COMBATTING THE MENACE OF PIRACY AND MARITIME CRIMES IN AFRICA

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INTRODUCTION

1.   As an island continent, Africa in the foreseeable future would continue to depend significantly on its seas and oceans for export and import activities. Growing population and reliance on offshore extraction of both mineral and food resources would also compel increased shipping as well as coastal and deep sea activities; more so when the continent is a net importer of food and hydrocarbon products. It could be also be assumed that the maritime area around Africa, particularly the adjacent waters in the Mediterranean, Gulf of Aden, Indian Ocean and the Gulf of Guinea (GoG) would continue to generate global interest, on account of their extractive and communication values as d a global highway and sources of hydrocarbon. Under the foregoing premise, the security and safety of shipping and other seaborne activities constitute a cardinal determinant of the prosperity and future of Africa.

2.   Prior to the turn of this century, Africa's maritime environment was largely identified with 'sea blindness', in terms of the pervasive limited interests and inabilities in governance and exploitation activities by coastal states. In recent years, however, it is gladdening to note the progressive interest and commitment of political level actors towards addressing the deficits of sea blindness across the continent. In particular, following the expression of the African heads of government in Sirte, Libya at its 13th Ordinary Session in 2009, for a more prosperous use of the seas, the African Union Commission (AUC) responded to the attendant charge with the articulation of the 2050 Africa's Integrated Maritime Strategy (AIMS). The development of the Strategy and its Plan of Action in 2014 was followed by the adoption of its implementation instrument, the AU Charter on Maritime Security, Safety and Development in October 2016 in Lome, Togo during the first Summit of AU Heads of Government on Maritime Security. Similarly, apart from the Djibouti Code of Conduct, and regional Memorandum of Understanding (MoU) on Flag/Port State Control, Regional Economic Communities (RECs) such as the ECOWAS and ECCAS have seen the need to develop and emplace regional maritime strategies to accelerate wealth creation and governance capacities. The Yaounde Declaration of June 2013 between ECOWAS and ECCAS, agreeing to the establishment of an Inter-regional Maritime Coordination Centre as well as the Code of Conduct for the Repression of Piracy and Illicit Activities in the Gulf of Guinea, was another

step that echoes the growing interest of the political level in the development, safety and security of Africa's maritime environment.

3.   In the light of the evolving efforts, it is necessary to identify the confluence role of the Association of Africa's Maritime Administrators (AAMA), which was also derivative of the maritime renaissance, having been established in 2012 as an implementation tool of the Africa's Maritime Transport Charter. The objectives of AAMA translate into catalytic and coordination roles among stakeholders in the commercial, civil, safety, security and regulatory sectors of the maritime industry at national, regional and continental levels. More important is the fact that the establishment of this forum identifies with the objectives of the AIMS Plan of Action. It is therefore gladdening to note that this conference and, indeed, its theme which focuses on 'Sustainable Use of African Oceans and Seas' align with the collective continental objectives.

4.   In spite of the encouraging efforts at the political level, it is apparent that the prevalent maritime security situation around Africa could be much better. With particular reference to piracy, the challenges encountered in recent years in the Gulfs of Aden and Guinea reminds that practical preventive and remedial measures are still inadequate. In discussing the topic 'Combatting the Menace of Piracy and Other Maritime Crimes in Africa', therefore, this presentation intends to explain relevant concepts and the trend of maritime criminalities around the continent, including pertinent issues and challenges. Remedial measures shall be proffered as deemed appropriate.

CONCEPTS AND DEFINITIONS

5.   According to the 2050 AIMS, Maritime Crimes include; Piracy and Armed Robbery against Ships (PIRAS), Illegal Arms and Drug Trafficking, Money Laundering, Crude Oil Theft and Illegal Bunkering, Human Trafficking and Smuggling at Sea, Illegal Unregulated and Unreported Fishing (IUUF), Maritime Terrorism and Environmental crimes. This discourse also relies on provisions of Article 101 of the 1982 United Nations Convention on the Law of the Sea to define Piracy as any of the following acts:

> a.   Any illegal acts of violence, or any act of deprivation, committed for private ends by the crew or the passengers of private ship or a private craft, directed
> > (1)   On the high seas against another ship or aircraft, or against any persons or property on board such ship or aircraft.

(2)   Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

b.   Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

c.   Any act of inciting or intentionally facilitating an act described in subparagraph (a) or (b) above.

