FIGHTING PIRACY AND MARITIME TERRORISM AT SEA: THE PERSPECTIVE OF INTERNATIONAL LAW*

Abstract

This paper critically reviews major international legal instruments in tackling on the threats of piracy and maritime terrorism. Of recent, sea trading has faced serious threats due to the menace of sea piracy. To achieve the objective of this study, the wok will investigate international approach to maritime terrorism and piracy, assessed whether international legal instruments in addressing piracy and maritime terrorism has curtailed this menace. The study will also evaluate the political, economic, social and environmental factors responsible for the growth of maritime terrorism and piracy.

1. Introduction

The waters in Nigeria are infested with the activities of the pirates. In spite of the presence of some international laws like UNCLOS 1982 and the High Seas Convention of 1958, the problem of piracy becomes increased day by day rather than to decrease. What is the main reason for that? Is there any kind of lacking in the present law about the piracy? Is there any kind of problem in the applicability of that law? The purpose of this paper is to find out that reason and why international laws fail to control the piracy and the kinds of changes to control piracy in international laws.

2. Historical Perspective

Piracy is one of the oldest of all professions. In ancient Greece, piracy seems to have been widespread and widely regarded as an entirely honourable way of making a living; even during Roman times parts of the Mediterranean were infested with pirates, provoking several naval campaigns to suppress them. With the fall of Roman Empire, the incidence of piracy rose again and continued throughout the Middle Ages[1]. Well into the early modern and modern period, states would occasionally find it advantageous to align themselves with pirates for raids against their respective adversaries. The distinctions between pirates as criminals and privateers enjoying some authorization by recognized states. During the period between 1690 and 1730, pirates were sometimes provided with *Lettres de manqué* by the British crown, which formerly transformed them from pirates to privateers. The UK thus used privateering as a foundation for its gradual achievement of command of the sea employing a privated*guerre de course* in the form of commerce raiding, and the same was the case for other naval powers[2].

3. Piracy and International Law

Defining Maritime Piracy

In the Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[3] piracy is defined as: 'any illegal acts of violence or detention, or any act of depredation, *committed for private*

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*By Oladipupo S. ALAKA, LLB, BL, LLM., MPhil., PhD, Lecturer, Faculty of Law, Lagos State University, Ojo, Lagos. Email: alakaladipo@gmail.com

[1] Moller Bjorn.*Piracy, Maritime Terrorism and Naval Strategy*. Danish Institute for International Studies Report 2009:02 p.
[2].*Ibid.*
[3]The 1982 United Nations Convention on the Law of the Sea ('convention') is an international agreement dealing with all traditional aspects of ocean governance and uses. It was signed on December 10, 1982, after 14 years of negotiations to which more than 150 countries representing all regions of the world participated. The convention entered into force on November 16, 1994. In 1988, the 1982 UNCLOS Convention was supplemented by the convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (SUA Convention). The purpose of the SUA convention was to fill the gaps in the 1982 Convention. The definition of an illegal act at sea is much broader in the SUA Convention. It includes the unlawful seizure of vessels, the attachment of materials to or installation of materials in vessels in question, and the killing of persons on board. Consequently, the SUA Convention, unlike the 1982 Convention, also relates to politically motivated terrorist acts. In addition, it covers a significantly larger geographical territory than the 1982 Convention. At the time of the illegal act, the vessel can be anywhere at sea. However, the vessel must be in international transit at the time of the illegal act, i.e. it must be coming from foreign territory or the high seas or it must be passing through or heading for such areas. This means that there is still a gap in the law; i.e. if the vessel only transits the territorial waters of one state, that gap could be filled by national laws.

ends by the crew or the   passengers of a private ship or a private aircraft, and directed: on the high seas, against another ship or aircraft; against a ship, aircraft, persons or property in a place outside the jurisdiction of any state. It is also defined as 'any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a private ship or aircraft'; or 'any act inciting or of intentionally facilitating an act described in sub-paragraph (i) or (ii).' The 1958 Convention on the High Seas defines piracy as any of the following acts: 'Any illegal acts of violence, 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: On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; or against a ship, aircraft, persons or property in a place outside the jurisdiction of any state'. The Convention further stipulated that 'All states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state'. It mentions the seizure of pirate ships, the arrest of persons and the seizure of property on board, etc. but it limits universal jurisdiction to the high seas.

