MARITIME SAFETY ON LAKE VICTORIA

ANALYSIS OF THE LEGAL AND REGULATORY FRAMEWORK

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Dedication

For Nalubega

Acknowledgments

The success of this project depends largely on the encouragement and support of many others. I take this opportunity to express my gratitude to the people who have been involved in the successful completion of this project.

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1 Chapter One

1.1 Facts about Lake Victoria

Lake Victoria, with a surface area of about 68,800 km^2 and a shoreline of 3,450km^2 is Africa's largest Lake and the second largest freshwater body in the world. It is a relatively shallow lake reaching a maximum depth of about 80 metres with an average depth of about 40 metres. It is a trans-boundary resource shared by Kenya, Tanzania, and Uganda. Each of these three countries has sovereignty over a definite part of the Lake as included in its national boundaries. *Refer to the Annex.* Rwanda and Burundi are part of the upper watershed that drains into the Lake through the Kagera river. The Lake has a catchment area of 194,000 km^2 which is shared by five countries namely; Burundi (7 percent), Kenya (22 percent), Rwanda (11 percent), Tanzania (44 percent), and Uganda (16 percent). The Lake is also part of the Nile River basin system, shared by ten countries namely; Burundi, the Democratic Republic of Congo, Egypt, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania, and Uganda. The population of the Lake Victoria Basin (LVB) is about 35 million people and it represents approximately 30 percent of the total inhabitants of the East African Community Partner States.

1.2 International Traffic on the Lake

1.2.1 A brief Background

Organized shipping services on the Lake were introduced by railway companies early in the 20^{th} century as a connecting link and a natural extension of the railway lines in the lake region. As a consequence, coordinated lake marine transport in Uganda, Kenya and Tanzania was organized and managed by the railway companies. With the amalgamation of Kenya and Uganda Railways and Harbors and Tanganyika Railways and Ports Services in May 1948, management of lake transport services was undertaken by the traffic department of the East African Railways and Harbors from their headquarters in Nairobi. This structure was maintained by the three countries after they obtained their independence and during the early years of the East African Community, which had been formed by the same three countries in

the late 1960s. With the breakup of the community in 1977, three separate parastatal railway corporations with their own lake marine services were formed namely; Kenya Railways Corporation(KR), Tanzania Railways Corporation(TRC), and Uganda Railways Corporation(UR).

KR was left with a number of smaller passenger vessels, tugs and the wagon ferry M/V "UHURU" as well as the old obsolete vessels S/S "USOGA" and S/S "NYANZA". Although originally better off in terms of marine personnel, spare parts and maintenance facilities as compared to the lake services in Uganda and Tanzania, it was ironic that KR could now make little use of these advantages, as only the modest stretch of water in the Kavirondo Gulf justified marine services of any importance. M/V "UHURU" was laid up until 1985, where after she operated on the Kisumu-Jinja route as part of the operational agreement between UR and KR.

Tanzania, covering the largest part of the lake shore, was given possession of the majority of the vessels from the former fleet of lake steamers operated by the East African Railways and Harbours. The ships included the wagon ferry M/V "UMOJA", the tanker M/T "NYANGUMI" and the passenger vessel M/V "VICTORIA", in all totaling 8 ships plus a number of dumb barges. In 1986-88, the Ro/Ro landing craft M/V "SERENGETI" was built and delivered. In 1988 M/V Victoria was rehabilitated and re-engaged and in 1990, there was a step 1 rehabilitation of M/V UMOJA. In 1991, the marine department of TRC became an independent division with extensive autonomy within the Corporation.

URC took over only a very small portion of the vessels and own marine transport operations ceased completely between 1977 and 1983, mainly because Uganda as a country was suffering from political and economic turmoil during and following the Amin Dictatorship. However, services between Jinja and Mwanza were carried out by the M/V "UMOJA" from TRC. The wagon ferries M/V "KAAWA" M/V "KABALEGA" and M/V "PAMBA" were inaugurated in 1983, 1984 and 1985 respectively. Each vessel was capable of carrying 22 wagons with 40 tons of cargo, giving a total payload of 880 tons. Bilateral operational agreements between UR and KR and UR and TRC were signed in 1983, 1984 and 1985 and the wagon ferries started operating internationally between Jinja-Mwanza and Jinja-Kisumu.

1.2.2 Transport on the Lake as of today

Today, a significant number of vessels operate commercially on the Lake for transportation of passengers and cargo. The main international transport routes include; Mwanza – Port Bell/Jinja, Mwanza – Bukoba, Mwanza – Musoma, Port Bell/Jinja – Bukoba, and Kisumu - Bukoba. The main ports include Kisumu in Kenya, Mwanza, Bukoba and Musoma in Tanzania as well as Jinja and Portbell in Uganda. The marine transport is still the cheapest means of both passenger and cargo transportation for the three East African countries. This form of transport is important for East African integration as it offers linkage between East African partner states characterized by low unit cost and less environmental pollution. It is also very important for the Lake Victoria Basin economy, most especially trade and economic development. Total trade transacted across the Lake was US$ 771.66 million in 2007[1]. (Exports -$579.53, imports - $ 192.13 million) It is also important to note that transport on the lake has not been exploited to its full potential. Thus there is still room to increase its share of traffic compared to other modes like roads, railways and airways in the region.

1.3 Safety Challenges

Transport on the Lake suffers from among others hazardous safety and or security. 5000 people are estimated to drown annually in the Lake as a result of maritime accidents.[2] Major disasters are also frequent on the lake.[3] For example the passenger vessel M/V Bukoba capsized in 1996 with the loss of over 500 lives. The wagon ferry M/V Kabalega collided with a sister vessel MV/ Kaawa and sank in 2005. Cargo vessel MV Nyamageni sank in 2006. More recently, the following incidents have been reported; 18 Tanzanian School children drowned when their vessel flipped in strong winds on August 05, 2010. 28 people are feared dead after their ferry capsized in bad weather near Entebbe on July 21, 2011. This is a crisis and the need for improved safety standards cannot be over emphasized.

1.4 Legal and regulatory framework

Within the Lake Victoria Basin region, the mandate for facilitating a maritime safety culture is the prerogative of national and regional institutions. The existing policy, legal and institutional framework is as discussed below.

1.4.1 Regional Policy and Legislation

In East Africa, the basic policy for water transport cooperation is enshrined in the East African Community Treaty and the Second East African Community Development Strategy (2001-2005) which have provisions intended to improve maritime safety on inland waterways. Member states of the EAC also ratified a Tripartite Inland Waterways Agreement that was signed on 29 April 1998 between Kenya, Uganda & Tanzania. Its subject is cooperation in infrastructure services for inland waterways transport. Its purpose is to facilitate and promote inland waterways transport. Other legislations include; East African Inland Water Transport Act (force 1/5/59) as well as The Inland Water Transport (Safety of Navigation) Rules 1959. However, these two latter instruments have not been applied for a long period mainly due to the breakup of the EAC in the late 1970s.

Most recently, the Lake Victoria Transport Act 2007 has been enacted by the East African Legislative Assembly. It was assented to by the heads of states of Kenya, Tanzania and Uganda in January 2008 at Kampala, as indicated by EAC/CM9/Decision66. The Act was adopted by the East African Community and came into force for operation on November 04, 2009 as indicated by EAC/CM18/Decision139. The Act has its background in Article 31 of the Protocol for the Sustainable Development of Lake Victoria Basin; which among others provides for the establishment of a mechanism by partner states to enhance maritime safety on the Lake. The Act has provisions for construction, surveying, registration and licensing of all vessels used on Lake Victoria, for ensuring the safety of passengers and cargo as well as standards for competency of crew. The transport Act vests specific functions in the Lake Victoria Basin Community and the relevant units in partner states with respect to standards, development and regulation of maritime safety and security. Its implementation and enforcement is the responsibility of the three states of Kenya, Tanzania and Uganda and the Lake Victoria Basin Commission.

1.4.2 Regional Institutions and Organs

Efforts to set up relevant management institutions for inland water transport have largely been initiated by regional entities such as; Kagera Basin Organisation, United Nations Economic Commission for Africa, Economic Community of Great Lakes States, Nile Basin Initiative, Nile Equatorial Lakes Subsidiary Action Program, Common Markets for Eastern and Southern Africa among others. At the Eastern Africa Ministerial Conference on the New Partnership for Africa's Development held in Kampala in March 2002, regional priorities in the water transport that are relevant to this study were identified as reducing the average age of Merchant ships, promoting maritime safety as well as the need to review, rationalize and harmonize the existing Water Transport legislation and policies. Under COMESA, in the area of inland waterway transport, member states with common navigable inland water ways resolved to adopt, harmonize and simplify rules, regulations and administrative procedures governing their inter-state water ways transport. They also agreed to cooperate to ensure maritime safety on such water ways.

In East Africa, the Lake Victoria Basin Commission, a permanent apex institution of the East African Community is mandated to promote and coordinate sustainable development and management of the Lake Victoria Basin. It was established in July 2005 under Article 33 of the Protocol for the Sustainable Development of the Lake Victoria Basin 2003. The LVBC Secretariat located in Kisumu, Kenya, is an executive arm of the East African Community. LVBC is mandated to enhance maritime security and promote safety of navigation on Lake Victoria through the treaty for the establishment of the EAC and Article 31 of the Protocol for Sustainable Development of LVB. The LVBC functions in the Partner States through the designated Maritime Administrative Units. The LVBC Secretariat is also responsible for the coordination and implementation of the Lake Victoria Transport Act on a regional and national basis.

1.4.3 National Legislation

To begin with, the Lake Victoria Transport Act takes precedence over any national legislation as regards any matter to which the Act relates. This is provided for in Section 247 of the Act. In principle, this means that in the instance of any national law providing for any matter upon which the Act also provides, and which national law is inconsistent with the provisions of the

Act as regards that specific matter, then the provisions of the Act will take precedence over those of the national law. Or in other words the provisions of the national law will be null and void to the extent of their inconsistence with the provisions of the Lake Victoria Transport Act.

In Kenya, the Merchant Shipping Act Cap 389 provides for the registration and licensing of Kenyan ships, the training and the terms of engagement of masters and seafarers and matters ancillary thereto; the prevention of collisions, the safety of navigation, the safety of cargoes, carriage of bulk and dangerous cargoes and generally the consolidation of the law relating to shipping and for connected purposes. The Act applies to regulation of ships in Inland waters. It is important to note that this law is quite recent; it was only passed in 2009.

