

THE SOCIO-LEGAL IMPLICATIONS OF PIRACY IN NIGERIA AND THE GULF OF GUINEA

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Abstract

A huge percentage of world trade are transported by sea. Thus, the shipping industry is undoubtedly one of the life wires of global economy. Without shipping, intercontinental trade, the bulk transport of raw materials, and the import/export of affordable food and manufactured goods will be almost impossible. The continuous expansion of Seaborne trade which is so beneficial to consumers all over the world through competitive freight costs is attributable to the ever growing efficiency of shipping as a medium of transportation and the attendant economic implications. Impressively, petroleum resources are equally transported by sea through the shipping industry. The global scrambling for oil raised expectations that petroleum resources would boost the economy of exporting developing countries. Worst still, the sea through which petroleum resources and other

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products are transported is constantly under criminal activities and attack by pirates. Crimes on the Nigeria water ways and the Gulf of Guinea is on the increase such that human right, livelihood, environment and the economy of the region are being threatened. There is need for an effective legal protection of both the environment, and the activities within the region. This article is aimed at examining the socio-legal implications of crimes and piracy on Nigeria water ways and the Gulf of Guinea. The objective is to examine the need to guard the area and fashion out ways of utilizing and improving on existing legal framework to combat maritime crimes. When domestic laws are strengthened to align with the treaty's provisions regarding activities in the area, it will enhance enforcement, curb criminal activities, boost the confidence of investors and improve the economy of the region for the benefit of the region and the global community.

Keywords: Socio-Legal Implications, Piracy, Gulf of Guinea, Criminal activities.

1. Introduction

A good percentage of the world trade are being transported by sea. There are over 50,000 merchant ships trading internationally, transporting every kind of cargo. The world fleet is registered in over 150 nations, and manned by over a

million seafarers of virtually every nationality.¹ However, business activities on the sea are continually threatened by criminal activities such as piracy. This is generally seen as an act of violence or depredation on the high seas. A considerable number of piracy incidents take place within the Gulf of Guinea, an area defined as a portion of the ocean that penetrates the land, formed as a result of plate tectonics and is often connected to the ocean by narrow water passages known as straits. It covers an area of 2.35 million km², in the north-eastern part of the tropical Atlantic Ocean located off the western coast of Africa.²

The International Maritime Bureau (IMB) Piracy Reporting Centre release for 2018 clearly shows that the maritime industry experienced increase in attacks in 2018. The agency report uncovered high rise in attacks against ships and crews around West Africa.³ According to the report, violence increased in the last quarter of 2018, so that about 41 kidnappings were recorded off Nigeria between October 2018 and December 2018, thereby making all waters in Nigeria extremely risky.⁴ Some of these attacks occurred up to 100

¹ <Shipping and World Trade: Global Supply and Demand for Seafarers | International Chamber of Shipping (ics-shipping.org)> accessed on 01/09/2022

² <Gulf Of Guinea - WorldAtlas> accessed on 21/08/2022

³ <<https://www.ics-ccs.org/piracy-reporting-centre/request-piracy-report>> accessed 13th February 2022

⁴ O W Arugu & C E Halliday, 'Strengthening the Legal and Institutional Framework for Combating Piracy and Armed Robbery against Ships in Nigeria' (2018) (1) *Issues and Responses on Maritime Law*: 63-64

nautical miles offshore, outside the territorial waters of West African states.

In the last quarter of 2019 alone, 39 crew members were kidnapped in two separate incidents in the Gulf of Guinea.⁵ Michael Howlett, the Director of the ICC International Maritime Bureau decried the dangerous trend of incidents in the Gulf of Guinea in the following lines:

“The latest statistics confirm the increased capabilities of pirates in the Gulf of Guinea with more and more attacks taking place further from the coast. This is a worrying trend that can only be resolved through increased information exchange and coordination between vessels, reporting and response agencies in the Gulf of Guinea Region. Despite prompt action by navies in the region, there remains an urgent need to address this crime, which continues to have a direct impact on the safety and security of innocent seafarers.”⁶

In 2020, International Maritime Bureau’s (IMB) Piracy Reporting Centre (PRC) received 195 incidents of piracy and armed robbery against ships all over the world. The IMB report uncovers that there is a considerable rise of pirate incidents in the Gulf of Guinea. Globally, 135 crew members were

⁵ <ICC-IMB Annual report: 2020 World-Wide incidents of piracy and armed robbery against ships - MaritimeCyprus> accessed 1st September, 2022

⁶ Ibid

kidnapped from their vessels in 2020, the Gulf of Guinea accounted for over 95% of crew members kidnapped. A whopping 130 crew members were kidnapped in 22 separate incidents. It is imperative to stress that since 2019, the Gulf of Guinea has experienced significant rise in the number of numerous crew kidnappings. It is important to note that the menace of piracy may be above the official statistics as the IMB believes that about half of all attacks are not reported.

