

MARITIME PIRATES: THE CRIMINAL UNDERWORLD OF THE NIGERIAN MARITIME DOMAIN

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ABSTRACT

Sea piracy is regarded as a major maritime security issue in the Gulf of Guinea. The number of piracy incidents around the Horn of Africa and Gulf of Guinea in recent years has increased due to a breakdown of good governance in Somalia and Nigeria, among other countries. This paper examines the causes of piracy in the Nigerian maritime domain. It also appraises the impact of piratical activities on the economic development of the nation as well as governmental efforts to curb the scourge. It argues that the initial lackadaisical attitude of the Nigerian government to deal with the situation is a major factor responsible for the increase in the activities of pirates. While considering various strategies which have been adopted in other parts of the world, the paper recommends effective Surface Surveillance System, Bilateral Arrangement, Regional Maritime Awareness, among others as ways to tackle the menace of piracy in Nigeria.

INTRODUCTION

Nigeria is the most populous country in Africa with vast maritime domain with a coastline of 860km and maritime borders with Benin Republic, Sao Tome and Principe, Cameroon and Equatorial Guinea. The maritime domain is one of the major sources of income/revenue for the country.¹ Piracy is one of the challenges affecting the Nigerian maritime domain. Although, the Nigerian government established the Nigerian Maritime Administration and Safety Agency² (NIMASA) to ensure maritime security, the impact of the agency is debatable as its enforcement mechanism has been outsourced to a private security company. The number of piracy incidents around the Horn of Africa and Gulf of Guinea in recent years has increased due to breakdown of good governance in Somalia, Nigeria and some other African countries. Also, the initial lackadaisical attitude of the Nigerian government and the international community to deal with the situation is a major factor responsible for the increase in the activities of pirates in the Nigerian maritime domain. It has been stated that piracy thrives more off Lagos because of small shore-based groups marauding on ships as they approach Lagos. Fisheries disputes and subsistence piracy³ are common occurrences along the Bakassi, Cross-Rivers and Akwa Ibom coasts where pirate attacks increased, mainly as a result of the unresolved Bakassi Peninsula issue and corrupt Nigerian licensing practices for fishing vessels. The Gulf of Guinea hosts major African maritime domains including Nigeria and it is the area that has witnessed more piracy incidents. For example, in 2012 alone, there were about 14 piracy attacks in the Gulf of Guinea, and it was reported that about 8 of the 14 attacks happened in Nigeria. In one of these attacks, the captain and the chief engineer of a vessel were killed.

This paper takes a look into the criminal activities of pirates in the Gulf of Guinea, the nature and factors responsible for piracy. The paper also brings to fore, the Nigerian government initiatives to address the problem. It is undeniable that the problem is crippling economic activities in the Niger-Delta as young people prefer to engage in criminal acts due to the economic advantage it fetches them. The paper argues that the enforcement mechanism is weak and recommends proactive collaboration of NIMASA with the Nigerian Navy rather than the privatization of security surveillance in the Nigerian maritime domain.

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1. See Widson Patrick, 'NIMASA and security of Nigerian water domain' *Daily Independent* <<http://dailyindependentnig.com/2012/08/nimasa-and-security-of-nigerian-water-domain/>> See also Nigerian Navy Today <<http://nigerian-navy.blogspot.com/>> Accessed 11 March 2015
2. This is established under the Nigerian Maritime Administration and Safety Agency Act, No 17 of 2007
3. Subsistence piracy is a type of piratical activity driven by lack of employment and investment opportunities, and provides a limited economic stimulus for coastal micro economies



BRIEF HISTORICAL BACKGROUND OF PIRACY

The term piracy has its origin in the classical world and Roman and Greek literature refer to it as *pierato* and *pirata* respectively. In the Western Roman Empire, communities were sustained through acts of raiding ships and these activities were not considered criminal by the Romans. This is because *pirata* were seen as strong to confront the enemies of the Roman Empire.⁴ However, after the fall of Western Roman Empire, *pirata* were abandoned and were no longer used. But this is not to suggest that piratical activities stopped, it continued as series of attacks persisted. It has been stated that the modern pirate has its origins during the Renaissance, due to expansion in trade; ships belonging to western European powers from England, France, Venice and Spain were attacked by pirates. In reaction to the series of attacks, it was directed that attacks on ships be regarded as a criminal offence except attacks during war time. It was also maintained that pirates could be apprehended and punished by any state regardless of where they were captured.⁶

It merits mentioning that between the 16th to 19th century, government reserved the power to legitimize piracy by authorizing such activities through a letter of marque.⁷ A letter of marque is an instrument which would permit attacks on enemy ships and such activities that should ordinarily be regarded as piracy would be clothed as part of 'war at sea'. Interestingly, letters of marque were prohibited vide the Declaration of Paris in 1856 and the letter was later in 1898 made an exclusive reservation of the United States for issuance during the Spanish-American War.⁸

In Nigeria, piracy has traditionally been of a subsistence character because, pirates were relatively small shore-based groups preying on ships off Lagos and the South-West of Nigeria. Subsistence piracy and fisheries disputes are common occurrences along the Bakassi, Cross-Rivers and Akwa Ibom coasts where attacks intensified, largely as a result of the unresolved Bakassi Peninsula issue and corrupt Nigerian licensing practices for fishing vessels.

