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**REGIONAL ORGANISATIONS
AS A MECHANISM TO ENSURE
MARITIME SAFETY AND SECURITY: THE
CASE OF THE SOUTHERN AFRICA
DEVELOPMENT COMMUNITY-SADC**

ELCIDIO AGOSTINHO

A dissertation submitted to the World Maritime University in partial fulfilment
of the requirements for the award of the degree of Master of Science in
Maritime Affairs

2023

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Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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Abstract

Title of Dissertation: Regional Organizations as a Mechanism to Ensure Maritime Safety and Security: The Case of The Southern African Development Community-SADC

Degree: Master of Science

This dissertation will focus on the role of regional organizations to ensure maritime safety and security, and the initiatives to implement IMO instruments and sea order by their member States. Its role has been seen as solution to combat sub-standard ship by IMO, calling for cooperation among States. This situation led to the adoption, on 6 November 1991, of the Memorandum of Understanding on Port State Control with resolution A.682 (17), on regional cooperation in the control of ships and discharges. The adoption stemmed from positive results on regional cooperation as a mechanism to ensure maritime safety with the Paris MoU on Port State Control signed in 1982 and involving EU countries after the MV Erika accidents.

The Southern African Development Community (SADC) is a regional organisation established in 1992 with the goal of promoting economic growth and social development. It is composed of 16 countries, including 16 coastal states and 4 islands. These states are heavily reliant on sea and maritime transport, making them flag States, port States, and coastal States. The region is surrounded by both the Indian and Atlantic Oceans. The organisations adopted the Protocol on transport Meteorology and communications in 1996, Protocol on Politics, Defence Security Cooperation and Southern Africa Development Community Security Strategy as guidelines on how and based on what, member States and the region should organize themselves.

KEYWORDS: Cooperation, regionalism, integrations, Functionalism, safety, security, IMO, conventions, SADC, Port State Control,

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List of Abbreviations

AMTC	African Maritime Transport Charter-AMTC
AIMS2050	African Integrated Maritime Strategy
AIS	Automatic identification system
EMSA	European Maritime Safety Agency
EU	European Union
ICAO	International Civil Aviation Organization
III-CODE	IMO Instrument Implementations Code
IO	International Organization
ILO	International Labour Organizations
IMO	International Maritime Organizations
INTERPOL	International Criminal Police Organization
ISPS	International Ship and Port Facilities Security Code
IUU	Illegal, Unreported and Unregulated Fishing
MARPOL	International Convention for the Prevention of Pollution from Ships
MLC	Maritime Labour Convention
MoU	Memorandum of Understanding
NATO	Northern Atlantic Treaty Organization
PPDSC	Protocol on Politics Defence and Security Cooperation
PSC	Port State Control
PTCM	Protocol on Transport Meteorology and Communications
SADC	Southern Africa Development Community
SADC-MSS-	SADC Maritime Security Strategy
SAR	Search and Rescue
SAR	Search and rescue regions
SOLAS	Safety of life at Sea

STCW	International convention on Standards of Training, certification and watchkeeping
SUA	Suppression of Unlawful Acts against the Safety of Maritime Navigations
TONNAGE	Tonnage Measurement of Ships
UN	United Nations
UNCLOS	United Nations Law of the Sea Conventions

CHAPTER I

1.0. INTRODUCTION

The Southern African Development Community (SADC) is an intergovernmental organisation with the statute of international organisation (IO) according to Article 3¹ of its Constitutive Act which is the SADC Declarations and Treaty² signed in 1992. The Southern African Development Community (SADC) is comprised of 16 member States namely: South Africa, Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Democratic Republic of Congo, Seychelles, Swaziland, Tanzania, Zambia, Comoros, Madagascar, and Zimbabwe (SADC, 2021). This number comprises more than a quarter of all African States, 10 of which are located along the coast or are islands (Walker, 2019). Its geographical location, with members situated on both the Atlantic³ and Indian Ocean coasts⁴, and South Africa's sovereignty over the Prince Edward and Marion islands, means that SADC's influence extends far into the Southern Ocean, making it a unique African regional organisation (Walker, 2019).

The main documents regulating the maritime in the continent and consequently in the regional of SADC are: AIMS-2050 and the AMTC and for maritime security is ACMSSD, also known as the Lomé Charter, PTCM, PPDSC, SADC-MSS. These documents will constitute them main source of information and analyses by this research.

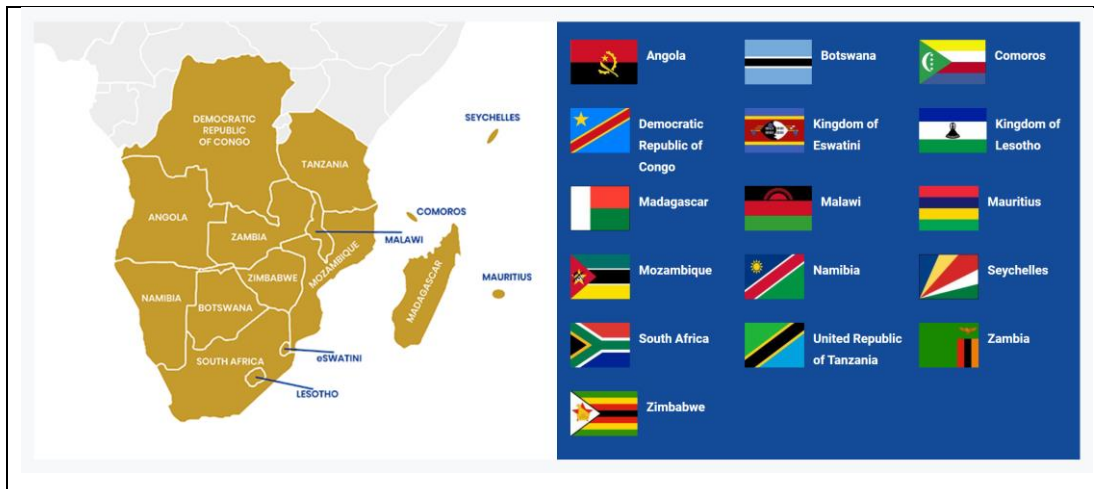
¹ SADC shall be an international organisation, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.

² The Treaty and Declarations establishing the SADC was signed on 17 August 1992 in Namibia Windhoek

³ Angola, South Africa and Namibia

⁴ Mozambique, Tanzania, Comoros, Mauritius Seychelles, Madagascar

Figure 1 Map of Southern Africa Development Community -SADC



Source: SADC Website

Article 5 of the SADC Treaty aims to achieve economic growth, common political values, systems and institutions, and complementarity between national and regional strategy (SADC, 1992). In order to achieve these goals proposed in article 5, the SADC shall harmonise political and socio-economic policies and plans of member States, create appropriate institutions and mechanisms for the mobilisation of requisite resources for implementations of programs and operations of SADC and its institutions, promote the coordinates of the international relations of the Member States and secure international understanding, corporations, and support and mobilise the inflow of private and public resources into the region (SADC,1992).

IO are subjects of international law and, as such, are bound by any obligation's incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties (Algirdas, 2016). SADC under n1, article 3⁵ on its legal status gives the power to act as IO.

Maritime affairs, and particularly maritime transport, is a state affair in the first place because maritime transport or shipping is regulated by IMO and only member States

⁵ SADC shall be an international organisation and shall have legal personality with capacity and power to enter into contracts, acquire, own or dispose of movable and immovable and sue and be sue and be sued.

can become IMO Members and be bound with the international responsibility of implementing IMO regulation, as explicit in the conventions of IMO⁶ or IMO Constitutive Act (IMO,1948). The IMO Convention requires cooperation among States, making it clear that international cooperation among them is required whether regional or global as shown by the adoption of resolution A.682(17) of 6 of November 1991 on regional cooperation in the control of ship discharges (IMO,1991). This resolution led to regional cooperation, with the conclusion of an MoU on PSP.

This research will examine the SADC initiatives toward a better implementation of maritime safety and maritime security measures and regulations adopted in the region. Maritime safety comprises four aspects: ship safety, navigational safety and cargo safety, and personal and occupational safety, connected to these aspects are the seaworthiness of the ship and the professional or vocational competence of the crew (Mukherjee & Brownrigg, 2019). For this purpose, the research will focus on 2 aspects of maritime safety, ship safety and navigation.

Maritime security is the measure deployed by maritime administrations, ship operators and managers, port facilities and offshore installations administrations, and other maritime organisations for protection against unlawful acts, such as piracy armed robbery, terrorism, and maritime violence (Mukherjee & Brownrigg, 2019).

These two aspects complement each other for better maritime transport activities and good order at sea. To conduct this work, documents adopted by SADC covering maritime safety and security, will constitute the main source of information, namely: the SADC Treaty and declarations, the PTMC-1996, PPDSC-2001, and the SAD-MSS-2011 and the agreement between SADC and INTERPOL. The documents

⁶ Article 1 To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes set out in this Article;

adopted by SADC, is part of general continental integration led by part of AU. The AU adopted the AMTC for maritime safety, ACMSSD for the maritime security and the AIM-2050, as a tool of implementations of regional of continental and regional initiative.

IMO is a specialised agency of the UN responsible for regulating the shipping industry, particularly maritime safety, with the objective of promoting cooperation among Governments in the field of governmental regulation and practices relating to technical and related administrative and legal matters of all kinds affecting shipping engaged in international trade (Balkin,2000).

