EXPLORING THE LINKS BETWEEN SEA PIRACY AND NATIONAL SECURITY: THE NIGERIAN EXPERIENCE

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ABSTRACT

Piracy which is a global crime that impedes the free movement of ships, passengers and goods with its attendant economic implications, has dire consequences for national security. This crime has made travelling by sea a tough risk across jurisdictions. The perpetrators are usually heavily armed, with sophisticated weapons to enable them hijack a vessel or vessels and redirect them to their desired location for the payment of an expected ransom, killing, robbery or other forms of violent crimes. Adopting the doctrinal approach, this paper explores the link between sea piracy and national security in the African state of Nigeria while drawing comparison and inspiration from other states across affected jurisdictions. It establishes that there is a direct nexus between sea piracy and national security. The paper found that youth unemployment, absolute or state control of natural resources, monumental corruption in and by government officials, misrule or bad governance, frustration and the desire to pay the government back for perceived wrongs done to the people, greed and criminal tendencies of youths and the lucrative nature of sea piracy are among the factors encouraging the crime. In the end, the paper recommends job creation, national re-orientation, equitable distribution of natural resources, eradication of corruption, and community engagement among others as solutions to the crime of sea piracy.

Keywords: National Security**,** Sea piracy, hostage taking, ransom, ship, Nigeria, Niger Delta, Gulf of Guinea.

INTRODUCTION

Sea piracy is a robbery or forcible depreciation on the high seas, without lawful authority, done *animo furandi*, in the spirit and intention of universal hostility.[i] It can also be seen as the act of forcefully taking over a ship or ships on the high sea with the intention to steal the cargo, take the passengers hostage or to commit murder. Piracy consists of any of the following acts:

> (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
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> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)[ii]

It is instructive to mention that the definition by the UNCLOS involves aircrafts and not just ships. Articles 102 and 103 went further to describe the classes of ships that can be used for piracy purposes.[iii]

It should be noted at this stage that there are basically two types of piracy namely: sea piracy and intellectual piracy[iv] which is theft of intellectual property especially in electronic media.[v] However, the focus of this paper is sea piracy as it has to do with national security. The term 'piracy' is widely used in the media and in official reports to generally refer to maritime crime, but this is formally incorrect, as UNCLOS defines piracy as an act conducted on the high seas i.e. beyond territorial waters. Similar criminal activities that take place within territorial waters are not defined as acts of piracy following this definition in international law.[vi] They are largely referred to as robberies.

Historically, sea piracy is an ancient crime perpetuated as long as there have been ships at sea.[vii] Internationally, the laws of various jurisdictions against piracy have ancient origins, too, but United States' law developed chiefly in the eighteenth and nineteenth century, is taking the lead or appears most developed. The power to criminalize piracy originated in the U.S. Constitution, which was followed by the first federal law in 1790 and crucial revisions over the

next sixty years. Additionally, the United States and other nations cooperated to combat piracy in the twentieth century. This resulted in a unique shared view of jurisdiction: piracy on the high seas can be punished by any nation.[viii]

In 1790 the United States' Congress enacted the first substantive antipiracy law, a broad ban on murder and Robbery at sea that carried the death penalty.[ix] In 1818, however, the U.S. Supreme Court ruled that the law was limited to crimes involving U.S. citizens: U.S. jurisdiction did not cover foreigners whose piracy targeted other foreigners.[x] A year later, in 1819, Congress responded by passing an antipiracy law to extend U.S. jurisdiction over pirates of all nationalities.[xi]

Somalia has been known and generally referred to as the global headquarters of sea piracy. According to Santiago Iglesias Baniela and Juan Vinagre Ríos[xii], Somalia having been without a stable government since 1991[xiii], lacks a functional economy, with various powerful factions (warlords and militant Islamic groups) possessing little, if any, national allegiance, they currently fight for the control of the country, where pirates are able to operate with impunity from Somali coastal towns or even camps up to the waters of Nigeria and beyond; this situation is the root of the revival of piracy acts in this area from the middle of the last decade, thereby making Somalia a country of concern to the globe. Of the 293 piratical incidents the International Maritime Bureaus recorded for the year 2008, 111 attacks occurred on the high seas surrounding Somalia's territorial waters. This represents a staggering annual increase of nearly 200% in the critical trade corridor linking the Suez Canal and the Indian Ocean. This led to the description of Somalia as one of earth's most dangerous waters.[xiv]

