

PURSUIT AND ARREST OF SUSPECT VESSELS AT SEA: THOUGHTS ON THE EXTRA-JUDICIAL DESTRUCTION OF VESSELS ENGAGED IN OIL THEFT IN NIGERIA*

Abstract

Crude oil theft has become one of the most heinous economic crimes committed against the Nigerian State. The heinousness of the crime lies in the fact that it robs the State of resources desperately needed for development. Recently, law enforcement agencies resorted to the practice of extra-judicially destroying vessels suspected to have been involved in the crime in Nigerian waters. They claim that the practice is intended to serve as deterrent. Using the doctrinal research methodology, this paper examines both municipal and international law governing the pursuit and arrest of vessels in enforcement of a coastal State's maritime laws. It finds that there is no legal justification, whether under international law or under Nigerian municipal law, for the practice. The paper argues that however well-intended, the practice amounts to self-help by the State and portrays maritime law enforcement agencies in Nigeria as norm-disregarding institutions. The paper also examines the legal, economic and environmental consequences of destroying oil-laden vessels in Nigerian waters. It finds that the practice is not only criminal, but also robs Nigeria of revenue and pollutes the marine environment. The paper then makes prescriptions for conducting legitimate pursuit and arrest of suspect vessels in Nigerian waters.

Keywords: Pursuit, Arrest, Vessel Destruction, Oil theft, Nigerian Waters

1. Introduction

The Nigerian economy relies preponderantly on revenue from crude oil exports. In fact, for the year 2022, crude oil accounted for 80% of the revenue of the Federal Government of Nigeria.¹ According to the National Bureau of Statistics (NBS), oil contributed to 7.24% and 5.67% of Nigeria's Gross Domestic Product (GDP) in 2021 and 2022, respectively.² It is for this reason that the importance of crude oil to the Nigerian economy cannot be overstated. The country has, however, been plagued by oil theft since

Vincent Iwunze**, LL.B (Hons); B.L; LL.M; Ph.D – Head, Department of Jurisprudence and International Law, Faculty of Law, Top faith University, Mkpatak, Akwa Ibom State, Email:iv.iwunze@topfaith.edu.ng, Mobile Phone: 08034370314; 08181701483; *Christiana Tom Edwards**, LL.B (Hons); LL.M; B.L, Studies Fellow, National Judicial Institute (NJI), Abuja, Email: christiewardssfnji@gmail.com, Mobile Phone: 08084065426; 08035515414.

¹O. Akintayo, 'Oil Exports account for 80% Total National Revenue' <<http://www.punchng.com/oil-exports-account-for-80-total-natioanl-revenue/>> accessed 10 June 2023.

² B.T. Moses, 'Economic Implication of Oil Theft in Nigeria' *Social Science, Humanities and Sustainable Research*,(2023) 4(4) 2; A. James, 'Stakeholders Decry Drop in Oil and Gas Contribution to GDP' available at <<http://www.dailypost.ng/2023/05/20/stakeholders-decry-drop-in-oil-and-gas-contribution-to-gdp>>, accessed on 20 June 2023.

around the late 1970s and the early 1980s.³ Oil theft in Nigeria is carried out by operators of illegal artisan refineries in the creeks of the Niger Delta region and, more worrisome, by syndicates that steal oil with motor tanker vessels for sale in the international black market. According to the Group Managing Director of the Nigeria National Petroleum Corporation Limited (NNPCL), an average of 200,000 barrels of crude oil is stolen from Nigeria daily, translating to about 73 million barrels in a year.⁴ While operators of artisan refineries steal in Jerry cans for their illegal refineries, the export syndicates steal in large quantities with tanker vessels, depriving Nigeria huge, badly needed foreign exchange earnings in the process. Vessels enter Nigerian waters, load oil and depart without being caught. This is despite the Navy and other security agencies and institutions saddled with the responsibility of securing Nigerian waters and enforcing the country's maritime laws. These vessels violate, not only Nigerian laws through their nefarious operations, but also rules of international law regarding the operations of foreign vessels in waters within State jurisdiction.

Due to challenges in the enforcement of maritime laws and regulations in Nigeria, many of these vessels are hardly arrested, and when arrested, they either escape or are released without due process of law. Recently, the Maritime Law Enforcement Agencies (MLEAs) have resorted to destroying such vessels without resort to judicial process as required by law. When suspect vessels are destroyed by the MLEAs, evidence needed for prosecution of such vessels and their crews are destroyed. Nigeria is also exposed to possible compensatory liability for the extra-judicially destroyed vessels.

Both municipal Nigerian law and international law vest Nigeria with enforcement jurisdiction over vessels in her waters. This enforcement jurisdiction includes the right to pursue and arrest vessels suspected to have committed offences. This paper discusses the rules governing the pursuit, arrest and handling of vessels suspected to have committed offences within Nigeria's maritime domain. It critically examines the propriety of the destruction of vessels by the MLEAs in the course of maritime law enforcement. The paper proceeds in five Parts. Part Two examines the nature of oil theft in Nigeria. Part Three discusses Nigeria's enforcement jurisdiction over vessels in the Nigerian maritime space. In Part Four, the paper discusses the rules and procedures for pursuit, arrest and handling of suspect vessels in Nigeria. Part Five identifies and discusses the legal,

³ T. Soremi, 'The Implication of Oil Theft on Social and Economic Development in the Niger Delta' *Global Journal of Social Sciences*, (2020)2.

⁴ E. Ejoh, 'Scandalous Oil Theft: Nigeria Loses N3.038 Trillion in One Year' available at <<http://www.vanguardngr.com/2022/05/scandalous-oil-theft-nigeria-loses-3n-038-trillion-in-one-year/>>, accessed on 1 July 2023.

economic and environmental consequences of destroying oil-laden vessels in Nigerian waters. Part Six is the authors' concluding remarks and recommendations.

2. Nature of Oil Theft in Nigeria

Oil theft is one of the perennial problems of Nigeria at the moment.⁵ As already adverted to above, the fact that crude oil export is the backbone of the Nigerian economy makes the crime of oil theft a very serious one. Because of the critical role oil plays in the Nigerian economy, oil theft affects every facet of the economy. The crime involves the illegal extraction and smuggling of oil by criminals. It also involves such illegal activities as vandalising oil pipelines and unauthorised oil bunkering.

