

**EVALUATION OF NIGERIAN LEGAL FRAMEWORK FOR EFFECTIVE
PROSECUTION OF MARITIME CRIMES AND PROPOSALS FOR
REFORM.**

By ODANWU CHIZOBA MARGARET

**United Nations-Nippon Foundation Fellow 2015-2016
DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA
OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS
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ABSTRACT

This thesis is an exploratory work made up of two parts. The first part examines how prosecution can be an effective tool in the fight against maritime crimes in Nigeria. The nature of maritime crimes envisaged in this work is not limited to Piracy and Armed robbery at sea. But a lot of other illicit activities which do not form part of the popular newspaper headings.

Chapter one will equally analyze the enabling laws for prosecution of maritime crimes, in Nigeria, its adequacy and suitability, current situations in Nigeria, challenges to prosecution of maritime crimes and then attempt to proffer lasting solutions and a way forward.

Part two will look at the alternative means of tackling and curtailing maritime issues as against criminal prosecution in addressing the maritime crimes that would be more cost effective and at the same time feasible. This is aimed at exploring more preventive measures, appraising the nature of crimes, and determining the enabling and driving factors of maritime crimes.

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DISCLAIMER

The views expressed herein are those of the author and do not necessarily reflect the views of the government of Nigeria, united nations ,The Nippon foundation of Japan, or any other institution.

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1. Chapter 1

1.1 NIGERIA AND MARITIME CRIMES

Nigeria contains of half the population of the Gulf of Guinea region, and contributes more than half of the regional GDP. Crude Oil accounts for 95% of Nigeria's foreign exchange earnings and up to 80% of budgetary revenues. It is the most important industry in the entire region and for two decades has been threatened by transnational organized crime.¹

Piracy and maritime crimes in Nigeria have remained relentless and constituted a major threat to international trade, navigation, welfare of seafarers and development of Nigeria and the countries on the Gulf of Guinea generally. The new reports issued by the international Maritime Bureau (IMB)² an organ of the International chamber of commerce show that piracy, kidnapping and other vices are on the rise. Twenty four Pirate incidents were recorded as occurring within Nigeria alone in the first quarter of 2016. This has shown an increase in piratical attacks in the region as against the incidents in 2015.

Ambassador Michael Sison, United States Deputy Representative to the United Nations at the United Nations Security Council Open Debate on Peace consolidation in West Africa in New York on April 2016, highlighted that, Nigeria is losing about USD 1.5 billion monthly to

¹ International Maritime Bureau Report on Nigeria (2006) <http://www.IMB.org>

² Ibid

piracy, armed robbery at sea, smuggling and fuel supply fraud as maritime crimes in the Gulf of Guinea increase at an alarming rate.

Today, Authors claim that the Gulf of Guinea especially the waters off the coast of Nigerian stand as the most dangerous maritime area in terms of the success rate of maritime violence and other criminal activities.³ To assist in tackling that, the United Nations Security council adopted Resolutions 2018 and 2039 in 2011 and 2012 respectively in which they expressed extreme concern over the mounting insecurity in the region as a whole and its aftermath on regional economic and social stability as well as global security⁴.

The United Nations through the above resolutions called on Regional states and institutions as well as the international community to respond with regards to the thriving maritime crimes in the region. In response, the Yaounde Code of conduct for the repression of piracy was adopted by the Gulf of Guinea states in June 2013 at Yaoundé Cameroon which enjoyed wide international support.⁵ Nevertheless, the problem of piracy and other illicit Maritime crimes in the Gulf of Guinea remain a major threat. The incessant attack on ships in the form of armed robbery,

³Raidt, J. & Smith, K. E. (2010 page 29). Advancing U.S., African, and global interests: Security and stability in the West African maritime domain. Retrieved from http://www.acus.org/files/publication_pdfs/3/advancing-us-african-global-interestssecurity-stability-west-africa-maritime-domain.pdf

⁴United Nations Security Council.(2012). Report of the United Nations assessment mission on piracy in the Gulf of Guinea (7 to 24 November 2011) S/2012/45. New York: UNSC.

⁵ Yaoundé Code of Conduct for the repression of piracy armed robbery at sea and other illicit maritime activities on sea. June 2013

piracy, kidnappings for ransom hijackings ,deals in small arms etc are far from over especially in Nigeria⁶.

Nigeria is a littoral state located on the Gulf of Guinea with a vast water space. The major economic activities in Nigeria are sea borne. Nigeria being an export as well as consumer nation relies heavily on World Ocean and seas for the success of its international trade⁷. However the threat of maritime crimes has posed a major problem in that sector.

The adoption of the Yaoundé' code has not impacted much in the controlling acts of piracy and other maritime crimes in the Gulf of Guinea.

Despite the responses of the Nigerian government to the challenges through the NN and other relevant stakeholders, maritime insecurity has remained unabated since its resurgence in the early 2000. A more recent attack on oil installation in the country and an increase in cargo theft and hijacking of ships off the coast of Nigeria territorialwaters,are clear demonstration of the level of challenge.⁸These deepening threats have continued and evolved into modern times⁹ resulting in developments that have reinforced the urgency for the effective counter piracy measures with full cognizance to be taken of the fact that the success and efficacy of both national, regional and global responses will depend on a sound knowledge of the operational

⁶ Ali Kamal-Deen 97. Anatomy of the Gulf of Guinea.PDF
<https://www.usnwc.edu/getattachment/e95feaa7-8883-4008-b49b-175783f25e43/The-Anatomy-of-Gulf-of-Guinea-Piracy.aspx>

⁷ibid

⁸Premium Times 1st June. 2016. Niger Delta Avengers claim more attacks on Chevron installations;

www.premiumtimesng.com/news/topnew/204487

⁹(KAIPTC Occasional PaperNo.3737)

[http:// www.kaiptc.org/Publications/Occasional-Papers/Documents/Fiorelli Kaipctc.](http://www.kaiptc.org/Publications/Occasional-Papers/Documents/Fiorelli-Kaipctc)

environment, awareness of the actors and most importantly, how the situation has evolved.

1.2 Maritime Crime: Domestic Problem

Most crimes at sea start on land. Man lives on land and not at sea. While the Gulf of Guinea provides an ideal shipping and fishing venue, its complicated geographical terrain aids the ease with which robbers disappear along the coastline after an attack.¹⁰ This exposes the vulnerability of the sea as well as the lack of sophistication and wherewithal of law enforcement agents to monitor illegal activities in the area, showcasing further, the weakness and capacity limitations of the Gulf of Guinea countries to handle the challenges.

Apart from the surveillance limitations, the low quality intelligence gathering and lack of community policing in the coastal areas have not contributed positively in the fight against maritime crimes¹¹. Of particular interest are the political and economic conditions onshore especially the growing army of jobless youths in the region who have become major drivers of piracy and other trans-boundary crimes on the Gulf of Guinea.¹²

In the Niger Delta for instance, the government offered amnesty for ex-militant in 2009 which caused an immediate abatement in attacks on shipping lines and resulted in a major cease fire in the region. However, these crimes resurfaced in 2010 with more vigour as a result of the inability of the government to sustain gainful employment, as well as inability of the government to sustain the amnesty program for ex-militant of 2009.

¹⁰ ibid

¹¹ ibid

¹² Oruwari, Y. (2006). A Case Study of Urban Gangs from Port Harcourt. Niger Delta Economies of Violence: Working Paper No. 14. [Http://www.geography.berkeley.edu/Projects Resources/.../WP/14-Oruwari.pdf](http://www.geography.berkeley.edu/Projects%20Resources/.../WP/14-Oruwari.pdf).

Government must make more conscious effort to pursue more effective enforcement actions against piracy network on land. For example, “the black markets”, the illicit markets where pirated goods (especially oil) are sold around the world, remains greatly uninhibited. Enforcement of regulations against these organized crimes is encouraged. It is worthwhile for such criminal gangs to be stamped out¹³

1.3 Maritime Crimes Prosecution in Nigeria.

Inadequate laws and incapacity of government agencies have hindered effective prosecution of pirates and maritime criminals in Nigeria. Similar situation exist in many central and West African States. The absence of enabling municipal laws for prosecuting pirates, sea robbers and other criminals at sea pose a huge challenge, compounded by weak penalties and weak judicial processes within the country.¹⁴

In Nigeria, although, the Navy and NIMASA are responsible for the regulation of maritime activities and patrol on the sea, they lack prosecution powers and rely on the police, Civil defence and the Federal Ministry of justice and other agencies for such indispensable part of the criminal Justice system.¹⁵The implication is the ensuing delay in the transfer of suspects and commencement of proceedings which undermines the dourness required in such situation.

¹³Ibid.

¹⁴ Adeniyi A Osinowo. African Security Brief Publication for the center for Strategic studies.<http://www.africacenter.org/publication/combating-piracy-in-the-gulf-of-guinea>.

¹⁵ibid

In addition to the unnecessary delay usually occasioned, lack of action on the part of the government may arise, as a result of the subtle conflict or disagreement among the different institutions that play the important roles in maritime law enforcement. It is a common knowledge, that trial for many suspects of oil theft and piracy commences several months after arrest due to inefficiency of investigation or unavailability of evidence, and difficulty in determining the appropriate court with criminal jurisdiction to entertain the cases.¹⁶

During the time of incarceration, challenges in the preservation of evidence and limitation of detention periods according to the constitution of the country often weigh in favour of the suspects who regain freedom soon after arrest and recidivist becomes an open option¹⁷.

The need to punish maritime crimes has necessitated the need to criminalize acts of piracy and other illicit maritime activities nationally. A clear and comprehensive definition of piracy in proper terms is required to determine its scope and bring it under criminal jurisdiction. The scope of this definition would align with the provision of the constitution of the federal Republic of Nigeria 1999 as amended, under section 36.¹⁸

2.0 Chapter 2.

Evolution of Maritime Crimes in Nigeria.

An understanding of the history of the crisis and violence in the Niger Delta Region of Nigeria which has culminated into a myriad of criminal activities in the maritime domain would go a long way in helping to

¹⁶ Suleiman Salau. The Guardian, Nigeria 28 July, 2016

¹⁷ *ibid*

¹⁸ Section s.36(12) 1999 Constitution of Nigeria as amended

resolve the issues. The unrest in the Niger Delta started with the NDPVF¹⁹ a group which had arisen against the government in an alleged fight for their human right. The group was founded in 2004 in an attempt to gain control over the region's vast petroleum resources particular in Delta State. Until 2005, the group was headed by Alhaji Mujahid Dokubo-Asari.

The group was deeply involved in oil bunkering justified by them as their way of drawing government's attention over the exploitation of their land without commensurate gains from the hugely profitable but ecologically destructive petroleum industry, to the affected communities.²⁰ However, more groups emerged following the activities of this group and the criminal activities continued with MEND (movement for the emancipation of the Niger Delta) an offshoot group from the NDPVF who claimed to represent the grievances of the entire local community against oil companies and the Nigeria government in the pursuit of economic justice.²¹

These grievances included, but not limited to: the marginalization of the communities in terms of the distribution of the oil revenue, complete lack of infrastructural development in the area, unprecedented environmental pollution, in addition to no job opportunities for locals. This major group and other smaller groups came into existence in order to challenge the lack of governmental commitment towards them in early 2000.²²

2.1 Pattern of Attacks

¹⁹ Niger Delta Peoples Volunteer Force in 2004

²⁰Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State (Human Rights Waatch,2005)

²¹

²² Whiteman S & Souses C (2012) Dalhousie marine Piracy projects: The root causes and real Causes of Marine Piracy 88.

In a bid to pass their message across, these groups organized attacks on oil installations and infrastructure. Through such attacks, the militants gained power and influence in the region in addition to local support. Such rebellion became a major distraction and problem to the Nigerian government and the Multinational oil companies operating in the area.²³

In an attempt to foil the recurrent attacks, the Nigerian government enlisted the help of the military to quench the crisis. While military strategy, was largely unsuccessful, oil companies therefore contracted the leaders of the militants or their proxies to protect their facilities, this in turn gave more power to the militants, and resulted in their wielding major influence and holding a high stake in turning militancy into a high end extortion project²⁴.

2.2 The Militants.

In tracing the evolution of the piracy and other maritime unrest in Nigerian, traced basically to the Niger Delta region of the country, regards must be had over the evolution of crimes with the:

Fundamental group who started with just attacks on oil installations and other petty thefts. This group can be referred to as “The Unorganized Pirates”. They consisted mostly of locals, sometimes, fishermen or traders who resort to illicit activity to augment their earnings. They carry out small scale, often localized attacks, targeting fishermen at sea, robbing vessels at port and or providing territorial protection in their local areas such as the oil installations protection contracts.

²³ ibid

²⁴ Ibid

This group often comes from isolated coastal communities, where there are critical economic situations and limited prospects.²⁵ This picture closely portrays the situation in the Niger Delta and even in the coastal areas around Lagos ports, where pollution of the environment and general deprivations, deny local citizens of their means of livelihood which is usually farming and fishing. Often occasioning their resort to criminal activities.

The second category is the organized pirates. This group employs a higher level of sophistication, ambition, resources and frequently relies on violence. Their attacks involve high level hijackings, kidnappings, cargo theft or holding cargo vessels and crew for ransom. These organized pirates often have links to organized criminal gangs²⁶ that are involved in large drug trafficking which facilitate the movement of their goods into the regional and global black markets enabling them to remain in business.

The two phases of piracy in the Gulf of Guinea are alleged to both originate off the coast of Nigeria²⁷. The first phase ensued with the oil boom in Nigeria in 1960 when small groups based out of Lagos in south western coastline of the country began to attack commercial shipping traffic carrying construction supplies to the region. Facilitated by poor coastal and security conditions at the time, these attacks typically ranged from minor harassment and financial shakedowns to the theft of cargo and equipment. Although the scale and organization of these attacks grew

²⁵ Ali Kamal Deen: The legalities of the Gulf of Guinea : [https://www.usnwc.edu/getattachment/e95feaa7-8883-4008-b49b-175783f25e43/The-Anatomy-of-Gulf-of-Guinea-Piracy.aspx-0p\[\[\[n c](https://www.usnwc.edu/getattachment/e95feaa7-8883-4008-b49b-175783f25e43/The-Anatomy-of-Gulf-of-Guinea-Piracy.aspx-0p[[[n c)

²⁶ Hansen and Steffen ,2011:Murphy,2011p.69

²⁷Op cit

over time, their numbers declined through the 1980s in response to the fall in oil prices and subsequent lack of targets.²⁸

Piracy resurfaced in the mid 1990s following the government's latest round of oil licensing in 1990 originating from the Niger Delta region. This second phase has witnessed a higher level of organization and violence than seen in the first. These attacks were no longer been constrained to small scale robbery but have expanded to target container ships and oil tankers in the region for the purpose of cargo theft and oil-bunkering.²⁹

The rate of these attacks has also steadily increased over the time with height in 1996, 2006, 2003 and 2007³⁰. In 2011, in response to increased Nigeria naval patrols, the hot spots of these attacks appeared to shift down the coast to neighboring Benin and Togo while attacks have also been reported in Cameroon Guinea and Code' Ivory among others.

