Effectiveness of the Current Regimes to Combat Piracy in the Gulf of Guinea: An Evaluation

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Abstract

In recent years, piracy has emerged as a growing problem in the gulf of guinea region (the region). The gulf has, in the past years, witnessed a sharp rise in pirate attacks. The aim of this paper is to assess the application and shortcomings of the current arrangements in addressing the problem of piracy in the region. In doing so, the paper presents the possible means of combating piracy in the region and provides an analysis of counter-piracy responses that have been employed in the region. Analysis includes an evaluation of the steps taken by the governments of the region and the effectiveness of the implemented strategies to counter the threat posed by piracy in the region. Identifying the barriers and challenges to combat piracy, a comprehensive arrangement based effective cooperation is proposed in the paper.

Keywords

piracy – Gulf of Guinea – effectiveness – current regimes – evaluation

1 Introduction

Piracy is one of the most worrying issues to the global community today.¹ The cost of piracy is human, economic, environmental and political. The

¹ Robert Haywood and Roberta Spivak, *Maritime Piracy* (Routledge, 2012).

manifestation of piracy constitutes a significant and direct threat to peace, security and the economic development of the affected countries and regions concerned.

The negative impact of piracy has begun to affect the global interests. It has become a recent source of concern for the international community. According to UN Secretary General Ban Ki-moon, the epidemic of piracy poses a serious threat to international peace and security and has destabilising effects on international navigation and maritime trade.² The top regions for piracy today are the Gulf of Aden, the Gulf of Guinea, the Malacca Strait and the South China Sea. All these regions are vital shipping routes, crucial for global trade.

In recent years, piracy has emerged as a growing problem in the Gulf of Guinea region (the region). The gulf has, in the past years, witnessed a sharp rise in pirate attacks. Alarming, both the frequency of piracy attacks and the level of physical violence against seafarers have increased in recent years. Piracy in the region has become so prevalent that it is now a growing risk for the states in the region. Although a number of legal and policy initiatives have been undertaken to combat piracy in the region, question remains as to the efficacy of the current arrangements. The aim of this paper is to assess the application and shortcomings of the current arrangements in addressing the problem of piracy in the region. In doing so, the paper presents the possible means of combating piracy in the region and provides an analysis of counter-piracy responses that have been employed in the region. Analysis includes an evaluation of the steps taken by the governments of the region and the effectiveness of the implemented strategies to counter the threat posed by piracy in the region. Identifying the barriers and challenges to combat piracy, a comprehensive arrangement based effective cooperation is proposed in the paper.

2 Methods of Fighting Piracy in the Gulf of Guinea

Developments in piracy over the last 20 years have been alarming for a number of regions. Among these, increased piracy has seriously disrupted the free flow of international commerce on the sea. As yet, no collective response has been forthcoming to prevent or effectively eliminate the threat.³ In spite of

2 Ban Ki-moon, 'Maritime Piracy as a Threat to International Peace and Security' (Speech delivered at Security Council Debate, United Nations, 19 November 2012) <http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1702>.

3 Bibi van Ginkel and Frans-Paul van der Putten, *The International Response to Somali Piracy: Challenges and Opportunities* (Martinus Nijhoff Publishers, 2010) 3.

various international efforts, the strategic plan to combat piracy has been inadequate, as it has failed to acknowledge fully the causes contributing to piracy. For this reason, to fight piracy in the Gulf of Guinea, it is essential to apply an integrated multidimensional approach that strengthens maritime security while also effectively addressing the principal causes of piracy embedded in the economic, social and political conditions of the region, including poor governance, corruption, unemployment and poverty. Additionally, there is an urgent requirement for cooperation and coordination at the regional and international levels.

Fortunately, there is a growing consensus for the need of a joint response to tackle the problem. A variety of local counter-piracy efforts in the region are now being supported by major powers like the US, China and several European countries. The UN and EU are also playing a pivotal role in building regional capacity. Economic Community of Central African States (ECCAS), Economic Community of Western African States (ECOWAS), the United Nations (UN) Regional Office for Central Africa and the UN Office for West Africa have been working together to adopt and implement a common strategy to combat piracy in the Gulf of Guinea. This has resulted in a range of military and non-military activities to fight piracy in the region.

2.1 *Military Means to Suppress Piracy*

Fighting piracy is essentially a law enforcement operation at sea.⁴ However, the problem cannot be solved by exclusively relying on a military-based approach. Seeking such a solution may render piracy purely as a security problem rather than as a symptom of more serious governance problems onshore.

Historically, the principal defence against piracy has been through military intervention. Coastal states having maritime enforcement capability usually control piracy by naval action. However, the Gulf of Guinea countries have limited maritime capacity and little capability to counter the threat effectively through these means. They also lack the unity required to allow for sustained surveillance and security in their regional waters. Consequently, weak naval enforcements have done little to prevent pirates from attacking merchant vessels with impunity. Realising the complexity of the situation, the following options may be invoked by the Gulf of Guinea countries.

4 Douglas Guilfoyle, 'The Laws of War and the Fight against Somali Piracy: Combatants or Criminals' (2010) 11 *Melbourne Journal of International Law* 3.

2.2 *Build Regional Maritime Capacity*

Piracy in the Gulf of Guinea occurs mostly in the territorial seas of coastal states. In this sense, the primary responsibility to suppress piracy lies with the national security forces of the regional countries. Notably, the growth of piracy in the region is due mainly to the inability of the coastal states to defend their territorial seas. Therefore, it is in their strategic interest to develop local maritime capacity. The states need to ensure that they are better equipped to tackle piracy. This can be achieved by strengthening the local maritime forces and their operational capabilities.

The introduction of an international naval force in the coastal waters of the Gulf of Guinea as has occurred off the coast of Somalia may be problematic. While the majority of pirate attacks in Somalia take place on the high seas, most of the attacks in the Gulf of Guinea occur within territorial waters. Given the broad regional sensitivities concerning external interference, the presence of foreign vessels in jurisdictional waters is likely to be considered by many states as unwarranted. Further, the possibility of foreign warships being a target of attack by pirates may undermine the usefulness of any such deployment.⁵

2.3 *Improve Collective Military Cooperation*

One possible option for a systemic solution to piracy could be the creation of a regional cooperative maritime security approach. Such an approach would make maritime safety and security a shared responsibility and enable regional states to conduct cross-border patrols and share law enforcement intelligence. Implementation of the approach would require building a regional maritime security partnership among the regional countries. To this end, the Gulf of Guinea's countries could establish a task force consisting of the naval forces in the region.⁶ This would significantly improve the efficient coordination of information and assets among all the naval forces of the region. The objective of such a task force would be to create a centre for law enforcement cooperation to facilitate in building a sustainable regional capacity and capability.

5 United Nations Assessment Mission Report, *Piracy in the Gulf of Guinea*, Security Council Doc. S/2012/45 (7–24 November 2011) 15.

6 The effort to set up a joint regional naval force among the members of the Gulf of Guinea Commission was initiated by the President of Nigeria under the codename 'Gulf of Guinea Guard Force'. Regrettably, this force is yet to materialise.

2.4 *Enhance Maritime Domain Surveillance*

Successful suppression of piracy can be accomplished by the collective vigilance of the maritime domain of regional countries.⁷ Progress in this regard can be achieved through a joint anti-piracy operation with all the navies of the region. The countries of the region can establish a common surveillance procedure and develop joint operational coordination capabilities in this regard. This would facilitate an effective maritime security intervention through a regional security system. It is expected that coordinated anti-piracy patrols would have deterrent effects on piracy.

2.5 *Consider the Use of Private Military Security Companies*

Ship owners operating in the region may consider the use of privately contracted armed guards. The presence of armed players in the Indian Ocean has been effective in reducing the number of successful hijackings in the region.⁸ While this solution may create new problems, the perceived success of private armed guards in protecting ships against Somali-based piracy may encourage the coastal states in the Gulf of Guinea and ship owners to consider this option. States willing to permit the use of Privately Contracted Armed Security Personnel need to establish a suitable national framework governing this. At present, privately contracted armed guards are not permitted by law to operate within the territorial waters of Gulf of Guinea countries. Ship owners and operators wishing to engage armed personnel have to pay the national military forces of the state in question to provide escort vessels or personnel to travel on board vessels. Nevertheless, privately contracted armed guards may act as security advisors to the Master of the vessel or serve as supervisors on escort vessels.