Oil theft in Nigeria occurs principally in three major ways.⁶ The first way involves cutting into pipelines and siphoning oil there from into containers. The stolen oil is then refined in local artisan refineries in the creeks of the Niger Delta region and the products sold in the communities.⁷ The second way involves attaching plastic hoses to wellheads through which oil is siphoned into waiting barges and canoes. The oil is then conveyed by these barges and canoes to and loaded on larger vessels waiting at the mouths of coastal rivers. When filled, these vessels in turn deliver and transfer their cargoes into oil tankers waiting in the high sea.⁸ The third way involves the lifting of excess crude oil by extraction licence holders who falsify bill of lading to misrepresent the actual quantity of oil being exported out of the country by the vessels involved.⁹

While all forms of oil theft harm Nigeria socially and economically, the export type of oil theft which involves stealing of oil in large quantities proves to be more harmful. This point was made recently by Tantita Security Services Limited, a Federal Government pipelines surveillance contractor, when it opined that a single 10-tonner vessel will do more damage to the Nigerian economy than 1,000 dugout canoes carrying Jerry cans.¹⁰ Locals who steal oil in jerry cans do so out of need, while the syndicates that steal for

⁵S.F. Anyio, 'Illegal Oil Bunkering and Oil Theft in Nigeria: Impact on the National Economy and the Way Forward' *ILIMI Journal of Arts and Social Sciences* (2015) 1(1)54.

⁶C. Katsouris and A. Sayne, 'Nigeria's Criminal Code: International Options to Combat the Export of Stolen Oil' (Chatham House, 2013) 2-5; E. Adishi and M.O. Hunga, 'Oil Theft, Illegal Bunkering and Pipeline Vandalism: Its Impact on Nigerian Economy 2015-2016' *IIARD Journal of Economics and Business Management*, (2017) 3 (2) 52.

⁷J.B. Asuni, *Blood Oil in the Niger Delta* (United States Institute of Peace, 2009) 2-17.

⁸A. Ikelegbe, 'The Economy of Conflict in the Oil-Rich Niger Delta of Nigeria' (2005) 14(2) *Nordic Journal of African Studies*, 208-234.

⁹T. Soremi (n 3) 2.

¹⁰S. Idowu, 'Tantita Disputes Navy, Claims Stolen Crude found in MT Praisel' available at <<http://www.thisdaylive.com/index.php/2023/08/06/tanita-disputes-navy-claims-stolen-crude-found-in-mt-praisel/>>, accessed on 20 August 2023.

export do so in large quantities and therefore out of greed. In some cases, vessels engaged in this criminality steal oil from Nigeria for years without being caught.¹¹

It needs be pointed out at this juncture that oil theft is not peculiar to Nigeria, but a challenge that has confronted other oil-producing nations at one time or the other. According to the UN, oil is the largest stolen resource across the world.¹² In fact, stolen oil accounts for 5% – 7% of oil sold in the global oil market.¹³ In the 1980s, for example, oil theft was reported in Texas, in the United States.¹⁴ Currently, Indonesia and Mexico are, like Nigeria, confronted with the menace of oil theft.¹⁵ Given, however, the enormity of oil stolen from Nigeria daily, Nigeria currently holds the infamous title of being the epicentre of oil theft in the world.¹⁶

Constituting a national challenge, the Federal Government has put in place diverse measures for curbing this menace. Starting from 2003, the Federal Government increased security presence in the Niger Delta region with a view to stemming the tide of illegal oil bunkering in the region. The Joint Task Force (JTF), (comprising the Army, the Navy and paramilitary agencies) was deployed in 2008 to, among others reasons, contain the activities of those engaged in illegal dealing in crude oil in the Niger Delta. To complement the effort of the security agencies, the Federal Government recently awarded a pipelines surveillance contract to a private company, Tantita Security Services Limited to patrol the creeks and monitor oil pipelines in the creeks of the Niger Delta. In fact, in August 2022, the Federal Government launched an application for monitoring oil theft.¹⁷ While a lot of success has been recorded recently in the detection of local thefts which

¹¹ Recently, security detected and destroyed a vessel involved in oil smuggling in Nigerian water. The vessel was discovered to have engaged in the illegal smuggling of oil out of Nigeria for 12 years. See also T. Obiezu, 'Nigerian Activists Alarmed by Burning of Vessel Laden with Stolen Crude' available at <<https://www.voanews.com/a/nigerian-activists-alarmed-by-burning-of-vessel-loaded-with-stolen-crude/7178202.html>>, accessed on 25 August 2023.

¹² A. Ibrahim and C. Ndikwe, 'Explainer: How Nigeria can Curb Crude Oil Theft' available at <<https://www.businessday.ng/news/article/explainer-how-nigeria-can-curb-crude-oil-theft/>>, accessed on 1 August 2023.

¹³ *Ibid.*

¹⁴ T. Soremi (n 3) 4.

¹⁵ The Economist, 'Black Gold on the Black Market' available at <<http://www.economist.com/the-americas/2012/08/black-gold-on-the-black-market>>, accessed on 10 July 2023.

¹⁶ B.T. Moses, 'Economic Implication of Oil Theft in Nigeria' *Social Science, Humanities and Sustainability Research*,(2023) 4(4) 3.

¹⁷ M. Izuaka, 'Oil Theft: NNPC, Tantita Security Intercept Vessel with Stolen Crude' available at <<http://www.premiumtimes.com/news/top-news/609123-oil-theft-nnpc-tanita-security-intercepts-vessel-with-stolen-crude-oil>>, accessed on 15 July 2023.

has seen to the destruction of many artisan refineries in the creeks of the Niger Delta,¹⁸ international oil smuggling has persisted.

3. Pursuit and Arrest of Vessels in Nigerian Waters

The maritime law enforcement jurisdiction of a coastal State refers to actions taken by the State to enforce applicable laws on, under and over waters within its jurisdiction.¹⁹ It includes authorisation by the State for law enforcement agents and authorised vessels to deal with other vessels, including foreign vessels in appropriate situations, by taking action at sea to enforce coastal State laws.²⁰ It also includes the authority of a State to empower law enforcement agents to apprehend, investigate and arrest persons and vessels, and the authority of its courts to hear cases with regard to conducts that occur in waters in respect of which it can lawfully exercise jurisdiction.

As a coastal State, Nigeria's jurisdiction to enforce its maritime laws is recognised and the extent of enforcement actions clearly stipulated under international law. As would be seen presently, the extent of enforcement action depends, in the case of vessels and their crew, on whether the vessel is a Nigerian vessel or a foreign vessel. In this section, we analyse the maritime law enforcement powers of Nigeria over vessels that commit or are suspected to have committed offences in waters over which Nigeria exercises sovereignty or enjoys sovereign rights.²¹

A vessel is a Nigerian vessel if it is registered in Nigeria, irrespective of the nationality of its owners. Registration refers to the entering of facts about the ship into formal public records, and every State has a duty to keep a register of all vessels flying its flag.²² Every vessel is required to be registered in a particular State the flag of which it is thereafter entitled to fly. It is for this reason that under international law every ship must have a nationality, and vessels have the nationality of the State whose flag they are entitled to

¹⁸ According to Obiezu, 85 per cent success has been achieved by government in the fight against oil theft and illegal refining by local elements in the creeks of the Niger Delta. See T. Obiezu, 'Nigerian Activists Alarmed by Burning of Vessel Laden with Stolen Crude', available at <<https://www.voanews.com/a/nigerian-activists-alarmed-by-burning-of-vessel-loaded-with-stolen-crude/7178202.html>>, accessed on 25 August 2023.