Like the rest of the world, sea piracy in Nigeria has existed as long as there has been movement of people and cargo on the sea and air. To some writers, piracy in Nigeria became entrenched as a result of the incursion of the Western powers into Africa which spread throughout the Gulf of Guinea (including Nigeria).[xv] However, the trend has soared because of the increasing youth unemployment, sabotage, corruption and bad governance in the country. Nigeria is undeniably a rich country based on its economic, agricultural and population advantages[xvi], but criminal activities like piracy have been a significant disadvantage. Most of the piracy activities happening in Nigeria are mainly located in the Niger Delta region, the heart of Nigeria's oil and gas exploration. Some of the unemployed youths of the region use piracy activities as a fightback against the so-called "state resource control" embarked upon by the Federal Government of Nigeria, which disadvantages them. [xvii] Indeed, Nigerian waters and the

adjoining Gulf of Guinea have been designated as a 'High Risk Area' and one of the most troubled and dangerous global waterways.[xviii]

The Niger Delta region, which is the heart of Nigeria's oil and gas exploration, serves as the avenue for most piracy activities in Nigeria which is believed to be perpetrated by the unemployed youths in the region.[xix] The piracy problem in Nigeria ultimately links to the country's dysfunctional oil industry and the violent politics of the Niger Delta.[xx] Given that Nigeria is the world's eighth-largest producer of oil, unfortunately, it suffers from shortages of refined fuels.[xxi] Some see this as a problem created by some unpatriotic citizens seeking to stymie national progress and development.

According to Dr. Christian Bueger, one of the significant causes of piracy is corruption, weak law enforcement and poverty.[xxii] These causes suggest that the problem of piracy in Nigeria is traceable to the conspiracy with government officials. Again, as Bless Nube[xxiii] reveals, "*we do not work in isolation. We have a network of ministries' workers. What they do is to give us information on the location and content of the vessels to be hijacked. After furnishing us with the information, they would make part payment, and after the hijack, they would pay us the balance*" Similarly, Perouse de Montclos[xxiv], claims that some Navy, Customs and Ports Authority staff collude with the pirates by providing insider information, to unleash piracy and armed robbery on vessels navigating the high seas, in the hope to share the proceeds among the parties.

Modern-day pirates around the world share the legal designation of their historic brethren as "enemies of all mankind".

SOME INCIDENTS OF SEA PIRACY IN NIGERIA

The inclusion of Nigeria in piracy hotlist calls for attention to the crime since it constitutes a security challenge to the nation.[xxv] Over the years, there has been an increase in the level of threats in the shape of piracy, sea robbery and kidnapping around Niger Delta region and wider Gulf of Guinea (GoG) coastal ways. In June 2008, MEND attacked Shell's Bonga Offshore Oil Rig, which led to temporary halt of the company's production at its $3.6billion facility. Also, in March 2016, the militants used an underwater explosive and destroyed Shell's Trans Forcados Pipeline, causing $3billion damage.[xxvi]

In 2018, Nigeria witnessed 48 actual and attempted piracy attacks, up from 33 recorded in 2017.[xxvii] In its 2017 report, the International Maritime Bureau (IMB), ranked Nigeria again as the country with the highest reported incidents of piracy, recording about 21 attacks out of 77 reported globally.[xxviii]

Despite efforts by the federal government to reduce the incidents of piracy and banditry in Nigeria's territorial waters, the country still leads in pirates attack in the Gulf of Guinea.

IMB in its 2018 quarterly report said a total of 156 incidents of piracy and armed robbery against ships were reported to its Piracy Reporting Centre in the first nine months of 2018 compared to 121 for the same period in 2017 and majority were from Nigeria.[xxix]

According to the IMB, "A total of 156 incidents of piracy and armed robbery against ships were reported to the IMB Piracy Reporting Centre (PRC) in the first nine months of 2018 compared to 121 for the same period in 2017. The 2018 figure is broken down as 107 vessels boarded, 32 attempted attacks, 13 vessels fired upon and four vessels hijacked although no vessels were reported as hijacked in the third quarter of 2018 again, Nigeria is in the lead. This is first time since 1994 when no vessel hijackings have been reported in two consecutive quarters.[xxx]

