

GIANT OF AFRICA: THE LEGAL AND PRACTICAL PROBLEMS OF THE PREVENTION OF MARITIME TERRORISM IN NIGERIA

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INTRODUCTION

For decades now, authors have attempted to give a legal definition of the phenomenon of terrorism. Due to its complex nature, there is still no such definition established in the international legal doctrine.ⁱ The uncertainty of how to define terrorism is not born from a lack of effort. During the past decades, the UN Security Council adopted more than 10 different documents on national, regional and international terrorism without defining the term “terrorism”.ⁱⁱ In many instances, attempts to address terrorism in international law have been complicated by long political discussions over the causes of terrorism, which action can be considered an act of terrorism, and which cannot?ⁱⁱⁱ

Putting aside the understanding of the term terrorism, the dangers facing maritime security are generally recognized (**Graphic 1**).^{iv} The UN Security Council defined maritime terrorism as one of the most fundamental threats to international peace and security.^v It is a threat which endangers the objectives and values established by the UN Charter^{vi} as well as the global economy, human lives, and the freedom of seas.



(Graphic 1) ^{vii}

However, there are different legal and practical problems in the prevention of maritime terrorism. In carrying out this Study, the legal framework against maritime terrorism and how does it affect Nigeria and the Gulf of Guinea will be examined in Chapter II. ^{viii} In Chapter III the author will identify the legal and practical problems that hinder the effective implementation of this legal framework in Nigeria. ^{ix} These challenges are analyzed, to find a way forward in the effective implementation of the legal framework against maritime terrorism in the country.

Concerns from IMO ^x member States on achieving uniform standards in enforcing the security regimes are explored with a view to ascertaining the manner in which the existing legal instruments can best be used to combat acts of maritime terrorism. Particular reference is made to a range of provisions in the UNCLOS, SUA Convention and ISPS Code on enhancing maritime security in developed and developing countries.

The focal point of this study will be to identify what is the relevant legislation on the prevention of maritime terrorism and what are the challenges in applying this legislation in practice in Nigeria.

RESEARCH QUESTION

Since the 1970s, Nigeria experienced a huge increase in the volume of imports due to the oil boom. As of 2015 Nigeria is the world's 20th largest economy, worth more than \$500 billion and \$1 trillion in terms of nominal GDP and purchasing power parity, respectively.^{xi} Nigeria is often referred to as the "Giant of Africa", owing to its large population and economy.^{xii} Unfortunately, however, the economic boom in this Giant came at a price. Attacks on ships rose dramatically since 1999, due to attacks by the Movement for the Emancipation of the Niger Delta (MEND) on predominate workers in the oil industry.^{xiii} Between 2000 and 2012, Nigeria had 79 incidents of maritime terrorism.^{xiv} By 2008, the second-highest number of incidents of piracy and maritime terrorism worldwide was recorded on the high seas surrounding Nigeria.^{xv} Considering this, one could ponder on the questions of why this is happening to the "Giant of Africa"? Why the Nigerian authorities are not capable of preventing those violent acts?

The research aim of this Study is to provide analysis of the legal and practical problems of the prevention of Maritime Terrorism, faced by the Nigerian authorities. To determine what those problems are, the author will identify the root causes of the problems and what had been done to tackle those challenges.

To achieve the research aim, the Thesis will answer the following research question:

What are the international legal instruments in addressing maritime terrorism and why their application in Nigeria is ineffective?

To answer this question, the author will:

- A) Examine the impact of maritime terrorism on Nigeria;
- B) Critically analyze the international legal framework against maritime terrorism;
- C) Identify the constraints of the international legal framework that have militated against ensuring maritime security in Nigeria;
- D) Provide strategies for the effective implementation of the maritime security legislation in Nigeria.

The main hypothesis defended by the author is that the application of the international legal framework against maritime terrorism, in Nigeria is currently ineffective. As a result of this, Nigeria is suffering not only huge financial and economic losses but also loss of human lives.^{xvi}

To provide a better understanding of the research question, its answer will be divided between two Chapters. Chapter II will study the relevant legal instruments which constitute the international framework against maritime terrorism. Chapter III will examine legal and practical problems with the application of these instruments in Nigeria.

THE SIGNIFICANCE OF THE THESIS

This topic was selected because of the dramatic increase in terrorist and pirate activities in Nigeria since 1999.^{xvii} The Thesis is important because it provides the needed intellectual input for understanding: first, what is the modern legal framework against maritime terrorism; second, what are the difficulties faced by maritime law enforcement institutions at the national level when implementing this framework; and third, how the difficulties limit their efforts to combat maritime terrorism. The research also makes a unique contribution to the growing literature on maritime law against terrorism in Nigeria and it lays a foundation for further research in this area.^{xviii} In examining data on breaches of maritime security, the study seeks to bring to light the trends that can be associated with security legislation and the ISPS. It is intended that such data analyses and critical evaluation of the legal instruments will assist in improving policy-making for maritime security at the international, regional and local levels. This Thesis will highlight the trend in the international framework for providing security at sea in the past 15 years.

RESEARCH METHOD

To achieve the objective of this Thesis, the qualitative research method is used. This method seeks to collect detailed information about a particular problems (*maritime terrorism and the legal and practical problems of the prevention of maritime terrorism in Nigeria*), that is observed in a real-life setting (*Nigeria*).^{xix} The goal is to better understand the roots and reasons

for the problems and to find a way to deal with them. An evaluation is made regarding the current anti-terrorism arrangements in Nigeria and the Gulf of Guinea. Data on threats to maritime security will be gathered from both primary and secondary sources. The primary data will be predominantly gathered from the IMB and the Nigerian Shippers Council (hereinafter: NSC).

The research studies the nature of maritime terrorism along with existing legal and institutional frameworks directed towards combating the offenses. Among the legal instruments to be analyzed are UNCLOS, SUA Convention and Protocol, SOLAS Convention and the ISPS Code. A pure legal analysis of the strengths and weaknesses of relevant international legal frameworks is undertaken to determine the extent of their effectiveness when applied by the Nigerian government. The research provides a legal analysis of secondary data, such as national and international organizational reports and records, journals, previous research, existing literature, newspapers, legal conventions and declarations and online publications.

