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Dissertation for Ph. D. in Law

**A STUDY OF THE
SUPPRESSION OF PIRACY
OFF NIGERIA THROUGH
THE INSTRUMENTALITY
OF PORT STATE CONTROL**

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Dedication

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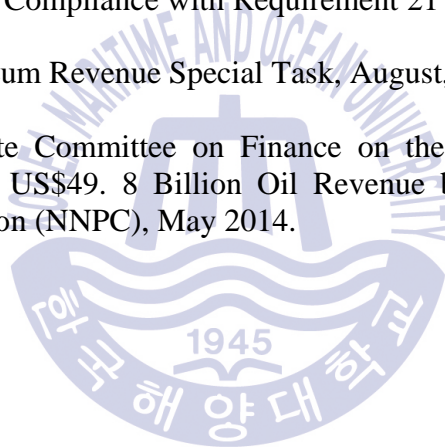
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List of Abbreviations

AALCO	Asian-African Legal Consultative Organisation
ACUNS	Academic Council on the United Nations System against Ships in Asia
AIS	Automatic Identification System
AMOU	Abuja Memorandum of Understanding
ANSI	American National Standards Institute
ASIL	American Society for International Law
ATS	Automatic Targeting System
BMP	Best Management Practice
CCTV	Close Circuit Television
CEO	Chief Executive Officer
CFC	Civilian Fusion Center
CIMSEC	Center for International Maritime Security
CMF	Combined Military Forces
CSI	Container Security Initiative
CSO	Company Security Officer
C-TAT	Custom-Trade Partnership against Terrorism
CTF	Combined Task Force
CVFF	Cabotage Vessel Financing Fund
DFT	Department for Transport

DG	Director General
ECCAS	Economic Community of Central and West African States
ECHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ED	Edited
EDN	Edition
EFCC	Economic and Financial Crimes Commission
EITI	Extractive Industries Transparency Initiative
EJF	Environmental Justice Foundation
ESR	Equipment Survey Report
EU	European Union
FOC	Flag of Convenience
FPSO	Floating Production Storage and Offloading
FSO	Floating Storage and Offloading
GAM	Gerakan Aceh Merdeka
GDP	Gross Domestic Production
GGC	Gulf of Guinea Commission
GMDSS	Global Maritime Distress and Safety System
GPS	Global Positioning System
GRT	Gross Registered Tonnage
HDI	Human Development Index
IAMSTAF	Inter-Agency Maritime Security Task Force on Acts of Illegality in Nigerian
IAMSP	International Association of Marine Security Professionals
ICC	International Chamber of Commerce
ICC	Inter-regional Coordination Center
ICT	Information and Communication Technology

ILA	International Law Association
ILO	International Labour Organisation
IMB	International Maritime Bureau
IMLO	International Maritime Labour Organisation
IMO	International Maritime Organisation
IPi	International Peace Institute
IPS	International Port Security
ISC	Information Sharing Center
ISO	International Standard Organisation
ISSC	International Ship Security Certificate
IUNC	International Union for Conservation of Nature
IUU	Illegal Unreported and Unregulated
JTF	Joint Task Force
LOSC	Law of the Sea Convention
LRITS	Long Range Identification and Tracking System
MCA	Maritime and Coast Guard Agency
MEND	Movement for the Emancipation of the Niger Delta
MLC	Maritime Labour Convention
MLPA	Money Laundering Prevention Act
MOU	Memorandum of Association
MOWCA	Maritime Organisation of West and Central Africa
MSA	Merchant Shipping Act
MSZs	Maritime Security Zones
MTISC	Maritime Trade Information Sharing Center
MTSA	Maritime Transportation Security Act
MUSE	Maritime Underwater Security Company
NATO	North Atlantic Treaty Organisation

NDP	Niger Delta Panel
NEITI	Nigerian Extractive Industries Transparency Initiative
NGO	Non-Governmental Organisation
NIMASA	Nigerian Maritime Administration and Safety Agency
NITOA	Nigerian Trawler Owners Association
NMSP	National Maritime Security Plan
NNPC	Nigerian National Petroleum Cooperation
NPA	Nigerian Ports Authority
OEF	One Earth Future Foundation
OML	Oil Mining Lease
PCASP	Privately Contracted Armed Security Personnel
PFSA	Port Facility Security Assessment
PFSAS	Port Facility Security Assessment Survey
PFSO	Port Facility Security Officer
PICOMMS	Presidential Implementation Committee on Maritime Safety and Security
PMSC	Private Maritime Security Company
PSC	Port State Control
PTSD	Post Traumatic Stress Disorder
ReCAAP and	Regional Cooperation Agreement on Combating Piracy Armed Robbery
RO	Recognised Organisation
RSO	Recognised Security Organisation
RPG	Rocket Propelled Grenade
SALW	Small Arms and Light Weapons
SAMI	Security Association for the Maritime Industry

SCGCP	Somalia Contact Group on Counter Piracy
SIRC	Seafarers International Research Center
SPDC	Shell Petroleum Development Company
SSA	Ship Security Assessment
SSAS	Ship Security Alert System
SSAS	Ship Security Assessment Survey
SSO	Ship Security Officer
SSP	Ship Security Plan
SSN	Safe Sea Net
STCWC	Standard Training Certification and WatchKeeping Convention
THETIS	The Hybrid European Targeting and Inspection
TWIC	Transport Workers Identification Credential
UAE	United Arab Emirates
UK	United Kingdom
UMRI	Universal Multidisciplinary Research Institute
UN	United Nations
UNCLOS	United Nations Convention for the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNMGSE	United Nations Monitoring Group on Somalia and Eritrea
UNODC	United Nations Office on Drug and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UNTS	United Nations Treaty Series
US	United States

USCG	United States Coast Guard
VDS	Vessel Detection System
VIMSAS	Voluntary IMO Member State Audit Scheme
VMS	Vessel Monitoring System
VTMS	Vessel Traffic Management System

List of Tables

Table 1: The Number of (actual & attempted) Global Piracy Acts (2009-June 2015)

Table 2: The Number of (actual & attempted) Piracy Acts off Nigeria (2009-June 2015)

Table 3: Types of Violence against Crew Globally (June 2015)

Table 4: Types of Violence against Crew Globally (2010-June 2015)

Table 5: Inspection Data by Authorities in AMOU



List of Graphs

Graph 1: The Number of (actual & attempted) Piracy Acts off Nigeria (2009-June 2015)

Graph 2: Types of Violence against Crew off Nigeria (Jan-June 2015)



List of Charts

Chart 1: The Number of (actual & attempted) Global Piracy Acts (2009-June 2015)

Chart 2: Types of Violence against Crew off Nigeria (Jan-June 2015)



List of Maps

Map 1: Maritime Zones

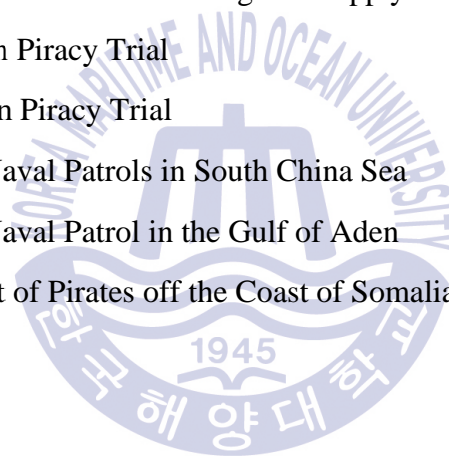
Map 2: The Gulf Guinea Piracy Map

Map 3: Oil Mining Leases (OML)



List of Pictograms

- Pictogram 1: Oil Spill in the Niger Delta Region
- Pictogram 2: Bad Road in the Niger Delta Region
- Pictogram 3: Underdeveloped Area in the Niger Delta Region
- Pictogram 4: Nigeria's Offshore Oil Rig
- Pictogram 5: Nigeria's Offshore Oil Rig and Supply Vessels
- Pictogram 6: Kenyan Piracy Trial
- Pictogram 7: German Piracy Trial
- Pictogram 8: Joint Naval Patrols in South China Sea
- Pictogram 9: Joint Naval Patrol in the Gulf of Aden
- Pictogram 10: Arrest of Pirates off the Coast of Somalia



Abstract

In the last decade, there has been an exponential increase in piratical attacks, both globally and off Nigeria. Piracy is a threat to freedom and security of navigation, which is pivotal to the increasingly growing international trade volume, particularly for Nigeria whose economy is import based. More importantly, the mainstay of Nigeria's economy, petroleum, is conveniently transported by sea. Equally important is the fishing industry, which provides revenue for the government and employment to the people of the coastal states in Nigeria. Thus, the continued existence of piracy off Nigeria, as a result of the underdevelopment of the oil producing communities, among others, portends grave danger to freedom of navigation, economic and sociopolitical development as well as the protection of the marine environment by the country. This research, aside from suggesting that the definition of piracy should be reviewed to reflect the features of contemporary piracy act, argues that the extant legal framework in Nigeria is inadequate to combat piracy, prevent unsecured or vulnerable vessels from entering its ports and territorial waters, and effectively monitor, police and regulate activities off the country's waters. It further argues that the legal regime alone would not ensure the safety and security of vessels off Nigeria, in the absence of political will by state actors in the enforcement of national and international maritime security instruments and other related conventions, regional cooperation and the prosecution of pirates and their sponsors. The central plank of this research is the use of port state control as a platform to suppress piracy off Nigeria. Port state control regime is a veritable instrument to determine the implementation and enforcement of maritime security instruments and other related conventions, local legislations, and soft laws. Moreover, port state control can be used as a platform for

engaging in joint military operations, regulatory and monitoring exercises and information as well as intelligence sharing and dissemination under regional cooperation.

Table of Contents

Acknowledgement.....	i
Dedication.....	iii
Table of Statutes.....	iv
International Instruments.....	vi
United Nations Documents.....	vii
Regional Instruments.....	viii
Table of Cases.....	ix
International Maritime Organisation Documents.....	x
Reports.....	xi
List of Abbreviations.....	xii
List of Tables.....	xvii
List of Graphs.....	xviii
List of Charts.....	xix
List of Maps.....	of xx
List of Pictograms.....	xxi
Abstract.....	xxii
Table of Contents.....	xxiii

CHAPTER 1: GENERAL INTRODUCTION.....	1
1.1 Background of the study.....	1
1.2 Scope of the study.....	7
1.3 Objective of the study.....	11
1.4 Research methodology.....	13
1.5 Literature review.....	15
1.6 Conclusion.....	30
CHAPTER 2: OVERVIEW OF PIRACY AND PORT STATE CONTROL.....	31
2.1 Introduction.....	31
2.2 Overview of piracy.....	32
2.3 Definition of piracy.....	35
2.4 Linkages between piracy and other maritime crimes.....	58
2.4.1 Piracy and oil theft.....	59
2.4.2 Piracy and vandalism of oil installations.....	62
2.4.3 Piracy and illegal, unreported and unregulated (IUU) fishing.....	64
2.4.4 Piracy and drugs, arms and human trafficking.....	66
2.4.5 Piracy and other maritime crimes.....	68
2.5 Overview of port state control (PSC).....	71
2.5.1 Meaning of port state control (PSC).....	71
2.5.2 Historical development of port state control (PSC).....	73
2.5.3 Critical evaluation of the regime of port state control (PSC).....	77
2.6 Conclusion.....	78
CHAPTER 3: CAUSES, CONSEQUENCES AND CHALLENGES IN SUPPRESSING PIRACY OFF NIGERIA.....	80
3.1 Introduction.....	80
3.2 Causes of piracy off Nigeria.....	80
3.2.1 Underdevelopment/pollution of the oil producing areas.....	88

3.2.2 Corruption and inequality between the ruling class and the masses	90
3.2.3 Weak and compromised maritime regulatory and security institutions.....	92
3.2.4 Lack of regional stability and cooperation.....	94
3.2.5 Existence of illegal unreported and unregulated (IUU) fishing and organised crime.....	97
3.3 Consequences of piracy in Nigeria.....	101
3.3.1 Economic consequences.....	101
3.3.2 Humanitarian consequences.....	104
3.3.3 Health consequences.....	106
3.3.4 Socio-political consequences.....	108
3.4 Challenges in suppressing piracy off Nigeria.....	109
3.4.1 Lack of political will by government.....	109
3.4.2 Inadequate legal regime.....	111
3.4.3 Inefficient and compromised maritime regulatory and security Institutions.....	113
3.4.4 Corruption.....	115
3.4.5 Absence of regional cooperation.....	117
3.5 Conclusion.....	119
CHAPTER 4: LEGAL FRAMEWORK FOR SUPPRESSING PIRACY OFF NIGERIA.....	120
Introduction.....	120
4.2 International legal framework for suppressing piracy off Nigeria.....	121
4.3 The Law of the Sea Convention (LOSC) 1982.....	121
4.4 The Convention for Suppression of Unlawful Act of Violence against the Safety of Maritime Navigation (SUA Convention) 1988.....	125

4.5 The United Nations Convention against Transnational Organised Crime (Palermo Convention) 2000.....	128
4.6 The International Ship and Port Facility Security (ISPS) Code 2002...	129
4.7 The United Nations Security Council Resolutions (UNSCRs).....	141
4.8 Regional legal framework for suppressing piracy off Nigeria.....	143
4.9 Domestic legal framework for suppressing piracy off Nigeria.....	145
4.9.1 The 1999 Constitution of the Federal Republic of Nigeria.....	146
4.9.2 The Nigerian Maritime Administration and Safety Agency (NIMASA).....	147
4.9.3 Merchant Shipping Act (MSA) 2007.....	148
4.9.4 Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria (LFN) 2010.....	149
4.9.5 Police Act, Cap. P1, Laws of the Federation of Nigeria (LFN) 2010	150
4.9.6 Piracy and Other Unlawful Acts at Sea (and Other Related Offences) Bill 2008.....	151
4.9.7 Other supporting legislations.....	152
4.10 Soft laws for suppressing piracy off Nigeria.....	153
4.10.1 Best management practices (BMP) for the protection of ships against pirates.....	154
4.10.2 Guidelines for the use of privately contracted armed security personnel (PCASP) on board ships.....	156
4.11 Conclusion.....	157
CHAPTER 5: THE USE OF PORT STATE CONTROL TO SUPPRESS PIRACY OFF NIGERIA.....	158
5.1 Introduction.....	158

5.2 Analysis of Abuja Memorandum of Understanding (AMOU) data.....	160
5.3 Overview of the Abuja Memorandum of Understanding (AMOU).....	162
5.4 Overview of Nigeria’s port state jurisdiction.....	168
5.5 The use of port state control (PSC) to suppress piracy off Nigeria.....	170
5.6 Challenges in using port state control (PSC) to suppress piracy off Nigeria.....	181
5.6.1 Lack of trained port state control (PSC) officers.....	182
5.6.2 Lack of training facilities.....	182
5.6.3 Inadequate funds.....	183
5.6.4 Corruption.....	183
5.6.5 Lack of political will by government.....	184
5.6.6 Absence of regional cooperation.....	185
5.7 Conclusion.....	186
CHAPTER 6: RECOMMENDATIONS FOR SUPPRESSING PIRACY OFF NIGERIA.....	187
Introduction.....	187
6.2 Legal mechanisms for suppressing piracy off Nigeria.....	189
6.2.1 Enhanced prosecutorial strategy in the use of domestic legislations to suppress piracy off Nigeria.....	189
6.2.2 Support for national courts/creation of a hybrid or internationalised courts.....	190
6.2.3 Reinforcing international cooperation in the arrest and prosecution of persons suspected of piracy.....	191
6.2.4 Revision of the meaning of piracy under international law.....	192
6.2.5 Review of domestic criminal law enforcement procedure.....	194
6.2.6 The application of the United Nations Security Council Resolutions (UNSCRs) expanding the scope of international law rules on	

piracy.....	195
6.2.7 Expansion and consolidation of global and regional efforts to suppress piracy off Nigeria.....	195
6.3 Non legal mechanisms for suppressing piracy off Nigeria.....	196
6.3.1 Onboard measures by crew/use of privately contracted armed security personnel (PCASP) on board ships.....	199
6.3.2 The need to curb flag of convenience (FOC) in Nigeria.....	201
6.3.3 Availability of funds.....	202
6.3.4 Provision of adequate facilities and capacity to implement existing Legislations.....	203
6.3.5 Application of the reviewed best management practices (BMP) guide compiled by IMO and the shipping industry.....	204
6.3.6 Political will by the Nigerian government to suppress piracy off the country.....	205
6.3.7 The Inclusion of joint naval operations.....	208
6.3.8 The effective implementation of the port state control (PSC) in Nigeria.....	208
6.4 Conclusion.....	209
CHAPTER 7: CONCLUSION.....	210
7 Conclusion.....	210
BIBLIOGRAPHY.....	214

CHAPTER 1

GENERAL INTRODUCTION

1.1 Background of the study

The sea plays a huge role in the economic development of Nigeria.¹ Nigeria, as well as the world, depends largely on sea-based transport for energy, tourism, security and international trade. Furthermore, the sea is home to avalanche of mineral resources which are exploited by coastal states, like Nigeria, as a source of revenue to their governments.² Equally, the sea is endowed with living creatures, such as fishes, and other aquatic animals, that have economic importance to littoral states. More importantly, crude oil, which is the mainstay of Nigeria's economy, is exported through sea transportation.³ In other words, the sea provides a means of transporting people, goods and services as well as a source of wealth to coastal states.

¹) Shipping, through the ports, accounts for about 99 per cent by volume and 95 percent by value of Nigeria's seaborne trade, while over 70 per cent of the total maritime trade traffic in volume and value within the West and Central African sub-region comes from the country. Chima Momoh Buhari, "An Analysis of Nigerian Seaborne Trade (Dry Bulk) and the Demand for Transport," (2013) *International Affairs and Global Strategy*, Vol. 15, p. 14 <www.iiste.org/Journals/index.php/IAGS/article/download/8015/8300> accessed 23 August 2015. See also Donatus Onwugbuchunam & Geraldine Okeudo, "An Evaluation of Nigeria's Seaborne Trade and Demand for Sea Transport" (2012) *European Journal of Business and Management*, Vol. 4, No. 13, p. 187 <<http://www.slideshare.net/AlexanderDecker/an-evaluation-of-nigerias-seaborne-trade-and-demand-for-sea>> accessed 23 August 2015.

²) The maritime area of Nigeria compares to about one-third of the land size of the country. Nigeria's expansive coastline with vast sea areas within its maritime environment is rich in hydrocarbons, fishes, shrimps, shipping, oil and gas installations, endangered species of sea creatures and other types of mineral resources yet to be exploited. The country depends upon these resources for her revenue. It is estimated that an average sum of N11.00 trillion was generated annually from 2006 – 2011 from Nigeria's maritime environment. Mfong Ekong Usoro, "Assessing the Efforts of the Nigerian Government in Combating Maritime Security Issues," a paper delivered at a One-Day Roundtable for Piracy and Security Challenges, organised by the Nigerian Institute of Advanced Legal Studies, June 24, 2013, p. 2.

³) Nigeria contains about half the population of the West African region and contributes more than half of the regional Gross Domestic Products (GDP). Oil is the source of about 90 percent of Nigeria's foreign exchange earnings and up to 80 percent of budgetary revenues.

As a corollary to the above, the importance of sea transportation in Nigeria is further buttressed by importation of Kerosene, Premium Motor Spirit (PMS) and Automotive Gas Oil (AGO) into the country. Due to Nigeria's inability to refine crude oil, refined products like Kerosene, PMS and AGO are imported into the country through shipping, thereby, increasing vessel traffic in Nigerian waters.⁴ This is further complemented by the existence of vessels that provide support services to the country's offshore oil rigs and platforms where the exploration of minerals and other natural resources is done. Moreover, as an import dependent country, Nigeria relies heavily on maritime transport for the importation of finished goods, making the shipping industry an indispensable part of its economy. It is trite that the sea provides a source of income for fishermen living in the communities along the coastlines of Nigeria. Against this backdrop, the spate of piracy⁵ off Nigeria goes to the root of the economic and sociopolitical development of the country.

Central to the continued existence and spread of piracy off Nigeria is the absence of political will by the Nigerian government to decisively deal with the menace despite the enormous human and material resources within its grasp. For instance, the government of Nigeria has not criminalised piracy

It is the single most important industry in the entire region and Nigeria, and for two decades, has been threatened by transnational organised crime and piracy and armed robbery against ship. "Transnational Organized Crime in West Africa: A Threat Assessment," United Nations Office on Drugs and Crime (UNODC), 2013, p. 45.

⁴) For decades, support vessels operating in Nigeria's offshore oil fields have been attacked by pirates which eventually leads to hijacking and full-scale pilfering of oil tankers in the recent times. Tanker traffic is particularly dense in the Gulf of Guinea because Nigeria, the region's largest oil and gas producer, lacks the capacity to refine its own product. Consequent upon that, crude oil is transported out of Nigeria, refined in other countries, and then imported back into the country where it is sold below market rates due to government subsidy. Kalu K. Anele & Yun-Cheol Lee, "A Study on Strengthening Control of Maritime Piracy in Nigeria's Territorial Waters," (2014) *Maritime Law Review*, Vol. 26, No. 2, 25.

⁵) In this research, "piracy," "maritime piracy" and "sea piracy" mean the same thing, therefore they are used interchangeably.

in its local laws by domesticating relevant maritime security instruments on piracy, which means that piracy may not be a crime in Nigeria. The government of Nigeria has also continued to pay lip service to the issue of corruption in both the maritime sector and the petroleum⁶ industry in the country. This lukewarm attitude by the government arises because those at the corridors of power, members of the political class, and the elites have continued to engage in aiding and abetting of piracy and other related maritime crimes in the country.⁷ The recently published corruption perceptions index report for 2014 which placed Nigeria in a distant position of 136 out of 174 countries is a testament to the level of corruption in the country.⁸

Aside from being enmeshed in corruption, both the maritime and petroleum regulatory institutions and the security agencies are ill-trained, ill-motivated, ill-equipped and lack adequate funds to be able to discharge their statutory duties dispassionately and function effectively. A corollary to this is the challenges facing the administration of criminal justice in the country, in particular, the inadequate legal regime, dearth of holding and prison facilities and compromised judiciary, which have impeded the prosecution of pirates and their sponsors in the country. The delicate issues in the Niger

⁶) Note that “petroleum” in this research means “crude oil” as well as “oil and gas.” They are used interchangeably.

⁷) The arrest and detention of Jarret Tenebe, a People’s Democratic Party (PDP) gubernatorial hopeful in Edo State by the Economic and Financial Crimes Commission (EFCC) for oil theft shows the level of involvement of politicians, government officials and the elites in the commission of maritime crimes, especially piracy, in Nigeria. Tenebe stated that his illicit activities have the cover of several top government officials and politicians, including Mike Oghiomhe, a former chief of staff to former President Goodluck Jonathan, Tony Anenih, former chairman of the Board of Trustees (BOT) of PDP, and Diezani Alison Madueke, former Petroleum Minister. “\$50m found in the Account of PDP Guber Candidate involved in Oil Theft, as EFCC denies being Manipulable,” *Sahara Reporters*, New York, 12 September, 2014 <<http://saharareporters.com/2014/09/12/50m-found-account-pdp-guber-candidate-involved-oil-theft-efcc-denies-being-manipulable>> accessed 17 August 2015.

⁸) “Corruption Perceptions Index 2014,” Transparency International, 2014 <<http://www.transparency.org/cpi2014/results>> accessed 6 August 2015.

Delta region have continued to linger on despite the huge revenue that accrues to the country from the resources exploited in the region and various allocations given to the states that make up the region. As a consequence, poverty, unemployment, environmental degradation, infrastructural decadence and political violence have continued to pervade the social fabric of the region and beyond, engendering more piratical activities from the hapless youths. Although a lot have been written on the challenges in the Niger Delta communities,⁹ this dissertation observes that the narratives about the region have almost remained the same-‘more talks less action.’ Nigeria lacks the state of the art surveillance facilities to monitor and police its ports,

⁹) For details of oil spillage in the Niger Delta, see generally, “Nigeria: Hundreds of Oil Spills Continue to Blight Niger Delta,” Amnesty International, 19 March, 2015 <<https://www.amnesty.org/en/latest/news/2015/03/hundreds-of-oil-spills-continue-to-blight-niger-delta/>> accessed 27 July 2015 and Ruth Krause, “Oil Spills Keep Devastating Niger Delta,” *Deutsche Welle (DW)*, 20 March, 2015 <<http://www.dw.com/en/oil-spills-keep-devastating-niger-delta/a-18327732>> accessed 27 July 2015. For more information on political violence in the Niger Delta, see generally, Hilary Matfess, “Looming Challenges in Niger Delta could Threaten Nigeria’s Election Afterglow,” *IPI Global Observatory*, 17 April, 2015 <<http://theglobalobservatory.org/2015/04/niger-delta-militants-buhari-boko-haram/>> accessed 27 July 2015 and “Niger Delta Election Violence Update: January-March 2015,” The Fund for Peace, <<http://reliefweb.int/sites/reliefweb.int/files/resources/nigeriaelectionupdate-20150324.pdf>> accessed 27 July 2015. For detailed analysis of corruption in the Niger Delta, see generally Adu & Funmilayo Modupe, “Niger Delta Development in a Corruption Ridden Society: Importance of Insurgency,” (2014) *Global Journal of Human-Social Science*, Vol. 14, Iss. 2, Version 1.0 <https://globaljournals.org/GJHSS_Volume14/4-Niger-Delta-Development.pdf> accessed 27 July 2015 and William Ehwarieme & Jude Cocodia, “Corruption and Environmental Degradation in Nigeria and its Niger Delta,” (2011) *Journal of Sustainable Development in Africa*, Vol. 13, No. 5 <http://www.jsd-africa.com/Jsda/Vol13No5_Fall2011_A/PDF/Corruption%20and%20Environmental%20Degradation.pdf> accessed 27 July 2015. For details of the underdevelopment of the Niger Delta, see generally, Kelly B.O Ejumudo, “Youth Restiveness in the Niger Delta: A Critical Discourse,” SAGE, January-March, 2014 <<http://sgo.sagepub.com/content/spsgo/4/2/2158244014526719.full.pdf>> accessed 27 July 2015 and Okouwa Peace Jack-Akhigbe, “The State and Development Interventions in the Niger Delta Region of Nigeria,” (2013) *International Journal of Humanities and Social sciences*, Vol. 3, No. 10 (Special Issue) <http://www.ijhssnet.com/journals/Vol_3_No_10_Special_Issue_May_2013/28.pdf> accessed 27 July 2015.

territorial waters, internal waters, and creeks, thereby exposing its maritime zones to piracy and other maritime crimes.

The consequences of the tsunami of piracy off Nigeria are rife. It is pertinent to note that maritime piracy is a major global challenge and a regional problem that is compromising the development of the Gulf of Guinea, a strategic economic and energy area in the global landscape. It also threatens international trade, freedom of navigation and the stability of coastal states in the Gulf of Guinea. Of great importance is its adverse effect on the economic development of Nigeria. This happens in different ways: due to piracy, the revenue derivable from the exportation of crude oil has been reduced, thereby affecting the economic and infrastructural development of Nigeria.¹⁰ Further, the importation of refined products, offshore oil exploration and the activities of vessels engaged in support services are greatly stifled by piracy acts off Nigeria. Additionally, the importation of finished goods into the country is hampered by the activities of pirates in the ports and territorial waters of Nigeria, including the high sea. It is worthy of note that the fishing industry in Nigeria has been seriously hit by the spate of piratical attacks off the country's waters.¹¹

In view of Nigeria's quest to use its strategic position as the largest economy and biggest producer of crude oil in the Gulf of Guinea to advance its economic development, the country's ports are positioned and poised to become the hub of the West and Central African regions.¹² This means that

¹⁰) The existence of piracy and other maritime crimes have resulted in the loss of about \$8 billion yearly in Nigeria. See K.K. Anele & Y. Lee (n. 4) p. 25.

¹¹) Kalu K. Anele, "The Economic Effect of Piracy in Nigeria: An Overview of the Fishing Industry," 2015 Winter Academy Seminar organised by the Korean Institute of Maritime Law held at the Korean Seafarers Welfare and Employment Center, 27 February, 2015, pp. 41-73.

¹²) Godfrey Ofurum, "Shippers Council to Make Nigeria a Hub in West and Central African Sub-Region," *Business Day*, 23 July, 2015 <<http://businessdayonline.com/2015/07/shippers->

more merchant vessels will be calling at the Nigerian ports. However, due to piracy, which has led to the declaration of the Nigerian waters as high risk areas and the attendant increase in insurance premium, vessel owners are re-routing their ships to the ports of neighbouring countries.¹³ This has culminated in the high cost of essential commodities imported into the country and loss of revenue accruable from activities in the Nigerian ports. Piracy also heightens the already tensed and volatile security situation in the Niger Delta by encouraging arms, drug and human trafficking, oil theft, vandalism of oil installations and IUU fishing in the country's maritime zones. For illustrative purposes, many lives have been lost, properties destroyed or stolen, while marine environment is polluted during maritime crimes, including piratical attacks off Nigeria. From this background, there is need to effectively and efficiently suppress the scourge of piracy off Nigeria.

This research contributes to knowledge and the literature in piracy in two broad ways. First, the research advocates for a review of the meaning of piracy to reflect the current acts of piracy which is peculiar to Nigeria and other piracy hotspots like Strait of Malacca. Second, the dissertation argues for the use of port state control¹⁴ as a platform for suppressing the crime. It is a truism that the suppression of piracy off Nigeria must be conducted through a multifaceted approach. However, proper application of PSC is a veritable tool to achieve the above objective because it encourages and harnesses the implementation and enforcement of local statutes and maritime security instruments and other related conventions in curbing piracy. In

[council-to-make-nigeria-a-hub-in-west-and-central-african-sub-regions/#.VbHL3dKqqko>](#)
accessed 24 July 2015.

¹³) ICC International Maritime Bureau (IMB) "Piracy and Armed Robbery against Ships: Report for the Period of 1 January- 30 June 2015," July 2015, hereafter referred to as the "IMB Piracy Report for 2015," p. 19.

¹⁴) Port state control, hereafter referred to as "PSC."

furtherance of this, the use of PSC encapsulates all other countermeasures against piracy and, at the same time, provides a platform for regulating, monitoring and policing the maritime zones of coastal states in order to prevent piracy and other maritime crimes. PSC is also relevant in conducting thorough vessels inspections to determine whether they complied with international regulations, particularly on safety and security.

As a consequence, this research proposes a piracy response model for Nigeria based on the use of PSC. This is achieved by analysing the manifestation of the contemporary piracy, the existing international, regional as well as national legal regime on the crime, the experiences of the international community and regional states in addressing other piracy cases (Gulf of Aden and Southeast Asia). In addition, the use of soft laws to suppress piracy acts and the current operational arrangement and efforts of the Nigerian government can be implemented through the vehicle of PSC.

1.2 Scope of the study

Piracy is evidently not a new crime in the world, hence, the recent spate of piracy globally and off Nigeria, does not mean that the maritime crime is new. In Nigeria, piratical activities have been in existence during and after the era of the colonial conquistadors.¹⁵ Though there were snippets of piracy attacks in the past off Nigerian waters, especially in the waters of Lagos

¹⁵) Marc-Antoine P. de Montclos, "Maritime Piracy in Nigeria: Old Wine in New Bottles?" (2012) *Studies in Conflict & Terrorism*, pp. 532-533. For detailed analysis of the historical development of piracy, see Laura Barry & Benjamin Staver, "A Study in Maritime Piracy," a Report submitted to the Faculty of the Worcester Polytechnic Institute (WPI) in partial fulfillment of the requirements for the Degrees of Bachelor of Science, 7 May, 2009, pp. 2-6; Joanne M. Fish, "Maritime Piracy: North versus South," Old Dominion University, 12/31/2014, pp. 7-19 <<http://web.isanet.org/Web/Conferences/GSCIS%20Singapore%202015/Archive/ac36734b-4fe3-472a-9a0f-438336424ae6.pdf>> accessed 25 September 2015; and Adam J. Young, "Roots of Contemporary Maritime "Piracy" in Southeast Asia," a Thesis submitted to the Graduate Division of the University of Hawai'i in partial fulfillment of the requirements for the Degree of Masters of Arts in Asian Studies, May, 2004, pp. 34-59.

which involved petty theft and essentially sea robbery, the advent of the Niger Delta militants gave fillip to the type of piracy existing in the country today. Piracy off Nigeria, which has become more frequent, is no longer limited to petty theft and sea robbery; it has metamorphosed into the hijack of tankers carrying crude oil, merchant vessels and fishing trawlers. Additionally, piracy off Nigeria is violent and leads to the kidnapping, shooting, and sometimes death of seafarers, which implicate serious traumatic experiences to the families of the affected victims.¹⁶

It must be stated that previous researches on the re-emergence of piracy have substantially increased our knowledge and understanding of this phenomenon. There is a consensus among researchers that the legal framework for piracy is limited in scope, which may contribute little in the suppression of the crime.¹⁷ In line with this position, this dissertation robustly argues that the issues of geographical location, private ends and two ship conditions in the determination of what constitutes a piracy act have paved way for pirates to escape unpunished. Also, the absence of obligation for countries to cooperate in the suppression of piracy greatly reduces the efficacy of the present legal framework for combating piracy.

Although there are many international maritime security instruments and other related conventions for combating piracy, Nigeria has not domesticated most of them, sadly suggesting that piracy may not be a crime in the country. How can a crime be suppressed without a written law? In addition to being ill-trained, ill-equipped, ill-motivated and inadequately

¹⁶) For detailed analysis of the implications of piracy, see Chapter 3 below.

¹⁷) These assertions will be thoroughly discussed in Chapter 2 of this research. Note that “research,” “dissertation,” “study” and “work” are used interchangeably to mean this dissertation.

funded, regulatory institutions¹⁸ and security agencies have compromised their functions and the ripple effect is the escalation of piratical activities off Nigeria. To crown it all, government is reluctant to suppress piracy by its inaction towards fighting corruption and prosecuting corrupt government officials and those that sponsor and facilitate piracy and other maritime crimes in the country. Little wonder oil-rich Nigeria is occupying the 125th position out of a 142 countries, according to the Legatum Prosperity Index for 2014,¹⁹ in relation to wealth and wellbeing of its citizens.

It has become increasingly necessary for piracy to be suppressed in Nigeria. This is because piracy threatens the exploration and sale of crude oil which is the bastion of Nigeria's economic existence and survival. Furthermore, suppressing piracy has become more desirable due to the fact that it engenders other maritime security concerns, like oil theft, vandalism of offshore oil installations, drugs, arms and human trafficking, IUU fishing and dumping of toxic waste. Combating piracy in Nigeria, therefore, requires a platform that harnesses all other countermeasures against the crime: PSC.

The use of PSC to combat piracy in Nigeria, as suggested by this dissertation, becomes relevant and apt in situations where weak maritime registration regimes in some countries allow stolen vessels to be reregistered, while crew carrying false passports, forged competency certificates, and fraudulent bills of lading are able to man stolen ships. Pirates make use of documents that are fraudulent or questionable and this can be dictated by thoroughly inspecting vessels in accordance with the relevant International

¹⁸) The regulatory institutions used throughout this research cover those in the maritime sector and the petroleum industry.

¹⁹) See "Legatum Prosperity Index," The Legatum Institute <<http://www.prosperity.com/#!/ranking>> accessed 6 August 2015.

Maritime Organisation's (IMO) security and safety instruments.²⁰ It is trite that issuers of fraudulent documents are well-organised criminal organisations with effective links to maritime administrations, employers, manning agents and training establishments.²¹ Besides, port officials and customs agents also collude with organised criminal groups to identify and track potential target ships and contribute in impeding the recovery of ships and cargoes or the prosecution of suspected pirates.²²

Against this background, this study is limited to piracy and its suppression in Nigeria through the framework of PSC. Due to its transnational nature, the absence of case laws as well as the lack of legislations criminalising the crime in Nigeria, the study comparatively analyses piracy in Nigeria with a view to using PSC to suppress it. The suppression of piracy in Nigeria, as well as in other countries, has been hampered extensively by the apparent limitations inherent in its extant legal regime. These limitations have encouraged piracy by providing leeway for pirates to escape from capture or prosecution for piratical acts. For instance, the argument of this research is that the geographical limitation, which goes to the root of the act of piracy, means that weak, poor or failed states that do not have the funds and the infrastructural capability to effectively regulate and police their waters are going to be at the mercy of pirates. This is because pirates escape capture due to the fact that joint naval forces or navies from other countries cannot confront any pirate vessel in the territorial waters of another country. More so, joint naval ships cannot engage in hot pursuit of pirate vessels in the territorial waters of another state because of the restriction based on the territorial sovereignty of a coastal state over its

²⁰) Kevin. H. Govern, "National Solutions to an International Scourge: Prosecuting Piracy Domestically as a Viable Alternative to International Tribunals," (2011) U. Miami Int'l & Comp. L. Rev., Vol. 19, p. 17.

²¹) *Ibid*, pp. 17-18.

²²) *Ibid*.

territorial waters. In this regard, the exercise of the right of visit and the right of hot pursuit of a suspected or escaping pirate vessel is encumbered.²³ Further, lack of local laws criminalising piracy, coupled with the absence of regional cooperation, has paved way for the incessant piratical attacks off Nigeria.

Against the import of the statement of the problem, the following research questions arise?

1. What is piracy and what are the gaps in the extant legal regime of piracy under international law and how does it hamper the suppression of piracy off Nigeria?
2. What is the nature of piracy and how would the expansion of the definition of piracy under international law regime enhance the suppression of the crime off Nigeria?
3. What is PSC and how does it interface with piracy?
4. How can PSC be utilised to enhance the efficiency and effectiveness of the suppression of piracy off Nigeria?
5. In view of the pivotal role which lack of political will by government plays in the suppression of piracy, how would PSC contribute in reversing the trend as well as galvanise other countermeasures against piracy off Nigeria?

1.3 Objective of the study

In view of the challenges facing the suppression of piracy in Nigeria, the objective of this dissertation, *A study of the suppression of piracy off Nigeria through the instrumentality of port state control*, is essentially to examine the nature of piracy, identify the root causes, consequences and challenges in

²³) See the United Nations Convention on the Law of the Sea, adopted 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994), articles 110 & 111, respectively. The Law of the Sea Convention, 1982, hereafter referred to as the "LOSC."

suppressing the crime in Nigeria with a view to introducing the use of PSC as the platform for the implementation of piracy countermeasures. Consequent upon that, the study critically evaluates the review of the definition of piracy as a way of providing leverage in the use of PSC to suppress the crime.

They study focuses on the following specific objectives:

1. Critically evaluates the definition of piracy with a view to identifying the *lacuna* inherent in it.
2. Interrogates the concept of PSC *vis-a-vis* the prevention and suppression of piracy.
3. Critically examines the application of PSC in the prevention and suppression of piracy off Nigeria.
4. Explores the best way to introduce and use PSC in the prevention and suppression of piracy off Nigeria.
5. Considers how best to enhance the effectiveness and efficiency of PSC in the prevention and suppression of piracy off Nigeria.

From the above specific objectives, the significance of the study is to bring to the fore the root causes, challenges in the current efforts to suppress piracy and the adverse effects it has on the economic, sociopolitical and environmental development of Nigeria. Presently, the suppression of piracy is essentially encumbered by lack of political will on the part of Nigerian government to generally combat the menace decisively. Particularly, government has been reluctant to tackle the issue of corruption which has become a pandemic in the maritime sector, the petroleum industry and the security agencies in the country. The government of Nigeria has also failed to use the enormous natural resources at its disposal to improve the lives of its citizens, especially people from the oil producing communities.

The study further facilitates full comprehension of the merits in the use of PSC as a platform for the implementation and enforcement of domestic statutes and maritime security instruments and other related conventions. More specifically, PSC enhances the use of ports to launch joint military operations and rescue missions as well as monitor and police the waters off Nigeria and the Gulf of Guinea on the basis of bilateral or multilateral agreement. PSC also provides an enabling environment for self-evaluation in the implementation and enforcement of national laws and maritime security instruments and other related conventions in Nigeria. Regional cooperation in the areas of information sharing and exchange of intelligence, enhanced maritime domain awareness, joint military exercises and patrols and swift response to security situation in the Gulf of Guinea can conveniently and effectively be conducted and coordinated under the platform of PSC. Lastly, PSC provides an enabling environment where governments, ship owners, seafarers, cargo owners and port authorities can synchronise their security initiatives in the ports and the surrounding waters in accordance with international regulations to prevent piracy in the maritime industry.

1.4 Research methodology

This study is basically doctrinal and library based due to its nature. It is primarily qualitative in approach, which involves robust analysis and thorough synthesis of primary sources, including soft laws, and secondary sources. The primary sources of information include the constitution, statutes, case laws, international maritime security conventions as well as other related instruments and other international sources that deal with the various aspects of this study. Soft laws would also be used where necessary to enrich the competence of seafarers in handling maritime security situations. The

secondary materials are textbooks, journal articles, magazines, newspapers and internet sources. Information espoused from these sources will be subjected to content analysis. Additionally, data in the form of tables, charts, graphs and pictograms are analysed and interpreted to give a clear, comprehensive and coherent presentation of current facts and figures relating to piracy and its effects in Nigeria.

From the foregoing, the study is divided into seven chapters, *to wit*, Chapter 1, the 'General Introduction,' contains the introduction, the background of the study, the scope of the study, the objective of the study, the research methodology and the literature review. Literature review in this chapter adumbrates the opinions of writers on the concept of contemporary piracy. Chapter 2, 'Overview of Piracy and Port State Control,' discusses the definition of piracy, its limitations and the need for its expansion under international law, and the linkages between piracy and other maritime crimes in Nigeria. Further, the meaning, historical development, and critical evaluation of PSC are discussed. The essence of this chapter is to interrogate and bring to fore the concepts of piracy and PSC. 'Causes, Consequences and Challenges in Suppressing Piracy off Nigeria' are analysed in Chapter 3. This chapter is very crucial in the dissertation because it examines the root causes, interrogates the consequences and explores the challenges in suppressing piracy in Nigeria with a view to introducing ways to use PSC to curb the maritime crime. Chapter 4 looks at the 'Legal Framework for Suppressing Piracy off Nigeria.' It is the position of this research that the legal regime of piracy generally is pivotal in arresting, prosecuting, punishing, curbing as well as preventing the occurrence of the crime, particularly off Nigeria. Nonetheless, the research argues that the existing international law regime of piracy is restrictive in nature and therefore should be considered for review in order to expand its meaning and scope.

Chapter 5, ‘The Use of Port State Control to Suppress Piracy off Nigeria,’ analysis the AMOU data, examines the Abuja Memorandum of Understanding,²⁴ explores Nigeria’s port state jurisdiction, interrogates the use of PSC to suppress piracy off Nigeria and discusses the challenges in using PSC to suppress piracy off Nigeria. This chapter, therefore, is the central plank of this research. The ‘Recommendations,’ which are contained in Chapter 6, proffers various countermeasures towards suppressing piracy and argues that by introducing these countermeasures, piracy will be considerably reduced off Nigeria. Chapter 7, ‘Conclusion,’ concludes the study by providing a summary of the research, as well as its findings, and reiterating the importance of using PSC to suppress piracy off Nigeria.

1.5 Literature review

The literature on the topical issue of piracy is rife.²⁵ Some of the literature discuss the root causes of maritime piracy, either in general,²⁶ or in specific parts of the world.²⁷ Others focus on the implications of piracy,²⁸ while some

²⁴) Abuja Memorandum of Understanding, 1999, hereafter referred to as the “AMOU.”

²⁵) Alfred P. Rubin, *The Law of Piracy* (Naval War College Press, Newport: Rhode Island 1988); Bruce A. Elleman, *et al*, “Conclusion” in Elleman Bruce A., *et al*, (eds.) *Piracy and Maritime Crime: Historical and Modern Case Studies* (Naval War College Press: Newport, Rhode Island 2010); K. Zou & S. Wu, *Maritime Security in the South China Sea: Regional Implications and International Corporation* (Corbett Centre for Maritime Policy Studies Series, Ashgate Publishing, 2009); Jarle S. Hansen, *Piracy in the Greater Gulf of Aden: Myth, Misconception and Remedies* (Norwegian Institute for Urban and Regional Research: Oslo 2009).

²⁶) K. K. Anele & Y. Lee, *supra* note 4, pp. 30-36, Nikolaos Biziouras, “Piracy, State Capacity and Root Causes: Lessons from the Somali Experience and Policy Choice in the Gulf of Guinea,” (2013) *African Security Review*, Vol. 22, No. 3, pp. 111-122 <<http://www.tandfonline.com/doi/pdf/10.1080/10246029.2013.790318>> accessed 27 July 2015, and S. Whiteman, *et al*, “Children and Youth in Marine Piracy: Causes, Consequences and the Way Forward,” Dalhousie Marine Piracy Project, December, 2012, pp. 2-17 <<http://www.childsoldiers.org/wp-content/uploads/2014/02/Children-and-Youth-in-Marine-Piracy-RDCSI.pdf>> accessed 27 July 2015.

²⁷) Miles G. Kellerman, “Somali Piracy: Causes and Consequences,” *Student Pulse*, Vol. 3, No. 09, 2011

delve into the historical development of the crime.²⁹ Nevertheless, there is a consensus among writers that the extant legal regime of piracy is limited, which creates a lot of challenges in the suppression of the crime.³⁰ This research is a novel idea that attempts to tackle the issue of piracy in Nigeria through the instrumentality of PSC, while advocating for the expansion of the definition of the crime under international law regime to adequately reflect the contemporary piracy model.

Against this backdrop, Kempe, in his view, regards piratical acts as a form of private maritime violence, which in its legal form is privateering and

<<http://www.studentpulse.com/articles/579/somali-piracy-causes-and-consequences>>

accessed 27 July 2015, and Gary E. Weir, "Fish, Family, and Profit: Piracy and the Horn of Africa," in Elleman Bruce A., *et al*, (eds.), *supra* note 25, pp. 207-222.

²⁸) Charles W. Koburger, "Selamat Datang, Kapitan: Post-World War II Piracy in the South China Sea," in Elleman Bruce, *et al*, (eds.), *ibid*, pp. 65-78; Sam Bateman, "Confronting Maritime Crime in Southeast Asian Waters: Reexamining "Piracy" in the Twenty-First Century," in Elleman Bruce A., *et al*, (eds.), *ibid*, pp. 137-153 and Elleman Bruce A., "The Looting and Rape of Vietnamese," Elleman Bruce A., *et al*, (eds.), *ibid*, pp. 97-108.

²⁹) A.P. Rubin, *supra* note 25, Wombwell, "The Long War against Piracy: Historical Trends," Occasional Paper 32, Combat Studies Institute Press, US Army Combined Arms Center Fort Leavenworth, Kansas, 2010

<http://usacac.army.mil/cac2/cgsc/carl/download/csipubs/OP32_Piracy.pdf> accessed 27 July 2015 and Elwaleed A Talha, "Political and Economic Impact of Somali Piracy During the Period (1991-2012)" Graduate School of Public Policy, The University of Tokyo, Research Paper, International political Economy Case Study, July, 2013

<http://www.pp.u-tokyo.ac.jp/courses/2013/documents/5140143_9a.pdf> accessed 27 July 2015.

³⁰) K. K. Anele & Y. Lee, *supra* note 4, pp. 23-61; Elena Zinovieva, *et al*, "International Cooperation on Combatting Maritime Piracy," International Cooperation in Criminal Matters, THEMIS Competition, Semi-Final A, 7-10 April, 2015, pp. 2-6

<http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_Bulgaria_1.pdf> accessed 17 July 2015; Kees Thompson, "Ending the "Catch and Release" Game: Enhancing International Efforts to Prosecute Somali Pirates under Universal Jurisdiction," a Senior Thesis presented to the Faculty of the Woodrow Wilson School of Public International Affairs in partial fulfillment for the degree of Bachelor of Arts, 3, April, 2013, p. 9 <<http://nationalstrategicnarrative.org/wp-content/uploads/2013/07/Kees-Thompson-Senior-Thesis.pdf>> accessed 15 July 2015; and Pieter Brits & Michelle Nel, "What Piracy did for Good Order at Sea: A Perspective on Lessons Learned," pp. 3-5 <http://www0.sun.ac.za/milscience/images/stories/lecturers/sciencetech/Draft_papers/britsnel_maritime%20jurisdiction%20reviewed%207%20sept.pdf> accessed 15 July 2015.

in its illegal form is piracy.³¹ In relation to this position, this dissertation adopts it and further reiterates the fact that it implicates a reconstruction of the key aspects of the global expansion of piracy as an accompanying characteristic of countries' quest to broaden their jurisdiction, this time, on the sea. Besides, it buttresses an evolving modern international legal order in maritime affairs, occasioned by the problem of the ocean as a fragmented space of competing legal strategies.³² Kempe further elucidates the inconsistency in the nature, root causes, and solution to piracy *vis a vis* international law, thus:

the menaces of state sponsored privateering, and the use of the principle of universal jurisdiction over piracy as a tool for advancing political interests or imperial expansion. This could lead to the conclusion that the legal treatment of piracy reveals the inevitable corruptibility of modern international law. However, some of the examples...have also shown the potential of international law to resist its instrumentalization as an excuse for political action. In the light of the shifting legal discourse on piracy, therefore, international law cannot be identified as a mere instrument of politics, either to justify or to outlaw private maritime violence. Under certain circumstances, international law was able to express its claim to autonomy, and to attempt to resist efforts to reduce its status to that of a tool for the legitimization of political interests. Thus, the early modern development of the legal treatment of piracy in interstate affairs reflects the inconsistency of modern international law, fluctuating between the two poles of its abuse by non-legal interests on the one hand and its independence as a normative

³¹) Michael Kempe, "'Even in the Remotest Corners of the World': Globalized Piracy and International Law, 1500-1900," (2010) *Journal of Global History*, Vol. 5, Iss. 3, p. 355.

³²) *Ibid*, p. 371.

authority on the other hand. This indissoluble tension is an inherent part of the ambivalent structure of international law. It should be kept in mind when managing contemporary problems of international maritime affairs.³³

The above statement supports the argument that piracy has been a historical tool used by countries in furtherance of their selfish political and economic ends. It was tagged profiteering, passed through the process of commissioning through letters of marque issued by governments when it served the interest of a country. On the other hand, it becomes piracy when it works against the interest of government and international law was sometimes used to achieve this parochial goal, exposing the use of legalism to justify political action that cannot be justified either by law or politic policy.³⁴

Rubin in his cerebral book, *The Law of Piracy*, extensively projected the historical development of piracy, tracing its nature in the ancient, renaissance and modern municipal and international law.³⁵ He opines that piracy is linked to "... unrecognized rebels, naval vessels acting beyond their authority, naval vessels acting within their national commissions to interfere with peaceful commerce in ways the international legal order will not tolerate."³⁶ Rubin further derides the double standard that existed among the wealthy nations, who use the word "piratical" as an adjective to describe foreign government action, then turn the adjective into noun in order to assert enforcement jurisdiction to suit their parochial agenda.³⁷ I agree with Rubin on the double standard that heralded the historical development of piracy.

³³) *Ibid*, pp. 371-372.

³⁴) A.P Rubin, *supra* note 25, pp. xiii-xiv.

³⁵) *Ibid*.

³⁶) See generally A.P. Rubin, *ibid*.

³⁷) A.P Rubin, *ibid*, p. 339. K.H. Govern, *supra* note 21, p. 4, where it was stated that Britain clamped down on pirates, at the same time enlist them as privateers to help the country fight their wars by raiding enemy vessels.

However, it must be noted that contemporary piracy has been hijacked by insurgents, terrorists, transnational organised criminals, armed bandits and the likes, without the support of government. This is done most times to score a cheap political, including religious, point with jaundiced economic gain.