The SADC is made up of Member States which are flag States, port States and coastal States, as well as landlocked countries. Among several activities taking place on the coastlines of the Member States, shipping or maritime transport is one of them. For that reason, according to the international legal framework, particularly UNCLOS, they have the responsibility to ensure maritime safety by implementing IMO conventions and regulations, in particular SOLAS (SOLA,1974)⁷. IMO adopted 3 mechanisms of implementation for IMO regulations, namely flag State⁸, port State⁹ and coastal State¹⁰ (IMO,1997).

Governments are aware of this responsibility and are challenged by the difficulty of the task due to financial, human resource and other reasons. As a result, states have decided to join forces in order to tackle this. In this regard, 8 European States signed an MoU in 1978 with an attempt to create a system that has a greater effect than simply

⁷ Article 1 of SOLAS The contracting government undertakes to give effect to the provision of this present Convention and annex thereto, which shall constitute an integral part of present convention. every reference to the present convention constitutes at the same time a reference to the annex.

⁸ resolutions A.847(20) (1) adopted on 27 of November 1997 on a guideline to assist flag State in the application of the IMO instrument.

⁹ Resolution A.1155(32) on Port State Control measures.

¹⁰ Resolution A.1157(32) on Non-Exhaustive list of Obligations under Instruments relevant to the IMO instruments implementation code (III CODE).

reporting problems to flag states, which later became the Paris MoU (Desombre, 2006). This vision is also shared by Walker (2019) who states that many regional and multilateral initiatives that aim to enhance collective maritime safety and security as part of country strategy implement regulations.

The aforementioned mechanisms of implementation of IMO instruments, has cooperation among the States as the key point to succeed and be adopted, particular when they are grouped, or organised by positions. It will enable them as neighbour countries to be aware and share risks threatening, they marine environment. This was the case of the Paris MoU, designed and adopted by EU countries, and established under the structure of the EU as a regional organisation. Cooperation most of the time happens when a policy from one State is understood by another State as a facilitator to pursue its own objectives. Consequently, the common ground brings cooperation. Shipping is a worldwide industry, vital for the global economy. Approximately 11 billion tons of cargo, representing more than 80 percent of world trade volume, are carried on commercial ships each year (Thenamaris, 2022).

1.1. PROBLEM STATEMENT

The SADC region is very unique with 10 coastal States and four Islands surrounded by both the Atlantic Ocean and Indian Ocean. This geographical condition makes States overlap and affiliate themselves in different sub-regional and international organisations other than the SADC. This situation may not help SADC draw its maritime safety and security initiatives because they are out of SADC auspices (Walker, 2019). The SADC region includes flag States, port States and coastal States and has maritime transport as one of its basic activities. To deal with the complex maritime transport in the region, SADC adopted the PTMC-1996, to provide the overview of maritime safety measures and PPDSC-2001 and SADC-MSS to provide security measures.

Both instruments work as guidelines and regulatory instruments for the countries to structure their transport sectors and, in particular, maritime transport. The protocol aims, among other objectives, to achieve the integration of regional transport and security issues in the region, particularly maritime, to be facilitated by the implementation of compatible policies, legislations, rules, standards, and procedures (SADC, 2006). The document brings intentions and views on how maritime transport should be regulated in the regions in a view of regionalism and regional cooperation. Ship safety is concerned with how safe a ship is, and security is concerned with protection against unlawful acts against the ship and its cargo, including people on board.

To ensure the safety and security of the region, activities such as ship inspection and search and rescue, as well as coordinated defence and security services need to be carried out. These activities require a coordinated and regional approach, which involves sharing the economic burden and political will, and setting the same standards. A true regional determination is necessary to achieve this goal. The SADC region, as described above, has very unique geographical maritime characteristics that demand coordinated action and planning and cooperation among the member States. The Paris MoU is a case of success of cooperation among States that belong to the same IO and territory, in this case the EU.

After the MV Erica incident which led to the adoption of the Paris MoU on PSC, substantial changes were made within the EU territory under the leadership of EU. These changes set up a standard and requirements to be met by flags who wanted to access the EU ports or navigate in EU water (Roe & Selkou,2022). The case of EU and the Paris MoU shows the roles and responsibilities that regional organisations can have in helping their member States implement safety measures and ensure maritime safety in their region.

1.2. AIMS AND OBJECTIVES

These documents reflect the ambition the continent has, which must be replicated through the regional organisations. The research aims to analyse the role that SADC is playing in helping his Member States to ensure maritime safety and security individually and collectively. This role, on one hand, could derive from objectives contained in the SADC treaty and Declarations, PTMC-1996 and PPDSC-2001, and can also emerge from the IMO resolution on cooperation between states to conclude agreements to ensure maritime safety and security based on United Nations Sustainable Development Goal (SDG) 17, international cooperation to achieve sustainable development goals. To achieve these aims, the research will focus on the following objectives:

- **Identify the main threats to maritime safety and security in the SADC region;**
- **Analyse the initiative adopted by SADC to ensure maritime safety and security;**
- **Analyse the Challenges and the opportunities that SADC has to ensure maritime safety and security in the region.**

1.3. RESEARCH QUESTIONS

To achieve the aims and objectives aforementioned, the research will try to answer the following research questions:

- **What are the main threats to the SADC maritime safety and security?**
- **What are the solutions adopted by the SADC to help improve maritime safety and security in the region?**
- **What are the main challenges and opportunities for SADC to ensure maritime safety in the region?**

1.4. METHODOLOGY RESEARCH

For this research, the methodology is based on triangulation and mixed methods. In social research, the logic of triangulation applies to situations in which two or more methods, or different measuring instruments or approaches are used (Straits and Jr, 2018). The triangulation process allows for obtaining complementary data between the main methods in use, namely legal research and qualitative research. The qualitative method comprises semi-structured interviews to obtain primary data. This allows the researcher to analyse quantitative and qualitative data, and to validate them. The mixed method approach helps to fill the gaps during the research because no method can be autonomous; it needs to have another one to complement it. During the process of research, it is important to adapt due to complexity by applying different types of methods and technical aspects. To collect data and information, the researcher analysed documents, such as legislation, policy and books.

1.5. STRUCTURE OF THE RESEARCH

This research is presented in five chapters, covering all aspects of the dissertation topic and the steps taken to carry it out. Chapter I comprises the introduction describing the topic background, and establishing the objective, research questions, problem statement, and methodology. Chapter II is the literature review; in this chapter the context and function of international organisations is described. An overview of the roles of IMO and SADC and the international legal framework to conduct their mandate focuses on the concept of International Organizations, regionalism, cooperation, integration, port State control, flag State and coastal State.

Chapter III covers a detailed overview of the maritime safety and security structure in the SADC region. It includes a description of the current framework for maritime safety, search and rescue (SAR), the legal framework for maritime security, and the various types of threats that occur in the maritime security area. Chapter IV comprises an analysis of the structure presented in chapter III, focused on the instruments adopted

by the SADC, namely the PTMC-1996, PPDSC-2000 and SADC-MSS-2011, exploring their weakness and limitations and difficulties of implementation. Finally, Chapter V deals with the conclusion and recommendation.

1.6. EXPECTED RESULT

The expectation in developing this research is to identify barriers for better implementation of SADC instruments related to maritime transport and maritime security. The aim is to aid in the establishment of a regional approach that utilises regionalism as a means to coordinate maritime transport activities, which could ultimately lead to a successful implementation of IMO instruments and ensure greater safety and security in the maritime sector.

The integration process of the SADC region, with the free trade protocol signed in 2000 (SADC,2000), has maritime transport as one of the keys to success, as part of its role in the intermodal transport structure and trade globally. The main expected result is to prove that the region needs to adopt a tool to the PTMC-1996; the main goal of this dissertation is to demonstrate that the region would greatly benefit from adopting a tool to implement PTMC-1996. Even though some member states are involved in other MoUs, it is essential for the region to have its own mechanism to effectively implement the provisions outlined in the protocol on transport.

Additionally, it is important to update the SADC-MSS document to address certain types of crimes and maritime security threats that are currently not included. These documents are crucial for a region that includes 10 coastal states and 4 islands out of a total of 16 members.

CHAPTER II: LITERATURE REVIEW

2.0. INTRODUCTION

Shipping is an internationally regulated activity, and its regulations are guaranteed by States as regulators and members of international communities through organisations, either regional or global (Thenamaris, 2022). International law, according to World Maritime University (2004), may be defined as the law concerned with the conduct of states and of IO, and their relations inter se, as well as some of their relations with persons, whether natural or personal. From the practical point of view, it can be said that international law is a system regulating the rights and duties of states inter se. When it comes to adopting regulations or conventions and regulating maritime safety, we have IMO and the Member States in one side and in the other side the shipping companies. The States are responsible for implementation and non-States actors, such as the shipping industry, shipowners, and shipping companies for compliance.

The cooperation shall be based on intergovernmental institutions such as SADC, which bring States together based on territory, values, historic ties, and vision of regionalism. This type of multilateral cooperation based in IO has functionalism and functionalist theory as its base. This theory belongs to David Mitrany and emerged in late 1940 bringing the idea of integration (Sarfati, 2005). Integration is a primary approach to IO, whether regional or global. This point of view is also shared by Moravcsik, affirming that integration results from the bargaining among States, bringing agreements and binding the institutions to those agreements and mandates focusing on the practical effect of the agreements and day-to-day basis operations of the organisations

SADC is based on integration and cooperation among States in the region, Its role perfectly suits the functionalist approach. Policy formulation in the region, must be adopted reflecting what the region needs and be aligned with world agenda in shipping

because shipping is international and one of the world agenda now is marine environment protection with the adoption of the SDG.