2. Meaning of Maritime Piracy

Maritime piracy has been classified, together with others (war crimes and crimes against humanity) as a universal crime under international law, thereby giving all nations the powers to arrest and punish piracy provided that it has been committed on the high seas (*terra nullius*).⁷ According to the *Black's Law Dictionary*, piracy is 'Robbery, kidnapping, or other criminal violence committed at sea.'⁸ Similarly, the *United Nations Law of the Sea convention (UNCLOS)* defines piracy as:

Consisting of any of the following: (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

⁷ [UNCL Sea, 1982] a 105

⁸ B A Garner, ed. *Black's Law Dictionary* (11th Edition, United States of America: West Publishing Co., 2019), 1266.

property in a place outside the jurisdiction of any state; (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁹

The foregoing guidelines allows for the determination of a person engaging in piracy-like behaviours. After identifying pirates, it is important to underscore the different methods by which pirates attack. Irrespective of the fact that methods of pirate attacks differ, various literature on maritime piracy describes four major types of pirate attacks. These four types include: robbery of a vessel at sea, hijacking of vessels, kidnapping for ransom, and attacks on vessels berthed in harbours or at anchor.¹⁰ Each of these methods illustrates the link between financial issues and piracy.

2.1 Modes of Maritime Piracy

Zara Reymond argues in favour of four methods of pirate attacks to include robbery of a vessel at sea, hijacking vessels, kidnappings for ransom and attacks on vessels berthed at

⁹ Article 101 of United Nations Convention on the Law of the Sea, 1982.

¹⁰ C Z Raymond, 'Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?' (2009)(62)(3) *Naval War College Review*, 32.

harbours or the anchor.¹¹ According to Lawal¹², pirates operate in various forms and their modus operandi includes but not limited to the following;

- i. Attack big ships with smaller number of crew who invariably cannot provide adequate protection for the vessel. Pirates also disguise as officials and attempt to stop and board ships by wearing uniforms usually armed with low velocity weapons such as pistols and in a number of cases with assault rifles.
- ii. Waylay ships (mostly fish trawlers) with faster boats, synchronise their speed with that of the target, attack swiftly and take away the fish, petroleum products and sometimes boat, the trawler itself or engine.
- iii. Mount surveillance on crew and trail those who go to town from ports; listen to their discussion about the vessel route and type of cargo on board as well as intercept ship-to-shore communications in order to determine which ship to attack. Pirates equally attack ships in order to steal cash from the aster's safe meant to settle operational expenses. Pirates operating off the Gulf of Guinea hijack ships typically for five or six days, ransack the vessel, steal the cargo, and leave the sailors. Hijacked tankers are

¹¹ C Z Reymond 'Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?' (2005(62) (39), *Naval War College Review*: 23

¹² C Diana, 'Piracy Laws and the Effective Prosecution of Pirates' (2010, Vol. 33), *Boston College I&CLR*, 121-122

often taken back to Nigerian waters, where the oil is siphoned and the crew freed.¹³

3. Piracy and other Illegal Activities at Sea in Nigeria and the Gulf of Guinea

The Gulf of Guinea has become a hub for global energy transportation and not only a large source of fossil fuels, but also the region's major consumer market. West Africa states also export minerals (such as diamonds), timber and agricultural products (such as cacao and sorghum), through the Gulf of Guinea.¹⁴

These economic activities are nevertheless continually threatened by the menace of piracy. In 2012, the International Maritime Bureau's Piracy Reporting Centre (IMBPRC) recorded 58 attacks, including 10 hijackings. Nigeria was the most affected country with 27-29 attacks in 2012 and 2013 respectively, while 13 attacks was recorded in the first quarter of 2014. Altogether, some 237 foreigners and dozens of Nigerians were kidnapped in sixty-seven incidents in the coastal states of the Delta Region in 2006 and 2007 alone. As a result of these attacks, Liberia and Norway in 2007 raised their International Ship and Port Facility Security (ISPS) Code Security levels from I to II for ships operating in Nigerian coastal waters and ports. The Panama Maritime Authority

¹³ H Alsop 'Oil Tanker Near Ivory Coast Hijacked by Pirates'. Daily Telegraph News of. February 4, 2014

¹⁴ V Felbab-Brown 'The Not-So-Jolly-Roger: Dealing with Piracy off the Coast of Somalia and the Gulf of Guinea' (2014) *Small Wars Journal* (online journal). Accessed 10 August, 2022

(PMA) followed suit subsequently. No other country in the Gulf of Guinea has been given a similar treatment by the International Maritime Authorities.¹⁵ Most of these attacks target oil vessels. Again, they constitute a clog to trade and transportation in the region.¹⁶

Unlike Somali Pirates who prey mainly on ships transiting through the region, pirates within the Gulf of Guinea attack ships passing through the region or ships berthed or anchored or waiting to berth. This changes the nature of the challenges faced by ships dealing with piracy off the Gulf of Guinea. This is because they must have security systems in place to address threats while on their way or when they are stopped. The existence of large institutional infrastructure ensure that ships engaged with also provides the opportunity for pirates within the Guinea to have direct access intelligence about their routes, content, and structure of the ships themselves, though (it is suspected) they access information shared with the maritime sector in the region.

