THE ADEQUACIES AND INADEQUACIES OF THE
piracy regime: a gulf of guinea perspective

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ABSTRACT

Maritime piracy is one of the pressing global issues of the present century. The cost of piracy is human, economic, environmental and political. Recognising the piracy threat, the international community has taken several steps to address the problem. Several international organisations, including the United Nations (UN), European Union (EU) and the North Atlantic Treaty Organisation (NATO) have taken different initiatives to facilitate an international response to piracy. The UN Security Council has adopted a series of resolutions targeting piracy. As part of a military deterrence measure, the presence and coordination of international navies has been increased in high-risk piracy-affected areas, including the Gulf of Aden. However, international initiatives have proven insufficient and ineffective due to most of them primarily addressing the effects of piracy through military means. The initiatives have thus contributed only to reduce the number of attacks and their success rate, while failing to rectify the underlying reasons for piracy or solve the problems ashore in a sustainable manner. The current international framework for suppressing piracy has also been considered as insufficient to curb piracy in the sense that it does not provide any mechanism for the successful prosecution of pirates.

In recent years, piracy has emerged as a growing problem in the Gulf of Guinea. The gulf has, in the past years, witnessed a sharp rise in pirate attacks. Alarmingly, both the frequency of piracy attacks and the level of physical violence against seafarers have increased in recent years. Piracy in the Gulf of Guinea has become so prevalent that it is now a growing risk for the states in the region. There are also indications of links in the area between piracy and other types of organised crime such as oil bunkering and drug trafficking. The problem has thus become a recent source of concern for the international community of nations. The states in the region lack the technical and logistical capability or the financial resources to counter the threat effectively. In addition, the limited regional integration in the maritime sphere creates further concern in this situation. In this context, there is a need for establishing enhanced cooperation at the regional level through the formulation of a comprehensive regional strategy.

The thesis first outlines the international and regional framework for piracy with special emphasis on the strengths, weaknesses and possibilities of the current legal regime to combat piracy. It explains how the contemporary international legal regime created by
the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) has been deficient in addressing the piracy problem, and focuses on some of the cooperative efforts between states in regional initiatives in Southeast Asia and East Africa, to emphasise the growing strength of regional agreements to curb piracy. Thereafter, it addresses the issue of piracy in the Gulf of Guinea by referring to its underlying causes and adverse effects, and finally evaluates the effectiveness of the current anti-piracy initiatives of the region. In doing so, it identifies the problems arising from the lack of coordination among the various organisations engaged in addressing piracy and explores the reasons for these shortcomings.
DECLARATION

The work embodied in this research thesis is, to the best of my knowledge and belief, original except where due reference is made in the text. I hereby certify that this thesis contains no material which has been accepted for the award of any degree at this institution or any other university.

Sayed Mohammed Mohiuddin Hasan

2014
DEDICATION AND ACKNOWLEDGEMENTS

This research thesis is lovingly dedicated to my wife Sarah for her constant encouragement, continuous support and patience. Without her material and moral assistance over the last two years, the completion of the work would not have been possible.

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<tr>
<td>AMLEP</td>
<td>Africa Maritime Law Enforcement Partnership</td>
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<td>APS</td>
<td>African Partnership Station</td>
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<td>ARF</td>
<td>ASEAN Regional Forum</td>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>BMP</td>
<td>Best Management Practices</td>
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<tr>
<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>EI</td>
<td>Energy infrastructure</td>
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<td>EIS</td>
<td>Eye in the Sky</td>
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<td>EU</td>
<td>European Union</td>
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<td>GGC</td>
<td>Gulf of Guinea Commission</td>
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<td>HSC</td>
<td>The Convention on High Seas</td>
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<td>IBF</td>
<td>International Bargaining Forum</td>
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<tr>
<td>IGAD</td>
<td>Intergovernmental Authority for Development</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<tr>
<td>ISC</td>
<td>Information Sharing Centre</td>
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<td>MEND</td>
<td>Movement for the Emancipation of Niger Delta</td>
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<tr>
<td>MGC</td>
<td>Maritime Guard Command</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>MOWCA</td>
<td>Maritime Organisation for West and Central Africa</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>NIMSA</td>
<td>Nigerian Maritime Administration and Safety Agency</td>
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<tr>
<td>ReCAAP</td>
<td>Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia</td>
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<tr>
<td>SUA</td>
<td>The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation</td>
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I INTRODUCTION

Piracy is one of the most worrying global issues today. The phenomenon of piracy constitutes a significant and direct threat to peace, security and the economic development of the affected countries and regions concerned. In recent times, its negative impact has begun to affect the interests of all states globally. The scourge poses a serious threat to international peace and security and has destabilising effects on international navigation and maritime trade. The top regions for piracy today—the Gulf of Aden, the Gulf of Guinea, the Malacca Strait and the South China Sea—are all vital shipping routes crucial for global trade. The issue of piracy against merchant vessels in these regions generates additional costs on international economic activities. Piracy activities increase insurance premiums and ship operating costs. This eventually leads to the re-routing of ships, further increasing the costs related to maritime commerce. The payment of ransoms and maintenance of naval forces also yield considerable costs to the maritime industry. All these increase the cost of global trade and severely affect the world economy.

This introductory chapter provides background information to piracy and outlines the justification of the thesis, introduces the research questions and sets out the scope of the study and methodology of the thesis.

A Background

In general parlance, piracy is robbery at sea. Legally, it refers to certain acts of violence committed either on the high seas or in an exclusive economic zone (EEZ). The term can have a narrow legal meaning for establishing jurisdiction over particular illegal activities, or it can be used broadly to cover all forms of sea robbery and violence at sea. However, the common perceptions of piracy have rarely been applied with uniformity. For

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3 The term ‘high seas’ refers to the sea zone that is not within the territorial waters or jurisdiction of any particular state. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines it as ‘…all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic state’.
4 The concept of an exclusive economic zone (EEZ) refers to the area of sea that extends maximally 200 nm from a state’s coastal baseline. UNCLOS defines it as an area beyond and adjacent to the territorial sea in which states have full sovereignty to explore and exploit natural resources.
example, article 101 of United Nations Convention on the Law of the Sea (UNCLOS)\(^6\) describes piracy as illegal acts committed on the high seas for private ends by the crew or passengers of one ship against another ship. However, different authors have tried to define and explain the term in many different ways. Murphy, a renowned scholar of modern maritime piracy defines it as ‘unlawful depredation at sea involving the use or threat of violence, but not necessarily, involving robbery’.\(^7\) The British jurist C.S. Kenny characterised piracy as ‘any armed violence at sea which is not a lawful act of war’.\(^8\) Dillon suggests piracy be placed in the category of ‘actions against ships underway and outside the protection of port authorities in territorial waters, straits and the high seas’.\(^9\)

Over the last few years, states and various organisations have embarked on national, regional and international initiatives aimed at preventing and controlling piracy. Nationally, states have been focusing on policing their waters. Regional stakeholders have aimed at building regional capacity through information sharing and a reporting system. At the international level, counter-piracy efforts have largely focused on the military response to piracy. Despite these initiatives, maritime piracy remains a matter of serious concern, as it is a growing threat to the security and safety of shipping.\(^10\) The intertwining of piracy creates substantial risks for global markets, as the bulk of international maritime commercial transport is carried on through many of these pirate-infested regions.\(^11\) For example, the Gulf of Aden region, the world’s most dangerous maritime route for piracy, is accountable for the majority of trade between Asia and Europe. It is estimated that about 16,000 ships pass through the Gulf of Aden annually, transporting various Asian goods and oil from the Persian Gulf region to Europe and North America.\(^12\) Similarly, the Gulf of Guinea region, a point of departure of important exports of oil, gas and other commodities to ‘First World’ countries\(^13\) has recently become a dangerous maritime area for piracy.

\(^7\) Martin N Murphy, Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World (Columbia/Hurst, 2010) 7.
\(^8\) In Re Piracy Jure Gentium [1934] AC 586, 598.
\(^12\) ‘Pirates of Somalia’, Volume 1, Issue 1, African Economic Development Institute <http://www.africadecon.org/index.php/exclusive/read_exclusive/1/1>.
The contemporary development of maritime piracy is not confined to one particular sea area or zone. The changes in financial circumstances of different regions, together with instability, lawlessness and problems of effective governance, have contributed to the evolving trend of piracy worldwide. The Malacca Straits of the Indian Ocean between Indonesia and Malaysia, the South China Sea, the Gulf of Aden, the Gulf of Guinea along the coast of West and Central Africa, the Gulf of Oman in the Arabian Sea and the South American region between the coastlines of Colombia and Venezuela are the prominent regions of contemporary piracy. The negative impacts of piracy are felt most acutely in the geographic regions where pirate attacks take place. However, there are frequent changes in geographic ‘hot spots’. In the 1990s, Southeast Asia ranked first for pirate attacks on maritime vessels. In the new millennium, the Horn of Africa surpassed Southeast Asia to become the most vulnerable region. Recently, piracy is on the rise in the Gulf of Guinea, off the coast of West Africa. In the past year, the Gulf of Guinea has seen a sharp growth in piratical attacks. In response to the increase in piracy, in 2011, Lloyd’s Market Association (a group of London-based maritime insurers) judged the waters off the coast of Nigeria and Benin as similarly risky to those off Somalia. In addition, considering the volume of pirate attacks off the coast of West Africa, the International Bargaining Forum (IBF), in March 2012, formally designated the territorial waters of Benin and Nigeria as a piracy ‘High Risk Area’.

The history of piracy suggests that it has changed in nature and location. Regarding the location of piracy incidents, piracy in Asia tends to occur close to coasts, while Piracy in East African waters has generally been further from shore, most often in international waters. Further, the most common piracy practice of kidnapping, followed by pirates throughout ages, has been replaced by a variety of business models, including hostage taking of crews for ransom, theft of vessels and/or their cargo and the looting of

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15 Ban, above n 2.
19 A forum involving the International Transport Workers’ Federation and international maritime employers who established the Joint Negotiating Group.
22 Ibid 81.
valuables from vessels in quick raids. This changing nature of modern-day piracy, its increasing link with other illegal maritime activities and its mounting economic costs (for example, the cost of ransom, piracy insurance premiums, naval deployment in piracy infested areas, piracy prosecution) have given a new dimension to the piracy phenomenon.

Although piracy is common in particular geographic regions of the world, there are certain similarities and differences as regard the crisis in each region. The identical causal factors include weak governance, unfunded law enforcement and security systems and common geographic features. Differences include the typology of the attacks. It is argued that ‘the differences in political and economic landscapes influence how pirates embed their operations across territory, and thus how they carry out their operations’. Yet, in most cases, the motivation for piracy is similar: it is linked to economic deprivation. For example, Somali pirates have claimed that they are fighting to defend their local fishing sector, while Nigerian pirate groups point to the unequal sharing of oil resources to justify their actions. However, the models of piracy and typologies of attack in different regions do differ in nature. Given this, it is clear that actions taken to repress piracy need to reflect the realities of the piracy in a given region. It is important to understand the threats and challenges of piracy in view of the socio-economic, political, cultural and geographical dimensions of the regional states concerned. Apart from international efforts to combat piracy through international cooperation, success in combating piracy largely depends on the continuation of national efforts and regional initiatives.

