment in which the state operates.

This enlarging of analysis encourages security to be seen within larger, regional contexts. The rationale for this is supplied by the processes of internationalization (of national affairs, conflicts and politics), and those of interdependence, including contemporary complex interdependence. The interests of regional landlocked states some of which are secured as rights within the framework for management of oceans provided in UNCLOS are therefore seen as part of the complex web of interdependence in which such interests influence, and are in turn influenced, by the good order at sea in the Indian Ocean Region (IOR).

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1.0. Introduction

Hitherto the debate on piracy off the coast of Somalia has been confined to counter piracy operations and other measures designed to curb the piracy menace. For almost a decade now, discussions at seminars have failed to progress the debate to encompass an in-depth discussion on the underlying causes of piracy and the overall concept of good order at sea. Equally there has not been satisfactory enquiry on the role, if any; the interests of regional hinterland landlocked states have on the good order at sea. Without such an enquiry the debate has narrowed down to success by states and other international bodies on the successes or failures of the operational measures undertaken at sea designed to counter piratical attacks. Often times the topics presented at seminars on piracy off the coast of Somalia have overlapped and similar resolutions passed.

In order to objectively discuss the role of landlocked states in maintaining good order at sea there is urgent need to formulate a theoretical basis for the elements that constitute the broad concept. Without a theoretical basis the meaning of such broad concepts as good order at sea may be subjective and the discussion may lose objectivity. The new theoretical paradigm suggests that institutions and phenomena must adjust themselves to basic human needs. In constructing a conceptual framework for the discussion, the study adopts an expanded meaning of 'security' as a concept involving not just states, but also individuals and persons and the wider environment in which the state operates.

This enlarging of analysis encourages security to be seen within larger, regional contexts. The rationale for this is supplied by the processes of internationalization (of national affairs, conflicts and politics), and those of interdependence, including contemporary complex interdependence. The interests of regional landlocked states some of which are secured as rights within the framework for management of oceans provided by the United Nations Convention on the Law of the Sea (UNCLOS) are therefore seen as part of the complex web of interdependence in which such interests influence, and are in turn influenced, by the good order at sea in the Indian Ocean Region (IOR).

The paper begins by analyzing the concept of human security and its emphasis on interdependence and interconnected nature of phenomena affecting human security. It then considers how the broad concept of good order at sea can be viewed from the prism of human security, providing contours for the broad concept and an objective conceptual framework through which interests of landlocked countries on good order at sea can be discussed. The paper then considers the rights of landlocked states under the United Nations Convention on the Law of the Sea (UNCLOS) as the "*constitution*" providing the framework for good management

of oceans. The paper then discusses challenges facing such landlocked hinterland states in East Africa. It then draws out inter-linkages between those challenges and lack of good order at sea viewed from the prism of human security. In doing so the paper focuses on piracy, Trafficking in persons, Small Arms and Light Weapons (SALWs), Drugs, Illegal trade in natural resources and counterfeit goods, Illegal Unreported and Unregulated (IUU) fishing and pollution as some manifestations of lack of good order at sea. The paper finally concludes by recapping its findings, noting how the concept of human security with its emphasis on interdependence and interconnected nature of phenomena can provide the theoretical framework for drawing inter-linkages between the lack of good order at sea and the challenges facing hinterland landlocked states in East Africa.

2.0. Theoretical/Conceptual Framework; The Expanded Concept of Human Security

Since the beginning of the twenty first century, the term ‘security’ was essentially contested and underwent tremendous redefinition. This redefinition was intended to capture two issues: the broadened concerns of the concept and the special security perspectives of Third World states¹. The latter concern was particularly prompted by the fact that the traditional (western) understanding of what constituted security threats seemed not to match up to the challenges and realities of the same among developing states. The beginning of the twenty first century has also been faced by the realities of globalization in all its concomitant aspects².

Traditionally, security issues were considered to be purely the domain and concern of states. However, that state centric (realist) perspective has been changed drastically; it is now not contested that security is not just concerned with states and regimes, but also with individuals and peoples³. This emerging dimension of human and societal security has been a central emerging thread in contemporary discourses about security. The movement away from the traditional concerns and understandings about security has further encouraged security analysis to move beyond the state, and to encompass the wider environments in which the state operates⁴. This enlarging of analysis has encouraged security to be seen within larger, regional contexts. The rationale for this is supplied by the processes of internationalization (of national affairs, conflicts and politics), and those of interdependence, including contemporary complex interdependence⁵.

¹ Joshua Goldstein, *International Relations* San Francisco, Longman, 2003.

² Sandra Destradi ‘Regional Powers and their Strategies: Empire, Hegemony and Leadership’ in *Review of International Studies* 36, (4), October 2010, pp. 903-930.