THE IMPACT OF MARITIME TERRORISM ON NIGERIA

In the 21st century, there are various threats to maritime security. Some of them are the:

- organized crime; piracy.
- maritime terrorism; drug trafficking.
- The proliferation of weapons of mass destruction.

There are others, but the focus of this paper will be to examine mainly the elements of maritime terrorism.

Maritime security is one of the most significant factors in the modern world, considering that the sea covers over 70 % of the earth's surface.^{xx} The success of transportation by sea has made the nations of the world interdependent. Easily, people, goods and services are moved by ships from one place to another within a country and from one country to another globally, in what has resulted to be known as world globalization.^{xxi} In the globalization of the world through the sea, the safety of the sea lines of communications (hereinafter: SLOCs) for international

trade need to be sustained. This is because these SLOCs are vulnerable to threats from acts of maritime terrorism.

TERRORISM

Terrorism is not a new occurrence, however, today it is still hard to provide a universally binding definition of international terrorism. Terrorism has been described in many studies, as a crime and a holy duty. Or as a justified fight against the oppressor and inexcusable terrifying acts of brutality. A lot depends on whose point of view is being represented.^{xxii} Today, a comprehensive definition of terrorism does not exist in the treaty law, nor the customary international law.^{xxiii}

The United Nations tried to remedy this by adopting several counter-terrorism treaties. However, all those documents can be characterized by adopting different (and even contradictory) definitions of the term terrorism, depending on the subject matter of each document. Some early attempts to create a definition of what terrorism is can be found in Article 31 of the Vienna Convention on the Law of Treaties.^{xxiv} However, this article had been interpreted broadly and inconsistently by the international community.^{xxv} Furthermore, the legal definitions of terrorism, used in the different anti-terrorism instruments, adopted since 1969 around the world, are extremely different.

Creating a universal definition that includes all of the different forms of terrorist activities, as of today is a truly demanding task. The creation of such a definition will be inevitably plagued by different perspectives and political goals. Those differences can be summarized by the notion that one man's terrorist is another man's freedom fighter.

In spite of the problems, an abstract determination of the notion is needed for this Thesis. To delimitate the subject matter, and find common grounds for a definition of terrorism, the author will use definitions provided by jurists, international organizations and legal documents. By doing so, the author highlights the key elements that characterize terrorism and distinguish terrorism from other forms of violence. Hence, hereafter the term terrorism is understood as *the use and threat of use of violence as a method to cause fear and terror among a population or a group*^{xxvi} to reach a political, social, religious, or ideological goal^{xxvii} by coercing

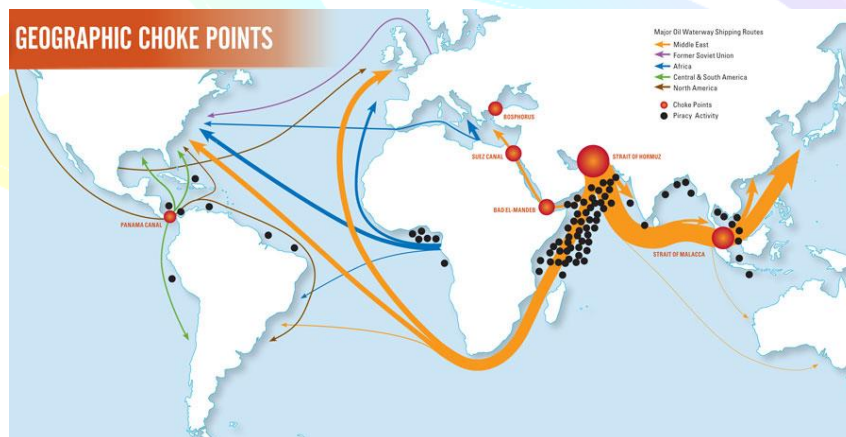
someone to do something he/she would otherwise not do or abstain from doing something he/she would otherwise do. ^{xxviii}

For this paper, the above definition will cover ships and infrastructure (for example oil platforms and drilling rigs) located on the sea, coastal infrastructure (ports, dry docks) as well as the personnel and passengers on-board those ships and infrastructure.

MARITIME TERRORISM

Maritime terrorism is an activity, which takes place at sea. ^{xxix} According to the Global Terrorism Database, 314 incidents of maritime terrorism (following the working definition applied in this study) occurred between 1970 and 2014 – globally. Since then, this number had steadily increased. ^{xxx}

The maritime terrorism has a political, ideological or religious background. ^{xxxi} Based on it, the terrorist groups will look for places where they can hit the infrastructure of the industrialized world most effectively. Such potential targets are the so-called choke points (**Graphic 2**) and mega-harbors. 75 % of all international sea transport activities transported by 50,000 ships are using 2,800 such ports. ^{xxxii}



(Graphic 2) ^{xxxiii}

The increasingly violent acts at high seas inflicted not only local, national and regional damages, but also have international effects. ^{xxxiv} In the subsequent paragraphs some successful

maritime attacks, committed around the world, will be examined, demonstrating the intentions and the effects of maritime terrorism:

- October 2000: A successful attack was carried out against the U.S. destroyer USS Cole in Yemen. 17 U.S. Sailors were killed, 39 wounded (**Graphic 3**).^{xxxv}

- October 2002: The French oil tanker MV Limburg was attacked off Ash Shahir by a terrorist group with connections to Al Qaida. One member of the crew was killed and 90,000 tons of oil spilled into the Gulf of Aden. The monthly container traffic in Yemen shrank from 43,000 to 3,000 metric tons and since Yemen's economy depends hugely on maritime imports and exports it was greatly affected. As a result of the terrorist attack, Yemen's economy declined by 1 % of its GDP and 3,000 dockworkers lost their job.^{xxxvi}

- July 2010: A suicide attack was carried out by the Abdullah Azzam Brigade against the Japanese oil tanker M. Star in the Strait of Hormuz. One member of the crew was injured and the hull severely damaged.^{xxxvii}



(**Graphic 3**)^{xxxviii}

Form 2010 to the present day, the terrorist groups acting at sea continued to be the scourge of the sea. The Al Qaeda attempt to hijack a Pakistani frigate in 2014 and the March 2015 attack against cruise ship tourists in Tunis are just two examples of maritime terrorism committed in the last five years.^{xxxix}