2.1. INTERNATIONAL ORGANISATION

The research focuses on the work of two main International Organizations, one with a wide range and scope of actions and a special global mandate, which is the IMO, and the second one with a regional mandate and political view translated in the Constitutive acts that also comprises aspects related to maritime safety and security, which is the SADC¹¹. An IO can be defined as an organisation established by treaty or other instrument governed by international law and possessing its own legal personality; it is created by States (Peace Palace Library [PPL],2023).

2.2. INTERNATIONAL MARITIME ORGANIZATION (IMO)

The need to establish an international body to regulate maritime transport culminated with the IMO. Shipping is of major importance to the trade of individual nations and of the world in general and is essentially international in character. It can, therefore, be effectively regulated only through co-operation at the international level, between all the Governments which are concerned with shipping operations or services, or which are affected by such operations (Balkin;2000). According to Balkin (2000):

The IMO objective is the promotion of cooperation among Governments in the field of governmental regulation and practices relating to technical and related administrative and legal matters of all kinds affecting shipping engaged in international trade. The International Maritime Organization is a specialized agency of the United Nations. Once established as the Inter-Governmental Maritime Consultative Organization (IMCO) in 1948 became a specialised

¹¹ According to article SADC shall be an international Organisation, shall have legal personality, with capacity and power to enter in contract, acquire, own or dispose of movable and immovable property and to sue and be sued.

agency of the United Nations in 1959 and was renamed or adopted the new designation of International Maritime Organization in 1982.

2.3. SOUTHERN AFRICA DEVELOPMENT COMMUNITY (SADC)

Established in 1992 by South Africa, Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Democratic Republic of Congo, Seychelles, Swaziland, Tanzania, Zambia, and Zimbabwe (SADC,2021), the SADC, according to Article 5 of the SADC treaty, aims to achieve development and economic growth, involve common political values, systems, and institutions and achieve complementarity between national and regional strategies (SADC,1992).

SADC plays a huge role in southern African regional issues. It started a process of integration, which comprises political, economic, trade, and social aspects. The responsibility to ensure compliance with maritime safety measures led to several mechanisms of control and implementation by the States, with particular attention to the Port State Control Memorandum of Understanding (MoU)¹². SADC is based on the concept of regionalism, which is understood as a term in international relations that refers to the expression of a common sense of identity and purpose combined with the creation and implementation of institutions that express a particular identity and shape collective action within a geographical region (Mandal,2007).

This mechanism finds its legal base in the resolution A.682 (17)¹³ on regional cooperation in the control of ships and discharges promoting the conclusion of regional agreements (IMO,1991). To ensure compliance with UNCLOS Article 218 related to the power of States to carry on inspections on a foreign vessel, most of these agreements have regional intergovernmental organisations as an umbrella to collect

¹² Port State Control is the inspection of foreign ships in national ports to verify the conditions of the ships and its equipment to comply with the requirements of international regulations. (IMO,2023).

¹³ Adopted by the IMO in 06 of November 1991

the political will of the States to delegate part of their sovereignty to other states to carry out inspections on flagged vessels.

The Paris Memorandum of Understanding on Port State Control, which operates under the auspices of the European Union and the related European maritime institutions or alongside the European Maritime Safety Agency (EMSA)¹⁴, was the first case of success and led to several regional agreements with the same aim. The proliferation of regional institutions, linking together geographically and ideologically related states, has emerged since the close of the second world war, and has been noticeable in making regionalism one of the mechanisms to pursue their collective interests and cooperation.

According to Shaw (2017), the reason for this rise of the regional institution can be understood because of the onset of the Cold War and the failure of the Security Council enforcement procedures, which stimulated the growth of regional defence alliances such as NATO and Pact of Warsaw and bloc politics. The decolonization process resulted in the independence of scores of States, most of which were eager to play a non-aligned role between East and West, and the rise of globalisation has meant that all states form part of one economic trading system and can no longer individually function effectively.

2.4. LEGAL FRAMEWORK FOR IMPLEMENTATION OF SHIPPING REGULATIONS

The responsibility of implementing the IMO instruments is primarily that of the Member States, three regimes exist to guarantee and ensure that vessels comply with the technical standards on safety regulations namely:

¹⁴ European Maritime Safety Agency (EMSA) provides technical expertise and operational assistance to improve maritime safety, pollution preparedness and response and maritime security, created in 2002 (EU,2023).

2.4.1 FLAG STATES

A ship registered in a State is entitled to fly the flag of that State, which is referred to as the flag State. The flag State has the primary responsibility for regulating the operations of the ship, regardless of where the ship happens to be at any particular time (Balkin,2000). The same disposition is found on the Article 94¹⁵ of the United Nations Convention on the Law of the Sea-UNCLOS (UN,1982).

2.4.2 PORT STATES

It is the right of a State different from the flag State to conduct inspection on a ship in its port. These inspections over ships, are conducted based on certain conditions provided by international treaties or in general international law. The State in whose port or jurisdiction a foreign ship happens to be is referred to as the port State (Balkin,2000). On the other hand, Mukherjee and Browning (2013) share the point of view that a port state is that state in whose port or off-shore terminal a foreign ship is physically located at a given time.

2.4.3 COASTAL STATE

It is understood by Mukherjee and Browning (2013) as the moment when a foreign ship is physically located in a maritime zone of a state that the State becomes a coastal state in relation to the ship. Based on UNCLOS, coastal states must adopt laws and regulations in respect of safety of navigation and regulation of maritime traffic system, aids to navigation, and search and rescue services.

2.5 SADC INITIATIVES ON MARITIME SAFETY AND SECURITY

The SADC and its members share the same challenges to ensure maritime safety and security in the region either individually or collectively. The PTMC of 1996 is the first

¹⁵ The flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures and practices

SADC initiative to tackle issues of maritime transport. The document offers a legal framework to States or Member States to cooperate in order to implement maritime safety. PPDSC set up the rules for security issues. The first one relates to transport, and particularly to maritime transport. It does not bring enforcement measures or implementation strategies but the provisions in the document require the adoption of a PSC MoU.

The documents adopted by SADC aforementioned, namely PTMC of 1996 and PPDSC 2001 they are mere guideline or policy without a toll to implement in the case of PTMC for maritime safety. Form maritime security exist a total disconnection between the PPDSC and the SADC -MSS for maritime security. The SADC-MSS does not reflect the entire reality of the region, focusing only on piracy as a consequence of the Somali pirates that operated in SADC waters.

As a consequence of this situation, when it comes to maritime safety and the responsibilities that member States have, to implement IMO regulations, some SADC members are members of other regional intergovernmental tools of implementation of IMO instruments on ship safety, such as the Abuja Memorandum of Understanding (Abuja MoU) and Indian Ocean Memorandum of Understanding (Indian Ocean MoU). Neither of the aforementioned MoUs is under the SADC umbrella. This situation makes it difficult the SADC to harmonise PSC measures to be implemented in the region by adopting its own MoU that would reflect the reality and objectives of the region.

The fact that the regulations are internationally adopted and the implementation is individual by IMO member States means that any seeking of cooperation within the region must be done taking into consideration the reality of the region. This cooperation must have political will and institutions framework of the region, as a pure functionalism chain operating with the blessing of the regional political body.

The adoption of a memorandum of understanding on PSC, on one hand, and a regional search and rescue regional plan on the other, could help the region in improving ship safety and also navigational safety and lead to a better implementation of the Multilateral Agreement on Maritime Search and Rescue Agreement. This agreement was concluded among States of the region, by an IMO initiative in 2000, trying to cover the world with search and rescues services (South Africa Maritime Safety Authority [SAMSA]). For maritime security, it is urgent to update SADC-MSS, would help harmonise procedures on ship and navigational safety and also improve the maritime security.

All areas of maritime safety can be covered by an MoU on PSC, since constructions, equipment of ships to training and certifications and living conditions under Maritime Labour Conventions-MLC and International Labour Organizations-ILO. According to Desombre (2006):

The international agreements on agreement under the auspices of International Labour Organizations (ILO), namely the Merchant Shipping Minimum Standard Conventions and created the seeds of current PSC regime, giving the power to port State to carry inspection in ship if the port State evidenced or have received complaints even from crew member that the ship is not living up to the standards of member State once the merchant.

The PSC has become the back up for flag State in order to determine the standard of a ship, detaining a ship is the first line of defence, States using their sovereignty in their water to enforce their rules (Desombre, 2006). This also need flag States to increase their level of control to succeed, is a team work of their shipping industry that will guarantee the safety and environment protection.

CHAPTER III: STRUCTURE OF MARITIME SAFETY AND SECURITY IN THE SADC REGION

3.1 GLOBAL MARITIME SAFETY LEGAL FRAMEWORK

Shipping is regarded as a collective and international activity under an international regulatory framework. The IMO was created to deal with maritime safety or, as summed up in the IMO slogan, safe, secure, and efficient shipping on clean oceans. Its main objective is the promotion of cooperation among Governments in the field of governmental regulation and practices relating to technical and related administrative and legal matters of all kinds affecting shipping engaged in international trade (Balkin,200).

Maritime safety is concerned with how safe a ship is as a waterborne object that houses human beings and properly includes crew, passengers, and cargo (Mukherjee,2013). This aspect is guaranteed by 4 IMO international conventions, namely:

- Safety of life at Sea-SOLAS, considered the main IMO convention in the field of ship safety, combines 9 articles in its annex consisting of 12 chapters. This Convention is the body for several IMO regulations, such as International Safety Management (ISM) Code, International Maritime Dangerous Goods (IMDG), Liquid Natural Gas (LNG), and casualty investigations code (Mukherjee,2013).
- Loadline Convention-LOADLINE, sets the maximum level to which a ship can be loaded so that safe freeboard is maintained under varying conditions of water density and seasonal and climatic considerations. The issue of freeboard is a vital part of the maritime safety regime combining ship safety as well as navigational safety, because it relates to watertight integrity of the ship as well the ability to float safely (Mukherjee,2013).
- International Convention for the Prevention of Pollution from Ships (MARPOL)- Is the main convention covering pollution from ships, adopted by

the IMO in 1973 and its protocol in 1978 makes this convention the main regulatory instrument in place to deal with pollutions from ships (IMO,1973).