The number of crew held hostage reported for the duration of the incident has increased in comparison to the same period in 2016.[xxxi] The number of crew kidnappings has reduced from 49 in 2017 to 39 in 2018.[xxxii] It is noticeable that 37 of the 39-crew kidnapped for ransom globally, have occurred in the Gulf of Guinea region in seven separate incidents. Twenty-nine crew were kidnapped in four separate incidents in Nigeria including 12 crew kidnapped from a bulk carrier underway 51nm SW of Bonny Island, Nigeria in September 2018.[xxxiii]

It added: "Statistically, the Gulf of Guinea accounts for 57 of the 156 reported incidents. While most of these incidents have been reported in and around Nigeria, the Nigerian Navy has actively responded and dispatched patrol boats when incidents have been reported promptly. There has also been a noticeable increase in the number of vessels boarded at Takoradi anchorage, Ghana. No new incidents were reported off the coast of Somalia in the third quarter of 2018.[xxxiv]

Comparatively, in other world regions, incidents of piracy and armed robbery are comparatively low.[xxxv] No new incidents were reported off the coast of Somalia in the third quarter of 2018, while two fishermen were reported kidnapped off Semporna, Malaysia in

September 2018. Incidents in other regions, including some Latin America countries, border on low-level opportunistic theft.[xxxvi] Nevertheless, the IMB continues to encourage all masters and crew members to be aware of these risks and report all incidents to the 24-hour manned PRC.[xxxvii]

Furthermore, the IMB states that the piracy attack frequency of crew members in the GoG, in the first half of 2020 represents 90% of the whole world.[xxxviii] In addition, the frequency of abducting ship crew rises to about 50%, from 71 in 2018 to 121 in 2019[xxxix]. From January 1st, 2020 to August 4th, 2020, the attacks on vessels in GoG are up to 39 (27 actual incidents and 12 attempted attacks), including one attack in Togo[xl]. Besides, 38 total attacks of piracy attacks and armed robbery were reported to the IMB Piracy Reporting Centre in the first three months of 2021 in the world[xli]. Therefore, Nincic C.[xlii] claims that issues about maritime security along the West African coast (Benin, Ghana, Nigeria) but in particular, the Togolese waters, are increasing in recent years and threatens the international movement of commodities and services.

From available event though, the global piracy cases dropped in 2021 to the lowest since 1994[xliii], Nigeria had more incidents of piracy than the whole of the rest of Africa put together in 2021.[xliv] For the year 2022, not much has happened except with the pockets of incidents of piracy.[xlv]

THEORIES OF SEA PIRACY IN NIGERIA

1. *The Failed State Theory*

According to Rotberg and Campbell, 'Nigeria has long teetered on the precipice of failure.[xlvi] But now, unable to keep its citizens safe and secure, Nigeria has become a fully failed state of critical geographical concern.'[xlvii] Nwalozie opines that Nigeria has failed to introduce and entrench good governance, democratic tenets, and "true federalism"; instead, it has promoted and sustained 'the political scramble for power among different ethnic groups.' [xlviii] The implication of the failed state theory is that a country's government has failed to provide good governance, exhibit democratic principles, create economic development, secure the lives and properties of its citizens, and curb corruption in government, the maritime industry and the oil sector.[xlix]

This has led to heightened unemployment and poverty in the country, thereby motivating the youths, especially in the Niger Delta region, to become pirates.[1] Hasting used quantitative analysis to argue that failed state is connected to 'less logistically sophisticated hijackings (kidnappings for ransom), while state weakness encourages more sophisticated attacks (those where the ship and cargo are seized and sold).'[li] These types of hijacks are peculiar to Nigerian piracy. Regan opines that a weak state, exemplified by the absence of good governance, provides 'opportunities for pirates to operate with low risk of apprehension. As a country becomes politically weaker, the likelihood of piracy increases.'[lii] Daxecker and Prins argue that weak state, as well as economic interests, implicates the use of piracy by insurgencies, like the Niger Delta militants in Nigeria[liii] to achieve their goals. Santiago Iglesias Baniela and Juan Vinagre Ríos[liv] have argued that this theory is copiously applicable to and manifest in Somalia. According to them, since the state architecture has failed and woefully too, many citizens have resorted to piracy as means of survival.

