NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL LAW PROGRAM

THE SUPPRESSION AND PROSECUTION OF MARITIME PIRACY UNDER INTERNATIONAL LAW

FAVOUR. CHINENYE. IWUNZE

MASTER'S THESIS

NICOSIA
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2019

ACCEPTANCE/APPROVAL

We as the jury members certify the 'The Suppression and Prosecution of Maritime Piracy under International Law' prepared by Favour.Chinenye.Iwunze defended on 22/05/2019 has been found satisfactory for the award of degree of Master

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I Favour Chinenye Iwunze, hereby declare that this dissertation entitled 'The Suppression and Prosecution of Maritime Piracy Under International Law' has been prepared by myself under the guidance and supervision of 'Assoc Prof Dr Derya Aydin Okur' in partial fulfillment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach and Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

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In response to numerous questions from family and friends about my future academic endeavors, a very determined English warrior and scholar once famously said: "This is not the end. It is not even the beginning of the end but it is perhaps, the end of the beginning".

ABSTRACT

THE SUPPRESSION AND PROSECUTION OF MARITIME PIRACY UNDER INTERNATIONAL LAW

This study examines the problem we face in the context of the rise in maritime piracy, mostly countries in West and Central Africa, with the worst affected countries being Nigeria, Togo and Cote d'Ivoire. Maritime piracy has also influenced global economic development, as shown in the case of Gulf Of Guinea.

The current thesis seeks to demonstrate that maritime piracy has substantially increased in western part of Africa because, albeit the development of the law of the sea has transposed towards acknowledging the rights of coastal states in order to defend their territorial seas with reference to the third piratical incision, not enough attention has been given to the consequences flowing from the fact that the coastal states in question do not possess the requisite resources and systems to enforce international law or prosecute pirates.

It is submitted here that piracy in its modern form in the Gulf of Guinea is a transnational crime that may be contained through a regional legal infrastructure. Universal jurisdiction is problematic since it translates into 'relational statism' that is, where states pursue only their self-interest.

As such, consistency and clarity in international legal situation may be best achieved, whereby jurisdiction is essentially territorial and can only be exercised by a state outside its territory where it obtains the consent of the territorial state perhaps through convention or in accordance with a permissive rule derived from international customs.

Keywords: UNCLOS, Maritime Piracy, Gulf of Guinean, Armed Robbery against ships, Suppression and prosecution of Maritime Pirates.

ÖZ

THE SUPPRESSION AND PROSECUTION OF MARITIME PIRACY UNDER INTERNATIONAL LAW

Bu çalışma, en çok etkilenen ülkeler olmak üzere, çoğunlukla Batı ve Orta Afrika'daki ülkeler olan deniz korsanlığının artması bağlamında karşılaştığımız sorunu incelemektedir Nijeria, Togo and Cote d'Ivoire. Deniz korsanlığı, Gine Körfezi örneğinde gösterildiği gibi küresel ekonomik gelişmeyi de etkiledi.

Mevcut tez, deniz korsanlığının Afrika'nın batı kesiminde önemli ölçüde arttığını göstermeyi amaçlamaktadır; kesi, söz konusu kıyı devletlerinin uluslararası hukuku uygulamak veya korsanları kovuşturmak için gerekli kaynak ve sistemlere sahip olmamalarından kaynaklanan sonuçlara yeterince dikkat edilmemiştir.

Burada, Gine Körfezi'ndeki modern haliyle korsanlığın bölgesel bir yasal altyapı yoluyla içerilebilecek ulus ötesi bir suç olduğu belirtilmektedir. Evrensel yargı sorunu, devletlerin yalnızca kendi çıkarları ile ilgilendiği "ilişkisel statü" ye dönüştüğü için sorunludur.

Bu nedenle, uluslararası yasal durumdaki tutarlılık ve netlik en iyi şekilde elde edilebilir, bu nedenle yargı yetkisi esasen bölgeseldir ve yalnızca bölge devletinin rızasını aldığı bir devlet tarafından, belki de kongre yoluyla veya izin verilen bir kural uyarınca uluslararası gümrüklerden türetilmiştir.

AnahtarKelimeler: UNCLOS, DenizKorsanlığı, GineKörfezi, GemilerekarşıSilahlıSoygun, deniz korsanlarının bastırılması ve kovuşturulması.

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ABBREVATIONS

AU	:Africa Union
AMC	:Africa Marine Commando
APC	:Africa Partnership Station
BFF	:Bakassi Freedom Fighters
CHS	:Convention of the High Seas
CRIMGO	:Critical Maritime Routes
EEZ	:Exclusive Economic Zone
ECCAS	:Economic Community of Central African States
ECOWAS	:Economic Community of West African States
EU	:European Union
EUCOM	:United States European Command
EAC	:East African Community
GOG	:Gulf of Guinean
INTERTANKO	:International Association of Independent Tanker Owners
IMO	:International Maritime Organization
IMB	:International Maritime Bureau
ILC	:International Law Commission
ICC	:International Chamber of Commerce
IGAD	:Intergovernmental Authority for Development
ICC	:Intergovernmental Coordination Centre
LOSC	:Law of the Sea Convention
LNG	:Liquefied Natural Gas
MEND	:Movement for the Emancipation of Niger Delta Africa
NIMASA	:Nigeria Maritime Administration and Safety Agency
NAF	:Nigeria Air Force
NNF	:Nigeria Naval Force
NATO	:North Atlantic Treaty Organization
OBP	:Ocean Beyond Piracy
OEF	:Operation Enduring Freedom
RAND	:Research and Development
ReCAAP	:Regional Cooperation Agreement on Combating

Piracy and Armed Robbery against Ships in Asia

SUA   :Suppression of Unlawful Acts against the Safety
                              Of Maritime Navigation
SAA   :Secure Anchorage Area
SADC   :South Africa Development Community
UNCLOS   :United Nation Convention on the Law of the Sea
UNODC   :United Nation Office of Drugs and Crimes
UNSC   :United Nation Security Council
UNGA   :United Nation General Assembly

INTRODUCTION

The history of maritime piracy can be traced to the period of maritime trade and carriage of goods by the sea[1]. It was prevalent during the middle ages given that it was often indistinguishable from warfare as princes were strictly responsible for the acts of piracy of their subjects[2]. Thus, although the worlds seas were rendered relatively safe for business during most of the 20th century, the decade of 1990's saw a sharp rise in piracy to the point of adversely impacting upon global business.

The past 20 years has witnessed a serious increase in maritime piracy in some war torn and economically depressed regions. Well-trained guerillas experienced in armed warfare and equipped with modern technology, satellite telephones, missiles and powerful boats constitute the contemporary personnel of piracy. However, pirate assaults are not solely confined to war torn areas, but also occur across well-known trade and tourist routes. Assaults have been carried out across the Gulf of Guinea for example. The rebirth of piracy is confirmed by statically data from the International Maritime Bureau (IMB)[3] and the International Maritime Organization (IMO)[4] that shows the number of pirate attacks since end of the Cold War.

In other words, maritime piracy is a complex phenomenon according to the meaning used it is composed of different criminal acts (e.g. Theft, robbery, kidnapping); The United Nation Convention on Law of the Sea (UNCLOS) which was adopted by International Maritime Organization, differentiates piracy and armed robbery and it established a definition of maritime piracy which involves only attacks carried out internationalwaters.

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[1] Goodwin JM, *'Universal Jurisdiction and the Pirate: Time for an Old Couple to Part;'*(39 Vanderbilt Journal of Transnational Law) p 977

[2] Lewis E *,'Responsibility for Piracy in the Middle Ages'* ,(19 Journal of Comparative Legislation and International Law, 1937) p77

[3] Chalk P, *'Contemporary Maritime Piracy Off the Horn of Africa: Scope, Dimensions, Causes and Responses',* (16 Brown Journal of World Affairs, 2010) p 89-102

[4] International Maritime Organization *, 'Reports on Acts of Piracy and Armed Robbery Against Ships'* (IMO, Paris, 2010) p41

The Phenomenon of maritime piracy goes back to the beginning of seafaring, which became a common scourge both for shipping companies and their customers. Pirates have threatened the interest of seafaring countries whenever the sea has been used for trade and shipping function mainly in coast of Somalia and Nigeria. Ever since 1980s, Maritime Piracy has reemerged as an international issue due to the continuous rise in the recorded attacks.

Customary International law, forbid piracy and has handled pirates as enemies of mankind (hostis humani generis) pirates were considered to have declared war on all countries, as such pirates were subject to the universal declaration[5], which gave all states the right to capture and punish the perpetrators under the protection of the universal declaration. Nevertheless lack of international enforcement mechanisms to exercise such rights has made the international law of piracy, to some extent unenforceable. Maritime Piracy activities are becoming more sophisticated by the day; the issues become a significant matter and a challenge to the transnational security which threatens lives and global warfare. There are numerous causes to this maritime piracy; many observers believe that the maritime piracy issue is a land based issue.

"According to Hirsi, the pirates' are not fishes; they do not reside in the sea rather they reside inthe cities"[6.]

This sentence points out that the maritime theft and robbery against vessels are land issues, and should be dealt with on land before being solved at the sea, it should first be taken care of by the state to which the pirates belong to[7].

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[5]Bassiouni M. C and Wise, E. M, *'Autdedereautjudicare: the duty to extradite or prosecute in international law'*,(MartinusNijhoff Publishers; 1995)p 11-18

6 Hirsi A, '*Somalia-Sea-Piracy: Business Model or Resource Conflict',* (Wardheer news, 2011) p22

7Jean Edmond R, (2013), *'MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS'*:

However most perpetrators lack government who can impose the law in their states, various indications shows that piracy attacks can be found in the areas favorable for the pirates, especially in the areas with a narrow channel that would direct the ships to a part where escape would be difficult.

Historical cases for examples would include the Gulf of Aden, Madagascar, and Gulf of Guinea, whose geographic location helped the pirates.

The maritime routes security is a major concern for the national government, ship owners, and trade companies who mostly face the danger of being robbed off their cargo or hijacked for ransom. The international bodies had to quickly engage in other to treat the reemerging piracy threats as a priority, between a short period of time the international bodies such as United Nation Security Council (UNSC) became effectively involved and UNCLOS was established for the prosecution of pirates.