The Rome Convention[4] provides a noteworthy definition of piracy and provides as follows:
A person commits an offence if he unlawfully and intentionally:
  a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
  b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
  c. destroys a ship or causes damage to a ship or its cargo which is likely to endanger the safe navigation of that ship or;
  d. places or causes to be placed on a ship by any means whatever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
  e. destroys or seriously damages maritime navigation facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
  f. injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in sub-paragraph (a) to (f)5

The International Maritime Bureau (IMB) defines piracy as 'an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act'

However, Murphy, a leading expert on piracy, defined it as 'unlawful depredation at sea involving the use or threat of violence, but not necessarily, involving robbery[6].

4. Root Causes of Piracy

Geography
Regions with close proximity to waterways tend to have piracy. Proximity to major lanes of transportation and major ports renders piracy more lucrative and hence increases the likelihood of piracy. Geography also refers to the existence of hideouts, that is coastal strips or islands which are difficult to reach or control. Hideouts are necessary for preparing a piracy operation and for the case of ransom piracy to anchor the vessel. In principle, piracy operations can also be launched from ports, especially if they are weakly governed and surveilled[7].

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[4]. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988).
[5]See article 3, paragraph 1, sub-paragraphs (b), (c) and (e) of the Rome Convention.
[6]Murphy, M. N., 2009 *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism n the Modern World* pp. 7-8, Hurst & Co., London.
[7]Christian, Bueger. *Learning from Piracy: Future Challenges of Maritime Security Governance forthcoming in Global Affairs 1(1), 2015, p. 2.*

Weak Law Enforcement
Weak law enforcement stresses that the lower the risk of getting caught and punished for piracy, the higher the likelihood that piracy occurs. This concerns various levels of law enforcement stretching from coast guard and naval capabilities to policing, intelligence and persecution capabilities on land, as well as the efficiency of the judicial sector allowing for the prosecution of piracy. The prevalence of official corruption is a further major factor impacting the likelihood of piracy[8].

Maritime Insecurity
A factor closely related to weak law enforcement is the degree to which the maritime environment of a country is insecure and prone to violence. Piracy tends to occur in seas in which there is a host of other illegal activity, such as trafficking, smuggling and illegal fishing and how far violence and insecurity at sea is considered to be the norm[9].

Economic Dislocation
Rightfully, piracy has often been described as a business model and seen as an activity that is primarily economically motivated. Communities that tend to engage in piracy are those which have been economically marginalized, have been put at disadvantage by economic developments or are not allowed to participate in sources of wealth.

Cultural Acceptability and Skills
Piracy has also a considerable cultural dimension. In order for piracy to prevail, it requires some sense of legitimacy. Foot soldiers have to be recruited and convinced that to engage in piracy is a legitimate activity and the majority of piracy operations are dependent on support from local communities, which provide shelter, food and other supplies.

Another cultural dimension is the availability of skills required for piracy among the populace. Such skills include navigation, boarding, weapon handling or negotiation skills. Skills necessary to perform piracy are widespread in Niger Delta region of Nigeria. This includes the navigation skills of fishermen. Skills such as the handling of weapons have been learned in decades of Nigeria civil war, others such as the handling of navigation devices or boarding skills, have been trained in attempts of setting up militant groups in Niger Delta region. Also (land based) kidnap and ransom taking has become a widespread practice before the rise of piracy, hence skills and experience most likely have transferred to piracy.

5. Meaning of Maritime Terrorism
Maritime terrorism has no internationally agreed upon definition. Legal scholars have agreed on an operational definition for maritime terrorism based on article 3 and 4 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), even though the SUA Convention does not refer to terrorism specifically. Maritime terrorism is defined as: 'any attempt or threat to seize control of a ship by force; to damage or destroy a ship or its cargo; to injure or kill a person on board a ship; or to endanger in any way the safe navigation of a ship that moves from territorial waters of one state into those of another state or into intentional waters'[10]. The Council for Security Cooperation in the Asia Pacific *(CSCAP)* working group has offered an extensive definition for maritime terrorism, as follows: *'... the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resort, port areas and port towns or cities ...'[11]*. This definition does not explain what exactly terrorism is, or whether it would only include maritime attacks against civilian (merchant) vessels or also attack against military crafts. It should be noted that the IMB does not distinguish between piracy, armed robbery of ships or maritime