¹⁹ United Nations Office on Drugs and Crimes (UNODC), *Maritime Crime: A Manual for Criminal Justice Practitioners* (United Nations, 2017) 62.

²⁰ *Ibid.*

²¹ Nigeria, like all coastal States, have and exercise sovereign rights on, under and above its territorial sea, but only exercises some functionally limited sovereign rights in respect of maritime zones beyond the territorial sea.

²² NP Ready, *Ship Registration* (Informa Publishers, 1991) 6.

fly.²³ All vessels sailing the seas must, therefore, be registered to one State at a time²⁴ to ensure effective jurisdictional oversight and to ‘notify the international community what state has jurisdiction over them.’²⁵

Accordingly, a vessel registered to Nigeria acquires a Nigerian nationality, comes under the enforcement jurisdiction of Nigeria, and enjoys Nigeria’s protection anywhere in the world. To this extent, a Nigerian vessel is subject to the laws of Nigeria, the arrest powers of her MLEAs, and the jurisdiction of her courts. The same applies to the crew of every Nigerian vessel. A Nigerian vessel is, therefore, amenable to the enforcement jurisdiction of Nigeria and as such could be boarded by her law enforcement authorities in any maritime zone, including the high sea, where foreign vessels enjoy high seas freedom. In respect of foreign vessels, the doctrine of hot pursuit lays down the rules and procedure for pursuing and boarding a foreign vessel that committed an offence or is suspected to have committed an offence in waters under coastal State jurisdiction. A pursuit inconsistent with those rules renders any arrest illegitimate and exposes the pursuing coastal State to international responsibility. In Nigeria, a Standard Operating Procedure was given in 2017 for the guidance of all MLEAs involved in the arrest, detention and prosecution of vessels in the Nigerian maritime space. The Standard Operating Procedure applies to both Nigerian and non-Nigerian vessels alike.²⁶

3.1 Doctrine of Hot Pursuit

Under international law, all States are entitled to freedom of navigation and the other uses of the high seas.²⁷ Accordingly, no State may exercise sovereignty over parts of the high seas.²⁸ This is referred to as the doctrine of high seas freedom. It is for this reason that a ship having the nationality²⁹ of a State cannot lawfully be stopped or boarded on the high sea by any State except the State whose flag it flies.³⁰ This is the whole essence of the principle of exclusivity of flag State jurisdiction. The doctrine of hot pursuit constitutes

²³ Article 91(1) United Nations Convention on the Law of the Sea (UNCLOS); art. 4(2) United Nations Convention on Conditions for Registration of Ships, 1986.

²⁴ A ship is not permitted to be registered in two or more states at a time and shall not change its flag while on a voyage or while in a port of call, except in the case of transfer of ownership or change of registry. See article 92(1) UNCLOS; article 4(5) United Nations Convention on Conditions for Registration of Ships, 1986.

²⁵ T. Shaughnessy and E Tobin, ‘Flags of Convenience: Freedom and Insecurity on the High Seas’ <<http://www.law.upenn.edu.pdf>> accessed 11 June 2017.

²⁶ UNCLOS, article 87.

²⁷ UNCLOS, article 87(1).

²⁸ *Ibid.*, article 89.

²⁹ A ship has the nationality of the State whose flag it flies. See art. 91(1) UNCLOS.

³⁰ *Ibid.*, article 92(1).

an exception to the principle of exclusive flag State jurisdiction over vessels flying its flag. Hot pursuit refers to the pursuit of a foreign vessel ‘when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state.’³¹ The doctrine was developed in the 19th century to ensure that a vessel which has infringed the laws of a coastal State cannot escape punishment by fleeing to the high sea where it ordinarily would enjoy high seas freedom.³² Aptly put, the right of hot pursuit allows a coastal State to pursue into the high sea a vessel that has violated its laws within its waters thereby denying the offending vessel the opportunity to escape punishment by attempting to hide behind the right of free navigation in the high sea designed to protect innocent vessels.³³

To be lawful, hot pursuit must be conducted in accordance with conditions laid down under the United Nations Convention on the Laws of the Sea (UNCLOS), 1980. These conditions, as the International Tribunal on the Law of the Sea (ITLOS) stated in the *MV Saiga case*,³⁴ are cumulative and therefore must all be satisfied for a pursuit to be legitimate.³⁵ Firstly, competent authorities of the coastal State must have good reason to believe that the foreign vessel has violated its laws and regulations.³⁶ A pursuit would, therefore, be unlawful if it turns out to be mistaken. Care must, therefore, be taken to ensure, not only that there has been a violation, but also that the wrong vessel is not pursued for the violation.

UNCLOS does not stipulate offences which if committed in coastal State waters, would warrant hot pursuit. This would mean that every violation of the maritime laws and regulations of the coastal State (including oil theft) would activate the right of hot pursuit irrespective of the maritime zone where the violation occurred.³⁷ Since under the Convention the competent authorities must ‘reasonably believe’ that a violation has occurred, they must have knowledge of actual violation and mere suspicion will not

³¹ UNCLOS, article 111(1); D.J. Harris, *Cases and Materials on International Law* (6th Edn, Sweet & Maxwell 2004) 46.

³² M.N. Shaw, *International Law* (5th edn., Cambridge University Press 2023) 551.

³³ G.H. Allen, ‘Doctrine of Hot Pursuit: a Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technology and Practices’ (1989) 20 *Ocean Development and International Law*, 309; E.E. Essien, *Essays in International Law of the Sea* (Golden Educational Publishers, Uyo 1994) 12.

³⁴ *MV Saiga Case No. 2 (St. Vincent and the Grenadines v. Guinea)* ITLOS Case No. 2, 1 July 1999.

³⁵ *Ibid.*, para. 146.

³⁶ UNCLOS, article 111(1).

³⁷ R.C. Rueland, ‘The Customary Right of Hot Pursuit onto the High Sea: Annotation to Article 111 of the Law of the Sea Convention’ (1993) 3 *Va. J. Int’l L.*, 6-7; *United States v. F/V Taiyo Maru*, No. 28, SOI 600, 395 F. Supp.413, 415 (D. Me. 1975).

suffice.³⁸ Thus, in the *MV Saiga* case,³⁹ the ITLOS found as a fact that no laws or regulations were violated by the *Saiga* to warrant the pursuit of the vessel by Guinean law enforcement agents.