The number of maritime terrorist attacks is also evidence of the increasing power and confidence of terrorist organizations, around the world. In his paper *A Guerrilla Wat At Sea: The Sri Lankan Civil War*, Professor Paul Povlock of the Naval War College describes how at their strongest, their maritime branch of the Sri Lankan separatist group boasted a force of 3000 personnel with separate branches for logistics, intelligence, communications, offensive mining, and suicide squads.^{xl}

During the last three decades, several organizations, recognized as terrorist groups, had been suspected to be involved in maritime terrorism.^{xli} For example, The Liberation Tigers of Tamil Eelan Abu Sayyaf Group and The Movement of the Emancipation of the Niger Delta (hereinafter: MEND), operating in Nigeria.^{xlii}

With the establishment of the MEND, maritime terrorism took a new turn in Nigerian waters. The MEND, is an organized coalition of armed militias,^{xliii} involved in the kidnapping of oil workers, theft of crude oil, raids on ships and constant attacks on installations.^{xliv} Their activities increased instability in the Niger Delta region of Nigeria and this, in turn, led to increased attacks on ships at sea, river crafts and oil platforms. In Nigeria, 49 kidnappings of mostly oil industry workers took place in 2006 and 39 in 2008.^{xlv}

According to the United Nations Office on Drugs and Crime, due to MEND's activities, in recent years, the Gulf of Guinea has experienced an escalation of piracy and maritime terrorism. The total costs of piracy and maritime terrorism in the Gulf region, for the period between 2010 and 2015 are estimated to \$ 818.1 million.^{xlvi} With more than 90% of global trade carried out by sea, the economic effects on countries like Nigeria (depending on sea transportation) and its trading partners are especially burdensome.^{xlvii} According to the Nigeria Trawlers Owners Association, attacks against the Nigerian oil industry and maritime transportation resulted in a crippling effect on Nigeria's oil production and export. For example, due to MEND's attacks, a drop of 800,000 barrels per day had been calculated, only in 2016. This is a drop from 2.2 million barrels per day (2015) to 1.4 million (2016), the lowest production level in 25 years, resulting in tremendous financial losses.^{xlviii}

Most of the terrorist attacks in Nigeria occur in territorial waters. Sam Bateman observed that ports by their nature are vulnerable to criminal attacks.^{xlix} Ten hijackings from Nigerian ports were attributed to Nigerian pirates in 2011 and ten in 2012,¹ but it is estimated that attacks went highly underreported.^{li} The worst affected regions are Forcados, Burutu, Akwa-Ibom, the Badagry Estuary and the Bakassi Peninsula.^{lii} Some Nigerian ports located in these regions are isolated and remote. Therefore, to ensure port security involves ensuring the security of maritime environments which comprise of land, air, sea surface and subsurface. The Nigerian authorities face several difficulties to achieve maritime security in all the environments and

this would make the ports susceptible to piratical and terrorist attacks. Those difficulties will be examined in Chapters III.

INTERNATIONAL LEGAL FRAMEWORK AGAINST MARITIME TERRORISM

After establishing the theoretical framework on which the Thesis is based, namely what is maritime terrorism and its effects on Nigeria, **Chapter III will proceed in answering the first part of the research question – what are the relevant legal instruments** which constitute the international framework against maritime terrorism.

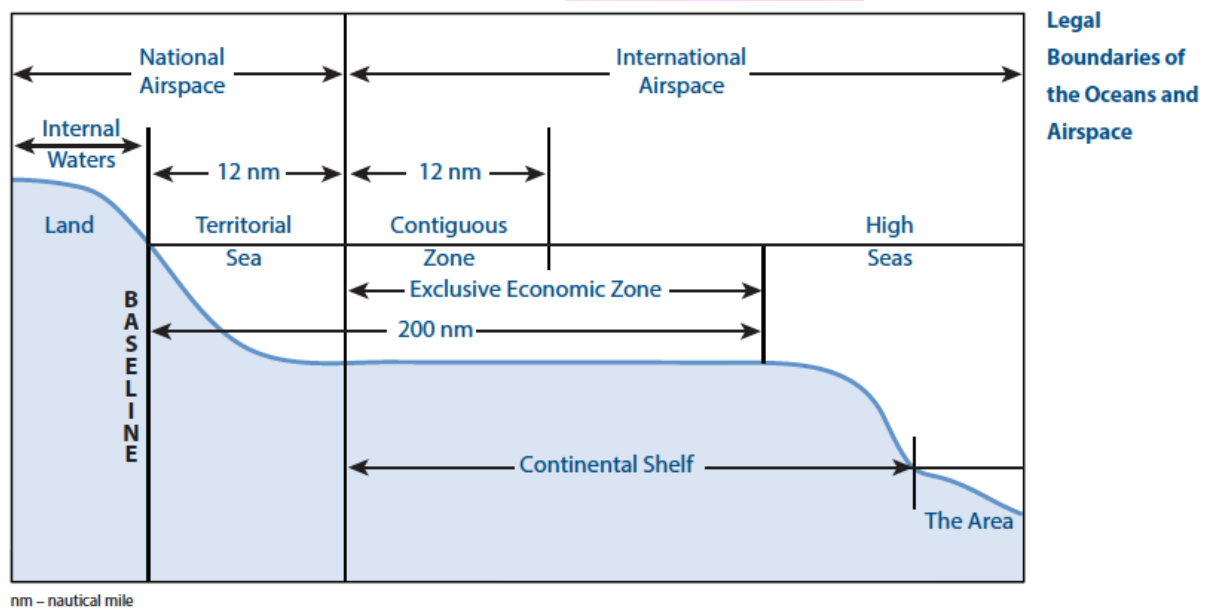
Over the years, the international legal framework has been developed and modified to adapt to prevailing unlawful acts which threaten maritime safety and security. According to Mukherjee^{liii} many of those developments represent a codification of prevalent international custom and practice. This is in response to evolving threats to maritime security that the international community undertakes to amend existing legislation and where necessary enact new legislation. Part of the **international legal framework** which is going to be examined in the following paragraphs is the LOSC 1982, SUA 1988 Protocol and SOLAS 1974 as Amended. This chapter will look at the rationale of those instruments in combating maritime terrorism.