In Tanzania, the Merchant Shipping Act 2003 provides for the registration and licensing of ships, terms of engagement of seafarers and matters ancillary thereto, prevention of collisions, safety of navigation, regulation of load lines, carriage of bulk and dangerous cargoes, unsafe ships, inland waterways, passenger ships, consolidation of the law related to shipping and for connected matters. This is supplemented by the Merchant Shipping (Small Ships, Local Cargo Ship Safety, Small Ship Safety, Surveys and Inspections for Vessels Engaged on Local and Coastal Voyages, Inland Waters) Regulations, 2004.

In Uganda, the legal instruments for inland water transport are; the Ferries Act Cap 350, the Vessels (Registration) Act Cap 349 and the Inland Water Transport (Control) Act Cap 348. The Ferries Act provides for the rules for the use of a special flag, forfeiture of license, fees, and auctioning of rights to run a ferry. The Inland Water Transport Act sets the regulations for licensing of ships while the Vessels (Registration) Act establishes the obligation to register all classes of vessels. However, these laws have been described as disjointed and under the responsibility of numerous institutions, not harmonized and contradictory as well as archaic and dormant. Therefore it has been recommended that these laws should be repealed.[3]

1.4.4 National Institutions

In Kenya, there is the Kenya Maritime Authority established under the Kenya Maritime Authority Act 2006 whose functions include among others the regulation of activities with regard to shipping in the inland waterways including the safety of navigation. There is also

Kenya Railway Corporation (KRC), a body established under the Kenya Railways Corporation Act Cap 397 whose duties include the provision of a coordinated and integrated system within Kenya of inland water ways transport services and port facilities in relation to inland water ways transport services. There is also the Lake Basin Development Authority, established under the Lake Basin Development Authority Act Cap 442 whose functions include the monitoring of operations and provision of technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria.

In Tanzania, there is Marine Services Company Limited which is responsible for the operation of maritime services on inland waterways of Tanzania. It was incorporated in December 1997 under Company Ordinance. There is also the Surface and Marine Transport Regulatory Authority which was established under the Surface and Marine Transport Regulatory Authority Act, 2001 to deal with all economic and safety regulation issues in surface and marine transport. There is also Tanzania Ports Authority, established under the Ports Act 2004 which is entrusted with the responsibility of maintaining effective management and operations of sea and inland water ways ports.

In Uganda, there is the Rift Valley Railways (Marine Division) which has been entrusted with the management of the inland water transport services on the Lake and the vessels formerly operated by URC. There is also the Transport Licensing Board, a statutory body established under the Traffic and Road Safety Act 1998 and within the Ministry of Works and Transport which is mandated to license and inspect all vessels including passenger and cargo boats, used for inland water transport. In accordance with the Lake Victoria Transport Act, this latter division of the Ministry of Works and Transport has been designated as the Maritime Administrative Unit.

1.5 Problem Statement

With the enactment of the Lake Victoria Transport Act 2007, it is expected that safety on the Lake will improve greatly, the number of maritime casualties will reduce greatly and that this will boast public confidence in transport on the Lake. However, there are a number of issues which arise from the Act and which bring into light the question of how far and to what extent the Act will go in improving and ensuring safety on the Lake.

Such issues include; the applicability of the Act to the different types of vessels depending on their make, age and type of cargo, standards set by the Act as regards the different types of vessels, especially as regards passenger vessels and cargo vessels, enforcement of the Act and follow up action against non-complying states, nature and criteria for inspections and surveys, jurisdiction other than criminal jurisdiction and finally port state vis-à-vis flag state powers. As regards these issues, a number of provisions in the Act are ambiguous and in other cases, there is a void in the Act.

1.6 Arrangement of Chapters

Chapter one gives an introductory background to the thesis. It contains the facts about the Lake, information about shipping on the Lake and safety challenges thereon, an introduction of the legal and regulatory framework as well as the problem statement. Chapter two analyses the various safety measures on the lake from the relevant laws as well as a comparison with relevant international instruments. Chapter three examines the question of flag state jurisdiction and chapter four examines that of port state jurisdiction. Finally, chapter five gives a brief discussion about coastal state jurisdiction and issues thereunder which may affect inland waterways such as the lake. The chapter ends with conclusions.

End Notes

1. LVBC, "Analysis of Trade in Lake Victoria Ports and Basin" 2011, Nairobi, African Centre for Technology Studies Pg 9
2. Lake Victoria Basin Community Annual Report July 2008- June 2009, Kisumu, Kenya pg 20
3. http://www.asahi-net.or.jp/~ee1s-ari/lake.html
4. IDC, "Inland Water Transport Study Main Report" 1997, Kampala, Uganda

2 Chapter Two

2.1 Maritime Safety

The term "Maritime Safety" is a very broad one and it cannot easily be defined in specific limited terms. It is therefore better to use general terms to give a close indication as to what the concept means. Maritime safety refers to such measures intended to ensure safety of human life and property when on any water body and the protection of the marine environment. According to Z. Kopacz[1], `safety of human life and property ' is composed of two components: safety of ships, and safety of persons in distress. '*safety of ships'* is composed of technological and operational ships' safety, and safety of navigation. For the purpose of this research, only safety of human life and property will be considered. Hereunder, the research goes into an examination of the relevant laws as regards technological and operational ship's safety as well as safety of navigation and the powers of both flag and port states in ensuring such safety. Excluded from this research work is a detailed examination of other provisions of the relevant laws regarding the protection of the environment and prevention of pollution.

2.1.1 UNCLOS 1982 on Maritime Safety

UNCLOS 1982 has been ratified by the three states of Kenya, Tanzania and Uganda. Article 94 of UNCLOS 1982 provides that every state shall take such measures for its vessels as are necessary to ensure safety at sea with regard inter alia to; the construction, equipment and seaworthiness of ships; the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; the use of signals, the maintenance of communications and the prevention of collisions. The Convention on the High Seas 1958 adopted the same basic approach in its Article 10. The Convention on the High Seas 1954 codified the rules of International Law relating to the High Seas. However this Convention was replaced by UNCLOS 1982, which provides for the rights, duties, obligations and responsibilities of states as regards the Seas and expounds on the rules laid down in the Convention on the High Seas. Although Lake Victoria is only an inland waterway

with waters only classified[2] into sheltered and or open waters as opposed to classification[3] of waters on the seas, UNCLOS 1982 is important in defining internationally accepted measures and or standards for maritime safety. Although UNCLOS 1982 has not been formally extended to apply to Lake Victoria, the convention in its Article 8 defines a country's Internal waters as waters on the landward side of the baseline of the territorial sea; which includes lakes and rivers.

2.2 IMO Conventions on Maritime Safety

2.2.1 The International Convention on Load Lines, 1966

The LL 1966 applies to all sea going vessels above a certain tonnage, including tankers. The Convention has been ratified by both Kenya and the United Republic of Tanzania. Uganda is yet to ratify the Convention. Article 4 of the LL 1966 provides that the Convention shall apply to ships registered in countries the governments of which are contracting governments as well as ships engaged on international voyages. According to Article 5 of the same convention, new ships of less than 24 metres in length and existing ships of less than 150 tons gross are exempted from its application. The Convention's provisions relate to the ship's loading limits and its purpose is to prevent overloading which would lead to casualties. It was adopted on April 05, 1966 and entered into force on July 21, 1968. It has long been recognized that limitations on the draught to which a ship may be loaded make a significant contribution to her safety. These limits are given in the form of freeboards, which constitute, besides external weather tight and watertight integrity, the main objective of the Convention.

In Article 12 and Annex I, Chapters I, II, III and IV of the Convention, provisions are made determining the freeboard of ships by subdivision and damage stability calculations. The regulations take into account the potential hazards present in different zones and different seasons as provided for in Annex II. The technical annex contains several additional safety measures concerning doors, freeing ports, hatchways and other items. The main purpose of these measures is to ensure the watertight integrity of ships' hulls below the freeboard deck. All assigned load lines must be marked amidships on each side of the ship, together with the deck line. Ships intended for the carriage of timber deck cargo are assigned a smaller freeboard as the deck cargo provides protection against the impact of waves

The Convention includes three annexes. Annex 1 contains regulations for determining load lines and Annex 11 defines zones, area and seasonal periods. Annex III contains certificates, including the International Load Line Certificate. The 1988 Protocol, adopted in November 1988, entered into force on 3 February 2000 and the 2003 amendments adopted in June 2003 entered into force on January 01, 2005.[4]

2.2.2 The international convention for the safety of life at sea, 1974 and its protocol, 1978

The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948, and the fourth in 1960. The 1974 version includes the tacit acceptance procedure - which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties. As a result the 1974 Convention has been updated and amended on numerous occasions. It was adopted on November 01, 1974 and came into force on May 25, 1980.[5] The Convention has been ratified by both Kenya and the United Republic of Tanzania. Uganda has been called upon to ratify the Convention.[6]

The SOLAS convention aims primarily at the protection of human life at sea, prescribing uniform rules on navigation, prevention of pollution, stability, machinery, electrical installations, fire prevention and other aspects of the construction of ships. It also prescribes rules for safety of navigation such as danger and distress messages, meteorological and ice patrol services and routing among others. The current SOLAS Convention includes Articles setting out general obligations, amendment procedure and so on, followed by an Annex divided into 12 Chapters.

2.2.3 International Safety Management Code

The ISM Code was adopted on November 04, 1993 in the frame of the IMO and constitutes a managerial/operational approach to maritime safety. It came into force from July 01, 1998 with regard to passenger ships, oil tankers, chemical tankers, gas tankers, bulk carriers and high speed vessels with a GRT of more than 500, on international voyages. It became mandatory for companies operating other ship types on international voyages from July 01, 2002. The ISM Code requires a safety management system to be established by the ship owner or any person who has assumed responsibility for the ship. This Code lays down internationally recognized standards for the organization of a shipping company's management in relation to safety. The introduction of the Code signifies the setting of the minimum requirements for the management of ships. Thus the need for this code cannot be over emphasized.

