

The Gulf of Guinea Piracy: Impact and Effectiveness of Control Measures

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Abstract

Maritime piracy is an old concept, the history of which can be traced far way back since the time when the human being started using sea as a means of transport. Its criminality was firstly been considered by the customary international law even before codification of the same in 1958 Geneva Convention on the High Seas and later the 1982 United Nations Convention on the Law of the Sea. Somali piracy emerged in the 1990s, its narrative root causes, and impact brought by it and how it is combated have moved the author to write this paper. The International law perception of what constitutes acts of piracy lead the governments of Gulf of Guinea coastal states to be solely responsible for maritime security of their countries as well as eliminating piracy acts happening in their area. Different from piracy off the coast of Somalia, a stateless country, Gulf of Guinea countries have stable governments and thus the principle of sovereignty applies. The combat of piracy in the Gulf of Guinea is vested to the Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC) with the aid from partner States. This paper focused on impact of Gulf of Guinea piracy to the maritime industry and to the countries, effectiveness of the control measures placed to combat piracy and challenges facing the combat of piracy in the area. Moreover, the definition of maritime piracy, narrative root causes of piracy off the coast of Gulf of Guinea, and lastly, conclusion and recommendations are the areas covered by this paper.

Keywords: Piracy, Armed Robbery, Violence, Gulf of Guinea

1. Introduction

Maritime piracy is not a new phenomenon in the world maritime trade. It has been observed way back centuries for centuries having the same cause but differs in style. Despite its oldest concept into people's mind piracy has never been observed as a friend to the maritime industry, it is indeed an enemy of the sea transportation, an enemy to the world economy, an enemy to the consumers and thus it has always been fought. And because it comes in the different style and form depending on the need and geographical location, even the way of combating it can never be uniform. The advancement of technology resulted piracy of today to be far way different from the ancient piracy thus even response by the world on how to combat it should be in accordance with the technology advancement. This paper is focusing on the recent piracy activities happening in the Gulf of Guinea.

Piracy in the Gulf of Guinea have been observed to grow in an alarming proportions in recent times where hi-jacking and kidnaping of ships and its crew happen in great number. The Gulf has been ranked by the International Maritime Bureau (IMB) as the area with the third highest incidence of piracy and armed robbery against ships in the world, following South East Asia and Horn of Africa¹. The piracy activities in this area involves not only hijack for ransom, but also theft of cash and cargo and siphoning oil carried on board the attacked ships. These activities are really endangering safety of navigation. The geographical coverage of these activities is in the Nigerian coast water, Togo coast water, Benin coastal water, the waters of Ivory Coast, waters of Gabon and other nearby countries of West and Central Africa. These led the London-based Lloyd's Market Association, an Umbrella group of Maritime Insurers, to list these countries in the risk category as Somalia².

2. Definition of maritime piracy

Maritime piracy has been classified, together with others (war crimes and crimes against humanity) as universal crime under the international law, whereby all nations may both arrest and punish piracy provided that it has been committed on the high seas (terra nullius).³ Piracy under international context has firstly been defined by the 1958 Geneva Convention on the high seas as illegal acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or private aircraft and directed against another ship or aircraft or against persons or property onboard such ships or aircraft on the high seas which is outside of

¹ Kofi Mbiah, 'Unlawful acts in the West African Waters'. Coastal Zone Piracy and Other Unlawful Acts at Sea's Journal edited by Maximo Mejia Jr and Jingjing Xu. Page 127

² Claims Journal, a magazine for insurance professionals

³ Article 105 of United Nations Convention on the Law of the Sea, 1982

jurisdiction of any State¹. This definition has later in 1982 United Nations Convention on the Law of the Sea article 101, been confirmed and adopted.

Definition of piracy in the international law eyes has emerged discussion particularly on the geographical coverage of the place where piracy activities are considered to have taken place. This definition is considered to be narrow as it has left no room for the activities of the same nature happening elsewhere than on the high seas. It excludes all the activities of a like that is happening in the territorial waters of a State and within the Exclusive Economic Zone (EEZ) of a State where no other State than the territorial's shall have jurisdiction over the matter, and International Law could not apply but Municipal Laws of the littoral State where the piracy activities are taking place. Piracy activities happening in the Gulf of Guinea have emerged mixed thoughts amongst scholars on whether the same fit into the international law definition of piracy or not, this paper will also focus piracy within the ambit of international law definition and whether the same is exhaustive.

2.1 The concept of coastal water piracy

Unlike Somali piracy or others that were only taking place on the high seas, piracy off the coastal water of West Africa is evidenced to have occurred in all places from within territorial waters of a coastal state and in the exclusive economic zones to the high sea. This brought up some mixed thoughts of what exactly happen in the Gulf of Guinea qualifies to be piracy or not, if it does under what concept.

It is very clear that piracy, under the eyes of the International law happens on the high seas, the area with no one's jurisdiction. So States have universal extraterritorial jurisdiction to try and prosecute according to their own laws and procedures, the acts of piracy committed on the high seas. A clear definition of what constitutes piracy is one firstly defined by the 1958 Geneva Convention on the High Seas² and later adopted by the United Nations Convention on the Law of the Sea (UNCLOS), 1982³. Piracy under UNCLOS involves:

- (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 sea, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) Any act of voluntary participation in the operation of a ship or 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)

Thus the definition of piracy under international law is very narrow. It restricts piracy to only actions taken on high seas for the private ends and there must be involvement of two ships or aircraft. If the same acts are committed in territorial waters that's not piracy, and if same acts happens on the high seas but with scarcity of involvement of two ships it is not piracy as well.

So, what then are such acts if occur in territorial waters and in exclusive economic zones? Clearing this confusion the International Maritime Organization (IMO) has termed those acts that happening within the jurisdiction of the coastal States as 'armed robbery against ships'. So armed robbery as per the IMO is any unlawful act of violence or detention or any act of depredation, or threat thereof, other than piracy, directed against a ship or against persons or property onboard such ship within State's jurisdiction over such offences⁴.

In its reports for piracy and armed robbery from 1984 to March 2015, IMO has separated incidents which reported to have taking place in international waters, territorial waters and in ports areas. This is to mean that those acts happened in the international waters, as per IMO definition, is piracy; and those that happened in territorial waters and in ports areas are, in the eyes of IMO, armed robbery.

Despite of the IMO definition of armed robbery against ships, still there is a debate on what actually constitute acts of piracy. The debate has gained heat after observing same acts as piracy are committed in territorial waters of a State. The acts of piracy happening in the gulf of Guinea Coastal States has as well emerged a lot of controversy on how to respond to it. The controversy laid on the nature of the activities itself in terms of geographical location where these activities are mostly taking place as against the International Law definition of piracy under the United Nations Convention on the Law of the Sea. Basing on the actual situation, the International Maritime Bureau (IMB) an organ under the International Chamber of Commerce (ICC) provided an additional definition of piracy to constitute "an act of boarding or attempting to board any ship with the apparent intent to commit theft and any other crime and with the apparent intent or capability to use force in the furtherance of that act"⁵. And now, we have piracy activities happening in territorial waters of West Africa

¹Article 15 of Geneva Convention on the high Seas, 1958

² Article 15

³ Article 101

⁴ International Maritime Organization, Reports on Piracy and Armed Robbery against Ships: Annual Report on Piracy 2003 – September 2005, available at: www.imo.org

⁵ Riskintelligence.eu/about/approach/piracy

Countries and beyond that.

2.1.1 Legality of IMB definition of piracy

The IMB definition of what constitute acts of piracy satisfies piratical actions regardless of the location. Whether the acts are conducted within the port area, coastal zones, territorial, EEZ or high seas; it is actually the solution of the persistence confusion of what constitutes actions happening in the Gulf of Guinea to a greater extent. But one can ask himself or herself, what is the legality or rather the weight of the ICC-IMB definition of piracy? Can it be taken and adopted by States? If the answer is yes, basing on what?

In answering that, and for the purpose of suppressing acts of piracy, the legal definition of what constitutes acts of piracy that will serve the commercial and security purpose is required. The definition of piracy under the UNCLOS is not satisfactory and it evidenced to have created a confusion and difficulties on prosecuting the piracy perpetrators by the respective countries. The International Maritime Bureau (IMB) is an organ under the International Chamber of Commerce (ICC), it is the major source of reporting piracy incidents in the world. The work is done through the Piracy Reporting Centre based in Kuala Lumpur that was established in 1992. The reports given is basing on the definition of piracy provided by itself, so the world is received a certain number of reported piracy incidents happening in the Gulf of Guinea in a particular year, while the actual conduct reported, in its large amount, are outside the ambit of piracy in the International law eyes. One can argue this by saying the PRC reports are combination of piracy and armed robbery, that's correct, but because there is no distinct columns of piracy incidents and armed robbery incidents within the report, and also because the extent of the IMB definition of piracy is well known, if combined with the majority of unlawful acts against ships conducted off the coast of West Africa and its nature, then the conclusion will be that it is not certain if what is reported by IMB to be piracy in the Gulf of Guinea is actually piracy in the eyes of International law.

Although IMB definition of piracy is the one suitable for actual actions that are happening in the Gulf of Guinea today, States cannot use it since IMB does not have the authority to create binding laws. So its definition of piracy is only creating guidance to the States to follow. But the question will rise on how the State party to the UNCLOS have two different provisions of what constitutes piracy, or rather how can a State Party have a combined definition with the actual wording of the UNCLOS? These controversies have brought challenges on the prosecution of piracy perpetrators as a way of combating and suppression of acts of piracy.

2.2 Geographical coverage of piracy in West Africa

The Guinea coastal area is comprised of States like Ghana, Benin, Nigeria, Togo, Gabon, Ivory Coast, Democratic Republic of Congo, Liberia and Sierra Leone. These countries have been affected much by piracy activities that are happening in coastal water of West Africa. Most of piracy activities in the Gulf of Guinea have been observed to take place in territorial waters and Exclusive Economic Zones that fall within the jurisdiction of a coastal state. However, some of the incidents reported to have taken place beyond territorial waters and Exclusive Economic Zone of a State. The International Maritime Bureau, in March 1, 2013 reported fifteen (15) incidents, including three (3) hijackings, occurred in the Gulf of Guinea. Amongst, eleven (11) have occurred in Nigeria. Fifteen crew members were hijacked, one died out of gunshot wound after his tanker fired while anchorage in Lagos port¹. In another incident, fourteen crew members reported to have been hijacked in different four vessels in Nigeria attacked while underway². Further, three (3) incidents were reported in February the same year to have taken place in the coast of Ivory Coast where two tankers were hijacked, one tanker was taken underway 70 Nautical Miles off the Abidjan coast³.

In the year 2011 ten (10) incidents were reported to happen in the coastal water of Nigeria, twenty (20) incidents reported to take place in Benin⁴. In 2012 a total number of sixty two (62) incidents were reported to take place in West Africa waters⁵.

The IMB annual reports⁶ show that in 2013 and 2014 fifty one (51) and forty one (41) incidents respectively happened in West Africa region particularly the Gulf of Guinea. Of all the States, Nigeria takes the lead.

In the IBM 2015 quarterly report⁷ twenty three (23) incidents were reported to happen in the coastal States of the Gulf of Guinea between 1 January 2015 and 30 September 2015. Among them twelve (12) incidents happened in Nigeria waters, two (2) in the Congo, one (1) in Liberia, one (1) in Ivory Coast, three (3) in Guinea,

¹ Pottengal Mukundan, IMB Piracy Report Highlights Violence in West Africa. Available at: <http://icc-ccs.org/news/865-imb-piracy-report-highlights-violence-in-west-africa>

² Ibid

³ Ibid

⁴ IMB, Piracy Attacks and East and West Africa Dominate World Report. Available at: <http://www.icc-ccs.org/home/resources/85-news/711-piracy-attacks--in-east-and-west-africa-dominate-world-report>

⁵ ICC IMB, Piracy and Armed Robbery against Ships. 2014 Annual Report. Available at: www.icc-ccs.org

⁶ Ibid

⁷ ICC-IMB, Piracy and Armed Robbery against Ships Report 1 January-30 September 2015

two (2) in Ghana and two (2) in the Democratic Republic of Congo.

On 18 November 2015 an attempted attack of a product tanker at Pointe Noire anchorage, the Congo¹ was reported. As per statistics the incidents seem to drop in number comparing with 2013 and 2014 where forty six (46) and thirty three (33) respectively were reported². However, the reported incidents are only few in number comparing to the actual incidents happening in the Gulf. Many incidents are not reported.

3. Causes of piracy

There is no uniform causes triggering piracy activities to take charge in a certain area. The causes are diverse and complicated, and they tend to differ from one area to another. Weaknesses in law enforcement, weak security and poor political environment³ are some of the factors that, when available in an area piracy would emerge; Poverty, economic hardship and socio-political instability are common factors for the piracy to emerge⁴; though it is not necessary for all these factors to be available in order for pirates to respond, but where all or more of these factors become available, there is a likelihood of piracy to emerge and flourish

3.1 Causes of piracy in the Gulf of Guinea

Piracy in the Gulf of Guinea is powered by political conflicts and insurgency and the Movement for the Emancipation of Niger Delta (MEND) in their claims against the Nigerian government to address social inequalities and political differences, robbery of a ship's cargo, absence of security structure, corruption in the oil sector, weak law enforcement and poverty to mention the least.