RESEARCH QUESTION

This thesis is intended to provide holistic understanding of the issues of piracy and armed robbery against ships from the perspective of Gulf of Guinean. Many commentators have criticized the existing law of piracy and argued the international law of the sea is no longer relevant and adequate to deal with the issues of piracy and armed robbery against ships. The central question of the entire thesis is to determine whether the existing legal framework to suppress and fight maritime piracy is sufficient enough.

RESEARCH METHODOLOGY

This thesis undertakes a qualitative study that mainly involves library and internet resources research of previous literature, documents and official documents of the United Nation, IMO, and the annual report of IMB. Apart from

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http://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/Randrianan tenaina_1213_Madagascar.pdf (Accessed April 3, 2019)

the legal analysis, a historical perspective is also emphasized to fully understand the nature and concept of the law in context to determine its adequacy and relevancy in the current situation. This thesis studies the cooperative efforts of states in combating piracy and armed robbery against ships.

IMPORTANCE OF RESEARCH TOPIC

This study, discusses the importance of fighting piracy in the Gulf Of Guinea. The Gulf of Guinea is a major trading course for commerce in Africa. The region holds energy and mineral resources that are vital to states along its coastline, also to the world.

GOG is home to one of the main energy manufactures, Nigeria and Angola are part of the top crude oil exporters. However any disturbance in the oil sector in the western Africa could affect the world price in oil.

Seafarers are also becoming cautions of these regions, due to the high rate of piracy attacks and other criminal acts that take place in the sea. The shoreline is known for its wealth in its seafood and also fishes, which is the main way of living. Western Africa countries, receives millions of dollars from Europe also Asia, who legally fish in their seas. This study talks about the security carried out in the GOG.

FORMATION OF THESIS

The thesis consist of a five chapter sections, the starting point of the first chapter 1 (one) begins with the structural composition of the intended research topic its significant, and the relevance of the research question, following up immediately is chapter 2 Chapter two, which focuses on conceptualizing the offence of maritime piracy, discussing the history of maritime piracy, defining maritime piracy and armed robbery against ships, and also discussing the implementation of UNCLOS and UNCLOS and modern piracy. Chapter three focuses on the cost and trade implications of maritime piracy, how states economies are affected by maritime piracy. Chapter four examines the phenomenon of piracy in west coast of Africa with emphasis on the Gulf of

Guinea. It seeks to explain the high level of piratical attacks and identify the security challenges confronting the states in the region. The chapter begins with a paradigm of piracy in the Gulf of Guinea, setting the background with a discussion on the statistics on piratical attacks over the decade. Lastly chapter fivediscusses the prosecution of pirates in states with territorial jurisdiction and also examine the international efforts at enhancing the prosecution and suppression of pirates.

CHAPTER 1

EVOLUTION OF MARITIME PIRACY: A LEGAL AND HISTORICAL ANALYSIS

'For most of their history, pirates had to be the enemies of some before becoming the enemies of all'.

Despite longstanding efforts to develop strategies and legal instruments to counter the phenomenon, the maritime piracy remains a major concern to stakeholders of maritime industries, including costal states. Different types of piracy exist in various regions of the world, creating different types of victim and different effect on economies. The heterogeneity of the phenomenon hinders the attempt to establish international strategies aimed at consistent and coherent prosecution and sanctioning of pirates across the globe. This Chapter undertakes a legal and historical analysis of the evolution of maritime piracy, in order to explore the major factors that compromise the enforcement of international law. The Objective is to work towards an appropriate response to maritime piracy that takes account of sovereignty of the costal state but yet, does not deny the international community the right to intervene when they are either unwilling or unable to arrest and prosecute pirates.

I will also discuss the problem arising from the attempt to define the term piracy for the purpose of stabilizing the legal conception of the offence. This theoretical point, introduces some historical observation on late mediaeval piracy. I then discuss attempts to codify the rules of customary international law on piracy, placing emphasis on the provisions of the United Nation Convention of the Sea (UNCLOS).

1.1 Conceptualizing the Offence of Maritime Piracy

The sea is both a high way and an international boarder, and violence that occurs in this setting often falls in the area between military combat and civilian conflict. An attack on a ship originating in one country in the maritime territory of another country could be an sovereign act of defending territory or of initiating military aggression against another country, or simply commercially criminal assault upon a vessel and the persons operating it regardless of its or their origins, purposes, nationality, or territorial location.

What distinguishes piracy from the other crimes that might be carried out on the high seas (such as terrorism), is the motive of the attacker. However, there is a fine line between piracy and terrorism given that they are both unlawful activities that require states and other geostrategic entities to harmonies their interest and approaches to policy[8].

Nonetheless, maritime piracy is not the only concern of international law. According to Western Michigan University professor of Maritime Law and Policy Fakhry, he argues cogently that the definitional problem of Maritime piracy stems from the fact that there are two sources of our legal understanding of definition, one based on international law and one based on municipal law[9]. He says that the international law restricts the concept since it does not apply to attacks perpetrated in territorial or internal waters. On the other hand, municipal laws where piracy laws have been incorporated, whether criminal or private (carriage of goods by sea and insurance); emphasize the traditional approach to piracy that is, punishing attacks on a vessel irrespective of the vessel, location and perpetrator. However this conception of municipal law is focused on English law and does not help with the examination of the problems of piracy with countries with insufficient laws such as the Gulf of Guinea.

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[8]Joshua H.O and Sam B, *'Maritime Challenges and Priorities in Asia: Implications for Regional Security'* (Routledg; 1st Edition June 7, 2012) p 272

[9]Fakhry A '*Piracy across Maritime Law: Is There a Problem of Definition?'* in Chircop A, Letalik N, McDorman TL and Rolston SJ, *'The Regulation of International Shipping: International and Comparative Perspectives'* (Koninklijke, Leiden, 2012) p97.

When talking of 'international law', the definition of piracy often refers to Article 101 of UNCLOS, which states that, 'piracy' consist of any 'illegal acts of violence against detention, or any act of depredation committed for private ends by the crew or passengers of a private ship or a private aircraft. This definition was taken with minor changes from Article 15 of the High Seas Convention 1958, which in turn was taken from the articles of the International Law Commission on the law of the Sea[10]. The Commissions articles were also based in the Article 3 of the Harvard Research Law Draft Convention on Piracy[11].

It has been argued that the term 'private ends' is not restrictive as generally contended when examined in context. The argument here is that the term was used to refer to 'gains or other private ends of the doers[12]' which simply implies that the piratical intent to plunder. Thus what is important is that violence was perpetrated on the high seas without a government commission or letter of marquee. This implies that the permission of a state and interpretation by courts (usually domestic courts) actually determines whether an act constitutes piracy. Hence, maritime piracy is an international problem that needs to be resolved from a national perspective.

Nonetheless, some countries have integrated the provisions of UNCLOS in their domestic legislation. For example Article 101 of UNCLOS, was integrated in Section 26 of the UK Merchant Security Act 1997. It is expected that the term piracy under a municipal law will be much broader. The Privy Council of the United Kingdom for example defined piracy as 'any armed violence at sea which is not a lawful act of war'. Such a broad definition certainly overlaps with the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) which focuses on maritime terrorism.

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[10]Guilfoyle D, *'Piracy and Terrorism', The Law and Practice of Piracy at Sea: European and International Perspectives'* (Hart publishing, 2014), p36

[11]Harvard Research in International Law 'Part IV: Piracy', (26 American Journal of International Law Supplement 739, 1932)p 764

[12]Zollmann C, *'Bishop on Criminal Law',(*9th Edition, TH Flood & Co, Chicago, 1926) p406.

From a legal view point, the definitional problem is also related to the fact that modern pirates, tend to carry out their operations in regions with large coastal areas, small naval forces and weak regional security. These activities are carried out in places where the laws of the costal or territorial states are too week or in nonexistence and also in places where corruption is rampant or where improvised coastal communities act autonomously[13]. In this regard, article 101 of UNCLOS is important; given that it provides a mechanism for maritime suppression that requires the participation of more states than the territory state in providing navigation and safety. In fact, all the states that have ratified the convention have the obligation to participate and cooperate in efforts to combat maritime piracy.

Article 100 of UNCLOS provides that "All states shall cooperate to the fullest possible extent in the repression of maritime theft, or in any other place outside the jurisdiction of any state.

In light of the above, it may seem that according to UNCLOS which is deemed to be a codification of customary law, only the occupants of a ship who commit a violent act against the occupants or cargo of the other ship, may be called pirates. Thus, if the crew of a ship or the passengers of a ship takes some sort of action against their own ship, they would not be called pirates. It is important to note that a state generally has jurisdiction only within its territory. Jurisdiction is essentially territorial and can only be exercised by a state outside its territory if it obtains the consent of the territorial state. This implies that the term 'piracy' ought to be defined according to the laws of the territorial state and the provisions of UNCLOS. In order to understand this approach, it is important to analyze the historical development of maritime piracy as a special type of crime.

1.2 Historical Background of Maritime Piracy

The history of maritime piracy is co extensive with maritime trade, the Latin word for piracy is 'pirata' which indicates a commander at the sea, and while in

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[13]Aaron C, '*Somalia piracy: a legal maelstrom',* (Westlaw article, Cov.L.J. 2012) p83.

the Greek word it's called 'peirato'. Maritime piracy has been in existence ever since maritime trading became known[14].The earliest documentation on piracy was during the 14th century BC Pirates attacked Roman ships and seized their cargos, grain and olive oil.

During ancient times, from the 8th century, Illyrians, Greeks, Romans, Tyrrhenian and the Phoenicians, became involved in piracy were they attacked and stole vessels in the coastal waters and on high seas, by the 3rd Century BC, Phoenicians specialized in kidnapping boys and girls who were sold as slaves, the most notorious pirates were the Illyrians, whom often attacked the Adriatic Sea[15]. They were defeated by Roman Republic who arrested and sanctioned them on the ground that they perpetrated unlawful acts within the Roman territory. This implies that piracy was only eradicated because of the link between state authority and states claim over a particular geographical territory.

 Trade of the Roman empires at the Mediterranean Sea, was once threatened throughout the 1st century by the Clinician pirates of Cilicia, commonly known to be (Turkey) along the coast of Anatolia. Julius Caesar who was 25 years of age at that time was captured on his way to Rhodes by the Clinician pirates on the Aegean Sea[16] . The pirates demanded 20 talents of silver (which is about 600,000 in today's US dollars). After theransom was paid and Caesar freed, he captured the pirates and took all their possessions as well as 50 talents of silver. He then handed over the pirates to authorities at the prison in Pergamum and further travelled to meet the proconsul of Asia, Marcus Junius Brutus for petition to have the pirates executed. The proconsul objected. Caesar travelled back to Pergamum and ordered that the pirates should be crucified under his own authority. Although the insurgents became aware of the penalty of such criminal activities, Caesar had exercised criminal

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[14] Daniel H, (2009), The Enemy of All: Piracy and the Law of Nations (Zone Books)"https://www.amazon.com/Enemy-All-Piracy-Nations-Books/dp/1890951943 (Accessed, April 3, 2019). p49.