The code is intended to address deficiencies in the organization and management of a shipping company or firm through establishment of a universal mandatory code of practice to ensure that safety issues are addressed along defined lines both on board and ashore. According to Article 1.4 of the Code, it is up to the shipping company to develop, implement and maintain a safety Management System comprising the company's policies, instructions and procedures for the safe operation of the vessel, procedures of reporting accidents and non-conformities with the code, procedure to prepare for emergency situations as well as for internal audits and management reviews.

2.2.4 Convention on the International Regulations for Preventing Collisions at Sea, 1972

The SOLAS Convention embodies in chapter 5 rules dealing with safety of navigation but the majority of the rules of navigation are to be found in the 1972 COLREG. COLREGs was adopted on October 20, 1972 and entered into force on July 15, 1977. This convention lays down the proper rules of the road. These apply to all vessels upon the high seas and in all waters connected therewith that are navigable by sea going vessels. The Convention has been ratified by both Kenya and the United Republic of Tanzania. Uganda has been called upon to ratify the Convention.

The 1972 Convention was designed to update and replace the Collision Regulations of 1960 which were adopted at the same time as the 1960 SOLAS Convention. One of the most

important innovations in the 1972 COLREGs was the recognition given to traffic separation schemes - Rule 10 gives guidance in determining safe speed, the risk of collision and the conduct of vessels operating in or near traffic separation schemes. The first such traffic separation scheme was established in the Dover Strait in 1967. It was operated on a voluntary basis at first but in 1971 the IMO Assembly adopted a resolution stating that that observance of all traffic separation schemes be made mandatory - and the COLREGs make this obligation clear.

The COLREGs include 38 rules divided into five sections: Part A - General; Part B - Steering and Sailing; Part C - Lights and Shapes; Part D - Sound and Light signals; and Part E - Exemptions. There are also four Annexes containing technical requirements concerning lights and shapes and their positioning; sound signaling appliances; additional signals for fishing vessels when operating in close proximity, and international distress signals.[7]

2.2.5 International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978

The STCW Convention, 1978 was drafted with the close co-operation of IMO and ILO. The Convention has been ratified by Kenya and the United Republic of Tanzania. Uganda has been called upon to ratify the Convention. It was adopted on July 07, 1978 and came into force on April 28, 1984. It was the first Convention to establish basic requirements on training, certification and watch keeping for seafarers on an international level. The Convention prescribes minimum standards relating to training, certification and watch keeping for seafarers which countries are obliged to meet or exceed. There have been major revisions in 1995 and 2010. The 1995 amendments entered into force on 1 February 1997. One of the major features of the revision was the division of the technical annex into regulations, divided into Chapters as before, and a new STCW Code, to which many technical regulations were transferred. Part A of the Code is mandatory while Part B is recommended. Another major change was the requirement for Parties to the Convention to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the Convention. This represented the first time that IMO had been called upon to act in relation to compliance and implementation. Generally, implementation is down to the flag States, while port State control also acts to ensure compliance.

The regulations contained in the Convention are supported by sections in the STCW Code. Generally speaking, the Convention contains basic requirements which are then enlarged upon and explained in the Code. Part A of the Code is mandatory. The minimum standards of competence required for seagoing personnel are given in detail in a series of tables. Part B of the Code contains recommended guidance which is intended to help Parties implement the Convention. The measures suggested are not mandatory and the examples given are only intended to illustrate how certain Convention requirements may be complied with. However, the recommendations in general represent an approach that has been harmonized by discussions within IMO and consultation with other international organizations.

The Manila amendments to the STCW Convention and Code were adopted on 25 June 2010, marking a major revision of the STCW Convention and Code. The 2010 amendments are set to enter into force on 1 January 2012 under the tacit acceptance procedure and are aimed at bringing the Convention and Code up to date with developments since they were initially adopted and to enable them to address issues that are anticipated to emerge in the foreseeable future.[8]

2.3 IMO and Safety on Inland Waterways of Africa.

In recognition of the lack of effective safety regulations for vessels operating on inland waterways of Africa, IMO under a technical co-operation project PR267 TC02RAF/98/109[9] developed Model Safety Regulations for Inland Waterways Vessels and Non-Convention Craft, including Fishing Vessels, operating in Africa. As per paragraph 4 of the preamble, these regulations provide a regional safety and pollution prevention standard for new vessels and barges and, as appropriate existing vessels and convention-sized vessels that trade regularly and consistently on inland waterways of Africa and at sea on non-international voyages, and for personnel serving aboard them. According to paragraph 5 of the preamble, these regulations are intended to facilitate the operations of vessels to which the relevant international conventions are not applicable but for which the application of the basic safety

principles embodied in such conventions; if applied, would ensure a higher level of safety for the vessels and personnel on board and protection of the marine environment.

The model regulations incorporate as far as is practicable the basic standards[10] as derived from; the existing regulations of the relevant African Countries, the *Amended proposal for a Directive of the European Parliament and of the Council amending Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels (2000/C 365 E/08) COM(2000) 419 final 97/0335(COD)*, the standards set out in the *Tripartite Agreement on Inland Waterway Transport between Kenya, Uganda and Tanzania,* and IMO Conventions namely; The International Convention for Safety of Life at Sea (SOLAS), 1974, as amended, The International Convention on Load Lines (LL), 1966, as amended, The International Regulations for Preventing Collisions at Sea (COLREG), 1972, as amended and The International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, as amended.

Such basic standards include standards for certification and surveys, construction and equipment, freeboard and stability, machinery and bilge pumping arrangements, electrical installations, fire protection, life-saving arrangements and appliances, communications equipment, safety of navigation, health and safety in the crew's accommodation and working stations, carriage of cargos and dangerous goods, certificates of competency and manning, pollution prevention as well as fishing vessels as provided for in chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 respectively of the Model Safety Regulations.

2.3.1 IMO Model Safety Regulations for Inland Waterways Vessels and Non-Convention Craft, Including Fishing Vessels, operating in Africa. January 2002

The Model Safety Regulations constitute a body of regulations whose importance constitutes the promotion of safety of navigation and hence enhancement of safety of lives, vessels, and cargo, provision of guidance and harmonized standards in important areas such as construction and maintenance of craft, surveys, training and the certification of crews; promotion of the development of a safe fishing industry; prevention of pollution and preservation of the marine environment; promotion of waterborne regional/international trade

for countries sharing common water masses; and the promotion of the development of a safe waterborne tourism industry.

The Regulations are divided into 4 parts namely, the preamble, explanatory notes, 15 chapters and 9 annexes. The preamble gives an introductory background to the regulations. Paragraph 1 thereunder explains the general lack of a maritime safety culture in many African countries both coastal and landlocked and how this has contributed to a number of maritime casualties. As a result, the need for a body of rules, regulations and standards for safety on the inland waterways of the region has been emphasized. The explanatory notes give an explanation of some of the provisions in the regulations, their intended purpose and how the concerned Authorities should apply them. Paragraph 2 thereof explains that waterways have been classified into sheltered and open waters for the purpose of ensuring the application of safety standards consistent with the additional risk that may be encountered in particular locations of the waterways at particular times of the year depending on the wave or weather conditions. Paragraph 6 explains that whereas the model safety regulations do not provide for sanctions against non-complying persons, Administrations ought to make provisions for such sanctions when adopting the regulations into national legislation.

The chapters constitute general provisions and provisions laying down specific safety standards for vessels, crew, shipping companies and relevant administrations as provided for therein. The annexes make provision for the forms of certificates of seaworthiness and certificates of manning, conduct of stability proof test, subdivision calculation, stability information to be carried aboard certain vessels, as well as the carriage of livestock, thereby supplementing the provisions in the chapters.

The Model Safety Regulations import the basic standards on technical requirements for vessels from the EU Directive (2000/C365E/08) COM (2000) 419 final 97/0335(COD). This may be attributed to the fact that the provisions of the Directive have already been put to test having been in existence for a long time and that both instruments are intended for vessels used on inland waterways. A number of the provisions as laid down in the former instrument are similar to those already laid down in the latter instrument. Provisions on basic technical terms are accorded the same interpretation in both instruments. Examples include terms such as engine room, accommodation and freeboard. Further, provisions of the Model Safety

Regulations on construction in chapter 3 are similar to provisions on the Hull in paragraphs 2.03 to 2.03.7 Chapter II Annex II of the EU Directive. Other similar provisions include provisions on electrical installations in chapter 6 of each of the two instruments as well as provisions on health and safety in the crews accommodation and working stations in chapter 11 of each of the two instruments. There are some minor differences on issues like size of vessels.

2.4 The Lake Victoria Transport Act and a comparison with relevant IMO instruments

The IMO Model Safety Regulations have been adopted and domesticated by the East African Community through their incorporation into The Act 2007[11]. The Safety Standards dealt with by this Act can be considered under four main headings namely; seaworthiness of ships, collision avoidance and or prevention, crewing standards as well as the establishment of navigational aids. These safety standards are comparable to those set by IMO Conventions and other instruments regarding seas and other larger water bodies in as far as they can also be considered and grouped under the same four main headings. However the intensity, sophistication and applicability of the later differs greatly in some aspects given the long period of time over which they have been developed, the nature and size of ships to which they apply as well as the nature, size and classification of the water bodies to which they apply as compared to Lake Victoria.

The Act can be described as a mile stone in as far as safety on the Lake is concerned. The period prior to 2007 was characterized by neglect as there was hardly any comparable meaningful legislation on safety in the lake area. The breakdown of the East African Community in the 1970s had dealt a major blow to legislations such as the East African Inland Water Transport Act and corresponding Inland Water Transport (Safety of Navigation) Rules 1959. The setting of safety standards was hence left to Ship operators who instead maximized on commercial interests.

2.4.1 Seaworthiness of Ships

In order to make certain that shipping is kept as safe as can be possible, it is critical that all ships must be fit in design, structure, condition and equipment to encounter the ordinary perils of the voyage[12]; otherwise enormous consequences could result from the failure to do so. At this point, it is important to remember the victims of the vessel M/V Bukoba among whom were 40 children returning home from school. Over 500 people remained trapped inside the steel hull as the ship capsized and went down in calm waters some 10 km northwest of Mwanza. According to the findings of the Commission of Inquiry Report into the cause of the sinking, the vessel was grossly overloaded and unstable due to issues with the ballast. At the time, given the neglect of safety standards in the region, this was bound to happen. The new Act is intended to redress such short comings through ensuring adherence to safety standards.