3.1.1 Political conflict, insurgency and MEND movement

Nigeria has been faced by a decade-old conflict between insurgents, the Nigerian state and oil corporations. The economic dispossession and political marginalization by the Nigerian government ignited the society of people in Niger Delta, the focal point of oil resources, to oppose the Nigeria government claiming the control over their oil resources. The western oil companies were sabotaged by tapping oil pipelines and selling oil in the oil black market. This conflict engineered by Movement for the Emancipation of Niger Delta (MEND) was increasingly involved in criminal activities to the coast area beyond the Niger Delta. MEND stretches its arms to engage in piracy as a way of gaining power to facilitate the in-land criminal enterprises to fight the Nigerian government⁵. These activities of MEND and other groups spread to the entire coast of the Gulf of Guinea; actually Niger Delta conflict plays a big role in the presence of piracy in the Gulf of Guinea.

3.1.2 Robbery of ship's cargo

Unlike Somali piracy which aimed at kidnapping for ransom, piracy in the Gulf of Guinea is focusing on stealing cargoes. And Seafarers are seen to be an obstacle for piracy to accomplish their mission. The Gulf of Guinea is an increasingly busy maritime region for the transportation of a number of valuable commodities such as gold, iron ore, agricultural products and more. It is the primary route to and from major oil producing countries Angola and Nigeria. Also with new discoveries of offshore oil in Ghana, Ivory Coast and Liberia, there is an expectation of the increase of tanker traffic⁶. Therefore pirates in the Gulf of Guinea are mainly focusing on oil theft that anticipated by the presence of black market for fuel. The ships are hijacked for the purpose of stealing the vessel and unloading its cargo.

It is estimated by Lloyd's that the losses for the stolen crude oil range between \$2 and \$6 million dollars per incident⁷. It is reported in 2013 that \$5 million dollars' worth oil was siphoned from the hijacked vessel at the port of Abidjan, Ivory Coast⁸. This and many events of alike have haunted West Africa Countries in recent years.

3.1.3 Absence of security structure

The absence of security and ineffective mechanism for coastal/port surveillance in the area has also led to the influx of piracy activities within the region. The use of private security guards has been banned by the governments of West Africa, particularly Nigerian government⁹. The use of private security guards onboard ships has been proven to be effective control measure to deter pirates in the Gulf of Aden; this is not a case in the

¹ IMB, Live Piracy & Armed Robbery Report. Available at: [icc http://icc-ccs.org/pracy-reporting-centre/live-piracy-report](http://icc-ccs.org/pracy-reporting-centre/live-piracy-report)

² 1 January-30 September Report, supra

³ Murphy, 'Small Boats, Weak States, Dirty money: Piracy and Maritime in the Modern World' page 28

⁴ Mejia, 'Economic Development, Political Stability, and Maritime Piracy: Exploring the Linkages.'

⁵ Christos Kyrou and Kaade Wallace, The Gulf of Guinea: Maritime Piracy's New Global Nerve Centre. Available at: http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429/

⁶ Nick Berg (Editor) 'Piracy's persistence in the Gulf of Guinea' African Defense Review. Available at: <http://www.africandefence.net/piracys-persistence-in-the-gulf-of-guinea/>

⁷ UNODC, Transnational Organized Crime in West Africa: A Threat Assessment, Transnational Crime Report page 45

⁸ Freedom C. Onuoha, 'Oil Piracy in the Gulf of Guinea'. Oil Piracy Report page 31

⁹ Baltic and International Maritime Council, 'Security Alert-Nigeria' online: BIMCO available at: http://www.bimco.org/News/2014/06/16_security_Alert_-_Nigeria.9spx

Gulf of Guinea as there is none of it.

In addition to that, the local navies are not well equipped to take charge over the security patrol along the area of the entire gulf of Guinea. They are less concerned about the events since the stolen goods from ships have insurance cover and insurance companies pay the value amount of the stolen goods. These local navies are easily bribed by pirates not to make often patrols over the area. So because of this the local navies become worthless¹.

3.1.4 Corruption in the oil sector

Corruption activities in the oil sector have been directly linked by the piracy in the Gulf of Guinea. The inhabitants of this region depend largely on oil revenue, but due to the corruption activities in this sector, only a small percentage of revenue reaches a local population. The Gulf of Guinea has eight states rich in oil that produced a total of 5 million barrels of oil per day² and Nigeria alone produces 2.3 million barrels of oil per day³ Weak and corrupt governmental officials rely on the profits of the oil companies coming from exporting of oil to overseas, this lead to mismanagement of resources in the region⁴.

3.1.5 Weak law enforcement

The weak law enforcement is directly connected by the corruption, but this time by the law enforcers. Majority of law enforcers are condemned to indirectly support piracy activities along the coastal water of West Africa by not responding positively to the events and accepting bribes from the offenders. Pirates take this as an advantage to keep on their actions against vessels. Most of West Africa citizens have the least favourable view of the integrity of their law enforcement agencies, and the majority of them whom came across with the police felt compelled to pay a bribe to the police to escape liabilities⁵.

The law enforcement do not end to the police, it is a series of public officials and the legislation itself. It is common for public officials to accept bribes for the offenders to escape punishment. Nevertheless, majority of these countries for a long time do not have provisions of law provided for the offence of piracy and have not yet domesticated provisions of piracy in the United Nations Convention on the law of the Sea 1982.

3.1.6 Poverty

Poverty resulted from unemployment and unequal distribution of the States wealthy particularly in Nigeria, has resulted youths who don't see the future for themselves to engage themselves in piracy activities targeting commodities onboard ships. It has been reported that ninety (90) million of the 151 million populations live below the poverty line⁶. The national cake that is made by the presence of oil is only been shared among the few elites of the Nigerian society. Dr Christian Bueger, a Cardiff University researcher and editor of an online research portal (piracystudies.org), said in an interview with Africa Renewal that piracy tends to be conducted or supported by marginalized communities that have not been participating in economic development⁷.

3.2 Impact of piracy in the Gulf of Guinea States

It is obvious that piracy activities in the area hinder various developments. This is uniform to everywhere though the difference might be in the gravity of the actions and level of impairment. The presence of Piracy in the Gulf of Guinea has brought a diverse impact to the economic and social development of the area. A lot of money have been spent on the fight of piracy in the region. The amount spent by naval and counter-piracy forces of countries in the region are estimated to be between \$348 and \$370 million dollars⁸. The estimated amount spent on security equipment and Guards is between \$150.9 and \$225.4 million dollars. In a situation like this insurance cost is raised for obvious reason, because of the risks involved; the estimated costs involved for insurance in 2013 alone is \$ 40,101,863 million; the area has turned to be the high risk area. Some ship owners chose not to report the incidents simply because they fear the increase of the insurance cover and their ships will be held for investigation by authorities⁹. Apart from high premium incurred by ship owners, there is the increase of crewing cost; crew would not be interested to work in such a dangerous and risk environment, to lust them ship owners have to increase the wages. Labour costs for seafarers held in custody and for working on the high risk area is

¹ Fiorelli, 'Piracy in Africa: The Case of the Gulf of Guinea' KAIPTC occasional paper no. 37

² ibid

³ ibid

⁴ Tepp, 'The Gulf of Guinea: Military and Non Military Ways of Combating Piracy' page 191

⁵ UNODC, Transnational Organized Crime in West Africa: A Threat Assessment. Page 56 available at: <http://issuu.com/openbriefing/docs/organized-crime-in-wst-africa>

⁶ Deutsche Welle, Emerging Threat: Piracy in the Gulf of Guinea. Available at: <http://www.dw.com/en/emerging-threat-piracy-in-the-gulf-of-guinea/a-16583626>

⁷ Nirit Ben-Ari, Piracy in West Africa: A Bumpy Road to Maritime Security. Africa Renewal, December 2013 page 12. Available at: un.org/africarenewal/magazine/December-2013/piracy-west-africa

⁸ Oceans Beyond Piracy Report, The State of Maritime Piracy 2013. page 54, available at: www.oceanbeyondpiracy.org

⁹ Alex Younevitch et al, 'Analysis: West Africa Piracy issue to stay long term, may affect Regional Trade' edited by Jonathan Fox. Available at: Platts.com/latest-news/shipping/London/analysis-west-africa-piracy-issue-to-stay-long-26005753

estimated to reach \$9,193,651 million¹. Goods are stolen during the attacks causing a huge loss to the shippers and/or carriers. Value for goods stolen aboard attacked vessels ranges between \$10.1 million to \$30.27 million and that of ransom collected by pirates is estimated to be \$ 1.57 million.²

Piracy in the Gulf of Guinea involves violence; severe injuries and death have been observed to happen during the attack and hijack. A total number of one thousand two hundred (1,200) Seafarers were affected by piracy activities off the coast of West Africa amongst whom three hundred (300) were held hostage. And the first three quarter of the year 2014 the number of affected Seafarers increased³. The affected Seafarers are left by psychological scars for what they have gone through until their release for those who are lucky. Captain Suresh Biradas⁴ while giving his testimony on what he experienced in pirates custody off coast of Nigeria, said that he will never return to the sea again. He says, they kept him in a bare wooden floor of a tiny hut, and the only food they had every day is a 70 gram of packet of noodles, nothing else. He was freed after twenty eight (28) days after paying off the requested ransom.

The attack by pirates off the West Africa Coast is associated with violence; gun fire during attack, torture and inhumane treatment are among the things Seafarers undergo when they are in pirates' hands. The crew of MT Adour were cruelly beaten and intimidated by the firing of the guns when their vessel was hijacked in the year 2013.⁵

Not only that, but also several Seafarers have been murdered by pirates in the Gulf of Guinea. Their level of violence is such extreme to terminate the lives of fellow human beings. In one piracy incident pirates throw the ship Captain and Chief Engineer into the cold room the place where fish are stored; they were left there and froze to death⁶.

3.2.1 Impact of the Gulf of Guinea piracy in the carriage by sea

Piracy activities have been observed to distract the shipping industry in several arenas. There were so much delay caused by rerouting or hijackings, so much loss caused by delays, theft and ransom, the increase of cost of the sea transport that affect ship owners, governments as well as consumers have been witnessed, not only in the Gulf of Guinea but also wherever piracy activities are involved. Charter parties' contracts and marine insurance, and the entire carriage by sea have been affected much by piracy activities. This part analyses impact of piracy basing on the extent by which the piracy in the Gulf of Guinea affect charter-party contracts, marine insurance costs and carriage by sea at large.

3.2.1.1 Impact of piracy activities on the liability of the carrier

Piracy has brought an impact on Carrier's liability under shipping contracts. Both carriage of goods by sea and carriage of passengers by sea conventions have stipulated for the carriers liability. Under the carriage of passengers there is Athens Convention which provides, under its 2002 protocol, the strict liability for carrier for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident⁷, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character⁸. Piracy is not in the list, however it is arguably covered by exception (b) of Article 3 which permits the carrier to escape liability if it can prove that the incident was solely caused by intentional acts or omission of the third party.

On the part of carriage of goods by sea, the liability of the carrier in all three conventions, Hague/Visby Rules, Hamburg Rules and Rotterdam Rules is based on fault liability⁹. There is a list of incidents that exonerates carrier from liability in the Hague/Visby Rules¹⁰ but piracy is not one of them. Hamburg Rules does not provide for exceptions to the liability of the carrier, all that carrier needs to exonerate itself, is to prove that loss or damage and delay is not caused by its fault or the fault of its servants.¹¹ There is no place where piracy have been expressly mentioned but it can be associated by delay on delivery of cargo to the port of destination and to the loss and/or damage associated with such a delay that might be caused by piracy activities probably resulted from rerouting of the vessel or hijacking of the vessel. So the carrier will only be exonerated if it

¹ Ocean Beyond Piracy Report, supra page 54

² *ibid*

³ ISWAN, Seafarers Affected by Increase in Piracy Related Violence Off West Africa Coast. Modified on 24 September 2014. Available at: www.seafarerswelfare.org/news-and-media/latest-news/seafarers-affected-by-increase-in-piracy-related-violence-off-west-africa-coast

⁴ BBC News, Danger Zone: Chasing West Africa's Pirates. Available at: www.bbc.com/ews/world-africa-30024009

⁵ Ocean beyond piracy, State of Piracy Report, supra

⁶ *Ibid*

⁷ Article 4 of the protocol of 2002 to the Athens Convention Related to the Carriage of Passengers and their Luggage by Sea 1974 that replaced Article 3 of the Convention.