History proves that maritime piracy can be significantly reduced if efforts at the local and regional levels are broadened. For example, piracy had room to operate when the international relations between colonial powers in Southeast Asia region were non-cooperative due to economic and political competition with each other. It was not brought back under control until the British, Dutch and Spanish all committed to making piracy a

23 Haywood and Spivak, above n 1, 13.
26 Ibid 224.
28 For example, Somali piracy is different from other piracy in that their primary target is to take seafarers captive to exchange for huge ransoms. The majority of attacks in Southeast Asia are cases of robbery, while the type of piracy in the Gulf of Aden is again different.
priority in their domestic agendas.\textsuperscript{30} This is manifested by the Iranun raids that continued well into the second half of the nineteenth century in the region. Today, as in the nineteenth century, it will ultimately be the ability of the regional states to give priority to the issue of piracy that will bring it back under control.\textsuperscript{31}

The effects of contemporary piracy are now universal in scope.\textsuperscript{32} The rapid escalation of piratical attacks against merchant shipping and its associated threat to the freedom of navigation have provoked the international community to adopt multifaceted responses to the problem.\textsuperscript{33} The key international response to suppress piracy in East Africa has been through international military operations or by way of various deterrent or protective measures on the part of mariners.\textsuperscript{34} The international naval operations were introduced in pursuance of a series of UN Security Council resolutions under chapter VII of the UN Charter.\textsuperscript{35} At present, various multinational counter-piracy deployments are being carried out in the region. The EU Naval Force has Operation Atalanta, NATO has Operation Ocean Shield and Combined Maritime Task Force 151, and there are also many other independently deployed naval vessels helping to patrol the Internationally Recommended Transit Corridor. In the Gulf of Guinea region (a coastal zone that is bordered by a number of countries in West Africa), international counter-piracy assistance has been primarily confined to providing anti-piracy training, equipment and support. The UN Office on Drugs and Crime has had a lengthy presence in the region to disrupt drug smuggling through Africa to Europe from South America. However, no international anti-piracy missions like those seen in the waters off East Africa yet exist in the Gulf of Guinea.\textsuperscript{36}

To date, the international response to combat piracy has been slow and insufficient due to the shortcomings of the anti-piracy international legal regimes and some practical problems in relation to arresting and prosecuting suspected pirates. The research is directed

\textsuperscript{32} Andrew J Shapiro, ‘Remarks made to the International Institute for Strategic Studies’, Washington DC, 30 March 2011.
\textsuperscript{34} Clive Schofield and Robin Warner, ‘Scuppering Somali Piracy: Global Response and Paths to Justice’ (2011) 31 \textit{Australian Maritime Affairs} 54.
\textsuperscript{35} The United Nations Security Council (UNSC) has specifically addressed or mentioned maritime piracy and armed robbery off the coast of Somalia in Resolutions 1816 (June 2008), 1838 (October 2008), 1844, 1846 (December 2008), 1851 (December 2008), 1897 (December 2009), 1918 (April 2010), 1950 and 1976.
\textsuperscript{36} Lincoln, above n 33, 2.
to focus on the adequacies and inadequacies of the piracy regime in the Gulf of Guinea region, an area that is located to the southwest coast of Africa. Geographically, the gulf encompasses the maritime area that stretches along the western coast of Africa. However, in its broadest sense, the area is considered to include the subregions of Central and West Africa.

B Justification of the Study

The Gulf of Guinea was chosen for this research study because of the deteriorating security situation in the region due to the escalating trend of maritime piracy. The region is a valuable source of oil and pirates in the region target diesel and oil tankers in particular. The increasing trend in piratical incidents in the Gulf also presents a risk for oil-producing countries of the region. For decades, the region’s economy has been strongly dependent on the oil industry because of the proven reserves of oil and increased domestic production. The region accounts for 70 per cent of Africa’s total oil production and supplies around 40 per cent of Europe’s oil and 29 per cent of the United States’ (US) oil. Piracy affects the activities related to the exploration and exploitation of offshore oil. Thus, an increase in piracy incidents would be likely to raise the operating costs for exploration and production activities throughout the region and consequently affect the economic development of the region.

In the Gulf of Guinea, cooperation is centred on regional efforts with the United States Africa Command (US AFRICOM), one of the major players involved in establishing naval and other maritime capabilities and cooperation along the coast. The regional group, the Economic Community of West African States (ECOWAS) is working to bring uniformity to the maritime policies of its member states. In addition, various donors are working on multiple projects at the regional level to help the local powers to address the threat of piracy. However, these regional initiatives are affected by inadequate resources and a lack of structured legal arrangements. Despite the various cooperation mechanisms in the subregion, a tangible and lasting result is yet to be achieved. It is expected that such a result may only be achieved by implementing a viable regional approach identifying the root causes of the problems of the regional countries and by strengthening mutual interaction to achieve this goal.

Though the responsibility to fight piracy primarily lies with the countries of the region, most countries of the Gulf of Guinea are incapable to prevent or effectively manage the threat by themselves. Therefore, there is a need for a comprehensive, coordinated and united approach to respond effectively to the growing threat of piracy along these countries’ coasts. There is also a general consensus that regional cooperation is pivotal in this regard. The significance of regional cooperation to repress piracy successfully is broadly recognised.\textsuperscript{39} The formulation of a sound maritime policy and the implementation of a comprehensive strategy at the regional level, with the involvement of the regional organisations and groupings, may greatly contribute towards the prevention and suppression of piracy. Recognising the importance of regional cooperation in different geographical areas, the UN General Assembly, through its Resolution 60/30 of March 2006, urged states to give ‘urgent attention to adopting, concluding and implementing cooperation agreements at the regional level in high-risk areas’.\textsuperscript{40}

However, there are several challenges to increased regional cooperation in combating piracy. The issue of national sovereignty, tense relations between neighbouring coastal states and maritime border disputes are some of the factors that impede broader regional economic and political integration. The research will identify some of these challenges in the Gulf of Guinea region and evaluate the strengths and weaknesses of existing regional arrangements to combat piracy. Considering the challenges for an effective regional cooperation, the research will test the effectiveness of existing regional frameworks such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) and the Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct). Despite many attacks in the Gulf of Guinea taking place in the territorial waters of coastal states and thus not specifically fulfilling the legal definition of piracy under the United Nations Convention on the Law of the Sea (UNCLOS), the term ‘piracy’ in this thesis has been used in the generic sense to include such bodies of water. Recognising the legal limits of the definition, the term ‘pirate’ is therefore used to describe those who commit piracy and/or armed robbery at sea.


\textsuperscript{40} \textit{Oceans and the Law of the Sea}, GA Res 60/30, 60\textsuperscript{th} sess, plen mtg (24 December 2011).
C Research Questions

The thesis explores the following research questions:
1. What are the present legal and policy arrangements to combat piracy in the Gulf of Guinea?
2. How effective are the present arrangements to combat piracy in the region?
3. Do regional frameworks play an effective role in dealing with the piracy problem?
4. What are the challenges to increased regional cooperation mechanisms in the region?
5. What are the barriers and practices to combat piracy in the Gulf of Guinea and how could the present arrangement be improved?

D Research Method

To a great extent, the research will be of a descriptive nature, positioning it within the broad area of qualitative research. The basic methodological approach to be used in the research will be a study of the nature of piracy in the Gulf of Guinea along with the existent policy and legal frameworks directed towards combating the threat in the region. A case study of piracy in the Gulf of Guinea forms the subject of investigation of the research. The objective is to conduct an in-depth exploration of the nature of the piracy occurring in the region by identifying its root causes and considering its severity, typology and motivation. Further, the case study is used to test the current Gulf of Guinea strategies to address piracy. To gain a clear understanding of the nature of the threat, the historical context from which the crime developed has also been examined.

An analysis of the strengths and weaknesses of the relevant international and regional piracy frameworks in addressing the problem in the Gulf of Guinea has been undertaken to determine the extent of their effectiveness. The international legal framework on piracy includes the two major international treaties addressing piracy: UNCLOS and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). Three important regional instruments—ReCAAP, the Djibouti Code of Conduct and the Yaounde Code of Conduct—comprise the regional piracy framework considered here. The ReCAAP model was purposely selected because it was the first regional agreement to promote and enhance cooperation against piracy and

armed robbery in Southeast Asia. The drop in the prevalence of piracy in the region has been directly attributed to the implementation of this cooperative arrangement. This is because the ReCAAP model allows for the simple and easy exchange of information, an expansive definition of piracy and constant reporting on recent pirate attacks or attempted attacks. The Djibouti Code of Conduct was selected because it is the first regional anti-piracy arrangement between Arab and African countries. The code incorporates many provisions from ReCAAP to provide a framework for the sharing of information, the review of domestic legislation, and training and capacity building in the region. The Yaounde Code of Conduct was selected because it is the most recent code of similar types for preventing piracy, armed robbery against ships and illicit maritime activity in West and Central Africa. Thus, these models constitute the best cases to study the effectiveness of the regional cooperation in the Gulf of Guinea region.

For the purposes of ascertaining the adequacies and inadequacies of the piracy regime in the Gulf of Guinea, an evaluation is made regarding the current anti-piracy arrangements of the region. The literature review of existing research covering this topic encompassed books, journals, reports of government and non-government agencies, conference proceedings, media releases and various online materials. The review mainly focused on the historical evolution of piracy, international and regional arrangements to combat piracy, piracy in the context of the Gulf of Guinea and the evaluation of existing counter-piracy arrangements of the region.

**E Thesis Structure**

The thesis is divided into seven chapters. The present chapter provides an introduction and necessary background to the thesis. Chapter II examines the evolution of the definitions of piracy and pirates in maritime history. Chapter III presents the international law perspectives of piracy, highlighting the limits of international law to address the problem. In Chapter IV, the regional framework for piracy is discussed with special emphasis on the regional instruments; namely, ReCAAP, the Djibouti Code of Conduct and the Yaounde Code of Conduct. Chapter V addresses the historical background of piracy in the Gulf of Guinea and analyses the contributory factors leading to piratical acts, the impact of piracy in the region and the response to piracy by regional and extra-regional states. Chapter VI evaluates the current arrangements to combat piracy in the Gulf of Guinea region. Finally, Chapter VII concludes and reviews the thesis, highlighting the important findings and recommendations for further research.
II HISTORY OF PIRACY

A Chapter Introduction

Maritime piracy has been an issue of longstanding concern for humanity.¹ The threat has continuously affected various sovereigns, empires and states. The powers of different ages have strived to address the issue through force or diplomacy, or have overlooked it altogether.² Sometimes, piracy has been allowed to flourish to the benefit of these powers. Modern piracy constitutes a continuation of its historical type in the sense that its growth shares some basic ingredients with the antecedents of piracy in the past like lawlessness, weak governance and lack of economic opportunity. Tackling contemporary piracy therefore could be more effective if embedded in a historical study of the problem since its emergence in the ancient world. Such a study would add new perspectives in understanding the prevailing image of piracy in modern times.

This chapter provides a brief review of the evolution of the concept of piracy and explores its different faces throughout human history. It concludes by focusing on some of the lessons that can be drawn from history to suppress modern piracy.

B Evolution of the Concept of Piracy

The notion and the rules of piracy have changed and advanced over thousands of years. During this time, the term has been interpreted to suit the needs of diverse cultures, politics and periods. The definitions of piracy have been used in different ways, to label its perpetrators as everything from enemy combatants to common criminals.³ A historical analysis of the term is helpful to understand its essence and determine effective ways to counter it.