The first phase of piracy off the coast of Lagos was largely small scaled and subsistence in nature. Their motive was always financial gains as a direct consequence of the rampant unemployment, deep inequality, and environmental degradation, assisted by maritime capacity drawn from Nigeria's significant fishing industry. The resort to piracy became a means of survival for them. These crimes of opportunity perpetrated by small shore based groups became increasingly organized over time with the size of these groups ranging from 20-30 individuals prior to the decline of

²⁸.Whiteman S & Souses C (2012) supra

²⁹ Vaughan 2011 p.10

³⁰IMO 2010.

piracy in the region in the 1989s³¹.The hike in piracy in the last two decades involved a high level sophistication, organization and violence. According to the UN assessment mission in the Gulf of Guinea both national and international interlocutors have expressed the view that organized criminal organization is responsible for many of the pirate attacks³².

Piracy is therefore one component of the larger transnational organized crime networks that are active in oil bunkering,³³ trafficking in cocaine children, counterfeit medicines, tobacco and hard drugs across the region. Young unemployed men are frequently lured into these criminal networks by promised riches, fast money and power such that piracy gangs are increasingly compose of younger members.

It should be pointed out at this juncture, that ex-militants have also become involved in piracy, motivated by their own growing frustration with the national amnesty program implemented in 2009³⁴.A number of insurgent groups operating in the area have further employed piracy as a means to achieve their political goals. The MEND in particular, is a key player in maritime piracy, as its rise coincided with a spike in piracy in the following year 2006³⁵.

³¹ Ibid p.73

³²United Nations Security Council.(2012). Report of the United Nations Assessment Mission on Piracy in the Gulf of Guinea (7 to 24 November 2011) S/2012/45. New York: UNSC.

³³Ibid page 4

³⁴Ibid page 4

³⁵Murphy, M. (2011). The Water of Africa: Piracy in the African Littoral. *Journal of the Middle East and Africa* (2), 65-83. doi: 10.1080/21520844.2011.576452.

Other smaller groups have arisen including the Niger Delta Avengers in reaction to the suspension of the Amnesty program of 2009. Given the groups dissatisfaction with the Nigerian government oil regime, the platforms and tankers located offshore have become an important and lucrative target for attacks as they allow the group to make a strong political statement and to fund their ongoing insurgency.³⁶

The amnesty program was introduced in the Niger Delta to encourage the militants to lay down their arms in exchange for mobilizations and training programs. Although militant group initially responded positively to the amnesty initiative by 2010 but later become recalcitrant to the ceasefire and subsequently returned to piracy.

3.0 Factual Analysis of the Major Crimes on the Maritime Domain.

Aside from the threat of Piracy and armed robbery at sea, the oldest and most endemic maritime crimes in the world, which has also negatively projected Nigeria as a country and the Gulf of Guinea as a region in the world Maritime domain, so many other criminal activities plaque the country's maritime space.

Some of them are listed as indirect and grouped under transnational Organized crime and include: Money laundering, illegal deals in arms and drugs, trafficking, Illegal Oil bunkering Crude oil theft, human trafficking, smuggling, maritime pollution, IUU fishing, illegal dumping

³⁶Smith, D.J. (2011, August 12). Piracy off West Africa increases sharply. The Guardian. Retrieved from <http://www.guardian.co.uk/world/2011/aug/12/piracy-west-africaincrease-somalia>

of toxic waste, maritime terrorism, hostage taking and vandalism of offshore infrastructure.³⁷

Due to Political instability, absolute underdevelopment, and dire economic situations, as well as vulnerabilities to land -based internal sources of threats, Security in the GoG maritime domain is generally underrated and conceptualized principally in land based terms. This current maritime security challenges along the gulf of Guinea have now stimulated a serious change fundamentally, in the understanding of threats to the sub region that has gained a great strategic political and economic interest.³⁸

A wide range of maritime threats as listed above, have posed a great threat to livelihood, navigation trade, travel and exploitation of the natural resources of the countries in the GoG. The emerging trends and dynamics of these maritime issues has exposed the role played by non-state actors and has equally demonstrated how organized crime has escalated in today's world of globalization,³⁹ especially in transnational security threats.

In the whole of West Africa, Gulf of Guinea has emerged one of the most important energy regions in the world, with abundant hydrocarbons being discovered in more countries in the region. The region has become a huge economic hub in the world. The energy prospect of the gulf of Guinea is enormous. The GoG boast of fossil and renewable energy

³⁷ The Yaoundé' Code of conduct, 2013.

³⁸ .Legalities of the Gulf of Guinea Maritime Crime with Suggested Solutions:<http://www.cimesc.org/legalities-gulf-guinea-maritime-crime-suggested-solution/11783>.

³⁹ibid

sources. It ranks among the top five percentile of the petroleum producing regions for exploration and production investment worldwide.⁴⁰

The GoG accounts for about 86% of Africa's energy reserves and its primary consumption is just about 3.55 of Africa's fossil energy requirements as at 2013. Angola, Equatorial Guinea, Gabon, and Nigeria holds about 90% of the regions proved reserves while Cameroon, Ghana Sao Tome and Principe, and code D'Ivoire accounts for the remaining 10%.⁴¹

3.1 IUU FISHING.

Preserving and securing energy resources in the Gulf of Guinea especially in Nigeria is a huge challenge but far from being the only security concern existent in the country. Protection of fish stocks occasioned by the hike in IUU fishing is an evolving challenge of its own. The waters off West Africa are endowed with the world's richest concentration of fin fish, crustaceans and molluscs. Ironically, its fishing communities are among the poorest and most impoverished in the world, due to their vulnerability to IUU fishing by foreign vessels.⁴²

IUU fishing has become an easy and highly lucrative business due to the lack of monitoring and enforcement mechanisms in West Africa, especially in the GoG with major focus on Nigeria. IUU fishing alone was reported of robbing Nigeria of an estimated \$60 million in revenue

⁴⁰ Joseph Echendu :Energy Resources & Development :A case study for the GoG Region.www.iaee.org/en/publications/proceedingsabstractpdf.aspx?id=12

⁴¹ Ibid.

⁴²Ibid.

annually⁴³. Pirates target places called inshore Exclusive Zones (IEZ) which were especially mapped out to protect shallow waters where fishes come to reproduce. They target high value species whilst generating a huge amount of unwanted by-catch which is then tossed back into the ocean dead or alive.⁴⁴

These activities result in a dramatic decline in the amount of fishes caught. As a result, fishermen spend more time at sea for fewer and smaller fish catch. This can be attributed to the rate of harvest which far outweighs the rate of replenishment. Nigeria was identified in 2015 as one of the six nations including Columbia, Ecuador, Nicaragua and Mexico in which IUU fishing is rampant.⁴⁵

It is worthy of note that the fleets of trawlers which engage in IUU fishing in Nigeria, are mainly Chinese and Korean and they spend weeks plundering the seas off the Atlantic coast, exploiting the lax policing situations. Land shrimps, lobsters and snapper among other valuable species worth over \$100,000 per boat per day amounting to over 300,000,000 in West Africa sub region per boat per year.⁴⁶ Unfortunately, IUU fishing perpetuated in Nigeria by foreign vessels even local vessels remain unabated and unchallenged as a consequence of inadequate

⁴³ Joseph Echendu Energy Resources & Development :A case study for the GoG Region. www.iaee.org/en/publications/proceedingsabstractpdf.aspx?id=12 at page

⁴⁴ Agro Nigeria News of April, 13, 2015

⁴⁵ National Oceanic and Atmospheric Administration (NOAA) 2015 biennial report to congress on IUU fishing

⁴⁶ Professor A. Eyiwunmi Falaye ffs. Illegal Unreported Unregulated (IUU) Fishing in West Africa (Nigeria and Ghana) http://www.imcsnet.org/imcs/docs/iuu_fishing_Nigeria_Ghana.pdf

monitoring Mechanisms and lack of strong legal framework as well as unavailable surveillance structure.⁴⁷

These illicit activities not only result in lost of revenue to Nigeria, since fisheries generate about \$30, million in the foreign exchange earnings of Nigeria, it cost also a great means of livelihood; Protein of animal origin is in short supply in Nigeria and that situation strongly emphasis the need to supplement animal protein with fish protein to a great extent being a good source of sulphur. Particularly, fish is rich in essential Amino acids and it is suitable for supplementing high carbohydrate content⁴⁸. The Federal Department of Fisheries FDF⁴⁹ is reported to lose resources hitherto generated which are an average total sum of 44 Million Naira, from licensing trawlers annually.

3.2 IUU Regulation Gap

IUU fishing is on the increase due mainly to weak national fishery administration; including weak reporting systems, poor regional fisheries management, and effective monitoring systems. Although the IMB Piracy reporting center has recorded relatively low attacks on fishing vessels in the GoG, the Nigerian Trawler Owners Association (NAITO) contends that between 2003 and 2008, fishing trawlers were attacked 293 times in region.⁵⁰ These assaults usually involve demands for protection, money, and theft of cargo, engines, vessels or even kidnappings. The security situation deteriorated in 2008 to the point that Nigerian Trawlers Association refused to leave port in protest to the states marginal response.

⁴⁷ Ibid page 1

⁴⁸ Ibid 2.3

⁴⁹ Federal Department of Fisheries

⁵⁰ Pirates terrorize Nigerians fishing fleet.

<http://www.nytimes.com/2008/06/12/world/africa/12lagos.html>

Pirates in the Niger Delta have frequently attacked trawlers at sea. The pirates operate with speed boats fully armed with automatic weapons.⁵¹ They steal fish as well as seize trawlers and demand ransom for the release of such trawlers. Fishing companies are forced to pay such ransom. During the piracy incidents, electronic equipment, drums of lubricating oils and cash (money) are removed on board the trawlers. Trawlers are also faced with high insurance premiums as brokers have become more reluctant to cover these vessels.

3.3 Other Illicit Criminal Activities on the Maritime Domain

The other types of illicit activities on the maritime scene would be grouped under transnational organized crime and include: Illegal dealing in arms and drugs, trafficking ,human trafficking which can be tied to organized criminal groups ,habour/port security challenges in addition to the major challenge of Piracy which undermine other marine commercial interest, threatening livelihoods and most worrisome, scaring away potential investors, as well as remaining a challenge to the economic and political stability of the country.

Given the complexities of national, regional, continental and global sources and ramifications of maritime insecurity in the GoG, sustainable solution will only arise from a comprehensive understanding, mobilizing and harmonizing of actions at the different levels. The challenge is to implement actions, interventions and mechanisms that are fully integrated and holistic, rather than those in which different actors pursue disconnected and divergent measures incapable of achieving the long term designs with regards to fighting maritime crimes.

3.4Transnational Organized Crimes

⁵¹ Highlights oil bunkering, illegal fishing, illegal logging and

According to the study published by the UNODC,⁵² Organized transnational crimes such as theft, oil bunkering trafficking in Small arms and light weapons(SALW) and their ammunition, human trafficking and illegal migration, pollution to mention but a few have been on the rise along the coast of West and Central Africa since early 2000. While these crimes are wildly acknowledged in public debates, their far reaching impact is often overlooked. Today, GoG has become one of the preferred transit hubs in the global trade in narcotics and psychotropic substances largely from South America, as well as destination for fake and sub-standard pharmaceuticals from Asia and Far East.⁵³

3.5 Trafficking in Narcotics, Fake and Substandard Pharmaceuticals, Arms and Weapons.

Cocaine transiting through West Africa originated from three main sources: Colombia, Peru, and Bolivia. Similarly, Brazil has been a longstanding supply source for Lusophone to West Africa countries especially Guinea Bissau which has become a conduit for re-exporting to several other countries in the region. The UNODC report showed that Nigerian ports as the main regional hub for containerize shipments, have become strategic for large quantity transshipment of drugs from South America and the Asian markets.⁵⁴

Nonetheless, organized crime manifests itself in many forms and activities, ranging from traditional types of criminal organizations, to transnational criminal networks, with elastic structures and fluidity that

⁵²‘Transnational Organized crime in West Africa’ a threat assessment UNODC 2013

⁵³Dr Charles UKEJE/MVOMO Ella. ‘African Approaches to Maritime Security-The Gulf of Guinea. P.21

⁵⁴UNODC 2013 supra.

enables them to move fast, transform and to be controlled from multiple locations. The illicit trafficking and misuse of firearms is intrinsically linked to these criminal organizations and networks: as facilitators of violent crimes, as tools to perpetrate power, and as lucrative trafficking commodities, that fuels armed conflicts, crime and insecurity. Most often these crimes are intertwined, such as human, firearms and drug trafficking.⁵⁵

The consequences of firearms violence cannot be overemphasized, while the death toll in the context of armed conflict is well known, more lives are lost worldwide from non-conflict firearms events. The greatest danger lies not in the profit generated from the illicit firearms deals, but rather in the human misery the guns are able to inflict and the instability they can cause.

Thus, aside from the main challenges of ‘PIRACY’ and armed robbery at sea which has taken the center stage in maritime security issues, the GoG region has been reported as a major hub in the global drug trade and other illicit commercial activities, and the region faces serious challenges that are capable of undermining development efforts. Transnational Organized crime markets and the vast profits they generate clearly continue to fuel instability and hinder development in West Africa.⁵⁶

3.6 Relevant Legal Instruments

It must be noted, that to curtail transnational organized crimes, more integrated and well tailored mechanisms are required, starting from domesticating and enforcing the relevant international legal instruments

⁵⁵ . UNODC: Illicit Firearms as a threat to global Security: <https://www.unodc.org/unodc/firearms-protocol/introduction.html>.

⁵⁶. UNODC: Tracking transnational organized crime in West Africa. <http://www.unodc.org/unodc/en/frontpage/203/February/tracking-transnational-organized.html>.

and updating existing domestic laws. Such relevant international instrument include: UNTOC⁵⁷, protocol against the illicit Manufacturing of and trafficking in firearms, their parts and components and Ammunition, supplementing the United Nations convention against Transnational organized Crime-Treaty series (2001). And the Arms Trade Treaty (2013).See General Assembly resolution 67/234.

The programmes of action to prevent, combat, and eradicate the illicit trade in small arms and light weapons in all its Aspects (2001). International Instrument to enable states to identify and trace in a timely and reliable Manner, Illicit Small Arms and light Weapons (2005). Documents on Small Arms and Light Weapons A/CONF.192/PC/20. Also worthy of note is the Economic Community of West African States (ECOWAS) convention on Small Arms and light Weapons, their Ammunition, parts and Components that can be found for their manufacture, Repair and Assembly (Kinshasa Convention) 2010.

3.6 Cooperation against Transnational Organized Crime.

The mobile nature of Maritime crimes, including the opportunity for perpetrators to move across jurisdictions, during and after the commission of a crime, makes their interdiction and punishment difficult. To this end, no one state can effectively deal with maritime crimes. This understanding has propelled the international community to initiate actions to curb them. To ensure that states has the jurisdiction to proceed against ships suspected of, or engaged in the commission of maritime crimes and to further ensure that maritime criminals have no safe haven, the international communities have encouraged state parties to implement

⁵⁷. United Nations Convention Against Transnational Organized Crime (UNTOC) (2000)

domestic measures enabling them to take action through a universal ratification of maritime security instruments.

This move is not without challenges, international conventions and instruments are merely a foundation for measures to be taken, a platform upon which municipal law should take effect. Consequently, a lot depends on the states themselves therefore political will of the state is a prerequisite for any effective action to be taken against criminals in this regard. Organized crime today, is typically a network of violence and corruption perpetuated by drug cartels in order to protect their financial interests in trafficking illegal narcotics.⁵⁸ These organized crimes are usually interrelated and as the name suggests, this network of violence and crime is highly organized and spans abroad global spectrum among powerful cartels and crime syndicates. They are so powerful and believed to have stakes in virtually all of the security threats discussed therein including terrorism⁵⁹.