⁸ *ibid*

⁹ Article 4 of Hague/Visby Rules, Article 5 of Hamburg Rules and Article 17 of Rotterdam Rules

¹⁰ See Article 4(2) of the Hague/Visby Rules

¹¹ See Article 5(2) – 5(7) of the Hamburg Rules

succeeded in proving that the loss and/or damage to the goods due to delay caused by rerouting to escape high risk area or delay caused by hijacking of the vessel by pirates, is not its fault or a fault of its servants and agents. The Rotterdam Rules have piracy as an event that carrier's liability can be exonerated from. The provision says, apart from proving absence of fault on its part and on the part of its servant and agents, carrier can be exonerated from liability for loss, damage or delay if it proves that loss, damage or delay was contributed by war, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions¹. However, the Rotterdam Rules have not been into effect yet, so carriers are still facing problems in excluding themselves from liability in cases of piracy. Beyond the scope of the aforementioned conventions, the parties may agree to apply one of the conventions as contractual clauses in a carriage of goods by sea contract.

3.2.1.2 *The impact piracy has in freight*

Piracy activities have contributed to the increase of the ship owners' costs for the running of the shipping transport business in general. Because of piracy ship owners have found themselves to be faced by new costs of security equipment and private armed security, re-routing costs, costs for the increased speed, costs of labour, costs for piracy prosecution and imprisonment, costs for the military operations, costs for counter-piracy organizations etc. On top of that insurance premiums have been increased due to the increased risk of piracy. To compensate the increased costs and in order to earn profit which is the main objective of the business, freight was also to be increased.

The escalation of pirates' activities in the Gulf of Guinea and the freight increase impact has raised a great concerns to the companies that trading along the area, especially oil trading companies. As the incidents given less attention, ship owners will keep on assessing the trend of their business and figure out how to get profit, which obviously will increase the freight rate for them to cover the increased running costs and remain with a good profit.

3.2.1.3 *Impact of piracy activities in charter-party contracts*

Piracy actions that involve hijacking and stealing cargo and property in the coastal states of Gulf of Guinea have placed charter party contracts in an ambiguous situation. There are situations when loss occurred, assumptions had to be used to include piracy in war clause but there are situations the assumption could not fit. The judicial reasoning have been used more than express legal provisions to exclude a party from liability caused by piracy. This has particularly done in absence of relevant express provisions of the law in charter contracts. It has never been easy for the parties in dispute who bring the dispute into the court and the judges who interpret provisions of law and come up with a decision.

3.2.1.3.1 *Piracy and ITL clause in charter party*

There is a case instituted before a court of law that emerged an issue of whether owner's liability for in-transit loss does not extend to loss caused by piracy actions. Parties to this case are *Trafigura Beheer BV v. Navigazione Montanari Spa* [2014]², the Commercial Court considered whether a charter-party clause making owners liable for in-transit loss covered loss resulted from the stolen cargo by pirates.

In this case the Charterers instituted an action against the owners for in-transit loss of part of the premium motor oil cargo. The voyage in question was from Abidjan to Lagos. While the vessel was at position in the south west of the port waiting for further orders, it was attacked by fifteen (15) pirates who siphoned an amount of oil approximately to 5,300MT. The charterer claimed that owners are responsible under charter-party clause i.e. in-transit loss clause (ITL Clause).

There were two issues dealt by the court on this case. The first issue was whether the pirates' removal of the transferred cargo constituted in-transit loss under the ITL clause, and the second issue was whether the ITL clause imposed a strict liability to the owners or whether the exception clauses applied to exclude liability.

The court held that the ITL clause did not provide a clear definition of what constitutes in-transit loss, so this created uncertainty as it did not even mention the types of loss covered by the phrase. This led the court to construe the phrase basing on natural business meaning which was the loss incidental to the carriage of oil product such as short delivery caused by quantity calculation errors, remnants of cargo left on-board or loss through evaporation; rather than any other loss that arose because of the pirates' actions.

There was no point of dealing with the second issue since the first issue was already cleared by the court, so the case ended in favour of the owners.

In the case of the *Paiwan Wisdom*³, the owners refused to perform charterer's instructions to load the vessel in Hopping, Taiwan and discharge the same to Mombasa, Kenya due to piracy risks in that area. Here the Owners relied on provision of *Conwartime 2004* which permits the Owners of a vessel to refuse to follow

¹ Article 17(3)(c) of Rotterdam Rules

² *Clyde & Co, CC004726-February 2014. Available at: [www.clydeco.com/uploads/Files/Articles/2014/CC004726_Trafigura v Navigazione 17.02.14](http://www.clydeco.com/uploads/Files/Articles/2014/CC004726_Trafigura_v_Navigazione_17.02.14) p28*

³ *Taokas Navigation SA v. Solym Carriers Ltd [2012] EWHC 1888 (comm) available at: lexology.com/library/detail.aspx?g=55c5e7b7-cb5b-4be0-9bc2-2de34c41ffed*

charterers' orders in certain circumstances where the vessel could be deemed to be at risk. The High Court, upholding the arbitrator's award held that, if threatened or actual acts of piracy constitute a war risk, for a purpose of the conwartime 2004 Clause, there is no requirement within that clause that the relevant war risk has to escalate since the date of the charter party. This case highlights the importance of establishing whether or not, as a matter of construction of charter party, owners have accepted the risk of going to the particular areas of ports. Piracy have placed the shipping industry in circumstances like this for a long time, though various shipping contract have started to accommodate piracy clauses into the contracts, even Rotterdam Rules by understanding the controversy brought to the shipping industry, have incorporated piracy into the list of exceptions to exonerate carriers from liability.

3.2.1.3.2 How piracy affects relationship between ship-owners and charterers on the issue of rerouting of the vessel

It has been a common practice for ship captains in any endangering situation to deviate the ship for safety of navigation. Deviation is only allowed in a certain circumstances but generally it is counted as a breach of the obligation. The legality of deviation depends on where the instructions are coming from, if from the ship owner or a charterer and on top of that whether the reason is viable. Normally deviation is a causative agent of delays in voyages which can also resulted to the frustration of the charter-party contracts whether delay is of a shorter time or longer one. Piracy activities going on in the Gulf of Guinea have sometimes triggered the breach of the obligation and thus to destroy the relationship between ship-owners and charterers.

3.2.1.3.2.1 Deviation

Under the charter-party contract ship-owner has an implied obligation not to deviate from the agreed route. Deviation has been defined as an intentional and unreasonable change in the geographic route of the voyage as contracted¹. A few standard charter forms include an express provision for the route to be followed but, in absence of such a provision the obligations is presumed in the direct geographical route between the ports of loading and ports of discharge. The Master of a ship is under obligation to exercise reasonable care and skills in ensuring the success of the charter-party and accordingly is entitled to deviate from the proper course in order to ensure the safety of the vessel and its cargo. But the danger that cause the deviation must be of a reasonably permanent nature rather than risk of a merely temporary obstruction. Whenever there is justifiable deviation, additional costs for it should be assumed by charterers.

In the Triton Lark case the owners succeeded during arbitration, appeal was lodged by charterers to the High Court. The issue before hand was the requirement which owners had to meet under CONWARTIME which defines in clause 1 to include acts of piracy. So there was a requirement of showing that in the reasonable judgement of the Master of the vessel, the vessel "may be or is likely to be exposed to piracy". The Judge considered that whether there was "likely to be" should be assessed by whether there was "a real likelihood"². That means exposing to acts of piracy does not need to have actual effect on the vessel rather than simply to be exposed to the risk of piracy, but the degree of likelihood differs between case and case depending on the facts and evidence adduced by the parties.

This case talked about the risks of piracy in the Gulf of Aden but it is relevant for the Gulf of Guinea situation since deviation rule touches the carriage by sea in general and piracy whenever emerged, the deviation is considered not to be an option depending on the circumstances.

Mellish LJ, in the Teutonia' case said: "It seems obvious that, if a Master receives credible information that, if he continues in the direct course of his voyage, his ship will be exposed to some imminent peril, as for instance, that there are pirates in his course, or icebergs, or other dangers of navigation, he must be justified in pausing and deviating from the direct course, and taking any step which a prudent man would take for the purpose of avoiding the danger³."

3.2.1.3.2.2 Frustration

Delays that takes shorter time is more likely to frustrate voyage charter-party than time charter-party. So all in all piracy may cause frustration of both time and voyage charter party contracts.

Frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract⁴. So it is for the court to decide whether the contract was frustrated not basing on the terms of the contract itself but the emerged circumstances at hand. Delay in performance of the contract is one of the factors that can be considered for frustration. The decision on frustration is a mixed question of facts and law but at the end courts decided in

¹ Tetley, while English courts have been restricted the concept of deviation to geographic deviations, US courts have extended it to other departures from the terms of the contract which materially increase the risks to cargo such as unauthorized deck carriage (Jones v Flying Clipper (1954) 116 Fed Supp 386) or over-carriage (The Silver Cypress [1944] AMC 895) p 1812

² Triton Lark (Pacific Basin IHX Ltd v. Bulk handling Handymax AS) 2011

³ (1871-1873)LR 4PC 171, 179

⁴ John Wilson, quoting the words of Lord Radcliffe, Carriage of Goods by Sea, seventh edition. Page 38

accordance of the law. Facts are the passage through the court to reach its decision.

Different from the past where frustration was impliedly taken into consideration, most of charter-party contracts now a days incorporate circumstances which, if occurred the contract may be frustrated. Piracy, for those contracts that has included as risk, is normally included in the war risk clause. BIMCO Standard War Risk Clause for Time Charter 1993, for example, in its CONWARTIME 1993 included piracy as war risk¹. All in all whether the contract shall be frustrated or not depends on the question of material facts and the question of law.

3.2.1.3.3 *If piracy actions render a port unsafe in the concept of Safe Port and Unsafe Port*

The obligation to nominate a safe port is vested to the Charterer. The obligation has now obviated from implied one to the express one as most of charter-party contracts have incorporated provisions of the safe port warrant. For example *Baltim 1939*² provides: ‘The vessel shall be employed in lawful trades for the carriage of lawful merchandise only between safe ports or places where the vessel can be safely lie always afloat.’

What constitutes a safe port for the purpose of warranty? Does piracy activities going on in the Gulf of Guinea and most of it occurs on coastal waters of a State and some while at anchorage position are enough to render the port unsafe? Sellers LJ in the *Eastern City*’s case provided a definition of what constitutes safe port regardless of whether the warranty is express or implied and whether in time or voyage charter-party contracts. He says ‘A safe port is a place where a chartered vessel may enter, load or discharge, and leave without legal restraint and at which the vessel will encounter no perils greater than those of the sea. Whether a port is safe is a fact to be determined in each case having regard to the vessel concerned.’³

Any claim for breach of the safe port undertaking will be limited by the proximity and causation of damages rules. In cases where the vessel is trapped in a port by a temporary obstruction such as silting or the outbreak of hostilities, there may be claim for damages for detention provided the cause of delay is such as to render the port unsafe, otherwise no remedy will be available unless the delay is so prolonged as to frustrate the object of the contract⁴.

The situation provided by Pirates’ activities in the Gulf of Guinea, especially for those attacks happened while vessels are at anchorage, might fit into this scenario. If the chartered vessel invaded by pirates, and the goods are stolen, and some injuries and/or death to the crew occur; and the vessel put under detention by authorities for the purpose of investigation et cetera, a delay will be caused. And where damages are accrued as a result of such an event, then it is fit for the court to award the remedies.

3.2.1.3.4 *Whether piracy activities in e Gulf of Guinea amounts to off-hire of a chartered vessel*

No hire shall be payable during periods when the charterer will not be able to use the vessel because of some events or accidents that are within the owner’s area of responsibility. Charter-party standard contracts provided circumstances on which the vessel will go off-hire regardless of the same being within owner’s responsibility. During such a time, charterer will be compensated for the lost time during off-hire period.

Does piracy activities falls within the ambit of incidents that might lead to off-hire of the vessel? NYPE 93 in its off-hire clause lists the following as off-hire events: “Loss of time from deficiency and/or default of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the vessel (unless such arrest is caused by events for such the charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, dry docking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the vessel”.⁵

Whether off-hire is caused by hijack of the vessel by pirates fall within the meaning of the clause incorporated in the charter-party contract. In the case of *Osmium Shipping Corporation v. Cargill International SA*⁶, the Commercial Court considered an off-hire of a ship while held by pirates. In this case the Owners and Charterers entered into charter-party contract in respect of the vessel Captain Stefanos. The contract was under NYPE 1946 and the vessel fixed its voyage from South Africa through Suez Canal to the intended port of destination. While on its way, the vessel was on 21 September 2008 hijacked by pirates and was released on 6

¹ 1. For the purpose of this clause the words: (b) “War Risks” shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or Government of any State whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous, or are likely to be or to become dangerous, to the vessel, her cargo, crew or other persons on board the vessel.

² Clause 2 of the *Baltim 1939*

³ [1958] 2 Lloyd’s Rep 127 at p 131

⁴ John Wilson, *supra* p. 29

⁵ Clause 17 of NYPE 93

⁶ [2012] EWHC 571 (Comm) retrieved from incelaw.com/en/documents/pdf_library/strands/shipping/shipping-e-brief-may-2012.pdf

December 2008. The charterers contended that while under pirates' custody the vessel was off-hire. The London Arbitration Tribunal held the vessel was off-hire during the time of the hijack until the day of its release, basing on the wording of the rider clause 56 of the charter contract which stipulates that:

"Should the vessel put back whilst on voyage by reason of and accident or breakdown, or in the event of loss of time either in port or at sea or deviation upon the course of the voyage caused by ...capture/seizure, by detention or threatened detention by any authority including arrest, the hire shall be suspended..."