It is recommended that the use of private armed guards should be considered by Gulf of Guinea governments as an absolute last choice. It is uncertain whether the presence of armed guards in the Gulf of Guinea would have the same effect as off the coast of Somalia. It is believed that due to previous armed conflicts in the region, the Nigerian pirates have access to more sophisticated weaponry than those in Somalia. Moreover, the pirates seem to be less hesitant to employ violence against crews. This being the case, it may be risky to allow private armed guards to operate in the territorial waters of the region.

7 Kevin H Delano, *The Gulf of Guinea and its Strategic Center Point: How Nigeria Will Bridge American and African Cooperation* (Thesis, AIR University, 2009) 8 <<http://www.dtic.mil/dtic/tr/fulltext/u2/a539609.pdf>>.

8 James Brown, 'Pirates and Privateers: Managing the Indian Ocean's Private Security Boom' [2012] *Lowy Institute for International Policy* 3.

Moreover, such as deployment may lead to international disputes, as carriage of armed personnel has legal implications for coastal and port states.

The stand of the federal government of Nigeria on the engagement of private security companies has been a worrisome issue.⁹ The concession agreement between Nigerian Maritime Administration Safety Agency (NIMASA) and the private security company Global West Vessel Specialists Nigeria Limited to provide platforms and expertise has been criticised for ceding maritime security to the private sector. Further, it is alleged that the private company is owned by an ex-commander of the Niger Delta, Government Ekpemupolo (a.k.a. Tompolo). The use of non-authorised private armed guards off Nigeria has also been risky, as the domestic law does not allow the bringing of weapons into its territorial waters. The arrest of *MV Myre Seadiver*, a Russian vessel, on suspicion of importing arms and ammunition is illustrative of the measures that may be taken against private security companies violating the law.

For the greater benefit of the region, the Gulf of Guinea governments should aim to adopt a unified stand on the issue of armed guards. The governments need to clarify the positions and policies of states to avoid uncertainty. Differing positions on whether armed guards are to be allowed within territorial waters are likely to complicate further the security challenges of the region.

2.5.1 Non-Military Means to Suppress Piracy

To fight and eradicate piracy, the Gulf of Guinea states need to address the main causes of the problem. The rise of piracy in the region is due mainly to lack of good governance practices. The failure of the countries to maintain effective command over their land and sea territories has contributed to the growth of piracy in the region.¹⁰ In addition, poverty, crime and corruption in the Niger Delta have created conditions favourable for piracy.¹¹ Therefore, addressing the root causes of piracy in the region requires the adoption of long-term policies actively focusing on improving economic governance and ensuring the socio-economic welfare of the coastal communities.

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- 9 Sharifah Zubaidah Syed Abdul Kader and Abdulkadir O Abdulrazaq, 'Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty' (2013) 9 *Journal of Law, Policy and Globalisation* 22.
 - 10 Ursula Elisabeth Daxecker and Brandon Prins, 'Insurgents of the Sea: Institutional and Economic Opportunities for Maritime Piracy' (2013) *Journal of Conflict Resolution* 2.
 - 11 International Crisis Group, *The Gulf of Guinea: The New Danger Zone* (Africa Report No. 195, International Crisis Group, 2012).

2.6 *Improve Economic Governance*

Poor economic governance in the Gulf of Guinea has seen the region become characterised by crude oil theft, drug trafficking and illegal fishing. These illegal activities have in turn fostered widespread corruption and criminality in the region. The Gulf of Guinea piracy is thus largely the result of poor governance. Notably, the massive organised oil theft business has enabled certain corrupt groups to become rich, leaving the mainstream populations poor. Such economic inequality has led to the growth of maritime crimes along the coast. The development of piracy tends to coincide with economic marginalisation as the vast majority of piratical incidents are motivated by poverty.

The Gulf of Guinea states should thus focus on removing opportunities for corruption and ensure that the proceeds from oil revenue benefit the poor. To control the selling and refining of stolen crude oil, all states need to develop strict regulations. They also need to accomplish full control over their proven oil reserves to counter smuggling.

2.7 *Increase Development on the Coast*

Piracy is largely driven by poor economic opportunities. Lack of sources of livelihood may compel coastal communities to resort to maritime crimes, including piracy. This is very much true in the Niger Delta, where the local residents lost their fishing-related livelihood structures to environmental pollution caused by the oil industry.¹² The majority of piracy incidents occurring in the Gulf of Guinea can be explained in terms of the extreme level of poverty and high unemployment resulting from the environmental abuses and subsequent loss of livelihood.¹³

The solution to piracy in this regard lies with the creation of alternative forms of economic activity along the coast. Gulf of Guinea states should focus on boosting coastal state governance by introducing improved employment opportunities for the coastal population. This reconstruction effort will help to drive prospective pirates away from piracy.

2.8 *Establish Special Courts within the National Jurisdiction of Regional States*

Effectively tackling piracy requires the successful prosecution and imprisonment of persons who engage in piracy. Piracy trials are critical to end the

12 Scott Pegg and Nenibarini Zabbey, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) 48 *Community Development Journal* 400.

13 Kekong Bisong, *Restorative Justice for Niger Delta* (Maklu Publishers, 2009) 90.

impunity of pirates. However, prosecutions can fail if law enforcement, prosecutorial and judicial capacities are not strengthened by states participating in the counter-piracy effort. Unfortunately, most of the countries in the Gulf of Guinea region lack the legal infrastructure to try pirates. The recommended solution in this regard is that the states should establish Special Courts in the respective countries of the region having the jurisdiction to adjudicate piracy prosecutions. To achieve this, the regional countries have to effect significant changes in the law and establish an elaborate legislative framework that grants extra-territorial jurisdiction to the courts.

2.9 *Harmonise the Regional Legislative Framework Based on Key International Legal Provisions on Piracy*

Lack of harmonisation in piracy laws among states impedes the process of deterring piracy. To facilitate effective prosecution, the Gulf of Guinea states should favour a uniform legislative framework that comprehensively domesticates the relevant key provisions of the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS)¹⁴ and the *Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation* (SUA).¹⁵

UNCLOS is the cornerstone of the international legal framework related to piracy. The piracy regime under UNCLOS provides the legal basis for states to collaborate to suppress piracy. The piracy provisions contained in UNCLOS state the rights and obligations of states to cooperate in curbing piracy. Another convention under which piratical acts are considered as offences is SUA. SUA and UNCLOS supplement one another.

UNCLOS codifies the customary international law of piracy. The provisions on piracy in UNCLOS are contained in Articles 100–110. These provisions set out the legal framework for the repression of piracy under modern international law.¹⁶

The definition of the term ‘piracy’ has been the most contentious issue of customary international law. There was no authoritative definition of the term until the customary international law of piracy was first codified in the 1958

14 *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994).

15 *Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation*, opened for signature 10 March 1988, 1678 UNTS 201 (entered into force 1 March 1992) (‘SUA’).

16 The preambles to UNSCR 1848 and 1851 (2008) reaffirm ‘that international law, as reflected in UNCLOS, sets out the legal framework applicable to combating piracy and armed robbery at sea’.

High Seas Convention (HSC).¹⁷ The modern definition of piracy is found in UNCLOS, which, using very similar language, adopts the HSC definition. As of 24 October 2012, 164 states have ratified or acceded to the Convention.¹⁸ This signifies that the definition has achieved universal acceptance by states.

Article 101 of UNCLOS defines piracy as 'any acts of violence or detention [or deprivation] ... committed for private ends by the crew or passengers ... of a private ship ... and directed ... on the high seas against another ship, or against persons or property on board'. The definition therefore clarifies the exemption from the definition of piracy of acts with governmental objectives, acts committed within territorial waters, in port or internal waters, or acts that involve a single ship. This definition thus constitutes an impediment in legally addressing the problem of piracy and affects the implementation of piracy laws globally.