The Act and the corresponding Maritime Safety Regulations lay down standards[13] relating to the construction and equipment of ships, freeboard and stability, machinery and bilge pumping arrangements, electrical installations, fire protection, life-saving arrangements and appliances, communication equipment, carriage of bulk cargoes and dangerous goods. To say that these provisions are comparable to standards for sea worthiness provided for in SOLAS is to overstate the matter. However they incorporate the basic standards of sea worthiness as laid down in SOLAS. As regards free board and stability, the provisions are comparable to those laid down in the International Convention on Load lines. The Act[14] requires vessels operating on the Lake to carry certificates of seaworthiness attesting to compliance with these technical requirements.

Further on safety, SOLAS 1974 as amended incorporates the International Safety Management Code in its Chapter IX. The Lake Victoria Transport Act also provides for the same in Section 72 wherein vessels with a gross registered tonnage of one hundred and twenty five tones or above are required to comply with the code. The challenge in the region is now sensitization of the concerned companies, firms and individuals about the ISM Code.

Of significance to note about the two sets of Laws is the fact that whereas the provisions of SOLAS apply to new ships and specify where necessary the provisions applicable to existing ships as provided for in Chapter II-1 Part A Regulation 1, the provisions of the Act and the corresponding Regulations apply to vessels but without clarification as regards already

existing vessels. According to regulation 2, existing vessels are given three years from the date of commencement of the regulations within which to comply and under Regulation 3, the Council has the power to exempt from their application all or any of the provisions to vessels the keels of which were laid down before the entry into force of the instrument. This section is ambiguous in as far as it does not provide a criteria and grounds under which such vessels may be exempted and it may be subject to abuse by the relevant Authorities given the bureaucracy and corruption in the region. This may cause hardships when it comes to implementation and enforcement as regards already existing vessels especially given the fact that courts in the region are reluctant to apply laws retrospectively for they are considered unjust. On this, both Article 28(7) of the Constitution of the Republic of Uganda 1995 and Article 50(2)(n) of the Constitution of Kenya 2010 provide against trial and conviction of a person for an act or omission that did not at the time it took place constitute an offence.

Further SOLAS is so particular on provisions applicable to passenger ships, those applicable to cargo ships as well as provisions applicable to both types of ships when it comes to construction, sub-division and stability, machinery and electrical installations as well as lifesaving appliances as provided for in Chapters II and III of the Annex respectively. This distinction is lacking in the Act and the Maritime Safety Regulations. On the contrary, these two instruments set general requirements without distinguishing between those specific for passenger vessels and those specific for cargo vessels. There are a few exceptions to this general trend when it comes to subdivision of passenger vessels and certain cargo passenger vessels(regulation 25), pumping and draining from every space in a vessel where any one water tight compartment is flooded (regulation 42(2)), the number of fire extinguishers (regulation 59(5)), the number of lifebouys (regulation. 72(2)), number of life jackets (regulation 72(8), as well as a public address system (regulation 80(3)).

The generalization in The Act and corresponding Regulations may lead to uncertainties and inconsistences during surveys and inspections as regards what to look out for in passenger vessels on one hand and cargo vessels on the other. It is important that high standards are set for passenger ships as compared to cargo ships given the value attached to human life. When it comes to passenger vessels, particular emphasis should be paid to issues such as; demonstration of buoyancy in the case of a leak, situation of passenger spaces on decks, for example they should be situated aft of the collision bulk head, minimum thickness of bottom,

bilge and side plating of passenger vessels, basic requirements for subdivision of vessels, transverse bulk heads, intact stability and stability in the event of a leak, calculation of the number of passengers on the basis of free deck area, safety clearance, free board and drought marks, fire protection and fire fighting in passenger spaces among others. This specification will simplify the work of surveyors and inspectors as regards what to look out for in the different types of vessels.

It can further be said that the provisions of SOLAS are so sophisticated, and technologically advanced compared to those of the Act and the Maritime Safety Regulations. For example whereas Part IX of the Maritime Safety Regulations on Communication Equipment only provides for radio communications system, emergency position indicating radio beacon as well as radar reflector and transponder, Chapter IV SOLAS on Radiotelegraphy and Radiotelephony requires ships depending on type and size to be fitted with among others a radiotelegraph station and its operator as well as a radiotelephone station and its operator. Most of all, the chapter incorporates the Global Maritime Distress and Safety System (GMDS). The omission in the Act and Regulations of a technical operator of the communication system may prove disastrous in case of disaster. This difference is not surprising given the neglect maritime safety has suffered in the Lake Victoria Basin region. There is a need to embrace this technological advancement in the region if safety is to be improved upon.

2.4.2 Collision avoidance and ships' routing

This is provided for in part 8 of the Lake Victoria Transport Act and part 10 of the Maritime Safety Regulations under the heading Safety of Navigation. Safety of navigation can be considered as `such conditions of conducting the ships at sea which ensure that ships are not endangered by collisions, stranding or storm damage'[11]. Collisions on the Lake are not un common, the worst being that between M/V Kabalega and M/V Kaawa in May 2005 which resulted into the sinking of the former with and the loss of over 800 tonnes of cargo. The Commission of Inquiry Report into the Cause of the Accident attributed it partly to poor light and sound signals on both vessels. It follows therefore that adherence to the provisions of the Act and Regulations will enhance safety on the lake. Both Port and Flag State Authorities should always inspect vessels before they sail for compliance with the requirements of the

Act, ensure that deck crew have the necessary qualifications and are conversant with safety equipment on the vessel.

Law provides for safety obligations and avoidance of collisions, stability of vessels, compasses and navigation, navigation, lights and sound signals, notification of hazards to navigation, distress signals and equipment, load line certificates among others. These provisions are extensively based on those laid down in the International Regulations for Preventing Collisions at Sea (COLREG) 1972, as amended[12]; which should actually be referred to in case of a need for interpretation of any of the provisions or determine appropriate technical standards for specified equipment.

2.4.3 Crewing Standards

Inadequately trained or qualified crews are a major factor in the cause of shipping accidents. The collision of M/V Kabalega with M/V Kaawa in May 2005 was partly attributed to inadequately trained crew on the bridges of both vessels. It should therefore follow that an improvement in the quality of the crews would lead to a reduction of accidents.

The Law provides for certificates of competence and manning in part VII of the Act and part 8 of the Regulations. Law sets down mandatory minimum requirements for certification, training and qualifications of masters, officers and ratings serving on tankers as well as safety training. These provisions set standards comparable to those in the STCW Convention as amended and provide for a syllabus equivalent to that provided for in the STWC Code for Masters, Engineers and other important members of the crew. The provisions provide a long awaited solution to competence and manning of crew but the challenge of implementation and enforcement still remains. Flag states should issue certificates of competence to only qualified personnel and Port Authorities should always inspect vessels for such certificates as another way of improving safety in the region.

2.4.4 Establishment of navigational aids.

Of obvious importance to the safety of shipping is the establishment of navigational aids such as light houses, lightships, buoys and radar beacons on the Lake. As regards the Seas, an obligation is laid down by the SOLAS Convention on states Parties to arrange for the

establishment and maintenance of such aids to navigation as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned[13]. Under sections 10(g) and 11(2)(e) of the Act, this obligation is the responsibility of the LVBC and the Maritime administrative Units respectively of the partner states. However the Act is ambiguous in as far as it does not give a criteria and guidelines for the establishment of such aids. Further, it does not provide for a mechanism through which this is to be achieved the source of funding as well as a time frame within which states should discharge this obligation. The questions as regards how, when and what happens in case the concerned Authorities do not discharge this obligation is left unanswered. There is a need for redress of this void if safety is to be improved upon in the region.

Moreover, according to the project documents of the Project on Enhancement of the Safety of Navigation on Lake Victoria which are available from the offices of the EAC Secretariat at Kisumu, it has come to light that in the past there were approximately 30 navigation aids in the form of visual marks with lights on Lake Victoria. Today there are virtually no aids to navigation on the lake as they have either disappeared or fallen into disuse due to poor maintenance or have been vandalized. The sailing directions, last revised in 1972 are still being used but are rather outdated. So are the available navigation charts of the lake which were last updated in 1956. In addition, nautical surveys were last created between 1900 -1906.

The duty and or obligation to improve safety on the lake is a two way responsibility. That is ship operators on one hand and the responsible contracting governments as well as concerned authorities on the other. It is the responsibility of the three governments of Kenya, Tanzania and Uganda to put in place navigational aids as well as make available updated navigational maps and charts to the Lake users. This is a necessity which cannot be postponed.

End Notes

1. Z. Kopacz, W. Morgas and J. Urbanski, "The Maritime Safety System, its Main Components and Elements." 2001 Pg. 200
2. Section 7 Lake Victoria Transport Act 2007.
3. According to the UN Convention on the Law of the sea, such waters are classified into internal waters, the territorial sea, contiguous zone, straits used for international

navigation, archipelagic states, exclusive economic zone, the continental shelf and the high seas.