The United Nations Convention against Transnational Organized Crime (hereinafter referred to as CTOC) is the main international convention that is instructive here; its aim includes combating organized crimes through global cooperation regarding confiscation of property, mutual legal assistance, technical assistance and training. Criminalizing Organized Crime in all ramifications, including illicit trafficking in arms,

⁵⁸ .Organized Crime and its threat to Security Tackling a Disturbing Consequence of Drug Control, Report by the Executive Director of the UNODC, Documents E/CN.7/2009/CRP.4-E/CN.15/2009/CRP.4,1 March 2009-Commission on Narcotic Drugs, Fifty-second Session and Commission on Crime Prevention and Criminal Justice, Eighteenth Session, p.3.

⁵⁹ See Carrie Lyn Donigan Guymon, international legal Mechanism for Combating Organized Crime: The need for a Multilateral Convention', (2000) Berkeley J. Int'L-53. P gs 55-69.

drugs and persons, international law enforcement cooperation; adoption of new frameworks for mutual legal assistance, extradition and provision in respect of human trafficking⁶⁰ must be enforceable by the state parties.

4.0 Legal Framework on Piracy.

The major International legal framework on piracy is the UNCLOS. For the offence of armed robbery at sea, the SUA Convention and the protocols thereto, IMB provisions and IMO provisions. Other instruments exist such as the SOLAS, ISPS Code etc.

4.1 Definition of Piracy and Armed Robbery at Sea

It is very significant to establish the scope for the purpose of this study. Several definitions of piracy exist, which were formulated by different authors and were most times contradictory to each other, the diverse nature of these definitions also added more difficulty towards its understanding and enforcement.⁶¹

A brief analogy of the definition dilemma of piracy at the international level will be examined and some light will also be shed on the legal basis for the current anti-piracy activities today. Since the definition of piracy

⁶⁰ The protocol is: 1. Protocols to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime. (2.) Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized crime; and (3). Protocols against the illicit as in the body of the work.

⁶¹ Max Mejia, Maritime Gerrymandering: Dilemmas in Defining Piracy, Terrorism and other Acts of Maritime violence(2003) 2:2 Journal of International Commercial law 153

evolved, the UNCLOS⁶² provided a definition and scope of piracy under Article 101 thus:

- a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i). against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- b) Any act of voluntarily 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 describe in sub paragraph (a) (b)⁶³

The high points of this definition are made up of illegal acts of violence motivated by private gain, to be directed against another vessel or the persons and property on board a vessel, to be committed by persons on board a private ship on the high seas or outside the jurisdiction of any state.⁶⁴ This definition was subject to harsh criticism, especially after the Achille Lauro Hijacking due to its limited scope of jurisdiction. This definition was considered highly limiting and restrictive and therefore, very inadequate.

The fact that the international seizure such as the Achille Lauro incident is not piracy under international law prompted the conclusion of 1988 convention for the suppression of unlawful Acts Against the safety of navigation (SUA Convention) which established certain offenses without

⁶² United Nations Convention on the Law of the sea.
http://www.un.org/dept/los/convention_agreements/texts/unclos/unclos_e.pdf.

⁶³ Article 15, of the Geneva Convention on the High Sea, 1958:
http://legal.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf.

⁶⁴ AchilleLauro Hijackings ends;HTTP://WWW.history.com?this-day-in-history/achille-lauro-hijacking-ends.assed on the 11th of November 2016

the two ship requirement. The UNCLOS provision is inadequate due to the reasons stated below:

A). Article 101 applied only to offense committed on the high sea. Offenses committed inside the jurisdiction of any state are excluded from the scope of this article.

B) The definition excludes war and terrorism where the motive is political by stating that the intention is required to be for private gain/end. In other words, it is not applicable to piratical acts.

C) Lastly, Article 101 requires two ships to be involved. Therefore acts of violence committed by passengers or crew on board a vessel were not considered piracy.

The Achille Lauro hijacking of 1985 was a wake up call for the maritime community.⁶⁵ As a result of the inadequacy of the UNCLOS definition of piracy, the IMO adopted a resolution which requires states to implement measures to prevent unlawful acts against passengers and crews on board a vessel.⁶⁶

4.2 SUA Convention

The suppression of Unlawful Acts (SUA) convention was also adopted in 1988 which was aimed at ensuring that states take appropriate action against persons who committed similar offenses against a vessel. The main aim of this convention was to provide the legal frame work at the international level.⁶⁷

⁶⁵ Achillelauro Hijackings ends;<http://www.history.com/this-day-in-history/achille-lauro-hijackings-ends>.

⁶⁶ Mukherjee and Others (ed), Maritime Violence and Other Security Issues at Sea (WMU Publications 2002)Pg. 24

⁶⁷ Abhyankar (n 78) 24.

Nonetheless, it is trite to point out that the word “piracy” does not exist in the SUA convention, but a number of offenses are included that are enough to be considered as piracy or part of maritime violence.⁶⁸ It is also stated that the motive and venue of crime is irrelevant under the convention, Article 3 of the SUA convention further covers attempted offense and provides a wider scope unlike the UNCLOS.⁶⁹

4.3 IMO Convention

The IMO defined piracy in its latest resolution A.1025 (26)⁷⁰ a bit differently, stating that: For the purpose of this code, Piracy means an act defined in article 101 of the United Nations Convention on the law of the sea (UNCLOS). “Armed robbery against ships means any of the following acts:

- A) Any illegal acts of violence or detention or any act of depredation, or threat thereof, other than an act of piracy committed for private ends and directed against a ship or against persons or property on board such a ship, within a state’s internal waters, Archipelagic waters and territorial sea.
- B) Any act of inciting or of intentionally facilitating act described above. According to the above definition, the motive in the commission of this act should be private gain.

⁶⁸Supplement B under Article 3 as amended.

⁶⁹The SUA Convention defines offences of Maritime violence but does not define Maritime piracy, the IMO Resolution also provides definition but it does not criminalize piracy.

⁷⁰Code of Practice for investigation of crimes of piracy and armed robbery against ships:

<http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A.1025.PDF>

4.4 Distinctions under the Different Conventions

The SUA Convention seems to have filled the gap with regards to the motive. From the definition of IMO, it intends to compensate the restrictive nature of UNCLOS definition as regards to jurisdiction. The scope of armed robbery does not cover acts which took place within a state's contiguous zone and exclusive economic zone.⁷¹

The international Maritime Bureau (IMB) defined Piracy as:

“An act of boarding any vessel with intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of the act”⁷² Even though this definition excludes the requirement of the motivation of private gain, it still does not remove the hurdles of involvement of two ships. Notwithstanding, IMB has deserted this definitions for the UNCLOS and IMO definitions. The IMB definition also had no position in International law.⁷³

The two international regimes that define piratical acts did not criminalize them. Each one is applicable to different cases, but it totally depends on the motive and venue of the act. Different states incorporated the applicable legal framework in different ways which results in confusions and compilations.⁷⁴ This in turn highlights the necessity and the need for every state to domesticate the relevant provision of the UNCLOS with a view to adjusting the provision to suit local situation and requirements.

⁷¹In this regard, interpretation of Articles 33 and 58 is necessary.

⁷²Piracy and Armed Robbery Against Ship; Report of the period 1 January to 31 December 2009 (London, 2010)

⁷³ICC-IMB (n2)

⁷⁴Fitzpatrick and Anderson (n 50), pg 132.

Furthermore, several international organizations have adopted other definition to conceal the inadequacy of the UNCLOS provisions on piracy. These however, remain as soft law until they are applied to the Criminal legal systems in the home countries but it have resulted in a lot of difficulty in its application and enforcement which has led to ineffective mechanism for enforcement against acts of piracy.⁷⁵

In 2011, the CMI adopted a national law against acts of piracy or maritime violence, their aim was to standardize a uniform municipal law of states, this settles the conflict between the two clear cut terms.⁷⁶ Its main objective is to make sure that no act of piracy goes outside the jurisdiction of the states affected to prosecute these crimes or to extradite for prosecution in another state.⁷⁷

These national laws deal with the offenses of piracy ,armed robbery against ship and offenses described under the SUA Convention among others and it is contained in a single document which includes all types of maritime violence.The introduction of these offences of maritime violence halted the restricted application of the UNCLOS and the SUA Convention.

Nevertheless, this model law have not gained global acceptance in terms of implementation internationally, but there are hopes that it will be given effect through international and local laws of states in order to adopt a

⁷⁵Oceans & Law of the Sea (United Nations) Division for Ocean Affairs and the law of the Sea: national Legislation on Piracy: updated 26 October 2011: The General Assembly called upon states to take appropriate action under their national laws. http://www.un.org/depts/los/piracy/piracy_national_legislation.htm. assessed 10/11/2016

⁷⁶Mejia (n 73) Pg.173-175

⁷⁷Mejia and Mukherjee (n 36) pg.321.

uniformity of application. The international framework, beyond doubt only represents the instruments that are applicable to criminalize piracy and the implementation of an effective regime for the punishment of pirates.⁷⁸

The SUA convention defines offences of maritime violence but does not define Maritime Piracy. The IMO Resolution also provides a definition but does not criminalize piracy. The General Assembly called upon states to take appropriate steps under their national laws to facilitate the apprehension and prosecution of those alleged to have committed acts of piracy.

4.5 Relevant Counter Piracy Measures in UNCLOS

There are several measures that have been developed and adopted by the international community to counter piracy. Taking a brief look at the current legal frame work which has been provided by international law, comparatively the UNCLOS imposes several responsibilities on states to tackle the scourge of Piracy

Article 98(2)⁷⁹ places liability on flag states to ensure that the international safety standards are complied with:

Article 100, mandates all states to collaborate fully in the fight to suppress piracy. There have been frequent debates with regards to states responsibility, issues of jurisdiction and also enforcement powers with regards to the suppression of piracy⁸⁰

⁷⁸Some of the relevant international treaties are, International convention against the taking of Hostages, 1979, the international convention for the suppression of Terrorism Financing 1999, and the UN Convention against Transnational Organized Crime, 2000.

⁷⁹Article 94 places further responsibility on Flag states.

⁸⁰With regard to the issue of Jurisdiction, see Lijedahl (n 79) Pg.115 and powers of enforcement: see GeiB and Petrig (n 28) Pg 55-135.

Article 100(1) (a) of the UNCLOS⁸¹ transfers the right of warship boarding on a foreign vessels when there is reasonable ground to suspect that the vessel is afflicted with piracy⁸². States also have the power to arrest a pirate ship and arrest pirates.

Article 105 of the UNCLOS empowers states to seize a pirate ship or aircraft “on the high sea” or in any other place outside the jurisdiction of any state thus, every state may seize a pirate ship or aircraft, or a ship or aircraft taken by pirates and under the control of pirates and arrest persons and seize property on board. The courts of that state which carried out the seizure may decide upon the penalties to be imposed and may also determine the action to be taken with regards to such arrests.

4.6 Article 105 and the National Courts.

Article 105 states thus:

Seizure of a pirate ship or aircraft “on the high sea or in any other place outside the jurisdiction of any state; every state may seize a pirate ship or aircraft or a ship or aircraft taken by pirates or under the control of pirates and arrest persons or seize the property on board The courts of the states which carried out the seizure may decide upon penalties to be imposed and may also determine the action to be take subject to the right of third parties acting in good faith.”⁸³

This has heralded the operationalization of the national courts and conferred prosecution powers on a state as well as national courts to not only try offences but also punish such acts appropriately.

⁸¹Formally Article 22 of the Geneva Convention on High Seas 1958

⁸²UNGA Res.61, GAOR, 40th Sess.at 9, UN Doc.A/Res? 40?61 (1985) All states were urged to collaborate with other states and the UN to eliminate Piracy.

⁸³UNCLOS

4.7 Judicial Scope of the National Court

In considering the provisions of Article 105 of UNCLOS, states should try to determine the scope of their national courts for the prosecution of pirates. There are two important jurisdictional issues in assessing the role of judicial institutions. First, what type of maritime violence can be treated as piracy, and secondly, what is the jurisdictional scope for the different states to prosecute the perpetrators?

This issue also links to the UNCLOS definition of piracy, as earlier highlighted three major limitations exist under Article 101 which includes: the issues of Private ends, two ships condition and the issue of geographical location. While the first and second condition are not very problematic for piracy,⁸⁴ as substantial number of such attack occurred within the territorial waters of the coastal states, the geographical location is very germane and would be highlighted here.

4.8 Geographic Limits.

UNCLOS created the *Sui generis* Zone of the EEZ. Under the UNCLOS, piracy can only occur on the high seas or in the exclusive economic zone where the coastal states have the sovereign rights and not sovereignty, and UNCLOS provided for the applicability of international law related to piracy in the EEZ.⁸⁵ The provision seems to preclude attacks in the territorial seas, archipelagic waters, and internal waters of the coastal states. But contemporary maritime violence on ships occur in the territorial seas of coastal states⁸⁶ Against this backdrop, providing

⁸⁴The definition is still limited when it concerns maritime terrorism.

⁸⁵UNCLOS Supra note 11 ,article 58(2)

⁸⁶. Robert C Beckman, Combating piracy and Armed robbery Against Ships in Southeast Asia: The way forward, 33 OCEAN DEV.& INT'LL.317 (2002) IMO

jurisdiction only to coastal states in cases of armed robbery against ships in territorial waters and not treating such as piracy is justified considering the sovereignty of coastal states over its territorial waters⁸⁷

For the purpose of this work, the geographical limitation of the UNCLOS definition of piracy is not a major hindrance in the process of operationalization of the role of national courts in the global context. What is required is a strong political will on the part of states to equip its national courts for this instrumental role in combating piracy and armed robbery at sea and other related offences by ensuring the prompt prosecution of alleged offenders.

4.9 Universal Jurisdiction:

This applies to the prosecution of Maritime Pirates. Pirates under UNCLOS are treated as *Humani generis* and the UNCLOS provided for universal jurisdiction to the court of the country that seizes a pirate ship.⁸⁸ Piracy is regarded as a crime of universal jurisdiction,⁸⁹ under customary international law that has been codified by intentional treaties adopted in the twentieth century have clearly established universal jurisdiction for Piracy,⁹⁰ to prevent and suppress piracy has been widely

report on Acts of Piracy and Armed robbery Against Ships, Doc.MSC.4/Circ 133 (March 19) 2009.

⁸⁷ M.D.Saiful Karim: Prosecution of Maritime Pirates: The National Court is dead- Long Live the National Court. [Http://www. 32 Wis.Int'L.J.37](http://www.32Wis.Int'L.J.37) 2014

⁸⁸ UNCLOS, art.105

⁸⁹ The Princeton Principle on Universal Jurisdiction: National COURTS AND THE PROSECUTION OF SERIOUS CRIMES UNDER INTERNATIONAL LAW 18 21 9 (Stephen Macedo ed, 2004)

⁹⁰ M. Cherif Bassiouni Universal Jurisdiction for international crimes: Historical Perspective and contemporary Practice, 42 VA.J.INT'L L. 81, 108 (2001)

recognized in customary international law as the international crime per excellence to which universality applies.⁹¹

Pirates were considered outlaws even before the evolution of modern international law.⁹² It was recognized that every state has the prescriptive, adjudicative and enforcement jurisdiction over all piratical acts on the high seas even in the absence of any link with the offence perpetrators, and the victim.⁹³ The national court therefore plays a very important role in cases within universal jurisdiction also. A state in the exercise of the universal jurisdiction carries out action on behalf of the global community against enemy of mankind in the interest of public order. Article 105 allows for the exercise of jurisdiction but does not impose an obligation to prosecute pirates in domestic courts. Such obligation is therefore discretionary both under UNCLOA and the HSC.