The Owners being aggrieved by the decision they appealed to the Commercial Court. The Judge, Mr. Justice Cook held that, the starting point when construing clause 56 of charter-party was to look for the ordinary and natural or conventional meaning of the language used in the context of the agreement, the parties' relationship and the relevant facts surrounding the transaction so far as known to the parties. Upholding the Arbitrators decision Mr. Justice Cook concluded that the wording used and the structure of the clause all supported the Charterers submission.

Piracy activities going on in the Gulf of Guinea brings the same effect and even more to the shipping contracts.

INTERTANKO and BIMCO have incorporated piracy clauses in their standard form contracts in December 2008 and March 2009 respectively. Provisions of piracy under BIMCO stipulate that the vessel shall remain on hire during incidents of piracy, although those particular issues are sometimes modified by reducing the rate or adding a limit in terms of time or amount.

In Time charter 2013 the piracy clause expressly stated that "...the charterers shall indemnify the Owners for any claim from holders of Bills of Lading...if the Owners become liable to pay to the crew any bonus then the bonus shall be reimbursed to the Owners by charterers...Charterers shall reimburse the Owners any additional premiums required by the Owners' insurers.

3.3 Impact of Gulf of Guinea piracy in marine insurance

Insurance cover is important to many aspects of human life as protection against risks surrounded the same. Shipping transport as an aspect in human life is also attracted for protection against risks involved the business. Insurance protection as itself is a business, whereupon various insurance companies have tuned themselves to offer the service to the need and charging insurance premium as consideration for the service offered. In shipping transport there are risks in its diverse that involves the business, piracy is one of them. Insurance protection for shipping is not an option, it is compulsory and there are laws to govern that for the safety of maritime navigation and it has been there for decades.

Shipping insurance comes in four main types; war risk insurance that cover for the vessels sailing in war risk areas, cargo risk insurance for cargo that is transported by the vessel, hull and machinery insurance for any physical damage of the vessel and kidnap and ransom risk cover for the vessels that are traversing the high risk areas where piracy activities are mainly taking place. Piracy is covered by the Hulls and Machinery and freight clauses under the current MAR policy form.¹ The London market incorporated standard Hull clauses whereby piracy is recognized as marine peril. However, under the Norwegian Marine Insurance Plan of 1996 piracy risk is covered under the Hull-War Risk insurance. Piracy also is covered in the War Risks Additional Expenses for cargo transported by sea. This can lead to double payment if an assured person is insured by the London market for marine risks and at the same time is also insured by the Norwegian market for hull-war insurance.² The Mutual War Risk Associations will not find a way to dismantle this overlapping payments. Section 80³ of the Marine Insurance Act 1906 is expressly provides for double payments, so it practically resolves the problem but underwriters need to enforce it.

Gulf of Guinea piracy has contributed to the incorporation of new clauses related to it in some of the marine insurance contracts and in others have resulted to additional of risks of piracy. For example it has been a practice since the influx of Somali pirates and now West Africa pirates, for the underwriters to formulate a kidnap and ransom (K&R) policies which aimed at fostering investigations, negotiations and funding of the ransom money demanded. The impact did not end in incorporation only but also the increase in insurance premium for those vessels doing business around the areas identified as high risk areas and those vessels

¹ Clause 6 of Perils under the Institute Time Clauses Hulls, 6 (6.1.5) and Clause 7 of Perils under the Institute Time Clauses Freight, 7 (7.1.5)

² Soyer, Baris. Marine Insurance Fraud (2014) at page 221 available at: <https://books.google.com>

³ (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rate ably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

traversing the area. Among piracy related insurance, war risk and kidnap and ransom risk are the ones. The Protection and Indemnity Clubs have clearly defined that, they do not cover ransom payments. Most of the vessels are insured against piracy under their war risk insurance and when piracy are included in war risk insurance companies is charged for additional premium if a ship is trading in the pirate area¹.

In 2008 the insurance premium was reported to have increased ten times higher for the vessel traversing high risk areas as a result of growth of pirate attacks. The amount could be more than that if all the incidents are reported. Most of pirates attacks in West Africa waters go unreported, IMO reveals that about 2/3 of piracy incidents happening in Gulf of Guinea are not reported². The reason behind this is the subsequent increase in insurance premium and probably because the increase is not proportional to the value of the claim for smaller attacks, and the time consuming procedure of reporting pirate attack that could lead to significant delay.

4. Nature of piracy activities in the Gulf of Guinea

Maritime piracy, as old the phenomena is, has never been uniform. As earlier mentioned, since the beginning of it piracy kept on changing its modes of operation in terms of time when these activities are taking place, the area where the same are conducted and target of the perpetrators. Piracy of the ancient time was focused on theft of valuable things and the money, it is different from the contemporary piracy which if theft is the target then it is cargo theft, otherwise ransom is the main business. The contemporary piracy also has different forms depending on the purpose of committing the offence and the area where the same is taking place.

This part is focusing on the nature of piracy activities that are currently happening in the Gulf of Guinea.

The International Maritime Bureau (IMB) ranked Gulf of Guinea as the highest third position after South East Asia and Horn of Africa for piracy and armed robbery incidents³. The Gulf of Guinea piracy is of three kinds, firstly it focuses in theft of cash and cargo, secondly the pirates focuses on ransom money and thirdly it involves violence resulted into injuries and killing of crew members as vividly observed on the case scenarios hereunder discussed.

Pirates have continued to flourish in attacking vessels even up to date. In the years 2015/2016, more than twenty (20) incidents were reported to take place in the coastal waters of Gulf of Guinea particularly in Nigeria waters between January 2015 and April 2016.

Piracy actions against ships along the coastal water of West African countries were observed to focus on stealing cargo, cash and other valuable things in the ships. Mostly, the focus is on petroleum cargo carried on small crafts known as chemical tankers or product tankers. Piracy activities off Nigeria had been reduced for some time, however, the end of 2015 as the above narrated events show, was observed for pirates to become more active in Nigeria waters. It is presumed that a sudden increase on piracy activities from October 2015 is a result of an announcement concerning uncertainty over the future of the amnesty agreement between the Nigerian president and former militants in the region. The said announcement was protested by former militants on 14 December 2015 in Wari, Delta state, amid reports the government was planning to cut the amnesty budget. Such a move could see ex-militants return to piracy and organized crimes in the region.⁴

During the years 2010 – 2014 as per the IMO piracy and armed robbery reports, most of incidents happened in the Gulf of Guinea took place in international waters than territorial waters. This signifies the growth and the gravity of piracy acts along the area. Before, most of these incidents were happening in jurisdictional waters of the West African States which is territorial waters and in ports areas. The area now is very risky and dangerous for the safety of navigation. The 2014 IMO report of piracy and armed robbery for West Africa Countries demonstrates a total of forty five (45) incidents were reported to have happened. The number has decreased compared to fifty four (54) and sixty four (64) incidents reported to have happened the years 2013 and 2012 respectively⁵. Amongst those, twenty eight (28) were reported as successful attack (nine incidents took place in high seas, another nine took place in territorial waters, ten incidents took place in ports areas)⁶ and seventeen (17) incidents were reported as attempts (seven took place in high seas, six in territorial waters and four in ports areas)⁷. The number of actual committed incidents in 2014 in high seas tallied with those happened in territorial waters but exceeded by those happened in ports areas while attempts committed more in

¹ Piracy FAQs. www.igpandi.org, revised August 2013

² Benedkovic and Vuletic, Piracy influence on the Ship Owners and Insurance Companies. Page 6 available at: http://web.efzg.hr/dok/TRG/jbendekovic/26780_e_x_Vuletic.pdf

³ Koffi Mbiah, 'Unlawful Acts in West African Waters' page 127 of the book Coastal Zone Piracy and Other Unlawful Acts at Sea. By Maximo Mejia Jr and Jingjing Xu.

⁴ World Maritime News Staff, 'Nigeria Arrests 1,610 Pirates in 2015'. January 6, 2016 available at: worldmaritimeneews.com/archives/180230/Nigeria-arrests-1610-pirates-in-2015

⁵ International Maritime Organization, Reports on Piracy and Armed Robbery against Ships. MSC. 4/Circ. 219. Annual Report. 28 April 2015

⁶ Ibid Annex II page 2

⁷ Ibid Annex II page 1

high seas followed by territorial waters and less in ports areas. If combined, results will be that more incidents have been committed in high seas. Seven (7) vessels were hijacked, fifteen (15) incidents involved threat and actual violence, sixty six (66) crew members held by pirates, forty one (41) assaulted, two (2) were wounded and one (1) killed.

In addition to that, there are more allegedly attempt recorded to have occurred in high seas than in territorial waters and ports areas the year 2013 by proportions of fourteen (14) attempts, one (1) attempt and five (5) attempts¹, while successful attacks reported shows that thirteen (13) incidents occurred in high seas, five (5) in territorial waters and sixteen (16) took place in ports areas². The overall incidents reported to take place on the high seas overweighs those happened in territorial waters and in ports areas. In this year, nine (9) vessels were hijacked and subsequently released. Violence and threat of violence were witnessed in a total number of twenty two (22) incidents, ninety three (93) crew members were held by pirates and one (1) reported to have been assaulted.

In the year 2012 the reports shows that the total number of the allegedly attempted attacks happened throughout that particular year is nineteen (19) whereby eight (8) of them took place in international waters, six (6) of them took place in territorial waters and the remaining five (5) took place in ports areas³ while the actual attacks reported to occur in international waters is seventeen (17), nine (9) incidents were committed in territorial waters and nineteen (19) in ports areas⁴. The overall international waters incidents overweigh those of other waters. Again, nine (9) vessels were hijacked, also violence were observed in twenty three (23) incidents, one hundred and twelve (112) crew members were held by pirates, four (4) were reported dead and another four (4) were wounded.

Further, in the year 2011 the IMO reported nine (9) allegedly attempt incidents to happen in the international waters, five (5) in territorial waters and three (3) in ports area⁵. During the same year ten (10) successful attacks happened in the high seas, fifteen (15) incidents occurred in territorial waters and nineteen (19) in ports area⁶. The total attacks were forty four (44) and attempted attacks were seventeen (17), twenty two (22) incidents were reported to involve threat and actual violence to crew members, eight (8) vessels were hijacked during the material year, sixty eight (68) crew members were held by pirates and two (2) were wounded. More incidents happened in ports area followed by those happened in territorial waters and lastly those took place in international waters.

And during the year 2010 a total number of thirty seven (37) piracy and armed robbery actual attacks were reported to happen in the Gulf of Guinea. Whereby six (6) attacks took place in the high seas, fifteen (15) attacks happened in territorial waters and sixteen (16) attacks were committed in ports area. Twenty one attacks involved a threat and actual violence towards crew members, two (2) vessels were hijacked, seven (7) crew were wounded, the other four (4) were assaulted and forty two (42) were held by pirates⁷. The report also shows a total number of ten (10) allegedly attempts have been committed in that particular year, the description of which, four (4) attempts happened in the high seas, four (4) happened in territorial waters and two (2) happened in ports area⁸.

The charts below describe piracy and armed robbery incidents in ports areas, territorial sea and high sea reported to and recorded by the International Maritime Organization from 2010 to 2014.

