

Research Space

Journal article

An appraisal of the legal framework for combating piracy and other illegal maritime activities in the Gulf of Guinea – a case study of Nigeria

Moneke, E. U.

AN APPRAISAL OF THE LEGAL FRAMEWORK FOR COMBATING PIRACY AND OTHER ILLEGAL MARITIME ACTIVITIES IN THE GULF OF GUINEA USING NIGERIA AS A CASE STUDY

by Enuma U. Moneke*

Abstract

The Gulf of Guinea is blessed with an abundance of mineral resources, agricultural commodities, hydrocarbons and other energy commodities which provide an economic lifeline to the littoral and landlocked states within the region. It plays host to over a dozen countries including Nigeria and Angola which rank among the top ten largest exporters of crude oil in the world. Further, with other oil producers such as Cameroon, Chad, Equatorial Guinea, Gabon and Republic of Congo, the region is of great importance to the world economy. Thus, safe access to ports in the region and security on its sea lanes are crucial for global energy production. In recent times, there has been an alarming surge in piracy and other illegal maritime activities in the Gulf of Guinea, with Nigeria as the main area of activity. The scourge holds serious implications for the Nigerian economy as it is adversely affecting oil production, food security, maritime trade, shipping and insurance costs, amongst others. Despite concerted efforts made at the national, regional and international level to stem the tide, piracy attacks remain on the rise. The lack of an adequate legal framework for tackling the problem, has constantly been cited as the principal cause of the failures experienced in the fight against piracy in Nigeria and the wider Gulf. This paper appraises the current international and domestic legal framework for the punishment and prosecution of piracy and other illegal maritime activities, with specific reference to Nigeria. It argues that the extant framework is grossly inadequate and so, it calls for intensified efforts at all levels to establish comprehensive and effectual legal frameworks for the criminalisation and punishment of piracy and similar acts.

1. Introduction

Maritime piracy is an ongoing international problem that threatens the safety of maritime navigation and the global economy. The scourge has continually featured in water ways in South East Asia, the Far East, the Indian Sub-Continent, the Americas and Africa for centuries now.¹ However, so far as the prevalence of maritime piracy is concerned, the year 2009 will be remembered for a surge in piracy not seen in generations.² In 2009, a total of 406 attacks were reported worldwide, a sharp contrast to the figures, 239, 263 and 293 which were recorded for the periods, 2006, 2007 and 2008 respectively.³ A

* Research Fellow, Nigerian Institute of Advanced Legal Studies, Abuja, Nigeria.

¹ Piracy incidents have also been reported in the Arabian Sea, Papua New Guinea, the Mediterranean Sea and Oman. These waters are classified by the International Maritime Bureau for monitoring and reporting purposes under the heading "Rest of the World" - International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery against Ships Report, 2015 <<https://www.icc-ccs.org/>> accessed 3rd February 2016.

² Theo Neethling, 'Piracy around Africa's West and East Coasts: A Comparative Political Perspective' (2010) vol. 38, Nr 2, South African Journal of Military Studies, 89 < www.ajol.info/index.php/smsajans/article/download/70505/59109 > accessed 21 July 2015.

³ The 2009 piracy attacks included 49 successful hijackings, 1052 hostage takings, 68 injured crewmen and 8 deaths - International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery against Ships 2009 Annual Report <<https://www.icc-ccs.org/>> accessed 17 January 2015.

significant proportion of these attacks, 264 to be precise, occurred in Africa. Pirates operating on the Somali coasts and the Gulf of Aden⁴ in the Horn of Africa (East coast of Africa) are suspected to have carried out 217 of the 264 attacks recorded for Africa.⁵ Prior to these attacks, concerns had already started growing for the security of the busy shipping routes running across the pirate-infested areas. These concerns culminated in the initiation of collaborative and extensive international efforts to combat Somali piracy, the effects of which are now manifest.⁶ Today, piracy in the Gulf of Aden is at an all-time low, largely attributable to the involvement of foreign naval forces and use of vessel protection detachments.⁷ For the year 2015, no attacks were reported for the region.⁸

However, attention has now shifted to the West coast of the Continent as piracy and other unlawful acts are now on the rise in the region. Indeed, the spate of piracy attacks in the Gulf of Guinea⁹ has assumed alarming dimensions. A substantial majority of these attacks occur off the coasts of Nigeria, around the economic capital which is Lagos and the oil rich waters of the Southern Niger Delta. In fact, Nigeria alone accounts for nearly half of the reported incidents of piracy in the Gulf of Guinea.¹⁰ Due to the increasing insecurity in the region and its implications for regional and global security, various strategies have been devised by the Nigerian government, mainly in collaboration with some of the littoral states in the Gulf of Guinea, to curb the emerging trend. The United Nations Security Council has at various stages, called for concerted efforts by the states in the region and governments, world over. These efforts, notwithstanding, Nigeria remains Africa's piracy hotspot as the figures have continued to soar.¹¹

⁴ The Gulf of Aden is a gulf situated in the Arabian Sea. It is positioned between Yemen, on the South coast of the Arabian Peninsula, and Somalia in the Horn of Africa.

⁵ A total of 47 vessels were reported hijacked and 867 crew members were taken hostage. A further 10 were reported injured, 4 killed and 1 missing. Their targets have included bulk carriers, containers, fishing vessels, tankers, tugs and yachts - International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery against Ships 2009 Annual Report <<https://www.icc-ccs.org/>> accessed 17 January 2015.

⁶ Adjoa Anyimadu, 'Maritime Security in the Gulf of Guinea: Lessons Learned from the Indian Ocean' (2013) 2 <https://www.chathamhouse.org/.../chathamhouse/.../0713pp_maritimesec...> accessed 7 May 2015.

⁷ Freedom Onuoha, 'Oil Piracy in the Gulf of Guinea' (2012) Issue 4, Conflict Trends, 27 <[www.mercury.ethz.ch/serviceengine/Files/ISN/165606/.../en/04\(14\).pdf](http://www.mercury.ethz.ch/serviceengine/Files/ISN/165606/.../en/04(14).pdf)> accessed 17 May 2015.

⁸ For the previous years, the International Maritime Bureau (IMB) Piracy Reporting Centre (PRC) recorded the following figures for the region: 10 attacks for 2014; 8 attacks for 2013; 69 attacks for 2012; 163 attacks for 2011; and 100 attacks for 2010. The statistics show a steady decline from 2012. However, as of 31 December 2015, suspected Somali pirates continue to hold 29 crew members for ransom - International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery against Ships Report, 2015 <<https://www.icc-ccs.org/>> accessed 3 February 2016.

⁹ The Gulf of Guinea is located off the coasts of West Africa, and stretches from Senegal to Angola. The countries within the Gulf include, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Ivory Coast, Ghana, Togo, Benin, Cameroon, Nigeria, Equatorial Guinea, Sao Tome and Principe, Gabon, Republic of the Congo, Democratic Republic of the Congo (DRC), and Angola.

¹⁰ International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery against Ships Report, 2015 <<https://www.icc-ccs.org/>> accessed on 3 February 2016.

¹¹ *ibid*

The situation is quite dire because it holds severe social, economic and political implications for Nigeria. Thus, there is need to strengthen the extant anti-piracy measures. Practically speaking, the effectiveness of national, regional and global response measures will be contingent upon a thorough knowledge of the dynamics of the phenomenon. More importantly, it will depend on the establishment of a sound legal and regulatory framework for combating piracy and unlawful acts on and around Nigerian territorial waters, which forms the focus of this paper.

The paper sets the background for the discussion with a contextual definition of the term “piracy” and the attempts to distinguish it from other illegal maritime activities. Having analysed the dynamics of the scourge in the Gulf of Guinea, the discussion is narrowed down to an examination of the piracy facts and figures for the Nigerian coasts. The paper discusses the underlying factors fuelling piracy and then proceeds to appraise the international and domestic legal framework for combating piracy in Nigeria. It concludes with a look at the imperatives for improving maritime security in the Gulf of Guinea.

2. Maritime Piracy

Maritime piracy, ordinarily, refers to robbery, kidnapping or other criminal violence committed at sea.¹² It is an international threat which exemplifies the unique challenges posed by non-state actors operating within non-traditional boundaries.¹³ Under customary international law, there is a well-recognized principle that each state has universal jurisdiction to prosecute pirates. This principle is codified in the *United Nations Convention on the Law of the Sea, 1982* which is the requisite international legal framework for dealing with piracy.¹⁴ Under the UNCLOS 1982, for an act to qualify as piracy it must, amongst other requirements, have taken place on the high seas, usually referred to as international waters. Conversely, similar acts or illegalities that occur within territorial waters, internal waters, or, by extension, archipelagic waters, ports, and

¹² Bryan Garner (ed), 'Blacks Law Dictionary' (9th ed, Thomson Reuters) 1256.