The 1982 Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (hereinafter: UNCLOS), is an international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III). The conference took place between 1973 and 1982. UNCLOS as a widely ratified convention is the fundamental instrument regulating maritime matters. It lays down the basic principles applicable at sea, just as the principle of freedom of the seas, peaceful uses of the oceans, freedom of the seas and exclusive flag state jurisdiction on the high seas.^{liv}

Coastal states and flag states share the common interest of eliminating maritime terrorism which is a threat to the safety of navigation routes, the safety of human life at sea, and major economic interests.^{lv} When the UNCLOS was negotiated, maritime terrorism was not as

visible and urgent as it is today. The hijacking of the Italian flagged cruise ship *Archille Lauro* in 1985, three years after the conclusion of UNCLOS, functioned as a wakeup call. Explicit regulations on terrorism are hence lacking, and it is to resort to general provisions. Of particular importance in this context is the principle that jurisdiction is based on registrations. Exclusive flag state jurisdiction, which in a nutshell stipulates that on the high seas no state other than the flag state is permitted to prescribe or enforce the law on a vessel, is the consequence. Nevertheless, as a principle, it is not absolute and encroachments are permissible as long as justified by law. There are three conferences, on the law of the sea – UNCLOS I (1956), UNCLOS (1960), and UNCLOS III (1967).



(Graphic 4)^{lvi}

Regarding the national jurisdiction, UNCLOS established:

- The sovereignty of the coastal States over their territorial waters and the airspace above these waters;
- The right and conditions for peaceful passage through territorial waters;
- Criminal and civil jurisdiction in territorial waters;
- The right of the coastal State to exercise the controls necessary, to prevent violations of its border and immigration laws.

If a terrorist act is about to happen in the territorial sea, the coastal state, according to articles 19 and 25 UNCLOS, could intervene (stop, board and inspect the vessel) if it is fairly confident

that the passage is non-innocent. If the measures taken prove unreasonable or not proportionate the state is liable for any damage caused.

When a terrorist attack occurs in the territorial sea, criminal jurisdiction can only be exercised by the coastal state “*if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea*” or otherwise justified under article 27 (1) UNCLOS.

The UNCLOS does not define the breadth of territorial waters. In international relations, it is customary for the breadth of the territorial sea not to exceed 12 nautical miles, and most states in their domestic law, governing the status of their naval water, adhere to these limits. About the 12 miles zone, it is important to mention, that the coastal state has wide powers to suppress maritime terrorism. The coastal state can prosecute criminals but has no legal obligations to do so within its maritime zones up to 12 nm from the baselines under UNCLOS.

Regarding the areas, beyond national Jurisdiction, UNCLOS proclaims the basic principles of freedom of navigation, fishing, and laying of cables and pipelines on the sea bottom. The 1982 Convention also introduces the freedom of marine research and the possibility of building artificial islands and installations.

According to the Convention, ships traveling on the high sea only obey the power of the state whose flag they carry. For warships, this principle is absolute, while some exceptions are allowed for trade vessels. Military vessels can stop and search foreign merchant ships on suspicion of human and drug trafficking, piracy, and unauthorized radio and television broadcasting.

However, what is the legal status of the terrorist activities, perpetrated in the high sea? Article 110 (1) (d) UNCLOS may be applicable to maritime terrorism if terrorists approach their target in small, highly maneuverable speedboats. These speedboats are exempted from the requirement to fly the flag of any state and so they are considered as stateless vessels subject to the universal right to visit.^{lvii} When discussing terrorism in high seas, it is also necessary to point out the fact, that in some cases of maritime terrorism, article 111 UNCLOS may grant third-states jurisdiction. For example: if a terrorist attack has been committed within areas of

national jurisdiction and the offender flees towards the high seas. In this situation, the coastal state authorities may pursue the boat

The 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation

In the subsequent paragraphs, the author will present information, regarding several UN resolutions, the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2005 Protocol to SUA convention

The SUA Convention was adopted to address the shortcomings of UNCLOS regarding maritime terrorism. The Convention was adopted by the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation at Rome on 10 March 1988. It came into force on 1 March 1992 after it had been ratified by 15 states.

Some of the elements, criminalized by SUA are^{lviii}:

- Seizing control of a ship by force or threat of force;
- Committing an act of violence against a person on a ship if it is likely to endanger the safety of the ship;
- Destroying or damaging a ship or its cargo in such a way that endangers the safe navigation of the ship;
- Placing or causing to be placed on a ship a device or substance which is likely to destroy or cause damage to the ship or its cargo

The SUA Convention is the first international treaty designed to meet the particularities of maritime terrorism. As such it is an important and significant step forward the fight against terrorism at sea.

It is important to stress out the fact that cooperation and assistance as the fundamental basis to combat terrorism, are provided in article 12 and 13 SUA Convention. The 1988 SUA Convention is a criminal law instrument making terrorists criminals but does not contribute to the suppression of attacks as indicated by the title.^{lix}

The 2005 Protocol to the Sua Convention

The terrorist attacks of September 11 provided clear evidence of the insufficient legal structure concerning terrorism at that time, as neither IMO instruments nor UNCLOS covered terrorist attacks where a ship is used as a weapon.^{lx}

To strengthen the existing legal instruments, The 2005 Protocol was created. This protocol greatly expanded the scope of SUA Convention

Currently, however, only 40 states, which represent only 39,06 % gross tonnage of the world's merchant fleet, have ratified the Protocol's amendments.^{lxi} As a result of this, it is extremely difficult to determine to what extent the Protocol will be successful. The success of the protocol depends mainly upon its effective implementation at national level. This implementation includes the adoption of the Protocol's catalog of offenses and provisions for criminal jurisdiction. With certainty, this is a process that is slow and will certainly take more time.