The SUA was adopted on 10 March 1988 and entered into force on 1 March 1992. The main purpose of the Convention was to address maritime terrorism. To that end, the Convention adapted many of the provisions of previously existing anti-terrorism conventions.¹⁹ The Convention provides that certain acts that endanger the safety of international maritime navigation are offences. The offences covered by the Convention are listed in Article 3(1) and include:

1. The seizure of, or exercise of control over, a ship by force, threat of using force or any form of intimidation;
2. Violence against a person on board a ship;
3. Destruction of a ship or the causing of damage to a ship or its cargo;
4. Placement on a ship of a device or substance that is likely to destroy or cause damage to that ship or its cargo;
5. Destruction of, serious damaging of, or serious interference with, the operation of maritime navigational facilities;
6. Communication of information known to be false; and
7. Injuring or killing any person in connection with the commission or attempted commission of the preceding offences.

17 *Geneva Convention on the Law of the Sea*, opened for signature 29 April 1958, 450 UNTS 82 (entered into force 30 September 1962).

18 See *UNCLOS at 30*, 2 < http://www.un.org/depts/los/convention_agreements/pamphlet_unclos_at_30.pdf>.

19 Helmut Tuerk, 'Combatting Terrorism at Sea – The Suppression of Unlawful Acts against the Safety of Maritime Navigation' (2008) 15 *University of Miami International and Comparative Law Review* 347.

Attempting, threatening and abetting any of the offences have also been declared as crimes under Article 3(2) of the Convention. Notably, the Convention does not use the term piracy, but includes it within the scope of its application.²⁰ The broad set of offences defined in Article 3 includes the basic element of the crime of piracy (that is, the seizing of a ship by force, threat or intimidation).²¹ Therefore, acts that are piracy may also be offences under the SUA Convention.

Although the Convention was not intended to address the law of piracy, it remedies some of the shortcomings of UNCLOS's definition of piracy. Firstly, it broadens the geographical limits of the offence by covering acts occurring in territorial waters and not just on the high seas and in EEZs. Article 4 of the Convention confirms that the Convention applies either 'if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States' or 'when the offender or the alleged offender is found in the territory of [another] State Party'. Secondly, the definition includes acts motivated for political ends and eliminates the two vessel requirement.²²

Unlike UNCLOS, the SUA Convention places a concrete obligation upon parties to make the offences punishable by appropriate penalties.²³ Article 6 obliges the State Parties to establish their jurisdiction over the offences in question. Though the Article does not strictly establish universal jurisdiction, it provides three distinct ways of establishing jurisdiction by a State Party in cases when the unlawful act is perpetrated against their ships, takes place in their territory or is perpetrated by one of their nationals.²⁴ Article 10 of the Convention further obliges State Parties to exercise jurisdiction over alleged offenders when they are found within their territory and are not extradited to another State Party having jurisdiction.

States should adopt legislation that criminalises piracy and impose universal jurisdiction for it so that suspected pirates can be tried irrespective of their nationality and the geographical location of the piratical incident.

20 Annemarie Middelburg, 'Piracy in a Legal Context: Prosecution of Pirates Operating off the Somali Coast' (Wolf Legal Publisher, 2011) 9.

21 SUA art 3(1)(a).

22 Milena Sterio, 'Fighting Piracy in Somalia (and Elsewhere): Why More is Needed' (2009) 33 *Fordham International Law Journal* 387.

23 SUA art 5.

24 *Ibid.*, art 6(1)(a–c).

2.10 *Conclude Agreements to Formalise Custody and Prosecution Arrangements*

The states of the Gulf of Guinea region should have a common agreement or arrangement in place to facilitate expeditious investigation, prosecution and punishment for any captured pirates. The effectiveness of the agreement could be further enhanced by prescribing a mechanism for transfer agreements between the apprehending state and the prosecuting state. The agreement must provide procedures for the transfer of suspects and the conditions under which this may take place.

2.11 *Enhance Regional Cooperation*

Regional cooperation and the coordination of all states within the region would aid in the prevention and suppression of piracy.²⁵ As the majority of incidents of piracy occur within the respective jurisdictional sea areas of the countries of the Gulf of Guinea, improved regional cooperation is required within the territorial seas. To this end, the countries must establish a regional mechanism for piracy suppression. The countries in the region need to adopt legal and policy frameworks for suppressing piracy and focus on enhancing cooperation and coordination in law enforcement and intelligence sharing. To counter the symptoms and causes of piracy, the countries need to improve regional dialogue on the issue. This is essential to ensuring the regional countries develop long-term policies to address poverty, corruption and crime in the region.

2.12 *Ensure Compliance with the Best Management Practices by the Shipping Industry to Deter Piracy*

Shipping companies and flag states should take measures to prevent and respond to pirate attacks. They should implement the best management practices codified by the commercial shipping sector. These practices call on vessels to employ vessel self-protection measures including 24-hour watch keeping, on-deck lighting, use of razor wire around the vessel and use of citadels or safe rooms where crew can seek shelter in case of pirate attack. In December 2012, the International Shipping Associations (BIMCO, ICS, INTERCARGO and INTERTANKO) developed a set of Interim Guidelines for owners, operators and Masters for protection against piracy and armed robbery in the Gulf of Guinea region. These guidelines address the gap between the best practice advice for

25 Zou Keyuan, 'Crackdown on Piracy in Southeast Asian Seas: Need a More Effective Legal Regime?' in Shicun Yu and Keyuan Zou (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation* (Ashgate Publishing Limited, 2009) 154.

protection against Somalia-based piracy (BMP4)²⁶ and the present situation in the Gulf of Guinea. On 25 May 2012, the IMO developed its 'Interim Guidance to Private Maritime Security Companies providing Privately Contracted Armed Security Personnel on board Ships in the High Risk Area'²⁷ for the east coast of Africa. The objective of the guidelines was to 'assist policy development at the national level and facilitate greater harmonisation of policies at the international level to the issue of private armed security on board ships'.²⁸ The IMO, in consultation with the shipping industry and naval forces of the region, should agree on similar guidelines to deter and prevent piracy in the Gulf of Guinea. Until then, the shipping industry should act in accordance with the best management practices for Somalia-based piracy and the interim guidelines.

2.13 *Coordinate International Efforts to Combat Piracy*

The failure of the Gulf of Guinea states to address piracy has effectively prompted the international community to undertake wide-ranging efforts to combat the threat. However, to be effective, these efforts need to address the root causes of piracy originating in the Gulf of Guinea. The international partners should therefore concentrate on developing economic governance along the coast, particularly in the Niger Delta. They should also support the region's countries to formulate a comprehensive regional response to piracy.

In developing an effective maritime security approach to combat piracy, partners should focus on building self-sustainable capacity in the respective countries of the region. This can be done by providing assistance with training and equipment for agencies responsible for maintaining and regulating good order at sea. However, to ensure an effective international response to the threat, better coordination of international efforts is required. To avoid duplication, the partners need to ensure that their efforts are complementary.

3 *Assessment of National Arrangements to Combat Piracy*

A number of arrangements in the Gulf of Guinea have been implemented to address piracy with the expectation that incidents of piratical attacks would gradually decline. However, piracy in the region has grown rapidly in recent years. Previously largely confined to Nigerian waters, the crime has now spread

26 See Best Management Practices for Protection against Somalia Based Piracy, (Witherby Publishing Group Ltd, 2011).

27 International Maritime Organisation, MSC.1/Circ.1443 (25 May 2012).

28 *Ibid.*

to the whole region. Attacks have become more frequent and violent, with more ships and sailors falling prey to pirates.

The nature of piracy in the Gulf of Guinea, which largely occurs in territorial waters, means the coastal states are the most relevant entities to fight piracy. External actors cannot intervene in domestic jurisdictions; therefore, the coastal states must take the responsibility for imposing enforcement measures to suppress piracy.²⁹ However, the limited national capacities of the individual countries have seriously undermined their ability to prevent and effectively manage the threat in their coastal waters.