However, while the UNCLOS does not impose an obligation on member states to set in motion the role of their national courts for the persecution of pirates, the SUA Convention does. It does not leave the question to the political determination of member States. The SUA Conventions provision to extradite or prosecute clearly imposes an obligation on states to take affirmative action with regards to maritime offences.

5.0 FACTORS DRIVING INSURGENCY.

In recent times, piracy has become a business venture for criminals. It has become a very lucrative venture with huge turn over in millions of Naira

⁹¹ .Bassiouni, *supra* note 40 at 110-11

⁹² . Kenneth C. Randal, *Universal Jurisdiction under International law* 66 TEX.L.REV.785, 791 (1988) Note 40 at 791.

⁹³MANUAL OF PUBLIC INTERNATIONAL LAW 365 (MAX Sorensen ed,1968)

which accrue through the ransom paid for the release of hijacked vessels or kidnapped seafarers. A huge turnover is also realized from the sale of stolen oil cargo.

However, piracy like every other business has some elements and levels of challenge but mostly why it has remained successful despite the efforts of the security agencies in Nigeria remains a big question. The one million question is who are those who engage in piracy, and why have they remained successful in the illicit business they have chosen as their own.

This brings us to the examination of the driving forces of maritime Piracy and other forms of criminal activities in Nigeria. These causes can be conveniently grouped under Poor Governance, which has precipitated the following: Corruption and mismanagement in the oil sector, Absence of legal consequences, Chronic unemployment, Perverse poverty, Absence of state and government presence, Lack of state capture and inclusiveness, Pollution, Poor funding and Environmental degradation.

In his article, examining piracy in the Gulf of Guinea region, Major Eero Tepp identifies eight major factors contributing to piracy in the region. These factors include “legal and jurisdictional weakness, favorable geography, conflict and disorder, underfunded law enforcement, inadequate security, permissive political environments, cultural acceptability, and promise of reward.”⁹⁴ Linked to oil development and the resulting economic, social, and environmental conditions in the Niger Delta”⁹⁵

⁹⁴(Tepp, 2012: 188) Tepp, E., 2012. The Gulf of Guinea: Military and Non-Military Ways of Combating Piracy. *Baltic Security and Defense*. 14. no. 1: 181-204

⁹⁵(Ibid: 7).

The inhabitants of this region depend predominantly on oil revenue, yet – due to government corruption and exploitation – only a small percentage of the revenue reaches the local populace⁹⁶ the issue of large scale corruption and mismanagement in the oil sector invariably in the Nigerian oil sector which mostly affect the Niger Region has become endemic and needs urgent attention. Piracy and other illicit maritime crimes may be a long way from being over if these issues are not raised and adequately tackled.

Unemployment and the lack of economic opportunities encourage many to turn to piracy as a means of livelihood. Although terrorist organizations benefit from cooperating with pirates, attacks are largely motivated by financial and not political gain, and thus do not stem from terrorist organizations. This is in keeping with the assertion by economist Paul Collier that on a larger scale, greed and not grievance underscores the emergence of conflict.⁹⁷

It was reported that crude oil was being stolen on an industrial scale with ready buyers in the Gulf of Guinea, the United States, Europe and several Asian countries. The Report said that Nigeria loses \$8 billion a year to theft by politicians, security forces, militants, oil industry staff, oil traders, and members of local communities, most of who have no interest in stopping it. The request by the Deputy Prime Minister of Britain for the repatriation of about \$150 billion illegal oil proceeds stolen and laundered in global financial hubs including London, New York, Geneva, Singapore, British Crown Territories and elsewhere have yielded no

⁹⁶Ibid at 7

⁹⁷(Collier, 2007).

results.

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The United Nations very recent release was that Nigeria was losing \$1.5 billion monthly to piracy, armed robbery at sea and fuel supply fraud. That Nigeria sells crude and import products into Nigeria is for corrupt tendencies. That Nigeria cannot manage the petroleum subsidy regime h is a result of corruption.⁹⁹Corruption in the Niger Delta is the root cause of the youth's restiveness.

Several ad-hoc government intervention programmes have not impacted on the rural dwellers. Many managers of these ad-hoc agencies, who mostly are from the Niger Delta, saw such funds as their share of the national cake. Unfortunately governments acquiesce to it with little or no monitoring of such programmes has also led to a lot of lapses and mismanagement where the poor has nothing at all and the rich gets richer¹⁰⁰.

5.1 Possible Solution.

Government should plan development programmes for communities hosting critical energy infrastructure who live in abject poverty and squalor alongside opulent and affluent oil companies' settlements. The government should invest in the construction of refineries and petrochemical plants in the Niger Delta region to diversify the economy.

⁹⁸The Chatham House of United Kingdom Think Tank Publication in September 2013

⁹⁹. Remarks at a UN Security Council Open Debate on Peace Consolidation in West Africa: Piracy and Armed robbery at Sea in the GoG. April 25,2016. <http://www.vanguardngr.com/2016/05/impressionistic-corruption-niger-delta-howitzers/>

¹⁰⁰ Ibid

Large scale corruption has been identified as a major deriving force towards maritime crimes. Huge sums of monies are laundered through the international financial system; providing a huge source of virtually untraceable funds which is then be used by criminals to bribe government officials, bypass established financial controls, and could be used to fund additional illegal activities in the EEZ¹⁰¹.

To truly tackle youth restiveness in the Niger delta, the listed areas must be addressed. While the Amnesty program may have seemed successful at the time it was introduced, it was short term and was not sustainable because the required funds was huge. Empowering the youths would be more sustainable. The PAP was initiated by the administration of late President Umaru Musa Ya'Adua on June 25, 2009 with 26, 358 ex-agitators granted amnesty after meeting the government's deadline to surrender their arms.

Following a seemingly relenting violent protests in the Niger Delta and Abuja by ex-militants claiming to have been excluded from the scheme, the immediate-past president, Good-luck Jonathan had in late 2012 approved the inclusion of an additional 3,642, bringing the total number to 30,000.¹⁰² No fewer than 7,556 ex-agitators (beneficiaries) of the Presidential Amnesty Programme (PAP) are exiting the scheme in 2016 with a total savings of N6.2 billion accruing to the federal government. Large sums that would go a long way in creating employment to be able to absorb the youths already trained.

¹⁰¹ University of Ghana <http://ugspace.ug.edu.gh> page 23. maritime security and safety in the gulf of guinea: tackling the challenges of piracy and other maritime transnational threats in the gulf of guinea

¹⁰²This day, Thursday Nov,3 2016

Massive unemployment is another major challenge contributing to the raising incidents of piracy in the Niger Delta., Unemployed youths are readily available for recruitment into crime. These youths who are attracted to promises of riches turn out as the foot soldiers that are utilized in the perpetration of maritime crimes in Nigeria.

5.2 The Socioeconomic impact of the Crude Oil in Nigeria.

In appraising the factors that drive crime in the Niger delta, a brief understanding of the history of the Nigerian black gold and its contribution in the formation of the Niger delta is imperative in order to be able to find a lasting solution to the crises which has not only ruined the peace and stability of the Niger delta region but which is greatly threatening the peace and stability of the entire nation.

With the discovery of oil in Oloibiri in 1956, Shell BP (as it then was) sinking 17 oil wells in Oloibiri resulting in the exploration yielding over 20 million barrels of crude oil¹⁰³It is assumed that the Niger delta would be a gigantic economic reservoir of national and international significance following the discovery of its wealth of oil and gas. One would expect that in exchange for the vast output of the natural resources from its land should be explosive revenue that would result in rapid socioeconomic developments and noticeable transformation within the Delta itself.¹⁰⁴

But in reality, administrative neglect, crumbling social infrastructure and services, massive unemployment, overwhelming corruption, social

¹⁰³(Keshi and Whatts,2008) Curse of the Black Gold: 50 years of oil in the Niger delta: Brooklyn power house.

¹⁰⁴(UNDP 2006) Niger Delta Human Development Indices report.

deprivation, abject poverty, filth and squalor in addition to endemic conflict has become the bane of the Niger Delta of Nigeria¹⁰⁵. The highlighted situations, especially the lingering crises in the region contribute to the scourge of maritime piracy in two main dimensions. First, the widespread militant attacks and sabotage of oil installations and facilities has led to a situation where security interest and attention has been on the protection of these strategic facilities to the detriment of a more comprehensive policing and patrol of the Nigerian territorial waters.¹⁰⁶ This could explain the reason behind the unhindered piratical attacks on fishing trawlers and cargo vessels.

The second reason which seems more fundamental is the proliferation of arms and light weapons as a direct consequence of the crises in the Niger Delta region. Efforts on the part of the security personnel to check oil bunkering activities have further triggered resistance on the part of the bunkers who recruit and arm youths to sustain their lucrative trade. The bunkers and pirates' in-turn invest the proceeds from their illegal business in the procurement of more sophisticated weapons in order to outsmart any perceived enemies¹⁰⁷. In every instance the army of jobless youths are easy targets for recruitment for these dirty jobs.

Enormous possibilities for industrial development abound in terms of the abundance of the raw materials in the region but these remained under

¹⁰⁵www.ccsenet.org/jsd Journal of Sustainable development Vol 4, No.3; June 2011. Published by the Canadian center of science and education.

¹⁰⁶(Onuoha C and Habiba I Hassan) National Security Implications of Sea Piracy in Nigeria's Territorial Waters The Nigerian Army Quarterly Journal 2009 PDF.0

¹⁰⁷O. Iheanu and F.K Mohammed (ed), Oiling Violence. The proliferation of Small arms and light weapons in the Niger Delta (Lagos Frankard Publishers 2004)

utilized and unrealized.¹⁰⁸ Beyond the rich oil and gas deposits, the Niger delta is blessed with arable land for agricultural purposes, extensive forests excellent fisheries from their abundant sea body, and a large labour force.¹⁰⁹

In contrast however, the potential for economic growth and sustainable development has been replaced by abysmal economic and social conditions of absolute neglect by existing policies and actions subjecting the locals to abject poverty and suffering in the midst of plenty, evoking the feeling that the oil and gas endowments is rather a curse and a double edged sword¹¹⁰.

Painfully, the region that produces the energy needs of the world, from the United States of America, the United kingdom, The Netherlands etc imports the fuel they use irrespective of the fact that their land yields over 2 million barrels of the product per day. Basic amenities are lacking, roads are almost none-existent, whereas the wealth emanating from their region funds gigantic infrastructure developments in the other parts of the country and provides the funding for expensive peace keeping operations in the other parts of Africa.¹¹¹

Development plans in the Niger delta are mostly short term and never people centered¹¹² such plans tended to be at the whims and caprices of the officials and lacked essential civil society and grass roots inputs or participation. They were also not sufficient, far reaching and diversified, lacked longitudinal or symmetrical scope and coverage to achieve

¹⁰⁸Op cit at page 3

¹⁰⁹(Jonathan 2004)

¹¹⁰UNDP Human Development report in the Niger Delta 2006

¹¹¹Ibid page 4

¹¹²Keshi and Whatts (2006)

inclusive goals of human development.¹¹³ Such unsustainable plans included the following:

The 1957 Willinks Commission of inquiry set up to recommend the best strategies for the development of the region which has the most difficult terrain in the country¹¹⁴ The commission recommended that owing to the fragile ecology and the peculiar developmental challenges facing the Niger delta, special focus and considerations should be given to facilitate the development of the area. It concluded by stating that “a feeling of neglect and a lack of understanding was widespread....a case has been made out for special treatment of the area. This is a matter that requires special effort because the region is poor, backwards and neglected” That conclusion is as true in the Niger Delta today as it was in 1957¹¹⁵.

In reaction to the above report, the post independence government composed the Niger Delta Development Board (NDDB) in 1960 to manage the developmental needs and challenges of the region. The achievement of the commission was not far reaching and lacked broadness.¹¹⁶ Subsequent and persistent agitation from the local populace for a structured development plan in the region resulted in the setting up of the Presidential Task force Account (Popularly known as the 15% committee) in 1980, by the Shehu shagari administration¹¹⁷ 15 percent of the Federation Account was dedicated to the commission to

¹¹³www.ccsenet.org/jsd Journal of Sustainable development Vol 4, No.3; June 2011.
Published by the Canadian centre of science and education

¹¹⁴Daily times (2008)

¹¹⁵Ibid

¹¹⁶Keshi and Whatts (2006)

¹¹⁷Daily Times, 2008 182

tackle the developmental problems of the region. The board was also ineffective and was subsequently dismantled¹¹⁸.

Other strategies and structures emerged¹¹⁹ but never stood the test of time as they remained largely ineffective in addressing the feeling of neglect which engulfed the Niger Delta. There was the (NDBDA) Niger Delta Basin Development Authority set up in 1976, Oil Mineral Producing Area Development Commission (OMPADEC) in 1992¹²⁰ and even more which were all short termed.

The long years of Government absence, neglect, no state inclusion, and deprivation coupled with the shortcoming of the oil companies as well as the failure of the former developmental initiatives had by the 1990 created a volatile atmosphere characterized by protests agitations and communal conflicts¹²¹. The region in that period has become quite restive, with irate youths disrupting oil production activities in a bid to attract government attention and ended up culminating in the emergence of ethnic Militias.

In 1999, Former President Obasanjo constituted a new body “the Niger Delta Development Commission (NDDC) to take over from OMPADEC¹²². To achieve its mandate, the NDDC board identified areas of focus including: development of social infrastructural, Technological and environmental remediation, Economic stability, human development, Pursuit of peaceful environment that would allow tourism to thrive and

¹¹⁸ www.ccsenet.org/jsd. Journal of Sustainable development Vol4, NO 3 June 2011

¹¹⁹ *ibid*

¹²⁰ *ibid*

¹²¹ UNDP 2006

¹²² Daily Times 2008

would support buoyant culture.¹²³ The Changes in the development initiatives have continued with each successive government and the most felt being that under the late President Y'ardua administration which introduced the amnesty programme in 2002.

5.3 Consequences of Oil Exploration on Niger Delta.

Multinational oil companies like shell, chevron, Mobil, ELF, Agip, and Texaco among others are present in the Niger delta and have been involved in some ventures with the Federal government in connection with oil exploration, exploitation and production.¹²⁴ However a juxtaposition of their operations and human deprivation in the region has indicated that the oil companies have contributed largely to the poor physical and human growth of the affected communities. Including, the non observation of human rights, non compliance with environmental standards for exploration and exploitation and no restitution for damages.

The oil Companies, particularly shell has operated in the region for over 30 years without appreciable control or environmental regulation to guide their activities.¹²⁵ The activities of the multinational oil companies have resulted in gross environmental degradation of the Niger Delta Region ranging from a pollution of the farmlands, water bodies, the loss of means of livelihoods for the locals, rampant unemployment and poverty abound. In August 2008, a fault in the Trans-Niger pipeline resulted in a significant oil spillage into the Bodo creek in Ogoniland.

¹²³ Nigeria: Petroleum Pollution and Poverty in the Niger Delta. Amnesty International. Assessed at www.amnesty.org.