³ Robert Jackson and George Seronsen, *Introduction to International Relations: Theories and Approaches* (New York, Oxford University Press, 2003).

⁴ Narine Shaun, *Explaining ASEAN: Regionalism in Southeast Asia*, Boulder: Lynne Rienner 2002, pp. 139-159.

⁵ Helen Milner, ‘International Theories of Cooperation among Nations’, *World Politics*, 44, (3), April 1992, pp. 466-480.

The concept of human security therefore focuses on the individual, exploring ways of mitigating threats to the individual's security, taking into consideration a wider array of factors such as economic circumstances, food, health, environmental, personal, community, and political factors that threaten an individual's security within the wider environment within which the state operates and taking into account the contemporary web of complex interdependence of phenomena⁶. In this regard you cannot talk of economic security in the absence of political security or environmental security and vice versa. For there to be human security therefore all the parameters that threaten an individual's security mentioned above must be present.

3.0. The Historical Context of UNCLOS

The seas have been the basis of civilization, commerce and navigation.⁷ In this regard, the seas have historically performed two important functions: first as a medium of communication, and secondly as vast reservoir of resources, living and non ó living. Both of these functions have stimulated the development of legal rules⁸.

UNCLOS seeks to provide the framework for global ocean governance; a sort of constitution setting out the structure for the management of oceans.⁹ African states played a major role in the adoption of UNCLOS, in fact when a vote on UNCLOS became inevitable at the end of UNCLOS III in 1982 all independent African states voted affirmatively.¹⁰ Participation of African states was however not limited to adoption of UNCLOS, it was also key in the development of some of the concepts under UNCLOS. For instance, contributions by African states were key in developing and modifying the concept of innocent passage through the territorial sea and over straits; the concept of archipelagic states; and the concept of Exclusive Economic Zone (EEZ) - role played by Kenya in developing and seeking consensus for the concept is most notable. Indeed the concept is now widely accepted as part of customary

⁶ See also Richard Jolly and Deepayan Basu Ray *The Human Security Framework and National Human Development Reports: A Review of Experiences and Current Debates* UNDP occasional paper no. 5, (2006) p. 5.

⁷ Kenchington R., *Managing Marine Environments*, (Taylor and Francis New York Inc. 1990). p. 6. From the earliest times, the sea has been a source of materials, a means of transport and a sink of wastes. Excavation of ancient middens shows that from the earliest prehistoric societies the sea has been a source of food and materials. Legend and history record that transport and communication, made possible by the mastery of the sea, extended the range of human communities and, through trade and conquest, gave access to new resources. Since times before recorded human history, the seas have seemed vast and their capacities infinite in relation to human endeavor. The seas are the last frontier on earth.

⁸ Shaw, M.N., *International Law*, 4th ed., Cambridge University Press, United Kingdom, 1997 at p. 391. See also Churchill, R.R. and Lowe, A.V., *The Law of the Sea*, 2nd ed., Manchester, 1999; Dupuy R.J., and Vignes, D., *Traite du Nouveau Droit de la Mer*, Brussels, 1985 and McDougal M.S. and Burke W.T., *The Public Order of the Oceans*, New Haven, 1962.

⁹ See R. Friedheim 'A proper Order for the Oceans: An Agenda for the New Century' in D. Vidas and W. Ostreng (eds), *Order for the Oceans at the Turn of the Century*, (Kluwer Law International, The Hague *et al*, 1999) p.541.

¹⁰ See Aldo Chircop *et al* 'The maritime Zones of East African States in the Law of the Sea: Benefits gained, opportunities missed' 16 RADIC (2008)121,p.126; for a detailed discussion on Kenya and the concept of EEZ see Okidi C.O. 'The Kenya draft articles on Exclusive Maritime Economic Zone Concepts: Analysis and comments on the original proposal' in Okidi C.O. and Sydney Wesley (eds) 'Management of Coastal and offshore resources in Eastern Africa Papers presented at the Workshop held at the Institute for Development Studies,' (University of Nairobi April 26 - 29 1977) 63.

international law¹¹. It is also noteworthy that development and refinement of some of these concepts by African states also aimed at catering for the interests of landlocked hinterland states with the majority of such states found on the African continent¹². OAU made a declaration endorsing the inclusion of the right of access by landlocked states to and from the sea in UNCLOS, unlike the declaration from Latin American states¹³. Similarly the OAU declaration supported recognition of rights of landlocked states to participate in the exploitation of marine resources in the EEZ of neighboring states. However there were differing positions between African landlocked and coastal states on the extent of this right during UNCLOS III¹⁴.