CONCEPTUAL FRAMEWORK OF PIRACY

It has been asserted that piracy is a technical legal term which refers to particular acts of violence committed on the high seas or in the exclusive economic zone (EEZ). A critical look at analysis offered by a scholar shows that there have been misunderstandings with appreciating what constitutes piracy at sea, because the term can have a narrow legal meaning at establishing jurisdiction over particular illegal activities. It can generally be used to cover all forms of sea robbery and violence at sea.¹⁰

There are attempts in the literature at conceptualizing human security. The neo-realist framework argument is on the continued primacy of the state within the broadest conceptualization of security¹¹ and this is why the approach was referred to as "new security thinking".¹² In the perspective of this approach, security is viewed as the responsibility of state. It is however maintained that the mechanism adopted by the neo-realist may not be adequate to tackle the insurgence of maritime piracy, accordingly collaboration of states with other stakeholders would be a panacea to tame maritime piracy.¹³ On the

4. A. P. Rubin, *The Law of Piracy* (2nd edn, New York: Transnational Publishers 1998) 6
5. Stuart Kaye, 'The Legal Framework for Piracy' in Andrew Forbes (eds), *Australian Response to Piracy: Legal Perspective*, (Sea Power Centre, Australia 2011) 35
6. *ibid.* See also H. Lauterpacht, *Oppenheim's International Law* (vol.1, London: Longmans, Green & Co. 1948) 279. In *Magellan Pirates's* case 164 ER 47, the Chief Judge in Admiralty, Dr. Stephen Lushington held that the pursuit of pirates within the Straits of Magellan to the extent of pursuing them to their base onshore or anchor in Chilean territory was lawful
7. A.P. Rubin, (n 4) 58
8. J. Colombos, *The International Law of the Sea*, (6th edn, London: Longmans 1967) 448
9. S. Bateman, 'Sea Piracy: Issues in the Indo-Pacific Region' in Andrew Forbes (eds), *Australian Response to Piracy: Legal Perspective*, (Sea Power Centre, Australia, 2011) 18
10. *ibid*
11. S.J. Akinsola, 'Borderless Security Threats: Trends in Maritime Piracy on Nigerian Territorial Waters and Lessons from Somalia' in I.O. Albert, B.A. Aluko and O.O. Isola (eds), *The Security Sector and Conflicts Management in Nigeria*, (Ibadan: Institute of African Studies, University of Ibadan, 2013) 287
12. *ibid.* See also Thompson L., *Theoretical Approaches to Security and Development*, Monograph No. 50
13. B. Buzan, 'New Pattern of Global Security in the 21st Century' (1991) 67(3) *International Affairs* 431-451 copiously referred by S. J. Akinsola, 'Borderless Security Threats: Trends in Maritime Piracy on Nigerian Territorial Waters and Lessons from Somalia' in I.O. Albert, B.A. Aluko and O.O. Isola (eds), *The Security Sector and Conflicts Management in Nigeria*, (Ibadan: Institute of African Studies, University of Ibadan, 2013) 287



other hand, the postmodernist argument is rooted within the pluralist theory and advocates a wider conceptualization of security which goes beyond a military determination of threats. The proponents of this theory contend that the state must be dislodged as the primary custodian of security, while non-state actors like individuals, ethnic and cultural groups, non-governmental organizations, multinational corporations, etc. should be involved in tackling security challenges. To this school of thought, governments whose responsibility is to be 'the guardian of their people's security' have failed in this onerous task and thus become sources of insecurity to the citizens.¹⁴ It places emphasis on the interdependency and borderless threats spread by non-state actors like organized criminals.

Importantly, Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides a strict legal definition of piracy. According to the provisions, piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or 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).

In the above quoted provisions, there are key words worthy of consideration; to wit 'high seas' and 'for private ends'. From the provision of the UNCLOS, an incident which does not happen on the high seas and the EEZ is not piracy. It means that under international law, the following are clear:

- a. Piracy cannot occur within waters subject to the full sovereignty of a state and territorial sea.
- b. For an act to constitute piracy, it must be for private ends. The importance of private ends is that, it differentiates piracy with acts of terrorism because act of terrorism is not ordinarily conducted for private ends.
- c. For an act to constitute piracy, it must involve two ships. Hence, where the crew, passengers or stowaways are already onboard seize a ship, it is not regarded as an act of piracy. The Privy Council while considering the definition of piracy in *re Piracy Jure Gentium*,¹⁵ viewed the definition offered by Kenny that 'piracy is any armed violence at sea which is not a lawful act of war'.

Article 15 of the Convention on the High Sea 1958 defines piracy as:

- (1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - a. On the high seas, against another ship or aircraft;
 - b. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
- (2) 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;
- (3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

14. A. O. Isaac, 'The Scrutinized Elite: A Destruction of the "Cabals"', Nigeria Political Economy' <www.niser.gov.ng/downloads/Albert_cabals> Accessed 20 May 2014

15. [1934] AC 586



It has been argued that both definitions offered by 1982 UNCLOS and the 1958 Convention are too narrow for the challenges posed by modern day piracy.¹⁶ The inadequacy of the Conventions to cover many violent crimes committed on the seas became manifest in 1985 with the *Achille Lauro* incident. On 7th October 1985, four (4) armed stowaways onboard the Italian cruise liner, *Achille Lauro*, hijacked the ship and killed a passenger on wheelchair, an American Jew. The attack, apparently for political motivations, took place while the ship was in Egyptian waters. The motivation and the fact that the attackers were on the ship placed the attack outside the realm of the definition of piracy under the 1982 UNCLOS. The international community with various interests in prosecuting the perpetrators was left without the authority under international law to prosecute them. After this incident, the international community, through the United Nations and the International Maritime Organisation formulated the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) in March 1988 to establish a legal basis for prosecuting maritime violence that did not come under the 1982 UNCLOS piracy regime.

