Impact factor: 3.80

LOGAN JOURNAL OF POLITICAL SCIENCE AND PUBLIC POLICY
11(3) 2024 LJPSPP

ISSN: 3067-0608

ASSESSING THE EFFECTIVENESS OF TANZANIA'S LEGAL SYSTEM IN COMBATING MARITIME TERRORISM

Hamisi Abdallah Nyamoga
Dar es Salaam Maritime Institute, P.O. Box 6727, Sokoine Drive, Dar es Salaam, Tanzania.

Abstract: For a country to deal with maritime terrorism as an offence it has to implement as provided under Article 3 of the SUA Convention and SUA Protocol, 1988 by incorporating it in its domestic law. However, since the amendment of SUA Convention and SUA Protocol which introduced the offence of maritime terrorism there was no amendment which was done to incorporate the offence in our domestic law. The legal regime of our country only allows prosecution of suspect if the offence has been domesticated into our laws. It investigates legal challenges at domestic level emanating from the international law. It also interrogates the adequacy and inadequacy of the existing legal framework in protecting maritime security. Aim of this research is to analyse the inadequacy of the existing Prevention of terrorism Act in prosecution of maritime terrorism towards the amendment of SUA Convention and its Protocol. After the consideration of the above issues the research finds that Tanzania lacks a comprehensive law which provide room for prosecution of maritime terrorism. Data was collected purposively from 29 respondents selected from Judges, Prosecutors. Advocates and Police Officers. Questionnaires and interview and documentary review were used to collect data. The major findings of this study revealed that in Tanzania legal regime does not provide room in prosecution of maritime terrorism as the country does not incorporate into our law Article 3 of the amended SUA convention which introduced maritime terrorism as an offence. Consequently, the research recommends a law reform in Tanzania especially the Prevention of Maritime Terrorism Act so as to incorporate maritime terrorism as an offence.

Key terms: Maritime, Terrorism, Prosecution, Security, Legal, Regime

1. Introduction

The legal regime under maritime crimes depends on international instruments such as Conventions, Treaties and Customary laws. Tanzania being a member state in some convention ratified some of them to be state laws. For example, Convention of the Suppression of Unlawful Acts against the Safety of Maritime Navigation' (SUA). Which come into force after the issue of maritime terrorism which took place on 11 September 2001. On this day, around nineteen men hijacked four commercial airlines headed towards the West Coast in America. The World Trade Centre was part of the attack More than two thousand people were killed in New York City,

Washington D.C and the exterior of Shanks Ville, Pennsylvania. This was the worst form of a terrorist's attack the world had ever seen. These events moved the international community to recognize that the nature of attacks were being elevated a notch higher by terrorists. It is at this point that deliberations began to amend its rules and regulations to curb suchlike attacks in the maritime industry with regard to the SUA Convention, 1988 and the SUA Protocol, 1988. The procedures to undergo amendments was taken and International Conference on the Revision of the SUA Treaties was held in October 2005 to adopt amendments to the SUA Convention, 1988 and the SUA Protocol, 1988. The 2005 SUA Convention and the 2005 SUA Protocol entered into force on 28 July 2010. Basically, the amendment was on Article 3 of SUA Convention which introduced new offence of Maritime Terrorism. The 2005 SUA Convention provides that any person commits an offence within the meaning of the Convention if that person unlawfully and intentionally,

1. When the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act that uses against or on a ship or discharges from a ship any explosive, radioactive material or Biological Chemical nuclear weapons in a manner that causes or is likely to cause death or serious injury or damage;
2. When he discharges, from a ship oil, liquefied natural gas, or other hazardous or noxious substances, in such quantity or concentration that causes or is likely to cause death or serious injury or damage
3. When he uses a ship in a manner that causes death or serious injury or damage;
4. When he threatens, with or without a condition, as is provided for under national law, to commit an offence as set out in the 2005 SUA Convention respectively. In Tanzania we have Prevention of Terrorism Act which was signed in 14th December, 2002. According to the long tittle of this Act its aim is to provide comprehensive measures of dealing with terrorism, to prevent and to cooperate with other states in the suppression of terrorism and to provide for related matters. Tanzania has attempted to meet this obligation by attempting to cover the offences set forth in article 3 of the 1988 SUA Convention under sections 342 and 343 as the offence of high jacking. As stated early that in Tanzania we have the Prevention of Terrorist Act but till now this offence was not incorporated under the law. Not only was that but also even the offence of high jacking not amended so that to cover the offence as stated under SUA Convention. Therefore, the legal regime of Tanzania requires international laws which has been ratified be incorporated into domestic law make part of our laws. It difficult to prosecute maritime terrorism in Tanzania because the offence has not been introduced into our domestic law. In other words, one can say that legal regime capacity in Tanzania does not provide the room for prosecution of maritime terrorism as a crime.

