



## Evolving a Combative Framework and Strategy for Effective Maritime Counter Piracy Measures in Nigeria

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### Abstract

Maritime piracy is a global problem affecting the entire world, particularly, world maritime, which contributes a huge percentage of the logistics in world economy. Being a worldwide problem, it is necessary to develop a counter piracy law for Nigeria, gearing towards both domestic and regional jurisdictions for effective application and enforcement. Sea navigation through ships is the major means of movement of finished goods and raw materials globally. The sea being the heritage of mankind, any activity that negatively affects sea transportation affects the world economy, nay, Nigerian economy. Maritime pirates over the ages have been considered as enemies of humanity. Piracy has been a major problem in all major sea routes worldwide, including the gulf of Guinea. Notwithstanding all the criminal activities of maritime pirates in and around the gulf of Guinea including Nigerian coastal waters, there is no legal framework formulated to accost and punish pirates to curtail their activities. It is quite unfortunate that the international Convention developed by the UNCLOS, 1982, to fight piracy and armed robbery at sea is yet to be domesticated as part of Nigerian municipal law. The various agreements and guidelines churned out by the International Maritime Organization (IMO), on this subject are yet to become part of Nigerian policy as recommended to member states of IMO. This article recommends that Section 12 of the Nigerian 1999 Constitution should domesticate these conventions and guidelines as counter piracy law for the country to make the fight against maritime piracy and armed robbery successful.

**Keywords:** Maritime piracy; International maritime organization; The gulf of guinea; Global oceans; Maritime industry; Shipping industry.



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### 1. Introduction

The sea as a major route for oil tankers ferrying oil and other raw materials from Nigeria to Europe, Asia and the United States of America needs safety and protection if the Nigerian economy must be grown and developed. Article 101 of the United Nations convention on the Law of the Sea-UNCLOS III, 1982, defines piracy generally as: Any illegal act of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft and directed:

- (i) On the high seas, against another ship or aircraft or against a person 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;
- (iii) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a private ship or aircraft;
- (iv) Any act of inciting or of intentionally facilitating an act described in subparagraphs (a) or (b).

Private aircraft in this definition anticipates such aircrafts that land on the High seas.<sup>1</sup> The Black's Law Dictionary<sup>2</sup> defines piracy as robbery, kidnapping or other criminal violence committed at sea. Gleaning from the above, it is settled that maritime piracy is an act of robbery committed at sea, and being for private end. The oceans are a continuous, globally body of water comprising 71 percent of the surface of the earth. The unified world oceans has an area of more than 361 million square kilometers and a total volume of 1,347,000,000 cubic kilometers, comprising 97 percent of the water on the planet.<sup>3</sup> With a relatively free interchange of water and aquatic life among the oceans, one should think in terms of the seas as being a single, unfathomable, and vast body of water.

This interconnected quality of the seas has made the oceans an essential route of regional cabotage (intra-continental) shipping and transcontinental voyages, including commercial trade; a regular domain of military training, maneuver and strategic mobility; and a vector for migration, smuggling, and trafficking; and the transmission of disease.<sup>4</sup> As a sphere principally useful for mobility, shipping is by far the most efficient method of

<sup>1</sup> United Nations Convention on the Law of the Sea, 1982, art 101.

<sup>2</sup> B. A. Garner, Black's Law Dictionary (7<sup>th</sup>edn, West Group St. Minn. 1999).

<sup>3</sup> M. A. Charette and W.H. F. Smith, 'The Volume of Earth's Ocean', 23 Oceanography 112-114 (June 2010) 187.

<sup>4</sup> The Bubonic plague or Black Death is thought to have entered Venice via trading vessels from farther along the Eastern Mediterranean. Similarly, the Europeans introduced Small Pox and other infectious diseases in the Americas, devastating the

transporting large quantities of heavy cargo and materials long distances. The oceans have a profound effect on world politics, demographics, and economics. Large population centres emerged along oceans and rivers. Furthermore, in ancient times as well as the present, the oceans serve as the planet's geopolitical fulcrum. Although the global oceans are interconnected to form one immense body of water, the social and political density of regional and coastal seas means that most piracy occurs within 200 miles off the shore. The unity of the oceans is the simple physical fact underlying the dispositive value of sea power to shape events on land (Mankinder, 1917).

The gulf of Guinea is internationally recognized transit corridor, which offers security escorts by coalition warships. Most maritime pirates seek to steal goods or cash on board ship, seize the ship and its cargo for resale, or take the master and crew hostage and hold them for ransom, stealing cash, equipment, electronics, cloths or even the ship itself; this is the favoured model of piracy in most parts of the world, including the gulf of Guinea.