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[8]*Ibid*
[9]*.Ibid*
[10]Johnson, D., Pladdet, E. & Valencia, M. 'Introduction, Research on Southeast Asian Piracy'.In Johnson, D. & Valencia, M. (eds.) *Piracy in Southeast Asia: Status, issues and responses.* Singapore: Institute of Southeast Asian Studies, 2005.
[11] The Council for Security Cooperation in the Asia Pacific (CSCAP) 2009.

terrorism[12]. Thus, there exists a very thin line between *piracy* and *terrorism,* although there are still certain factors which can distinguish between them[13]. First, in terms of ends, while piracy is usually driven by financial gains, terrorism is more directed towards achieving certain political motivations. However, the line between the two, is rather blurred because terrorists could acquire funding for their political ends through piracy – tactically piratical, but strategically terrorist. Second, in terms of means, while pirates are usually associated with basic tactics, e.g. boarding, theft, the use of force or violence etc., terrorists usually aims at achieving particular strategic effects. Although they are distinct crimes, due to this reason pirate attacks are sometimes labelled as maritime terrorism, for example, the attack in January 2004 on an Indonesian fagged product tanker *MV Cherry 201* was conducted by members of the Free Aceh Movement (FAM). This group is an internationally recognized terrorist group, but the event was recorded as pirate attack.

6. Origin and Incidence of Maritime Terrorism

Maritime terrorism is once specific expression of international terrorism and it is connected to piracy. The piracy is an old crime with international character. Roman law identifies pirates as the enemy of society – *piratahostis generis humani ...*[14]. The first serious occurrence of maritime terrorist actions is the hijacking of the Italian passenger ship *'Achille Lauro'.* This capture was carried out by a battle group of the terrorist organization 'Front for Liberation of Palestine' in the Eastern Mediterranean in 1985. Maritime terrorism is seen as a combination of illegal actions that affect – directly or indirectly the interests of a nation at sea or on land. These actions may be grouped into several main categories: piracy, robbery, assaults, hijacking, and illegal trafficking of weapons, people and drugs. Most 'nightmare scenario' of maritime terrorist envisage the use of ships as floating bombs or as delivery vehicles for explosive devices, perhaps even nuclear ones; or attacks against passenger ships, that are simply intended to cause a maximum of fatalities, or the sinking of ships in order to produce a maximum of economic damage; for instance, by blocking congested and narrow waterways. According to their targets, terrorist attacks can be divided in the following categories: attacks against vessels on the sea; attacks against vessels in ports and at anchor, and attacks against port facilities and other coastal targets.

The tactics of maritime terrorists depend on the type of the vessel, which is attacked, the value of the target, the security system of a port, the motives and operational experience of the terrorist group etc. for example, terrorists often attack merchant vessels. Fighting swimmers are used only against immobile vessels. Fast boats are used both at high sea and near the coast.
Terrorist try to use the factor of surprise, which is transformed into a special element of their attacks. Terrorists prefer to carry out their attacks on vessels and port facilities in weakly protected ports. The direction of the attack is chosen depending on the weak port of the protection – it may be carried out both from the sea and from the coast.

7. International Legal Instruments for the Counter-Piracy and Anti-Piracy

International legal instruments provide legal protection to maritime and shipping domain. Such legal protection seems to result from the rules of international law applicable to maritime piracy, as contained in *Article 15-19 of HSC* which was the first legal instrument to codify such rules; *UNCLOS,* which reproduces the same regime in its Articles 100-107; and the 1988 SUA Convention which regulates as amongst state parties, unlawful acts against the safety of maritime navigation.

United Nations Convention on the Law of the Sea UNCLOS

International law has established an obligation on member states to cooperate in the suppression of piracy, including granting member states certain rights to seize pirate ships and criminals. UNCLOS is a major anti-piracy treaty. Article 100 provides that: 'All states shall cooperate to the fullest possible

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[12]International Chambers of Commerce, International Bureau. *Piracy and armed robbery against ships: Annual Report.* London, 1 January – 31 December, 2006.

[13]IDSA, 2009.Piracy, maritime terrorism and policy response. Weekly Fellows' Seminar Series, Institute for Defense Studies and Analysis (DSA), New Delhi, India, 10 July 2009.

[14]MedniKarov, B. and Kolev, Kiril*'Terrorism on the High Sea, Piracy and Maritime Security'.Information and Security*. An International Journal, Vol. 19, 2006 102-114.

extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state'. Article 105 provides that: 'On the high seas, or in any other place outside the jurisdiction of any state, every state may seize a pirate ship or aircraft or a ship or aircraft taken by pirate and under the control of pirates, arrest the persons and seize the property on board'.