Experts say pirates near the Gulf of Guinea primarily hijack vessels to siphon crude oil on-board. However, serious threats to human life are emerging. On 17th December, 2013 a Ukrainian captain and Greek engineer were abducted from their oil-carrying ship off the Nigerian coast. Nigerian pirates released the two men three weeks later after an unknown

¹⁵ B Helene, 'Cost of Piracy: A Comparative Voyage Approach' (2010, Issue 12) *Maritime Economics & Logistics*: 180.

¹⁶ C Barrios 'Fighting Piracy in the Gulf of Guinea: Offshore and Onshore'. European Union Institute for Security Studies Issue. May 2013

ransom was believed to have been paid. In March 2014, a top UK-based maritime intelligence organisation announced a special advisory warning for crew kidnapping in the Gulf of Guinea following 10 attacks in December 2013 alone.

In August 2012, Togolese security forces traded gunfire with pirates who had hijacked a Greek oil tanker. Angolan waters lie almost 1,000 miles from the regional piracy epicentre in Nigeria. Angola is the second largest oil producer in sub-Saharan Africa behind Nigeria. Gulf of Guinea piracy is increasingly characterised by violent assaults and hostage taking against ships. 1871 seafarers were victims of attacks and 279 were taken hostage in 2013.¹⁷ To some extent, within the last ten years, it appears that Nigerian waters as well as that of the wider Gulf of Guinea has been characterised by the Hobbesian Law of the State of nature- where life is nasty, brutish, poor and short.

3.1 The Cost of Maritime Piracy and Armed Robbery at Sea

Approximately 90% of world trade currently travels by sea. This represents about 93,000 merchant vessels, 1.25million seafarers, and almost 6billion tons of cargos. With this volume of cargo trade travelling by sea, piracy is therefore a serious threat to the global economy¹⁸. Sea piracy is one of the oldest international crimes. It has become an increasing problem that

¹⁷ J V Madsen, C Seylie, K Brandt, B Purser, H Randall and K Roy 'The State of Maritime Piracy' 2013

¹⁸ U E Daxecker and B C Prins 'The New Barabary Wars: Forecasting Maritime Piracy' (2015) (vol. 11, Issue 1) *Foreign Policy Analysis*: 25

has affected both commercial and private shipping¹⁹ and has been an extant worldwide melee for several decades²⁰ for any company involved in shipping, thereby making such types of activities potentially very risky indeed.²¹ Although many attacks in the Gulf of Guinea and Nigeria occur in the territorial waters, the term ‘piracy’ is often used to describe both piracy and other illegal activities at sea despite the fact that many of these crimes may not fulfil the precise legal definition of piracy under United Nation Convention on the Laws of the Sea UNCLOS.

Maritime piracy poses substantial risks to seaborne trade, with significant commodities, ranging from raw materials and energy to high-value manufactured products, being shipped between global power houses, like Western Europe and the East through several of the dangerous waterways including the Gulf of Guinea.²² According to the Permanent Representative of Nigeria to the United Nations, the estimated loss to piracy is US \$2billion. This includes the commercial shipping sector, offshore oil and fishing industries.

Equatorial Guinea had to resort to private companies for surveillance of their marine resources. It awarded Bergen Risk

¹⁹ Laura Barry and Benjamin Staver ‘A study of Maritime Piracy’ Dorchester Report 2009

²⁰ ‘Sea Piracy’, Background Working Paper. European Committee on Crime Problems (CDPC) September 2012

²¹ Mrs Keles ‘Piracy-a-Crime and a Challenge for Democracies’, Explanatory Memo. Rapporteur at the Parliamentary Assembly, April 2010

²² K Mbekeani and M Ncube, ‘Economic Impact of Maritime Piracy’ (2011, Vol 2, Issue 10)*Africa Development Brief*13

Solutions, a United States based organisation a contract worth \$250million to carry out surveillance in 2010.²³ Similarly, in 2011, Benin Republic requested the United Nations to assess the scope of the piracy threat in the region and make recommendations for possible United Nations support in tackling the menace of maritime piracy.

4. Maritime Piracy in Nigeria and the Gulf of Guinea

The crime of Piracy involves violence, theft, and hostage-taking. It affects not only the safety of seafarers and vessels but also the social well-being of the affected countries. One of the major socio-legal implications of piracy in Nigeria and the Gulf of Guinea is the erosion of the rule of law. It creates an atmosphere of lawlessness, which leads to the breakdown of legal institutions and systems. This can have a significant impact on the ability of affected countries to maintain law and order, as well as their ability to attract foreign investment and trade.

Another implication is the impact on the socio-economic well-being of affected countries. Piracy disrupts economic activities, particularly maritime trade, which can lead to loss of revenue, reduced employment opportunities, and increased poverty. It creates a negative image of affected countries, which can deter foreign investment and tourism.

Furthermore, piracy has a significant impact on the safety and security of seafarers and vessels and can lead to physical harm,

²³ J. W. Reuchlin, 'The Economic Impacts of Piracy on the Commercial Shipping Industry: A Regional Perspective' (April 2012) Dalhousie Marine Piracy Project

kidnapping, and human trafficking which can metamorphose into forced labour, including use of fraudulent means, or coercion to compel a person to work against his/her will, often in hazardous or abusive conditions. It can further extend to sex trafficking including recruiting, transporting, or harbouring of a person for the purpose of sexual exploitation, prostitution, pornography, and sex tourism. It also includes child trafficking for forced labour, sex trafficking, or other forms of exploitation.