¹³ Mathew Fiorelli, 'Piracy in Africa: The Case of the Gulf of Guinea' (2014) 3 <www.kaiptc.org/...Papers/.../Fiorelli-KAIPTC-Occasional-Paper-2014.asp...>accessed 6 August 2015.

¹⁴ Hereinafter referred to as “UNCLOS 1982”. See Articles 100 -107 of the UNCLOS.

anchorages are referred to as “armed robbery against ships,” or “armed robbery at sea”.¹⁵ It is pertinent to stress that the distinction drawn by the United Nations, notwithstanding, “piracy” and “armed robbery at sea” share the same characteristics and present the same level of danger to maritime security. Further, the motive and the other factors that drive “piracy” and “armed robbery” are fundamentally the same.¹⁶ Even though the tendency exists amongst lay persons and even within maritime circles to use the word “piracy” to describe both types of offences, for the purposes of this paper the terms “piracy” and “armed robbery at sea” shall be used as differentiated.

3. Piracy in the Gulf of Guinea

3.1. The Statistics

Over the last six years, the dynamics of piracy in African waters has taken a new direction. Following the remarkable decline witnessed in the spate of piracy attacks in the Gulf of Aden, alarm bells are ringing with regards to the growing insecurity in the Gulf of Guinea.¹⁷ In fact, the focus of the international community has now shifted to insecurity of waters off the coasts of West Africa.¹⁸ Even though the Gulf of Guinea has always had a history of piracy and other criminal activities, they never presented a major threat until recently. In the last few years, the region has observed a substantial increase in piracy attacks. Indeed, the rising threat of piracy is apparent.¹⁹ Attacks rose from 25 in 2005 to 59 in 2008. There were slight reductions in 2009 and 2010 with 48 and 39 incidents respectively. In 2011 the figures swelled again with 53 incidents registered for the period. However, the year 2012 marked a peak with a total of 62 incidents.²⁰

As a result of the increasing insecurity in the region and its implications for regional and global security, the United Nations Security Council adopted Resolutions 2018 and 2039

¹⁵ This definition is proffered by the International Maritime Organisation (IMO), a specialised agency of the United Nations (UN) which is responsible for improving maritime security and preventing pollution from ships. Its primary role is to ensure safety and security on the high seas by establishing a fair and effectual regulatory framework that is generally accepted and applied by the shipping industry.

¹⁶ Ali Kamal-Deen, ‘The Anatomy of Gulf of Guinea Piracy’, (2015) vol. 68, No. 1, Naval War College Review, 93 <<https://www.usnwc.edu/.../The-Anatomy-of-Gulf-of-Guinea-Piracy.aspx>> accessed on 6 August 2015.

¹⁷ *Ibid*

¹⁸ Anyimadu (n 6) 2

¹⁹ Kamal-Deen (n 16)

²⁰ See the International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery Against Ships Annual Reports for 2008 to 2012. Available at <<https://www.icc-ccs.org/>> accessed on 17 January 2015.

in 2011 and 2012²¹ respectively, calling for collaborative efforts by regional states, institutions and the international community in the fight against piracy. The Resolutions encouraged the states of the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission (GGC) to develop a comprehensive strategy for combating piracy including: the development of anti-piracy laws and regulations in countries where these are not in place; the development of a regional framework to combat piracy and armed robbery at sea and; the development and reinforcement of domestic laws and regulations, as appropriate, to implement relevant international treaties for tackling maritime insecurity, in accordance with international law.²² Following the adoption, a summit of Gulf of Guinea Heads of State was convened in order to consider a comprehensive response in the region. The response to this call culminated in the adoption of a *Code of Conduct for the Repression of Piracy* by the Gulf of Guinea States in June 2013 at Yaoundé, Cameroon, with wide international support.²³

The adoption of this Code notwithstanding, piracy in the Gulf of Guinea region remains a serious threat. In fact, in July 2013, the month after the adoption, a Maltese-flagged ship, *Cotton*, was hijacked off the coast of Gabon. This was the first attack of its kind along that coast thus signifying an extension of the scourge, southward.²⁴ More attacks followed this incident.²⁵ Subsequently, a fresh call for the intensification of collaborative efforts in the fight to repress piracy was made in November 2013 by UN Security Council Resolution.

²¹ The United Nations Security Council Resolutions are available at <www.un.org> Search Oceans and Law of the Sea site>.

²² Security Council Resolution 2039 specifically recognized the urgent need "...to devise and adopt effective and practical measures to counter piracy and armed robbery at sea in the Gulf of Guinea; reiterated the leadership role and responsibility of States in the region in countering the threat and addressing the underlying causes of piracy and armed robbery at sea in the Gulf of Guinea, in close cooperation with organizations in the region and their partners; emphasized the importance of building on existing national, regional and extra-regional initiatives to enhance maritime safety and security in the Gulf of Guinea; and welcomed the initiatives already taken by States in the region and regional organizations, including ECCAS, ECOWAS, GGC, and the Maritime Organisation for West and Central Africa (MOWCA), to enhance maritime safety and security in the Gulf of Guinea".

²³ Politics Inn, 'Ban Welcomes Anti-piracy Strategy Adopted by Leaders from West, Central Africa', *The Daily Press* (June 28 2015) <http://politicsinn.com/ban-welcomes-anti-piracy-strategy-adopted-by-leaders-from-west-central-africa/> accessed on 30 July 2015.

²⁴ Kamal-Deen (n 16)

²⁵ According to International Maritime Organisation (IMO) *Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report 2013*, by the end of 2013, the Gulf of Guinea had recorded more incidents of attacks on the high seas than in previous years.

A 1069 (28).²⁶ Nevertheless, the situation worsened in 2014²⁷ as Angola and Ghana witnessed their first major hijackings.²⁸ For the year 2015, the story was no different because out of the 35 incidents recorded for Africa, 31 happened in the Gulf of Guinea with Nigerian waters hosting 14 of the incidents.²⁹ The International Maritime Bureau (IMB)³⁰ estimates that the actual number of attacks that occur in the Gulf of Guinea is possibly, twice the official figures.³¹ This is based on the perception that, unlike in other parts, only about half of the incidents of piracy in the region are actually reported by the fishing and oil industry for fear of reprisals.³²

3.2. The Geographical Spread

The Gulf of Guinea is located off the coasts of West Africa, and stretches from Senegal to Angola.³³ It plays host to over a dozen countries including Nigeria. The region is blessed with an abundance of mineral resources, agricultural commodities and more importantly hydrocarbons and energy commodities which provide an economic lifeline to the littoral and landlocked states within the region. Angola and Nigeria rank among the top ten largest exporters of crude oil in the world. Also, with other oil producers such as Republic of Congo, Cameroon and Gabon, Equatorial Guinea and Chad, the region is no doubt, of strategic importance to the global economy. Thus, safe access to ports in the region and security within its waters are crucial for global energy production.³⁴ Today, the region stands as the most dangerous maritime area in terms of the degree of violence employed,

²⁶ Resolution 1039 (28) titled, Prevention and Suppression of Piracy, Armed Robbery Against Ships and Illicit Maritime Activity in the Gulf of Guinea, urges governments to cooperate with and assist states in the Gulf of Guinea, "... to develop their national and regional capabilities to improve maritime governance in waters under their jurisdiction; to prevent, within the provisions of international law, piracy, armed robbery against ships and other illicit maritime activities; and to assist States to build capacity to interdict and bring to justice those who commit crimes. Such assistance might include strengthening of the legal frameworks, including anti-piracy laws and enforcement regulations; the training of national maritime law enforcement agencies; promoting anti-piracy and law enforcement coordination and cooperation procedures between and among States, regions, organizations and industry; and the sharing of information."

²⁷ Of the 33 incidents of piracy recorded in Africa for 2014, 23 occurred in the Gulf of Guinea with the Nigerian waters hosting 10 of those 23 incidents - International Chamber of Commerce (ICC) and International Maritime Bureau (IMB) Piracy and Armed Robbery Against Ships Report, 2014.