- International convention on Standards of Training, certification and watchkeeping (STCW)¹⁶ constitutes the governing instrument for the global regime for seafarers' qualifications; the Conventions provides the minimum requirements to be met by seafarers and the State parties (IMO,1978).
- Maritime Labour Conventions (MLC)¹⁷ The MLC is designed to sit alongside regulations such as the International Maritime Organization (IMO) standards on ship safety, security and quality ship management such as SOLAS, STCW and MARPOL. The Convention stipulates the minimum conditions for seafarers to work onboard a ship (ILO,2006).

The conditions aforementioned are technical aspects. It is the responsibility of the IMO Member States to fulfil the dispositions of article 94¹⁸ of the United Nations Convention on the Law of the Sea-UNCLOS (UN,1982). During this process of fulfilling this technical aspect, a state can be a Flag State, Port State and Coastal State. Flag State is a state whose nationality is held by a ship by virtue of which the ship is entitled to display the national flag or merchant ship ensign of that state and in fact display such flag or ensign (Mukherjee and Browing,2013). Mukherjee and Brownrigg (2013) state that when a foreign ship is physically located in a maritime zone of a state, the State becomes a coastal state in relation to the ship. A port State is a State in whose port or off-shore terminal a foreign ship is physically located at a given time (Mukherjee and Brownrigg, 2013).

¹⁶ Adopted by the IMO 1978

¹⁷ The MLC was adopted in February 2006 by the International Labour Organization-ILO.

¹⁸ Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, meaning maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size, and assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

The maritime safety structure is composed internationally having the IMO sitting on top and member states as responsible for ensuring maritime safety through implementation of the maritime conventions. The process of implementation can be a unilateral or multilateral approach, and regionalism plays a key role in this. The cases of the emergence of PSP MoU, comprising states of the same region, is known as one of the very successful mechanisms when it comes to shipping safety. For navigational safety and search and rescue a collective approach is also better.

3.2 MARITIME SAFETY LEGAL FRAMEWORK OF SADC

Maritime safety must comprise the capacity to regulate and the capacity to control the regulations by implementing and enforcing the regulations. Since this activity is global, and the risks are shared, and the success of implementing these and making a better impact in commercial shipping is mutual, cooperation is the solution. Regional organisations have succeeded in developing mechanisms, as shown in this research with the case of Paris MoU and the EU.

The legal framework also comprises the African Maritime Integrated Strategy (AIMS-2050), adopted by the Africa Union in 2012¹⁹ and the Africa Maritime Transport Charter-AMTC²⁰ adopted in 1993 (AU,1993). The aforementioned instruments have the IMO and IMO instruments as guidelines, due to the role of the IMO as the regulatory body or the United Nations (UN), as the specialised agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships (IMO, 2023). IMO is the global standard setting authority for the safety, security and environmental performance of international shipping. Among the main technical regulations of shipping, the following

¹⁹ The 2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy) consists of the overarching, concerted and coherent long-term multi-layered plans of actions that will achieve the objectives of the AU to enhance maritime viability for a prosperous Africa.

²⁰ African Maritime Transport Charter falls within the scope of international law encompassing maritime transport and related activities in the coastal, inland waterways, territorial seas including the Exclusive Economic Zones of States Parties and shall by further extension, to related activities in landlocked States Parties.

conventions are highlighted Safety of Life at Sea-SOLAS²¹, prevention of pollution from Ships (MARPOL)²², load line (LOADLINE),²³ and Tonnage Measurement of Ships (TONNAGE)²⁴ (Mukherjee, 2013).

Water transport and commercial shipping areas vital modes of transport, are becoming a key element in international seaborne trade. Because of the geographical positions of some of SADC member states have infrastructure to serve the seaborne trade. This situation elevates even more, the responsibility of implementing IMO regulations by the States. The region, via the regional governmental body, which is SADC, shares part of the burden to secure the region, because according Article 1 of SADC Treaty, region is understood to be the geographical area of the Member States of SADC (SADC, 1992).

Because of the provision of Article 1 aforementioned, and the share of responsibilities individual or collective as SADC to tackle Maritime safety concerns, adopted its PTMC 1996, in which under article 8 sets out the policy and the framework for maritime transport activities (SADC, 1996).

3.2.1 THE IMPORTANCE OF MARITIME SAFETY AND THE ROLE OF SADC.

The SADC countries have made bilateral and multilateral efforts to fulfil their obligations of implementing the IMO conventions because the primary responsibility for ensuring compliance of ships with the standards laid down by international regulations governing safety, pollution prevention and crew condition rest with the flag state (Ready,1998). The SADC, as part of the international community, knowing that countries have individual responsibilities, and aware of its responsibilities as the

²¹ Adopted by IMO in 1914.

²² Adopted by IMO 1973.

²³ Adopted by IMO 1966.

²⁴ Adopted by IMO in 1969

umbrella for its member States toward international relations and cooperation, and based on their national interests, allows its member States through its Treaty, under article 24²⁵, to establish cooperation with other states whose objectives are compatible with the SADC.

This provision, aforementioned, allowed its member States to pursue mechanisms to ensure maritime safety and protect their maritime zones. In this process, they concluded, with countries outside the SADC region or jurisdiction, PSP MoU as recommended by IMO through resolution A.682(17), adopted on 6 November 1991, regional cooperation in the control of ships and discharges (IMO,1991) with legal support in the articles 25 and 218 of the UNCLOS, which gives states the right to enforce Port States measures and protect their coastal lines (UN,1982).

Port State control is a mechanism of coordination between maritime authorities on a regional basis. This tool allows the shipowner and the charterer to avoid inspection in any port subject to inspection. It comes as an important tool to determine the standard of ships, particularly with respect to environment and safety regulations (Desombre, 2006). SADC countries such as Angola, South Africa and Namibia are members of Abuja MoU on Port State Control, which is a Memorandum of Understanding on Port State Control²⁶ for the west and central African region.

The Abuja MoU was established on 22nd October 1999 as an inter-governmental organisation comprising the maritime administrations of countries abutting the Atlantic coast of Africa (Abuja MoU, 2023) and is out of SADC jurisdiction in terms of territory and legal power. The Indian Ocean MoU²⁷ is another example that does

²⁵ Member states should maintain good working condition and form of cooperation with, and may enter into agreement with another State, regional and international organizations whose objective is compatible with SADC and provision of the treaty (SADC,1993).

²⁶ Port State Control is the power of factor from a state to board, inspect, and where appropriate detain a merchant ship flying a foreign flag that enters its port (Desombre,2006)

²⁷ The Indian Ocean Memorandum of Understanding (IOMOU) on port State control (PSC) in the Indian Ocean region, comprising the follow members, Australia, Eritrea, India, Sudan, South Africa

not lie under the SADC jurisdiction. The multilateral approach is the best solution to ship control. Nevertheless, bilateral agreements between States in the region also play a role in the list of efforts to implement maritime safety, Mozambique and South Africa are examples of this bilateral approach. Both countries signed, in 1996, a bilateral agreement related to Merchant Shipping and related matters, where among other aspects maritime safety measures are stipulated.

Desombre (2006) suggests that port State control as a complement and not as a substitute to effective enforcement of maritime safety and marine environmental protection standards by flag State administrations and the PSC provision feature in UNCLOS and all the major IMO and ILO conventions, namely:

- UNCLOS articles 218, 226, 230, 231;
- SOLAS chapter I, Part B, Regulations 19;
- LOAD LINE Article 21;
- STCW articles 10;
- ILO 147, articles 4 and MLC 2006 minimum standard, article 5;
- MARPOL articles 4-7.

3.2.2 SADC AND SEARCH RESCUE

Navigational safety contains several aspects among the roles of coastal States to be performed within its maritime zones, namely internal waters, territorial sea, contiguous zones, and exclusive economic zones. The IMO adopted the III CODE comprising the coastline (Brownrigg and Mukherjee,2013), in this case:

Navigational safety has to do with the safety of ships as manoeuvrable floating object including the safety of humans and property on board, entailing rules of navigation as well as navigational equipment. some of the rules are described in the V chapter of SOLAS convention address aspects related to with navigational and meteorological warnings, search and rescue service and

and Tanzania, Mauritius, Sri Lanka, Iran, Kenya, Maldives, Oman, Yemen, France, Bangladesh, Comoros, Mozambique, Seychelles, Myanmar and Madagascar

lifesaving signal, hydrographic services including publications, ships routing, reporting system, vessel traffic services, external aids to navigations, shipboard navigational equipment, voyage data recorder, automatic identifications system (AIS), international code of signal, navigational bridge visibility, pilot transfer arrangements, steering gear, danger and distress messages, distress signals and avoidance of dangerous situations at sea (Mukherjee and Brownrigg, 2013).

Coastal State have obligations under IMO, one of them is SAR services, stipulated in various IMO instruments, to complement the safety of navigation. According to IMO (1979):

Is defined as the performance of distress monitoring, communication, coordination and search and rescue functions, including provision for medical advice, initial medical assistance, or medical evacuation through the use of public and private resources including co-operating aircraft, vessels and other installations.