Much of the piracy in the Gulf of Guinea originates from the proliferation of insurgency and instability in Nigeria. The upsurge in pirate attacks in the region is also due to the 'peculiarities of the Nigerian economy and widespread corruption'.³⁰ The piracy issue in the Gulf of Guinea is therefore purely a Nigerian problem.

3.1 *The Niger Delta Insurgency*

For decades, piracy has been an issue of concern off the coast of Nigeria. The number of piracy attacks rose significantly during the Movement of the Emancipation of Niger Delta (MEND) phase of the Niger Delta Insurgency (2006–2009). The conflict began in the early 1990s when the federal government allotted the region to foreign companies for oil exploration.³¹ The oil industry, by polluting the area, destroyed the traditional livelihoods of fishing and farming and caused high-level community crises in the region. These crises have led to violent conflict between local communities and oil companies in the Niger Delta.

The formation of MEND in 2005 added a new dimension to the violence. In January 2006, the militant group declared war on the oil industry. The group intensified attacks on oil platforms and virtually paralysed the energy industry through kidnappings and other violent criminal activities. To escape from the attacks, the oil companies focused more on exploration and production activities at sea. However, the insurgents adapted to the situation and expanded their activities seawards. They proved their capability to commit attacks not only at sea off the Delta but also as far as Lagos. The constant military pressure caused by the Joint Task Force created to control piracy in the Delta region

29 Philipp Wendel, *State Responsibility for Interferences with the Freedom of Navigation in Public International Law* (Springer, 2007) 22.

30 Mark Doyle, 'Nigeria's Piracy – Another Form of Oil Theft' *BBC News* (online), 18 June 2013, <<http://www.bbc.co.uk/news/world-22956865>>.

31 Judith Burdin Asuni, *Blood Oil in the Niger Delta* (United States Institute of Peace, 2009) 3.

prompted the insurgents to expand their range of operation further along the coasts of neighbouring countries. In this way, the criminal activity around the Niger Delta led to the development of piracy in the Gulf of Guinea.

To manage the developing problems in the Niger Delta, the government offered an unconditional amnesty for militants on 25 June 2009. This was part of the late President Umaru Musa Yar'Adua's strategy to pacify the insurgents.³² The amnesty program included monthly allowances and vocational training for militants who surrendered their arms. Following the introduction of the amnesty, there were clear signs of a decline in the number of attacks against the oil industry and the kidnapping of expatriate oil company workers. The production of crude oil subsequently rose to 2.6 million barrels per day.³³

Soon after the death of Yar'Adua on 5 May 2010, progress on rehabilitation and reintegration slowed. Complaints from ex-militants began to emerge as to the promised allowances and training. Some aggrieved militants even threatened to exclude themselves from the amnesty program and return to their criminal activities. Fresh tension arose when the federal government failed to provide jobs for former militants trained by the presidential amnesty office. The federal government has now decided to terminate the presidential amnesty program as of 2015.³⁴

Analysts argue that the amnesty process failed to restore peace, security and development in the region.³⁵ In particular, they argue that the amnesty program failed to address the causes of the grievances that led to armed struggle.³⁶ Despite the amnesty program, oil-producing communities continued to suffer from severe poverty and underdevelopment. As such, the program failed to reduce the long-term potential for violence in the region.³⁷

32 Kathryn Nwajiaku-Dahou, *The Politics of Amnesty in the Niger Delta: Challenges Ahead* (IFRI, French Institute of International Affairs, 2010) 3.

33 Oscar Edoror Ubhenin, 'The Federal Government's Amnesty Programme in the Niger Delta: An Appraisal' (2013) *Yönetim Bilimleri Dergisi* 184.

34 Kenneth Ehigiator, 'Why Amnesty Ends 2015 – Kuku' *The Vanguard* (online), 20 June 2013, <<http://www.vanguardngr.com/2013/06/why-amnesty-ends-2015-kuku/>>.

35 Oluwatoyin O Oluwaniyi, *Post-Amnesty Programme in the Niger Delta: Challenges and Prospects* (African Centre for the Construction Resolution of Disputes, 2011) 54.

36 Segun Ayobolu, 'Boko Haram: The Problem with Amnesty' *The Nation* (online), 13 April 2013, <<http://thenationonlineng.net/new/boko-haram-the-problem-with-amnesty/>>.

37 Chris Newsom, *Conflict in the Niger Delta: More Than a Local Affair* (Washington, DC: United States Institute of Peace, 2011).

3.2 *Corrupt Oil Sector*

Piracy in Nigeria is closely linked to the criminal practices of the oil sector. Years of corruption and maladministration by successive Nigerian regimes has given rise to a number of illegal practices within the industry. The stealing of crude oil from Nigeria's pipelines and its sale to vessels offshore has become a thriving business. The International Energy Agency estimated that Nigeria was losing about \$7 billion annually to oil theft.³⁸ While part of the stolen crude oil is processed at illegal refineries in Nigeria, most is exported to other oil-refining nations. Proceeds from the illegal exporting of oil are used by criminal organisations to launch pirate attacks on oil-carrying vessels.

The booming trade in illegally refined petroleum products off Nigeria generates strong incentives for piracy. Due to lack of domestic refineries, the state needs to import large quantities of refined oil from abroad. As a result, the coast is often crowded with oil tankers. This makes it easier for pirates to target vessels to steal these products to sell on the black market.

There is no doubt that pirates require intelligence information to carry out the illegitimate business of stealing oil. There have been allegations that corrupt officials from the port and oil industry pass information to pirates regarding the locations of vessels and the types of cargo fuel they carry in exchange for a share in piracy profits. In addition, there is a strong criminal network in operation that involves officials at all levels of government selling oil to buyers across Nigeria and in neighbouring countries.

Pirates are also believed to have a strong link with members of law enforcement. It is commonly believed that national security officials are regularly either involved in oil theft or bribed to overlook the activity. This suspicion was confirmed in 2005 when some of Nigeria's top military commanders were penalised by the Nigerian Navy for having personal involvement in oil theft and illicit trading.³⁹ In 2009, Olabode George, a former chair of the Board of the Nigerian Ports Authority, was convicted by the Lagos High Court for charges that included contract splitting and inflation.⁴⁰ The conviction was subsequently affirmed by the Court of Appeal.

38 Ejirofor Elike, 'Nigeria Loses U.S. Billion Annually to Oil Theft' *This Day* (online) 14 November 2012, <http://allafrica.com/stories/201211140265.html>.

39 Integrated Regional Information Networks (IRIN), *Nigeria: Conviction of Admirals Confirms Navy Role in Oil Theft*, (January 2005) <<http://www.irinnews.org/report/52598/nigeria-conviction-of-admirals-confirms-navy-role-in-oil-theft>>.

40 'Bode George, Others Jailed for 28 years' *The Vanguard* (online), 26 October 2009, <<http://www.vanguardngr.com/2009/10/breaking-news-bode-george-others-convicted-judgement-still-on/>>.

3.3 *Onshore Crime*

Most of the piracy incidents in Nigeria are linked to organised crime on land. It is in reality an extension of the rampant illegal oil bunkering onshore. Pirates are often associated with criminal gangs involved in the illegal fuel trade. Their hijacking of vessels is part of the local criminal activities, wherein the stolen oil is sold on the black market. This form of piracy originally began during the Niger Delta insurgency and has intensified in recent years.

The pirate groups operating in the maritime area off Nigeria are well organised and possess elaborate knowledge of the oil industry. They tend to collaborate with the militants of the Niger Delta in conducting attacks on vessels. This is evidenced by the fact that certain hijacked vessels end up off the Niger Delta. The groups also possess sufficient communications equipment to coordinate attacks far out at sea.