6.   The IMO Resolution A.1025 (26) defines Armed Robbery against Ships as any of the following acts:

a.   Any illegal act of violence or detention or any act of deprivation, or threats of thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial seas.

b.   Any act of inciting or of intentionally facilitating an act described in subparagraph 5a above.

7.   The limitation of sovereign jurisdiction in the application of piracy necessarily demands the domestication of related legal enforcement tools by willing states. This, in turn, requires states to define jurisdictional interests on piracy in terms of nationality of pirates and victim persons, flag state of pirate or victim vessels, including ownership of cargo and location of incident. Likewise, the burden of combating armed robbery at sea lies with governments and by implication is a measure of national maritime governance capacity. For the purpose of this discussion, PIRAS shall be used interchangeably with Attacks on Shipping to reflect the same collective meaning.

8.   It is equally necessary to identify with the AIMS definition of Africa's Maritime Domain (AMD) as 'all areas and resources of, on, under, relating to, adjacent to, or bordering on an African sea, ocean, or African lakes, intra-coastal and inland navigable waterways, including all African maritime related activities, infrastructure, cargo, vessels and other means of conveyance.' It also includes the air and the electromagnetic spectrum above these defined areas. The AIMS made additional provision for the establishment of a Combined Exclusive Maritime Zone of Africa (CEMZA) envisioned as 'a stable, secure and clean maritime zone ... for implementing common African maritime affairs policies for the management of African oceans, seas and inland waterways resources as well as for its multifaceted strategic benefits'.
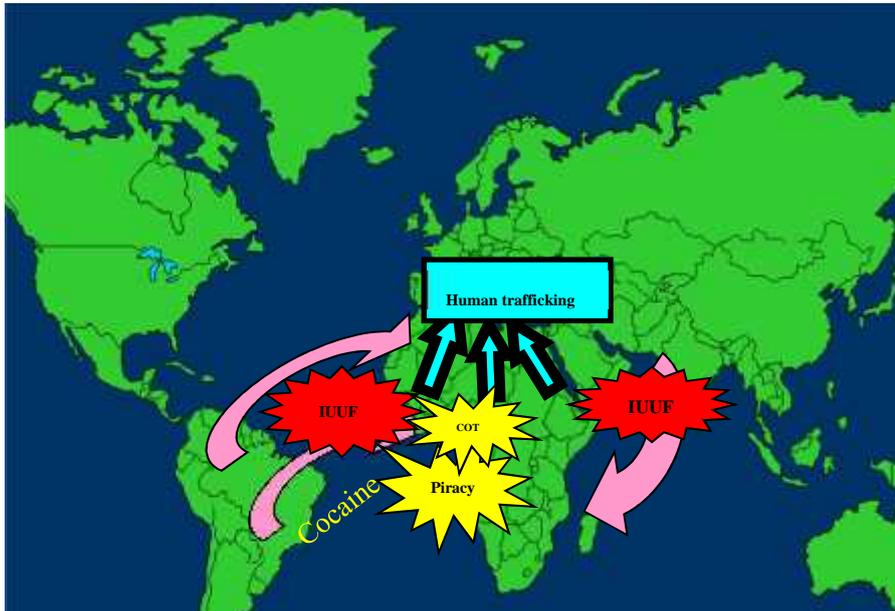
TREND OF MARITIME CRIMES IN AFRICA

Figure 1.   Maritime Crimes across Africa.