International Ship and Port Facility Security Code

The ISPS Code 2002 was formulated for international shipping by the IMO as a comprehensive frame to strengthen maritime security and specifically to prevent and suppress acts of terrorism against the maritime realm.^{lxii} Several measures were adopted in July 2004 in the SOLAS Convention 1974 As Amended, which aimed at enhancing maritime security on board ships and at the ship-port interface. These amendments created a new SOLAS Chapter XI-2, which contains special measures to enhance maritime security. Specifically, it deals with maritime security containing the mandatory requirement for member States' ships and port facilities to comply with the ISPS Code. The Code came into force on 1 July 2004. Fundamentally, the ISPS Code takes the approach that ensuring the security of ships and port facilities is a risk management activity. Also, it demands that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.^{lxiii}

The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability, for ships and

port facilities. In its preamble, the ISPS Code states that the increase in maritime threats would only be counteracted logically with a reduction in vulnerability.

The Code provides several ways in which vulnerability could be reduced. One of the ways is that the ship will be subjected to a system of survey, verification and control to ensure that the security measures are implemented.

Measures Targeting Contracting Governments

To begin the process of security measures, each Contracting Government will conduct Port Facility Security Assessments in its area of responsibility. These assessments have three essential components which include the identification and evaluation of important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged could cause significant loss of life and among others. The security assessment must identify the actual threats to focus on critical assets and infrastructures, to prioritize security measures. The assessment must address the vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities and other areas within a port facility that may be a likely target. These security assessments are essential for the Contracting Governments to accurately evaluate risk. The principal responsibilities of Contracting Governments under the IMO security regulations are to enforce the relevant provisions in SOLAS and the ISPS Code and make rules accordingly.

Measures Targeting Ships

Some ship-related provisions were modified in the SOLAS Convention - Chapter XI. These include the acceleration of the implementation of the requirements to fit Automatic Identification Systems (hereinafter: AIS), marking of Ship's Identification Number, installation of Ship's Security Alert System and the carriage of a Continuous Synopsis Record among others. According to Murphy^{lxiv} AIS could enhance maritime safety by providing all ship and shore stations with details of the position, course and speed of all the other AIS-equipped vessels within range. Also, it would facilitate more rapid and precise communication between stations in cases of emergency. However, the AIS is an insecure means of

communication, since the signal is broadcast and open to any appropriate receiver. Furthermore, the low cost of AIS equipment and its wide availability constitutes a risk as pirates and terrorists could easily acquire the equipment for their nefarious use. Additionally, the incident of piratical attack on Malta-flagged Russian cargo ship *Artic Sea* in the Baltic Sea in July 2009 has shown that pirates, once onboard, can render the AIS ineffective by switching off the responders.

THE LEGAL AND PRACTICAL PROBLEMS OF THE PREVENTION OF MARITIME TERRORISM IN NIGERIA

The purpose of Chapter III is to pinpoint the main legal and practical problems of the implementation of international legislation against maritime terrorism in Nigeria. This Chapter will elaborate on the second part of the research question – namely, why the application of international legislation against maritime terrorism is ineffective in Nigeria?

As we can see from table 1, since 1999 there is a steady increase in acts of piracy and terrorism in Nigeria.

Ser	Gulf of Guinea Country	Number of Actual and Attempted Attacks Annually									
		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
1.	Angola	1	3	1	-	3	-	-	4	1	2
2.	Cameroon	3	2	7	5	2	4	2	1	-	2
3.	Ghana	2	2	5	5	3	5	3	3	1	7
4.	Guinea	6	6	3	2	4	5	1	4	2	0
5.	Ivory Coast	5	5	9	5	2	4	3	1	-	3
6.	Nigeria	12	9	19	14	39	28	16	12	42	40
7.	Senegal	1	-	1	3	8	5	-	-	-	-

(TABLE 1) ^{lxv}

The increasing number of maritime terrorism and piracy are evidence, that the “Giant of Africa”, Nigeria, have troubles to implement and enforce the international and the national

legislation against maritime terrorism. The following paragraphs are going to study some of the main reasons for those troubles.

Lack of Domestication of International Legislation

Most of the countries in the Gulf of Guinea are party signatory to the international legislation such as UNCLOS^{lxvi}, SUA Convention^{lxvii} and ISPS Code. The ISPS Code is an important instrument for ensuring the security of ships and port facilities from acts of terrorism, piracy and other maritime crimes. Despite their importance to maritime security, certain provisions in these international legal regimes have not been domesticated in the National Laws of the countries in the Gulf of Guinea. This implies that the Criminal Code of these countries could not treat acts of terrorism as criminal offenses in itself.

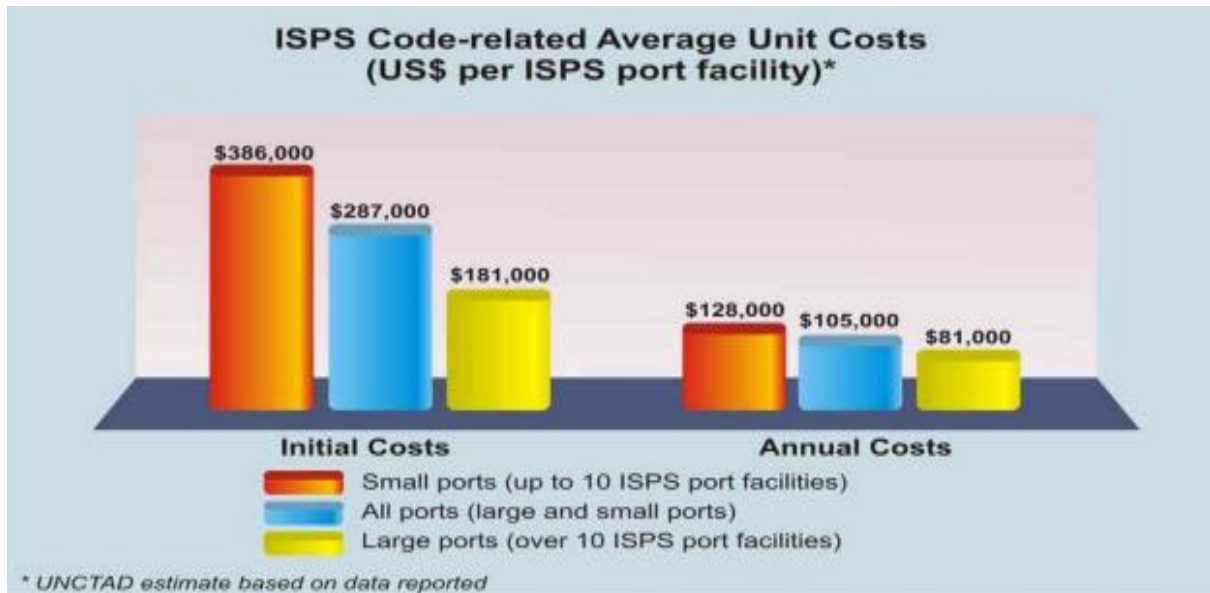
For example in Nigeia, acts of terrorism and piracy are not defined by the Laws of the Federation of Nigeria (hereinafter: LFN)^{lxviii}; therefore these acts could not be prosecuted in any of the law courts in Nigeria. However, LFN declares it a criminal offense for murder, arson, illegal possession of firearms and explosives which are punishable by the law. This implies that terrorists and pirates could be prosecuted by these complementary acts to their criminal offenses. With the increase in acts of terrorism and piracy in this region, with Nigerian waters having the second highest number of attacks in 2008, second only to Somalia waters^{lxix}; there is a need for the codification of these offenses in the National Laws. This codification will directly treat acts of terrorism and piracy as criminal offences; thereby ensure effective implementation of ISPS Code in the Gulf of Guinea and Nigeria.