²⁸ Kamal-Deen (n 16)

²⁹ ICC – IMB Piracy and Armed Robbery Against Ships Report (n 10)

³⁰ The International Maritime Bureau is a specialised division of the International Chamber of Commerce (ICC), established in 1981 to act as a central point in the fight against all types of a maritime crime and malpractice. As a result of the disturbing increase in pirate attacks, the *IMB Piracy Reporting Centre* was created in 1992. It keeps a round-the-clock watch on the world's waterways and reports incidents of piracy to local law enforcement. It also educates and issues warnings about piracy hotspots and enclaves to the trade and shipping industry. For statistical purposes, the IMB embraces a broad definition of piracy that covers actual and attempted attacks both when the ship is at anchor or at sea. The comprehensive approach adopted by will affect the number of attacks that the IMB will record— Information accessed at www.icc-ccs.org on 20 July 2015.

³¹ Dennis Tull, 'West Africa' in Stephan Mair (ed), *Piracy and Maritime Security*, (2011) 28 <http://www.swp-berlin.org/fileadmin/contents/products/.../2011_RP03_mrs_ks.pdf> accessed 30 August 2015.

³² Kamal-Deen (n 16)

³³ Anyimadu (n 6) 2

³⁴ *ibid*

frequency and success rate of piracy attacks and other unlawful acts.³⁵ This state of affairs is not unconnected with its abundant oil reserves as we will see later in this article.

For a clearer understanding of the dynamics of piracy off the West African coasts, the littoral states in the Gulf of Guinea are classified as “hot spots,” “enclaves,” or “areas of low risk”. According to Kamal-Deen,³⁶ piracy hot spots are graded according to risk and danger of attacks, while enclaves, which represent the vicinities where pirates are based and from which they operate, are categorised as primary or secondary, depending on the certitude of the presence of pirates.³⁷ Democratic Republic of Sao Tome and Principe, Angola and Gabon are generally low risk areas because only 1, 2 and 3 attacks respectively, have been recorded on their waters in the past five years.³⁸ For the DRC, Congo and Ghana, the incidents recorded are not very serious as they are usually limited to petty theft in and around ships in ports.³⁹ However, these incidents have been fairly frequent.⁴⁰ Cameroon is no longer a high risk area because there has been a significant reduction in attacks off their coasts since 2009.⁴¹ Cameroon and Liberia have each recorded only 3 attacks in the last five years.⁴² Even though the International Maritime Bureau (IMB) rates Sierra Leone as a low risk area,⁴³ the International Maritime Organisation (IMO) classifies it, as well as, Guinea and Ivory Coast as piracy hotspots based on either multiplicity of attacks or degree of violence used in the execution of attacks.⁴⁴ In fact, Guinea is categorized as the region’s secondary piracy enclave.⁴⁵ The coasts of Nigeria, Togo and Benin are jointly, the most dangerous in the region.⁴⁶ Nonetheless, being the focal point of Gulf of Guinea piracy, Nigeria takes the lead as Africa’s primary piracy hotspot. While Togo and Benin and reported 30 and 22 attacks

³⁵ Kamal-Deen (n 16)

³⁶ *ibid*

³⁷ The hijacking of the MT *Kerala* in February 2014 was the first major incident off Angolan waters. The Greek owned vessel vanished off the coast of Angola having been hijacked by a sophisticated pirate gang. They disabled its identifications system and communication equipment. Over a week after, the hijackers released *Kerala* off the coast of Nigeria, about 1300 miles away, after siphoning 12,270 tons of its diesel cargo to other ships. The hijacking signifies the southernmost extension of activities of Nigerian pirates, but represents only one sub-division of piracy in the Gulf of Guinea – James Bridger, ‘Piracy in the Gulf of Guinea: Oil Soaked Pirates’ *USNI News* (March 10, 2014) <<http://news.usni.org/2014/03/10/piracy-gulf-guinea-oil-soaked-pirates>>accessed on 25 August 2015.

³⁸ ICC-IMB Piracy and Armed Robbery against Ships Report (n 10)

³⁹ Kamal-Deen (n 16)

⁴⁰ ICC-IMB Piracy and Armed Robbery against Ships Report (n 10)

⁴¹ Kamal-Deen (n 16)

⁴² ICC- IMB Piracy and Armed Robbery against Ships Report (n 10)

⁴³ *ibid*

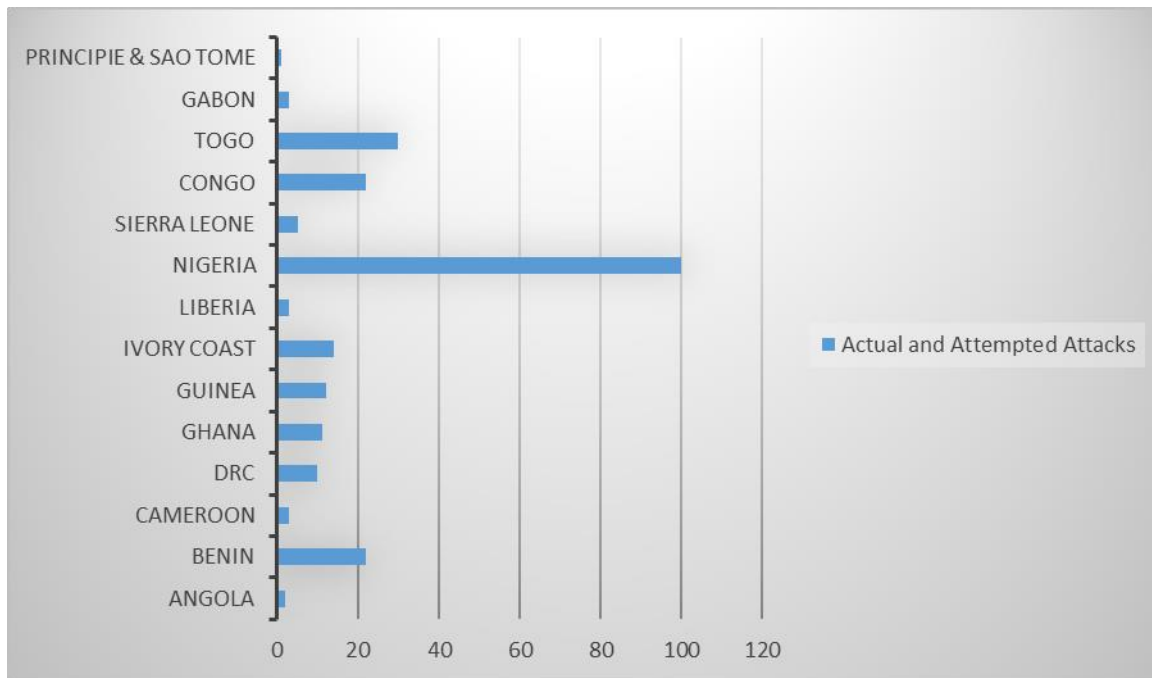
⁴⁴ Kamal-Deen (n 16)

⁴⁵ International Maritime Organisation Reports on Acts of Piracy and Armed Robbery against Ships: Acts Reported during August 2012, MSC.4/Circ.188 (London, 29 October 2012).

⁴⁶ See ICC-IMB Reports, 2014 and 2015.

respectively from 2010 to 2015, Nigeria recorded 100 attacks for the period. See **Figure 1 below**.

Figure 1: Distribution of Attacks in the Gulf of Guinea from 2010 – 2015⁴⁷



4. Nigeria: Africa’s Primary Piracy Hotspot

Today, the waters off the coasts of Nigeria are officially Africa’s primary piracy hotspot,⁴⁸ both in terms of certitude and frequency of attempts and actual attacks. Nigerian pirates were responsible for 22 of the 34 incidents recorded for Gulf of Guinea in 2013. They also carried out 10 of the 23 attacks recorded for the region in 2014. In 2015 there were 31 attacks with Nigerian pirates claiming responsibility for 14 of those attacks.⁴⁹ A significant proportion of piratical or other unlawful acts that are associated with Nigeria takes place within her territorial waters, which includes her internal port waters and inland waterways.⁵⁰ The attacks are substantially concentrated around Lagos and the Southern Niger Delta.⁵¹

⁴⁷ Statistics are based on ICC –IMB Piracy and Armed Robbery against Ships Report. See (n 10)

⁴⁸ Kamal-Deen (n 16)

⁴⁹ ICC-IMB Piracy and Armed Robbery against Ships Report (n 10)

⁵⁰ The territorial waters of Nigeria measures 12 nautical miles from the coastal baselines of the country. Article 3 of UNCLOS. See generally the Territorial Waters Act, Cap T5, Laws of the Federation of Nigeria, 2004.