To justify hot pursuit, some scholars have argued that the offence must not be one committed by passengers on board the vessel which cannot be attributed to the vessel.⁴⁰ For them, the right of hot pursuit is only available where the alleged offence was committed by persons who had authority and control over the vessel. This would appear to be the correct approach to the issue of commission of offence which is at the heart of the doctrine of hot pursuit. To hold a foreign vessel liable for an offence committed independently of the will of persons in control of the vessel would be too strict an approach in dealing with the State whose flag the foreign vessel flies. For hot pursuit to be legitimate, it must commence in the internal waters, archipelagic waters (in the case of a coastal State with an archipelago of islands), the territorial sea or the contiguous zone of the pursuing coastal State.⁴¹ Pursuit could also commence in the exclusive economic zone where there has been a violation of any law of the coastal State with regard to any of the purposes for which the exclusive economic zone is established. Pursuit cannot, legitimately, commence in the high sea. It is, accordingly, unlawful for MLEAs to commence pursuit or stop a foreign vessel in the high sea for boarding for an offence earlier committed in Nigerian waters.

Although hot pursuit is forbidden to commence in the high sea,⁴² a foreign vessel in the high sea could be lawfully pursued by a coastal State where, though it had not committed any offence itself, one or more of its boats had done so, within coastal State waters.⁴³ This means that for the purpose of hot pursuit, a foreign vessel could be either physically or constructively present in coastal State waters.⁴⁴ Constructive presence of vessels in coastal State waters is exemplified by the *Araunah* case. Here, some of the crews of the *Araunah* were taking seals within half a mile of the Russian coast in the Behring Sea by means of small canoes belonging to the *Aranuah*. The vessel was seized in the high sea

³⁸*Ibid.*

³⁹ *MV Saiga* (n 34).

⁴⁰ D.P. O'Connell, *The International Law of the Sea* (Clarendon Press, 1982) 176.

⁴¹ UNCLOS, article 111(1).

⁴² Commencing hot pursuit in the sea is prohibited because it would amount to violation of freedom of the high seas of which hot pursuit is an exception.

⁴³ UNCLOS, article 111(4); W.C. Gilmore, 'Hot Pursuit and Constructive Presence in Canadian Law Enforcement: A Case Note' *Marine Policy*(1988) 12, 105; N. Poulantzas, *The Right of Hot Pursuit in International Law* (A. W. Sijthoff) 71-78.

⁴⁴ G.H. Allen, Doctrine of Hot Pursuit: A Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technology and Practices, *Ocean Development and International Law*, (1989) 20, 309.

because, by the action of its crews with her boats, she was constructively within Russian waters when the offence was committed. Similarly, the *Teny Maru*, a Japanese fishing vessel was taken on the high sea because her boats engaged in fishing in the territorial sea.⁴⁵ The *Grace and Ruby* was also taken in the high sea because her boats were being used to transport liquor to shore.⁴⁶

Besides, before hot pursuit could commence, a visual or auditory signal must be given to the foreign vessel to stop and this signal must be given from a distance which enables it to be seen or heard by the foreign vessel.⁴⁷ The order to stop is not permitted to be given to the offending foreign ship by radio. This is because the order to stop for boarding could be given by radio from a distance away from the foreign ship. During the preparation of the draft of the High Sea Convention,⁴⁸ the International Law Commission (ILC) reasoned that permitting the stop signal to be given via radio could lead to abuse.⁴⁹ Law enforcement must, therefore, ensure that the order to stop for boarding is given from a distance from which the suspect vessel could be sighted.

Furthermore, to pass as legitimate maritime hot pursuit, the pursuit must be immediate, continuous and uninterrupted.⁵⁰ Immediacy, continuousness and un-interruption all make the pursuit 'hot'. It would, therefore, not be hot pursuit if having violated the laws of a coastal State and entered the high sea without a pursuit, the foreign vessel is later found on the high sea and pursued. It will also not be immediate if the pursuit is carried out in retrospect, that is, for an offence committed in the past. A learned author has raised the salient question whether 'immediate' means that the pursuit must begin the moment the offending vessel resists arrest, or the moment it commits the offence.⁵¹ It is our view that 'immediate' would mean that the pursuit must commence the moment the offending vessel resists arrest and takes to flight. If a foreign vessel having committed an offence in coastal State waters found that a law enforcement vessel approached to arrest it, and for any reason (including realisation of the futility of flight), surrendered to arrest, it cannot be said, *stricto jure*, that there was hot pursuit. Pursuit, it is submitted, implies flight.

⁴⁵E.E. Essien, *Essays in International Law of the Sea* (Golden Educational Publishers, 1994) 33-35.

⁴⁶*Ibid.*

⁴⁷ UNCLOS, article 111(4).

⁴⁸The High Sea Convention is one of the four conventions created at the First United Nations Convention on the Law of the Sea, 1958 (UNCLOS I). It was signed, alongside the other three, on 29 April 1958 and entered into force on 30 September 1962.

⁴⁹Y.B.I.L.C. 252 (1956).

⁵⁰R.R. Churchill and A.V. Howe, *The Law of the Sea* (Manchester University Press 1983) 152; R.C. Reuland, 'The Customary Right of Hot Pursuit onto the Sea: Annotations to Article 111 of the Law of the Sea Convention' *Va. J. Int'l L.*, (1993) 3, 19.

⁵¹Essien (n 46) 40.

It needs to be pointed out that it is not all foreign vessels that become the subject of hot pursuit. International law limits the category of vessels against which the right of hot pursuit may be exercised by a coastal State. Warships are not amenable to maritime hot pursuit because they enjoy immunity from the jurisdiction of all States except the flag State.⁵² Also non-commercial ships in the service of a foreign government are immune from jurisdiction on the high sea.⁵³ Such ships are, however, required to respect and observe the laws of the coastal State.⁵⁴ The flag State may, however, be liable to answer for a violation of coastal State law by a non-commercial vessel in its service.⁵⁵ Although warships and non-commercial vessels in the service of a foreign sovereign enjoy immunity against foreign jurisdiction on the high sea, a coastal State could, in self-defence, pursue and arrest such vessel on the high sea.⁵⁶

The pursuit being continuous and uninterrupted means that once commenced, the pursuit must not be abandoned until the vessel is arrested or it exits the geographical limits within which hot pursuit is permitted.⁵⁷ The continuity of pursuit serves to keep the coastal State's claim against the pursued vessel alive.⁵⁸ What amounts to interruption is, however, a question of fact. Will every interruption of the pursuit, however trivial, amount to abandonment of the pursuit? It will appear from case law that trivial interruptions or short periods of deviation during which the objective of pursuit was not lost sight of would not amount to abandonment of pursuit.

In the case of vessel *The North*,⁵⁹ it was held that pursuit was not broken when the pursuing vessel deviated momentarily for the purpose of picking the dories of the fleeing foreign vessel (which was evidence against the fleeing vessel). Similarly, in the *I'm Alone* case,⁶⁰ argument was canvassed that there was interruption when the pursuing vessel having come alongside the pursued foreign vessel remained there for an hour before resuming pursuit. It was held that the interruption was not sufficient to amount to abandonment of pursuit.

Pursuit would be interrupted, however, if, for an interval of time, the pursued vessel was no longer pursued by any vessel or aircraft, though pursuit resumed subsequently. This

⁵² UNCLOS, article 95.

⁵³ *Ibid.*, article 96.