For the most part, piracy involves armed robbery beyond the territorial sea of a coastal state, and it is generally apolitical, except perhaps in the gulf of Guinea. Along the coastline of Nigeria, insurgents use piracy as a means of compelling the redistribution of the country's oil wealth. The people drilling rigs and offshore installations have been attacked and foreign workers have been kidnapped. Nigerian pirates seek to siphon wealth from the country's oil industry as a means of altering the political map of the country, but in most places, piracy is a crime of opportunity and gain, not a political act.

Maritime piracy is a function of lack of good government on land (Murphy, 2010). Consequently, the most successful efforts to suppress maritime piracy are shore-based political solutions (Pham, 2010-2011). Whether securing the Hansa trade in the Baltic sea in the 14th century or protecting merchant shipping along the suez canal route in the gulf of Aden in the 21<sup>st</sup> century, establishment of peace, good government, and rule of law on land is the best method of maintaining order at sea. Bjork (1943) Although maritime piracy emerges from land, its effects reverberates throughout the seas. Through the ages and around the world, the varied nature of maritime piracy has been shaped by the social, political and economic milieu of the affected regions and of the era. The fertile geography of the vast oceans of the planet has serves as the backdrop, a pernicious expanse of anonymity (Langewiesche, 2005).

## 2. Maritime Sector's Collaborative Response to Maritime Piracy

Maritime shipping is a global industry, accounting for more than 90 percent of international trade. Therefore, ship security is very important for maintaining a good business. The reaction to piracy across the globe in the ocean has evolved sudden intellectual response in the counter piracy strategy, law and policy. The seriousness of the menace and the collaborative effort has not been experienced since nations came together in the war against slavery in the 19<sup>th</sup> century. Various nation-states and the worldwide shipping industry have concertedly evolved and implemented formidable policies and strategies to combat the threat (James, 2011).

The maritime industry has elaborated many measures and programmes to safeguard merchant ships against maritime pirates. After piracy off the coast of Somalia had reached its peak, the variety of passive and active anti-piracy counter measures increased, and industry best management practices (BMP) and guidance to industry concerning preventive measures were promulgated by industry, states, and international organizations.

### 2.1. The Industry Code of Practice

The International Chamber of Shipping (ICS), representing eleven (11) shipping industry organizations<sup>5</sup> has promulgated best management practice (BMP) to safeguard the industry from piracy. The most recent version is BMP3, which was adopted in June, 2010. The BMP consists of planning and operational practices for ship owners, operators, managers, and masters of vessels transiting the gulf of Guinea, gulf of Aden and the Somalia Basin. Typical Somali piracy attack profiles are included in the BMP.

Generally, successful attacks are characterized by five ship vulnerabilities first, the ships have a low speed, second, the vessels that have inadequate planning are at greater vulnerability. Fourth, ships with a visibly low state of alert and evident lack of defensive measures are at greater risks and fifth, a slow response by the ship crew increases the likelihood of a successful attack.<sup>6</sup>

### 2.2. Provision of Advance Notice of Transit

It is required that companies should carefully plan their vessel transit, prior to transit, ships are advised to contact United Kingdom Maritime Trade Operations (UKMTO), Maritime Safety Centre Horn of Africa (MSCHOA), and Maritime Liaison Office Bahrain (MARLO), all three of which connect the shipping industry to

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native populations - Jared Diamond, 'Guns, Germs and Steel: A Short History of Everybody for the Last 13,000 Years', 195-215 (2005) 69.

<sup>5</sup> The Shipping Industry Consortium that prepared BMP has requested that the International Maritime Organization distribute the documents to member states and associated organizations. The Imo did so in Imo Doc.MSC. 1/ Cir. 1337, Piracy and Armed Robbery Against Ships off the coast of Somalia. Best Management Practices to Deter piracy off the coast of Somalia and in the Arabian Sea Area developed by the industry, August 4,2010. Version 1 of the BMP was disseminated by Imo in February 2009; Version 2 was disseminated by IMO in 'MO Doc. MSC.1/Cir. 1335; Piracy and Armed Robbery Against ships off the coast of Somalia: Best Management Practices to Deter piracy off the coast of Somalia and in the Arabian Sea Area, developed by the industry, September 29, 2009.

<sup>6</sup>Kraska[n12] 60.

maritime security force operating in the region by providing advance notice of transit, warships are better positioned to provide different cover, respond quickly if a ship is attacked.<sup>7</sup>

### 2.3. Implementation of the BMP and International Ship and Port Facility Security (ISPC) Code

In May 2009, New York declaration was opened for signature. The declaration commits states to maintain the BMP for merchant ship flying their flag. The declaration also provides that state will implement the International Ship and Port Facility Security (ISPC) Code. Just at the fourth plenary session of the Contact Group on Piracy off the Coast of Somalia (CGPCS) was meeting in New York on September 10, 2009, diplomats from the United States, Japan the Republic of Cyprus, the Republic of Singapore, the United Kingdom signed the New York Declaration. By July 2010, ten (10) countries had signed the declaration.<sup>8</sup>