¹ International Maritime Organization, Reports on Piracy and Armed Robbery against Ships. MSC. 4/Circ. 208 Annual Report. 1 March 2014 Annex 2 page 1

² Ibid Annex 2 page 2

³ International Maritime Organization, Report on Piracy and Armed Robbery against Ships. MSC. 4/Circ. 193 Annual Report. 2 April 2013 Annex 2(A) page 1

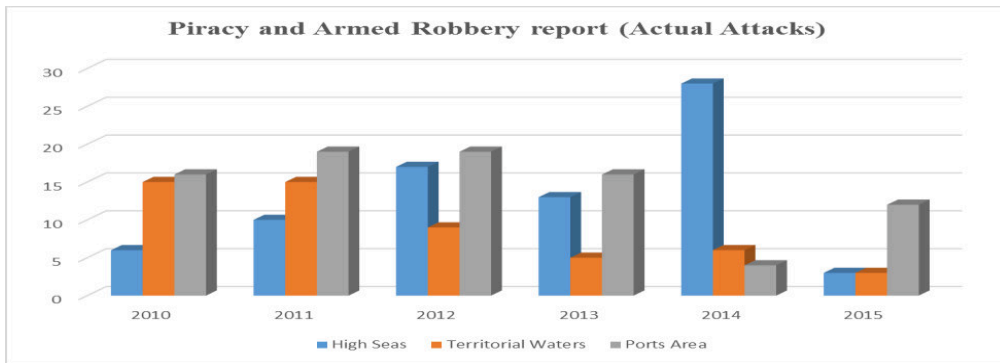
⁴ Ibid Annex 2 (B) page 2

⁵ International Maritime Organization, Report on Piracy and Armed Robbery against Ships. MSC. 4/Circ. 180 Annual Report. 1 March 2012. Annex 2 page 1

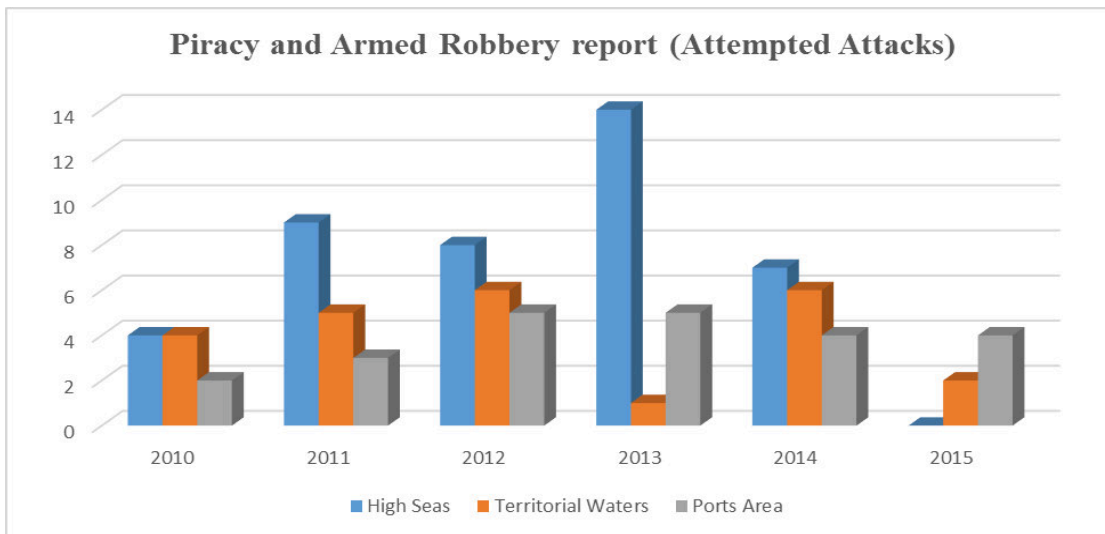
⁶ Ibid Annex 2 page 2

⁷ International Maritime Organization, Report on Piracy and Armed Robbery against Ships. MSC. 4/Circ. Annual Report. 1 April 2011. Annex 2 page 1

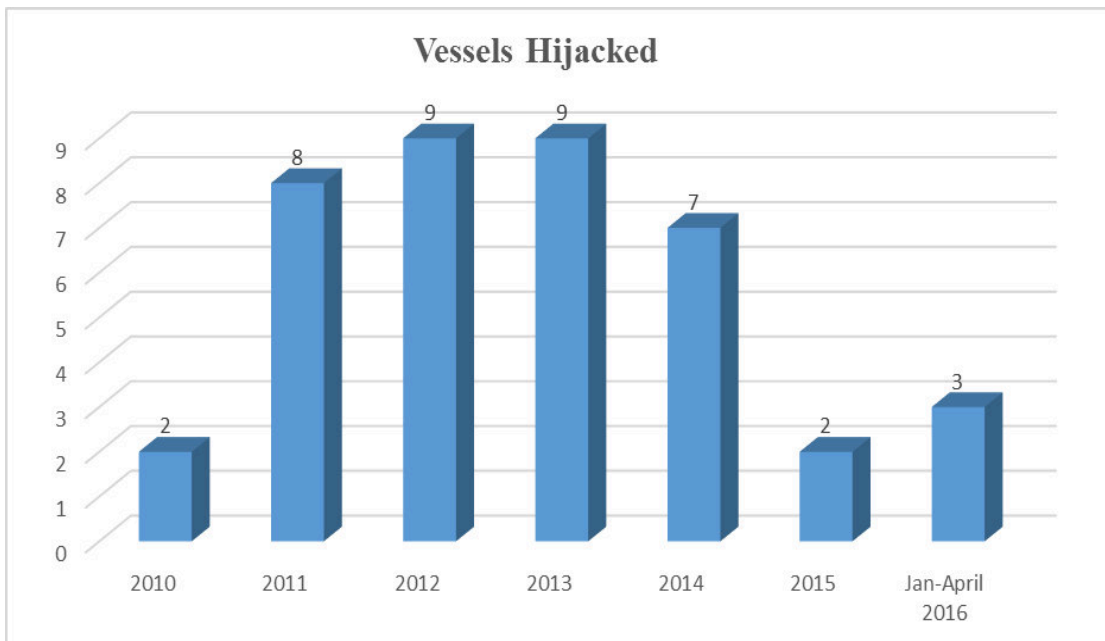
⁸ Ibid Annex 2 page 2



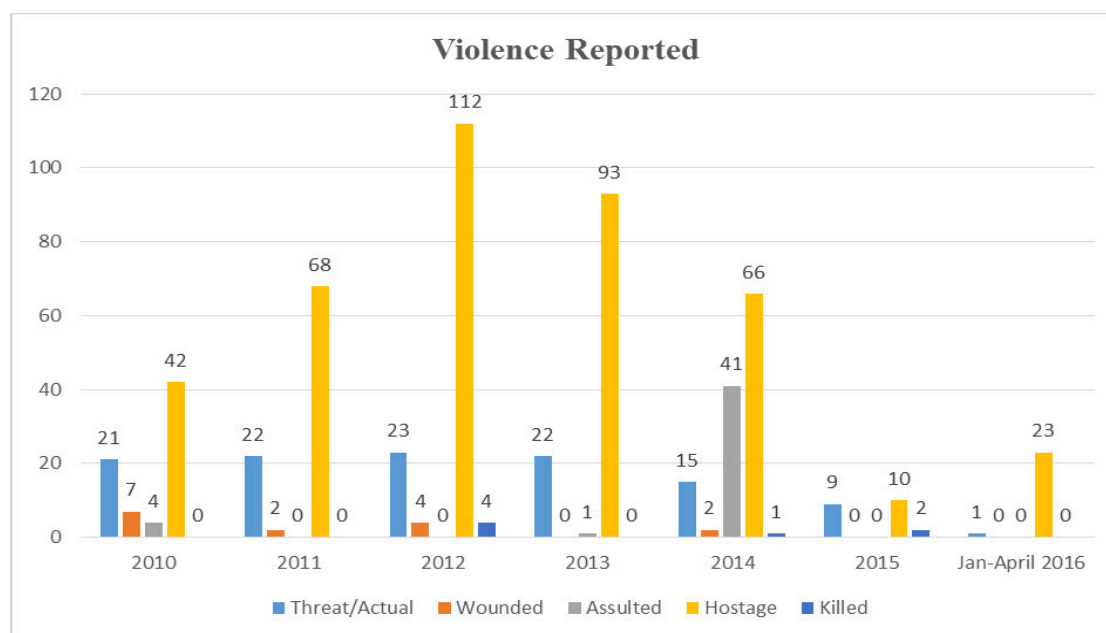
Source: IMO Reports



Source: IMO Reports



Source: IMO Reports



Source: IMO Reports

It can be seen from the above mentioned statistics that unlawful acts against ships in the Gulf of Guinea is everywhere, from ports area to the territorial waters and to the high seas. Although they have been classified into piracy and armed robbery according to the geographical location where they are taking place, these activities are quite similar in methods and results, and perpetrators have the same intention of committing unlawful acts against vessels. The classification of these acts have contributed to the hindrance in effectively combating and suppressing the same. The States, where unlawful acts against ships are taking place have joined forces to combat it but yet there are challenges faced. These challenges will be pointed out as the discussion goes on.

5. The control measures set to combat acts of piracy in the Gulf of Guinea

In every endangering situation there must be strategies sought in order to calm the situation. Piracy activities in the gulf of Guinea are alarming in a sense that both regional and international measures needed to combat the situation. The rate of killings, torture inflicted to crew members held hostage, attacks and amount of oil siphoned and ransom taken urged the international community to set an eye and oversee what is going on in the gulf and strategize on ways to help West African community to tackle the situation.

Efforts to combat piracy in the gulf of Guinea can be sectioned into those efforts set by the international community and those combined efforts by the West Africa Regional countries. In the former, analysis is more likely to touch what have so far done and the legal capacity of the international community, according to the nature of the situation, to intervene the matter; while in the later the focus will be on the efforts made and the effectiveness of the same towards combating piracy in the region.

5.1 Efforts done by the International Community

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Due to the increasing piracy threats in the Gulf of Guinea, the need for the international community to build on the Security Council resolution 2018(2011) was observed in order to counter the growing menace of piracy in West Africa's gulf of Guinea through coordination and logistical support to regional security initiatives.¹

¹ SC/10558 Security Council 6723rd Meeting(Am)

The United Nations Secretary General, Ban Ki-moon, in responding to the resolution 2018¹ on piracy in the gulf of Guinea, an outcome of the lobbying letter written by the Benin president, Boni Yayi to all members to ensure smooth passage of the resolution done during the Nigeria presidency of Security Council², in November 2011 assembled a team to examine the situation in the gulf of Guinea³. This helped to draw attention to the problem; it was resolved, in that meeting, to convene a regional summit as to form a united front by the affected West Africa Countries⁴. The comprehensive maritime security framework across national boundaries observed to be an utmost need to combat piracy in the gulf countries. Also technical and logistical assistance from the International Community was seen to be of crucial.

West Africa piracy activities were observed to undermine socio-economic development efforts in the region and it was becoming more violent and systematic, targeting lucrative cargo such as oil carried onboard tankers rather than taking hostages for ransom as in East Africa. Therefore, Gulf of Guinea countries saw the need of having a united front in order to respond effectively to the growing threat of piracy along their coast. The United Nations Security Council resolutions 2018 and 2039 urged the Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission to develop a comprehensive strategy to combat maritime piracy in the Region.

The Security Council resolutions pertaining the gulf of Guinea piracy activities were taken into considerations by various countries, thus to join the efforts by providing various assistance to the West Africa countries affected by piracy. The support is focused on capacity building for naval forces including training, equipment and boats to boost the area's maritime security and enable them to deter attacks and rapid response to the same.

5.1.1 The United States of America support towards combating piracy in the gulf of Guinea

The United States navy donated boats and carried out training in Nigeria through its Africa Partnership Station programme,⁵ this was designed to provide quality military training to sailors and leaders of partner states. This has facilitated the improving of the country's Regional Maritime Awareness Capability (RMAC) by setting up radar, radio equipment and Automated Identification System (AIS) at several sites along the coast.⁶ United States of America also supports maritime security exercises like the operation Hot Pursuit involving the Togo and Benin navies in September 2012.

Apart from that, in January 7, 2014 the United States of America passed a Bill encouraging the increased cooperation between the United States of America and West and Central African countries to fight armed robbery at sea⁷. The measures follow the US Africa command's ongoing efforts to train national forces in the Region and to promote relationships between nations to combat sea crimes⁸. Under the umbrella of African Partnership Station (APS), it has organized multinational naval training exercises known as Obangame Express conducted in Calabar, Nigeria in February 2012 and in Douala, Cameroon in March 2011.

5.1.2 France support to combat piracy in the gulf of Guinea

France is very much supportive to its former colonies using bilateral contracts. It has been involved in strengthening maritime security to these countries and enable them to combat sea crimes. In 2011 France began a three year project helping Benin, Togo and Ghana draw up national maritime security strategies, train civilians and armies and improves co-ordination between the three neighboring countries⁹. France also support the ASECMAR (Support for Maritime Security in the Gulf of Guinea) by providing €800,000 to strengthen the project which was later include Nigeria, Ivory Coast and Guinea¹⁰. Its warships stationed in the gulf of Guinea to train local navies and also to deter pirates.

5.1.3 United Kingdom efforts to combat piracy in the gulf of Guinea

The United Kingdom contributed in the fight against piracy through the Association of Oil Companies International Marine Forum (OCIMF)'s effort to establish a Maritime Trade Information Sharing Centre (MTISC) in Ghana. The MTISC is intended to collect and disseminate information on security incidents in the

¹ Security Council Resolution 2018, S/RES/2018. 31st October 2011

² United Nations Security Council S/2012/45. Report of the United Nations Assessment mission on piracy in the Gulf of Guinea (7 to 24 November 2011) available at: oceanbeyondpiracy.org/sites/default/files/S.C._Sec_Gen_Letter_GoG_Piracy_2012.pdf

³ Republic Togolese: 'Gulf of Guinea needs regional anti-piracy strategy', 29-02-2011 Retrieved on 29-02-2011

⁴ Ibid

⁵ "The Gulf of Guinea: The New Danger Zone." Crisis Group Africa Report No. 195. 12th December 2012 pg. 22

⁶ Ibid

⁷ The Bill is available at: www.gvtrack.us/congress/bills/113/sres 288/txt.

⁸ Captain Dave Rollo quoted in Donna Miles "African Common Help Partners Promote Maritime Security." American Press Service, October 28, 2013

⁹ The Gulf of Guinea: The New Danger Zone-supra

¹⁰ ibid

entire gulf of Guinea through a secured website¹.