4. http://www.imo.org/About/Conventions/ListOfConventions/pages/international-Convention-on-Load-Lines.aspx
5. http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx
6. IMO, Mission Report on 'Needs Assessment Mission on Maritime Legislation', Kampala, Uganda, from First to Seventh May 2010. P. 35
7. http://www.imo.org/About/Conventions/ListOfConventions/Pages/COLREG.aspx
8. http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Standards-of-Training,-Certification-and-Watchkeeping-for-Seafarers-(STCW).aspx
9. Preamble to the IMO Model Safety Regulations .
10. Paragraphs 4, 5 and 6 of the preamble to the IMO Model Safety Regulations.
11. Paragraph 3 of the preamble to the IMO Model Safety Regulations provides that they were agreed to by among others Kenya, Tanzania and Uganda during a Workshop held in Mwanza, Tanzania between 15 and 19 October 2001
12. Carver's carriage by sea, 13th edn, vol. 1 paragraph 147
13. Parts 3, 4, 5, 6, 7, 8, 9, 10 and 12 of the Lake Victoria Maritime Safety Regulations respectively.
14. Section 22
15. Z. Kopacz, W. Morgas and J. Urbanski The Maritime Safety System. Its main Elements and Components. Pg. 204
16. Chapter 10, IMO Model Safety Regulations.
17. Regulation 14 Chapter V

3 Chapter Three

3.1 Role of Flag States in International Law

It's the general duty of the flag state to take due care that its ship users do not disturb public order at sea.[1] Flag states play the key role of main jurisdiction over the ship and the legitimacy of such jurisdiction is not in dispute. The traditional justification for flag state jurisdiction relied on the flag state's jurisdiction over the ship owning company and the circumstances that the flag state was the only state that was capable of exercising effective (enforcement) jurisdiction over its ships.[2]

Under UNCLOS,[3] the flag state's duty to prescribe and enforce rules and standards for ships flying its flag is in principle exclusive and applies irrespective of the location of the ship. However when the ship is located in the ports or coastal waters of another state, the port/coastal state has concurrent jurisdiction and the ship is required to comply with the laws of the coastal state, in so far as they are adopted in accordance with international law.[4] Neither UNCLOS nor general international law provides clear rules for resolving competing claims to jurisdiction, but a common presumption is that territorial jurisdiction generally overrides jurisdiction claimed on other grounds, while the coastal state's powers to enforce certain environmental offences in the EEZ do not necessarily affect the flag state's concurrent jurisdiction.[5]

With respect to the content of individual flag states' legislation, UNCLOS imposes a number of minimum obligations, by reference to generally accepted international rules and standards and to prohibit ships that fail to meet those requirements from sailing.[6] These minimum obligations apply irrespective of whether the flag state has formally signed up to the rules and standards in question. UNCLOS, in other words, avoids the need to formulate more precise prescriptive and enforcement obligations for flag states by referring to an abstract, and continuously changing, set of international rules to be developed elsewhere.[7]

UNCLOSC Article 91(1) provides that every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship. The flag determines the national law which

governs the ship and how and where a right can be enforced in relation to that ship. Upon completion of registration, the ship will be identified by; the number and the name of the ship, the maritime flag which the vessel is asked to fly and the ships papers or documents which it must carry.[8]

Under the Lake Victoria Transport Act, section 18 provides for the obligation to register all vessels above a certain tonnage and Section 26 provides for the issuance of a certificate of registration upon completion of the registration; which according to section 27 shall be used for the lawful navigation of a vessel. Section 32 provides for the register of vessels which shall indicate details of the vessel including; the name, official number, details of ownership among others. In addition, Section 33 of the Act provides for a port of registry of a vessel as the port at which a vessel has been registered and the port to which a vessel belongs.

UNCLOS, Article 94(1) on the duties of the flag state requires states to exercise jurisdiction and control in administrative, technical and social measures and ensure safety at sea in matters relating to sea worthiness, manning, collision prevention, construction and crew qualification in conformity with generally accepted international regulations, procedures and practices.

There is also an imposition of an obligation on the flag state to hold an enquiry in the event of any marine casualty or navigational incident occurring on the high seas and causing loss of life or serious injury to nationals of another state or serious damage to ships or installation of another state or to marine environment.[9] Further, all states may report casualties and other incidents where there are clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised.[10]

Among its other duties are those listed in Article 217 (2) and (8) UNCLOS namely; requirements for the periodic inspections, compliance with applicable standards in respect of construction, design, equipment and manning of vessels. Flag states are also required to set penalties for violations severe enough to discourage infringements.

Concerning enforcement, Article 97(3) SOLAS provides that no arrest or detention of a ship following a collision or other incident of navigation concerning a ship on the high seas, even as a measure of investigation, shall be ordered by any authorities other than those of the flag state. Nevertheless, this is complemented by Article 218(1) entitling a port state to institute

proceedings against those on board a vessel in respect of discharges on the high seas in violation of applicable international rules and standards.

3.2 Role of Flag States under Specific IMO Conventions

The more specific technical obligations of flag states are normally laid down in the IMO conventions.[11] The key conventions which are also relevant for the purpose of this study namely; SOLAS as amended, COLREGS as amended, STCW as amended and LL as amended typically take the form of sets of minimum obligations to which the (flag state) administrations of the states' parties are to give effect.

In particular, these conventions require flag states to give effect to their provisions and annexes, promulgate all laws, decrees, orders and regulations and take all other steps which may be necessary to give full and complete effect so as to ensure safety of ships flying their flags.[12] Further, the conventions prescribe a number of certificates to be issued to ships and crew as proof of compliance with the requirements set therein, thereby ensuring safety. Such certificates include[13]; ship safety certificates of different types , certificates of competency for different members of the crew, and Load Lines Certificates. Further, the conventions provides for surveys and inspections by recognised authorities of flag states as a way of ensuring compliance of the ships flying their flags with their provisions.[14] In addition, the conventions also provide for investigations by flag states of casualties occurring to their ships.[15]

3.3 Role of Flag States under the Lake Victoria Transport Act

The main responsibility of each of the three states of Kenya, Tanzania and Uganda under the Act is enforcement. Under Section 11, each of the states is required to establish a maritime administrative unit for the purpose of registering vessels, enforcement of safety of navigation, carrying out inspections, implementation of maritime training, conduct of investigations into casualties on the lake and appointment of personnel responsible for the management and implementation of the Act.

Particular roles include; issuance of certificates of seaworthiness as a way of ensuring ships compliance with provisions on safety, issuance of certificates of registration or licences for establishing the nationality of a ship and jurisdiction of the flag state over such vessels, surveys and inspections to ensure that vessels are seaworthy, prohibition of ships entitled to fly their flags from sailing until such ships can sail in compliance with the requirements of the Act, grant of certificates of competency to members of the crew to ensure their efficiency thereby enhancing safety.[16]

Others include prescription of offences for violation of provisions of the Act, investigation of vessel casualties, formal investigations, offences and penalties for the purpose of discouraging violations of the provisions of the Act and its regulations, as well as detention of unseaworthy vessels.[17]

In particular on jurisdiction, section 234 provides that A person may be proceeded against, tried and punished in a place where such person may be in custody for the offence as if the offence had been committed in that place. Reference to an offence under section 234 refers to offences committed under the Act some of which are listed under section 232 thereof for example sending a vessel to the lake without competent crew as well as sending a vessel to the lake in an unseaworthy condition that may endanger safety of life and property. Section 234 as a whole gives three alternatives as regards the place for trial in respect of offences committed under the Act namely; firstly, the place where a person may be in custody, secondly, the place where the offence may have been committed and thirdly, the place for which a person charged may apply to be tried. Any of the three places could either be in the flag state or the port state.

Further on trials and proceedings, section 235 of the Act provides for the admissibility of evidence. It is to the effect that in case of any proceedings under the Act, the disposition of persons required in the course of proceedings, the admissibility in evidence and inspection of documents and their copies in proceedings and the admissibility of documents in proceedings shall be governed by the relevant laws on evidence of the partner states. This section does not appreciate and address the issue of differences that may exist in the laws of each of the three states of Kenya, Tanzania and Uganda.

Section 234 above does not provide conclusively for ‘at which of the three places a person charged must be prosecuted, tried and punished and under what circumstances such a person

may be tried, charged and punished in a particular place.' More so, section does not resolve issue of competing claims to jurisdiction. It can however be inferred that the issue has been left for the Authorities and or Courts exercising jurisdiction over the place where the person charged may be in custody to decide. Further on enforcement, the Act in Section 233 and others only provides for imprisonment and or fines following proceedings for offences committed there under. This limits the range and or scope of enforcement measures.

In addition to this, the Act does not define the term person. The question arises whether this term is restricted to natural persons only and or whether it applies to companies and firms as well. Restriction of the term to natural persons creates a void as regards the responsibility of shipping companies and other operating firms and or partnerships towards safety in the region.

Further, Act does not come out clearly on jurisdiction other than criminal jurisdiction. In this case, the presumption is that resort shall be made to other laws of the countries on Civil Proceedings. Such laws may not be the best solution given the special nature of maritime issues and the need for expertise in the handling thereof. Resorting to other laws comes with the additional risk of occasioning a miscarriage of justice.

3.4 A Comparison between the Lake Victoria Transport Act and the International Conventions

When it comes to the role of flag states, the basic elements are the same but some differences arise when one examines in detail the content of the different provisions. Such similarities include; the basic role of exercising jurisdiction over ships flying their flags, enforcement of and ensuring of compliance by ship owners with provisions of the different relevant laws and instruments relevant for maritime safety, issuance of relevant certificates as a way of ensuring compliance with provisions relevant for safety, carrying out inspections and surveys, as well as investigations of casualties. Once effectively enforced, these will go a long way in ensuring safety on the Lake.

3.4.1 Flags of convenience and or open registries

One of the main international debates in the recent past has been the issue of flags of convenience and or open registries where certain states set low standards for the registration of vessels in their registry and thereby attract vessels owned by foreign persons to such registries. Such vessels have been described as having low safety standards and that they pose a major and greater threat to safety as compared to vessels in ordinary registries and with a genuine link to the states of registration. Whereas in the past no vessel has sailed into Lake Victoria from the Sea, a situation could easily arise where a vessel from the countries neighbouring East Africa could sail into the Lake through one of the navigable rivers that go through the Lake. The Act avoids safety risks associated with such a case by providing in Section 14 for the application of Part III thereof on Registration of Vessels to every vessel used on the Lake, subject to exceptions therein.

The Act has set stringent criteria for the registration of vessels thereby avoiding and eliminating the risks associated with open registries and or flags of convenience. In fact the Act does not provide for open registries. Section 32 provides for only one general registry of vessels which may consist of separate register books for the different classes and descriptions of vessels on the Lake. Section 19 provides for the requirements for registration of vessels and these include; ownership by a citizen of the partner state or a body corporate incorporated in such a state, seaworthiness of a vessel, name of master and crew and full particulars of their certificates of competency, the surrender of any foreign marine document to the issuing government or its cancellation(if any). Further, section 21 provides for the survey and inspection of a vessel upon an application for registration for the purpose of determining whether the vessel is sea worthy and that it has a qualified crew.