2. Methodology

This study used qualitative method to investigate on the inadequacy of the existing Prevention of terrorism Act in prosecution of maritime terrorism towards the amendment of SUA Convention and its Protocol. After the consideration of the above issues the research finds that Tanzania lacks a comprehensive law which provide room for prosecution of maritime terrorism. The study was done on a sample of 29 respondents selected from Judges, Prosecutors. Advocates and Police Officers. Questionnaires and interview and documentary review were used to collect data as shown in the table 1.

Table 1; Selected Respondents

SN	Respondents	Sampling Technique	Frequency

1	Judges	Purposive Sampling Technique	4
2	Prosecutors from NPS	Purposive Sampling Technique	10
3	Advocates	Purposive Sampling Technique	10
4	Police Officers	Purposive Sampling Technique	5
	Total		**29**

Source: Researcher, 2024

Literature review

3.1 Theoretical review

Pius Adejoh and Waziri Adisa (2017) conducted research in Nigeria critically examining the legislative regime against terrorism. Although the country is a signatory to numerous anti- terrorist international instrument, it did not holistically transform any of the instruments into its municipal legal system because it poorly appreciated the nature of terrorism. He critically examines the current legal regime and particularly analyses the background and foreground of the some of the salient counter terrorism provisions, their relationship with international norms and Nigeria's international obligation to combat terrorism. Hamad Bakar Hamad (2016) in his research he defined maritime terrorism as a political motivated crime launched at or from the sea. In recent years, there have been a number of terrorist incident on land in East African Community (EAC) region, all in Kenya. Nonetheless no act of terrorism has yet occurred by sea in the EAC even though Kenya shares both land and maritime borders with Somalia. The researcher investigates the likelihood of the EAC being the next victim of maritime terrorism. It also looks why the EAC is vulnerable to maritime terrorism. The study found that the likelihood of the EAC being target of maritime terrorism storms from the fact that it borders Somalia and Kenya is at war with al- Shabaab, a Somalia based terrorist group. He further found that the lack of regional maritime security strategies which includes Regional Legislations on maritime terrorism, maritime domain awareness program me, unpoliced maritime waters and poor cooperation between Kenya and Tanzania maritime law enforcement agencies make the region extremely vulnerable to maritime terrorism. The Author in A manual for Criminal Justice PR actioners (2019) provides on how maritime law enforcement has jurisdiction in maritime crimes. Maritime law enforcement means actions taken to enforce all applicable laws on, under and over international waters, and in waters subject to the jurisdiction of the State carrying out such enforcement activities. Maritime law enforcement therefore includes authorizations for law enforcement agents and authorized vessels to deal with other vessels, including foreign vessels in some situations, by taking action at sea to enforce relevant laws. Maritime law enforcement requires that a number of preconditions be fulfilled before operations are conducted. As this Manual focuses on interference with foreign vessels for maritime law enforcement purposes, these preconditions include the following:

(a) The coastal State must have enacted a law that applies to the conduct which the maritime law enforcement agents are using as the basis for their actions in relation to a particular suspect vessel;

(b) The coastal State must have the authority to regulate that conduct in the maritime zone where the suspect vessel is located;

(c) The maritime law enforcement agents must be authorized under the law of their coastal State to take maritime law enforcement action against that suspect vessel, in relation to that suspected breach and in that maritime zone; and

(d) There can be no legal limitation on the application of the coastal State's law to the vessel and people targeted by the coastal State's maritime law enforcement actions. It is not sufficient merely to have laws that allow and regulate the collection of evidence at sea, the detention of suspects at sea or the many other necessary elements and aspects of actually enforcing law at sea. It is also necessary to ensure that the particular maritime law enforcement agents who will be required to use those powers are specifically given the authority to do so. In other words, there must be a valid general grant of jurisdiction and authority to the maritime law enforcement agents exercising those powers. This manual adds value to this research as it shows the need of coastal state to enact laws so that to cover all the offences committed while in sea.

3.2 Conceptual Framework of the Study

Independent variable is the variable that stands alone and is not changed by the other variables are trying to measures whereas dependent variable is something that depends on other factors. However, this research was dealing with an independent variable which is legal regime which attributed by the following attributes such as Legislation, Courts, Law enforcement agencies and Legal professionals. One dependent variable used in this study which is prosecution of maritime terrorism and Prosecution of maritime terrorism attributed by maritime terrorism offence.