5.1.4 Peoples' Republic of China efforts to combat piracy in the gulf of Guinea

The Peoples' Republic of China through its efforts to help combating piracy in the gulf, China's permanent representative to the United Nations, Wang Min repeatedly encouraging the International Community to join hands to combat piracy in the gulf of Guinea. He says "we call upon the International Community to give necessary assistance to the countries concerned and relevant regional organization by sharing information and experience, providing technological assistance and enhancing capacity building".² He assured that Chinese Government will continue to give assistance within its capabilities. In September 2011 China offered Benin €4 million for the purchase of patrol boat³.

5.1.5 Japan efforts to combat piracy in the Gulf of Guinea

Japan was not left behind, having authorities given by the United Nations Security Council through its Resolution⁴, in March 2014 contributed \$1 million to the IMO West and Central Africa Maritime Security Trust Fund in order to eliminate piracy in the gulf of Guinea⁵. Japan's contribution to the Trust Fund is aimed at supporting the West and Central African countries to implement code of conduct inaugurated for the purposes of preventing piracy activities and other maritime related crimes, within their territorial waters as well as international waters for the sake of securing safety for the International Transport.

5.2 Legality of the International Community to fight for the gulf of Guinea piracy

The international community is responding in accordance with the international law whenever there is an urgent situation that needs its attention. And the applicability of the international law by the international community is universally on areas of no man's jurisdiction. Again on issues of maritime piracy the provisions of the United Nations Conventions on the Law of the Sea⁶ are very clear that according to its definition piracy is only happening on the high seas where no State has jurisdictions over the areas but States all together have universal jurisdiction over the areas to arrest and try the offenders.

The International Community have no authority over the matters happening within the territorial waters of a State. This is because every State is sovereign⁷ and it cannot be interfered by any other State over its matters. Piracy activities transpired in the Gulf of Guinea happening within and outside territorial waters of a coastal state unlike Somalia, where there is no stable government to deal with matters pertaining within the area, all West Africa countries have stable sovereign governments with municipal laws governing the conducts of whatever happening in there. And as per definition of piracy under the United Nations Convention on the Law of the Sea, 1982⁸ maritime crimes happening within the territorial waters are not piracy, rather, armed robbery even if all the elements and the modus operandi and weapons used are same as those crimes taken place on the high seas and defined as piracy. So, in situations like this the international law cannot apply, that makes the international community not to have teeth to bite over the situation.

Therefore, although the international community gives its hand to the West Africa's gulf of Guinea coastal states to fight for piracy activities, due to the nature of the piracy in the gulf of Guinea, and with accordance with the definition of piracy as aforementioned discussion, the United Nations is only focusing on helping the gulf of Guinea coastal states to strengthen their Regional Maritime Security in order to combat piracy activities. The assistance is based on provision of equipment, logistical tools, training and facilitation. The United Nations Security Council, when passing two resolutions⁹ in 2011 concerning the issue of piracy in the gulf of Guinea urged States to reinforce domestic legislations, develop comprehensive regional counter piracy framework, issue appropriate guidance to shipping and cooperate in prosecuting pirates and their backers.

5.3 Regional efforts put forward to combat piracy in the gulf of Guinea

Due to the nature of piracy activities in the gulf of Guinea whereby some of piracy attacks are happening within

¹ ibid

² Andrew S. Erickson, Piracy's Next Frontier: A Role for China in Gulf of Guinea Security? Neptune Security Group, December 10, 2013 available at: <http://www.neptunemaritimesecurity.com/piracy-next-frontier-a-role-for-china-in-gulf-of-guinea-security/>

³ Roger L. Phillips, an Arms Race at Sea. November 8, 2011. Available at: <http://piracy-law.com/page/22/>

³ Gard, Togo Implements New Antipiracy. July 4, 2012. Available at: gard.no/content/20651727/Gard%20Alert%20Togo%20implements%20news%20anti-piracy%20measures.pdf

⁴ SC/10558 supra

⁵ IMO, "Japan Gives One Million Dollar Boost to GoG Fund". March 17, 2014 available at: www.imo.org/en/MediaCentre/PressBriefings/Pages/06-japanfund.aspx#.VvP3O8uqBc

⁶ Article 101

⁷ Article 2 of the United Nations Charter, 1945

⁸ supra

⁹ supra

territorial waters of the State. And as for the coastal states comprised into the gulf area, their governments are sovereign so no one has a sole mandate to intervene the matter without the cooperation and willingness of States concerned. Regardless how capable they are, and regardless how skillful they are, without partnership and agreement with the countries of the gulf of Guinea, the developed countries do not have locus standi over the matter happening within territorial waters of a state. Thus, understanding all that the regional states formulated plans and strategies, and also gulf of Guinea coastal states have entered into bilateral agreements with the partner states in strengthening their energy in combating piracy actions along the area.

In line with the assistance of the partner states, the coastal countries of the gulf of Guinea, through their economic communities have developed various strategies and plans for combating piracy in the gulf of Guinea. The economic communities of Central and West African countries formulated various plans to eliminate piracy activities within their territorial waters and to strengthen maritime security over the area.

At the continental level, the African Union (AU) have since back 2002 been working with the economic communities of west and central African states on various issues concerning peace and security over the region. This was a result of a delicate state of peace between countries of west and central Africa. As a way of pushing the implementation of the African Peace and Security Architecture's goal (APSA) which have five components¹ but none of them directly touch the maritime security issues, the AU worked closely with ECOWAS and ECCAS. Having discovered the lacunae present in APSA, the AU adopted, in 2009, Africa's Integrated Maritime Strategy (AIMS)² aimed at effective management of Maritime Security issues as part of broader continental security priorities. As the piracy activities erupted in the coastal states of the Gulf of Guinea, the AU adopted in December 2011 the draft 2050 Africa Integrated Maritime Strategy (2015 AIM - Strategy) aimed at seeking to articulate an overreaching, coherent, multi-layered African – driven long term common vision to address Africa's maritime challenges and opportunities³. Also, the AU, during this workshop was set to cooperate with ECOWAS, ECCAS, the GGC and the United Nations regional offices for Central and West Africa (UNOCA and UNOWA), to prepare for the Yaounde summit in 2013.

Together, they formulated a code of conduct concerning the repression of piracy, armed robbery against ships, and other illicit maritime activity west and central Africa and signed by 24 States that comprise West and Central Africa, which are; Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Republic of Congo, Congo DRC, Ivory Coast, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Equatorial Guinea, Liberia, Mali, Niger, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone, Chad and Togo. Signed in Yaounde, Cameroon on 25 June 2013, the Code was inaugurated purposely for the State Parties to co-operate to the fullest possible extent in repression of inter alia, transnational organized crime (piracy inclusive) in the maritime domain towards sharing and reporting relevant information, interdicting ships and/or aircraft suspected of engaging in transnational organized crime in the maritime domain and other illegal activities at sea, ensuring that persons committing or attempting to commit transnational organized crime in the maritime domain and other illegal activities at sea are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation of seafarers, fishermen, other shipboard personnel and passengers subjected to transnational organized crime in the maritime domain etc., particularly those who have been subjected to violence.⁴

The signatories to this Code of Conduct were urged to develop and implement appropriate national maritime security policies to safeguard maritime trade from all forms of unlawful acts, to develop and implement national legislations, practices and procedures that provide the security for the safe and secure operation of port facilities and ships at all security levels, and national legislations which ensure effective protection of the marine environment. Also they are intended to establish a national maritime security or other system for coordinating the related activities between the departments, agencies, control authorities, and other organizations of the State, port operators, Companies and other entities concerned with, or responsible for the implementation or compliance or enforcement of measures to enhance maritime security and search and rescue procedures; to establish national maritime plan for harmonizing and coordinating the implementation of security measures designed to enhance the security in the international maritime transport sector; and to prosecute, in their domestic courts and in accordance with relevant domestic laws, perpetrators of all forms of piracy and unlawful acts against seafarers, ships, port facility personnel and port facilities.⁵

¹ The AU peace and Security Council, a continent-wide rapid early warning-early response system, council of the wise (acting as an organ for strengthened mediation), the African standby force and implementation of a political framework for post-conflict reconstruction.

² Dr Charles Ukeje and Professor Wullson Mvomo Ela, African Approaches to Maritime Security – the Gulf of Guinea. Friedrich Ebert Stiftung Peace and Security Series No. 11 page 29

³ *ibid*

⁴ Article 2 (1) of Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa

⁵ Article 4 of the Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in West and Central Africa.

But before this Code of Conduct which came on 2013, enough were already been done by the Economic Communities of West and Central African States as well as individual States on their own capacities since the year 2009 or even before, as efforts to combat piracy activities emerged in their localities.

5.3.1 The Efforts done by the Central African States to combat piracy along the gulf of Guinea

The Economic Community of Central African States (ECCAS) in 2009 created a Regional Coordination Centre for Maritime Security of Central Africa (CRESMAC) for the purpose of combining military and civilian skills of member countries and to promote a cooperation between the Gulf of Guinea Commission and Economic Community of West African States (ECOWAS) the objective of which, is to share information and management, to jointly do surveillance of maritime space, to harmonize the sea activities and other maritime related issues.

For effective control and protection of maritime security over the region, ECCAS has divided the entire area into zones A, B and D. The most dangerous zone where frequent piracy activities take place is zone D which comprised of Cameroon, Ghana, Equatorial Guinea and Sao Tome and Principe. The maritime surveillance agreement were entered and signed by the respective countries in May 2009.¹

The SECMAR has succeeded naval resources of State Members and it has opened multinational coordination centre in Douala, which is responsible for liaison between the radar stations of participating countries and their marine operated centres.² The plan is also aimed at, inter alia, the use of arms against pirates and to carry out joint operation involving International partners.

The United Nations Secretary General, Ban Ki-Moon, during the 36th meeting of United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC) that was held in Kigali, Rwanda, commended the committee for its pioneering efforts to address piracy and armed robbery through the active collaboration with the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission (GGC)³

Angola, a central African country, by understanding the importance of combating acts of piracy and armed robbery which are rampant in the area, prepared itself to host an International Conference on Maritime and Energetic security in Luanda in 2015. Georges Chicoti, the Angolan Minister of Foreign Affairs announced and quoted by Nick De Vlaminck, that Angola prepared to host the said conference in order to counter piracy activities in the region, but effective cooperation within the region is mostly needed for effective control of piracy activities.⁴

5.3.2 Efforts placed by the West African Countries to combat piracy in the gulf of Guinea

The fight for piracy activities seem to be hard when conducted solely by an individual country. This is because of the nature of piracy itself and its modus operandi which normally taking place at sea where it is difficult to place security forces in its borders. In addition to that, the culprits have a wider area for the operation and they might commit crime in the territorial waters of a particular State and slightly navigate towards another country's territorial waters to escape the arrest. So, even if a country's security control is strong enough, it might be not easy to properly combat the crime if a neighbouring country's security control is weak. Also, most of the African countries' economy is weak, the fight needs high technological equipment, logistics and infrastructure that are not easy for a developing country to afford. Thus, it needs joint forces and strategies in order to combat piracy activities in the gulf of Guinea. Nigeria, for example, in fighting piracy activities happening within its territorial waters transformed its Joint Task Force Operation Restore Hope, which initially was formed to fight conflicts which was taking place in the Niger Delta, into an expanded maritime security framework known as Operation Pulo Shield.⁵

Ghana and Benin also in their individual capacity try to combat piracy activities taken place in their territorial waters by formulating policies, strengthen surveillance systems, creating Maritime Awareness Domain (MDA) capabilities etc. While Ghana in 2011 pressed an order from China Poly Technologies Incorporated as part of a larger drive to modernize its navy, two 46 metre patrol vessels, Benin received a grant of four million Euros from China for the purchase of patrol boats⁶, the vessels were intended to be used in the fight against piracy off Ghana and Benin coasts and to strengthen maritime security over the area. In 2012 Togolese army

¹ Crisis Group Report No. 195 supra

² Crisis Group interview, expert on Gulf of Guinea, ECCAS, Libreville, 23 January 2012

³ India Blooms News Service, Ban urges collective action to fight piracy in Central Africa. (New York, Aug 24 (IBN S): United Nations Secretary-General Ban Ki-moon has called Friday on Central African leaders to collectively focus on conflict prevention in the sub-region and to fight the threats of piracy and armed robbery at sea, as well as other security challenges) August 2013 available at: <http://www.indiablooms.com/ForeignDetailsPage/2013/ForeignDetails240813f.php>

⁴ Nick De Vlaminck, Angola Working to Counter Piracy in the Gulf of Guinea. April 19 2015 available at: <http://globalriskinsights.com/2015/04/angola-working-to-counter-piracy-in-the-gulf-of-guinea/>

⁵ Freedom C. Onuoha, Piracy and Maritime Security in the Gulf of Guinea. Aljazeera Centre for Studies, 12 June 2012. Available at: <http://studies.aljazeera.net/en/reports/2012/06/2012612123210113333.html>

⁶ Roger L. Phillips, an Arms Race at Sea. November 8, 2011. Available at: <http://piracy-law.com/page/22/>

agreed to hire private security companies to guard anchored vessels at the port of Lome.¹ In 2014 the month of February Ivory Coast announced about expansion of its navy by forty (40) vessels to help combat piracy within its waters.² But still there was a need to join forces of all states along the gulf of Guinea to easily combat piracy activities that are rampant in the area. So they organized themselves and with the guidance of the Security Council of the United Nations through the economic communities, to strategize on combating piracy.