Convention for the Suppression of Unlawful Acts against THE Safety of Maritime Navigation 1988 (SUA 1988)

To deal effectively with cases of maritime terrorism from a judicial point of view, a specific international regulation was required to secure the prosecution and punishment of the offender. The first international legal instrument on a specific legal regime covering maritime terrorist acts (though without specifically mentioning terrorism) came about in the late 1980s with adoption of SUA 1988. The basic objective of the SUA 1988 was to punish any person who committed an offence by unlawfully and intentionally seizing or exercising control over a ship by force or threat thereof; performing an act of violence against a person on board a ship if that act was likely to endanger the safe navigation of that ship; or destroying a ship or causing damage to a chip or to its cargo which was likely to endanger the saf navigation of that ship. The SUA 1988 covered the unlawful acts no matter whether they are for political ends or for private ends. The fundamental purpose of SUA Convention, along the lines of other anti-terrorist conventions from which it drew inspiration, was the adoption of the 'extradite or prosecute' clause, imposing an international obligation on all states parties in which offenders might be present to either being prosecuted within the state's own legal courts, whether or not the offence was committed within their territories, or to extradite the offenders to one of that states that had jurisdiction under the SUA 1988.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988

This protocol contained similar provisions. Both the SUA Convention and protocol could be regarded as complimentary anti-piracy legal measures. However, the scope of the territorial application between the UNCLOS and the SUA Convention was different; while the former applied only to the high seas and the EEZ, the later applied to not only the water beyond, but also the waters within national jurisdiction. This enlarged territorial scope responds to the need to combat maritime terrorism in all areas of the ocean. In this respect, the SUA Convention could be an important tool for combating major criminal hijacks[15]. The SUA Convention would apply to such attacks whether they were committed in port, in the territorial sea, or in maritime zones outside the jurisdiction of the coastal states.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Protocols 2005)

This protocol substantially expands the scope of the original 1988 SUA Convention. For instance, the 1988 SUA Convention does not touch upon the possibility of a state party boarding a vessel of another state party to prevent a SUA offence, while article 8b of SUA 2005 has created the possibility for the boarding of a state party vessel on the high sea. The 2005 SUA protocols also considerably broadens the covered offences beyond concerns of vessels and navigations safety to deal directly with: (i) the use of vessels as instruments of or platforms for terrorist activities; (ii) the transportation of suspected materials, biological, chemical or nuclear weapons; and (iii) the transportation of people who have committed acts that is offences under the terrorist conventions[16].

International Ship and Port Facility Security (ISPS) Code

Internationally, port security is governed by rules issued by the IMO and its 2002 International Ship and Port Facility Security (ISPS) Code. ISPS Code is an amendment to the Safety of Life at Sea (SOLAS) convention (1974/1988) on minimum security arrangements for ships, port and government agencies. The code was agreed upon at a meeting of the 108 signatories to SOLAS Convention in

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[15]Beckman, R. C., *Combating piracy and armed robbery against ships in Southeast Asia: The way forward.* Ocean Development and International Law, 33(3-4), 317-341.
[16]Nang, H. and Adolf, K. Y. Ng *The International Legal Instruments in Addressing Piracy and Maritime Terrorism: A Critical Review.*

London in December 2002. The measures agreed upon under the code were brought into force on 1 July 2004 and labelled as the comprehensive security regime for international shipping[17]. In compliance with the code, all ships over 500 gross tonnage and critical facilities within the port's domain are obliged to conduct vulnerability assessments and develop security plans to deter potential *terrorist attacks* e.g. passenger, vehicle and baggage screening procedures, security patrol, establishment of restricted areas and its executions, procedures for personnel identification, access control, installation of surveillance equipment, etc. The code bears several objectives, viz: the detection of security threats; the implementation of security measures; the collation and promulgation of information related to maritime security; the provision of reliable methodologies in assessing maritime security risks; the development of detailed security plans and procedures in reacting to changing security levels; and the establishment of security-related roles and responsibilities for contracting governments (and their administrations), shipping companies and port operators at national and international levels, including the provision of professional training.