3.4.2 Remedies against Non-Complying States

Despite the clear obligations on flag states to legislate and enforce a minimum set of international rules and standards for their ships, under UNCLOS, as well as under the IMO regulatory conventions on one hand and under the Act on the other hand, there are few remedies available against noncomplying flag states. At the international level, the legal mechanisms for ensuring the implementation by the flag states of their obligations in relation to merchant ships have remained modest. IMO has traditionally avoided undertaking controls

or other follow-up action with respect to poorly performing flag states.[18] But over the past few years, some developments have taken place.[19]

Under the Act, the legal mechanism for ensuring discharge by the flag states of their obligations and responsibilities is non-existent. Moreover, the Act does not provide for a time frame within which the states should fully implement and enforce its provisions. Part II thereof provides for the administration of the Act but does not provide for follow up action or controls in case of a non performing state. This void may hinder the success of the Act in instances where states neglect their duties and responsibilities there under. It is therefore important that this issue is addressed with immediate effect if the Act is to be a success.

3.4.3 Surveys and Inspections

Major differences arise when it comes to surveys and inspections as well as issuance of certificates evidencing safety under the Act on one hand and under SOLAS on the other. SOLAS classifies surveys[20] into surveys for passenger ships on the one hand and surveys of specific appliances and equipment of cargo ships on the other hand. Furthermore, SOLAS under regulation 12 categorises the certificates for safety into different types namely; Passenger Ship Safety Certificate, Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Radiotelegraphy Certificate, and Cargo Ship Safety Radiotelephony Certificate depending on the nature of the inspection.

On the other hand, the Act provides for inspections and surveys generally without classification and also provides for the issuance of a general certificate of seaworthiness without particular attention to the type and nature of the vessel. This generalization regardless of the nature and type of vessel as well as use of the term ‘certificate of seaworthiness’ without specific definition under the Act and Regulations is ambiguous and may cause uncertainties during inspections as regards what to look out for in the different types of vessels. This issue should be looked into and further legislated upon because different types of ships require different safety standards. Particular attention should be paid to standards for passenger ships.

As regards surveys and inspections, IMO Conventions[21] in addition to surveys and inspections being carried out by officers of the administration and or persons or organisations to whom the responsibility has been entrusted further provide that in every case the Administration concerned fully guarantees the completeness and efficiency of such survey and inspection. The Act is silent on this last sentence and may lead to uncertainty on responsibility and liability in cases of

incomplete and inefficient surveys leading to maritime casualties. So this issue should also be addressed in the Act.

Further, as regards investigations of casualties, the Act places emphasis on liability and responsibility rather than addressing the root cause of the casualty. This can be seen in section 224(3) and (4) which stress cases where the penalty of suspension or cancellation of a certificate of competency may be enforced in case such incompetency resulted into a casualty. On the other hand, IMO Conventions[22] emphasise investigation into casualties which may assist in determining what changes in such regulations might be desirable. On this, it is desirable that the Act places emphasis on addressing the root causes of maritime casualties and ways of improving safety as well as avoiding such casualties in the future. Attachment of liability and responsibility should be a secondary motive.

End Notes

1. H. Meyers 'The Nationality of Ships' 1967 p. 113
2. Henrik Ringbom, 'The EU Maritime Safety Policy and International Law' 2008 P. 167
3. Articles 92(1), 94 and 217
4. See Articles 21(4), 39(2), 42(4), and 58(3).
5. Churchhill and Lowe, "The Law of the Sea, 3rd ed, 1999, P. 87
6. Article. 94(5), 211(2), 217(1 and 2)
7. Henrik Ringbom supra P. 169
8. Singh, N., 'Maritime Flag and International Law', Sifthoff, Leyden, The Netherlands, 1978, p.2
9. Article 94(7)
10. Article 94(6)
11. Annex 2 of IMO Resolution A. 973(24) lists more than 500 specific flag state obligations which follow from the IMO Conventions
12. SOLAS Article 1 and LL article 1
13. SOLAS Reg. 12, STCW Convention and Code, and LL Article 16 respectively.
14. See LL articles 13 and 14 as well as SOLAS regulation 6
15. Regulation 21 SOLAS and Article 23 LL
16. Sections 23, 26, 58, 67, 68, 75, 76, 78, 80, 88 respectively;
17. Sections 184, 232, 223, 224, and 186 respectively

18. Henrik Ringbom supra p.171
19. See in particular the 143 page report of the consultative group on Flag State Implementation. UN Doc. A/59/63) on flag state implementation, established by the UN Secretary-General following the prestige accident. And various other international bodies.
20. Regulations 7, 8, 9 and 10 respectively
21. LL Article. 13 and SOLAS Regulation. 6
22. SOLAS Reg. 21 and LL Article 23

4 Chapter Four

4.1 Port State Control

PSC may be defined as the control of foreign flagged ships in national ports or the process by which a nation exercises its authority over foreign vessels when those vessels are in waters subject to its jurisdiction[1]. The loosening of the link between the flag state and the ship owning company through the development of open registers or flags of convenience since the end of the Second World War has gradually called into question the legitimacy of the exclusive flag state jurisdiction and increased the need for complementary jurisdiction over ships by port and coastal states.[2]

The concept of the port state, as a jurisdictional entity separate from the coastal state, was only introduced in the early 1970s, first in the context of the MARPOL negotiations, later at UNCLOS III. The concept was closely linked to the enforcement of measures to prevent international discharge violations at sea, with its purpose being to avoid exclusive reliance on flag states for this purpose, while still avoiding the navigational interferences and hazards involved with at sea enforcement by coastal states. Port means an area within which ships are loaded with and discharged of cargo and includes the usual places where ships wait for their turn or are ordered or obliged to wait for their turn no matter what the distance from the port.[3]

4.2 Right of Access of Foreign Vessels to Ports

It is generally accepted in Academia that there is no general right of access to ports in international law.[4] The question was also addressed from the angle of international law by the U.S Supreme Court in Cunard S.S. Co. v. Mellom[5]. The case concerned the application of U.S liquor prohibition regulation to foreign flagged vessels in U.S waters. The court accepted the jurisdiction of the port state and the principle of comity when it held that "A merchant ship of one country, voluntarily entering the territorial limits of another, subjects herself to the jurisdiction of the latter… Of course the local sovereign may out of considerations of policy choose to forego the exertion of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely in its discretion". This implies that such ships are as a starting

point, subject to the far reaching enforcement jurisdiction of the port state, which includes measures such as the inspection of the ship, detention or the imposition of conditions for departure and the application of various types of sanction. Notwithstanding this starting point, general international law acknowledges certain limitations on port states enforcement jurisdiction over foreign ships.

Notably, it is widely assumed in theory and in state practice that matters which are purely internal to the ship lie beyond the jurisdiction of the port state, but there are certain doctrinal differences as to whether this represents a matter of law or merely follows from considerations of comity.[6] This principle means that matters which do not have any actual or potential bearing on interests of the port state should be left for the flag state to enforce.

4.2.1 Ports of Refuge

According to section 1.19 of the IMO guidelines on places of refuge, A place of refuge has been defined to mean a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment. Further, in section 1.18 of the same guidelines, a ship in need of assistance has been defined to mean a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigational hazard. The right of a foreign ship to stop and anchor in cases of force majeure or distress in the case of navigation in the territorial sea, straits used for international navigation, and in archipelagic waters in the case of force majeure or distress is also explicitly referred to by UNCLOS in Articles 18(2)), 39.1 (c), and 54 respectively.

According to section 3.12 of the IMO Guidelines, when permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible. Issues to be taken into account include among others the economic question, the environmental question and the political issue. Governments are called upon by the IMO Assembly to take into account the IMO Guidelines when responding to requests for places of refuge from ships in need of assistance.

4.3 UNCLOS on Port State Jurisdiction

4.3.1 Prescriptive Jurisdiction of Port States

"In the legal literature, it is widely accepted that UNCLOS provides port states with extensive prescriptive jurisdiction over foreign ships, despite the absence of any very explicit provisions to this effect; Or the absence of particular provisions to the contrary, in combination with the implied acceptance of such jurisdiction from the different articles in UNCLOS is generally treated as evidence that this matter is regulated by general international law, rather than by UNCLOS."[7]

To begin with, reference is made to the territorial sovereignty of the state which in accordance with Article 2(1), extends to ports and internal waters. The absence of any limitation with respect to the law making jurisdiction in ports and internal waters suggests an a priori unlimited jurisdiction in these areas. Subject to limitations expressly provided for in the convention, the port state's jurisdiction must therefore be presumed to be complete. Article 25(2) establishes that, with respect to ships in the territorial sea which are proceeding to the ports or internal waters of the coastal state, the latter has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal water is subject. Similarly article 38(2) also provides for passage through the strait subject to the conditions of entry of the state bordering such a strait. Finally article 211(3) includes certain procedural requirements in relation to states which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign ships into their ports or internal waters. The reference to particular requirements suggests that such requirements may differ from the accepted international standards.

The extent of a port states' prescriptive jurisdiction may depend on the nature of the rules and the location of the infringement. Unlike operational requirements, CDEM rules are normally static thus following the ship. Failure to meet a given national CDEM standard will therefore normally signify that the standard is also being violated during the ship's presence in the port and within the territorial jurisdiction of the port state. Thus the jurisdictional claim by a port state is weaker in respect of a violation of an operational requirement such as a navigational requirement which takes place beyond its territorial jurisdiction, in particular in the absence of

any effect on the port state itself. However, in the case of a violation of such an operation requirement with the result that the port state suffers damage or is affected, the jurisdiction claim by such an affected port state will be stronger. While a quasi-universal jurisdiction for port states over violations of international discharge standards has been explicitly provided for in UNCLOS 1982 Articles 21, 42(1)(b) as well as 211(4 and 5) this has not been done with respect to other operational requirements. Hence, a coastal state requirement which prescribes a certain type of conduct in respect of foreign ships before or after their presence within the port state's territorial jurisdiction might well exceed the limits of the port state prescriptive jurisdiction.