One question begs for an answer: Why were African states so keen to embrace the UNCLOS framework? UNCLOS was not seen by African states merely as an avenue for ocean governance with its effects merely limited to matters taking place at sea but as noted by Chircop et al “*the LOS convention constituted an opportunity to break away from their colonial past and to engage in a new kind of regime-building expected to contribute to the economic, social advancement of all peoples, effectively a new international economic order.*”¹⁵ Benefits of UNCLOS were thus expected to be multidimensional contributing to economic, political, and social security of newly emergent African states. The sea and marine resources were viewed as avenues for furthering national development¹⁶, and therefore would impact on all aspects of human security; economic, social, health, food, and political

As noted above UNCLOS seeks to provide the broad framework for global ocean governance, a sort of constitution setting out the structure for the management of oceans. However it could and indeed it has been contended that UNCLOS greatly favors coastal states to the disadvantage of landlocked states;¹⁷ while landlocked states gained fairly limited rights (discussed below) Coastal states gained sovereignty over 12 mile territorial sea limited only by a right of innocent passage; and 200 EEZ, with sovereign rights to regulate exploitation conservation and management of living and non living resources subject only to certain restrictions on over flight, laying of submarine cables, management of straddling stocks, and rights of landlocked states to the surplus of the maximum allowable catch¹⁸. However, it should be noted that UNCLOS is a carefully structured compromise between various interests; those who advocate Hugo Grotius’s open seas (*mare liberum*) concept and adherents of John Selden’s closed seas (*mare clausum*) concept; between landlocked states and coastal states; between major coastal states and smaller

¹¹ See N.S. Rembe, *Africa and the International Law of the Sea* (Sijthoff and Nordoff, Netherlands, 1980) p.204-206; see also Aldo Chircop et al, *supra* note 10

¹² There are currently 16 landlocked states on the African continent including Southern Sudan.

¹³ See N.S Rembe *ibid*

¹⁴ For a detailed discussion See N.S. Rembe *ibid* pp. 148-149.

¹⁵ Aldo Chircop et al *supra* note 10 p. 121

¹⁶ See *ibid*

¹⁷ See R. Friedheim *supra* note 9 p.543; see also Aldo Chircop et al *ibid* p. 127.

¹⁸ See R. Friedheim *supra* note 9 p.543.

coastal states. Indeed as noted by Okidi “almost every provision is so delicately balanced against others that most berserkers believe that reactivating one or two issues may in fact lead to a chain reaction that may reduce the monumental í . Convention into rubble”¹⁹. It can therefore be reasonably argued that UNCLOS is the only framework there is for ensuring human security through proper governance and management of the oceans.

4.0. The “Concept” Of Good Order At Sea Vis a Vis The Expanded Notion Of Human Security.

What exactly entails good order at sea lacks clear contour delineations and it may thus suffer the danger of subjective interpretation. The S. Rajaratnam School of International Studies (RSIS) policy paper on good order at sea in South East Asia, while noting what good order at sea entails focuses narrowly on safety and security of shipping and development of marine resources²⁰. Such a focus harbors the inherent danger of narrowly concentrating on illegal activities in the sea and failing to identify the linkages with landward challenges thereby, excluding many issues linked to good order sea that are of interest to landlocked hinterland states.

If the concept of good order at sea is viewed from the prism of the expanded concept of human security as discussed above, then it provides contours through which an objective assessment of what entails good order at sea can be discussed thereby providing an objective conceptual framework through which the interests of landlocked states in good order at sea can be examined. Good order at sea is thus only achieved where threats to human security emanating from the sea are addressed. Effects of such threats are not localized to littoral states but as will be seen also affect landlocked states. Moreover such threats emanating from the sea are interlinked with landward challenges both in littoral and landlocked states.

5.0. The Rights of Landlocked States Under UNCLOS Framework

Landlocked states enjoy certain rights under UNCLOS which are meant to ensure that these states take full advantage of the sea even if they do not have direct access to the sea. These rights include, but are not limited, to:

- i. Access to the surplus over allowable catch. Article 69 of UNCLOS requires that each coastal State is to determine the total allowable catch (TAC) for each fish species within its EEZ and is also to estimate its harvesting capacity (HC) and what it can and cannot itself catch to establish surplus of the allowable catch($TAC - HC = SAC$);

¹⁹ See head note to this paper as adopted from C.O. Okidi (1982).

²⁰ Sam Batman et al ‘*Good Order at sea in South East Asia*’ RSIS Policy paper available at http://www.rsis.edu.sg/publications/policy_papers/RSIS_Policy%20Paper%20%20Good%20Order%20at%20Sea_270409.pdf (Last accessed on 10th September 2013).