3.4 *Insufficient Government Response*

The actual solution to Gulf of Guinea piracy lies in addressing the local problems of Nigeria, where many of the pirates originate. The upsurge of Nigerian piracy is largely due to the lack of meaningful economic opportunities and the devastating oil pollution in that country, particularly in the Niger Delta region. The emergence of pirates can be traced to the underdevelopment and marginalisation of the area by successive Nigerian governments. This is seen to be the fundamental cause of maritime attacks in the waters of Nigeria. In addition, the widespread corruption and lack of effective prosecution of pirates in Nigeria also stimulates the growth of piracy in the country.

The Nigerian Government has taken steps to address the causes behind piracy. In its effort to fight corruption, the government established the Economic and Financial Crimes Commission in 2002 to investigate and prosecute allegations of corruption and financial crime.⁴¹ The Commission was also assigned to determine the reason for piracy in the Niger Delta region.⁴² To control piracy, the government also established a Joint Task Force comprising the Army, Navy and paramilitary agencies. In January 2012, the government dissolved its Joint Task Force (Operation Restore Hope), established to address Niger Delta

41 Emanuel Obuah, 'Combatting Corruption in Nigeria: The Nigerian Economic and Financial Crimes (EFCC)' (2012) 12 *African Studies Quarterly* 2.

42 Matteo Crippa, 'The Oil Spill: Nigeria's Counter-Piracy Measures and their Effect on Neighboring Countries' *Communis Hostis Omnium* (online), 22 October 2011, <<http://piracy-law.com/2011/10/22/the-oil-spill-nigeria%E2%80%99s-counter-piracy-measures-and-effect-on-neighboring-countries/>>.

militancy, and established Joint Task Force (Operation Pulo Shield), to protect oil installations and curb oil theft and sea piracy.

The Nigerian Government has also renewed its efforts to strengthen security in the maritime domain. The capacity of the Coastguard and Navy has been increased to prevent pirate attacks. To implement the International Ship and Port Facility Security code, the Presidential Implementation Committee on Maritime Safety and Security was set up in 2004. To ensure effective search and rescue, a regional Maritime Rescue Coordination Centre was established on 27 May 2008 in Lagos and the government signed multilateral agreements with neighbouring countries to coordinate the maritime search and rescue services in areas adjacent to their coasts. Concrete efforts have also been taken by anti-crime agencies to tackle piracy. For example, in 2011, the Navy and NIMASA intensified their efforts to combat piracy within the country's territorial waters by increasing patrols. As regards developing the legal framework for fighting piracy, the government appointed a Lagos-based lawyer as a consultant for preparing a bill that would domesticate major international conventions relating to the suppression of unlawful acts and piracy at sea.

Despite increased government initiatives, the continued perpetration of piracy proves that the government response has been insufficient to tackle the problem. The country's maritime forces remain under-equipped for the considerable task of patrolling Nigeria's coastline. There have also been issues of failure of prosecuting agencies of government, including the Police and the State Security Service, to ensure that piracy suspects face justice. The legal framework for action against piracy remains insufficient and ineffective. Development efforts in the Niger Delta region by the government have also been ineffective due to corruption.⁴³

4 Assessment of Regional Arrangements to Combat Piracy

The nature of piracy in the Gulf of Guinea suggests the need for a constructive role for regional actors in any effort to combat piracy. Although piracy manifests as regional criminal activity, there has not been any integrated regional approach to address the problem. The existing regional organisations for peace and stability have also played a limited role in forging a regional solution to

43 Fidelis A E Paki, 'Oil and Development Deficit in Africa: The Failure of Intervention Agencies in Nigeria's Niger Delta' (2011) 2 *International Journal of Business and Social Science* 139.

piracy. In this context, effective regional maritime cooperation is perhaps the only means through which the Gulf of Guinea states can reduce piracy.

4.1 *Problems and Issues of Maritime Cooperation in the Gulf of Guinea*

Despite continued efforts to foster maritime cooperation, the formulation of a successful maritime regime in West Africa is limited by the sensitive issue of national sovereignty. Many states in the region are strongly protective of their sovereignty and are usually unwilling to approve any cooperative activities that might compromise their sovereign rights. This emphasis on sovereignty makes regional integration in security matters particularly difficult. Weaker countries are particularly cautious about their stronger neighbours' (especially Nigeria's) ability to project influence in the region.

Sharing of information related to maritime security is affected by some tense relationships between neighbouring countries. The continuing maritime border dispute between Ghana and Côte d'Ivoire, the sovereignty dispute between Equatorial Guinea and Gabon over islands in Corisco Bay and the tensions between Cameroon and Equatorial Guinea over an island at the mouth of Ntem River make maritime security cooperation more difficult within the subregion. In addition, the region's naval forces have different types of communication systems and cultures of confidentiality, hampering the exchange of information.⁴⁴

If the problems are to be solved, ECOWAS should serve as a strong security regional organisation for its member states. However, given the institutional limitation of the organisation, there are concerns about its ability to formulate a comprehensive regional response to piracy. The ECOWAS Commission, as an intergovernmental secretariat, has limited scope to design the maritime policies of its member states. The implications of the draft maritime strategy are also debatable, as it may serve as a mere guideline for the member states.

4.2 *Unequal Development of Regional Cooperation*

To date, the regional organisations operating in the Gulf of Guinea region have shown highly unequal implementation capacities in dealing with the piracy problem. Although ECCAS has made commendable progress in broadening its institutional structure and pooling together the available resources, the same cannot be said for ECOWAS, where divisive tendencies among the leaders of the community have impeded progress in articulating a coherent regional response to maritime insecurity.

44 International Crisis Group, above n 11.

ECCAS has created its own maritime security efforts to tackle piracy in the Central African subregion. In 2008, the member states developed a comprehensive joint maritime security strategy focusing on six objectives, including (i) information sharing and management, (ii) joint surveillance of maritime space through the sharing of assets, (iii) coordination of states' actions at sea, (iv) self-financing through a regional maritime tax, (v) procurement of logistics and (vi) the institutionalisation of maritime conferences for Central Africa. In October 2009, the ECCAS member states adopted a protocol establishing a Regional Centre for Maritime Security in Central Africa (CRESMAC) in Pointe Noire in the Republic of Congo with the intent to promote information sharing and combined naval operations.

To ensure effective implementation of the maritime security strategy, ECCAS has divided its maritime space into three geographical zones, A, B and D, extending from Angola to the maritime borders of Cameroon. Each of the zones is managed by a multinational coordination centre and all three centres are controlled by CRESMAC. Zone D, which covers Cameroon, Equatorial Guinea, Gabon and São Tomé and Príncipe, was the first to be activated, in response to significant acts of piracy in that area. In May 2009, the member states of the concerned Zones signed an agreement on the modalities for conducting maritime security operations and surveillance. The agreement was followed by the adoption of a joint operational plan for maritime security known as SECMAR 2.⁴⁵

The West African bloc ECOWAS lags far behind ECCAS in promoting maritime cooperation among its members. The upsurge in piracy within the ECOWAS region has proven that maritime security is a serious problem for its member states. Considering the intensity of the problem, in August 2011, the ECOWAS Council of Ministers, at its sixty-sixth session, directed the ECOWAS Commission to address the issue of piracy promptly.⁴⁶ In February 2012, the fortieth summit of the Heads of State and Government of ECOWAS acknowledged the significance of political leadership and the coordinating role of ECOWAS in addressing piracy and tasked the ECOWAS Commission with the urgent task to develop a maritime policy framework.

In accordance with the mandate, the Commission started the development of an ECOWAS Integrated Maritime Strategy to address the threat to maritime security and safety in the region. The strategy is expected to provide guidelines

45 *Ibid.* 19.

46 'ECOWAS' Ministers Urge Commission to Tackle Piracy in Member States' *The Vanguard* (online), 23 August 2011, <<http://www.vanguardngr.com/2011/08/ecowas%e2%80%99-ministers-urge-commission-to-tackle-piracy-in-member-states/>>.

for security of the waters off the coast of the ECOWAS member countries. The strategic framework plans to replicate the ECCAS model of maritime strategy by demarcating three geographical zones, each with its own coordination centre. The Commission has also been trying to operationalise a Model Zone (Zone E) to enable the countries of the Zone to ensure maritime security in the area. In July 2013, the forty-third summit of the Heads of State and Government of ECOWAS directed the ECOWAS Commission to expedite the urgent adoption of the ECOWAS Integrated Maritime Strategy and establish a Pilot Model Zone E.