⁵¹ The points of attack usually include Lagos to Lekki Axis; Awoye/ Aiyetoro/ Benin River; Escravous/ Forcados/ Ramos/ Dodo; Fishtown/Brass/ Bartholomew/Barbara; Sombreiro/ Bonny/BOT/Andoni/Opobo; and Qua Iboe/ Calabar/ Rio del Rey.

Unlike Somali pirates, who at the height of Somali piracy, were known to have hijacked ships and crew solely for ransom, Nigerian pirates are known to be very violent and focus predominantly on the theft of cargo, usually oil and petroleum products.⁵² A 'classic' case is an attack on a tanker that is fully laden with oil, with the aim of hijacking it and stealing its cargo. The hijacked tanker is normally detained for some time during which time the vessel is re-directed to another tanker for transfer of the cargo.⁵³ After the transfer, the stolen oil is sold into the black market onshore.⁵⁴ In some cases these attacks are launched from mother-vessels or using other forms of structured off-shore organisation.⁵⁵

Oil piracy, as the phenomenon has been labelled is usually executed by well-coordinated criminal gangs, mostly operating from Nigerian waters.⁵⁶ As posited by Malaquias,⁵⁷ in the Gulf of Guinea, "*piracy is the organized, sometimes highly sophisticated, illicit taking of oil. They steal the oil, make a couple of black market circles of the stuff, and then deposit it back into the global supply*". An example of such incident is the hijack of a Cook Islands product tanker, *MT Mariam*, on 11th January 2015, by armed pirates while underway, south-west of Bayelsa. About 10 pirates armed with AK47 rifles boarded the tanker, attacked and took all nine crew members hostage and then hijacked the tanker. Subsequently, the pirates transferred the oil cargo into another vessel which two of pirates departed with. As the eight remaining pirates made their way into Ghanaian waters with the hijacked ship, they were arrested by the Ghanaian Navy.⁵⁸ Prior to this incident, there was the hijack on the 6th March 2014, of a Nigerian flagged supply ship, *Prime Lady* by seven armed pirates around 30 nautical miles of Brass Nigeria. The pirates, armed with machine guns, revolvers and knives launched their attack from a speedboat. They took all the crew members hostage and used the vessel as a mother-vessel to look out for another vessel to hijack. Having found no suitable vessel after 20 hours of searching, they forced their way into the locked cabins and stores and stole the personal

⁵² Onuoha (n 7)

⁵³ Christina Barrios, 'Fighting Piracy in the Gulf of Guinea' (2013)1 <www.iss.europa.eu/uploads/media/Brief_20.pdf> accessed 17 May 2015.

⁵⁴ *ibid*

⁵⁵ Barrios (n 53)

⁵⁶ Onuoha (n 7)

⁵⁷ Assis Malaquias, "Ask the Expert: The Growing Threat of Oil Pirates in West Africa's Gulf of Guinea", (2012)

<<http://www.africacenter.org/security/experts/asis-malaquias>>accessed 17 May 2015.

⁵⁸ ICC-IMB Piracy and Armed Robbery against Ships Report (n 10)

belongings of the crew and ship properties. During the incident, some of the crew members were badly beaten up while one escaped being shot.⁵⁹

The foregoing goes to show the dexterity with which these attacks are carried out. Apart from attacks on oil vessels, fishing vessels are known to have been attacked. Such attacks have included theft of fish cargoes, fishing tools, vessel equipment and other property on board. In some cases, fishermen have lost their lives. Just like attacks on oil vessels, most of the attacks on fishing vessels go unreported for fear of reprisal attacks. So aside the “get rich quick” syndrome which is an apparent cause of piracy and other illegal maritime activities in Nigeria and the wider Gulf, what is the underlying factor? How has the scourge attained the disturbing dimensions witnessed today?

4.1. The Underlying Factors Fuelling Piracy

Maritime piracy in Nigeria is said to be directly linked to oil development and the resulting economic, social, and environmental conditions in the Niger Delta.⁶⁰ Presently, the oil producing states with coasts in the Gulf of Guinea, produce over 5 million barrels of oil per day,⁶¹ and together, they possess one-tenth of all the oil reserves in the world. Nigeria is at the heart of this region and with a population of 170 million. She accounts for 25 percent of the entire population of Africa. Nigeria is also the 13th largest oil producer in the world with over 2.4 million barrels produced each day.⁶² The country is heavily dependent on its oil sector which accounts for majority of its export revenues. A significant quantity of the nation’s oil reserves are situated in the oil rich waters of the Niger Delta area of the country.

In the past decade or more there has been an emergence, and subsequently, an increase in the activities of local militia groups in the Niger Delta area of Nigeria. These groups protest the perceived marginalisation and deprivation of oil benefits by successive governments in Nigeria.⁶³ The most influential and cohesive of these groups is the

⁵⁹ ICC-IMB Piracy and Armed Robbery against Ships Annual Report 2014.

⁶⁰ Neethling (n 2)

⁶¹ Chineme Okafor and Chiemelie Ezeobi, ‘Alison-Madueke: Nigeria, Angola Maintain Lead in Gulf of Guinea Oil Production’ This Day Live (Nigeria, 30 August 2013) <http://www.thisdaylive.com/articles/alison-madueke-nigeria-angola-maintain-lead-in-gulf-ofguinea-oil-production/157649/>>accessed 30 September 2015.

⁶² The figures are provided by International Energy Statistics (IES). Information accessed at www.eia.gov on 10 October 2015.

⁶³ Onuoha (n 7)

Movement for the Emancipation of Niger Delta (MEND), which is one of the largest militant groups in the area.

MEND claims to be fighting for a greater share of oil revenue for the region, amongst other communal interests, however, its activities are dominated by extreme criminalities. Right from its inception in 2005, it has been linked with various criminal acts including, ransom motivated hostage-takings involving expatriate workers. The activities of MEND assumed a different dimension when it began to attack oil installations in the Niger Delta. It started with onshore oil pipelines and then extended its activities to offshore oil platforms.⁶⁴ The height of the insurrection, was the June 2008 attack on a \$3.6 billion offshore terminal owned by Royal Dutch Shell in the Bonga oil field, causing it to stop production of 220,000 barrels of oil per day.⁶⁵ Following the attack, MEND announced that it had purposely targeted the oil facility positioned about 120 kilometres off the coast so as to show that offshore oil facilities were not outside its range.⁶⁶ It warned oil and gas tankers to avoid Nigerian waters and then continued with its nefarious activities.⁶⁷ Even the establishment of a Joint Task Force of security agencies did not yield any positive results in the fight to contain the activities of the group. Towards the end of 2008, the Nigerian government entered into negotiations with MEND, the result of which was a formal amnesty proclamation in June 2009. However, the ceasefire did not last very long as the “dividends” which were supposed to accrue from the proclamation had not been satisfactorily divided amongst the actors involved. Soon cracks appeared, factions emerged, hostilities were resumed and so, for the remaining part of 2010, piracy and other illegal maritime activities became rampant once again. Since then, the statistics for piracy and other illegal maritime activities in the Gulf of Guinea have continued to soar, with a significant majority, executed on Nigerian waters.

The situation is compounded by the fact that the country lacks 100% crude refining capacity. Nigeria produces more than 2 million barrels of oil a day but only has the

⁶⁴ Kamal-Deen (n 16)

⁶⁵ Tull (n 31) 29

⁶⁶ *ibid*

⁶⁷ The *Bonga* attack heightened concerns within the international community as it became clear that even deep-sea energy installations were not immune to attacks. It signalled a peak in a series of threats to energy security in the Gulf of Guinea, and it opened a new chapter in global asymmetric threats. Prior to this however there had also been other attacks on other offshore platforms in the Gulf of Guinea, all of them off the coast of Nigeria. In 2007 *Bulford Dolphin*, a mobile drilling rig, was attacked. There were also attacks on in May 2007 on *Mystras* and *Trident VIII*, both oil facilities. The attack on *Mystras* was indeed very significant, as it marked the second on an FPSO in two year – Kamal-Deen (n 16).

capacity to refine less than one-quarter of that.⁶⁸ Thus, hundreds of tankers, ply the length and breadth of the Gulf, through the mangrove swamps of the Niger Delta, carrying out barrels of crude for refinement and bringing them back into the country. These tankers are easy targets for pirates and oil thieves who lie in wait for them to sail by.⁶⁹ Hopefully, with the efforts being made by the current administration to revive the country's oil refineries, it is expected that the opportunities presented for such attacks will be considerably reduced in the future.