It is also understood, that SAR as customary practice when understood as a duty to render assistance to persons in distress at sea. This principle has been codified in several instruments, such as the United Nations Convention on the Law of the Sea-UNCLOS²⁸, and Chapter V of SOLAS²⁹.

3.2.2.1 LEGAL FRAMEWORK

The SADC region comprises 16 member States, 10 of which are coastal States, and the need to provide SAR services either individually or collectively is a fact. To pursue these obligations to perform SAR operations at sea, the world and SADC have adopted a legal framework, composed by:

3.2.2.2 UNITED NATIONS CONVENTIONS ON THE LAW OF THE SEA (UNCLOS)

Regarded as the constitution for the use of the sea, UNCLOS provides the rights and obligations of the States for the use of the sea and the delimitations of maritime zones. One of the obligations of coastal States according to UNCLOS, under Article 98 is the duty to render assistance:

Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose (UN,1982).

²⁸ Number 1 and 2, Article 98, Duty to render assistance, 2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

²⁹ Aids of navigations, regulations⁷;

UNCLOS provides a codified version of practices that were already in place because, traditionally, as part of the customary practice or law and also as a sea tradition or habit, a ship master had to assist or render assistance to people in distress. UNCLOS brought this provision under Article 98, allowing a ship Master to:

- (a) To render assistance to any person found at sea in danger of being lost;
- (b) To proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- (c) After a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call (UN,1982).

UNCLOS was not the first convention to address search and rescue or the necessity of saving people in distress at sea. The Brussels Convention on Assistance and Salvage of 1910, Article 11³⁰ goes in the same direction as UNCLOS.

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3.2.2.3. SEARCH AND RESCUE CONVENTION (SAR)

The SAR Convention was adopted in Hamburg on April 27, 1979, and entered into force on 22 June 1985, and aims to develop a world SAR plan in order to assist people in distress at sea, and aims through cooperation among coastal States to establish search and rescue organisation and services³¹ around the world, to ensure that seafarers or persons in distress might be assisted in order to solve the problems of the needs originated by maritime traffic (IMO,1979).

The Convention also aims to promote cooperation between States and all the relevant actors involved in the maritime search and rescue structure. This situation led to the

³⁰Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody even though an enemy found at sea in danger of being lost, which is basically the terms under UNCLOS

³¹

IMO and another organisation, the International Organizations of Civil Aviation- ICAO, to establish search and rescue regions (SRRs) or zones around the world, making 13 areas of search and rescue. According to IMO:

Search and rescue region, is an area of defined dimensions associated with a rescue coordination centre within which search and rescue services are provided. Meanwhile, Search and rescue service is the performance of distress monitoring, communication, coordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resource~ including co-operating aircraft, vessels and other craft and installations (IMO,1979).

The need to fulfil its obligation to provide SAR services, based on the zones aforementioned, led countries to find solutions to do so. One of the solutions was to establish multilateral or bilateral agreements among them, making a regional approach one of the key elements of the SAR Convention proposed.

From the international legislation aforementioned, SADC has developed and adopted PTMC-1996, allowing its Members State to implement international standards and recommended practice when it comes to search and rescue. The international standards and recommended practice are contained in the general search and rescue legal framework, namely: SOLAS, UNCLOS, and SAR. Under number 4³² of Articles 8 of the SADC PTMC-1996, SADC Member States developed actions and adopted the Multilateral Agreement on Search and Rescue in 2007.

This agreement brought together countries including: Mozambique, South Africa, Angola, Namibia, Comoros, and Madagascar. On the other hand, bilateral efforts culminated with bilateral agreements among member States, such as the Mozambique

³² Member States shall take all steps necessary to develop their search and rescue capacity on a regional basis by the investigations of options to develop a regional search and rescue organisation with participation by all member States including a consideration of available search and rescue capacity and capability, funding requirements and legal, operational and organisational requirements.

and South Africa Search and Rescue agreement, signed in 2002, with the aim to provide search and rescue within the region assigned to these countries.

Both agreements, whether bilateral or multilateral, work as complementary when it comes to individual responsibility to provide SAR services. The cooperation will provide a low cost and a reliable capacity of intervention from the States, because the coordination and control of SAR operations, is established and operated by each individual coastal State. when it comes to international responsibilities, it will take in consideration the resources and capabilities of each of them. It is necessary for each country to develop a national plan and harmonise with neighbouring countries and adopt a regional plan combining the national plan characteristics of all individual States.

3.3 OPERATIONAL LEVEL

Chapter V SOLAS, speaks about safety of navigation, combining search and rescue operations (SAR), maintenance of meteorological services, and ice patrol services (Mankababy,1986).Under regulation 7³³ of Chapter V SOLAS, these arrangements shall include the establishment, operations and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and navigational danger, and shall, so far as possible, provide adequate means of locating and rescuing such persons (IMO,2020).

All of these aspects, and the need to put in place a world system of SAR, led to the development and adoption of a full Convention on Search and Rescue (SAR)³⁴,and the search and rescue operations or services were designated or codified in the IMO

³³ Each government undertakes to ensure that necessary arrangements are made for the distress communications and coordination in the area of responsibility and for rescue of persons in distress at sea around the coast

³⁴ Adopted by the IMO in April 1979;

Instrument Implementations Code (III CODE)³⁵, under a non-Exhaustive list of coastal State obligations.

All SADC members should have a national SAR plan combining all the stakeholders as part of their obligations under the SAR Convention, but the region of SADC itself does not have a search and rescue plan, which would materialise the multilateral Search and Rescue Agreement signed among the countries. Due to the possibility of disaster in the region, the SADC established a disaster risk reduction unit. This unit is responsible for coordinating regional preparedness and response programs for trans-boundary hazards and disasters, inaugurated in 2011 (SADC,2023).

In the meantime, without the adoption of a protocol on disaster risk reduction or management, which would be much more detailed and might combine SAR operations, the multi-disciplinary nature of disaster risk management is addressed by several SADC instruments or protocols adopted which could be relevant, such as:

- Protocol on Politics, Defence and Security Cooperation, under Article 2³⁶ States that a specific objective of the Organ on Politics, Defence and Security Cooperation that can be used to SAR operations;
- The same approach is contained on the PTMC-1996, under line C), number 4 Article 8.5³⁷ which gives PPDSC responsibilities to perform SAR operations on behalf of the regions, collectively and Member States individually since the responsibilities of implementing IMO conventions belongs to the State and not the region.

³⁵ Adopted by the IMO in December 2013 through resolution A.1070(28), aiming to enhance maritime safety and protections of marine environment and assist States in the implementations of instruments of the Organization.

³⁶ Enhance regional capacity in respect of disaster management and co-ordination of international humanitarian assistance

³⁷ The promotion of co-operations with the police forces or coast guard and civil aviation sub-sector and the telecommunications meteorology services.

The absence of a formally and well-established SAR structure does not leave empty space for actions of the region and the countries to perform SAR operations and deliver international standards but makes it very difficult under unclear circumstances.

3.4 MARITIME SECURITY

Maritime transport activities have value assets involved, such as the ship, the cargo and the life of people onboard. This condition brings up certain unlawful acts or criminal offences including piracy, armed robbery against ships, and terror that poses threats and harms the activity. The legal framework in international law is concerned with the loss of life, personal injury and loss of or damage to property (Mukherjee and Brownrigg, 2013). The legal scope or technical aspects related to legality of the actions towards the maritime security threats aforementioned differs from jurisdiction to jurisdiction and sometimes it helps perpetrators to escape (Mukherjee and Brownrigg, 2013).

Maritime security might force States to match the level of the threats because:

Maritime security can be understood as those measures deployed by maritime administrations, ship owners, ship operators, port facilities and offshore installations administrations, and other maritime organizations for protections against unlawful acts such as piracy, armed robbery, terrorism and maritime violence. (Mukherjee and Brownrigg, 2013, p.250).

The concept of maritime security has as a base the fact that life and property at sea must be protected against other human factors with intentions to harm or cause an abnormal situation that will lead to compromising the assets involved whether life or property (Mukherjee and Brownrigg, 2013). Maritime security finds its legal framework on the rights of the States to protect their sovereignty in the different maritime areas or spaces, namely internal water, territorial sea, contiguous zone and exclusive economic zone and how the measures aforementioned can be deployed by the States (United Nations Conventions on Law of the Sea [UNCLOS]1982).

Most of the international dispositions or regulations related to maritime security finds their basis prescribed in international law, particular UNCLOS and the International Convention for the Suppression of Unlawful Acts (SUA), International Ship and Port Facilities Security Code (ISPS Code), as a mechanism to try to deal or cope with the threats and types of threats that can emerge from the activities happening at sea, particularly those that have to do with maritime transport or the shipping industry as a whole.

3.4.1 TYPES OF THREATS TO MARITIME SECURITY AND ITS LEGAL FRAMEWORK

Maritime violence is a relatively new term in the industry. It intends to describe the violent acts happening on the sea in general and in particular the maritime criminal offences including piracy, armed robbery against ships and terrorism (Mukherjee and Brownrigg, 2013). Nevertheless, according to Mukherjee and Brownrigg (2013), an elaborate definition of the term is provided in a so-called model national law devised by a Joint international Working Group on Uniformity of Law Concerning Acts of Piracy and Maritime Violence spearheaded by the Committee Maritime International (CMI). Maritime security comprises the threats that lead to maritime violence and cause injury to humans or to death and for the protections of the goods and the vessel itself. The main threats to maritime security are:

3.4.1.1 PIRACY

The act or the acts perpetrated by piracy are similar to others such as robbery, but the distinction is where it takes place. Piracy can be understood as an act of robbery on the high seas (Webster, 2002, as cited in Mejia Jr, n.d, p.30). To deal with this issue, the world adopted a number of regulations or legal instruments, foremost of which is UNCLOS, which defines piracy as:

Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private

aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) 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 of intentionally facilitating an act described in subparagraph a) and b) (UNCLOS,1982,p.54).