The International Maritime Organisation (IMO) and International Maritime Bureau (IMB) offered a separate definition for armed robbery against ships. According to them:

Any unlawful act of violence or detention, or any act of depredation, or threat thereof, other than act of 'piracy', directed against a ship or against persons or property onboard such a ship, within a State's jurisdiction over such offences.¹⁷

The above definition envisages unlawful act against a ship during passage and in port or anchor regardless of whether the ship is inside or outside the territorial waters when the attack occurred. The point here is that, piracy exists as a universal crime upon which all states are entitled to take action.¹⁸

Maritime security is no doubt important not only for the exploration and exploitation of maritime resources, but also for securing livelihoods. Therefore, the challenges in the Gulf of Guinea, of which Nigeria is a major stakeholder include piracy. Other challenges include oil theft, illegal, unreported and unregulated (IUU) fishing. It has been observed that between 2003 and 2011, the Gulf of Guinea accounted for about 30% of piracy attacks.¹⁹ The region is a source of about 5.4 million barrels of oil per day. Nigeria accounts for 47% of the region's total oil supply.²⁰ In 2012 alone, an estimated 100,000 barrels of oil were stolen per day, costing Nigeria about \$1 billion per month in lost revenues.²¹

GULF OF GUINEA: PIRATES HAVEN

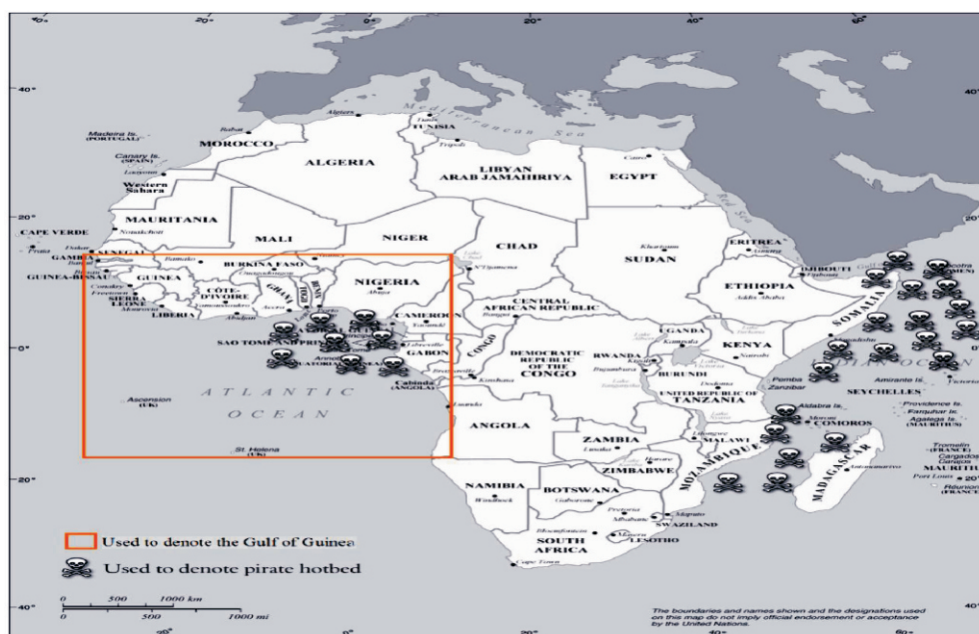
Before delving into the dynamics of piracy in the Gulf of Guinea (GoG), it is apposite that allusion is made to the area referred to as the GoG. There is no universally agreed geographical definition of the GoG.²² The region has been defined as part of the Atlantic Ocean Southwest of Africa.²³ The region known as GoG encompasses over a dozen countries from West and Central Africa, to wit; Angola, Benin, Cameroon, Central African Republic, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Republic of Congo, São Tomé and Príncipe, Senegal, Sierra Leone and Togo. The GoG is located more strictly by the intersection of Latitude 00 (Equator) and Longitude 00 (Greenwich Meridian)²⁴ and its geostrategic and maritime

16. A.G. Hamid and H. Ahmed, 'Assessing the Viability of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation' (2012) 6 (11) Australian Journal of Basic and Applied Sciences, 138
17. International Maritime Bureau, 'Piracy and Armed Robbery Against Ships-Annual Report for the Period 1 January-December' (January 2009) 4
18. S. Bateman, (n 9) 19
19. 427 of 1,434, mostly off the coast of Nigeria, Angola and Republic of Congo
20. A. Dambazau, 'Overcoming Nigeria's Security Challenges' (Paper presented at the 11th Convocation ceremony of the Igbinedion University, Okada, Nigeria)
21. *ibid*
22. F.C., Onuoha 'Piracy and Maritime Security in the Gulf of Guinea: Nigeria as a Microcosm' (A Report submitted to Aljazeera Centre for Studies, 12 June 2012)
23. *ibid*
24. L. Anene, 'Gulf of Guinea: A Growing Strategic Profile' (2006) 2 (1) Nigerian Army Quarterly Journal, 39-51



resources are quite attractive. The resources available in the region include diamond, oil, gold, fishes, to mention but a few.²⁵

Piracy has existed in human history as far back as people navigate oceans as a means of trade and this makes the cankerworm a threat to all maritime states.²⁶ A sharp increase in maritime piracy in the Asian region was reported in the late 1990s due to the political instability and massive unemployment caused by economic crisis.²⁷ In fact, the information collected by the International Maritime Organization on piratical activities in the Asian region shows that out of over 4,000 cases of maritime piracy reported, two-third occurred in Asia as of 1999. Recent information has shown that the GoG recorded an increase in piracy attacks and lack of fund was said to be a major hindrance in counter-piracy measures. The manner of piracy attacks in the GoG indicated that Nigerian pirates are Nigeria-based, notwithstanding Benin Republic record of higher incidents in 2011 and 2012.²⁸ The International Bargaining Forum (IBF) in April 2012, labeled the territorial waters within 12 nautical miles off the coast of Benin and Nigeria as a piracy 'High Risk Area'²⁹ and this also informed the International Maritime Bureau information to carriers to steer clear of Nigerian waters.



Adapted from F.C Onuoha (2012)

The frequency of maritime piracy in the Gulf of Guinea (GoG) has remained an emerging threat to trade and economic development in Nigeria. The threat of insecurity posed by piratical activities may develop to an uncontrollable monster, hence, the need for urgent actions and measures to tame the cankerworm. It was reported that in 2012 alone, there were fourteen (14) piracy attacks in the Gulf of Guinea. Astonishingly, out of the said attacks, eight (8) of them happened in Nigeria and in an incident, the captain and the chief engineer in one of the ships were killed.