¹²⁴ Ibid at page 4

¹²⁵ www.ccsenet.org/jsd. Journal of Sustainable development Vol4, NO 3 June 2011

The oil poured into the swamp and Creek, covering the area in the thick slick of oil and killing the fish that the people depend on for food and for their livelihood.¹²⁶ The spill was investigated by a local NGO, the center for Environment, Human rights and Development (CEHRD) which reported that the spill had resulted in the dearth and damage to a number of species of fish that provide the protein needs of the local community including widespread damage to Mangroves which are an important breeding ground.¹²⁷

The pipe that burst was the responsibility of shell Petroleum Development Company which failed to take any action from the time of the burst till 7th of November, 2008 in contravention of Nigerian Oil industry regulations¹²⁸ neither did the federal regulators take any action or step. “The Creek is dead was the conclusion of the CEHRD”¹²⁹

Poverty has become a way of life due to economic stagnation, agricultural underdevelopment from soil infertility resulting from the high and persistent pollution of farm lands in the region: unemployment; poor quality of life due to shortages of essential goods, facilities and money:

¹²⁶www.cehrd.org/environment and conservation program, Persistent oil spillage at bodo Creek: Unprecedented impacts on ecosystem stability and food security of Ogoni Community” October 2008.

¹²⁷www.cehrd.org p157

¹²⁸The Department of petroleum resources Environment Guidelines and standards for the petroleum Industry in Nigeria (EGASPIN), Revised Edition 2002, Section B Para 2.6, states “For contamination on waters, it shall be required that operators respond for immediate (SIC) containment of oil spill in order to prevent the spreading of the spilled product” Para 2.6.3 goes on to say that clean up shall commence within 24 hours.

¹²⁹Amnesty international Petroleum, Pollution and poverty I the Niger Delta.

isolation and poor communication; government insensitivity; unhealthy environment and malnutrition.¹³⁰ Such conditions affect most members of the affected communities because it is not only income poverty that is the problem but a total lack of access to social and physical infrastructure. The traditional form of work in the Niger delta has become quite unattractive because of weak earnings relative to the oil sector and such apathy has led the youths into crime.¹³¹

6.0 Nigerian Legal Framework for the Prosecution of Maritime Crimes.

Currently, Nigeria has no legal framework to prosecute criminal acts committed on the maritime front. The lack of enabling laws in this area in Nigeria has undermined security in no small measures. Nigeria has attempted to pass numerous anti-piracy legislation but has remained unsuccessful till date¹³².

Nigeria was labeled one of the hot-spots for maritime piracy in 2010.¹³³ The IMB stated that the most affected areas for piracy are: the gulf of Aden, the red Sea, and the Waters off the coast of Somalia, Bangladesh, Nigeria, Indonesia and Malaysia”. Surprisingly, the problem seems to have remained the same ever since that report in 2010.

¹³⁰UNDP(2006)

¹³¹¹³¹Prosecution of Maritime Pirates: The National Court Is dead—long Live the national Court. M.D. Saiful KariMhttps://hosted.law.wisc.edu/wordpress/wilj/files/2015/03/Karim_final.pdf

¹³² Ocean Beyond piracy; <http://oceansbeyondpiracy.org/piracy-law-database/west-africa/nigeria> retrieved on the 5th of November,2016

¹³³Int’l Mar. Bureau, Piracy and Armed Robbery against Ships—Annual Report 2009, 6 (2010).

To begin to stem the tide of piracy and other maritime crimes, through prosecution, adequate legal framework must exist to define crimes and punish criminal activities in the country. Currently, the unavailability of laws for the prosecution of Maritime crimes has posed a great challenge towards legally addressing the scourge.

6.1 Achieving Successful Prosecution of Maritime Crimes in Nigeria.

Even though Nigeria has rectified and are party to many international conventions ¹³⁴ they are yet to establish the necessary legal and institutional frameworks at the national level which will enable these conventions to be applied locally in line with the provisions of the constitution¹³⁵ as an aid for the prosecution of crimes in that regard.

It has been established that pirates and other criminals most times exploit this laxity and loopholes in the law to operate almost with impunity. Recently, Nigeria purportedly domesticated the SUA Convention of 1988 with the accompanying protocols through the provision of Section 215(h) MSA¹³⁶ of 2007 by “enacting or incorporating the SUA Convention by reference. Much as it is quite desirable to domesticate the SUA Convention, and the protocols thereto, the laid down procedure in the constitution must be complied with at all times.

¹³⁴See United Nations Convention on Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397

[hereinafter UNCLOS]; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA Convention 1988].

¹³⁵Section 12, of the Nigerian Constitutions 1990 as amended.

¹³⁶The Nigerian Merchant Shipping Act, 2007

It is therefore doubtful, whether the procedure adopted in domesticating the SUA in Nigeria is right in the light of the following provisions:

Section 12 of the 1999 constitution provides that “No treaty between the Federation and any other country shall have the force of law unless to the extent to which any such treaty has been enacted into law by the National Assembly”.

In reliance on this provision, the Supreme Court of Nigeria held in the case of **REGISTERED TRUSTEE OF THE National Association of Community Health Practitioners of Nigeria &Ors V Medical and Health Workers Union of Nigeria**.¹³⁷That:

*“In essence, what the legislature meant or intended is that for a treaty to be valid, and enforceable, it must have the force of law behind it, i.e it must be supported by a law enacted by the National assembly, not bits and pieces of provisions found here and there in the other laws of the land, and not specifically so enacted to domesticate it, to make it a part of our law, to interpret similar provisions, as being part of International Labour Organization Conventions just because they form parts of some other enactments like the African charter of Peoples Rights etc will not be tolerated.”*¹³⁸

In a similar vein, the supreme Court held in **Abacha v. Fawehinmi**¹³⁹ that *“Before its enactments into law, by the National assembly, an international treaty has no such Force of law as to make its provisions justifiable in our courts.....Domestic courts has no jurisdiction to construe or apply a treaty: nor could it incorporate treaties; save the law*

¹³⁷(2008) 2NWLR (Pt.1072)575 at 623

¹³⁸See also MHWUN V. Min of Labour & Productivity (2005) 17 NWLR (Pt.953)120 at 156/7CA

¹³⁹(2000)6NWLR (Pt.660)228at288

of the land. They have no effect upon the citizenry rights and duties in common law or statute.”

The purport of the above is that Nigeria needs to domesticate any international treaty by first enacting same by an Act of the National assembly into the laws of the land.

6.2 Analysis of Maritime National Laws in Nigeria.

For the purposes of this research, the following relevant laws regulating maritime activities in Nigeria will be considered: These are some of the laws that relate to breach and contravention of laws;

Coastal and inland Shipping (CABOTAGE) Act 2003

Merchant Shipping Act 2007

NIMASA ACT 2007.

International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004.

Nigerian Territorial waters Act 1967.

The major problems with these laws are that most of their provisions are archaic, obsolete and do not even contain provisions criminalizing or punishing acts of Piracy or the related offences of armed robbery at sea, or other illicit activities at sea.

6.3 THE LAWS.

The Merchant Shipping Act was updated in 2007. Part XI relates to the safety of Maritime navigation. Section 215 provides that at “the commencement of this Act, the following Conventions Protocols and their amendments relating to Maritime Safety shall apply:

- (a) International Convention for the Safety of Life at Sea, 1974(SOLAS);
- (b) Protocol Relating to the International Convention for the Safety of Life at Sea, 1988 and *Annexes I to V* thereto;

- (C) International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978(STCW) as amended;
- (d) International Convention on Maritime Search and Rescue, 1979 (SAR);
- (e) International Labour Organization Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932);
- (j) International Convention on Maritime Satellite Organization, 1976 (INCMARSAT) and the Protocol thereto;
- (g) The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990;
- (h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988and the Protocol thereto;
- (i) International Convention on Salvage, 1989;
- (j) Placing of Seamen Convention, 1920;
- (k) International Ship and ports Facility Security (ISPS) Code; and
- (l) International Convention for Safe Containers, 1972.

216.-(1) the minister shall be responsible to make regulation for the application of the provision of such convention.

It therefore, domesticated the IMO Convention for the suppression of Unlawful Acts against the safety of maritime Navigation (1988) and its related Protocol on Fixed platforms.

While this is a laudable development, the procedure and process of ratification in this sense does not compel with the constitutional provisions to enable it enjoy local application. Incorporation by reference through amendment is not proper in Nigeria. Moreover, the second argument against section 215(h) MSA on the procedure of domestication

is that it does not contain any specific provision on the implementation of the SUA or features of punishment for the SUA offences.¹⁴⁰

Besides, the protocols¹⁴¹ to the SUA were not ratified by Nigeria at that time, and could not have been so domesticated by a county which is not yet a party to it by reference. Therefore, in accordance with the provision of Section 12 of the 1999 constitution, the SUA convention signed by Nigeria cannot have the force of law or be enforceable in Nigerian courts.

AS the Supreme Court further held in **Abacha v.Fawehinmi**¹⁴², at 288/289, “unincorporated or undomesticated treaties might have an indirect effect upon the constitution of states, or might give rise to a legitimate expectation by citizens that the government ,in its acts affecting them ,would observe the terms of the treaty and so it is submitted that even without being ratified by Nigeria, Nigerians have a legitimate expectation that the Federal government in its acts affecting them, would observe the terms of the SUA Convention 1988 it has ratified.

6.4.1 Nigeria Maritime Administration and Safety Agency (NIMASA) ACT NO 17, 2007.

¹⁴⁰Dr.Austin Blanco-Bazan In his IMO advisory mission Report on Anti-Piracy National legislation for Nigeria May, 2010 page 14.

¹⁴¹Protocol 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 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005

¹⁴² Supra.

NIMASA was established by an Act of National Assembly as a body corporate with perpetual succession that can inter-alia enter into contract and incur obligations and has the objective of promoting and regulating maritime safety and security in Nigeria, and be responsible for executing the provisions of the Act and other Acts on maritime safety and maritime security under the supervision of the Federal ministry of transport.

It is trite to underline that through NIMASA, the Federal Government has initiated machinery for the drafting and enactment of the “Piracy and Other Unlawful Acts At Sea (And Other Related Offences) Bill. The bill is comprehensive and if passed will go long ways in addressing some pressing issues concerning maritime offences in the country.

Part 1 of the bill comprises the short title and Interpretation sections; Part 2, Establishment of jurisdiction over prosecution of offenses created in the bill. Part 3 deals with Offences, Part 4 is on Enforcement and Safeguards, and Part V is on requests, inter-agency and regional Cooperation Assistance, Dispute Resolution Methods. Part 6 provides for reporting of incidents, While Part 7 is on Repeals and Modifications.

For the first time, armed robbery against ship was defined in part 1 thus;

“any illegal act of violence, or detention, or any act of depredation committed in the Nigerian territorial waters for private ends by the crew or the passengers of a private ship or private air craft and directed against another ship or aircraft or against any person or property on board such ship or aircraft and for the purpose of criminalization and punishment, all acts of armed robbery are considered to be included within the meaning of unlawful act in this Act.

‘Court’ means the Federal High Court of Nigeria or any court having jurisdiction over the

matters and offences prescribed under this Act.

‘Piracy’ includes any of the following acts by any person or group of persons namely:

(a) any illegal acts of violence or detention, or any act of

Depredation, committed for private ends by the crew or the passengers of a private ship or a

Private aircraft, and directed:

(i) Beyond the Nigerian territorial waters, against another ship or aircraft, or against persons

or property on board such ship or aircraft; or,

(ii) Against a ship, aircraft, persons or property in a place beyond the Nigerian territorial waters;

(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) Above.

‘Pirate ship’ or ‘Pirate aircraft’ includes a ship or aircraft intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in the meaning of piracy or if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons who have committed that act and the acts of piracy committed by a warship, Government ship or government aircraft whose crew has mutinied and have taken control of the ship or aircraft, are assimilated to acts committed by a private ship or aircraft.

‘Unlawful act’ includes an act (other than an act of piracy under this Act) committed by any person or group of persons if that person or group of persons unlawfully and intentionally:

- (a) Seizes or exercises control over any ship or a fixed platform by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a ship or a fixed platform if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship or destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) 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; or
- (e) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
- (f) Destroys or strongly damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (g) Communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- (h) Falsely pretends to have suffered or become a victim of any of the acts stated in (a), (b), (c) and (d) above whether or not the false pretence is for the purpose of demanding or receiving ransom or other monetary payment; or

(i) When the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government in Nigeria or an international organization to do or abstain from doing any act:

(a) uses against or on a ship or on a fixed platform or discharges from a ship or a fixed platform any explosive, radioactive material or BNC weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(b) Discharges, from a ship or a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (h)(i) herein, in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) Uses a ship in a manner that causes death or serious injury or damage; or

(d) threatens, with or without a condition (whether as to ransom or otherwise), aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the unlawful acts set forth herein if that threat is likely to endanger the safe navigation of the ship in question or the safety of a ship or a fixed platform; or

j) Transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition (whether as to ransom otherwise) death or serious injury or damage for the purpose of intimidating a Population, or compelling a Government or an international organization to do or abstain from doing any act; or

(ii) Any BCN weapon, knowing it to be a BCN weapon as defined in this Act; or

(iii) Any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to

be used in a nuclear explosive activity or any other nuclear activity not under safeguards to an International Atomic Energy Agency comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose; Provided that it shall not be an offence under this Act if any item in j(ii) or j(iii) is transported to and from the territory of or under the control of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where the resulting transfer or receipt or the holding of such items is not

Contrary to the State Party's obligations under that Treaty; or

(k) Transports another person on board a ship knowing that the person committed an act that constitutes an offence defined as unlawful act under this Act or intending to assist that person to evade criminal prosecution; or

(l) Injures or kills any person in connection with the commission of any of the offences set forth above or;

(m) Attempts to commit, or participates as an accomplice in, or organizes or directs others to commit an act set forth herein or contributes to the commission of one or more of the offences set forth herein by a group of persons acting with a common purpose intentionally and either (i) with the aim of furthering the criminal activity or criminal purpose of the group where such activity or purpose involves the commission of an offence set forth herein or in the knowledge of the intention of the group to commit an offence set forth herein.

Part 3 provided for punishment and penalties for the different offences under the Bill including Forfeiture, restitution, death penalty (if death resulted from the crime), life imprisonment and fines, depending on the gravity of the offense. It also has provisions on extradition of offenders

and the inclusion of the offences of unlawful act as extraditable offences in certain cases and the procedure for extradition. Part 4 deals with enforcement by enforcement or authorized officials boarding ships to search on reasonable suspicious grounds, the procedure for such searches and the stringent Measures of safeguards against abuse of the powers are also provided for.

The challenge to the operationlization and enforcement of this bill is that it has not being passed into law by the National Assembly of Nigeria .A major amendment of the bill was undertaken by NIMASA in conjunction with officers drawn from the relevant stakeholder under the auspices of the Embassy of the United States of America in Nigeria. The amendment is with a view to ensure that new and emerging trends in the area of maritime safety and security are covered.

Section 36(12) of the constitution provides that no person shall be punished for a crime unless such is defined in a written law and the punishment for the offence is expressly provided. This has in most cases truncated the prosecution of maritime crime offenders since there is no provision of the law punishing Maritime crimes or even defining the offences.

Take for instance, Section 1 of the Terrorism Act 2011 ,provides that kidnapping of a person, seizure of an aircraft, ship, their diversion or use for some crimes, supply or use of weapons, Explosives or nuclear, biological or chemical weapons without lawful authority are offences. Similarly, Section 15 of the money laundering Act,2011 makes piracy an offence punishable with 5 to 10 years imprisonment but the meaning of piracy is not stated in the Act contrary to Section 36(12) of the 1999 Constitution.