Piracy attacks have disrupted the livelihoods of fishermen, seafarers, and other workers who depend on the sea for their income. This has increased poverty and further led to insecurity in the water-ways, and economic hardship. Maritime piracy has created fear and trauma among seafarers and their families with significant psychological impact that has led to stress, anxiety, and other mental health issues.

Furthermore, Piracy attacks have led to oil spills, damage to marine ecosystems, thereby depriving individuals within the region their rights to a clean environment. Loss of life and injury to crew members in Nigerian waters, resulting to legal claims for compensation and damages by the victims and their families. Piracy attacks can also result in damage to vessels and their cargo, which can lead to legal claims for compensation and damages by the ship owners, charterers, and cargo owners. Piracy attacks in the Gulf of Guinea region have led to increased insurance costs for vessels operating in Nigerian waters. This is because insurance companies consider the risk of piracy when setting their premiums, which can have a significant financial impact on ship owners and operators.

Piracy is a complex crime that can be difficult to investigate and prosecute. The legal challenges involved in prosecuting pirates can result in delays and difficulties in bringing perpetrators to justice. In summary, piracy in Nigeria and the Gulf of Guinea has significant legal implications, including loss of life and injury, damage to vessels and cargo, increased insurance costs, negative impact on trade, and legal challenges in prosecuting pirates. Addressing these legal impacts requires a concerted effort by government agencies, international organizations, and other stakeholders to enhance maritime security, improve legal frameworks and enforcement, and promote regional cooperation and collaboration.

4.1 Socio-legal Implication of Piracy in Nigeria and the Gulf of Guinea

It is imperative to state that under the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), Human right is not provided for. Nevertheless, some human rights are provided under Chapter IV of the constitution. Generally, human rights are seen as those rights which the international community recognizes as belonging to all individuals by the very fact that they are humans.²⁴ Human right is seen as “demands or claims which individuals or groups make on society, some of which are protected by law and become part of the *lex lata* while others remain aspirations to be attained in the future.”²⁵

²⁴ U. O. Umzurike, *Introduction to International Law* (Spectrum Books Limited, 2010), 139

²⁵ OsitaEze, *Human Rights in Africa*. (Macmillan Press, 1984), 5.

According to Ikhariale, human rights are innate in man as they are entrenched in man by a divine nature and thus, positive law lacks the potency of either eliminating or creating them, but rather to protect them.²⁶ For Donnelly, human rights are a complex and contested social practice that organizes relations between individuals, society, and the state around a distinctive set of substantive values implemented through equal and inalienable universal rights.²⁷ He further contends that human rights exist not for a mere human existence but ‘for an existence that gives a deeper human moral reality.’²⁸ Similarly, Maurice Cranston posits that:

human right by definition is a universal moral right, something which all men everywhere, at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing to every human being simply because he is human.²⁹

However, some scholars contend that the question regarding whether or not a right falls within the parameter of a human right cannot accurately be resolved through the application of

²⁶ Mike Ikhariale, *Journal of Human Rights Law Practice*. [1995](5) 58, cited in O.N. Ogbo, *Human Rights Law and Practice in Nigeria*, (2003) 4.

²⁷ Jack Donnelly, ‘Human Rights.’ (2005) Working Paper No. 23. Available at <<http://www.du.edu/gsis/hrhw/working/2005/23-donnelly-2005.pdf>> Accessed 18 April 2020

²⁸ Jack Donnelly, *The Concept of Human Rights*. (St. Martins’s Press, 1985), 39.

²⁹ Maurice. Cranston, *Human Rights Today*. (Ampersand Books, 1962), 40.

‘standardised set of criteria.’³⁰ Thus, Gibson suggests that certain benchmarks would only assist in defining whether a claim meets the requirements as a human right or not.³¹

Accordingly, Philip Alston recommends that human right should, *inter alia*, exhibit a fundamental significant social value; be qualified for identification by reason that it is a clarification of the United Nations Charter obligations, a reflection of customary law rules or an articulation that is declaratory of general principles of law; must be harmonious or at least not obviously discordant with States’ general practice as well as being adequately specific in a way as to give rise to recognizable rights and duties.³²

In the words of Philippe Sands, human rights procedures ‘have begun to define the content of participatory rights in the environmental domain.’³³ International concern for the human rights started in the treaties which terminated the religious wars that enraged Europe between 16th and 17th centuries. Religious right was extended at the 1815 congress of Vienna to guarantee to specified communities civil and political right.

³⁰ N. Gibson, ‘The Right to a Clean Environment.’ *Saskatchewan Law Review*.(1990), 7.

³¹ *Ibid*

³² Philip Alston, ‘Conjuring Up New Human Rights: A Proposal for Quality Control.’ [1984](607) *American Journal of International Law*, 614-615.

