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TOWARDS A MODEL “**STATE ACTION AT SEA**” FOR GULF OF GUINEA STATES

LIST OF ACRONYMS

GoG	Gulf of Guinea
OBB	Ocean Beyond Borders
IUU	Illegal Unreported and Unregulated
ICC	Inter-regional Coordination Centre
KA IPTC	Kofi Annan International Peacekeeping and Training Centre
IMO	International Maritime Organization
SEPCIM	Permanent Secretariat of the Inter-Ministerial Committee for State Action
SSR	Security Sector Reform
EIMS	Economic Community of West African States Integrated Maritime Strategy
HSOP	Harmonized Standard Operating Procedures
ISPS	International Ship and Port Facility Security
VOI	Vessel of Interest
MLEA	Maritime Law Enforcement Agencies
GDP	Gross Domestic Product
NIMS	Ghana's Integrated Maritime Strategy
ECCAS	Economic Community of Central African States

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Introduction

The Gulf of Guinea (GoG) is noted for its huge hydrocarbon potentials together with fisheries resources and a potential blue economy capable of supporting revenue generation from maritime transport while also promoting the attainment of food security. These potentials, when properly harnessed can be a factor to bridging income gaps and contributing to economic growth in all the littoral states along its shores. At the same time, GoG waters increasingly attracts attention as a dangerous maritime zone for ocean transport as a result of rising incidences of piracy attacks, marine pollution and abuse of national fisheries licensing regimes in many of the littoral states along its shores¹. Indeed, the abuse of national fisheries licensing regimes involving national decision makers has the tendency of undermining the national pursuit of strong institutions needed to confront such maritime threats on a daily basis.

Stretching approximately 6000 kilometres of coastline from Senegal to Angola, an average of 1,500 fishing vessels, tankers and cargo ships navigate the GoG waters daily. However, the International Maritime Bureau (IMB) notes that in 2020 alone, and in the era of the Covid-19 pandemic, the GoG witnessed 84 attacks on ships with 135 seafarers kidnapped for ransom². Again, the GoG experienced a nearly 50% increase in kidnapping for ransom between 2018 and 2019, and around 10% increase between 2019 and 2020³. Furthermore, Ocean Beyond Borders (OBB) estimated the cost of piracy attacks at \$8.1 million in 2017⁴ alone. Additionally, the value of illegal unreported and unregulated (IUU) fishing by local and industrial fishers in the GoG is estimated at \$ 4 billion⁵. Furthermore, a rise in narcotics trafficking through the Gulf of Guinea resulted in multiple seizures at air and sea ports along the Gulf of Guinea between 2005 and 2014

(ref)⁶. In 2011, the damaging effects of piracy and crimes in the Gulf of Guinea prompted the President of Benin, Boni Yayi, to seek international assistance to address the threats to safety and security in the Gulf of Guinea. That effort triggered a series of activities and processes culminating in the evolution of the Yaoundé Process which include: the Yaoundé Declaration which among others, established the Inter-regional Coordination Centre (ICC) for Safety and Security in the Gulf of Guinea; the Yaoundé Code of Conduct which outlines the contextual crimes in the GoG and identifies mechanisms for responding to them; and the Additional Protocols to the Yaoundé Code of Conduct which expresses in greater detail, the mandate, structure, inter-relationships involved in the operations of the ICC so created. For example, the roles of the ICC as outlined in the Additional Protocols to the Yaoundé Code of Conduct (2014), include but not limited to:

- promote the harmonization of texts on State’s Action at sea for the benefit of Member States of the two regions, namely the harmonization process of statutory laws relating to the fight against piracy, armed robbery, and other illicit acts committed at sea; ...;
- promot[e] the development of a unique strategy framework including issues relating to safety and security, development, and governance in the common maritime space, as well as the application of the political accountability principle as concerns the most serious forms of criminality committed in the sea....;
- coordinat[e] multilateral programs concerning State’s Action at Sea...; [and]
- see to the compatibility and interoperability among regional architectures for marine safety and security⁷.