[15]Konstam A, '*Piracy: The Complete History', (*Osprey Publishing, August 19, 2008),) p 65.

[16]Freeman P, '*Julius Caser'*, (Kindle edition, May 13th2008), p125.

jurisdiction of an extraterritorial nature. However given that ever increasing size of the Roman Empire no sovereignty problems concerning extraterritorial jurisdiction were raised until after the fall of the Empire and rise of smaller European Kingdoms with recognized boundaries[17].

In 450 AD, Iris pirates captured and enslaved the famous Irish saint St. Patrick. Thus the motivation of the pirates had evolved from simply plundering or stealing cargo. During the period of (8th and 12th century BC) the Viking were known to be the popular pirates, they were known for plundering vessels at sea, the name Vikings comes from a language called 'Old Norse 'their assaults extended from Western to Eastern Europe and to North Africa. For more than one century, the Vikings carried on the piratical activities of stealing treasure and fighting while many of them settled in new lands as fishermen, farmers, craftsmen or traders[18].

From 1620 to 1720, it was known as the golden age. Different categories of personnel emerged during this period: privateers, buccaneers and corsairs. However, privateers were regarded as lawful pirates and the piracy assaults were permitted by the states authority. By the commission letter of marquee and reprisal, pirates obtained permission to steal from other opponent states while the gains would be divided between their governments. [19]These acts were known as privateering, for example the United State of America government were given permission from the United States Constitution of 1787 to give out the letter of reprisal or marque, with this the privateer cannot be accused with piracy while operating under the power of the commission or the marque. Many nations supported privateering the Queen ofEngland the 1st

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[17]Ryngaert C,' *Jurisdiction in International Law'*, (2nd Edition, Oxford University Press, 2015) p 52-53.

[18]Jones G, '*A History of the Vikings'*, (2nd Edition, Oxford University Press, 2001).

[19] Adam G, (2013), *PRIVATEERING AND THE PRIVATE PRODUCTION OF NAVAL POWER"* https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/1991/5/cj11n1-8.pdf , (Accessed, April 3 2019)

permitted privateering (they were known as sea dogs) France also supported privateering also and their privateers (were known as the French Corsairs)[20]

However these privateering were not accepted in some nation and the offenders were punished in the same manner with the pirates, e.g. the Spanish authorities killed the alien privateers with their marque tied to their neck. When pirates where captured throughout 17th and 18th century their sentence was mostly death by hanging it was mostly done in public and it was seen during those days as a form of entertainment. Privateering was later exterminated through Paris declaration in respect to Maritime Law by 16th April 1856.

However there are several "pirate" that are slightly different. Privateers as mentioned previously were mostly given authorization from the state to steal from enemy vessels. Buccaneers on the other hand consisted of both pirates and privateers who carried out operations mainly in Western Indies and were known for attacking Spanish ships in the Caribbean. During 17th century, Corsairs were well-known for sailing the Mediterranean, they carried along believes, which were either Christian or Muslim.

Muslim group identified as Barbary Corsairs located at Northern Africa states of Morocco. Barbary Corsairs was an active threat until the 18000s, they were given authority by their government to attack the ships of Christian states and they were mostly known for attacking ships which are for slave business. However in opposition to Barbary Corsairs, were the Maltese Corsairs who were ordered by the Christian Knights of Saint John to attack the 'barbarian' Turks vessel[21].

Historians such as Von Martens, tried to differentiate between 'privateers' and 'pirates' during 18th century. He wrote that the privateer operated in times of war and mostly seized ships with a commission or a letter of marque from a state, unlike the pirate, that has no authority and they carry out their activities

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[20]Lewis E, *'Responsibility for Piracy in the Middle Ages'*, (19 Journal of Comparative Legislation and International Law, 1937) p77

[21]Larry B, (2009), *A Study in Maritime Piracy*" https://www.scribd.com/document/284047094/A-Study-in-Maritime-Piracy (Accessed, April 4, 2019), p4

regardless of war or peace [22]. He admitted that both terms were used indiscriminately prior to the 18th century, many privateers became pirates. As such, piracy, whether by independent or state sponsored criminals, was prevalent during that time because the acts of these varied 'pirates' were often indistinguishable fromwarfare as princes were strictly responsible for the acts of piracy of their subjects [23]. The princes for example required to protect seaborne trade by defending the coastal areas. Their duties in this respect became known as 'safeguard of the sea'. The fact that many economies depended on the revenues of costal trade made it pressing for governments to provide security at sea against both pirates and foreign armies. As such the word 'piracy' as understood then was not restricted to the unlawful acts of plunders on the high seas.

From the above, it may be said that the authority of the state plated an important role in shaping the concept of piracy, given that some of those who attacked and plundered vessels on the high seas had a mandate from their government. These pirates were not self-funded criminals that sought to achieve only private ends. The activities that might have been linked to piracy moved further from the Mediterranean when in the early 19th century Chinese pirates emerged. They were active in the waters of Strait of Malacca, the Philippines, Singapore and Malaysia[24]. Piracy became a global phenomenon and a major problem for international commerce. Today there are several hotspots for piracy including Gulf of Aden, the Somalia Coast, GOG, Strait in Malacca and Indian Ocean. Although, as I explained earlier, we face challenges in reaching a precise legal conception of piracy, pirates no longer set out to plunder ships on the high sea for private profit with a commission from their home state. However, tackling this problem remains a major international security challenge because of the question of jurisdiction. From

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[22]George F, *'EssaiConcernant les Armateurs, les Prises et Surtout les Reprises: D'Apres les Loix, et les Usages des Puissances Maritimes de l'Europe'*(Gottingen, 1795) p 12.

[23]Lewis E*, 'Responsibility for Piracy in the Middle Ages'*, (19 Journal of Comparative Legislation and International Law, 1937) p77

[24]Konstam A, '*Piracy: The Complete History', (*Osprey Publishing, August 19, 2008),) p 65.

the historical development, it is clear that most states favored what we can refer to as pre-Haitian positivist approach of linking enforcement jurisdiction to territorial jurisdiction.

However, the severity of crimes committed by pirates and the inability of territorial states to arrest and sanction pirates has led to the shift towards expanding the jurisdictional reach of states that do not have territorial jurisdiction.

1.3 Definition of Maritime Piracy and Armed Robbery against Ships

Sea robbery has become different over the years. The establishment of the concept of sea robbery reflects on governance in the day, which is being demonstrated through the split between pirates from buccaneers and the privateers in the past. However the concept of maritime piracy refers to anyone who attacks another at sea. In the post Westphalia order piracy grew more in busy trade routes. A more distinction was created between pirates who were later seen as to be disturbing the friendship of nations[25] and also the privateers who given permission by the state authority. Privateering was later outlawed by 1856 by the Declaration in Respect to Maritime Law which took place in Paris.

During 1934, piracy was seen as an action which is beyond stealing, British jurist C.S Kenny, he described piracy as
"Any armed violence at sea which is not lawful act of war".

However, Kenny's concept wasn't legal due to its broadness. The first international codification of piracy was during 1958 Geneva Convention of the High Seas (Article 15) this was found within 1982 United Nation Convention on Law of the Sea. On defining piracy, article 100-107 of UNCLOS was

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[25]Goodwin JM, '*Universal Jurisdiction and the Pirate: Time for an Old Couple to Part;*' (39 Vanderbilt Journal of Transnational Law,2006) p 977

accepted in 1982[26]. It is a common fact that the person who commits such crimes has to be considered "hostishumani generis" (enemy of mankind) because they are beyond legal protection. Experts of the League of Nations created the earliest effort of codification of piracy between1926 and 1930.

The first ever term of piracy came to sight in the 15th article of the United Nation convention on the high seas during 1958, its meaning was restricted to private actions that were committed against private ships. The 1982 UNCLOS agreement integrate the regulation of the agreement 1958 and its development into one body.

"Article 101 of the UNCLOS define an act of ship based robbery which consist
a) *Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft and directed:*
   i. *On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.*
   ii. *Against a ship, aircraft, persons, property in a place outside the jurisdiction of any state*
b) *Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;*
c) *Any act of inciting or of intentionally facilitating am act described in subparagraph (a) or (b)."*

IMO also defines Armed Robbery in Resolution A.1025 (26) "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" as:

Armed robbery against ships" means any of the following acts:

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[26] United Nations, (1958), Convention of the High Seas.http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf (Accessed, April 4 2019).

1, any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a States internal waters and territorial sea;

1. *Any act of inciting or intentionally facilitating an act described above.*

1.4 Implementation of UNCLOS

The concept of maritime theft in article 101 of UNCLOS raises concern on arresting marine robbers. An important part of the act of piracy is that it contributes to brutality. Even though brutality constitutes an important part, there remains a problem of what violence may amount to piracy. However violence can be directed to persons or property on board. However an attempt to commit an illegal act is not included in the definition of piracy as such there is confusion in regard to the implementation of the provision of UNCLOS by municipal court.

In United States v Said[27], for example, the government tried to prosecute individuals that had unsuccessfully attacked a US Navy dock ship to speculate maritime piracy, however court under the rule of Judge Raymond, held that 'piracy' by UNCLOS requires piracy on high sea. Thou the individual could be prosecuted for the offence of committing violence against a person on a vessel.

However in case of United State v Hassan[28], the government also tried to prosecute the defendants who had unsuccessfully attacked a US Navy dock, under the rule of judge Mark Davis, the court denied the defendants the motion to dismiss and determined that the alleged conduct could 'if proven' constitute piracy.

Despite the similarity between both cases the two judges reached opposite conclusion as to whether an alleged action of the defendants opening fire on another vessel constitutes piracy, the distinction between the two opinion

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[27] WL3893761 (E.D. Va., August 17, 2010).
[28] WL4281892 (E.D. Va., October 29, 2010).

centers on the interpretation of the phrase that piracy is defined by the notion of nations.

Despite this, it may be said that courts would generally lean towards the idea that piracy includes both violence and attempt to commit violence.