9.   Figure 1 depicts the geo-spatial manifestation of maritime criminalities across the major water bodies around Africa. Notably, the socio-political problems in northern Africa since 2011 with attendant weakening of maritime governance capacity, particularly in Libya, gave rise to unprecedented upsurge in illegal migration across the Mediterranean. As the trend persists, the International Organisation for Migration (IOM) recently reported increase in cases of migrants trapped in North Africa being sold as slaves. From the illegal drug trafficking perspective, the South America – West/North Africa routes have remained major trafficking hub for cocaine, mostly destined for Europe. Likewise, the coasts of Eastern and Southern Africa have also emerged as key transit routes for trafficking heroine from Asia into Europe. More worrisome is the gradual transformation of the African transit states into consumption markets and production sources for such drugs and indeed other emerging dangerous drugs. IUUF equally constitutes a challenge perpetrated mainly by European and Asian flagged ships across both the Atlantic and Indian Oceans around Africa. Regrettably, annual losses due to IUUF are estimated at over US $1bn as Africa remains a net importer of fish products.
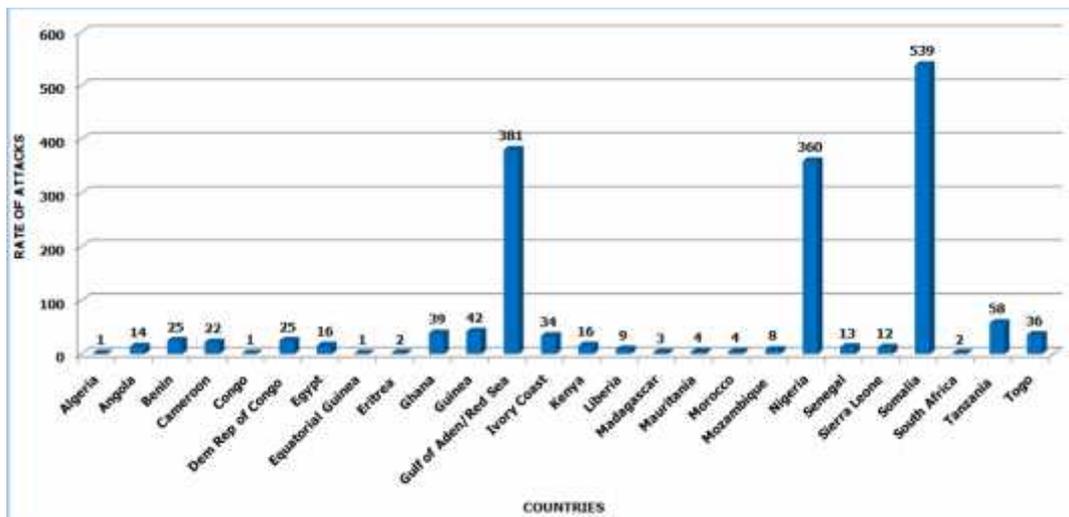
Figure 2.   Reported Piracy and Armed Robbery Incidents (Africa) 2003-2016

10.   The trend of attacks on shipping between 2003 and 2016, as compiled by the IMB and displayed in Figure 2, shows clearly that the Horn of Africa (HoA), (Somalia, Gulf of Aden) and the Gulf of Guinea account for majority of the reported or attempted attacks at various times during the period. In this regard, the 2 areas shall constitute the focus of analysis of the trend of piracy in this discussion.

11.   In the HoA, the insurgence of piracy over a decade ago, as depicted in Figure 3, could be attributed to the combination of state failure and socio-economic deprivation in Somalia as well as weak MLE capability among neighbouring states. At its peak, the piratical acts involved abduction of crew and long-term negotiation for ransom payment. The threat to international commerce along the Horn, which accounts for transit of about 20,000 ships annually, necessitated several UN Security Council Resolutions, including development of the Djibouti Code of Conduct (2009), the Inter-Governmental Authority for Development (IGAD) Peace and Security Strategy as well as Somalia's Inland Strategy and Action Plan against Piracy. Practically, however, it was the activation of multinational naval task forces and operations, such as Operations ATALANTA (12 EU navies), OCEANSHIELD (14 NATO navies) and Combined Task Forces 150/151 (14 EU, USA and Asian navies), along with the introduction of Privately Contracted Armed Security Personnel (PCASP) onboard merchant ships, that turned the tide against pirates from 2013. The introduction of International Recognised Transit Corridor also proved useful in reducing the cost of policing the vast swath of the Horn of Africa. The hijack of MT ARIS 13 by Somali pirates in March 2017 and subsequent attack of 3 other vessels is however a reminder of the fragility of recent progress. Nevertheless, the successful negotiation for release of MT ARIS 13 by the new