¹ White, M., 2021 (07 Feb). Piracy in Gulf of Guinea poses “serious” trade threat. Global trade review, Available at: [https://www.gtreview.com/news/africa/piracy-in-gulf-of-guinea-poses-serious-trade-threat/#:~:text=The%20International%20Maritime%20Bureau%20\(IMB,kidnapped%20during%202022%20separate%20incidents.](https://www.gtreview.com/news/africa/piracy-in-gulf-of-guinea-poses-serious-trade-threat/#:~:text=The%20International%20Maritime%20Bureau%20(IMB,kidnapped%20during%202022%20separate%20incidents.) (accessed: 12 May 2021); See also: Fisheries Committee for West Central Gulf of Guinea (FCWC), 2019 (4 Oct). How Ghana’s weak penalties are letting trawlers off the hook. Available at: <https://fcwc-fish.org/other-news/how-ghanas-weak-penalties-are-letting-trawlers-off-the-hook> (Accessed: 13 May 2021)

² Lamorena, J. (2021, January 27). Gulf of Guinea records highest ever number of crew kidnapped in 2020, according to IMB’s annual piracy report. Commercial Crime Service. <https://www.icc-ccs.org/index.php/1301-gulf-of-guinea-records-highest-ever-number-of-crew-kidnapped-in-2020-according-to-imb-s-annual-piracy-report>

³ EU, 2021 (Jan., 25). EU Maritime Security Factsheet: The Gulf of Guinea. Available at: https://eeas.europa.eu/headquarters/headquarters-homepage/52490/eu-maritime-security-factsheet-gulf-guinea_en Accessed: 12 May 2021

⁴ Oceans Beyond Piracy, (2017). “The state of piracy 2017 – the economic and human cost”, available at: https://oceansbeyondpiracy.org/sites/default/files/one_earth_future_state_of_piracy_report_2017.pdf (Accessed: 18 May 2021)

⁵ Merem, E. C., Twumasi, Y., Wesley, J., Alsarari, M., Fageir, S., Crisler, M., ... & Washington, J. (2019). Analyzing the tragedy of illegal fishing on the West African coastal region. International Journal of Food Science and Nutrition Engineering, 9(1), 1-15.

⁶ United Nations. (2022). Transnational Organized Crime in West Africa: A Threat Assessment by United Nations (2013-2020). United Nations (2013-2020).

⁷ See Article 3(2) of the “Additional protocol to the memorandum of understanding between ECCAS, ECOWAS, GGC on safety and security in the Central and West Africa maritime space relating to the organization and functioning of the Inter-Regional Coordination Center, 2014 (05 June).

These outlined interventions reinforce the role of the state in galvanizing multi-national responses to the threats to safety and security in the Gulf of Guinea. As a result, it becomes relevant to map the types and nature of state actions at sea by state parties committed to the Yaoundé Process with a view to appreciating the synergies and differences as well as strengths and weaknesses in individual national perspectives and approaches to responding to threats to safety and security in the GoG maritime domain. Such an approach could help to anticipate the potential capabilities of state parties to the Yaoundé Process to respond collectively to the threats to safety and security in the GoG; what the existing gaps are; and what could be done to improve such responses.

This paper examines the kinds of national legal and policy approaches evolving from the littoral states along the Gulf of Guinea. Furthermore, it seeks to identify and address the threats to security and safety in GoG in order to understand

Maritime criminality and threat response context in the Gulf of Guinea

On 10 February 2021, the Secretary-General of the International Maritime Organization (IMO), Kitack Lim, in consonance with the efforts initiated by GoG states also called for “better co-ordination between maritime stakeholders in the Gulf of Guinea and regional organizations to improve safety for ships and their operatives....” This call comes amidst rising incidences of crime and insecurity in the waters of the Gulf of Guinea. As stated above, 95% of all maritime-related kidnappings in 2020 occurred in the GoG. Thus, the challenges to the GoG reinforce the need for strong public institutions and collective action. Therefore, the state of public legal, institutional and policy networks at the national level are important building blocks towards the attainment of functional national maritime institutions capable of adopting and applying regional and international maritime safety and security norms including best practices.