Elleman, *et al*, conclude that piracy has a firm historical and cultural roots, whether high-value sea robbery by organised criminal group or low-value petty theft by impoverished seafarers due to changing economic conditions, like poverty, industrialisation and urbanisation; and political conditions, such as government's legitimacy and ability to maintain law and other.³⁸ Further, according to these writers, pirates have most often operated from small islands or archipelagoes immediately adjacent to major shipping lanes; and indeed, they may originally have been legitimate members of local maritime communities, who value the geographic importance of access to ports, straits, and the sea lines of communication through them.³⁹ Moreover, piracy thrives in the waters off land areas that lack law and other, as well as the absence of policing and proper surveillance of coastline. In addition, pirates operate where there is economic or political anomie, especially, areas prone to civil war or insurgency.⁴⁰ These poignant points suggest that piracy essentially takes place or emanates from the territorial waters of a coastal state. Evidently, piracy depicts an extension of the chaos on land to the seaward territory of a riparian state.⁴¹

³⁸) Bruce A. Elleman, *et al*, *supra* note 25, p. 223.

³⁹) *Ibid*, p. 225.

⁴⁰) *Ibid*, p. 223.

⁴¹) Ursula Daxecker & Brandon Prins, "Insurgent of the Sea: Institutional and Economic Opportunities for Maritime Piracy," (2012) *Journal of Conflict Resolution*, p. 4. Uadiale observes that many of the drivers of maritime insecurity are to be found onshore. Consequent upon that, efforts to address such insecurity must begin onshore. Martin Uadiale, "Issues of Maritime (In)Security" Center for Transnational Relations, Atlantic Basin Working Paper p. 4
<http://transatlanticrelations.org/sites/default/files/ABI_Human_Security_Working_Paper

Bento acknowledges that modern pirate differs from its historical counterpart in that a contemporary pirate has adapted to modern technical, political, economic and social developments, which makes him considerably more sophisticated than their counterparts of yesteryear.⁴² I concur with Bento that many of today's pirates are technologically savvy individuals who strategically plan each attack with the help of publicly available information about their target and they often carry satellite phones, global positioning systems (GPS), automatic weapons, and antitank missiles in perpetuating their illegal acts. The GPS assist them in tracking down the vessel that will be hijacked and to attain a certain level of precision in their attacks.⁴³ Bento further identifies the limitations in using the present legal regime to suppress piracy and suggests the adoption of the definition of piracy by International Maritime Bureau (IMB) as a stepping-stone towards establishing a specialised body of international piracy law that envelopes the crime's particular nature, while also addressing the problematic bifurcation between territorial waters and the high seas.⁴⁴ This research argues that there is need to adopt a piracy definition that accommodates both the territorial waters and

[Uadiale.pdf](#)> accessed 24 July 2015. In discussing piracy in Indonesia, Kurniawan opines that "Though well intentioned, people have misunderstood that the issue of armed robbery against ships at sea is a purely maritime issue. This misunderstanding needs to be addressed. In Indonesia's experience, most armed robberies against ships are planned on land and goods stolen are generally sold or traded on land. Moreover, the pirates maintain a land base for their operations. Security problems in national territories, such as rebel forces, freedom fighters or paramilitaries can provoke chronic piracy and other criminal acts at sea." Rama A. Kurniawan, "Piracy an Extension of Somalia's Lawless Land," *Jakarta Post*, 17 December, 2008

<<http://www.thejakartapost.com/news/2008/12/17/piracy-extension-somalia039s-lawless-land.html>> accessed 24 July 2015.

⁴²) Lucas Bento, "Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish," (2011) *Berkeley Journal of International Law*, Vol. 29, Iss. 2, p. 405.

⁴³) *Ibid*, pp. 405-406.

⁴⁴) *Ibid*, pp. 416-424.

high sea conditions. More importantly, Bento is of the view that due to the new nature of modern piracy, it requires new means for its suppression.⁴⁵

Zou and Wu's understanding of contemporary piracy is that the present legal regime is restrictive,⁴⁶ which manifests in the number of successful piratical attacks on vessels, exposing the inadequacy to effectively tackle the maritime crime. The problems associated with the present legal regime for piracy would have been averted if the suggestion of the International Law Association (ILA) was accepted. Prior to the United Nations Convention for Law of the Sea (UNCLOS) III in 1970, the ILA suggested that piracy should be defined as: "unlawful seizure or taking control of a vessel through violence, threats of violence, surprise, fraud or other means," but it was rejected.⁴⁷

Zuo concurs with the view that piracy historically was a domestic crime punished under national legislations but later became an international crime since it threatens international maritime trade and transportation.⁴⁸ He went further to opine that the extant legal regime of piracy under international law is inherently flawed, which is not surprising since piracy was not an issue on the agenda when the LOSC was drafted.⁴⁹ Zuo concludes by stating that despite the fact that "piracy committed within national waters is subject to punishment in accordance with relevant domestic penal codes, the current definition provided by IMO and contained in the ReCAAP obviously applies to such piratical acts. This also can be seen through the

⁴⁵) *Ibid*, p. 406.

⁴⁶) K. Zou & S. Wu, *supra*, note 25, p. 139.

⁴⁷) *Ibid*.

⁴⁸) Keyuan Zou, "New Developments in the International Law of the Piracy," (2009) *Chinese Journal of International Law*, Vol. 8, No. 2, pp. 323-324.

⁴⁹) *Ibid*, p. 324.

resolutions adopted by the United Nations Security Council...on the suppression of Somali piracy.”⁵⁰

On his part, Wolfrum accepts the fact that there are existing challenges in piracy governance under the LOSC, particularly, on the issue of geographical limitation; but argues that “justifications for appropriate counter-action do exist. A warship witnessing an attack against a merchant ship in the coastal waters of another State carried out by a private ship may intervene under its obligation to render assistance to persons in distress.”⁵¹ This view conforms to the expansive interpretation of the LOSC which is intended to cover distress as the consequence of natural disaster or collision at sea.⁵² It is imperative to point out that, the possibility of its application is dim. Nonetheless, the philosophy behind this extended interpretation is to reflect the existence of a general obligation to safeguard human life at sea and in this respect, it is applicable here.⁵³ Such intervention in the territorial waters of a coastal state could be lawful if the intervention is done at the instance of the vessel in distress. Wolfrum further mutes the idea that under international law, rescue action, though limited in application, may be taken by a warship to assist a vessel under attack in the territorial waters of another state under the principle of humanitarian intervention.⁵⁴ This research agrees that there is an opportunity for the extension of geographical location of piracy, especially on humanitarian grounds.

⁵⁰) *Ibid*, p. 329.

⁵¹) Rudiger Wolfrum, “Fighting Terrorism at Sea: Options and Limitations under International Law,” p. 4
<https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/doherty_lecture_130406_eng.pdf> accessed 7 August 2015.

⁵²) See the LOSC, article 98 for circumstances in which a war ship can enter the territorial waters of a coastal state.

⁵³) R. Wolfrum, *supra* note 51.

⁵⁴) *Ibid*.

Lanham agrees that the constraints imposed by the current definition of piracy are manifold, a reflection of the historical nature of the crime and the particularity of state interests it advances.⁵⁵ Nevertheless, he concludes by recognising that a far greater range of threats to maritime security exist than are contemplated by the current definition of piracy and that those threats should not be disregarded or ignored by international law.⁵⁶ Although the United Nations Security Council⁵⁷ has expanded the definition of piracy, Lanham posits that “rather than unduly expanding the notion of piracy to achieve the...goals of preventing and prosecuting acts of terrorism or aggression on the high seas or piratical acts occurring within domestic waters, appropriate...treaty...ought to be established. Such laws would complement the specificity of the offence of piracy and ensure maritime security.”⁵⁸ I strongly believe that the complementary legislations Lanham is referring to are already in existence. They include Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988;⁵⁹ the International Convention against Taking of Hostage, 1979;⁶⁰ the International Convention for the Suppression of the Financing of Terrorism, 1999;⁶¹ and the United Nations Convention against Transnational Organised

⁵⁵) Honor Lanham, “Walk the Plank: Somali Pirates and International Law,” a Dissertation Submitted in (partial) Fulfilment of the Degree of Bachelor of Laws (With Honours) at the University of Otago, October 2009, p. 28.

⁵⁶) *Ibid.*

⁵⁷) The United Nations Security Council, hereafter referred to as “UNSC.” This it has done through its resolutions.

⁵⁸) H. Lanham, *supra* note 55.

⁵⁹) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992) hereafter referred to as the “SUA Convention.”

⁶⁰) Convention against the Taking of Hostages, adopted 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983), hereafter referred to as the “Hostage Convention.”

⁶¹) International Convention for the Suppression of the Financing of Terrorism, adopted 9 December 1999, 2178 UNTS 229 (entered into force 10 April 2002).

Crime, 2000.⁶² Nonetheless, they played an insignificant role in suppressing piracy off the coast of Somalia. On the other hand, the success recorded in reducing piracy off Somali waters is mainly due to the expansion of the definition of the crime to acts that occurred in the territorial waters of Somalia. This gave the joint naval forces and navies of other countries the right of visit, the right of hot pursuit and to intervene when piratical acts are perpetuated on territorial waters or when pirates retreats to territorial waters of a coastal state.⁶³

Sterio comprehends the limitations imposed on the anti-piracy efforts of countries and regional or joint military forces since contemporary piracy has gone beyond mere sea robbery.⁶⁴ He went further to advocate for the implementation and enforcement of the SUA Convention, which criminalises the acts of aiding and abetting in the commission of an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship, among others.⁶⁵ Such acts of prohibited maritime violence can take place anywhere, as long as the victim's vessel is transiting through an international lane. Again, such prohibited acts can involve only one vessel, and they can be committed for any aim, including political and state-sponsored violence.⁶⁶ Sterio reiterates the fact that the "...SUA Convention illustrates the modern-day approach to piracy and the need to broaden its definition to encompass maritime aggression and terrorism, as opposed to confining its definition to the outdated scope of sea robbery."⁶⁷ It

⁶²) United Nations Convention against Transnational Organised Crime, adopted 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003) hereafter referred to as the "Palermo Convention."

⁶³) Milena Sterio, "Piracy off the Coast of Somalia," (2012) *Amsterdam Law Forum*, Vol. 4, No. 2, p. 108.

⁶⁴) *Ibid*, p. 110.

⁶⁵) The SUA Convention, article 3.

⁶⁶) M. Sterio, *supra* note 63, p. 110.

⁶⁷) Milena Sterio, "The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution," (2010) *American University Law Review*, Vol. 59, No. 5, p. 1462.

is argued that this position has the support of the UNSC, which has repeatedly enjoined member states of this convention to fully implement it and to rely on it extensively when fighting Somali pirates.⁶⁸

De Montclos observes that piracy in Nigeria has been a historical event.⁶⁹ According to him, the historical development of piracy acts on Nigerian waters is traceable to pirates who ambushed passing vessels in places like the Cawthron Channel near Bonny, between the sea and the river, during the slave trade era.⁷⁰ This historical fact confirms this writer's position that piracy cannot be easily divorced from criminal activities on the territorial waters of a coastal state. Montclos also opines that there has been a paradigm shift in terms of geography, method, weapons and other gargets used, targets, root causes and effects of piracy in Nigeria.⁷¹

Charlebois, on the history of piracy in Nigeria, argues that there have been two distinct phases of piracy off Nigeria.⁷² Phase one coincided with the oil boom in Nigeria in the 1960s, when small groups based in Lagos, the country's biggest port city, began to prey on the commercial shipping traffic carrying construction supplies to the region, and the second phase kick-started mid-1990s following the government's latest round of oil licensing in 1990 which has continued to exist till date.⁷³

⁶⁸) See the UNSC Resolution 1897 (2009) UN Doc S/RES/1897, hereafter referred to as the "UNSCR 1897," para. 14; the UNSC Resolution 1851 (2008) UN Doc S/RES/1851, hereafter referred to the "UNSCR 1851," para. 5; and the UNSC Resolution 1846 (2008) UN Doc S/RES/1846, hereafter referred to as the "UNSCR 1846," para. 15.

⁶⁹) P.M. De Montclos, *supra* note 15, p. 532.

⁷⁰) *Ibid.*

⁷¹) *Ibid.*, pp. 533-535.

⁷²) Jamies Charlebois, "Pirate Economics: The Economic Causes and Consequences of Contemporary Maritime Piracy in Sub-Saharan Africa," submitted in partial fulfilment of the requirements for the Degree of Master of Development Economics, Dalhousie University Halifax, Nova Scotia, August, 2012, p. 24 <<http://dalspace.library.dal.ca:8080/xmlui/bitstream/handle/10222/15429/Charlebois%2c%20Jamie%2c%20MDE%2c%20ECON%2c%20August%202012.pdf?sequence=1&isAllowed=y>> accessed 27 July 2015.

⁷³) *Ibid.*, pp. 24-25.

In his opinion, Uadiale argues that the increased maritime piratical attacks in Africa, particularly off Nigeria, are facilitated by the consequential failure of the state to implement its social responsibilities.⁷⁴ In furtherance of this stance, he opines that African states are either failed, failing or weak, and they are lagging behind in terms of security as well as securing their coastlines, good governance, maintenance of law and order, infrastructural development, among other things.⁷⁵ Due to the dereliction of duty, African countries are susceptible to the menace of maritime piracy. This may also be caused by internal or external conflicts, ineffective government, or state collapse and such “States lack indigenous and local development strategies and demonstrate inadequate leadership and fragile governance... Weak States represent yet a third category, and are those at the risk of failing.”⁷⁶ This dissertation contends that this stance aptly describes the situation in Nigeria in which absence of good governance, corruption, weak maritime and petroleum regulatory institutions, and compromised security agencies, have paved way for the spate of piracy in the country.

Hansen in the book titled, *Piracy in the Greater Gulf of Aden: Myths, Misconception and Remedies*, a concise report on piracy in Somalia, opines that piracy is rife due to its economic importance and the fact that the legal regime is flawed.⁷⁷ The report states that piracy emerges as a result of a balance between expected gains from piracy and expected losses from working as pirates, as perceived by the potential pirates.⁷⁸ Fundamentally, it is alleged that “people engage in piracy because they benefit more from it than from other alternative activities; either because there are no alternatives

⁷⁴) Martin Uadiale, “The Security Implication of Sea Piracy and Maritime Insecurity in Contemporary African Economy,” (2012) International Journal of Economic Development Research and Investment, Vol. 3, No. 3, p. 49.

⁷⁵) *Ibid.*

⁷⁶) *Ibid.*

⁷⁷) J.S. Hansen, *supra* note, 25, p. 7.

⁷⁸) *Ibid.*

(for example due to a lack of work opportunities), or because the benefits that can be achieved by piracy are so great that it draws recruits away from other relatively good jobs.”⁷⁹ This view captures the nature of Nigerian pirates, who are Niger Delta militants trying their hands on piracy and other lucrative and purportedly safe but illegal rackets that could fetch a lot of money for them with minimum risk. In other words, the pecuniary gains lure people into piracy.

Further, it is argued that piracy is less risky in terms of legal governance since the state maritime regulatory institutions and security agencies are weak, coupled with none existent or inadequate domestic legislation.⁸⁰ Another finding by the report is that pirates “are decentralised and they are a product of the lack or decline of local institutions rather than the lack of a state. Although the two are correlated, they are not the same,”⁸¹ which is trite in Somalia, where absence of the central government was at the epicenter of piracy in the country. All the same, in Nigeria, maritime regulatory institutions and security agencies relevant in curbing piracy off the country are under the aegis of the central government. Thus, the inability of these institutions and agencies to effectively regulate activities in the relevant sectors is key to the plethora of piracy acts off Nigeria. In view of that, the Nigerian government’s lack of political will to suppress piracy encourages the crime in the country.

Liss observes that piracy has a long history and has re-emerged as a security threat in the contemporary period, especially in Nigerian waters as well as waters off the coast of Somalia, Indonesia, among others.⁸²

⁷⁹) *Ibid.*

⁸⁰) *Ibid.*

⁸¹) *Ibid*, p. 62.

⁸²) Carolin Liss, ‘Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses,’ Peace Research Institute Frankfurt (PRIF) Report No. 125, 2014, p. 2.

Accordingly, piracy is a characteristic "...and reflection of a number of geo-political and socio-economic problems and security concerns, including declining fish stocks, the lack of state control over national territory, problems in relations and cooperation between countries, and existence of radical politically motivated groups and organised crime networks."⁸³ This observation accurately describes most of the root causes of piracy in Nigeria, and other pirate hotspot areas which, therefore, provides an insight on how to effectively suppress the crime in these countries.

Prinsloo, in his thesis, *African Pirates in the 21st Century: A Comparative Analysis of Maritime Piracy in Somalia and Nigeria*, holds the view that pirates are no longer small gangs operating independently.⁸⁴ Accordingly, the vast network of pirate organisations which include numerous actors who are involved in the actual piratical attacks can be divided into three groups. First are the local fishermen whose knowledge of the terrain and seafaring capabilities are useful; second, the ex-militiamen who can be viewed as "the muscle" behind the attacks, with their knowledge of firearms and tactics which are useful during attacks and, lastly, those who are responsible for operating the high-tech navigation and communication equipment used.⁸⁵ In as much as this writer agrees with the summation of Prinsloo, there is a *lacuna* in this line of thought: the absence of facilitators and sponsors of pirates who work behind the scene. On that account, it is argued that these piracy sponsors and facilitators include government officials, security agencies, employees of multi-national oil companies and heads of transnational criminal organisations.

⁸³) *Ibid.*

⁸⁴) Cyril Prinsloo, "African Pirates in the 21st Century: A Comparative Analysis of Maritime Piracy in Somalia and Nigeria," Thesis presented in partial fulfillment of the requirements for the degree of Masters of Arts (International Studies) at Stellenbosch University, March, 2012, p. 25.

⁸⁵) *Ibid.*

In their view, Daxecker and Prins assert that although piracy is implemented at sea, it begins and ends on land.⁸⁶ So, it is indubitable that access to a state is essential to piratical operations because pirates need sanctuaries on land to plan attacks, protect themselves from capture, conduct ransom operations and dispose of their loot or launder the ransom money. Permissive political, legal and institutional environments, such as weak or failed states, are more likely to experience piracy because they create an enabling environment in which piracy can flourish.⁸⁷ Daxecker and Prins accurately describe the factors and the environment in which piracy thrives, a peculiar circumstance in Nigeria, thus:

While weak states can provide basic services such as transportation infrastructures and commodity markets, they struggle to adequately maintain them. In failed states, the government exerts little control over its territory and fails to provide public goods to its citizens. Pirates must have access to shores and anchorages to load and unload their cargo and conduct ransom negotiations. Consequently, piracy flourishes in areas with poorly guarded ports and underpaid security personnel, and such individuals are likely to conspire with pirates for compensation. Weak and failed states thus provide pirate operations with access to sanctuaries and markets necessary to operate. Without access to bases and markets on land, pirates face difficulty in protecting themselves from capture and disposing of their loot. In fact, the research argues that piracy is a land-based activity that is implemented at sea.⁸⁸

⁸⁶) U. Daxecker & B. Prins, supra note 41.

⁸⁷) Weak states are states in which corruption, crime, and other social problems are rampant. *Ibid.*

⁸⁸) *Ibid.*, pp. 4-5.

1.6 Conclusion

The import of Chapter 1 is to clearly streamline the background information regarding the research which culminated to the problem statement as well as the research questions. Again, the objectives of the research were further highlighted and the method of conducting the research was included in this chapter. The literature review brought to the fore the various opinions and positions of writers on the piracy conundrum. It is evident from the opinions of writers that modern piracy requires an expansive legal regime considering the fact that it has differing nature and regularly occurs in waters that are not well policed and monitored. Thus, failed states, failing states as well as countries with compromised maritime regulatory and security agencies are easily exposed to piracy acts.



CHAPTER 2

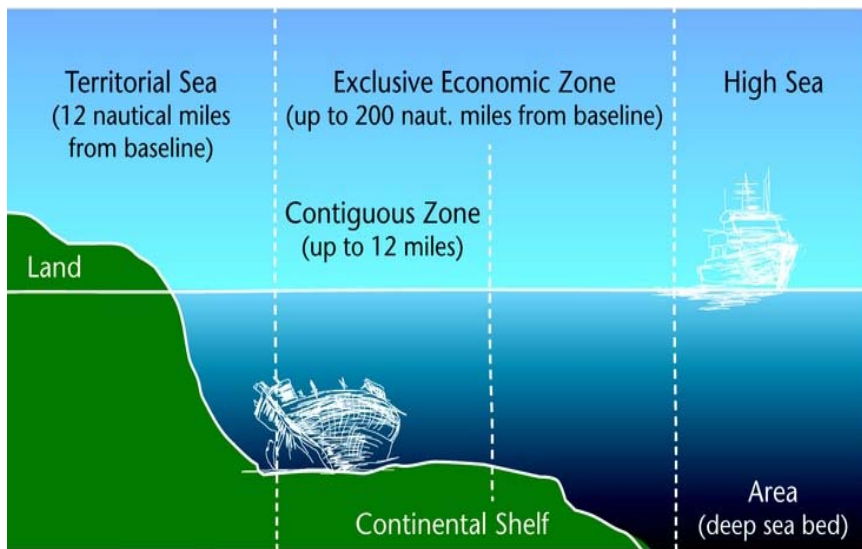
OVERVIEW OF PIRACY AND PORT STATE CONTROL

2.1 Introduction

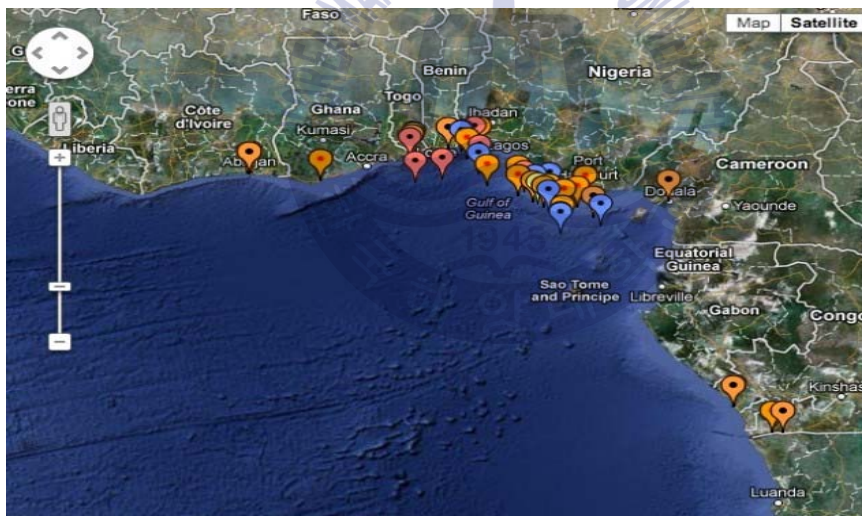
Chapter 2 of this research delves into the conceptual clarifications of the concept of piracy, *to wit*, the definitions, nature, features and scope, with a view to identifying the legal limitations in the present legal governance of the crime. This chapter robustly examines the definition of piracy under the existing legal regime in accordance with international law and argues that it is limited which could affect the suppression of the crime in Nigeria. In furtherance of the argument, the paper made a case for the review of the definition of piracy to reflect the nature of contemporary piracy acts. Furthermore, the overview of the concept of PSC is discussed in the chapter, highlighting the factors that led to its introduction and the various attempts to update its provisions to capture the existing circumstances in the maritime industry. In all, this chapter brings to the fore the meaning, nature, scope and features of these concepts with a view to determining subsequently the interface between PSC and piracy and how the former can be used to suppress the latter.

2.2 Overview of piracy

Map 1: Maritime zones⁸⁹



Map 2: Gulf of Guinea piracy map⁹⁰



⁸⁹) Cullled from Herbert Anyiam, "The Legalities of Gulf of Guinea maritime Crime with Suggested Solutions," Center for International Maritime Security (CIMSEC), 17 July, 2014 <<http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783>> accessed 27 July 2015.

⁹⁰) See Piracy Map 2013 <<http://www.permanan.org/piracy-map-2013/>> accessed 31 January 2015.

Table 1: The number of (actual & attempted) global piracy acts

(2009-June 2015) (Table created by the Author)

(IMB Piracy Report for 2013, IMB Piracy Report for 2014 and IMB Piracy Report for 2015)⁹¹

Countries	2009	2010	2011	2012	2013	2014	Jan-June 2015
Nigeria	29	19	10	27	31	18	11
Somalia	80	139	160	49	7	3	
Indonesia	15	40	46	81	106	100	54
Bangladesh	18	23	10	11	12	21	11
Columbia	5	3	4	5	7	2	2

Table 2: The number of (actual & attempted) piracy acts off Nigeria

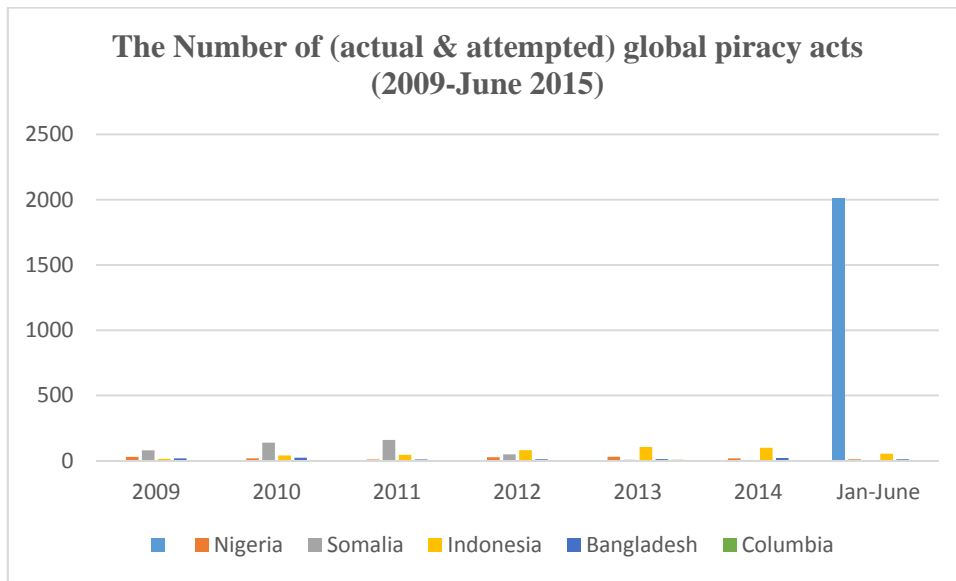
(2009-June 2015)

(Table created by the Author from Table 1)

Country	2009	2010	2011	2012	2013	2014	Jan-June 2015
Nigeria	29	19	10	27	31	18	11

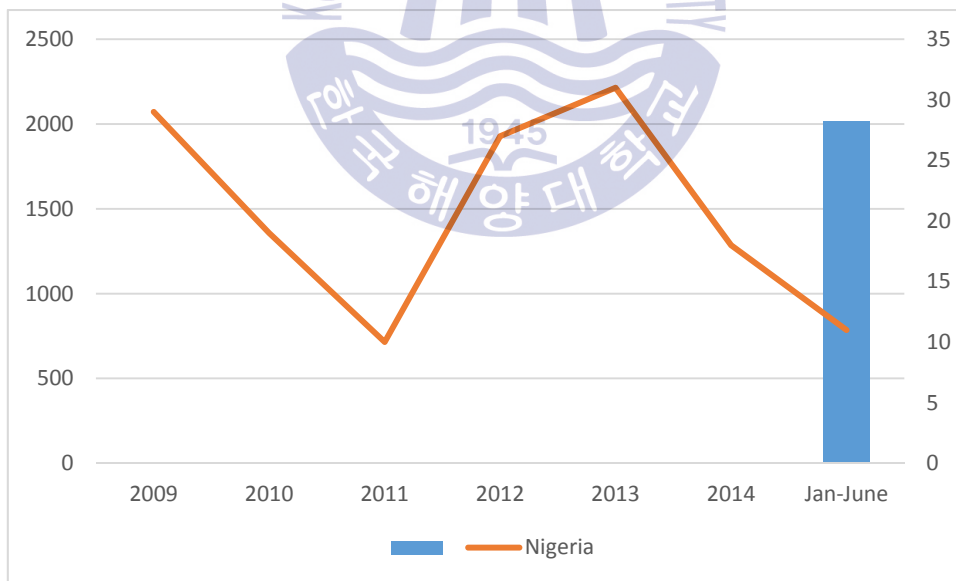
⁹¹) ICC IMB, "Piracy and Armed Robbery against Ships: Report for the Period 1 January-31December, 2013," January, 2014, hereafter referred to as the "IMB Piracy Report for 2013," p. 5; ICC IMB, "Piracy and Armed Robbery against Ships: Report for the Period 1 January-31December, 2014," January, 2015, hereafter referred to as the "IMB Piracy Report for 2014," p. 5 and IMB Piracy Report for 2015, p. 5.

Chart 1 (Chart created by the Author from Table 1)



The number of (actual & attempted) piracy acts off Nigeria (2009-Jan-June 2015)

Graph 1 (Graph created by the Author from Table1)



2.3 Definition of piracy

The definition of the term piracy is fluid and it has elicited a lot of controversies. In her view, Twyman-Ghoshal observes that the definition of “...piracy has changed over time and varies depending on context.”⁹² As a consequence, it is argued that the development of the concept has captured the amalgam of economics and politics of the day, reflected by the separation of pirates from buccaneers, privateers, including those in possession of letters of marque, on one side, and the common criminals and those who engage in petty theft on vessels, on the flip side.⁹³ More so, politics has played a key role in shaping the nature of piracy, particularly in countries that have been embroiled in internal strife, war and, more significantly, riparian states that lack the facilities and effective maritime regulatory and security agencies to police and monitor activities along their waters.⁹⁴

The courts are not spared in the polemics of arguments regarding the meaning of piracy,⁹⁵ exposing the multitudinous perceptions that the definition of the crime may evince in courtrooms around the world when piratical activities are brought before domestic courts.⁹⁶ In describing certain aspects of piracy, Stribis opines that a survey of international digests manifests the different perceptions relating to the definition of piracy, with

⁹²) Anamika A Twyman-Ghoshal, “Understanding Contemporary Maritime Piracy,” a Dissertation presented at the School of Criminology and Criminal Justice, in partial fulfillment of the requirements for the degree of Doctor of Philosophy, in the field of Criminology and Justice policy, Northeastern University Boston, Massachusetts, November, 2012, p. 13.

⁹³) *Ibid.*

⁹⁴) *Ibid.*

⁹⁵) See the oral argument in the United States case of *Kiobel v Royal Dutch Petroleum*, No. 10-1497, 1 October, 2-012, Transcript, 26, cited in Ioannis Stribis, “Who is a Pirate? On Customary International Law and Jurisdiction in Domestic Courts,” in Andreone Gemma., *et al*, (eds.) *Insecurity at Sea: Piracy and other Risks to Navigation* (Giannini Editore: 2013) p. 17. See also the opposing decisions in the cases of *US v Said, et al*, 757 F. Supp. 2d 554 (E.D. Va. 2010) and *US v Hasan, et al*, 757 F. Supp. 2d 599 (E.D. Va. 2010) and the latter decision in *Dire v US* (12-6529).

⁹⁶) See I. Stribis, *ibid.*

the conclusion that almost every activity occurring at sea can be or has already been regarded as piracy.⁹⁷ In other words, acts ranging “from unauthorised broadcasting from vessels on the high seas to sinking of merchant vessels by submarines, to terrorist acts or interdiction on the high seas of vessels suspected of transporting weapons of mass destruction or parts thereof to environmental activism on the high seas ... or attacks against offshore constructions.”⁹⁸

However, under the extant legal regime, the LOSC has defined piracy as:

- a) any illegal acts of violence, detention, or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - i. on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii. against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁹⁹

Before a comprehensive analysis of the above international law definition of piracy, it is imperative to state that the mindset of the drafters of the LOSC and the circumstances surrounding the drafting of the convention was predisposed to other maritime issues, but piracy.¹⁰⁰ In other words, the provisions of the LOSC conclusively demonstrate that the focus of the

⁹⁷) *Ibid.*

⁹⁸) *Ibid.*

⁹⁹) The LOSC, article 101.

¹⁰⁰) A.A. Twyman-Ghoshal, *supra* note 92, p. 17.

convention was not piracy. Evidently, the concern during the drafting of the convention was the redistribution of resources to the new nations that emerged due to the end of colonisation and, at the same time, ensuring freedom of navigation for more established fleets.¹⁰¹ As a matter of fact, a perusal of the LOSC shows that although there are 327 articles in the convention, only seven deal with piracy. This can be attributed to the fact that at the time of drafting the convention, piracy was no longer regarded as a serious global threat. Thus, instead of piracy, the focus was effectively placed on issues of sovereignty, which explains “why they failed to set any requirements for nations to legislate comparable domestic legislation on piracy and neglected to require any form of cooperation between nations when dealing with maritime predation.”¹⁰² This research concurs with the arguments of these writers that piracy was not considered as a significant threat to the world during the drafting of the LOSC which led to the dearth of clarity in the interpretation of the convention regarding the meaning of the crime.

As a corollary to the above, Tepp is of the opinion that the LOSC definition is too limited to comprehend the full range of contemporary piracy, essentially due to the fact that more than three decades ago its drafters regarded piracy as an obsolete eighteenth-century phenomenon rather than a current and very real danger.¹⁰³ Consequently, the oversight has created a legislation that neither defines an international crime on which prosecutions

¹⁰¹) *Ibid.* A cursory look at Barnes, *et al*, summary of the content of the LOSC shows that little or no attention has been given to the issue of piracy. Richard Barnes, *et al*, “The Law of the Sea: Progress and Prospect,” in David Freestone, *et al*, (eds.) *The Law of the Sea* (Oxford University Press: New York 2006) pp. 1-27.

¹⁰²) R. Barnes, *et al*, *ibid.*

¹⁰³) Eero Tepp, “The Gulf of Guinea: Military and Non-Military Ways of Combating Piracy,” (2012) *Baltic Security and Defence*, Vol. 14, Iss. 1, pp. 184-185.

can be based nor is intended to vest countries with the necessary jurisdiction to enforce or to adjudicate.¹⁰⁴

On the issue of private end provision, Constantinople states that the drafters of the Harvard Draft gave no attention to acts of violence committed on the high seas for public ends, and as a result, they ignored the possible threat posed by organised insurgents, national liberation organisations and their splinter groups, informal groups and isolated individuals in attacking and seizing ships on the high seas.¹⁰⁵ It is argued that that the interface between the Niger Delta militant and pirates off Nigeria buttresses the fact that the private end condition limits the meaning of piracy with its attendant implication in suppressing the crime off the country's waters.

From the foregoing, it is important to argue that there is a thin line between private and political ends. Unlike pirates in the olden days whose only job was to hijack and steal from a vessel, contemporary pirates are essentially circumstantial in nature: a means to an end. Lending credence to this assertion, Zuo argues that one of the limitations of the definition of piracy under international law is that, under contemporary piracy, "the criterion for "private ends" is blurred by terrorist attacks which usually carry some political and public purposes."¹⁰⁶ For illustrative purposes, Somali pirates are seen as jobless fishermen who, as a result of the absence of an effective central government, were trying to end IUU fishing in their territorial waters. This act escalated into the present day piracy in the Gulf of Aden and the Indian Ocean.¹⁰⁷

¹⁰⁴) *Ibid*, p. 185.

¹⁰⁵) George Constantinople, "Towards a New Definition of Piracy: The Achille Lauro Incident," (1986) *Virginia Journal of International Law*, Vol. 26, p. 752.

¹⁰⁶) K. Zou, *supra* note 48, p. 328.

¹⁰⁷) There is a link between Somali pirates and terrorist group, al-Shabaab, which has blurred the international law condition that piracy must be for only personal interest. See

Moreover, the Indonesian pirates emerged as a political group, known as the Gerakan Aceh Merdeka (GAM), who are fighting to break off from Jakarta and set up an independent state and piracy provides a means of financing their alleged political course.¹⁰⁸ Lastly in Nigeria, due to perceived marginalisation from controlling the resources in the Niger Delta region, environmental degradation of the oil producing areas, and lack of infrastructural development in the Niger Delta communities, the Niger Delta youths violently opposed the continuous neglect of the region. This led to insurgency whereby the Niger Delta youths diverted their grievances to kidnapping, vandalising onshore and offshore oil installations, and hijacking and stealing crude oil from tankers which culminated in piracy off Nigeria.¹⁰⁹

“Counterpiracy under International Law,” Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing No. 1, 2012, p. 8.

¹⁰⁸) Some piratical acts are politically motivated. A concise illustration is the fact that the Indonesian authorities blame most of the piratical attacks in that region on the Free Aceh Movement also known as GAM which is seeking to break off from Jakarta and set up an independent state. GAM has been fighting since 1975 for independence for the gas- and oil-rich region on the northern tip of Sumatra, about 1,100 miles northwest of Jakarta. For instance, in January 2004, gunmen believed to be affiliated with GAM hijacked a tanker, *Cherry 201*, off Aceh Province. The tanker was carrying 1,000 tons of palm oil from South Africa to Indonesia. A few weeks later the gunmen shot and killed four crewmembers when their \$10,000 ransom demand was not fully met by the ship owner. In August 2003, in the Straits of Malacca, gunmen took control of the Malaysian-flagged tanker, *Penrider*, carrying 1,000 tons of fuel oil from Singapore to Penang. The attackers, whom Malaysian police believed were affiliated with GAM, demanded a ransom of \$100,000 against the ship’s crew of nine, but later released them after the ship owner paid \$50,000. See Ali M. Koknar, “Terror on the High Seas,” *Security Management*, August 2014 <<https://sm.asisonline.org/migration/Pages/terror-high-seas.aspx>> accessed 27 July 2015. See also Nicholas Michael, *Maritime Security: An Introduction* (Elsevier: Boston 2008) p. 171.

¹⁰⁹) See generally, US Energy Information Administration (EIA), Country Analysis Brief: Nigeria, (last updated: 27 February, 2015), pp. 4-5 <http://www.eia.gov/beta/international/analysis_includes/countries_long/Nigeria/nigeria.pdf> accessed 24 July 2015. In the case of *Institute of Cetacean & Others v Sea Shepherd Conservation Society & Another*, D.C. No. 2: 11-cv-02043-RAJ, 2013, p. 4 <<http://cdn.ca9.uscourts.gov/datastore/general/2013/02/25/1235266.pdf>> accessed 7 August, 2015, The United States (US) Court of Appeal for the Ninth Circuit held that “private” in the definition of piracy under the LOSC refers to matters of personal nature that are not necessarily connected to finance. The court, citing Guilfoyle, further stated that “private ends” are those acts taken not on behalf of a state. See Douglas Guilfoyle, “Piracy off

Hence, piracy became a way to express their political grievances to the central government that have successively neglected them.

Again, it could be argued that the ‘two ships condition’ given under international law for piracy to take place is also restrictive, since most attacks these days are carried out by pirates in skiffs, boats and fishing trawlers. Sometimes piratical acts are executed by pirates who are lurking in the dark areas around ports waiting for an opportunity to attack a targeted vessel which has been left unguarded and unprotected.¹¹⁰ It is also possible for pirates to be on board a vessel, hijack and steal the cargoes and properties of the crew, change the name of the vessel or sell it to a buyer who will change the name of the vessel, a situation that has culminated to the emergence of the phantom ship concept in the maritime industry.¹¹¹

Somalia: UN Security Council Resolution 1816 and IMO Regional Counterpiracy Efforts,” (2008) *International & Comparative Law Quarterly*, Vol. 57, p. 693. See also Douglas Guilfoyle, “Counter-Piracy Law Enforcement and Human Rights,” (2010) *International & Comparative Law Quarterly*, Vol. 59, p. 143. In the case of *Castle John v NV Mabeco* (1986) 77 ILR 537, the Belgian court interpreted private ends to include political ends. Contrast with the position that such expansive interpretation of the meaning of “private end” cannot be reconciled with the earlier authoritative work of the Harvard Draft Convention on Piracy and Commentary. See H. Lanham, *supra* note 55, pp. 16-17.

¹¹⁰) K. Zou, *supra* nota 48, p. 329. See also Geneva Academy, *supra* note 107, p. 14.

¹¹¹) Peter Chalk, *The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States* (RAND Corporation: Pittsburgh 2008) p. 6. According to Campbell, the concept of ‘phantom ship’ arises when a vessel is seized, repainted, renamed, and re-registered and flagged through temporary registration offices operating in numerous ports of call. Once registered, the phantom vessel seeks a shipper or shipping agent with tight deadlines for delivery of cargo, therefore facilitating a need for immediate vessel cargo space to charter. In addition, victims of phantom ship are often shippers or shipping agents saddled with letters of credit with looming expiration dates. The renamed vessel is offered as the carrier, the cargo is loaded, “an authentic-looking bill of lading to the proper destination port” issued to the shipper, and the vessel disembarks under the command of pirates posing as legitimate master and crew. The phantom ship is diverted to a different port, other than that listed on the bill of lading, the cargo is sold “(either to an existing partner or an innocent buyer),” and the vessel is again repainted, renamed, and reflagged with temporary registration. Covington Campbell, “Effecting a Sea Change: Changing Tack to Heal the Wounds of African Piracy,” 2008, pp. 15-16

<<http://earthjuris.org/wp-content/uploads/2011/05/spring2008-Campbell.pdf>> accessed 6 September 2015.

The need to clarify and expectedly extend international law restriction on the occurrence of piracy on the high sea is given fillip by the emerging trend in contemporary piracy worldwide.¹¹² Current piratical attacks have shown that such a restriction will not augur well with the fight against piracy, considering “the fact that most of the piratical acts take place within the waters of national jurisdiction in the contemporary world.”¹¹³ For example, the piratical attacks off the coast of Somalia¹¹⁴ exhibited the various inhibitions such a restricted definition tantamounts to in the fight against piracy, particularly encumbering states from exercising the right of hot pursuit of the pirate ship. To obviate this challenge, the UNSC, through its resolutions, empowered joint naval forces or states navies to enter the territorial waters of Somalia to suppress piracy.¹¹⁵

¹¹²) Piracy in South America, Asia and Africa has elaborated the changing trend of piracy from what it used to be.

¹¹³) K. Zou, *supra* note 48, p. 329.

¹¹⁴) The situation in Somalia was captured thus: “Capturing ships and holding them and their crews for ransom since the 1990s has been carried out by armed groups acting mostly in the territorial sea and claiming to protect Somalia’s fishing resources, which were in effect pillaged by foreign fishermen, and the coastal waters, which were used as a dumping ground for waste in the absence of a government able to enforce the law. Taking advantage of the continuing lack of an effective government, and not without connection with terrorist groups and with the political and armed fights going on in Somalia, pirate activity then absorbed a growing number of people – including fishermen expert in handling boats – and became ever bolder.” Tullio Treves, “Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia,” (2009) *The European Journal of International Law*, Vol. 20, No. 2, p. 400.

¹¹⁵) Consequent upon the inhibitions resulting from the restrictive nature of the definition of piracy under international law in the fight against piracy off the coast of Somalia, the UNSC, in 2008, extended the meaning of piracy to include acts committed in Somali territorial waters. See the UNSC Resolution 1816 (2008) UN Doc S/RES/1816, hereafter referred to as the “UNSCR 1816,” article 7, paras. (a & b), and the UNSCR 1846, article 10 para. (a & b), which extended the fight against piracy to Somalia territorial waters. Buttressing the fact that the expansion of the meaning of piracy is long over-due, Dillon argues that the definition of piracy under the LOSC prevents the navies or coast guards or maritime police from exercising the right of hot pursuit under article 111 of the LOSC, and by extension the right of visit under article 110 of the LOSC, while the pirates, aware of the restriction, use any country’s territorial waters to elude pursuers. Therefore, there is need to expand the definition to include acts committed in the territorial sea. Dana Dillon, “Maritime Piracy: Defining the Problem,” (2005) *SAIS Review*, Vol. XXV, No. 1, p. 160.

Reflecting on piracy in Nigeria, Pham opines that "...there were more recorded cases of attacks by pirates in the waters off Nigeria than in those off Somalia. Even in 2010, the International Maritime Bureau recorded 39 incidents off the coast of West Africa, including 19 near Lagos. There, 13 vessels were boarded, four were fired upon, and there were two attempted attacks."¹¹⁶ Map 1 above shows the demarcation between territorial waters, which is 12nm and international waters, which in this case includes the exclusive economic zone (EEZ), a distance of 200nm and the high sea. IMB yearly reports show that piracy occurs mostly in territorial waters, archipelagic waters, ports, and even in internal waters.¹¹⁷ This is further buttressed by Map 2, Tables 1 & 2, Chart 1 and Graph 1 above.

As a corollary to the above, attacks by pirates off Nigeria "...occur at night and target oil and chemical tankers that are stationary while conducting ship-to-ship transfer operations, usually at a distance of over 40 nautical miles offshore."¹¹⁸ Lending credence to this position that the provisions of the LOSC would not curb piracy is the fact that most of the attacks on merchant vessels and oil tankers are not committed on the high seas but within the jurisdiction of states, most times while the ship is berthed or anchored (see Maps 1 & 2 above). Navies of foreign countries are normally forbidden to chase pirates across national boundaries, in furtherance of the right of hot pursuit. This is of particular concern in areas like the Strait of

¹¹⁶) Peter J. Pham, "West African Piracy: Symptoms, Causes, and Responses," paper in "Global Challenge, Responses: Forging a Common Approach to Maritime Piracy," a Public-Private Counter-Piracy Conference Organised by the UAE Ministry of Foreign Affairs in association with DP World, 18-19 April, 2011, Dubai, United Arab Emirates, p. 29.

¹¹⁷) See IMB Piracy Report for 2015, pp. 18-24. See also IMB Piracy Report for 2014, pp. 23-27 and See IMB Piracy Report for 2013, pp. 22-30.

¹¹⁸) "Calming Troubled Waters: Global and Regional Strategies for Countering Piracy" paper presented by Warren Snowdon, on behalf of Stephen Smith, Minister for Defence to the Perth Counter-Piracy Conference, 16 July 2012, Australian Strategic Policy Institute (ASPI), p. 26. See also Michael Ritter, "West African Piracy-Still Piracy but a Different Kettle of Fish,?" *Shipping Bulletin*, January, 2014, p. 2.

Malacca, Gulf of Aden, where pirates often rapidly escape from one country's territorial waters to another, leaving frustrated security forces in their wake.¹¹⁹ Concurring with the position that piracy occurs mostly in territorial waters due to the peculiarity of the pirates and the nature of the maritime zones, Dutton opines that:

... most acts of piracy today occur more often than not in territorial waters and ports, rather than in international waters, meaning that UNCLOS does not provide a jurisdictional basis to prosecute those acts. A nation's territorial waters may extend twelve miles from its coastline, and it is only that nation which has jurisdiction to prosecute wrongful acts occurring in its sovereign territory. In addition, island states like Indonesia and the Philippines may claim within their territory all waters between the outermost points of their outermost islands. Therefore, attacks occurring within the straits, gulfs, and archipelagos where international ships must pass and at ports where they must dock are not subject to UNCLOS. Nevertheless, some commentators estimate that up to 70% of recent attacks have occurred in just such locations.¹²⁰

This research argues that the above statement lends credence to the fact that most contemporary piracy occurs within the territorial waters, ports, straits, gulfs and archipelagic waters of a coastal state, which makes the present international legal regime of piracy grossly inadequate in suppressing the crime.

¹¹⁹) Gal Luft & Anne Korin, "Terrorism goes to Sea," Institute for the Analysis of Global Security, 2004 <<http://www.iags.org/fa2004.html>> accessed 21 July 2015.

¹²⁰) Yvonne M. Dutton, "Bringing Pirates to Justice: A Case for including Piracy within the Jurisdiction of the International Criminal Court," One Earth Future Foundation Discussion Paper, February, 2010, p. 8.

On their part, Beckman & Palakrishnan outlines the limitations of the definition of piracy under article 101 of the LOSC as follows: First, article 101 of the LOSC provides a definition of piracy without imposing any obligation on state parties to enact national legislation making piracy, as defined in the LOSC, a criminal offence with appropriate penalties.¹²¹ Second, article 101 in effect gives states the right to extend their criminal jurisdiction to include acts of piracy committed on the high seas by foreign nationals against foreign ships. Even so, the LOSC does not impose an obligation on states to establish universal criminal jurisdiction for acts of piracy on the high seas.¹²² Third, the piracy provisions apply only in areas beyond territorial sovereignty, or seaward of the outer limit of the territorial sea of any state. This position jettisons the fact that in Southeast Asia, likewise Nigeria, most attacks on ships are not piracy because they take place on vessels in port, in archipelagic waters, internal waters or in the territorial waters.¹²³

The fourth point is that article 105 of the LOSC gives every state the right, in areas outside the territorial sovereignty of any state, to seize pirate ships and the property on board and to arrest the pirates. Nevertheless, it imposes no obligation on states to exercise such powers.¹²⁴ Fifth, article 105 of the LOSC gives the courts of the state which has seized a pirate ship and arrested the pirates the power to exercise jurisdiction by trying the pirates and imposing a penalty. But, it imposes no obligation on states to make the

¹²¹) Robert Beckman & Sanjay Palakrishnan, "Regional Cooperation to Combat Piracy and International Maritime Crimes: The Importance of Ratification and Implementation of Global Conventions," Conference on the Practices of the UNCLOS and the Resolution of South China Sea Disputes, National Taiwan Normal University, 3-5 September, 2012, p. 5 <<http://cil.nus.edu.sg/wp/wp-content/uploads/2012/09/Beckman-Paper-Taiwan-Conference-3-5-September-rev-27-Aug.pdf>> accessed 7 August 2015.

¹²²) *Ibid.*

¹²³) *Ibid.*

¹²⁴) *Ibid.*

necessary changes within their domestic legal system to give their courts such jurisdiction. It also imposes no obligation on states to prosecute any suspected pirates in their custody.¹²⁵

The Sixth point is that article 100 of the LOSC imposes a general obligation on states to cooperate to the fullest possible extent in the repression of piracy. It does not impose an obligation on states to take any alleged offenders present in their territory into custody, nor does it impose an obligation on states to either prosecute or extradite alleged offenders present in their territory.¹²⁶ Additionally, there is no obligation imposed on states to give mutual legal assistance in connection with the criminal proceedings of persons charged with the offence of piracy.¹²⁷ This dissertation maintains that these limitations goes to the root of suppressing piracy off Nigeria.

In view of the two ship requirement, Ahnefeld argues that from a practical point of view, the activities of pirates and terrorists on the sea overlap and the incidents merge into one another.¹²⁸ Terrorists are, like pirates, civilians who are not associated with a country, but through fear or panic, attack other civilians for purely personal gain.¹²⁹ Second, all acts of maritime terrorism should be tried under the existing legal regulations without exception whatsoever because they run contrary to the fundamental human rights of life, liberty and security.¹³⁰ And third, when looking back at the wording of article 101 of the LOSC, the definition further elaborates under (b) that piracy also may consist of participating “in the operation of a

¹²⁵) *Ibid.*

¹²⁶) *Ibid.*

¹²⁷) *Ibid.*

¹²⁸) Janin V. Ahnefeld, “The International Fight against Modern-Day Piracy-Are the Legal Regulations Enough,?” Small Master’s Thesis, Masters of Laws in Law of the Sea, University of Tromso, Faculty of Law, 2011, p. 22.