1 Historical Perspective

The English word ‘pirate’ is derived from the Latin phrase ‘pirata’, meaning a sea robber.⁴ This term, in turn, had its origins in the Greek word ‘peirates’, which literally

¹ H E Jose Luis Jesus, ‘Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects’ (2003) 18 International Journal of Marine and Coastal Law 364 [7].
⁴ Henry S Fraser, ‘Pirates and the Caribbean’ (Lecture delivered at the Lloyd Erskine Sandiford Conference Centre (27 September 2011) <http://www.prfruhenryfraser.com/other-articles/22-pirates-and-the-caribbean.html>.
indicates one who attacks. The beginning of piracy can be traced back to the time when merchants first ventured out to sea with ships. Since then, piracy has continued to plague the maritime nations of the world. In certain cases, it has been reduced or relocated, but it has never been eliminated.

Initially, the term ‘pirata’ was not considered in terms of criminality. The term was understood by the Romans and Greeks to mean belligerent (in the context of war). This view in turn influenced the understanding of ‘piracy’ in the Western tradition. During the Medieval period, there was a shift in the meaning of the word. To describe the seizure of ships and goods, the term was commonly used to mean unauthorised privateer. During the same period, the interpretation of ancient classical literature contributed new concepts to the law of piracy, including ‘animo furandi’ (meaning private motive as opposed to political motive) and ‘hostes humanis generis’ (Latin for ‘enemy to all mankind’). The prominent sixteenth and seventeenth century legal minds Hugo Grotius (1583–1645), Alberico Gentili (1582–1608) and John Selden (1584–1654) relied greatly on these classic texts to authenticate their theories and statements of international law. However, these jurists moved beyond their classical legal ancestors and initiated an international rethinking of ‘pirata’. They introduced a new legal interpretation by attributing ‘pirata’ to certain acts of maritime violence beyond the ambit of law. Grotius applied the label of piracy to group of robbers on sea or on land. Similarly, Gentili discussed piracy without king’s consent to be banditry on land. The new interpretation translated piracy as a crime into English municipal law. As such, pirates were no longer considered to be belligerents in war, but were treated as common robbers. Likewise, the term ‘piracy’ suggested a crime against all humankind, as it was committed on the seas and not targeted against any specific group.

The understanding of ‘piracy’ as criminal activity had important consequences; that is, it approved the application of municipal criminal laws on the seas and justified the use of force against pirates to protect commercial interests. However, complications arose

5 Ibid.
8 Ibid.
10 Ibid 11.
11 Ibid.
when ‘piracy’ was confused with ‘privateering’. It was not always clear whether particular acts of violence committed at sea against merchant ships were acts of piracy or of privateering. In international law, a privateer was defined as ‘a private armed vessel owned and managed by private persons and under a state commission’.\textsuperscript{14} Thus, pirates and privateers were distinguished only by the fact that the latter was sanctioned by sovereigns. The practice of using privateers by nations to supplement their naval forces remained a common activity until the nineteenth century. Only in 1856, with the Paris Declaration Respecting Maritime Law, was privateering finally abolished by the majority of European naval powers (excluding Spain).\textsuperscript{15}

The evolution of the concept of piracy led to the development of contemporary domestic and international piracy laws. Under domestic legal systems, piracy is a crime only when it is criminalised by anti-piracy legislation. Under International law, piracy is recognised as a domestic crime of universal jurisdiction, meaning that all states may exercise jurisdiction over the crime, but only through their respective domestic criminal justice systems.

2 Definitions of Piracy

Although piracy has existed for centuries, the international community has failed to adopt a uniform definition of the problem. Thus, there is a lack of consensus as to the meaning of piracy beyond it being considered a universal offence. To date, the absence of a unified definition of piracy has had an impact on the effectiveness of various counter-piracy measures. There are also differences in the definitions of piracy under both international law and municipal law. This has hindered greater international cooperation in the fight against piracy.

(a) Contemporary Domestic Definitions of Piracy

Not all of the maritime nations across the world have anti-piracy laws. Even for those having laws in place, their definitions of piracy may differ. While some countries have adopted more inclusive definitions in their domestic laws, others have relied on a narrower definition. As such, there is no uniformity in the definition of piracy in the domestic legislation of different countries.\textsuperscript{16}

\textsuperscript{14} George Grafton Wilson and George Fox Tucker, \textit{International Law} (Silver Brudett and Company, 1901) 254.
\textsuperscript{15} The Paris Declaration Respecting Maritime Law (16 April 1856) was signed by the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia and Turkey on 30 March 1886.
The authority to consider piracy a crime was devised for the first time by the US Constitution. The Constitution declared that Congress shall have power ‘to define piracies and felonies committed on the high seas, and offences against the law of nations’. Pursuant to the constitutional mandate, Congress enacted the first substantive anti-piracy law in 1790, which deemed robbery and murder committed on the high seas to be ‘piracy punishable with death’. The text of title 18, section 1651 of the United States Code provides, ‘whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life’. The US Supreme Court in United States v. Smith held that the definition of piracy, under the law of nations, was ‘robbery or forcible depredations on the high seas’. The Court further expanded the definition of piracy in United States v. Brig Malek Adhel stating that the existence of actual plunder or intent to plunder was not necessary to bring an act within the scope of piracy. The Court held that if someone ‘sinks or destroys an innocent merchant ship, without any other object to gratify his lawless appetite for mischief’, the act will amount to piracy as an act of robbery on the high seas.

English law recognises ‘piracy by law of all nations’ or ‘piracy jure gentium’ as a common law crime. According to section 26 of the Merchant Shipping and Maritime Security Act 1997, a pirate can be prosecuted in English courts if the offence of piracy is criminalised by statute. The section provides ‘[f]or the avoidance of doubt it is hereby declared that for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the provisions of the United Nations Convention on the Law of the Sea 1982 that are set out in schedule 5 shall be treated as constituting part of the law of nations.’ The section further provides that the high seas shall, in accordance with paragraph 2 of Article 58 of the Convention, ‘include all waters beyond the territorial sea of the United Kingdom or any other state’. The House of Lords in R v Jones (Margaret) and others advocated that the crime of piracy be the only exception incorporated into national (municipal) law from international law without an implementing statute.

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17 United States Constitution art I s 8 cl 10.
18 Crimes Act of 1790 9 1 Stat. s 8 (1790).
22 Ibid.
The Parliament of Australia has passed legislation concerning the two major international treaties addressing piracy: UNCLOS and SUA. The UNCLOS piracy provisions were implemented in 1992 by amendments made to the Crimes Act 1914. The SUA convention was implemented through the Crimes (Ships and Fixed Platforms) Act 1992. The Crimes Act 1914 defines piracy as:

an act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship or aircraft and directed: (a) if the act is done on the high seas or in the coastal sea of Australia against another ship or aircraft or against persons or property on board another ship or aircraft; or (b) if the act is done in a place beyond the jurisdiction of any country—against a ship, aircraft, persons or property.

The Crimes (Ships and Fixed Platforms) Act 1992 criminalises a number of activities that endanger the safety of navigation, such as the hijacking of a ship, wherever they occur in the world.

Southeast Asian countries that are heavily impacted by piracy have adopted different definitions of the crime under their anti-piracy laws. Japan, a leading partner in the fight against Southeast Asian piracy, defines piracy as:

seizing or taking control of a ship by through assault, intimidation or any other means; robbing property, obtaining, or causing others to obtain an unlawful profit; kidnapping; demanding ransom; breaking into or damaging a ship for the purpose of committing any of the aforementioned acts; and harassing, beleaguering, or obstructing the passage of another ship in navigation for the purpose of committing an act of piracy.

Each of the acts must be committed for private ends on the high seas, territorial sea or internal waters. Malaysia, another country fighting piracy in the region, defines piracy as an act committed 'by any person on the high seas where the offense is piracy by the law of nations'. The Philippines defines piracy as:

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28 s 51.


30 Ibid.

31 Courts of Judicature Act 1964 (Malaysia) s 22(1)(a)(iv).
any attack upon a seizure of any vessel, or the taking away of the whole or part thereof ... by means of violence against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters.\(^{32}\)

Among the countries in Africa, Kenya models its definition of piracy on the UNCLOS definition and defines the activity as:

any act of violence or detention, or any act of de predation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed—(i) against another ship or aircraft, or against persons or property on board such ship or aircraft; or (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.\(^{33}\)

It is important to note the differences in the language used to define piracy in the above domestic laws. In the US, UK and Malaysia, the piratical act must be committed on the high seas to qualify as piracy; in Australia, the act may occur on either the high seas or in the coastal sea of Australia; in Japan, the act must be committed on the high seas, territorial sea or internal waters; in Kenya, no specific reference is made to the high seas, meaning the act may occur anywhere; and in the Philippines, the act must take place in the state’s territorial waters to constitute piracy. Similar variance is found with regard to the applicability of international law. For example, the laws of the US, UK and Malaysia refer to the law of nations for defining piracy. This implies that the act must qualify as piracy under international law to be an offence under the domestic law. However, the piracy laws of other countries do not make any such references. Thus, the definition of piracy is different under the domestic laws of various maritime nations. To rectify this issue, several international treaties and regulations have tried to offer a uniform definition.

\(b\) Contemporary International Definitions of Piracy

The universally accepted definition of piracy is contained in Article 15 of the 1958 Geneva Convention on the Law of the Sea (HSC)\(^{34}\) and Article 101 of UNCLOS. The Articles define piracy as:

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\(^{32}\) [Antipiracy and Anti-Highway Robbery Law 1974 (Philippines) s 2(d)].

\(^{33}\) [Maritime Safety Act (Kenya) s 369].

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

The key elements of the definition are: (1) the act of piracy must be committed on the high seas; (2) the violent act has to be exclusively for private ends, and (3) the act should involve at least two vessels. This definition has been criticised by some scholars as excessively restrictive in the sense that piracy under customary international law encompassed a broader range of activities.35 These scholars have referred to the states’ practices before codification of the definition under the two treaties and indicated that many activities within territorial waters were treated as piracy.36 However, some scholars have accepted the definition as a reflection of international customs.37 Further, the definition is accepted and recognised by the International Maritime Organisation (IMO).

With a view to collecting information, the International Chamber of Commerce’s International Maritime Bureau (IMB) defines piracy as: ‘An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act’.38 This definition is much broader than the High Seas/UNCLOS definition of piracy, as it covers some of the activities that occur in the national waters of many states. It is widely recognised by the

36 For example, the activities of Norman Vikings in Western Europe and Barbary Corsairs in the Mediterranean were treated as piracy despite this mostly occurring in territorial and coastal waters.
shipping industry and is frequently used in the literature concerning piracy.\textsuperscript{39} Although the wider definition adopted by the IMB allows for a more comprehensive picture of contemporary piratical incidents, it is not recognised by international law. This is because public international law restricts piracy to incidents occurring outside the jurisdiction of a state.

\textit{C Historical Development of Maritime Piracy}

Many of the contemporary issues concerning piracy can be traced back to its early historical background. The evolution of maritime piracy constitutes a centuries-long series of historical developments and change. The concept itself has evolved and grown over the last forty centuries (including the eighteenth, nineteenth and twentieth centuries).