4.2. The Costs of Piracy and other Illegal Maritime Activities

As already noted, the Gulf of Guinea provides an economic lifeline to coastal and landlocked West African countries, and is of strategic importance to the rest of the world. With Nigeria and Angola ranking among the largest oil exporters in the world, safe passage to ports in the region and security within its waters are a must for global energy production.⁷⁰ Piracy and other illegal maritime activities, including attacks on offshore facilities hold serious implications for Nigeria and the rest of the world.⁷¹ First, these activities have cost Nigeria millions of dollars over the years. This is evident in the drop in oil production which followed the 2008 Bonga attack on offshore oil installations. Nigeria's oil production sunk to its lowest in 25 years and global oil prices soared. Actually, for the period 2005 to 2008 the country lost approximately \$202 million to similar attacks on offshore installations.⁷² Further, it is estimated that the total economic cost associated with West African piracy including, crude oil theft and bunkering, was between \$564.9 million and \$681.4 million for the year 2013.⁷³

Second, the fishing industry which is the second highest non-oil export industry in Nigeria, is under threat as a result of attacks on fishing vessels. Food security is also at risk because the industry makes a key contribution to the food and nutritional security of

⁶⁸ Mark Doyle, 'Nigeria's Piracy - Another Form of Oil Theft', *BBC*, (June 2013) <<http://www.bbc.com/news/world-22956865>> accessed on 30 September 2015.

⁶⁹ *ibid*

⁷⁰ Anyimadu (n 6) 2

⁷¹ Nigeria and Angola account for 47 per cent and 34 per cent of total Gulf of Guinea oil supply respectively. It is extremely important that Gulf of Guinea countries and their allies collaborate to police the sea lanes of the Gulf of Guinea; disruptions in crude oil supply not only affect countries such as Nigeria but ultimately have an impact on the global economy – Chineme Okafor and Chiemelie Ezeobi, 'Alison-Madueke: Nigeria, Angola Maintain Lead in Gulf of Guinea Oil Production' *This Day Live* (Nigeria, 30 August 2013) <http://www.thisdaylive.com/articles/alison-madueke-nigeria-angola-maintain-lead-in-gulf-ofguinea-oil-production/157649/>>accessed 30 September 2015.

⁷² Neethling (n 2)

⁷³ Jens Marsden and others, 'The State of Maritime Piracy Report 2013', (Colorado: Oceans Beyond Piracy, 2014) 54 <www.oceansbeyondpiracy.org/sites/default/files/.../SoP2013-Digital.pdf>accessed 6 August 2015.

200 million Africans.⁷⁴ According to the World Bank (2012), the fisheries sector in Africa employs 25.4 million people.⁷⁵ Also, a study by the Food and Agricultural Organisation (FAO) reveals that the total value added of marine fishing by African countries in 2011 was US\$ 9.9 billion.⁷⁶ Apart from the foreign exchange earned from fish exports, additional income is also generated from fishing licenses. Further, even though acts such as illegal, unreported and unregulated (IUU) fishing hardly come up in discussions of maritime security in the Gulf of Guinea, it is of crucial economic importance because West Africa loses about as much as \$1.5 billion annually as a result of such illegal activities.⁷⁷

Third, the scourge is already affecting shipping insurance premiums and freights. Piracy related insurance for the Gulf which covers war risks, kidnap and ransom costs, is estimated to have cost over \$40 million in 2013.⁷⁸ If the present situation is left unabated, it may result in redirection of maritime traffic to less risky neighbouring states which would add more transit times to journeys and further increase insurance premiums. This would also mean that Nigeria would be losing derivable revenue that would normally accrue to the country through the provision of port services etc.⁷⁹ Again, if 100% refinement of crude within the country is not achieved, the increased cost of shipping as a result of these attacks, will continue to affect the fuel pump price.

Fourth, security on our waters is imperative to avert the trafficking of people, hard drugs and Small Arms and Light Weapons (SALWs) into unstable West African countries that are at risk of destabilization.⁸⁰ A threat assessment conducted by the United Nations Office on Drugs and Crime (UNODC) shows that the Gulf presents a very safe transit passage for the trafficking of hard drugs from South America through West Africa to North America and Europe. The assessment reveals that up to 18 tons of cocaine estimated at about US \$ 1.25 billion passes through the region every year.⁸¹

⁷⁴ Erastus Mwencha, 'The Geostrategic Importance of Africa's Maritime Domain: Opportunities and Challenges', (2010), cited in Kenedy Mbekeani and Mthuli Ncube, 'Economic Impact of Maritime Piracy' (2011), Vol 2, Issue 10, AFDB Africa Economic Brief 1 <www.afdb.org/fileadmin/.../Maritime%20Piracy_Maritime%20Piracy.pdf> accessed 30 September 2015.

⁷⁵ World Bank, 'Hidden Harvest: The Global Contribution of Capture Fisheries', (2012) <<https://openknowledge.worldbank.org/.../664690ESW0P1210120Hidde...>> accessed 30 September 2015.

⁷⁶ Gertjan de Graaf and Luca Garibaldi, 'The Value of African Fisheries' 2014 (Food and Agriculture Organization of the United Nations, 2014) <<http://www.fao.org/3/a-i3917e.pdf>> accessed 30 September 2015.

⁷⁷ Anyimadu (n 6) 4

⁷⁸ Marsden and others (n 71) 54

⁷⁹ Mfon Usoro, 'Assessing the Efforts of the Nigerian Government in Combating Maritime Security Issues' (Paper presented at the Nigerian Institute of Advanced Legal Studies Roundtable on Piracy and Security Challenges held in Abuja, Nigeria on 24th June 2013)

⁸⁰ Anyimadu (n 6) 2

⁸¹ United Nations Office on Drugs and Crime (2013). 'Transnational organized crime in West Africa- A Threat

Again, there is the human cost of piracy. In January 2008, more than 50 incidents of attacks on fishing trawlers led to 10 deaths. In the first half of 2009, 30 deaths were reported. According to IMB, half of these deaths occurred on Nigeria's territorial waters.⁸²

5. The Legal Framework for Combating Piracy and other Illegal Maritime Activities

5.1. The International Legal Framework

The Latin translation of the word "pirates" is "enemies of mankind" (*hostis humani generis*). In other words, pirates are "not enemies of one state, but of all states" and so, they pose a unique and shared security threat at the international level.⁸³ Piracy is an international crime that falls within the jurisdiction of every state under customary international law.⁸⁴ Every state has the right to fight and prosecute acts of piracy committed on international waters (high seas), under its own domestic laws⁸⁵ regardless of the nationality of the pirate, the registry of the ship, or the destination of the cargo.⁸⁶ This is based on the Principle of Universality.

This principle was first adopted in the *Geneva Convention on the High Seas in 1958*. The relevant provisions were however adopted unaltered in the *United Nations Convention of the Law of the Sea 1982*⁸⁷ which stands, today, as the requisite international legal framework for combating piracy. Because the principle as codified in the UNCLOS 1982 has acquired the status of customary international law, it is binding on every state including non-parties to the convention.⁸⁸ However, these provisions apply only to piracy on international waters as the UNCLOS and customary international law are silent on the modalities for combating piracy on territorial waters.⁸⁹

Assessment', cited in Nicholas Okai, 'Security Consolidation in the Gulf of Guinea: The Need to Engage AFRICOM Better through the SECLOMTS Model' (2014) *International Affairs and Global Strategy*, vol. 20, 12 <www.iiste.org> Home > Vol 20 (2014) > Okai> accessed 6 August 2015.

⁸² Punch Editorial Board, 'Tackling Piracy in Nigeria's Territorial Waters', *Punch Online* (26 October 2012)

<www.punchng.com/editorial/tackling-piracy-in-nigerias-territorial-waters/> accessed 30 September 2015.

⁸³ Eero Tepp, 'The Gulf of Guinea: Military and Non-Military Ways of Combating Piracy', (2012) *Baltic Security and Defence* Vol. 14, Issue 1, www.mercury.ethz.ch/serviceengine/Files/ISN/146424/...a7f1.../en/7.pdf accessed 6 August 2015.