⁵⁴ Churchill and Lowe (n 50) 72.

⁵⁵ UNCLOS, article 31.

⁵⁶ Poulantzas (n 44) 192.

⁵⁷ The limit beyond which hot pursuit must not be commenced will be discussed presently.

⁵⁸ Poulantzas (n 44) 210.

⁵⁹ *The King v. The North* decided August 25, 1905.

⁶⁰ 3 R.I.A.A. p. 1609 (1935).

principle is best illustrated by the pursuit of the vessel *MYS Zolotoy* in August 1988.⁶¹ The *MYS Zolotoy* was a Russian fishing trawler which was observed fishing without permit within United States exclusive economic zone by a Coast Guard aircraft. Upon realising that it was being observed, the vessel fled to the Canadian exclusive economic zone. Two United States Coast Guard cutters were immediately deployed to intercept the vessel while the aircraft maintained surveillance over her. At the danger of running out of fuel, the aircraft summoned a helicopter from the nearest Coast Guard air station to relieve it.

The surveillance aircraft was forced to turn away and depart 13 minutes before the relieving helicopter arrived. Having departed, it could not maintain radar contact with the *MYS Zolotoy*. Though the vessel was positively identified and photographed by the aircraft, the US State Department determined that during the 13 minutes interval when the vessel was not under surveillance the pursuit was interrupted. And having been interrupted, the pursuit could not lawfully be resumed by the relieving helicopter or the Coast Guard cutters. A vessel which commences a pursuit may, for reasons such as vessel breakdown or fuel shortage, not be able to complete the pursuit and may have another vessel called in to continue the pursuit and effect arrest. It is not settled with finality whether the takeover of pursuit by another vessel would result in abandonment. In other words, can pursuit be legitimately done in relays?

The *I'm Alone* case⁶² is instructive with regard to the question whether hot pursuit is possible in relays. The *I'm Alone* was a Canadian schooner notorious for smuggling rum into the U.S. during the Prohibition years. On March 22, 1929 while returning from Belize with liquor, a U.S. Coast Guard cutter *Walcott* intercepted her in the Gulf of Mexico and began the pursuit of the schooner within U.S. contiguous zone. At a point in the pursuit the cutter's gun jammed and she had to call for assistance from her base from which two other vessels were dispatched. One of the two cutters which took over the pursuit, the *Dexter* eventually sank the Canadian schooner on the high sea. It was argued for Canada that the pursuit was unlawful because the particular cutter that sank the schooner did not commence the pursuit but came from a different direction two days later. Although the tribunal did not make this an issue in the case, it did not declare the

⁶¹ C.H. Allen, 'US Coast Guard – Doctrine of Hot Pursuit, a Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technologies and Practices' 20 *Ocean Development and International Law*, 309-341.

⁶²*Ibid.*

pursuit illegitimate. The case is since then regarded as authority for the proposition that hot pursuit is possible in relays.⁶³

However, under article III(5) of UNCLOS, the right of hot pursuit is only exercisable by Warships or Military Aircraft, or other ships or aircraft clearly marked and identifiable as being in government service and authorized to that effect. This means that there must be a connection between the vessel undertaking the pursuit and the authority of the coastal State. A specially authorised ship or aircraft other than a warship may, however, engage in hot pursuit.⁶⁴ Under article III(5) of UNCLOS, such specially authorised ship must be 'clearly marked and identifiable' as such. This restriction on the categories of vessels that may embark on hot pursuit to vessels vested with the imprimatur of State authority ensures State responsibility for the enforcement actions of the vessels.

Notably, while hot pursuit may commence even from the exclusive economic zone of a coastal State which is its outermost waters, it cannot continue into the territorial sea of any other State. The moment the pursued vessel enters the territorial sea of the flag State or that of any other State, pursuit must immediately cease.⁶⁵ This is because in the territorial sea, coastal States exercise sovereignty and the pursuit of a vessel into their territorial seas amounts to violation of sovereignty. In the *Itata* case,⁶⁶ it was claimed that a Chilean vessel was pursued and eventually seized by an American ship in Chilean territorial sea. The American-Chilean Claims Commission that heard the case found from the evidence that the Chilean vessel had indeed entered Chilean territorial sea when it was taken. The Commission held that the seizing of the vessel was unjustified as the Chilean vessel had already entered Chilean territorial waters without being interrupted.

Opinions are varied among international lawyers on whether pursuit can resume for the same violation when the offender vessel re-enters the high sea from the sanctuary of the territorial sea. Colombos is of the view that such a resumption of pursuit is undesirable because it prolongs a right which ought to be exceptional, and because the right of pursuit, being a derogation from the general rule prohibiting any interference by a State with foreign vessels on the high seas, ought to be interpreted in the narrow sense.⁶⁷ For their part, McDougal and Burke take the view that there is 'no sound reason for considering that the pursuit cannot be commenced again as soon as the suspect vessel

⁶³Essien (n 46) 40.

⁶⁴ UNCLOS, article 111(5).

⁶⁵*Ibid.*, article 111(3).

⁶⁶O. Hardy, 'The Itata Incident' *Hispanic American Historical Review*, (1922) 5(2) 195-226.

⁶⁷C.J. Colombos, *The International Law of the Sea* (6th edn Longmans 1967) 169-170.

again appears on the high seas.’⁶⁸ According to them, there is not much difference between the arrest of a vessel after an interval of time and an arrest immediately a violation occurred.⁶⁹ This view is faulted by Poulantzas on the basis that it tends to overlook the fact that the cessation of pursuit discontinues the jurisdictional link between the pursuing and the suspect vessels.⁷⁰ It is our considered view that the totality of the provisions of article 111 of UNCLOS is inclined, not to an untrammelled right to pursue foreign vessels on the high seas, but to a straitjacketed framework that aspires to a rarity of maritime pursuits. Moreover, the word ‘ceases’ used in article III (3) of the Convention is literally terminative, not suspensory.

Finally, where the pursued foreign vessel fails to stop when signaled to do so, a properly identified vessel or aircraft is justified, as a last resort, to use force in effecting arrest.⁷¹ Such force must, however, be reasonable as excessive, unwarranted force may give rise to international responsibility on the part of the enforcing State.⁷² Where it becomes necessary to use force to compel the fleeing vessel to heave to in order to be boarded, it is necessary to warn such vessel of the impending application of force before force is actually applied. This could be done through the use of a non-lethal means such as firing a warning shot. It could also be done through internationally recognised radio signals communicating that the pursuing vessel intends to fire on the fleeing vessel if it does not stop.⁷³ After the fleeing vessel has been warned to stop to no avail, it may then be fire upon. Shots must, however, be aimed at disabling the vessel in facilitation of boarding, and not for the purpose of sinking or destroying it, or imperiling the lives of persons on board.

⁶⁸ M.S.Mcdougal and W.T. Burke, *The Public Order of the Oceans* (Yale University Press 1962) 920.