25. Nearly 70 percent of Africa's oil production is concentrated in the West African coast of GoG. It was forecasted by experts in 1999 that Western oil companies will invest between \$40 billion and \$60 billion in the GoG alone over the next 20 years. The estimation based on the forecast is that deep water drilling will account for 25 percent of offshore oil production by 2015, if compared with just 9 percent in 2007. See F.C. Onuoha, supra note no. 16 at p 372. Part of the forecast was that by 2020, oil production in GoG is expected to surpass the total production of the Persian Gulf nations: 25 percent of the global production as compared to 22 percent from the Persian Gulf
26. H. Nong, 'Maritime Trade Development in Asia: A Need for Regional Maritime Security Cooperation in the South China Sea' in Shicun Wu and Keyuan Zou (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation* (England: Ashgate Publishing Limited, 2009) 39
27. ibid 40
28. S.J. Akinsola, (n 11) 28
29. ibid 290



According to the Risk Intelligence,³⁰ there were 58 recorded piracy-related maritime security incidents in the Nigerian shore and coastal waters in 2010. One noteworthy incident of 2010 was the hijack of the product tanker Valle di Cordoba on December 24, 2010 and the theft of 5,000 tons of petrol (technically offshore Benin), by supposedly Nigerian pirates.³¹ Although, this figure is a remarkable reduction when compared with the 91 recorded incidents for 2009 and 114 incidents for 2008, it was argued that these figures presented only a disguised reprieve as a more disturbing trend surfaced. The reason is that as the amnesty programme of the Federal Government appears to be a plausible solution to criminal activities in the region, mid-ranking militants in the Niger Delta increasingly turned to offshore kidnappings for ransom. As a result of this, it was reported in 2010 that a total of 18 attacks involving kidnap of expatriates for ransom were recorded in the region.³² There was a consensus among local and international reports that maritime insecurity in Nigeria is driven by different factors along different parts of the shoreline. There was a contention that piracy has traditionally been of a subsistence character with relatively small shore-based groups marauding on ships as they approach Lagos. Subsistence piracy and fisheries disputes are common occurrences along the Bakassi, Cross-Rivers and Akwa Ibom coasts where attacks intensified, mainly as a result of the unsettled Bakassi Peninsula issue and corrupt Nigerian licensing practices for fishing vessels.³³

This is the sad testimony of Nigeria's maritime domain which has become a haven for piracy. Surprisingly, despite series of attacks in the GoG, a private security firm³⁴ is engaged for the purpose of providing security in the Nigeria maritime domain. As mentioned somewhere,³⁵ apart from statutory and constitutional limitations, a private security company lacks the wherewithal to provide maritime security surveillance. The perspective of engaging a private security company on maritime security has been misconstrued in Nigeria. This research is not oblivious of the fact that engagement of private security companies in maritime domains is not a new phenomenon. A private security company, Glenn Defense Marine (Asia) was established as far back as 1946.³⁶ The emergence of private security companies in recent times in the region was sequel to the 9/11 2001 attack. Despite what is obtainable in some parts of Asia and other jurisdictions like Australia, it cannot not be regarded as a total privatization of surveillance and enforcement of maritime security as it is in Nigeria. Carriers who wish to increase their security in the course of navigating seas engaged the services of private security companies to forestall any untoward incident. Some of the companies are owned by ex-military personnel and render services like tracking of their clients' ships, training of crew, provision of security personnel to escort ships, investigation and recovery of missing or hijacked ship, negotiation with attackers in case of kidnapping of crews, etc. This writer contends that the privatization of maritime surveillance and enforcement to a private security company is not the solution to maritime piracy; rather government needs an expansion and modernization of its maritime agencies.³⁷ It is maintained that the Navy as a government agency have essential roles to play in safeguarding the nation maritime zones and should therefore device strategies to increase and maintain maritime security especially with regard to

30. The Risk Intelligence is a Denmark-based maritime security intelligence company

31. See Gulf of Guinea Hijacking, <http://www.riskintelligence.eu/maritime/gulf_of_guinea_tanker_hijacking_report/> Accessed 11 March 15

32. There are confirmations that the main targets of attacks are Nigerian-flagged, but foreign owned, fishing vessels. According to the International Maritime Bureau (IMB), on January 4, 2009, pirates hijacked the French ship Bourbon Leda with five Nigerians, two Ghanaians, one Cameroonian and one Indonesian on board. Also, on January, 21, gunmen attack the diesel tanker MT Meredith and kidnapped a Romanian, while in the same month, pirates also boarded an Exxon tanker MV Ngoni stole some items and also seized a tugboat. Another outstanding attack was the one involving the attack on the Turkish ship Ilena Mercan where two crew members were kidnapped

33. For example, on March 13, 2010, a Chinese fishing vessel was hijacked off the Bakassi Peninsula where seven fishermen were abducted. The kidnappers demanded a ransom and later released the vessel and its passengers on March 18

34. Global West Vessel Specialist Limited

35. S.Z Abdul Kader, and A.O. Abdulkadir 'Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty' (2013) 9 Journal of Law, Policy and Globalization, 19-25

36. C. CLiss, 'The Privatization of Maritime Security- Maritime Security in Southeast Asia: Between a rock and a hard place?' (Working Paper No.141 February 2007) <www.arc.murdoch.edu.au/publications/wp/wp141.pdf> Accessed 19 May 2014

37. See 'Safety and Security of Nigerian Maritime Domain' Shipping Position. <<http://shippingposition.com.ng/article/safety-and-security-nigerian-maritime-domain>> Accessed 24 May 14



traditional security threats, while internal security should be the business of the police.³⁸ In order to appreciate devices for tackling piracy activities, it is important to identify its causes in Nigeria:

CAUSES OF MARITIME PIRACY IN NIGERIA

1. **Lack of Economic Opportunity:** It is obvious that problems of piracy in Nigeria have its prime in the Niger-Delta region of the country. Many people in the area are fishermen and because of oil exploration activities, waters in the region have been contaminated thereby affecting fishing activity which is the major source of economic sustenance. The lack of other economic opportunities influenced some vulnerable people in the region to venture into piracy.
2. **Problem of Employment Opportunity:** People who have been affected by environmental degradation with no other job to do consider piracy as an alternative source of income. This has manifested in kidnapping of expatriates and hijacking of vessels for ransom.
3. **Problem of Good Governance Onshore:** The problem of good governance onshore has found its way to the sea as there is lack of adequate, effective and efficient enforcement agency at sea. It has been asserted that politically unstable nations or territories have emerged as both cause of and permission for armed robbery or piracy at sea.³⁹
4. **Corruption among the Law Enforcement Agencies:** Although corruption is a global phenomenon, its prevalence in Nigeria is alarming thereby affecting the country's socio-economic, political development, national security and integration.⁴⁰ Marine Police and Naval personnel have been described as culprits and complicit in piratical activities as they take money and give information to pirates. It was argued that corruption has found its way into the activities of the Nigerian Navy as vessels owners are mandated to deposit 20-30 bags containing fish to the Navy.⁴¹ The corruption of the Navy has resulted in significant disadvantage and economic loss to the business of fishing vessels owners.⁴² Optimum political will on the part of the government to tackle the issue of corruption may save the country from the menace that is threatening the security of the nation.⁴³

IMPACT OF PIRACY ON THE NIGERIAN MARITIME TRADE

The rise in piracy-related activities along the Nigerian coast is having significant implications on the Nigerian economy, global trade and local stability. Nigeria is the largest oil producer in Africa and the tenth largest producer in the world. But piracy in the Niger Delta, coupled with the militancy onshore, is drastically driving up operating costs of maritime and oil companies. Some operations had been shut down and a number of organisations pushed out of business. The following are some instances of the impact of pirate attacks in the Nigerian maritime domain:

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38. S. Bateman, 'Naval Balance in South-East Asia- Search for Stability' *Jane Defense Weekly*, (11 May 2005). Malaysia, Philippine and Singapore have long established maritime agencies with the navy responsible for the sea
 39. G. Weir, 'Fish, Family and Profit-Piracy and the Horn of Africa' in E.B. Forbes, A and Rosenberg D (eds), *Piracy and Maritime Crime: Historical and Modern Case Studies*, (Newport RI: Naval War College, 2010) 208
 40. A.O.Yusuf, 'Federalism and the Quest for National Integration and Development in Nigeria' in Akintoye, A and Ojuokaiye, T, (eds) *Proceeding of the 2012 Biennial Law of the Nigerian Bar Association Ilorin Branch*, (Ilorin: SOJ Goldspring, 2012) 45. The business of corruption in Nigeria is a fall-out of the failure to tackle political corruption which cast doubt on the moral uprightness of our leaders to manage the affairs of the nation. It goes from the above that where government operates on a high ethical value and upholds the rule of law, the state machineries designed to fighting importation of harms will thrive
 41. See Pramod G. and Pitcher. T.J. 'An Estimation of Compliance of the Fisheries of Nigeria with Article 7 (Fisheries Management) of the UN Code of Conduct for Responsible Fishing' <<ftp://ftp.fisheries.ubc.ca/CodeConduct/.../Nigeria-CCRF.pdf>> Accessed 25 October 2012
 42. *ibid*
 43. The political will on the part of government and firmer action against pirates were responsible for the fall in the number of attacks in Indonesia waters. See generally, Bateman S. 'Piracy and Armed Robbery against Ships in Indonesia Waters' in R. Cribb and M. Ford. (eds), *Indonesia Beyond the Water's Edge: Managing an Archipelagic State*, (Singapore: Institute of Southeast Asian Studies, 2009) 117



- a. AP Moller-Maersk (Danish transporter) once suspended all shipping to the Nigerian oil industry port of Onne, near Bonny Island. The suspension was sequel to criminal activities of pirates who attacked six vessels in one day on 9 January 2008.⁴⁴
- b. Piracy in the Nigerian coastal region appears likely to drive up shipping costs and insurance premiums. Indeed, it was reported that two seafarers' unions called for Nigerian waters to be classified as a war zone.⁴⁵ It is argued that in as much as pirates' attacks increase in frequency, the freight charges automatically increases.⁴⁶
- c. Piracy is compounding Nigeria's security problem. Armed-robbery of ships at sea would affect economic advantages accruable from seaborne trade. For example, the Association of Fishing Trawlers Owners in Lagos in January 2008 embarked on a strike to protest piracy because of the impact on their business. The association claimed that during the time under consideration, over 50 attacks occurred on their vessels which eventually led to the death of ten sailors.
- d. Piracy attacks have contributed to poverty among local fishermen in Nigeria. It needs be emphasised that unless attacks are adequately and promptly addressed, it may result in further displeasure and indeed adverse reaction from local communities.

EFFORTS BY NIGERIAN GOVERNMENT TO CURB INCIDENTS OF MARITIME PIRACY.