- Coastal States are obliged to give access to others, particularly neighboring States and land-locked states, to the surplus of the allowable catch (SAC). Such access must be done in accordance with the conservation measures established in the laws and regulations of the coastal State by way of fishing agreements;
- ii. The right to navigation in the High seas. Article 89 provides that no state may validly purport to subject any part of the High Seas to its sovereignty;
 - iii. Freedom by landlocked states of access to and from the sea in order to exercise their rights under UNCLOS. In this regard landlocked states have a right of transit through the territory of transit States by all means of transport (Article 125). However the terms and modalities for exercising freedom of transit are to be agreed between the land-locked States and transit States concerned through bilateral, sub-regional or regional agreements;
 - iv. The right by landlocked states for their traffic in transit not to be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic (Article 127);
 - v. The right for ships flying the flag of land-locked States to have treatment that is equal to that accorded to other foreign ships in maritime ports (Article 131);
 - vi. The right by ships of all States (subject to the provisions of UNCLOS) , including land-locked states, for innocent passage through the territorial sea; the passage must be continuous and expeditious (Article 17);
 - vii. The right by all states, including landlocked states, for transit passage through straits used for international navigation between one part of the high seas or an EEZ and another part of the high seas or an EEZ. The right of passage must be continuous and expeditious and includes passage for the purpose of entering, leaving and returning from a state bordering the strait (Articles 37 and 38);
 - viii. The right by all states, whether coastal or land-locked, to enjoy in the EEZ, the freedoms of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms (Article 58); and
 - ix. The right by all states, whether coastal or landlocked to enjoy in the High seas (a) the freedom of navigation;(b) freedom of over flight;(c) freedom to lay submarine cables and pipelines, subject to Part VI of UNLOS;(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;(e) freedom of fishing, subject to the conditions laid down in section 2 and Art 116 of the LOSC; (f) freedom of scientific research, subject to Parts VI and XIII of UNLOS.

6.0. Challenges Facing Landlocked Hinterland States in East Africa.

Landlocked states in the East Coast of Africa are among the least developed countries of the world. If one compares and contrasts a country like Burundi and Switzerland which are both landlocked, with the former being in Africa and the latter being in Europe, it is quite clear that African landlocked states are still lagging behind in development while their counterparts in Asia and Europe seem to be performing well. Thirty per cent (30%) of the GDP of these countries is taken up by trade transactional costs and logistics. The 2003 United Nations Development Program (UNDP) report on challenges facing developing landlocked states further notes these landlocked countries are not only significantly poorer than their maritime neighbors but also developing at a slower pace.²¹ In the following paragraphs the paper discusses the factors contributing to the challenges facing landlocked developing states.

6.1. Lack of Direct Access to the Sea/Geographical Handicap²²

Landlocked states do not have direct access to sea. This denies these states a share of the international market due to the fact that the sea plays a significant role in maritime trade. States like Burundi and Rwanda have to export their goods through transit corridors such as Kenya. This raises the trade transactional costs thus making their products expensive and uncompetitive in the international markets²³.

6.2. Remoteness from world markets²⁴

Geographical handicap of landlocked states cut them from actively participating in the international trade as the sea plays a very crucial role in promoting international trade. The high transactional costs involved in trading discourage investors from investing in those countries²⁵.

6.3. High trade transaction costs.²⁶

Landlocked states have to incur a lot of expenses in transporting their products through transit states. Transit states may impose taxes and other costs which may raise the transactional costs. The legal basis for rights of transit are contained in Article 125(1) of UNCLOS which provides that land-locked states shall have the right of access to and from the sea for the purpose of exercising the rights provided for in the Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked states enjoy freedom of transit through the territory of transit states by all means of transport.

²¹ Thomas Snow *et al* 'Country case studies on the challenges facing landlocked developing countries' UNDP Background paper for Human Development Report (HDR) 2003,p.4.

²² For a detailed discussion See *idem* p.8.

²³ For a detailed discussion see *ibid* p. 36-47.

²⁴ See *ibid* p. 8.

²⁵ See *ibid* pp.8-11.

²⁶ See *ibid*.

Under the UNCLOS framework the terms and modalities for exercising freedom of transit shall be agreed between the landlocked states and transit states concerned through bilateral, sub regional or regional agreements -Article 125(2) and (3). Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights provided for in UNCLOS for land-locked states shall in no way infringe their legitimate interests

Transit states normally impose bureaucratic rules relating to this arrangement. The transactional costs are increased due to taxes, inspection costs and custom charges.

6.4. Political situations in transit States²⁷

Political instability in transit states normally hinders landlocked states from accessing the sea. In the context of the East African region Uganda, Burundi and Rwanda use Kenya as their transit corridor, and when post-election violence erupted in Kenya in 2007 and 2008, these landlocked states were greatly disadvantaged and suffered economically as they could not access the sea through the Mombasa port .