4.3.2 Enforcement Jurisdiction of Port States

Specific provisions on port state enforcement are only found in UNCLOS Part XII, which deals with the protection and preservation of the marine environment. However, port state enforcement is not limited to such issues. Instead, UNCLOS has to be read against the backdrop of the jurisdiction which port states enjoy under general international law, which as noted above includes wide ranging enforcement powers for states over foreign ships which have voluntarily entered their ports. Rather, the origins of port state enforcement provisions of part XII suggest that they emanate from a need to clarify certain limits on the exercise by states of port state jurisdiction in specific situations, and from a more general wish by the drafters to include various safeguards against abuse of enforcement jurisdiction.[8]

Port state jurisdiction is provided for in three separate articles, all of which are subject to the safeguards contained in section 7 of the same part. Firstly, enforcement in relation to discharges is regulated in Article 218 which provides for investigations and institution of proceedings. Secondly, Article 220 (1) provides for facultative coastal jurisdiction for the port state in respect of violations committed by a ship in its coastal zones. This article may also involve the enforcement of national rules, provided that they are adopted in accordance with UNCLOS. Secondly it may also relate to the enforcement of any rules for the prevention, reduction and control of the marine environment. As to the means of enforcement, Article 220(1) does not place any limitation on the measures available and the reference to the institution of proceedings implies that a wide range of enforcement measures is available to the port state.[9] Finally article 219 which provides that a state having ascertained that a ship which is present in one of its ports is in violation of applicable international rules and

standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the ship from sailing. In such a case the port state may permit the vessel to proceed only to the nearest appropriate repair yard. In addition, and also in contrast to Articles 218 and 220, Article 219 is not conditional on the ship's voluntary presence in the port.

4.4 Port State Control under the IMO conventions

Port State Control is provided for in a number of IMO Conventions namely; the 1966 Load Lines Convention as amended, SOLAS 1978 as amended, the 1978 STCW as amended and COLREG 1972 as amended.

4.4.1 International Convention on Load Lines 1966

Under Article 20, a contracting state must accept as valid a certificate issued by another contracting state and under Article 21, an inspection must be limited to determining that the ship is not loaded beyond the limits allowed by the certificate. Further, in case of an infringement the port state must ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew.

4.4.2 The International Convention for the Safety of Life at Sea 1974 and its Protocol 1978

Port states can inspect vessels of other contracting members but only to verify the existence on board of the appropriate valid certificates required by the convention. Only if there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate can the inspector detain the ship until it can proceed without danger to passengers or crew. This is provided for in Chapter 1 regulation 19. Members of the 1978 Convention must also apply the requirements of the convention on the ships of non-parties to the convention as may be necessary to ensure that no more favourable treatment is given to such ships.

4.4.3 Convention on the international regulations for preventing collisions at sea, 1972

Coastal states are granted considerable rights to use routing measures or to introduce changes in existing ship routing schemes for remedial purposes in urgent cases. Namely, the IMO general provisions on ships routing permit states to adopt routing measures or to amend existing shipping routes independently, without first seeking consultation with and agreement of the IMO, with the object of directing traffic flows clear of a new local navigational hindrance, i.e. the presence of new offshore drilling installations or a sudden hazard calling for instant emergency measures.[10]

4.4.4 International Convention on Standards of Training, Certification and Watch keeping for seafarers, 1978

Contracting states are permitted a measure of port state enforcement for the purpose of verification of certificates. The certificates issued by another state shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of the certificate is not the person to whom that certificate was originally issued. Article X(1) The inspecting official must if he finds the violation inform the master or relevant consul so that he can take appropriate action. Article X(2) The only two grounds for detaining a ship are, under Regulation 1/4 and Article X(3), failure to correct deficiencies in proper certification or in proper watch arrangements and even then, this must pose a danger to persons, property or the environment. Undue delay or detention will give rise to a right of compensation. The no more favourable treatment formula is provided for in Article X(5).

However, it must be emphasized that implementation of these conventions does not imply an extension of the port state's enforcement authority over violations on the high seas or in foreign coastal waters, only control of ships and their equipment (SOLAS 74/78, Loadlines 1966), Control of crew competence and working conditions (1978 STCW), and other requirements present in the ship as it enters the port in question. The rectification of these conditions is well within the jurisdiction of the port state since they are present while the vessel lies in its waters.

Port state jurisdiction on the other hand means that: "a state may exercise enforcement jurisdiction over foreign ships in its ports in respect of offences against international rules and standards even if committed in sea areas beyond its coastal jurisdiction…. Even if the violations were committed on the high seas (or foreign waters) and they did not in any way affect the port state the latter would be entitled to take enforcement action against the vessel concerned."[11] This is as discussed above in sub-chapter 4.3

4.5 Port State Control under the Lake Victoria Transport Act and relevant Maritime Safety Regulations

This is explicitly provided for in Regulation 140 of the Maritime Safety Regulations. The regulation provides for port state control in so far as such control is directed towards verifying the validity of the certificate of seaworthiness. In the instance of clear grounds for believing that the condition of the vessel or of its equipment does not correspond substantially with the particulars of any of the certificates, or that the vessel is not seaworthy, or the certificate has expired or is invalid, the registrar of vessels shall take steps to ensure that the vessel does not leave port unless it can proceed to the next port of call or leave the port for the purpose of proceeding to an appropriate repair yard, without danger to the vessel or persons on board the vessel. Undue delay and or detention entitles the aggrieved to compensation from the Maritime Administrative Unit of the responsible state.

However this regulation is ambiguous in as far as it does not provide for a criteria on how an inspection should be carried out, does not state clearly the grounds upon which a certificate of seaworthiness can be declared invalid or what exactly an inspecting officer should look out for. Further, regulation does not clearly state what constitutes unseaworthiness and or what an inspector should look out for in deciding on whether to detain a vessel on grounds of un seaworthiness.

4.5.1 Right of Access of foreign vessels to ports under the Lake Victoria Transport Act

Neither the Act nor Regulation 140 above on port state control solves all questions that arise as far as exercise of such control is concerned. Other un answered questions include; right of access of foreign vessels to ports, right to a port of refuge, institution of proceedings, as well as other remedies and or sanctions that can be exercised by a port state. Under Section 247, the Act is to take precedence over the relevant laws of the partner states related to any matter to which the provisions of the Act relate. This section is not helpful as regards issues which the Act ought to have legislated on but upon which it is silent. Instead, the general presumption is that reference shall be made to other laws of the relevant states.

Here under, the starting point is the reference to the territorial jurisdiction of a state. A state enjoys full territorial jurisdiction over all its national boundaries. In principle and in this context, this means that foreign vessels have no right of access to ports, no right to ports of refuge and that a state can institute proceedings and or exercise other remedies against a foreign vessel in its ports in accordance with other national laws. However by following this trend, maritime issues may be subjected to general laws of a state a thing which may occasion injustice and uncertainty given the special nature of such issues. It should be emphasized that maritime issues require specialized bodies if they are to be resolved efficiently. Therefore the void in the Act should be addressed.

4.6 A Comparison between Port State Control under the Act as well as Maritime Safety Regulations on one hand and IMO Conventions on the other

Under both the maritime safety regulations and the SOLAS, port state control is exercised in so far as it is directed towards verifying the validity of the certificate of seaworthiness as well as the relevant safety certificates respectively and Port Authorities have the powers to detain the vessel until it can proceed on its voyage without danger to passengers, crew and or the vessel.

The Maritime Safety Regulations further provide for a right to compensation in the instance of undue delay and or detention. This provision helps to prevent abuse of port state control powers thereby ensuring a balance between the exercise of such powers and the commercial interests of the vessel operators.

On the other hand, whereas the Maritime Safety Regulations clearly provide for control as regards certificates of seaworthiness, unlike the LL and STCW Conventions, the Act and the same regulations are silent on control in so far as Load Lines and Competency certificates are concerned. This may have a negative impact on safety in instances of vessels calling in port but without fulfilling requirements as to competency of crew and load lines. However, the Act provides for the making of regulations for the grant of certificates of competency as well as load lines certificates in Sections 87 and 113 respectively. These regulations are yet to be made and whether this void will be addressed is also another issue yet to be resolved.

End Notes

1. Z. Oya Ozcayir, The Role of Port State Control 5 JIML, 147 (2001).
2. Henrik Ringbom supra P.167
3. Charter Party Laytime Definitions 1980. 12 journal of maritime law and commerce 421 1981-3
4. Lliana Christodoulou-Varotsi, 'Maritime Safety Law and Policies of the EU and USA: Antagonism or synergy?' (2009) Berlin, Springer
5. U.S. 100 (1923)
6. M. S., Burke, W. T. (1962), The Public Order of Oceans. A Contemporary International Law of the Sea, Yale University Press, New Haven/London, 1962 pp. 161-173
7. Henrik Ringbom supra pg. 214
8. Henrik Ringbom supra Pgs. 213, 214, 215
9. Rainer Lagoni, 'The Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea: A Preparatory Report', 11 Internatinal Journal of Marine and Coastal Law, No 2/1996, pp. 147-164
10. George C Kasoulides, "Port State Control and Jurisdiction Evolution of the Port State Regime" 1993, P57

11. Kari Hakapaa, Marine Pollution in International Law, Material Obligations and Jurisdiction with Special Reference to the Third United Nations Conference on the Law of the Sea, Suomalainen Tiedeakatemia, Helsinki 1981 p.172.

5 Chapter Five

5.1 Coastal State Jurisdiction

Unlike the Seas where states can exercise three types of jurisdiction namely Flag state jurisdiction, Coastal state jurisdiction[1] and or port state jurisdiction, on Lake Victoria, states can only exercise two types of jurisdiction. It is either Flag state Jurisdiction or port state jurisdiction. This is explained by the difference in the maritime zones on the Lake and those on the seas and the fact that the Lake is only an inland water way. Countries sharing the Lake cannot be referred to as coastal states in light of the true meaning of the term 'coast'. Since the Lake is only shared by three countries with definite national boundaries, the reference of the Act to only two types of jurisdiction is justified and it simplifies the question of jurisdiction. It is on this basis that this work has mainly concentrated on two types of jurisdiction namely port state jurisdiction and flag state jurisdiction but with a brief reference to coastal state jurisdiction.