¹²⁹) *Ibid.*

¹³⁰) *Ibid.*

ship ... with knowledge of facts making it a pirate ship”.¹³¹ With regards to this wording and due to a contextual interpretation, it has been contended that the wording “against another vessel” should be interpreted to equally include takeovers by insiders.¹³²

Due to the apparent limitations of the international law definition of piracy as enunciated in article 101 of the LOSC, it becomes imperative to broaden the scope of the definition to include armed robbery in the territorial waters, internal waters, archipelagic waters and ports. The expansion of the meaning of piracy is supported by avalanche of facts. Further, courts, government, organisations and writers have incorporated certain categories of acts to piracy, and the need to enlarge the meaning of the crime therefore lies partly on the existence of doubts relating its definition and partly by a desire to affirm the illegality of certain types of activity in the most unequivocal manner.¹³³

Harris, in his observation, shows that a state may define piracy differently in its domestic law, as was done in the United Kingdom (UK) where slave trading on the high seas and acts committed in the territorial sea were regarded as piracy.¹³⁴ Petrotto posits that piracy takes place in varying forms globally, the notable differences include the place of attack,¹³⁵ the

¹³¹) *Ibid.*

¹³²) *Ibid.*

¹³³) Ian Brownlie, *Principles of Public International Law* (7th edn. Oxford University Press: Oxford 2008) p. 231. See the dissenting opinion of Judge Moore in *The Case of the S.S. “Lotus” (France v Turkey)* PCIJ (Series A) No. 10 (1927). See also James Crawford, *Brownlie’s Principles of Public International Law* (8th edn. Oxford University Press: Oxford 2012) p. 304.

¹³⁴) D.J. Harris, *Cases and Materials on International Law* (6th edn. Sweet & Maxwell: London 2004) pp. 458-459. See also Malcolm Shaw, *International Law* (6th edn. Cambridge University Press: Cambridge 2008) p. 616, citing the ReCAAP (2005), which extends the regulation of piracy beyond high seas to events taking place in internal waters, territorial waters and archipelagic waters.

¹³⁵) It could occur in ports, internal waters, and high seas. Petretto Kerstin, “Piracy as a Problem of International Politics” in Mair Stephan (ed.) *Piracy and Maritime Security*:

objectives of the attackers¹³⁶ and severity of violence.¹³⁷ These differences, it is argued, are relevant in determining the impact of piracy to maritime transport and the response options available to potential victims, as well as the international community.

A related argument has been put forward by Wolfrum, as well as Timben,¹³⁸ who argues, for instance, that the meaning of the word “illegal” in the definition of piracy under international law is ambiguous and that the legislative history is vague.¹³⁹ Due to this ambiguity, it is for the courts of the prosecuting states to decide whether the act of violence under consideration was illegal under international law or the domestic law of the prosecuting states.¹⁴⁰ Against this backdrop, it is the contention of this research that the dearth of clarity in the definition of piracy under the LOSC could jeopardise the efficacy of using the instrumentality of the law in combating piracy.

Lending credence to the fact that the definition of piracy should not be rigid, but flexible, which means that it could be given an extended

Regional Characteristics and Political, Military, Legal and Economic Implications (Stiftung Wissenschaft und Politik: Berlin 2011) p. 11.

¹³⁶) *Ibid.* In this regard, it could be for personal or political ends.

¹³⁷) *Ibid.*

¹³⁸) Timben argues that some slight ambiguity is introduced by the words “any illegal acts of violence or detention, or any act of depredation” in the LOSC, article 101(a). Thus, one could ask under what system of law acts must be “illegal”; or whether there is a meaningful difference between the use of the words “acts of violence” (plural) and “act of depredation” (singular). The ordinary meaning, object and purpose of these words would suggest a broad approach should be taken. Piracy has always been an international crime enforced by national laws, the exact terms of which have varied between jurisdictions. It may be difficult to give these words the kind of clear and precise meaning that would accord with modern expectations that criminal offences should be precisely drafted in advance. Neakoh R. Timben, “Piracy: A Critical Examination of the Definition and Scope of Piracy and the Issues Arising therefrom that Effect the Legal Address of the Crime Globally,” Small Master’s Thesis, Master of Laws in Law of the Sea, University of Tromsø, Faculty of Law, Fall, 2011, p. 13.

¹³⁹) R. Wolfrum, *supra* note 51, p. 3.

¹⁴⁰) *Ibid.* See also Leonard R. Meijden, “The Influence of Modern Piracy on Maritime Commercial Transport,” Thesis submitted in partial fulfillment of the requirements for the MSc Degree in Urban, Port and Transport Economics, Erasmus University Rotterdam, November, 2008, p. 11.

interpretation in accordance with changing circumstances and peculiar local situation is the position of the European Court of Human Rights.¹⁴¹ The ECHR submits, in relation to interpreting the provisions of a status in order to flexibly reflect to contemporary or unforeseeable events, that legal provisions:

must be formulated with sufficient precision to enable the persons concerned-if need be with appropriate legal advice-to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Whilst certainty is highly desirable, it may entail excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are a question of practice.¹⁴²

With regards to environmental protection as illustrated in the *Sea Shepherd's* case,¹⁴³ Millar, in suggesting a new definition of piracy, reflects that the existing international law regime of piracy is problematic, which allows slight technicalities to prevent it from covering traditional acts of piracy, whilst managing to include acts that although deplorable, are not piratical.¹⁴⁴ As a consequence, the IMB's proposed broad and empirical definition is favourable as it circumvents the high seas requirement whilst

¹⁴¹) European Court of Human Rights, hereafter referred to as the "ECHR."

¹⁴²) EctHR 25 October, 2011, *A.T. Akcam v Turkey*, quoted in I. Stribis (n. 95) p. 33.

¹⁴³) See the case of *The Institute of Cetacean Research v Sea Shepherd conservation Society* 12-35266 (9th Cir. 2013).

¹⁴⁴) Nicole Millar, "Polar Pirates: Friend or Foe? Should the Definition of Piracy be Altered to Exclude the Activities of Sea Shepherd in the Southern Ocean," a Dissertation submitted in partial fulfillment of the degree of Bachelor of Laws (Honours), Faculty of Law, University of Otago, October, 2013, p. 44.

maintaining and, arguably, enhancing the traditional understanding of piracy.¹⁴⁵

Due to the apparent limitations and challenges inherent in the international law definition of piracy, attempts were made by international and regional organisations to define crime in line with contemporary situations. In 1995, IMO, while adopting the LOSC definition, defines the act of piracy as any unlawful act of violence or detention or any act of depredation, or threat thereof, directed against a ship or against persons or property on board such ship, beyond a state's jurisdiction over such offences.¹⁴⁶ According to IMO's definition, when such act of piracy occurs within territorial waters, archipelagic waters, ports and internal waters of a coastal state, it is referred to as armed robbery against ship. Clearly, the definition identifies similar acts that take place in different locations: acts of piracy occur in international waters (high sea which includes the EEZ which is the high seas for navigational purposes) while armed robbery against ships takes place in territorial waters. In other words, armed robbery against ships happens within the jurisdiction of a state, whereas piracy occurs on the high seas, which is governed by international law. The above distinction is also made by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia.¹⁴⁷

¹⁴⁵) *Ibid*, p. 47. See also B.O.G. Nwanolue & Victor C. Iwuoha, "Maritime Security in the Gulf of Guinea: A Territorial Challenge to Nigeria's Security and Strategic Development," p. 6 <<http://nwanoluebog.net/wp-content/uploads/2015/04/COPY-MARITIME-SECURITY-IN-THE-GULF-OF-GUINEA.pdf>> accessed 30 April 2015.

¹⁴⁶) IMO Code of Practice for the Investigation for the Crime of Piracy and Armed Robbery against Ships (Resolution A.922 (22)), (IMO Code), para. 2, 2.1-2.2.1. In the case of *Republic v Aid Mohamed Ahmed & others* (Chief Magistrate's Court, Mombasa) Criminal Case No. 3486 of 2008, 26, the court found the accused person guilty of committing act of piracy on the high seas. For the definition of piracy in Kenya, see the Merchant Shipping Act, 2009, section 369 (1).

¹⁴⁷) The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Agreement, 2004, (which came into force on the 4 September, 2006), UNTS

IMB, for statistical purposes, defines piracy as “(a)n act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.”¹⁴⁸ Table I above shows the number of attacks that took place in some piracy hotspots in the world. A lot of these piratical acts took place in territorial waters, especially in ports during berthing or at anchorages.¹⁴⁹ Supporting this point is the ReCAAP piracy report which states that in Asia, incidents involving ships at anchor and berth accounted for 80 percent of the total incidents reported in 2013.¹⁵⁰

Further, recent events have shown that “piracy and threats to maritime security can no longer be ignored. The development of a robust and universally applicable legal regime to deal with the problem ought to form an essential part of any effective response.”¹⁵¹ Thus, the expansion of the meaning of piracy can be inferred from the fact that international law provides for the international community some precise norms to suppress

2398, hereafter referred as “ReCAAP,” articles 1 and 2. For other regional agreements that adopted the IMO module of piracy and armed robbery against ships, see Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in West and Central Africa, adopted 25 June, 2013, hereafter referred to as the “Code of Conduct,” article 1, paras. 3-4, and the Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, adopted 29 January, 2009, hereafter referred to as the “Djibouti Code of Conduct,” article 1, paras. 1-2.

¹⁴⁸) ICC IMB, “Piracy and Armed Robbery against Ships: Annual Report 1 January-31 December 2009,” January, 2010, p. 3.

¹⁴⁹) See IMB Piracy Report for 2015, pp. 18-24. See also IMB Piracy Report for 2014, pp. 23-27 and See IMB Piracy Report for 2013, pp. 22-30.

¹⁵⁰) ReCAAP Information Sharing Center, “Piracy and Armed Robbery against Ships in Asia Annual Report January-December 2013,” p. 03. Over the last decade, approximately 80% of all violent attacks against ships have taken place in territorial waters, with harbor and port areas the most vulnerable. “Council Conclusions on the Gulf of Guinea Action Plan 2015-2020,” Council of the European Union (EU), Brussels, 16 March 2015, p. 6 <www.consilium.europa.eu/en/meetings/fac/2015/03/st07168_en15_pdf/> accessed 10 August 2015.

¹⁵¹) Donald R. Rothwell, “Maritime Piracy and International Law,” *Crimes of War* <<http://www.crimesofwar.org/commentary/maritime-piracy-and-international-law/>> accessed 7 August 2015.

piracy through effective implementation and enforcement of the LOSC and the SUA Convention.¹⁵²

The UNSC resolutions has repeatedly urged state parties to the LOSC and the SUA Convention to fully implement their relevant obligations under these conventions and customary international law and cooperate with the United Nations Office on Drugs and Crime (UNODC), the INTERPOL, IMO, other states and other international organisation in building judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea.¹⁵³ The implementation and enforcement of the expanded definition can also be inferred from the SUA Convention since the crimes envisaged in convention has no geographical limitations, two ship requirement restriction or the private ends provision.¹⁵⁴ It is noteworthy that for a country to adapt its local criminal law to international law, such a state must “produce: rules which establish domestic court jurisdiction over maritime piracy crime; norms which define such crime; norms which provide penalties for the offenders. All such norms must be created according to international law rules currently applicable and in force.”¹⁵⁵

More so, the expansion of the definition of the meaning of piracy can be inferred by the provisions of the various UNSC resolutions¹⁵⁶ in the fight against Somali pirates which have been implemented by different joint naval forces and navies of some countries resulting in the reduction in the number of piracy acts in the Indian Ocean and Gulf of Aden (see Table 1 above, where only 3 attacks took place in Somalia in 2014 and none so far between Jan-June 2015 unlike previous years).

¹⁵²) Matteo D. Chicca, “International Law and Domestic Law: Solving some Problematic Issues in Order to Effective Combat Maritime Piracy,” in Andreone Gemma., *et al*, (eds.), supra note 93, p. 35.

¹⁵³) See the UNSCR 1851, article 5; and the UNSCR 1897, article 14.

¹⁵⁴) SUA Convention, article 3.

¹⁵⁵) M.D. Chicca, supra note 152, p. 38.

¹⁵⁶) See generally the UNSCRs 1851 and 1897.

To fight piracy off the coast of Somalia, the European Union (EU) established Operation EU NAVFOR Atalanta in December 2008. In January 2009 the US announced the formation of Combined Task Force 151 (CTF-151), a force of the Combined Maritime Forces (CMF) with a specific piracy mission-based mandate. The North Atlantic Treaty Organisation's (NATO) Operation Ocean Shield was established in August 2009.¹⁵⁷ It is argued that the challenge is essentially the jurisdiction of the patrolling naval forces to engage in hot pursuit and enforce the right of visit on pirate ships in the territorial waters without necessarily undermining the sovereignty of the coastal states.

It is important to state that there are circumstances that can permit patrolling naval forces to enter the territorial waters of a coastal state to prevent and arrest pirates. Before enumerating situations where pirates may be arrested in territorial waters of a coastal state, it is equally pertinent to note that criminalisation and prosecution of pirates on the basis of individual criminal responsibility is undertaken by states. This is because piracy is a national crime that is transnational in nature and not an international crime.¹⁵⁸ Against this background, it behooves on states to determine what constitutes piracy and the attendant prosecution method. In this regard, states can expand the definition of piracy by extending the geographical location of

¹⁵⁷) Marcus Houben, "Operational Coordination of Naval Operations and Capacity Building," in Thierry Tardy (ed.) *Fighting Piracy off the Coast of Somalia: Lessons Learned from the Contact Group* (EU Institute for Security Studies 2014) p. 28 <http://www.iss.europa.eu/uploads/media/Report_20_Piracy_off_the_coast_of_Somalia.pdf> accessed 20 July 2015.

¹⁵⁸) James Kraska, *Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea* (Praeger: Denver, Colorado 2011) pp. 106-107. See also Antonio Cassese, *International Criminal Law* (2nd edn. Oxford University Press: Oxford, 2008) and Marta Bo, "Emerging Voices: Piracy vs. Core Crimes-Assessing the Consequences of the Juxtaposition between Transnational and International Crimes" <<http://opiniojuris.org/2013/08/09/emerging-voices-piracy-vs-core-crimes-assessing-the-consequences-of-the-juxtaposition-between-transnational-and-international-crimes/>> accessed 24 July 2015.

where the act occurs, among other things. Such an expanded definition under the domestic legislation will be deemed not to have violated the provisions of piracy under international law since the LOSC, in article 100, encourages states to cooperate in suppressing the crime.

The application of the SUA Convention also lends credence to the above position that state should cooperate in suppressing piracy. For illustrative purposes, the UNSC adopted this strategy when it realised that the existing legal regime is ineffective in suppressing piracy off Somalia.¹⁵⁹ Accordingly, states, after broadening the definition of piracy, can engage in mutual agreement among each other, which could be based on regional or other affiliations, to determine the best and safe way of combating piracy in the territorial waters of a state without impugning on state sovereignty. The French government applied this method in arresting pirates in Somali waters.¹⁶⁰ Moreover, such a formal agreement that is exclusively for parties should outline the roles and responsibilities of parties in the suppression of piracy. It is important to note that the LOSC embraces any mutually agreed method among states in fighting piracy.¹⁶¹

Another plausible reason for an expansion of the meaning of piracy resides in the fact that modern piracy is intractable and its *modus operandi*, as well as the weaponry, has evolved overtime, masking the real nature of

¹⁵⁹) The UNSCRs 1816, articles 7 paras. (a) & (b) and 1846, article 10, paras. (a) & (b).

¹⁶⁰) Douglas Guilfoyle, "Somali Pirates as Agents of Change in International Law-making and Organisation," (2012) Cambridge Journal of International and Comparative Law, Vol. 1, No. 3, pp. 90-91.

¹⁶¹) Note that three ways have been suggested for the expansion of the definition of piracy under the LOSC. They include the fact that the right of innocent passage has curtailed state's sovereignty and therefore sets the foundation for an expansion of universal jurisdiction in counter-piracy efforts, there should be an additional protocol to article 100 of the LOSC, providing international parties the ability to pursue pirates in territorial waters under certain closely defined circumstances and change in interpretation rather than substance. Selina Maclaren, "Entrepreneurship, Hardship, and Gamesmanship: Modern Piracy as a Dry Endeavor," (2013) Chicago Journal of International Law, Vol. 14, No. 1, pp. 358-359.

the crime. Winn and Govern rightly observed that the most inimical feature of contemporary piracy “is the growing nexus between maritime crime, terror organisation, and failed or failing states.”¹⁶² In view of this position, Murphy opines that piracy may be a “marginal problem in itself, but the connections between organized piracy and wider criminal networks and corruption on land make it an element of a phenomenon that can have a weakening effect on states and a destabilizing one on the regions in which it is found.”¹⁶³ This research reiterates the fact that contemporary piracy has manifestly interwoven with maritime terrorism.

Further, it has been argued that a customary international law rule already exists to permit foreign governments to combat piracy in the territorial waters of another nation, so long as that nation is considered a failed state.¹⁶⁴ This stems from the theory that if a country is unable to perform its duty to the international community, such as preventing piracy or human rights violations within its territorial waters, then it no longer has a basis to assert sovereignty over those territorial waters.¹⁶⁵ Presently, Nigeria is a failing state which has contributed to the lackluster attempts to suppress piracy in the country and for that reason, this dissertation argues for the expansion of the meaning of the crime to include piratical acts in the territorial waters of the country.

¹⁶²) John I. Winn & Kevin H. Govern, “Maritime Pirates, Sea Robbers, and Terrorists: New Approaches to Emerging Threats,” (2008) *The Homeland Sec. Rev.*, Vol. 2, p. 132.

¹⁶³) David Osler, “Book Review: Contemporary Piracy and Maritime Terrorism,” *Maritime Terrorism Research Center*, 19 August, 2007

<<http://www.maritimeterrorism.com/2007/08/19/book-review-contemporary-piracy-and-maritime-terrorism/>> accessed 24 July 2015 (reviewing Martin N. Murphy, *Contemporary Piracy and Maritime Terrorism* (1st edn. Routledge: London 2007).

¹⁶⁴) Lawrence Azubuike, “International Law Regime against Piracy,” (2009) *Annual Survey International & Comparative Law*, Vol. 15, Iss. 1, pp. 51-52. See also Daniel Pines, “Maritime Piracy: Changes in U.S. Law needed to Combat this Critical National Security Concern,” 2012, *Seattle University Law Review*, Vol. 36, pp. 98-99.

¹⁶⁵) Thus, in such a situation, there is no violation of the failed state’s territorial integrity if other states enter its territorial waters in order to suppress piracy.

In the light of the geographical limitation of piracy under international law, the global community has never abdicated its responsibility under the various human rights agreements permitting intervention when a country's government commits atrocities against its own citizens.¹⁶⁶ Referring to this posture by the global community as a permissive regime, Isanga argues that it "... is inconceivable that piracy, a crime regarded as one that is committed against the human race, should not be suppressed and prosecuted at the international level as effectively as other internationally cognizable offences."¹⁶⁷

In addition to the above arguments, it is common knowledge that the international law regime for piracy is determined by the LOSC. Notwithstanding, this could be modified by a resolution of the UNSC. According to the provision of the UN Charter, where there is "a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."¹⁶⁸ Under this provision, the UNSC introduced ad hoc solutions to enhance the suppression of piracy off the coast of Somalia by permitting the joint naval patrol and navies of other nations to enter the territorial waters of Somalia to arrest pirates, parallel to the provision of the LOSC.¹⁶⁹ The UNSC also authorised the "shiprider" agreement to facilitate more enforcement capability toward

¹⁶⁶) Joseph M. Isanga, "Countering Persistent Contemporary Sea Piracy: Expanding Jurisdictional Regimes," (2010) *American University Law Review*, Vol. 59, Iss. 5, pp. 1297-1298.

¹⁶⁷) *Ibid.*

¹⁶⁸) The Charter of United Nations, adopted 26 June 1945, UNTS xvi, (entered into force 24 October 1945), hereafter referred to as the "UN Charter," article 103.

¹⁶⁹) The LOSC, article 111 provides the navy of a country can engage in hot pursuit of a ship suspected of piracy, armed, drug and human trafficking on the high seas, but the chase must be terminated if the ship enters the territorial waters of another coastal state.

prosecuting arrested pirates,¹⁷⁰ contrary to the provision of article 105 of the LOSC. Consequently, it must be stated that these amendments were introduced due to the inherent limitations of the LOSC, which portends grave concern in the suppression of piracy in the Gulf of Aden and the Indian Ocean.

Anyiam, who acknowledges that the LOSC definition of the crime is generally accepted under customary international law, submits that in the determination of the strategy to tackle unlawful acts against vessels; including where to prosecute offenders, a legal definition will be more appropriate.¹⁷¹ He further argues that “the IMO’s definition of piracy in accordance with Article 101 of UNCLOS should be the preferred mechanism for this purpose. This is because piracy is an international crime for which every state has the right and duty to fight.”¹⁷² Amri further observes that the UNSC “...has repeatedly reaffirmed that ‘international law, as reflected in UNCLOS, regulate the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities.’”¹⁷³ However, the UNSC acknowledged the limitations inherent in the existing international law governance and extended the definition of piracy to include armed robbery that takes place in the territorial sea.¹⁷⁴ In furtherance of this position, the LOSC, in article 311, paragraph 3, gives state parties power, through agreements, to modify or suspend its operation, applicable solely to the

¹⁷⁰) The UNSCR 1851, para. 3. See also J.M. Isanga (n. 166) pp. 1275-1276.

¹⁷¹) H. Anyiam, *supra* note 89.

¹⁷²) *Ibid.*

¹⁷³) Ahmad A. Amri, “Southeast Asia Maritime Piracy: Challenges, Legal Instruments and a Way Forward,” (2014) *Australia Journal of Maritime and Ocean Affairs*, Vol. 6, No. 3, p. 159 <<http://www.tandfonline.com/doi/pdf/10.1080/18366503.2014.915492>> accessed 31 July 2015.

¹⁷⁴) UNSCR 1846, para. 1; the UNSCR 2125 (2013) UN Doc S/RES/2125, hereafter referred as the “UNSCR 2125,” para. 1; the UNSCR 2018 (2011) UN Doc S/RES/2018, hereafter referred to as the “UNSCR 2018,” para. 1; and the UNSCR 1897, para. 1.

relations between them. Thus, the adoption by the Nigerian government of a definition which embraces the nature of piracy in Nigeria is acceptable under international law.

In concluding this part of chapter two, recourse should be given to the reflection of Stribis, who submits that there are elements of modern definition of piracy that can be debated, but the nature of the acts envisaged by this international crime is not one of them.¹⁷⁵ Some other elements of that definition, like “the meaning and contents of ‘illegal’ as a qualification of ‘acts of violence,’ the ‘private ends’ condition, the two-ship ‘requirement, the question of mutiny, the relationship with terrorism or other outlawed activities, prohibited by international law, including Security Council resolutions, to name a few-can be usefully discussed.”¹⁷⁶ Stribis further submits “that the restrictive construction of ‘acts of violence’ to encompass only robbery on the high seas, is not warranted from the current state of applicable international law.”¹⁷⁷

Klein, in her incisive book, *Maritime Security and the Law of the Sea*, further argues that security interests should be given greater scope in the understanding of the law of the sea in the light of the changing dynamics of exclusive and inclusive claims to ocean use.¹⁷⁸ She went on to posit that while the protection of sovereignty and national interests remain fundamental to maritime security, there is increasing acceptance of a common interest that exists among states when seeking to respond to a variety of maritime security threats.¹⁷⁹ In other words, due to common interests to secure the sea, the definition of piracy under customary

¹⁷⁵) I. Stribis, supra note 95, p. 34.

¹⁷⁶) *Ibid.*

¹⁷⁷) *Ibid.*

¹⁷⁸) Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford University Press: New York 2011) p. 1.

¹⁷⁹) *Ibid.*

international law could be extended to include armed robbery against ships in territorial waters of a coastal state by flexibly interpreting the provision of article 101 of the LOSC. Zuo brilliantly capture the position of this research thus:

...it seems that the world community at present has no choice but to accept the definition provided by the LOS Convention since there is no other well-established legal definition of piracy at the international level. But on the other hand, for the convenience of the suppression of piracy, the world community seems to have accepted the dichotomous definition provided by the IMO as manifested in numerous international documents including those UN documents relating to the LOS Convention. Thus, the current prevailing term “piracy and armed robbery against ships” is a compromised combination so as to amend the obvious deficiencies left over by the LOS Convention.¹⁸⁰

2.4 Linkages between piracy and other maritime crimes

According to Crisis Group report on the Gulf of Guinea region, weak governance has allowed illicit activities to flourish at sea and create an enabling environment for violent crime.¹⁸¹ The growth of piracy and other maritime crimes is a result of structural problems such as poverty, socio-political tension and the grievances of local communities where crude oil is explored. It is a trite fact that the “...extent of piracy is an indicator of the radicalisation and willingness to turn to crime of frustrated populations. Other factors are the region’s densely populated conurbations, porous borders, quarrels between states and their inability to stop illegal trade in

¹⁸⁰ K. Zou, *supra* note 48, p. 329.

¹⁸¹) International Crisis Group, “The Gulf of Guinea: The New Danger Zone,” *African Report*, No. 195, 12 December, 2012, p. 1.

arms, oil and drugs.”¹⁸² By way of addition, Nigerian oil industry is shrouded in illegality; while corruption and fraud are present throughout the value chain.¹⁸³ The offshoot of this is that piracy has continued to thrive, paving the way for other maritime crimes to become viable or the existence of other maritime crimes has engendered the escalation of piracy in Nigeria. Hence, there is a nexus between piracy and other maritime crimes in the country.¹⁸⁴

2.4.1 Piracy and oil theft

Examining the concept of oil theft¹⁸⁵ shows that ordinarily it involves illicit tapping of pipelines for local refinement within the Niger Delta region. The bunkering of the stolen crude oil, which is taken for international sale, is organised on a much broad scale and usually goes together with the forgery of bills of lading to understate the amounts of oil actually and legally lifted for export.¹⁸⁶ Those involved in this nefarious act, their Nigerian partners and people that steal the oil are unionised. More so, they must pay a fee to the Navy as well as other security agencies and regulatory institutions, both in the maritime sector and the oil industry, and have to ‘settle’ (bribe) the local communities to have access to oil theft opportunities and negotiate an acceptable date for their operation, so that they are not disturbed by a naval presence.¹⁸⁷ Report shows that the “...larger barges cost more than \$50,000 and carry up to 5,000 barrels.... between 100 and 250 million barrels of crude oil are stolen every year. With an average black market price of \$25

¹⁸²) *Ibid*, pp. 3-4.

¹⁸³) Christina Katsouri & Aaron Sayne, “Nigeria’s Criminal Crude: International Options to Combat the Export of Stolen Oil,” Executive Summary and Recommendations, Chatham House, September, 2013, p. 1.

¹⁸⁴) See generally, Gavin Simmonds, “The Correlation between Maritime Piracy and Oil Theft: Impact of Illegal Energy Seizure on Global and Regional Economies,” Briefing Paper, UAE Counter-Piracy Conference, 2014.

¹⁸⁵) Note that oil theft is regarded as “illegal bunkering” in Nigeria.

¹⁸⁶) O.M. De Montclos, *supra* note 15, pp. 534-535.

¹⁸⁷) *Ibid*.

per barrel in 2005, this represents an income of \$1.5–4 billion, and a loss of \$2.5–6.2 billion to the government and \$121–302 million to the oil-producing companies.”¹⁸⁸

Oil theft, which is endemic in the Gulf of Guinea, it is argued, has found some traction in other piracy hotspots in the world due to its seemingly non-violent approach. “Incidents of oil siphoning, a new model which combines the acts of piracy, hijack and oil theft, but not kidnapping or hostage taking, has recently increased in South East Asia.”¹⁸⁹ Anyimadu succinctly summarises the nature and effect of this maritime crime thus:

Attacks on chemical tankers and vessels carrying refined petroleum are well choreographed, and demonstrate that hijackers have good knowledge of how to operate these specialized vessels, as well as accurate intelligence on ships’ locations and the type of cargo they carry. Tankers that are attacked are usually moored or carrying out ship-to-ship transfers at sea, and so are vulnerable to being detected and boarded. Their crew is held while the cargo is transferred to smaller vessels by the hijackers to be resold onshore. It is estimated that 40 per cent of Europe’s oil imports, and close to 30 per cent of the United States’ imports of petroleum products, must travel through the Gulf of Guinea each year, and security concerns could affect Nigeria’s and Angola’s exports of crude oil.¹⁹⁰

Another consequence of oil theft is the proliferation of illegal and sub-standard refineries in the Niger Delta. The existence of such illegal refineries encourages oil theft and piratical attacks on tankers carrying crude

¹⁸⁸) *Ibid.* See also Obari Gomba, “The Perilous Route of Nigeria’s Illegal Oil Bunkerers,” *The Guardian*, 18 September, 2013, p. 44.

¹⁸⁹) G. Simmonds, *supra* note 184.

¹⁹⁰) Adjoa Anyimadu, “Maritime Security in the Gulf of Guinea: Lessons from the Indian Ocean,” Chatham House, July, 2013, p. 4.

oil off Nigeria. More importantly, “the activities of illegal refineries have been causing serious damage to the environment while a significant proportion of the stolen crude used in the illegal refineries were disposed off in the environment.”¹⁹¹ It is further argued that the destruction and burning of recovered stolen crude oil, tanker trucks, illegal refineries and confiscated vessels in the Niger Delta by the Joint Task Force (JTF) also lead to the destruction of the environment and ecology.¹⁹² In view of this, there is no gain saying the fact that piracy related oil theft lead to the pollution of the marine environment.

The Report of the Petroleum Revenue Task Force also showed that quite a number of traders did not demonstrate relevant expertise in the business of crude oil trading, and that the use of crude oil traders was contrary to the global trend wherein national oil companies develop their own trading arms.¹⁹³ In line with its mandate, the Ribadu Report further identified abnormality in the sale of crude oil by Nigeria and the concern is that the country is the only major oil producer in the world with a policy and practice that allows it to sell 100 percent of its crude to private commodities traders, rather than directly to refineries.¹⁹⁴

A corollary to the above is the introduction of subsidy in the oil industry, which has been a conduit to syphon money as well as short change the people of Nigeria who are expecting infrastructural development and improved living standard in the country. The gamut of fraudulent dealings

¹⁹¹) Roseline Okere, “How to Tackle Theft, Human Capital Issues in Oil, Gas Sector,” *The Guardian*, 7 August, 2013, p. 51.

¹⁹²) Dayo Oketola, “Destruction of Recovered Stolen Oil angers Experts,” *Punch*, 26 August, 2013, p. 25.

¹⁹³) For example the various Nigerian National Petroleum Corporation (NNPC) trading subsidiaries which currently have limited capacity. Report of the Petroleum Revenue Special Task, August, 2012, hereafter referred to as the “Ribadu Report,” p. 15.

¹⁹⁴) Such practice exposes the country to lost margins to middlemen, manipulation of pricing, suboptimal returns and market fraud. *Ibid.*

was captured in the report by the Ad-hoc Committee set up by the House of Representatives on the 8 of January, 2012, to verify and determine the actual subsidy regime in Nigeria.¹⁹⁵ This situation, it is argued, encourages the already dissatisfied Niger Delta youths to become pirates in order to get ‘a piece of the national cake.’ After concluding its investigation, the House Report explicitly:

found out that the subsidy regime, as operated between the period under review (2009 and 2011), were fraught with endemic corruption and entrenched inefficiency. Much of the amount claimed to have been paid as subsidy was actually not for consumed PMS. Government officials made nonsense of the PSF¹⁹⁶ Guidelines due mainly to sleaze and, in some other cases, incompetence. It is, therefore, apparent that the insistence by top Government officials that the subsidy figures was for products consumed was a clear attempt to mislead the Nigerian people.¹⁹⁷

2.4.2 Piracy and vandalism of oil installations

The vandalism of oil installation, which is essentially done on land, has been extended to facilities offshore. For instance, the Movement for the Emancipation of the Niger Delta (MEND), in order to show its capability of attacking offshore oil facilities, on the 19 of June, 2008, deliberately attacked a US\$3.6 billion offshore terminal owned by Royal Dutch Shell in the Bonga

¹⁹⁵) See generally, House of Representatives Report of the Ad-hoc Committee ‘To Verify and Determine the Actual Subsidy Requirements and Monitor the Implementation of Subsidy Regime in Nigeria’ Resolution No. (HR.1/2012), 18 April, 2012, hereafter referred to as the “House Report.” See also the Report of the Senate Committee on Finance on the Investigation of the Alleged Unremitted US\$49. 8 Billion Oil Revenue by Nigerian National Petroleum Corporation (NNPC), May 2014, hereafter referred to as the “Senate Report.”

¹⁹⁶) PSF means “Petroleum Support Fund.”

¹⁹⁷) Executive Summary of the House Report, p. 5. For further details on oil theft in Nigeria, see generally, C. Katsouris C. & A. Sayne, *supra* note 183.

oil field, forcing it to cease production of 220, 000 barrels of oil per day.¹⁹⁸ Later on the 12 of July, 2009, the use of speed boats by MEND fighters to attack the Atlas Cove jetty in the port of Lagos, which serves as a docking station for oil tankers, led to the killing of 8 people,¹⁹⁹ lending credence to the notion that piracy culminates to the destruction of offshore oil installations. This further illustrates the increase in maritime crimes in Nigeria which has a devastating effect on international shipping, offshore facilities and revenue accruable to Nigerian government. Due to its frequency, Nodland is of the view that attacks on offshore foreign marine assets have been on the increase.²⁰⁰

Pipeline sabotage which includes oil bunkering, pipeline vandalism/fuel scooping and oil terrorism is another form of maritime crime that occurs in Nigeria. Onuoha states that pipeline sabotage involves “blowing up of oil pipelines, installations and platforms with explosives, and the seizure of oil barges, oil wells, flow stations, support vessels and other oil facilities...,” and such acts are similar to the *modus operandi* of pirates in the country.²⁰¹ Piratical attacks by the Niger Delta militants have resulted in the destruction of offshore oil installations, the deterioration in the social situation of the region, the destruction of infrastructure and heightened levels of violence and criminality in Nigeria. Uadiale observes the rising spate of violence and criminality *vis-à-vis* piracy, “particularly in the Lagos and Niger-Delta region. Not only did the ‘opportunistic’ attacks against ships at berth or anchor in Lagos and Apapa resume, but a well-organized and violent

¹⁹⁸) Tull M. Dennis, “West Africa,” in Mair Stephan (ed.), supra note 135, p. 29.

¹⁹⁹) *Ibid.*

²⁰⁰) Arild Nodland, “Guns, Oil, and “Cake”: Maritime Security in the Gulf of Guinea,” in Elleman A B., *et al.* (eds.), supra note 25, p. 196, citing the BRS, “Maritime Security in Nigeria,” *Quarterly Review*, No. 4, March, 2008.

²⁰¹) Freedom C. Onuoha, “Oil Pipeline Sabotage in Nigeria: Dimensions, Actors and Implications for National Security,” (2008) *African Law Review*, Vol. 17, No. 3, pp. 99 - 108.

form of piracy also emerged in the Niger-Delta region, in the major distributaries of the Niger such as the Warri, Bonny and Escravos rivers.”²⁰²

Gomba opines that another reason for the vandalism of oil installation in Nigeria is a reaction of the people of Niger Delta after the killing of the Ogoni Nine.²⁰³ He states that the “Kaima Declaration crystallized from the peak of anger and discontent. It simply reflected the mood of the region. Outside the fine points of the document, many persons became willing to defy the state, and to interpret right and wrong from the barrel of angst. Legitimacy was redefined.”²⁰⁴ This research contends that due to the attacks and neglect of the people of Niger Delta by Nigerian government, the people from the oil producing area decided to attack oil infrastructure to vent their anger,²⁰⁵ which ultimately leads to piracy.

2.4.3 Piracy and illegal unreported and unregulated (IUU) fishing

Further, fish stocks are important sources of protein and income for the Gulf of Guinea region. IUU fishing by both foreign and local vessels has become a serious threat to the economic development of the region, and the continuation of this activity portends grave danger to world fish markets as stocks are depleted.²⁰⁶ The absence of effective maritime security which has been made worse by piracy has increasingly engendered illegal fishing in the Gulf of Guinea. The economic importance of the fishing industry in Africa cannot be overemphasised. It is trite that Africa’s fishing industry generates about US\$10 billion annually through internal trade, global exports and fishing licenses issued to foreign operators, while in the Gulf of Guinea

²⁰²) M. Uadiale, supra note 74, p. 51.

²⁰³) O. Gomba, supra note 188, p. 41.

²⁰⁴) *Ibid.*

²⁰⁵) *Ibid.*

²⁰⁶) “Maritime Security in the Gulf of Guinea” Report of the Conference held at Chatham House, London, 6 December 2012, March 2013, p. 3.

region, it is estimated that the region has an annual potential of 1, 000, 000 tons of fish and 800, 000 tons of inland fisheries.²⁰⁷

In addition to the above, West Africa is one of the world's main locations for IUU fishing. In line with the spate of IUU, Anyimadu argues that almost 40 per cent of the fish caught in West African waters is taken illegally.²⁰⁸ In spite of that, the issue of IUU is seldom discussed robustly when issues relating to maritime security in the Gulf of Guinea are deliberated. Although the fishing industry plays a significant and critical economic role, West African governments collectively lose as much as \$1.5 billion annually because of IUU fishing.²⁰⁹ Nigeria loses over US\$30 million yearly over poaching.²¹⁰ The beneficiaries of this nefarious activity include the EU and Asian markets, and there are links between vessels involved in IUU fishing and other forms of organised crime at sea, including drug-smuggling,²¹¹ and piracy.

Comparatively, the fishing industry is equally pivotal for many East African countries. For example, in the past two decades, the industry accounted for over 90 percent of Seychelles' export and over 20 percent of exports in Madagascar.²¹² Tuna fish and related industries, like port services, among others, account for about 40 percent of Seychelles foreign earnings.²¹³ Considering the strategic economic importance of this highly sensitive industry, the negative effect of piracy has been significant, with the tuna catch in the affected areas dropping by about 26.8 percent per annum and

²⁰⁷) United Nations Conference on Trade and Development (UNCTAD), "Maritime Piracy-Part I: An Overview of Trends, Costs and Trade-Related Implications," *Studies in Transport Law and Policy*-2014, No. 1, 2014, p. 31.

²⁰⁸) A. Anyimadu, *supra* note 190, p. 4.

²⁰⁹) *Ibid.*

²¹⁰) See Siaka Momoh, "Storm in the Gulf," *Businessday*, 7 May, 2013, p. 42.

²¹¹) A. Anyimadu, *supra* note 190, p. 4.

²¹²) See UNCTAD, *supra* note 207, p. 32.

²¹³) *Ibid.*

with export of fishing products falling by 23.8 percent in East African countries.²¹⁴ The cost of piracy in Seychelles generally was approximately 4 percent of the island's GDP in 2009.²¹⁵ Other countries also recorded declines in their fishing industry, including Yemen with an estimated loss of US\$150 million in 2010.²¹⁶

In Somalia, it has been argued repeatedly that piracy in the country arose due to illegal fishing in Somali waters.²¹⁷ Hansen argues that while illegal fishing has been going on in Somali waters, the collapse of the country's government engendered the escalation of piracy and illegal fishing.²¹⁸ Schbley & Rosenau observe that pirate leaders in Somalia facilitate IUU fishing.²¹⁹ It argued that this observation is supported by the report of the United Nations Monitoring Group on Somalia and Eritrea (UNMGSE), which states that due to "the decline in pirate hijackings of merchant vessels since 2012, pirate leaders have turned towards unlicensed fishing operations in Somali waters as a source of revenue."²²⁰

2.4.4 Piracy and drugs, arms and human trafficking

In the same vein, ports in Nigeria, as well as other countries in the Gulf of Guinea, lack sufficient oversight, effective monitoring and proper surveillance by maritime regulatory and security agencies, which encourage piracy and other maritime crimes in the region. In fact, long coastlines,

²¹⁴) *Ibid.*

²¹⁵) *Ibid.*

²¹⁶) *Ibid.*

²¹⁷) Jasmine Hughes, "The Piracy-Illegal Fishing Nexus in the Western Indian Ocean," Strategic Analysis Paper, 10 February, 2011, p. 3.

²¹⁸) Stig J. Hansen, "Debunking the Piracy Myth: How Illegal Fishing Really Interacts with Piracy in East Africa," (2012) RUSI Journal, Vol. 156, No. 6, pp. 26-30.

²¹⁹) Ghassan Schbley & William Rosenau, "Piracy, Illegal Fishing, and Maritime Insecurity in Somalia, Kenya, and Tanzania," CAN Strategic Studies, November, 2013 p. 19.

²²⁰) UNSC Report on Somalia of the Monitoring Group on Somalia and Eritrea, UN Doc. S/2013/413, July 12, 2013, Annex 3.1, p. 100.

porous borders, weak enforcement mechanisms, corruption, infrastructural decadence, and weak maritime regulatory and security institutions have enabled IUU fishing, as well as trafficking in drugs, arms and human to thrive in Nigeria. This situation is further aggravated by lack of political will by the various countries to effectively secure their maritime zones, thereby allowing smuggling routes to become established in their various ports, with an estimation of 50 tonnes of cocaine worth US\$2 billion and destined for Europe, transiting West Africa annually.²²¹

Aside from providing nearly 10 percent oil and 4 percent natural gas, Nigeria and other Gulf of Guinea countries provide an easy source of narcotic supply to the EU.²²² Reflecting on the dangers posed by drug trafficking in Europe and the link to the Gulf of Guinea, the Council of the EU states that the “region’s proximity to Europe with easy sea access gives it a comparative advantage over the Middle East for our oil needs and Europe remains a primary export market for other regional products, including forestry, agricultural and mineral resources. Narcotics...trafficked along the coast...are increasingly damaging local communities and fuel problems in Europe.”²²³ On their own part, South American pirates are linked to drug smuggling and hijacking of yachts.²²⁴

Herbert-Burns rightly states that the sustained trafficking of illicit narcotics, weapons, and people through the sea, particularly in the Indian Ocean, will persist for the medium-to long-term.²²⁵ The reasons for this conclusion include the fact that there are many sources of high-volume

²²¹) A. Anyimadu, *supra* note 190, pp. 4-5

²²²) Council of the EU, “EU Strategy on the Gulf of Guinea,” Foreign Affairs Council Meeting, Brussels, 17 March, 2014, p. 2.

²²³) *Ibid.*

²²⁴) Lydelle Joubert, “The Extent of Maritime Terrorism and Piracy: A Comparative Analysis,” (2013) *South African Journal of Military Studies*, Vol. 41, No. 1, p. 117.

²²⁵) Rupert Herbert-Burns, “Countering Piracy, Trafficking, and Terrorism: Ensuring Maritime Security in the Indian Ocean,” *STIMSON*, April, 2012, p. 4.

supply for all the three commodities; there are equally sufficiently huge number of points of exports located in key countries that are exposed to chronic insecurity and corrupt officials; and particularly, the environment within which this occurs is vast and essentially insecure, including lengthy tracts of unpatrolled coastline.²²⁶ This dissertation rightly argues that these features also allow piracy to thrive, especially in the Indian Ocean, the Gulf of Aden and the Gulf of Guinea.

On the issue of weapon trafficking in Nigeria, two incidents readily come to mind. In one of the incidents, 15 Russian sailors of the *MV Myre Seadiver* were detained by the Nigerian Navy for illegally bringing 14 AK-47 rifles with 3, 643 rounds of ammunition into Nigeria in October, 2012.²²⁷ The other incident involved a British gun-runner, Gary Hyde, who was given a jail term of 7 years for arranging the sale of 80, 000 AK-47 assault rifles and 32 million rounds of ammunition in Nigeria, as well as spearheading the shipment of over 800, 000 pounds shipment of tens of thousands of small arms and light weapons (SALWs) from China to Africa.²²⁸ It is therefore argued that arms trafficking facilitates piracy in Nigeria by providing weapons to pirates in the execution of their nefarious acts.

2.4.5 Piracy and other maritime crimes

In furtherance of the above, piracy is also engendered by the proliferation of SALW in the Gulf of Guinea region, especially in Nigeria, which has encouraged and sustained the outbreak of violent conflicts in the country as well as other neighbouring countries. From Bah's point of view, out of 100 million illicit weapons in circulation in sub-Saharan Africa, about eight to

²²⁶) *Ibid.*

²²⁷) S. Momoh, supra note 210.

²²⁸) *Ibid.*

ten million are concentrated in the West African sub-region.²²⁹ Onuoha argues that the availability of SALWs contributes to the frequency and intensity of conflicts, criminality, as well as maritime piracy, which has bedeviled the countries in the Gulf of Guinea region.²³⁰ It is not surprising that countries, like Nigeria, confronted by these challenges, “tend to couch their security in terms of narrow, landward security. An obvious consequence for this narrow view of security is the overwhelming support given to land-based forces, particularly the army, to the neglect of maritime security forces such as navy, air force and coast guards.”²³¹

Linking SALW to piracy, Chalk opines that the availability of light weapons which originates “from unregulated arms bazaars and former and on-going conflict zones, weapons are widely prevalent, cheap, readily transportable, easy to handle, and durable. These munitions are perfectly suited to designs of Somali gangs, providing them with the necessary “hardware” to take on, seize, and hold even the largest ocean-going carriers.”²³²

As a corollary to the above, contemporary piracy has been alluded to terrorism. Murphy, on his part, is of the opinion that terrorists will collude with pirates in order to extend their dominance at the sea.²³³ In his view, Brooks contends that piracy offers terrorists a means to finance their ongoing land-based operations.²³⁴ Thus, it could be argued that contemporary pirates

²²⁹) Freedom C. Onuoha, “Piracy and Maritime Security in the Gulf of Guinea: Nigeria as a Microcosm,” Al Jazeera Centre for Studies, 12 June, 2012, p. 8, citing Alhaji Bah.

²³⁰) *Ibid*, pp. 8-9

²³¹) *Ibid*.

²³²) Peter Chalk, “Piracy off the Horn of Africa: Scope, Dimension, Causes and Responses,” (2010) *The Brown Journal of World Affairs*, Vol. XVI, Iss. II, p. 97.

²³³) Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World* (Columbia UP: New York 2008) p. 380.

²³⁴) Peter Brookes, “The Challenges of Modern Piracy” in M.R. Haberfeld & Agostino von Hassel (eds.) *Modern Piracy and Terrorism: The Challenges of Piracy for the 21st Century* (Kendall Hunt: Dubuque, IA 2009) p. 31.

operating at sea today maintain a relationship with regional terrorist groups.²³⁵ On the other hand, doubts have been cast on such ‘spurious arguments’ which cannot be supported with evidence, and writers have equally reiterated the fact that there is no supportable evidence of such a relationship.²³⁶ Nelson’s reflection is that the “implications of a terrorism-piracy nexus have a profound impact on international stability, and it is important to determine whether or not this is an existing threat or has the potential of becoming one.”²³⁷ It is the position of this research that going by the nature of modern piracy in Nigeria and the Strait of Malacca, there is sufficient platform for pirates and terrorists to interact in furtherance of their individual or collective goals.

Alawode & Ogunleye aptly outline some of the acts of oil terrorism, as well as piracy, in Nigeria which include blowing up of oil pipelines, installations, and platforms with explosives, and the seizure of oil barges, oil wells, flow stations, support vessels, and other oil facilities. According to the authors:

- (i) On January 16th, 2005, a major pipeline supplying crude to the Forcados export terminal was blown up, cutting supplies by about 100,000 barrels per day.
- (ii) On March 18th, 2005, militants blew up an oil pipeline operated by an Italian company, reducing flow by 75,000 barrels per day.

²³⁵) Roger L. Tomberlin, “Terrorism’s Effect on Maritime Shipping,” in M.R. Haberfeld & Agostino von Hassell (eds.) *ibid*, p. 53.

²³⁶) Joubert is of the opinion that the likelihood of pirates and terrorist working together is limited because their objectives are different. It is not in pirates’ interest to cooperate or collaborate with terrorists. See L. Joubert, *supra* note 220, p. 131. See also Peter Chalk, “The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States,” RAND, Project Air Force, 2008, pp. 31-32 and Bateman Sam, “Assessing the Threat of Maritime Terrorism: Issues for the Asia-Pacific Region,” (2006) *Security Challenges*, Vol. 2, No. 3, p. 81.

²³⁷) Eric S. Nelson, “Maritime Terrorism and Piracy: Existing and Potential Threats,” (2012) *Global Security Studies*, Vol. 3, Iss. 1, p. 23.

(iii) On October 3rd, 2006, militants struck at an oil vessel at Cawthorowe Channels, killing five soldiers who were escorting the vessel, and later sinking the vessel.

(iv) On May 8th, 2007, MEND attacked three oil pipelines; two of these pipelines were in the territory of Akassa and the third in Twon-Brass.²³⁸

2.5 Overview of port state control (PSC)

This sub-head examines the meaning of PSC and traces its historical development in the maritime industry. In the process, the reasons for the introduction of PSC would be identified and interrogated. Equally, the various regional platforms for the application of the PSC would be outlined.

2.5.1 Meaning of port state control (PSC)

PSC is the inspection of foreign flagged vessels in national ports to verify that the condition of ships and their equipment comply with the requirements of international conventions and that ships are manned and operated in compliance with applicable international laws.²³⁹ Bevan, comparing PSC and port state jurisdiction states that PSC is a narrower concept compared to “port state jurisdiction, involving the inspection and assessment of visiting vessels against a range of internationally-agreed standards on matters such as safety and environmental safeguards. These inspections generally arranged

²³⁸) A.J. Alawode & I.O. Ogunleye, “Maintenance, Security, and Environmental Implications of Pipeline Damage and Ruptures in the Niger Delta Region,” (2011) *The Pacific Journal of Science and Technology*, Vol. 12, No. 1, p. 568. For detailed analysis of piracy and maritime terrorism, see Thorsten Resch, “Combating Piracy Today-A Comprehensive Analysis of How to Counter the Menace of Piracy Using the Example of Attacks by Somali Pirates Around the Horn of Africa,” Faculty of Law, School for Advanced Legal Studies, University of Cape Town, 2010, pp. 12-14 <<http://core.ac.uk/download/pdf/29053107.pdf>> accessed 4 May 2015.

²³⁹) R. Chiu, *et al*, “The Implementation of Port State Control in Taiwan,” (2008) *Journal Marine Science and Technology*, Vol. 16, No. 3, p. 207. Keith Michel, *War, Terror and Carriage by Sea* (LLP: London 2004) p. 741.

on a regional basis, so that information can be shared and efforts targeted towards the most high-risk ships.”²⁴⁰ Norris, further, explains that under the regime of PSC, a port state may take measures that include boarding and inspections, followed by control actions as necessary in response to any identified discrepancies.²⁴¹ The concept of PSC, this dissertation argues, reflects on the need to board and inspect vessels calling at the port of a coastal state for the purposes of ensuring that such ships comply with existing international conventions, regulations and standards, particularly in the area of security and safety.

The philosophy behind PSC is the application by the port state of its national laws to visiting vessels. This research is of the view that the regime of PSC allows port states to inspect and determine the competence of crew and seaworthiness of ships in relation to security and safety situation on the sea. Shading light on this point, Churchill and Lowe opine that when ships enter into foreign ports and other internal waters, they are within the territorial sovereignty of the coastal state.²⁴² McDorman, on his part, posits that “a port is part of a State’s internal waters over which a State can exercise the same jurisdiction as if the internal waters were part of the land of the State, a foreign vessel in port is subject to the same jurisdiction as an alien on land.”²⁴³ Hence, by virtue of this international legal principle, in its port, a port state “has absolute jurisdiction over visiting vessels in the same manner as if the visiting vessel were a foreign citizen... doing business in the host

²⁴⁰) Bevan Marten, “Port State Jurisdiction in New Zealand: The Problem with *Sellers*,” (2013) VUMLR, Vol. 44, p. 562.

²⁴¹) Norris J. Andrew, “The “Other” Law of the Sea,” (2011) Naval War College Review, Vol. 64, No. 3, p. 89.

²⁴²) R.R. Churchill & A.V. Lowe, *The Law of the Sea* (Manchester University Press: Manchester 1999).