### 2.4. International Maritime Bureau

The international maritime bureau is an industry funded by the international chamber of commerce (ICC) and is also involved in advising merchant ships on tactics to avoid becoming victims of piracy. In 1992, the IMB established a Piracy Reporting Centre in Kuala Lumpur, Malaysia. Funded by the merchant shipping industry, the 24-hour IMB Piracy Reporting Centre (PRC) serves as the shipping industry's clearing house for assisting ship masters in avoiding piracy attack, and in reporting actual or attempted attack or even suspicious movement.<sup>9</sup>

The PRC maintains an internet website that provides location and other data on piracy attacks worldwide. The PRC issues daily status reports on piracy and armed robbery to ships via broadcasts on the INMARSAT- C safety NET service and makes reports to law enforcement. The IMB also issues extensive guidance to the shipping industry. Crew should be briefed on the risks of piracy before transit, and vessels should conduct piracy emergency response drills to test communication procedures before entering into a high risk area. The IMB is a private entity and represents the interests of governments in the international maritime organization (IMO)

### 2.5. Counter Piracy at IMO

Article 100 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) requires states to cooperate in the suppression of piracy. States may conduct operational naval patrols, share intelligence and law enforcement capabilities, and extradite and prosecute suspected pirates. Nations should also maintain robust internal communications among various law enforcement and diplomatic agencies, and between coastal states and flag states.<sup>10</sup>

The IMO first addressed the problem of maritime piracy in 1983, the year after UNCLOS III was adopted, when Sweden submitted a paper to the maritime safety committee expressing alarm over the gathering threat of piracy. IMO detailed guidelines on counter piracy measures are contained in the following documents:<sup>11</sup>

IMO DOC. MSC/Circ. 443, measures to prevent unlawful Acts against passengers and crew on Board ships, Maritime Safety Committee Circular, September 26, 1986.

IMO DOC. A. 683 (17), Prevention and Suppression of Acts of piracy and Armed Robbery against ships, November 6, 1991.

IMO DOC. A. 738 (18), Measures to Prevent and Suppress Piracy and Armed Robbery against ships, November 4, 1993

IMO DOC. A. 923 (22), IMO, Measures to Prevent the Registration of Phantom Ships, November 29, 2001. This refers to a fraudulent practice whereby hijackers reregister seized vessels under different names, often after having sold the cargo and kill the crew

IMO DOC. A. 979 (24), Piracy and Armed Robbery against Ships in waters off the coast of Somalia, November 23, 2005 . IMO DOC. A. 1002 (25), A Comprehensive Resolution on Piracy and Armed Robbery' Against ships in waters off the coast of Somalia

IMO DOC. MSC. 1/Circ. 1333, institution of Corporate Tactical Information mounting of effective Patrol Activities, June 26, 2009, Annex 99

IMO DOC. MSC/Circ. 1073, Directives for Maritime Rescue Coordination Centres (MRCCS) on Acts of Violence Against Ships, June 10, 2003, which directs the Establishment of Maritime Rescue Coordination Centres

IMO DOC. MSC./Circ. 1072, Guidance on Provision of Ship Security Alert Systems, June 26, 2003.

IMO DOC. MSC/Circ. 1009/Rev. 1, False Security Alerts and Distress j Security Double Alerts, December 14, 2004 which directs states to institute emergency response procedures.

IMO DOC. MSC/623. Rev. 3, Measures for the Employment of Enhanced Lighting and Detection Mechanisms, July 6, 2006.

IMO DOC. MSC./623. Rev. 2, June 20, 2001.

Other Guidelines formulated by the IMO which states are to adopt into their municipal policy and strategy include.<sup>12</sup>

<sup>7</sup> Ibid

<sup>8</sup> Ibid p.79

<sup>9</sup> Ibid 80

<sup>10</sup> IMO, Focus on IMO: Piracy and Armed Robbery at Sea, January 2000; 2.

<sup>11</sup> Kraska [n12] 102.

<sup>12</sup> IMO DOC. MSC/Circ. 1072, Guidance on Provision of Ship Security Alert Systems, June 26, 2003.

**Ship Security Plans:** this is to be based on risk assessment, for instance vessel and cargo type and size, freeboard (the distance of the deck to the water), the maximum speed of the ship, the number of crew and their level of training, the ability to establish secure areas or a safe room sanctuary on board the ship to protect the crew, installation of surveillance equipment that can help alert a ship under attack.

**Ship board security:** this involves passive defensive measures chosen from a menu of passive and defensive measures to deter or defeat pirates. Passive measures are not considered to constitute the use of force. Passive measures may include determining the area to be transited, the time of year, the time of day, the type of ship, and the make-up of the crew.