Somali government without ransom payment signifies the importance of political stability in anti-piracy efforts.
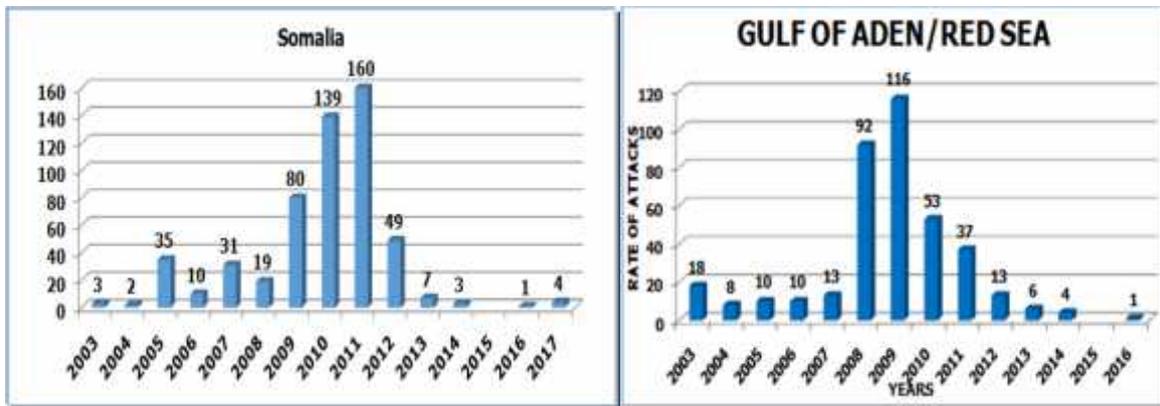

Figure 3.   Trend of Piracy in the Horn of Africa

12.   In the GoG, the observed trend of PIRAS associates closely with criminal and militant activities perpetrated around the coastal communities. In the Niger Delta for instance, by 2004, the hitherto peaceful political and socio-economic agitations had transformed into violent militancy, laced with attacks on shipping, crude oil theft and other criminalities. Likewise, Cameroon, Equatorial Guinea, Gabon and Sao Tome and Principe had begun to experience attacks on shipping. In response the ECCAS in 2008 initiated a zonal collaborative maritime security arrangement; this effort, though largely successful, was only effective within the common maritime area around Zone D maritime area. In Nigeria, the introduction of political and socio-economic initiatives such as the Amnesty Programme for Ex-Militants in 2009 did much to abate attacks on shipping. Nevertheless, the resurgence of militancy in late 2015 could be attributed to the observed increase in attacks. The undesirable trend necessitated dedicated anti-piracy effort by the Nigerian Navy in April 2016 under Operation TSARE TEKU with resultant significant decrease in attacks onwards till date. Elsewhere, an anti-PIRAS operation mounted by the Nigerian Navy and NIMASA off the coast of Lagos in 2010, proved successful in decimating incidents of armed robbery against ships, substantially till date. Regrettably, by 2011, Benin Republic had started to experience PIRAS that almost shut down shipping activities around the Port of Cotonou until a combined Operation PROSPERITY, with significant intervention from the Nigerian Navy and NIMASA, successfully rid the area of piratical attacks by end of 2012. Meanwhile, indications of increasing attacks along the Togo-Ghana-Cote d'Ivoire had begun to manifest by 2013. Similarly, the hijack of MT KERALA off the coast of Angola in January 2014 and its rescue 6 days later

off Tema, Ghana as well as the hijack and rescue of MT MAXIMUS between Cote d'Ivoire and Sao Tome and Principe in 2016 represent the widening dimension of criminal networks involved in PIRAS within the GoG.

ISSUES

13.   PIRAS and other maritime crimes reflect, to a reasonable extent, the ability or otherwise of coastal or island state to emplace effective governance in its maritime domain. As derivable from the foregoing discussion, these criminalities reflect a predictable trend as they also have their roots in political and socio-economic causals ashore. It is therefore necessary to illuminate further on the attendant issues on these observations.

14.   Threat Migration.   Prior to the decimation of piracy in the HoA, the focus of pirates on the international sea route was relatively predictable. Apparently, the multinational naval actions precipitated the southward extension of attacks into Tanzanian waters and the Mozambican Channel since 2012. In the GoG, however, the past 15 years have witnessed a rapid mutation of PIRAS in terms of motive and reach. From cargo theft and armed robbery in the coastal fringes up to the early 2000s, the trend manifested in armed attack on ships deep into the sea, theft of petroleum cargo onboard and more recently, preference for kidnap for ransom. Specifically in the Niger Delta, the dwindling price of crude oil from 2015 made its theft and attacks on crude tankers less attractive. Rather, pipeline vandalism and illegal refining persisted. The conclusion of local elections in some of the Niger Delta states in December 2015/January 2016 equally heralded a disturbing increase in attacks on shipping and pipeline vandalism, particularly with the overt declaration of violence by militant groups. As the anti-piracy operations by the Nigerian Navy began to show effectiveness in 2016, a migratory trend towards illegal refining became noticeable. Activation of the anti-illegal refining Operation RIVER SWEEP in January 2017 resulted in a surprising destruction of over 200 illegal refineries, more than what were destroyed in the previous 2 years. Regrettably, the successes elicited reversion to attacks on shipping and kidnap for ransom of foreigner crew members. Although the restful militancy in the Niger Delta is a significant contributor to the security challenges in the GoG, the expanding criminal network that cuts across several state boundaries in the GoG, involving many nationals, also calls for concern. The arrest and conviction of suspects from several GoG states, Asia and Europe justify this observation on the migratory trend of attacks on shipping in terms of geography, purpose, target and scope of collaboration. Apart from fluctuations