²⁴³) Ted L. McDorman, “Regional Port State Control Agreements: Some Issues of International Law,” (2000) *Ocean and Coastal Law Journal*, Vol. 5, p. 210, quoting Ted L. McDorman, “Port State Enforcement: A Comment on Article 218 of the Law of the Sea Convention.”

country. The result being that a visiting vessel is subject to and must comply with the laws and regulations of the host country.”²⁴⁴

The above position is, however, limited, if the visiting vessel is a government vessel, issues of sovereign or diplomatic immunity may arise. In addition, where a vessel is not voluntarily in port but had to call at port because of an emergency or weather, there may be a limitation in customary international law on the authority of the port state regarding that vessel.²⁴⁵ Thus, the ideation of this research is that the PSC regime could be calibrated as a means to determine the competence of the crew to prevent or repel piracy attacks as well as the availability and adequacy of communication and security equipment on board the ship. Moreover, PSC is a platform for information and intelligence gathering and sharing on security of vessels and maritime domain awareness between the port state and the vessels and among regional authorities.

2.5.2 Historical development of port state control (PSC)

It is generally believed that most flag states have failed in the administration of their duties, *to wit*, monitoring ships flying their flag and insisting on compliance with the obligations and requirements under international maritime conventions. The failure of flag states and that of other associated organisations such as the classification society and the insurers²⁴⁶ has led to

²⁴⁴) *Ibid.*

²⁴⁵) R.R. Churchill & A.V. Lowe, *supra* note 242.

²⁴⁶) The events at the *San Marco* case illustrate that ship owners, classification societies, insurers, and flag state administrators have failed to do their job properly. For further details, see Ian Middleton, “Holes in the System,” *Seatrade Rev. Monthly*, January, 1994, p.6. See also Oya Z. Ozcayir, “Port State Control: The Impact of Caspian Oil and Gas Development on Turkey and Challenges facing the Turkish Straits,” the Marmara Hotel, Istanbul, 9 November, 2001, p. 2; and D. Fitzpatrick & M. Anderson (eds.), *Seafarers’ Rights* (Oxford University Press: 2005) p.157.

grievous maritime disasters, including loss of life and property; pollution of the maritime environment and economic loss.²⁴⁷

The above challenge and other failures such as the problem associated with the flag of convenience (FOC) have become a challenge for major maritime nations. FOC arose as a negative economic reaction to effective flag state administration. Ships registered under the FOC regime enjoy the laxity in such ports of registration on international regulations matter. They rarely ever visit their home nation during the whole of their service life, thus making the enforcement of international standard uneven.²⁴⁸ Mandaraka-Sheppard aptly describes the situation as: “The failure of some flag States to exercise effective control on the enforcement of international safety regulations, the slackness of some shipping companies to observe safety issues, the poor performance of some classification societies...coupled with the increased public interest...led to measures to counterbalance these deficiencies...”²⁴⁹

Historically, the development of PSC lies in the MOU between 8 North Sea states signed in Hague in 1978. The background of this MOU is that in 1976 a maritime session of the International Labour Organisation (ILO) Conference adopted the Merchant Shipping (Minimum Standards) Convention: ILO Convention No. 147. This convention was aimed at inspecting vessels that entered the ports of member states.²⁵⁰ On the 2nd of

²⁴⁷) Ilavbare M. Erakhoba, “The Effect of Port State Control on International Maritime Commerce: A Critic of the European Memorandum of Understanding (Paris MOU) and the West and Central Africa Memorandum of Understanding (Abuja MOU),” LLM Dissertation, University of Hertfordshire, School of Law, 19 September, 2011, pp. 1-2.

²⁴⁸) *Ibid.*

²⁴⁹) Aleka Mandaraka-Sheppard, *Modern Maritime Law and Risk Management*, (2nd edn. Informa: London 2009).

²⁵⁰) O.Z. Ozcayir, *supra* note 246, pp. 3-4.

March, 1978, the Hague Memorandum was signed by the maritime authorities of eight countries²⁵¹ which decided that this convention deserved a proper follow-up. The aim of the memorandum was to monitor the seagoing ships generally in order to ensure that requirements stated under the ILO Convention No.147, as well as in other conventions, were met.²⁵²

Just as the Hague Memorandum was about to come into effect, in March 1978 *Amoco Cadiz* incident happened. The consequence of this incident was a strong political and public demand in Europe for much more stringent regulations with regard to the safety of vessels in the shipping industry.²⁵³ Following these developments, the Ministers responsible for the maritime safety of 13 European countries, together with the representatives of the Commission of the European Communities, IMO and ILO met in Paris in December 1980. They agreed that the elimination of substandard shipping would be best achieved by coordination of port states and based on the provisions of a number of widely accepted international maritime conventions.²⁵⁴ At a second ministerial conference, again in Paris, in January 1982, the present Paris MOU on PSC was adopted and signed by the maritime authorities of 14 states.²⁵⁵

This idea has since been supported by IMO, UN agency responsible for the regulation and support of international maritime activities including the development of laws, treaties, conventions, regulations and codes.²⁵⁶ It

²⁵¹) These countries were Belgium, Denmark, France, Germany FR, the Netherlands, Norway, Sweden and the UK.

²⁵²) O.Z. Ozcayir, supra note 246, pp. 3-4.

²⁵³) *Ibid.* p. 4.

²⁵⁴) *Ibid.*

²⁵⁵) *Ibid.*

²⁵⁶) Oya Z. Ozcayir, "The Use of Port State Control in Maritime Industry and Application of the Paris MOU," (2009) *Ocean and Coastal Law Journal*, Vol. 14, No. 2, p. 202. For more

has further led to the establishment of 8 other MOUs, which includes Latin America MOU, Asia- Pacific MOU, Caribbean MOU, Indian Ocean MOU, Mediterranean MOU, Abuja MOU for West and Central Africa, Black Sea MOU and Riyadh MOU for the Gulf Region. It is pertinent to state that not all port states have joined the PSC as the US is not a member of any MOU, but the country has the US Coast Guard (USCG) which carries out PSC activities in accordance with the US Code of Federal Regulations and other international conventions.²⁵⁷

The ultimate responsibility for the enforcement and implementation of conventions lies with the flag state; while sovereign and other self-governing states have the right to control any activity within their own borders including those of visiting ships calling at their ports. The control by these sovereign and self-governing states over foreign flagged ships in their ports, verifying compliance with the requirement of the international marine conventions on the basis of the above philosophy is called PSC.²⁵⁸ The regime of PSC will ensure that competent and well trained crew and standard vessels as well as equipment are used in the shipping industry in order to reduce the incidence of piracy.

details on the historical background of PSC, see Ronald P. Barsto, "Port State Control: Evolving Concepts," in Harry N. Scheiber (ed.) *Law of the Sea: The Common Heritage and Emerging Challenges* (Martinus Nijhoff Publishers: Boston 2000) pp. 87-93; and George C. Kasoulides, *Port State Control and Jurisdiction* (Martinus Nijhoff Publishers: Boston 1993).²⁵⁷ D. Fitzpatrick & M. Anderson (eds.), supra note 246, p. 159. See also K. De Baere & H. Verstraelen, "Port State Control," Norwegian Centre for Maritime Medicine (NCMM), 2013 <<http://textbook.ncmm.no/index.php/textbook-of-maritime-medicine/54-textbook-of-maritime-medicine/14-ship-control/709-port-state-control>> accessed 24 July 2015.

²⁵⁸) I.M. Erakhoba, supra note 247, p. 2.

2.5.3 Critical evaluation of the regime of port state control

In 1981, the first resolution on the procedures for the control of ships through the PSC, IMO Resolution A.466 (XII), was adopted by the IMO Assembly.²⁵⁹ Since 1981, the resolution has been amended in response to new developments in the shipping industry. Thus, in 1995, the Assembly of the IMO made the first amendments to A.466 (XII) by adopting Resolution A.787(19), entitled “Procedures for Port State Control.”²⁶⁰ Resolution A.787(19) was amended in 1999, by Resolution A.882(21),²⁶¹ and the current version of the IMO Procedures for PSC is “Resolution A.1052 (27), 2011.”²⁶² The new resolution provides basic guidance on how to conduct PSC inspections; encourages consistency in the conduct of these inspections and control procedures; and clarifies the procedure for assessing the deficiencies of a ship, its equipment, or its crew.²⁶³ These procedures are not mandatory, they only offer guidance to port states in conducting inspections on visiting vessels to their ports.²⁶⁴

Although the participating PSC regions are supposed to follow the IMO procedures when exercising PSC, in practice, it has been clear that PSC regions have interpreted and implemented these procedures in a number of different ways.²⁶⁵ For example, if convention control provisions were strictly interpreted, a routine or general inspection would be limited to a check on the validity of the vessel’s certificates, except in situations where the

²⁵⁹) See generally International Maritime Organisation (IMO), Procedures for the Control of Ships, A. Res. XII/466, 19 November 1981.

²⁶⁰) IMO, Procedures for the Control of Ships, A. Res. 19/787, 23 November, 1995, p. 2.

²⁶¹) IMO, Amendments to Procedures for Port State Control, A. Res. 21/882, 25 November 1999, p. 1.

²⁶²) IMO, Amendment to Procedures for Port State Control, A 27/Res.1052, 20 December 2011.

²⁶³) See generally IMO, Procedures for Port State Control, 2011, *ibid*.

²⁶⁴) *Ibid*, para. 1.1.

²⁶⁵) O.Z. Ozcayir, *supra* note 256, p. 211.

condition of the vessel was doubtful. Nevertheless, it is often argued that the mere presence of certificates is only evidence of, and not confirmation of convention standards being met.²⁶⁶ As a consequence, some PSC officers are predisposed to inspect more than just the ship's certificates while undertaking routine PSC inspections.²⁶⁷ Such extensive inspection will go a long way to determine the competence and certification of the crew, the standard and seaworthiness of ships and availability of modern facilities by the vessels with a view to preventing piracy incidences.

2.6 Conclusion

This chapter critically and thoroughly discussed the meaning, nature, features, scope and limitations of the legal regime of piracy as well as an overview of PSC. While noting the limitations of the extant legal framework for suppressing piracy, the researcher argues that due to the nature of contemporary piracy, particularly in Nigeria, there is need to review the definition of the crime under international law with a view to expanding it. Particularly, the geographical aspect of piracy definition should be expanded to include acts that occurred in territorial waters. The chapter went further to examine the meaning and historical development of the concept of PSC, which highlighted the prospect of using the concept as an effective and useful platform for implementing and enforcing international, regional and domestic instruments on maritime safety and security. This forms the basis for the use of PSC as an instrument for suppressing piracy in Nigeria. In other words, PSC was established to verify that vessels entering the ports of a coastal state have complied with relevant safety, pollution and security

²⁶⁶) "Port State Control: A Guide for Ships involved in the Dry Bulk Trades," INTERCARGO, London, 2000, pp. 7-8.

²⁶⁷) *Ibid.*

conventions, regulations, orders, as well as domestic laws. Thus, PSC will be a veritable tool to determine whether vessels have complied with security measures contained in relevant security instruments and other conventions. This will prevent ships from being susceptible to piratical acts. Moreover, PSC could be used as a platform for implementing other counter-piracy measures in the suppression of piracy.



CHAPTER 3

CAUSES, CONSEQUENCES AND CHALLENGES IN SUPPRESSING PIRACY OFF NIGERIA

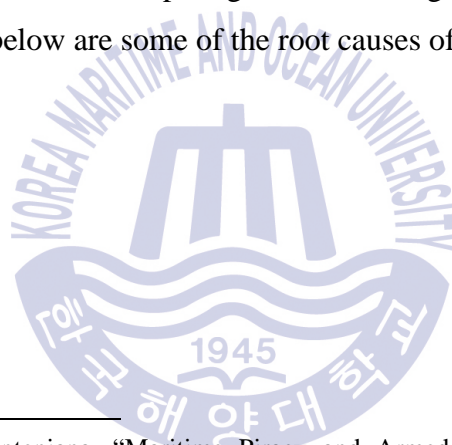
3.1 Introduction

With the aid of pictograms, tables, graph, chart, map and analysis of reports, this chapter, first and foremost, identifies and analyses the root causes of piracy in Nigeria. It is pertinent to note that piracy needs an enabling environment to thrive, especially where there are inadequate legal regime, weak maritime regulatory and security institutions, lack of surveillance equipment, poverty, unemployment, absence of regional cooperation, and most importantly, lack of political will by the government of the coastal state to suppress the maritime crime. Furthermore, the chapter critically examines the effects of piracy from humanitarian, health, sociopolitical perspectives, especially how piracy adversely implicate on the economic development of Nigeria. Lastly, the chapter discusses the problems inherent in the suppression of piracy with a view to proffering solutions and argues that lack of political will by government paves way for the advent of the root causes, consequences and challenges in the suppression of piracy in Nigeria.

3.2 Causes of piracy off Nigeria

From the forgoing, it is a truism that in a globalised world, the security of the oceans is of paramount importance to humanity, generally. It is worthy of note that oceans are not only the platform on which about 90 percent of the goods and energy that sustains the world economy are transported, but they provide resources of various kinds (both living and non-living) that support

“the livelihood of people on land today and the future generation.”²⁶⁸ Several activities that guarantee life onshore are performed at sea. Hence, order and security at sea, considered as secondary wealth generator and enabler, is one of the core pillars for ocean sustainable wealth generation.²⁶⁹ Unfortunately, order and security at sea have been under constant threat due to incessant piracy acts. In fact, piracy is considered a plague that has affected the maritime industry “since seaborne trade occurred in the history of mankind. Their occurrence has been up and down in switchback depending on the era and the region.”²⁷⁰ A cursory look at the report of the Dalhousie Marine Piracy Project shows that some of the root causes of global piracy include poverty, corruption, lack of infrastructural development, overfishing, environmental degradation, weak regulatory and security institutions, and insurgency.²⁷¹ With the aid of pictograms, tables, graph, chart, map and analysis of reports, below are some of the root causes of global piracy.



²⁶⁸) Jean E. Randriananteniana, “Maritime Piracy and Armed Robbery against Ships: Exploring the Legal and the Operational Solutions. The Case of Madagascar,” The United Nations-Nippon Foundation Fellowship Programme 2012-2013, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, the United Nations, New York, 2013, p. 1 <http://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/Randrianantenaina_1213_Madagascar.pdf> accessed 15 May 2015.

²⁶⁹) F.N. Bailet, *et al*, *Integrated Maritime Enforcement: A Handbook* (Halifax: Dalhousie University, 1999) p. 6.

²⁷⁰) J.E. Randriananteniana, *supra* note 268.

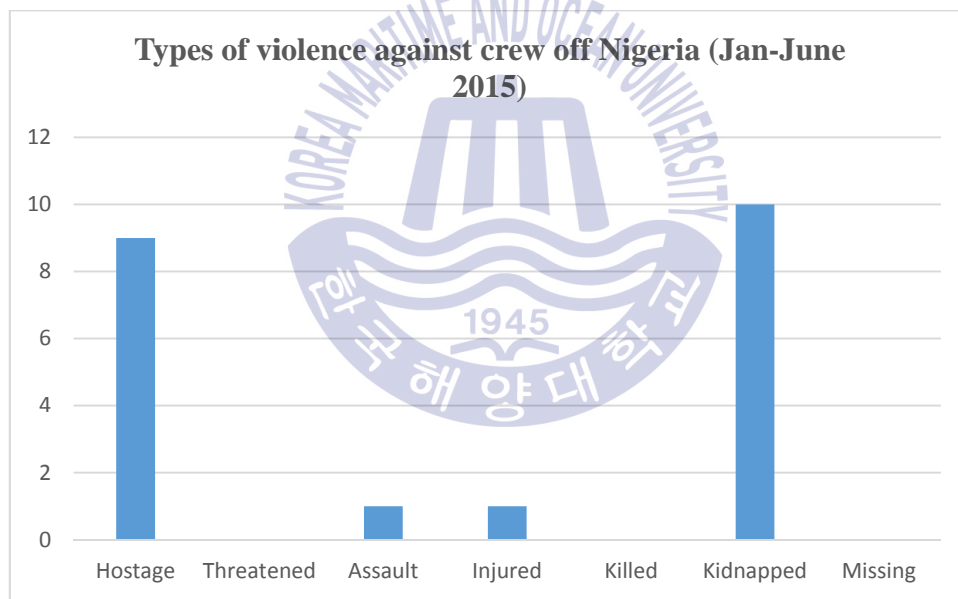
²⁷¹) See generally, S. Whiteman & C. Suarez, “Dalhousie Marine Piracy Project: The Root Causes and True Costs of maritime Piracy,” Marine Affairs Program Technical Report No. 1, 2012 <http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical_series/MAP%20Technical%20Report%20%231.pdf> accessed 12 May 2015.

Table 3: Types of violence against crew globally (Jan-June 2015)

(Table created by the Author) (IMB Piracy Report for 2015)²⁷²

Country	Hostage	Threatened	Assault	Injured	Killed	Kidnapped	Missing
Nigeria	9		1	1		10	
Ghana	45				1		
Indonesia	50			2			
Bangladesh	2	1		2			
Malaysia	110			1			

Chart 2 (Chart prepared by Author from IMB Piracy Report for 2015, p. 10)



²⁷²) IMB Piracy Report for 2015, p. 10. In 2014, Nigeria had hostages-15, Injured-1 and Killed-1; Indonesia had Hostages-90, Threatened-4, Assault-1 and Kidnapped-3; and Bangladesh had Hostages-3, Threatened-1 and Injured-2. See IMB Piracy Report for 2014, p. 11.

Graph 2 (Graph prepared by Author from Chart 2)

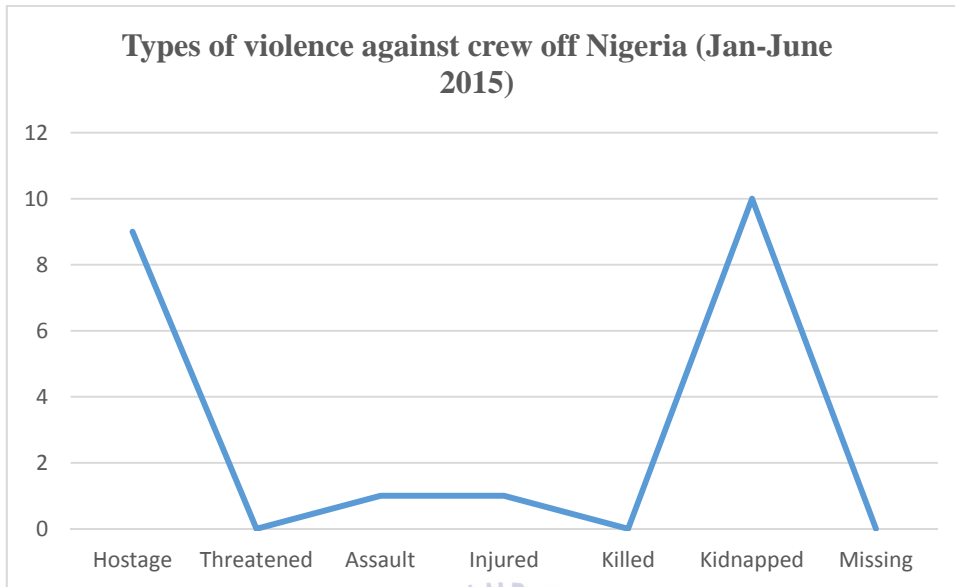


Table 4: Types of violence against crew globally (2010-June 2015)

(Table created by the Author) (IMB Piracy Report for 2014 and IMB Piracy Report for 2015)²⁷³

Types of Violence	2010	2011	2012	2013	2014	Jan-June 2015
Assault	6	6	4	-	1	14
Hostage	1174	802	585	304	442	250
Injured	37	42	28	21	13	9
Kidnap/Ransom	27	10	26	36	9	10
Killed	8	8	6	1	4	1
Missing	-	-	-	1	1	
Threatened	18	27	13	10	9	5
Total	1270	895	662	373	479	289



²⁷³) IMB Piracy Report for 2014, p. 11 and IMB Piracy Report for 2015, p. 10.

Pictogram 1²⁷⁴



Pictogram 2²⁷⁵



²⁷⁴) See “Shell Oil Spills in the Niger Delta-in Pictures,” *The Guardian*, 3 August 2011 <<http://www.theguardian.com/environment/gallery/2011/aug/03/shell-oil-spills-niger-delta-in-pictures>> accessed 21 April 2015.

²⁷⁵) Michael C. Ekenyerengozi, “Bayelsa under PDP Remains most Underdeveloped,” 26 October 2014 <<http://www.nigerdeltanews.com/bayelsa-under-pdp-remains-most-underdeveloped/>> accessed 21 April 2015.

Pictogram 3²⁷⁶



Pictogram 4²⁷⁷



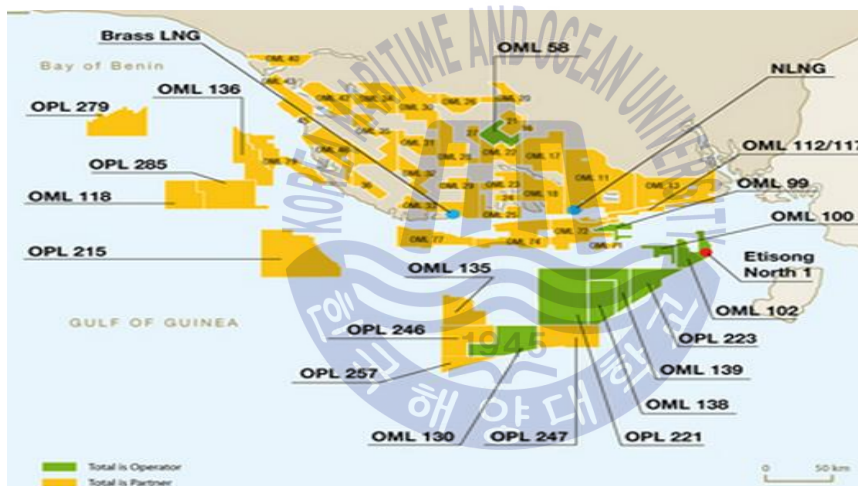
²⁷⁶) “Nigeria: Under-development Continues to Fuel Oil Theft,” *IRIN*
<<http://www.irinnews.org/report/81507/nigeria-under-development-continues-to-fuel-oil-theft>> accessed 21 April 2015.

²⁷⁷) “Total find Oil Field off Nigeria Coast”
<<http://nigerianssavingnigerians.org/2011/11/07/total-find-oil-field-off-nigeria-coast/>>
accessed 2 June 2015.

Pictogram 5²⁷⁸



Map 3²⁷⁹



²⁷⁸) “Shell: Oil Production begins from Bonga North West,” *Offshore Energy Today.Com*, 6 August, 2014 <<http://www.offshoreenergytoday.com/shell-oil-production-begins-from-bonga-north-west/>> accessed 2 June 2015.

²⁷⁹) “Total Makes 2nd Oil Discovery in OML 102, Offshore Nigeria,” *Offshore Energy Today. Com*, 7 November, 2011 <<http://www.offshoreenergytoday.com/total-makes-2nd-oil-discovery-in-oml-102-offshore-nigeria/>> accessed 2 June 2015. Note that OML means “Oil Mining Lease.”

3.2.1 Underdevelopment/pollution of the oil producing areas

One of the major causes of piracy is the underdevelopment of the coastal areas in Nigeria, which is not only parallel to the economic importance of the area, but a confirmation of the staggering neglect and insensitivity of government at the federal, state and local levels towards the region. Against this backdrop, the Niger Delta youths in the South-south Nigeria became very restive due to complete neglect of the region by each successive government and government's inability to reverse this deplorable trend.²⁸⁰ There is an overwhelming infrastructural neglect in the coastal communities, coupled with the devastation of the environment as a result of the activities of oil exploration in the area. Despite the fact that about 83 percent of Nigeria's revenue²⁸¹ comes from the region, it has been subjected to all forms of infrastructural decadence (see Pictograms 1-3 above). This has been made worse by environmental pollution, like oil spillage, which destroys the agricultural potentials (fishing and farming) of the coastal areas.²⁸²

According to a Shell sponsored report,²⁸³ consequent upon decades of oil and gas exploration in the Niger Delta area, the environmental stress has increased and livelihoods have been impacted by a combination of factors, like oil spillage, as well as lingering residues of pollutants (see Pictogram 1 above). This has not provided a conducive environment for the

²⁸⁰) K.K. Anele & Y. Lee, supra note 4, p. 30.

²⁸¹) Abubakar Adamu, "The Impact of Global Fall in Oil Prices on the Nigerian Crude Oil Revenue and its Prices," proceedings of the Second Middle East Conference on Global Business, Economics, Finance and Banking (ME15Dubai Conference), Dubai-UAE, 22-24 May, 2015, p. 2
<http://globalbizresearch.org/Dubai_Conference2015_May_2/conference/psd/D508.pdf>
accessed 6 September 2015.

²⁸²) K.K. Anele & Y. Lee, supra note 4, p. 30. See also Kalu Kingsley Anele, "Taming the Tide of Maritime Piracy in Nigeria's Territorial Waters," (2015) J. Navig. Port Res. Vol. 39, No. 2, p. 92.

²⁸³) IUCN Niger-Delta Panel, *Sustainable Remediation and Rehabilitation of Biodiversity and Habitats of Oil Spill Sites in the Niger Delta: Main Report including Recommendations for the Future* A Report by the Independent IUCN-Niger-Delta Panel (IUCN-NDP) to Shell Petroleum Development Company of Nigeria (SPDC), (Switzerland: Gland, 2013) p. 11.

recovery and return of biodiversity to the affected areas. Moreover, the pollution of the environment aggravates the worsening crises of poverty and unemployment which culminates to increased restiveness among the youth of the delta region,²⁸⁴ thereby making the area a fertile ground for piracy and other maritime crimes.

In furtherance of the above, the net effect of underdevelopment and pollution of the oil producing communities is the proliferation of poverty and unemployment. Aside from the chronic lack of infrastructural development of the oil producing areas, 70 percent of Nigerians live below the poverty line amid abundant natural resources.²⁸⁵ According to the 2014 Human Development Index (HDI), Nigeria is ranked 152 out of 187 countries in spite of its huge human and natural resources.²⁸⁶ More so, the 2014 Index of Economic Freedom puts Nigeria at 129th position, accumulating 55.3 points, placing the country's economic score as 'mostly unfree.'²⁸⁷ Many people in Nigeria, particularly the youths, have gotten tired of joblessness and the life style the leadership of the state subjected them to (see Pictogram 3 above). This situation is similar in many other African countries where the youths in a well-coordinated scheme and in defiance of societal norm get involved in piracy as a means of survival.²⁸⁸ Poverty and unemployment which have

²⁸⁴) *Ibid.* See generally, United Nations Environment Programme (UNEP), *Environmental Assessment of Ogoniland* (Nairobi: UNEP, 2011).

²⁸⁵) For more details on the poverty and unemployment level in Nigeria, see Alexander Ekemenah, "Unemployment in Nigeria: Task before Jonathan's Administration," *BusinessWorld*, 2-9 September, 2013, pp. 32-33.

²⁸⁶) "Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience," Human Development Report 2014, United Nations Development Programme (UNDP), p. 159

<<http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>> accessed 21 April 2015.

²⁸⁷) "Highlights of the 2014 Index of Economic Freedom," The Heritage Foundation <http://thf_media.s3.amazonaws.com/2014/pdf/Index2014_Highlights.pdf> accessed 21 April 2015.

²⁸⁸) Matthew Fiorelli, "Piracy in Africa: The Case of the Gulf of Guinea," KAIPTC Occasional Paper No. 37, August 2014, p. 8

given fillip to piracy is also a common feature in Indonesia.²⁸⁹ Thus, it is argued that poverty and unemployment due to environmental degradation, unemployment, poverty and infrastructural decadence lead to piracy.

3.2.2 Corruption and inequality between the ruling class and the masses

The various militant groups in the Niger Delta that have threatened the security and peace of Nigeria emerged as a spontaneous reaction to a long term grievances of the people who live in the same country with their rich politicians while many Nigerians live in penury.²⁹⁰ This dissertation contends that Nigeria has become a safe haven for militant groups made up of youths agitating for change in the current political dispensation that encourages corruption and mismanagement of public funds. In fact, it was alleged that former President of Nigeria, Dr. Goodluck Jonathan “was unlikely to move against the senior officials alleged to be controlling the market for oil theft (and by extension piracy) as many are influential and among his key

<<http://www.kaiptc.org/Publications/Occasional-Papers/Documents/Fiorelli-KAIPTC-Occasional-Paper-2014.aspx>> accessed 22 July 2015; E. Tepp, supra note 103, p. 193; and Alexander Holmgren, “Piracy’s Persistence in the Gulf of Guinea,” *African Defence Review*, 13 January, 2014

<<http://www.africandefence.net/piracys-persistence-in-the-gulf-of-guinea/>> accessed 22 July 2015.

²⁸⁹) K.K. Anele & Y. Lee, supra note 4, pp. 30-31. The causes of piracy in Asia include rampant unemployment, rising poverty, and slow economic growth in Southeast Asia which also make it difficult for states to finance anti-piracy efforts. But these economic hardships only raise incentives for individuals to join piracy gangs. Following the Asian financial crisis and collapse, many turned to crime to acquire money, food, or cigarettes. Some ships carry enough food to feed an entire village, while others carry oil or other cargo that can be resold for tremendous profits. Jennifer C. Bulkeley, “Regional Cooperation on Maritime Piracy: A Prelude to Greater Multilateralism in Asia?,” (2003) *Journal of Public and International Affairs*, Vol. 14, p. 3. Piracy in the Strait of Malacca has been linked to poverty and ill-equipped security agency. Patrick Winn, “The World has a New Piracy Hotspot,” *Global Post*, 27 March, 2014 <<http://www.globalpost.com/article/6641460/2015/09/02/celebrate-wwiis-end-eating-ice-cream-head-japanese-war-criminal>> accessed 3 September 2015. “The Asian financial crisis of 1998 may have contributed to a rise in piracy in Southeast Asia, and the global “great recession” that engulfed the world economy in 2008 has also been a factor in drawing more seafarers into a life of maritime crime.” K. Kraska, supra note 158, p. 38.

²⁹⁰) K.K. Anele & Y. Lee, supra note 4, p. 31.

allies.”²⁹¹ Generally, corruption has become institutionalised in Nigeria, as all sectors are deeply involved in corrupt activities.²⁹² But it is particularly heinous in the petroleum industry where it has negatively affected and most times distorted the day to day administration and management of the country as well as the lives of the citizens.²⁹³ Investigation into the activities in the petroleum industry in Nigeria has revealed that corruption has permeated into the fabrics of the society in such a way that those engaged in the sector have short-changed the country.²⁹⁴

Due to corruption, government officials and their cohorts are becoming wealthy, while the masses, particularly people from the oil producing communities, are languishing in abject poverty. It is trite that “weak and corrupt government officials in...*the Niger Delta*”²⁹⁵ rely on the profits from foreign oil companies, which ship the majority of their oil overseas. As a result, high unemployment, poverty, and mismanagement of resources are rampant throughout the region.”²⁹⁶ Therefore, the militant groups in the Niger Delta use piracy as a way of addressing the perceived

²⁹¹) See generally, “Gulf of Guinea Piracy,” Exclusive Analysis <www.lmalloyds.com/CMDownload.aspx?ContentKey...71ab...> accessed 12 May 2015. See also Auditor-General of the Federation, “Investigative Forensic Audit into the Allegations of Unremitted Funds into the Federation Accounts by the NNPC,” prepared by PricewaterhouseCoopers Limited, 2015, hereafter referred to as the “Forensic Audit Report”; the House of Report; the Senate Report, Nigerian Extractive Industries Transparency Initiative (NEITI), “NEITI’s 2012 EITI Report in Compliance with Requirement 21 (c) of the EITI Rules, 2011 Edition”, hereafter referred to as the “NEITI Report” and the Ribadu Report. For more information on corruption, pollution, mismanagement of natural resources, poor governance, among others, see generally “Insecurity in the Gulf of Guinea: Assessing the Threats, Preparing the Response,” International Peace Institute (IPI), January, 2014, pp. 3-4.

²⁹²) See generally, the Forensic Audit Report; the Senate Report; the NEITI Report; the Ribadu Report; and the House Report.

²⁹³) See the Forensic Audit Report; the Senate Report; the NEITI Report; the Ribadu Report; and the House Report.

²⁹⁴) For detailed reports of the structure, nature, types and economic consequences of corruption in the petroleum industry in Nigeria, see generally, the Forensic Audit Report; the Senate Report; the NEITI Report; the Ribadu Report; and the House Report.

²⁹⁵) The italicised words are mine.

²⁹⁶) M. Fiorelli, *supra* note 288, p. 6.

injustices, social grievances and inequality in Nigeria as demonstrated by unemployment, absence of economic opportunities in the oil producing area.²⁹⁷ Chalk testifies that “corruption and easily compromised judicial structures have encouraged official complicity in high-level pirate rings. The nature of this involvement has been extensive, ranging from providing intelligence on ship movements and locations to helping with the rapid discharge of stolen cargoes.”²⁹⁸

3.2.3 Weak and compromised maritime regulatory and security institutions

In addition to the above, the existence of weak maritime regulatory and security agencies, and political institutions, as witnessed in Somalia,²⁹⁹ contribute to the rising profile of piracy in Nigeria. For instance, countries, like Nigeria, with ineffective political and legal institutions as well as weak maritime regulatory and security agencies usually record high incidences in which pirates capture vessels, rob the crew and the ships of their cash, as well as cargo in the harbors, ports, territorial waters and the high sea. In view of the weak regulatory and security institutions:

The Nigerian Navy, the largest in the region, is proving to be largely ineffective in patrolling even its littoral waters. Even a claimed success, like the Joint Task Force’s interceptions on 7 May 2012 of two bunkering vessels allegedly siphoning off crude oil from a Shell manifold in Rivers State, and the seizure of 1.3 million

²⁹⁷) *Ibid*, pp. 6-7.

²⁹⁸) Peter Chalk, “Maritime Piracy: Reasons, Dangers and Solutions,” Testimony presented before the House Transportation and Infrastructure Committee, Subcommittee on Coast Guard and Maritime Transportation on 4 February, 2009, p. 3 <https://www.rand.org/content/dam/rand/pubs/testimonies/2009/RAND_CT317.pdf> accessed 12 May 2015.

²⁹⁹) The collapse of the Somali state, the explosive emergence of clan-based violence, and the destruction of political, social and economic foundations of society led to piracy off the coast of Somalia. See generally, Bettina Rudloff & Annette Webber, “Somalia and the Gulf of Aden,” in Mair Stephan (ed.), *supra* note 133, pp. 34-41.

barrels of crude, raises questions regarding both local security forces' competence and the extent to which they have been penetrated by corruption. The destruction of both vessels immediately after their seizure, and the claimed size of the seizure, cast doubts on both the official account and the JTF's capability to disrupt oil bunkering on a systematic basis.³⁰⁰

As a corollary to the above, Tepp opines that "Nigeria is a prime example of underfunded and inadequate security."³⁰¹ The inability of the Nigerian government to adequately fund and train officers of the Nigerian Maritime Administration and Safety Agency (NIMASA), the Nigerian Navy and the Nigerian Police has led to a situation where the readiness and effectiveness of these maritime regulatory and security institutions are low. More so, the vast network of river transportation route is poorly policed and monitored and all of these challenges provide the enabling environment and the opportunity for pirates to operate without any preventive confrontations from both the maritime regulatory and security institutions.³⁰² In relation to the neglect of the security and regulatory institutions in the maritime sector in fighting piracy, Dogarawa opines that "there is also the seeming neglect of the marine police, who incidentally are more civil than the navy, in the task of fighting piracy in the country."³⁰³ Regrettably, it is further contended that maritime regulatory and security institutions in Nigeria sometimes connive with the pirates in hijacking tankers laden with crude oil.³⁰⁴

³⁰⁰) Exclusive Analysis, supra note 291.

³⁰¹) E. Tepp, supra note 101, p. 191.

³⁰²) *Ibid.*

³⁰³) Lawal B. Dogarawa, "Sustainable Strategy for Piracy Management in Nigeria," (2013) *Journal of Management and Sustainability*, Vol. 3, No. 1, p. 124.

³⁰⁴) Security agencies aid pirates by either providing them with weapons or giving them access to security and intelligence information on tankers and their cargo. Udensi L. Okoronkwo, *et al*, "National Security and Maritime Piracy in Nigeria: A Sociological Discourse," (2014) *Humanities and Social Sciences Letters*, Vol. 2, No. 1, p. 66 <<http://www.pakinsight.com/pdf-files/HSSL-2014-2%281%29-60-71.pdf>> accessed 14 May

In addition, there is an absence of comprehensive records of vessels operating in Nigerian waters which would have provided easy identification and assistance in case of piratical attacks. For example, the activities of fishing trawlers are areas that need to be streamlined. Fishing trawlers operators are regulated by the Federal Ministry of Agriculture based on their fishing activities, but the trawlers they use in fishing are part of the items that should be regulated by the Federal Ministry of Transportation through its agency, NIMASA. There is no link between the two Ministries (Agriculture and Transportation) regarding the activities of fishing trawlers in Nigeria.³⁰⁵ Absence of link between the two Ministries, it is argued, provides an enabling environment where fishing trawlers may be used for piracy without any form of identification or record.

3.2.4 Lack of regional stability and cooperation

It is a truism that most piracy hotspots are located in regions engulfed in political instability, civil unrest, insurgency, regional disputes and are basically ravaged by poverty and unemployment. This is evidently witnessed in the West Africa region where boundary disputes, drugs, human and arms trafficking as a result of internal crisis, insurgency and terrorism in most of the countries in the region have contributed to the spread of piracy.³⁰⁶ For

2015. Further, there has been an inter-agency squabbles between the Nigerian Navy and the Nigeria Maritime Police, a branch of the Nigerian Police, caused by selfish interests of the affected security agencies in the country. For more details on inter-agency squabbles, see Dirk Steffen, "Troubled Waters? The Use of the Nigerian Navy and Police in Private Maritime Security Roles," Center for International maritime Security (CIMSEC), 1 July, 2014

<<http://cimsec.org/troubled-waters-use-nigerian-navy-police-private-maritime-security-roles/11918>> accessed 18 June 2015.

³⁰⁵) L.B. Dogarawa, *supra* note 303, pp. 123-124.

³⁰⁶) Both terrorism in Nigeria, Mali, Chad and Cameroon, on the one hand, and internal crisis due to militancy, insurgency and political crisis in Ivory Coast, Nigeria, contribute to the escalation of piracy in the Gulf of Guinea. For more details of how regional crisis lead to piracy in the Gulf of Guinea, see F.C. Onuoha, *supra* note 229, pp. 8-9. In Asia, the inability of Malaysia, Indonesia and Singapore to cooperate in the area of policing their maritime

instance, the maritime boundary disputes between Nigeria and Cameroon as well as Ghana and Ivory Coast may prevent these countries from cooperating for the purpose of effectively suppressing piracy. In other words, long-term political instability of a state and the inability of countries to cooperate in the area of maritime security contribute to the emergence and sustenance of piracy.³⁰⁷ In a similar vein, most of the affected countries due to the absence of “established rule of law, developed and functioning state institutions and an overall satisfactory governance”³⁰⁸ provide conducive environment for piracy to thrive. Besides, connections “to corruption, organized crime, and insurgent groups have provided the opportunity and market availability for organized piracy...”³⁰⁹ in the Gulf of Guinea.

More specifically, this research argues that there is a link between piracy and lack of regional cooperation. Maritime insecurity which is a precursor to piracy is engendered by absence of regional cooperation in monitoring and safeguarding the coastlines of the region. For illustrative purposes, the incidences in the South China Sea show that where there is no cooperation among the coastal states, piracy and other maritime crimes become rife. Instead of cooperating in the area of monitoring and patrolling of their coastline and enhancing their maritime domain awareness, these countries are busy bickering and fighting over uninhabited islands and maritime zones. This is exemplified by recent tensions and hostilities

zones has led to increase in piracy acts in the Strait of Malacca. See N. Klein, *supra* note 178, p. 304.

³⁰⁷) Keunsoo Jeong, “Diverse Piracy Patterns and Different Control Mechanisms,” A Paper for the ISA Global South Caucus Conference, 2015, p. 4 <<http://web.isanet.org/Web/Conferences/GSCIS%20Singapore%202015/Archive/e6fad450-03e9-4946-9d3a-ee793d30de5b.pdf>> accessed 30 April 2015.

³⁰⁸) Tina Lovedou, “From the Gulf of Aden to the Gulf of Guinea: Lessons Learned and Best Practices to be Employed by the Insurance Companies,” Briefing Paper, UAE Counter-Piracy Conference, 2014 <<http://counterpiracy.ae/upload/2014-Briefing/Dr.%20Tina%20Loverdou-Briefing%20Paper-Final-English%20Website.pdf>> accessed 30 April 2015.

³⁰⁹) S. Whiteman & C. Suarez, *supra* note 271, p. 31.

between China and Philippines as well as China and Vietnam in the South China Sea.³¹⁰ Presently, China has started exploiting oil in the disputed maritime zone with Vietnam which has escalated the friction and hostility existing in the disputed maritime area.³¹¹

In addition to the above, almost all the countries in the Gulf of Guinea are oil producers or have begun to explore oil and gas, leading to disputes among some of the countries over maritime boundaries. This argument is supported by “the on-going maritime boundary dispute between Ghana and Cote d’Ivoire. Some of these disputes prevent the states from having a coordinated approach to addressing their security concerns, thereby creating a window of opportunity for criminal activities to flourish in their region.”³¹² Consequently, in relation to piracy off Nigeria, it is a truism that “without a regional coordinated response to Gulf of Guinea piracy, including improved maritime surveillance capabilities, any national naval response is unlikely to reduce piracy levels significantly.”³¹³

³¹⁰) Carlyle A. Thayer, “Efforts of Ensure Maritime Security,” Paper presented to 2nd Tokyo Defence Forum Seminar organised by the Ministry of Defence, Tokyo, Japan, 16 March, 2012, p. 4.

³¹¹) China’s decision to move its Haiyang Shiyou 981 oil rig into waters west of the disputed Paracel Islands has triggered confrontations between China and Vietnam, both on land and the sea. Bill Hayton, “China-Vietnam Tensions: Beijing Vows to Continue Drilling,” *BBC News Asia*, 16 May 2014 <<http://www.bbc.com/news/world-asia-27434945>> accessed 21 April 2015. See also “China and Japan: Seven Decades of Bitterness,” *BBC News Magazine*, 13 February, 2014 <<http://www.bbc.com/news/magazine-25411700>> accessed 21 April 2015. China has continued to build artificial islands in the South China Sea. This has led to some friction among countries in the region. Emma Graham-Harrison, “South China Sea Island are Chinese Plan to Militarise Zone, Claims US,” *The Guardian*, 30 May, 2015 <<http://www.theguardian.com/world/2015/may/30/us-claims-south-china-sea-islands-are-beijing-plot>> accessed 22 July 2015.

³¹²) Joana A. Osei-Tutu, “Lowering the Anchor on Maritime Insecurity along the Gulf of Guinea: Lessons from Operation Prosperity,” KAIPTC Policy Brief 11/ 2013 <<http://www.kaiptc.org/Publications/Policy-Briefs/Policy-Briefs/KAIPTC-Policy-Brief-11--Lowering-the-Anchor-on-Ma.aspx>> accessed 13 May 2015.

³¹³) Exclusive Analysis, supra note 291.

Additionally, this research contends that the dearth of maritime domain awareness, which is the effective understanding of anything connected to the global maritime domain that could implicate a country's security, safety, economy, or environment,³¹⁴ exacerbates piracy. Evidently, piracy adversely implicates on the safety, security, environment and most importantly, the economy of coastal states. Nonetheless, most of the countries and the regions where piracy is rife do not have a plan for establishing and improving their maritime domain awareness, specifically in the areas of information and intelligence gathering and sharing, inspection of vessels, monitoring of vessels entering their ports and policing of the coastlines. This portends grave danger to maritime activities in those areas. Osinowo summarises the effects of the absence of maritime domain awareness in the Gulf of Guinea thus: "Government in the region have been late to realize how their absence in the maritime domain not only costs them untold revenue but also undermines security on land, as criminal activities on the sea start and end onshore."³¹⁵

3.2.5 Existence of illegal unreported and unregulated (IUU) fishing and organised crime

Rudloff and Webber observe that the rise in incidents of piracy is a reactive expression of self-defence against international illegal fishing that robs the coastal state revenue accruing from fishing, and depriving fishermen their

³¹⁴) N. Klein, supra note 178, p. 213. See also "National Maritime Domain Awareness Plan for The National Strategy for Maritime Security," December, 2013, p. 2 <https://www.whitehouse.gov/sites/default/files/docs/national_maritime_domain_awareness_plan.pdf> accessed 13 May 2015 and "National Plan to Achieve Maritime Domain Awareness," Homeland Security <<http://www.dhs.gov/national-plan-achieve-maritime-domain-awareness>> accessed 13 May 2015.

³¹⁵) Adeniyi A. Osinowo, "Combating Piracy in the Gulf of Guinea," African Security Brief No. 30, February, 2015, p. 2 <<http://africacenter.org/wp-content/uploads/2015/02/ASB-30-Feb-2015-Combating-Piracy-in-GoG.pdf>> accessed 13 May 2015.

means of livelihood and this trend has been linked to Somalia.³¹⁶ Illegality in this purview relates to the breach of national standards within the EEZ and of the norms and rules of regional organisations and international law. It covers such various transgressions like quota violations, seasonal fishing bans and reporting obligations.³¹⁷ Particularly in Africa, IUU fishing is rife with its attendant effect on the economic and sociopolitical development of the affected countries as well as the destruction of the marine environment. The resultant loss of jobs by fishermen and poverty encourages piracy among the people in the affected riverine areas. In its report, the Environmental Justice Foundation (EJF) robustly summarises the effect of IUU fishing in West Africa thus:

Global losses due to Illegal, Unreported and Unregulated (IUU) or “pirate fishing” are estimated to be between US\$10 billion and US\$23.5 billion per year. West African waters are estimated to have the highest levels of IUU fishing in the world, representing up to 37 percent of the region’s catch. Along with the economic losses, pirate fishing in West Africa severely compromises the food security and livelihoods of coastal communities. In Sierra Leone, fish represents 64 percent of total animal protein consumed in the country, and an estimated 230,000 people are directly employed in fisheries. IUU vessels compromise the health of fish stocks and the marine environment. Ninety percent of vessels documented by EJF in West Africa are bottom trawlers, which drag heavy trawl equipment

³¹⁶) B. Rudloff & A. Weber, “Somalia and the Gulf of Aden” in Mair Stephan (ed.), *supra* note 299, p. 37.

³¹⁷) B. Rudloff & A. Weber, *ibid*, p. 37-38. See also Philip J. Mayne, “Comparing the Counter Piracy Operations within the Straits of Malacca and off the Coast of Somalia and the Gulf of Aden: Have the Lessons Learned through a Successful Campaign in the Straits been Applied in Somalia?,” being a Dissertation Submitted for the Degree of War and Security Studies, Department of Politics and International Studies, the University of Hull, 2013, pp. 13-14.

along the seabed, resulting in damage to the bottom habitat and high levels of by-catch, including vulnerable marine life such as sharks and turtles.³¹⁸

By way of addition, piracy in Latin American countries occurs where shipping routes links with routes used for trafficking in illegal commodities, such as drugs, illegally extracted raw materials, human and arms.³¹⁹ This applies to maritime border between Colombia and Venezuela, Haiti and Jamaica, among others. Well-established smuggling routes run through these areas, and are used in exporting cocaine to the US and Europe. The intermediaries of the cocaine trade possess speedboats and heavy weaponry, creating an incentive to utilise the equipment for other purposes, like piracy.³²⁰ Such existing route, it is contended, makes the running of piracy activities very easy and convenient.

Moreover, the incessant IUU fishing activities in the Gulf of Guinea, as witnessed in Nigeria, due to the absence of regulatory and enforcement institutions as well as the existence of organised crime has engendered the existence of FOC. It is trite that FOC encourages the proliferation of piracy attacks in most of the piracy prone areas due to the use of FOC ships to

³¹⁸) Environmental Justice Foundation (EJF), "Pirate Fishing Exposed: The Fight against Illegal Fishing in West Africa and the EU," A Report by the EJF, 2012, p. 4 <<http://ejfoundation.org/sites/default/files/public/Pirate%20Fishing%20Exposed.pdf>> accessed 16 May 2015. See generally, INTERPOL, "Study on Fisheries Crime in the West African Coastal Region," Environmental Security Sub-Directorate, Project Scale, September, 2014 <www.interpol.int/en/content/download/27590/.../3/.../WACS%20EN.pdf> accessed 25 April 2015; Ghassan Schbley & William Rosenau, "Piracy, Illegal Fishing, and Maritime Insecurity in Somalia, Kenya, and Tanzania," CAN Strategic Studies, November, 2013 <<http://www.cna.org/sites/default/files/research/IIM-2013-U-005731-Final3.pdf>> accessed 16 May 2015; and Caroline Kende-Robb, "Why Illegal Fishing off Africa's Coast must be Stopped," *The Guardian*, 19 June 2014 <<http://www.theguardian.com/global-development/poverty-matters/2014/jun/19/why-illegal-fishing-africa-must-be-stopped>> accessed 16 May 2015.

³¹⁹) Daniel Brombacher & Gunther Maihold, "Maritime Security in Latin America" in Mair Stephan (ed.), *supra* note. 135, pp. 53-54.

³²⁰) *Ibid.*

conduct piratical attacks, making detection and capture of the pirate vessels very difficult.³²¹ FOC registers often have poor security, safety and training standards, lower living and working conditions, and they place no restrictions on the nationality of the crew employed, which leads to problems and communication difficulties during emergency situations.³²² Also, FOC ships are easily attacked by pirates because of their vulnerability to piratical attacks. It is the contention of this dissertation that FOC ships' vulnerability and subsequent victimisation exist because they are not required to adhere to strict labor, safety, security and environmental standards; thus, easy to overcome by pirates.³²³

In his incisive summary of the root causes of piracy in the Gulf of Guinea, Baros opines that:

Yet the most important root cause of maritime insecurity is weak, bad governance that results from precarious legal frameworks, poor law enforcement, and widespread corruption in the region. State structures and political leaders in the Gulf of Guinea are interwoven with the oil industry, and the regimes - governments and civil servants - often depend (and feed) on it. This is the case from Angola to Gabon, and especially so in Nigeria, where federal, state and local authorities are all part of the problem.³²⁴

³²¹) "Flags of Convenience" Nautilus International
<<https://www.nautilusint.org/en/what-we-say/campaigns/flags-of-convenience/>> accessed 13 May 2015.

³²²) *Ibid.*

³²³) Bridget L. Coggins & James J. Kim, "How Korea Can Better Manage Maritime Piracy," The Asian Institute for Policy Studies, Issue Brief, 10 March 2014-01~2014-316, p. 203
<asaninst.org/wp-content/themes/twentythirteen/action/dl.php?id=33341> accessed 21 April 2015.

³²⁴) Cristina Barrios, "Fighting Piracy in the Gulf of Guinea Offshore and Onshore," European Union Institute for Security Studies, Brief Issue, No. 20, May, p. 3
<http://www.iss.europa.eu/uploads/media/Brief_20.pdf> accessed 13 May 2015. See generally, Kalu K. Anele, "A Study of the Effects of Maritime Piracy in Nigeria's Territorial Waters," (updated) paper presented at the 2014 Summer Academy Seminar organised by the

3.3 Consequences of piracy in Nigeria

UNCTAD reports that due to “today’s globalised and interdependent world, the implications of maritime piracy are far reaching and extend to all countries, whether coastal or landlocked. While short term impacts often involve an increase in costs, longer implications can be of a different scale.”³²⁵ It must be stated that the global cost of piracy remains uncertain, with the existing estimates providing divergent estimates and conclusions.³²⁶ But, studies conducted so far provide an indication of the order of magnitude of the economic cost associated with piracy.³²⁷ Below are some of the effects of piracy in Nigeria.