⁸⁴ Diana Chang, 'Piracy Laws and the Effective Prosecution of Pirates' (2010) vol. 33, Issue 2, *Boston College International and Comparative Law Review*, 272 <www.lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1012&context=iclr> accessed 7 March 2015.

⁸⁵ Article 105 of UNCLOS 1982

⁸⁶ Chang (n 82)

⁸⁷ Christian Schaller, 'Combating Acts of Piracy under International Law' in Stephan Mair (ed), *Piracy and Maritime Security*, (2011) 56 <http://www.swp-berlin.org/fileadmin/contents/products/.../2011_RP03_mrs_ks.pd...> accessed 30 April 2013.

⁸⁸ *ibid*

⁸⁹ Schaller (n 85)

5.1.1. The United Nations Convention on the Law of the Sea (UNCLOS) 1982

The customary international law on piracy is codified in Articles 100 – 107 of the United Nations Convention on the Law of the Sea (UNCLOS). These articles govern the provisions relating to the definition of piracy, the universal jurisdiction of states to fight and prosecute piracy, and duties of party states in the arrest and prosecution of pirates. Article 100 imposes a duty on all states to cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state.⁹⁰ Article 101 of UNCLOS defines piracy as consisting of any of the following acts:

- 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. on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - ii. against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- b) any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c) any act of inciting or intentionally facilitating an act described in subparagraph (a) or (b).”

In effect, to found a conviction for piracy, the attack must meet three fundamental requirements i.e. the “high seas”, “two ships” and “private ends” requirements. These requirements are quite restrictive.

⁹⁰ As at 22nd September 2015, 167 states had ratified the 1982 United Nations Convention on the Law of the Sea. Nigeria signed the Convention on 10th December 1982 and then ratified it on the 14th of August 1986. It must however be noted that Principle of Universality as codified in UNCLOS applies to all States, whether signatory or not.

First, for an act to qualify as piracy, it must have been committed for “private ends”. In other words, politically motivated acts are excluded from the scope of the UNCLOS definition of piracy. In the case of *MS Achile Lauro*, four passengers, acting on behalf of the Palestine Liberation Front (PLF) hijacked the Italian *MS Achile Lauro* off the coast of Egypt, as she was sailing from Alexandria to Ashdod, Israel. They demanded the release of 50 Palestinians being held Israeli Prisons. It was decided by the court that the act was not piracy because it was politically motivated. This motive requirement has attracted criticisms from academics and experts within maritime circles because it effectively excludes political terrorism and attacks that are not for profit.⁹¹ For instance, an armed attack on a ship by local militia groups in the Niger Delta, intended to draw the attention of the international community to their perceived relegation and deprivation of their fair share of the oil wealth, is not carried out for “private ends” because it is not executed to profit the group. For that reason, not for profit attacks become a valid defence to piracy under this definition.⁹²

The second restriction is that, for an act to qualify as piracy it must have occurred on the high seas or another place, outside the jurisdiction of the state. Any such acts perpetuated in the territorial waters, archipelagic waters, internal waters and ports of a state would not come within the definition of piracy. The difficulty presented by the “high seas” element is that pirates are usually more active near the coast and in archipelagos and so would not be caught by the antipiracy provisions of the UNCLOS.⁹³ While this approach would have been best suited to Somali piracy where the attacks are known to have been carried out in international waters, it is a severe constraint so far as the effective combating of piracy off Nigerian waters is concerned.⁹⁴ A significant number of piratical or illegal maritime activities which are carried out in the Gulf of Guinea, occur on Nigeria waters, around Lagos axis and the Niger Delta. Thus, even where the attackers are apprehended, they cannot be tried under the anti-piracy provisions of the UNCLOS because their acts would not come within the definition of piracy. At best, they would have to be prosecuted under the domestic laws of the country which as we will see, are not very adequate for the suppression of piracy. Again, it has been argued that this very

⁹¹ Chang (n 82)

⁹² *ibid*

⁹³ Schaller (n 85)

⁹⁴ Chang (n 82)

narrow approach adopted by the UNCLOS has in fact served to fuel piracy over the years, according to Bento, ⁹⁵“...this is because weak states leave a fertile ground for pirates, yet foreign states capable of repressing piracy must respect the weak state's sovereign rights. As such, pirates can launch attacks from within the territorial and internal waters with relative impunity...” Thus, pirates can continue their nefarious operations basking in the knowledge that for sovereignty reasons, the states with the might and wherewithal cannot enter territorial waters of another state to apprehend them.

Third, even where the “high seas” and “private ends” requirement are met, the attack would still not qualify as piracy if it comes from within. In essence, the “two-ship” element excludes mutiny as an act of piracy because the internal seizure of a ship does not involve two ships. Such act is often executed from within.⁹⁶ Thus the hijack of a ship by its passengers as happened in the case of *MS Achile Lauro* would not come within the anti-piracy provisions of the Convention. There have been debates within the maritime legal circles as to whether the crimes of political terrorism and mutiny should come within the UNCLOS definition of piracy. The motives that drive political terrorism and mutiny differ considerably because while terrorists naturally aim to draw attention to a cause, pirates are solely motivated by the desire to make money.⁹⁷ Accordingly, it has been argued that extending the anti –piracy provisions of UNCLOS to include political terrorism and mutiny as acts of piracy, would serve no end towards establishing an effectual international legal framework for combating illegalities on our waterways. This is because modern-day piracy and terrorism/mutiny require diverse solutions. ⁹⁸

Another weakness inherent in the UNCLOS is the requirement that the act be “...an illegal act involving violence, detention, or depredation...” This portion of the UNCLOS’ definition of piracy also creates a drawback because the import of that requirement is that all attempted hijackings or clandestine attacks, where attackers creep in to ships at night and make away with cargo and personal belongings without the knowledge of the members of crew are categorically precluded.⁹⁹

⁹⁵ Lucas Bento, ‘Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish’, (2011) 29 Berkeley J. Int'l Law. 399 <<http://scholarship.law.berkeley.edu/bjil/vol29/iss2/1>> accessed on 6 August 2015.

⁹⁶ However, Article 102 of UNCLOS treats the mutinying crews of a warship or government ship as pirates within the scope of Article 101.

⁹⁷ Chang (n 82)

⁹⁸ *ibid*

⁹⁹ *ibid*

The effectiveness of the UNCLOS is further limited by the fact that while the UNCLOS confers universal jurisdiction on every state in the repression of piracy, it does not require states to pass domestic anti-piracy legislation that accord with the provisions of the convention nor does it provide model laws for states that wish to adopt such legislation.¹⁰⁰ Again, it fails to provide a practical legal framework for the prosecution and punishment of pirates because it allows the arresting state discretion in the determination of penalties.¹⁰¹ The import of this is that, for the purposes of punishing the offence of piracy, there is a general lack of harmony with regards to the penalties that are imposed by affected states. Further, the UNCLOS does not provide for inchoate offences such as conspiracy, aiding, abetting and attempt.

5.1.2. Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) 1988

The case of *MS Achille Lauro* as referred to above exposed the inadequacies of the anti-piracy provisions of the UNCLOS because it excluded cases of internal seizure and was silent as to prosecuting pirates.¹⁰² So the need to protect international shipping, trade and commerce informed the decision to establish a more robust international legal framework for the repression of unlawful acts at sea. This framework was birthed in the form of the IMO *Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) 1988*.¹⁰³ Basically, the Convention aims to proscribe and punish conducts which may threaten the safety of maritime navigation.¹⁰⁴ The SUA Convention does not define or use the word “piracy”. However, the act of piracy is perceived to be one of such marine related crimes, envisaged by Article 3 of the SUA Convention. Article 3 covers every imaginable act of criminality that could occur on territorial or international waters. Under Article 3(1):

1. Any person commits an offence if that person unlawfully and intentionally:

¹⁰⁰ Bento (n 93)

¹⁰¹ Chang (n 82)

¹⁰² Bento (n 93)

¹⁰³ Hereinafter referred to as the SUA Convention

¹⁰⁴ The SUA Convention was signed on 10th March 1988 in Rome. It came into effect on the 1st of March 1992 following ratifications by 15 countries. As at June 2015 the number of signatories stand at 166. The *SUA Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf* is a supplementary convention to SUA. The Protocol came into force concurrently with the SUA Convention.

1. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;
2. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
3. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;
4. 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;
5. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship;
6. communicates information which he knows to be false, thereby endangering the safe navigation of a ship;
7. injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (1) to (6).