in prices of crude oil, the highlighted migratory trend of maritime criminality is symptomatic of deeper political and socio-economic issues, weaknesses in maritime governance capacity and other strategic considerations such as inter-state cooperation and coordination.

15.   <u>Socio-economic and Political Considerations</u>. The analysis of PIRAS in both the HoA and GoG readily suggests the imperative of more focused attention on the socio-economic dimension of the causals. As Matessi and Tarrant cautioned, the successes in the HoA should not be seen as permanent, but at best tactical and reversible. Rather, they canvassed that practical attention should be focused on the motivations for PIRAS such as extreme poverty, poor infrastructure and unemployment. Further to the caution by Mattesi and Tarrant, it is necessary to note a recent comment by Abdirizak Dirir, the erstwhile Director of Anti-Piracy Operations in Somalia's Puntland. In the wake of the resurging piracy off the HoA, he pointed out that 'piracy will restart again if illegal fishing by foreign vessels is not stopped'. It is hoped that the improvement in political stability in Somalia would facilitate the implementation of appropriate strategies towards addressing the socio-economic issues. In the GoG, the fact that the trend of attacks on shipping has responded in inverse sympathy with the effort to address political and socio-economic issues in the Niger Delta, such as the Amnesty Programme and dialogue with the militant groups, also suggests the direction of future strategy towards curbing PIRAS in the region. For MARADs, these observations translate into the imperative of developing and integrating measurable employment generation programmes into national maritime strategies and plans on shipping and port development, seafarers training and regulatory framework on local content capacity development. Bearing in mind the limited industrial status and indigenous shipping capacity of many African states, there is the further need to limit the negative impact of foreign trade agreement on development of local industries and employment generation.

16.   <u>Policing Capacity</u>.   Policing capacity, as an expression of maritime governance, relies on effective compliance with the doctrinal concept of 'Trinity of Action' viz; Surveillance, Response Initiative and Law Enforcement. Maritime Domain Awareness (MDA) capability, in terms of remote monitoring assets and information generation, provides a veritable tool for assessing maritime surveillance effort. It is encouraging to note that, in recent years, many African states have made encouraging effort to acquire electronic MDA assets such as AIS, radars and camera to provide remote picture of activities in their respective domain. Nevertheless, complete coverage of coastline and the EEZ is yet to be achieved in several states. More worrisome is the ability of many states to sustain the maintenance and full functionality of the MDA

assets that rely on relatively expensive internet bandwidth subscription and foreign technical assistance. Similarly, maritime air surveillance, as a first line of detection and physical observation, is yet a limited capability due to paucity of maritime patrol aircraft across Africa. Response initiative derives strength from the level of availability of patrol vessels and their continuous presence in the key coastal areas and the EEZ. A rough estimate suggests that the continent would require about 780 OPVs to establish effective presence in the EEZ and/or CEMZA, when established. Such theoretical figure is a far cry from the current aggregated capacity of about 280 patrol vessels in the collective inventory of African navies and coast guards. Effective MLE draws strength from capacity to detect and arrest, availability of domesticated anti-piracy law(s) and efficiency of prosecution process. Regrettably, based on the aforementioned asset inventory, the capacity of Africa's coastal states to effectively detect and arrest remains limited. Likewise, as less than 20 per cent of these states have anti-piracy laws, the impairment of the prosecution process is apparent. The arrest and transfer of suspected pirates involved in the attack on MT MARIAM by the Ghana Navy in January 2015 to Nigeria arising from absence of anti-piracy laws in Ghana, (as well as Nigeria) exemplifies the dilemma of MLE in Africa.