2. The Frustration/Aggression Theory

Another theory that attempts to emphasis the prevalence of piracy in Nigeria and other affected countries is the frustration/aggression theory which 'postulates that when people are unable to attain their set goals owing to governmental failure, they become frustrated which may in turn lead to aggression.'[lv] Linking frustration to aggression, Dollard, et al., suggest that aggression is always a consequence of frustration. [lvi] This means that the occurrence of aggressive behaviour always presupposes the existence of frustration and the existence of frustration always leads to aggression. Nwokedi, et al., use the frustration aggression theory to aver that the youths in the Niger Delta region of Nigeria due to frustration, anger, and violence became pirates 'in the drive to illegitimately and forcefully benefit from the profitable maritime business operations in their communities'. [lvii]

3. The Economic Theory

Similarly, the economic theory suggests, inter alia, that poverty, unemployment, and environmental degradation, due to oil exploration in the Niger Delta region led to piracy in Nigeria. [lviii] Simply put, the destruction of the Niger Delta environment as a result of oil exploration,[lix] infrastructural underdevelopment of the region, the resource control agitation, poverty, unemployment, and political violence are some of the frustrations of the Niger Delta youths which culminated in the youths exhibiting aggression by becoming pirates.[lx] This theory

according to Santiago Iglesias Baniela and Juan Vinagre Ríos, is equally applicable in the Gulf of Aden which include Somalia.[lxi]

4. The Greed Theory

The greed theory has been used to elucidate the causes of piracy in Nigeria.[lxii] Consequently, Balogun, substantiated the theory of greed as one of the drivers of 'oil related criminality and youth belligerency in the context of a complex history of oil exploration and production and petro-capitalism to gain access to oil wealth and rents through clientele networks'[lxiii] in Nigeria. Therefore, 'consideration of conflicts using the greed framework of analysis provides a local basis to'[lxiv] understand and appreciate the motive towards mobilizing rebellious forces, such as the Niger Delta militants, in attacking oil tankers off the coast of Nigeria. The greed theory has been applied in resource-rich countries, exemplified by Nigeria, where incessant conflicts and violent confrontations abound because of the quest to control the resource endowments[lxv] by militant groups, such as the Movement for the Emancipation of the Niger Delta (MEND). It is argued that parochial economic considerations and greed precipitate groups to engage in rebellious acts, like piracy off the coast of Nigeria.

STATE/ABSOLUTE OWNERSHIP AND CONTROL OF PETROLEUM AND OTHER RESOURCES

There have been divergent views expressed by Jurists and other commentators on the absolute ownership and control of petroleum resources by the Nigerian government. Writers such as Professor Ajomo and a host of others are of the opinion that absolute ownership and control is the way to go. Others like Professor Sagay and Professor Daruigbo[lxvi] are of the view that absolute ownership has failed and should therefore be abandoned for individual ownership like it is done in the United States of America.[lxvii] While Ajomo argued that State or absolute ownership ensures national unity, effective resource control and prevents the enrichment of few individuals,[lxviii] Professor Sagay opined that absolute ownership has done no one no good as it has become the pillar of disunity, corruption and governmental impunity. He argued further that absolute/state control has not by any means prevented the enrichment of few individuals at the expense of the vast majority.[lxix]

Whichever way one looks at it, it is clear that one of the grouses of the Niger Delta people and by implication many pirates in Nigeria, is the fact that they and their communities are not carried along in the control and management of the resources their region is blessed with. Consequently, it can be concluded on this note that absolute or state ownership of resources is a contributing factor to sea piracy in Nigeria. This paper shall at the end recommend for joint control and ownership of resources.

SECURITY IMPLICATIONS OF SEA PIRACY IN NIGERIA

No fewer than 80 percent of world's trade carried out globally travels by sea. This represents around 93,000 merchant vessels, 1.25 million seafarers and almost six billion tons of cargo yearly[lxx]. These figures show an increase in seaborne trade in recent times.[lxxi] Presently, the International Communities have witnessed one of the world's oldest crimes against sea trade- sea piracy.[lxxii] In the main, African waters harbor important seaways of growing maritime concerns, namely the Coast of the Horn of Africa (HoA) and the Gulf of Aden (GoA); East Coast of Africa, and the Gulf of Guinea (GoG); West Coast of Africa. These waterways and availability of ports have become mine field for sea pirates. From 2007 to date (2022), maritime operators have witnessed intense attacks. In view of this, Nincic[lxxiii] avers that maritime insecurity in Africa and in Nigeria waters in particular, has grown at a disturbing rate and threatens the global flow of goods and services across the world's shipping lines. This portrays a pervasive maritime insecurity and a threat to national security and economic growth in Africa.