6.5. Conditions of infrastructure in landlocked and transit States²⁸

Some landlocked states also have dilapidated road and rail transport system thereby causing delays in shipment of the goods to the global market. Rwanda has good road networks but the infrastructure in some of the transit states such as Kenya are poor and thus negatively affecting transportation of cargo for shipment to international markets.

6.6. Security in the transit states²⁹

Security concerns are normally a great hindrance for those states transporting their goods through transit states. In Kenya, there have been reported increases in cases where trucks on transit in Kenya have been hijacked and cargo stolen.

6.7. Lack of capital for investment

Developing landlocked states lack sufficient capital to invest in agriculture, education, industries and good infrastructure. This means therefore that these states continue experiencing low growth

²⁷ See ibid p.12-14.

²⁸ See ibid pp.8-11.

²⁹ See ibid p. 14.

trends which in turn make them less competitive in the global trade. Lack of capital also means that these states cannot be able to participate in offshore mining and large scale fishing.

6.8. Disease and poverty

Diseases such as malaria and HIV and Aids continue posing great challenges to developing landlocked states. These states have to focus much of their resources to addressing these challenges instead of developing the infrastructure.

Economic challenges are not the only problems facing landlocked states in East Africa. As will be discussed below insecurity caused by a proliferations of Small and Light Weapons (SALWs), influx in counterfeit products and illegal trade in natural resources are also some of the challenges facing landlocked states e East Africa.

7.0. The Link between lack of good order at sea and the challenges facing landlocked states in East Africa

The concept of human security underscores the complex interdependent nature of phenomena affecting human security such as criminality, conflicts, politics, national affairs and the environment. The interests of regional landlocked states are therefore seen as part of the complex web of interdependence in which such interests influence, and are in turn influenced, by the good order at sea. From the foregoing it is evident some of the challenges facing landlocked states are interlinked to problems in coastal states as transit corridors. These problems not only cause lack of good order at sea but are also effects of such lack of good order. Moreover, as will be demonstrated below, even where challenges are not directly linked to coastal states as transit corridors they are linked to reverberating effects due to lack of good order at sea.

In the following section the s paper discusses r some of the manifestations of such lack of good order that threaten human security focusing on piracy and other forms of organized crime, IUU fishing and pollution and their link to challenges facing landlocked hinterland states in East Africa.

7.1. Piracy

Although Piracy off the East Coast of Africa is currently on the decline, its effect on landlocked states may serve to exemplify the effects of lack of good order at sea viewed from the wider prism of human security and consequently why landlocked states should be interested in good order at sea.

7.2. Adverse effects on Commerce and Trade

Piracy imposes costs on the global economy. Piracy incurs economic costs through ransom payments, damage to ships and cargo, delays in delivering cargo, increased maritime insurance rates, the costs of steps to harden merchant ships against attack, and costs for using naval forces for anti-piracy operations. Rerouting vessels to avoid the risky areas leads to increased fuel costs.³⁰ According to international shipping organizations, insurance rates for ships rose from \$ 500 in 2008 to \$20,000 per voyage in 2009 because of piracy ó a forty-fold increase³¹. In some instances insurance premiums have thus gone up by 1000%³². In 2011 the cost of insurance associated with piracy (war risk and kidnap and ransom insurance) was approximately \$ 635 million³³.

If one considers high trade costs as one of the major challenges facing landlocked hinterland states in East Africa, increase in trade costs due to piracy serves only to exacerbate the challenge for landlocked states to be competitive in the world trade market. This in turn affects their ability to develop domestic infrastructure, tackle poverty and fight diseases which are all threats to human security. Moreover it affects their ability to invest in sectors such as agriculture, industry and Information Technology (ICT) to boost their economies.

7.3. Proliferation Of Arms In The Region And The Potential Of Fuelling Conflict

Increased cases of piracy sparked a proliferation of arms in the East Africa region. As pirates got more revenues from ransom payments, they were able to purchase more sophisticated weapons. According to BBC news report, most of the weapons were bought from Yemen and from the capital Mogadishu³⁴. Weapon dealers from Mogadishu receive the money through *hawala* - an informal money transfer system based on honor. With the borders of neighboring states being very porous, these arms find their way into countries like Kenya, Ethiopia and Eritrea and are used for criminal activities.³⁵

One of the major challenges faced by landlocked hinterland states in East Africa is general insecurity in transit states. Insecurity in Kenya greatly affects transit of goods to Uganda and Rwanda while insecurity in Tanzania affects transit of goods to Burundi and Rwanda.

³⁰ The additional fuel cost of traveling via the Cape of Good Hope is about \$3.5 million annually, U.S. Department of Transportation Maritime Administration, *Economic Impact of Piracy in the Gulf of Aden on Global Trade*, December 2008.

³¹ Robert R. Frump, "Danger at Sea: Piracy Threat Likely to Keep Growing Despite Greater International Response," *Shipping Digest*, January 12, 2009.