3.3.1 Economic consequences

Piracy implicate a lot of economic hardship on the development of Nigeria, generally and to the states, specifically. At the federal level, piracy affects activities in the petroleum industry, which is the mainstay of the country’s economy. Considering the fact that offshore oil exploration has commenced extensively in Nigerian waters (see Pictograms 4 & 5 and Map 3 above), piracy negatively affects the entire activities in the offshore oil fields and rigs. Additionally, vessel providing support services are easy targets for pirates. It is indubitable that piracy leads to increase in insurance, which is subsequently borne by consumers considering the fact that Nigeria is an

Korean Institute of Maritime Law, held at the Korea Seafarers Welfare and Employment Center, 28 August, 2014.

³²⁵) UNCTAD, *supra* note 207, p. 12.

³²⁶) For detailed analysis of the various studies conducted on the cost of global piracy, see generally, UNCTAD, *ibid*; Jens V. Madsen, *et al*, “The State of Maritime Piracy 2013 Report,” Oceans beyond Piracy, 2014 <<http://oceansbeyondpiracy.org/sites/default/files/attachments/SoP2013-Digital.pdf>> accessed 30 April 2015; and Peter Chalk, *et al*, “Countering Piracy in the Modern Era,” Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century, RAND National Defense Research Institute, 2009 <http://www.rand.org/content/dam/rand/pubs/conf_proceedings/2009/RAND_CF269.pdf> accessed 12 May 2015.

³²⁷) UNCTAD, *ibid*, p. 13.

import dependent country and it also affects the revenue of the country since crude oil is transported by sea.³²⁸

Comparatively, the economic cost of piracy off the coast of Somalia is as follows: 2010: US\$7 - US\$12 billion; 2011: US\$6.6 – US\$6.9 billion; 2012: US\$5.7 - US\$6.1 billion;³²⁹ 2013: US\$3.3.2.³³⁰ In 2013, the economic cost of piracy of piracy in West Africa was US\$565 - US\$681 million, and Nigeria takes the lion share of the cost, being the largest economy in the region as well as having the highest number of piratical attacks in the Gulf of Guinea.³³¹ According to NEITI's 2012 Report, the total revenue that accrued to Nigeria was US\$62. 944 billion.³³² Nigeria losses about US\$8billion to the activities of pirates and other maritime criminals,³³³ which is about 8 percent of US\$62. 944, the total annual revenue of the country. At the state level, using Bayelsa state as a case study, Essien and Adongoi, after an empirical study, argue that piratical attacks have a significant adverse effect on sea

³²⁸) J.V. Madsen, *et al*, supra note 326, p. 54.

³²⁹) UNCTAD, supra note 207, p. 14.

³³⁰) J.V. Madsen, *et al* (n. 326) p. 7.

³³¹) *Ibid*, pp. 55-67. See also IMB Piracy Report for 2014, p. 5. Furthermore, many experts believe that Nigeria piracy accounts for about 71% of all incidents in West Africa. Rick Noack, "Why Nigeria's Election Year may see a Spike in Pirate Attacks," *The Washington Post*, 14 October, 2014 <<http://www.washingtonpost.com/blogs/worldviews/wp/2014/10/14/why-nigerias-election-year-may-see-a-spike-in-pirate-attacks/>> accessed 14 May 2015.

³³²) NEITI's Financial, Physical and Process Audit: An Independent Report Assessing and Reconciling Physical and Financial Flows within Nigeria's Oil and Gas Industry 2012, presented by Taju Audu & Co, 10 March, 2015, p. 15 <http://www.neiti.org.ng/sites/default/files/pdf_uploads/2012-OIL-GAS-REPORT/2012-Oil-Gas-Audit-Report-Exec-Sum.pdf> accessed 20 July 2015.

³³³) K.K. Anele & Y. Lee, supra note 4, p. 25. See also Sun Kerry, Oil Theft in Nigeria," *International Policy Digest*, 24 November, 2013 <<http://www.internationalpolicydigest.org/2013/11/24/oil-theft-nigeria/>> accessed 22 July 2015.

business operations like seafaring, sea poaching and fishing business in the state.³³⁴

Corollary to the above, piracy also imposes significant costs on the Nigeria's important local fishing economy. Fishing was the second highest non-oil export industry in the country, and piratical attacks on fishing trawlers have made it a dangerous venture as fishing boat captains refuse to sail in Nigerian waters.³³⁵ The attacks range from minor harassment to theft of fish cargoes, engines and other materials on board the trawlers and extortion. It is pertinent to note that piratical attacks worldwide are considered to be vastly under-reported, and Nigeria is no exception, particularly when it comes to attacks on fishing vessels.³³⁶ The Nigerian Government Inter-agency Maritime Security Task Force on Acts of Illegality in Nigerian Waters (IAMSTAF) reported at least 293 documented sea robberies and pirate attacks between 2003 and 2008 on the country's fishing vessels alone.³³⁷ From available data, Nigerian Trawlers Owners Association (NITOA) lost a whopping sum of N118.5 billion between 2003-2011.³³⁸ Figures released by NITOA showed that members lost N5bn in 2003, N6bn in 2004, N7.5bn in 2005, N12bn in 2006, N13 in 2007, N15bn in 2008, N17bn in 2009, N20bn in 2010 and N23bn in 2011.³³⁹ For this reason, piracy drastically affects the fishing industry in Nigeria.

³³⁴) Blessing S. Essien & Toakodi Adonogoi, "Sea Piracy and Security Challenges of Maritime Business Operation in Bayelsa State, Nigeria: An Empirical Study," (2015) *International Journal of Humanities and Social Sciences*, Vol. 5, No. 2.

³³⁵) K.K. Anele, *supra* note 11, p. 55.

³³⁶) Donna Nincic, "Maritime Piracy in Africa: The Humanitarian Dimension," (2009) *African Security Review*, Vol. 18, No. 3, pp. 7-8.

³³⁷) *Ibid.*

³³⁸) Francis Ezem, "Trawler Owners Lose N119bn to Piracy in Eight Years," *National Mirror*, 24 December, 2012

<<http://nationalmirroronline.net/new/trawler-owners-lose-n119bn-to-piracy-in-eight-years/>> accessed 12 February 2015.

³³⁹) *Ibid.*

3.3.2 Humanitarian consequences

It is argued that the humanitarian effect of piracy basically relates to the seafarers, which is in the form of physical injury, abuse and death (see Tables 3 & 4, Chart 2 and Graph 2 above, which show the number of violence acts against seafarers generally and per country). It is trite that more attention is paid to the number of people captured and killed during a piratical attacks, while inadvertently downplaying the number of people injured in the process.³⁴⁰ In 2012, there was a significant reduction in media coverage of hijackings and releases, which resulted in the minimal information available on how many seafarers were physically abused beyond the reports received by the IMB.³⁴¹ From these reports,³⁴² only three of the 349 seafarers taken captive by Somali pirates reported a significant injury as a result of piracy. Moreover, five seafarers died because of Somali piracy either during captivity or in rescue operations.³⁴³ The physical abuse pirates meted out to seafarers is vividly illustrated when Somali pirates hijacked two South Korean fishing boats. The crewmembers were held hostage and as negotiation was dragged on for months, the captured seafarers were beaten and starved before they were released after the ransom was paid.³⁴⁴

Similarly, the incidence of injuries from piracy in West Africa was higher with 18 people reported as injured.³⁴⁵ This included two people who

³⁴⁰) See Keija Hurlburt, *et al*, "The Human Cost of Maritime Piracy 2012," Working Paper, Oceans Beyond Piracy, a Project of One Earth Future Foundation, 2013, p. 22. Allen has argued that contemporary piracy has become more violent and there is underreporting of these incidences. Charles A. Allen, "Ocean Policy Opportunities Confronting Piracy and Armed Robbery at Sea," in Myron H. Nordquist & John N. Moore (eds.) *Ocean Policy: New Institutions, Challenges and Opportunities* (Martinus Nijhoff Publishers: 1999) p. 287.

³⁴¹) Keija Hurlburt, *et al*, *ibid*.

³⁴²) *Ibid*.

³⁴³) *Ibid*.

³⁴⁴) *Ibid*. See also Anthony M. Davis, *Terrorism and the Maritime Transportation System: Are We on a Collision Course,?* (WingSpan Press: CA 2008) p. 121.

³⁴⁵) K. Hurlburt, *et al*, *ibid*, pp. 16-22.

received non-fatal gunshot wounds on vessels that were fired upon by pirates, 14 who were beaten or shot at by pirates who boarded their vessels, and a final two who were beaten or shot at during a hijacking.³⁴⁶ Seafarers have lost their lives during piratical attacks in the Gulf of Guinea and Gulf of Aden.³⁴⁷ Further, seafarers kidnapped are also denied of food and water; shot at with water cannons; locked up in ship's freezer; tied up in the hot sun; kept in solitary confinement; forced to parade naked; forced to participate in mock executions; denied of medical care; forced to collaborate with the pirates; and used as human shield.³⁴⁸

In furtherance of the above, piratical attacks on fishing trawlers lead to humanitarian consequences when pirates shoot, maim and kill crew members. This situation is aptly demonstrated by an incident that occurred on the 23 April, 2014, when armed robbers attacked fishing boats on the Ibeno waterways in Akwa Ibom state, Nigeria, leading to stealing of the engine of the boat, nets and fish, while one of the fishermen was shot.³⁴⁹ Lending credence to the spate of piracy attacks on fishermen, NITOA stated that it lost 4 crewmembers after 144 piratical attacks on trawlers in 2012.³⁵⁰ On her part, Nincic observes that pirate attacks on fishing vessel have resulted in the killing of fishermen.³⁵¹ Aside from fishermen, pirates also hijack oil tankers, while crewmembers are injured and kidnapped in the process in Nigerian waters.³⁵²

³⁴⁶) *Ibid.*

³⁴⁷) *Ibid.*

³⁴⁸) *Ibid.* See also Melanie O'Brien, "Where Security Meets Justice: Prosecuting Maritime Piracy in the International Criminal Court," (2013) *Asian Journal of International Law*, p. 4.

³⁴⁹) K.K. Anele, *supra* note 11, p. 59.

³⁵⁰) "How Pirates Operate on Nigeria Waters-Fishing Trawlers Owners" *Shipping Position*, 7 March, 2013 <<http://shippingposition.com.ng/article/how-pirates-operate-nigerian-waters-fishing-trawler-owners>> accessed 12 February 2015.

³⁵¹) D. Nincic, *supra* note 336, p. 7.

³⁵²) IMB Piracy Report for 2014, p. 26.

In more than one instance since 2011, the Somali pirates have assaulted fishermen and fishing vessels of Sri Lankan origin and on one occasion killed two fishermen.³⁵³ The violent nature of piracy off the coast of Somalia was demonstrated by the attack on a fishing trawler, *Sherry Fishing Dhow*, by Somali pirates on the Indian Ocean. During this attack, extreme violence was used by the pirates against the crew, by firing at them using AK 47 rifle and a pistol, and subsequently taking control of the trawler, thereby endangering the lives of the crewmembers.³⁵⁴

3.3.3 Health consequences

In addition to the economic and humanitarian effects of their experiences, many seafarers exposed to piratical attacks may experience long-term psychological or behavioural effects. Piratical attacks are extremely violent. This takes place even before pirates board ships, and seafarers are exposed to the fire of automatic weapons and in some cases, an attack with rocket-propelled grenades (RPGs).³⁵⁵ Seafarers whose ships are boarded may also suffer the stress and uncertainty linked to waiting in citadels, and those captured face abuse on board ships or onshore as the hostages of pirates. Most kidnapped seafarers suffer post-traumatic stress disorder (PTSD) and post-release or recovery reintegration is not always conducted with sufficient appreciation for the need for psychological support, potentially increasing

³⁵³) Daya Dharmapriya, “Countering Maritime Piracy: A South Asian Perspective” Regional Counter-Piracy Workshop, Colombo, Sri Lanka, 27-28 September, 2012 <http://oceansbeyondpiracy.org/sites/default/files/dharmapriyas_paper_formatted.pdf> accessed 11 February 2015.

³⁵⁴) See the case of *Republic v Abdirahaman Isse Mohamud & Ors* Misc. Criminal Application No. 72 of 2011, p. 2.

³⁵⁵) K. Hurlburt, *et al*, *supra* note 340, p. 23.

the risk in these cases that the seafarer will experience challenges with recovering.³⁵⁶

In addition to the impact on Nigeria's export economy, seafood prices have skyrocketed due to the scarcity of fish caused by fewer fishing vessels that are willing to engage in fishing as a result of piracy. Of particular importance is the fact that prices of fish have more than doubled and even quadrupled in some places, placing this important protein source out of the reach of most of the average citizens.³⁵⁷ This situation is equally peculiar to other Gulf of Guinea countries, where fish stocks remains an important source of protein. For instance, the poorest 40 percent of the regional population depend on fish as a crucial component of their diet.³⁵⁸ Thus, piracy jeopardises the nutritional value derived from the fishing industry, and this culminates to other health challenges like malnutrition, obesity, diabetes, among others.

³⁵⁶) There are a number of reasons to believe that these experiences might lead to long-term distress in some people. Being held hostage, threats of death, and other forms of severe and long-duration stressors have been found, in prior research, to be significant risk factors for behavioural problems in the long term. For some people who have been through traumatic events, the experience can trigger lasting problems including physical health issues, psychological problems including post-traumatic stress symptoms and depression, and behavioral problems including substance abuse and problems at work or at home. While rates of distress vary according to both individual characteristics and characteristics of the event itself, for experiences similar to pirate attacks, such as combat and long-term hostage experiences, rates of distress in other populations have been found to be relatively high. These experiences are associated with long-term rates of distress of 20% or more. Currently, there is little direct research looking at the psychological impact of piracy on seafarers specifically. However, what little there is clearly suggests that seafarers are not immune to these impacts. See K. Hurlburt, *et al, ibid*. For details of the study on the psychological effect of piracy on seafarers, see "Study on the Psychological Impact of Piracy on Seafarers," Officer of the Watch, Seamen's Church Institute, 23 October, 2012 <http://seamenschurch.org/sites/default/files/sci-piracy-study-report-web_0.pdf> accessed 13 May 2015.

³⁵⁷) D. Nincic, *supra* note 336, p. 8.

³⁵⁸) Report of the Conference held at Chatham House, *supra* note 206, p. 3.

3.3.4 Socio-political consequences

In 2008, over 170 fishing trawlers were idle because fishing boats were afraid to sail to sea, threatening approximately 50, 000 jobs and as a consequence, Nigeria continues to lose up to US\$600 million in export earnings due to piracy threats to its fisheries.³⁵⁹ More so, many fishing companies are relocating to other countries, while others are closing down completely as a result of piracy off Nigeria.³⁶⁰ It is argued, therefore, that the disruption of fishing activity due to piracy portends grave danger to the socio-political and economic development of Nigeria and other Gulf of Guinea countries.³⁶¹ In Seychelles, for instance, the fishing industry, as well as tourism, provides employment for 36 percent of the country's workforce,³⁶² and piracy adversely affects this.

The activities of pirates in Nigeria have continued to compromise and expose the lack of security and absence of maritime domain awareness in Nigeria, as well as the dearth of facilities for monitoring and policing the country's maritime zones. Efforts to combat maritime piracy in Nigeria have taken a toll on the budgets of the institutions charged with the responsibility of regulating, policing, monitoring and securing the maritime areas of Nigeria. According to the report of the Ocean Beyond Piracy, "5-10 percent of the budget of the Nigerian Navy, as well as \$326 million from the budget

³⁵⁹) D. Nincic, supra note 336, p.8. See also Augustus Vogel, "Navies versus Coast Guards: Defining the Roles of African Maritime Security Forces," African Security Brief, No. 2, December 2009, p. 1.

³⁶⁰) Jerome U. Orji, "How has the Nigerian Maritime Industry Performed in the Last 50 Years?" *Ships and Ports Weekly*, January, 2011, p. 4 <[https://www.academia.edu/1037968/How has the Nigerian Maritime Industry performed in the Last 50 years](https://www.academia.edu/1037968/How_has_the_Nigerian_Maritime_Industry_performed_in_the_Last_50_years)> accessed 4 September 2015.

³⁶¹) UNCTAD, supra note 207, p. 31.

³⁶²) *Ibid*, p. 32. Particularly tourism is affected since yachts are attacked by pirates in the traditionally piracy hotspots like the Caribbean, Philippines, the China Sea, the Somali coast and the Gulf of Aden. See Dieter Berg, *et al*, "Munich Re, Piracy - Threat at Sea," 2006, p. 16

<<http://www.ukpandi.com/fileadmin/uploads/uk-pi/Documents/Munich%20Re%20-%20Piracy.pdf>> accessed 25 April 2015.

of the Nigerian Maritime Administration and Safety Agency (NIMASA), are devoted to counter-piracy operations.”³⁶³ The import of this, it is argued, is that moneys meant for the development and advancement of these institutions are channeled toward suppressing piracy in Nigeria.

3.4 Challenges in suppressing piracy off Nigeria

Having discussed the root causes and consequences of piracy, it becomes imperative to interrogate the challenges in combating the crime in Nigeria. In other words, with the effects it has on the humanitarian, economic and sociopolitical existence of Nigeria, coupled with the various efforts by government to tame the tide of the crime, why has piracy persisted off the country. It is important to note that despite the efforts of countries to tame the tide of piracy, due to the factors that shall be argued below, the rate of occurrence of this maritime crime has continued to increase with its attendant effects.

3.4.1 Lack of political will by government

This dissertation argues that the greatest challenge in the fight against piracy in Nigeria is the lack of political will on the part of government to implement and enforce the numerous reports, policies, legislations, and international instruments that ensure the security and safety of maritime transportation. In spite of the fact that piracy adversely affects the main source of revenue for the country,³⁶⁴ government has continued to drag its feet in the enactment of legislation to curb the crime through the domestication of existing international maritime instruments and has failed to vigorously implement and enforce other related laws. Furthermore, government has not prosecuted and punished corrupt individuals in the oil industry indicted in several

³⁶³) J.V. Madsen, *et al*, supra note 326, pp. 54-56.

³⁶⁴) The main source of revenue in Nigeria is oil and gas. Piracy also affects other sources of revenue in Nigeria like the ports and other related activities and fishing.

reports by various investigative committees.³⁶⁵ This attitude, it is posited, engenders piracy off Nigeria.

Montclos is of the view that the role of the Nigerian government in fighting piracy in the country is ambiguous, since some of its members collude with the militants, who are also pirates,³⁶⁶ in committing maritime crimes. The Nigerian Police, the Nigerian Navy, the Nigerian Army and NIMASA indirectly participate in piracy and other maritime crimes in Nigeria. For example, the Nigerian Army is known to have concluded 'shady deals' with the Niger Delta militants to share the booty and negotiate a status quo.³⁶⁷ More so, aside from being corrupt and engaging in arms trafficking, officers of the Nigerian Navy also collude with pirates to hijack tankers and siphon crude oil off the country's coast.³⁶⁸ In furtherance of their illicit and corrupt activities, "insiders in the Navy, Customs, and Port Authorities still inform pirates and militants on the location of boats and the value of their cargo. Some of them even provide the bills of lading."³⁶⁹ At the state level, the Governors of the oil producing states, beyond being corrupt, fund the militants for political reasons as well as sponsor pirates in their various domain for financial gains.³⁷⁰ From the above arguments, it is obvious that lack of political will by the Nigerian government, at the various levels, is not

³⁶⁵) See generally, the House Report; the NEITI Report, the Senate Report, the Forensic Audit Report and the Ribadu Report.

³⁶⁶) M.P. De Montclos, *supra* note 15, p. 538.

³⁶⁷) For example, a leaked Military Intelligence Investigation Report of November 2007 showed that the then Chief of Army Staff, Late General Andrew Azazi, facilitated the release and even promoted officers who sold weapons to Henry Okah's brother, a kingpin of Movement for the Emancipation of the Niger Delta (MEND). Interestingly, Late General Aziza was made the Security Adviser to the President, Dr. Goodluck Jonathan and was not removed until he died. *Ibid*, p. 538.

³⁶⁸) A notable incidence is the disappearance of a Russian tanker full of stolen crude oil from Navy custody in Warri, which led to the dismissal of two Rear Admirals who were implicated in the saga. *Ibid*.

³⁶⁹) *Ibid*.

³⁷⁰) *Ibid*.

only central to the root causes of piracy off Nigeria, but also pivotal to the challenges in the suppression of the crime in the country.

3.4.2 Inadequate legal regime

There is no doubt that criminalising piracy in accordance with the provisions of the LOSC,³⁷¹ the SUA Convention and the various UNSC resolutions³⁷² is the first step towards suppressing global piracy. However, Nigeria has not complied with the provisions of the LOSC and the resolutions of the UNSC regarding the criminalisation of the crime in the country's local laws; as a result, there may be no extant domestic law on piracy in Nigeria. Similarly, some of the related conventions, like the Maritime Labour Convention (MLC) 2006, which provides for the protection of the rights and improved working condition for seafarers, have not been domesticated in accordance with the requirement of the Constitution of Nigeria.³⁷³

More pointedly, this dissertation contends that the legal regime for piracy is handicapped in spite of the fact that international law has long recognised maritime piracy as a universal crime and has provided tools for its suppression. This situation is consequent upon the 'institutional structure of the regime' which is complex and it "functions as a major obstacle to effective cooperation, because each regime provides diverging definitions of the targets, pushes different actors to different behaviors, and, thereby, creates conflicting norms to effectively address maritime piracy as an issue of global governance."³⁷⁴ Zach, *et al*, concur with the argument that the

³⁷¹) The LOSC, articles 100 and 105.

³⁷²) See the UNSCR 2125, para. 17; the UNSCR 2018, para. 2 (a); and the UNSC Resolution 1918 (2010) UN Doc SC/9913, para. 2, hereafter referred to as the "UNSCR 1918."

³⁷³) The 1999 Constitution of Nigeria, section 12, which states that a convention or treaty can only be enforceable or binding on Nigeria after being domesticated by the National Assembly of the country.

³⁷⁴) Charlotte Carnehl, "Global Governance of Maritime Piracy: Closing the Legal Gaps," E-International Relations Students, 13 May, 2015

confusion about the appropriate legal response to piracy has impeded anti-piracy cooperation which has resulted in a governance gap leading to low prosecution rates.³⁷⁵ A cursory look at the various anti-piracy regimes depicts three potential tensions: the definition of the target and the *locus delicti*, the tension between the right and the duty of a state to suppress piracy, and the tension among public and private governance institutions.³⁷⁶

From the foregoing, a critical analysis of the legal governance gaps shows that the LOSC and the SUA Convention are parallel in their definition of piracy and the location of the crime. In this regard, various scholars have criticised the LOSC for being insufficient since it clearly limits piracy to international waters and excludes piratical acts in the territorial waters of a state, leaving them to national jurisdiction without creating any obligations on how states have to regulate piracy in their own waters.³⁷⁷ These provisions of the LOSC, it is argued, can impede the suppression of piracy, especially when the coastal state is considered a weak or a failed state unwilling or unable to address piratical activities. Besides, the requirement of

<<http://www.e-ir.info/2015/05/13/global-governance-of-maritime-piracy-closing-the-legal-gaps/>> accessed 14 May 2015.

³⁷⁵) Danielle A. Zach, *et al*, “Burden-sharing Multi-level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia,” A One Earth Future and Oceans Beyond Piracy Report, 2013, p. 13

<http://www.lessonsfrompiracy.net/files/2015/03/OBP-Burden_Sharing.pdf> accessed 14 May 2015.

³⁷⁶) C. Carnehl, *supra* note 374, citing Struett Michael J., *et al*.

³⁷⁷) C. Carnehl, *ibid*; K.K. Anele & Y. Lee, *supra* note 4, pp. 26-29; Anele Kalu Kingsley, *et al*, “A Study on Port State Control to Combat Maritime Piracy in Nigeria’s Territorial Waters,” (2015) *Maritime Law Review*, Vol. 27, No. 1, pp. 118-122; . Bento, *supra* note 39, pp. 416-426; Barry H. Dubner & Karen Greene, “On the Creation of a New Legal Regime to Try Sea Pirates,” (2010) *Journal of Maritime Law & Commerce*, Vol. 41, No. 3, pp. 457-460 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2544690> accessed 21 May 2015 and Asian-African Legal Consultative Organisation (AALCO), “The Law of the Sea Responses to Piracy: International Legal Challenges,” AALCO/51/ABUJA/2012/SD/S 2, The AALCO Secretariat 29 C, Rizal Marg, Diplomatic Enclave, Chanakyapuri, New Delhi, 110 021, India, pp. 9-13 <docenti.unimc.it/andrea.caligiuri/teaching/...to-piracy...legal.../file> accessed 21 May 2015.

‘private ends’ disregards politically motivated crimes, and the ‘two vessels’ requirement excludes the option that crewmembers of the boat revolt and, subsequently, use the cargo for private gain.³⁷⁸ The SUA Convention, on the other hand, has a much broader definition of unlawful acts at sea and establishes an obligation for states to regulate piracy in their territorial waters.³⁷⁹

3.4.3 Inefficient and compromised maritime regulatory and security institutions

Aside from being ill-equipped, ill-motivated and ill-trained, the regulatory institutions and security agencies in both the maritime sector and the petroleum industry have compromised their functions and are involved in illegal activities with vessels traversing through Nigerian waters. This has been succinctly demonstrated by the rancour and misunderstanding between the Nigerian Navy and the Nigerian Military Police (a department in the Nigerian Police) over who guards the vessels in Nigerian waters.³⁸⁰ This parochial attitude by the Nigerian security agencies engenders a situation where piratical acts are “more likely to occur...”³⁸¹ off the country than being prevented.

Govern argues that “even when authorities in one region increase pressure on maritime criminals, piratical activities simply move closer to shore, towards areas with less enforcement activity, or increase in violence. For example, when piratical activities decreased in Malaysia and Bangladesh

³⁷⁸) C. Carnehl, supra note 367.

³⁷⁹) The SUA Convention articles 3-4.

³⁸⁰) D. Steffen, supra note 304.

³⁸¹) K.H. Govern, supra note 21, p. 44, quoting Donna Nincic. See Caesar J. Payi, “Why is Nigerian Maritime Security Important but Yet Challenging,” being a Dissertation submitted to the Faculty of Business, Environmental and Society (BES) in partial fulfilment of the requirement for the award of Masters of Arts (MA) in International Relations and Diplomacy, Coventry University, January 2015, pp. 22-26.

in 2007, attacks off Nigeria and Somalia tripled.”³⁸² This is as a result of ill-equipped and weak maritime regulatory and security institutions in the affected countries.

It is imperative to state that most countries in Africa have failed to comply with the amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) relating to implementation of a unified long-range identification and tracking system (LRITS) capable of identifying merchant vessels over 300 tons displacement up to 1500km at sea, as well as the Automatic Identification System (AIS).³⁸³ On top of that, most countries have equally failed to implement and enforcement the provisions of the International Ship and Port facility Security (ISPS) Code, adopted on 12 December, 2002, (the ISPS Code). The Special Measures to Enhance Maritime Security in Chapter XI-2 of the ISPS Code establish enhanced security standards both for ships at sea and for port facilities. It mandates the implementation of a Ship Security Plan (SSP), the installation of ship alarms and AIS, and the appointment of Ship Security Officer (SSO), a Port Facility Security Plan (PFSP), a Port Facility Security Officer (PFSO) and a Company Security Officer (CSO).³⁸⁴ The failure to provide the facilities to monitor the activities of vessels both in the port and on the sea and lack of

³⁸²) K.H. Govern, *ibid*, p. 45.

³⁸³) *Ibid*, p. 46. For more on the LRITS and AIS, see the amendments to the SOLAS: Resolution MSC.202 (81), Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended, Adopted on 19 May 2006, IMO Doc, MSC 81/25/Add.1, Chapter V, regulation 19-1 and Resolution A.917 (22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems (AIS), Adopted on 29 November 2001, IMO Doc, A 22/Res.917, 25 January 2002, Chapter V, regulation 19, hereafter referred to as the SOLAS Amendment.”

³⁸⁴) See generally ISPS Code, Part A. Joseph S. Szyliowicz, “The Dimensions of Maritime Security,” in Szyliowicz Joseph S. & Celebi Ozlen (eds.) *Global Maritime Security New Horizons* (2013) p. 9 <<http://www.dgmm.tsk.tr/eng/document/newhorizons.pdf>> accessed 25 April 2015.

implementation and enforcement of these security instruments contribute immensely in preventing the suppression of piracy off Nigeria.

3.4.4 Corruption

Corruption is the bane of insecurity in the maritime sector as well as the oil industry in Nigeria. Most government officials are so corrupt that they compromise their responsibilities, thereby allowing pirates to get away with their crimes. For a piece of the loot, some government officials leak information about vessels and their cargoes, making them potential target for piracy.³⁸⁵ In view of that, it has been observed that “the most single canker worm that has eaten deep into the fabrics of our society is corruption. This has so deep-rooted and pervaded the nation that it has now appeared to have become a permanent characteristic of the Nigerian polity. It has become completely institutionalized ... it is now a norm and no longer an eccentric.”³⁸⁶ Little wonder in the latest current report of Transparency International (TI), Nigeria assumes the unenviable position of 136 out of 175 countries.³⁸⁷

In furtherance of the above, it is argued that corruption is probably the single most important encumbrance to the realisation of Nigeria’s great productive potential and development. Beyond government’s penchant for rhetoric, the purported war against corruption has yielded no significant result in abating the problem.³⁸⁸ The rise in piracy in Nigeria, as well as in

³⁸⁵) There have been claims by oil and energy tankers that insider information is allowing pirates to target their ships. Barry H. Dubner & Ritvit Raturi, “On the Economics of International Sea Piracy-A Case of History Repeating itself,” (2012) Michigan State International Law Review, Vol. 20, No. 3, p. 748.

³⁸⁶) H.E. Ajie & O.E. Wokekoro, “The Impact of Corruption on Sustainable Economic Growth and Development in Nigeria,” (2012) International Journal of Economic Development Research and Investment, Vol. 3, No. 1, p. 91.

³⁸⁷) Transparency International (n. 8).

³⁸⁸) John O. Adeoti, “Nigeria: Policy Priorities to Unlock Growth Potential,” p. 32 <http://www.brookings.edu/~media/research/files/reports/2012/1/priorities%20foresight%20africa/01_snapshot_nigeria_adeoti> accessed 15 May 2015.

the Gulf of Guinea, as earlier pointed out, is mainly due to the poverty of the great majority of the population alongside wealthy elites. The absence of transparency, probity and accountability in the oil and gas industry in Nigeria, which is monopolised by the ruling elites and foreign private companies, is evident. The inequitable distribution of wealth means that economic disparities are conspicuous, which fuels discontent, despair and resistance among the youths of the oil producing communities.³⁸⁹ More importantly, activities in the oil and gas industry, with reference to the so-called subsidy regime,³⁹⁰ have exposed the complacency, complicity, shady transactions, and illegal activities on the part of the regulatory institution, NNPC, the independent oil markers and the legislature.³⁹¹

The maritime sector of the Nigerian economy has its own fair share of corrupt practices in the implementation of many of its statutory functions. For instance, the disbursement of the Cabotage Vessel Financing Fund (CVFF)³⁹² has been a source of concern since it did not follow due process. In view of this, the former Speaker of the Nigerian House of Representatives, Rt. Honourable Aminu Tambuwal observes that “the Nigerian inland water ways has remained grossly a wasteland for the national economy. The desired salutary effect has not been seen in the volume of cabotage business

³⁸⁹) International Crisis Group, supra note 181, p. 4.

³⁹⁰) See the Forensic Audit Report, the Senate Report, House Report, Ribadu Report and NEITI Report.

³⁹¹) There has been allegation of wide spread corruption involving members of the House Committee of the House of Representatives charged with the responsibility of investigating the subsidy regime in Nigeria. For example, the chairman of Zenon Petroleum and Gas Ltd, Femi Otedola accused Honourable Farouk Lawan, former Chairman of the House’s Ad hoc Committee on Petroleum Subsidy Regime of extorting the sum of \$620, 000 from him as part of a \$3 million bribe the law maker allegedly demanded. Okey Ndiribe & Emman Ovuakporie, “\$3m Bribery Scandal: Reps Gamble with Gambo Ethics Committee,” *Sunday Vanguard*, 8 July, 2012, p. 11.

³⁹²) See the Coastal and Inland Shipping (Cabotage) Act, 2003, Part VIII section 42 (1), hereafter referred to as “Cabotage Act.”

in Nigeria. The fear is that some unpatriotic people are misapplying the Cabotage Vessel Financing Funds to the detriment of its objectives.”³⁹³

Besides, the inability of the Minister of Transport to tender the reports of the yearly accruals of the CVFF from inception in 2004 to 2013 exposes the questionable way in which activities in the maritime sector have been going on.³⁹⁴ Some of the suspicious transactions done under the aegis of the CVFF include the selective disbursement of funds to six companies among numerous applicants and the huge amount paid to those companies, transfer of money from the CVFF account to other accounts without proper authorisation, and the manner in which NIMASA engages its consultants in all its dealings.³⁹⁵ In addition to the above, there are allegations “that information about potential target ships originates from international maritime organisations, which receive the information voluntarily from the shipping companies,”³⁹⁶ thereby expanding the scope of corruption related piracy.

3.4.5 Absence of regional cooperation

The spate of piracy in Nigeria has continued unabated due to the absence of regional cooperation among Gulf of Guinea countries. Despite the statutory provision that every state “shall cooperate to the fullest possible extent in the repression piracy on the high seas or in any other place outside the

³⁹³) “Is Cabotage Vessel Financing a slush Fund?-House of Reps,” *Energy Mix Report*, 23 October, 2013 <<http://energymixreport.com/is-cabotage-vessel-financing-a-slush-fund-house-of-reps/>> accessed 2 January 2015, quoting Aminu W. Tambuwal, the Speaker of the House of Representatives during a public hearing conducted by the House of Representatives Ad-hoc Committee on the investigation into the CVFF in Nigeria. See Uzoamaka Anagor, “Stakeholders Call for Probe of NIMASA Boss over Alleged N800m Return Ticket Scam,” *Businessday*, 15 May 2013, p. 36.

³⁹⁴) *Ibid.*

³⁹⁵) *Energy Mix Report*, supra note 393.

³⁹⁶) Beatriz Binkley & Laura Smith, “Somali Pirates: The Anatomy of Attacks,” Matthew B. Ridgway Center for International Security Studies <<http://research.ridgway.pitt.edu/blog/2010/09/28/pirate-attacks/>> accessed 22 June 2015.

jurisdiction of any State,”³⁹⁷ countries that make up the Gulf of Guinea have been engaged in boundary disputes, which have made regional cooperation nearly impossible. Such disputes lead to distrust and suspicion among the countries in the Gulf of Guinea. For that reason, it is contended that the Gulf of Guinea countries cannot cooperate in information and intelligence gathering and sharing, joint military training and exercises and financial assistance.

Besides, the LOSC³⁹⁸ and the various UNSC resolutions³⁹⁹ advocate and highlight the importance of international cooperation among states on global, regional, sub-regional and bilateral basis and cooperation between states and international organisations, like IMO, the INTERPOL and the UNODC, in the prevention and suppression of piracy.⁴⁰⁰ This include calling for participation of states in the effort to suppress piracy by means of naval forces, facilitation of the apprehension and prosecution of suspected pirates and those who sponsor and facilitate the maritime crime, information and intelligence gathering and sharing as well as capacity building. Where such cooperation is absent, fighting piracy becomes an exercise in futility since the crime affects everyone and takes place in any part of the sea.

The SUA Convention, the Palermo Convention, and the Hostage Convention also propagate and promote international cooperation almost in the same areas, but emphasis on the cooperation with respect to judicial process such as the confiscation of proceeds of the crime or property used in

³⁹⁷) See the LOSC article 100.

³⁹⁸) *Ibid*, article 100.

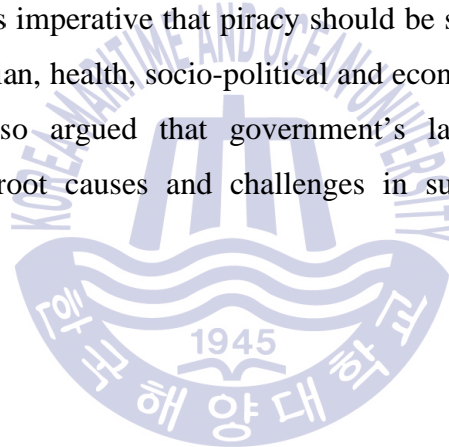
³⁹⁹) See generally the UNSCR 2125 para. 8 and the UNSCR 2077 (2012) UN Doc S/RES/2077, paras. 7, 11 & 12, hereafter referred to as the “UNSCR 2077.”

⁴⁰⁰) J.E. Randriananteniana, *supra* note 268. See the UNSCR 2125, para. 9 and the UNSCR 2077, paras. 9 & 11.

committing the crime,⁴⁰¹ and their disposal,⁴⁰² extradition of offender,⁴⁰³ law enforcement cooperation,⁴⁰⁴ mutual legal assistance,⁴⁰⁵ joint investigations,⁴⁰⁶ transfer of sentenced persons,⁴⁰⁷ and collection, exchange and analysis of information.⁴⁰⁸ This research argues that the absence of these steps towards suppressing piracy would engender piracy in the waters of coastal states.

3.4 Conclusion

From the research so far, it is evident that maritime piracy has continued to occur with its attendant adverse implications to the maritime industry, the economic development of coastal states, global energy supply and international trade. This chapter has delved into the various causes, consequences and challenges in suppressing piracy in Nigeria. From the discourse so far, it is imperative that piracy should be suppressed in order to avoid the humanitarian, health, socio-political and economic effects it has on Nigeria. It was also argued that government's lack of political will contributes to the root causes and challenges in suppressing piracy off Nigeria.



⁴⁰¹) The Palermo Convention, article 13.

⁴⁰²) *Ibid*, article 14, para. 2.

⁴⁰³) *Ibid*, article 16; the Hostage Convention, article 10 (1); and the SUA Convention, article 7.

⁴⁰⁴) The Palermo Convention, article 27.

⁴⁰⁵) The SUA Convention, article 12; the Palermo Convention, article 18; and the Hostage Convention, article (1).

⁴⁰⁶) The Palermo Convention, article 19.

⁴⁰⁷) *Ibid*, article 17.

⁴⁰⁸) The SUA Convention, article 13 (1b); and the Palermo Convention, article 14.

CHAPTER 4

LEGAL FRAMEWORK FOR SUPPRESSING PIRACY OFF NIGERIA

4.1 Introduction

Chapter four robustly examines the legal framework of piracy off Nigeria, which focuses on the prevention, arrest, prosecution and punishment of pirates. It also includes soft laws tailored toward the prevention and suppression of piracy as well as the enhancement of maritime security. The legal framework in this chapter is divided into three, *to wit*, international, regional and national regimes in order to comprehensively cover the field of global piracy. More so, the legal framework consists of convention on piracy and other related instruments, the UNSCRs, soft laws and other supporting national laws. Although there are *lacuna* in the legal regime under the LOSC, this chapter argues that the implementation and enforcement of these relevant maritime instruments go a long way in bridging the gap and contributing in suppressing piracy off Nigeria. It is further argued that the importance of the UNSCRs cannot be over-emphasised considering their impact in reducing piratical acts in the Gulf of Aden and the Indian Ocean. Ultimately, the use of domestic laws is a condition *sine qua non* in the suppression of piracy off Nigeria. It is important to state that the use of soft laws complements the legal regime of piracy by making interested parties in the shipping industry (ship owners, seafarers, shipping companies among others) to be security conscious and imbibe a proactive security culture in all their operations. The present legal regime is equally important in laying out the framework for the application of rules and regulations, implementation of policies, adoption of best practices in the shipping industry, as well as using

necessary force to combat piracy. Arrest and prosecution of pirates are also advocated under the extant piracy legal regime.

4.2 International legal framework for suppressing piracy off Nigeria

Under this sub-heading, various conventions on piracy and security of maritime transportation, the UNSCRs and soft laws are discussed with a view to encouraging their use in preventing and combating piracy off Nigeria. It is important to note that the existence of international legal framework for combating piracy is crucial in suppressing the maritime crime. Thus, it provides the platform and template for cooperation, prevention and prosecution of pirates.

4.3 The Law of the Sea Convention (LOSC) 1982

It is pertinent to state that despite the fact that many countries, like the US,⁴⁰⁹ have not ratified the LOSC, experts considers the convention a codification of customary international law and therefore binding on all nations, even non-parties to the treaty.⁴¹⁰ The LOSC defines piracy in article 101, to

⁴⁰⁹) While the US has not ratified the LOSC, Nigeria has ratified but has not domesticated the convention in accordance with the 1999 Constitution of Nigeria. However, by virtue of Nigerian domestic laws which adopted part of the convention, it is argued that Nigeria cannot avoid its obligation under international law on the pretext of non-domestication of a convention. See the Territorial Waters Act, Cap. T5, Laws of the Federation of Nigeria (LFN), 2010 and the Exclusive Economic Zone Act Cap. E17, LFN, 2010. Further, Fedeli states that "...failure to sign a self-executing treaty or failure to ratify a non-self-executing one does not preclude liability under customary international law." Thomas Fedeli, "The Rights and Liabilities of Private Actors: Pirates, Master, and Crew," One Earth Future Founding Working Paper, 2010 <<http://oneearthfuture.org/sites/oneearthfuture.org/files/documents/publications/Rights-and-Liabilities-Fedeli.pdf>> accessed 17 May 2015. See generally, O. Omo-Eboh, "Legal Framework for Maritime Security Management: Implications and Impacts" a paper presented at the 4th Strategic Admiralty Seminar for Judges organised by NIMASA on December 5-6, 2012 at the Oriental Hotel, Victoria Island, Lagos, pp. 11-12.

⁴¹⁰) Andrew M. Bagley, "You're a Crook, Captain Hook! Navigating a Way Out of the Somali Piracy Problem with the Rule of Law," (2012) GA. J. Int'l & Comp. L. (Note) Vol. 40, p. 723 <<http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1003&context=gjic>> accessed 25 March 2015. See also L. Azubuike, supra note 164, p. 49; Diana Chang, "Piracy Laws and the Effective Prosecution of Pirates," (2010) Boston College of International and

include acts that occur on the high seas (as well as the EEZ), involving two ships and must be done for private gain. In arguing for the expansion of the definition of piracy due to its inherent limitations,⁴¹¹ the two ship, geographical limitation and private ends conditions prevent states from comprehensively suppressing piracy, as well as deprive navies of other countries or joint naval operation teams from exercising the right of visit and right of hot pursuit against pirate ships.⁴¹²

In furtherance of the above, the LOSC,⁴¹³ encourages states to cooperate to the fullest possible extent in combating piracy on the high seas or in any other place outside their jurisdiction. Against this backdrop, it is argued that suppressing piracy requires commitment and active engagement by states. Lending credence to this position, Tuerk opines that the “...practice of piracy has been widespread over the centuries and continues to be a menace. As a result, every State not only has a right, but also a duty, to take action to curb piratical activities.”⁴¹⁴ Though there is a duty for states to cooperate in suppressing piracy, however, there is no corresponding

Comparative Law, Vol. 33, p. 274
<<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=iclr>>
accessed 19 May 2015.

⁴¹¹) Andrew DeMaio, “Upping the Stakes to Win the War against Somali Piracy: Justification for New Strategy Based on International Humanitarian Law,” (2015) *Geo. Mason L. Rev.*, Vol. 22, pp. 406-407 <<http://www.georgemasonlawreview.org/wp-content/uploads/2015/02/DeMaio-Website.pdf>> accessed 2 June 2005; G.R Constantinopol, *supra* note 105, p. 732; Malvina Halberstam, “Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety,” (1988) *The American Journal of International Law*, Vol. 82, No. 2, pp. 269-310; R. Wolfrum, *supra* note 51, pp. 4-6 and Rheny W. Pulungan, “The Limitations of the International Law on Piracy and Maritime Terrorism: Options for Strengthening Maritime Security in the Malacca Strait,” submitted in total fulfilment of the requirements of the Degree of Doctor of Philosophy, Melbourne Law School, The University of Melbourne, June 2014, pp. 96-112 <<https://minerva-access.unimelb.edu.au/bitstream/handle/11343/40765/Rheny%20Pulungan%20thesis%20202014.pdf?sequence=1>> accessed 2 June 2015.

⁴¹²) See the LOSC articles 110 and 111, respectively.

⁴¹³) The LOSC, article 100.

⁴¹⁴) Helmut Tuerk, “Combating Terrorism at Sea-The Suppression of Unlawful Acts against the Safety of Maritime Navigation,” (2008) *U. Miami Int’l & Comp. L. Rev.*, Vol. 15, p. 342.

obligation to do so, “thereby leaving this provision open to interpretation with regard to the means that states should employ to sufficiently fulfill their obligation.”⁴¹⁵ This lacuna under the LOSC regime, it is argued, may provide a leeway for countries to abdicate their obligations under international law to cooperate in suppressing piracy.

Gottlieb is of the view that “while Article 100 does not create an absolute obligation, its clear wording entails the existence of a presumption of cooperation in the face of piracy... Thus, a state that was in a position to act and failed to do so carries the burden of justifying-based on factual, legal, or other grounds-its lack of action.”⁴¹⁶ Though Gottlieb’s view is plausible, this dissertation contends that the failed or failing state theory provides sufficient justification for any state that does not fulfill its obligation under article 100 of the LOSC.

Moreover, the convention⁴¹⁷ states that every state may seize a pirate ship or ship taken by pirates and under the control of the pirates, arrest the persons and seize the property on board. The courts of the states that execute the seizure may decide the penalties to be imposed as well as the action to be taken with regard to the ships or property, subject to the rights of a third party acting in good faith. Many writers state that article 105 of the LOSC grants universal jurisdiction in the suppression of piracy,⁴¹⁸ other writers,

⁴¹⁵) Yaron Gottlieb, “Combating Maritime Piracy: Inter-Disciplinary Cooperation and Information Sharing,” (2013) Case Western Reserve Journal of International Law, Vol. 46, Iss. 1 & 2, pp. 307-308 <<http://law.case.edu/journals/JIL/Documents/46CaseWResJIntlL1.Digital.pdf>> accessed 5 June 2015.

⁴¹⁶) *Ibid*, p. 309.

⁴¹⁷) The LOSC, article 105.

⁴¹⁸) A.M. Bagley, *supra* note 410, p. 723; United Nations Office on Drugs and Crime, “Combating Transnational Organized Crime Committed at Sea,” Issue Paper, United Nations, New York, 2013, p. 9 <http://www.unodc.org/documents/organized-crime/GPTOC/Issue_Paper_-_TOC_at_Sea.pdf> accessed 20 May 2015; Ashley J. Roach, “Countering Piracy off Somalia: International Law and International Institutions,” (2010) *The American Journal of International Law*, Vol. 104, p. 405

nonetheless, maintain the view that it is the arresting state that has jurisdiction to prosecute pirates.⁴¹⁹ More importantly, although the LOSC does not explicitly authorise third state prosecution of pirates, it does not expressly prohibit the practice.⁴²⁰ In fact, it is argued that there is an inference that the use of third party to prosecute pirates complies with the onerous duty to cooperate in suppressing piracy.⁴²¹

Further, a critical analysis of this provision depicts that it does not impose a specific obligation on the state parties to the convention to extradite or prosecute pirates, or even criminalise acts of piracy in their domestic laws.⁴²² In spite of these limitations, this dissertation argues that the LOSC remains the convention that specifically defines piracy and encourages parties to enact laws criminalising the maritime crime in accordance with the customary international law position. As a consequence, it is contended that states, particularly Nigeria, should enact domestic laws criminalising piracy in accordance with the LOSC in order to arrest and prosecute pirates.

<<https://www.brandeis.edu/ethics/pdfs/internationaljustice/Piracy.pdf>> accessed 20 May 2015 and D. Chang, *supra* note 410, p. 288.

⁴¹⁹) Eugene Kontorovich, "A Guantanamo on the Sea": The Difficulty of Prosecuting Pirates and Terrorists," (2010) *California Law Review*, Vol. 98, p. 270 <<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1037&context=facultyworkingpaper>> accessed 20 May 2015, Eugene Kontorovich, "The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation," (2004) *Harvard International Law Journal*, Vol. 45, No. 1, pp. 183-237; and James T. Gathii, "Kenya's Piracy Prosecution," (2010) *The American Journal of International Law*, Vol. 104, p. 425 <<https://www.brandeis.edu/ethics/pdfs/internationaljustice/Piracy.pdf>> accessed 20 May 2015.

⁴²⁰) E. Kontorovich (2010), *ibid*, p. 271.

⁴²¹) See the LOSC, article 101.

⁴²²) Kriangsak Kittichaisaree, "Piracy: International Law and Policies," Centre for International Affairs, Working Paper, Paper Presented at the AALCO Seminar at the UN Headquarters on 16 March, 2011, p. 2 <<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Piracy-InternationalLawAndPolicies.pdf>> accessed 31 March 2015.

4.4 The Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention) 1988

Due to the fact that piracy has been recognised under the laws of nations as a changing body of law that must be defined at the time of the alleged transgression⁴²³ and consequent upon the inherent limitations of the LOSC, the SUA Convention and its Protocol of 2005 emerged. The SUA Convention was introduced as a result of act of violence against a person on board a ship, or destroying a ship or its cargo, or endangering the safe navigation of that ship. One of the objectives of the SUA Convention is to urgently develop international cooperation between states in devising and adopting effective and practical measures for the prevention of all unlawful acts, which obviously includes piracy, against the safety of maritime navigation, and the prosecution and punishment of their perpetrators.⁴²⁴

Furthermore, the SUA Convention⁴²⁵ provides for unlawful offences on ships. Specifically, article 3 (1) stipulates that any person commits an offence if that person unlawfully and intentionally; seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or destroys a

⁴²³) See the case of *United States v Dire*, 680 F.3d 446, 629-630/633. See also Peter Hershey, "Regulating Jolly Roger: The Existing and Developing Law Governing the Classification of Underwater Cultural Heritage as "Pirate-Flagged"," (2014) UMass Law Review, Vol. 10, p. 117 <<http://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1079&context=umlr>> accessed 25 March 2015.

⁴²⁴) The SUA Convention, article 3, for the lists of what constitute an offence under its purview.

⁴²⁵) Although Nigeria has not domesticated this convention, Omo-Eboh argues that if the inclusion of the convention in section 215 of the Merchant Shipping Act (MSA), Laws of the Federation of Nigeria (LFN), 2010, hereafter referred to as "MSA 2010", means that it has been domesticated, it makes an Act of National Assembly unnecessary; if not, the need for an Act of National Assembly to domesticate it becomes imperative. O. Omo-Eboh, supra note 409. See the decision of the Supreme Court in *Abacha v. Fawehinmi* [2000] 6 N.W.L.R. (Part 660) p. 228, where the apex court held that for a treaty to have the force of law, it must be enacted into law by the National Assembly of Nigeria.

ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship, among others.⁴²⁶ From these provisions, the dissertation posits that the SUA Conventions has expanded the crimes that are related to piracy thereby facilitating pirates' prosecution.

In the light of the foregoing, the SUA Convention charges a state party to the convention upon being satisfied that circumstances so warrant, and in accordance with its law, to take the offender or alleged offender in its territory into custody or take measures to ensure his presence for such a time as is necessary to enable extradition proceedings to be instituted.⁴²⁷ The SUA Convention further provides for mutual legal assistance,⁴²⁸ and exchange and analysis of information.⁴²⁹ The introduction of these steps, this research argues, would contribute immensely in the suppression of piracy off coastal states like Nigeria.

It is important to reiterate the fact that the core elements of some of the crimes under the SUA Convent can be elements of the crime of piracy. For example, to “seize or exercise control over a ship by force or threat thereof or any other form of intimidation,” or “perform an act of violence against a person on board a ship if that act is likely to engender the safe navigation of that ship”⁴³⁰ contained in the SUA Convention is similar to the

⁴²⁶) The SUA Convention, article 3.