Article 3(2), also provides that it an offence to attempt to commit or abet the commission of any of the acts listed in Article 3(1). The SUA Convention enjoins all parties to co-operate in the prevention of these offences and goes ahead to specify the extent of such co-operation.¹⁰⁵ It attempts to plug the loopholes inherent in the UNCLOS by establishing a more inclusive legal framework. It excludes the motive and internal seizure

¹⁰⁵ Article 13

requirements, and extends the territorial limits of the offence.¹⁰⁶ However, it introduces a different approach with regards to the extent of the jurisdiction of states to prosecute crimes committed on the world's waterways by restricting jurisdiction to only states that have some connection to the offense. Under Article 6(1), states are enjoined to take measures as may be necessary to establish jurisdiction over an offense only where it is committed against a ship flying that state's flag,¹⁰⁷ in that state's territory,¹⁰⁸ or committed against a national of that state.¹⁰⁹ The SUA Convention also mandates member states to prosecute or extradite the suspected offender. So where a party state has made an arrest and is unable to establish its jurisdiction to try the offender, it is under an obligation to extradite the offender to a state that has successfully established jurisdiction.¹¹⁰ Notwithstanding its attempts to meet the shortfalls of the UNCLOS, the SUA Convention has been criticised as being an ineffective legal tool for dealing with unlawful acts at sea because its provisions on sanctions lack specificity and uniformity.¹¹¹ According to Bento:

Despite criminalizing numerous offenses, the SUA is not sufficiently specific regarding sanctions. To the extent that signatory states have followed through with this criminalization provision, there is a lack of penal uniformity among their laws. If comparative leniency were to develop in some states, and if pirates were to become sophisticated actors with a strong understanding of international law, such leniency might lead pirates to forum shop in order to manage operational risk.

The provisions of the SUA Convention are binding on states parties only.¹¹²

5.2. The Domestic Legal Framework

¹⁰⁶ Article 4

¹⁰⁷ Article 6(1)

¹⁰⁸ Article 6(2)

¹⁰⁹ Article 6(3)

¹¹⁰ Article 10

¹¹¹ Bento (n 93)

¹¹² So far there are 166 signatories to the SUA Convention including Nigeria.

It is clear from the foregoing section of this paper that the international legal framework depends substantially on municipal laws in the fight against piracy. The UNCLOS enables states to capture and arrest pirates on international waters where they are caught committing a crime. Even though such crime is international by nature, by virtue of it being perpetuated on the high seas, they are prosecuted and punished by local courts under municipal laws. Also, the SUA Convention does not provide for the modalities for the prosecution of unlawful acts at sea nor does it stipulate sanctions for such offences. So, again, such acts which may include piracy are left to the courts of the states having sufficient connection with the offence to try. Thus, in contrast to war crimes such as genocide which have an international underpinning and which are tried by the International Criminal Court (ICC) or other regional crimes tribunal, there is no specialised international framework for trying piracy and other illegal maritime activities. The import of this as already pointed out above is not only a gross inconsistency in municipal laws of the states that provide for piracy, but also gross inadequacy on the part of states who do not have laws to deal with the offence. Nigeria is one of such countries that does not have a legal framework for addressing piracy or similar acts.

5.2.1. The Criminal Code Act and the Penal Code Act

Although Nigeria is bound by the UNCLOS by virtue of customary international law, she cannot rely on it in the fight against piracy. There are two reasons for this: First, a substantial majority of attacks that take place in Nigeria happen on her territorial waters. The purport of this is that where attackers are apprehended they have to be punished and prosecuted under her domestic laws because UNCLOS' anti-piracy provisions do not recognize attacks outside international waters. Second, even where attackers are arrested on international waters for piracy as provided for by UNCLOS, and brought to Nigeria for trial on the basis of universal jurisdiction, this still presents a problem because of the stark lack of an adequate legal framework for prosecuting and punishing piracy.

With regards to the SUA Convention,¹¹³ the position is no different because even though it has been incorporated into Nigerian laws by virtue of *section 216* of the Merchant

¹¹³ The requirement to make regulations also applies to the Protocols to the SUA Convention.

Shipping Act 2007,¹¹⁴ it has yet to achieve blanket implementation because the Minister of Transport is yet to make the necessary regulations to give effect to it as required by *section 217(h)* of the Act.¹¹⁵

Within the Nigerian municipal legal framework, the *Criminal Code Act*¹¹⁶ and *Penal Code (Northern States) Federal Provisions Act*¹¹⁷ are the main legislation which creates and punishes offences. The Criminal Code is silent on the offence of piracy or similar acts. The section with the most proximity to violence against a person committed on a ship can be found in *Chapter 51* of the *Criminal Code* captioned “*Offences in relation to Ships and Wharves*”. *Section 501*, with subsections *(a)* to *(l)*, of that Chapter is titled, “*Offences in relation to ships*”. *Section 501 (a)* and *(b)* makes it an offence for a drunk or disorderly to: persist in their attempt to board a ship after being warned off by a duly authorised member of crew or; refuse to leave a ship after being requested to do so by a duly authorised member of crew. Sub-sections *(c)* *(d)* and *(e)* criminalises: the molestation of a passenger by another passenger; the obstruction or molestation of the crew or any member of them in the navigation or management of the ship; the attempt by a person to board a ship where admission is refused on account of the ship being full. Sub-sections *(g)* to *(k)* creates offences which border on traveling without a valid ticket; traveling beyond the destination the paid for; traveling in class superior to the class paid for. For the offences listed above the Code stipulates a meagre fine of N10 (ten naira) and adds that “...the liability [the fine] shall not prejudice the recovery of any fare payable by him [the offender]”.¹¹⁸ *Sections 501(2)* stipulates that such person may be arrested without a warrant by the crew member or other person called to assist him. The above offences and the penalty of N10 (ten naira) are partly reproduced in *section 429* of the *Penal Code Act*.

Clearly, the intention behind *sections 501* and *429* of the *Criminal Code* and *Penal Code*, respectively could not have been to address the offences of “piracy”, “armed robbery at sea” and other illegal maritime activities, at the time it was drafted, and certainly not

¹¹⁴ Cap M11, Laws of the Federation, 2004.

¹¹⁵ It has however been argued that the domestication of Conventions through the process of incorporation as can be seen in sections 216 and 217(h) of the Merchant Shipping Act 2007 is an improper method of domesticating Conventions.

¹¹⁶ Cap.77, Laws of the Federation of Nigeria 2004.

¹¹⁷ Cap.P3, Laws of the Federation of Nigeria 2004.

¹¹⁸ Section 501(1)

modern day piracy which is becoming increasingly sophisticated. The sections appear to focus on disputes that could arise as between passengers, crew members and unarmed persons boarding a ship with the sole intention of constituting nuisance. They do not consider murder, armed robbery, violence, hijacking or hostage-taking which all trappings of modern day piracy. But even at that, the paltry fine of N10, prescribed for the offences listed, leaves one wondering whether it was a preventive enough measure, even for period the Codes were drafted. Nigeria, is today, is the most pirate-infested country in Africa. There is an urgent need to move with the changing times as her Criminal Code is inadequate.

The Merchant Shipping Act (MSA) 2007

The *MSA 2007* does not cover piracy or similar acts itself, but as earlier noted, it provides under *section 216* that the SUA Convention and its Protocols shall apply to Nigeria. As the Minister of Transport is yet to make the necessary regulations to give effect to it as required by *section 217(h)* of the Act, the SUA Convention and its Protocols are yet to achieve full implementation in Nigeria. One of the drawbacks of the SUA Convention is that it does not provide for sanctions, so assuming it was fully applicable in Nigeria, we would still be faced with the same issues presented by the UNCLOS. If and when the regulations are made, it is expected that adequate provisions would be made for sanctions to be applied for unlawful acts at sea.

5.2.2. Piracy and Other Unlawful Acts at Sea (and Other Related Offences) Bill (Piracy Bill)

In line with its responsibilities to regulate and promote maritime security,¹¹⁹ the Nigerian Maritime Administration and Safety Agency (NIMASA) introduced the *Piracy and Other Unlawful Acts at Sea (and Other Related Offences) Bill (Piracy Bill)*. The Piracy Bill incorporates the relevant provisions of the UNCLOS and SUA Convention and its Protocols. Under section 2 of the Bill, piracy is defined to include:

¹¹⁹ Section 1(i)(ii) of the NIMASA Act 2007, Cap N161, Laws of the Federation of Nigeria, 2004

- 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 the 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).