This concept is conspicuously restrictive in terms of the constitutive elements of the act and the zonal location of its commission, making clear how and where this act must occur to be considered as piracy:

The elements following are the main condition to an of maritime violence to be considered piracy under international law, namely: an illegal act of violence motivated by private gain, committed by persons on board a private ship, directed against another vessel, or the persons and property on board and committed on the high seas or outside the jurisdiction of any State (Mejia Jr.n.d.31).

These situations lead to a possibility by the States to assume that there is no piracy within their jurisdictional water and could make them claim that piracy could be over in the world due to the lack of constitutive elements to be qualified as piracy.

3.4.1.2 ARMED ROBBERY AGAINST SHIPS

The technical aspect required to be considered piracy opened space for other types of maritime crimes or unlawful acts that took place at sea and were not adopted in the international legal system. Due to that, the world, and the IMO in particular, adopted several instruments to cover the legal aspect left behind by the legal conception of piracy. Among these instruments are the (SUA)³⁸ and the IMO resolution A.1025(26) of 2 December 2009, establishing a code of practice for the investigation of crimes of

³⁸ Adopted by IMO in Rome on 10 of March 1988

piracy and armed robbery against ships. The term armed robbery was established under the aforementioned resolutions as:

Armed robbery against ships means any of the following acts: 1 any illegal act of violence or detention or any act of depredation, or threat 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 sea; 2 any act of inciting or of intentionally facilitating an act described above (IMO,2010, p.4).

These instruments tackle the issue of acts happening more generally, making it possible for countries to take legal actions against perpetrators who were hiding in shadows of the legal definition of piracy. The maritime zones away from the high seas now have jurisdiction or are no longer facing the lack of a legal framework or regime juridical to hold responsible those who commit crimes or unlawful acts at sea.

3.4.1.3 MARITIME TERRORISM

The maritime version of terrorism is distinguishable from piracy and armed robbery against ships in terms of their respective motives. Terrorism in general is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives (FBI, as cited by United State Institute of Peace, n.d, p.8). Maritime terrorism has its basis of motivations the general terrorism itself. It is politically motivated trying to influence the political conduct of adversaries, in this case governments, through threats and violent attacks on calculated targets.

Acts of terrorism are characterised by symbolic rather than material significance, and their object and motivation are thus clearly different from those of piracy and armed

robbery (Mukherjee and Brownrigg, 2013). The world faced numerous cases of maritime terror, such as:

The 1970 explosion claimed by Al-Fatah and the Popular Front for the Liberation of Palestine (PFLP), that killed 19 and injured 36 in an Israeli port, the 1971 explosion of a bomb by a Mozambican terror group that killed 23 crew members on board a Portuguese cargo and the 1988 Abu Nidal attack against the Greek passenger ferry city of Poros, that resulted in 9 persons being killed and 80 being injured are all different from cases of piracy and armed robbery against ships (Mukherjee and Brownrigg, 2013.p.254).

The sequence of events aforementioned show how States must be connected to prevent acts like this from happening in their waters or premises. It also requires governments to work together to make the navigational areas more secure, even for activities like oil exploration, and to secure their infrastructure. The SUA Convention and IMO resolution on these acts happening at sea brought what was needed to complement UNCLOS on how the international legal framework should be followed by States and strengthen their cooperation to combat security threats.

3.5 MARITIME SECURITY IN THE REGION OF SADC

Due to the coastal States that comprise the region of SADC, and some of them with a lot of natural resources and lack of capacity to patrol their coastal areas, maritime security threats are a persistent challenge. Piracy and maritime crime, and unlawful acts in general have negative impacts on the economies of African States connected to the Indian Ocean, including SADC countries, because:

SADC coastal area, does not fall within the region normally patrolled by the international anti-pirate forces, southern African waters or SADC coastal States water, are increasingly becoming an attractive alternative to Somali pirates because of the lack of patrolling across the Indian Ocean and this situation is becoming a concern to SADC, whose coastline and shipping lanes are extremely vulnerable (South Africa Department of Defence [SDOD],2011).

As part of the vulnerability of the SADC coastal areas, the SADC region now faces the threat of maritime piracy and armed robbery against ships, and piracy and other unlawful acts against the safety of navigation (SDOD,2011). The hijacking of vessels in particular has spread rapidly and unexpectedly to the Eastern oceans of SADC and the Mozambican Channel (SDOD,2011). Tanzania, Mozambique and Angola have also recently experienced armed robbery in their harbours and territorial waters, as illustrated by the following facts:

- Seizure of a Mozambican fishing vessel, the “Vega 5”, by Somali pirates on 27 December 2010, the furthest south that the pirates have Piracy attacks were not expected as far south as the Mozambican Channel (SDOD,2011).
- On 10 December 2010 the MV MSC Panama (Liberia) with a crew of 23 was hijacked off the coast of northern Mozambique (close to the border with Tanzania) while in route to Beira (SDOD,2011);
- On 25 December 2011, the fishing vessel FV Shih FU No 1 (Taiwan) with a crew of 28 was hijacked even further south in the narrowest part of the Mozambique Channel between Madagascar and Mozambique (SDOD,2011);
- On 25 October 2006 in Dar es Salaam, for example, raiders stole a ship store and escaped (SDOD,2011);
- The oil tanker MT Kerala was hijacked off Angola in January 2014 (Blaine & Nel,2019).

Piracy and maritime crime are negatively impacting the economies of African states connected to the Indian Ocean as well as islands such as the Seychelles which depend to a great extent on tourism for income (Blaine & Nel,2019). In other terms:

Good order at sea requires the creation of collaborative maritime security architectures to allow the conduct of free trade in a safe and secure environment, allowing the blue economy to flourish, this architecture strengthens maritime institutions, enabling such institutions to regulate the fishing industry better, enhance actions against illegal acts such as piracy, smuggling, illicit trade and cross-border crime, combatting environmental

threats such as plastics pollution, as well as ensuring safe navigation of shipping (Blaine & Nel,2019,p.109).

The solutions presented by SADC to tackle the problems aforementioned must be at the level of the threats, and cooperation and collaboration must always be part of the member States and the SADC itself. More member States should be encouraged to sign the regional-continental and global instruments that regulate the combat of such issues, such as the Lomé Charter³⁹, Jeddah amendments on the Djibouti Code of Conduct⁴⁰ given that boundaries on water are, most of the time, impossible to establish and maritime threats are always a common problem for neighbouring countries.

3.5.1 SADC MARITIME SECURITY INITIATIVE

Surround by all these events and necessity to draw up a response to tackle the situation in the region, the SADC:

Following the hijacking of Vega 5 by Somali pirates in the Mozambique Channel, the SADC Troika asked the State Security Sub Committee of the Inter-State Defence and Security Committee (ISDSC) to draft guidelines towards a regional action plan for combating piracy on the basis of that plan, the Joint Defence and Security Committee and State Security Sub-Committee met in Pretoria, South Africa, to develop a SADC MSS (Coelho,2013. p.13).

3.5.2 SADC MARITIME SECURITY STRATEGY

The execution of the strategy resulted in the formation of a SADC maritime task force which focused almost exclusively on anti-piracy operations:

The SADC maritime security strategy aims to counter maritime insecurity in SADC Indian Ocean region, and it focuses on the elimination of piracy in the SADC Eastern Indian Ocean and cites three priorities namely: the eradication

³⁹ African Charter on Maritime Security and Safety and Development in Africa-Lomé Charter.

⁴⁰ Djibouti Code of Conduct is instrument adopted by the IMO to repress piracy and armed robbery.

of Somali piracy in Southern Africa, securing the west coast of Southern Africa and securing Southern Africa vast rivers and lakes, such as the Congo River and Lake Tanganyika, which are vital to trade and development (Coelho,2013. p.13).

The strategy consists of two main components:

- Military deterrence and intelligence-gathering. Military deterrence consists of the deployment of South African naval means to patrol the coast of Northern Mozambique and Southern Tanzania after an agreement signed among the three countries in the beginning of 2012. Since then, under Operation Copper, a South African naval vessel has been permanently stationed off the coast of Pemba in northern Mozambique, together with a maritime patrol aircraft and a maritime surveillance helicopter (Coelho,2013. p.13);
- The second component is a “massive South African naval intelligence-driven operation” supported by Maritime Domain Centres (MDCs) to be run from strategic locations (Silvermine in Cape Town and the Bluff in Durban), coordinated by a multi-security agency centre in Snake Valley, Pretoria, and aimed at gathering and processing intelligence. The system includes “maritime intelligence-gathering hubs” in South Africa’s neighbouring countries up to Kenya on the East, and the Democratic Republic of Congo (DRC) on the West, involving “the use of local populations as intelligence gatherers (Coelho,2013. p.13).

3.5.3 AGREEMENT BETWEEN SADC AND INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)

When it comes to combatting and investigating crimes, SADC through the Southern Africa Regional Police Chiefs Cooperation's Organizations (SARPCCO)⁴¹ signed an agreement with INTERPOL with the aim to cooperate on issues of police and criminal investigations on 6 December, 2019. This partnership will have an impact on the member States posture and cooperation when it comes to police matters. This agreement could be seen as a complement to the SADC-MSS because the aims of this strategy cover only aspects related to piracy and the agreement with INTERPOL will force the SADC to extend the scope of its strategy to more domestic acts which are considered crimes.