³³ Philippe Sands, ‘Human Rights and the Environment,’ in *Human Rights and the Environment, Proceedings of a Geneva Environment Network Roundtable*. United Nations Environment Programme/ The Geneva Environment Network/Swiss Agency for the Environment, Forests and Landscape, (2004), 28.

Human Rights also inspired the Human Rights Provisions of the United Nations Charter.

The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 extended the frontiers beyond the traditional civil and political right. The preamble to the Universal Declaration of Human Rights adopted on 10 December 1948 unequivocally underscore and emphasize the point that, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.³⁴ Thus, every state strives to protect these rights, which are recognized in torts, crime, and contract amongst other aspect of human relationship.³⁵

Right is very fundamental in every legal system, thus certain rights are conferred on persons whether natural or artificial. It is the protection of rights that foster peaceful coexistence and harmony in the society. Although, there is a general acceptance of the importance of human rights, nonetheless there is considerable confusion as to its precise nature and its role especially under international law.³⁶ Consequently, the concept of human right have been subjected to a multiplicity of

³⁴ Ian Brownlie ed. 'Universal Declaration of Human Rights 1948' in *Basic Documents on Human Rights* Third Edition (Oxford University Press Inc., 1992), 21

³⁵ Salmond J., *Jurisprudence* 1966 in U. O. Umozurike, *Introduction to International Law* (Spectrum Books Limited, 2010), 139

³⁶ W. N. Hohfeld, 'Fundamental Legal Conceptions as Applied to Judicial Reasoning', [1913](23)*Yale Law Journal*, 16

discourse raging from a philosophical, legal, theological, sociological, and even political perspective;³⁷ thus, making it somewhat difficult to have a uniform theoretical framework on the concept of human right. Equally important to aver is that there is a considerable controversy as to what constitutes right, which is a jurisprudential concept.

From a philosophical perspective, right is seen as ‘a set of moral principles whose justification lies in the province of moral philosophy.’³⁸ In other words, rights are grounded in moral reasoning. The Natural Law view theorist view right in the traditional formulations as that which exist as a result of a law higher than positive law. Such higher law creates a universal principles governing all human beings. According to John Locke, who is one of the chief proponents of Natural Law theory, rights such as right to life, liberty and property is based on a social contract, which marks an end to the difficult conditions faced in the state of nature.³⁹

The Supreme Court of Nigeria in *Uwaifo v AG Bendel*⁴⁰ held thus:

³⁷ Nlerum S. Okogbule, *Globalization and Human Rights in Africa: Exploring the Mutual Impact Relationship* (Sibon Books Ltd,2012), 32

³⁸ J. J. Shestack, ‘The Philosophic Foundations of Human Rights’ in Nlerum S. Okogbule, *Globalization and Human Rights in Africa: Exploring the Mutual Impact Relationship* (Sibon Books Ltd,2012), 32

³⁹ Malcolm N. Shaw, *International Law* Sixth edition (Cambridge University Press, 2008), 267.

⁴⁰ (1984) 7 SC 124

There are the four classes of rights conferred by law. Right in the strict sense (*strictusensu*) that is, when the law limits the liberty of others on my behalf; liberty – when the law allows my will a sphere of unrestrained activities; power – when the law actively assist me in making my will effective; immunity – when the law denies to others a particular power over me; in a narrow sense an immunity is that which other persons cannot do effectively in respect to me.

From the foregoing, we can safely say that rights refer to those claim that are regarded as fundamental or basic to the individual, or group of individuals, who assert them.⁴¹ These rights are further entrenched under the Universal Declaration of Human Rights, 1948. It include the right to life, the right to property, the right to fair trial, right to liberty, freedom of expression and peaceful assembly, right to a poison free and healthy environment.⁴²

It is important to state that under the Universal Declaration of Human Rights⁴³ there are basically two categories of rights viz: political and economic, social and cultural rights. Under political rights the charter recognizes that all persons are born equal both in dignity and in rights. Under this auspices therefore, the UNDHR ‘protects live, liberty and security of

⁴¹ S.Foster, *Human Rights and Civil Liberties* (Pearson Publishing, 2008), 5-7

⁴² *Ibid*

⁴³ UN Doc A/11, 1948

person, forbids slavery, servitude and slave trade in all its manifestation, prohibit torture, cruel, inhuman or degrading treatment or punishment. At the economic, social and cultural right level nobody may be arbitrarily deprived of his property, it thus guarantees right to social security.⁴⁴

5.1 Legal and Institutional Framework on Maritime Safety

International Legislation on Maritime Safety

There are a number of international legal instruments aimed at addressing the problems associated with piracy. These include the United Nations Convention on the High Seas (1958), the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA 1988), and the United Nations Convention of the Law of the Sea (UNCLOS also known as Montego Bay Convention 1982).

The United Nations Convention on the High Seas

The United Nations Convention on the High Seas is an international treaty designed to govern the use of the high seas, which are defined as areas of the ocean that are beyond the jurisdiction of any individual state. The treaty is divided into 37 articles. Articles 14–21 of the treaty primarily deal specifically with issues of piracy.