It also includes as offences, unlawful acts other than the act of piracy as defined above. In describing the acts it considers unlawful, the Bill partly reproduces *articles 3(1) (1) to (7)* of the SUA Convention as highlighted above. It also includes attacks on territorial waters which it captions, “armed robbery at sea” as one of such unlawful acts.¹²⁰ Thus, the Bill adopts an expansive approach to tackling illegal acts at sea by criminalising illegal acts that occur beyond territorial waters as piracy and attacks within territorial waters as “armed robbery at sea”.

The Piracy Bill, by the combined effect of *sections 2 and 3(i)*, confers trial jurisdiction on the Federal High Court with regards to criminal and extradition proceedings or “...*any court having jurisdiction over the matters and offences prescribed under this Act*”. There is a conflict here because *section 215(g)* of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, confers admiralty jurisdiction on the Federal High Court, to the exclusion of any other courts. Again, the Bill exclusively allocates prosecutorial powers

¹²⁰ Section 2 of the Bill

to the Attorney General and his delegates in *section 3 (1)(ii)*, even though, the Nigerian Navy and NIMASA have constantly cited as an impediment, the lack of prosecutorial powers to expeditiously prosecute such offences.

Section 17(1) punishes piracy with 21 years imprisonment and or a fine of not more than N20m (twenty million naira). For armed robbery at sea, sub-section (2) imposes a term of 15 years imprisonment or a fine of not more than N15m (fifteen million naira). In both cases, there is the added sanction of restitution to the owner or forfeiture to the Federal Government of Nigeria, of whatever the offender has obtained or gained from the commission of the crime. Where the attacks results in injury and or death, a higher punishment of life imprisonment or death is imposed under *section 17(3)*. The Bill also provides for related offences such as attempt,¹²¹ aiding and abetting,¹²² amongst others.

The problem with, *sections 17(1)* and (2) is that the crimes of piracy and armed robbery at sea possess relatively, the same characteristics, the only difference lies in the territorial limits. And so, it is not clear why the punishments should differ. It may well be that that the draftsman accords more seriousness to attacks on the high seas for the simple reason that it happens on the international stage. The paper holds the view that attacks on ships and crew members, hijackings, hostage- taking, theft of cargo and other similar acts that occur on territorial waters may also be international by nature. This is because there is always a variety of jurisdictions at play with such attacks. For example, an attack on US owned vessel laden with US owned cargo, crewed by Panamanian and Turkish nationals and attacked by Nigerian and Cameroonian pirates on Nigerian Waters brings into play five different countries. To that extent such an attack is an international crime. Simply put, attacks whether carried out on international or territorial waters should be criminalised using one word – piracy, and punished the same.

Regardless, the Bill could be said to be a good attempt at establishing an adequate legal framework for Nigeria especially, as it provides for piracy, armed robbery, inchoate offences, prosecution and punishment of these offences. Also, with the incorporation of SUA Convention's *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed*

¹²¹ Section 18(1) of the Bill

¹²² Section 18(2) of the Bill

Platforms located on the Continental Shelf, it recognises and punishes unlawful acts such as attacks on offshore oil installations. It must, however, be noted that the Bill was presented to the now defunct 7th National Assembly of the Federal Republic of Nigeria in 2012 but was never passed into law. It is yet to be presented to the current Assembly (the 8th Assembly).

6. The Way Forward

To effectively address piracy and other unlawful acts in the Gulf of Guinea, the littoral states have a very crucial role to play. The lack of an adequate legal framework for tackling the problem in affected states, has constantly been cited within maritime circles, as the principal cause of failures experienced in the fight against piracy in the Gulf. As noted earlier, an overwhelming majority of the attacks that are carried out in the Gulf of Guinea and more recently, in Africa occur on Nigerian waters. Unfortunately legislation for effective criminalisation and punishment of these acts are either inadequate or non-existent. International organisations, saddled with the responsibility of ensuring safety of maritime navigation are constantly making efforts to entrench order on the world's waterways. Shipping companies, insurers and the international community in general are all interested in knowing what preventive mechanisms Nigeria is putting in place because they, as well as Nigeria, have economic and political interests to protect. Thus, Nigeria needs to wake up to her responsibilities. On this note the article proffers the following recommendations:

1. Presently, a lot of difficulties are experienced in the prosecution of pirates and perpetrators of other unlawful acts because the country lacks an all-encompassing municipal legal framework that effectively criminalises and punishes the offence, hence there is need for NIMASA to reintroduce the *Piracy and other Unlawful Acts at Sea (and other related offences) Bill* to the current Assembly for passage into law. Further, for the Bill to live up to expectation if it is eventually enacted into law, issues bordering on trial jurisdiction as highlighted above must be given due consideration before it is passed. More importantly, attacks on territorial waters should not only be recognized in the definition of piracy, but should be expressly

criminalised using the word “piracy”.¹²³ Some jurisdictions adopt more inclusive definitions of piracy in their municipal laws. For, example, the *Kenya Penal Code of 1967* recognises piracy as occurring in territorial and international waters.¹²⁴

2. Also, according to the Oceans Beyond Piracy’s *State of Maritime Piracy Report for 2013*¹²⁵ there are no definitive claims of any prosecutions of pirates in West Africa in 2013. For Nigeria, in particular, reports for the period, suggested that jurisdictional elements limited the ability of the Nigerian Maritime Administration and Safety Agency (NIMASA) to prosecute suspected pirates, resulting in no prosecutions for that period.¹²⁶ Thus a lot of consideration needs to go into the issue of lack of prosecutorial powers which the Agency has identified as an impediment to the effective prosecution of pirates.
3. The SUA Convention is yet to be fully integrated into our laws because the Ministry of Transport has yet to make the necessary regulations under *section 215(h)* of the *Merchant Shipping Act 2007* for a blanket implementation of the laws. While we await the passage of the *Piracy Bill*, this process which appears less arduous than the legislative processes of the National Assembly, should be set in motion in order to achieve full integration of the Convention into our municipal laws.
4. On the regional level, in line with the United Nations Security Council Resolution 2039, encouraging states to develop a regional framework to combat piracy and armed robbery at sea, the littoral states in the West African Region need to pull together and consider working towards establishing a framework in this regard.
5. On the international level, quite a number of points have been highlighted with regards to the shortcomings of the anti-piracy provisions of the United Nations Convention on the Law of Sea. The United Nations has a lot to do in this regard, especially as universal jurisdiction is hardly invoked by states because of the lack

¹²³The Bill was presented to stakeholders for contributions and input in March 2012. It is expected that some of the issues highlighted and suggestions proffered in this article would have been featured in the feedback to NIMASA. The expectation is that NIMASA would conduct a thorough review of the Bill before reintroducing it to the current Assembly.

¹²⁴ Penal Code (1967) Cap. 63 & 69 (Kenya).

¹²⁵ Marsden and others (n 71) 54

¹²⁶ Thus in computing the cost of piracy in the Gulf of Guinea for that period, OBP estimated costs for this item as \$0 in the absence of information demonstrating prosecution.

of a framework for prosecuting and penalising piracy. The time has come for the development of a uniform body of international piracy law, which would provide a sound footing on which states and non-state actors can stand in the fight against piracy.

7. Conclusion

Piracy undoubtedly, threatens global trade and the safety of maritime navigation. The present situation is dire and so, calls for all hands to be on deck. The littoral states within the Gulf and of course, governments around the world need to intensify efforts in the fight against piracy. More importantly, Nigeria has to take the lead in this fight considering, amongst other things, that her waters have hosted a substantial amount of these attacks in the past five years. In addition to the drawbacks experienced as a result of the inadequacies of her laws, other operational areas which are key to combating piracy, need to be revamped. More attention needs to be given to the budgetary allocations of the agencies which make up the maritime defence sector.¹²⁷ The officers involved in the fight need to be encouraged to put in their best through the provision of robust welfare packages and state of the art gadgets for effective policing of the seas. Finally, a lot of the disorder witnessed on Nigeria's waters is a function of poor governance, corruption and disarray on land. It is only when these issues are addressed that Nigeria can truly begin the fight towards enthroning order on her waterways.

¹²⁷ For instance, the Nigerian Maritime and Safety Administration Agency (NIMASA), the Nigerian Navy (NN), Marine Police, Nigerian Customs Service (NCS), Nigerian Immigration Service (NIS).