Maritime violence is a concept involving several types of acts that will need cooperation with INTERPOL. Countries are facing drug trafficking in regional waters due to lack of patrols. IUU fishing is another issue, along with human trafficking and illegal migration. These police matters are also contained in the new version of the Djibouti Code of Conduct Jeddah amendments. SADC should use its power and influence on member States to ratify and adhere to the Djibouti Code of Conduct Jeddah amendments and other legal frameworks available for States to cope with maritime crimes.

⁴¹ SARPCCO within the SADC structure rely on Organ on Politics, Defence and Security provide a foundation of Peace and Stability in the SADC Region as a prerequisite for the achievement of SADC objectives of socio-economic development, poverty eradication, and regional integration

CHAPTER IV: ANALYSIS AND FINDINGS

The social and better conditions of the populations is one of the SADC aims. Economic integration for better socio-economic development is one of the steps to achieve a better social and living condition. This process of integrations also involves an establishment of a Free Trade Zone by 2008 as stipulated on the SADC Protocol of Trade of 2005 (SADC,2005). Regional Integration means a process of integrating the activities of different parts into a system, by neighbour countries through common rules and institutions (Norks Utenrikspolitisk Institute [NUPI], 2023).

According to IMO, international shipping is responsible for 80% of global trade to people and communities all over the world (IMO,2023). To pursue the target SADC put in place, the integration process and free trade zone, maritime transport will play a vital role in connecting the region to the world as a global activity. The demand for these services will automatically increase the maritime traffic and the look maritime transport infrastructure demanding a better maritime safety and marine environmental protection.

The SADC through its existence tried to establish a framework to deal with maritime safety and security toward the development of maritime transport. The structure aforementioned is composed of the following documents: the Protocol of SADC on Transport, Meteorology and Communications, the multilateral agreement on search and rescue, the SADC Maritime Security Strategy, the agreement with INTERPOL and bilateral and multilateral agreements among members states. All these instruments have as an umbrella instrument such as the Africa Maritime Integrated Strategy-AIMS2050 and Africa Maritime Transport Charter-AMTC, combined with the international regulations, particularly from the IMO, which resulted in SADC initiatives to deal with maritime safety and security.

Maritime safety has to do with the safety of the ship itself, and is regulated internationally by the conventions adopted by the IMO and implemented by member States. Maritime safety is concerned with how safe a ship is as a waterborne object that houses a human being and properly includes crew, passengers, and cargo (Mukherjee,2013). IMO urges States to cooperate in order to fulfil their obligations on the implementation of conventions, as stated in the Resolution A.682(17), on regional co-operation on the control of ships and discharges, promoting the conclusion of regional agreements. SADC aims to fulfil this appeal from the IMO, and its responsibilities as a regional intergovernmental organization and IO and its responsibilities toward the world, as stated in the Treaty and Declaration that established the organization in 1992.

The integration process when it comes to international maritime transport is through IMO and all the community involved. SADC according to a) article 5 of its Treaty, aims to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Africa and support the socially disadvantaged through regional integration (SADC,1992). With the role of shipping in world trade this objective must also be achieved by providing a better and well-regulated shipping industry.

To protect or regulate the shipping industry and maritime transport in general, the organisations adopted in 1996 the PTMC, as a guideline or instrument giving the member States orientation on how, and based on what, they should structure and regulate maritime transport. As stated in Article 8.5, Chapter 8 related to international standards and recommendations, but PTMC does not stipulate enforcement mechanisms, leaving it up to the States to find the best solution to do so, as stated in n°2, Article 8.5⁴².The provision aforementioned, can only be achieved by very strong

⁴² Member States shall promote the safety of life and property at sea by strengthening the capacity of their maritime administrations to bar unseaworthy ships from coastal waters and inland waterways by, among others (SADC.1996).

PSC measures, either individually or collectively. A PSC is a State in whose port or off-shore terminal a foreign ship is physically located at a given time (Mukherjee and Browning,2013). This condition gives the power to the Port State to board and inspect the foreign ship and, when it is appropriate, to detain the ship. Line b), n°2, Article 8.5⁴³ requires a mechanism of enforcement of the provision of this Article in particular and the enforcement mechanism of PTCM when it comes to maritime safety.

The mechanism of enforcement, which should be a MoU on PSC, comprising all SADC member States and to be attached to the PTMC, does not exist or it was not concluded by the member States themselves or proposed SADC in form of initiatives. Despite the fact that is stipulated by the PTCM. A regional PSC MoU is the missing tool to fully implement ship safety and marine environmental protection in the region, because:

port state control creates an incentive for flag States to increase standards, putting vessel on alert and afraid to be detained and flag state, also do not want to gain a reputation for requiring more than their fair share of inspection (Desombre, 2006.p.98).

The absence of this tool within the organisation, connecting only countries or members States forced some members to join the existing structure in the other regions. In addition, because of the oceans crossing some member States, namely the Indian Ocean and the Atlantic Ocean certain member States joined forces in the regions of other PSC MoU, namely Abuja Memorandum of Understanding-MoU on PSC control and Indian Ocean MoU on Port State Control, this situation shows one main consequence, which is the lack of regionalism on maritime safety matters.

Maritime security has a different approach in the region, based on the legal and policy framework or guidelines, the PPDSC, adopted on 14 of August 2001, followed by the SADC-MSS (SADC, 2023). This instrument brings an overview on how the region

⁴³ Member States can promote initiatives to conclude regional port state control agreements, which shall be annexed to this protocol

and States should cooperate to deal with all cases that threaten security in the region. Maritime transport activities have valuable assets involved, such as ships, the cargo and the lives of people onboard. This condition, attracts certain unlawful acts or criminal offences, including piracy, armed robbery against ships, and terror, that pose threats and harm the activity. The legal framework in international law is concerned with loss of life, personal injury and loss of or damage to property (Mukherjee and Brownrigg, 2013).

Nevertheless, due to all threats posed to the assets involved in maritime transport and activities in general, maritime security can be understood as those measures deployed by maritime administrations, ship owners, ship operators, port facilities and offshore installation administrations, and other maritime organizations for protection against unlawful acts such as piracy, armed robbery, terrorism and maritime violence. (Mukherjee and Brownrigg, 2013). In order to cope with the main threats and materialize the objectives of the PDSC, and also following a sequence of piracy events and hijacking cases in the region (Walker,2019), the SADC formally adopted the SADC-MSS, currently in force, through a summit of heads of State held in Luanda, Angola, in August 2011 (Coelho, 2013).

The SADC-MSS appears to be an emergency response to an external threat that reached Southern African waters, not originated there, namely piracy. Despite being seemingly effective in the short term, SADC-MSS reveals an unclear conception of maritime security, and a narrow approach to achieving it (Coelho,2013). On one hand, the strategy only focuses on piracy and counter piracy neglecting the other types of harmful acts at sea that compose the maritime security threats such as such as drug and human trafficking, IUU fishing, environmental protection and rescue and disaster response, making it very difficult to implement. These aspects that have been neglected by the SADC-MSS have direct impacts on the chain of cost and are felt in the rise of transport costs through more onerous insurance costs and less direct routes,

among other factors, with an obvious impact on national, regional and international economies (Coelho. 2013).

The SADC-MSS reveals disconnection between the reality and the response or initiative because it is understood that it reflects South African regional preoccupations, interests and aspirations, mostly caused by the status of this country in the region and responsibilities as a leader of the region (Coelho,2013). The SADC-MSS was designed, paid and has been almost solely implemented by South Africa, which is to be expected since this country is the sole naval power in the region, having put in an entire system of management of this strategy in South Africa, such as a centre of intelligence and a navy based on its defence strategy (Coelho,2013).

The dependence on South Africa's structure and resources is shown in the components of the strategy, namely a massive South African naval intelligence-driven operation supported by Maritime Domain Centres to be run from strategic locations in Silvermine in Cape Town and the Bluff in Durban both in South Africa and the deployment of South African naval means to patrol the coast of Northern Mozambique and Southern Tanzania after an agreement signed among the three countries in the beginning of 2012 (Coelho 2013).

The combinations of the two structures in the region, for maritime security and maritime safety reveal a lot of disconnections between the States and the vision, values, identities and aims stipulated in the documents that were adopted by the organisation. This situation in terms of both maritime security and safety is derived from the lack of regionalism when deciding for the region.

- **LACK OF REGIONALISM IN THE REGION**

Regionalism is a term in international relations that refers to the expression of a common sense of identity and purpose combined with the creation and implementation of institutions that express a particular identity and shape collective action within a

geographical region (Mandal,2007). The SADC treaty brings together scenarios of integration and cooperation shown through the programmes, and protocols as mechanisms to make the region move forward and match the current challenges.

SADC and its members, when it comes to implementing safety regulations and regionally adopted instruments, should share the same challenges, values, aims and objectives toward the organisations and the region. Nevertheless, maritime safety in the region, whether individual or collectively, has the PTMC of 1996 as a guide because it offers a legal framework to States or Member States to cooperate in order to implement maritime safety conventions and international recommended standards. However, it does not stipulate enforcement measures or implementation strategies, relying on the initiatives of the States, which may differ from State-to-State based on capacity, priority and States' own interests.

As a consequence of the aforementioned situations, some SADC members are spread throughout regional intergovernmental tools of implementation of IMO instruments on PSC, such as the Abudja MoU and Indian Ocean MoU. These MoUs are not under the umbrella of SADC jurisdiction, which makes it very difficult to dictate terms on how its member States should operate in relation to the referred MoUs and put in place the value and vision the region has for itself. The situation also makes it difficult to implement regionalism, which could jeopardize the spirit and objective shown by the PTMC-1996, because of the integration with countries with different realities.