17.   <u>Commercialisation of Anti-Piracy Activities</u>.   The successes of the PCASP concept in the HoA, coupled with the fundamental shift in IMO's position through recommendation of such concept, set the stage for the emergence of Private Maritime Security Companies (PMSCs) as attractive business venture. Interestingly, the decimation of piratical acts in the HoA in recent years has coincided with increasing influx of PMSCs seeking to provide services to shipping communities in the GoG. In the GoG, gaps in patrol capacity of the NN, coupled with increasing threat of militant attacks necessitated the transformation of erstwhile logistics support companies, contracted mostly by the oil companies, into PMSCs. Accordingly, the provision of fixed weapons and armed personnel by the NN onboard PMSC-owned vessels under an MoU, obligates both parties to conform with defined minimum standards. Essentially, under this arrangement, the government through the NN retains the monopoly of lawful control of arms at sea. It is however necessary to caution that the PMSC model in Nigeria and other states could result in growing tendency towards increased investment in private anti-piracy capacity which may rob navies and coast guards of much needed attention and recapitalisation. Therefore, as many African coastal states are under pressure to embrace the concept of PMSC/PCASP, there is the need to avoid over-commercialisation of maritime security efforts.

18.   <u>Frailty of Maritime Governance.</u>   Frailty of maritime governance, as a symptom of sea blindness, manifests in terms of deficient policies or limited knowledge of available legal and cooperative instruments for addressing PIRAS at both state and regional levels. When aware, commitment to the implementation process and capacity for sustenance of enforcement process constitute other limiting factors. At the national level, many African states still contend with poor coordination and limited capacity among national agencies, departments of government and civil maritime stakeholders in the management of MLE efforts. Evidence equally abound that many stakeholders as well as implementing agencies are hardly aware of agreements consummated on maritime security by their respective governments. Further, IUUF thrives around many coastal states, not only because of limited patrol capability, but also as a result of weak or non-existent laws with minimal deterrent values. These frailties impair the much needed cooperation, knowledge and information sharing, including operational coordination that are required to provide effort-multiplier value on anti-piracy efforts.

<u>REMEDIAL MEASURES</u>

19.   The foregoing analysis of the trend of maritime crimes and attendant issues shows that remedial measures transcend the capacity of navies and coastguards. It brings to the fore the imperative of a whole-of-nation and whole-of-region effort in addressing the fundamental causals and responsive strategies. Some of the remedial measures are proffered in this section.

20.   <u>Asset Recapitalisation Strategy.</u>   Notwithstanding the ample evidence of political will on asset recapitalisation of navies and coast guards, particularly in the GoG, these efforts are still far in catching up with the huge OPV deficit as earlier pointed out. Apart from the challenge associated with multiple sources of vessel acquisition in many states, other imperatives requiring urgent attention include development of affordable OPVs in terms of acquisition and maintenance. This circumstance provides an opportunity for joint effort among coastal states in the development and acquisition of operationally efficient and cost effective vessels that could be locally constructed, thereby providing avenue for development of shipbuilding industry and employment generation. Such effort should be backed by institution of common air surveillance mechanism with night observation capability for both routine and responsive monitoring of the maritime air space, at the least, starting with Zones D and E.

21.   <u>Profiling Capacity</u>. Congruent to the issues associated with the emplacement of the Trinity of Action is the overriding need for effective

profiling of activities in the maritime domain, as a preventive strategy against maritime criminality. This requirement is informed by an agreement with the fundamental understanding that 'piracy begins and ends ashore'. In a recent experience off the coast of the Niger Delta, an investigation into the abduction of a captain of an offshore support vessel in July 2016 revealed that the same person was kidnapped on board the vessel 2 years earlier. Additional intelligence from a foreign source had also implicated him in illegal sale of bunker fuel at sea. It could be recalled that earlier in October 2012, the captain of another offshore support vessel C-RETRIEVER was indicted, as he also later confessed to illicit sale of bunker fuel at sea in which one of the operations led to his abduction at sea. Interestingly, the process that led to confession of the Captain was facilitated by a foreign civil intelligence source that was also able to track his ostentatious lifestyle in the US. These examples justify the overriding need for development of an effective anti-piracy profiling capacity at national, regional, continental and global levels. It calls for the aggregation of the outputs of surveillance, response and law enforcement efforts into a sustained database on maritime activities that would result in the designation of vessels, persons and groups of interest in relation to past and potential criminal activities. In this regard, Maritime Administrations (MARADS) have an important role to play, particularly in providing the platform for such information sharing synergy at national and regional levels. Further, implementation of the recommendations of the Reviewed IMO MSc Circular 1333 on Prevention and Suppression of Piracy, which encourages states to establish functional focal points, align with the necessity of a robust profiling capacity. Essentially, in the light of the 2050 AIMS and other subsisting regional agreements, the focal points translate into regional and national Maritime Operations Centres (MOCs).