³² See story entitled; *Shipping insurance cost soars with piracy surge off Somalia* available at http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4727372.ece (Last accessed on 21st June 2010).

³³ See *ibid*.

³⁴ *Ibid* at 19.

³⁵ *Failing States: Weapons Proliferation, Piracy and Organised Crime*, available at <http://www.diis.dk/sw79304.asp> (last accessed on 19th June 2010) .

Proliferation of arms due to Piracy also increases political upheavals in an already volatile region. This not only adversely affects relationship between transit neighbors and landlocked states like Ethiopia, Djibouti and Eritrea, but also directly affects landlocked states like Southern Sudan and Northern Uganda.

If one considers good order at sea from the prism of human security, there is thus a direct link between lack of good order at sea and lack of human security, in terms of political and individual security in landlocked hinterland states in East Africa.

7.4. Trafficking in persons, Small Arms and Light Weapons (SALWs), Drugs, and Illegal trade in natural resources and counterfeit goods

Piracy is not the only a form of organized criminal activity that results from a lack of good order at sea. Threats to human security such as trafficking in persons, SALWs, drugs, trade in counterfeit products and illegal trade in natural resources pose serious challenges in e East Africa. The United Nations Office on Drugs and Crime (UNODC) report 2009 on Organized Crime in Eastern Africa notes that:

Eastern African countries have become an ideal transit point for illegal goods. Due to the region's long coastline, its remote islands, and porous borders presents an easy entry point to the whole continent. Furthermore, being located south of the world's major heroin producing regions; it can be used as a transit point from east to west, or up to the north. In addition, the geographical features of Eastern Africa are exacerbated by high levels of corruption, which further ease the transfer of goods through the region by permitting access via official border crossings.³⁶

Effects of such organized crime on landlocked neighboring countries are evident. For instance the UNODC report notes that Seychelles is seen as an important entry point for SALWs into Eastern Africa that later find themselves in landlocked hinterland states fueling conflicts and general insecurity in those states. In this regard the UNODC report finds Burundi as one of the country's where SALWs are most accessible and levels of violent crime are also very high.³⁷ Burundi is thus not only directly but also greatly affected by smuggling of SALWs through the sea.

With regard to illegal trade in wild life, it depletes the natural resources of such states, impoverishing communities thus imperiling human security. The report finds the port of

³⁶ United Nations Office on Drugs, 'Organized crime and trafficking in Eastern Africa: A discussion paper' (2009) p. 11 available at [http://www.unodc.org/documents/easternafrika/regional-ministerial-meeting/Organised Crime and Trafficking in Eastern Africa Discussion Paper.pdf](http://www.unodc.org/documents/easternafrika/regional-ministerial-meeting/Organised%20Crime%20and%20Trafficking%20in%20Eastern%20Africa%20Discussion%20Paper.pdf) (Last accessed on 4/9/13).

³⁷ *Idem* p. 24

Mombasa as the largest hub for smuggling of wild flora and fauna by sea. Trade in ivory is noted to be on the increase in *inter alia* Rwanda.³⁸ Rwanda is thus directly affected by smuggling of ivory through the sea.

On trade in counterfeit goods, the UNODC report finds the Eastern African region which includes the landlocked hinterland states of Burundi, Rwanda and Uganda are emerging *significant* destinations for counterfeit goods. The entry points for such counterfeit goods in the East African region are through the sea ports of their coastal neighbors.³⁹ Such trade leads to *inter alia* decreased revenues for governments to plough and develop economies. As hitherto discussed one of the challenges facing landlocked states is failure to make capital investments in key sectors of their economies and also to develop good infrastructure. This can only be achieved where governments can collect revenue and plough it into their economies. Counterfeit drugs also imperil the health of individuals; this exacerbates the situation in landlocked hinterland states already grappling with the burden of tackling of diseases such as HIV AIDs and the widely prevalent malaria. The UNODC report finds one of the most heavily counterfeited drugs is artesimine used for treatment of malaria. According to the World Health Organization (WHO) Uganda is one of the countries in Africa with the highest burden of Malaria⁴⁰. Uganda is thus directly and heavily affected by trade in counterfeit drugs smuggled though the sea.

7.5. Fishing and Pollution

In the last one decade, the interconnection between environmental issues and human security issues has gained a greater significance⁴¹. Specifically, there has been a growing awareness of the link between maritime security and environmental issues, their interconnectivity and the multiple effects they can have across a spectrum of disciplines⁴². Perhaps, the most important facets of the interconnectivity between maritime security and the environment are in the realms of resource utilization and conservation, and prevention of pollution.