\textit{1 Piracy in the Ancient Period}

Around 2000 BCE, a document in Sumerian cuneiform, one of the oldest known writing systems, recorded incidences of pirate attacks in Mesopotamia.\textsuperscript{40} According to the writing of Greek historian Thucydides (460–400 BCE), king Minos of Crete successfully suppressed piracy in the eastern Mediterranean in the early fourteenth century BCE.\textsuperscript{41} He is credited as the first sovereign to establish a strong naval fleet to restrain piracy. Egyptian scribes recorded a raid by the Lukkans (the first pirate group, based on the south-eastern shore of Asia Minor) on Cyprus in the fourteenth century BCE. The dominance of these ancient pirates in the Mediterranean was partially destroyed by one of the greatest Egyptian leader, Ramses III, in around 1186 BCE.\textsuperscript{42} However, the pirates eventually returned and in 1160 BC contributed to the collapse of several Bronze Age cultures of the Eastern Mediterranean, including the Hittite Empire.\textsuperscript{43}

During the reign of the Illyrian queen Teuta (231–228 BCE), Roman merchant vessels were subject to frequent pirate attacks in the Adriatic Sea. According to the writings of Greek historian Polybius, the queen authorised her subjects’ ships to ‘plunder all whom they fell in with’.\textsuperscript{44} She granted her commanders the letters of Marques that

\textsuperscript{40} Haywood and Spivak, above n 2, 21.
\textsuperscript{43} George Fletcher Bass, \textit{A History of Seafaring: Based on Underwater Archeology} (London: Thames and Hudson, 1972) 20.
\textsuperscript{44} Evelyn S Shuckburgh, ‘The Histories of Polybius’ (In Parentheses Publications, 2002) 76.
allowed them to attack vessels with authority. This eventually led to uncontrolled piracy in the Adriatic. The repeated attacks on Italian merchant ships by Illyrian pirates provoked the Roman Senate to interfere in the matter. Two envoys were sent to the queen with a request to end piracy. In response, Teuta endorsed piracy as a lawful trade and refused to take any responsibility for the action of pirates. The disagreement and subsequent killing of one of the envoys en route home finally compelled the Romans to declare war on Illyria. In 219 BCE, the Romans defeated the queen after a two-year war.

Piracy once again began to flourish when the expanding Roman Republic went to war with the Carthaginian (the Punic Wars, 264–146 BCE), Macedonian (215–168 BCE) and Seleucid empires (192–188 BCE). By this time, pirates had increased their strength to target the Roman Empire. In 68 BCE, Ostia, the port of Rome, was sacked and torched by Sicilian pirates, who also managed to kidnap two of Rome’s prominent senators. More importantly, the pirates heavily disrupted the Eastern Mediterranean trade, causing a grain shortage in the city. In response to the ensuing threat, the Roman Senate passed a law (Lex Gabinia) to confer upon one of its promising military strategists, Gnaeus Pompeius Magnus (Pompey the Great), extensive authority to address piracy. Under the law, Pompey the Great was assigned the powers of a provincial governor to exercise authority over the whole Mediterranean and the Black Sea for a period of three years. In addition, he was given the discretionary power to raise money, troops and ships.

According to Greek historian Plutarch, within 40 days of assuming power, Pompey successfully drove the pirates towards the coast of Sicilia. Thereafter, he made an offer to the existing pirates to surrender to escape punishment. He assured them he would help them to find new pursuits on accepting the offer. This approach proved very successful in reducing piracy in the Roman Mediterranean. The last pirate stronghold, Coracesium, fell shortly afterwards. The levels of piracy in the Mediterranean Sea subsequently stayed low for four centuries, until the fall of the Western Roman Empire.

45 Ibid.
46 Jane Margaret Strickland, Rome, Regal and Republican: A Family History of Rome (A Hall, 1854) 290.
49 Ibid 234.
51 Robin Seager, Pompey the Great: A Political Biography (Blackwell Publishing, 2002) 47.
Piracy outside the Mediterranean region can be traced to China’s Han Dynasty (206 BCE – 220 CE).\textsuperscript{52} Thereafter, it grew under various subsequent regimes, flourishing when governments were weak and lacked the ability or political willingness to address the problem. It also increased during periods of vibrant maritime trade.\textsuperscript{53}

2 Piracy after Rome

Piracy incidents continued even after the fall of Rome. For example, several large groups of Gothic pirates raided the coast of the Black sea in the third century CE. In the early centuries of the Christian era, the Teutonic pirates of the Angles, Saxons and Jutes tribes infested the eastern and southern coasts of Britain.\textsuperscript{54} In the ninth to the twelfth centuries, the Viking pirates continued to influence the region by making regular raids. Further, piracy surged in the South China Sea with the end of the Han Dynasty in 220 CE.

(a) Piracy in the Baltic and North Sea Region

The prevalence of pirates around the Baltic and North Sea prompted the German merchant communities to form protective alliances in the twelfth century. In 1241, the ports of the northern German towns of Lubeck and Hamburg signed a treaty of mutual protection. This eventually formed the basis of the establishment of the Hanseatic League. In the middle of the fourteenth century, the league enjoyed considerable success in protecting the commercial activity of Northern Europe. The league occasionally promulgated regulations. For example, in 1264, the league declared in a decree that ‘[e]ach city shall, to the best of her ability, keep the sea clear of pirates, so that merchants may freely carry on their business by sea’.\textsuperscript{55} In the subsequent year, another decree further declared, ‘If pirates appear on the sea, all the cities must contribute their share to the work of destroying them’.\textsuperscript{56} Though these decrees were declarations of group of merchants rather than of sovereigns, they exerted great influence on the European countries and their rulers. In 1361, the league challenged the power of territorial sovereigns by waging war against King Waldemar IV Atterdag of Denmark, who had attacked the Hanseatic city of Visby on the Swedish island of Gotland.\textsuperscript{57} The Danish king was defeated by the armed forces of the league in 1370. During the course of the fourteenth century, the league

\textsuperscript{52} Frank Shanty and Patiti Paban Mishra (eds), \textit{Organised Crime: From Trafficking to Terrorism} (ABC-CLIO, 2008) 299.
\textsuperscript{54} Albert W Gaines, ‘The Growth, Aggressiveness and Permanent Character of Anglo-Saxon Laws and Institutions’ (1906) 40 American Law Review 694.
\textsuperscript{55} Oliver Thatcher and Edgar McNeal (eds), \textit{A Source Book for Medieval History} (Charles Scribner’s Sons, 1905) 611.
\textsuperscript{56} Ibid.
transformed from a coalition of merchants to a relatively organised network of agreements between the merchant cities themselves. The league remained active for another 200 years, but finally declined in the seventeenth century due to the rise of nation states and competition from other communities.  

(b) Piracy off the North African Coast

For centuries, piracy prevailed along the coast of North Africa (known as the Barbary Coast). However, it became particularly flagrant after the final defeat of the Moors (Muslim Arabs and Berbers) in 1492. The pirates initially attacked Spanish vessels and performed raids on coastal populations. However, over the years, the raiding intensified to include attacks on all western trading vessels irrespective of nationality. The pirates gradually became more powerful as they secured the support and protection of the Ottoman Empire. After the naval battle of Lepanto in 1571, the power and influence of the Ottomans over the sea reduced significantly. As a result, the Barbary pirates lost their backing from the Empire.

The nature of Barbary piracy was violent. For example, pirates not only robbed the cargo of ships but also enslaved the mariners. It is estimated that millions of Europeans were captured by the Barbary pirates from the sixteenth to the nineteenth century. That Barbary piracy was allowed to continue for more than three centuries shows that it was more or less tolerated by the emerging European powers. The European nations responded to the problem by concluding peace treaties with the Barbary regencies that required a nation to pay tribute to secure peaceful transit on the high seas. For example, England signed treaties with Algiers, Tunis and Tripoli in 1662 that contained important clauses to protect their ships and nationals from pirates. Similar treaties were signed by other European nations trading in the Mediterranean. In 1784, the US Congress followed the tradition. Rivalry among European shipping powers also promoted the growth of Barbary piracy. The European nations considered it to be a useful scourge for their opponents. For example, France inspired the pirates against Spain, and England later supported them against France. These latter two countries also repeatedly engaged in signing opposing treaties against each other with the Dey of Algiers.

58 Ibid.
61 Charles Thomas-Stanford, About Algeria: Algiers, Tlemcen, Constantine, Biskra, Timgad (John Lane, 1912) 71.
In the early nineteenth century, the US opted to face the Barbary pirates with force. Thomas Jefferson assumed office as President in March 1801 and advocated war against the piratical states. He proposed using naval force to end the practice of paying tribute and to open the Mediterranean for free trade.\(^2\) The First Barbary War (1801–1805) had some initial success. However, only with victory in the Second Barbary War (1815) was the US freed from paying tribute to the Barbary States. Barbary piracy was finally eliminated in 1830, when Algiers was conquered by France.\(^3\)

\(c\) Piracy in the Atlantic Ocean

The Iberian suppression of free trade marked the beginning of piracy in the Atlantic world. The Papal treaty of Tordesillas in 1494 divided the Atlantic Ocean between Spain and Portugal. The treaty drew a demarcation line through the middle of the ocean, giving Spain control over the western half of the line and Portugal control over the eastern half.\(^4\) This treaty was opposed by other European seagoing nations, including Denmark, England and France. Unlike the Spanish, the Danish, English and French were not allowed to station ships in the Caribbean or the Indian Ocean. As a result, these countries colluded with pirates and sanctioned privateering to weaken the dominance of the powerful Spanish and Portuguese fleets that were gathering vast fortunes from the region.\(^5\)

\(d\) Piracy in the Red Sea

The colonial mercantile system established by England played a part in fostering piracy during its golden age. In the seventeenth century, the English Parliament passed a series of Navigation Acts (in 1651, 1660, 1663, 1673 and 1696) to regulate trade in its empire. These Acts imposed considerable economic burden on the American colonists by declaring that all colonial trade had to be on English ships; that certain ‘enumerated goods’ including tobacco, sugar and rice could be shipped only to England; that the master and three-quarters of the crew of all ships be British; and that merchandise going to or from any other European country to the American colonists must be routed through England to pay duty.\(^6\) Consequently, the price of every good became expensive. This created an opportunity for the Madagascan pirates (referred to as Red Sea Men) to sell their

\(^3\) iMinds, *Barbary Pirates* (iMinds Pty Ltd, 2009) 2.
plundered goods to the colonists at a cheaper rate. The merchants and colonists grew
dependent on the pirates for their goods and many colonial governors sponsored them in
various ways. For example, Benjamin Fletcher, the governor of New York (1692–1697),
maintained a good relationship with the pirates. He allowed their ships to deliver goods to
buyers while avoiding legal requirements.67 William Markham, the governor of
Pennsylvania (1694–1699), protected pirates from arrest.68

Over time, political pressure against piracy gained momentum. In 1698, during the
reign of King William III, England passed the Piracy Act, an Act for the effectual
suppression of piracy, which declared piracy illegal and imposed the death penalty for the
crime.69 The colonies equally participated in the process and enacted severe penalties for
piracy that included the death penalty for aiding pirates.70 Between 1716 and 1726, a large
number of pirates were executed in public under the new legislation.71 Parallel to public
execution, efforts were made to suppress piracy by offering general amnesties to pirates. In
1717, King George I issued a royal proclamation that declared a general pardon for pirates
who surrendered themselves to the authorities before September 1718.72

The golden age of Euro-American piracy was coming to an end at the beginning of
the eighteenth century. When the War of the Spanish Succession concluded in 1713, the
Royal Navy emerged as the dominant naval power of the sea.73 Soon after, they began to
abandon their reliance on privateers by discharging thousands of sailors. In the mid-
nineteenth century, the European Nations formally renounced and banned privateering.74
This pushed many sailors and former privateers towards piracy.