Maritime SAR operations in the region is also struggling, because of the lack of regionalism. Once established the multilateral agreement on SAR as result of the IMO initiative in 2000, South Africa was designated the regional Maritime Rescue Coordinate Centre (MRCC) by IMO. South Africa already have regional responsibilities such as the implementations of SADC-MSS which rely totally on South Africa resources. This situation, either caused by South Africa politically will of leadership in the region, or because IMO felt that South Africa should lead the

region in SAR services, will put South Africa completely overloaded and cause lack of productivity and start to make regional reflect South Africa interests.

Maritime security has a different approach in the region, and has at its pinnacle the legal and policy framework or guidelines, the PDSC, adopted on 14 August 2001, followed by the SADC-MSS (SADC, 2023). This instrument provides an overview on how the region and States should cooperate to deal with all cases that threaten security in the region. Maritime transport activities have valuable assets involved, such as the ships, the cargo and the lives of people onboard.

This condition attracts certain unlawful acts or criminal offences including piracy, armed robbery against ships, and terrorism, which pose threats and harm to the activity. The legal framework in international law is concerned with loss of life, personal injury and loss of or damage to property (Mukherjee and Brownrigg, 2013).

The region is discovering more natural resources that will require more traffic and investment on the infrastructure and consequently more coordinated safety and security services. Mozambique is about explore Liquefied Gas-LNG with heavy investment in offshore infrastructure and facilities that could attract perpetrator to commit maritime crimes.

CHAPTER V: CONCLUSION AND RECOMMENDATIONS

The regional body has the power and the possibility to help countries harmonise PSP measures to be implemented in the region. Based on the fact that regulations are internationally adopted, but their implementation is individual, and cooperation is recommended by IMO, regional organisations can make a difference and SADC took the first step with the adoption of PTCM in 1996. The document does not have a tool of implementation, which is holding back the intentions of the region.

Cooperation within the region must be done, taking into consideration the reality of the region in terms of capacity, political will and institutional framework, as a pure functionalism chain operating with the blessing of the regional political body. SADC has to adopt and enforce instruments reflecting the realities of the region, and put them as high priorities in terms of implementation and assign institutional frameworks for implementation.

Regional cooperation has many facets which shipping interests are an integral part, including trade and commerce. SADC aims to increase trade, in which shipping plays a vital role, as well as to protect the marine environment, as stated in article 197 of UNCLOS (Mukherjee, 2021). These two aspects deliver a clear message on how States should play their roles, and Southern African States need to be cognizant of the region's increasingly complex maritime politics and play a huge role when adopting a regional approach. The 16 SADC member States comprise over a quarter of all African states, and 10 of the 16 member States are characterised as coastal or island States. The four SADC island states are located in the Indian Ocean (Walker, 2019).

The geography of States is the principal denominator of regionalism. This situation, combined with the characteristics and number of coastal and inland States, elevates the regional organisation's responsibility of dealing with maritime affairs in general and maritime safety and security in particular. For a better implementation of maritime safety obligations by States in the regions, SADC should adopt a Memorandum of

Understanding on Port State Control and establish an internal structure to oversee the management of the aforementioned MoU. This decision would help the region put in place or enforce the already existing disposition in the PTCM of 1996 and would work as a tool of cooperation among States to implement IMO conventions on a regional basis, cooperating to tackle the problem of substandard shipping.

An MoU on Port State Control is the main mechanism and that is why IMO encourages States to cooperate, which was made clear with the adoption of resolution A.682(17), on regional cooperation in control of ships and discharges promoting the conclusion of regional agreements. On a regional basis, PSC is characterised by the articulation and application of a regional Memorandum of Understanding (MoU), addressing regulatory and administrative maritime issues which provide harmonisation of procedures (Mukherjee, 2021).

PSP are built on the UNCLOS framework, and on IMO and ILO regulations, but countries make their own regulations pertaining to the main international regulations related to labour, safety and environmental protection, systematising the process of enforcing the international regulations (Desombre, 2006). Regional cooperation approaches as a mechanism of implementing IMO regulations started with the European Union and the Paris MoU on Port State Control in 1982 and cover 14 IMO instruments and 3 ILO instruments (Mukherjee, 2021).

The MoU on Port State Control should come with a structure of implementation within the structure of SADC. In the EU, this instrument is accompanied with a package of legislations and institutions for PSC management in the region, which is the European Maritime Safety Agency (EMSA) (Roe & Selkou, 2022). This Institution has the aim to oversee the implementation of IMO regulations adopted by the EU. All these regional institutional cooperation procedures were initiated after cases of accidents that compromised the region, particularly the coast of France, namely the MV Erika

incident, where 20 000 tonnes of heavy fuel oil damaged the environment in December 1999 (Roe & Selkou,2022).

The reason that led the EU to adopt the Paris MoU can be replicated in the SADC region and countries, because the activity and the risks are the same. With the globalization of shipping activity, solutions that worked in one context can work in other countries and regional organisations. The Katina P incident that happened in Mozambique in 1992⁴⁴, and sinking of Panamanian flagged Ship Sallos, in coast of Cabinda in Angola in 2014 on his route from Dubai (Rede Angola [RA],2014), causing serious environmental damage, can be taken as a case replicated as the case of the MV Erika accident that led to changes in the EU.

The SADC PMTC of 1996 under b) 2) of Article 8.5⁴⁵ is proving that the MoU is the missing tool in the SADC's initiatives toward a better implementation of IMO instruments and ensuring ship safety. The adoption must be accompanied by the establishment of an internal organ, whether a committee or subcommittee, responsible for only maritime safety regulations and policy.

Governments are urged to take the necessary arrangements for distress communications and coordination in the area of responsibility and for rescue of persons in distress at sea around the coast. These arrangements shall include the establishment, operations and maintenance of such SAR facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and navigational danger, and shall, so far possible, provide adequate means of locating and rescuing such person (IMO,2020).

⁴⁴ On 17th April 1992 the tanker KATINA P was disabled by a freak wave while transiting the Mozambique Channel. It was carrying 66,700 tonnes of heavy fuel oil en-route from Venezuela to the United Arab Emirates. The vessel lost hull plating amidships resulting in a release of approximately 3,000 tonnes of cargo (ITOPF,1992).

⁴⁵ Requires member states to promote initiatives to conclude regional port state control agreements, which shall be annexed to this protocol (SADC,1996).

The need to establish a worldwide system of search and rescue and consequently an international SAR Convention, led IMO to divide the world into zones and make SAR obligations of coastal States, adopting the SAR Convention as the legal frame work. The SADC member States under the Protocol of Transport Meteorology and Communications and IMO support developing a multilateral agreement on SAR. This instrument has yet to be fully operationalized because of lack of a regional plan on search and rescue and lack of regionalism. Countries like Angola took time to join the agreement and the region depends on South Africa to operate it.

The agreements on SAR aforementioned is a result of a project initiated by the IMO in 2000 that led to adoption and designated South Africa as regional MRCC coordinator it is not an institutional agreement adopted or led by SADC. Nevertheless, SADC should embrace the project started by the countries, attach it into its institutional structure and help collect funds for capacity building to strengthen the regional SAR services. With its geographical position having the Atlantic Ocean on one side and the Indian Ocean on another, plus 10 coastal States and 4 islands among 16 members States, these characteristics should elevate even more the responsibilities of the organisations to adopt a regional search and rescue plan to help countries develop their national plans matching the regional one.

With regard to maritime security, the main recommendation goes to the review and update of the adopted SADC MSS, for the simple fact of not representing the region and presenting lack of regionalism because it represents purely South African interests. It also has a very limited concept of maritime security, comprising only two areas, piracy and counter piracy. These threats are external to the region coming from Somalia and perpetrated by Somali pirates.

The document must address other domestic crimes at sea such as IUU fishing, armed robbery, human and drug trafficking, maritime terrorism and maritime violence. The time to respond to threats, and also to take the SADC-MSS to the region, have limited

a public debate public the implementations faced difficulties, which demand the need to review it. The review process must observe 3 steps:

1. Move beyond a purely security-based approach to a holistic one.
2. Gradually decentralise the effort by looking for a solution in which SADC member-States other than South Africa, particularly coastal States, have larger roles and responsibilities. and
3. Seek the inclusion of non-security stakeholders, and the adoption of good practices (Coelho, 2013.p15)

The main cause for the recent situations on the SADC initiatives on maritime safety and security, is lack of regionalism in the region, deliberately caused or not. The fact of having both Ocean crossing the region is one element that can divide position and actions within SADC The current situations can benefit countries who aims to have the reputation of regional leader and are willing to use its resources to pursue its interests and not the collectively interest. It also may spoil any kind of intention from other countries in the region to take responsibilities.

The agreement with INTERPOL can really as tool to change the approach on maritime security based on the SADC-MSS and also level of awareness about combating maritime crimes and influence member States to adherence international legislations related to maritime crimes. Maritime crimes occur at sea but all the logistic, plan and base operations and profit from it is at onshore, meaning they are at the scope of nationals' police and SADC have an institutional framework for policy matter SARPICO.

Institutional reform is required ant core of SADC to start dedicate even more attention on maritime transport issues. The legal framework in place at the continent adopted and dictated by the AU, have reflected on SADC regional instruments and is necessary to establish a specific organ with the organizations either committee or commission of

maritime safety issues as a stand-alone unit, also work closely with IMO organizations and instruments and become an observer member at IMO would help the region.

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Appendices