In the United v Said, the court noted that the accused could be tried for other offences such as vandalism against ships (punishable by prison term of 20 years in the United States), vandalism on a sailor (also punishable by prison term of 20 years in the United States), and planning to attack a person on a vessel. The divergent decisions the United State court has above shows that customary international law is sometimes ambiguous, and reliance on universal jurisdiction may be dangerous. This is because the courts of the costal state and home state of the vessel may interpret the customary international law rule differently leading to challenges of the legality of their decisions.

The implementation of UNCLOS is also problematic, according to the definition; an action is considered maritime piracy when carried out 'against another ship'. This is considered to be the 'two vessels requirement', the pirate vessel and the victim vessel. However this implies that the attack or taking over cargoes by the same people on it, can't be considered as an act of piracy. In the case of *AchilleLauro*, four members of a Palestinian liberation group aboard an Italian vessel hijacked it and demanded the release of Palestine prisoners[29]. Given that they had already boarded this was said to be hijacking and not piracy. UNCLOS mostly require the acts to be carried out on water, opposed to a second party.

Ocean constitutes 'Open Ocean' which can't be within a countries protection; in other words, there is no protection on water with regard to any pirate attacks that take place. This is why it is stated that all states must cooperate to the

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[29] Pancracio JP, *'L'Affaire de AchilleLauro et Le Droit International'* ,(AnnuaireFrancaise de droit international,1985)p221-236

fullest to suppress piratical activities outside the territorial jurisdiction of any state[30].

To understand where the high sea starts and ends, it is important to ascertain other sea zone. with regard to the regional water, article 2 of UNCLOS Countries that 'the sovereignty of a costal state extends beyond its land territory and internal waters, the territorial water of a state measure up to 12 nautical miles from land, which is confirmed in article 3 of UNCLOS. Within this distance the costal state has right to judge any pirate attack that takes place here. While article 56 of UNCLOS provides that the EEZ shall not exceed 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, the right of the coastal states includes exploiting and exploring their natural resources whether living or non-living. It also provides that in exercising its right and performing its duties in the EEZ, the coastal states shall have regard to the right and duties of other states and shall act in a manner compatible with the provisions of UNCLOS.

However given that piracy must be carried out on high seas, this implies that any attack on the territorial sea of a state, the provision of UNCLOS would not be applied. States have the right to fight maritime robbery. It may be argued that this approach ensures consistency, although it may be problematic where the costal state has neither the resources or the political will to stop the attacks not only within the EEZ but also in its high seas as well as its own internal waters (e.g. Somalia) however even though UNCLOS authorizes states to act upon piracy in the EEZ, states may be reluctant to do this as a fear of interfering into another state claiming the EEZ[31].

1.5 UNCLOS and Modern Piracy

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[30]United Nations Treaty Collections, (August, 2012). *Chapter XXI:Law of the Sea, Convention of the High Seas*.http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XXI2&chapter=21&lang=en#Participants (Accessed April 4, 2019)

[31] Ferreira S,*"The evolution of state sovereignty: a historical overview"* (European Journal of International Law, Vol. 17, no, 2, 2006) p 1-26.

According to Indian Writer Ghosh's, analysis of modern piracy suggests that the problem is a manifestation of several underlying socio-political issues that affects a given region[32]. And piracy can be explained in terms of greed and bureaucratic corruption in a costal state or due to high rate of unemployment. Either ways the significant increase in the quantity of good being transported across the sea by merchant's ships create lucrative target for bandits.

Today's Modern pirates endanger lives, trade and also the surroundings as they mainly aim vessels and crew traveling across international seas. The rise if these pirates in the Aden and GOG do not only pose danger to commercial trade but also threatens the provision of aid distribution by UN World Food Program in Somalia.

These pirates mostly use high speed open boats which were moved from mother ship. Immediately the smaller boats comes towards the selected vessels, the pirates starts shooting using automatic weapons and rocket-propelled grenade to put fear on the crew members in the aimed vessel. In other to get to the deck of the ship, pirates use hook ladders to climb. Reports show that these pirates are more armed than the crew; this makes it difficult for the crew to defend themselves from pirates, who are well taught.

The seafarers on the other hand, were never trained to deal with such situation and most times they do not have any weapon with them[33]. Once this pirate's board into the ship they get very brutal. Mostly the pirates have more advantage because they can speed off very fast without being caught sailing away with the kidnapped crew members. The pirates ask for ransoms and once these ransoms are settled, these pirates organize for the money to be transferred to another different ship. Once they verify and count the originality of the cash, they abandon the vessel to be recovered by the local navy and they set free the kidnapped crew members[34].

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[32]Ghosh P.K, '*Somalia Piracy: An Alternative Perspective*', (Observer Researcher Foundation, 2010) p16

[33]Jennifer C.B, '*Regional cooperation on maritime piracy: a prelude to greater multilateralism in Asia*'. (Journal of public and international affairs, volume 14/spring, 2003)

[34] Pennell, C. R., '*Bandits at Sea: A Pirates Reader*'. (NYU Press, 2001) p56.

However, Piracy is a flourishing occupation because they get cash through ransoms and also through selling the cargos, the most important cargo to pirates are the cargos which contains fuels, diesels, natural gas. The pirates mostly assault the ships and transfer the resources to their own vessel; this type of occupation has less possibility of being captured or dead[35].

CHAPTER 2

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[35] Ted K, (2014), '*Crime on the high seas: The world's most pirated waters*' http://www.cnbc.com/2014/09/15/worlds-mostpirated-waters.html(Accessed, April 15, 2018)

COSTS AND TRADE-RELATED INDICATION OF MARITIME PIRACY

One great consequence attached to maritime piracy is its cost implications. One of such costs is human cost as many individual sometimes loss their lives in the attacks. A body known as the (OEF) in (2013) indicated that between 2005 and 2012 above 61 seafarers lost their lives to pirates' brutal killings. They held five thousand four hundred and twenty hostages and two hundred and seventy nine ships were stolen. More than 50% of the piracy activities took place within the coast Nigeria of between 2005 and 2012. However, this study will rather focus on economic cost and trade related cost implications of maritime piracy. This is important because the impact of maritime piracy seems to affect all countries regardless of whether such country is within coastal or landlocked. Economic costs of maritime piracy could be discussed in line with its benefits since by truncating the benefits of maritime means increasing its cost implications. This section of the study presents a general overview of some major economic costs connected with maritime piracy with emphasis on its trade-related implications.

2.1 The Economic Cost of Maritime Theft: Overview

Worldwide, cost of sea theft is difficult to state categorically although one can only rely on the power of estimation. Some studies classified the economic cost of maritime piracy into: first-order costs and secondary cost[36].

The firstorder is used to describe the costs of payoff. The secondary costs of piracy on the other hand, cover costs such as the cost affecting foreign investment on those affected regions, the cost on commodity prices[37].

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[36] One Earth Future Foundation, (2012), *The Human Cost of Maritime Piracy. Ocean Beyond Piracy*. "http://oceansbeyondpiracy.org/publications/human-cost-maritime-piracy-2012 (Accessed, April 25, 2019).

[37] Chalk P, *"The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States"* (*RAND Corporation* April 28, 2008) <https://www.rand.org/pubs/monographs/MG697.html>(Accessed April 17, 2019)

According to IMB studies, the total cost of piracy, especially those witnessed in Africa ranges between seven to twelve billion dollars in 2010 in 2011 the cost ranges between US$5.7–US$6.1 billion; while in 2012 the cost was estimated at US$6.6–US$6.9 billion[38]. The study indicated that the shipping industry bored more than 80% of the total cost; the government bored 20%. On average the cost for each incident is estimated to be US$82.7 million in 2012; being 189% increase from that of the US$28.6 million estimated in 2011.

The subsequent section will provide a review of the different types of costs triggered by maritime piracy.

2.1.1 Cost of Ransom

One of the first order costs is that incurred on ransoms for the kidnapped or hijacked.

In this case, the victims or their families are meant to pay ransoms in exchange of the kidnapped individual or the hijacked goods or vessels. Study revealed that between 2008 and 2012 vessels hijacked were released only after paying ransom[39]. The value paid on ransoms between 2005 and 2012 for the release of the kidnapped seafarers, was estimated to be about three hundred and thirty nine million dollars and four hundred and thirteen million dollars. The estimation per incident in 2005 was US$150,000 but rose to three million, four hundred thousand dollars in 2009; four million dollars in 2010; five million us dollars in 2011; and three million us dollars in 2012[40].

If other logistics are accounted for, especially, the cost for negotiation or delivery of the ransoms, etc. are taking into consideration, then the cost of

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[38]One Earth Future Foundation, (2011), *The Economic Cost of Somali Piracy Ocean Beyond Piracy.* http://www.icc-ccs.org/home/piracy-reporting-centre, (Assessed 17 April, 2019).

[39] World Bank, *'United Nations Office on Drugs and Crime; Interpol: Tracking the Illicit Financial Flows from Pirate Activities off the Horn of Africa'*, (Washington, DC: World Bank, 2013)

[40]One Earth Future Foundation, (2011), 'The Economic Cost of Maritime Piracy' See also Sisulu L.N, (2011) Minister of Defence and Military Veterans at the SADC Extraordinary Meeting on Regional Anti-Piracy Strategy.

ransom   will   be   much   more   higher.

A report from (OEF) (2012) revealed that, sometimes, negotiation lasts for several days, up to three months as the case of the 2009 seafarers who were held hostage for 55 days. Pirates use money from ransom for their own interest, in exchange of their hostages, ships or hijacked vessels. It could be used to further perpetuate their evils.

2.1.2 Cost of Insurance

Due to the high rate of ship threat and the growing ransom the maritime insurance industry responded by the increment of the shipping rates especially in places with high threat of piracy. Shippers purchase four main types of insurance for security or protection against pirate attacks: risk for war, ransom from kidnapping, insurance for hull and cargo.

- **Risk of War**: the risk of war insurance creates surplus chargers for the ship travelling a high risk places. The Gulf of Eden has been categorized a high risked place "according to Lloyds Market Association joint committee by May 2008". Ever since this date the price for high risked areas doubled, from 500 dollar each vessel to 150,000 per vessel[41].
- **Kidnap and Ransom:** kidnap and ransom mostly protects the crew over ransom demands but not the cargo or the vessel in the ship. However few marine insurance policies now include both the crew and property in the ransom and kidnap.
- **Cargo:** the cargo insurance only covers the goods that are being carried by a ship. The premium on cargo that are travelling through piracy areas is estimated to have doubled between 25dollar to 100 dollar per container
- **Hull Insurance:** Hull insurance mostly covers the physical damage of the ship, which includes fire outbreak, ship sinking and also piracy attack. Due to piracy the hull insurance has increased.