Highm Costs

The ISPS Code applies to port facilities serving ships engaged on international voyages.⁹ Therefore, any individual port may encompass more than one port facility to which the ISPS Code applies. The main obligations of the port facilities involve, among others, undertaking Port Facility Security Assessments (PFSA), developing Port Facility Security Plans (PFSP), designating Port Facility Security Officers (PFSO) and ensuring that training and drills take place regularly. The ISPS Code imposes significant additional costs on the Contracting Governments and ship-owners to implement the above undertakings.^{lxx} According to the OECD Report^{lxxi}, the initial burden on all ship operators worldwide is estimated to be at least

USD 1,279 million and USD 730 million per year thereafter, for additional manpower and security-related equipment.

The graphic below is presenting the initial and annual costs of the implementation of the ISPS code per country, depending on the port size:



(Table 2) ^{lxxii}

Not every country can cover such expenses. The countries of the Gulf of Guinea are among the developing countries of the world. Some of the countries do not have the financial capability to spend a large amount of money on the security of merchant shipping annually. Consequently, the effort of Nigeria to implement the provisions of the ISPS Code in her geographical area of responsibility is being hindered by the high cost of compliance. The implementation of the ISPS code is further hindered by the high level of corruption, reported in Nigeria.

Corruption

According to the reports of Transparency International ^{lxxiii}, there is a high level of corruption of officials of the Governments in the Gulf of Guinea. Nigeria is among the countries in the region that are worse affected by corrupt practices according to the report. It would be difficult to ensure the effective implementation of maritime security regimes in a corrupt environment. ^{lxxiv}

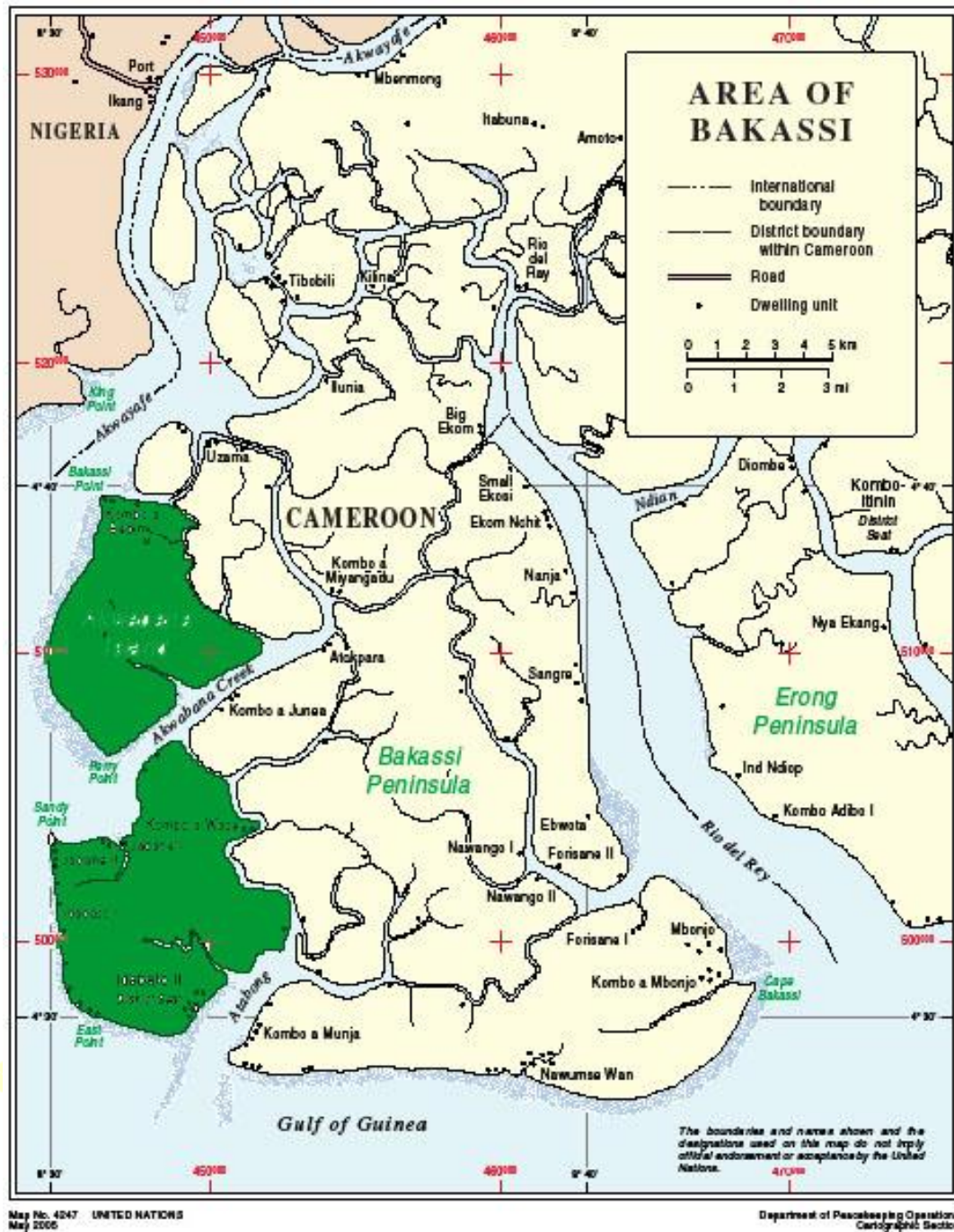
A direct consequence of corruption is the poor governance in the West and Central African countries. As a result of this, some countries have tended to fail State status,^{lxxv} which is a trademark for a lawless society and haven for criminal activities. For example, petroleum and gas resources have been discovered in large quantities off-shore in the Gulf of Guinea and Nigeria ranks the sixth largest exporter of crude oil in the world.^{lxxvi} Most of the facilities for the oil production are off-shore and the countries in this region lack sufficient maritime security operatives, which has significantly facilitated illegal bunkering. As a result, the money realized from the illegal bunkering and other maritime crimes are being used by militant groups in Niger-Delta such as MEND and Niger Delta Peoples Salvation Front to finance terrorism as well as piracy and armed robbery against ships.