An examination of most maritime laws indicate that their provisions are obsolete, archaic, not up to date and do not address current challenges in the maritime front, especially the modern ways of prosecuting and penalizing arrested pirates due to the absence of the needed exhaustive legal framework.

7.0 Legal Gaps in the Framework for the Prosecution of Maritime Crimes in Nigeria.

The criminal prosecution of piracy and other illicit crimes has traditionally been a matter for determination by the local courts equipped with domestic criminal norms and procedures. The efforts made in Somalia to introduce international prosecution model failed.¹⁴³ The criminal prosecution of acts of piracy or armed robbery at sea against ships require among other things, the existence of criminal norms defining, criminalizing and prohibiting acts and conducts and prescribing penalty.¹⁴⁴

Article 101 of the UNCLOS and Article 15 of the HSC defined the scope, of the enforcement jurisdiction. The two treaties confer jurisdiction upon states rather to criminalize piracy.¹⁴⁵ Suspects must be tried under domestic criminal norms¹⁴⁶. Article 14 of the Harvard Draft Convention expressly stipulate that the law of the state which exercises either in the

¹⁴³UNSC, Report of the secretary general on possible option to further the Aim of Prosecution and imprisoning persons Responsible for Acts of piracy and Armed robbery at sea off the coast of Somalia UNdocS/2010/394

¹⁴⁴Rothwell, Oude Elferink, Scott & Stephens. The Oxford handbook of the law of the sea

¹⁴⁵Ibid at page 859

¹⁴⁶MD Fink and RJ Galvin Combating pirates off the coast of Somalia: Current legal challenges (2009) 56 Netherlands International law review 367,389.

wording or the draft such criminal jurisdiction defines the crime, govern the procedure and prescribes the penalty and there have been no contradiction noticeable either in wording or draft of the HSC Or the UNCLOS from the theory of the HDC under which piracy was not a crime under the law of nations, but rather, the basis of universal enforcement and adjudicative jurisdiction.¹⁴⁷

However, the definition of the term Piracy by the HDC does not make it a legal crime by the force of the convention alone, but rather by the application of a state's legal machinery¹⁴⁸ The fact that the penalties and punishment are not expressly spelled out in the UNCLOS under Article 101 or article 15 of the HSC and did not also contain provisions prohibiting expressly piracy runs counter to the possibility of using them as basis for domestic criminal prosecutions.¹⁴⁹

Punishing piracy under domestic criminal law rather than international law reflects current state practices¹⁵⁰. Article 100 of the UNCLOS imposes an obligation on states to cooperate to the fullest extent possible in the repression of piracy. That may not be read to obligate a state to encapsulate a particular act of piracy in its domestic law or define such in their municipal law¹⁵¹. However, suspects can potentially be tried for offences adopted in fulfillment of the obligation to criminalize the acts

¹⁴⁷ Harvard Draft convention and commentary n 11 Art.2

¹⁴⁸ Harvard draft convention and Commentary n 11,760.

¹⁴⁹ Rothwell,Oude Elferink,Scott & Stephens. The Oxford handbook o the law of the sea.860

¹⁵⁰ UNSC Compilation of Information Received from member states on measures they have taken to criminalize piracy under their domestic laws and

¹⁵¹ Rothwell,Oude Elferink,Scott & Stephens. The Oxford handbook o the law of the sea. Page 860.

defined in article 3 of the SUA convention ¹⁵²or for general crimes under the criminal jurisdiction of such state. Same applies also where the offences of armed robbery at sea is absent from domestic criminal law.

It is worthy of note therefore, that the criminal prosecution of the acts of piracy requires that the state has criminal jurisdiction over the offence with which they are charged. Under the customary international law, any state is competent to try piracy suspects even in the absence of any link with the respective pirate attack. Despite the size and seriousness of offences or conducts constituting piracy, it is generally not as serious in gravity as the other offences with universal jurisdiction such as genocide, or the crimes against humanity. It is attune rather with offences such as hostage taking on dry land which are covered under customary law and under which they do not grant universal jurisdiction.¹⁵³

Another explanation is the DE-nationalization of pirates and pirate's ship as legal consequences of piracy and the resulting jurisdictional gaps, yet under the UNCLOS, this reasoning does not hold water since the loss or retention of Nationality is governed by the law of the flag state and not by international law¹⁵⁴

The strongest reason for ascribing the universal jurisdiction to piracy would simply be the *Locus delicti* of the offence. I.e. the scene of crime which is the high sea belonging to all, where we all have interest in the

¹⁵² SUA Convention n64 Ari 5.

¹⁵³ Ibid 860

¹⁵⁴ UNCLOS n7, Article 104:see also HSC n7 article 18 ILC Articles Concerning the law of the sea.

safety of navigation and commerce and where no one state can claim rights or jurisdiction or supremacy.¹⁵⁵

The provisions of Article 105 further drives home the need for the arresting states to assume jurisdiction. Some authors have argued that the provision referring to the power of the seizing state to prosecute a piracy suspect can be better reconciled with the wording of the provision¹⁵⁶

7.2 Unavailability of Laws

Despite the efforts by the international community as well as efforts at national levels, prosecution of maritime crimes have not been quite effective.' To this day, a significant number of captured suspects were released without facing justice despite the availability of overwhelming evidence with respect to the offence.¹⁵⁷ This catch and release syndrome raises a question whether there is a duty to prosecute or extradite piracy suspects.

Article 105 of the UNCLOS stipulating that the seizing state may decide upon the penalties to be imposed does not imply an obligation to try suspects arrested for piracy. Article 100 which urges states to cooperate to repress piracy does not entail a determination of the type of cooperation they engage in.¹⁵⁸

A more detailed proposal from Malta may be examined here, (a) All states have the obligation to prevent and punish piracy and to fully cooperate in its repression was rejected during the drafting of Article 100

¹⁵⁵ Draft convention on jurisdiction with respect to crime with commentary n 87,556, Art 9

¹⁵⁶ I Shaeerer, piracy in wolfram (ed) n 50 (18)

¹⁵⁷ See UNSC Res 2125 n 6 preamble

¹⁵⁸ ILC Article concerning the law of the sea, n 13 282 (on a provision similar to the provision of article 100).

of the UNCLOS¹⁵⁹ the SUA and Hostages' conventions which defined offences potentially fulfilled by acts of piracy oblige states parties in the territory of which the alleged offender is found to submit the case without any hesitation to the competent authority for prosecution if they lack such power or have the suspect extradited¹⁶⁰

In Nigeria, the absence of an Act of National Assembly for the prevention and suppression of unlawful Acts at sea, involves a lack of Competent Jurisdiction to try any of such crimes or illegal acts on the sea or the maritime domain since Criminalization of Offences is unclear.

7.3 Enforcement Gap

Another major gap is the absence of enforcement mechanism for existing laws. The existing legislation is most times not enforced against offenders who breach these laws. There is a plethora of legislations on environmental law/protection, yet no legal action or step is taken against those whose actions result in degradation of the environment.

Section 20 of the constitution¹⁶¹ states that "the state is empowered to protect and improve the environment and safeguard the water, air land forests and wildlife of Nigeria. With regards to the above provisions Nigeria has enacted several laws on environmental protection but the issues of enforcement remains a problem.

Pursuant to Section 37 of the petroleum (Drilling and production) Regulation 1969, the holder of an oil Mining lease, or an oil prospecting

¹⁵⁹ Virginia Commentaries Vol 111 183

¹⁶⁰ SUA CONVENTION N64 ART 10 Hostages Convention n 98 art.8

¹⁶¹ 1999 Constitution of the Federal Republic of Nigeria As Amended. UNODC Maritime crime and piracy: <http://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TOC/maritime-crime-and-unodc.html>

Licence (OPL) is required to prevent the escape of petroleum into any water, will, spring stream, river, lake, reservoir estuary, or harbour. The drilling Regulations further authorizes inspectors to examine the premises of the holder of the OM or OPL to ensure that such persons who fail to comply with the drilling regulations may be prosecuted.¹⁶²The DPR also has the power to seal up premises, seize offending substances, impose fines and require cleanup of environmental damage. Violators are at risk of fines and in most cases, a shutdown of the polluting facility until there is compliance.

8.0 Formulation of Policies, National Framework

Successfully fighting the scourge of maritime crimes would involve the formulation and enforcement of national anti piracy laws which would clearly define acts under criminal headings and prescribe in clear terms, the full penalties for same. In addition, the mechanism for enforcement should be included.

The IMO in recognizing the importance of domestic laws in the prosecution of pirates passed Resolution A.1025 (26) which encourages states to ratify enabling legislation that would codify their jurisdiction over piracy and establish procedures to facilitate the prosecution of pirates at sea. The Resolution further recommends guidelines for piracy investigation strategy. Some of their suggestions include that the state that own the attacked ships should initiate investigations for piracy incident while the state whose territorial waters the incident occurs should bear responsibility to investigate armed robbery at sea.¹⁶³

¹⁶² Federal Environmental Protection Agency Act 1998

¹⁶³ International Maritime Organization(IMO) Code of practice for the investigation of the crimes of piracy and armed Robbery against Ships, IMO Assembly Res.A.1025 (26)(Dec,2,2009)

In actualizing this dream, state parties should ratify and domesticate relevant international instruments on piracy, IUU fishing, and pollution trafficking and other illicit crimes at sea. This should further involve the mechanisms that would tackle corruption which has become quite endemic in our institutions and has been referred to as the major driver of piracy and general unrest in Nigeria.¹⁶⁴

For instance it has been alleged that the role of the Nigerian government is quite ambiguous since some of its members collude with the rebels, some security forces do not attack the militants but collude with them in bunkering and piracy.¹⁶⁵

An analysis of governmental agencies says a lot in this regard, anti corruption drive must begin with government agencies, navy, army and all those suspected of aiding the pirates by providing information on location of ship and aiding further in disposing of the stolen cargo of crude oil.¹⁶⁶

A strategy for tackling unlawful acts against vessels in the GOG and in Nigeria particularly has become imperative, and to prosecute offenders, a more appropriate legal definition will be required. Therefore, it is submitted that the IMO's definition of piracy which is in tandem with the UNCLOS definition should be the preferred mechanism for this purpose. This is because piracy is an international crime for which every state has a right and duty to fight. Theft and armed robbery at sea within internal

¹⁶⁴ Chatham House Report *supra* at 4

¹⁶⁵ SUA CONVENTION N64 ART 10 Hostages Convention n 98 art.8

¹⁶⁶ Hebert Anyim, The Legalities of the Gulf of Guinea : <http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783>

waters, port facilities and territorial waters are national problem properly dealt with under domestic laws of a country.

Moreover, some of the theft and armed robbery against vessels in GOG are due to a high level of bribery and corruption such as port and security personnel teaming up with criminals.¹⁶⁷ Thus it becomes inappropriate and legally wrong to describe theft and armed robbery at sea within internal and territorial waters and port facilities as piracy.

Another possibility would involve improving the judicial system, because a sense of impunity encourages sea robbers to develop their criminal organizations. According to NIMASA Officials, only two or three pirates are prosecuted every year.¹⁶⁸

To combat piracy crimes and other illicit acts at sea, the ultimate and long term solution is eventually to start with the fight against corruption at all levels including the civil society. Indeed, impunity and diversion of public funds are at the heart of the matter. For David Enweremadu,¹⁶⁹ for instance, corruption explains why “increasing decentralization of oil wealth ...and rapid economic growth spurred by rising prices of crude oil since 1999 have failed to bring peace and security to the people of Niger Delta.

8.1 Addressing the Problems Offshore

It has become imperative for states to appreciate that their sovereign extends to its territorial waters where it has exclusive jurisdiction and competence to ensure the good order and security of its territorial waters.

¹⁶⁷Ibid at 530

¹⁶⁸ Herbert Anyim, The Legalities of the Gulf of Guinea : <http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783>

¹⁶⁹ David Enweremadu, Ending the Vicious Circle: Oil, Corruption, and Violent Conflict in the Niger Delta (Zaria: IFRA, polycop., 2009), pp. 3, 7.

Thus every coastal state has a legal responsibility by way of a duty of care to provide proper and adequate security for maritime traffic in its territorial waters.¹⁷⁰

This duty involves maintaining security and order at sea, and securing states internal waters and port facilities as well as individual territorial waters by employing necessary available mechanisms, to enhance security at the national level and then at the regional level. This is the “Doctrine of Responsibility”.¹⁷¹

In accordance with UNCLOS, every state should maintain proper and adequate security and the states that fail in this duty may be liable for breach of that duty of care to victims of maritime crimes in their territorial waters and port facilities¹⁷² GoG states, especially Nigeria should adopt a zero tolerance policy to all forms of offshore bunkering activities. The surge in maritime crimes in GOG is inextricably linked to the illegal activities in the oil industry in that region.

Enforcing an aggressive anti-smuggling measures with zero tolerance. Smuggling is the backbone of criminality against vessels and seafarers. This is because the clandestine nature of smuggling which is carried out to evade payment of customs and port duties are often conducted sneakily without security detection, thereby creating the propensity for criminal activities which leads to attacks on vessels.¹⁷³

9.0 Towards a Robust National Legal Framework.

¹⁷⁰Herbet Anyim, The Legalities of the Gulf of Guinea : <http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783>

¹⁷¹ Ibid at 530

¹⁷² ibid

¹⁷³Herbet Anyim, The Legalities of the Gulf of Guinea : <http://cimsec.org/legalities-gulf-guinea-maritime-crime-suggested-solutions/11783>

Piracy and maritime crime is on the rise West and Central Africa, particularly in the countries bordering the Gulf of Guinea, home to some of the world's biggest offshore oilfields. UNODC in their fact finding assessment exercise, contended that none of these states possesses the necessary capacity to prosecute such activities, thereby compromising security of navigation and threatening the lives of sea seafarers.¹⁷⁴

The Current Nigerian legal framework has proven ill equipped to prosecute piracy and other maritime crime offenders. Gaps in the law of the sea in that area boarder fundamentally on the unavailability of jurisdictional provisions, offence creating legislation, trial and sentencing procedure, and the requisite judicial capacity needed to undertake prosecution against maritime crimes.

It is trite to highlight further, that the current framework or existing laws do not contain provisions that provide for the key areas in criminal justice such as: prevention, criminalization, and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange, which will equip it with the mechanism to have full national application. The absence of an effective maritime governance system, in particular, hampers freedom of movement in the region, disrupts trade and economic growth, and facilitates environmental crimes.¹⁷⁵

¹⁷⁴ <https://www.unodc.org/westandcentralafrica/en/togo-nigeria-maritime-crime-meeting>

¹⁷⁵ Ambassador Michele J. Sison, a U.S. Deputy Representative to the United Nations <http://www.worldmaritimeneews.com/archives/189965/piracy-and-maritime-crime-costing-nigeria-usd-1-5-bn-a-month>

9.1 Code of Practice For Effective Prosecution Of Maritime Crimes In Nigeria

The IMO Maritime Safety Committee (MSC) has assisted member states to develop a Code of Practice to aid investigation of maritime piracy¹⁷⁶. The Code of practice recommends that states should adopt legislation to establish their jurisdiction over piracy and armed robbery against ship, including laws for prosecution of maritime crimes offenders¹⁷⁷

States are urged to implement through domestic laws the provisions of the UNCLOS and the SUA Convention relating to piracy. This code of practice also provided guidelines for the training of investigators, and investigative strategy. It provided a framework for a systematic and careful collection of evidence, including photographs, and videotape, individual witness accounts, detailed forensic examination of scenes of crime, and search of intelligence databases.¹⁷⁸

States are further encouraged to connect counter piracy naval patrols to boarder efforts with the aim of strengthening maritime security. Efforts to suppress illegal smuggling and narcotic trafficking can be utilized in deterring and defeating piracy. A situation worked out in 2009 when the UNODC in July of that year issued guidance for countries requesting transfer of pirates to Kenya. This was developed in conjunction with the Kenya Department of Public prosecutions, the EU/Kenyan Forces, and a

¹⁷⁶ IMO Doc. A. 1025 (26), Code of Practice for Investigation of Crime of Piracy and armed Robbery against Ships, January 18, 2010, which updated the Code of Practice of January 22, 2002.