**Designing Vessels with High- speed knots:** this recommends travelling in ship with high knots of up to 17 or greater which are least susceptible to pirate attack, because the pirate skiffs do not have sufficient time from the initial sighting to catch and climb on board the ships, and it is more difficult to board a faster vessel.

**Employment of measures to reduce vibration from the ship:** this can be attained by using razor wire securely tight to the rails, suspension of 55-gallon drums from the side of the ship which swinging motion makes boarding difficult, also some ships heading through the western Indian Ocean have hung large banners over the side of the ship with the inscription in various languages, that the ship is armed-even if it is not.

**Recognition of unique measures:** for instance the United States' permission of ships flying its flag to use non-deadly force in defence of the vessel or in defence of property, or to prevent theft or intentional damage of property. For example a non-deadly force include aggressive maneuvers to create a large wake that could swamp the pursuing pirate skiff; use of the sonic Long Range Acoustic Device (LRAD): aiming of fire hoses to deter boarding by pirates; use of disabling fire to halt skiffs; use of concertina wire or barbed wire around the deck rails in order to prevent boarding of the ship. Tasers, flash bangs, bean bag guns, and dazzling or blinding lights stop pirates. Warning shots are not considered a use of force by the United States, but instead constitute a warning signal.

**Active measures:** this include use of force; attempt at standardization carriage of firearms; building of citadels in ships; embarkation of unarmed security personnel; the contract personnel option; the right of self-defence; vetting of the contract ship security personnel.

## 2.6. Formulating Counter-Piracy Law in Nigeria

Before adopting any set of measures to counter piracy, it is important for government or other agencies concerned to gather accurate statistics of the incidents; to collate these statistics under both type and area and to assess the nature of the attacks with special emphasis on types of attack, accurate geographical location and modus operandi of the wrong doers and to disseminate or publish these statistics to all interested parties in a format that is understandable and useable. Advance intelligence could also prove useful in obtaining information to governments in order to be able to act in a coordinated manner even before an attack occurs. Based on the statistics of the incidents and any intelligence of piracy and armed robbery against ships entitled to fly Nigerian flag, as necessary, advise and guidance on any appropriate additional precautionary measures ships may need to put in place to protect themselves from attack. The government should involve representatives of ship-owners and seafarers in developing these measures to prevent and suppress piracy and armed robbery against ships.<sup>13</sup>

In any ongoing campaign against piracy and armed robbery, it is necessary, wherever possible to neutralize the activities of pirates and armed robbers. As these persons are criminals under both International and Nigerian Laws, this task will generally fall to the security forces. Government should avoid engaging in negotiation with these criminals and seek to bring perpetrators of piracy and armed robbery against ships to justice. Negotiating with criminals in a case regarding hijacking of ship may encourage potential perpetrators to seek economic revenue through piracy.<sup>14</sup> In the light of the foregoing, the following strategic measures need be incorporated into any counter piracy framework for the country.

### 2.6.1. Self-Protection

Ships can and should take measures to protect themselves from pirates and armed robbers. These measures are contained in MSC.1/Circ.1334. While security forces can often advise on these measures, the government is required to take such measures as are necessary to ensure that owners and masters accept their responsibility. Ultimately, it is the responsibility of owners, companies, ship operators and masters to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists. The government should make ship owners/companies aware of any UN Security Council, IMO, or other UN resolutions on piracy and any recommendations therein relevant for the ship owner, ship operator the master and crew when operating in areas where piracy or armed robbery against ships occur.<sup>15</sup>

With respect to the carriage of firearms on board, the government should be aware that merchant ships and fishing vessels entering the territorial sea and/ or ports of another state are subject to that state legislation .It should be borne in mind that importation of firearms is subject to port and coastal state regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.<sup>16</sup> So the government can bring down this to form part of its local legislation as a coastal state whose laws affect merchant ships within its territorial sea. Domestic legislation can cater for this possibility.

<sup>13</sup> J. Kraska, op. cit; p. 202

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> IMO MSC.1/1334



### 2.6.2. Non-Arming of Seafarers

For legal and safety reasons, flag states are strongly discouraged in carrying and using of fire arms by seafarers for personal protection or for the protection of a ship. Seafarers are civilians and the use of fire arms carried on board ship is great. Carriage of arms on board ships may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker.<sup>17</sup>

### 2.6.3. Use of Unarmed Security Personnel/Private Contracted Armed Security Personnel

The use of unarmed security personnel is a matter for individual ship owners, companies and ship operators to decide. It should be fully acceptable to provide an enhanced lookout capability this way. The use of privately contracted armed security personnel on board ships is a matter for flag state legislation and policies and is a matter for flag states to determine in consultation with ship owners, companies, and ship operators, if and under which conditions this will be allowed. Flag states should take into account the possible escalation of violence, which could result from carriage of armed personnel on board merchant ships, when deciding on its policy.<sup>18</sup> But it is a policy to exploit and provide for in a local legislation in Nigeria.