Such national maritime security and safety response networks typically include several interlocking systems, namely comprising of:

(a) surveillance and information networks,

the differences and synergies in national maritime responses. Such an approach is useful in appreciating the endeavours undertaken by GoG region as it continues to persuade its member states to respond together (or in clusters and zones) to the threats to security and safety in the Gulf of Guinea. In this paper, the national legal and policy approaches are broadly categorized into three: state action at sea; harmonized standard operating procedures (H-SOPs); and national integrated maritime governance strategy. The paper is informed by the outcome of the multi-country consultations conducted in 2019 to initiate the Kofi Annan International Peacekeeping and Training Centre (KA IPTC) capacity development and research project on “Enhancing regional research, capacity building and convening of stakeholders towards a safer maritime domain in the Gulf of Guinea” supported by the Government of Denmark for the littoral states in West and Central Africa along the shores of the GoG.

(b) operational systems,
(c) particular maritime institutions that work together to ensure safety of life and property at sea from the geographic and operational hazards (i.e., underwater obstacles, collision as well as harms and damages caused by the unfavorable weather conditions, etc.); and
(d) protection of maritime environment from pollution generated by the ships.

In West and Central Africa which fall within the scope of the Yaoundé Code of Conduct signed on 15th June 2013 by the Heads of State and Government of the littoral states along the GoG in West and Central Africa, the activities that are defined as constituting transnational organised crimes in the maritime crime relate to:

- a) money laundering;
- b) illegal arms and drug trafficking;
- c) piracy and armed robbery at sea;
- d) illegal oil bunkering;
- e) crude oil theft;
- f) human trafficking;
- g) human smuggling;
- h) marine pollution;
- i) IUU fishing;
- j) illegal dumping of toxic waste;
- k) maritime terrorism and hostage taking; and

l) vandalization of offshore oil infrastructure⁸ .

Constituent member states are expected to design and implement response mechanisms for preventing incidences of such crimes and countering same when they occur.

National responses to threats to maritime security and safety in the Gulf of Guinea

(a) State action at sea

One of the models that guide the interventions of the state at sea along the Gulf of Guinea is often referred to as “state action at sea” (in French: action d'états de la mer). As the example from Cote d'Ivoire is illustrated below, this model takes the form of maritime domain awareness among relevant ministries and public agencies convened regularly at the highest possible level of decision making in a particular state. It consciously preserves the functional autonomy of the institutional actors involved. It does so by creating a platform that enables relevant ministries and agencies to brief the incumbent President or his/her representative (often the Prime Minister) so that other Ministries and relevant public agencies present also get to know about what is happening in the relevant agencies and Ministries. The Ministries and agencies may choose to engage more substantively between and among themselves but they are not obliged to involve the coordinating platform in their detailed engagements. From the multinational consultations conducted by the KAIPTC as part of this study, the model is associated with the French speaking states in West and Central Africa.

For example, in Cote d'Ivoire where this model is operational, the state established a Permanent Secretariat of the Inter-Ministerial Committee for State Action (SEPCIM) in 2016 under the Office of the Prime Minister to coordinate its action at sea. SEPCIM, therefore, comprises 15 ministries of state with mandates bordering on maritime security, safety at sea and the blue economy. The overall objectives of SEPCIM are to:

- (a) ensure safety and security in the maritime domain in Cote d'Ivoire but also,
- (b) provide maritime governance and leadership,

- (c) coordinate agencies; and
- (d) serve as the focal point for maritime security issues as well as the Blue economy.

The SEPCIM concept in Cote d'Ivoire is underpinned by the 2011 security sector reform (SSR) measures introduced in the country, the June 2013 Summit of African Heads of State which climaxed the in Yaoundé, Cameroun and the ECOWAS Integrated Maritime Strategy (EIMS). It is the offshoot of the National Security Strategy of 2012 of Cote d'Ivoire. SEPCIM is backed by a State Action at Sea Decree number 2014-30 of 3rd February 2014 after which the Government Ministerial Council adopted the National Security Strategy 5th November 2014.

It operates as a special Prime Ministerial Committee with selected Ministers and heads of Maritime-related agencies as members. The Committee has a permanent Secretariat that supports the work of the Committee on a daily basis. The Committee intends to appoint maritime prefects in the two maritime divisions in Abidjan and San Pedro in future to address riverine and other far-off issues.