¹⁷⁷ IMO Doc .A. 1025(26) 3.1

¹⁷⁸ Ibid 5.2

representative from the US Criminal Investigative Service at a workshop which took place on June 25, 2009.

The guidance includes a communication checklist specifying information needed by the Kenyan prosecutors as well as evidentiary standards to ensure that the prosecution is successful. Some of the steps include: Commanding officers should ensure that all evidentiary exhibits are bagged, labeled, and photographed. Witness statements are prepared and translated into English, pirates identified to the extent that is possible, food and basic emergency medicals are provided to the pirates. Similar code of Conduct will be required for investigators in Nigeria.

A code of conduct is also required for prosecution of maritime crimes in Nigeria for the purpose of giving guidance on the general principles to be applied in determining any case: Whether criminal proceedings should be instituted, or where they are already instituted, whether they should be continued or discontinued and what charges should be preferred. Such code should be able to provide guidelines on the conduct of criminal prosecutions and define standards of conduct and practice that the public prosecution services expect from the prosecutors.

The code should provide the mechanisms for determining the evidential test and the public interest test of prosecution of maritime crime. For the evidential test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge based on the provision of the law providing for such offence.¹⁷⁹ Such a prosecutor must consider what the defence case may be and how it may likely affect the prospect of conviction. While

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prosecutors are not persecutors, it is pointless to undertake a case which will not succeed, Therefore, any case that does not pass the evidential test stage must not proceed, no matter how sensitive such might be.

Even when the evidential test has been analyzed and concluded, the prosecutor must still ask himself whether a prosecution is required in the public interest. The two must coexist at all times and if the public interest is not met, the prosecutor may, if he believes that the public interest is more properly served by offering the offender the opportunity to have the matter dealt with out of court do so. In making this decision, regard must be had to the nature of the public interest weighing in favour of or against prosecution.

The code should provide guidelines for investigators of maritime crimes. Every successful prosecution most times depend on the value of evidence recovered in the course of investigation. Investigation is invariably therefore the key to a successful prosecution of offences. It is the duty of an investigator to investigate an allegation that a criminal offence has been committed, to gather evidence in relation to that allegation and to present that evidence to the prosecutor.¹⁸⁰

The code should provide for inter-agency cooperation between the investigator and the prosecutors in any given case. At what point should a prosecutor get involved in the case, is his guidance needed in the course of investigation to ensure that the right evidence is recovered and properly preserved to be useful during trial. The duration of investigation and even length of trial should be provided for by the code.

9.2 Capacity Building

¹⁸⁰[http ://www.turkishmaritime.com.tr/the-danger-of-piracy-in-nigeria-23352h.htm](http://www.turkishmaritime.com.tr/the-danger-of-piracy-in-nigeria-23352h.htm)

It is worthy of note, that even where there is applicable law to proceed against pirates, the capacity is most times unavailable to undertake the crucial duty. One notable development in this regard is the statement of the then NIMASA DG where he alleged that even though arrests are made, the suspects are quickly released soon after and they always go back to the crime.¹⁸¹ Experts on maritime law and security have argued for an overhaul of the nations municipal laws which are inadequate in the face of the growing challenges of maritime crimes in the country.

It is important, to point out however that the problem in the maritime industry in Nigeria lies both in the platitude of laws and capacity to enforce the laws. Most times the law enforcement agents lack the capacity and necessary expertise to get sufficient evidence at sea for prosecution¹⁸². This may be attributed to the nature of the sea generally which may be different from land based investigations.

Therefore capacity building is requiring for naval officers who are in charge of sea patrols and arrest, regarding admissible evidence in court. Such training will also include the handling of recovered evidence and proper chain of custody to ensure its usability in court. Inter-agency collaboration among the actors in this field is also encouraged. This would engender a communication chain during an investigation with the prosecutors on the right evidence tenable and admissible in court.

In addition to that should be training for prosecutors and judges to ensure that every party is attune with evolving developments to ensure that

¹⁸¹Ibid

¹⁸² Oghale Enuke, formulating of a new Maritime legal Framework to tackle Maritime piracy and Armed Robbery at sea. Accessed 10, July, 2016.

pirates and other maritime criminals apprehended within Nigeria territorial waters are adequately prosecuted and punished .

10.0 CHAPTER 2: ALTERNATIVES TO PROSECUTION

Needless to once again state, that piracy is a continuing international problem that disrupts shipping lanes of communication, the world economy, negatively affects the safety and security of navigation, crewmen and ship owners.¹⁸³ The challenge is that within international law, there is a well recognized principle of Universal Jurisdiction over the apprehension and prosecution of pirates.¹⁸⁴ Nevertheless, the framework has not been quite successful in the fight against piracy through prosecution thereby creating a problem of “catch and release” due to weak domestic judicial system and due to state’s unwillingness to prosecute the offenders for various political reasons.¹⁸⁵

Piracy remains an international crime that falls under every states jurisdiction under customary international law.¹⁸⁶ Because of the universal jurisdiction, each state has the responsibility to prosecute pirates under its own domestic laws irrespective of a pirate’s originality, the registry of the ship or the destination of cargo.¹⁸⁷

¹⁸³ James Kraska & Brian Wilson: Fighting Piracy, Armed Forces J.Feb.2009, at 10.

¹⁸⁴ DAVID J. BEDERMAN, INTERNATIONAL LAW FREMAEWORK 76 (2006)

¹⁸⁵ International efforts to combat Maritime Piracy: Hearing before Secom. On International Organizations, Human Rights and Oversight of the Comm. On foreign Affairs H.R, 111th Congress.6 (2009) statement of Rep. William D. Delahurt, chairman of Subcommittee.

¹⁸⁶ BEDERMAN, Supra note 5, at 76.

¹⁸⁷ MARTIN N MURPHY, SMAL BOATS, WEAK STATES, DIRTY MONEY: The Challenge of PIRACY 12 (2009)

Despite the codification of universal Jurisdiction, and the push for greater regional cooperation, customary international law still requires domestic legislation to prosecute the crime.¹⁸⁸ Unfortunately, it is difficult for some states to prosecute pirates because of procedural impediments that are not “forward thinking”.¹⁸⁹ Other states lack the resources to spend on a full blown trial and possible imprisonment of the Accused.¹⁹⁰ Even where States possess the requisite resources, expertise and the procedures for pirate prosecution, political reasons may prevent a maritime crimes prosecution.¹⁹¹

Consequently, Nigeria and some other West African Countries remain unable to go full force against maritime crime offenders. It has therefore become quite imperative that tackling the root causes of the scourge, the driving forces and reasons provoking piracy and other crimes on the maritime territory in West Africa should be explored. This would involve steps to address the rampant unemployment of the teeming youths and general poverty alleviation.

10.1 Ethical Response to Piracy Financing

Another procedure for tackling the scourge through alternative means would involve piracy financial trail. Lots of hijackings have occurred within the last decade in the Gulf of Guinea to a level of concern both

¹⁸⁸ Rosemary Collins & Daud Hassan, Applications and shortcomings of the law of the sea in combating piracy: A Southeast Asian Perspective at 102, 104.

¹⁸⁹ Niclas Dahlvang, Violence Against Maritime Navigation, 18 U.S.C 2280 (1996)

¹⁹⁰ Krasska and Wilson *supra* at note 3.

¹⁹¹ International efforts to combat Maritime Piracy: Hearing before Secom. On International Organizations, Human Rights and Oversight of the Comm. On Foreign Affairs H.R., 111th Congress. 27 (2009) (testimony of ambassador Stephen Mull, senior advisor, Under Secretary for Political Affairs, U.S. Department of State (hereinafter Mull Testimony-Piracy Hearing).

internationally and otherwise. Most worrisome, is the level of impunity with which these attacks are carried out on the coastal areas of the states on the Gulf of Guinea. The pirates appear to operate in organized syndicates. Generally, they are composed of Maritime militia. Which conducts the attacks; a ground militia which handles pre and post capture logistics, and a figurehead responsible for financing.¹⁹² Ransom are usually paid in cash and are distributed among pirates in accordance to their position within the organization¹⁹³

It has been widely contended that pirates off the coast of Nigeria and the wider GoG operate with sophisticated weapons and appears to be very organized, on that point, Tony Attah of Shell petroleum stated that,

“it is a highly organized criminal phenomenon involving a parallel industry with a developed supply chain and growing sophistication. It involved trained engineers returning each night to siphon oil, and boatyard operators who helped construct and supply barges to the thieves to transport crude oil around the creeks. A small amount of the stolen oil remained in the local market, although rudimentary refinement techniques resulted in up to 80% of this oil being dumped into the creeks. The refined element of the oil that remained in the local market was used to fuel small generators used by the local population. But the vast majority of the oil was exported. It was taken to larger tankers waiting

¹⁹² UN. Sec. Council, Monitoring group on Somalia, Pursuant to Sec. Council Resolution 18 (2008) 140 U.N.Doc.S/2008/769 (Dec.10,2008)

¹⁹³ Charles Marts: Piracy Ransoms-Conflicting perspectives. One earth foundation Working paper 2010 retrieved 13/10/2016 http://oceansbeyondpiracy.org/sites/default/files/ransom_charlie_marts.pdf.

offshore, which transported it to refineries outside the country. These transfers were conducted out at sea, making them difficult to detect”¹⁹⁴.

Stemming the tide and controlling the escalation will involve a holistic approach which would incorporate a financial trail of piracy activities. This trail should not be limited to ransom payments only but should extend to the proceeds of sales of the stolen crude oil. Who sells, who buy and who gets paid, where does such proceed go? A lot of action has been taken already nationally, regionally and otherwise to fight the scourge. It was discovered that when the “operation prosperity” which was the outcome of the bilateral agreement between Nigeria and Benin kicked off, the piratical activities shifted towards Togo and other areas less patrolled by the Navy.

The expectation was that these efforts would soon begin to pay off, reducing the number of attacks. But in 2016 alone attacks seemed to have doubled, and reducing piracy now requires that the next steps should be taken. With this in mind, the question is what next. It is apparent that piracy emerged from a complex political, economic, and cultural milieu. No single response will solve the problem.

10.2 The Money Trail

For a criminal organization as highlighted above to maintain its successful operations, funding must be required. Who provides the funding and what is the chain of movement for such illicit funds. Security operatives must collaborate and cooperate in order to unravel this mystery. The chain of command must be traced and followed. The

¹⁹⁴ . The Chatham House Report. Retrieved 13th Novembe2016. [https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0312confreport_maritime security.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0312confreport_maritime%20security.pdf)

apprehended ones most time are the laborers in the field who may be referred to as the foot soldiers.

It has been argued that, the foot soldiers who are the poor young men recruited to do the real work of either hijacking, kidnapping for ransom or some other gruesome activities most times have a boss who issues command and never participate in the dirty deal. They are the money behind the deal and this has necessitated the need to search for the potential for disrupting the piracy financing and ransom system through coordinated banking security¹⁹⁵.

From the situation in Somalia, the pirate Financiers stand in the middle of the piracy network. The money Kingpins,” Investors and Beneficiaries of the piracy business. On average they collect from 30%to 50% of the total ransom, working individually or as a group.¹⁹⁶ Whereas, “The Foot Soldiers” typically receive a standard fee of US\$30,000 to US\$75,000 per ship which only amounts to 1%-2.5% of an average ransom pay.

It was also established that such funds are invested locally, moved by cross-border cash smuggling, trade based money laundering, bank wire transfer and the abuse of Money of Value Transfer services.¹⁹⁷ Some of the monies/proceeds are recycled into financial criminal activities; including further piracy acts, human trafficking, including migrant

¹⁹⁵World Bank 2013, Pirate trails; tracking the illicit financial flow.

¹⁹⁶The World Bank Pirate Trails: Tracking the illicit financial flows from Piracy off the Horn of Africa.www.worldbank.org/en/topic/financialmarketintegrity/publication/pirate-trail-tracking-the-financial-flows-from-piracy-off-the-horn-of-africa.

¹⁹⁷ibid

smuggling, and investing in Militias and military capacities on Land in Somalia.¹⁹⁸

The situation is as true as it applies to Nigeria. An analysis of the trends of Maritime Piracy, armed robbery at sea, IUU fishing and other criminal activities in the Nigerian Maritime domain, reveals that they run an organized system from the time of attack down to the end, there is a chain that ensures that consistency is maintained at all times which accounts for the success of their business. When the ransom is paid where does it go, Proceeds from the sale of stolen crude cargo etc. There is a need for better monitoring of the financial flows from piracy activities and enhanced information sharing among the countries on the GoG. Improved cross border controls, especially entry and exit points and above all, improved regional cooperation and in addition, international support is also required.¹⁹⁹

Concerning regional cooperation, ensuring the security of the gulf of Guinea is beyond any one regional body acting alone. A number of regional organizations share an interest in maritime security such as ECOWAS, ECCAS, MOWCA and finally the GGC which has the highest mandate for dealing with maritime issues. It was established in 2001 as a permanent framework for collective action with a view for ensuring peace, security and stability that will abet economic growth. The GCC signed on 29th 2012 the **Luanda Declaration**²⁰⁰ on peace and security in the gulf of Guinea.

The declaration states that in response to the threat of maritime insecurity in the GoG, member states need to establish regional cooperation and

¹⁹⁸ibid

¹⁹⁹Chatham house Report

²⁰⁰ Luanda Declaration on Peace and Security, www.psgg.info/wp-content/uploads/2012/11/LuandaDeclaration-ENFINAL.pdf

interstate dialogue. This is because a number of Trans boundary issues require regional approach, such as, arms proliferation, terrorism, migration and crude oil theft. The declaration therefore called for a sustainable mechanism to monitor and enforce peace and security in the region.²⁰¹

Such cooperation has also become imperative in the light of the fact that it has been established that criminals often move from one area to another less patrolled and regional cooperation would ensure that every country contributes to the surveillance to ensure that the ability of criminals to circumvent the situation to their favor is curtailed.²⁰² A systematic coordination in counter piracy operations response is therefore required to tackle the problem headlong especially in intelligence and information sharing on “following the money.”

Another argument in this regard is the anti-ransom perspective. This is the argument by certain authors who have canvassed that ransoms paid to criminal organizations that kidnap with a hope of securing a financial reward encourages a model of “for-profit” capture that is both illegal with a destabilizing effect on everyone involved both the victims and perpetrators of the crime.

The President obama’s Executive Order 13535, and related international legislation which tend to advocate for the prohibition of terrorist financing through the payment of ransom, should be encouraged.

10.3 PLEA BARGAIN.

²⁰¹ Chattan house report on maritime issues
https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0312confreport_maritimesecurity.pdf

²⁰²Ibid.