Sensitivity Over Territorial Water Sovereignty

Disputes over maritime boundaries could impair maritime security globally.^{lxxvii} This have been the case with some countries in the Gulf of Guinea.^{lxxviii} It was observed that as a result of the disputes, some countries in the sub-region have difficulties to address shared security concerns in a collaborative manner and even resolve to military force.^{lxxix} This tends to hinder effective maritime security. For example, some countries would find it difficult to address shared security concerns in partnership with the other countries in the region, if they have lingering territorial disputes.

Among the major maritime disputes in the Gulf of Guinea are those between Cameroon and Nigeria over the Bakassi Peninsular^{lxxx} as well as between Cameroon and Equatorial Guinea over an island at the mouth of the Ntem River.^{lxxxi}

Bakassi Peninsula dispute is a particularly bitter dispute between neighboring countries.



(Graphic 5) lxxxii

Bakassi is a peninsula on the Gulf of Guinea. It lies between the Cross River estuary, near the city of Calabar. It is governed by Cameroon, following the transfer of sovereignty from neighboring Nigeria as a result of a judgment by the International Court of Justice.^{lxxxiii} Initially, the Nigerian Senate rejected the transfer, since the Greentree Agreement ceding the area to Cameroon was contrary to Section 12(1) of the 1999 Nigerian Constitution.^{lxxxiv} The territory was transferred to Cameroon on 14 August 2008. To this day, however, this boarding incident

causes grievances between the two countries ^{lxxxv} and as a result, the cooperation between Cameroon and Nigeria on the field of maritime security is virtually non-existent.

Lack of Resources

According to IMO Reports ^{lxxxvi}, the countries of the Gulf of Guinea are yet to fully comply with the standards for port safety and security provisions in ISPS Code due to lack of resources. For example, there are some resources needed in the ports for the effective implementation of the ISPS Code. These include ships, security personnel, vessel traffic services (VTS) center, AIS, ^{lxxxvii} LRIT^{lxxxviii} and other surveillance equipment. In some countries in the Gulf of Guinea, including Nigeria, the existing infrastructure is weak while in others the infrastructure is lacking. As a result, the implementation of the existing international legal regimes in this sub-region is hindered. However, the positive aspect is that in countries such as Angola, Ghana and Nigeria where the security infrastructure is weak, efforts are being made to repair, upgrade and replace the infrastructure appropriately. ^{lxxxix}

STRATEGIES FOR EFFECTIVE MARITIME SECURITY IN NIGERIA

A effective ISPS Code is a requirement in ensuring maritime security globally.^{xc} In the Gulf of Guinea, neighboring coastal countries should take measures to ensure that the provisions in the Code are effectively carried out. Some of the provisions in the ISPS Code do not specify the standards of the requirements for its implementation. Instead, they are being left to individual Contracting Governments to determine and apply accordingly. For example, although the Code and other legal regimes, criminalize the acts of terrorism and piracy, the legislation did not specify standard courts of jurisdiction or punishments to be awarded to the perpetrators.

All the requirements in the ISPS Code that are not specified were left for the Contracting Countries to work out in detail and implement accordingly.^{xcii} The degree of each State concerned with matters of terrorism and piracy have varied from one State to another. Generally, the countries in the Gulf of Guinea, do not consider terrorism as a serious threat to maritime security. In fact, in Nigeria, there is no National Law against acts of terrorism and piracy.^{xciii} However, the perpetrators of these criminal acts could be tried with other Penal Code of the National Laws bordering on murder, armed robbery and possession of illegal firearms

among others.^{xciii} Faced with the difficulties in enforcing the ISPS Code in Nigeria, some strategies have been identified which may make the Code effective within the region. However, in the absence of corruption, these strategies include the domestication of international legislation, maritime security tax collection, a maritime domain awareness initiative and a regional maritime security initiative. Others are ships-port facilities security initiatives, manpower training developments, the use of armed escorts on board ships and the deployment of a rapid reaction Naval Force.

Weapons Control on Ships

In some countries such as Indonesia and Malaysia, firearms and armed guards are permitted on board merchant ships and ports. It is worth noting that this is a limited strategic approach in ensuring the security of ships and port facilities.^{xciv} On another hand, in the Gulf of Guinea the countries, including Nigeria, prohibit the carriage and use of firearms for the security of shipping activities unconditionally. Therefore, it is unlikely that these countries would allow ships with unlawful possession of firearms into their ports. This prohibition could leave the merchant ships defenseless in case of terrorist attacks against them. A possible solution will be to examine the best practices regarding weapons control on ships, applied in Indonesia and Malaysia and replicate them in Nigeria as well.

Deployment of Naval Task Force

High-risk waters around the world would necessitate the use of naval forces in the support of civil authorities to ensure maritime security. This has been the situation with the GWOT in “hotspot areas” such as the Gulf of Aden and Strait of Malacca. Presently, there are multinational coalition forces with the mandate of the UN and led by the US Navy in “Operation Active Endeavour”^{xcv} and regional forces led by EU in “Operation Atalanta”^{xcvi} which are to enhance the maritime security in the “hot spot” areas worldwide. It is worth noting that these formidable Naval Forces were primarily deployed as a counterterrorism measure.