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[41]Bowden A, (2010), "The Economic Costs of Maritime Piracy_2010" http://docshare.tips/bowdenthe-economic-costs-of-maritime-piracy2010_5837b423b6d87f1d8e8b5f05.html (Accessed, April 15, 2019)

2.1.3 Shipping Networks and Rerouting Fleet

There was a time when Suez Canal was considered as a major cargo route. But as maritime piracy activity on the area increases, it becomes necessary to sought out alternate routes.

For some few vessels, mostly the slow and low moving vessels, they are mostly at the highest danger for piracy attacks, by keeping away from the danger zone areas, perhaps may be secured and less expensive option. For instance few vessels would decide to keep away from the danger of sailing across the Gulf of Aden and Suez Canal but insist on taking an alternative by sailing across the Cape of Good Hope which is the hand land on the Atlantic coast of Cape Peninsula in South Africa, rerouting ships though alternative routes has its own cost.

Transporting tankers from Saudi Arabia to USA through the Cape of Good Hope increases the distance to about 2,700 miles. Rerouting from Europe to East is an additional six days to the voyage. The total excess cost or rerouting those vessels is calculated to be around 2.4 billion dollars to 3 billion dollars each year.

2.1.4 Cost of Deterrent Security Equipment

Given the continuous attack from pirates, seafarers now thought it wise to have their personal security to protect their crew. This in itself is costly as the estimated cost on security guard and equipment in 2010 ranges between US$363 million and US$2.5 billion, while in 2011 the cost was between US$1.06 and US$1.16 billion in 2012 and US$1.65 and US$2.06 billion in 2012[42].

2.1.5 Cost of Naval Forces

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[42]Xiaowen F.U and Adolf N.G, *The impact of maritime piracy on global economic development: the case of Somalia, (*Maritime Policy and Management'. Vol. 37: 7, 2010), p677-697

As the situation of piracy gets worse, most countries in the world engage the services of military or naval operation to combat the pirates. Such services have cost implications. For instance, in 2012, the cost of engaging the military operations amounted to US$1.09 billion which is below US$1.27 billion reported in 2011.[43]

2.2 Second Order Cost and some Trade Relatable Implication

The second order impacts and costs focus on the cost implication of piracy on the neighboring regions as well as on the global economy. One of the second order cost is the effect of piracy on the ports within the affected area. For one thing, maritime piracy is capable of damaging the image and reputation of the affected ports. Such port will be considered vulnerable and thus loss its business attraction. The port fees that could have been collected which are a major source of revenue[44] will drop in the occasion where customers are no longer seeing it as attractive. For instance, the Benin's port at Cotonou increases revenue for the government. However, when the port was attacked in 2011, it resulted in 70% drop.[45] Similar situations were witnessed in Nigeria and Cameroon.

Similarly, mobility is another significant second order cost for the third world countries. Even the landlocked countries are not exempted from the effect of maritime piracy. These countries depend solely on transit transport services through neighboring countries. Trading in these landlocked countries suffers disproportionately higher transport costs. A study showed that on average; about US$2600 and US$3300 are spent on exporting and importing a single container in these landlocked countries respectively unlike developing countries which spent only half the amount for same purpose[46]. Some of the reasons why the cost of transportation is higher in these areas include: no

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[43]ibid

[44] Joe B, (2013), Nigerian pirate gangs spreading across the oil rich Gulf of Guinea, http://www.reuters.com/article/2013/05/29/westafrica☐piracy☐idUSL6N0BIAJ520130529

[45] ibid

[46] United Nations,'*The Development Economics of Landlockedness: Understanding the development costs of being landlocked'*. (United Nations, New York., 2013)

direct access to sea; domestic markets being very small; remoteness and separated from the world market place; transit procedure maybe cumbersome; characterized with high transport risks and costs[47]. Maritime transport has significant and strategic economic importance in the global trade as it provides access to international markets. Even the landlocked countries could use neighboring sea to import or export their goods to and fro the world market.

As already discussed earlier piracy increases insurance premiums, and tarnishes the corporate image of the affected region. A World Bank study estimates the risks associated with piracy, especially the ones that increases trade costs by 1%. Since above US$1 million of international trade transporting their goods uses the affected area thus resulting to US$18 billion overall cost to global trade.[48]

2.3 Environmental Pollution

Issue of pollution arising from pirate attacks on tankers constitutes danger not only to marine ecosystem, it increases the economic implication for affected coastal countries; in subject to vessels carrying hazardous substances (e.g. chemicals) possible risk involves people losing their lives as a result of explosions. Oil spill which arises as a result of piracy may cause destruction to coastlines and the exclusive economic zone of some states. A spill that involves oil may cause damage to the maritime biodiversity and may endanger economic chances and livelihood gotten from the exploitation of seas, (fisheries, tourism, cruise shipping).

The marine contamination is of a great issue to the GOG which is becoming the fastest growing region for oil and gas supply. As of late 2011 the Gulf of Guinea was contaminated as a result of the spillage of over 40,000 barrels of oil, which originated from Bonga field situated in the offshore of Nigeria (120

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[47] ibid

[48] Qup-Toan D, (2013), 'The Pirates of Somalia: Ending the Threat, Rebuilding a Nation'. http://siteresources.worldbank.org/INTAFRICA/Resources/pirates□of□somalia□main□report□web.(Accessed, April 15, 2019)

kilometres off the Nigeria coast)[49]. However the oil spillage has already had a ready record in term of environmental disasters. In 2006 reports showed that about 1.5 million tons of oil had spilled into Niger Delta.

CHAPTER 3

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[49]Akpofure, E. A, (2011), '*The Adverse Effects of Crude Oil Spills in the Niger Delta, Nigeria. Urhobo Historical Society*' http://www.waado.org/environment/petrolpo. (Assessed April 15, 2019).

PIRACY IN THE GULF OF GUINEA

Piracy can be defined as an act, which is carried outside the jurisdiction of a state; thus, beyond 12 nautical miles, is piracy. If it's within 12 miles, it is categorized as an armed robbery against ship. The difference is the jurisdiction. Piracy is a multinational crime and states have an obligation to intervene within the 12 miles.

3.1 Gulf of Guinea

The world number two continent both in size and its population, the GOG is in the north-eastern part of the Atlantic Ocean. It extends from Cape Lopez in Gabon, to Cape three points in Ghana and its coastlines includes the Bight of Benin and the Bight of Bonny.

In examining the piracy dynamics, it is important to highlight the strategic location and also the empowerment of these regions in other to clarify why there is a rapid growth in piracy especially in Gulf of Guinea. Piracy in GOG has become a major issue for countries both within and outside the province. Gulf Of Guinea could be geographically defined to consist of the oil producing states along the coast of Central West and Southern Africa.[50]

The region comprises of Nigeria, and its neighbouring countries. Chad is being added among the players because its oil is connected to that of Cameroon[51].Theregion is over six thousand kilometre, it extends through West to north and down to south and these clearly show its geo maritime significance. It is both famous for its affluence and it is blessed with great reservoir containing minerals also marine resources, which consist of diamonds and oil.

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[50] Cyril O, (2013), "Piracy and Maritime Security in the Gulf of Guinea http://www.tandfonline.com/doi/full/10.1080/21520844.2013.862767 (Accessed, April 15, 2019)

[51] Johannes D, (2015), "Piracy and Maritime Security in the Gulf of Guinea: Trends ..." http://www.tandfonline.com/doi/full/10.1080/21520844.2013.862767 (Accessed, April 15, 2019)

More than half the population of Africa's petroleum manufactures are directed to that province. It also hosts major petroleum producers in the world[52].

Nigeria and Angola are one of the biggest oil manufacturers in the Africa surpassing other oil rich states. Six years ago, Nigeria manufactured over 2.53 million barrel daily while Angola on the other hand, comes second in the production of petroleum in Sub-Saharan Africa and they produce about 1.7 million barrels per day[53].

Other regions manufacture three hundred and forty six thousand barrels every day, while the later manufactures about 274,000 barrels per day while Gabon produces about 241,700 barrels every day. Cameroon manufacture has been decreasing in over the years with the country manufacturing around 60,000 barrels every day. Oil was discovered in Ghana, Sao Tome, Principe and Sierra Leone. On December 15th, Gold Coast started its commercial extraction that yielded a total of eight hundred million barrels of oil. Ghana oil production has grown to 78,000barrels per day in 2011 to 240,000 barrels per day in 2013.[54]

However, the region oil reserves hold a significant amount of oil the world economy needs in years to come. Each day that passes, the GOG transports about 4.7 million barrels of petrol to United States of America, one million barrels of oil to Europe, eight hundred and fifty thousand barrels of oil are transported to Asia. The huge investment in these region meant that the seaborne oil trade had increased; it is in this context that maritime threat increased with a growing number of maritime piracy and attacks on these oil vessels. These generated much media attention and also security concerns for these regions.

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[52] Freedom O, (2010), "The Geostrategic of Oil in the Gulf of Guinea: Implications ..." https://www.researchgate.net/publication/254109529_The_Geostrategy_of_Oil_in_the_Gulf_of_Guinea _Implications_for_Regional_Stability (Accessed, April 15, 2019)

[53] Kunle K, "Nigeria risks losing Africa's biggest oil producer status," (Vanguard, July 9, 2013,) http://www.vanguardngr.com/2013/07/nigeria-risks-losingafricas-biggest-oil-producer-status/.(Accessed, April 15, 2019)

[54]Energy Information Administration, (2015).
 http://www. eia.gov/countries/country data.cfm?fips=GH, (Accessed April 15, 2019).

The states in this region are different in terms of population, size, levels of development, democratic evolution, and also the nature of resource enrichment. Citizens in the states are poor but in their natural resources, they are wealthy. The level of poverty, unemployment, and corruption is very high in these regions with lots of oil. They also have lots of security threats which includes; high weapons flow. Example, over 40percent of fishes caught in the West African, waters were taken illegally; which later deprives the regions government billions of dollars.

Sea theft and cargo hijacking re-emerged in GOG after a wave of decolonization in the region. However, after colonization the post-colonial states inherited weak naval capacity, weak economy and a fragile political space. The motivations for armed conflicts, criminal activities and piracy in the region[55], are as a result of the rising poverty and inequality in that region.