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

The United Nations Convention on the Law of the Sea (UNCLOS) is an international treaty that sets out the legal framework for the use and protection of the world's oceans and

⁴⁴ U. O. Umezurike, *Introduction To International Law* op cit, 140

their resources. The convention was adopted in 1958. It has been ratified by about 168 countries, including most major maritime powers. UNCLOS establishes rules for the use and management of maritime zones, including territorial waters, exclusive economic zones, and the high seas. It also sets out the rights and responsibilities of states in relation to the ocean, including navigation, fishing, marine research, and the protection of the marine environment.

One of the key features of UNCLOS is the concept of the Exclusive Economic Zone (EEZ). Under UNCLOS, coastal states have special rights over the exploration and exploitation of natural resources in an area extending up to 200 nautical miles from their coastlines. This has important implications for issues such as oil and gas exploration, fishing, and the protection of marine biodiversity. UNCLOS also established the International Seabed Authority, which is responsible for regulating deep-sea mining and ensuring that the benefits of such activities are shared equitably among all nations.

In summary, UNCLOS is an important framework for the governance of the world's oceans and has played a key role in promoting cooperation and resolving disputes among states. It continues to be a vital tool for ensuring the sustainable use and protection of the world's marine resources.

The United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)

The United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, also

known as the SUA Convention, is an international treaty that was adopted in 1988 by the United Nations General Assembly. The convention is designed to address the issue of maritime terrorism by establishing universal jurisdiction over certain criminal acts committed against ships and their crews.

The SUA Convention sets out a number of unlawful acts that are considered to be serious offenses, including the seizure of ships by force, acts of violence against passengers or crew members, and the placing of devices on board a ship that are likely to destroy or damage it. The convention requires all states to criminalize these offenses and to cooperate in investigating and prosecuting individuals suspected of committing them.

The convention also establishes a number of procedural safeguards to ensure that individuals accused of committing these offenses are treated fairly and that their human rights are protected. For example, it requires states to provide legal representation to accused persons who do not have the means to obtain it themselves, and to ensure that they are not subjected to torture or other forms of cruel, inhuman, or degrading treatment.

In addition to the core provisions relating to unlawful acts against maritime navigation, the SUA Convention also addresses related issues such as the transport of weapons and explosives on board ships, the provision of false information relating to ships and cargo, and the use of ships for piracy and other criminal activities.

International Maritime Organization

The International Maritime Organization (IMO) is a specialized agency of the United Nations (UN) responsible for regulating international shipping. It was established in 1948 and has its headquarters in London, United Kingdom. The IMO's primary role is to develop and adopt international regulations and standards related to shipping, with the aim of ensuring safety, security, and environmental protection. The organization's main areas of focus include ship design, construction, and equipment, as well as navigation, crew training and certification, and the prevention of pollution from ships.

IMO works closely with its member states and other organizations, such as industry groups and non-governmental organizations, to promote the implementation of its regulations and standards. The organization also provides technical assistance and capacity-building support to developing countries to help them improve their maritime infrastructure and regulatory systems. As of 2021, the IMO has 174 member states and three associate members. The organization is funded through contributions from its member states and has a staff of approximately 300 people.

Nigerian Legislations on Maritime Safety

Although Nigeria is a party to several international maritime conventions and treaties, including the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), and

the United Nations Convention on the Law of the Sea (UNCLOS), Nigeria has some laws on maritime, it includes:

Merchant Shipping Act

This is the principal legislation governing maritime affairs in Nigeria. It covers a wide range of issues, including the registration and operation of Nigerian ships, maritime safety and security, and the prevention of pollution from ships. By the express provisions of this Act, No ship shall operate commercially in or from the waters of Nigeria unless the ship is:

- (a) A registered Nigerian ship;
- (b) Provided with a certificate of foreign registration or other document similar or equivalent to that required by this Act;
- (c) Registered by the law of a country other than Nigeria as a ship of that country and is by the law of that country exempted from registration;
- (d) Pursuant to subsection (2) of this section, exempted from registration under this Act;
or
- (e) A licensed Nigerian ship operating solely within the waters of Nigeria.⁴⁵

However, the Minister may by notice exempt generally or specifically from registration under this Act, a licensed Nigerian ship or a class of Nigerian ship when operating

⁴⁵ [MSA 2007] s 5(1)

outside the waters of Nigeria.⁴⁶By the provisions of the Act a Nigerian ship shall hoist the national colour,⁴⁷ on a signal being made to the ship by any ship which forms part of the naval forces of Nigeria, or which is commanded by an officer of any such forces on full pay; and if the ship is of fifty tons gross tonnage or upwards, on entering or leaving any port in a foreign country.⁴⁸

Where a ship fails to hoist its flag as provided under this section, the master of the ship commits an offence and on conviction is liable to a fine not less than one hundred thousand Naira.⁴⁹It is instructive to note generally that most ships used for pirate attack do not hoist flags, by the express provisions of the MSA; it makes it easier for security agencies to identify and go after them. At best they hijack ships of other states, which will definitely send signals to coastal states about the attack. In this wise therefore, the MSA makes provision to combat marine piracy and armed robbery at sea.