4.3 *Uncoordinated Inter-regional Cooperation*

Cooperation between maritime regions can play a significant role in minimising maritime security threats across countries and regions. Such cooperation is vital for the Gulf of Guinea region as it includes the Central African and West African subregions. Several regional organisations operating in the regions have a common interest in maritime security. These include ECOWAS, ECCAS, the Maritime Organisation of West and Central Africa (MOWCA) and the GGC. The inter-regional framework between the West and Central African states in maritime affairs has been too weak to deliver any tangible positive results. Cooperation between the two African Communities of the subregions (that is, ECCAS and ECOWAS) only began in 2011, with the aim to develop an integrated strategy to combat piracy and establish maritime security in the region. In 2012, at the Maritime Safety and Security Conference in Cotonou, both Communities agreed on the submission of a draft MoU and Operational Agreement to their respective secretariats. The conference was held to facilitate cooperation between these African Communities to deliver regional maritime security in their maritime domains. In 2013, at the summit in Yaounde, leaders of the two Communities agreed on an integrated strategy to combat maritime insecurity in the Gulf of Guinea.

MOWCA was established in 1975 as the Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR) and afterwards institutionalised as such in 1999. The organisation was initially established with a view to develop the maritime infrastructure of the region. In 2008, the organisation, in conjunction with IMO, designed a framework for a 'sub-regional integrated coastguard function network' for Central and West Africa and agreed to a MoU with the IMO. The objective was to assist in promoting inter-regional and national cooperation on the issues of maritime security. However, the effort is yet to materialise, as six out of 20 coastal states have not signed the MoU. Moreover, the effort of MOWCA to establish a Regional Maritime Development Bank in Nigeria has also slowed due to lack of financial commitment on the part of the Nigerian Government.

Meanwhile, the Gulf of Guinea Commission (GGC) was established in response to the necessity for a permanent framework for collective action on maritime issues in the West and Central regions of Africa. The treaty creating the new regional institution was signed by the heads of states of the concerned countries in February 2001. Having its headquarters in Angola, the Commission comprises Nigeria, Cameroon, Angola, the Republic of Congo, Gabon, Equatorial Guinea, the Democratic Republic of Congo and Sao Tome and Principe. The Commission became functional after its summit of Heads of States and Governments was held on August 2006.⁴⁷ Among all the regional institutions operating in the region, the Commission has the largest authority for dealing specifically with maritime issues. The treaty of the organisation describes the Commission as 'a framework ... for cooperation and development as well as for prevention, management and resolution of conflicts relating to the economic and commercial exploitation on natural resources within territorial borders and in the exclusive economic zones of member states'⁴⁸ However, the Commission has been struggling to cope with the security challenges. The formation of the Commission was delayed due to boundary disputes among the members and since then its institutional development has been hampered by political tension. For example, Cameroon suspected the institution would be used by Nigeria to settle the Bakassi Peninsula dispute in its favour and therefore postponed ratification of the treaty until its settlement by the International Court of Justice. The Commission also faces resistance from other treaty member states unwilling to accept Nigeria's lead role.⁴⁹ Most recently, in November 2012, the Commission adopted the Lunada Declaration on Peace and Security in the Gulf of Guinea region.⁵⁰ The Declaration urges the GGC member states to work together to develop and implement a comprehensive strategy for peace, security and development in the region. The Council of Ministers of the Commission ratified the Declaration in May 2013.

The overlapping institutional and operational mandates of the various regional institutions with regard to maritime security in the region argue for better integration and coordination of maritime efforts. It is imperative that the

47 Emmanuel Kendemeh, 'Central Africa: Gulf of Guinea Commission Goes Functional, *The Cameroon Tribune* (online), 28 August 2006, <<http://www.afrika.no/Detailed/12644.html>>.

48 Treaty on the Gulf of Guinea Commission, signed February 2001 (entered into force 2006) art 2.

49 David L Goldwyn and J Stephen Morrison, 'A Strategic U.S Approach to Governance and Security in the Gulf of Guinea (2005) *The Center for Strategic and International Studies (CSIS) Report* 19.

50 Conference of Luanda on Peace and Security in the Gulf of Guinea, 27–29 November 2012.

regional institutions develop mutual arrangements to implement their own maritime strategies effectively. Such a mechanism would contribute to the integration effort of the region and expedite the process of formulating an integrated maritime policy for the Gulf of Guinea region. The first ever regional summit of the Heads of States and Governments of ECCAS, ECOWAS and the GGC on Maritime Safety and Security in the Gulf of Guinea, held in Cameroon in June 2013, is a step in the right direction.

4.4 *Limited Joint Maritime Surveillance Operations*

With regard to joint surveillance of the maritime borders of the Gulf of Guinea region, the coastal states have been able to make limited progress in ensuring effective policing of their waters. The joint measures against piracy by navies are at present carried on by bilateral agreements between only a few countries. The joint patrol codenamed 'Operation Prosperity' has been limited to the territorial waters of Nigeria and Benin. The operation began in September 2011 and significantly reduced piracy-related cases in the common waters of the two countries; however, pirate attacks intensified in neighbouring waters. Unfortunately, no subsequent effort was made to include the neighbouring countries in the joint surveillance system.

Notwithstanding the success of Operation Prosperity, the capability shortfalls of the joint operation prevented it from being more effective in tackling piracy. Lack of essential logistical assets, in particular naval boats for patrolling, and the high operational cost constituted a major obstacle in achieving the desired reduction in overall piracy.

An integrated approach to maritime surveillance operation is vital to prevent piracy in the Gulf of Guinea. The absence of any joint arrangement for effective patrolling and monitoring of the maritime domain as a whole has allowed pirates to widen their area of operation from Nigeria to the waters surrounding the neighbouring countries. The states of the Gulf of Guinea need to increase their operational cooperation in the area of joint surveillance to prevent pirates from seeking refuge in any country of the region from which they can continue to mount their attacks.

5 **Assessment of the Regional Agreement to Combat Piracy**

In an effort to establish an effective framework to combat piracy and other illegal maritime activities in West and Central Africa, a new regional anti-piracy agreement was adopted on 19 March 2013 in Cotonou, at the Inter-Ministerial Conference of ECCAS and the ECOWAS on 'Maritime Security in the Gulf of

Guinea'. The agreement titled 'Code of Conduct Concerning the Prevention and Repression of Piracy, Armed Robbery against Ships, and Illegal Maritime Activities in West and Central Africa' aims to prevent piracy, armed robbery against ships and illicit maritime activity in West and Central Africa. In addition to the Code, the Conference adopted another two documents; namely, the ECCAS/ECOWAS Political Declaration on Illegal Maritime Activities in the Gulf of Guinea and the MoU between ECOWAS, ECCAS and GGC on Maritime Security in West and Central Africa. On 25 June 2013, the Heads of State and Government of ECCAS, ECOWAS and the GGC endorsed the three documents at the summit on Maritime Safety and Security in the Gulf of Guinea, held in Yaoundé, Cameroon.

The new Code was developed in accordance with the UN Security Council Resolutions 2018 (October 2011) and 2039 (February 2012). These resolutions recognised the need for adopting 'a comprehensive approach led by the countries of the region to counter the threat of piracy and armed robbery at sea in the Gulf of Guinea and their underlying causes' and the need to build on 'existing national, regional and extra-regional initiatives to enhance maritime safety and security in the Gulf of Guinea'. The Security Council explicitly welcomed the adoption of the code, saying the code 'defines the regional maritime security strategy and paves the way for a legally binding instrument'.⁵¹ The Council also encouraged regional members to promptly sign and implement the Code.

5.1 *General Features of the Code*

The preamble clearly states that the Code has been inspired by the Djibouti Code of Conduct, and the Code incorporates many aspects of it. For example, Article 5 of the Code concerning protection measures for ships is designed based on Article 3 of the Djibouti Code. Likewise, Articles 11, 12 and 13 regarding information sharing, incident reporting and assistance among signatories are based on Articles 8, 9 and 10 of the Djibouti Code. The Code also builds on the spirit of the IMO/MOWCA MoU.