  Atlantic Ocean became a new centre for attracting piracy. Rerecorded cases of piracy and ship theft in GOG, increased from 25 to 32 from 2005 till 2006 and 180 to 201 during 2017till 2018. The incidents decline to 48% in 2009 and later rose to 62 in 2012 and have kept on rising. Pirate groups, were found with sophisticated weapons like AK-47 rifles, and machine guns.

These sophisticated weapons are used in their operations within the region. The Nigerian pirate group has spread their operations to other places in the region due to easy mobility. Theses pirates have killed several coast guards, police and naval officers in the region and violence against seafarers in GOG has increased. In fact over 140 cases of kidnapping were recorded in GOG from 2009 to 2014. The impacts of piracy in GOG cannot be overlooked. The export of agricultural produce and natural resources such as; oil, gas, iron etc. happen to be major income stream in the region. Hence, the economy of the region solely depends on a secured maritime commerce. This is also important to the rest of the world, most importantly the supply of crude oil. The region supplies 10% of the total oil to Australia, Canada, Europe, China, India and South America.

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[55]Oliveira RS, '*Oil and Politics in the Gulf of Guinea*', (Columbia University Press, New York, 2007) p 3.

3.2 Factors Contributing to the Outbreak of Piracy in the Gulf of Guinea

There are various factors that led to the petroleum theft in the GOG. Despite the oil wealth of the countries, most of these countries are suffering due to the corrupt system. Basic services such as decent job opportunities, health facilities, and education are lacking in these states and there is scarcity of petroleum products. In Nigeria, corruption has left the country's refineries in a bad shape while for other countries; the wealth only benefits the central government, oil companies and also local elites[56]. Only the privileged enjoy the profits; this led to crimes in these states leading to piracy theft. However the decline of the livelihoods, made the youths to be easily recruited into onshore and off shore criminal acts tempted by the attraction of quick cash.

Most fishermen end up selling their boats to pirates or become pirates themselves. The rewarding nature of these crimes makes it attractive to the youths. The Nigerian youths earn big from ransoms or payments they receive from their own bounty.

Corruption became an epidemic in the nations offshore. Illegal activities like oil bunkering and poaching helped with the growth of piracy in the region. They trade illegal funds with stolen oil. The ransom which has to be paid in other to set the hostages free is another contributing factor that promotes piracy. Globally, piracy generates around thirteen to sixteen billion dollars annually. The ransom supports the pirates in several ways. The obvious benefit of the ransom is to set the victims free while the cost of it is the unreasonable promotion these transactions give the criminals, as well as the unemployed youth who would be attracted to this kind of money. The payment of these ransoms, gives pirates the finances to equip themselves further with sophisticated weapons which makes them more powerful.

One of the major factors that caused the sharp rise of piratical attacks over the past decades in this region is due to jurisdiction weakness[57]. Thus the

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[56]Jacobsen KL,"*The Gulf of Guinea: The New Danger Zone,*"(Africa Report, No 195, 2015).

occurrence of piracy is not due to lack of security at the sea, but due to state failure and corruption[58].

Other states in the region have paid less attention to the issue since the attacks are mostly carried out by armed militias based in Nigeria and the victims are foreign companies producing oil and gas in the country[59].

3.3 Cost of Piracy in the Gulf of Guinea

An effect of sea theft in GOG approaches in different ways. We can relate in likes of human, economic, financial, livelihoods, and diplomatic cost. Many seafarers, including those who escort these vessels, have died as a result to the high sea theft in the region. A report indicated that about 966 sea travellers were assaulted by armed pirates, 800 of whom were on the vessels operating in the region[60].Piracy in the region makes it had for trade and investment to be carried out in these regions due to the risk and fear of these pirates and also the risk that is involved in transporting gods through the regions pirate waters.

It has been concluded that the global economy has lost almost a billion dollars to maritime theft. The international Bargain Forum in April 2012, included Benin and Nigeria as high risk areas and the seas should be handled equally as "Gulf of Aden" as well as Somalia, because of high rate in piracy attacks in that region. This means that the seafarers can reject entering water or can request an increase in their daily wage, including other allowances like death compensation and disability compensation when they are in these high risk areas.

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[58]Tepp E, '*The Gulf of Guinea: Military and Non-Military Ways of Combating Piracy*', (Baltic Security and Defense, vol 14, 2012) p 181-191.

[59]Vrey F, *'Bad Order at Sea: From the Gulf of Aden to the Gulf of* Guinea' (African Security Review, vol 22, 2009) p 17-22.

[60]Conor S, and Kaija H, (2012), Human Cost of Piracy Report Maritime Piracy, http://mphrp.org/news_detail.php?NewsID=138 (Accessed, April 15, 2019).

Piracy also causes the disturbance of means of income and also leads to the shortage of food supply in countries[61]. Piracy outbreak in this region has also led to the interference and involvement of outside forces which may not favour the region.

3.4 Overview of the Piracy Statistics in the Gulf of Guinea

Armed attacks against ships in this area, over the years were well documented[62] . There were several cases of armed attacks against vessels by armed group of costal states seeking control over commerce and trade routes. The attacks have been linked mostly the carriage of oil in the Niger Delta region.

IMB shows 23 assaults in 2005, 60 attacks in 2007, 64 attacks in 2012 and 201 in 2018[63]. The most notable attack was that of a Russian crude oil tanker *Shkotovo*, in 2006, the attackers used automatic rifles and rocket propelled grenades and they successfully took the tanker. This showed the vulnerability of ships in that region. What is most troubling is that very little has been done by the state with territorial jurisdiction.

Reports from OBP on November 6th 2018 showed where pirates fire and pursued an unmanned LNG tanker. About nine pirates approached the vessel at a position about 30 nautical miles southwest of Bonny, Nigeria oil and gas production hub in Niger River Delta. The attackers made several attempt to get in but were unsuccessful. According to the Ocean beyond Piracy (OBP), it was reported that about 100 seafarers were kidnapped in 2017.

By September 2018 IMB reported that, pirates abducted 12 crew members from the Swiss bulk carriers Glarus in Nigeria waters. The vessels were carrying wheat between Lagos and Port Harcourt in the Niger Delta. The

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[61]Freedom .O,"*Violence at Sea: The Ramifications of Maritime Piracy in Nigeria's and Somali Waters for Human Security in Africa*,"(Institute of African Studies Research Review, 2009) p34.

[62]Neethling T, '*Piracy around Africa's West and East Coasts: A Comparative Political Perspective'* (South African Journal of Military Studies, vol 38, 2010) p 89.

[63] International Maritime Bureau, Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report 2009 (IMB, London, 2010) p 41.

pirates reportedly used long ladders and cut the razor wire on the deck to obtain entrance inside[64].

By October 29, 2018, it was also reported that pirates took control over the bunker tank, "Anuket Amber". They also boarded an Offshore Service Vessel and held people hostage, while transferring them into "Anuket Amber" that same day.

 ICC reports indicated that both vessels are safe and also no one was taken hostage. However the Indonesia Minister of Foreign Affairs Lalu Mohammed Iqbal,

"stated that pirates have taken three Indonesian nationals and 1 Ukrainian citizen from a different ship. The hijackers transferred them into the Panama flagged tanker Ankut Amber which was also controlled by the hijackers"

As of Thursday evening the Ark Tzes and her remaining 11 crew members survived the attack. The Indonesian authorities are working with the Ark Tzes owner to communicate with the hijackers for the release of the hostages. The location of the attack is several hundred miles South of West Africa Piracy Hot spot, the region off the Niger River Delta

 A report from the ICC International Maritime Bureau, which was released in July shows that six separate incidents of crew kidnapping has occurred in 2018, involving 25 crew members, all in the Gulf of Guinea. The bureau highlights those areas as high risk and that the true number of incidents may be higher than what has been reported.

As noted earlier, not all regions or states in Gulf of Guinea are being affected by piracy and the nature of attacks is not similar to each other. Some areas are more like trouble spot while the others are low risk. Example of the low risk areas are Cape Verde in Angola, despite the high level of traffic of oil in tankers in the Angola waters, there are low reported attacks of in that area. The lower level of corruption in the country and absence of armed groups seeking to take

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[64]The Maritime Executive, https://www.maritime-executive.com/author/marex(Accessed April 15, 2019).

share of the oil production profit explains why Angola is on the low risk. Other low risk includes Gabon, Sao Tome Principe[65].

The trouble spots are the areas were attacks are mostly common. The enclaves include Nigeria and Guinea. Many of the pirates operate from Guinea and attack vessels off its coast. Examples of major violent attacks include the attack on Isolo Verde in 2009 and Songa Emerald in 2010[66]. The main enclave is the Niger Delta in Nigeria. The swampy costal area in Niger Delta are among the richest oil and gas region in the world, it also hold an impoverished community. This has brought about a battle between the nationals, locals and the oil companies. However, Guinea and Nigeria are not only enclaves but are also trouble spots, Nigeria is both the primary enclave and the most dangerous trouble spot given that in 2008 it accounted for 80percent of the piratical acts in the GOG region[67]. Other trouble spots include Sierra Leone and Cote d'Ivoire were violent attacks are easily penetrated.

3.5 Primary Actors Responsible for Attacks in Gulf of Guinea

3.5.1 MEND (Movement for the Emancipation of Niger Delta)

The most notorious militant group in Nigeria is known to be the Niger delta rangers. This organization involves many armed group that take part of activities that are against the local and federal government and also the foreign oil companies. They generally seek a share of the oil resources[68]. These are seen as community interest, but they mostly use criminal activities to purse and secure their interest, foreign workers from these oil companies are mostly

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[65]Kamal A, *'The Anatomy of Gulf of Guinea Piracy'*, (Naval War College Review, 2014) p 93-95.

[66] International Maritime Bureau, Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report 2010 (IMB, London, 2011) p7.

[67]International Maritime Bureau, *'Reports on Acts of Piracy and Armed Robbery against Ships'*, Annual Report (2008), (IMB, London, 2009) p2-6.

[68]Enemugwem JH, *"The Niger Delta of Nigeria: A World Class Oil Region in Africa, 2000-2006"*(Africana, 2012) p166-167.

kidnapped for ransom[69]. The operations are mostly controlled by the local MEND leader of an *okrika*(an area within the MEND jurisdiction).

