PROBLEM OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE FIGHT AGAINST PIRACY AND ARMED ROBBERY IN THE GULF OF GUINEA

CASE OF COTE D’IVOIRE AND NIGERIA

YAPO Marina Madel
UN-Nippon Fellow 2013-2014 from Cote-d’Ivoire

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INTRODUCTION

- the Resurgence act of piracy and armed robbery in gulf of guinea since 2008

- Started in Nigeria coastal, it’s gradually reached the other littoral states such as Benin, le Togo and cote d’ivoire since 2011

- Statistics: 45 attacks in 2010, 58 attacks in the first 10 months of 2011. from january to september 2012, 34 attacks has been reported.

- 3 attacks have been reported in 2012 compared to 01 in 2011 in cote d'ivoire. 10 attacks in Nigeria in the first quarter of 2012.
INTRODUCTION

- It’s become necessary for the state and the region to combat these acts.

- Such struggle need the establishment of legal and institutional framework to address this problem.

- What are the several action taken by Côte d’Ivoire and Nigeria as well as regional level on legal and institutional framework to strengthen the maritime security?

- What are the obstacle registered?

- How to address effectively the problem of piracy and armed robbery?
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

What is the legal framework of the fight?

Cote d’Ivoire

Marine merschant code of 1961 in the articles 228,229,230 et 231

- any crew member of the ship that navigates without act recognizing the legitimacy of his expedition
- any crew member of ship who commits acts of violence or depredation to the ivorian or foreign ship

The penalty range from forced labour in time to death penalty
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- **The ivorian penal Code**
  - Article 3: describes the crime as any offence which penalty is more than 10 years
  - Article 15: the law applied to offences committed in national jurisdiction
  - The competent court for prosecution and judgement is ivorian court
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

Legal framework of the fight

NIGERIA

- **Part XI of merchant shipping act 2007 related to the safety of maritime navigation**

- Article 216: any international convention, protocol and amendment related to navigation safety (SOLAS, SUA, ISPS CODE etc.) shall be apply

- The Minister will be responsible to take regulation for the application of the provision of the relevant convention
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- Legal framework of the fight

Nigeria

- Bilateral cooperation agreement between Nigeria-Benin

At regional level

- Resolution N°193/12/03 of Maritime organization of west and central Afric (MOWCA) which establish a legal framework of cooperation for the fight

- Regulation n°04/2008/DM/UEMOA whose provision establish a legal framework for cooperation of states and intervention in states parties marine space for the fight against piracy
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

what’s about the institutional framework?

Côte d’Ivoire

- Maritime Affairs Administration
  - Conduct national maritime policy
  - Two operational services in charge of maritime safety and security
  - Operational agent called Maritime police in charge of the surveillance of platform offshore, the protection of the coastal
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- what’s about the institutional framework?

Cote d’Ivoire

- Service in charge of the maritime security whose mission is to ensure the implementation of the international ship and port facility security code provision

  - Provisional national committee for the Port and maritime security

- Mission: ensure the coordination, the consultation and exchange of information between the different administrations, services and organs of the states involved in maritime and port security
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- what’s about the institutional framework?

Nigeria

- Nigeria maritime safety agency (NIMASA)
  - National institution in charge of management of maritime affairs such as maritime safety and security
  - Regulate and promote the safety, security prevention of marine pollution and maritime labour
  - Monitoring the sea in collaboration with the navy
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- The regional institutional framework
  - Economic Community of West Africa State (ECOWAS) which try to establish a maritime integrated policy since the resolution 2039 of united nations
  - Economic community of central africa states (CEEAC) which establish in central Africa a security policy
  - Gulf of guinea commission in charge of management of conflict related to maritime delimitation boundaries and exploitation of natural ressources is interested by the issues of piracy
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

- Maritime Organization of west Africa (MOWCA)
  - mission: help states party to establish a legal framework of cooperation for an effectively fight against the threat related to safety, security and marine pollution
STATE OF LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AT NATIONAL AND REGIONAL LEVEL

What about the operationnel framework of the fight?