5.1 (a) Definition of Piracy and Armed Robbery

Unlike other anti-piracy regional agreements, the Code of Conduct not only deals with piracy and armed robbery against ships but also includes illicit maritime activity within the ambit of its operation. Though the Code does not define the term 'illicit maritime activity', Article 1(5) provides a list of transnational organised crime in the maritime domain. As regards the definition of piracy, the Code adopts the same definition of the crime as expounded by

⁵¹ *Security Council Statement*, SC/11091, 7016th mtg (14 August 2013).

UNCLOS and the Djibouti Code of Conduct.⁵² Thus, according to the code, an act constitutes piracy if it is (a) an illegal act of violence or detention, (b) committed for private ends, (c) against another ship, persons or property in a place outside the jurisdiction of any state, and (d) committed on the high seas. The definition also includes facilitation and incitement of any acts as mentioned above.⁵³ The Code accepts the same definition of ‘armed robbery at sea’ as contained in the IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.⁵⁴ This follows that acts that constitute piracy under the Code would be armed robbery at sea if committed within the territorial waters of a state.

5.1 (b) Duty to Cooperate

The signatories to the Code declare their intention to cooperate ‘to the fullest possible extent’ in the repression of piracy and armed robbery against ships; transnational organised crime in the maritime domain; maritime terrorism; illegal, unreported and unregulated fishing; and other illegal activities at sea, ‘consistent with their available resources and related priorities, their respective national laws and regulations, and applicable rules of international law’.⁵⁵ For the above purpose, the Code shares the principles of the Djibouti Code of Conduct; namely, the sharing and reporting of relevant information, interdicting ships engaged in transnational organised crime, the arrest and prosecution of those committing such crime and the care and treatment of the victims.⁵⁶ At the same time, the principles of sovereign equality and territorial integrity of states and of non-intervention in other states’ domestic affairs have also been recognised.⁵⁷

5.1 (c) Establishment of Information Sharing Network

Like the Djibouti Code, the Code of Conduct sets forth the commitment of each signatory to share information regarding piracy incidents in the region. The Code intends to establish an effective information-sharing network through a

52 *Code of Conduct Concerning the Prevention and Repression of Piracy, Armed Robbery Against Ships, and Illegal Maritime Activities in West and Central Africa*, signed 25 June 2013 (entered into force 25 June 2013) art 1(3). (‘Code of Conduct’). This definition is quite similar to ReCAAP’s definition of piracy.

53 *Code of Conduct* art 1(4)(C).

54 *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, Res. A.922(22) (22 January 2002).

55 *Code of Conduct* art 2(1).

56 *Ibid.*

57 *Ibid.* art 2(3).

system of national focal points and piracy ISCs. Each signatory is required to designate a national focal point and to declare and communicate it to other signatories, either at the time of signing the Code or as soon as possible after signing.⁵⁸ Further, the Code allows for using the piracy ISCs for ensuring effective communication between the focal points of signatories. However, no ISCs have been established under the new Code. It is expected that the Inter-regional Coordination Centre on Maritime Safety and Security for Central and West Africa might serve as an ISC. The Coordination Centre, to be based in Yaoundé, Cameroon, is provided for in the MoU between ECCAS, ECOWAS and the GGC on Safety and Security in the Maritime Region of West and Central Africa. The development of uniform reporting criteria, according to Article 12 of the Code, is expected to 'ensure an accurate assessment of the threat of piracy and armed robbery in the West and Central Africa'.

5.1 (d) Non-binding Legal Instrument

Similar to the Djibouti Code, the new Code is not a legally binding instrument. According to its Article 19(a), nothing in the Code of Conduct is intended to create or establish a binding agreement. Article 17 of the Code of Conduct states that within three years of the effective date of the Code (that is, 25 June 2013), the signatories intend to consult at the invitation of the Inter-Regional Coordination Centre to transform the Code into a binding multilateral agreement.

5.1 (e) Scope of Enforcement Powers

Article 6 of the Code of Conduct prescribes the scope of enforcement measures to repress piracy. It provides for the same enforcement power as provided under the relevant provisions of UNCLOS. The Code does not allow hot pursuit of suspicious ships that enter the territorial waters of another state. Article 6(3) of the Code of Conduct reiterates that any pursuit of ship extending in and over the territorial sea of a signatory is subject to the authority of that signatory, and no signatory should pursue such a ship in or over the territorial sea of any coastal state without the permission of that state.

5.1 (f) Prosecution of Pirates

The Code of Conduct aims to ensure that persons committing or attempting to commit piracy or armed robbery at sea are apprehended and prosecuted in their domestic courts.⁵⁹ To this end, the Code encourages signatories to

⁵⁸ *Ibid.* art 11(3).

⁵⁹ *Ibid.* arts 2(c) and 4(4).

criminalise piracy and armed robbery at sea under their national law to ensure effective indictment, prosecution and conviction.⁶⁰ The Code further encourages signatories to develop adequate guidelines for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders.⁶¹ However, unlike the Djibouti Code, the Code of Conduct omits to mention incorporating extradition provisions in the national legislation.

5.1 (g) Maritime Security Cooperation

Article 14(1) addresses the intention of signatories to cooperate on the development and promotion of training and educational programs for the maintenance of safety and law and order at sea. Cooperative activities include fostering cooperation among maritime training institutions and research centres, the exchange of naval and law enforcement personnel and other experts, and the exchange of views on maritime issues. Article 14(2) invites signatories to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities. Similar to Article 7 of the Djibouti Code, the new Code recognises the concept of 'embarked officers' operations'.⁶² The concept facilitates coordinated maritime security operations by allowing the law enforcement officials (Embarked Officers or Ship Riders) of a signatory (designating signatory) to embark in the patrol ship of another signatory (host signatory).

5.1 (h) Adoption of Certain National Strategies

The Code of Conduct urges the signatories to establish certain measures at the national level. According to Article 4(1), the signatories intend to develop and implement appropriate national maritime security policies to safeguard maritime trade and develop and implement national legislation to provide security for the operation of port facilities and ships. Article 4(2) urges the signatories to establish a national maritime security committee for coordinating activities between the various departments of the state.

5.1 (i) Seizure of Pirate Ship

The Code provides that any signatory may seize a pirate ship in areas outside the territorial sea of any state and arrest the persons and seize the property on board.⁶³ According to the language of Article 3, such seizure can be carried

⁶⁰ *Ibid.* art 15.

⁶¹ *Ibid.*

⁶² *Ibid.* art 9.

⁶³ *Ibid.* art 6(2).

out only by warships or other ships clearly marked and identifiable as being in government service. Article 1(14) defines a pirate ship as 'a vessel effectively controlled by people who intend to use it to commit an act of piracy, or used it to commit such an act, as long as it remains under the control of such persons'. Article 6(4) of the Code recognises the principle of universal jurisdiction and authorises the courts of the seizing signatory to adjudicate pirates. The court has also been given the power to decide the action to be taken with regard to the ship or property. Article 6(5) of the Code states that the seizing state may decide to waive its primary right to exercise jurisdiction. The appropriate action to be taken in such a case would be to allow any other signatory to enforce its law against the ship and persons on board. However, in case of any seizure made in the territorial sea, the jurisdiction of the signatory has been made exclusive.⁶⁴

5.1 (j) Saving Clauses

Article 19 of the Code of Conduct (similar to Article 15 of the Djibouti Code) provides several safeguard clauses. According to Article 19(b) of the Code of Conduct, nothing in the Code is intended to affect the competence of a state to investigate or exercise enforcement jurisdiction on board a ship not flying its flag under international law. Moreover, according to Article 19(j), the Code does not entitle a signatory to exercise jurisdiction or perform functions in the territory of another signatory that are exclusively reserved for the authorities of that other signatory. In addition, Article 19(k) stipulates that the Code does not prejudice in any manner the positions and navigational rights and freedoms of any signatory under the law of the sea.