They are also known for destroying oil pipelines and attacking offshore platforms. Despite the government intervention by creating a joint task force for security, MEND continued to grow over the decade and their activities were extended to kidnapping and killing of naval personnel.

Following the attack on mobile drilling rig at Bulford Dolphin in April 2007 and the Bonga in 2008[70], the federal government was forced to negotiate with the leaders of MEND. These incidents brought about fear that oil companies were not safe from the attacks by the local militant population. Nigeria has the highest attacks against offshore platforms. The federal government later came to an arrangement with the local group, whereby the latter ceased from attacking oil installation in exchange for monthly allowance and training, a formal amnesty was offered in June 2003.[71]

MEND forces were disbanded and piracy attacks reduced in 2009 from 60 to 46% in 2007.IMB report showed the activities continued to reduce in 2010. However, not all groups within the MEND were pleased, it was alleged that the allowances were not shared equally, and they were displeased with these acts. Nevertheless, the arrangement soon fell as most groups complained that MEND commanders were kept in luxurious hotels and mansions while the majority of the fighters remained in poverty. However IMB report shows that there were only 3 attacks between April and June 2009, and 7 attacks in October and November 2009. There was a divide between the younger fighters and the older commanders, due to the distribution of the allowance given by the federal government and oil companies.

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[69]Ogundiya I.S, (2009), ''IS *"Domestic Terrorism and Security Threats in the Niger Delta Region of Nigeria"* (20 Journal of Social Science, 2009) p31-32.

[70] International Maritime Bureau, Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report (2007), (IMB, London, 2008) p66.

[71]Bajpai S and Gupta J, '*Securing Oil and Gas Infrastructure'*, (55 Journal of Petroleum Science and Engineering, 2007) p 174-175.

3.5.2 Bakassi Pirates

Piratical attacks have perpetrated into Nigeria internal waters, also within the EEZ by two groups based in the Neighbouring Cameroon. They include the Bakassi Freedom Fighters (BFF) and the African Marine Commando (AMC).

The BFF is a group of Nigeria living in the peninsula of Bakassi at the extreme Eastern end of GOG that was returned to Cameroon by Nigeria. The BFF opposes the transfer of sovereignty to Cameroon which is derived from the law of the global court[72]. In 2008, they attacked a supply vessel; the *sagittal* within Cameroon territory sea, kidnapped and kept the crew hostage for 11 days until a ransom was paid. However unlike Nigeria government, the Cameroon government has acted forcefully against these piratical acts within its territory. It was claimed that the AMC was involved in the kidnap of oil company workers in 2011.

3.5.3 Pirates in Benin

Benin is the second most volatile area after Nigeria. The groups operating in Niger Delta expanded their enclave in Benin and carried out several attacks off the coast of Benin by 2011. They entered into the port areas of Benin and hijacked vessels. They also hijacked the oil tanker, *duzgit venture*, off the coat of Gabon. The pirates operating from Benin seized the vessel and ordered the captain to sail towards a barge where they plan to transfer the oil. However they were unable to meet the barge, the pirates then kidnapped the captain and other crew members and sailed four kilometres to their enclave. Nonetheless the president of Benin showed political willingness by requesting the support of international community. He also called upon the Nigeria government to Beninese forces in combating piracy in its waters.

This led to the launching of operation prosperity that involved a joint patrol of Beninese and Nigeria forces patrolling the Benin waters. It was reported those

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[72]Cameroon v Nigeria, ICJ Reports 2002, 303.

few months after the operational prosperity was launched the piratical activities in Benin waters declined. [73] As the attacks reduced in the Benin waters following the operational prosperity, the attacks of the coast of neighbouring Togo increased. IMB report showed that Togo had suddenly become a major trouble spot with as high as 15 attacks in 2012. As such the pirates moved their enclave from Benin to Neighbouring Togo.

The worst attacks were carried out in September 2011. Two tankers, *Northern Bell* and *Mattheous 1,* involved in a tanker to tanker shipment were hijacked in the coast of Benin. The crew of the later vessel was able to overpower the pirates and take control. However the pirates from the *Mattheous 1* sailed it to an unknown port. While the pirates who had lost the *Northern Bell* returned to Togo and attacked a chemical tanker, *Abu Dhabi Star*, flying Singapore flag. The pirates later moved forward into the GOG, hijacked *Orfeas*and were able to take the *Orfeas* to Niger Delta, which the unloaded the cargo and released the vessel.

The expansion of the enclave from Benin to Togo, demonstrates the character of the crime in GOG. It also shows why it is difficult for one state to contain the pirates, because they operate from different states and attack cargos at the ports and sail them across the high seas to territorial waters.

This chapter examined the phenomenon of piracy in Africa with emphasis on the GOG; it explains an altitude in piratical attacks and identified challenges affecting the region. It was stated that for some time now the Gulf of Guinean has been the world's main exploration hotspots with eighty states producing a tenth of oil reserves in the world and more than five million kegs in 24hours.

The population in these states are impoverished, especially the regions that have the most oil. This is because the officials are corrupt and largely rely on the profit from foreign oil and gas producers. This has caused resentment in the region with the local which, coupled with the regions lawlessness, has sustained the armed struggle waged by local militias. This in turn, has led to several armed attack against oil tankers on the high seas in internal waters

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[73]International Maritime Bureau, Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report 2012 (IMB, London, 2013) p5, 6, 21.

and in ports. Thus, occurrence of piracy is not due to lack of security at sea but an incidental product of state failure and corruption.

It was shown that despite several international counter piracy strategies, including AFRICOM involving the US and EUCOM and CRIMGO involving the European Union, piracy may only be successfully contained if states within the GOG are able to effectively prosecute pirates and keep them in appropriate prisons. Thus piratical attacks are still relatively high because the states in the Gulf do not show commitment. For example, of all states in the region, only Liberia and Togo have appropriate piracy legislation; cote d'Ivoire is a party to all the instruments under the SUA convention; while,(Nigeria, Angola, Gabon, Cameroon, and Congo) have not ratified the SUA fixed platform protocol.

CHAPTER 4

THE SUPPRESSION AND PROSECUTION OF MARITIME PIRATES

'Pirates are generally described as sea robbers. They are deemed hostishumani generis, enemy of mankind, warring against human race… Pirates are highwaymen of the sea, and all civilized nations have a common interest and under moral obligation, to arrest and suppress them.[74]

It has been shown in the previous chapters that the states with territorial jurisdiction in the Gulf of Guinea have generally been ineffective in prosecuting alleged pirates. This is assigned to a variety of reasons which includes the lack of political will, lack of the appropriate infrastructure and the non-existence of penal laws especially in criminalizing piratical acts. Thus the response of the criminal justice system of these states remains a major handicap. States that arrest the pirates are sometimes unable to prosecute them because the attack occurred, or arrest was made, in the contiguous zone or EEZ which, technically, is considered as territorial waters of the home state. Moreover, where they are prosecuted and imprisoned in the states that make the arrest, the pirates become a burden to the taxpayers.

4.1 The Prosecution by States with Territorial Jurisdiction

We saw in previous chapter that for the purpose of consistency, pirates ought to be prosecuted and sentenced by states with territorial jurisdiction. However, there are important jurisdictional, logistical and ethical difficulties related with pirate prosecution in the states with territorial jurisdiction. It has been

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[74]Edwin .D, "*Is the Crime of Piracy Obsolete,*" *(*Harvard Law Review 38, 351, 1925)p63

concluded that over 90percent of pirates captured at the sea, have been released because the regions were not prepared to prosecute them.

So much needs to be done to improve the capacity in the region, in order to enable states in this region to prosecute and imprison pirates on a consistent basis and also to enhance processes of collecting and preserving evidence and sharing of information.

More over the laws of these countries do not make piracy a universal offence in light of the provisions of UNCLOS. Thus persons that perpetrate piratical acts in their internal waters(including the EEZ that may be 200 nautical miles from the shore) cannot be arrested and prosecuted by any state, whose navy may be present in that area[75]. Despite the fact that UNCLOS (specifically Article 100) provides for universal jurisdiction, it has been pointed out that prior to the increasing number of piratical attacks, there were few cases in which the alleged pirates were arrested and prosecuted by a state that was unconnected to the ship that was attacked or the victims on board the ship[76].

4.2 International Efforts

By, December 7, 2010 the UNGA summoned all participating states to take proper steps under their state law to ease the prosecution of those who have perpetrated an act of piracy[77]. It advised neighbouring states to adopt national laws that reflect provisions of UNCLOS.

The Division for Ocean affairs ad IMO published guidelines geared towards helping those states that are interested in enacting new laws on piracy or amending pre-existing legislation[78]. They would ensure that the provisions of the statues of these states are consistent with those of UNCLOS relating to

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[75]Churchill RR and Lowe AV, '*The Law of the* Sea' (3rd Edition, Manchester University Press, 1999) p210.

[76]ShniderS,*'Universal Jurisdiction over "Operation of a Pirate Ship": The Legality of the Evolving Piracy Definition in Regional Prosecutions*' (38 North Carolina Journal of International Law and Commerce, 2012) p 492-535.

[77]United Nations Assembly Resolution 65/37 of December 7, 2010, para 86

[78] Boon KE, and Lovelace DC, '*Piracy and International Maritime Security: Developments (*Oxford University Press, Oxford, 2012) p 486-488.

piracy. The UNSC passed a number of resolutions calling all participating states to enact law criminalizing piracy. However, it is only logical that international efforts would be sufficient unless they are enforced within a regional security infrastructure.

Attempt was made in a first instance to work within existing territorial bodies such as; African Union [79], East African Community, Intergovernmental Authority for Development, and the South African Development Community. This attempt proved to be unfruitful for a wide variety of reasons, mostly political. It was then taught that it might be best to establish an independent structure outside of these extant organizations. This led to the creation of regional structures to govern the process in the Gulf of Guinea.

4.3 Prosecution of Pirates in Gulf of Guinea

The rate, at which pirates are executed in the Gulf of Guinea, is very low. This is especially the case with Nigeria, which has a well-established criminal justice system that dates back to the 19th century [80]. The lower rate of prosecution of pirates may be attributed to variety of reason, including the failure to completely incorporate relevant international instruments such as UNCLOS and SUA into domestic laws. Also it is uncertain which government body is responsible for maritime security, whether it is the federal police, the Nigerian Maritime Administration and Safety Agency, or personal security forces employed by shipping companies.