This can be an effective tool in the fight against maritime insecurity. A plea bargain, agreement, deal, plea, or copping a deal, is any agreement in a criminal case, between the prosecutor, and defendant where by the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor.

Plea bargain has been part of Nigerian law for some time now. it was incorporated into the Nigerian Administration of Criminal Justice Act passed by the National Assembly, which came into effect on the 15th of May, 2015 to ensure efficient management of criminal Justice institutions ,speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of suspects, defendants and victims.²⁰³

One of the gaps filled by the ACJN is the introduction of the plea bargain as one of the possible pleas available to an accused person (defendants) into its principal legislation a model to be adopted by other states in the Federation. Plea Bargain emerged in Nigeria with its introduction in the EFCC Act 2004 in Section 13(2). It was employed with a view to expeditiously recover funds looted by public officers. In other words, plea bargain was born out of expediency. That same desperation was similarly responsible for the Lagos State version of Plea bargain in 2007.²⁰⁴

Practice of Plea bargain is rooted in common law, from the medieval English Common law courts of guilty Pardons to accomplices in felony case. In modern times however, the significance it has gained can be traced to the United States of America,²⁰⁵ On account of its efficiency; Plea bargain has won the endorsement of the Supreme Court of America

²⁰³ (Part 1, Section 1 ACJA, 2015)

²⁰⁴ Section 79 ACJL Lagos State 2007

²⁰⁵ Olin, D. "Plea bargain" <http://truthinjustice.org>.

as “an essential component of the administration of criminal Justice.”²⁰⁶ Chief Justice Burger explained that plea bargain is to be encouraged because “if every criminal charge were subjected to full-scale trial, the States and the Federal Government would need to multiply by many times the number of Judges and court Facilities.”²⁰⁷

Varying opinions have been expressed on how to characterize plea bargain, some see it as a contract where party’s trade offers and counter offers, for a consideration, and reach acceptable consensual agreement.²⁰⁸ Others view it as a sentencing device that encourages offenders to enter correctional facilities and hopefully reduce crimes. Yet others describe plea bargain as a form of dispute resolution that yields win-win expeditions result, even if the state lets go of its pound of flesh in favour of negotiating some returns for victims who would have been left empty handed.

Plea bargain is provided for in Part 270 (subsections 1-18) ACJA²⁰⁹ as one of the possible pleas available to an accused person charged with a crime. Section 270 provides two ways a plea bargain may be initiated, by being an offer made by either the prosecutor or the defendants, the offers can be made directly or on their behalf. Instructively, the consent of the victim of crime is to be sought directly. Section 270 (2) goes on to enumerate conditions for making of the plea as follows:

- (a) The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt

²⁰⁶ John. H. Langbein: Understanding the short History of Plea Bargain (1997)

²⁰⁷ Santobello V New York, 404 U.S. 257,260,1971) (Faculty Scholarship series. http://digitalcommons.law.yale.edu/fss_paper/544)

²⁰⁸ Oguche 2010

²⁰⁹ Nigeria Administration of criminal Justice Act,2015

- (b) Where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representatives ,or
- (c) Where the defendant in a case of conspiracy has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of the crime, by providing relevant information for the successful prosecution of other offenders.

Sub section 2 (a) makes it clear that a crime that is provable is not subject to plea bargain. In all cases, there is a consideration for which the state would make a bargaining. Like in any contract, adequacy is not an issue. This rests the concern of the public on the question of justice being for sale. Rather than let criminals walk free from their crimes due to insufficient evidence, or dehumanize them perpetually as awaiting trial inmates, in prisons, it suffices to bargain a plea with them and dispose of the matter.

There is however no standard definition of plea bargaining among practitioners, the definition of plea bargain varies depending on the jurisdiction and on the context of its use.²¹⁰ Some of the definitions include that “it is an informal arrangement whereby the accused person agrees to plead guilty to one or some charges in return for prosecution agreeing to drop other charges or a summary

²¹⁰ Miller, H.S et.al “Plea Bargaining in the United States” 1-15

trial.²¹¹ Authors such as John H Langbein called plea bargaining “Condemnation without adjudication.”²¹²

As an alternative to a trial mode of procedure, plea bargaining presents itself as an economic method of criminal justice. It provides the means of disposing of cases with less expenditure of time and money than full scale trial. Practitioners endorse plea bargaining as an essential component of the criminal justice system which is an effective way of reducing their caseloads while at the same time doing justice.²¹³

11.0 Strengthening of all relevant institutions.

The point has been that GoG countries are generally weak to exercise effective control over their coastal and deep offshore territories²¹⁴ the challenge is even more daunting given the large expanse of coastal waters to cover and the limitation of their mostly small boats and poorly equipped national navies that most times have to engage better equipped and ruthless criminal groups. This issue is compounded more by internal political instability which frequently provides the motive for non state groups to engage in criminal and violent actions.

²¹¹ See the recent case of the USA v John Walker Lyndh, where upon Plea Bargaining consented to by US president himself an American Taliban fighter in Afghanistan was given 20 years prison term Upon pleas to two of the twenty charges, of terrorism leveled against him, by the USA, GOVERNMENT following the defeat of Al Qaeda and the Taliban in Afghanistan

²¹² Lanbdein J.H: Law without Plea Bargaining. How the Germans do it, 78 Michigan Law Review 204 (197) at 204.

²¹³ Bargaining Discourse: Human Studies5: 319-44. Also Alschuler, A. (1976): The trail Judges Role in Plea Bargaining Columbia Law Review 76:

²¹⁴ Prof Wullson MVOMO ELA: African approaches to maritime Security the gulf of Guinea

Ignorance or a lack of quick impact response to maritime security challenges could undermine fiscal survival and threaten domestic security and stability. Another reason heightening the intractability of maritime insecurity is the long history of Policy blindness otherwise referred to as sea blindness towards coastal waters. A key element to addressing maritime crime will be for regional States to build capacity and political will to investigate and prosecute those responsible for maritime crime. This includes flag States taking responsibility to pursue investigations into attacks against ships. Arrests alone are insufficient; it must be followed by prosecution.

To tackle maritime crimes in a sustainable manner in Nigeria and the wider Gulf of Guinea. The key institutions whose charge it is to maintain security and enforce law and order must be strengthened. Poor funding has being one of the major handicaps to the fight against insurgency on the maritime front. The GoG countrieslack significant naval or coast guard capability to constitute effective counter piracy measures against the lingering maritime crimes.²¹⁵

Until recently, the focus of the countries in the GoG has been on land based threats to security which obliterated a corresponding interest in the maritime scene. Security in the maritime territory was rarely considered in the design and implementation of security and defense options and strategies.²¹⁶Some countries may not be able to patrol their waters and prosecute pirates due to their financial and institutional deficiencies, with attendant difficulty in terms of acquisition, maintenance, deployment and

²¹⁵ Ibid

²¹⁶Ibid at 9

regulations of necessary resources required to establish and exercise credible presence on the territorial waters.

Thus what obtains currently in terms of Maritime security does not seem effective to fight, control and deter criminal elements and social movements whose activities now threaten security and peace of the affected areas. Indeed, some military responses, where they exist, appear to worsen the security situation mainly by increasing the risk of weapons proliferation and deepening human rights abuse. The implication is that these abuses would heighten resentment and invariably fuel insecurity.²¹⁷

To put the current situation into perspective, a recent report by Chatham House noted “the high rate of piracy in the GoG represented a significant ratio of attacks in African waters, due to unsuccessful counter piracy operations.”²¹⁸ The realization however, is that the impact of poorly executed military responses hugely influences instability and there is need for a reform in strategies.

As has been earlier argued, these attacks in the Gulf of Guinea, which have caused harm to crew members, vessels and maritime navigation generally are not opportunistic, but a well orchestrated action by networks of local and international criminal gangs often acting with the connivance of citizens and government officials in the GoG countries. These attacks are symptomatic of deeper government and security dilemmas which the countries face both individually and collectively. Irrespective of situations which provoked the level of insecurity now witnessed, the realization is that any creative and sustainable solution

²¹⁷ibid

²¹⁸Chatham house Report Supra..

must incorporate interests and inputs of multiple actors and agencies across West and central Africa and such solution must be pursued in a coordinated manner across all sectors.

11.2 SECURITY APATHY IN THE MARITIME DOMAIN.

Regardless of its huge potentials, which are not lost on the government and the international community, the Gulf of Guinea has become a safe haven for a network of local and international criminal elements whose transnational activities threaten the security in the whole region and undermine international economic activities.

However, while the regional bodies of ECOWAS and ECCAS have highlighted the detrimental effect of maritime insecurity, most governments in West Africa still have not prioritized the national action necessary to combat this insecurity on their maritime domain.²¹⁹

Concerned Governments and actors must adopt a comprehensive approach needed to tackle the interconnected types of maritime crime in West Africa. Such actions and attention must be sustainable. Furthermore, to be effective against piracy, Africa's coastal countries would need "effective early warning and intelligence services, credible determent and reaction forces, high mobility and possess the ability to sustain operations for long period²²⁰. The Navy and every other actor must be adequately empowered.

12.0 Need to Emulate Relevant Existing Best Practices Solutions and Compliance Models.

²¹⁹Ibid.

²²⁰ Len le Roux, South African Institute of Security studies :www.un.org/africarenewal/magazine/january2009/tackling-piracy-africa-shores)

While the institutions must be equipped and strengthened to maximize greater potentials in the fight against maritime vices, the government could borrow a cue from the other regions that were truly adjudged successful in suppressing the menace of the maritime criminal activities on their maritime spaces.

Following the efforts already made, resources and energy channeled by various countries, bodies and organizations, the fight against piracy in Nigeria and the greater GoG appears to be peripheral and not long term in nature. There is need to learn a lesson from other regions, the case for the South East Asia is instructive here. This part will also discuss a bit about the lessons from Somalia in the Gulf of Aden and the Malacca Strait. Recent regional approaches to solve the piracy problems and other maritime criminal activities are a trend worthy of note²²¹.

12.1 SOUTHEAST ASIA and (Re-CAAP.)

In 2004, sixteen regional Southeast Asian states signed the Regional Cooperation Agreement on combating Piracy and Armed Robbery against Ships in Asia (Re-CAAP) which was the first multilateral agreement to address piracy in Southeast Asia.²²² Re-CAAP established an information sharing center in Singapore.

The mandate of Re-CAAP is to fight piracy and maintain open access to Asia's sea lines of communication (SLOC) In its own words, it strives to "serve as a platform for information exchange among participating governments, analyze and prove accurate statistics of the piracy and armed robbery incidents to foster better understanding of the situation in Asia." "Facilitate capacity building efforts that helped improve the

²²¹ International Efforts to combat Maritime Piracy: Hearing Before the sub-comm. Supra (testimony of William Baumgartner, Admiral, J. Advocate Gen., and Chief counsel, U.S Coast Guard)

²²² About Re-CAAP, http://www.recaap.org/about.about1_2.html

capability of member countries in combating piracy and armed robbery and cooperate with organizations and like minded parties.²²³

Re-CAAP's success in combating non –state threats to intercontinental sea-based commerce is through information sharing functions.²²⁴ The organization maintained enviable transparency in the presentation of its information and maintained an excellent resource called the **“consolidated Incident Reports”** which quantifies several aspects of a pirate or criminal incident. For instance on the 9th of October, 2013, at 5.30 PM, it reported that the Diana 4, a Thai ship carrying petroleum products, encountered pirates. The organizations response to pirate incidents is to inform immediately the Malaysian Maritime Enforcement Agency (MMEA), even though Malaysia is yet to accede to the agreement. Such activeness and alertness could be applied in the GoG to tackle the festering scourge of maritime crimes at sea.

12.2 Case of the Strait of Malacca

When the piracy incidents at the Strait of Malacca became an issue of concern for the world and attempts by outside states to establish security regimes repeatedly run into sovereignty concerns from the coastal states in the region, some states in the region instead of persisting in this “failed strategy of externally imposed solutions” formed a coalition focused on internal security mechanism through aid and logistical support, building the capacity of local navies which turned out to be effective toward the fight against maritime insecurity challenges. The states are: Malaysia,

²²³ Ibid.

²²⁴ Ankit Panda: Recapping Asia's fight against maritime piracy and an example of successful multiculturalism.

<http://www.thediplomat.com/2013/11/recapping -Asia-fight-against-pirates>.

Indonesia, Singapore, and Thailand.²²⁵ These countries contributed man and resources and ensured round the clock surveillance of their coastal spaces.

12.3 Ensuring Maritime Security is the Duty Of The State.

Article 100 of the UNCLOS has mandated the states to uphold the duty of ensuring the security of their territorial and maritime spaces. This duty is not just in terms of fighting off terrorists and maritime armed robbers, but should encompass protecting access to maritime resources. One of the rationales for expanding the breath of the territorial sea was to safeguard the supply of marine genetic resources for the nourishment of the local population,²²⁶ as well as fostering profitable export markets. Ensuring that states' economic interests are protected is clearly part of the security of a state.

Within each maritime zone, states are accorded the rights and duties of responses to a range of maritime crimes or other unlawful acts. In achieving that, a state's national criminal laws would normally apply to the territorial sea and internal waters in accordance with the sovereignty that the coastal states exercise over these waters. This sovereignty empowers states to take action against vessels engaged in terrorism, transnational crimes, (such as trafficking of all sort) pollution, IUU fishing and illegal intelligence gathering.²²⁷

In the contiguous zones, coastal states may act under certain circumstances to prevent and punish offences related to fiscal, immigration, sanitary and customs matter. To achieve this feat, states in the Gulf of Guinea need to take a more proactive step in tackling the

²²⁵ Joyce Dela Pena: Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional concerns.PDF

²²⁶ N .Klein (P.585.) The Oxford hand Book of the law of the sea.

²²⁷ Ibid 586

maritime challenges robbing them of huge resources. No one country can act in isolation and it is therefore recommended that cooperation in ocean governance to ensure that the relevant codes relating to the suppression of unlawful acts at sea is fully operational.

Conclusion

Nigeria as a country has taken significant steps towards tackling Piracy, ranging from the coastal sea patrols, complying with the IMO's regulation by domesticating the SOLAS Convention, including the ISPS Code and even fitting the LRIT of ships on their coasts in 2013, which is one of the regulations adopted by the IMO under the SOLAS Convention to equip the states with information as to what ships are navigating where, and particularly, what ships are voyaging towards the states territory.²²⁸

But the Gulf of Guinea is too large for any one country, therefore wider cooperation among the actors and stakeholder including non coastal states is encouraged. Information sharing, contribution of man and facilities, financial resources would be born out of such cooperation to ensure that maritime crime if not completely eradicated, should not remain a topical issue in West Africa.

The issue of ensuring a robust legal frame work for dealing with the menace should be adequately complemented with addressing the root causes of the challenges. In order to achieve success, the steps must complement each other. Development of comprehensive and up to date maritime criminal law is at the heart of the matter. Empowerment and

²²⁸ For further reading ,see Klein, n 17, 158-62 HG Hesse, 'Maritime security in a Multilateral Context: IMO Activities to Enhance Maritime Security (2003) 18 International law Journal of Maritime and coastal law 327-331

creation of conducive and enabling environment for law enforcement agents to act has become necessary.

Justice must not only be done, but must be seen to have been done. Maritime criminals must be apprehended and punished to build the confidence of the people in the society. In addition, meaningful employment opportunities, better living conditions must be provided to dissuade youths from engaging in criminal activities.

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