However, to put the concept of state action at sea in West and Central Africa into a broader perspective, it is framed along the lines of the French state action at sea which is rather informed by French calculation of threats to the maritime security interests of France since 1972 when its first White Paper on Defence and National Security at Sea was issued. As a result of the national defence and national maritime security perspective, in the French case, the Navy has always been at the centre of its state action at sea. The second related white paper was issued in 1994. The third and current white paper on defence and national maritime security developed in 2008 rather draws on other national agencies to support the Navy in responding to maritime threats to the security of France. The last white paper issued in 2008 assesses France's perception

⁸See Article 1(5) of the Code of conduct concerning the repression of piracy, Armed robbery against ships, and illicit maritime activity in West and Central Africa, 2013.

of risks and threats to its security and prescribes some 15 options for addressing the risks and threats so determined for the next 15 years from 2008. It considers national security in a changing world in which security threats are mainly inspired by the trappings of borderless “globalization”. “In order to better ensure the defense of the interests of France and the mission of protecting its population, the national security strategy calls upon the interior security policy, for anything which is not directly related to individual security of persons and property or law and order, as well as the civil security policy. Other policies such as foreign policy and economic policy also contribute directly to national security”, the white paper explains.⁹

Consequently, France’s maritime security, safety and state action at sea, evolves from the above-mentioned white paper and re-establishes the policing role of the French Navy and locates the Navy at the centre of its national maritime security and safety and state action at sea strategy. By stressing on the policing role of the Navy, France relies on its navy to combat all forms of illicit maritime trade and or crimes including drug trafficking on the seas, illegal migration, illegal unregulated and unreported fishing, pollution and accident prevention, sea rescue and assistance and mine clearance campaigns using its mine warfare vessels and divers. Accordingly, it calls on actors relevant to its internal and civil security policy to cooperate with the Navy in the discharge of the maritime safety and security and state action at sea of France.¹⁰

Important points

1. Whereas, France promotes a central role for the Navy in the pursuit of its maritime security interests, there is limited clarity in leadership among the participating institutional actors beyond the chairmanship of the Office of the President in the case of the state action at sea model in West and Central Africa.

2. Again, because of the focus of the French White Paper on the defence system and the Navy, the white paper is above to make realistic projections of needs into the future, the basis of

cost estimates for incorporation into their annual national budgets. However, a similar case cannot be said about the model state action at sea in West and Central Africa. Thus, the French white paper approach is able to inform operational and financing decision-making and for that matter, ability to use the national budget as a tool for the white paper.

3. Again, the French approach is capable of seconding personnel to participate in regional and international processes on behalf of the state while the state action at sea model in West and Central Africa focuses internally on domestic institutions.

4. Last but not least, there appears to be no input from the regional and inter-regional maritime structures created to promote, among many other things, harmonization of national state actions at sea.

b. Harmonized standard operating procedures (HSOP)

On the other hand, faced with a poor maritime crime prosecution record, Nigeria provided a different model state action at sea premised on the delineation of and harmonization of the maritime prosecution roles of relevant national agencies in Nigeria in 2016. It did so by consulting among its relevant national maritime-related agencies over 10 years and produced the Harmonized Standard Operating Procedures [HSOP] on Arrest, Detention and Prosecution of Vessels/Persons in Nigeria’s Maritime Environment in 2016. The HSOP was not a legally binding document but it offered an opportunity for specific maritime-related agencies to conduct self-introspection to produce a process line relating to the type of maritime crime their mandate permits them to address and the procedures within their respective agency regulations that apply. In so doing, Nigeria managed to put together a document that expressed a functional inter-dependence among its numerous maritime agencies while maintaining the functional autonomy of the agencies involved. It thus clarified roles in the area of maritime crime prosecution and united the disparate maritime crime procedures of the individual agencies

⁹Republic of France, 2008. The French White Paper on defense and national security. P5.

¹⁰Maritime security and safety and State action at sea. Available at: <https://www.defense.gouv.fr/english/marine/operations2/maritime-security-and-safety-and-state-action-at-sea/maritime-security-and-safety-and-state-action-at-sea> (Accessed: 10 May 2021)

under the of the Office of the Federal Minister of Justice who is the chief Prosecutor of Nigeria.