(e) Piracy in Asia

In Asia, piracy flourished during the Ming Dynasty (1368–1644). The ‘sea ban’
policy adopted by the Ming authorities from 1550 onwards rigorously suppressed trade
between China and overseas nations. This caused hardships for many merchants on the

67 Jim Dwyer, ‘When the City held Pirates in High Regard’ The New York Times (online) 21 April 2009
<http://www.nytimes.com/2009/04/22/nyregion/22about.html?_r=0>
68 Colin Woodard, The Republic of Pirates: Being the True and Surprising Story of the Caribbean Pirates and the Man
70 Howard W Allen and Jerome M Clubb, Race, Class and the Death Penalty: Capital Punishment in the American
History (SUNY Press, 2008) 35.
72 David Cordingly, Under the Black Flag: The Romance and Reality of Lives Among the Pirates (Hartcourt Brace, 1997)
205.
China coast who were actively engaged in trading with both Europeans and other Asians.\textsuperscript{75} It is believed that the suppression of trade forced many merchants to resort to piracy.\textsuperscript{76}

The Qing Dynasty (1616–1911), which ousted the Ming dynasty, reopened maritime trade and introduced harsh measures to prevent piracy. Starting in 1652, Qing imperial decrees directed coastal officials to burn all boats and stop the construction of large ocean-going junks, and banned the purchase of foreign ships and sale of Chinese ships to foreigners.\textsuperscript{77} In 1661, the government issued a still stricter policy to force coastal people in Fujian and Guangdong to relocate 30–50 miles inland.\textsuperscript{78} However, the stringent Qing policies were unable to suppress pirates. In 1711, the imperial court began to issue new regulations to control the activities of Chinese seafarers and fisherman. Despite these regulations, the number of pirates increased between 1790 and 1810 to a challenging confederation of 50,000–70,000 men and women.\textsuperscript{79} In 1810, the Qing government offered the pirates full pardons and reward for their surrender.\textsuperscript{80} The policy was successful and many pirate leaders accepted this pardon. By the late nineteenth century, the Chinese, with the help of Europeans, succeeded in reducing the large-scale piratical activity in the South China Sea.

3 Modern Maritime Piracy

Modern-day piracy has a range of new features that set it apart from the piratical events of the past. Though the fundamental act of the crime remains the same, the context in which it takes place has changed significantly. This is mainly attributable to a change in the skills, weapons and strategies of pirates, coupled with the development of new approaches to tackle the threat. In modern times, common piracy practices have been largely confined to kidnapping and stealing vessels and/or their cargo. However, in some cases, vessels are robbed of their valuables in short raids. Though modern-day piracy occurs throughout the world, there are three hot spots: the Southeast Asian region around

\textsuperscript{76} Timothy Brook, The Confusions of Pleasure: Commerce and Culture in the Ming China (University of California Press, 1999) 123.
\textsuperscript{78} Ibid.
\textsuperscript{79} John Kleinen, ‘Maritime Piracy through a Barbarian Lens: Punishment and Representation (the S.S. Naoma Hijack Case [1890–91])’ in John Kleinen and Manon Ossewijer (eds), Pirates, Ports, and Coasts in Asia: Historical and Contemporary Perspectives (Institute of Southeast Asian Studies, 2010) 105.
the Malacca Strait, the Gulf of Aden off the coast of Somalia and the Gulf of Guinea off the coast of Nigeria.

A unique aspect of piracy in Southeast Asia has been armed robbery within the territorial waters of the coastal states of Malaysia, Indonesia, the Philippines and Thailand. Pirate attacks in the region have mainly increased as a result of weak state control.\textsuperscript{81} Piracy in the Gulf of Aden has been exclusively for the kidnapping of crews for ransom. Piracy in the region emerged due to state failure in Somalia. The majority of piracy incidents in the Gulf of Guinea region involve the stealing of oil cargo. The criminal activity in this region is linked with the massive unemployment and lack of meaningful economic opportunities in the Niger Delta region.\textsuperscript{82}

\textit{D Lessons for Modern Piracy}

This historical synopsis of piracy briefly demonstrates how pirates have been perceived by states throughout history and offers a number of lessons. History shows that states have variously treated pirates as combatants, enemies or criminals. The ancient piracy events reveal several approaches of sovereigns or states towards pirates. For example, Queen Teuta viewed the activities of pirates as legal. She authorised her subjects to attack Roman merchant vessels in the Adriatic Sea. Her action represented the beginning of state-sponsored piracy, which would later come to be known as privateering. She collaborated with the pirates to increase her power and wealth. King Minos on the other hand treated pirates with little tolerance or sympathy. He focused instead on suppressing pirates with naval force. Likewise, Rome used force to discourage the Sicilian pirates. Under Pompey the Great, the Roman Empire directly attacked the pirate bases of Asia Minor and successfully removed the pirate fleets from the sea. Piracy in the ancient world developed as the states of the day either ignored or supported their activities. Warring factions were often found to promote piratical activities that were directed against their enemies. The city-states and empires of the Mediterranean consistently approved the predatory action of pirates for their own political ends.\textsuperscript{83}

During the later stages of the evolution of piracy, pirates were consistently tolerated by existing governments. Over time, pirates were allowed to become powerful

\textsuperscript{83} Cyrus H Karraker, \textit{Piracy was a Business} (Richard R Smith Publishers, 1953) 16.
actors in the regional context. In the seventeenth century, the Barbary pirates emerged as a regional power with governmental authority. With express support from the Ottoman Empire, the pirate group developed from sea raiders into a highly organised entity that had to be recognised and treated as a legitimate power. In the mid-sixteenth century, when tensions between Spain and England were on the rise, Queen Elizabeth licensed certain pirates through the issuance of reprisals and commissions and made them work in relationship with the state. The policy was to create a mercenary navy that would plunder Spain’s commerce. This incorporated piracy into English maritime warfare.

Several important lessons can be learned from the piracy of past centuries. In particular, there cannot be any tolerance for piracy. Recognising piracy as a crime, pirates should be in all cases dealt with as criminals. If the power of pirates is allowed to grow unchallenged, at some point they will become difficult to destroy. For example, the success of the Vikings and Mediterranean pirates was largely dependent on the tolerance of the existing governments of the time. The history of piracy also shows that the inability of governments to counter piracy threats promotes their growth. For example, the weak governments in the Mediterranean and Europe provided opportunities for piracy to grow and prosper. As regards combating piracy, one of the teachings of history is to focus on the source of the problem. This approach may be of some help in reducing piracy that is driven by poverty. In 67 BCE, the Roman general Pompey the Great undertook a disarmament campaign that offered economic help to pirates in exchange for refraining from any engagement in piracy. The offer included legal employment opportunities on land. Pompey’s action proved successful, as many pirates accepted the offer.

**Conclusion**

In all of the cases discussed, it is evident that piracy needs onshore support to succeed and has often required onshore strategies to resolve. In the case of today’s piracy problem, this implies that coastal states should assume the lead role in counter activities. In the past, merchant societies and shippers have sometimes tried to assume responsibility for their own defence (for example, the Hanseatic League). To help to address the piracy issue, the modern shipping industry has only recently begun to develop self-protection arrangements for ships.
The next chapter outlines the international legal framework that has been developed over the last century to address piracy. It particularly examines the adequacy of these frameworks in countering modern piracy.
III THE INTERNATIONAL LEGAL FRAMEWORK IN COMBATING PIRACY

A Chapter Introduction

This chapter outlines the international law perspectives of piracy. In doing so, the chapter contemplates the nature and substance of the legal context for piracy in international law and highlights the limits of international law to cope with the problem. Under the modern international law regime, the subject of piracy has been reflected in several UN instruments, including the HSC,\(^1\) UNCLOS\(^2\) and SUA.\(^3\) The chapter discusses the key limitations of these conventions in countering piracy in the Gulf of Guinea region. The chapter concludes by suggesting that greater regional cooperation is an essential part of the solution to piracy in the Gulf of Guinea.

B International Law in Combating Piracy

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

1 UNCLOS

UNCLOS codifies the customary international law of piracy. The provisions on piracy in UNCLOS are contained in Articles 100–110. These provisions set out the legal framework for the repression of piracy under modern international law.\(^4\) The rules on piracy of the Convention have a long history. The codification of these rules began with the initiatives of the League of Nations in 1926, who selected the subject of piracy as one

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\(^4\) The preambles to UNSCR 1848 and 1851 (2008) reaffirm ‘that international law, as reflected in UNCLOS, sets out the legal framework applicable to combating piracy and armed robbery at sea’.
of the first offences to be codified.\(^5\) In the same year, the League’s Committee of Experts for the Progressive Codification of International Law elaborated a draft treaty on piracy. However, suggesting that the problems arising from piracy were not important enough at the time, the draft was not placed before the 1930 Codification Conference of the League of Nations,\(^6\) instead being passed to Harvard Law School for further research. In 1932, the school published ‘the Harvard Draft Convention on Piracy’, which was picked up by the newly formed International Law Commission in 1949. The Commission incorporated piracy provisions in Articles 38–45 of its Draft Articles on the Law of the Sea, to be later codified in Articles 14–21 of the HSC. These provisions were restated into UNCLOS, almost without amendment.

The definition of the term ‘piracy’ has been the most contentious issue of customary international law. There was no authoritative definition of the term until the customary international law of piracy was first codified in the HSC. The modern definition of piracy is found in UNCLOS, which, using very similar language, adopts the HSC definition. As of 24 October 2012, 164 states have ratified or acceded to the Convention.\(^7\) This signifies that the definition has achieved universal acceptance by states.

Article 101 of UNCLOS defines piracy as ‘any acts of violence or detention [or deprivation] … committed for private ends by the crew or passengers … of a private ship … and directed … on the high seas against another ship, or against persons or property on board’.\(^8\) The definition therefore clarifies the exemption from the definition of piracy of acts with governmental objectives, acts committed within territorial waters, in port or internal waters, or acts that involve a single ship. This definition thus constitutes an impediment in legally addressing the problem of piracy and affects the implementation of piracy laws globally.

\(a\) Limitations within the UNCLOS Definition of Piracy

\(i\) Meaning of Acts of Violence, Detention or Depredation

The UNCLOS definition requires ‘any illegal acts of violence or detention, or any act of depredation’ in an attack to be piracy.\(^9\) It is difficult to give these words any clear or precise meaning, as the Convention is silent on the issue. Further, it is not clear under what

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\(^8\) See Chapter II B 2 (b).
\(^9\) UNCLOS art 101(a).
systems of law acts are to be considered as ‘illegal’ or whether any significant difference exists between the use of the words ‘acts of violence’ or ‘acts of depredation’. Likewise, it is not clear whether any acts of threatened violence without physical violence would fall under the meaning of violence, detention or depredation.