Having identified the root cause and depth of piracy in the Gulf of Guinea and Nigeria in particular, it is important to mention that the government of Nigeria has embarked on sustained security and policy measures to discourage and possibly eliminate piracy in Nigeria and the sub- region. However, the Nigerian government's effort to combat the growing piracy problem appear unlikely to be effective in the short to medium term. Although, the Nigerian Navy has deployed more personnel to key regions and has established five new forward-operating bases in the Niger Delta to complement its established bases in Lagos, Calabar, Warri, Port Harcourt and Abuja, it lacks maritime air surveillance and investigation capabilities to make a significant impact on the activities of pirates. Acquisition and distribution of modern weaponry and additional ammunition will be essential to achieving the desired goals. The introduction of special anti-piracy patrols around Lagos and Bonny Island in the Niger Delta is applauded. However, due to the militancy in the Niger Delta and the sheer scale of the piracy problem, successful intervention from Nigerian security forces remains unlikely.⁴⁷

It is obvious that as terrorism and other crimes have taken new dimensions in recent times in Nigeria, so also is piracy in Nigerian waters and the Gulf of Guinea as a whole, on the increase. Incidents of piracy traverse substantial area of the Gulf of Guinea, according to the IMB. It was reported sometime ago that MT Abu Dhabi Star, a ship containing 50,000 metric tonnes of Natural Gas while in the Nigerian maritime domain, was hijacked by pirates for over eight hours. Interestingly, the efforts of the Nigerian Navy yielded the desired result as they were able to rescue the Indian crew as well as the product. Similarly, a supertanker, MT Energy Centurion was attacked on August 31, 2012, by pirates, offshore Lomé, Togo. As a result of the attack, the 3,000 metric tonnes of crude oil loaded by the vessel was stolen and siphoned into another vessel before the Nigerian naval authorities were able to rescue the crew.⁴⁸ It

44. Maerk halts shipping activities to Nigerian ports after attack, <<http://www.oyibosonline.com/cgi-bin/newsscript.pl?record=3138>> Accessed 25 October 2014

45. Both Nautilus, a union representing 25,000 British and Dutch ship officers, and the International Transport Workers' Federation (ITF), which has 600,000 members, called on the International Maritime Employers Committee (IMEC) to class Nigerian waters a war zone and to grant crews emergency rights such as war-risk pay bonuses for operating in those waters

46. S. J. Akinsola, (n 11) 294

47. See Nigeria's waters: A deteriorating maritime security environment

48. Eniola Akinkuotu, 'Piracy: Nigerian Navy Embraces ICT and Radar Surveillance to Boost Maritime Security, Increase Sea Patrols' <<https://beegeagle.wordpress.com/2012/09/09/piracy-nigerian-navy-embraces-ict-and-radar-surveillance-to-boost-maritime-security-increase-sea-patrols/>> Accessed 24 May 2014



was reported by the IMB that there were 10 piracy attacks off the 780km (485 miles) of Nigeria's coastline during the first quarter of 2012 and the same number was reported for the whole of 2011.⁴⁹ Although, Nigerian naval authorities have consistently maintained that there is no cause for fear, there is a need for them to double their efforts to ensure that crimes on the sea is reduced to the barest minimum.

In addition to the efforts of the Nigerian Navy, other steps taken by the government in curbing the menace of piracy include:

- a. Inauguration of the Presidential Implementation Committee on Maritime Security and Safety in 2004. In order to ensure that Nigerian Ports comply with the International Ship and Port facility Security (ISPS) Code,⁵⁰ the government constituted this Committee and it is heartwarming that the Committee has grown in understanding of the security challenges in the coast. Acquisition of surveillance infrastructures like Radars, AIS antennas and Aircraft to monitor the coast are great examples of the take-off of the assignment. However, despite government attempts at ensuring maximum security in the Nigerian maritime domain, the implementation of the ISPS Code in Nigeria remains a mirage.⁵¹ It is against the failure of implementation of the ISPS Code that the United States threatened sanctioning Nigeria in May 2013.⁵²
- b. Efforts by the Nigerian Maritime Administration and Safety Agency (NIMASA) through rigorous vigilance at ensuring zero piracy attack level in the Lagos pilotage district.
- c. The government has formed the military Joint Task Force (JTF) to combat militancy in the Niger Delta region, in order to minimize incidents of piracy.
- d. About 80 armoured patrol boats was reported to have been acquired by the Marine Police in recent years to respond to incidents of piracy and other policing tasks.
- e. Establishment of the Niger Delta Development Commission (NDDC) - In recognition of the need to develop the oil-rich Niger Delta, former President Olusegun Obasanjo in year 2000 established NDDC to cater for development of the region and ameliorate the effects of environmental degradation which the people are exposed to as a result of oil exploration activities in the region. The effort of the government was accentuated when the late President Umar Musa Yar'Adua established the Ministry of Niger Delta Affairs in 2008. Government policies through the agencies were geared towards improving the life of the people, developing the region, creating jobs for the unemployed and mitigating idleness which is a major factor responsible for piracy amongst the youths.
- f. Amnesty Program- Amnesty Program is a Federal Government of Nigeria's arrangement by which all the youths engaging in militancy activities like piracy, kidnapping, bunkering, etc. in the Niger-Delta were persuaded to sheathe their swords, embrace dialogue and surrender their arms in return for opportunities; to wit employment, education, vocational training etc. The administration of late President Umar Musa Yar'Adua identified the need to pacify the angry youths of the Niger Delta region in 2009 and set up the Amnesty Program. The government succeeded largely in subduing militancy in the region through the offer of amnesty to the restive youths. Most militant groups embraced the program and this has a great influence on the number of piratical activities in the Nigerian maritime domain.

49. Note that reference is made to 2012 because the 2013 report is not readily available

50. Compliance with the implementation of the ISPS Code is still in doubt till now. See generally, A.O. Abdulrazaq, 'Preventing Armageddon: Implementation of the International Ship and Port Facility Code in Nigeria' (2013) [2] July-December Ife Juris Review, 359

51. *ibid* 359-360

52. See also Andrew Airahuobhor, 'Implementation of the ISPS Code' <<http://dailyindependentnig.com/2013/08/nimasa-and-isps-code-implementation-momentum/>> Accessed 27 January 2014



- g. Removal of abandoned ships and wrecks from Nigerian waters- It has been discovered that abandoned ships in Nigerian waters serve as hideouts for pirates to share their loots and keep their weapons. The abandoned ships were removed.