### 2.6.4. Military Teams or Law Enforcement Officers only Authorized as Escorts

The use of military or law enforcement officers duly authorized by the government of Nigeria to carry firearms for the security of the ship is a matter for the government to authorize in consultation with ship owners, companies and ship operations.

Government should provide clarity of this policy on the use of such teams on board vessels entitled to fly its flag.<sup>19</sup>

Article 100 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) requires all states to cooperate to the fullest possible extent in the repression of and fight against piracy, particularly in areas where the United Nations Security Council expresses concern about the imminent threat of attacks by pirates and calls upon states to do so. This could be done by prosecuting suspected pirates, contributing to capacity building efforts and by deploying naval vessels and aircraft in accordance with international law to patrol the affected areas.<sup>20</sup> Nigeria can afford to do this in line with section 12 of the 1999 Constitution as amended, by domesticating these provisions in its local statutes.

### 2.6.5. Integrated Communication/ Incident Command Systems

On communication and co-operation between various agencies, and the response time after an incident has been reported to the coastal state: an incident command system for tactical as well as operational response could be adopted in Nigeria to provide a common terminology; integrated communication; a unified command structure; consolidated action plans; a manageable span of control; designated incident facilities, and comprehensive resource management; existing mechanisms for dealing with other maritime security matters, e.g. smuggling, drug trafficking and terrorism, should be incorporated into the incident command system in order to allow for efficient use of limited resources; procedures for rapidly relaying alerts received by communication centers to the entity responsible for action should be developed or, if existing, kept under review; and the government should by bilateral or multilateral agreements cooperate in establishing, when appropriate, a single point of contact for ships to report piracy threats or activities in specific high threat area; such as the Gulf of Guinea.<sup>21</sup>

### 2.6.6. Reported Incidents and Prosecution of Pirates

On investigating into reported incidents and prosecution of pirates and armed robbers when caught; it should be firmly established which entity in Nigeria has the responsibility and legal authority for carrying out post-attack investigations, since lack of clarity during the hours after an incident may result in missed investigative opportunities and loss or deterioration of evidence. The appointed investigation agency should have personnel trained in standard investigative techniques and who are familiar with the legal requirements of the courts, as it is widely assured that prosecution, conviction and confiscation of assets of offenders are the most effective means of discouraging would be offenders. As offenders may be involved in other kinds of offences, piracy and armed robbery against ships should not be viewed in isolation and useful information should, therefore, be sought in existing criminal records. Systems should be in place to ensure that potentially useful information is disseminated to all appropriate parties, including investigators.<sup>22</sup>

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<sup>17</sup>Ibid

<sup>18</sup>Ibid

<sup>19</sup>IMO DOC. A. 738(18) Measures to Prevent and Suppress Piracy and Armed Robbery against Ships, November: 7,1983.

<sup>20</sup>Ibid

<sup>21</sup>Ibid

<sup>22</sup>Ibid

### 2.6.7. Criminal Jurisdiction

In line with the IMO recommendations in MSC.1/Circ. 1333, a person apprehended at sea outside the territorial sea of any state for committing acts of piracy or armed robbery against ships, should be prosecuted under the law of the investigating state by mutual agreement with other substantially interested states:

- (a) which is the flag state of a ship that is the subject of an investigation, or
- (b) in whose territorial sea an incident has occurred; or
- (c) where an incident caused, or threatened, serious harm to the environment of that state, or within those areas over which the state is entitled to exercise jurisdiction as recognized under international law; or
- (d) where the consequences of an incident caused, or threatened, serious harm to that state or to artificial islands, installations or structures over which it is entitled to exercise jurisdiction; or
- (e) where, as a result of an incident, nationals of that state lost their lives or received serious injuries; or
- (f) that has as its disposal important information that may be of use to the investigation; or
- (g) that, for some other reason, establishes an interest that is considered significant by the lead investigating state; or
- (h) that was requested by another state to assist in the repression of violence against crews, passengers, ships and cargoes or the collection of evidence; or
- (i) that intervened under UNCLOS article 100, exercised its right of visit, under UNCLOS article 110, or effected the seizure of a pirate/ armed robber, ship or aircraft under UNCLOS article 105 or in port or on land.<sup>23</sup> Nigeria is entitled to domesticate these provisions in its local legislation to have criminal jurisdiction to arrest and try maritime pirates whose activities are captured under the items listed above.