(ii) High Seas Requirement

The UNCLOS definition of piracy applies exclusively to crimes committed on the high seas and not in territorial waters. In theory, the high seas means the open ocean that is not within the territorial waters or jurisdiction of any individual state. The Convention defines the term as ‘... all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State’. The definition has been considered by many to limit the geographical scope of the offence, as it excludes acts of violence against ships within territorial waters. Armed robberies taking place within the inland water or territorial waters of a state are not defined as piracy according to UNCLOS.

However, the indication in Article 101 of piracy occurring on the ‘high seas’ appears to be somewhat confusing. Article 86 of the Convention excludes the EEZ from being part of the high seas. However, Article 58(2) provides that ‘Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part’. It is generally accepted that the UNCLOS provisions on piracy are not incompatible with the part. Therefore, the provisions of the high seas regime (including all of the provisions on piracy) can be said to also apply to EEZs. This implies that the general law of piracy applies to all attacks on ships outside the 12 nm limit of the territorial waters of a state.

The high seas limitation also tends to weaken the duty assigned for states to cooperate in repressing piracy under Article 100 of the Convention. The language of the Article seems to indicate that there is no obligation on states to repress piracy that occurs within territorial waters. As a result, confining piracy to the high seas allows states to decline their responsibility for pirates based on their territorial limits.

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12 UNCLOS art 86.
(iii) The Private Ends Requirement

The second obvious limitation is the phrase ‘for private ends’ within the UNCLOS definition of piracy. As per the definition, piracy must be committed for private ends. This condition thus excludes from the definition of piracy politically motivated acts directed against ships or their crews. The limitation implies that, provided pirates are acting towards a political goal, their actions do not satisfy the ‘private ends’ requirement and, as a result, they cannot be considered as pirates under UNCLOS. This potentially removes certain acts that might closely correspond to piracy when they are conducted by a political movement for political purposes, thereby leaving a gap in the definition.

(iv) Two Ships Requirement

The UNCLOS definition of piracy only covers attacks committed by a private vessel against another vessel. In other words, piracy requires the involvement of more than one ship. Therefore, a situation in which crewmembers engage in mutiny, or the ship’s passengers are involved in seizing the ship, may not amount to an act of piracy.

(b) Limitations Associated with Piracy Provisions

(i) The Duty to Cooperate to Suppress Piracy

Article 100 provides that ‘[a]ll States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State’. The Article imposes a duty on states to cooperate in the suppression of piracy. However, the level of extending cooperation in a given situation is unclear. The wording of Article 100 omits to define ‘the fullest possible extent’ and thereby offers much flexibility for states to comply with the duty to cooperate. The Article seems to give extensive freedom to states to respond to the problem of piracy. It also appears that a state would not be failing in its duty to cooperate under Article 100 if it refused to arrest and prosecute pirates. Further, the Convention does not prescribe or establish any authority to determine whether a state is meeting its piracy suppression obligation.13

(ii) Exercising Jurisdiction over Pirates

The customary international law under the notion of ‘universal jurisdiction’ recognises that every state has the jurisdiction to apprehend and prosecute a pirate

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irrespective of the nationality of the pirate or victim or the vessel attacked.\textsuperscript{14} Despite the granting of such jurisdiction, Article 105 only mentions the power of the seizing state to try a pirate. The provision does not place any express responsibility upon the seizing state to prosecute an arrested pirate. It merely provides that the seizing state may decide upon the penalties to be imposed, including prosecution. This is discretionary rather than obligatory.

Additionally, the provision does not lay down any rules as to the prosecution of pirates. An arrested pirate is required to be tried and penalised under the apprehending state’s domestic law. This allows different trial procedures and penalties for pirates in different cases. More alarmingly, if the apprehending state does not have any penal legislation allowing for the punishment of pirates, or if the apprehending state does not want to try pirates in its own territory, they may go unpunished.\textsuperscript{15}

\textit{(iii) Hot Pursuit}

Article 111 of UNCLOS sets out the regime for hot pursuit. The Article states that, if a vessel is suspected of violating the laws and regulations of a coastal state, the vessel can be pursued onto the high seas. The right of hot pursuit begins when the offending vessel is within the internal waters or territorial sea of the pursuing state and ends when the vessel enters the territorial waters of another state.\textsuperscript{16} The right of hot pursuit may only be continued if the pursuit has not been interrupted.

The limitations imposed in the power of hot pursuit are a serious obstacle in enforcing piracy jurisdiction under the Convention. It is noted that navies and coastguards of the state pursuing pirates may enter another state’s territorial waters only after seeking and receiving that state’s consent. However, considering the issue of territorial sovereignty or jurisdiction, such permission is unlikely to be given by the coastal state.

\textit{(c) Shortcomings of the UNCLOS Piracy Regime in Combating Piracy}

At the international level, states have been using the UNCLOS as the legal basis to suppress piracy. However, the legal regime as codified in UNCLOS is not sufficient to address piracy threats. The inadequacy of the piracy provisions of UNCLOS lies in the fact

\textsuperscript{16} UNCLOS art 111(3).
that it ‘imposes few express obligations on states other than the duty to cooperate’. It also
does not impose any obligation on states to implement the relevant piracy provisions.
Notably, Article 100 of UNCLOS imposes a general obligation on states to cooperate to
the fullest possible extent in the repression of piracy. However, there is no obligatory
prescription on states to either arrest or prosecute suspected pirates present in their
territory. The Article does not impose any responsibility on the capturing state to
adjudicate piracy allegations by its courts or to transfer suspected pirates to another state.
Further, no obligation is imposed on states to provide one another mutual legal assistance
relating to criminal proceedings of persons charged with piracy. Article 101 of UNCLOS
provides a definition of piracy, but it imposes no obligation on State Parties to adopt
national legislation that criminalises piracy with applicable penalties.

Article 105 of UNCLOS empowers all states to take enforcement actions against
pirate ships. It gives every state the right, on the high seas or in any place outside the
jurisdiction of any state, to seize pirate ships and the property on board and to arrest the
pirates. However, it imposes no obligation on states to exercise such powers. The Article
further gives the courts of the state that carried out the seizure the power to establish
jurisdiction by prosecuting the pirates and determining the penalty. However, the Article
does not impose an obligation on the capturing state to make arrangements within its
domestic legal system to implement the provision. The permissive character of the
 provision allows the capturing state to avoid the prosecution of pirates, and in such a case,
 UNCLOS contains no mechanism for transferring pirates to another state.

2 The SUA Convention

The SUA Convention was adopted in response to the Achille Lauro incident of
1985. The Italian-flag cruise ship was seized by four members of the Palestinian
Liberation Organisation on 7 October 1985. The hijackers managed to board the ship as
tourists and took the ship’s crew and passengers as hostages. They demanded the release of
50 Palestinian prisoners held by Israel and threatened to blow up the ship if any rescue
mission was attempted. One passenger was killed by the hijackers when their demands

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17 Douglas Guilfoyle, ‘The Legal Challenges in Fighting Piracy’ in Bibi van Ginkel and Frans-Paul van der Putten (eds),
18 Robert C Beckman, ‘The Piracy Regime under UNCLOS: Problems and Prospects for Cooperation’ in Robert C
Beckman and J Ashley Roach (eds), Piracy and International Maritime Crimes in ASEAN: Prospects for Cooperation
19 Ibid.
were not met. Following the incident, it was doubtful whether the act could be characterised as piracy. A thorough analysis of the definition of piracy under UNCLOS exposed that the seizure could not be considered as an act of piracy as the hijacking was politically motivated and it did not fulfil the two vessel requirement. The limitations inherent in the UNCLOS definition of piracy motivated states to develop the SUA Convention.

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

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

Attempting, threatening and abetting any of the offences have also been declared as crimes under Article 3(2) of the Convention. Notably, the Convention does not use the term piracy, but includes it within the scope of its application. The broad set of offences defined in Article 3 includes the basic element of the crime of piracy (that is, the seizing of

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a ship by force, threat or intimidation). Therefore, acts that are piracy may also be offences under the SUA Convention.

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

Unlike UNCLOS, the SUA Convention places a concrete obligation upon parties to make the offences punishable by appropriate penalties. Article 6 obliges the State Parties to establish their jurisdiction over the offences in question. Though the Article does not strictly establish universal jurisdiction, it provides three distinct ways of establishing jurisdiction by a State Party in cases when the unlawful act is perpetrated against their ships, takes place in their territory or is perpetrated by one of their nationals. Article 10 of the Convention further obliges State Parties to exercise jurisdiction over alleged offenders when they are found within their territory and are not extradited to another State Party having jurisdiction. In addition to these obligations, State Parties are obliged to cooperate to prevent the commission of offences by taking appropriate measures, including the exchange of information and coordination of administrative and other measures. Further, State Parties are obliged to afford ‘the greatest measure of assistance’ to any state prosecuting offenders.

(a) Problems in Ratifying and Implementing the 1988 SUA Convention

The SUA Convention has the potential to be a useful instrument for fighting piracy. However, the relevance of the Convention in countering piracy is affected by certain shortcomings of the treaty provisions. It is argued that some of its provisions may allow

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24 SUA art 3(1)(a).
26 SUA art 5.
27 Ibid art 6(1)(a–c).
28 Ibid art 13(2).
29 Ibid art 12(1).
suspected offenders to escape punishment. The most notable deficiency in this regard has been stated as the lack of real obligation to prosecute and punish offenders.\textsuperscript{30} The obligation of the State Party under Article 11(1) to ‘submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State’ fails to ensure that the alleged offender will be tried and prosecuted by an independent court of criminal justice. The lack of any guarantees of judicial independence in this regard may ‘delay or even elude an effective criminal judgement’.\textsuperscript{31} Another deficiency is the provision that permits the requested state to consider the Convention as a legal basis for extradition in the absence of any specific extradition treaty.\textsuperscript{32} It is argued that the obligation to extradite in such a case is not absolute and may further be frustrated by lack of political will.\textsuperscript{33}

The efficacy of the SUA Convention in addressing piracy has also been questioned on several other grounds. It is argued that the requirement of having certain jurisdictional linkages between the alleged offenders and the State Party prosecuting them seriously undermines the notion of universal jurisdiction applicable to piracy offences, as it limits the number of states that can prosecute an offender.\textsuperscript{34} In addition, the jurisdictional provisions dealing with the obligation to either extradite or prosecute has been criticised for not prescribing any guidelines concerning the exercise of such power.\textsuperscript{35} The Convention has also been criticised for not providing any sanctions against parties who fail to fulfil their treaty obligations.\textsuperscript{36}

The application of the Convention largely depends upon how the states apply its provisions.\textsuperscript{37} In practice, states are found to rarely invoke the SUA due to fear of unwanted economic and political burdens and sovereignty issues. There are concerns that implementation of the Convention may infringe on national sovereignty and require


\textsuperscript{32} SUA art 11(2).

\textsuperscript{33} Treves, above n 30, 551.


additional expenditure on security for the State Parties. Notably, the Convention requires signatory states to take vast cooperative measures, including the sharing of information with other states, the extradition or prosecution of suspected offenders under state laws, and the taking of any practicable measures within their territories to prevent the commission of offences outside their territories. It is believed that these requirements are among many of the reasons for not invoking the Convention.