⁴²⁷) *Ibid*, article 7.

⁴²⁸) *Ibid*, article 12.

⁴²⁹) *Ibid*, article 13.

⁴³⁰) *Ibid*, article 1 (a) & (b) and LOSC, article 101. A cursory look at the South Korean legislation, Act on Punishment for Damaging Ships and Sea Structure, No. 11302, 2012, which domesticates the SUA Convention, shows that it provides for acts that are similar to piracy. Hence, it formed the bases on which the decision in the case of *Republic of Korea v Araye*, No. 2011 Do 12927, Supreme Court of Republic of Korea, 22 December, 2011, was taken.

LOSC's "any illegal acts of violence" or "any act of depredation" against a ship. The SUA Convention evidently removes the requirements that the attack on ships occurs on the high seas (including the EEZ) and that the attack is directed against another. It applies as long as the vessel does not navigate or is not scheduled to navigate within a single state's territorial waters, but traverses through international transit, ports, or territorial waters, and the alleged offender is present in the territorial waters of a state party thereto.⁴³¹

The Protocol⁴³² to the SUA Convention widens the list of offences under the SUA Convention to include, *inter alia*, acts of maritime terrorism (such as using a ship as a means of carrying out a terrorist attack) and transport by sea any person who has committed an offence under the SUA Convention or one of the other UN counter-terrorism conventions.⁴³³ The Protocol goes further to criminalise "transport on board a ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause ... death or serious injury or damage for the purpose of intimidating a population, or compelling a government... to do or abstain from doing any act."⁴³⁴ From the foregoing, this research argues that article 3*quater* establishes a comprehensive set of criminal responsibility for accessory offences, including attempts, participation as an accomplice and so forth which are equally useful in piracy offences.⁴³⁵

⁴³¹) K. Kittichaisaree, *supra* note 422, pp. 2-3; and Janin V. Ahnefeld *supra* note 128, p. 16. See also the SUA Convention, articles 4 & 7-10.

⁴³²) The 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, hereafter referred to as the "Protocol to the SUA Convention."

⁴³³) The Protocol to the SUA Convention, articles 3 & 3*ter*.

⁴³⁴) The Protocol to the SUA Convention, article 3*bis* (1) (b) (i).

⁴³⁵) *Ibid*, article 3*quater*.

4.5 The United Nations Convention against Transnational Organised Crime (Palermo Convention) 2000

The Palermo Convention was promulgated to promote cooperation to prevent and combat organised crime more effectively.⁴³⁶ The convention also focuses on the profiteering of piracy attacks. It is evident that well organised criminal cartels have started sponsoring and funding the illicit business of piracy, which has evolved into the equivalent of racketeering or a Mafia-like industry.⁴³⁷ In simple language, it is argued that consequent upon the linkage between piracy and organised crime, the use of the Palermo Convention to suppress piracy becomes relevant. Evidently, pirates that have been creating havoc in the Gulf of Aden, as well as the Gulf of Guinea, are now receiving intelligence on shipping routes, cargo, crews, and vessel schematics from accomplices in London via satellite telephone prior to any attack, which lends additional credence to the transnational element of piracy.⁴³⁸

In view of the above, organised criminal group means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Palermo Convention, in order to obtain, directly or indirectly, a financial or other material benefits.⁴³⁹ The Palermo Convention criminalises the participation in an organised criminal group to commit serious crimes.⁴⁴⁰ In using the convention to curb piracy, the

⁴³⁶) The Palermo Convention, article 1.

⁴³⁷) This is peculiar to Somali and Nigerian pirates.

⁴³⁸) Katie Smith Matison, "The Big Business of Maritime Piracy and the Modern Corsair: Dead Men Tell no Tales," *Journal of Transportation Law, Logistics and Policy*, pp. 382-384 <http://www.lanepowell.com/wp-content/uploads/2010/11/Matison_JTLP_2.pdf> accessed 17 May 2015.

⁴³⁹) The Palermo Convention article 2 (a).

⁴⁴⁰) *Ibid*, article 5.

provisions for the prevention of money laundering and corruption become very pivotal.⁴⁴¹

In addition to the above, the Palermo Convention promotes international cooperation almost in the same areas with the LOSC, but lay more emphasis on the cooperation with respect to judicial process such as the confiscation of proceeds of the crime or property used in committing the crime,⁴⁴² and their disposal.⁴⁴³ Equally included are: the extradition of offenders,⁴⁴⁴ law enforcement cooperation,⁴⁴⁵ mutual legal assistance,⁴⁴⁶ joint investigations,⁴⁴⁷ transfer of sentenced persons,⁴⁴⁸ and collection, exchange and analysis of information.⁴⁴⁹ This research posits that the effective implementation of the provisions of this convention will greatly reduce the activities of pirates who need corrupt officials to thrive. It will also prevent the laundering of the proceeds of the crime.⁴⁵⁰

4.6 The International Ship and Port Facility Security (ISPS) Code 2002

As a comprehensive security regime for international shipping,⁴⁵¹ the ISPS Code is a deliberate guidance on maritime transportation security, including ports. The code primarily targets how to deter or minimise maritime

⁴⁴¹) *Ibid*, articles 6-9.

⁴⁴²) *Ibid*, article 13.

⁴⁴³) *Ibid*, article 14, para. 2.

⁴⁴⁴) *Ibid*, article 16. This particular provision is also contained in the Hostage Convention, article 10 (1).

⁴⁴⁵) The Palermo Convention, article 27.

⁴⁴⁶) *Ibid*, article 18. See also the Hostage Convention, article 11 (1).

⁴⁴⁷) The Palermo Convention, article 19.

⁴⁴⁸) *Ibid*, article 17.

⁴⁴⁹) *Ibid*, article 14.

⁴⁵⁰) See generally, David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols* (Oxford University Press: New York 2007). In this regard, Nigerian legislation on money laundering, Money Laundering (Prohibition) Act, Cap. M18, LFN, 2010, hereafter referred to as the “MLPA” will be relevant.

⁴⁵¹) T.A. Mensah, “The Place of the ISPS Code in the Legal International Regime for the Security of International Shipping” (2003) WMU Journal of Maritime Affairs, Vol. 3, No. 1, pp. 17-30.

insecurity, particularly piracy and maritime terrorism.⁴⁵² The main objectives of the ISPS Code are: to detect security threats; implement security measures; collate and promulgate information relating to maritime security; provide a reliable methodology in assessing maritime security risks; develop detailed security plans and procedures in reacting to changing security. Additionally, to create security-related roles and responsibilities for Contracting Governments, ship companies and port operators at national and international levels, including the provision of professional training designated security officers.⁴⁵³

From a security prism, in order for Contracting Governments to implement the new security measures, they have to decide whether to adopt the ISPS Code in total or to modify it to meet their countries specific objectives, particularly where the code did not address those countries' concerns.⁴⁵⁴ The US, for example, incorporated the provisions of the ISPS Code in its domestic legislation, the MTSA, to suit its local circumstances. The provisions of the MTSA have been consolidated with the enactment of the Security and Accountability for Every Port Act, Public Law 109-347, 13 October, 2006.

Consequent upon the coming into effect of the ISPS Code, every ship and every port facility that are subject to the code have to follow a system of

⁴⁵²) Koi Y.A. Ng, "Maritime Security Instruments in Practice: A Critical Review of the Implementation of ISPS Code in the Port of Hong Kong" pp. 335 <http://www.icms.polyu.edu.hk/Papers/IFSPA09-Papers/8_M056.pdf> accessed 17 May 2015.

⁴⁵³) For the objectives of ISPS Code, see generally, the ISPS Code, article 1, para. 1.2. See K.Y.A Ng, *ibid*, pp. 335-336. The objectives and contents of the ISPS Code are essentially equivalent to the United States Maritime Transportation Security Act, Public Law 107-295, 25 November, 2002, hereafter referred to as the "MTSA."

⁴⁵⁴) F. Anstey, "The Fast Track to ISPS Code and National Security Regulation Implementation and the Implications for Marine Educators" <<http://www.solomonchen.name/download/7ms/1-001-s2-anstey.pdf>> accessed 17 May 2015.

surveys, verification, certification and control to ensure that their security measures are implemented. The research argues that it is beyond serious contestation that the measures contained in the ISPS Code are comprehensive which makes the code a dynamic security instrument for preventing and suppressing piracy, including securing the shipping industry. In line with the prevention of piracy and the protection of the maritime industry, the measures prescribed by the SOLAS,⁴⁵⁵ Chapter XI and the ISPS Code can be divided into five major categories accordingly.⁴⁵⁶ They are five major categories are thoroughly analysed below.

4.6.1 Contracting Governments

The principal responsibilities of Contracting Governments under the ISPS Code regulations are to determine and set the security levels and to inform these levels to ships flying its flag, to foreign flag vessels using port facilities in their territory and to foreign flag ships in or about to enter its ports. Regulation 4 of Chapter XI-2 of the SOLAS states that ships that are subject to the ISPS Code, be required to operate at a specific security level at all times. Depending on credible threats to the ship or to the port facility, three different security levels have been established. Security Level 1, Normal- the security level at which ships and port facilities should normally operate. The security measures taken at this level are the minimum standard for ships and port facilities. Security Level 2: Heightened- this security level applies as long as there is a heightened risk of a security incident. Security Level 3: Exceptional- the level applying for the time when there is a probable or imminent threat of a security incident, although it may not be possible to

⁴⁵⁵) International Convention for the Safety of Life at Sea, adopted 1 November 1974, 1184 UNTS 2/1983, entered into force 25 May 1980.

⁴⁵⁶) "Defining Terrorism: An Urgent Task for the Shipping Industry," Oslo Havn K.F., 1 September, 2005, p. 30
<https://www.duo.uio.no/bitstream/handle/10852/22826/masterthesis_IgnacioVelez.pdf?sequence=1&isAllowed=y> accessed 17 May 2015.

identify the specific target.⁴⁵⁷ The idea is for vessels to beef up their security in accordance with the security level existing in the ports and the surrounding areas of the ports they are about to enter.

The setting of the security level applying at any particular time is normally the responsibility of the flag administration for ships and port states administrations for port facilities and ship calling at their ports. Article 7 of the ISPS Code indicates the measures that a ship has to take while operating under each security level and article 14 does the same for port facilities. These security levels create a link, since they trigger the implementation of appropriate security measures for the ship and the port facility. When ships are at a port facility, and that port facility is operating at a higher security level, all ships have to operate at the level that applies to the port facility. If the case is the opposite, that is, when a ship is operating at a higher security level than the port facility, an agreement about the security measures around the ship should be reached between the parties. This does not mean that the port facility has to increase the security level.⁴⁵⁸

When a ship is intending to use port facilities, or is at a berth, or is in a territorial waters, the Contracting Government has the right, under the provisions of the SOLAS Chapter XI-2 regulation 9, to exercise various control and inspections to check compliance with the measures. The convention also allows the request of information beforehand for the purpose of avoiding the need to impose control measures or other actions that may lead to undue delays.⁴⁵⁹ Such inspection, the research argues, could assist in

⁴⁵⁷) For details of the responsibilities of Contracting State toward the security of port and shipping industry, see generally article 4 of the ISPS Code. In the US regulation, the MARSEC (Maritime Security) Levels 1-3 are used. Joseph Ahlstrom, *Vessel Security Officer* (Maryland: Cornell Maritime Press 2006) pp. 18-19.

⁴⁵⁸) "Defining Terrorism: An Urgent Task for the Shipping Industry," supra note 456, p. 31.

⁴⁵⁹) The information that a ship is required to provide are:

1. Evidence that possesses a valid security certificate and the name of the issuing authority.
2. The security level at which the ship is currently operating.

exposing untrained crew who do not know the security standards of a vessel in accordance with the code or other security conventions. As a consequence, the susceptibility of the vessel to hijacks by pirates is avoided.

If a port authority has reasons to believe that the security of the ship, or of the port facilities it has called before has been compromised, the ship might be subjected to additional control measures. The purpose of port state inspections is to detect technical deficiencies or breaches of mandatory safety and security standards that could present a threat to the port facility, other ships in the vicinity or to the environment.⁴⁶⁰ It is further argued by this research that sub-standard vessels without relevant certificates and poor labour conditions can easily be captured by pirates, therefore, there is need for further inspection of such ship at the ports.

Ordinarily, prior to 1st July 2004, the Contracting Governments must have increased and upgraded port safety and security procedures according to the ISPS Code and Nigeria has not fully complied with this provision. These security assessments had three essential components. First, Contracting Governments have to identify and evaluate important assets and infrastructures that are critical to the port facility as well as those areas around the port that if attacked could cause significant loss of life and damage to the port facilities or environment. Second, the assessment has to identify the actual threats to those important assets and infrastructure in order to prioritise security measures. And third, the assessment must address

3. The security level at which the ship has operated during the last 10 port calls.

4. Any additional measures taken by the ship in any previous port where a ship-to-shore interface was conducted.

5. Appropriate ship security procedures that were maintained during any ship-to-ship activities.

6. Other practical security-related information taking into account the guidance given in Part B of the ISPS Code. For further clarifications, see "Defining Terrorism: An Urgent Task for the Shipping Industry," *ibid*, p. 32.

⁴⁶⁰) *Ibid*, pp. 32-33.

vulnerabilities of the port facilities by identifying the weakness that might be a likely target, for example, in physical security, communication systems, structural integrity, procedural policies, among others.⁴⁶¹

4.6.2 Ships

In the light of the forgoing, even though the AIS⁴⁶² is not a requirement of the ISPS Code, it is a requirement of the SOLAS. It can also be used to monitor the movement of ships that are suspected to present a security risk. Another security measure stated by SOLAS is the requirement that ships be permanently identified by its unique identification number. This number must be permanently marked on the hull of the ship. In addition to these safety and security measures, ships have to comply with the following procedures: Ship Security Assessment Survey (SSAS); SSO; SSP; and Record Keeping.⁴⁶³ It is contended that if these security measures are implemented, it will reduce the vulnerability of ships to piracy attacks.

4.6.3 Shipping companies

The main responsibility of a shipping company is that every one of the ships that it operates obtains an ISSC and also to make sure that all the requirements for its ships are met. The shipping company shall appoint a CSO for the company and a SSO for each of its ship. The responsibilities of

⁴⁶¹) Once this evaluation has been carried out, Contracting Governments can evaluate the risks and threats that the port facility faces and take measures to minimise them. Another task imposed by the ISPS Code to Contracting Governments is the issuance of the International Ship Security Certificate –ISSC. Once all the security surveys have been carried out, an ISSC can be issued to the ship by the national maritime authority and has to be kept on board at all times and available for inspection, but out of reach from unauthorised persons. This certificate could also be issued by a classification society on behalf of the flag state. *Ibid*, pp. 33.

⁴⁶²) IMO has mandated the use of AIS as part of the carriage requirement for ships in accordance with SOLAS, Chapter V, regulation 19. Note that the MTSA requires that all self-propelled commercial vessels falling into a certain category, for example, over 65 feet in length or passenger vessels certified to carry more than 149 passengers, install and use AIS in all US Vessel Traffic Services (VTS) areas. J. Ahlstrom, *supra* note 457, p. 9. For the use of AIS and LRITS in the US, see the MTSA, sections 70114-70115.

⁴⁶³) The ISPS Code, articles 8-12. See also “Defining Terrorism: An Urgent Task for the Shipping Industry,” *supra* note 456, pp. 34-36.

these officers are defined, as well as their requirement for their training and drills. The training needs and requirements of the SSO are developed in the context of the Standard, Training, Certification and Watchman Convention 1978 (STCW Convention as amended). The CSO's responsibilities include ensuring that a Ship Security Assessment (SSA) is undertaken and that an SSP is prepared for each vessel to which the Code applies.⁴⁶⁴ More so, it is the duty of the shipping company to ensure that the SSP contains a clear statement emphasising the master's authority, as well as provisions needed to support the CSO and the SSO in carrying out their duties.⁴⁶⁵

4.6.4 Port facilities

The ISPS Code sets out similar requirements for ports facilities as it does for ships. For port facilities that receive ships coming from abroad, they are required to carry out the following: Port Facility Security Assessment Survey (PFSAS); PFSO; and PFSP. Port facilities are required to report security related information to the Contracting Government, which in turn will draw a list of approved PFSPs and then these will be submitted to the IMO.⁴⁶⁶ Modern port facilities are needed to ensure that the ports and the ships comply with international security standard in order to repel and prevent piracy.

4.6.5 Certifications and documentary requirements

In addition, the following three requirements are also applicable to the ship and the port facility: monitoring and controlling access to installations;

⁴⁶⁴) Chris Trelawny Chris, "Maritime Security: Implementation of the ISPS Code," 3rd Intermodal Africa 2005 Tanzania Exhibition and Conference, Dar es Salaam, 3-4 February, 2005, pp. 5-6.

⁴⁶⁵) For the duties of the CSO and SSO, see ISPS Code, articles 11.2 (1-13) and 12.2 91-10) respectively. See John P. Hogan & Lindsay Chapman, "International Ship and Port Facility Security (ISPS) Code-What Does it Mean for Fishing Vessel?" *SPC Fisheries Newsletter*, No. 113, 2005, p. 25.

⁴⁶⁶) The ISPS Code, articles 14-18. See also "Defining Terrorism: An Urgent Task for the Shipping Industry," *supra* note 456, pp. 36-37.

monitoring the activities of people and cargo; and ensuring security communications are readily available. Due to the fact that each ship or each port facility face different risks, the method in which they comply with the requirements of the code will be determined and approved by the Maritime Administration or Contracting Government, as the case may be.⁴⁶⁷ Hence, documentation generally and certifications are necessary to determine the preparedness of a vessel against piratical attacks.

A cursory look at the ISPS Code shows that it outlines concerted measures that will prevent piratical acts against a ship, if put in place. In other words, the maintenance of the security of the ship, the ports and harbor areas, can be done by implementing the provisions of the code. More importantly, the responsibility to secure activities in the shipping industry is the duty of all stakeholders, lending credence to the fact that collaborative efforts would yield better results than unilateral action. In this regard, this research argues that the full implementation and enforcement of the ISPS Code greatly complements the provisions of the LOSC and therefore a necessary tool in suppressing piracy.

4.6.7 Comparative analysis of the application of ISPS Code in Nigerian maritime sector

It is instructive to state that Nigeria has ratified and domesticated the ISPS Code in 2004.⁴⁶⁸ The administrative requirement of the application of the ISPS Code involves the creation of a central Designated Authority⁴⁶⁹ and institutional as well as national focal point of contact and the assignment of general and specific tasks. Under the administrative requirement, a Presidential Implementation Committee on Maritime Safety and Security

⁴⁶⁷) For certification and verification of documents, see generally the ISPS Code, article 19. See also “Defining Terrorism: An Urgent Task for the Shipping Industry,” *ibid.*, p. 38.

⁴⁶⁸) The International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, Cap. 126, LFN, 2010, hereafter referred to as the “ISPS Act 2010.”

⁴⁶⁹) The ISPS Act 2010, Part B, Chapter XI-2, article 1.7.

(PICOMSS)⁴⁷⁰ was established as the Designated Authority for the ISPS Code.⁴⁷¹ Nevertheless, due to inability of the PICOMSS to fast track the implementation of the ISPS Code, this onerous duty has now been transferred to NIMASA from the PICOMSS following a Presidential Directive.⁴⁷²

Unlike Nigeria, the US, since late 2002, proactively implements and enforces its own port security legislation and adopts regulations with verbiage essentially similar to the international regime.⁴⁷³ Acknowledging the limitations and inadequacy of the ISPS Code security scheme in the protection of the US seaports, Congress took unprecedented measures to extend the boundaries of the US maritime transportation system to the ports of origin around the world.⁴⁷⁴ Signed into law almost a month before the

⁴⁷⁰) PICOMSS was established in 2004 to ensure Nigeria's compliance as required by the ISPS Code. Nigeria was able to meet the deadline and was confirmed by the IMO as compliant that same year. However, in late 2012, due to the inability to maintain the standards required under the Code, there was redundancy in Nigeria which led to the issuance of a 90 day ultimatum issued by the US to Nigeria to comply or face the consequences of not allowing ships from Nigeria into US or European ports. PICOMSS was disbanded and the role of Designated Authority was given to NIMASA on 21 May 2013. See "We will Guarantee Port Security with Minimal Budget-Akpobolokemi, NIMASA Boss" *Sunday Newswatch*, 16 September, 2013. <http://www.mydailynewswatchng.com/?p=62675&wpmp_switcher=mobile&wpmp_tp=0> accessed 17 May 2015. Note that as at 2015, Nigeria ports were not fully compliant to the provisions of the ISPS Code. See "Nigeria Targets 100% ISPS Code Compliance for Port Facilities," *Hellenic Shipping News*, 2 November 2015 <<http://www.hellenicshippingnews.com/nigeria-targets-100-isps-code-compliance-for-port-facilities/>> accessed 2 January 2016.

⁴⁷¹) Lazarus I. Okoroji & Wilfred I. Ukpere, "The Effectiveness of the International Ship and Port Facility Security Code (ISPS) in Nigeria" (2011) *African Journal of Business Management*, Vol. 5, No. 4, p. 1428.

⁴⁷²) The Minister of Transport through an official letter on 21 May 2013 formally transferred the functions of PICOMSS to NIMASA. Toju Vincent, "US Coast Guard Revisit Nigeria to Monitor ISPS Implementation," *Sweet Crude Reports*, 26 December, 2013 <<http://www.sweetcrudereports.com/2013/12/26/u-s-coast-guard-revisit-nigeria-to-monitor-isps-implementation/>> accessed 17 May 2015.

⁴⁷³) See the MTSA.

⁴⁷⁴) See generally MTSA section 70103. See also Stephen L. Cox, "The Advent and Future of International Port Security Law" (2013) *National Security Law Journal*, Vol. 1, No. 1, pp. 86-87. See also the Security and Accountability for Every Port Act, Public Law 109-347, 13

ISPS Code's adoption, the MTSA granted the USCG sweeping powers to regulate domestic and international shipping within US ports and territorial waters.⁴⁷⁵ The MTSA created detailed new regulatory authority in maritime governance, shipping, port facility and outer continental shelf security. Against the backdrop of the US influence as a global economic power, MTSA effectively codified maritime transportation security protocols not only for the US, but also for every seafaring nation seeking to trade along her shores because the party must comply with the MSTA.⁴⁷⁶

For effective implementation and enforcement of the provisions of the ISPS Code, the Nigeria's qualifying facilities were delineated into four geo-functional Maritime Security Zones (MSZs) as follows: Lagos MSZ, Delta MSZ, Rivers MSZ and Calabar MSZ.⁴⁷⁷ The technical requirement is also the core of Nigeria's ISPS Code compliance initiatives. It is the basis on which Nigeria was assessed to have initially complied with the provisions of the code. The technical requirement involves assessments and approval of plans and the training of relevant personnel. Besides, it involves the identification and designation of port facilities that are required to comply with the relevant provisions. These port facilities are required under the ISPS Code regime to comply with security requirements, otherwise they will be considered unsafe for ships visits.⁴⁷⁸

In furtherance of the above, Nigerian government initiated the development of National ISPS Code Guidelines, which is generally referred to as National Maritime Security Plan (NMSP). This is a comprehensive plan

October 2006, hereafter referred to as the "Safe Port Act," which was enacted to further strengthen the security of its ports and surrounding waters of the US.

⁴⁷⁵) S.L. Cox, *ibid*.

⁴⁷⁶) In furtherance of the provisions of the MTSA, the USCG established the International Port Security (IPS) Program to meet MTSA's foreign port assessment mandates. See S.L. Cox, *ibid*, 87. See also MTSA, section 70110.

⁴⁷⁷) L.I. Okoroji & W.I. Ukpere, *supra* note 471, p. 1428.

⁴⁷⁸) *Ibid*.

that embodies all the security plans, port facilities and ships alike. These plans are audited and reviewed on a regularly basis to ascertain the needs or otherwise for update as the security scenario demands.⁴⁷⁹

For the Nigerian maritime administration, the lead recognised security organisation (RSO)⁴⁸⁰ namely the Maritime Underwater Security Company (MUSC) played a very key role in the development and audit of the NMSP. Only ships of five thousand Gross Registered Tonnages (GRT) are classified as SOLAS vessels and such come under the requirements of the ISPS Code, other ships are classified as non-SOLAS vessels. A major component of the technical requirement was the identification and upgrading of security infrastructure and equipment. The RSO appointed by Nigeria carried out equipment survey report (ESR) which was produced on a port by port basis.⁴⁸¹

Based on approved existing global industry benchmarks, the technical requirement involved the establishment of national baseline standards for port security infrastructure/ equipment upgrade. As a natural component of maritime security initiatives, there is an ongoing implementation of the Global Maritime Distress and Safety System (GMDSS) by NIMASA. More so, to ensure complete adherence to the requirements for complying with the provisions of the ISPS Code, Nigeria has embarked on the development and integration of various telemetric and surveillance infrastructure for ship to shore, shore to ship, shore to shore, intra/inter agency communications. This is achieved through the following maritime communication installations: AIS, Vessel Traffic Management System (VTMS), GMDSS, Ship Security Alert System (SSAS), LRITS, and the

⁴⁷⁹) *Ibid.* See also the MTSA, 2002, section 70103.

⁴⁸⁰) L.I. Okoroji L.I. & W.I Ukpere, *ibid*, pp. 1428-1429.

⁴⁸¹) *Ibid*, p. 1429.

Tracking/Identification of non-Convention Crafts Command Communication/Co-ordination Centers.⁴⁸²

Overall, there was upgrading of vulnerable or sub-optimal physical structures, port approaches, quay/land side access and restricted areas. An important element in the technical requirements, was training. In accordance with the dictates of the ISPS Code, training for maritime security was carried out at all levels in the maritime industry. For instance, over one hundred top maritime executives were trained at very high levels both within and outside Nigeria. Other personnel trained for the same purpose include four hundred and thirty three (433) PFSO, sixty four (64), CSO and SSO, twenty seven (27) port state security courses were also held for all the marine police attached to all maritime agencies in Nigeria.⁴⁸³

Beyond the above efforts by the Nigerian Government, Oritse posits that about 80 percent of facilities covered by NIMASA are compliant with the code, while 15 percent are still struggling to comply and 5 percent are yet to meet set standards.⁴⁸⁴ More pointedly, those facilities that are currently compliant with the code need to ensure sustainability of their security levels.⁴⁸⁵ In furtherance of the implementation of the provisions of the code, the NPA has created both PFSP and Port Facility Security Assessment (PFSA) on every terminal and facilities across the country.⁴⁸⁶ Further,

⁴⁸²) *Ibid.* See also the MTSA, sections 70114 & 70115.

⁴⁸³) L.I. Okoroji & W.I. Ukpere, *ibid.*

⁴⁸⁴) Godwin Oritse, "Nigeria: Terrorism-Port Security Officers Call for more Alertness" *Vanguard*, 3 July, 2014 <<http://allafrica.com/stories/201407030101.html>> accessed 17 May 2015.

⁴⁸⁵) *Ibid.*

⁴⁸⁶) Godwin Oritse, "ISPS: US Coast Guard Indicts FG over Confusion at Ports," *Vanguard*, 22 July, 2013 <<http://www.vanguardngr.com/2013/07/isps-us-coast-guard-indicts-fg-over-confusion-at-ports/>> accessed 17 May 2015.

Nigerian ports are complying with the specified security levels as required by the code to reflect the country's existing maritime security situation.⁴⁸⁷

Corollary to the above, Nigeria is a signatory to the MOU on PSC for West and Central African Region that was signed in Abuja 1999,⁴⁸⁸ which has the mandate of the safety, security and protection marine environment through compliance to international standards. The objectives of the PSC includes the appointment of an Inspection Officer whose duty is to board a vessel with a view to conduct inspection of foreign flag ships in national ports to verify that the condition of the ship and its equipment adhere strictly to the requirements of international regulations. It also provides for the determination of compliance to the requirements that a ship is manned and operated in compliance with international conventions like the ISPS Code and other relevant regulations.⁴⁸⁹

4.7 United Nations Security Council Resolutions (UNSCRs)

More pointedly, the UNSC resolutions have been instrumental in preventing and suppressing piracy. This has been exemplified by several UNSCRs that not only acknowledged the existence, challenges and measures to combat piracy, but have reaffirmed the actions of the joint naval forces in suppressing piracy in Somali waters. Focus has recently shifted to the organisations behind the piracy acts. In 2011, the UNSC adopted resolutions

⁴⁸⁷) John Iwori, "NPA begins ISPS Code Implementation at the Ports," *ThisDayLive*, 23 June, 2014 <<http://www.thisdaylive.com/articles/npa-begins-isps-code-implementation-at-the-ports/181644/>> accessed 5 June 2015. It imperative to note that while some ports in Nigeria are compliant to the provisions of the code, others have not. Thus, the USCG has determined that the Nigeria is not maintaining effective anti-terrorism, as well as anti-piracy, measures in some of its ports. See "Port Security Advisory (2-14)," U.S. Department of Homeland Security, USCG, 12 June, 2014 <<http://www.westpandi.com/globalassets/news/uscg-port-security-advisory-2-14.pdf>> accessed 17 May 2015.

⁴⁸⁸) The MOU on PSC for West and Central African Region that was signed in Abuja (1999) 1st Amendment October, 2012 <<http://www.abujamou.org/post/54.pdf>> accessed 22 May 2015, hereafter referred to as the "AMOU 1999."

⁴⁸⁹) See generally, *ibid*.

urging states to update their criminal piracy laws and include language for those who organise piracy without committing piracy themselves.⁴⁹⁰ Specifically, the UNSCRs⁴⁹¹ 1976 and 2020 urge states to investigate and prosecute “those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia.”

The UNSCR further empowers states to use, within the territorial waters of Somalia, all necessary means to suppress piracy.⁴⁹² This provision allows joint naval patrol teams as well as the navies of other states to enter territorial waters of Somalia and use adequate force to combat pirates. On the other hand, in analysing this provision of the resolution, it is argued that the term ‘all necessary means’ which authorised the use of force by states against pirates must be exercised in corroboration with the Somali Transitional Federal Government (TFG) in accordance with existing international law. Thus, ordinarily, such authorisation does “not confer any legal powers which were not already available under international law.”⁴⁹³

From the above UNSCRs, states are still required to enact into their domestic criminal legislation crimes of conspiracy or organisation of piracy. During arrest and subsequent prosecution, states are required to apply and enforce their laws. Ultimately, states with updated domestic laws may prosecute piracy acts within their own territorial jurisdiction including on the high seas.⁴⁹⁴ The UNSCRs also encourage cooperation between states and

⁴⁹⁰) See the UNSCR 1976 (2011) UN Doc S/RES/1976, para. 13, hereafter referred to as the “UNSCR 1976.”

⁴⁹¹) The UNSCR 1976 para. 13; and the UNSCR 2020 (2011) UN Doc S/RES/2020, para. 4, hereafter referred to as the “UNSCR 2020.”

⁴⁹²) The UNSCR 1816, para. 7 (b).

⁴⁹³) “Piracy and Legal Issues: Reconciling Public and Private Interest,” African Programme and International Law Conference Report, 1 October, 2009, p. 6 <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/011009piracy_law.pdf> accessed 21 May 2015.

⁴⁹⁴) Erin R. Davis, “Memorandum for the United Nations Contact Group on Piracy off the Coast of Somalia,” Case Western Reserve University School of Law, 2012, pp. 28-29

international organisations like IMO, the UNODC and the INTERPOL in suppressing piracy.⁴⁹⁵ In the light of the foregoing, it is argued strongly that the UNSCRs contributed immensely in the suppression of piracy in the Gulf of Aden and the Indian Ocean. Therefore, the UNSCRs can play a key role in combating piracy off Nigeria.

4.8 Regional legal framework for suppressing piracy off Nigeria

The introduction of regional framework to suppress piracy has become effective in recent years. Consequent upon its seeming success, there has been a trend toward adopting regional approaches in combating piracy. Goodman, in suggesting the use of regional approach towards suppressing piracy, opines that due to the absence of any effective enforcement mechanisms under international regime, regional solution becomes tenable in the fight against piracy.⁴⁹⁶ For illustrative purposes, in 2004, sixteen regional Southeast Asian states signed the ReCAAP, which was the first multilateral agreement to address piracy in Southeast Asia.

Essentially, the ReCAAP adopted the definition of piracy by the IMO, which defines piracy as involving piratical acts committed on the high seas and armed robbery against ships which occurs within the territorial waters of a coastal state.⁴⁹⁷ Aside from the general obligations which charges member states to make every effort to suppress piracy using their national laws and

<http://law.case.edu/Academics/AcademicCenters/Cox/WarCrimesResearchPortal/memoranda/PILPG_45%281%29_Prosecuting_use_of_child_pirates_CWRU.pdf> accessed 19 May 2015.

⁴⁹⁵) The UNSCR 2020, paras. 18-19 and the UNSCR 1976, paras. 12, 16-18.

⁴⁹⁶) T.H. Goodman, "Leaving the Corsairs Name to Other Times: How to Enforce the Law of Sea Piracy in the 21st Century through Regional Agreement," pp. 141-142, cited in Kristina Johansson, "Changes in the Views on Jurisdiction over Piracy under International Law," Masters Thesis, Faculty of Law, University of Lund, pp. 47-48 <<http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1558803&fileId=1564776>> accessed 20 May 2015.

⁴⁹⁷) See the ReCAAP, articles 1-2.

regulation and applicable rules of international laws,⁴⁹⁸ the ReCAAP established an Information Sharing Centre (ISC) in Singapore. The ISC is aimed at promoting close cooperation in the collection, collation, analysis as well as expeditious flow of information and intelligence relating to incidents of piracy and armed robbery against ships among contracting parties.⁴⁹⁹

In consonance with the above, another regional instrument created under the auspices of IMO is the Djibouti Code. During the IMO-sponsored meeting for East African states, nine East African states signed the Djibouti Code, which creates a network of information centers to report pirate attacks. By design, the Djibouti Code facilitates “cooperation between regional forces and regional countries” and requires signatories to report on suspected piracy through national information centers, interdict, arrest, prosecute, and protect and return hostages.⁵⁰⁰ Again, the Djibouti Code does not offer direct law for prosecution, since it is not legally binding, signatories agreed to arrest and prosecute pirates, to help repatriate hostages, and to modify their domestic laws to include “persons responsible.”⁵⁰¹

Due to the adverse effects of piracy off the coast of Somalia, twenty-eight nations and six international organisations formed the Contact Group on Piracy off the Coast of Somalia (CGPCS) to address piracy problems emanating from the Horn of Africa in 2009.⁵⁰² The common stated objectives for both regional groups include promoting information exchange,

⁴⁹⁸) See *ibid.*, article 3.

⁴⁹⁹) See *ibid.*, article 7.

⁵⁰⁰) D. Chang, *supra* note 410, pp. 278-279.

⁵⁰¹) See E.R. Davis, *supra* note 494, p. 33

⁵⁰²) See “Contact Group on Piracy off the Coast of Somalia,” US Department of State, Fact Sheet, Bureau of Political-Military Affairs, 14 January, 2009 <<http://www.state.gov/t/pm/rls/othr/misc/121054.htm>> accessed 19 May 2015. See also Thierry Tardy, “Introduction,” in Tardy Thierry (ed.) *Fighting Piracy off the Coast of Somalia Lessons Learned from the Contact group* (EU Institute for Security Studies: 2014) pp. 7-10

<http://www.iss.europa.eu/uploads/media/Report_20_Piracy_off_the_coast_of_Somalia.pdf> accessed 19 May 2015.

supporting capacity-building efforts, and facilitating the regional operations of member states.⁵⁰³

Other regional organisations aimed at maintaining maritime security, particularly in the Gulf of Guinea region, include the Maritime Organisation of West and Central Africa (MOWCA), which has its own sub-regional coast guard network, the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC). In a bid to stem the tide of piracy in the Gulf of Guinea region, the Code of Conduct was established.⁵⁰⁴ Just like the ReCAAP, the Code of Conduct contains measures to repress piracy and armed robbery at sea in the Gulf of Guinea.⁵⁰⁵ The Code of Conduct further articulates procedures and methods for assets forfeiture, information sharing, incident reporting and assistance among signatories in the fight against piracy in the Gulf of Guinea.⁵⁰⁶ It is the position of this research that they implementation of the Code of Conduct as well as other maritime instruments in Nigeria will go a long way to reduce the incidence of piracy off the country.

4.9 Domestic legal framework for suppressing piracy off Nigeria

Under the domestic legal regime, the constitution and some relevant legislations in Nigeria would be used in determining the domestic piracy governance with a view to identifying their efficacy in suppressing piracy acts in the country. More so, the importance of domesticating conventions on piracy, in particular, and maritime security and other related matters, in general, in combating piracy is also highlighted.

⁵⁰³) Henk Swarttouw & Donna L. Hopkins, "The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and Objectives," in Tardy Thierry (ed.), *ibid*, pp. 11-17.

⁵⁰⁴) See generally the Code of Conduct.

⁵⁰⁵) See the Code of Conduct, articles. 6 and 7, respectively.

⁵⁰⁶) See the Code of Conduct, articles 10, 11, 12 and 13, respectively. The code is expected to be binding 3 years after it was signed by 13 heads of states from the region on 25 June 2013.

4.9.1 The 1999 Constitution of the Federal Republic of Nigeria

Domestically, the Nigerian Constitution provides that: the security and welfare of the people shall be the primary purpose of government.⁵⁰⁷ In attaining this objective, section 11(1) states that the National Assembly may make laws for the Federation or any part thereof with respect to the maintaining and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.⁵⁰⁸ The Nigerian government has the responsibility of protecting and improving the environment and safeguarding “the water, air and land, forest and wild life of Nigeria.”⁵⁰⁹

From the above constitutional provisions, it is the duty of the federal government of Nigeria to make laws and policies that would protect its waters. This also includes safeguarding economic activities in the area of shipping. It is important to emphasise that section 12 of the 1999 Constitution of Nigeria provides for the procedures for domesticating treaties and conventions. Therefore, international maritime security conventions can be domesticated in Nigeria for the purposes of suppressing piracy off the country. Comparatively, article 6 of the Constitution of the Republic of Korea as Amended by Constitution No. 10, 29 October, 1987, states that: “Treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.”

⁵⁰⁷) The 1999 Constitution of Nigeria, section 14(2) (b).

⁵⁰⁸) *Ibid*, section 11 (1). Maritime shipping and navigation is listed as item 36 of the Exclusive Legislative List of the 1999 Constitution of Nigeria in respect of which only the National Assembly can make laws.

⁵⁰⁹) The 1999 Constitution of Nigeria, section 20.

4.9.2 The Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007

NIMASA is the agency of the federal government of Nigeria established for the regulation of maritime activities and implementation of domestic laws and international conventions relating to the maritime industry of which Nigeria is a signatory to. The Agency can be described as the apex agency of government for the regulation of merchant shipping and is placed under the supervision of the Federal Ministry responsible for Marine Transportation.⁵¹⁰

One of the functions of NIMASA is to provide directions and ensure compliance with vessel security measures.⁵¹¹ The NIMASA Act provides for the maintenance of maritime security and establishes the procedure for the implementation of conventions of the IMO and the International Maritime Labour Organisation (IMLO) and other international conventions to which Nigeria is a party to, in the areas of maritime safety and security, maritime labour, commercial shipping and for the implementation of codes, resolutions and circulars arising therefrom.⁵¹²

From the provisions of the NIMASA Act, the security of the Nigerian maritime domain and the implementation of conventions on the security of shipping generally rest squarely on NIMASA.⁵¹³ In other words, NIMASA, through its officials, is saddled with the following responsibilities: monitoring and policing the Nigerian ports and waters, boarding vessels calling at Nigerian ports. In furtherance of its responsibilities, NIMASA,

⁵¹⁰) The Nigerian Maritime Administration and Safety Agency Act (NIMASA) 2007, section 2(4), hereafter referred to as the “NIMASA Act 2007.” The Merchant Shipping Act, Cap. M111, LFN, 2010, hereafter referred to as the “MSA 2010,” section 2 (1) gives NIMASA the power to enforce its provisions.

⁵¹¹) See the NIMASA Act 2007, section 22 (1) (g).

⁵¹²) *Ibid*, section 22 (1) (p) (q).

⁵¹³) *Ibid*, section 22 (2) (a).

through the instrumentality of PSC, inspect and check both the validity of the relevant certificates and other documents, and the overall condition of the vessel, its equipment, and its crew. It is trite that seafarers are partners in the suppression of piracy. Against this backdrop, NIMASA also ensures that ship owners adhere strictly to the provisions of the MLC, 2006, and other related instruments, in relation to the protection of the rights of seafarers, the promotion of healthy working environment, adequate wages, training and vacation for the seafarers.

4.9.3 Merchant Shipping Act, Cap. M11, Laws of the Federation of Nigeria (LFN) 2010

It must be stated that the agency with the responsibility of implementing the provisions of this Act is NIMASA.⁵¹⁴ Thus, MSA 2010 empowers NIMASA to implement any international agreement or convention, including the ones mentioned in the Act, which relates to safety⁵¹⁵ and security⁵¹⁶ of the crew, the ship and the cargo; the prevention, reduction or control of pollution of the sea or other waters by matters from ships; and civil liability and compensation for pollution damage from ships, to which Nigeria is a party.⁵¹⁷ This is particularly relevant in the event of pollution caused by piratical attacks on vessels occurring off Nigeria. Comparatively, the purpose of the enactment of the Ship Safety Act, No. 9446, 2009, in the Republic of Korea, according to article 1, is to protect the life and property of the public by prescribing matters necessary for the maintenance of seaworthiness and safety of navigation. It is contended that a perusal of the Ship Safety Act shows that it contains measures to protect the safety of ships and the

⁵¹⁴) MSA 2010, Part I, section 2 (1).

⁵¹⁵) *Ibid*, Part XII sections. 215-216.

⁵¹⁶) The provisions of the Act show that ships flying Nigerian flag must register their vessels according to the conditions contained in the Act. Thus, Nigeria does not operate FOC and the process of registration and inspection goes a long way to prevent the use of Nigerian flagged ships for piracy. See generally, *ibid*, MSA 2010, Part II.

⁵¹⁷) *Ibid*, Part XXIII, section. 335 (1) (a-h).

punishments for the infraction of the provisions of the Act. Similarly, the implementation of the provisions of the Act can facilitate the prevention and suppression of piracy off South Korea.

4.9.4 The Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria (LFN) 2010

The Armed Forces Act⁵¹⁸ in section 1 (1) establishes for the Federation of Nigeria “... an Armed Forces which shall be maintained and administered as set out in this Act and comprise the Nigerian Army, the Nigerian Navy and the Nigerian Air Force.”⁵¹⁹ The Act charges the Armed Forces with the defence of the Federal Republic of Nigeria’s territorial land, sea and air. The Navy, in particular, is further charged with responsibility for: enforcing and assisting in co-ordinating the enforcement of all customs laws, including fishery and immigration laws of Nigeria at sea; enforcing and assisting in coordinating the enforcement of national and international maritime laws acceded to by Nigeria; and promoting, coordinating and enforcing safety regulations in the territorial waters and the EEZ of Nigeria.⁵²⁰ It is important to emphasize that the Nigerian Navy is relevant in the prevention and suppression of piracy off Nigeria through policing the country’s waters.

4.9.5 The Police Act, Cap. P19, Laws of the Federation of Nigeria (LFN) 2010

⁵¹⁸) Armed Forces Act, Cap. A20, LFN, 2010, hereafter referred to as the “Armed Forces Act.”

⁵¹⁹) See the 1999 Constitution of Nigeria, section 217(1).

⁵²⁰) The Armed Forces Act, section 1(3) and (4) (a).

The Police Act⁵²¹ in section 3 creates for Nigeria a police force to be known as the Nigerian Police Force.⁵²² It further provides the duties of the police. Under the Act, it shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged. The Nigerian Police Force shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.⁵²³

In furtherance of its constitutional and statutory mandate to ensure the preservation of law and order and the protection of life and property within Nigeria, the Nigerian Police Force has established a marine department for the purpose of patrolling Nigeria's internal and coastal waters. It must be noted that the police have not been effective in carrying out their statutory mandate. This is due to the overwhelming and sophisticated manner with which the pirates carry out their activities, coupled with the fact that the Nigerian police lacks proper training and adequate facilities to effectively monitor activities in Nigeria's waters. In most cases, the resources in terms of personnel, fund and equipment available to the Marine Unit of the Police are not sufficient to either prevent or repel piratical acts. It is further argued that corruption has also impeded the Marine Police from performing its duties satisfactorily.

4.9.6 Piracy and Other Unlawful Acts at Sea (and Other Related Offences) Bill 2008

⁵²¹) Police Act, Cap. P19, LFN, 2010, hereafter referred to as the "Police Act."

⁵²²) See also the 1999 Constitution of Nigeria, section 214(1).

⁵²³) The Police Act, section 4.

The preamble to the bill⁵²⁴ to combat piracy in Nigeria provides: “An Act to give effect to the provisions of the United Nations Convention on the Law of the Sea relating to Piracy and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,⁵²⁵ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, Protocol 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf and other related offences and matters.”

The Piracy Bill is divided into 4 Parts and 22 sections. Part 1 contains the definition section, Part 2 concerns the establishment of jurisdiction over and prosecution of offences created under the Bill; Part 3 covers offences, punishment, forfeiture and restitution and, lastly, Part 4 relates to enforcements and safeguards. As reflected in section 4, the Piracy Bill is intended to have broad application. Section 4 provides that the Bill shall apply to a ship if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limits of the Nigerian territorial waters or the lateral limits of its territorial waters with adjacent countries and irrespective of which flag the ship is flying whether the ship is engaged in any cabotage or other kind of navigation taking place within and beyond the

⁵²⁴) Piracy and Other Unlawful Acts at Sea (and Other Related Offences) Bill 2008, hereafter referred to as “the Piracy Bill.” The purpose of this Piracy Bill is to domesticate the SUA Convention. More so, as stated earlier, Nigeria has not domesticated the LOSC, which means that piracy may not be a crime in the country. In addition, the provisions of these conventions and protocols regarding the arrest, prosecution and prevention of piracy may not be available to Nigeria in the country’s bid to fight the maritime crime unless they are domesticated.

⁵²⁵) The MSA 2010, section 215 lists the SUA Convention as one of the conventions which shall apply in Nigeria. Contrast with the superseding provision of the 1999 Constitution of Nigeria, section 12 and the decision of the Supreme Court of Nigeria in the case of *Abacha v. Fawehinmi* (supra).

Nigerian territorial waters or continental shelf and also where the offender or alleged offender is found outside Nigeria but in the territory of a state party to the convention.⁵²⁶ It is argued that the absence of a domestic legislation criminalising piracy in Nigeria emboldens the pirates to wreak more havoc on the country's maritime industry. Therefore, there is need to criminalise piracy in order to facilitate the prevention, suppression, arrest, prosecution, imprisonment and punishment of pirates and the sponsors.

4.9.7 Other supporting legislations

Another veritable way to suppress piracy in Nigeria is by using other related or support legislations to prosecute pirates and their sponsors. For instance, piracy involves the movement of money, particularly when ransom has been paid. In this regard, the money trail will assist in identifying the pirates, their sponsors or sympathisers and they can be prosecuted using the Economic and Financial Crimes (EFCC) (Establishment) Act, Cap. E1, LFN, 2010, (EFCC Act; MLPA; and Terrorism (Prevention) (Amendment) Act, 2013 (Terrorism Act). Additionally, piracy involves act of terrorism, thus perpetrators can be brought to book under the terrorism legislation. It is the position of this paper that using these support legislations helps in the “investigation and prosecution of the relatively small number of individuals who provide the leadership and financial management of piracy...” and this serves “...both a strategically effective and cost-effective means of supplementing...”⁵²⁷ the fight against piracy.

⁵²⁶) At the time of writing this thesis, this bill has neither been passed into law or in the website of the National Assembly of Nigeria <http://www.nassnig.org/nass/legislation_2008.php?pageNum_bill=21&totalRows_bill=319> accessed 21 May 2015.

⁵²⁷) “Report of the Secretary-General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts,” UNSC, UN Doc. S/2011/360, 15 June 2011, p. 35.

4.10 Soft laws for suppressing off Nigeria

Shelton defines soft law as “any written international instrument, other than a treaty, containing principles, norms, standards, or statements of expected behavior.”⁵²⁸ Soft law “expresses a preference and not an obligation that state should act, or should refrain from acting, in a specified manner.”⁵²⁹ Soft laws are instruments that emerged as a response to the legal need confronted by the international community.⁵³⁰ It is pertinent to note that the belief that community legislation is not always the best and the only way to realise global integration and that a differentiated range of instruments, like soft law, is needed besides the ‘traditional legislative ones’ has gained currency in Europe.⁵³¹ Soft law texts are regarded as “political commitments that can lead to law, but they are not law, and thus give rise only to political consequences...Within states, the norms contained in non-binding instruments may provide a model for domestic legislation and thus become legally binding internally, while remaining non-binding internationally.”⁵³²

⁵²⁸) Dinah L. Shelton, “Soft Law,” in *Handbook of International Law* (Routledge Press: 2008) p. 3
<http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty_publications> accessed 26 July 2015.

⁵²⁹) *Ibid*, quoting J. Gold.

⁵³⁰) Fabian C.C. Augusto, “A Call for Rethinking the Sources of International Law: Soft Law and the Other Side of the Coin,” (2013) *Anuario Mexicano de Derecho Internacional*, Vol. XIII, p. 369
<https://www.academia.edu/4249596/A_call_for_rethinking_the_sources_of_international_law_Soft_law_and_the_other_side_of_the_coin_-_Un_llamado_a_Repensar_las_Fuentes_del_Derecho_Internacional_El_Derecho_Suave_y_la_Otra_Cara_de_la_Moneda> accessed 26 July 2015.

⁵³¹) Linda A.J. Senden, “Soft Law and its Implications for Institutional Balance in the EC,” (2005) *Utrecht Law Review*, Vol. 1, Iss. 2, p. 79
<<https://www.utrechtlawreview.org/index.php/ulr/article/viewFile/9/9>> accessed 26 July 2015, referring to the importance of the use of soft laws as one of the alternative regulatory instruments to the traditional legislations in the realisation of European integration.

⁵³²) D.L. Shelton, *supra* note 528, pp. 1-2. It has been argued that soft law is useful in suppressing piracy because of “its ability to be determined on a relatively rapid basis without all of the formality associated with a treaty negotiation, and to respond to newly

From these explanations, it can be deduced that the use of soft laws could indeed be helpful in suppressing piracy in Nigeria and they can be effectively used under the framework of PSC. Below are some of the relevant soft laws that can contribute to the suppression of piracy off Nigeria.

4.10.1 Best management practices (BMP) for the protection of ships against pirates

The shipping industry has equally contributed heavily to the reduction of piracy incidences off the coast of Somalia as well as the Gulf of Guinea through its development of best management practices (BMPs) for preventing piracy attacks.⁵³³ In addition, experience and data collated by naval/military forces, show that the application of the recommendations contained in the BMP4 can and will make a significant difference in preventing a vessel from piracy acts in Somali waters.⁵³⁴ The objective of the industry best management practices is to assist ships to avoid, deter or delay piracy acts in the high risk areas.⁵³⁵ Although piracy in the Gulf of Guinea is different from that of Somalia based piracy in many ways, large sections of the best management practices already developed by the industry to help protect Somalia based piracy are equally valid in the Gulf of Guinea. As a consequence, the interim guidelines aimed at bridging the gap between the advice currently contained in BMP4 and the prevailing peculiar situation in

emerging issues which require action.” Donald R. Rothwell & Tim Stephens, *The International Law of the Sea* (Hart Publishing: Oregon 2010) p. 25.