The ISPS Code consists of two major components. Part A provides the minimum mandatory requirements that ships (represented by their respective firms) and ports (represented by the contracting government) must follow. While part B provides more detailed, but not compulsory, guidelines and recommendations in the implementation of security assessments and plans. The section outlines of the two parts are largely equivalent, of which part A illustrates the principles that maritime stakeholders need to follow, while Part B discusses how such principles should/can be put into practice. Within the code, three aspects are directly related to port security, viz: changing security level (L1, L2 and L3, similar to the Maritime Security level (MARSEC) system)[18]; responsibilities of the contracting governments, including the appointment of a designated authority (DA) dedicated for port security affairs while at the same time establishing an administrative structure in supporting the DA to carry out its duties, including local legal backup; and port facility security, including the procedures of undertaking Port Facility Security Plans (PRSP) and appointing Port Facility Security Officer (PFSO).

8. Conclusion and Recommendations

Solutions to the problems of terrorism and maritime piracy are sought in the framework of the declared total war against terrorism. Views have been expressed in support of the International Criminal Court (ICC) being mandated to handle piracy cases[19]. Similarly, other quarters have advocated for an international tribunal of some sorts for the reason that domestic courts lack capacity and finances which the international adjudicating bodies have access to as prosecution and overseeing prosecutions is costly and logically challenging for most developing nations. Legal reforms may hold out the promise of deterring people from turning to piracy, and also judicial sanctions against pirates. Major causes of piracy and maritime terrorism inclusive economic deprivation, ineffective security, social acceptability of get rich quickly, lucrative random payment, access to weapons and ammunition, political marginalization, official corruption in Nigeria need urgent attention in addressing piracy and maritime criminality in Nigeria. Although piracy is only one of several other maritime security threats it can be considered as a paradigmatic one. Piracy illustrates that maritime security threats tend to be sticky. Once they emerge there are difficult to eradicate. Hence, prevention strategies and mechanism are crucial. Factors such as economic dislocation, cultural acceptability or skills empathize that development policies are crucial in addressing maritime insecurity. This includes awareness campaigns, reintegration programmes, as well as vocational training or infrastructure measures which are beneficial to marginalize coastal populations need urgent consideration.

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[17]Mensah, T. A. *The Place of the ISPC Code in the Legal International Regime for the Security of International Shipping.*The WMU Journal of Maritime Affairs, 3(1), 17-30, 2003.

[18]According to Pinto *et al* (2008), L1 implies that a threat is possible; L2 implies that terrorists are likely to be active in particular area(s); L3 implies that a threat is imminent to a given target.

[19]Yvonne M. Dutton, *Bringing pirates to justice: A case for including piracy within the jurisdiction of the International Criminal Court.* Chi J. Int' IL (University of Chicago Law School, 2010), 20-27.

In order to curb the menace of piracy on the High Seas the following recommendations must address the menace of maritime piracy and terrorism on the High Sea. Any solution must reflect the reality that piracy is a global, not a local problem. Just as states may cooperate to thwart pirate attacks, pirates may cooperate by trading information and pooling resources to reduce the effectiveness of counter-piracy operations. No solution to piracy can ignore human rights concerns. Ensuring that the trials of accused pirates are procedurally fair; articulating a framework for the capture and detention of pirates that is consistent with human rights law. A long-term solution to piracy would seem to require capacity-building at the domestic level. Piracy is an extension of land-based violence; itself is rooted in weak state institutions, poverty, domestic lawlessness and Compton[20]. Nigerian government and maritime authorities and Navy are not adequately prepared to execute functions of protecting maritime domain against maritime crime and criminality. In these circumstances, adequate measure is urgently required in countering maritime criminality and piracy. The reforms of the legal and penal system, maintaining high alert in pirate invested waters and dispatching of coastguard ships or Naval ships is very important in the circumstance. The new piracy bill recently enacted by the National is a welcome development. But the problems of its effectiveness and the difficulties in its implementation seem to be the weakest point to combat piracy and maritime criminality in Nigeria. The *ISPS Code* requires governments to gather and assess information with respect to security threats and exchange such information with other contracting governments, shipboard and poor facility personnel need to be aware of security threats and needs to report security concerns to the appropriate authorities for their assessment. Governments need to communicate security, related information to ships and port facilities[21].

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[20]. Suppressing Maritime Piracy: Exploring the Options in International Law. American Society of International Law.
[21]*Information retrieved through http://www.diis,dk/graphics/publications/Briefs2009/bmopircyofsomalia2. pdf.*