Another important feature of the HSOP is that it becomes the aggregate of all the thematic crimes identified by all relevant agencies in the country. It, therefore, helped to establish a range of maritime crimes and maritime crime laws enforceable in Nigeria.

Thus, under Part 2 of the HSOP, “any vessel(s) involved or being used in all or any of the following activities within Nigeria’s waters shall be liable to arrest”:

1. Operating without authorization by relevant government agencies;
2. Piracy and/or armed robbery at sea (or acting as a pirate vessel);
3. Stealing economic resources of Nigeria;
4. Illegal bunkering;
5. Unauthorized movement of petroleum products;
6. Unauthorized research and survey activities;
7. Drug and human trafficking;
8. Transportation of slaves;
9. Navigating in unauthorized areas;
10. Navigating without due regards to the ROR;
11. Making unauthorized and malicious broadcasting against the nation;
12. Transportation of illegal weapons into the country (Gun Running);
13. The use of outboard engine(s) mounted on boat beyond the approved capacity by relevant authorities;
14. Acts of terrorism;
15. Poaching;
16. IUU Fishing/Trawling against Nigeria’s Fishing Laws and Regulations;
17. Smuggling;
18. Acts that could lead to loss and/or damage of lives and properties within Nigeria’s waters.
19. Any activity or activities that could lead to safety and security breaches in Nigeria’s waters.
20. Operating without due regards to the provision of the International Ship and Port Facility Security (ISPS) Code;
21. Willfully or negligently breaking submarine pipelines, communication cables or high-voltage power cables with the intention to interrupt or obstruct telephone transmission/ flow of gas or other hydrocarbon products;

22. Non-compliance with Coastal and Inland Shipping Act No 5 of 2003 (Cabotage Act);
23. Pollution /Dumping of toxic waste;
24. Failure to install and/operate AIS;
25. Importation of arms, ammunition and other controlled items without End User Certificate;
26. Suspected or designated as a vessel of interest (VOI) by any maritime law enforcement agencies (MLEA); and
27. Any other illegal maritime activities not specified in this HSOP.

On a more remarkable note, the HSOP identifies crimes and threats to maritime defence and security including human security. It broadens the scope of issues involved in maritime security beyond piracy and provides an indication of the related maritime legal framework in Nigeria however disparate the constituent laws may be. At the same time, one of the drawbacks of Nigeria’s approach is that it relied on the mandate of institutions mostly established in an extant epoch and, for that matter, the HSOP is steeped in the area of domestic law and order. As a result, some of the contemporary transnational crimes and threats to the Gulf of Guinea maritime domain which are outlined in the 2013 Yaoundé Code of Conduct are not explicitly stated in the HSOP. Especially as the 2019 Suppression of Piracy and other Maritime Offences Act of Nigeria also focuses almost entirely on piracy, crimes such as maritime-related money laundering and maritime terrorism which are listed among 12 maritime crimes in the Yaoundé Code of Conduct, do not find space among the prohibited acts of the HSOP in Nigeria. Again the HSOP also targets functional coordination among relevant agencies in just the realm of maritime crime prosecution. It leaves out all other substantive and proactive matters that requires joined up action among state institutional actors in the maritime domain. Thus, it is limited in promoting organic coordination among maritime institutional actors in Nigeria. Furthermore, it offers little if at all, in terms of strategies for transforming the maritime domain in Nigeria. Once again, there is no trace of the contribution of the Yaoundé structures in the evolution of the HSOP.