The presence of navies is needed to detect and deter maritime crimes. These naval forces are to have the capability of interdicting and boarding vessels suspected of illegal activities. Currently, the patrolling of the Gulf of Guinea, particularly the Nigerian territorial waters, by the regional navies has been inadequate. This is evidenced by the fact, that even ships with

armed escort, set sailing from Nigerian ports were attacked.^{xcvii} As a result, Nigerian waters can be considered improperly governed and secured, thereby making the areas susceptible to maritime crimes.

Regional Maritime Cooperation

As mentioned, in the Gulf of Guinea, the States high sensitivity of territorial waters sovereignty. However, there is a growing trend to de-emphasize this sensitivity for the sake of more effective regional cooperation in combating maritime security threats. The countries in the Gulf of Guinea have established regional organizations such as the maritime Organization for West and Central African States, to promote regional cooperation among the countries.

Additionally, there is an on-going bilateral agreement between Equatorial Guinea and Nigeria in the sharing of their maritime assets to ensure security in the Gulf of Guinea.^{xcviii} The expansion of such bilateral agreements could enhance maritime security and impact on effective ISPS Code implementation and other security instruments within the region. As an additional benefit, bilateral agreements can improve the relationship between countries.^{xcix}



(Table 3)^c

CONCLUSION

The non-uniformity in the implementation of the international regulatory regimes by IMO Member States is attributed to the weaknesses in the definitions provided by those regulations. Thus, there have been different interpretations of these provisions in the national legislation by the Member States. The significant variation in the standard of maritime security globally has resulted in an increase in global acts of terrorism and piracy in the last fifteen years.

This Study identifies the motives of acts of terrorism and it establishes the human and economic impacts of these criminal acts on ships and ports.

The existing maritime security legal regimes including the UNCLOS, SOLAS and SUA Conventions and the ISPS Code had been examined in details in Chapter II, thus answering the first part of the research question: what is the contemporary international legal framework governing maritime security. Several legal and practical problems, hindering the application of those legal instruments in Nigeria, answering the second part of the research question of the Study: why the application of this legal framework is ineffective in Nigeria.

Furthermore, this study identifies contributing factors for the lack of effectiveness of the ISPS Code on enhancing maritime security in Nigeria. The most important factors are the sensitivity over territorial waters and the failure of nationalizing international law. This has resulted in the inadequacy of national law to address the issues of maritime terrorism as well as a lack of maritime security infrastructure in Nigeria.

This study stresses that the lack of any presence of a regional Naval Force which has resulted in the irregular patrolling of the Gulf of Guinea waters has made it unregulated as well as ungovernable and therefore a breach of maritime security.

Recommendations

To combat acts of terrorism, piracy and armed robbery against ships thereby ensuring maritime security in the Gulf of Guinea, it is recommended that:

- **The international community should define sufficiently, the provisions of the acts of terrorism in the UNCLOS, SUA Convention and ISPS Code.**

The legislation should be simple, precise and organised in a way to enhance comprehension. Currently, the term terrorism is not clearly defined or the term is defined in a way that conflicts with the existing legal instruments.

- **Gulf of Guinea countries should eliminate corrupt practices to enthrone good governance within the region.**

Gulf of Guinea countries, Nigeria included, need a united front in order to respond effectively to the growing threat of maritime terrorism^{ci} along their coasts. The primary responsibility to fight terrorism lay with the countries of the region, who must continue to develop coordinated mechanisms for monitoring and eliminating corruption as well as harmonizing their legal their legal system. Nigeria should applying a single corruption counteraction policy on national level, forming the culture of zero tolerance of corruption by governmental officials. Furthermore, the Nigerian government should undertake administrative, stimulus and other measures aimed at a wider involvement of the governmental officials in combating corruption, with the aim to developed a national wide negative attitude towards corrupt behavior.

- **International regimes on maritime security should be domesticated in the Gulf of Guinea.**

The incorporation of international law is the process by which international agreements become part of the municipal law of a sovereign state. A country incorporates a treaty by adopting domestic legislation that gives effect to the treaty in the national legal system.^{cii} There is a need for the codification of the maritime terrorism offenses enumerated in UNCLOS, SUA Convention and ISPS Code, in the National Laws, This strategy will directly treat acts of terrorism and piracy as criminal offenses; thereby ensure effective implementation of ISPS Code in Nigeria.

- **Regional cooperation for maritime security should be adhered to by the countries in the Gulf of Guinea.**

To promote regional cooperation, countries in the Gulf of Guinea could enter into bilateral and multilateral agreements between themselves as well as with foreign powers, such as the USA, and the EU. The main goal of this cooperation will be to develop capacity building for the

security personnel in the region. The capacity building would involve recruitment, training and retention of the ship security personnel following the ISPS Code.

- **Regional Navies in the Gulf of Guinea should be patrolling the waters in the Region, alone or with the help of an international force.**

For example, on realization of the weakness of the national navies in the region, the USA has proposed the establishment of the African Command Force (AFRICOM).^{ciii} Well-integrated navies in the region into the AFRICOM, such as the proposed Gulf of Guinea Guards will ensure improved infrastructure for these navies which would increase their effectiveness.

- **Maritime Domain Awareness Initiative**

As mentioned earlier, the Gulf of Guinea is one of the regions in the world where shipping activities are mostly ungovernable and unregulated. This has been attributed to insufficient Maritime Domain Awareness in the region, which is making the area prone to maritime crimes.

To remediate the situation, the USA Navy has already started a partnership with Nigeria Navy in establishing Regional Maritime Awareness capability centre in Nigeria.^{civ} This centre has systems covering over 45 nm area of the sea, within the range of which all shipping activities in the Nigerian Waters could be monitored and controlled to enhance maritime security. For this strategy to succeed, however, there is a need for increase of sharing of information between the Nigeria Navy, foreign allies and law enforcement agencies on illegal shipping activities in the Maritime Domain Awareness.

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