THE REGIONAL MARITIME SECURITY EFFORTS

It is important to mention that efforts to stamp out piracy along the Gulf of Guinea is not a Nigerian affair but regional as other governments in West Africa are working towards tackling the menace. Regional efforts are being taken under the Gulf of Guinea (GoG) Commission for the West Coast of Africa. This commission discusses maritime security issues in the West African sub-region with a view to harnessing and integrating governmental efforts and strategies against piratical activities and other social ills across the coast. The regional effort is being co-ordinated through the office of the National Security Adviser in Nigeria. Other regional maritime security efforts are:

- a. Bilateral Response- the governments of Nigeria and Benin Republic in October 2011 set up a combined maritime patrol off their waters. The arrangement is known as *Operation Prosperity*. The bilateral cooperation was the first of its kind in the region and it was in line with the Maritime Organization of West and Central Africa (MOWCA) Coastguard Function Network Initiative. In an attempt to increase the area of surveillance and minimize maritime threats, it was suggested that the joint patrol will be expanded to include the navies of Ghana and Togo. Essentially, the GoG represents a viable economic pot not only for Africa but the world at large; therefore, the strategic importance of the GoG has drawn domestic and international attention to the nature of maritime insecurity challenges in the region. Curbing insecurity would sanitize the nation's waterways of various forms of illegalities such as crude oil theft, illegal oil bunkering, pipeline vandalism and vandalization of multi-million dollar government facilities located offshore.
- b. Installation of a Surface Surveillance System under the Regional Maritime Awareness Capability initiative. This surveillance system⁵³ uses an automatic identification system and ground-based radar and sensors to enhance awareness of maritime activities. Blind patrols of the sea is no doubt baseless,⁵⁴ hence the need for application of the system. Prompt and adequate utilization of the system gives accurate dissemination of information during operations.⁵⁵ It will assist Nigerian naval authorities to enforce maritime surveillance and prevent illegal activities within the nation's maritime domain.
- c. Training of the Nigerian Navy by their foreign counterparts like the US Navy in order to assist in curbing crimes along Nigeria's waterways.⁵⁶ Commander, Task Force 63 US Navy, Commodore Richard Soucie, maintained that lessons learnt from Somalia and other hotbeds in Africa on piracy and sea robbery had prompted the assistance of the American government. It is strongly argued that training the Nigerian Navy on counter piracy, port security measures and capacity

53. It is a United States Navy-inspired coastal surveillance programme and the project is coordinated by the Africa Partnership Station brought together by the United States Government

54. The use of the system would make it easily possible see two ships side by side at the sea and if any illegal operation or activities going on between them, the navy can make arrest. Certainly, this is more effective than just patrolling the waters blindly without any direction

55. This position was confirmed by the Command Information Officer, Western Naval command, Lt. Commodore Jerry Omodara who was on a patrol on board West Africa's first locally built seaward defence boat. Omodara argued that the establishment of the Regional Maritime Awareness Centre in addition to the capability of other naval warships; piracy in the Nigerian maritime domain will soon be a thing of the past. See generally, Eniola Akinkuotu, 'Piracy: Nigerian Navy Embraces ICT and Radar Surveillance to Boost Maritime Security, Increase Sea Patrols' <<https://beegeagle.wordpress.com/2012/09/09/piracy-nigerian-navy-embraces-ict-and-radar-surveillance-to-boost-maritime-security-increase-sea-patrols/>> Accessed 24 May 2014

56. It would be recalled that earlier in the year, the American Coast Guard, USS Simpson, French Navy, Siroco and British Warship HMS Dauntless, were reported berthed in Nigeria for a three-day training of the officers of the NN on strategies to secure the nation's numerous waterways. See Eniola Akinkuotu, *ibid*



building will enhance maritime trade and economic development as almost 90% of commercial activities are being carried out through the sea. A country with little or minimal piratical activities would enjoy patronage from international shipping companies. This is because carriers like other investors would ordinarily prefer to engage in business with little risk or no risk and where there is a likelihood of danger in a particular region, they might steer clear of such region.

Maritime surveillance in GoG is greatly underfunded, thereby responsible for weak institutional capacity to tackle piracy and sea robbery. The inability of the Nigerian Navy to emphatically stamp out the menace has contributed to the vulnerability of the region. This is not to say that Nigeria has been inactive at ensuring security in the GoG, but there is a need to revisit government's effort. Other efforts by international and regional actors in which Nigeria has actively participated include the following:

- d. The November 2006 (Cotonou, Benin) Ministerial Conference on maritime strategy and security in the GoG: This conference was organized by US Naval Forces in Europe, US State Department, US European Command and the Africa Centre for Strategic Studies. It was organized with the aim of securing political commitments to implement effective and comprehensive national and regional maritime security strategies.
- e. The October 2006 (Dakar, Senegal) Thirteenth Annual Assembly: This conference of the IMO/Maritime Organisation for West and Central African (MOWCA) States was organized with the aim of establishing an integrated coast guard function network for the west and central coast of Africa.
- f. The May/June 2006 (Abuja, Nigeria) Second Africa Sea Power Symposium: In this conference, heads of African navies came together to discuss mechanisms for enhancing professionalism in tackling insurgence in the maritime sector.
- g. The March 2006 (Accra, Ghana) US Naval Forces in Europe, US European Command and the Africa Center for Strategic Studies organized experts' workshop on maritime safety and security in the GoG.
- h. The Gulf of Guinea Security Mechanism (GGSM): In accordance with GoG Commission goal of ensuring peace, security and mutual confidence necessary for harmonious development of member states, the Gulf of Guinea Security Mechanism (GGSM) was established to coordinate all arrangements to bring about a robust multinational maritime security for the sub-region.⁵⁷

IS GOOD GOVERNANCE THE CURE FOR MARITIME PIRACY?