The recurrent piracy attacks and robberies have become a great threat to national food security in Nigeria and other affected jurisdictions. The transportation of industrial machines, oil and other resources are done through the high seas, but with piracy, it becomes difficult to achieve this.[lxxiv]The summation here is that sea piracy is a direct threat to the supply of goods and services and directly threatens national security in all affected jurisdictions particularly in Nigeria.[lxxv]

Piracy and robbery on the waters have made fishing on Nigerian waters a great risk.[lxxvi] This has attendant implications for both the economy and national security.

In counting the cost of maritime piracy, therefore, we can only, but appreciate the dangers associated with the menace when we examine the whole gamut and trajectories of the

phenomena to, and for the African Continent and Nigeria in particular[lxxvii] such as: oil theft which has become a nightmare to the Nigeria government, trade and investment, transportation, higher insurance premiums, higher cost of operations, higher cost of goods, lesser income to regional ports, higher security cost, increased pump price of gasoline, disruption of livelihood systems, shortage of food supply, the proliferation of arms; undermines diplomatic relations, foreign intervention, human rights violations, threats to commercial shipping, threats to humanitarian aid deliveries; impact on fishing; environmental degradation, impact on oil production; human fatality, damage to property, bad culture amongst the youth, money laundering among many others. The damage piracy has caused to the African Continent, and that of the rest of the world are fathomless. If proper measures are not taken, African countries would still remain under-developed for the years to come and especially when African countries are trying to be ranked as developed countries in the 21st century and even beyond.

THEORIES OF NATIONAL SECURITY

The decision of a state/nation to set up measures for the security of its territory be it on the waters or on the land, has some basic philosophies or thoughts behind them. This is what is referred to here as the theories of national security. Various authors have propounded several theories along this line, some of which are sociological, political and legal.[lxxviii] We shall explore some of them here for the purpose of this paper.

1. *Sovereignty/Political Theory of National Security*

Under this theory, the principal consideration of the state for making provision of the security of its territory be it on the land or on the waters, is the drive to ensure the safety and sanctity of its sovereignty.[lxxix] The primary objective of this theory is to ensure that the sovereignty (political independence) of a state is maintained and that the conditions for the undisturbed functioning of the entities of such a state are properly kept while ensuring at the same time a state in which organizations and institutions that participate in and organize political life can carry out their functions in a non-threatened manner. For the proponents of this theory, a states' first concern should be to safeguard its sovereignty and that every other thing comes second. A critical look at this theory will convince one that no state can actually be a state in the real sense of the word if its sovereignty is compromised. Consequently, one can conclude that this theory is sacrosanct. The theory advocates for a process that consists in the elimination of

disturbances and creation of a favourable environment for the pursuit of political interests of a state and of the various subjects in the structure of its political system.[lxxx]

2. *Economic Theory of National Security*

To the proponents of this theory,[lxxxi] the state should concern itself first with the security of its economy before any other consideration. According to them, since no area of a state's life can survive without its economy, it should prioritise the security of its economy before any other consideration. [lxxxii] The primary objective of this theory is to provide the economic conditions that are necessary for survival, prosperity, and sustainable development of a society, as well as for efficient operation of a state and its institutions. While this theory has some merit, it can be argued that it takes a truly sovereign state to have a sustainable economy. Again, one will ask, is true sovereignty attainable without a measure of economic self-sustainability? It is therefore safe to conclude that that each needs the other for survival.

3. *The Game Theory of National Security*

A game is an interaction between two or more players basically competing for a prize. Games are played by everybody on a daily basis knowingly or unknowingly. A game involves players, each player has a set of strategies and each player has a pay-off at the end of the game. The player with the higher pay-off is said to be the winner of the game. Game theory aims to help us understand situations in which decision-makers interact with each other in some ways. A game in the everyday sense is a competitive activity in which players seek some level of supremacy over each other according to a set of rules or laid down moves.[lxxxiii] Game theory describes multi-person decision situations as games where each player chooses his/her actions which result in the best possible rewards for self, while anticipating the rational actions from other players. A player is the basic entity of a game that makes decisions and then performs actions. [lxxxiv] A game is a precise description of the strategic interaction that includes the constraints of, and payoffs for, actions that the players can take, but does not pay attention to the actions they actually take.