Anti-Piracy Act

The Anti-Piracy Act was enacted in 2019 to provide a legal framework for the prevention and punishment of piracy and other maritime crimes in Nigerian waters. It also provides for the establishment of a Piracy Prosecution and Intervention Centre to coordinate efforts to combat piracy.

⁴⁶ [MSA 2007] s5(2)

⁴⁷ [MSA 2007] s 6(1)

⁴⁸ Ibid

⁴⁹ [MSA 2007] s 6(2)

Nigerian Maritime Administration and Safety Agency Act

This Act establishes the NIMASA, which is responsible for the implementation and enforcement of Nigeria's maritime laws and regulations, as well as the promotion of maritime safety and security and the prevention of pollution from ships. NIMASA is the highest regulatory and promotional maritime agency. By the provisions of the Act, NIMASA is empowered to implement the **Merchant Shipping Act**.⁵⁰ The agency is saddled with certain duties which confer on it the powers to tackle maritime piracy in accordance with the provision of the **Merchant Shipping Act**.

Such duties include maritime security as well as establishing procedure for the implementation of conventions of the International Maritime Organization and the international convention to which the Federal Republic of Nigeria is a party on maritime Safety and security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising therefrom.⁵¹

5.1 Limitations of Existing Legal Frameworks in Combating Maritime piracy in Nigeria and The Gulf of Guinea

United Nation Convention on the Laws of the Sea

UNCLOS has facilitated the prosecution of piracy cases in some countries. Nigeria has used its domestic laws, which are based on UNCLOS, to prosecute and convict pirates. Other

⁵⁰ [MSA 2007] s 2(1)

⁵¹ [NIMASA Act] s 22(1) & (2)

countries, such as Benin and Togo, have also taken steps to strengthen their legal frameworks for combating piracy, in part through support from UNCLOS and other international organizations. UNCLOS has had some impact in combating piracy in the region. For example, UNCLOS has provided a legal framework for countries in the region to cooperate in the suppression of piracy, as evidenced by the Yaoundé Code of Conduct adopted by the Gulf of Guinea states in 2013. The Code of Conduct provides a framework for joint patrols, information sharing, and capacity building among the countries in the region. However, the effectiveness of UNCLOS has been limited by various factors.

One of the first challenges of UNCLOS is that piracy in the Gulf of Guinea is different from piracy off the coast of Somalia, which was the primary focus of UNCLOS when it was adopted. Unlike the Somali pirates who mainly targeted commercial vessels for ransom, pirates in the Gulf of Guinea often target oil tankers and other vessels for theft of cargo and kidnapping of crew members. This has made it more difficult to apply UNCLOS provisions related to piracy, such as the obligation of states to cooperate in the apprehension and prosecution of pirates.

UNCLOS primarily focuses on activities in the high seas, which are beyond the jurisdiction of individual states, and piracy in the Gulf of Guinea and Nigeria often occurs in territorial waters. UNCLOS does provide some provisions for states to take measures against piracy, including the right to arrest and detain suspected pirates and to seize pirate vessels, but there are limitations to these measures when piracy occurs

in territorial waters. Another challenge is that UNCLOS does not provide clear guidelines on the prosecution of pirates. This has led to confusion over which country has jurisdiction over piracy cases, especially when piracy occurs in the territorial waters of more than one country. In practice, this has led to a lack of effective prosecutions of pirates in the region. More so, some countries in the region have limited capacity to enforce UNCLOS and other international laws and conventions. Many of the countries in the region have weak governance structures, limited resources, and inadequate maritime law enforcement capabilities. This has created a permissive environment for piracy and made it difficult to apprehend and prosecute pirates.

SUA Convention

The United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) is an international treaty that criminalizes certain acts against the safety of ships and the safety of fixed platforms on the continental shelf. While the SUA Convention has been useful in combating maritime piracy in Nigeria and the Gulf of Guinea, its effectiveness has been limited by a range of factors.

One of the main challenges is that many of the countries in the region have not fully implemented the SUA Convention into their domesticated laws. This has limited the ability of these countries to effectively prosecute pirates under the treaty's provisions. Furthermore, even when countries have implemented the Convention into their domesticated laws, there are still challenges related to enforcement and prosecution of piracy cases.

Another challenge is that the SUA Convention focuses on the safety of ships and fixed platforms, rather than on piracy specifically. While piracy is a threat to the safety of ships and their crew members, the SUA Convention may not be the most appropriate legal framework for addressing piracy in the region.

Merchant Shipping Act

The Merchant Shipping Act is a Nigerian domestic law that provides for the regulation of shipping activities in Nigerian waters. While the Act has played a role in combating maritime piracy in Nigeria and the Gulf of Guinea, its effectiveness has been limited by a number of factors. One challenge is that the Merchant Shipping Act is primarily focused on the regulation of commercial shipping activities, and does not specifically address piracy. While the Act does provide for the arrest and detention of suspected pirates, it may not provide sufficient legal provisions for the prosecution of piracy cases.