c. National Integrated maritime strategy

Currently under the consideration of the President's Cabinet, Ghana is proposing a third model of state action at sea in which the Presidency leads a reconfigured maritime safety, security, commerce and governance mechanism. The cornerstone of the emerging model is a national integrated maritime strategy towards a safe and secure national maritime domain accompanied by an active maritime economy that create social benefits and contributes more than twice their current portion of the national Gross Domestic Product (GDP) over 20 years. The evolving strategy has embedded financing plan, an institutional framework and also, promises a national maritime security policy and periodic implementation plans. Furthermore, the strategy makes a conscious reference to Ghana's commitment to relevant regional and international maritime norms and subjects itself to a regular renewal regime every five (5) years. Developed through a consultative process, Ghana's integrated maritime strategy (NIMS) seeks to strengthen the country's maritime governance framework to contain an ever-growing maritime sector with heavily untapped hydrocarbon potential. It also seeks to respond to deficits in the management of its fisheries resources and reverse the state of under-utilization of the strategic location of the country's coast along important international shipping lanes. The above pursuits broadly combine to guarantee the country, opportunities for ensuring food security, bridging income gaps, raising foreign investment, increasing national output and creating favorable terms of trade. Part of the strengths of Ghana's NIMS relate to the combined delineation of a set of seven (7) founding principles along with six (6) strategic objectives with embedded recommendations for action under each strategic objective. Thus, the seven (7) core principles of: national ownership; social inclusion and impact; synergy; accountability; partnerships and cooperation; technology and innovation; and sustainability, broadly promote inclusiveness, inter-agency cooperation and sustainable exploitation of the country's maritime resources. This approach provides an enduring mechanism for tackling current and future challenges.

The six strategic objectives of the strategy are:

1. Strengthen the framework for maritime governance;
2. Ensure the safety and security of Ghana's maritime domain;
3. Develop a thriving blue economy;
4. Protect the marine and coastal environment of Ghana;
5. Promote capacity-building, research, awareness and knowledge-sharing; and
6. Develop dynamic and diversified regional and international cooperation

From a governance perspective, Ghana's NIMS provides a leadership framework for coordinating multi-stakeholder response to threats to safety and security in the maritime domain but also, develop the economy in the maritime domain. With over 20 ministries of state playing divergent roles in the maritime domain, the proposed leadership framework of the NIMS is reflected in the creation of a National Maritime Governance Council to be chaired by a sitting Vice President of the Republic with executive powers to overcome the multi-ministerial level turf battles that often work against inter-agency collaboration at the operational level because the different agencies report to different ministries of equal leverage. Again, the Council is envisioned to sit at multiple levels including, for example, the levels of heads of relevant maritime agencies, and along the lines of committees focusing on specific thematic issues such as research and training. Furthermore, the envisaged Council is empowered with a financing and decision-making authority that would reflect the national interest. While being dynamic and comprehensive, Ghana's NIMS appear as a domestically driven and responsive approach to maritime governance with provisions for leadership, operational coordination and resource mobilization. At the same time, the direct Executive involvement also implies a potential lull in focus should a particular administration decides to prioritize other issues at the expense of maritime governance. Again, when approved by Cabinet, the strategy will have to operate in an environment that is fast maturing along the lines of a rigid functional autonomy of the operational agencies.

Such a situation requires not just political leverage and resource availability, but also the skill and temperament of the initial set of actors that will drive the implementation of the strategy in ways that ensures inclusiveness among the maritime agencies and relevant constituencies within and outside the country.

3. Recommendations for model action at sea and Conclusion

Based on the above, and for West and Central African states to proactively deliver on their safety and security responsibilities in the maritime domain, their respective interventions at sea need to consider the following important factors:

1. National strategies/actions at sea need to proceed on the basis of a comprehensive and consultation-based threat assessment which should help establish the focus of the subsequent interventions;
2. By focusing, the strategies/actions at sea must should be able to make concrete projections

around which costs can be developed to form the basis for designing appropriate financing mechanisms;

3. National strategies/actions at sea must identify the national security interests in the maritime domain and must address both internal and external dimensions of same;

4. National strategies/actions at sea must comprehensively identify all critical national actors and direct their actions in ways that effectively respond to the nature of threats faced by a state;

5. National strategies/actions at sea must indicate its commitment to the adoption of regional and international normative framework to which a state is a part;

6. National state action at sea strategies must express, in practical detail, the commitment of the state to regional and international maritime security and safety norms to which the state is a party;

7. Consultations towards the design of national actions at sea, should be extended to critical actors of the Yaoundé structures.

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About the Project

This publication was supported by the Government of Denmark under the project “Enhancing Regional Research, Capacity Building and Convening of Stakeholders towards a Safer Maritime Domain in the Gulf of Guinea”. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the KAIPTC or the Government of Denmark.



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