The implication of this for national security is that nations plan and strategise for their security carefully studying the actions and inactions (games) of others states particularly perceived enemies. This means that the various states play what is called security games with one another all in an attempt to have an edge over the others.

THE LEGAL FRAMEWORK FOR COMBATING SEA PIRACY

1. *United Nations Convention on the Law of the Sea (UNCLOS) 1982*

The United Nations Convention on the Law of the Sea is a multilateral treaty which resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. The convention was opened for signature on 10 December 1982 in Montego Bay and entered into force on 16 November 1994 upon deposition of the 60th instrument of ratification.[lxxxv]

The Convention defines and codifies the standards and principles of international maritime law, inherited from customary international law relating to maritime affairs and are expressed to a great extent in the United Nations Charter and current international maritime law norms, such as the Geneva Conventions of 1958. A large portion of these requirements were further strengthened and expanded. The Convention also created the International Court of the Law of the Sea, competent to hear disputes relating to the interpretation and application of that treaty.

Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas

According to Elena Conde Perez:[lxxxvi]

> Since its creation at the III United Nations Conference on the Law of the Sea, the Convention of the same name has been and continues to be the object of the interest of legal practitioners and theorists. This is not surprising, since it is the longest and most comprehensive treaty in existence and throughout its 35 years since its adoption, it has proven to be a living legal text, highly flexible and adaptable to the changing circumstances of the international environment. Its quasi-universal nature reinforces the mentioned characters and explains the name under which it is known, "Constitution of the seas". Despite all its virtues, being a framework instrument, some of its provisions have fallen short, and have demanded a subsequent regulatory development. On the one hand, to understand LOSC, we cannot forget the state practice that has helped to consolidate the customary nature of many of its provisions. On the other hand, the three

institutions created by the Convention —the International Seabed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf— in the scope of their activities or jurisprudence —in the case of the Tribunal— have necessarily contributed to the progressive development of the regime established in LOSC.

2. *Suppression of Piracy and other Maritime Offences (SUPOMOA) ACT 2019*

On 24th day of June 2019, President Muhammadu Buhari signed into law a Bill of the National Assembly, now called the "Suppression of Piracy and Other Maritime Offences (SUPOMOA) Act 2019". The SUPOMOA Act 2019 seeks to prevent and suppress piracy, armed robbery and other unlawful acts against a ship, aircraft, and other maritime craft, howsoever propelled, including fixed or floating platform.[lxxxvii]

The Act applies to any person on board a ship or aircraft navigating in, on or above the territorial and internal waters of Nigeria or on international waters; or fixed or floating platform in, on or above the territorial and internal waters of Nigeria or on international waters.[lxxxviii]

The Act clearly defines what Piracy is.[lxxxix] It also includes circumstances where the offender or alleged offender is found outside Nigeria, but is in the territory of a State who is a party to other International Maritime Conventions.

The Act recognises the relevance of the United Nations Convention on the Law of the Sea [UNCLOS] 1982[xc], and the Unlawful Acts against the Safety of Maritime Navigation [SUA] 1988 and its Protocols. As with other maritime related offenses, Section 5(2) of the Act gives exclusive jurisdiction to the Federal High Court to hear and determine any matter under the Act irrespective of other elements of the crime that may appear to be non-maritime related contained in the offense.[xci] The Act appears to be the first of its kind in West and Central Africa, with some clarity in the fight against piracy offences[xcii].

However, the Act falls short of linking piracy in tandem with other transnational organised crimes that are though not committed on the sea many times, are connected thereto.[xciii] That gap in the law might allow pirates to abuse the system by committing other crimes alongside piracy which the Act does not cover. The Act also fails to define what a ship is. A similar lacuna was also created in the Cabotage Act 2003. The failure of the Cabotage Act to expressly describe an oil rig as a ship has been used by foreign ship owners as an avenue for contesting the statutory powers of Nigerian Maritime and Safety Agency (NIMASA) to levy its statutory

fees on oil rigs employed by these ship owners in their drilling operations until the Court finally interpreted the act to include oil rigs that are propelled. The issue of what constitutes a ship could have easily been averted if the definition given by the Act was all-encompassing and sufficient to cover all ships like the Jones Act 1929 did.[xciv] It is hoped that this lacuna will not affect the effective prosecution of offenses under the Act.