⁵³³) See generally Best Management Practices for Protection against Somalia Based Piracy, Version 4, August, 2011 <http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf?sfvrsn=0> accessed 5 June 2015, hereafter referred to as the “BMP4” and Interim Guidelines for Owners, Operators and Masters for Protection against Piracy in the Gulf of Guinea Region (to be read in conjunction with BMP4) <http://www.bundespolizei.de/DE/02Schutz-und-Vorbeugung/Pirateriepraev/Zusaetzliche-Infos/anlage_imo-circ3394_file.pdf?__blob=publicationFile> accessed 5 June 2015, hereafter referred to as the “Interim Guidelines.”

⁵³⁴) See the BMP4, section 1, para. 1.1.

⁵³⁵) *Ibid.*

the Gulf of Guinea was established. The interim Guidelines should be read in conjunction with BMP4 and make reference to BMP4 where relevant.⁵³⁶ Thus, it is posited that the application of BMP4 and the Interim Guidelines by ships will go a long way to prevent the incidence of piracy off Nigeria.

In view of achieving the purpose of the industry BMP, the BMP4, included simple steps, such as reporting and registration procedures, posting additional look-outs on shipping vessels, re-routing ships away from heavily pirated waters, and even posting dummies on ships to make it appear as though there are larger crews.⁵³⁷ Other measures include: sounding alarms, evasive maneuvering, increasing lighting, establishing a safe lockable 'citadel' for crews, and installing closed-circuit television.⁵³⁸ BMP4 also recommends increased training of crews to identify and address piracy and keeping a ship's speed at least at eighteen knots, or at 'full sea speed,' when transiting piracy hotspots to make it more difficult for pirates to catch and stop the ships.⁵³⁹ It is argued that the widespread adoption and use of these BMPs throughout the industry has mitigated the risk of pirate attacks across the board.⁵⁴⁰

4.10.2 Guidelines for the use of privately contracted armed security personnel (PCASP) on board ships

According to IMO, the "interim guidance is not legally binding and is not in itself a set of certifiable standards. It does, however, provide minimum

⁵³⁶) See the Interim Guidelines, para. 1.

⁵³⁷) See generally BMP4 and the Interim Guidelines, para. 5.

⁵³⁸) See the BMP4 section 8, paras. 8.7, 8.8, 8.10, 8.3-8.4 and the Interim Guidelines, para. 8.

⁵³⁹) See BMP4, section 4, paras. 4.6, 3.4.

⁵⁴⁰) Sandra L. Hodgkinson, "Current Trends in Global Piracy: Can Somalia's Success Help Combat Piracy in the Gulf of Guinea and Elsewhere,?" (2013) Case Western Reserve Journal of International Law, Vol. 46, Iss. 1 & 2, p. 152 <<http://law.case.edu/journals/JIL/Documents/46CaseWResJIntlL1.Digital.pdf>> accessed 5 June 2015.

recommendations on the competencies and abilities a professional PMSC⁵⁴¹ is expected to have.”⁵⁴² The purpose of the guidance is to provide interim guidance to the PMSC to enable the appropriate content and nature of the documented procedures to be put in place, to allow ship owners to make an informed judgment on the selection of the PMSC. Also for the PMSC to provide assistance to ship owners in the prevention of acts of piracy and armed robbery against ships in the identified high risk area, through the considered deployment of the PCASP.⁵⁴³

Besides, the government of UK recognises that the engagement of armed guards is an option to protect human life on board UK registered ships from the threat of piracy, however only in exceptional circumstances and where it is lawful to do so.⁵⁴⁴ Such exceptional circumstances include; when the ship is transiting the high seas throughout the high risk area, the latest BMP is being followed fully but, on its own, is not deemed by the shipping company and the ship’s master as adequate to protect against acts of piracy and the use of armed guards is assessed to reduce the risk to the lives and well-being of those onboard the vessel.⁵⁴⁵ It is argued here by the research that the use of soft laws (BMP4, Interim Guidelines and Interim Guideline

⁵⁴¹) PMSC means Private Maritime Security Companies.

⁵⁴²) IMO Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area, MSC. 1/Circ. 1443, 25 May, 2012 <http://www.mardep.gov.hk/en/pub_services/pdf/sqa_27anx.pdf> accessed 26 July 2015, hereafter referred to as “IMO Guidance to PCASP,” para. 1.5.

⁵⁴³) *Ibid*, para. 1.4. For further readings on the use of the IMO interim guidance to suppress piracy, see Trelawny Chris, “Armed Personnel Onboard Vessels-IMO Perspective,” <<http://www.clingendael.nl/sites/default/files/Presentation%20-%20Chris%20Trelawny,%20IMO.pdf>> accessed 26 July 2015

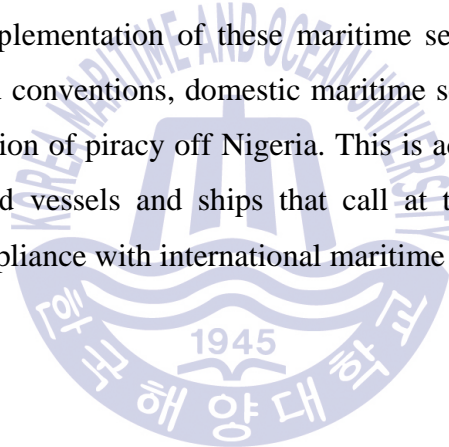
⁵⁴⁴) Department for Transport, Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend against the Threat of Piracy in Exceptional Circumstances, Version 1.2, (Updated May 2013) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204123/use-of-armed-guards-to-defend-against-piracy.pdf> accessed 26 July 2015, hereafter referred to as “UK Guidance to Armed Guards,” para. 1.4.

⁵⁴⁵) *Ibid*, 1.6.

for the use of the PCASP onboard ship) can contribute in suppressing piracy in Nigeria. More so, the efficacy of the use of these soft laws can be monitored effectively under the regime of the PSC.

4.11 Conclusion

It is beyond dispute that effective legal regime is pivotal in suppressing piracy. Despite the inherent limitations of the LOSC, a comprehensive application of the relevant extant maritime security conventions and other related instruments can go a long way to deter, suppress and assist in prosecuting pirates. More pointedly, adherence to the industry best management practices by ships, in view of the fact that seafarers directly confront pirates, would extensively reduce the incidence of piracy, especially off Nigeria. This research therefore posits that PSC represents the best platform for the implementation of these maritime security instruments as well as other related conventions, domestic maritime security laws, and soft laws in the suppression of piracy off Nigeria. This is achieved by inspecting the Nigerian flagged vessels and ships that call at the Nigerian ports to determine their compliance with international maritime security instruments.



CHAPTER 5

THE USE OF PORT STATE CONTROL TO SUPPRESS PIRACY OFF NIGERIA

5.1 Introduction

The main argument of this research is captured in this chapter. The argument is centered on the suitability of the PSC regime as a platform for implementing measures introduced to suppress piracy off Nigeria. This is premised on the fact that inspection of vessels calling at the ports of a coastal state to determine their compliance with international regulations to avoid being vulnerable to piracy is conducted effectively under the PSC framework. Further, facilities for identifying the position of a vessel, the type of cargo on board the vessel as well as information and intelligence gathering, sharing and dissemination in order to avoid piracy are common under the PSC governance. More importantly, the implementation of relevant international instruments on maritime piracy and other related instruments, including the UNSC resolutions, is efficiently and comprehensively done under the PSC platform. Sharing and dissemination of information among the countries in a region, international maritime organisations and shipping companies can be done effectively under the framework of PSC. Both joint naval forces and navies of other countries can effectively collaborate with relevant maritime regulatory and security agencies in Nigeria through the platform of PSC. From available data, an increased inspection of vessels calling at ports in Nigeria by port state officers will contribute immensely in the reduction of piracy due to sub-standard and FOC vessels. Such vessels are vulnerable to piratical attacks off Nigeria.

Table 5 – Inspection data by Authorities⁵⁴⁶

⁵⁴⁶) 2014 Abuja MOU Port State Inspection Statistics, Inspection Data by Authorities, Memorandum of Understanding on Port State Control for West and Central Africa Region

Authority	No. of Inspections	No. of Detailed Inspections	No. of Inspections with Deficiencies	No. of Deficiencies	Percentage of Inspections with deficiencies	No. of Detentions	Detent Percen
Benin	218		1	1	0.46		
Congo, Republic of	300						
Congo, DRC	594						
Cote d'Ivoire	108	2	7	18	5.93	2	1.7
Gabon	301		9	24	3		
Gambia	15						
Ghana	128		6	11	4.69		
Equatorial Guinea	9						
Guinea	75						
Liberia	135						
Nigeria	647	13	94	305	14.53	13	2.01
Senegal	168		10	23	5.95		
South Africa	184	2	52	227	28.26	2	1.09
Togo	24						
TOTAL	2916	17	179	609	6.1	17	0.58

5.2 Analysis of Abuja Memorandum of Understanding (AMOU) data

According to the press release by NPA, the total number of ocean going vessels that called the Nigerian ports in 2014 is 5, 541 with a total GRT of

<http://abujamou.org/post/14stats.pdf> accessed 3 June 2015, hereafter referred to as the "AMOU Inspection Statistics."

147, 852, 920 gross tons.⁵⁴⁷ Nigeria, as the Authority, inspected 647 vessels in 2014, making only 13 detailed inspections and 13 detentions.⁵⁴⁸ The AMOU inspection statistics (see Table 5 above) further shows that the number of vessels with deficiencies is 94. A general overview of the inspection statistics shows that due to 13 detailed inspections, 13 detentions were made. It must be emphasised that such detained deficient vessels reduces the number of sub-standard vessels that are vulnerable to piracy off Nigeria. In other words, it lends credence to the argument that the use of the PSC can facilitate the reduction in the number of piracy acts off Nigeria.

Furthermore, a detailed analysis of the inspection statistics above also shows that the number of inspections, generally, and the number of detailed inspections, particularly, are very poor compared to the total number of vessels that called at ports in Nigeria in 2014. Out of 5, 541 vessels that called at Nigerian ports in 2014, 647 were inspected, while 4894 ships were not inspected; which means that a paltry 11.7 percent of such vessels were inspected under the PSC regime in 2014. In a similar vein, from the AMOU statistics table above, 13 vessels were thoroughly inspected under the PSC regime in Nigeria, which shows that 5528 vessels, representing 99.8 percent of the total number of vessels that called at the ports in Nigeria, which was 5541, were not thoroughly inspected.

In comparison to Nigeria, 192, 912 vessels with total tonnage of 1, 829, 485, 971 called at the South Korean ports in 2014.⁵⁴⁹ In South Korea, there were 1, 633 ships inspections, out of which, 1, 287 ships were deficient, with 70 detentions resulting in average inspection and detention rate of 16.95

⁵⁴⁷) "Nigerian Ports Records 86.6 Million Metric Tonnes of Cargo throughput in 2014," Press Releases by the Nigerian Ports Authority Home Page, 2015 <<http://www.nigerianports.org/news.aspx?id=403>> accessed 4 June 2015.

⁵⁴⁸) AMOU Inspection Statistics.

⁵⁴⁹) Korea Statistical Information Service <<http://kosis.kr/statHtml/statHtml.do>> accessed 11 November 2015.

percent and 3.90 percent respectively.⁵⁵⁰ It is clearly evident that the regime of PSC in South Korea is more efficient than in Nigeria. Thus, the PSC regime in Nigeria was grossly ineffective. Not only were a few vessels that called at the country's ports inspected, but the number of thoroughly inspected vessel was even more negligible compared to the total number of vessels that called at the ports in Nigeria.

As a corollary to the above, a cursory look at the above inspection statistics from regional perspective shows that Authorities in the AMOU had 2916 inspections in 2014. While the number of detailed inspections was 17, the number of inspections with deficiencies and the number of deficiencies were 179 and 609, respectively. Percentage of inspections is 6.1 percent and detention has 0.58 percent. Comparatively, the PSC report for 2014 shows that 30,405 inspections involving 16,761 individual ships were carried out on ships registered under 99 flags operating under the Tokyo MOU and out of the 30,405 inspections, there were 19,029 inspections where ships were found with deficiencies.⁵⁵¹ Since the total number of individual ships operating in the region was estimated at 24,128, the inspection rate in the region was approximately 69 percent in 2014.⁵⁵² There is a wide difference between AMOU and the Tokyo MOU in all facets of the PSC report in 2014. In buttressing this point, it is pertinent to note that while Tokyo MOU detention percentage is about 69 percent,⁵⁵³ AMOU can only boast of 0.59 percent.

It is important at this juncture to reiterate the fact that the introduction of the PSC regime, which leads to “the inspection of foreign ships in national

⁵⁵⁰) Annual Report on Port State Control in the Asia-Pacific Region 2014, Tokyo MOU, p. 23

<<http://www.tokyo-mou.org/doc/ANN14.pdf>> accessed 8 June 2015. Note that the number of deficiencies and detentions do not include those related to security.

⁵⁵¹) *Ibid*, p. 11.

⁵⁵²) *Ibid*.

⁵⁵³) *Ibid*.

ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules,”⁵⁵⁴ is to avoid preventable security and safety infraction on board vessels and in the course of navigation. More so, the PSC framework encourages adequate readiness and capability to assess, evaluate and effectively respond to security threat. Above all, the data from the inspection statistics helps to determine the interface between the absence of compliance with maritime security instruments and piracy. This will culminate in the introduction and implementation, in a harmonised manner, of measures aimed at enhancing the security of ships engaged in international voyages and domestic shipping, including associated port facilities. It is therefore argued that unless more than 90 percent of vessels calling at Nigerian ports is thoroughly inspected under the PSC regime in Nigeria, piracy as a result of substandard ships or lack of effective PSC will persist off the country.

5.3 Overview of the Abuja Memorandum of Understanding (AMOU)

In the context of suppressing piracy, the MOUs⁵⁵⁵ invoke international instruments, including safety and security conventions that are legally binding on states. Their aim is to eliminate the operation of substandard ships that are vulnerable to piracy attacks, through a harmonised system of PSC and avoid the incidence of security breach in the course of ship navigation. They do not set any new standards or enforce any requirements on foreign merchant vessels beyond the international conventions requirements. They exist to ensure that all ships operating in their region

⁵⁵⁴) Maximo O. Mejia, *et al*, “Vessels at Risk and the Effectiveness of Port State Control Inspection,” March, 2010, p. 2 <<https://halshs.archives-ouvertes.fr/hal-00470635/document>> accessed 8 June 2015.

⁵⁵⁵) The MOUs here include the Paris MOU, the AMOU, the Tokyo MOU, Caribbean MOU, Black Sea MOU, Indian Ocean MOU, Mediterranean MOU, Riyadh MOU, etc.

meet international standards.⁵⁵⁶ Thus only internationally accepted conventions shall be enforced during PSC inspections. A port state can only apply those conventions that have entered into force and which it has implemented for its own ships. In consonance with the principle of ‘no more favourable treatment,’ ships that fly the flag of a state which are not a party to that convention or which are below convention size are not exempted from inspection.⁵⁵⁷ Against this backdrop, PSC provides an objective test for determining whether a vessel will be properly prepared for traversing through piracy hotspots.⁵⁵⁸ In other words, through the regime of PSC, vessels ability to avoid as well as withstand piratical attacks in the course of its navigation is determined and sustained.

The AMOU created Authorities⁵⁵⁹ that will enforce its provisions. Nigeria being one of the Authorities is saddled with the responsibility of maintaining an effective system of PSC for the inspection of foreign ships with a view to ensuring that, without discrimination as to flag, foreign merchant ships calling at one of its ports comply with the standards laid down in the relevant instruments listed in section 2 of the AMOU 1999. Moreover, foreign flagged vessels that anchored off Nigerian ports, or at offshore facilities including floating, production, storage and offloading (FPSOs) and floating, storage and offloading (FSOs) adhere to the standards

⁵⁵⁶) O.Z. Ozcayir, supra note 256, pp. 211-212.

⁵⁵⁷) *Ibid.*

⁵⁵⁸) Sam Bateman, “Ship Vulnerability, Port State Control, Flag State Responsibilities and Maritime Security,” <<http://www.icms.polyu.edu.hk/ifspa2012/Presentations/SpecialSession4-1.pdf>> accessed 2 June 2015.

⁵⁵⁹) The Authorities include Angola, Benin, Cameroon, Cape Verde, Congo, Côte d’Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mauritania, Namibia, Nigeria, Sao Tome and Principe, Sierra Leone, Senegal, South Africa, and Togo. Countries in the Region who are not full members are: Liberia, Guinea Bissau, Equatorial Guinea, Cape Verde, Cameroon, Congo DR, Mauritania, and Namibia. Abuja MOU Annual Report 2013.

laid down in the relevant instruments listed in section 2.⁵⁶⁰ More pointedly, it is the responsibility of Nigeria to ensure that the equipment, manning, operations and condition of the vessels are in compliance with extant international rules and regulations.⁵⁶¹

One of the important provisions of the AMOU is that the Authority, in this case Nigeria, will consult, cooperate and exchange information with the other Authorities in order to propagate the aims of the AMOU.⁵⁶² This is in line with the need for an improved maritime domain awareness by Nigeria⁵⁶³ and information as well as intelligence sharing and exchanges between countries within the Gulf of Guinea. This is further bolstered by cooperation and consultation amongst these countries in suppressing piracy in the region. The importance of maritime domain awareness is to enhance the "...capability to identify threats to the Maritime Domain as early and as distant from our shores as possible by integrating intelligence, surveillance, observation, and navigation systems into a common operating picture..."⁵⁶⁴ that can be accessed throughout a country.

Nigeria is also expected to apply relevant instruments which are in force and are binding on it. Moreover, in case of amendments to a relevant instrument, Nigeria has to apply those amendments which are in force and

⁵⁶⁰) The AMOU 1999, section 1, para. 1.2.

⁵⁶¹) S. Bateman, *supra* note 558.

⁵⁶²) The AMOU 1999, section 1, para. 1.4 .

⁵⁶³) Maritime domain awareness is the effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or environment of a country. See "National Concept of Operations for Maritime Domain Awareness," United States, (Unclassified) December, 2007, p. 2. See also Dale Ferriere, "Maritime Domain Awareness Opportunities: Outreach to the Global Community of Interest," *Proceedings*, Summer, 2010, p. 16. Note that maritime domain means all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime related activities, infrastructure, people, cargo, and vessels and other conveyances. Joseph Milligan, "Maritime Domain Awareness Overview," National Center for Risk and Economic Analysis of Terrorism Events (CREATE) Conference, 16-18 November, 2010, p. 1.

⁵⁶⁴) J. Milligan, *ibid*.

which are binding on it. Such amended instrument will be deemed to be the ‘relevant instrument’ for Nigeria.⁵⁶⁵ This means that Nigeria can apply instruments that are binding on it, like the ISPS Code,⁵⁶⁶ which the country has domesticated in accordance with the provision of the Nigerian Constitution.⁵⁶⁷ Though Nigeria may not have domesticated the LOSC and the SUA Convention, it is argued that the country as the Authority is not precluded from implementing the provisions of these conventions.⁵⁶⁸

In furtherance of the above, Nigeria will carry out inspections which comprise of at least a visit on board a vessel in order to check the certificates and documents, and further be satisfied that the crew and the overall condition of the vessel, its equipment, machinery spaces and accommodation, and hygienic conditions on board, meet the provisions of the relevant instruments.⁵⁶⁹ This is particularly important considering that substandard vessels are more likely to be susceptible to ‘maritime predations,’ and pirates exploit the vulnerabilities of substandard ships to launch attacks leading to successful hijacks.⁵⁷⁰

⁵⁶⁵) The AMOU 1999, section 2, para. 2.3.

⁵⁶⁶) The ISPS Act 2004.

⁵⁶⁷) See the 1999 Constitution of Nigeria, section 12 for the domestication of treaties in Nigeria.

⁵⁶⁸) See the arguments of T. Fedeli, supra note 409.

⁵⁶⁹) Sam Bateman, “Maritime Security and Port State Control in the Indian Ocean Region,” (2012) *Journal of Indian Ocean Region*, Vol. 8, No. 2, p. 193 <<http://www.tandfonline.com/doi/pdf/10.1080/19480881.2012.730752>> accessed 2 June 2015.

⁵⁷⁰) *Ibid.* See also Sam Bateman, “Tackling Piracy in Asia: The Current Situation and Outlook,” *Global Asia*, Vol. 5, No. 4, 2010, pp. 33-34 <<http://www.globalasia.org/wp-content/uploads/2010/12/300.pdf>> accessed 2 June 2015; Bateman Sam, “Sea Piracy: Some Inconvenient Truths,” 2010, p. 16 <http://www.peacepalacelibrary.nl/ebooks/files/UNIDIR_pdf-art2960.pdf> accessed 2 June 2015; “The Importance of the Indian Ocean Rim for Australia’s Foreign, Trade and Defence Policy,” Foreign Affairs, Defence and Trade References Committee, The Senate, June, 2013, pp. 142-143 <www.aph.gov.au/~media/wopapub/.../2010.../indianocean/.../report.ashx> accessed 2 June 2015, citing Dr. Sam Bateman; and S. Bateman, supra note 558.

In addition, ships without state of the art security facilities as well as radio-communication equipment can be easily hijacked by pirates. Where there are no certificates, or if there are clear grounds for believing that the crew or the condition of the vessel or its equipment does not substantially comply with the requirements of a relevant instrument, or the master or crew are not familiar with essential shipboard procedure relating to the safety and security of ships, a more detailed inspection will be carried out.⁵⁷¹ This is particularly relevant in relation to pirates' penchant for using FOC vessels⁵⁷² or phantom ships⁵⁷³ to perpetuate their crime.

A cursory look at piracy acts, especially in the Indian Ocean and Gulf of Aden, shows that substandard vessels, due to their vulnerabilities, have the highest number of successfully hijacked ships.⁵⁷⁴ The susceptibility of these substandard vessels that still navigate piracy prone areas stems from the inability of the flag states, who are the first line of defence, to live up to their statutory responsibilities to ensure that vessels flying their flag comply with generally accepted international standards and are operated safely. It also includes ensuring that vessels are seaworthy and manned by appropriately qualified seafarers.⁵⁷⁵ Again, the 'Recognised Organisation' established to ensure that vessels comply with international standards by applying technical standard the design, construction, survey and other aspects of ship operations have not been effective.⁵⁷⁶ Against this backdrop, this dissertation argues that

⁵⁷¹) The AMOU 1999, section 3, para. 3.3.

⁵⁷²) See K.K. Anele & Y. Lee, *supra* note 4, p. 36.

⁵⁷³) A phantom ship or ghost ship is a vessel, as well the cargo, that has been hijacked, seized, and converted to a different ship by repainting, renaming and reregistering by pirates. The vessel is either sold or used for piratical attacks. J. Kraska, *supra* note 158, pp. 40-41.

⁵⁷⁴) S. Bateman, *supra* note 569, p. 195.

⁵⁷⁵) See the LOSC article 94. See also S. Bateman, *ibid.*

⁵⁷⁶) Enforcement of required levels of safety and security in shipping is done through various types of inspection, which are both mandatory and non-mandatory. Mandatory ones are required to issue and maintain certificates needed by the IMO and to ensure that ships comply with minimum international standards. They are performed by 'Recognised

such vessels may be substandard and therefore susceptible to hijack by pirates.

In view of the enforcement of the relevant instruments, the Nigerian government is to create training programmes and seminars for the PSC officers, who are persons duly authorised by the competent Authority of a party to a relevant convention to carry out PSC inspections, and are responsible exclusively to that party.⁵⁷⁷ Similarly, the government of Nigeria will employ qualified PSC officers, train existing officers in line with qualifications contained in existing AMOU Manual, allow the PSC officers to participate in international and regional technical meetings, and maintain a robust logistics support mechanism for the PSC inspection department and the PSC officers.⁵⁷⁸ These provisions will strengthen the expertise of the PSC officers and keep them abreast of current international maritime security instruments and modern method of monitoring and controlling piracy and other maritime crimes.

It is important to note that the AMOU made provision for instruments that are not listed in section 2. Accordingly, a convention or code becomes a 'relevant instrument' for the purposes of the Memorandum where 3 or more member states of the AMOU Region have ratified or become parties to such international convention or code.⁵⁷⁹ Evidently, this provision, it is argued, allows the PSC officers to enforce far reaching instruments, particularly security related conventions and codes, which will be useful in suppressing piracy off Nigeria.

Organisation' (ROs), which may be either inspection units created by the ship registry of a flag state or classification societies on behalf of the registry. Non-mandatory inspections are performed by industry and by PSC. S. Bateman, *ibid*.

⁵⁷⁷) See the International Maritime Organisation Resolution A. 787(19), adopted on 23 November, 1995, para. 1.66, hereafter referred to as "IMO Resolution A. 787(19)."

⁵⁷⁸) The AMOU 1999, section 7. See also, IMO Resolution A. 787(19), *ibid*, article 2.5, paras. 2.5.1-25.6.

⁵⁷⁹) The AMOU 1999, section 2, para 2.6.

5.4 Overview of Nigeria's port state jurisdiction

Harris defines jurisdiction as the power of a state to govern persons and property by its domestic law under international law.⁵⁸⁰ “It includes both the power to prescribe rules (prescriptive jurisdiction) and the power to enforce them (enforcement jurisdiction). The latter includes both executive and judicial powers of enforcement.”⁵⁸¹ From an expansive point of view, Ihenetu-Geoffrey defines jurisdiction as:

In its broadest sense, the jurisdiction of a State may refer to its lawful power to act and hence to its power to decide whether and, if so, how to act, whether by legislative, executive or judicial means. It connotes the power of the state under international law to regulate or otherwise impact upon people, property and circumstances and reflects the basic principles of state sovereignty, equality of states and non-interference in domestic affairs. In this sense, jurisdiction denominates primarily, but not exclusively, the lawful power to make and enforce rules. The principles of international law regarding jurisdiction of States reflect both the sovereign independence and the sovereign equality of

⁵⁸⁰) D.J. Harris, *Cases and Materials on International Law* (7th edn. Sweet and Maxwell; London 2010) p. 227.

⁵⁸¹) *Ibid.* Beckman & Davenport, like Harris, state that there are two types of jurisdiction, prescriptive and enforcement jurisdictions. See Robert Beckman & Davenport, “Maritime Terrorism and the Law of the Sea: Basic Principles and New Challenges,” presented at Globalization and the Law of the Sea, 1-3 December, 2010, Marriott Metro Center, Washington D.C., p. 4 <<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/12/Beckman-and-Davenport-Maritime-Terrorism-31-Jan-2011-Final.pdf>> accessed 21 July 2015. However, Williams is of the opinion that there are three main types of jurisdiction, prescriptive, enforcement and adjudicative jurisdictions. Simon O. Williams, “State Jurisdiction over Privately Contracted Armed Security Personnel at Sea,” December, 2014, p. 1 <<https://www.kcl.ac.uk/sspp/departments/dsd/research/researchgroups/corbett/Tactique-Briefing---State-Jurisdiction-over-Privately-Contracted-Armed-Security-Personnel-at-Sea.pdf>> accessed 21 July 2015.

States, and increasingly the human rights of the affected individuals.⁵⁸²

From the above statement, there are prescriptive, enforcement and adjudicatory jurisdictions. Prescriptive jurisdiction refers to the power of a country to make laws that affect people and property, while the enforcement jurisdiction means a country's power to enforce laws that impact people and property. The adjudicatory jurisdiction involves prosecuting, convicting, sentencing and punishing persons for breaking the laws. In the context of this research, the above definition shows that in the use of legislations by Nigerian government to suppress piracy, the country can prescribe laws (either by domesticating relevant maritime security instruments and other related conventions or enacting laws) that will be used in prosecuting pirates and their supporters. Such laws can equally be used to go after the properties of pirates and their supporters. More so, Nigerian government can enforce these prescribed law through the activities of the maritime regulatory and security agencies (NIMASA, the Nigerian Navy, and the Nigerian Police) and further prosecute suspected pirates in its courts.

The above position is pivotal in suppressing piracy off Nigeria. First, the criminalisation as well as prosecution of pirates is one of the key ways to combat sea piracy. In view of that, there are a lot of relevant maritime security instruments and other conventions (the LOSC, the SUA Convention, the Palermo Convention, the ISPS Code, the STCW Convention, etc.) and domestic legislations (the NIMASA Act, the Armed Forces Act 2004, the Police Act 2004, etc.) prescribed for the prosecution of pirates in Nigeria. Second, these laws (including domesticated relevant maritime security

⁵⁸²) Chinedu Ihenetu-Geoffrey, "Rethinking Jurisdiction under International Law," From the Selected Works of Chinedu Chibueze Ihenetu-Geoffrey, May 2012 <http://works.bepress.com/cgi/viewcontent.cgi?article=1016&context=chinedu_ihenetugeofrey> accessed 24 July 2015.

instruments and other related conventions) can be enforced by the maritime regulatory institution (NIMASA) in the maritime sector and security agencies (the Nigerian Navy and the Nigerian Police) in Nigeria. Third, the judiciary, through the courts in Nigeria, adjudicate over piracy cases and the process of prosecuting suspected or arrested pirates is done in accordance with the prescribed laws for piracy. Therefore, port state jurisdiction to prescribe, enforce and adjudicate based on extant laws is important in suppressing piracy in Nigeria.

It is important to state that PSC plays a crucial role in the prescriptive, enforcement and adjudicatory jurisdictions of a riparian state towards suppressing piracy because it is instrumental in enacting, enforcing and adjudicating on laws, policies and regulations on maritime security. The research argues that the PSC framework is useful in the prosecution of pirates as it acts as a springboard for the enforcement of laws, arrest, detention, gathering of relevant information and evidence necessary for the prosecution, sentencing and punishment of pirates in Nigeria.

5.5 The use of port state control (PSC) to suppress piracy off Nigeria

In the light of the foregoing, ports are veritable platform for tackling piracy and could serve as a launch pad for visiting, boarding, engaging in hot pursuit of pirate ships when the need arises. Ports can also be used for surveillance and enforcement purposes: to monitor and police waters of a coastal state in order to prevent maritime crimes, as well as enforce the various international instruments on maritime security. As a consequence, PSC is the mechanism that utilises the vantage position occupied by the various ports in each port state in suppressing piracy and other related maritime crimes. This can be done by securing the ports and its surroundings with state of the art facilities and proper and adequate training and re-training of the PSC officers.

In line with the above assertion, PSC is instrumental in the enforcement of the MLC, 2006. The Preamble to the MLC, 2006 outlines the intentions and the objectives of the members of the ILO in adopting the convention. In particular, the Preamble refers to the global nature of the shipping industry and the need for seafarers to have special protection. Furthermore, it links the MLC, 2006 to the other key international conventions that establish minimum standards for the shipping industry in connection with safety, security and marine environmental protection. Specifically for security in the maritime sector, the Preamble to the MLC, 2006, mentions the SOLAS as amended and the LOSC 1982.⁵⁸³ Against this background, these conventions can be implemented through the instrumentality of PSC in suppressing piracy off Nigeria.

A corollary to the above is the fact that seafarers are directly affected by piracy. It is common knowledge that seafarers are kidnapped, tortured, beaten, shot, starved and sometimes killed in the process of hijacking a vessel by pirates. Seafarers, as witnesses during piracy trials, also play a crucial role in the prosecution of pirates. Consequently, seafarers deserve to be protected and treated fairly and this is pivotal to the objectives of the MLC, 2006. In view of that, article iv of the MLC 2006 provides that every seafarer has a right to: safe and secure workplace that complies with safety standards, fair terms of employment, decent working and living conditions on board ship and health protection, medical care, welfare measures and other forms of social protection.

⁵⁸³) Regionally, the importance of using the PSC to conduct security checks on vessels, as well as enhance the general security of shipping in Europe has been set out in the Directive 2009/16/EC of the European Parliament and the Council on Port State Control, 23 April 2009, article 15. For more details on the use of PSC to implement relevant international instruments on maritime security, see generally, Mfong E. Usoro, "Port State Control: A Tool for Sustainable Management of Maritime Safety and Marine Environment," Maritime Women: Global Leadership International Conference, World Maritime University, Malmo, Sweden, 31-1 April, 2014.

As a corollary to the above, it is trite that well trained, well-motivated seafarers, whose working condition⁵⁸⁴ is within the stipulated world standard, can be useful in combating pirates. This can be done by teaching, training and conducting drill exercise⁵⁸⁵ towards stability requirements for both passenger and cargo ships, emergency systems, fire protection, fire detection and fire extinction, life-saving equipment and location of same in a ship, and radio-communication equipment.⁵⁸⁶ Additionally, seafarers should trained to comprehend the navigational safety services provided by coastal states and mandatory safety management systems for ships. More so, port states should survey and inspect the ships to enhance maritime safety and security and making the ships hard to hijack in other to strengthen the competency and capabilities of seafarers to handle threat or piracy attacks against their vessels. These security and emergency tools and measures if introduced would facilitate the prevention and repulsion of piracy attacks.⁵⁸⁷ Accordingly, Nigerian government can, through the PSC framework, use the

⁵⁸⁴) The MLC, 2006, article IV.

⁵⁸⁵) The ISPS Code, article 13.

⁵⁸⁶) In this regard, it must be stated that the introduction of the AIS under the regime of SOLAS in the area of information and intelligence gathering, decimation and sharing has become very crucial in creating safety and security awareness on board ships as well as shore stations; and thus can be very helpful in suppressing piracy. For detailed analysis of AIS and its importance in the security of ships, see N. Bail, *et al*, "Training and Technology Onboard Ship: How Seafarers Learned to Use the Shipboard Automatic Identification System (AIS)" Lloyd's Register Educational Trust Research Unit, Seafarers International Research Centre (SIRC), Cardiff University, July, 2008, pp. 4-7 <<http://www.sirc.cf.ac.uk/uploads/publications/Training%20&%20Technology%20AIS.pdf>> accessed 3 June 2015 and Nicholas J. Bailey, "Training, Technology and AIS," Proceedings of the Seafarers International Research Centre's Fourth International Symposium, Cardiff University, July, 2005, pp. 108-109 <<http://www.sirc.cf.ac.uk/uploads/publications/Symposium%20Proceedings%202005.pdf>> accessed 3 June 2015.

⁵⁸⁷) For detailed analysis of these tools, see Nelson Turgo, *et al*, "The Use of Mandatory Equipment On-board - A New Study," Seafarers International Research Centre Symposium Proceedings, 2013, pp. 54-72 <www.sirc.cf.ac.uk/Uploads/Symposium/Symposium%20Proceedings%202013.pdf> accessed 3 June 2015.

ratified but not domesticated⁵⁸⁸ the MLC, 2006 to facilitate the suppression of piracy off the country.

The ISPS Code is the standard international framework through which contracting governments, government agencies, local authorities, ports, ship owners and the maritime organisations can cooperate and be assessed in the global commitment to detect security threats in the shipping industry. Gunasekaran argues that the ISPS Code is “a framework adopted to create security standards for the ship and port facilities in the international maritime industry.”⁵⁸⁹ First, there are some basic requirements for port facilities to be ISPS Code compliant, which include: perimeter wall fence, access control, lighting, close circuit television (CCTV), among others. The PSC officer in Nigeria coordinates activities involving the CSO for the company and the SSO for each of its ship; including the PFSAS, the PFSO, and PFSP, in the suppression of piracy off Nigeria.⁵⁹⁰

In order for contracting governments to implement and enforce the new security measures, they have to decide whether to adopt the ISPS Code in total, like Nigeria did, or to modify it to meet that country’s specific objectives, particularly where the code did not address that country’s concerns.⁵⁹¹ The US, for example, incorporated the provisions of the ISPS Code in its domestic legislation, the MTSA. In addition, the US has developed a significant security measures to fill up the ‘security policy gap’

⁵⁸⁸) It is important to state that an international instrument that has been ratified by Nigeria must be domesticated before it will become legally binding. See the 1999 Constitution of Nigeria, section 12.

⁵⁸⁹) Periasamy Gunasekaran, “Port Security in a Developing Country – Pre and Post 9/11 Terrorist Attacks: A Case Study on Port Klang in Malaysia,” a Thesis submitted in partial fulfilment of the requirements of the University of Greenwich for the degree of Doctor of Philosophy, Greenwich Maritime Institute, University of Greenwich, London, December, 2012, p. 82 <http://gala.gre.ac.uk/9820/1/Periasamy_Gunasekaran_2012.pdf> accessed 3 June 2015.

⁵⁹⁰) For details of the responsibilities of contracting state toward the security of port and shipping industry, see generally the ISPS Code, article 4.

⁵⁹¹) F. Anstey, *supra* note 454.

that has brought significant impact to the international community. Among these security measures are the Container Security Initiative (CSI), Custom-Trade Partnership against Terrorism (C-TAT), the Safe Port Act, the Transportation Workers Identification Credential (TWIC), the Mega Port initiative, '96 – and 24 – hour rules' among others.⁵⁹²

By introducing the above security measures, the vulnerability of the American container supply chain and exposure of the US ports and waters to piracy and terrorist acts are reduced. Though these security measures and initiatives were promulgated to prevent terrorism on US waters, it could facilitate the curbing of piracy. Therefore, Nigeria should, in accordance to its local circumstances, adopt some of these measures and initiatives with a view to implementing them to curb piracy off the country.

In the UK, it is the Department for Transport (DFT) that is responsible for security across all forms of transport, including maritime. However, maritime security is under the auspices of the Maritime and Coastguard Agency (MCA), which is therefore responsible to the DFT. The MCA responsibilities to the DFT include: implementing the ISPS Code for all UK-registered cargo ships; undertaking security aspects of the PSC

⁵⁹²) The 96-hour rule requires that all vessels that will call at US ports provide the US government with advance notice of arrival 96 hours before that arrival is expected, thereby allowing the US government to assess the threat posed by the vessel. The 24-hour rule requires that non-vessel operating common carriers and liner shipping companies provide the US government with 24-hour notice of a container being loaded onto a vessel in a foreign port, thus allowing the US government to assess the threat posed by the container, its contents, or the individuals who packed it. Both of these rules maximise the advantages of the Automated Targeting System (ATS) used by US Customs and Border Protection, a part of the Department of Homeland Security. Mary R. Brooks and Larissa M. Lugt, "Transatlantic Port Issues," (2010) *Journal of the Transportation Research Forum*, Vol. 49, No. 3, pp. 143-144 <http://www.trforum.org/journal/downloads/2010v49n3_09_TransatlanticPortIssues.pdf> accessed 4 June 2015. See also P. Gunasekaran, supra note 589, p. 83; "Expanded Port Security Measures," *News & Articles*, 3 June, 2015 <http://www.freehill.com/articles/uscoast_guard.cfm> accessed 4 June 2015 and A.A. Pallis and G.K. Vaggelas, "EU Port and Shipping Security" in Talley W. K. (ed.) *Maritime Safety, Security and Piracy* (Informa: London 2008) pp. 4-5.

inspections of foreign vessels in the UK ports, as well as passenger ships; receiving and handling ship security alerts in line with agreed standard operating procedures; and approving and auditing training providers for SSO and CSO courses.⁵⁹³

Using the platform of the PSC, Nigeria can require ships intending to call at its ports to provide information, for instance, an advance notice of arrival, to ensure that the vessel is in compliance with applicable maritime security requirements.⁵⁹⁴ Such information will assist the PSC officer to keep track of the vessel and be able to respond swiftly in case of emergency, which may be occasioned by piracy. Of great importance is where a vessel refuses to send such information as requested, the PSC officer should consider such a ship as a threat that requires further investigation, and preparation in case the vessel has been taken over by pirates. Lack of radio contact in such situation signifies insecurity and must be treated as such. Government ship should thereby be deployed to visit such vessel to determine the security situation. On the other hand, the imposition of compliance to international security measures on vessel prepares the crew and ship to repel piratical attacks.

From the foregoing, it is argued that PSC can also be used as a strategic, veritable and vantage springboard to organise, synchronise, administer as well as embark on hot pursuit or launch attacks against pirates. Aside from implementing and enforcing international instruments on maritime security and other related conventions as well as domestic maritime security legislations, PSC provides a ready anchor for coordinating international, regional and domestic security exercises. Above all, a

⁵⁹³) “Ship Security,” Maritime and Coast Agency, 16 January 2013 <<https://www.gov.uk/maritime-security>> accessed 29 May 2015.

⁵⁹⁴) SOLAS, Chapter XI-2, para. 2.1, Regulation 9. See also J. Ahlstrom, supra note 457, p. 55.

comprehensive surveillance and policing of the coastlines of Nigeria can also be done effectively under the regime of PSC. For instance, information sharing, which is one of the globally recognised ways of jointly suppressing piracy, can benefit from the instrumentality of PSC. Besides, the regional joint military forces can utilise the facilities of PSC to track down and make informed decisions towards embarking on hot pursuit or launching attacks against pirates. Even the Nigerian Navy can tap into this veritable platform in securing and policing the coastlines of the country.

This dissertation contends that the regime of PSC can also facilitate the use of satellite technologies for monitoring ships navigating through Nigerian waters in order to prevent them from piracy attacks. This is achieved through the use of LRITS to track and evaluate the security risks of vessels sailing through the waters off Nigeria. Another example is the use of Paris MOU database, the Hybrid European Targeting and Inspection System (THETIS), which uses the SafeSeaNet (SSN),⁵⁹⁵ to facilitate the prevention and suppression of piracy. Thus, information and intelligence gathering, sharing and dissemination as a counter-measure against piracy off Nigeria can be effective under the regime of PSC.

It is further argued that information and intelligence gathering, sharing and dissemination, between coastal states at the regional level as well as between coastal states and shipping companies, are crucial in the suppression of piracy. This is particularly important because information about a suspected pirate ship, on-going piracy attacks, position of joint naval forces or navies of other countries and piracy data can be easily dispatched from one country to another in order to evaluate piracy incidents with a view to

⁵⁹⁵ Angela Carpenter, "Satellites and their Role in EU Maritime Security and Marine Environmental Protection," Working Paper for UACES Annual Conference, September, 2013, Leeds, UK <<http://uaces.org/documents/papers/1301/carpenter.pdf>> accessed 7 November 2015.

proposing and introducing counter-measures. Against this backdrop, this research submits that the gathering, sharing and dissemination of information and intelligence to suppress piracy off Nigeria can be utilised effectively under the instrumentality of PSC.

The importance of using PSC as a platform to suppress piracy is further illuminated by the introduction of the Inter-Regional Coordination Center (ICC) established for the implementation of the Code of Conduct for West and Central Africa. The ICC is responsible for: promoting the development of a framework for safety, security, development, and governance in the common maritime space; and capacity building in civil and military components of both regions in maritime law enforcement. Further, the ICC coordinates training and practicing activities common to both regions; facilitates exchange of information and experience among Heads of Navies and other maritime safety and security agencies in the Gulf of Guinea in conformity with the goals of the Center; among others.⁵⁹⁶ This research submits that the effective implementation of these responsibilities by the ICC will go a long way in facilitating the suppression of piracy off Nigeria.

The IMO members, according to Trelawny, “are firmly convinced that the ICC offers an excellent way forward for the region,” believing “...that its role should be strategic, not tactical; that it should be a coordinating body identifying and disseminating best practice and serving as

⁵⁹⁶) Additional Protocol to the Memorandum of Understanding among ECCA, ECOWAS, and GGC on Safety and Security in the Central and West Africa Maritime Space relating to the Organisation and Functioning of the Inter-Regional Coordination Center for the Implementation of Regional Strategy for Maritime Safety and Security in Central and West Africa, article 3 (2) <<http://www.imo.org/OurWork/Security/WestAfrica/Documents/Angola%20Regional%20Workshop%20Report%20%282015%29%20-%20English.pdf>> accessed 8 June 2015.

an information exchange rather than an operational body.”⁵⁹⁷ The duties of the ICC, like other international and regional instruments, can be best performed under the PSC regime for the simple reason that structures, infrastructure, manpower, administration, experience and recognition needed exist under the PSC. Hence, it is argued in this dissertation that PSC is a perfect platform to ensure that there is an interface between the duties of ICC and the vessels calling at ports in the two regions and will ultimately contribute in suppressing piracy off Nigeria.

A very pivotal way of suppressing piracy under the PSC regime is the adoption of the Voluntary IMO Member State Audit Scheme (VIMSAS).⁵⁹⁸ Although IMO has the responsibility to develop technical safety, security and pollution prevention standards in relation to maritime transport, it does not have enforcement and compliance monitoring role.⁵⁹⁹ The objective of VIMSAS is to determine to what extent member states are implementing and enforcing the applicable mandatory IMO instruments. There was also need to address the issues of transparency and accountability among IMO member states,⁶⁰⁰ particularly in view of implementing and enforcing IMO conventions.

⁵⁹⁷) Speech by Chris Trelawny on behalf of the Secretary-General of the International Maritime Organisation during the Meeting to Facilitate the Implementation of the Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships and Illicit Maritime Activity in West and Central Africa through the Inter-regional Coordination Center, 24-27 March, 2015, p. 2
<<http://www.imo.org/OurWork/Security/WestAfrica/Documents/Angola%20Regional%20Workshop%20Report%20%282015%29%20-%20English.pdf>> accessed 8 June 2015.

⁵⁹⁸) The audit will become mandatory on 1 January 2016. See “Frequently Asked Questions,” IMO Homepage <<http://www.imo.org/About/Pages/FAQs.aspx>> accessed 15 June 2015.

⁵⁹⁹) A cursory look at IMO conventions shows that they do not contain any provision that gives the organisation enforcement and monitoring role. Kalu K. Anele & Yun-Cheol Lee, “Piracy in Nigeria. Using the Voluntary IMO Member State Audit Scheme as a Countermeasure,” (2015) *Ocean Policy Research*, Vol. 30, No. 1, p. 50.

⁶⁰⁰) This is particularly important due to the existing challenges in the present regime under the flag state. Presently, under various treaties, flag states, through the ROs are ultimately responsible for ensuring compliance of the provisions of such treaties. L.D. Barchue, “Making a Case for the Voluntary IMO Member State Audit Scheme,” p. 1

In relation to the suppression of piracy, voluntary self-evaluation would lead to the prevention of piracy or reduce the vulnerability of vessels to piracy acts.⁶⁰¹ The “audit will cover the Member State’s implementation and enforcement of applicable IMO instruments in its legislations; the effectiveness of its control and monitoring mechanism; effectiveness in promulgating IMO rules and regulations; enforcement action for the contravention of its laws and regulations; and other obligations and responsibilities under the applicable instruments.”⁶⁰² In relation to maritime security, particularly piracy, it is argued that the audit will enhance the preventive, the protective and the prosecution capabilities of coastal states.

The introduction of self-evaluation encourages states to fulfil their obligations under the various IMO conventions. Under the feedback mechanism objective of VIMSAS, “generic lessons learned from audits of Member State” can be shared which will be beneficial to member states.⁶⁰³ The findings of such audits are circulated to all IMO member states and can be used for making policy and regulation decisions. These audits identify gaps in existing maritime administration, indicate areas for improvement and have led to the commitment of additional resources by states to their maritime administrations.⁶⁰⁴ Aside from the fact that the regime of VIMSAS

<<http://www.imo.org/OurWork/Safety/Implementation/Documents/Voluntary.pdf>> accessed 15 June 2015.

⁶⁰¹) For example, while IMS Code seeks to consolidate the responsibilities of ship owners, companies and ship managers, the 1978 STCW Convention, as amended, addresses the issue of training and shipboard operational competencies of seafarers. Enforcement and implementation of these conventions will reduce the vulnerability of vessels to piratical attacks.

⁶⁰²) Framework and Procedures for the IMO Member State Audit Scheme, Resolution A. 1067 (28), Adopted on 4 December 2013, article 7.4, para. 7.4.1. See K.K. Anele & Y. Lee, *supra* note 599, pp. 68-70.

⁶⁰³) *Ibid*, article 5.

⁶⁰⁴) “Voluntary IMO Member State Audit Scheme(VIMSAS),” 12th North Indian Ocean Hydrographic Commission Conference, Colombo, Sri Lanka, 20-23 March 2012 <http://www.iho.int/mtg_docs/rhc/NIOHC/NIOHC12/NIOHC12-VIMSAS-IMO.pdf> accessed 15 June 2015.

encourages the implementation and enforcement of relevant maritime security instruments and other related conventions, which is relevant in the fight against piracy off Nigeria, it provides for the use of the PSC platform in the process. Hence, a thorough and effective VIMSAS regime that facilitates the suppression of piracy off Nigeria could be achieved through the instrumentality of the PSC.⁶⁰⁵

It is imperative to argue that the PSC offers a convenient platform for the cooperation of maritime and security agencies in the suppression of piracy in Nigeria. The PSC officers can coordinate the efforts of NIMASA, the Nigerian Navy, Maritime Police and the Nigerian Army in fighting piracy in the country. Similarly, under the PSC regime, PSC officer can collaborate with various interested parties in the shipping industry in order to implement soft laws that facilitate the security of vessels. The PSC framework can be used to conduct vulnerability assessments to accurately evaluate risk. These assessments include the areas of physical security, structural integrity, utilities, communications, and port procedures.⁶⁰⁶

The dissertation argues that the platform of PSC avails port states the opportunity and template to utilise their prescriptive, enforcement and adjudicatory jurisdictions. For illustrative purposes, under the PSC regime, Nigeria as the Authority, can use its prescriptive jurisdiction through its law making arm of government (the National Assembly), to make laws and domesticate maritime instruments and other related conventions that affect pirates and their supporters, including the properties of pirates and their

⁶⁰⁵) It is important to note that the VIMSAS Implementation Code provides for proper evaluation, implementation and enforcement of IMO instruments under the regime of PSC. See the IMO Instruments Implementation Code (III Code), Resolution A. 1070 (28), Adopted on 4 December 2013, Part 4. See K.K. Anele & Y. Lee, *supra* note 599, p. 80.

⁶⁰⁶) "Gulf of Guinea Maritime Security and Criminal Justice Primer," April, 2015, p. 23 <http://africacenter.org/wp-content/uploads/2015/05/Gulf_of_Guinea_Maritime_Security_and_Criminal_Justice_Primer.pdf> accessed 10 August 2015.

supporters. The Nigerian government can also employ its enforcement jurisdiction through these maritime regulatory and security institutions, NIMASA, the Nigerian Navy and the Nigerian Police, to enforce laws that impact on pirates and pirate supporters, as well as the properties of pirates and their supporters.

Lastly, Nigeria can deploy its adjudicatory jurisdiction through its courts by prosecuting, convicting, sentencing and imprisoning pirates and their supporters for the commission of the crime of piracy. In the same vein, the courts in Nigeria can give order for the confiscation of the properties of pirates and their supporters. These judicial efforts will act as a disincentive to prospective pirates. This dissertation submits that by effectively making use of these jurisdictional leverages that can be supported under the regime of PSC, the number of piracy act off Nigeria will drastically reduce.

5.6 Challenges in the use of port state control (PSC) to suppress piracy off Nigeria

There is no gain-saying the fact that a region where PSC is less effective tends to attract pirates. Aside from Paris MOU, Tokyo MOU and the USCG, most MOUs are grossly inefficient and ineffective,⁶⁰⁷ which exposes the affected regions to piracy and other related maritime crimes. This makes combating piracy a difficult task. They following are the factors that affect the efficiency and effectiveness of using PSC to suppress piracy in Nigeria.

5.6.1 Lack of trained port state control (PSC) officers

One of the challenges confronting the use of PSC to combat piracy off Nigeria is the dearth of trained PSC officers in the country. Although the AMOU has commenced the training of the PSC officers, the training is grossly inadequate compared to the vast nature of Nigerian coastline. As a

⁶⁰⁷) S. Bateman, supra note 569, p. 197.

consequence, more PSC officers are needed to be trained. Again, the number of existing PSC officers is far less than the enormous number of vessels calling at Nigerian ports or ships navigating through the waters of the country. It is contended that where there is lack of adequate investment, particularly in human resources, the enforcement of PSC will be grossly ineffective in curbing piracy,⁶⁰⁸ with its attendant adverse implications on the economy of Nigeria.