West African States, through its Economic Community of West African States (ECOWAS) have since then been formulating plans on how to combat piracy in their coastal areas. Unlike the Economic Community of Central African States (ECCAS), which seem to be stable in its plans pertaining maritime security and cooperation amongst member states and implementation of the same, ECOWAS started to be triggered by the sudden emergence of piracy off Benin coast in 2011. With assistance from partner states like the United Kingdom, ECOWAS commission began to harmonize its country member's maritime policies and to establish more integrated approach to maritime affairs.³ In doing this ECOWAS has developed strategies for the implementation of its plans for maritime surveillance network, maritime security, maritime safety and information sharing.⁴ Continuous information sharing and the need to improve oil and gas governance as a means of preventing class struggles were emphasized by ECOWAS.

Copying from its neighbor ECCAS, ECOWAS has also divided its coastal area into three operational zones aiming at each zone to pool resources and to take joint efforts for their maritime security. Nigeria, Benin, Togo and Niger are countries comprised zone E which is the pilot zone. Burkina Faso, Ivory Coast, Ghana, Guinea, Liberia and Sierra-Leonne fall under zone F while Cape Verde, Gambia, Guinea Bissau, Mali and Senegal fall under zone G. This, if taken seriously and if implemented accordingly, will help to the great extent to eliminate piracy activities along the coastal states of gulf of Guinea. The resolution to establish a regional maritime coordination security centres was taken place in 2013, June at Yaounde, a capital city of Cameroon, during the ECOWAS summit summoned purposely for discussion on how to respond to the piracy influx in the gulf's coastal states⁵.

Council for European Union, during its meeting sat in March 2015 passed a resolution to support the regional action plan 2015-2020 set for combating piracy in the gulf of Guinea. This decision was reached after the ECOWAS to submit its proposal to the council members, showing a desire to continue cooperating with partner countries in combating piracy and other sea crimes.⁶

There is also Memorandum of Understanding between International Maritime Organization (IMO) and the Maritime Organization of West and central Africa to establish, inter alia, sub-regional integrated coast guard network in West and Central Africa.

Records show that there is an increased number of attacks despite the efforts put forward by regional country members and their partners. The African Union has set an objective to implement the African Maritime Security Strategy by 2050. Amongst the strategy's goals are to "ensure security and safety of maritime transportation system" and to "prevent hostile and criminal acts at sea, and to harmonize the prosecution of the offenders"⁷.

6. Challenges hindering the effective implementation of strategies to combat piracy in the gulf of Guinea

Although there are efforts to combat piracy activities in the gulf of Guinea, from the international level coming down to the regional level and finally country level, since the emergence of an influx of these activities along the coastal states of the gulf, the situation still persists to date. The persistence of piracy in the gulf of Guinea is evidenced by a number of challenges that need to be overcome for the effective control of maritime security in general and piracy in particular. These are divided into legal challenges, economic challenges, political challenges and cultural challenges. This part analyses all the challenges evidenced to restrict the combat against piracy activities in the Gulf of Guinea coastal states.

6.1 Weak law enforcement

It is clear that the current legal regime in the gulf of Guinea countries is not comprehensive in respect of the

¹ Gard, Togo Implements New Antipiracy Measures. July 4, 2012 available at: gard.no/content/20651727/gard%20alert%20Togo%20implements%20new%20anti-piracy%20measures.pdf

² David Puglease, Ivory Coast to expand navy by 40 Ships to Fight Piracy. Ottawa Citizen, February 9, 2014

³ Crisis Group Interview, UK diplomat. Abuja 9 February 2012

⁴ A draft of ECOWAS Integrated Maritime Strategy, a version shared with Crisis Group in March, 2012

⁵ Oscar Nkala, Maritime Center to Fight Gulf of Guinea Piracy. March 27, 2015 available at: <http://www.defensenews.com/story/defense/naval/coast-guard/2015/3/27/ecowas-launches-maritime-center-fight-gulf-of-guinea-piracy/70561604>

⁶ *ibid*

⁷ Nirit Ben-Ari, Piracy in West Africa: A bumpy road to maritime security. December 2013 page 12 available at: www.un.org/africarenewal/magazine/December-2013/piracy-West-Africa.

enforcement of either international law or domestic laws against piracy perpetrators. The criminal justice system is weak and thus the independence of judiciary is impracticable. Sometimes it is due to corruption practices and incompetence of high level governmental officials which allow the offenders to diverge the punishment or to receive lighter punishment in exchange of corruption. Even stakeholders' efforts when trying to enforce compliance of rule of law or to impose sanctions in the event breached are undermined. However, in this part issues of scarcity of domestic legal instruments, unwillingness of States to prosecute offenders, the legal status of private security guards and position of UNCLOS on combating piracy are going to be discussed.

6.1.1 Lack of domestic legal instruments

It is evidenced that individual states are unwilling to domesticate international conventions relating to maritime security to which they freely signed. Resolution 1851¹ reiterated that the SUA Convention 1988 provides for parties to create criminal offences, establish jurisdiction and accept into their custody those persons responsible for piracy. Whilst the SUA Convention makes it an offence if person seizes or exercises control over a ship by threat or use of force thereof or any form of intimidation, enforcement relies upon the traditional jurisdictional bases of nationality and territoriality.

Most of gulf of Guinea countries do not have national legislations suitable to incriminate piracy offenders. This has made difficult if not impossible for navies to, when capturing pirates, to prosecute them. Nigeria, for example, does not have legislation for piracy. Highlighted by Commander Oladipo Oluwole, during his visit to the Cross River State Legislature in Calabar that, the navy and other maritime security agencies were unable to take the battle to the pirates because existing laws do not permit firing at the pirates nor allow the prosecution of those who captured.²

At least Togo have piracy legislation 'Code de la Marine Marchande (Ordonnance No. 129 du 12 Aout 1971)'. Articles 147 and 149 of this code have defined crime of piracy and stipulate elements of piracy and differentiate the punishment of acts of piracy based on the gravity of the offence and the consequences thereof. In this Code, there is imprisonment sentence; life imprisonment sentence and death sentence if the actions resulted to death or serious bodily physical harm to the victims.³ But the death sentence punishment is against the International law, basing on the Universal Declaration of Human Rights, 1948 that stipulates for the right to life for every human being⁴.

6.1.2 Unwillingness to prosecute piracy perpetrators

For the prosecution of pirates' offenders and imprisonment, there is a challenge for some countries not to be willing to prosecute, the reason being to avoid citizens with bad characters in their countries. There is a possibility of a released pirate to seek asylum to a country where he was serving a sentence. In 2008 the British Foreign Office advised its Royal Navy not to detain pirates of certain nationalities if their national laws included execution, or mutilation as a judicial punishment for committing piracy.⁵ This can also jeopardize prosecution of these cases even in countries where the offences have been committed, because prosecution involves adducing of evidences by witnesses for the sake of establishing and proving cases against pirates' perpetrators. These witnesses need protection for their safety, if there is no assurance for that, most of the people will not be willing to appear before the court and testify against offenders for fear of endangering their lives. If the law makes it an offence for the actual pirates and their lords and abettors, and if the mission is to really eliminate acts of piracy in our coastal areas to make shipping transport safer as well as States' maritime security, the protection of witnesses and informers are of crucial important, otherwise these innocent and well-wisher people will not volunteer to testify or to provide useful information about pirates and their networks. Therefore, the combat against piracy will be only sweet stories for the ears and the pleasing thoughts good for the hearts.

6.1.3 Challenges imposed by the UNCLOS

The United Nations Convention on the Law of the Sea's definition of piracy is narrow in a sense that it confined itself in situations where piracy activities are only conducted on the high seas and where there is an involvement of two vessels. The UNCLOS definition does not cover situations where one vessel is involved in piracy; for instance, where a crew member or a passenger of the same vessel attack the vessel or caused the same to be attacked for the private ends intention.

In addition to that, the UNCLOS provisions pertaining piracy do not impose mechanisms to secure prosecutions of the offenders. Articles 100 – 107 of the UNCLOS that vividly deal with piracy are silent on the mechanisms to prosecute piracy, the provisions only urged States to cooperate to the fullest possible extent on

¹Security Council, 'Security Council Authorizes States to Use Land-Based Operations in Somalia, as Part of Fight against Piracy off Coast; Unanimously Adopting 1851 (2008)'. www.un.org/News/Press/docs/2008/sc9541.doc.htm

² Daily Trust, Nigeria: Navy and the Law on Piracy, 18 March 2013. Available at: <http://allafrica.com/stories/201303181680.html>

³ Articles 151-154 of Code de la Marine Marchande, 1971

⁴ Article 3

⁵ Woolf Marie, 'Pirates can Claim UK Asylum'. The Sunday Times, April 13 2008 London. Retrieved on April 22, 2009

repression of piracy activities that are taking place on high seas outside any State's jurisdiction¹; how to deal with perpetrators has been left to the urged States. And there is no an obligatory provision for States to domesticate piracy provisions same way as in UNCLOS.

6.1.4 The legal status of Private Security Guards is not clear and straight forward

The use of private security guards has caused the liability issues between Ship Owners or Charterers and the Marine Private Security Companies to be complicated. This have resulted some countries in the Gulf of Guinea particularly Nigeria, to discourage the use of private security guards onboard ships. By introducing private security guards the powers of ship captain is in ambiguous situation, this is because the security guards are bound by their own military laws and codes of conduct, different from those agreed upon in the Rules for the use of force. This may raise the question of the applicability of the 'knock for knock' liability regime which is the corner stone of the GUARDCON contract.

6.2 Poor economic of West and Central African Countries

Most of the countries in west and central Africa are third world countries. All the gulf of Guinea coastal states are in this category (developing countries), economically they are poor regardless of the natural resources of oil and minerals extracted from their land and waters. Poor economy have been a huge obstacle for the accomplishment of maritime security strategies formulated to combat piracy in west and central African States. Much of the resources are normally directed to other sectors like health sector, education sector, food, military sector for on land security et cetera, to overcome problems existing on those areas. Maritime security is of lesser priority, regardless of its contribution to the national economy of the countries. The countries have got too much problems to handle but the capacity to overcome all those problems is minimal, due to bribery activities not much of the levies are collected. Private companies are so much evading taxes with assistance of corrupted governmental officers.

6.2.1 Local navies are ill equipped

West and Central African States' navies are faced with the scarcity of equipment to enable them to comfortably and effectively combat maritime crimes including piracy that are rampant to their coastal areas. The cooperation established by countries comprised zone D which covers Cameroon, Gabon, Equatorial Guinea and Sao Tome and Principe is limited capacitated in combating piracy activities, their navies have only four patrol boats while the Corymbe mission deployed by France alone have the same number of vessels.²

Apart from equipment, west and central Africa local navies are poorly trained, they lack skills to fight piracy that are well organized and using modern technology to implement their mission. It is always difficult if not impossible to fight and overcome a well-organized enemy by using poor skills and technology. That's why the international partners have directed their assistance on training and equipment to empower local navies and enable them to properly combat piracy activities within their region. Because most of piracy attacks in the gulf of Guinea happen within territorial waters where they are counted as armed robbery at sea, western countries are reluctant to get involved into another commitment on West Africa coast. It is the littoral states' navies' responsibility to combat these crimes.

6.2.2 Internal conflicts

Due to the conflicts between States of West Africa on matters pertaining economic wealth and political rallies, cooperation on maritime governance is limited and thus the fight against piracy could not be properly managed. For decades now West and Central African Countries have been haunted by internal conflicts as well as conflicts between states. This has led the governments to be unstable and to focus much on these conflicts and to forget other concerned areas like maritime security. The movement struggle of MEND in Nigeria happening in Niger Delta has existed for a long time, representing the economic disadvantaged group, MEND have been for years claiming the equal share of the national care obtained from the extraction of oil in Niger Delta. So it has been difficult to solely manage to overcome multiple crimes and conflicts happening within the same country

6.3 Political differences between State members

Despite the cooperation and strategies set by West and Central African States through the umbrella of ECOWAS, ECCAS, GGC etc., these countries individually have mistrust against one another. The weaker States fear the strong States like Nigeria will take advantage of the cooperation for its own benefit and that the same will use the resources that was meant for the cooperation to benefit itself. So the implementation of the Memorandum of Understanding that resulted into Yaounde Code of Conduct will not be of the same effect, speaking of which the Code itself have focused into diverse issues of maritime security rather than piracy per se. It is easier for the

¹ Article 100 of the United Nations Convention on the Law of the Sea, 1982

² Captain Sylvestre Fonkoua Mbah, Information Sharing in the Gulf of Guinea. Page 11 available at: [usnwc.edu/getattachment/Events/Regional-Symposia-\(1\)/RAS-Africa/presentations/4-b/CAPT-FOUNKOUA-INFORMATION-SHARING-IN-GOG.PDF.ASPX](http://usnwc.edu/getattachment/Events/Regional-Symposia-(1)/RAS-Africa/presentations/4-b/CAPT-FOUNKOUA-INFORMATION-SHARING-IN-GOG.PDF.ASPX)

Parties to the Code to select which issue to stress on and which issue no to. Nigeria would like to play a leadership role in the Gulf of Guinea, but such ambitions come up against the tacit opposition of other countries who fear this troublesome partner.¹ Every country leader likes to maintain sovereign rights to govern its territory.