Another challenge is the lack of adequate resources and infrastructure for maritime law enforcement agencies. The Nigerian Navy, which is responsible for maritime security and law enforcement in Nigerian waters, faces challenges related to equipment, training, and manpower, which limits its ability to effectively combat piracy in the region.

Nigerian Maritime Administration and Safety Agency (NIMASA)

The Nigerian Maritime Administration and Safety Agency (NIMASA) is a government agency responsible for the regulation of maritime activities in Nigerian waters. NIMASA has played a critical role in the fight against piracy in Nigeria and the Gulf of Guinea, but its effectiveness has been limited by a range of challenges. One of the challenges is the lack of adequate resources and infrastructure to effectively police Nigerian waters. This has made it difficult for NIMASA to patrol the entire coastline and provide adequate protection to vessels and crews operating in Nigerian waters.

Another challenge is the lack of international cooperation in addressing maritime piracy in the Gulf of Guinea. Piracy is a transnational crime that requires collaboration among different countries and international organizations to effectively combat. Without strong international cooperation, NIMASA's efforts to combat piracy may be limited.

Despite these challenges, NIMASA has taken several steps to combat piracy in the region. The agency has implemented a range of measures to improve maritime security, including deploying naval assets and increasing surveillance capabilities in Nigerian waters. NIMASA has also worked with other government agencies, such as the Nigerian Navy and the Nigerian Police, to enhance the coordination of efforts to combat piracy.

Recommendations and Conclusion

Having clearly conducted an examination of the socio-legal implication of piracy in Nigeria and the Gulf of Guinea, it is

recommended that to enhance the effectiveness of combating piracy in the region, there is a need for countries in the region to strengthen their domestic laws to align with the treaty's provisions and to increase their capacity to enforce these laws. This could include efforts to strengthen the capacity of maritime law enforcement agencies, improve information sharing mechanisms, and develop specialized courts or tribunals for the prosecution of piracy cases. It may also require greater international cooperation and support, including through capacity-building initiatives and resource mobilization efforts.

Again, it is important for the primary agency saddled with the responsibility, e.g. NIMASA to continue to work with other government agencies and international partners to address the root causes of piracy in the Gulf of Guinea. This could include efforts to improve the economic and social conditions of coastal communities, increase regional cooperation and enhance the capacity of maritime law enforcement agencies. This study further makes the following recommendations:

1. The writers believe that effective anti-piracy efforts require uniformity of laws amongst states within the Gulf of Guinea, such that legal solutions suppress piracy within the region rather than states fighting it alone.
2. Globally, most states lack the political will to prosecute pirates, this is also applicable to states flanking the Gulf of Guinea. Thus, few of them have enacted comprehensive anti-piracy laws. It is proposed that states within the Gulf of Guinea make

laws to deliberately combat piracy. Also, states that have enacted piracy related laws should update such laws so as to effectively fight the menace of piracy in the Gulf of Guinea in line with international best practices.

3. The writers further recommend a closer cooperation among international organizations and states in the Gulf of Guinea, both in the legal and operational level so as to adequately face the menace of piracy within the region.
4. The writers recommend the establishment of regional international piracy tribunals that can apply a uniform law on piracy and provide the judicial resources to enforce international piracy laws so as to effectively combat the menace in the Gulf of Guinea.
5. It is further suggested that states should prosecute pirates because of the notion of universal jurisdiction of states over acts of piracy. They can also provide information on the prosecution of pirates where they are unable to prosecute them.
6. It is also suggested that the gap between military interventions against piracy and judicial prosecution of suspected pirates be bridged. This will further enhance the fight against piracy in the Gulf of Guinea and by extension improve the economy of states within the region.
7. This study also suggests that there should be a complete reformation of the international regime for the prevention, suppression and prosecution of acts

of piracy so as to prosecute pirates in the International Criminal Court.

8. It is further recommended that both official and private security forces should be used against pirates, as this appears to be the best way to protect lives, national and international economic interests within Nigeria and the Gulf of Guinea.
9. Piracy also have a lot to do with human rights issues, this is because of the acts of kidnapping, which is a complete violation of right to liberty, and freedom of movement. It is therefore suggested that piracy be tackled from international human rights perspective.

In conclusion, the legal response to piracy in Nigeria and the Gulf of Guinea has been inadequate. There is a lack of capacity and resources to investigate and prosecute piracy cases, and legal frameworks are not well developed. This has created an environment in which piracy can thrive, and criminals can act with impunity.

The writers were able to identify that piracy is economically driven, as such, that the primary goal of most pirate attack is to make profit. This study also identified the negative socio-legal impact of maritime piracy and its implication in the economy of countries within the Guinea including Nigeria. Its negative impact is felt in the areas of tourism, shipping, manufacturing industries, amongst other sectors leading every serious government to declare it a serious problem as it also influences security and safety.

The writers demonstrated that irrespective of the fact that the methods of pirate attacks differ, its scope and trend come in four major ways of Robbery of vessel at sea, Hijacking of vessels, Kidnapping for ransom, and attacks on vessels berthed in harbours or at anchor. It was further established that each of the foregoing methods elucidates the link between financial issues and piracy.