C Conclusion

UNCLOS and SUA are the key international legal instruments that govern piracy. The piracy rules as embodied in these instruments contain some loopholes and are therefore inadequate to address the problem. The inadequacies have led to an imbalance between counter-piracy goals and the expected result. In the context of the Gulf of Guinea, the vast majority of pirate attacks occur within the territorial seas of the coastal states. The piracy provisions as contained in UNCLOS apply only on the high seas and exclude territorial waters. Hence, very few of the incidents in the Gulf of Guinea qualify as piracy under UNCLOS. Therefore, the piracy regime under UNCLOS appears to be weak for preventing and suppressing attacks on ships in the region. The SUA Convention ‘creates the prospect for a more committed and coherent cooperation amongst nations’ in the fight against piracy. However, the utility of the Convention depends on its being widely ratified in the piracy-affected region. The usefulness of the international legal instrument in the Gulf of Guinea region is limited due to the low number of states ratifying the Convention. Nigeria is the only country that has ratified the Convention (in 2004). The country is presently in the process of domesticating the Convention by considering enactment of the ‘Piracy and Other Unlawful Acts at Sea Bill’. Togo, Benin, Cameroon, Ghana, Sao Tome and Principe acceded to the Convention but have not yet passed any legislation to implement their obligations under the Convention. Cameroon and Côte d’Ivoire are not yet parties to the Convention.

Against this backdrop, regional cooperation has produced some beneficial results in combating piracy acts in piracy-affected regions. Regional anti-piracy agreements have offered the best opportunity for regional cooperation in this regard. There are supportive

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39 SUA art 13(1).
examples of regional agreements from the Southeast Asian and East African contexts. The establishment of ReCAAP and the Djibouti Code of Conduct concerning the suppression of piracy and armed robbery of ships in the Indian Ocean and Gulf of Aden, respectively, have made a major contribution to the fight against piracy in those regions. Both agreements anticipate a higher degree of cooperation between regional states in implementing their obligations towards security on the high seas and in their territorial waters. Thus, regional codes may serve as a useful tool to avoid the disadvantages of multilateral negotiations like UNCLOS and SUA by specifically targeting regional circumstances.

The next chapter focuses on the regional strategies and frameworks for countering piracy in different piracy-affected regions. In particular, it looks at the measures adopted by the regional states and organisations of Southeast Asia and the Indian Ocean region with the aim to examine and identify their effectiveness and the opportunities they afford.
IV REGIONAL STRATEGY FOR COMBATING PIRACY

A Chapter Introduction

The purpose of this chapter is to outline the regional approaches to combating piracy to ascertain their effectiveness in addressing the problem. Specifically, the chapter focuses on Southeast Asia and the Eastern Africa region. These regions were chosen because both have been global ‘hot spots’ of piracy for some time. The Southeast Asian states in particular have benefited greatly from regional cooperation and made significant progress in curbing the proliferation of piracy in the region. Many of the lessons learned from the success of Southeast Asia have also been applied in the Eastern Africa region. The chapter first provides the context of regional solutions to piracy and contemplates how regional stakeholders, with broader international support, have formed initiatives to address the specific dimensions of piracy in the regions. Following this, some of the key regional initiatives of the two regions are discussed, highlighting the progress made in, and the obstacles to, regional cooperation.

B Background of Regional Solution to Piracy

Over the centuries, the model of international cooperation to suppress piracy has been through aggressive international enforcement.¹ The international community has primarily responded to the threat by following an armed strategy of deterring and combating. For example, to counter piracy in the Gulf of Aden and other waters of the Indian Ocean, there has been heavy patrolling by joint maritime forces of several nations, including European Union (EU) and North Atlantic Treaty Organisation (NATO)-led fleets. These international military efforts and strategies have proven effective to a certain extent in containing the number of successful attacks but have not eradicated piracy itself. The utility of a response focused solely on maritime intervention has also been seriously questioned by many maritime piracy scholars. It has been argued that naval action as a part of a coherent political strategy can interdict and deter piracy but cannot solve the problem by itself.² Against this backdrop, regional partnership gradually re-emerged as the key

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² Martin N Murphy, ‘Suppression of Piracy and Maritime Terrorism: A Suitable Role for a Navy?’ (2007) 60 (Summer) Naval War College Review 42.
strategy to counter modern-day piracy more effectively. The piracy-affected littoral states of particular regions have thus opted for greater regional cooperation and coordination.

C Regional Cooperation in Southeast Asia

1 Regional Strategies in Combating Piracy

Regional efforts in Southeast Asia have played a significant role in reducing the number of acts of piracy in the region. With this aim, the Southeast Asian countries and extra-regional powers have developed various regional strategies. The first joint effort to enhance navigational safety in the Straits of Malacca and Singapore was the introduction of STRAITREP, a mandatory ship reporting system. This reporting system was adopted by the IMO upon a joint proposal made by Indonesia, Malaysia and Singapore. STRAITREP took effect on 1 December 1998 and requires ships plying the Straits of Malacca and Singapore to provide shore-based authorities with information such as their name, sign, position, course and speed. In 2004, the three littoral states established a trilateral coordinated patrol scheme named ‘MALSINDO Malacca Straits Coordinated Patrols’. The trilateral initiative, which aimed to conduct coordinated patrols in the Malacca Strait, involved the navies of the three countries and was formally launched on 20 July 2004. The security arrangement allowed the warships of one country to enter the territorial waters of another country while in pursuit of pirates after obtaining official permission. In 2005, the three states further agreed to add aerial anti-piracy surveillance of the Strait under the Eye in the Sky (EIS) plan. The plan allowed aircraft of one state to fly for up to three nautical miles into the territorial waters of other participating states. In April 2006, the MALSINDO and EIS initiatives were merged under the common framework of the Malacca Straits Patrol Network.

The growth of multilateral institutions such as the Association of Southeast Asian Nations (ASEAN) has also provided many prospects and incentives in fostering regional cooperation on piracy in the region. In 1997, ASEAN recognised piracy for the first time

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as a regional problem and adopted the ASEAN Declaration on Transnational Crime.\(^7\) The Declaration outlined the initiatives for regional cooperation on tackling transnational crime including piracy. The Second ASEAN Ministerial Meeting on Transnational Crime in June 1999 adopted the ASEAN Plan of Action to Combat Transnational Crime. The Plan sought to extend ASEAN member countries’ commitment to fight transnational crime from the national and bilateral levels to the regional dimension.\(^8\) To implement this plan, a Work Programme\(^9\) was adopted in Kuala Lumpur on 17 May 2002. This document offered a more comprehensive strategy to strengthen capacity to combat transnational crimes, including sea piracy. On 17 June 2003, the ASEAN Regional Forum (ARF)\(^10\) adopted a ‘Statement on Cooperation against Piracy and Other Threats to Maritime Security’, which committed participants to adopt regional maritime cooperation among ARF members to combat piracy. In August 2007, at the ARF Roundtable Discussion on Maritime Security Issues, participants agreed that sea piracy was one of the main threats to maritime security. ASEAN also established the ASEAN Maritime Forum in 2010 as a follow up to the objectives of the ASEAN Political Security Community Blueprint. The forum provides a crucial platform for discussion at the regional level on maritime security issues, including piracy.

2 **Regional Instrument: ReCAAP**

The latest anti-piracy initiative implemented by the littoral states of Southeast Asia is ReCAAP.\(^11\) The Agreement provides the basis for regional cooperation to counter piracy in the region and is seen as the region’s building block for successful regional integration.\(^12\) ReCAAP is the first regional agreement in Asia that promotes multilateral cooperation against piracy and armed robbery at sea. The Agreement resulted from a series of negotiations, with Japan taking the initiative in the establishment of ReCAAP in 2001.\(^13\) The Agreement was finalised on 11 November 2004 by 10 ASEAN states and came into

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\(^9\) *Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime (17 May 2002)* <http://www.aseansec.org/5616.htm>

\(^10\) The ASEAN Regional Forum is a security dialogue forum created by the ASEAN nations in 1993 to address the regional security needs.

\(^11\) ReCAAP is the first regional agreement to promote and enhance cooperation against piracy and armed robbery in Asia. The Agreement was finalised on 11 November 2004 and came into force on 4 September 2006.

\(^12\) Joshua Ho, ‘Combating Piracy and Armed Robbery in Asia: The ReCAAP Information Sharing Centre (ISC)’ (2009) *33 Marine Policy* 432–34.

force on 4 September 2006. As of April 2013, there are 18 contracting parties\textsuperscript{14} to the Agreement.

\textit{(a) General Features of the Agreement}

\textit{(i) Definition of Piracy under the Code}

ReCAAP follows the definition of piracy as contained in UNCLOS and adopts the definition of armed robbery at sea from the IMO Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships.\textsuperscript{15} However, ReCAAP has slightly changed the UNCLOS definition by omitting the word ‘aircraft’ as a pirate attacked target.

\textit{(ii) The Duty to Cooperate to Suppress Piracy}

Article 2 of the Agreement obliges the contracting parties to implement ReCAAP in accordance with their national laws and regulations and with consideration to their resources and capabilities. The more specific obligations of the contracting parties have been defined in Article 3(1), and include taking effective measures to prevent and suppress piracy, arrest pirates, seize pirate ships and rescue victim ships and victims of piracy. The approach to suppress piracy is based on intra and interagency information sharing and reporting, regional capacity building and cooperation with non-governmental organisations (NGOs). Additionally, the agreement establishes the ReCAAP Information Sharing Centre (ISC)\textsuperscript{16} located in Singapore. The Centre was officially launched in Singapore on 29 November 2006 to facilitate communication and information exchange between member countries. The ISC serves as a platform for information sharing with the ReCAAP focal points. The focal points are those organisations, such as the navy, coastguard or another agency, designated by the contracting parties to be the sole points of contact with the ISC. These focal points are linked to each other and to the ISC through a secure online information-sharing network. Upon the ReCAAP Focal Point being informed of an incident of piracy or armed robbery at sea, it submits a report to the ISC and the neighbouring focal points.

The contracting parties are also required to take legal and judicial measures for suppressing piracy. According to the Agreement, a contracting party should endeavour to

\textsuperscript{14} The 18 contracting parties to ReCAAP are the People’s Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People’s Republic of China, the Kingdom of Denmark, the Republic of India, Japan, the Republic of Korea, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the United Kingdom and the Socialist Republic of Viet Nam.

\textsuperscript{15} ReCAAP art 1.

\textsuperscript{16} The ReCAAP ISC was formally recognised as an international organisation on 30 January 2007.
extradite pirates to another contracting party having jurisdiction over them and provide mutual legal assistance in criminal matters.\(^{17}\) The Agreement further obliges each contracting party to endeavour to cooperate to the fullest extent possible with other contracting parties to enhance the capacity to prevent and suppress piracy and armed robbery against ships.\(^{18}\)

3 Evaluating the Regional Cooperation in Southeast Asia

The various regional initiatives in Southeast Asia to address piracy have met with ‘real but qualified successes’.\(^{19}\) Following the introduction of MALSINDO patrols, there was no evidence of an immediate reduction in the number of pirate attacks in the Malacca Straits. The major shortcoming of the initiative was the lack of a provision for effective hot pursuit, which limited navies to patrolling their territorial waters only.\(^{20}\) Trilateral patrols were also hindered by ‘political sensitivity over protecting sovereignty and a lack of capacity’.\(^{21}\) The effectiveness of the EIS program has also been questioned on the grounds that aerial patrol has been limited by an insufficient number of flights.\(^{22}\) The anti-piracy initiatives of ASEAN have provided the foundation for greater regional cooperation, but the under-institutionalised structure of the organisation has prevented it from realising its objectives in this regard.\(^{23}\) The members of ASEAN also lack the ability to invest large amounts of money into anti-piracy or security measures.