5.6.2 Lack of training facilities

As a corollary to the above, there are little or no training facilities for the PSC officers and inspection facilities in Nigeria, which may account for the lack of trained PSC officers in the country. The absence of such training facilities means that the manpower required to implement the provisions of the AMOU will not be available, as a result, the objective of establishing the PSC framework will be defeated, especially in the area of maritime security. For illustrative purposes, inspection facilities are very expensive and most countries in the AMOU are developing countries and therefore economically handicapped to purchase them; unlike their Paris MOU counterpart whose database is referred to as the THETIS. This situation is worsened by the fact that many countries in the region lack reliable electricity to power basic facilities like harbor lightens and computers. Nigeria, like other West African countries, also lag behind in technology as well as its use in securing vessels and other aspects of maritime transportation.⁶⁰⁹

5.6.3 Inadequate funds

It is trite that lack of funds contribute immensely to the inability of Nigeria to use PSC to suppress piracy. There is no doubt that inspection facilities are

⁶⁰⁸) Pierre Cariou, *et al*, "On the Effectiveness of Port State Control Inspections," (2007) Transportation Research Part E, p. 12
<<http://www.sjofartsverket.se/pages/10806/15-INF10-Attachment2.pdf>> accessed 2 June 2015.

⁶⁰⁹) I.M. Erakhoba, *supra* note 247, p. 18.

very expensive and it is an open secret that the current economic situation in the region makes it difficult for the AMOU to procure such facilities. Again, the Nigerian economy has stagnated, with the government losing revenue due to the fall in oil price, the effect of piracy and oil theft in the country. Lack of fund also affects the training of the PSC officers who are responsible for implementing the provisions of the AMOU. Even where the PSC officers are trained, such training may not be adequate and regular to meet with the current security situation in the shipping industry in Nigeria. Lending credence to the importance of adequate funding in PSC efficiency, Bateman states that the “Paris and Tokyo MOUs and the USCG appear to be the most efficient and effective PSC regimes. However, many countries involved in these regimes are developed states, able to afford the number of skilled inspectors and management structures required to make the regimes effective.”⁶¹⁰

5.6.4 Corruption

In addition to the above, corruption is the bane of insecurity in the maritime sector in Nigeria. Most government officials are so corrupt that they compromise their responsibilities, thereby allowing the pirates to get away with their crimes. Most of the government officials, for a piece of the loot, leak information about vessels and their cargoes, making them potential targets for piracy.⁶¹¹ Accordingly, the most significant and insurmountable challenge in the PSC regime in Nigeria is institutionalised corruption.⁶¹² It is argued that the need to inspect a ship to determine its compliance with international standards and sometimes the requirement to demonstrate, for instance, fire

⁶¹⁰) S. Bateman, *supra* note 569, p. 197.

⁶¹¹) There have been claims by oil and energy tankers that insider information is allowing pirates to target their ships. B.H. Dubner & R. Raturi, *supra* note 385, p. 748.

⁶¹²) H.A. Ajie & O.E. Wokekoro, *supra* note 386, p. 91.

drill or abandon ship drill, by the PSC officer may be a source of corruption where there are no guidelines on such inspection.⁶¹³

5.6.5 Lack of political will by government

The major challenge in the use of PSC to suppress piracy in Nigeria is the lack of political will on the part of government to implement and enforce the numerous policies, legislations, and international instruments that ensure the security and safety of maritime transport. In spite of the fact that piracy adversely affects the main source of revenue to the country, oil and gas, government has continued to 'play politics' in implementing and enforcing legislations to curb piracy. Government pays lip service to the training of PSC officers, provision of facilities, and funding of PSC measures. More importantly, Nigerian government has not subjected itself to voluntary third party audit in order to determine the country's compliance with relevant maritime security conventions and other related instrument.

A corollary to the above is the inability of government to prosecute corrupt government officials, particularly those in the maritime regulatory and security institutions. In addition, those sponsoring pirates and corrupt PSC officers have continued to be at the corridors of power without being charged to court to face criminal charges for financial crimes.⁶¹⁴ Such a situation will only make the concerted efforts to suppress piracy off Nigeria through the instrumentality of PSC fruitless.

5.6.6 Absence of regional cooperation

⁶¹³) B. Purves, *A Sea of Green - A Voyage around the World of Ocean Shipping* (Chameleon Press: Hong Kong 2005) p. 68.

⁶¹⁴) The lack of political will to prosecute corrupt government officials involved in oil theft in Nigeria can be seen from the attitude of the EFCC in the handling of the alleged revelation by Mr. Jarrett Tenebe, a People's Democratic Party (PDP) gubernatorial candidate in Edo State, that Mike Oghiadomhe, a former Chief of Staff to the former President, Goodluck Jonathan, Tony Anenih, former chairman of the BOT of the PDP, and former Petroleum Minister, Diezani Alison Madueke were covering his illicit activity of oil theft in the country. See generally, *Sahara Reporters*, supra note 7.

It is pertinent to note that not all the countries in the West and Central Africa are members of the AMOU.⁶¹⁵ The issue of membership is crucial in the realisation of the objectives of the PSC regime. Erakhoba states that the “MOU is an administrative agreement between its maritime authorities to share the responsibilities of inspecting ships entering their region for compliance with international regulations.”⁶¹⁶ The importance of the MOU is to share the inspection workload and to create an electronic database of all ships entering the region which is distributed and monitored by all members.⁶¹⁷ Consequent upon the lack of regional cooperation as a result of non-membership of West and Central African countries, the AMOU requirement of inspections, publishing reports of inspections, harmonising port state inspection procedures and practice and the sharing as well as monitoring of electronic database of all vessels entering the region will not be comprehensive.

As a corollary to the above, the absence of regional cooperation among the members of the AMOU has also been linked to the fact that “member States are failing on their responsibilities towards the Memorandum as well as on questions of exchange of technical co-operation programmes with similar Organizations established in other maritime regions in the world and also with the International Maritime Organisation.”⁶¹⁸ It is argued that these factors hampers the use of PSC as a platform to suppress piracy off Nigeria.

⁶¹⁵) Countries that have deposited Letters of Acceptance of the MOU and therefore full members are: Angola, Benin, Congo, Gabon, Ghana, Guinea, Cote D’Ivoire, Nigeria, Senegal Sierra Leone, South Africa, The Gambia, Togo and Sao Tome and Principe. See AMOU Website <<http://www.abujamou.org/index.php>> accessed 8 June 2015.

⁶¹⁶) I.M. Erakhoba, supra note 243, p. 13.

⁶¹⁷) *Ibid.*

⁶¹⁸) Memorandum of Understanding on Port State Control for West and Central African Region, Abuja MOU 2013 Annual Report, Chairman’s Statement, p. 04 <http://abujamou.org/assets/annual%20report_2013.pdf> accessed 2 June 2015.

5.7 Conclusion

This chapter has evidently shown that the platform of PSC can greatly contribute in the reduction of piracy off Nigeria. The argument revolved around using the instrumentality of the PSC to implement and enforce relevant maritime security instruments and other related conventions, including the UNSC resolutions and domestic legislations in suppressing piratical activities off Nigeria. Clearly, inspection of vessel under the regime of PSC prevents the vulnerability of ships due to their substandard nature or the fact that they operate FOC, whereby the vessels are manned by untrained crew or the vessels operate without on board security and communication facilities as prescribed under international maritime instruments. The instrumentality of PSC in suppressing piracy further boosts and facilitates regional cooperation when used as a channel through which information and intelligence are gathered, shared and disseminated among countries in the region, international organisations and shipping companies. Therefore, from the above arguments and analysis of inspection data (AMOU & Tokyo MOU), there is need for more thorough inspection of all ships that call at the Nigerian ports to avoid being susceptible to piracy acts.



CHAPTER 6

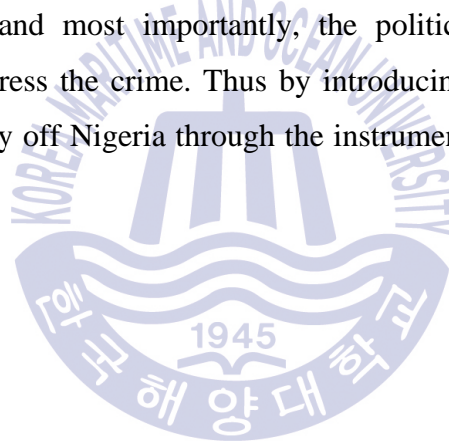
RECOMMENDATIONS FOR SUPPRESSING PIRACY OFF NIGERIA

6.1 Introduction

Chapter Six contains the recommendations proffered by this dissertation in suppressing piracy through the instrumentality of PSC. After a thorough research on some of the main issues involved in sea piracy, particularly the

root causes, consequences and the challenges in suppressing the maritime crime, with Nigeria in view, both legal and non-legal mechanisms are proffered for suppressing the crime. In line with the argument of this research for a multidimensional approach to the suppression of piracy under the framework of PSC, the research outlines the legal mechanisms that are critical to the suppression of piracy off Nigeria. The legal mechanisms include the domestication of relevant international instruments on piracy, implementation of domestic security legislations and other supporting laws, arrest, and the use of domestic or regional courts to prosecute pirates among others. On the other hand, the non-legal mechanisms are the use naval forces, implementation of soft laws, funding, training of the PSC officers, use of state of the art facilities to prevent piracy, policing of the coastlines, regional cooperation, improved working condition for seafarers, the operations of the joint naval forces and most importantly, the political will by Nigerian government to suppress the crime. Thus by introducing both measures, the suppression of piracy off Nigeria through the instrumentality of PSC will be enhanced.

Pictogram 6⁶¹⁹



⁶¹⁹) Emeka-Mayaka Gekara, “Leaders Questions Trial of Piracy Suspects in Kenyan Courts,” *Daily Nation*, 13 June, 2013 <<http://www.nation.co.ke/news/-/1056/610466/-/4gvsk2z/-/index.html>> accessed 12 November 2015.



Pictogram 7⁶²⁰



6.2 Legal mechanisms for suppressing piracy off Nigeria

Legal mechanisms for suppressing piracy off Nigeria embodies the use of legal instruments in combating piracy. The legal mechanisms include the use

⁶²⁰) “German Piracy Trial,” International Crimes Database (ICB) <<http://www.internationalcrimesdatabase.org/Case/952/German-Piracy-Trial/>> accessed 12 November 2015.

of instruments like the UNSC resolutions, international, regional, and bilateral agreements, as well as domestic legislations. It also includes all the legal processes from the arrest of pirates to their incarceration and the institutions responsible for the enforcement and implementation of these instruments such as the judiciary and regulatory and security agencies in both the maritime sector and the oil and gas industry as well as the security agencies in the country. It is obligatory on states to use these mechanisms in the fight against piracy and states are bound by decisions taken in furtherance of the implementation and enforcement of the legal mechanisms for combating piracy.

6.2.1 Enhanced prosecutorial strategy in the use of domestic legislations to suppress piracy off Nigeria

Prosecution is an integral part of the fight against piracy,⁶²¹ therefore, domestic courts should entertain cases of piracy in Nigeria (see Pictograms 6 & 7 above). In view of this, the following actions should be taken by the global community: provision of support to those states that have already demonstrated a willingness to prosecute pirates; address the concerns of states that have evinced an unwillingness to prosecute by working with them to reform their national laws to make prosecutions more convenient and less risky. Lastly, continue to consider the role regional or internationalised court could play in anti-piracy efforts should domestic prosecutions prove inadequate in suppressing piracy.⁶²² Such steps should also be extended to

⁶²¹) Sandeep Gopalan, "Put Pirates to the: Targeted Killings are a Necessary, Justified and Legal Response to High-Seas Piracy" <<http://core.ac.uk/download/pdf/11524687.pdf>> accessed 4 May 2015

⁶²²) Elizabeth Anderson, *et al*, "Suppressing Maritime Piracy: Exploring the Options in International Law," Expert Workshop, organised by Academic Council on the United Nations System (ACUNS), American Society for International Law (ASIL) and One Earth Future Foundation (OEF), 16-17 October, 2009, pp. 14-15. The following are some of the

the prosecution of pirate supporters, sponsors, and businesses. It is important to state that the prosecution of pirates must adhere strictly to accepted human rights standard.

6.2.2 Support for national courts/creation of a hybrid or internationalised court

In furtherance of the above, the extant international piracy regime is dependent on the role of national courts. Nevertheless, experience has shown that, as a result of the absence of political will from states, “this anticipated role of national courts does not match the reality. This does not mean that transferring the role of national courts to international courts will change the present unsatisfactory scenario.”⁶²³ Saiful further suggests that the global community may consider creating a permanent international court for piracy.⁶²⁴ This research argues that although for practical reasons,⁶²⁵ such a step will not solve the problem completely, the most viable solution will be to operationalise, support and fund the national courts of countries who are willing to prosecute pirates locally.⁶²⁶ Thus, Nigeria government should show interest in prosecuting pirates in its courts in order to attract support from the international community (see Pictograms 6 & 7 above).

piracy cases entertained by domestic courts: *The Republic v Mohamed Ahmed Dahir & 10 Others* (The Supreme Court of Seychelles) Criminal Side No. 51 of 2009; the *Republic v Abdi Ali & Others* (The Supreme Court of Seychelles) Criminal Side No. 14 of 2010; the *Republic v Farad Ahmad Jama & Others* (The Supreme Court of Seychelles) Criminal Side No. 16 of 2012; and the *Republic of Korea v Araye*, supra.

⁶²³) Karim Md Saiful, “Prosecution of Maritime Pirates: The National Court is Dead-Long Live the National Court,” (2014) *Wisconsin International Law Journal*, Vol. 32, No. 1, p. 157 <[http://eprints.qut.edu.au/78661/1/Karim_proof_\(5\).pdf](http://eprints.qut.edu.au/78661/1/Karim_proof_(5).pdf)> accessed 20 May 2015.

⁶²⁴) *Ibid.*

⁶²⁵) *Ibid.*, pp. 144-145.

⁶²⁶) *Ibid.*, p. 157. This author has robustly argued elsewhere for the use of national courts to prosecute pirates with a view to making piracy unprofitable. See generally, Kalu K. Anele, “The Viability of Establishing an International Tribunal for maritime Piracy,” (2015) *UMRI Journal of International Human Rights Law*, Vol. 1, Iss. 1, pp. 1-37.

As a corollary to the above, due to the inadequacy in the prosecution of pirates by domestic courts, there may be need to establish a hybrid or internationalised court (court that has the features of national and international courts) to try persons suspected of sea piracy. This could be an option considering that domestic courts may be incompetent, under-funded, under-staffed, ill-equipped and corrupt. It is common knowledge that most coastal countries, particularly Nigeria, lack the political will, the personnel, funds, facilities, including deficient domestic legal system which prevents them from curbing piracy through prosecution.⁶²⁷ It is pertinent to note that an internationalised court, unlike international courts, incorporates aspects of domestic and international law.

6.2.3 Reinforcing international cooperation in the arrest and prosecution of persons suspected of piracy

Further, Nigeria should engage in cooperation with other countries in the fight against piracy in the Gulf of Guinea by arresting and prosecuting persons suspected of piracy or facilitating piracy. Reinforced cooperation between states would be an added advantage in this respect, which can be done at the regional or sub-regional level. Such reinforced cooperation should conclude agreements on: procedures to be followed in approaching, boarding and detaining foreign ships; procedures for recording arrests and

⁶²⁷) The demerits of creating an international court for pirates are many, consequently, an internationalised court seems to be a better option. An internationalised court is not a single international court sitting at its own seat, but a special court created within domestic legal systems, the staff being a mixture of national and international judges and which would apply a combination of national and international rules. For more information on creating a hybrid tribunal for piracy. See Kristina Miggiani, "Towards Universality and Uniformity: Combating the Jurisdictional Challenges Facing the Prosecution of Somali Pirates in Light of the Legal Void Left by UNCLOS" (2013) *Elsa Malta Law Review*, p. 73 and "The Necessity to Take Additional International Legal Steps to Deal with Sea Piracy," Parliament Assembly, Council of Europe, Doc. 12194, 6 April, 2010. See also Amber Ramsey, "Barriers to Prosecution: the Problem of Piracy," *Civilian Fusion Center (CFC)*, September, 2011, p 7.

searches of ships in a manner acceptable as evidence in court; procedures for the transfer of suspects to custody in a suitable coastal state; and procedures for the transfer of suspects for trial in a suitable state. In addition, procedures for dealing with the transfer/repatriation of victims of crimes including crews of attacked ships, and for dealing with matters such as asylum applications; arrangements for ‘shipriders’, that is, law-enforcement officials of coastal states exercising domestic powers on foreign warships or government vessels,⁶²⁸ as well as arrangements for witness protection programme.

6.2.4 Revision of the meaning of piracy under international law

More importantly, an effective legal framework to adequately combat piracy requires that the provisions of the LOSC should be reviewed, particularly the meaning of the term. There are constraints from the wordings of the LOSC provisions, exemplified by the geographical location limitation, the two ship condition and the private ends conundrum. Moreover, the definition of piracy under international law refrained from obliging countries to criminalise piracy in their domestic legislations as well as prosecute arrested pirates.⁶²⁹

Although a modification of the piracy definition under the LOSC seems to be a good option, “it should be realized that it is not easy to initiate and launch the process of modification since there is no sign to show that the Contracting Parties to the LOS Convention would like to hold a review conference in the near future.”⁶³⁰ This is because the LOSC contains 320 articles and the issue of piracy would be an insignificant matter for review

⁶²⁸) E. Anderson, *et al*, supra note 622, p. 16. See also A. Ramsey, *ibid*, p. 4. For the meaning of “shiprider,” see the US-Panama Supplementary Arrangement on US Coast Guard Assistance, US Department of State, signed at Panama City, Panama on the 5th of February, 2002, entered into force on the 5th of February, 2002, (amended on the 12th of May, 2004), article II (p).

⁶²⁹) LOSC, article 105. R. Beckman & S. Palakrishman, supra note 121, p 5.

⁶³⁰) K. Zuo, supra note 48, p. 344.

compared to other LOSC subject matters. It would also not be a priority on the review agenda even if such a review conference were to take place. This dissertation argues that there is need to revise the LOSC provisions of piracy to capture contemporary realities of modern piratical acts, as accentuated by the various UNSC resolutions, other conventions, soft laws and *opinio juris*. On the other hand, in view of the cumbersome nature of a revision, strengthening means of combating piracy on the basis of the LOSC provisions through interpretative declarations, ancillary agreements,⁶³¹ and flexible interpretation of the LOSC are equally plausible in using the LOSC to suppress piracy. It is argued that the application of the LOSC and other relevant maritime security conventions can bolster the prosecution of suspected pirates.

6.2.5 Review of domestic criminal law enforcement procedure

⁶³¹) Lara Buttigieg, “Re-Defining Maritime Piracy: An International Perspective,” a Dissertation submitted to the Faculty of Laws, in partial fulfilment of the requirement for the Degree of LL. D., University of Malta, May, 2010 pp. 150-152 <<https://www.um.edu.mt/library/oar/bitstream/handle/123456789/2953/10LLD030.pdf?sequence=1&isAllowed=y>> accessed 24 June 2015. Maclaren observes that three ways have been suggested for the expansion of the definition of piracy under the LOSC. They include the fact that the right of innocent passage has curtailed state’s sovereignty and therefore sets the foundation for an expansion of universal jurisdiction in counter-piracy efforts, there should be an additional protocol to article 100 of the LOSC, providing international parties the ability to pursue pirates in territorial waters under certain closely defined circumstances and change in interpretation of the convention rather than substance. See S. Maclaren, *supra* note 161. Moreover, it has been argued that to maintain its viability, an international legal regime, like the LOSC, needs to be able to adapt to changing circumstances and new challenges. David Freestone & Alex G.O. Elferink, “Flexibility and Innovation in the Law of the Sea-Will the LOS Convention Amendment Procedures Ever be Used,” in Alex G.O. Elferink (ed.) *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Martinus Nijhoff Publishers: Boston 2005) 221.

In furtherance of the above, a successful prosecution of criminals involves the collation, safe handling and exhibition of evidence, and suspects must be arrested and detained in a way that is acceptable to the rules and procedures of criminal justice system that is handling the prosecution as well as the fundamental human rights. Harmonisation of rules of evidence would enhance co-operation between nations and cut down the probability of evidence being inadmissible. Where this is impossible, those persons empowered to capture pirates with a view to transferring them to a foreign criminal justice system for prosecution must be knowledgeable, and be trained in following the receiving country's procedures.⁶³² It is also argued by this dissertation that the Nigerian government should pass all relevant maritime security bills to facilitate the prosecution of pirates, pirate leaders and financiers as well as their imprisonment.⁶³³

6.2.6 The application of the United Nations Security Council Resolutions (UNSCRs) expanding the scope of international law rules on piracy

⁶³²) E. Anderson *et al*, *supra* note 622, p. 16.

⁶³³) IMO, Legal Committee, 101st Session, Agenda Item 5, "Piracy: Note by the Secretariat," LEG 101/5, 14 March 2014, para. 9. Roach concludes that adequate national legislation criminalising acts of piracy and armed robbery at sea, and associated crimes, as well as modern criminal procedure laws, are a *sine qua non* to suppressing piracy. Ashley J. Roach, "General Problematic Issues on Exercise of Jurisdiction over Modern Instances of Piracy," in Clive R. Symmons (ed.) *Selected Contemporary Issues in the Law of the Sea* (Martinus Nijhoff Publishers: Boston 2011) p. 137. Such legislation must provide for the protection of the human rights of pirates. This position has been given judicial notice, as the court in the case of *Republic v Hassan Jama Haleys & 5 others* (The High Court of Kenya, Mombasa) Criminal Miscellaneous Application No. 105 of 2010, states that Kenyan government and the international partners supporting piracy trials in Kenya should put in place a system to provide free legal representation for the suspects in these trials because it is the only way their rights to fair hearing is guaranteed. It is further argued that the use of support legislations in the prosecution of pirates and their sponsors in Nigerian courts can reduce the incidence of piracy off Nigeria. For the use of support legislations in suppressing piracy, see Raphael Kamuli, "Tanzania's Legal Framework on Sea Piracy: An Obligatory but Consistent Model," in Anna Petrig (ed.) *Sea Piracy Law* (Duncker & Humblot: Berlin 2010) pp. 64-65.

This research argues that the proper application and implementation of the various resolutions passed by the UNSC, as well as other regional organisations, would reduce the scourge of piracy globally. With the UNSCRs 2018, 1897, 1846, 1851, 2125, 2020, 1976 and the EU Foreign Affairs Council Meeting in Brussels on 17 March 2014, the UNSC and the EU have shown concern over the activities of pirates in the Gulf of Guinea and ways to combat the menace. These measures from the UNSC were prescribed under the framework of Chapter VII of the UN Charter with a view to remedying the limitations of the existing international law regime on piracy.⁶³⁴

6.2.7 Expansion and consolidation of global and regional efforts to suppress piracy off Nigeria

Similarly, the expansion of efforts through a plethora of initiatives would assist in addressing piracy off Nigeria. The UNSC through resolutions 2018 and 2039 recognised the need for a comprehensive approach led by regional countries. Regional initiatives have been spearheaded by the ECCAS, ECOWAS, GGC, as well as MOWCA. States in the region have also recognised the Djibouti Code of Conduct as a useful model for West Africa,⁶³⁵ which culminated to the establishment of the Code of Conduct for West and Central Africa. The Maritime Trade Information Sharing Centre

⁶³⁴) See T. Treves, *supra* note 114, p. 5. See also the UNSCR 1816, para. 7.

⁶³⁵) Brenda. V. Pimentel, "International Efforts and Initiatives," paper delivered during 'Counter Piracy: Challenges, Responses and Lessons Learned,' Session1, ReCAAP ISC Piracy & Sea Robbery Conference, Singapore, 9 April, 2013, pp. 03-04. The 2014 Piracy Report shows that while pirate attacks in Somalia went down to 3, Nigeria had 18 attacks at the same period. See also IMB Piracy Report for 2014, p. 5.

(MTISC) was established, and has become important in fighting piracy in the Gulf of Guinea.⁶³⁶

More pointedly, the ReCAAP ISC has been very successful in Asia, which has contributed immensely in the reduction of piracy in the region. More so, the ReCAAP has contributed in the suppression of piracy in other regions by acting as a foundation stone for the establishment of regional framework for suppressing piracy, for example, in the making of the Djibouti Code of Conduct.⁶³⁷ Buttressing this point, Hribernik opines that having successfully implemented the ReCAAP, “it has substantially contributed to the reduction ... of ... piracy and robbery attacks in Southeast Asia and Asia ... between 2006 and 2009. Furthermore, the agreement’s effectiveness has led to the adoption of some its elements by regional counter-piracy agreements in other parts of the world, most notably in the Djibouti Code of Conduct.”⁶³⁸

6.3 Non-legal mechanisms for suppressing piracy off Nigeria

Non-legal mechanisms, on the other hand, bother on the use of non-binding methods to combat piracy. This includes the introduction and use of soft laws like the application of the best management practices onboard vessels, deployment of PCASP onboard ships, use of modern facilities, conducting

⁶³⁶) B.V. Pimentel, *ibid.* Wambua states that regional cooperation, through the regional codes, is a condition *sine qua non* in suppressing piracy off the Horn of Africa. Paul M. Wambua, “The Legal Framework for Adjudication of Piracy Cases in Kenya: Review of the Jurisdictional and Procedural Challenges and the Institutional Capacity,” in Anna Petrig (ed.), *supra* note 633, p. 37.

⁶³⁷) Yoshisha Endo, “ReCAAP’s Successful Model for Regional Cooperation: Combating Piracy in Asia,” UAE Counter-Piracy Conference 2014 Briefing Paper <<http://counterpiracy.ae/upload/2014-Briefing/Yoshihisa%20Endo-Briefing%20Paper-Final-English%20Website.pdf>> accessed 24 June 2015.

⁶³⁸) Miha Hribernik, “Countering Maritime Piracy and Robbery in Southeast Asia: The Role of the ReCAAP Agreement,” European Institute for Asian Studies (EIAS), March, 2013, p. 11 <http://www.eias.org/sites/default/files/EIAS_Briefing_Paper_2013-2_Hribernik.pdf> accessed 24 June 2015.

anti-piracy naval operation, regional cooperation, funding, provision of surveillance facilities, training of regulatory and security officers, including PSC officers, among others (see Pictograms 8-10 below).

Pictogram 8⁶³⁹



Pictogram 9⁶⁴⁰

⁶³⁹) Maki Catama, “Indonesia, Malaysia, and Singapore’s Joint Patrols in South China Sea likely to Reduce Piracy Risks if Implemented,” <http://www.aseanmildef.com/2015/05/indonesia-malaysia-and-singapores-joint.html> accessed 12 November 2015.



Pictogram 10⁶⁴¹



6.3.1 On board measures by crew/use of privately contracted armed

⁶⁴⁰) “China Joins Escort Pact with Japan and India to Fend off Piracy,” *Navaltoday.com*, <<http://navaltoday.com/2012/07/09/china-joins-escort-pact-with-japan-and-india-to-fend-off-piracy/>> access 12 November 2015.

⁶⁴¹) “Somali Piracy Costs \$8.3bn a Year, Report Says,” *BBC News*, <<http://www.bbc.com/news/world-africa-13392537>> accessed 12 November 2015.

security personnel (PCASP) on board ships

Consequent upon the use of non-legal mechanism to combat piracy, vessel owners are encouraged to adopt various on board measures to discourage the commission of piratical acts against their vessels. Some shipping companies make use of rudimentary measures like fire hoses, deck patrols, or even carpet tracks to make piracy unattractive. Others shipping companies use a non-lethal electric screen with a loudspeaker system that emits a pitch sound so piercingly hurtful it repels pirates away. Also, vessel owners willing to spend more to protect their cargo could employ the services of private security guards onboard, though it is arguable that such guards have records of piracy deterrence.⁶⁴²

Aside from the mandatory certification, training and competence prescribed by international instruments, acquisition of the best management practices aimed at suppressing piracy by seafarers immensely contributes to the overall security of vessels. This has not only enhanced the level of security awareness of seafarers, but also provided a veritable and symbiotic working relationship between the crew and the PCASP on board the ship. For instance, due to the application of best management practices and enhanced security awareness, seafarers have been able to repel several pirate attacks against their vessels.⁶⁴³ More so, under the best management

⁶⁴²) It has been said that most ships do not even make use of basic deterrents which bolster the courage of the pirates. By introducing the use of PCASP, ship owners want to deter prospective pirates from hijacking or attacking a vessel. See Christopher Alessi & Stephanie Hanson, "Combating Maritime Piracy," <www.cfr.org/france/combating-maritime-piracy/p18376> accessed 25 May 2015.

⁶⁴³) "Chinese Crew Keep Pirates at Bay," *The Sea*, Iss. 198, 2009, p.1 <<http://www.missiontoseafarers.org/uploads/pdfs/The-Sea-Mar-Apr-2009.pdf>> accessed 24 June 2015; "DFA Lauds Measures Undertaken by *MV Beluga Fortune* Seafarers to Repel Piracy Attacks," Press Release by the Department of Foreign Affairs, Official Gazette, 4 November, 2010 <<http://www.gov.ph/2010/11/04/dfa-lauds-measures-undertaken-by-mv-beluga-fortune-seafarers-to-repel-piracy-attacks/>> accessed 24 June 2015; Gerry J. Gilmore, "Shipper-Supplied Security is Best Defense against Pirates, Flournoy Says," U.S. Department of Defense <<http://www.defense.gov/news/newsarticle.aspx?id=54207>>

practices regime, the assistance giving by seafarers to the PCASP has led to the prevention of pirate attacks on vessels.⁶⁴⁴ Against this backdrop, Coutroubis and Kiourktsoglou observe that better trained and protected crews can repel pirate attacks effectively,⁶⁴⁵ in addition to the use of the PCASP.

In view of the above points, the use of the PCASP in securing vessels thereby preventing them from being captured by pirates becomes necessary. Notwithstanding, this dissertation argues that in order to regulate and reduce the risks associated with the use of the PCASP, guidelines should be developed and implemented so that professionalism, safeguards, increased standard of performance and accountability are strictly maintained.⁶⁴⁶

6.3.2 The need to curb flag of convenience (FOC) in Nigeria

accessed 24 June 2015, citing Flournoy, who stated that about 78 % of pirate attacks on merchant vessel transiting the Gulf of Aden between Somalia and Yemen was thwarted by the ships' crew.

⁶⁴⁴) The combined efforts of the crew of the *MV Ocean*, who deployed their anti-piracy safety training, and the onboard security team fended off multiple attempts by pirates to board the vessel while off the coast of Lome, Togo. "Ocean Atlas Repels Piracy Attacks," January, 2013

<<http://www.seafarers.org/seafarerslog/2013/January2013/OceanAtlasRepelsPirates.htm>>

accessed 24 June 2015.

⁶⁴⁵) A. Coutroubis & G. Kiourktsoglou, "Somali Piracy: Relation between Crew Nationality and Vessel's Vulnerability to Seajacking." (2012) *International Journal on Maritime Navigation and Safety of Sea Transportation*, Vol. 6, No. 1, p. 103.

⁶⁴⁶) See IMO Guidance to PCASP, UK Guidance to Armed Guards and Provisional Guidelines-Use of Armed Guards on Board Norwegian Ships <http://www.igpandi.org/downloadables/piracy/news/Provisional_Guidelines.pdf> accessed 1 October 2015. Moreover, Williamson posits that following a number of serious incidents in the private security field, most notably in Iraq and Afghanistan, several industry associations have been created to provide increased standard of performance and accountability. For instance, the Security Association of the Maritime Industry (SAMI) and the International Association of Marine Security Professionals (IAMSP) have continued to work toward increasing the level of professionalism in the industry, and have developed vetting criteria and codes of conduct for their membership. Also, the International Standards Organisation (ISO) and the American National Standards Institute (ANSI) have developed quality assurance standards for accreditation of PMSCs. Hugh Williamson, "Protection of Canadian Ships against Piracy," (2013) *Canadian Naval Review*, Vol. 9, No. 2, p. 20.

Similarly, pirates sometimes hide under the guise of FOC to perpetrate their illegal act knowing that it will be very difficult to trace the ownership of the vessel used in the criminal act. Thus, countries must come together to impose sanctions against third parties that encourage FOC.⁶⁴⁷ The use of efficient PSC is vital in this respect because it is the duty of the Inspection Officer, after inspection, to determine whether a vessel is substandard, operates with untrained crew, lacks state of the art facilities for preventing piratical attacks, among others, and take appropriate steps towards detaining such vessel. For example, the payment of low wages by FOC vessels can result in the employment of untrained and unreliable seafarers with no allegiance to neither their employer nor the ship owner which compromises the security of the vessels.

The possible consequence of employing an unreliable crew is exemplified by the attack on the *MV Clown* near the island of Batam in 2000.⁶⁴⁸ In addition, the need to curb FOC is given fillip by the hijack of a Greek-owned tanker, the *Kerela*, by alleged Nigerian pirates in Angolan waters on 18 January 2014 and the fact that other maritime crimes, like IUU fishing and maritime terrorism thrive under FOC regime.⁶⁴⁹ It is arguable

⁶⁴⁷) Tina Shaughnessy & Ellen Tobin, "Flags of Inconvenience: Freedom and Insecurity on the High Sea"

<https://www.law.upenn.edu/journals/jil/jilp/articles/1-1_Shaughnessy_Tina.pdf> accessed 25 May 2015. See also Alessi & Hanson, supra note 637.

⁶⁴⁸) The crew of the ship, *MV Clown*, had decided on an unauthorised stopover in Batam to spend an evening on the island, which is well known for its inexpensive prostitutes, drugs and gambling. Unfortunately for the crew, the vessel came under attack that night when anchoring near the island and was hijacked by pirates. While it was later established that the crew did not collaborate with the pirates, all crewmembers nonetheless lost their jobs because of their negligence in making the unscheduled stopover. "The Roots of Piracy in Southeast Asia," APSNet Policy Forum, 22 October, 2007

<<http://nautilus.org/apsnet/the-roots-of-piracy-in-southeast-asia/>> accessed 2 July 2015.

⁶⁴⁹) James Hall, "New Piracy Threats and the Peril of Flags of Convenience: Southern Africa's First Ship Hijacking Highlights the Risks to Security of Foreign-Registered Ships," Consultancy Africa Intelligence (CAI), 31 March, 2014
<http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=166

that ship owners use FOC to evade prosecution for criminal activities by their vessel.⁶⁵⁰ Consequent upon that, nipping FOC at the bud would help in stemming the tide of piracy off Nigeria.

6.3.3 Availability of funds

It is important to state that inadequate funding contributes immensely in the lackluster fight against piracy, particularly in Africa. This is because some of the areas where piracy is rife are occupied by developing countries like Nigeria, Somalia, Indonesia, Bangladesh, among others. In Nigeria, for instance, adequate funds are needed in the suppression of piracy for the following reasons: to procure state of the art facilities to monitor activities in the ports and coastlines of the country, to train officials of the country's maritime regulatory institutions (NIMASA) and officers of the security agencies (the Nigerian Navy and the Nigeria Police), facilitate and equip the country's courts as well as train judges, among others. On the other hand, due to lack of funds, Kenya has stopped prosecuting pirates arrested by the countries it has MOU with.⁶⁵¹ Thus, funds need to be provided to these countries in their quest to combat piracy off their waters, as well as prosecute arrested pirates in their domestic courts. This dissertation submits that members of the EU, the US, and some Non-Governmental Organisations (NGOs) have a role to play in this regard.

[3:new-piracy-threats-and-the-peril-of-flags-of-convenience-southern-africas-first-ship-hijacking-highlights-the-risks-to-security-of-foreign-registered-ships&catid=60:conflict-terrorism-discussion-papers&Itemid=265](http://www.doi.org/10.1017/S0022278X12000000)> accessed 2 July 2015. Syrigos opines that FOC encourages maritime fraud and violence like piracy. Angelos M. Syrigos, "Developments on the Interdiction of Vessels on the High Seas," in Anastasia Strati, *et al*, (eds.) *Unresolved Issues and New Challenges to the Law of the Sea* (Martinus Nijhoff Publishers: Boston 2006) p.153.

⁶⁵⁰) *Ibid*.

⁶⁵¹) Paul M. Wambua, "The Jurisdictional Challenges to the Prosecution of Piracy Cases in Kenya: Mixed Fortunes for a Perfect Model in the Global War against Piracy," (2012) WMU J. Marit Affairs, Vol. 11, pp. 110-111.

6.3.4 Provision of adequate facilities and capacity to implement existing legislations

Corollary to the above is the incapacity to implement legislations in Nigeria. Aside from Nigeria that has not passed the law criminalising piracy as well as domesticating some of the international instruments, Kenya has done so, but lacks capacity to fully implement most of these legislative provisions. This is made worse by the fact that some of these countries lack the facilities to prosecute, as well as incarcerate the convicts.⁶⁵² Furthermore, there is need to invest in modern facilities, like maritime surveillance systems that enable authorities to have virtual control of their maritime domain as well as facilitate water and aerial patrols.⁶⁵³ Beyond providing funds, facilities and training should be provided to the officials of the maritime regulatory and security agencies as well as judicial officers in Nigeria to facilitate the prevention, arrest, prosecution and incarceration of convicted pirates.

Besides, there is need for capacity building in suppressing piracy off Nigeria. This has been one of the focal points of members of the Somali Contact Group on Counter Piracy (SCGP), who have agreed that there is need for legal training for law students, and law teachers in the suppression of piracy off Somalia. Moreover, the SCGP agreed to train non-law degree qualified prosecutors such as police prosecutors and a mid-career training programme to support judges and senior prosecutors as part of the measures to combat piracy off Somalia.⁶⁵⁴ This should be replicated in Nigeria in other

⁶⁵²) P.M. Wambua, *ibid*, pp. 111-112. See also Sandra L. Hodgkinson, "International Law Crisis: Seeking the Best Prosecution Model for Somali Pirates," (2011) Case W. Res. J. Int'l L., Vol. 44, pp. 307-308.

⁶⁵³) Such facilities are contained in some of the maritime security instruments such as the AIS, LRITS, VTS, Vessel Detection System (VDS), Vessel Monitoring Systems (VMS) among others. See SOLAS, Regulations 19, 19-1 and H. Anyiam, *supra* note 89.

⁶⁵⁴) IMO, Legal Committee, 101st Session, Agenda 5, "Piracy: Kampala Process-Legal Training Plan and Workshop on a Draft Law for Coastguard/Maritime Police," LEG 101/INF.2, 14 March 2014, Annex 1, paras. 3-5.

to have a strong institutional framework to suppress piracy off the country. Against this background, this dissertation reiterates the importance of the Gulf of Guinea Action Plan 2015-2020 initiated by the Council of EU and argues that it is a step in the right direction toward improving capacity building within the affected countries in combating piracy in the Gulf of Guinea.⁶⁵⁵

6.3.5 Application of the reviewed best management practices (BMP) guide compiled by IMO and the shipping industry

As part of the non-legal mechanism for combating piracy off Nigeria, there is need for ship owners, vessel operators, and other stakeholders to imbibe and comply with the reviewed best management practices guide by IMO⁶⁵⁶ and other shipping organisations⁶⁵⁷ to stem the tide of piracy. Some of the measures, which have been applied in Somalia, include registering vessels planning to transit the high risk areas with national and international authorities that have forces deployed to the region; developing an internal emergency plan to provide an effective response in the event of attack or hijack; increasing the number of crew and providing security training for the crew. Others measure are keeping a 24-hour surveillance in high risk areas; installing special radar and infrared equipment to detect attackers in good time; erecting barbed wire barriers as well as using non-lethal weapons such as water cannon or sonic weapons to prevent pirates coming on board; and installing impenetrable safe rooms where the crew can take refuge in the event of attack.⁶⁵⁸

⁶⁵⁵) See generally the Council of the European Union, *supra* note 150.

⁶⁵⁶) BMP4.

⁶⁵⁷) Interim Guidelines and “A Guide to BMP4,” Security Association for the Maritime Industry (SAMI), 2011.

⁶⁵⁸) See generally, BMP4, Interim Guidelines and “A Guide to BMP4,” Security Association for the Maritime Industry (SAMI), 2011. Implementing these measures has prevented pirates from succeeding in their attacks. K. Petretto, *supra* note 135, p. 15.

In furtherance of the above, the level of achievements by the CGPCS in its various activities should also be replicated in most of the piracy hotspots, like Nigeria. The fact that the CGPCS has been battling piracy successfully through elastic, expansive, and multi-faceted mechanisms, which has also stimulated a coordinated action by stakeholders from virtually every sector of the global sector affected by the challenge of piracy shows the importance of the group.⁶⁵⁹ This step is not only in line with treaty law, customary international law and the resolutions of the UNSC, but also *intadem* with the position of this research that advocates for a multi-dimensional approach in suppressing piracy off Nigeria. Such multi-dimensional approach will be optimally implemented through the framework of PSC.

6.3.6 Political will by the Nigerian government to suppress piracy off the country

In furtherance of the above, an overarching factor in curbing piracy off Nigeria is for the Nigerian government to have the political will to tackle decisively the root causes of piracy in the country and implement the legal and non-legal mechanisms for suppressing the crime. In view of that, government should make sure that oil exploration is done according to international standard. The issue of pollution, whether through oil spill or gas flaring, should be reduced considerably. More so, compensation should be paid to the affected communities, while polluted environment should be thoroughly cleaned up. Again, corruption in the oil industry, as well as the maritime sector, has to be condemned and not condoned. Thus, those who are involved in corrupt practices, embezzlement of public funds and racketeering in these sectors of the Nigerian economy should be prosecuted

⁶⁵⁹) H. Swarttouw & D.L. Hopkins, supra note 503, p. 11.

under the EFCC Act. In addition, those who sponsor pirates should be prosecuted under the MLPA, EFCC Act, and Terrorism Act. This can be achieved by following the money trail of the ransom payment and that of those sponsoring pirates.

More importantly, government should target and shut down the investments of known pirate sympathisers and sponsors, thereby weakening the financial backbone of pirates. It is important that the government of Nigeria makes infrastructural development of the Niger Delta a priority in order to reduce the incidence of insurgency that snowballs into piracy. There should be visible as well as tangible traces of infrastructural development in the oil producing areas and communities in Nigeria. Good governance and the dividend of democracy should also be felt by all Nigerians. In addition, government has to engage in regional cooperation with other countries in the Gulf of Guinea region in the areas of gathering, sharing and disseminating information and intelligence, joint military patrol and training, among other things.

As a corollary to the above, the signing of the MOU by NIMASA, the Nigerian Air Force and the Nigerian Navy in August 2013 to jointly halt the activities of sea pirates and other maritime criminals threatening the economy of the country is a welcome development.⁶⁶⁰ The installation of automated camera-equipped surveillance towers and the purchase of sophisticated vessels for relevant security agencies are steps in the right direction by the government of Nigeria in its efforts to suppress piracy off

⁶⁶⁰) Uche Usim, "With Military's Support, War against Piracy is Total- Akpobolokemi, DG/CEO, NIMASA," *The Sun*, 1 September, 2014 <<http://sunnewsonline.com/new/stakeholders-list-benefits-n65-atm-charge/>> accessed 24 July 2015.

the country.⁶⁶¹ Commenting on the use of surveillance facilities, particularly the use of information and communication technology (ICT) to suppress piracy, Akinkuotu states that:

One of such efforts is the installation of a new surface surveillance system, under its Regional Maritime Awareness Capability initiative. The surveillance system, which is a United States Navy-inspired coastal surveillance programme, uses an automatic identification system and ground-based radar and sensors to enhance awareness of maritime activities. The project is coordinated by the Africa Partnership Station brought together by the United State Government. According to NN authorities, such technology has become necessary due to the need for timely and accurate dissemination of information during operations. The NN says such application of information and communications technology will definitely enhance command and control and ICT will play a very important role in tackling some contemporary challenges. The system also assists NN authorities in enforcing maritime surveillance and preventing illegal activities within the country's maritime domain, diminishing the potential for lost national revenue through sea robbery and piracy.⁶⁶²

6.3.7 The inclusion of joint naval operations

⁶⁶¹) Comfort Oseghale, "Security Agencies Move against Sea Piracy," *Punch*, 8 January, 2015 <<http://www.punchng.com/business/maritime/security-agencies-move-against-sea-pirates/>> accessed 24 July 2015.

⁶⁶²) Eniola Akinkuotu, "Piracy: Nigeria Navy Embraces ICT, Increases Sea Patrols," *Punch*, 9 September, 2012 <<http://www.punchng.com/business/close-up-on-ict/piracy-nigerian-navy-embraces-ict-increases-sea-patrols/>> accessed 24 July 2015.

Despite its contribution in the reduction of piracy off the Somalia (see Table 1 & Pictograms 8-10 above), the joint naval forces have not been active in suppressing piracy in the Gulf of Guinea. It has been reported that parallel to “the Horn of Africa, foreign naval activities in West African waters generally comprise capacity-building exercises and training, rather than law enforcement action.”⁶⁶³ It is argued in this dissertation that the capacity-building exercises are laudable steps towards enhancing the capability of West African countries to be able to use their navies and other maritime security and regulatory agencies to suppress piracy. However, there is need to extend the activities of the international naval operations in the Gulf of Guinea to law enforcement. This is because the capacity of Nigerian government (like other West African countries) to suppress piracy is undermined by the fact that only 28 percent of the war ships of country’s navy and frigate is operational at any given time, which means that “maritime operations usually amount to intermittent sweeps, rather than a continuous patrol presence.”⁶⁶⁴

6.3.8 The effective implementation of the port state control (PSC) in

Nigeria

Above all, this paper argues that the PSC regime should be used as the platform for implementing and enforcing the various international, regional and domestic maritime security instruments in suppressing piracy off Nigeria. More pointedly, by introducing PSC as the platform for suppressing piracy off Nigeria, most of the measures to combat piracy would be implemented

⁶⁶³) Ocean Beyond Piracy, *The State of Maritime Piracy Report 2014* (Denver, CO: One Earth Future Foundation) p. 60.

⁶⁶⁴ James Bridger, “Crafting a Counter-Piracy Regime in the Gulf of Guinea,” Center for International Maritime Security (CIMS), 11 July, 2013 <<http://cimsec.org/crafting-a-counter-piracy-regime-in-the-gulf-of-guinea/6232>> accessed 17 October 2015.

and enforced effectively. It is trite that the inspection of vessels calling at Nigerian ports by Inspection Officer could help in preventing piracy off Nigeria, particularly piracy as a result of substandard vessels. Further, substandard vessel are vulnerable to piracy acts due lack of speed, absence of modern security and communication facilities on board ships, untrained crew, among others. The introduction of the PSC regime would reduce the number of substandard vessels flying Nigerian flag or calling at the ports in Nigeria. Moreover, under the regime of PSC, the following facilities will be used to monitor activities off the coast and ports in Nigeria: VDS, VTS, VMS, LRITS and AIS. Summarily, the dissertation argues that through its prescriptive, enforcement and adjudicatory jurisdictions, Nigeria should introduce and use PSC as a suitable platform for a multidimensional approach towards suppressing piracy off the country.

6.4 Conclusion

This chapter introduced and discussed the various measures to suppress piracy off Nigeria and argues that these measures can be implemented effective under the regime of PSC. It imperative to state abinitio that there was a deliberate bifurcation of the recommendations in other to accentuate the differences between legal mechanisms and non-legal mechanisms in suppressing piracy off Nigeria. The former anchored on the existing legal regime and prosecution of pirates and their supporters, while the latter adumbrated some of the on board actions by the crew, regional cooperation, joint naval patrol, as well as measures taken onshore. The common denominator is the use of PSC as a vehicle for implementing and enforcing both mechanisms.

CHAPTER 7

CONCLUSION

7 Conclusion

From the research, it could be deduced that piracy has posed considerable risks to the international community, in general, and Nigeria in particular, in the areas of trade, regional cooperation, freedom of navigation, energy supply, and the shipping industry. Piracy also encourages other maritime crimes like IUU fishing, drug, arms and human trafficking, oil theft, vandalism of oil installations and organised crime. Whereas piracy is an old crime, contemporary act of piracy has changed the landscape of the crime with the introduction and use of modern technology. It is argued that modern pirates are technology savvy and they can make use of GPS to easily track down the vessel they intend to hijack.

In suppressing piracy, it is imperative to identify the root causes of the crime. Incidentally, some of the factors that lead to piracy are common among the piracy hotspot areas (Gulf of Aden, Gulf of Guinea, Indian Ocean, and Strait of Malacca). Thus, some of the root causes of piracy include poverty and unemployment, corruption, weak and inefficient security agencies and regulatory institutions, organised crime, existence of internal strife, insurgency and in extreme cases, absence of a central government, and absence of regional cooperation due to maritime boundary disputes involving countries in the regions where piracy is common.

Using Nigeria as a case study, the effect of piracy is enormous. Piracy adversely affects the petroleum industry which is the mainstay of the country's economy, with the ripple effect on all sectors in the country. As a dependent economy, importation of finished goods into Nigeria is hampered by piracy with its attendant increase in insurance premium and subsequent increase in prices of imported items in the country. More importantly, many

seafarers are killed, maimed, taken hostage, kidnapped, missing and tortured in the course of piracy acts.

Evidently, the Nigeria government has made some attempts to combat piracy, for instance, the country has improved its surveillance system, established a local force, as well as engaged in bilateral and regional cooperation with a view to suppressing piracy off the country and the Gulf of Guinea. Nonetheless, the capacity for the Nigerian government to suppress piracy is undermined by its lack of political will to decisively tackling the root causes and the challenges in suppressing the crime. It is therefore important to note that a key component for a successful counter-piracy undertakings is the political will by the government of Nigeria to suppress the crime. This will further lead to regional cooperation among states, criminalisation of piracy in domestic laws by domesticating relevant maritime law conventions as well as enforcing them, provision of adequate funds, availability of state of the art facilities, and training of the personnel of the regulatory institutions and security agencies, and the prosecution of pirates and their supporters.

The legal basis for international cooperation is consequent upon the various international instruments, like the LOSC, as well as general principles of international law advocating for concerted effort at the regional level to combat piracy. In view of that, states are required to comply with 'due diligence' 'best efforts' standards, which, in the context of maritime piracy, entail exercising sincere, concerted and proactive efforts. Gathering information which should be shared and disseminated is one of the specific duties within the general duty to cooperate in suppressing piracy. This should

therefore lead to a regular exchange of relevant data among all actors involved in the maritime sector.⁶⁶⁵

There are laudable attempts by the government of Nigeria to tame the tide of piracy off its waters. This is exemplified by the signing of the MOU by NIMASA, the Nigerian Air Force and the Nigerian Navy in August 2013 to jointly halt the activities of sea pirates and other maritime criminals threatening the economy of the country is commendable. Further, the installation of automated camera-equipped surveillance towers and the purchase of sophisticated vessels for relevant security agencies are steps in the right direction by the government of Nigeria in its efforts to suppress piracy off the country's waters. Nevertheless, there is need to expedite more efforts in suppressing piracy off Nigeria.

In line with the premise that there is no singular approach towards suppressing piracy, the paper therefore argues that a multidimensional approach as recommended above based on the PSC regime is the best option for suppressing piracy in Nigerian. The PSC platform represents a comprehensive network of counter-piracy activities and can be used as a springboard in exercising the duties of a port state, coastal state and flag state in securing the ocean and the shipping industry. More importantly, the instrumentality of PSC can be used to effectively enforce and implement relevant maritime security instruments and other related conventions as well as relevant local legislations, considering the fact that some of these instruments already provides that PSC should be used to ensure their compliance and enforcement. The research concludes by stating that the

⁶⁶⁵) Restrictions on information sharing should be based on national security and classification rules should be applied only on an exceptional basis. Y. Gottlieb, supra note 415, p. 332.

objectives of the PSC regime which include, the security of the ocean and maritime activities, among others, is *intandem* with the global effort to rid the world of the menaces of maritime piracy; hence the regime is suitable as an instrument in the suppression of piracy off Nigeria.



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