- The different operational forces

  - Maritime police, national police and the Navy in Cote d’ivoire
  - The navy, NI MASA force and the Joint military task force in Nigeria
  - Organization of joint patrol for the safety of ivoirian sea
  - Organization of joint patrol in Nigeria sea
  - « Opération prosperité » joint patrol between Nigeria-Benin along the benin coast
WHAT ARE THE OBSTACLE TO COUNTER THESE UNLAWFUL ACTS?
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

- Analysis of the international framework of the fight
- The requirement of the international convention
  - UNCLOS
    - **Definition of piracy**: any unlawful acts of violence, detention or depredation committed by the private ship or aircraft crew or passenger against another ship or aircraft, person or goods in private way, in the high sea or another place which don`t relevant to national jurisdiction of any state)
    - Competence jurisdictional
    - Criminalization
    - cooperation
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

- Analysis of the international framework of the fight
  - Convention for supression of unlawful acts against the safety of navigation SUA(88) and protocol 2005
    - Definition of armed robbery
    - Measure of supression
  - International Ship and Port facilities Security Code (ISPS Code)
    - States parties responsibilities
    - Responsabilities of compagony, ship and port facilities
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

Face to the recommandation of the convention how can we conclude about the national legal framework to combat piracy and armed robbery?

- Outdated national legislation to counter piracy
  - Definition of piracy is not consistent with that of UNCLOS
  - The penalties provide by cote d’ivoire is unconstitutional
  - the universal jurisdiction is not provided
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

- Nigeria merchant shipping Act 2007

  - The act is not explicit because it’s leaves the minister to take the regulation later that is not ready yet

  - No legal framework for the prevention of unlawful acts

  - SUA convention is not provided yet in the national law of the two countries

  - One bilateral agreement has been concluded between Nigeria and Benin for the surveillance of Benin coast
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

- The gaps of institutional framework
  - The lack of collaboration and coordination between the national institutions
  - The lack of cooperation between the state which are not integrated the cooperation and the coordination of the action to combat the unlawful acts
  - The increase number of regional institutions with the interference objective create an ineffective of the action
THE GAPS OF LEGAL AND INSTITUTIONAL FRAMEWORK, OBSTACLE TO THE EFFECTIVELY FIGHT AGAINST PIRACY AND ARMED ROBBERY

- The gaps of operational framework
  - The lack of naval equipment for monitoring
  - The lack of logistical support infrastructure (bunkering facilities, for repair)
  - The budget allocated for the security of maritime space is insufficient and tiny
  - Obsolete knowledge of law enforcement
  - No formal system of collection and exchange of information between states
IN FACE OF THESE GAPS WHAT MUST BE DONE TO COUNTER PIRACY?
RECOMMENDATIONS

- At national level
  - Updated of national legislation
  - The government must give priority to maritime security by supporting the action of the national for acquisition of naval assets
  - Coordination of the action of the state at the sea
  - agreements and reciprocal arrangements between states to arrogate the right of hot pursuit of pirates beyond their maritime borders and also conduct joint patrols
At national level

- Seek technical assistance from international organizations for the strengthening of the capacity of the legal bodies and forces

- Governments must support the MOWCA in the effective implementation of the regional network of integrated Coast Guard
Recommendations

At regional level

- The African union must raise awareness and encourage States to cooperate

- The coordination of the actions of the regional institutions by the pooling of resources and creation of a fund to support reform in the maritime sector

- The regional organization could create a specialized training schools of the coast guard in Central Africa and West Africa in order to standardize the knowledge, procedures and methods of fight against maritime violence

- Create a regional focal point for the sharing of security information at real-time
Recommendations

At international level

- Technical and material assistance from the international organization and developed countries
  - for capacity building on the enforcement issues of maritime law regarding piracy
  - help for the enforcement of legal framework to counter piracy
  - provide naval assets for the sea monitoring
CONCLUSION

- The fight against piracy and armed robbery is confronted with the issue of legal and institutional framework.

- The lack of national legislation and the lack of cooperation, along with insufficient naval assets, are major obstacles to effectively fighting piracy and armed robbery.

- To ensure the strengthening of maritime security and fight effectively against this issue, it has become necessary to:
  - Develop a national anti-piracy legislation.
  - Coordinate the action of the state in sea.
  - Coordinate the regional institution.
  - Develop cooperation between states.
  - Request technical and material assistance from the international community.
THANK YOU FOR YOUR ATTENTION