Environmental factors that influence human security include; desertification, deforestation, land degradation, natural disasters such as drought and flood, over (and often illegal) exploitation of resources and pollution. The paper focuses on two elements that have been most prevalent in the Eastern Africa Coast; illegal exploitation of marine resources and pollution of the marine environment and their link to challenges facing landlocked hinterland states in East Africa.

³⁸ *Ibid* p.34.

³⁹ *Ibid* p. 36.

⁴⁰See WHO Malaria report fact sheet (2012)p.2 available at http://www.who.int/malaria/publications/world_malaria_report_2012/wmr2012_factsheet.pdf (last accessed 4/9/13).

⁴¹ Leary and Chakraborty 2005.

⁴² Organization of Eastern Caribbean States; *Intervention related to Maritime Security and Safety*, available at http://www.un.org/Depts/los/consultative_process/mar_sec_submissions/oecs.pdf (last accessed on 2nd August 2010).

7.5.1. Illegal exploitation of Marine Resources.

Illegal exploitation of marine resources is mainly manifested through IUU fishing. However illegal exploitation of resources along the vast Somali coast has greatly contributed to the security situation in Somalia⁴³.

Somalia has a coastline of 3,300 kilometers making it the longest in Africa. Somalia's coast is endowed with abundant high value fish stocks⁴⁴. Somali waters are rich with marine and other natural resources that represent an important primary production sector. Due to its geographical position Somali waters are characterized by a unique tropical marine ecosystem and an extraordinary biological diversity.⁴⁵ The coast of Somalia has among the highest concentrations of fish in the world's oceans. At the turn of the millennium, Somalia was home to about 30,000 professional fishermen, along with 60,000 occasional fishermen⁴⁶.

The abundance of fish stock coupled with a lack of effective security infrastructure has attracted intensive illegal fishing from far distant fishing vessels that take advantage of the long unpatrolled coastline⁴⁷. Although there is a general agreement that the fish stocks in the waters off the Somali coast have been overexploited, there is no reliable data to indicate the extent of the problem. There have been no tangible research activities since the major fish stock assessments by FAO/UNDP in the 1970s and 1980s, and other bilateral research assistance provided by various governments and agencies⁴⁸.

While adverse effects of IUU fishing to littoral states and artisanal fishers have been considered in existing literature, there is little discussion on the effects on landlocked hinterland states. Piracy off the coast of Somalia is linked to IUU fishing. Lacking alternative livelihoods and threatened with increased food insecurity, many Somalis living near the shore have turned to piracy to sustain themselves. These Somalis view piracy as a legitimate means of earning an income after their fish stocks were plundered through IUU⁴⁹.

⁴³ Why Fish Piracy Persists The Economics of Illegal, Unreported and Unregulated Fishing, OECD available at ftp://ftp.fao.org/fi/document/cwp/cwp_23/inf4e.pdf (Last accessed on 10th August 2010)(website not genuine).

⁴⁴ *Ibid*

⁴⁵ Mission Report, Joint UNEP /DHA Environment Unit and the UN Co-ordinating Unit for Somalia, available at ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1109388 (last accessed on 10th August 2010)

⁴⁶ Prelude to piracy; *The poor Fishermen of Somalia* available at <http://www.spiegel.de/international/world/0,1518,594457,00.html> (last accessed on 10th August,2010). Somali fishermen catch a wide variety of seafood -- from tuna to sardines, dorado to perch, shark to lobster -- in their nets..

⁴⁷ Dr. Hassan and A. Mwangura, IUU Fishing and Insecurity Impacts on Somalia Fisheries and Marine Resources, 4th IUU Fishing update & Consultation Chatham House ,2008. (The distant-water fishing vessels include of those sailing under flags of conveniences such as China, France, Germany, Honduras, India, Italy, Japan, Korea, Pakistan, Portugal, Saudi Arabia, Russia, Spain, Sri Lanka, Taiwan, Thailand and Yemen.)

⁴⁸ Summary of fisheries and resources information for Somalia <http://www.fao.org/fi/oldsite/FCP/en/SOM/profile.htm> (Last accessed on 10th August 2010)

⁴⁹ Maritime Security in Southern African Waters(Thean Potgieter and Reiner Pommerin eds) 2009.

As discussed above piracy has direct link to challenges facing landlocked hinterland states in e East Africa. Consequently, landlocked states are also exposed to the reverberating effects of IUU fishing. As noted above UNCLOS grants landlocked states access to the surplus of allowable catch, IUU fishing depletes fish stocks making any surplus stock unattainable. Landlocked states are therefore negatively affected by IUU fishing. With piracy on the decline, such persons lacking alternative means to sustain their livelihood are prone to engage in other organized criminal activities that also directly affect landlocked hinterland states.

7.5.2. Pollution of the Marine Environment

In the East African region, like in most developing regions of the world, most people depend on natural ecosystems for their livelihood. The disruption of the natural cycle therefore would be catastrophic to the human security in the region.