Section 4(g) of the Act provides that it is an offense to receive proceeds from the crime of piracy, armed robbery against ships and other maritime offenses at sea. The Act expressly lumped individuals receiving proceeds from the crimes under the Act and Corporate entities such as banks and other financial institutions. There is a need to revisit this section because the proceeds of crimes including maritime crimes usually find its way to banks and other financial institutions without the banks knowing the actual source of the funds. With the enactment of this Act, banks and other financial institutions are advised to upgrade their vigilance.[xcv]

With the full adaptation of the definition of piracy under Article 101 of UNCLOS, the challenges associated with that definition were also adopted. For instance, section 4 of SUPMOA Act provides that for piracy to be established, the act must be committed for private ends or for personal gain. However, any acts that are politically motivated do not fall within the definition of piracy. This principle is flawed because, in Nigerian political climate, political rivals could go as far as committing a criminal act of violence against a ship or crewmen, unfortunately, it will not amount to piracy.

Furthermore, the Act in section 12 (1) provides that any person who commits an act of piracy, armed robbery at sea or any other unlawful act under the Act, whether or not the person was armed with a firearm or other weapon during the commission of the offense shall be liable on conviction to life imprisonment and a fine of ₦50,000,000.00 (Fifty Million Naira) and restitution. However, section 12 (2) also provides that if during the commission of an armed robbery at sea, the offender was in possession of or had under his control any firearm, explosive or BRCN weapon, the offender shall be liable on conviction to at least 15 years imprisonment. There is a need to revisit the punishment section because of the disparity and ambiguity.

Another challenge with the Act is its lack of clarity on roles and responsibilities. Section 17(3) says 'law enforcement and security agencies' will be responsible for gathering intelligence, patrolling waters and investigating offences. But the law isn't specific on which law

enforcement agency (ies) are responsible for these functions; an oversight that may deepen inter-agency rivalry.[xcvi]

The Armed Forces Act [xcvii] makes Nigeria's Navy responsible for securing the country's maritime domain. But Section 17(1) and (2) of the Act seems to have tasked the NIMASA with coordinating all maritime activities and security including 'to prevent and combat piracy, maritime offences and any other unlawful acts prohibited by this Act'.[xcviii]

Given that piracy is a transnational crime, combatting it requires more than national efforts. After the Yaoundé Code of Conduct was reviewed in 2017, maritime laws or amendments to penal codes were expected throughout West Africa to standardise legal regimes. Only Nigeria has since passed anti-piracy legislation, and even then, its standalone nature means the law won't help coordinate piracy responses in the region as much as expected.

The defects aside, the Act is a milestone in Nigeria's lofty ambition to tackle maritime piracy. The Act was enacted at a time when the coast of Nigeria was seen as the new haven for piracy in the world, the "Somalia" of the present day by the international maritime community. The Act is timeous, innovative and far-reaching. It is also a wake-up call for other countries within the Gulf of Guinea to enact similar domestic laws, and then aim at partnering at the regional level.

FINDINGS

This paper found that there exist a direct link/nexus between sea piracy and national security and that until sea piracy is truly curbed, no nation (including Nigeria) can say it is safe.

It further found that there are a number of factors responsible for or at the least, contributing to sea piracy in Nigeria and in other affected jurisdictions.

It stresses that the neglect and or refusal of the federal government to develop the Niger Delta region where eighty percent of its revenue comes from has apart from ignorance and poverty as argued by some writers, remained the major cause of the social upheavals experienced in the region which by implication have spread to other parts of the Country. This has enthroned the culture of violence including sea piracy, hostage taking, pipeline vandalization, oil theft etc in the region.

CONCLUSION

This paper concludes that security of the high seas and inland water ways is therefore at the heart of national security in Nigeria, and that the government of the Federal Republic of Nigeria needs to do much more than is currently doing to ensure safety of its water ways thereby and by direct implication its national security.