⁶⁹ *Ibid.*

⁷⁰ Poulantzas (n 44) 231.

⁷¹ See *Corfu Channel case* (1949) I.C.J. Rep. 4, 17; DP O’Connell, *The International Law of the Sea* (Clarendon Press 1982); R.C. Reuland, ‘The Customary Right of Hot Pursuit onto the Sea: Annotations to Article 111 of the Law of the Sea Convention’ *Va. J. Int’l L.*, (1993) 3, 9.

⁷² Z. Zhonghai, ‘On the Connotation and Practice of the Right of Hot Pursuit’ *China Oceans Law Review*, (2006) 1, 570.

⁷³ *Ibid.*

3.2 The Harmonised Standard Operating Procedure

There is usually little or no coordination between MLEAs operating in Nigerian waters with regard to the pursuit, arrest and detention of vessels.⁷⁴ In some cases, vessels were detained for unreasonably long periods of time compelling their owners to seek release orders from the ITLOS.⁷⁵ The need arose to streamline the procedure for the arrest, detention and prosecution of vessels and persons for maritime offences committed in the Nigerian maritime domain by MLEAs. This need necessitated the making of the Harmonised Standard Operating Procedures on Arrest, Detention and Prosecution of Vessels and Persons in Nigeria's Maritime Environment (HSOP).⁷⁶ The HSOP is not a binding legal document having only been given by the Attorney-General of the Federation without legislative imprimatur. It is intended, however, to ensure effective governance in the national maritime space, harmonise the enforcement activities of the different MLEAs operating in Nigeria's maritime environment and protect the rights of vessels and crewmen during arrest, detention and prosecution. The HSOP lays down procedures that must be complied with from the point a vessel is caught committing an offence in Nigerian waters or is suspected to have committed an offence to prosecution of the vessel and persons involved in the commission of the offence.

Clause 6 of the HSOP contains a long list of illegal activities for which a vessel could be arrested by the MLEAs. These include, *inter alia*, stealing economic resources of Nigeria, illegal bunkering, and unauthorised movement of petroleum products. The MLEAs are, under the HSOP, vested with power to arrest any vessel/person involved in any type of criminality and sundry offences from the internal waters of Nigeria to the outer limits of her exclusive economic zone.⁷⁷ The power to arrest is vested in all law enforcement agencies by the establishing Acts of which vest the power of arrest on them.⁷⁸ An arrest could also be made by any law enforcement agency armed with a court order for that purpose.⁷⁹

⁷⁴ K. Omonobi-kano, 'Lack of Synergy in Maritime Policing Impedes Effective Tackling of Threats in Nigeria's Economic Zone' available at <<http://www.vanguardngr.com/lack-of-synergy-in-maritime-policing-impedes-effective-tackling-of-threats-in-nigeria-economic-zone>>, accessed on 12 November 2023.

⁷⁵In one case, the vessel, the *MT San Padre Pio*, a Swiss vessel, was arrested on 23 January 2018 with its 16 Ukrainian crew and was released in July 2021 after the Swiss Government had approached the ITLOS for release of the vessel.

⁷⁶ The HSOP was signed into operation by the Attorney-General of the Federation, Abubakar Malami in January 2017.

⁷⁷HSOP, Clause 7(1).

⁷⁸HSOP, Clause 8.

⁷⁹*Ibid.*

The arrest of a vessel must be carried out in accordance with the provisions of the HSOP and the arresting agent(s) must communicate the fact of such arrest to the Appropriate Superior Authority (ASA) once arrest is made.⁸⁰ Where it becomes necessary to arrest a vessel or persons, the order to arrest must be clearly transmitted through any appropriate method of communication to the arresting agents. The HSOP prohibits the arrest of warships on the high sea, warships of other nations making an innocent passage through Nigeria's territorial waters, and vessels owned and operated by a State and used only on government commercial services.⁸¹ As already stated, a MLEA arresting a vessel in the Nigerian maritime space is required to adhere strictly to the procedure laid down in the HSOP. An agency arresting a vessel in Nigerian waters is, therefore, required to comply with the following procedure:⁸²

- a) Maintain good distance and safe positioning from the vessel sought to be arrested.
- b) Communicate their intention clearly to the captain of the vessel to be arrested on the nature/type of offence committed and inform him that the vessel is under arrest.
- c) Give simple and direct orders or command on what they want the vessel to do next.
- d) Assess the movement of the vessel to determine if she is willing to comply.
- e) Use reasonable force within the limits of Rules of Engagement (ROE) in force.
- f) Move in with extreme caution to ensure safety and security of their vessel and the safety of the vessel to be arrested.
- g) If there is need to board to take control of the vessel, follow appropriate boarding procedure.
- h) Establish the position of arrest and ensure that the captain of the arrested ship or suspected ship's crew enters the details into the ships Log Book and also marks the position on the navigation chart/ECS.
- i) Ascertain the flag State of the vessel.
- j) Ensure that there is evidence of the offence.
- k) Ensure that witness statements are obtained within a reasonable time.
- l) Record the names and nationalities of the arrested vessel.
- m) Take inventory and images of what is suspected to have caused the arrest. For example, product, quantity, type and other useful data.

⁸⁰*Ibid.*, clause 7(2).

⁸¹*Ibid.*, clause 10.

⁸²*Ibid.*, clause 11.

- n) In case the arrested ship is unable to proceed to base on her own steam, request the mother base/law enforcement agency to provide tug assistance using appropriate means of communication.
- o) Notify the ASA as soon as practicable after the arrest.
- p) Make a preliminary written report to the mother base.
- q) Hand over the arrested vessel to the base/law enforcement agency as soon as practicable.

The need to maintain safe distance and good positioning from the vessel to be arrested is for the purpose of avoiding collision that may endanger life and safety of both vessels. It is also to ensure the safety of the arresting personnel should the crew of the arrested vessel be armed and have hostile animus. Irrespective of the offence committed or suspected to have been committed, therefore, the arrested vessel and its crew deserve the protection of the State. The safety of, not only the vessel of the arresting agency and the agents, but also that of the arrested vessel and her crew, is important.

As the procedure shows, except the suspect vessel fails to comply with an order to stop for boarding, there is no justifiable reason for using force against her. Even where the vessel disregarded that order and continued in its flight, only reasonable force is permitted to be directed at her. Though the HSOP does not define 'reasonable force', going by the rules of hot pursuit in the law of the sea, it would mean that only non-lethal warning shots may be fired at her. If solid shots must be fired at the vessel if it refused to heave to for boarding, the aim must be to disable and not to sink or destroy her.⁸³

Of utmost importance is the need, in accordance with the HSOP, to obtain evidence of the commission of an offence by the vessel. The inutility of prosecution is obvious if no evidence of commission of an offence was obtained against a vessel alleged to have committed an offence and her crew. It is for this reason that the HSOP prescribes that evidence of the commission of the offence should be obtained by the arresting agency. This is to be done by taking such record of particulars of the offence as location of the vessel at the time of arrest, inventory and images of her cargo, the quantity of the cargo, type of cargo and other data that might be useful for successful prosecution, as well as the statements of witnesses.