6.3.1 Maritime Boarders Conflicts

The maritime boarders' conflicts between states within the region impede the cooperation to fight for piracy. For instance the maritime boarder dispute between Ghana and Ivory Coast over the segment of their oil rich waters; Nigeria and Cameroon maritime boarder conflict over the Bakassi peninsula; Equatorial Guinea maritime boarder conflict with Cameroon over an Island at the mouth of the Ntem river; Gabon maritime boarder conflict with Equatorial Guinea over the Mbone Island and Corisco Bay boundaries. The State boarders being in a rivalry condition with one another jeopardize the efforts to fight piracy regionally as country leaders are not in good terms. However, the proximity of Nigeria to zone D countries has necessitated cooperation between ECCAS and ECOWAS, especially when attacks happen in ECCAS coast and offenders flee to Nigeria waters, ECOWAS country for a refuge. As other states distrust Nigeria, it is all depending on the strategies set by three regional institutions, ECOWAS, ECCAS and GGC rather than between states on zone D and Nigeria.²

6.3.2 ECOWAS capacity over its member states

ECOWAS powers to its member states' maritime policies and practices is merely advisory, it is not binding at all and no state shall be held liable if it will not implement as planned and intended by ECOWAS. Most of its members have entered into bilateral agreements with partner States over the same issue of maritime security outside an umbrella of ECOWAS. The bilateral agreements just like ECOWAS strategies are to fight piracy activities in their particular territories. The bilateral agreement made the countries not to actively involve into implementing ECOWAS plans, and the donors are of the fear that following regional responses will take a long time for all state parties to reach consensus which will delay the matter.³

6.4 Cultural differences

Differences in civilization of West and Central African States are another factor contributing to the hardship of effectively combating piracy activities in the Gulf of Guinea coastal states. Different working languages, culture and bureaucracies is a reason that hinders communication and trust between leaders. Some countries have colonized by France thus use French language for communication while others were colonized by British thus they use English language for communication. Also because of these differences and due to the military confidentiality principles, some navies are poorly ready to communicate information between coastal states. For instance in Nov 2011 the Ghanaian navy received a distress call from an oil barge on fire off the coast of Benin, it wanted to communicate to the Togolese navy but due to the wrong telephone numbers they had they failed to reach Togolese navy so they have to call airport control tower in Lome which informed the navy,⁴ this had definitely took time and delayed the response.

7. Conclusion

To sum up, piracy activities in the gulf of Guinea coastal waters have emerged and persisting due to West Africa's unrest civil wars, inability of coastal states to organize effective patrols over their coastal areas, weak legal enforcement and judicial structure that led pirates to escape capture and punishment, economic underdevelopment that led to ineffective port security control, poor governance of the Gulf of Guinea countries' governments where by corruption practices is common to government officials and actors especially in maritime sector and oil sector, and the emergence of west Africa waters as a major source of oil production and supply. As a result sea transportation along coastal waters of Gulf of Guinea have been declared to be dangerous and too risky for crew members' lives and cargo carried aboard. Violent actions against crew and theft of cash money and property carried aboard have marked the uniqueness of piracy activities in the Gulf of Guinea. Due to piracy activities the economy of coastal states resulted from sea transportation have been injured, ship owners suffered loss due to siphoning of oil cargo carried aboard, increase of insurance premium etc.

At the beginning, piracy attacks were mostly happened within territorial waters of the Gulf of Guinea Coastal States, but later pirates extended their activities and reached high seas where a number of incidents were reported to have been committed. Yet the international naval forces are not placed to guard the area, instead supports have been offered to the countries off the coast of Gulf of Guinea in order to strengthen their capabilities to fight for the crime. The efforts sown by West and Central African States through ECOWAS and ECCAS together with GGC on the fight of piracy have not reaped the desired fruits yet. The Yaounde agreement though it's sweetest as it is, yet it will remain to be advisory in nature and has no legal force upon state parties.

¹ Crisis Group, the Gulf of Guinea: The New Danger Zone. Africa Report no. 195. December 12, 2012 page 21

² *ibid*

³ Crisis Group interviews, donor representative Accra, Lome, Cotonou, Lagos, Abuja. January and February 2012

⁴ Crisis Group interview, Diplomat in Lome. 25 January 2012

So the ultimate decision of prioritizing maritime security and elimination of piracy activities in the Gulf of Guinea lies upon individual government of the respective countries. There is, in a pipe line, United Nations strategy of incorporating International Organizations precisely, the United Nations Office for Drugs and Crime (UNODC) and United Nations Development Programme (UNDP) to work hand in hand with West and Central African States to capacitate them in formulating relevant legislations for piracy, strengthening judicial structures and personnel as well as prisons just like the way these organizations assisted in prosecution of piracy offender in East African Countries taking into consideration the nature of west Africa piracy. Basing on the analysis, the following recommendations are of importance for the avoidance and elimination of piracy activities in the Gulf of Guinea.

7.1 Make use of private security guards onboard vessels

The Gulf of Guinea countries should make use of private security guards aboard the vessels as one way to deter and repel pirates from attacking the vessel. The use of private security guards have shown positive results in deterring pirates off the coast of Somalia, it only need to be made legal. By employing private security guards shipping companies get an opportunity to participate in the combat while protecting their vessels, cargo and employees (crew members) aboard the vessel. In the Gulf of Guinea only armed guards from or employed by the national forces of the state whose territorial waters a vessel is in, may operate on ships. Nigeria announced to detain any vessel entering the country's territorial and coastal waters with security escorts on board, whether armed or unarmed. Up to 2015 Nigeria detained three vessels for having private security guards onboard.¹

Piracy activities off the coastal states of the Gulf of Guinea have brought effects not only to the coastal states surrounding the area but also to the entire shipping industry the victims of which are multinationals. In a single vessels there is involvement of more than one country, there is a country where the ship owners are citizen of, there is a country where the vessel has been registered, there are countries where crew members belong, a country where owners of property carried aboard are belonged and there is a country where piracy attacks have been committed. All these countries are victims of actions taking place in a single sovereign state where no other State is allowed to intervene. Governments of Gulf of Guinea Coastal States should be aware of this and consider it wisely when practicing their sovereignty right.

7.2 Use of bottom-up rather than up-bottom approach

Combating piracy and other maritime crimes in the Gulf of Guinea countries must be dealt and implemented using a bottom-up approach rather than up-bottom approach. It has been vividly observed that the root cause for eruption of piracy activities in the Gulf of Guinea is movement struggles of the so believed to be the disadvantaged group over national resources. The MEND for some time have been in conflict with Nigerian government over the oil resources extracted in Niger Delta, the group is linked with the piracy activities happened in Nigeria waters in order to increase their influence and funding² and later extended to Benin and Togo waters.³ Movement of a like was observed in Somalia though in a different way, the Gulf of Guinea countries need to revise their policies and to strategize on resolving social justice issues that are raised by the activities of the extractive industry, particularly oil and gas companies operating in the region. The society surrounding the area need to enjoy the benefit of the national wealthy through social services such as health services, infrastructure, clean and safe water, food, education and employment. This will reduce the tension of people within the area.

The current approach taken is the top-bottom which will not effectively burnish piracy activities. The coercive measures currently in place, is not a long ran solution to the problem after all, evidence shows that despite the military use of force, piracy and other maritime related crimes still persist in the Gulf of Guinea.

7.3 Enhancing good governance

The governments need to set-up structural bodies and/or agencies that will deal with corruption to enhance good governance. Government official including police officers, military officers, and politicians in Nigeria have been mentioned to engage themselves into the grand corruption practices resulted to failure of the government to control piracy. First and foremost the government should shutoff the black market business where the siphoned oil from ships by pirates and their associates are peddled, the business should remain to the legally established and licensed companies. If black market is burnished, pirates will have no place to peddle the siphoned oil and thus the tasty of the piracy activities will be lost.

¹ UK Club, Piracy and the Gulf of Guinea. 13 February 2015 available at: <http://www.hellenicshippingnews.com/uk-club-piracy-and-the-gulf-of-guinea>

² Christos Kaade, The Gulf of Guinea: Maritime Piracy's New Global Nerve Centre. Fair Observer. Available at: http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-centre-18429.

³ Irin Humanitarian News and Analysis, Benin Togo: Joining forces to fight piracy in the Gulf of Guinea. Available at: <http://www.irinnews.org/report/94333/benin-togo-joining-forces-to-fight-piracy-in-the-gulf-of-guinea>

7.4 Prosecution of perpetrators

There is a need for the Gulf of Guinea countries to ratify International Conventions on piracy and maritime security at large, and to incorporate them into their municipal laws for effective control of piracy activities. The national penal legislations that analyses procedures and punishment of the perpetrators have to be enacted or amended to suit the purpose. The end portion of the combat is the defeat, the purpose of combating piracy is defeat, and in this sense the defeat involves deterrence, apprehension, prosecution and sentencing the pirates; this can only be properly managed if there is suitable legislations to deal with piracy. Strong military and sweet plans and strategies alone are immaterial if there is no law enforcement. Prosecution of piracy offenders have been impossible in the region due to lack of relevant law. Nigeria, for example, does not have piracy provisions in its legislations and many more west and central African countries have not deposited their legislations containing piracy provisions, only Togo amongst all have deposited its legislation ‘Code de la Marine Marchande, 1971’.

7.5 Strengthening judicial system and structure

Along with the legislations, the Gulf of Guinea countries need to strengthen their judicial system and structures. This can be done by way of imposing judicial personnel (Judges, Prosecutors and Investigators) with the relevant knowledge and understanding of piracy as an offence and maritime security in general. Also, courts and prison infrastructures must be expanded to enable them to accommodate piracy offenders; new prisons and remands should be constructed or the existing ones should be expanded or renovated. Experience can be borrowed from East African Countries where with the assistance of the United Nations Office on Drugs and Crimes (UNODC) and United Nations Development Programme (UNDP) have successfully managed to strengthen the judicial and prisons capacities. Judicial personnel and prosecutors and investigators should be provided by personal security and that of their families in general so that to make them comfortable and freely doing their job. On top of that, the judiciary must be left independent with no interference from other state organs like Executive and Parliament.

7.6 Vessels be installed with security devices

Ship owners need to install protective devices into their vessels navigating to the piracy high risk areas in order to deter pirates from attacking them. There are several ways of protecting vessels by way of security installations; there is water cannon (anti-piracy curtain), aiming at pirates trying to board the vessel or their boats whereby the water will flood and disturbing them. There is also Boat trap intended to trap pirates’ boats and disable the motor boat propeller. Apart from those, there is Pain Ray (Active Denial System (ADS)) used to deter pirates by penetrating the electro-magnetic waves beneath their skin which causes unbearable burning sensation but without causing permanent damage to the skin. In addition to that there is Lubricant Foam used to make the deck or sides of a vessel slippery to avoid pirates from climbing it; Moreover, Laser beam can be used to provide warning to pirates at a distance of over 2 kilometres and at a shorter distances the glare is more intense enough to temporarily blind pirates so that they are unable to target their weapons effectively. Further, Sound Cannon (Long Range Acoustic Device (LRAD)) which can emit painfully loud sound frequencies that are enough to disorient any approaching pirate; and lastly there is Guardian Anti-piracy Barriers to prevent ladders and grappling hooks from getting a hold on the sides of the vessel¹.

7.7 Piracy definition needs to be extended

It is a high time now the definition of piracy and what it covers should be expanded from the narrow one available in the United Nations Convention on the Law of the Sea, 1982 article 101. The narrow definition hinders the International Community from fully participating in the fight against piracy in the Gulf of Guinea countries since other attacks are happening within the territorial waters of a state where upon the same are termed as armed robbery, and the maritime security issues are within the jurisdiction of a particular sovereign state. The modus operandi of piracy activities happened in high seas is not different from those actions of the same nature happening in territorial waters and within Exclusive Economic Zones, to differentiate the two is to make the fight problematic. Piracy actions should attract universal jurisdiction whereupon those happening within territorial waters of a particular state should be open for the country itself, the country where the attacked vessel was registered, countries of nationality of the crew members and countries which the owner of the property carried aboard is a citizen; to investigate, try and prosecute the perpetrators. This can be done cooperatively upon entering into an agreement, or separately but principles of *res judicata* and *res sub judis* must be observed.

¹ Christine Mungai, How East African Piracy ended, and lessons West Africa can learn to end Crime on its Waters. Mail and Guardian Africa, 22 February 2015. Available at: mgafrica.com/article/2015-02-20-how-somali-piracy-was-ended-unusual-military-collaborations-and-5-very-ingenuous-inventions.

7.8 A clear stand of where piracy falls under the insurance policies

The inclusion of piracy in the list of maritime peril in all policies is of crucial importance to avoid double insurance over the same peril. Whether it is covered as a maritime peril or as a war risk, there is an importance of the legislation to specifically address the matter to avoid duplications or double payments over the same matter.

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