There is confusion as regards the court with subject matter jurisdiction. Section 21 of the Admiralty Jurisdiction Act 1991 states that 'The Federal High Court has exclusive jurisdiction for maritime and criminal matters''. However, it does not specify the procedure for trying maritime crime in Federal High Court. It is uncertain which law this court should apply. This is because local laws do not define the term 'piracy'. Part 1 of the Nigeria Terrorism [prevention] Act of 2011

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[79] Baker ML, '*Toward an African Maritime Economy: Empowering the African Union to Revolutionize the African Maritime Sector'* (64 Naval War College Review, 2011) p43-47.
[80]Otu N, '*Colonialism and the Criminal Justice System in Nigeria'*, (23 International Journal of Comparative and Applied Criminal Justice, vol 23, 1999) p 293

for example does not make mention of the term piracy. Given that section 36(12) of the Nigeria Constitution provides that nobody should be convicted of a crime. Unless the offence is defined in the constitution, it is difficult to even charge many alleged pirates.

The Federal High Court may not rely on the UNCLOS definition because the definition is restricted to the crimes committed by the offenders. Thus attacks perpetrated by rebels of the Niger Delta within Nigeria territorial waters do not constitute piracy as regards to UNCLOS.

The United Nation Security Council issued a resolution that stated as follows:

States of the region of the Gulf of Guinea to take prompt action, at national and regional levels with support to the international community where able, and by mutual agreement to develop and implement national maritime security strategies, including for the establishment of a legal framework for the prevention, and repression of piracy and armed robbery at sea and as well as prosecution of persons engaging in those crimes, and punishment of those convicted of those crimes and encourages regional cooperation in this regard.[81]

The Security Council thus promotes a two-pronged approach that involves building regional sea safety, and enhancing the security governance of states in the region. This led to a Yaoundé summit in June 2013 whereby states in the region, joined a member states of the GOG commission, the Economic Community of West African States and the Economic Community of Central African State to issue a memorandum on sea safety and security in Central and West Africa[82].

The Inter-regional Coordination Centre was set up to enforce regional format for maritime security. They also enforced a Code of Conduct known as the

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[81] Security Council Resolution, (2018) , UN Doc. S/RES/2018 (Oct 31, 2011), para 5.

[82]Kontorovich E and Art S '*An Empirical Examination of Universal Jurisdiction for Piracy*' (American Journal of International Law, 2010) p436-439.

Yaoundé Code of Conduct to govern the fight against piracy and armed robbery against ships.

The Yaoundé Code failed to achieve a higher rate of prosecution of pirates that were captured by navies from the non-coastal states. Article 4(4) of the Yaoundé Code provides that the signatory states undertake to punish the offenders in their local courts in accordance with their local laws. Article 4(5) also emphasizes that the organization and functioning of the system of prosecution and sentencing is the exclusive responsibility of each signatory state. Thus despite the fact that Article 6(1)(a) notes that all signatory states should accept to cooperate in arresting, investigating and prosecuting alleged pirates, the Code has simply reiterated the status quo. The status quo is problematic given that many coastal states have not advanced their domestic laws, making it difficult for their justice department to prosecute alleged pirates.

This chapter has shown that despite the fact that pirates ought to be prosecuted and sentenced by states with territorial jurisdiction, or with their consent, the states of Gulf of Guinea exhibit important jurisdictional, logistical and ethical difficulties in this regard. In addition, the laws of these countries do not make piracy a universal offence in light of the provisions of UNCLOS.

An international Tribunal for the prosecution of pirates in the GOG might as well serve as a solution to these problems. The tribunal would provide scope for creating the jurisdiction for the prosecuting the pirates who attack and hijack vessels on the high seas.

CONCLUSION

Maritime theft, poses a great risk for the world, International cooperation among states and non-states would be a key element to battle maritime theft. Communication among states and other organizations mentioned earlier would help in the capture and prosecution of maritime pirates. Both active and non-active states have a responsibility of cooperating and passing across necessary information to fight against these piratical acts.

UNSC in its resolution urges all states to cooperate in the cases of holding prisoners and the execution of the accused pirate. It also emphasized on the need for states to give warning.

Maritime piracy current threat is at the GOG, the region is a great concern for the international community. The GOG is at the most strategic marine part of the globe, due to its natural resources. The assaults carried out at the GOG, is a serious threat to the shipping industries and also the insurance companies.

Attacks in the GOG have put the oil supplies at risk. Despite various plans to prevent marine theft in the region, the issue shows no sign of stopping. The main cause of piracy in the region is due to the state weakness and high rate of poverty. Despite its natural resources, most people survive by less than 2 dollars a day. Most of the countries in GOG are third world nations, the joblessness in these countries have made the people to participate in this illegal commerce, for their survival. Therefore piracy became a lucrative field which would be so difficult to deal with, due to economic conditions of the countries these pirates belong to. The expansion of the Nigerian pirates into the neighboring states is also a major issue the international communities have to deal with. Piracy remains a menace and it affects commerce. And the

continuous kidnapping in the GOG, has threatened the international community.

However, the nature of GOG piracy has some valid problems within the global structure. Mix-up arises when ships are being ambushed in this area and takes place within the states territory. Hence, the global legislature for maritime theft does not cover this issue. To qualify as piracy under international law, an attack should take place in areas outside the territorial sovereignty of any state. Another issue is when pirates are covered by the jurisdiction of their state. The pirates operating the GOG are mostly Nigerians. These pirates avoid prosecution when they run from Nigeria to another neighboring jurisdiction which is easier for them to defeat herby dodging the global legislature. Lack of Jurisdiction for maritime theft has geared the countries to device a means for fighting piracy. Cooperation in South East has encouraged states in the GOG to fight maritime theft. An example is the Code of Conduct concerning the prevention and repression of piracy and armed robbery against ships in West and Central Africa.

Sea thefts are mostly caused due to the economic, political and social instability of a country. AU is the regional institution in GOG; however, the AU has not done much in the fight against piracy. The institution has showed its willingness to fight piracy; by developing the 2050 Africa integrated maritime strategy. It will come into force in 35 years from now, which is a long way for dealing with the dangers maritime piracy poses.

Recently, piracy in the GOG has grown to become an unlawful business, regardless of the different attempts to fight piracy. Different measures have been taken to fight piracy but only few have actually succeeded while some have failed to offer any solution. In most cases, most efforts have been relying on the forces whereas, fighting maritime crime in GOG, needs a more systematic format. The first systematic approach is that all forces involved in maritime governance should be well trained. Secondly, neighboring states must tackle corruption within its government sector.

The primary question that this thesis asked is whether the existing legal framework to suppress and fight maritime piracy is sufficient. Upon thorough examination of the International laws to suppress piracy, it may be concluded that the current framework is ineffective.

The strict definitional requirements under the legal framework of UNCLOS fail to ensure the enforcement of the counter piracy laws[83]. For example, the two ships requirement and the exclusion of territorial waters. And piracy involves only violence and involvement between two ships, but not when only one ship is involved and the passengers of the ship hijack the ship.

The definitional requirements of piracy under UNCLOS do not present a considerable set of restraints to the enforcement of counter piracy laws. The feature that poses great threat to law enforcement is the fact that UNCLOS does not oblige member states to prosecute or extradite the pirates apprehended. Because of this gap in the counter piracy legal framework, states routinely release pirates without prosecution to avoid bearing the cost of the suppression of piracy. 90% of all pirates arrested were released without being prosecuted[84].

To counter this practice UNSC resolution such as 1976 of 2011, have respectively urged states to bring their domestic laws into conformity with UNCLOS to suppress piracy and prosecute pirates.
There are obviously other factors that contribute to the failure to effectively exterminate piracy, for instance, the cost of locating, apprehending and prosecuting pirates is said to be a central feature that prevents states, which are not directly involved to fight and suppress maritime piracy.

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[83]Todd P, '*MaritimeFraud and Piracy*' (2nd ed, Informal Law from Routledge, November 2010).) para 1.016-1.018.

[84] DAVID A, '*BRINGING INTERNATIONAL FUGITIVE TO JUSTICE: EXTRADITION & ITS ALTERNATIVES*' (Cambridge University Press, 2016) p227.

RECOMMENDATIONS

The biggest challenge amounting to the rise in maritime theft in GOG is security system. This security challenge hinders the suppression of attacks and allows for the sharp rise of attacks and the levels of attack. I suggested that, the most appropriate response would be to immediately invoke automatic universal jurisdiction as the most immediate and effective way to suppress the increasing number of attacks. However, I argued for the view of this doctrine of universal jurisdiction might be problematic because it may lead to the encroachment on the sovereignty of a state and create conflict.

Thus my solution would be that a consent approach, would likely to produce coordinated action conducive to a more comprehensive solution whereby a flag state would have jurisdiction if the attack occurred in a place where no other state has territorial jurisdiction, especially given the nature and geography in GOG. Take for instance, the case of Benin. There was a sharp increase in number of attacks led to the implementation of a regional framework. The president of Benin showed political willingness by entreating the Security General of the United Nations to requesting support from the global community.

Operation Prosperity had been created involved a joint patrol being set up patrolling the Benin seas. In a few months after the operation had been set up followed that the number of attacks had been decreased drastically.

The organization of a global committee for prosecuting pirates is a solution to the issues of piracy; I noted that, states with territorial jurisdiction in the Gulf of Guinea have generally been ineffective in prosecuting pirates which has led somewhat to continuing acts of piracy. This is because there has been a lack of a fear of punishment for committing this crime.

Further to the above, an International Tribunal would be an effective means of prosecuting pirates because 90 per cent of the alleged pirates captured at sea have been released because the states of the Gulf of Guinea were not prepared to detain and prosecute them. Having an International Tribunal would also be a clearer method of dealing with piracy cases because it would mean cases can be allocated to the specialist court rather than pirates awaiting trial in a number of different states. The idea of having an International Tribunal can also be developed as a positive contention because international efforts have proven successful.

The ICC is another body which has also been set up to implement the regional strategy for maritime security. They have also been set up to implement the regional strategy for maritime security. They have also issued a Code of Conduct governing the fight against piracy. given that justice cannot be done without means of enforcement(and many coastal states suffer from a lack of adequate security forces), this certainly provides good guidance and sets a precedent for states to begin arresting suspected pirates, once they are in a position to do so. Once arrested, the accused can be brought before the International Tribunal. The enforcement aspect however is currently seen as difficult given that a number of states are ill equipped to patrol and make the necessary arrest to stop offenders on the high seas.

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