5.2 *Evaluation of the Code of Conduct*

The Code of Conduct may constitute a significant first step in the process of enhancing regional maritime governance. The Code of Conduct is a good model of effective regional cooperation, as it elaborates a common maritime security strategy for the entire maritime domain of West and Central Africa. However, the utility of the code is somewhat limited, as it is not a legally binding instrument; it is merely a transitional Code of Conduct that does not impose any obligations on member states. As such, compliance with the Code is heavily dependent on the political will of the concerned signatories. The Code also says nothing about armed protection of merchant ships. Private Maritime Security Companies expected that the agreement would provide some guidelines on using private security guards by merchant ships. This would have

64 *Ibid.* art 6(6).

allowed them to operate inside territorial waters of coastal states in the region. However, as it stands, only the members of the national armed forces are allowed to carry arms inside the territorial waters of the signatories.

The effectiveness of the Code depends heavily on its successful implementation. Full and effective implementation of the Code of Conduct is necessarily a technical and financial matter. In this sense, implementation of the Code may be hampered due to the limited ability of signatories. Burdened with limitations relating to wealth and capacity, the signatories are bound to experience certain challenges in implementing the Code. In addition, implementation requires significant legal and institutional adjustments at the national level. Differences in the wealth and capacity of signatories are expected to affect their implementation capabilities at the national level. The IMO in this regard has assumed a significant role in assuring implementation by intending to establish a Trust fund. The organisation has also been involved in the implementation of the Djibouti Code of Conduct with funding from 'the IMO Djibouti Code Trust Fund'.

6 Assessment of International Cooperation to Combat Piracy

International assistance from foreign partners has been part of a comprehensive strategy to address maritime insecurity in the Gulf of Guinea. The strategic interest of the international community in the region has prompted a number of traditional donors to support national and regional efforts to combat piracy. However, a lack of coordination and collaboration among them has limited the overall impact.

Addressing maritime security issues in the Gulf of Guinea has been the prime concern of the international community. For this reason, international partners have mainly focused on building the maritime security capacity of the regional states. Support has been directed towards capacity building of naval forces through training and supplying of equipment and vessels. The US' interest in the Gulf of Guinea increased significantly after the 9–11 terrorist attack and the US invasion of Iraq.⁶⁵ On 6 February 2007, the Bush Administration announced the establishment of a new unified combatant command, US AFRICOM, for Africa. The primary objective of AFRICOM was to protect US oil interests in Africa and its surrounding waters. Nigeria rejected the proposal for the US AFRICOM headquarters to be based in its territory and strongly

65 Arild Nodland, 'Sea-piracy – Can Africom Save the Gulf of Guinea?' (2008) *Scandinavian Oil Gas Magazine* 50.

opposed any establishment of a military base in the ECOWAS region. However, the country welcomed the engagement of the US Navy in the Maritime Security Cooperation program through APS.

Since its creation in 2007, the APS has been assisting the Gulf of Guinea maritime community to develop maritime governance in the region.⁶⁶ The aim of the program has been to strengthen the defence capabilities of the maritime nations through training and collaborative activities. Among its various activities, APS has conducted a series of regional training activities for the naval forces of the region and coordinated a number of maritime security exercises along the coastline. More recently, APS is coordinating the Regional Maritime Awareness Capability in West Africa. Under this program, surveillance systems are being installed along the coast of the countries to improve situational awareness in their maritime domain.⁶⁷

France has also been actively involved in supporting measures aimed at improving regional responses to combat piracy and armed robbery in the Gulf of Guinea. The country co-sponsored UN Security Council Resolution 2018, which called on regional bodies to take strong action against perpetrators of piracy in the region. In mid-2011, France designed a special project, the Support for Maritime Security in the Gulf of Guinea project or ASECMAR, to implement its maritime security policy in West and Central Africa. The three-year project planned to strengthen maritime security capabilities in Benin, Ghana and Togo. Since September 2011, the French Ministry of Foreign Affairs has dedicated a priority solidarity fund for the project. The cooperation approach has been expanded to include Nigeria, Côte d'Ivoire and Guinea.

The UK (through the Foreign Office) has been working closely with ECOWAS to develop an integrated maritime policy for the Gulf of Guinea. It has also been providing states of the region with equipment and expertise to police their own coastal waters. In addition, it has been supporting the efforts of the Oil Companies International Marine Forum to develop a Maritime Trade Information Sharing Center for the Gulf of Guinea. The Center is expected to serve as a single point of focus for mariners to share information, and could act as an early warning system for security incidents in the region.

The UN has been equally responsive to the piracy problem in the Gulf of Guinea, and this issue has been on the agenda of the UN Security Council

66 Kathi A Sohn, 'The Global Fleet Station: A Powerful Tool for Preventing Conflict' (2009) 62 *Naval War College Review* 45.

67 New Radar System Improves Nigerian Maritime Capability' *Africa Defense Journal* (online), 16 March 2011, <<http://africadefensejournal.wordpress.com/2011/03/16/new-radar-system-improves-nigerian-maritime-capability/>>.

several times. In November 2011, the UN dispatched an assessment team to the Gulf of Guinea to evaluate the scope of the threat of piracy in the region. The UN's approach has been to assist the regional countries to adopt a comprehensive strategy to combat piracy. The organisation also intends to provide technical support to coastal states through the IMO and the UN Office on Drugs and Crime.

The EU has been addressing the issue of maritime security in the Gulf of Guinea through a number of projects. The Seaport Cooperation Program aims to strengthen cooperation in countering maritime trafficking and securing seaports in West Africa. The recently announced Critical Maritime Routes in the Gulf of Guinea Program is expected to help governments across West and Central Africa by providing training for coastguards and establishing a regional mechanism of information sharing.

Thus, a number of donor states and other relevant international entities are working on multiple projects at different levels to address maritime insecurity in the Gulf of Guinea. However, the response so far has been fragmented and disparate due to a lack of effective coordination. This lack of coordination runs the risk of duplicating functions and efforts, in turn reducing the effectiveness of projects. Thus far, the efforts have had a limited impact in preventing piracy in the region.

7 Conclusion

The Gulf of Guinea is one of the most strategic maritime areas of the world. Due to its proven reserves of oil and natural gas, the region is regarded as a major future supplier of global energy. In recent years, the worrying surge in acts of piracy and attacks against shipping in the Gulf of Guinea has seriously threatened oil supplies from the region. That these attacks are increasing in terms of both number and frequency has established the region as the world's new piracy hot spot.

The roots of piracy in the Gulf of Guinea centre on Nigeria. Originally limited to the waterways and estuaries of the Niger Delta region, piracy has now increased in both frequency and scope. The gradual expansion of Nigerian pirate groups into the waters of neighbouring states is further destabilising peace and security in the region.

The inability of the Nigerian Government to adequately address the issue in the Niger Delta has allowed piracy to grow and flourish in the region. Given that the majority of the region's pirates are of Nigerian origin, Nigeria should take the leading role in improving maritime security against piracy and armed

robbery in the Gulf of Guinea. However, Nigeria cannot be held solely responsible in this regard. The issue of maritime security is largely a regional problem. As such, it is a collective responsibility of the coastal states of the region to address piracy emanating from Nigeria.

Despite various measures taken to prevent piracy, the problem has shown no signs of abating. Most recently, piracy has revealed itself to be a thriving business in the region. The experience in combating piracy shows that the best solutions in this respect are those based on addressing root causes on land. Developing coastal infrastructure by creating legitimate employment opportunities for local residents could be a decisive step in this regard. Tackling corruption and poor governance is also crucial. However, this can only be achieved through the coordination of regional strategies with international support. Collective efforts intended to curb piracy, although commendable, remain largely inadequate to address the full extent of the problem due to the current lack of coordination. A number of maritime stakeholders are actively engaged in the Gulf of Guinea region to fight piracy; however, there has been no effort to avoid the duplication of processes and initiatives. Long-term suppression of piracy in the region requires a coordinated approach by the various stakeholders.