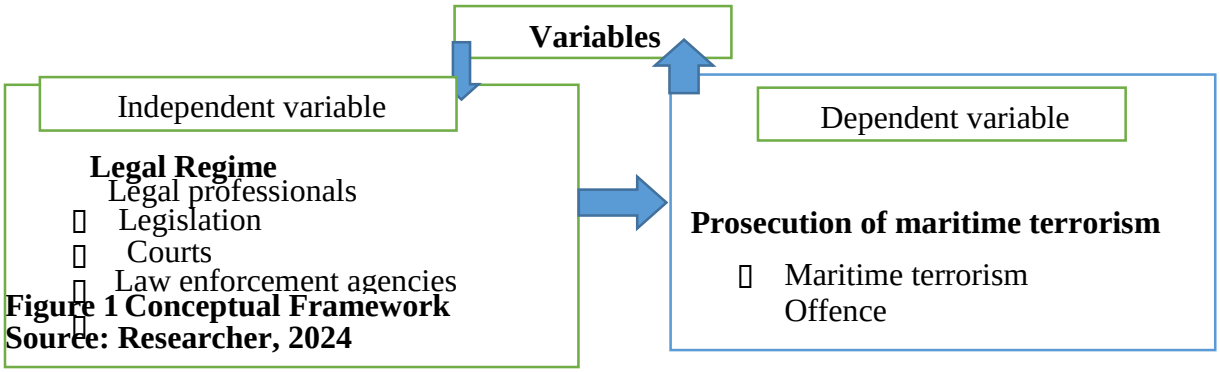

Figure 1 Conceptual Framework
Source: Researcher, 2024

4. Results and Discussion

Maritime Terrorism in Tanzania

After the incidence which took place in New York City, Washington D.C and the exterior of Shanks Ville, Pennsylvania. These events moved the international community to recognize that the nature of attacks were being elevated a notch higher by terrorists. It is at this point that deliberations began to amend its rules and regulations to curb suchlike attacks in the maritime industry with regard to the SUA Convention, 1988 and the SUA Protocol, 1988. The procedures to undergo amendments was taken and International Conference on the Revision of the SUA Treaties was held in October 2005 to adopt amendments to the SUA Convention, 1988 and the SUA Protocol, 1988. The 2005 SUA Convention and the 2005 SUA Protocol entered into force on 28 July 2010. Basically, the amendment was on Article 3 of SUA Convention which introduced new offence of Maritime

Terrorism. The 2005 Protocol to the SUA Convention adds a new Article 3bis which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally:

(a) When the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(iii) Uses a ship in a manner that causes death or serious injury or damage; or (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or (b) Transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or

(iii) Any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

2. It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b) (iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b) (iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the NonProliferation of Nuclear Weapons where:

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) If the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty. Through this amendment the offence of Maritime terrorism was introduced. Tanzania has acceded to SUA Convention on 11 May, 2005. It has been insisted to every State Party has an obligation to make "the offences set forth in article 3 of the 1988 SUA Convention punishable by appropriate penalties which take into account the grave nature of those offences". Tanzania has attempted to meet this obligation by attempting to cover the offences set forth in article 3 of the 1988 SUA Convention under sections 342 and 343 as the offence of high jacking. As stated early that in Tanzania we have the Prevention of Terrorist Act but till now this offence was not incorporated under the law. Not only was that but also even the offence of high jacking not amended so that to cover the offence as stated under SUA Convention. Before independence, the HCT was made the court of admiralty with power to adjudicate all matters

arising on the high seas pertaining to ships or shipping in Tanzania. After independence the High Court remained with admiralty jurisdiction in the country. However, the available literature shows that relevant sources in Tanzania have limited records on high seas offences statistics. Tanzania is a common law legal system under which a piece of legislation is needed for international convention to be entertained by local courts. This is in accordance with Article 63(c) and (e) of the Constitution of the United Republic of Tanzania, 1977 (CURT). However, the CURT is silent on the subject of maritime terrorism. Apparently, the country has one piece of legislation establishing Hijacking as a criminal offence namely the Merchant Shipping Act, 2003 [21 of 2003] Therefore the wording found under Article 3 which introduced the offence of Maritime Terrorism are the same wording found under section 342 and 343 as the offence of Hijacking. One of the respondents who is dealing with criminal offence in Tanzania responded to the face-toface interview with the researcher that he did not come across with the offence of maritime terrorism as the law does not provide such an offence instead, he know piracy as the only offence committed in sea. Another respondent responded that he knows terrorism as many people were arrested and prosecuted on political issues which are so connected with religious issues but he did not come across with what is called maritime terrorism. A respondent from the office of the DPP who is prosecutor preferred anonymity due to the nature of confidential information stated that there was no such offence in Tanzania but if happened such situation will be covered as the offence of high jacking as provided for under Merchant Shipping Act. He further stated that the offence of maritime terrorism was introduced under SUA convention after the amendment but in Tanzania till now there no such amendment to the Prevention of Terrorism Act to accommodate such offence and that is how the legal regime of Tanzania provide. Advocates on the other hand point out that he did not come across with such offence of maritime terrorism in Tanzania as the law does not provide instead he said there are offences of terrorism which have been prosecuted in Tanzania and the law is so out dated. Judges on the other hand state that they are waiting for the cases to be filled in the Court and to see whether they have jurisdiction to try such case and if they don't have such jurisdiction the case will be dismissed. But if the law provides such offence the court will have jurisdiction to try such offence. Lastly responded that up to now they did not come across with such offence in court and the law of Prevention of Terrorism Act does not proved such an offence. Documentary review supports this by showing that the Prevention of Terrorism Act does not provide the offence of Maritime terrorism hence one cannot be prosecuted with the offence of Maritime terrorism.