Recommendations: Towards a safer water ways and national security, this paper makes the following recommendations:

Intentional fight against corruption: Apart from the fact that what the littoral states are getting by way of derivation is quite infinitesimal compared to the discomfort they suffer; one sad thing is that even what is paid to the states does not positively impact the lives of the people because of corruption. Political leaders keep sharing the money between themselves until there would be nothing left for the common masses or for development. The federal and state governments should be more intentional and wilful in the fight against the prime enemy of the Nigerian state-corruption and stop paying lip services the crusade.

Immediate amendment of the Suppression of Piracy and Other Maritime Offences Act (SUPMOA) 2019: As argued earlier in this paper, it is important that this revolutionary statute be amended to ensure that the lacunas in it including its failure to define a ship, the unfair, unjust and ambiguous sanctions provisions are closed. There is also the need for the Act to at least make certain provisions for exceptions with respect to receiving proceeds of piracy which currently put banks at high ricks.

Creation of Maritime Division Court: Maritime matters are of specialized knowledge as such, there is an urgent need to create a specialized divisional court to handle maritime matters presided over by trained maritime judges for the speedy dispensation of offenses under the Act. With NIMASA's powers to prosecute albeit, with the consent of the Attorney General, offenses under the Act will not be prosecuted swiftly, hence the need to have a maritime court readily available to dispense justice and the requirement for the AG's consent removed as it entrenches corruption in Nigeria.

Good governance: There is urgent need for the federal government to in addition to sustaining the fight against corruption, launch a campaign on good governance in Nigeria through the Ministry of National Orientation. This campaign should be targeted at changing the corrupt

orientation of all Nigerians with particular attention paid to political and public office holders. This is to ensure that whatever money is released is judiciously spent and accounted for.

Massive Youth Employment and Empowerment: Government should provide employment and massive youth empowerment in the Niger Delta and the nation at large to create a sense of belonging. This is because unemployment is one of the major factors that led to the rising rate of militants in the Region and most of these militants are graduates. It is also our recommendation that the Amnesty programme in the Niger Delta region be sustained.

Development: Government should ensure that the Niger Delta Region is well developed like other regions. Developmental projects should be embarked upon by multinational oil prospecting companies in host communities such as provision of potable water, electricity, and hospitals. Roads should be constructed to link the Niger Delta communities to ease transportation system in the Region. This way the people will feel a sense of belonging and relieve.

Corporate Social Responsibility: Oil companies operating in the host communities should take up their social responsibilities in their host communities by developing the area, and also employ the youths instead of using the security personnel to intimidate their host communities. This practice has left the youths thinking that those they invited to come and eat have deprived them from eating themselves.

Environmental Sanitation: The present state of the Niger Delta environment is evident of the inability of both the government and the industry to effectively handle environmental problems. This calls for an enhanced and formalised role for NGOs and civil society in environmental governance through a strategic partnership involving the government, the industry and the civil society. The federal government in conjunction with NGOs and the oil companies should embark on an immediate and speedy cleaning of the Niger Delta region to save the region from more damning health and environmental hazards than what the people are already going through.

Willingness to enforce the extant laws on the protection of the environment: The government and all its agencies concerned with the enforcement of the extant laws for the protection of the environment and its inhabitants from pollution should develop more willingness to enforce these laws as the current unwillingness to enforce these laws has brought untold hardship on the people of the Niger Delta region of Nigeria.

The government should, as matter of urgency, rehabilitate and equip public schools in the Niger Delta region to compete favourably with the best schools anywhere in the world. The government should give educational grants, scholarships, bursaries and mother incentives such as research grants to indigenes of the Niger Delta to make teaching and learning effective, attractive and interesting.

Finally, there is the need for the federal government to carry the people of the Niger Delta particularly the communities along in the management of the resources obtained from their region.

ENDNOTES

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[iii] United Nations Convention on Law of the Seas, Article 102 provides for Piracy by a warship or government ship or aircraft whose crew has mutinied thus: "The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft". Article 103 provides for the definition of a pirate ship or aircraft as" A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

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[vii] Chijioke J Nwalozie, *Exploring Contemporary Sea Piracy in Nigeria, the Niger Delta and the Gulf of Guinea*, 13, JTS, 159, 174, (2020), <https://doi.org/10.1007/s12198-020-00218-y>; Daud Hassan & Sayed M. Hasan, *Origion, Development and Evolution of Maritime Piracy: A Historical Analysis*, 49, IJLCJ, 1, 1, (2017), https://doi.org/10.1016/j.ijlcj.2017.01.001.

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