Following the arrest of a vessel, the HSOP prescribes that the office of the Attorney-General of the Federation should facilitate expeditious prosecution and discharge of cases

⁸³*I'm Alone* (n 60).

involving arrested vessels.⁸⁴ Pending the determination of the case, a court of competent jurisdiction may prescribe appropriate bond terms for the release of the vessel.⁸⁵ Where there is need for forfeiture of the arrested vessel in the interim, an order of court for interim forfeiture must be obtained for that purpose. Upon conviction, the prosecution may apply that the interim order become absolute.⁸⁶ Where the arrested vessel is loaded with products, the prosecuting authority is required to approach the Federal High Court for an interim order to dispose of the products and keep the proceeds in the court's custody in an interest yielding account pending the determination of the case.⁸⁷

It is pertinent at this juncture to consider recent cases involving the destruction of vessels for their alleged involvement in oil theft in Nigeria. In October 2022, the vessel *MT DEIMA* was arrested by Tantita Security Services Limited in the Escravos River in Delta State. At the time of arrest, the vessel was allegedly carrying 1500 metric tonnes of stolen Nigerian crude oil and had 8 crewmembers who were all Nigerians.⁸⁸ The vessel was then set ablaze by the Nigerian military with its wet cargo which discharged into the river. The House of Representatives condemned the destruction of the vessel and called for an inquiry.⁸⁹ Nothing has been heard of the prosecution of its crewmembers. In December 2022, the NNPC, in collaboration with Tantita Security Services Limited, arrested and then destroyed the vessel *MT Brighton I* in the Ramos River, in Agge, a border community between Delta and Bayelsa States.⁹⁰ The vessel was alleged to have been involved in pilfering oil from Nigeria. On 3 January, 2023 she was set ablaze and completely destroyed by those agencies of the Federal Government. At the time of burning the vessel, she was reportedly laden with stolen crude oil.⁹¹ In a similar fashion, in May 2023, the NNPC announced that security operatives had set ablaze a 1000 metric tons capacity vessel in the internal waters at Oteghele, Delta State.⁹² On 11 July

⁸⁴HSOP, clause 15(1) .

⁸⁵*Ibid.*, clause 15(2).

⁸⁶*Ibid.*, clause 16(1).

⁸⁷*Ibid.*, clause 16(2).

⁸⁸ B. Dunno, 'Illegal Bunkering: Military Destroys Ocean-Bound Vessel Allegedly Involved in Oil Theft' available at <<http://www.sunnewsonline.com/illegal-bunkering-military-destroys-ocean-bound-vessel-allegedly-involved-in-oil-theft/>>, accessed on 10 May 2023.

⁸⁹ J. Akoje, 'House to Investigate Destruction of Vessels with Stolen Crude Oil' available at <<http://www.thisdaylive.com/index.php/2023/07/19/house-to-investigate-destruction-of-vessels-with-stolen-crude-oil>>, accessed on 10 August 2023.

⁹⁰E. Yafugborhi, 'Crude Oil Theft: New Pollution Tension in Niger Delta as Rogue Ships Burn' available at <<http://www.vanguardng.com/2023/08/crude-oil-thef-new-pollution-tension-in-niger-delta-as-rogue-ships-burn/>>, accessed on 28 August 2023.

⁹¹*Ibid.*, (n 90)

⁹²*Ibid.*

2023, operatives of the JTF intercepted a vessel, the *MT TURA II*, in the Escravos area of Delta State allegedly loaded with 800,000 barrels of stolen crude oil.⁹³ The vessel was said to be headed for Cameroon with its cargo when it was intercepted with the full complement of its crew. The vessel was then destroyed by a military helicopter that fired lethal shots at her. Investigations revealed that the oil had been sourced from an offshore well in Ondo State with no valid documentation.⁹⁴ She was found to have operated for the last 12 years without being caught.⁹⁵

In each of the above cases in which a vessel was destroyed for involvement in oil theft, neither the rules of hot pursuit nor the guidelines prescribed under the HSOP were complied with. Rather than collect evidence for prosecution, the vessels were in each case destroyed. Rather than dispose of their cargoes for the public revenue, they were in each case caused to be discharged into Nigerian waters. With the cargo lost in each case, it is difficult to determine the volume of crude oil actually stolen by those vessels. The figures usually released by the agencies of government involved can only be the cargo capacities of the vessels and not the quantity of their cargoes, same having been lost to the waters. Granted that the crime of the vessels is one most deleterious to the floundering Nigerian economy, no legal justification exists for the destruction of those vessels by the MLEAs involved.

Moreover, though specially authorised by the Federal Government, vessels belonging to Tantita Security Services, which in each case commenced the pursuit, are not marked as required under international law. A pursued vessel would, therefore, be right not to stop for them for boarding in the absence of markings showing that they operate with the imprimatur of the Federal Government of Nigeria. The incidents were no more than self-help by the Nigerian State. From the foregoing analysis, it can safely be asserted that no legal justification exists, whether under Nigerian law or under international law for the destruction of a vessel that is suspected to have committed an offence in the waters of Nigeria.

In defence of the destruction of those vessels, the JTF and the NNPC claimed that their actions were intended to serve as deterrent to other vessels that would want to engage in the crime. Tantita, for its part, sought reliance on section 15 of the Nigeria Hydrocarbon Oils Refineries Act. The section empowers an officer who reasonably suspects that

⁹³ The Nation, Editorial: 'THE End of MT TURA II' <<https://www.thenationonlineng.net/the-end-of-mt-tura-11/>> accessed 28 August 2023.

⁹⁴*Ibid.*

⁹⁵*Ibid.*

hydrocarbon oils are being refined on any land or premises in a manner contrary to the Act to enter thereon, if necessary by force, and dismantle or seize any apparatus and equipment used for such refining. It is submitted with respect that the section is irrelevant to the destruction of vessels at sea for suspected crude oil theft. It applies only to illegal refining of petroleum products in Nigeria. The section provides legal support for the destruction of illegal artisanal refineries in the Niger Delta region by the security agencies and not for the destruction of suspect oil-laden vessels at sea.

4. Consequences of Vessel Destruction in Nigerian Waters

The destruction of vessels alleged to have committed offences in waters subject to Nigerian jurisdiction by the MLEAs has various legal, economic and environmental implications. The first of these consequences is the loss of evidence needed to prove the alleged offence(s). Under Nigerian constitutional jurisprudence, a defendant is presumed innocent until the contrary is proved by the prosecution.⁹⁶ In the law of evidence, the legal burden of proving the guilt of the defendant lies on the prosecution who alleges commission of an offence.⁹⁷ Proof of the commission of the alleged offence of oil theft can scarcely be proved against a vessel, her crew and accomplices without evidence of the offending vessel itself being in Nigerian waters, the stolen cargo, its quantity, type and source. When an oil-laden vessel is destroyed in water, chances are that evidence of the vessel itself is destroyed and the stolen oil either incinerated or caused to discharge into water. This accounts, perhaps, for the absence of prosecution in respect of vessels destroyed so far by Nigerian MLEAs for alleged involvement in oil theft.