Over the last two decades there has been massive pollution of the marine environment in the East African Coastal region⁵⁰. One of the major sources of pollution that has caused most damage to the environment is toxic waste dumping and pollution from land based activities. In 2004, in the wake of tsunami waves that hit the Indian Ocean, a grim reality was exposed; the extent of the presence of highly toxic waste dumped along the Somali coastline. The waves smashed open barrels containing toxic waste that had been dumped there since early 1980s. According to a story carried out by the Sunday Times newspaper of United Kingdom, warlords in Somalia were paid by European firms to allow dumping of toxic waste in waters adjacent to their fiefdoms⁵¹.

In February 2005, the United Nations Environment Programme (UNEP) issued an official statement in which it confirmed that Somalia's coastline had been used as a dumping ground for nuclear and hazardous waste by other states for many years. The reason proffered for the toxic waste dumping is the long civil war and hence the inability of the authorities in Somalia to police shipments or block dumping of toxic waste⁵².

The hazardous waste dumped along Somalia's coast comprises uranium radioactive waste, lead, cadmium, mercury, industrial, hospital, chemical, leather treatment and other toxic waste. Most of the waste was simply dumped on the beaches in containers and disposable leaking barrels which ranged from small to big tanks without regard to the health of the local population and any environmentally devastating impacts⁵³.

⁵⁰ See IPCC report on Detection and Attribution Related to Anthropogenic Climate Change available at <http://www.ipcc.ch/pdf/supporting-material/expert-meeting-detection-anthropogenic-2009-09.pdf> (Last accessed on 9th August 2010)

⁵¹ See story entitled Somalia's Secret Dumps of Toxic Waste Washed Ashore by Tsunami available at <http://www.timesonline.co.uk/tol/news/world/article418665.ece> (last accessed on 18th November, 2011); Barbara Carazzolo et al (2002). Ilaria Alpi: Un Omicidio Al Crocevia dei Traffici, second edition, Baldini & Castoldi, Milano, pp 206

⁵² UNEP, Press Release UNEP/268, February 22, 2005.

⁵³ Hazardous waste dumping in Somalia, a report by United Nations Environment Programme available at http://www.unep.org/bh/Publications/Somalia/TSUNAMI_SOMALIA_LAYOUT.pdf (last accessed on 18th November, 2011).

Marine pollution however is mostly as a result of land based activities.⁵⁴ Similarly Marine pollution in the East African region has mainly come from land based sources, (including from landlocked hinterland states with rivers feeding into the Indian Ocean that are heavily dependent on agriculture). The siltation caused by agricultural activities is a major pollutant to the marine environment⁵⁵.

Consequently, activities in landlocked hinterland states contribute to effects on the marine environment. Pollution of the marine environment in turn leads to adverse consequences affecting landlocked hinterland states. Marine pollution undermines the viability and sustainability of livelihoods in the East African coast. The health and well being of the coastal populations is largely dependent on the well being of the coastal ecosystem⁵⁶ Marine pollution affects fish and other marine living organisms. This may lead to shortage of food supply and employment opportunities in the region⁵⁷. With reduced food supplies and employment opportunities, coupled with a growing population, there is likely of heightened incidences of criminality as a source of livelihood⁵⁸. Such criminal activities raise insecurity in transit states directly affecting transportation of cargo to landlocked hinterland states, Moreover criminal activities may occasion activities directly imperiling maritime security such as piracy and other organized crimes.

8.0. Conclusion

Viewed from the more recent expanded concept of human security that underscores the importance of interdependence of phenomena this paper has sought to show how certain manifestations of lack of good order at sea are linked to challenges in landlocked hinterland states.. This enlarging of analysis encourages security to be seen within larger, regional contexts. The rationale for viewing security from the expanded perspective founded on the processes of internationalization (of national affairs, conflicts and politics), and those of interdependence, including contemporary complex interdependence.

⁵⁴ See supra note p.549

⁵⁵ *Idem.*

⁵⁶ See report published by UNEP titled Marine Pollution and the Role of Cities, available at http://www.unep.org/urban_environment/PDFs/Coastal_Pollution_Role_of_Cities.pdf (Last accessed on 18th November, 2011)

⁵⁷ *Idem.*

⁵⁸ UNEP, *Ecosystems and Biodiversity*, and *Climate Change* September 2005.

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The interests of regional landlocked hinterland states in East Africa are secured as rights within the framework for management of oceans provided in UNCLOS. These rights are therefore seen as part of the complex web of interdependence in which such interests influence, and are in turn influenced, by the good order at sea in the Indian Ocean Region (IOR). It is therefore in the interest of such landlocked hinterland states of East Africa to effectively engage in finding solutions to lack of good order at sea.

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