### 2.6.8. Emergency/Ship Response Procedures / Plans

Nigeria, according to IMO recommendations, is required to make all ships operating in waters where attacks occur to have measures to prevent attacks and attempted attacks of piracy and armed robbery against ships and on how to act if such an attack or attempted attack occurs, as part of the emergency response procedures in the safety management system, or part of the ship security plan. Such measures should include a full spectrum of appropriate passive and active security measures. The ship security plan and emergency response plans should be based on a risk assessment which take into account the basic parameters of the operation including.<sup>24</sup>

- (a) the risks that may be faced;
- (b) the ship's actual size, freeboard, maximum speed and the type of cargo, which is being transported;
- (c) the number of crew members available, their capability and training;
- (d) the ability to establish secure areas on board ship; and
- (e) the equipment on board, including any surveillance and detection equipment that has been provided.

## 2.7. Nigeria's Duty as a Coastal State in Counter Piracy Efforts

In order to be able to respond, as quickly as possible, to any report from ships on piracy and armed robbery attacks, every piracy or armed robbery threat area should be adequately covered by Coast Earth Stations which are continuously operational, and which preferably are situated in the littoral state (Nigeria) responsible for the area or in neighbouring states; neighbouring countries having common borders in areas which can be characterized as piracy and armed robbery threat areas should establish cooperation agreements with respect to preventing and suppressing piracy and armed robbery. Such agreements should include the coordination of patrol activities in such areas; on further development of regional cooperation, a regional agreement to facilitate coordinated response at the tactical as well as the operational level should be concluded between Nigeria and its neighbours; such an agreement should specify how information would be disseminated; establish joint command and control procedures (a regional incident command system); ensure efficient communications; set policies for joint operations and entry and pursuit; establish the links between entities involved in all maritime security matters, establish joint specialized training of and the exchange of views between investigators; and establish joint exercises between tactical and operational entities.<sup>25</sup>

### 2.7.1. Programme for Law Enforcement Officials

The programme for law enforcement officials aboard another parties vessels requires that the parties shall establish a law enforcement liaison officer programme among their law enforcement authorities. Nigeria may designate a coordinator to organize its programme of activities and to notify the other parties of the types of vessels and officials involved in the programme. Subject to the law of the parties involved, these liaison officers may, in appropriate circumstances embark on the law enforcement vessels of other parties; authorize the pursuit, by the law enforcement vessels on which they are embarked, of suspect vessels fleeing into the territorial waters of the liaison officer's party; authorize the law enforcement vessels on which they are embarked to conduct patrols to suppress acts of armed robbery against ships in the liaison officer's party's national waters; and enforce the laws of the parties in

<sup>23</sup>Ibid

<sup>24</sup>Ibid.

<sup>25</sup> IMO DOC. A. 922(22), Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships. January 22, 2002.

national waters, or seaward therefrom in the exercise of the right of hot pursuit or otherwise in accordance with international law.<sup>26</sup>

### **2.7.2. Use of Force Under the Programme for Law Enforcement**

When a liaison officer is embarked on another party's vessel, and the enforcement action being carried out is pursuant to the liaison officer's authority, any search or seizure of property, any detention of a person, and any use of force pursuant to the agreement, whether or not involving weapons, shall be carried out by the liaison officer, except as follows: crew members of the other party's vessel may assist in any such action if expressly requested to do so by the liaison officer and only to the extent and in the manner request. Such request must only be made, agreed to, and acted upon in accordance with the applicable laws and policies, and such crew members may use force in self-defence, in accordance with the applicable laws and policies.<sup>27</sup> Nigeria as a signatory to IMO convention on the fight against piracy and armed robbery at sea can domesticate the provisions of this agreement and enforce against this menace.

### **2.7.3. Detecting and Pursuing Another Party's Vessel in ones Internal Water**

Parties may only conduct operations to suppress piracy and armed robbery in the waters of another party with the permission of that party in any of the following circumstances. An embarked liaison officer so authorizes. On those exceptional occasions when a suspect vessel, detected seaward of national waters, enters the national waters of another party and no liaison officer is embarked in a law enforcement vessel, and no law enforcement vessel from the party whose national waters have been entered by a suspect vessel is immediately available to investigate, the law enforcement vessel may follow the suspect vessel into national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instructions and the arrival from law enforcement authorities of the party in whose national waters the event took place. On those equally exceptional occasions when a suspect vessel is detected within a party's national waters, and no liaison officer is embarked from that party and no law enforcement vessel is immediately available to investigate from that party, the law enforcement vessel from another party may enter the national waters, in order to board the suspect vessel and secure the scene, while awaiting expeditious instruction from the law enforcement authorities and the arrival of law enforcement officials of the party in whose national waters the event has occurred. This strategy should be vigorously pursued and utilized by Nigeria to help in building programmes to suppress maritime piracy in the Gulf of Guinea.

### **2.7.4. Notice to Law Enforcement Authority**

The government should provide prior notice to such as the navy and marine police in the waters where the event took place of action to be taken, unless it is not operationally feasible to do so. In any case, notice of the action shall be provided to the relevant law enforcement authority without delay. This means that an effective communication machinery should be provided by government to ensure effective communication.