The idea of good governance often refers to the duty of running the Government of a given state in an effective manner. The notion has been said to be qualitatively and conceptually superior to mere good government.⁵⁸ The concept of good governance also presupposes the right to a legitimate and accountable government, the right to ensuring a socially and economically equitable society that is inclusive in nature, promotion of a society where the rule of law and fundamental human rights are respected, among others. Therefore, good governance depends largely on various factors. In the discharge of its sovereign functions, a state has to discharge many constitutional obligations and it should be capable of utilizing the power of the state such as security for sustainable human development. The concept is generally a package to strengthen the institutions of Government and civil society with

57. Oyewole O. Leke, 'Assessing the Work of the Nigerian Government on Maritime Security in the Gulf of Guinea' (*Speech Delivered by the Senior Special Assistant to the President of Federal Republic of Nigeria on Maritime Services, at the Le Meridien Piccadilly, London, United Kingdom 24 August 2011*)

58. See 'Good Governance in International Law: An Indian Perspective' (ILA Regional Conference, South Africa, (Pretoria) 27th - 29th August, 2007)



the goal of making governments more open, accountable, transparent, as well as democratic and participatory.⁵⁹

Under International Law, a consensus on what good governance implies seems to be taking shape. The concept of good governance entails accountability, transparency and participation, hence all these are considered to be among its core principles. In fact, the requirements of good governance is considered a matter of the age-old adage of *patere legem quem ipse fecisti*, (comply yourself with the laws you made for others). It is against this backdrop that some international organisations like the International Monetary Fund ('IMF'), the World Trade Organization ('WTO'), etc. are preaching good governance to their member states⁶⁰ to enable them benefit from international grants and aids. Commenting on the principles of good governance, Michel Camdessus said:

Promoting good governance in all its aspects, including ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption... [is] an essential element of a framework within which economies can prosper.⁶¹

Corruption as identified by Michel Camdessus is one factor that is responsible for series of piracy attacks by insurgent groups like MEND in the Niger-Delta of Nigeria. The abject state of life is no longer acceptable and this is why the youths in the region resulted to piracy in the maritime domain as a means of survival. Hence, it would be right to conclude that piracy attacks are economically motivated. The undemocratic structure, unequal power and unfair resources allocation which occurred in Africa during the late 1960s are rising again.⁶² Accordingly, where these are not adequately addressed, it could aggravate the already volatile security situation in the Nigerian maritime domain.

Also, Kofi Annan, a former UN Secretary-General while commenting on good governance and transparency maintained that:

What is encouraging about recent developments in Africa is that the pressure for good governance is no longer coming from one side or the other, but from peoples and leaders alike. The spirit of democratic empowerment is challenging all leaders to live up to the ideals of independence, and to deliver the freedoms, the rights and the opportunities that their people deserve.⁶³

To this end, Article 8(4) of the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States which was signed in Cotonou (known as Cotonou Agreement) on the 23rd June, 2000 provides thus:

The [political] dialogue shall also encompass a regular assessment of the development concerning the respect for human rights, democratic principles, the rule of law and good governance.

From the **9/11 terrorist attack**, the global panic engendered as a result of the **2003** outbreak of Severe Acute Respiratory Syndrome (SARS) to the bird flu in **2005** and the Ebola outbreak of **2014**, the interdependence of our globalized world has become painfully evident in recent years. It is no longer in doubt that national governments cannot, alone, address a range of critical issues bothering on good

59. *ibid*

60. See Jan Wouters and Cedric Ryngaert, 'Good Governance: Lessons from International Organizations' (Institute for International Law Working Paper, 2004) 4

61. Michel Camdessus, 'The Role of the IMF in Governance Issues: Guidance Note' approved by the Executive Board of the IMF on 25 July 1997

62. aul Boro, 'Governance and Violence in Nigeria: A Threat to National Development' in I.O. Albert, B.A. Aluko and O.O. Isola (eds), *The Security Sector and Conflicts Management in Nigeria*, (Ibadan: Institute of African Studies, University of Ibadan, 2013) 115

63. Kofi Annan, 'Africa's New Spirit of Democratic Empowerment: Continent's Sobering Challenges' (An address at the Kennedy School of Government, Harvard University, on 24 April 2002)



governance, to wit: trade liberalization, infectious diseases, terrorism, economic integration and worldwide environmental issues like climate change.⁶⁴ It is against this backdrop that scholars had for years, advocated the need for international policymaking and the theoretical logic of organizing collective action on a scale proportional to maritime piracy and all other threats.⁶⁵ Reservation was however expressed that the nation-state still remains the dominant structure in international relations, hence skepticism about "global governance" runs deep, especially the approach of the United States.⁶⁶

From the foregoing, it is apparent that the idea of good governance has become a global phenomenon and leaders or governments of state parties have been urged to dole out dividend of good governance to their citizens through the promotion of basic rights, economic development, economic integration, environmental awareness programme, national security and democratic practices. Where all these are in place, the spate of insecurity being perpetrated by pirates in the Gulf of Guinea will drastically reduce.

CONCLUSION

In this study, it has been shown that with the nature of piracy in GoG, ensuring good order at sea is a matter of absolute necessity. The failure of ensuring good order explains the rapid increase in incidents of piracy in the region which has attracted the attention of the international community and the International Maritime Organisation which advised carriers to steer clear of the Nigeria maritime domain. This paper calls for more regional collaboration and bilateral arrangements between states and other security initiatives to counter the growing menace of piracy in Nigeria. It is also shown in this paper that the frequency of maritime piracy in the Gulf of Guinea (GoG) has remained a continuing threat to trade and economic development in Nigeria. This paper maintains that privatization of maritime surveillance and enforcement to a private security company is not the solution to maritime piracy, rather government needs to expand and modernize its maritime agencies. The Nigerian Navy should play the primary role in safeguarding the nation's maritime zones and should therefore device appropriate strategies to enhance maritime security.

64. See C. E. Daniel, 'Good Governance at the Supranational Scale: Globalizing Administrative Law' (2006) 115:1490 Yale Law Journal, 1493

65. *ibid*

66. *ibid*