5. Conclusion

It suffices therefore to conclude that, domestication of ratified instruments remains as a setback in the fight against maritime terrorism in Tanzania. The status of domestication of the ratified instruments has some implications on the legal regime of Tanzania in the context of maritime security. For instance, non-ratification of international instruments which have bearing on maritime terrorism has the implication that, the domestic legal regime for maritime terrorism in Tanzania will remain with latent gaps to the extent that it will lack contemporary issues in this area of law. Such scenario will always create difficulty in judicial proceedings on maritime terrorism cases and may further lead to inefficient prosecution of maritime terrorism suspects. This is so because, the basis upon which to build the foundation under which the perpetrator can be convicted depends on the provisions of a ratified relevant instrument. Equally, ratified instruments should be supplemented by political will to enact a robust domestic law which can adequately deal with maritime terrorism threats. It appears that, all the conventions clearly stipulate that they can become binding laws only to ratifying states. In this regard, courts of law in Tanzania

cannot apply maritime terrorism provisions under non-ratified conventions discussed above. As a common legal principle, ratified instruments which are yet to be transformed in domestic law cannot be entertained by courts in Tanzania as well. On another note, for a domestic court to prosecute international crime there must be a law giving it jurisdiction. Maritime terrorism is an international maritime crime. As it is a common legal principle that any law that deals with an international crime should be a direct reflection of the existing international law, the offence of High jacking under Merchant Shipping Act incorporates SUA provision, in the same line, with respect to maritime security crime. However, Merchant Shipping Act is also not as comprehensive as it ought to be because it does not incorporate all the relevant provisions and amendment found in SUA Convention and its protocol.

REFERENCES

Bohm R.M & Haley K.N, (2002) Introduction to Criminal Justice, New York, McGra Education, New York, 3rd edition.

Daniel O'Connell (edited by Ivan A. Shearer), The International Law of the Sea, Volume 1 (Oxford: Clarendon Press)

Garner, B.A, (2000) Black's Law Dictionary, St. Paul, Minn., West Group, (7th edition). Helmut T. (2010), Combating Terrorism at Sea, Volume 1.

Lehr, P, A (2023) Modern History of Maritime Terrorism.

Manning. C &Nyanduga B.T (2006), Guide to Tanzania Legal System and Legal Research.

Seokwoo, S.C.L & Kwon. M (2013) the Limits of Maritime Jurisdiction.

Darton M &Watkins D (2013) Research method in Law, London, Routledge: Tylor and Francis Group, 1st edition.

Maritime Crime: A Manual for Criminal Justice Practioners, 2nd Edition, United Nations Office on Drugs Crime

Financial Intelligence Unit (FIU), Terrorist Financing Risk Assessment Report, 2022

Bhandari P. (2021) Ethical Considerations in Research/ Types and examples.

Ferreira. J.C (2018 Research Validity.

McCombes.S (2019) Sampling Methods/Types, Techniques and Examples Yin.R. K (2018) Case Study Research and Applications, 6th edition.

Logina, a "The internation law related to maritime security: an analysis of its effectiveness in combating piracy armed robbery against ships.

Mapunda B.T "the law of the sea in Tanzania: assessment of the implementation of the 1982 United Convention on the Law of the sea.

Mejia M.Q and Mukhorijee P. 'The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts.

Mkakili F.N., Analysis of Marine Environment Protection Law in Tanzania, World Maritime University, 1997

Ngugi L.M, Maritime Security Offences Act, Ratification of 2005 SUA Convention and 2005 SUA Protocol.

Prodan. T (2017) Maritime terrorism and resilience of maritime criminal infrasture.

Rashid J.M, An Act to provide for the Effective Incorporation and Implementation of the International Convention on Arrest of ships 1999 and other matters, International Maritime Law Institute 2019-2020.