Loss of evidence aside, the destruction of a vessel by MLEAs entails liability on the part of the Federal Government of Nigeria. With respect to Nigerian vessels, a shipowner whose vessel was destroyed could successfully sue the Federal Government for the value of the vessel. This is irrespective of the fact that the vessel and its crew could have committed offences. This is so unless such violence had been offered by the suspect vessel that necessitated her destruction by law enforcement in self-defence. With regard to foreign vessels, Government is exposed to compensatory responsibility for every such incident. As earlier pointed out, every pursuit and arrest of a foreign vessel by coastal State law enforcement agencies contrary to the rules of international law gives rise to international responsibility on the part of the coastal State. The State whose flag the destroyed vessel flies is entitled to make an international claim for compensation against

⁹⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 36(5).

⁹⁷ Evidence Act, 2011, section 131 .

the coastal State.⁹⁸ Thus, Nigeria is exposed to international responsibility each time a foreign vessel is unlawfully pursued and boarded or destroyed in the course of maritime law enforcement, otherwise than in accordance with international law rules on hot pursuit.

Apart from exposing the Federal Government of Nigeria to compensatory liability locally and internationally, the destruction of vessels for alleged oil theft also exposes the men of the armed forces involved in such acts to criminal liability under the Armed Forces Act, 1994.⁹⁹ The Act provides that a person subject to service law under the Act who wilfully or maliciously sets fire to, among others, a vessel, ship or aircraft is guilty of the offence of arson and liable, on conviction by a court-martial, to imprisonment for life.¹⁰⁰ Except, therefore, in a clear case of self-defence, law enforcement agents involved in the destruction of the vessels in the above cases exposed themselves to criminal prosecution.

Aside the foregoing legal implications, destroying vessels carrying crude oil in Nigerian waters portends serious environmental consequences. There is no doubt that the destruction of vessels laden with oil would most likely result in the discharge of their wet cargo into the water below, causing avoidable environmental pollution. A drop of crude oil is reported to contaminate 25 litres of water.¹⁰¹ If the reports are correct, at the time the *MT DEIMA I* and the *MT TURA II* were destroyed by MLEAs, they were loaded with tons of crude oil which discharged into internal waters of Nigeria. The extent of pollution caused by the destruction of those vessels can only be imagined. This development is bound to worsen the challenge of environmental degradation that has plagued the Niger Delta and which is the root cause of the decades of restiveness in the region.¹⁰²

It is, therefore, no surprise that environmentalists and groups in the Niger Delta have vehemently condemned the practice of setting oil-bearing vessels ablaze as punishment and as deterrent.¹⁰³ On its part, the House of Representatives roundly deprecated the destruction of those oil-carrying vessels in Nigerian waters in view of the implications for

⁹⁸ Zhonghai (n 73) 571-572.

⁹⁹ Cap A20, Laws of the Federation, 2004.

¹⁰⁰ Armed Forces Act, 1994, section 111.

¹⁰¹ Punch Newspaper, 'Environmentalists Criticise Burning of Stolen Oil Vessel in Niger Delta' available at <<http://www.punchng.com/environmentalists-criticise-burning-of-stolen-oil-vessel-in-niger-delta>>, accessed on 27 August 2023.

¹⁰² K.B.O. Ejumudo, 'Youth Restiveness in the Niger Delta: A Critical Discourse' (Jan-Mar 2014) *SAGE*, 1-12; SM Ogbodo, 'Environmental Issues and Nigeria's Niger Delta Crisis: Implications for Sustainable Development and Global Peace' *OID International Journal of Sustainable Development*, (2010) 3, 17-21.

¹⁰³ *Ibid.*

the marine environment. The House proceeded to empanel an ad hoc committee to investigate the burning of the *MT TURA II* particularly, and to ascertain the whereabouts of the 150,000 metric tons of crude oil it was reported to have stolen.¹⁰⁴

5. Conclusion and Recommendations

The practice of destroying vessels suspected to have engaged in oil theft in Nigeria is one that cannot be legally defended or justified. It negates both municipal and international law rules for dealing with suspect vessels and portrays Nigerian MLEAs as norm-disregarding institutions. The claim that the practice would serve as deterrent to such other vessels does not burnish the illegality the practice adorns. Maritime law enforcement is no more than police operation and police operation is not a wartime operation.¹⁰⁵ Accordingly, the rules on the use of force in armed conflict do not apply. The purpose is to maximally enforce a coastal State's laws in its maritime space with minimal use of force. It is hoped that, with the outrage that trailed the destruction of those vessels, going forward, the MLEAs would scrupulously follow the rules in line with international best practice.

It is recommended that all law enforcement agencies with responsibility for enforcing Nigerian maritime laws and securing her waters be familiarised with, not only the procedures under the HSOP, but also with the rules of international law governing pursuit and taking of vessels at sea. The procedures are not useful if they are not understood and complied with by those who ought to implement them. Until those agencies play by the rules, Nigeria runs the risk of paying dearly for illegitimate pursuit or unreasonable use of force against vessels and their crews. In view of the fact that the oil pipelines surveillance contractor Tantita Security Services has, within a short time, caught and caused the arrest of more criminal vessels than the Navy and the other state security agencies, it has become imperative to stamp full State authority on its operations. To this end, it is suggested that the Federal Government should ensure that its operational vessels are properly marked as exercising the authority of the Federal Government of Nigeria in the Nigerian maritime environment. This way, foreign vessels will have no excuse for not complying with the contractor's stop orders at sea.

Although it lays down procedures for arrest of ships on Nigerian waters which MLEAs must comply with, the HSOP is bereft of legal force. It is recommended that the National

¹⁰⁴A. Seye, 'Stolen Crude: Reps to Investigate Content of Vessel Seized, Burnt by Security Agencies' available at <<http://www.dailypost.ng/2023/07/18/stolen-crude-reps-to-investigate-content-of-vessel-seized-burnt-bysecurity-agencies/>>, accessed on 22 July 2023.

¹⁰⁵ UNODC, *Maritime Crime: A Manual for Justice Practitioners* (United Nations, 2017) 72.

Assembly should give the Procedure legislative backing by passing it into an Act of the National Assembly. Such Act should create, not just offences bordering on the destruction of vessels (as under the Armed Forces Act, 1994), but offences for non-compliance with the Procedure and prescribe punishments therefore. With the recent involvement of persons who are not subject to service law (such as Tantita Security Services) in maritime law enforcement, there is also need for legislation creating offences and prescribing punishments for criminal conducts by such persons who are not subject to service law, and for non-compliance by them with the HSOP.