### **2.7.5. Jurisdiction over Detained Vessel**

In all cases arising in national waters, or concerning vessels flying-the flag of a party seaward of any state's territorial sea, the party whose flag is being flown by the suspect vessel shall have the primary right to exercise jurisdiction over a detained vessel, cargo and/ or person or board (including) seizure, forfeiture, arrest, and prosecution), provided, however, that the party may, subject to its constitution and laws, waive its primary right to exercise jurisdiction and authorize the enforcement of another party's law against the vessel, cargo and/ or persons on board. This calls for the domestication of all conventions relating to security of sea including piracy from the United Nations, IMO, UNCLOS and other international agencies bordering on safety at sea.

### **2.7.6. Implementation of the Operations to Suppress Piracy**

Operations to suppress piracy and armed robbery pursuant to the Agreement on Cooperation in Preventing and Suppressing Piracy and Armed Robbery against ships and shall be carried out only against suspect vessel, including vessels without nationality, and vessels assimilated to vessels without nationality. All parties Nigeria inclusive, shall utilize the incident command system when operating in conjunction with another party in an operation within the scope of the agreement. All parties undertake to agree on uniform reporting criteria in order to ensure that an accurate assessment of the threat is developed. Furthermore, all parties shall endeavour to ensure that reporting ships are not unduly detained for investigative purposes. A summary of reports to each party shall be shared at least annually with the other parties.<sup>28</sup>

A party conducting a boarding and search pursuant to the Agreement shall promptly notify the flag state of the results thereof. The relevant party shall timely report to the other party, consistent with its laws, on the status of all investigations, prosecutions and judicial proceedings resulting from enforcement action taken pursuant to the Agreement where evidence of piracy and armed robbery has been found.

<sup>26</sup>Ibid

<sup>27</sup>Ibid

<sup>28</sup> IMO DOC. MSC.I/Circ. 1334, Guidance to Ship owners and ship operators, shipmasters and crews on Preventing and Suppressing Acts of Piracy and Armed Robbery against Ships, June 23, 2009.

Each party shall ensure that its law enforcement officials, when conducting boarding and searches (and air interception) activities pursuant to this Agreement act in accordance with the applicable national laws and policies of that party and with the applicable international law and accepted international practices.

Boarding and searches pursuant to this Agreement shall be carried out by law enforcement officials from law enforcement vessels (or aircraft). The boarding and search teams may operate from such ships (and aircraft) of the relevant parties, and seaward of the territorial sea of any state, from such ships of other parties may be agreed upon by the parties. The boarding and search team may carry standard law enforcement small arms.<sup>29</sup>

All these IMO recommendations are matters to be seriously appropriated by Nigeria since maritime piracy is a global crime and is fought collectively. Our local laws should be enhanced to capture and provide for these measures, while its criminal justice law must be strengthened. The Criminal Code, the Criminal Procedure Act and other related criminal statutes should be reinforced to punish pirates and armed robbers at sea.

### 2.7.7. Formulation of Comprehensive Counter Piracy Legal Framework

Efforts should be made to develop a comprehensive National policy and strategy for maritime security to fully integrate and create a synergy among the existing institutions and agencies to ensure effective and efficient implementation. Blending public and private maritime security activities on a global scale into an integrated effort that addresses piracy and armed robbery in the gulf of Guinea.

The envisaged National strategy for maritime security liaises with all Federal Government Maritime security programmes and initiatives into comprehensive and cohesive national effort encompassing all appropriate Federal, State, local and private sector entities.

In addition to this strategy, the agencies should develop supporting plans to address the special threats of piracy and armed robbery in the gulf of Guinea. Such plans could include:

- ✓ Nationwide plan to accomplish sea space awareness
- ✓ Global/Regional maritime intelligence integration plan
- ✓ Provisional maritime operational threat response plan
- ✓ International contact and collaboration strategy
- ✓ Maritime infrastructure development plan
- ✓ Regular maritime transport system security plan
- ✓ Maritime commerce safety plan
- ✓ Internal coordinating plan

In addition to, and in conjunction with the above named national strategies, Nigeria should as a matter of necessity and urgency cause the domestication of all the Articles of the 1982 UNCLOS that have to do with countering of piracy into our local legislation as enshrined in section 12 of 1999 Constitution, as amended. Specially, Articles 100, 104-107, 110-111 of the United Nations Convention on the Law of the Sea, 1982 should be integrated to our national legislation to be able to arrest and punish pirates and armed robbers at sea.

The Criminal Code Act, Cap. C39 Laws of the Federation of Nigeria, 2004 should equally be reinforced and expanded to include crimes that will be domesticated according to S. 12 of the Constitution. This will pave way for crimes committed in the Nigerian maritime domain to be punished like any other crime committed on land.