In brief about coastal state jurisdiction, a state having a coastline is entitled under international law to adopt measures in order to protect its interests within four main zones of varying jurisdiction which are recognised by UNCLOS namely; internal waters, territorial waters, contiguous zone and exclusive economic zone.[2] While coastal states are required not to hamper the innocent passage of foreign ships through the territorial sea, they are empowered to adopt laws and regulations in conformity with international law which limit such right.[3] They may thus regulate among others the safety of navigation, maritime traffic, the protection of navigational aids and facilities and other facilities or installations. In this context, the point may be raised as to whether a substandard ship is violating its rights of innocent passage by being prejudicial to the peace, good order and security of the coastal state.[4] It should be noted that states are not empowered by international law to impose conditions relating to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards. In such a case, they must give due publicity to measures taken by them to enable foreign ships to comply.[5]

5.1.1 Jurisdiction over activities with external or internal effects

A jurisdictional problem arises concerning the authority of coastal state to regulate for potential hazards, situations where there is an apparent threat or an imminent danger of producing external damage, for example the presence of an ill equipped or under manned ship, or a vessel carrying dangerous cargo. There is no evidence that international law restricts in anyway the competence of the coastal state to regulate vessels presenting such hazards or to take precautionary measures to avoid the threat of damage.[6] However there has developed a compromise between the conflicting interests of the coastal state over activities within its jurisdiction, and the flag states need to defend freedom of navigation and to claim abroad immunity. The Dutch Court of Appeal at the Hague commenting on the same issue had this to state:

"Whatever the position may be with regard to the distinction sometimes heard that a ship is, that it were, a piece of sovereign territory of the flag state, such a fiction can at most mean that in principle, the law of the flag state applies on board that ship, and in particular does not pose any obstacle to the assumption of jurisdiction by the coastal state when that ship puts in. These coastal states have jurisdiction, once that ship enters their territory and there is a conflict in which not only the internal order of the ship , but also the legal order of the coastal state concerned is involved."[7]

5.1.2 Ships in transit and the right of innocent passage on the Lake

Issues considered under Coastal State Jurisdiction which but for the term 'coastal state' are likely to affect the question of jurisdiction on inland waterways include ships in transit and their right of innocent passage. It is not in dispute that such ships may pose significant safety risks to port states with inland waterways even though they do not call at such ports. Well knowing that they will not be subjected to Port State Control, such ships may neglect safety standards. The Act is silent on powers of a port state as regards a foreign registered vessel transiting its waters without calling at port. A question arises as to whether a port state has the power and jurisdiction to take enforcement action as regards such a vessel, especially where circumstances are such that it is grossly sub-standard and poses a great danger to safety in such waters.

The jurisdiction of a flag state over such a vessel under the Act is not disputed since by ascribing its nationality to a vessel, it assumes unlimited jurisdiction. As long as the Port State does not intervene, the jurisdiction of the flag state cannot be questioned. But where the port state wishes to exercise enforcement jurisdiction, another question arises as to which of these two types of jurisdiction takes precedent over the other. Again the Act is silent.

A third instance upon which the Act is silent is where a port state wishes to exercise enforcement jurisdiction over transiting vessels in respect of issues which may not necessarily concern safety. The question arises whether a vessel has a right of innocent passage which cannot be hampered and or denied by a port state on grounds other than safety concerns.

Reference should be made to other national laws of the relevant states. Section 247 provides that the Act takes precedence over the relevant laws of the partner states related to any matter to which the provisions of the Act relate. This section is not helpful when it comes to issues which the Act ought to have provided for but upon which it is silent and therefore creates ambiguity. Under the national laws of the three states,[8] a state has unlimited jurisdiction over its territorial boundaries. In principle this means that a state has the power of enforcement jurisdiction over a transiting vessel and that such a vessel's right of innocent passage is subject to such jurisdiction.

5.2 Conclusions and Recommendations

The Lake Victoria Transport Act and corresponding Maritime Safety Regulations can be described as a mile stone in as far as safety on the Lake is concerned. At the time of its enactment in 2007, safety standards on the Lake had sunk to their lowest. There was hardly any meaningful legislation in as far as safety was concerned. The period prior to the Act was characterized by general lack of a maritime safety culture on the Lake for example; overloading of all kinds of vessels used on the Lake, incompetent and unqualified crew, use of very old vessels which were also in very poor technical state, the absence of life jackets on vessels, outdated navigational charts and the absence of navigational aids among others. This period saw some of the worst disasters ever on the Lake, for example the loss of over 500 lives when the Tanzanian registered vessel M/V Bukoba sunk in 1995 and the sinking of the Ugandan registered vessel M/V Kabalega after it collided with a sister vessel M/V Kaawa in

2005. These two casualties could have been avoided, but for the poor safety culture in place at the time.

It is expected that with the implementation and enforcement of the Act, safety standards on the Lake will be greatly improved upon. The Act has provisions for the construction, surveying, registration and licensing of all vessels used on Lake Victoria, for ensuring the safety of passengers and cargo as well as standards for competency of crew. The Act vests specific functions in the Lake Victoria Basin Community and the relevant units in partner states with respect to standards, development and regulation of maritime safety and security. The partner states of Kenya, Tanzania and Uganda as well as the LVBC have the responsibility of implementation, enforcement and ensuring compliance with the Act. Port States have the responsibility of exercising port state control as regards vessels which call at ports.

The basic standards for Maritime Safety laid down in the Act are comparable to those laid down in the *Amended proposal for a Directive of the European Parliament and of the Council amending Directive 82/714/EEC of 4 October 1982 laying down technical requirements for inland waterway vessels (2000/C 365 E/08) COM(2000) 419 final 97/0335(COD)* and IMO Conventions namely; The International Convention for Safety of Life at Sea (SOLAS), 1974, as amended, The International Convention on Load Lines (LL), 1966, as amended, The International Regulations for Preventing Collisions at Sea (COLREG), 1972, as amended as well as the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, as amended.

However following an examination of the Act, it has been found to be wanting in a number of ways. Firstly, it is provided that the Act applies to all vessels whether new or old, without qualification of the provisions as regards already existing vessels. The challenge in respect of such provisions is enforcement. Courts in the region are reluctant to apply laws retrospectively. There is a need for clarity as regards provisions applicable to already existing vessels and circumstances under which such vessels may be exempted from the application of the Act. Further, with a few exceptions, the Act sets general standards for passenger and cargo vessels without distinguishing between standards specific to each of the two types. This makes the provisions ambiguous and brings about uncertainty as regards what exactly an inspector or surveyor should look out for in respect of each of the two types of vessels during

inspections and or surveys. There is a need for special requirements and or standards for the different types of vessels. Such vessels like tankers and passenger vessels need special requirements over and above general requirements for vessels. This is attributed to the additional risks associated with the carriage of passengers and other toxic or dangerous substances such as oil and gases.

When it comes to communication systems, the provisions in the Act are ambiguous in as far as they do not clearly specify how and who should operate such equipment. There is a need for clarity of this. As regards navigational aids and their installation, there is a void in the Act as regards the criteria for their installation, timeframe within which they should be installed, and follow up action. What happens in case of non-performance by the concerned state in as far as installation of such aids is concerned? Other voids in the Act include; forms of jurisdiction other than criminal, follow up action and controls as regards non performing states in as far as implementation and enforcement of the Act is concerned, right of access to ports and ports of refuge as well as transiting ships and their right of innocent passage. Other ambiguities include; provisions on port state control in as far as Act does not provide for a criteria for such control, as well as provisions on jurisdiction regarding the place of trial and applicable law. Last but not least, the Act provides for inspections and surveys of vessels for the purpose of establishing their seaworthiness. However, there is no guarantee as regards the efficiency of such inspections and surveys. This brings into question the effectiveness of such inspections and surveys and the safety of vessels subjected to such inspections and surveys.

There is a need for the law to make provision for such related issues like forms of jurisdiction other than criminal and jurisdiction in respect of artificial persons such as companies, firms and other bodies. There is also a need for special provisions as regards non-performance by the contracting governments, right of access of vessels to ports and ports of refuge, right of innocent passage, guarantee as regards efficiency of surveys and inspections. This is important otherwise there is a risk that special maritime issues upon which the Act is silent may be subjected to other general laws of any of the three states of Kenya, Tanzania and Uganda. This may not only occasion a miscarriage of justice but may also defeat the purpose of the Act which among others is the harmonization of laws regarding navigation of the Lake; in case of differences in the general laws of the different states. The law should also make provision for other remedies against non-compliance other than just fines and imprisonment.

End Notes

1. UNCLOS Articles 2, 18(2), 19(2), 21and 39
2. Alan Boyle, EU Unilateralism and the Law of the Sea, 330 Marius (Scandinavian Institute of Maritime Law) 261 (2004)
3. UNCLOS Articles 17, 18, 19, 21
4. Maritime Safety Law and Policies of the European Union and the United States of America: Antagonism or Synergy? LLiana Christodoulou-Varotsi p. 22.
5. UNCLOS Articles 21(2) and 21(3)
6. George C. Kasoulides supra Pgs 23-24
7. Buenaventura vs Ocean Trade Company. (1984) E.C.C. 183 PARA. 2 of the judgement.
8. Refer to the Constitutions of Kenya, Uganda and Tanzania

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12. U.S. 100 (1923)

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H. Internet Resources

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http://www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx

http://www.lvbcom.org/

Abbreviations

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CDEM	Construction, Design, Equipment and Manning of Vessels
COLREGs	Convention on the international regulations for Preventing Collisions at Sea, 1972
COMESA	Common Markets for Eastern and Southern Africa
EAC	East African Community
IDC	International Development Consultants.
ILO	International Labour Organisation
IMO MSR	IMO Model Safety Regulations for Inland Waterways Vessels and Non-Convention Craft including Fishing Vessels operating in Africa.
IMO	International Maritime Organisation
KR	Kenya Railways
LL	International Convention on Load Lines 1966
LVB	Lake Victoria Basin
LVBC	Lake Victoria Basin Commission
M/T	Marine Tanker
M/V	Marine Vessel
NBI	Nile Basin Initiative
PSC	Port State Control
SOLAS	International Convention for the Safety of Life at Sea 1974

STCW	International Convention on Standards of training, certification and watch keeping for seafarers, 1978 (STCW)
SUMATRA	Surface and Marine Transport Regulatory Authority
THE ACT	The Lake Victoria Transport Act 2007
THE LAKE	Lake Victoria
TRC	Tanzania Railways Corporation
UNCLOS 1982	United Nations Convention on the Law of the Sea 1982
URC	Uganda Railways Corporation

Annex

Map of Lake Victoria