22. <u>Legal and Policy Reforms.</u> The extra-sovereign condition imposed by the definition of piracy requires willing states to demonstrate primary commitment through domestication of appropriate legal instruments backed by effective processes. There is the urgent need to improve the level of availability and deterrent value of anti-piracy and anti-IUUF laws across African states, either landlocked, coastal, island or archipelagic. MARADs have a prominent responsibility in this regard. Apart from the imperative of effective laws, fast-tracking of prosecution processes, convictions and forfeitures require stronger synergy among MLEAs as well as judicial reforms and more effective legislations. Other desirable and measurable objectives are efficiency in operational procedures as well as sensitisation and human capacity development among MLE officers.

23.   <u>Operational Improvements</u>.   The successes of the Transit Corridor concept and use of PCASPs in the HoA suggest that they could provide both preventive and responsive deterrence to PIRAS. Operationalising these concepts, however, comes at a huge cost to many African states in terms of sustenance of patrol operations and surcharges on shipping by PMSCs. In this wise, on the one hand, states and their MARADs are under obligation to critically assess the cost-benefit implications of patrol operations against real or potential losses arising from maritime criminalities and, on the other hand, the cost of investment in socio-economic infrastructure as against asset acquisition for maritime security.   Overall, a whole-of-nation and whole-of-region operational concept is advocated with emphasis on profiling and information sharing, youth employment and infrastructural development, effective presence of MLEAs and speedy prosecution process.

24.   <u>Implementation of the AU Charter on Maritime Security Safety and Development.</u>   In defeating the prevalent image of frailty of maritime governance, it becomes necessary to enjoin AAMA, severally and collectively, to pilot the domestication of provisions of the recently adopted AU Charter on Maritime Security Safety and Development. The suggestion derives from the viability of the Charter's provisions in addressing the prevalent maritime challenges across the continent. Pertinently, the 2 broad areas addressed in the Charter – Development of Ocean Economy and Maritime Security and Safety - focus on both the socio-economic and operational remediation steps required by states and regions in combating the challenges of maritime criminalities. Under Development of Ocean Economy, the Charter made provisions for sustainable exploitation of maritime and marine sectors, promotion of biodiversity, climate change, maritime disaster management, maritime governance and maritime infrastructure that are all essential components of the Ocean Economy. On Maritime Security and Safety, the Charter urged state parties to enhance maritime domain awareness, information and intelligence sharing, prevention of theft of maritime resources, cooperation in combating all forms of maritime crimes and enhancement of structures for such cooperation. The activation of maritime security and safety trust fund was also encouraged. Accordingly, this discussion remains convinced of the critical role of MARADs in the implementation of the well-founded aspirations at the political level, as reflected in the Charter.

<u>CONCLUSION</u>

25.   The foregoing discussion posits that maritime crimes around Africa may persist or recur in sympathy with the level of challenges of political and socio-

economic conditions ashore, particularly in the HoA and GoG with regards to PIRAS. It was also established that deterrent policing and profiling capacities, along with effective legal process provide a cost-effective process for addressing the menace of PIRAS. In this regard, MARADS are encouraged to reposition and build capacity towards synergising the complimentary efforts among all stakeholders involved in the implementation of local and international legal and policy instruments. This responsibility extends to improvements in the effectiveness of the trinity concept of anti-piracy operations. Cost-effective collective strategies on operational asset acquisition and faithful domestication and implementation of the AU Charter on Maritime Security Safety and Development were also suggested towards improving security and developmental values of AMD. AAMA and, indeed, member MARADS are enjoined to vanguard the harmonisation and implementation of the AU, IMO and regional initiatives on maritime safety and security into practical and sustainable derivatives that would promote the blue economy of Africa. Other suggested imperatives on the checklist includes functionality of regional and national MOCs as focal points, capacity building on MDA and promotion of information sharing, dynamic profiling capacity and effective presence of MLEAs at sea.

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