The Nigerian sea power through the Nigerian Navy should be improved, equipped and empowered to patrol Nigerian continental shelf, EEZ and territorial sea. The Criminal Code Act envisaged to be reinforced should contain provisions that should empower the navy to apprehend, detain and bring pirates to justice in the municipal court. A special admiralty criminal court could be established to try these maritime crimes.

A maritime criminal jurisdiction of the Admiralty should be established at some selected ports to punish offenders. A maritime criminal court is hereby advocated to be a permanent court to punish maritime crimes generally since piracy and armed robbery condone other forms of crimes.

A Nigerian piracy policy which should include but not limited to surveillance, prevention, deterrence, reduction of vulnerability in the Nigerian maritime domain is highly recommended. Holding pirates accountable for their criminal activities by exposing them to prompt and adequate trials, preserving freedom of the seas, protection of sea lines of communication, supporting international efforts, partnership with regional states under MOWCA to map out action plans to suppress piracy and armed robbery at sea.

Reinforcing and participating in the MOWCA integrated coast guard network to cover the entire space of the Gulf of Guinea. This will strengthen the institutional framework for close cooperation on suppression of piracy and armed robbery at sea around and about the Gulf of Guinea. This MOWCA agreement provides guidelines for coastal surveillance, maintaining presence in the economic zones, and enforcement of international treaties especially the law of the sea conventions and IMO instruments. For example the IMO's maritime safety committee documents contain in the following documents among others, should be domesticated.

- IMO documents MSC/Circ. 1333, Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery against Ships, June 26, 2009.
- IMO Document MSC/Circ. 443 Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, Maritime Safety Committee Circular, September 26, 1986.
- IMO Document A 683 (17), Preventing and Suppression of Acts of Piracy and Armed Robbery against Ships, November 6, 1991.

<sup>29</sup>Ibid



- IMO Document A 545 (13), Measures to Prevent Acts of Piracy and Armed Robbery against Ships, November 17, 1983.
- IMO Document A 738(18), Measures to Prevent and Suppress Piracy and Armed Robbery against Ships, November 4, 1993.
- IMO Document A 922 (22), Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, January 22, 2002.
- IMO Document A 1025 (26), Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, January 18, 2010.
- IMO Document A 923 (22), IMO, Measures to Prevent the Registration of Phantom Ships, November 29, 2001.

### 3. Conclusion

The safety and economic security of Nigeria depends substantially on the secure use of the waters around and about the Gulf of Guinea. The oil and gas industry in Nigeria cannot be sustained if ships and tankers transporting these cargoes cannot operate under safe and secure maritime environment. Nigeria therefore has a vital national interest in maritime safety and security. Terrorists in the name of pirates and armed robbers must be stopped before they render the nation's economy useless and without growth. Flowing from this, Nigeria must take full advantage of regional alliances, international cooperative measures, devices and methods in strengthening the use of law enforcement agencies and the navy, strengthening of intelligence collection, analysis, and dissemination.

The entire maritime space generally, and in particular, the oceans are a single, immense maritime domain that affects human life globally. Although the four major geographical components of Atlantic, Pacific, Indian and Arctic is man-made, this continuous body of water is the world's marvelous well defined geographical feature, which is under no state's jurisdiction. It offers all countries, even land-locked nations, a network of sea-lanes or highways that is of enormous use to their security and wealth. The waters are also the source of food, mineral resources, and tourism, and the commercial lives of all countries are sustained by it. These waters equally act as both a barrier to and a conduct for threats to the security of Nigeria and nations globally. Nigeria highly depends on the oceans for its international trade and other uses.

The oceans are used to move a greater percentage of general cargo in containers and this sustains a global maritime link. Shipping is the life of the world economy, but seriously vulnerable to attacks in some key areas including the Gulf of Guinea and Gulf of Aden (Horn of Africa). Although the global economy continues to increase the value of the oceans' role as highways for commerce and provider of resources, technology and the forces of globalization have lessened their roles as barriers. Thus, this continuous domain serves as a vast, ready, and largely unsecured medium for pirates and armed robbers.

Defeating this serious threat to maritime security requires a common understanding and a joint effort for action on a global scale. Maritime security requires a top priority to ensure freedom of the seas; facilitate freedom of navigation and commerce; advance prosperity and freedom; and protect the resources of the ocean. Each country has a common interest in achieving two basic objectives to make easier the strong maritime trade that supports economic security and to protect against maritime piracy and armed robbery. Since all nation states benefit from this collection security, they should share in the duty to maintain safe sea environment by countering the threats in their maritime domain. Nigeria as a beneficiary in the ocean activities including shipping needs to review and strengthen all of its policies and strategies to combat the serious attacks of piracy and armed robbery in the Gulf of Guinea. Various related governmental agencies should carry out maritime security strategies which should provide effective layer of securing the Nigerian marine environment.

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