In this context, the regional anti-piracy instrument ReCAAP has been applauded as a good example of regional cooperation in Southeast Asia. It provides a solid foundation for an institutionalised regional solution to piracy through information sharing, training and capacity building in the region. ReCAAP has gained international accreditation for its effective role in reducing Asian piracy. The success of ReCAAP has mainly been due to the information-sharing mechanism that combines the efforts of participating states in this regard to establish a criminal combating system.\(^ {24}\) The ReCAAP ISC and the network of focal points within each participating country establishes an effective piracy reporting model and plays a useful role in capacity building within the region. The ReCAAP ISC has

\(^{17}\) ReCAAP art 12, 13.
\(^{18}\) ReCAAP art 14.
\(^{22}\) Raymond, above n 4, 8.
\(^{23}\) Bulkeley, above n 6, 11.
been instrumental in ‘bringing all stakeholders and like-minded individuals together to share information and enhance response.’

As an organisation, ReCAAP and ReCAAP ISC also have several progressive effects. The requirement of ReCAAP to identify and designate a focal point is a positive step for facilitating interagency cooperation within a contracting party. The regional anti-piracy capacity-building initiative requirement is expected to inculcate greater awareness between the contracting parties and improve the capability of member countries in combating piracy in the region. The condition of cooperative arrangement with various partner organisations and like-minded parties will help to establish a wide network beyond the operational area of the regime. The fact that ReCAAP is open to accession by other states will further contribute to the growing strength of the ReCAAP network and facilitate effective international cooperation to combat piracy and armed robbery against ships in Asia.

Although ReCAAP has many advantages, certain limitations may impede its effectiveness to prevent and suppress piracy. For example, ReCAAP does not contain any explicit provision on joint maritime law enforcement operations. It also does not provide for any enforcement powers exceeding the enforcement regime of UNCLOS. Above all, ReCAAP does not permit hot pursuit in the territorial waters of another state. In addition, the reporting system under ReCAAP ISC may cause delays in reporting, as it receives information on piracy and armed robbery incidents from focal points and not from ships directly. The smooth functioning of ReCAAP ISC may also be affected due to the different levels of competency of the various ReCAAP focal points. The focal points of different contracting parties may lack the same level of capability to enforce their anti-piracy efforts. There is also a risk of inadequate information sharing among intergovernment agencies and the focal points. In addition, the absence of adequate legal instruments concerning piracy and armed robbery on the part of some of the contracting parties affects the ISC’s focal point network. ReCAAP is also limited by its signatory

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26 Ho, above n 12, 432.
27 Some examples of partner organisations and like-minded parties include the IMO, the International Association of Independent Tanker Owners (INTERTANKO), the Asian Ship Owners Forum (ASF), the Baltic and International Maritime Council (BIMCO), the NATO Shipping Center and INTERPOL.
28 ReCAAP art 18.
30 Art 2(5).
31 Ho, above n 12, 141.
states. The Agreement has not yet been signed by Malaysia or Indonesia. ReCAAP ISC may be handicapped by the lack of cooperation from these two countries.

Despite these limitations, ReCAAP has proven an excellent model for lessening the risk of piracy incidents at sea within the region. It is significant for furthering close collaboration among the contracting parties in the field of maritime law enforcement and activities conducted under ReCAAP enhance the mutual confidence among the contracting parties. The Agreement has also recorded a mutual understanding on joint cooperation in the area of information exchange and mutual support. As discussed earlier, the cooperative arrangement of ReCAAP allows a variety of organisations to collaborate and cooperate with the ReCAAP ISC in sharing information and participating in capacity-building programs. Given the Agreement’s success in fostering cooperation, it has served as a model for further international agreements.

D Regional Cooperation in East Africa

1 Regional Strategies to Combat Piracy

The East African states have made several attempts to cooperate on maritime security. On 7 October 2010, ministers from East and Southern Africa, at their second ministerial meeting on ‘Piracy and Maritime Security’, adopted a regional strategy for the Eastern and Southern Africa and Indian Ocean region. The strategy was complemented by a ‘Regional Plan of Action’. These two documents provided a regional framework to prevent and confront piracy. Attempts have also been made to implement a regional structure for cooperation and communication within the existing regional organisations, including the Intergovernmental Authority for Development (IGAD), the East African Community and the African Union (AU).

Established in 1986, the IGAD was originally developed by the East African states (in conjunction with the UN) to address environmental crises that led to famine and economic hardship in the region. The IGAD Capacity Building Programme against Terrorism released a piracy report on the impacts of piracy in the IGAD region in March 2009. In July 2010, IGAD developed a strategy to combat piracy on land in Somalia entitled ‘Somalia Inland Strategy and Action Plan to Prevent and Counter Piracy 2010–2015’. This was prepared as part of the overall Eastern and Southern Africa–Indian Ocean

Regional Strategy and Regional Plan of Action. The strategy seeks to address the root causes of piracy through locally developed solutions.\textsuperscript{33}

Formed after the dissolution of the Organisation of African Unity in 2002, the Durban summit officially launched the AU. The intergovernmental organisation’s policy efforts to fight maritime piracy include the African Maritime Transport Charter (Revised);\textsuperscript{34} the Durban Resolution on Maritime Safety, Maritime Security and Protection of the Marine Environment in Africa;\textsuperscript{35} and Africa’s Draft Integrated Maritime Strategy. In addition, the AU participates in the Contact Group on Piracy, the Djibouti Code of Conduct and the regional conferences on piracy organised by the Eastern and Southern Africa–Indian Ocean countries. The AU also works to establish an integrated coastguard network through partner agencies in the region.

2 Regional Instrument: The Djibouti Code of Conduct

On 29 January 2009, the Djibouti Code of Conduct was adopted at a meeting convened by the IMO in Djibouti. A strong base for the work of the meeting was established during the subregional seminar on piracy and armed robbery against ships and maritime security held in Sana’a, Yemen (9–13 April 2005) and the follow-up subregional workshop on maritime security, piracy and armed robbery against ships in Muscat, Oman (14–18 January 2006). On 27 November 2007, the Assembly of the IMO adopted Resolution A.1002(25) on Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia, which called upon governments in the region to conclude and implement a regional agreement in cooperation with the IMO, to prevent, deter and suppress piracy and armed robbery against ships. Pursuant to the Resolution, the IMO organised a subregional meeting\textsuperscript{36} that prepared a draft cooperative framework agreement concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden. Subsequently, the Djibouti meeting\textsuperscript{37} considered and adopted

\textsuperscript{33} Joint Comminique from the Eastern and Southern Africa–Indian Ocean Ministers and European Union High Representative at the 2nd Regional Ministerial Meeting on Piracy and Maritime Security in the Eastern and Southern Africa and Indian Ocean region’ (7 October 2010).
07_April_2010_Experts_Meeting_on_Maritime_Security_and_Safety_Strategy-
Documentation/African%20Maritime%20Transport%20Charter%20Durban%20Resolution.doc>
\textsuperscript{36} The sub-regional meeting on piracy and armed robbery against ships for the states from the Western Indian Ocean, Gulf of Aden and Red Sea areas, held in Dar es Salam, United Republic of Tanzania, 14–18 April 2008.
\textsuperscript{37} The sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for the states from the Western Indian Ocean, Gulf of Aden and Red Sea areas held in Djibouti, 26–29 January 2009. The
the instrument with the short title ‘the Djibouti Code of Conduct’. The Code became effective on 29 January 2009, the date on which it was signed.\(^{38}\)

The Djibouti Code of Conduct consists of three related documents. The first document contains the resolution adopting the code. The resolution recognises the extent of the problem of robbery and armed robbery against ships in the region and urges the participating governments to implement the provisions of the code. The attachments provide the fundamental contents of the code, including as relate to enforcement measures to repress piracy and armed robbery, information sharing, incident reporting and general assistance among participants, as well as a resolution concerning technical cooperation and assistance. The second document focuses on enhancing training in the region. The resolution recommends the establishment of a regional training centre in Djibouti for the purpose of promoting the implementation of the Code. The third document is largely a symbolic one, expressing appreciation to Djibouti for holding the meeting.

\(a\) General Features of the Code

The Code is the first regional agreement between Arab and African countries against acts of piracy. It primarily focuses on the creation of mechanisms to promote enhanced cooperation between the participant states. The main objective of the Code is to enhance the effectiveness of the prevention, interdiction, prosecution and punishment of persons engaged in piracy and armed robbery against ships.\(^{39}\)

\(i\) Definition of Piracy under the Code

The Code adopts the same definition of piracy as contained in Article 101 of UNCLOS. The definition of ‘armed robbery against ships’ is also very similar to that defined in Article 1(2)(a) of ReCAAP. Article 1(2)(a) of the Code defines ‘Armed robbery against ships’ as the ‘unlawful act of violence or detention, or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea’. The definition excludes the phrase ‘another ship’ and thus covers violence taking place on board a single vessel within a state’s internal waters, archipelagic waters or territorial sea.

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38 The Code was signed by the representatives of Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania and Yemen.
(ii) The Duty to Cooperate to Suppress Piracy

The existing duty of cooperation to suppress piracy under the Code has been made consistent with the available resources, related priorities and applicable rules of international law.\textsuperscript{40} The Code requires the signatories to share and report relevant information through a system of national focal points and piracy ISCs. The national focal points are designated by the participating states.\textsuperscript{41} The ISCs are to serve as a network of national focal points in all signatory states. Pursuant to Article 8(1) of the Code, three ISCs have been established in Sana’a, Mombasa and Dar es Salam. These centres have been fully operational since the first half of 2011.

The duty to cooperate under the Code also extends to: (a) interdicting ships suspected of engaging in piracy or armed robbery against ships; (b) arresting, investigating and prosecuting persons committing piracy; (c) seizing pirate ships and property on board such ships and (d) rescuing ships, persons and property subject to piracy.\textsuperscript{42}

3 Evaluating the Regional Cooperation in East Africa

The regional cooperation in the East Africa region has been marked by unlinked and uncoordinated policies and activities. The regional approaches to combating piracy indicate poor coordination and planning. Many of the efforts suffer from lack of coordination and tend to address only maritime security issues.\textsuperscript{43} However, regional organisations such as the AU and IGAD have made some progress in developing and implementing counter-piracy plans and programs. Among all of the regional initiatives of the region, the adoption of the Djibouti Code of Conduct is seen as a ‘starting point for successful cooperation and coordination in the region’.\textsuperscript{44} The Code represents the first significant step towards the development of a regional capacity to suppress piracy. Although the Code is based to some extent on the model of ReCAAP, it covers more matters than the Agreement. For example, the Code commits the signatories to ensure the apprehension and prosecution of pirates. In this regard, the Code directs that each party review their domestic maritime legislation to ensure that it is adequate for criminalising piracy and that adequate guidelines have been formulated for the exercise of jurisdiction,

\begin{itemize}
  \item\textsuperscript{40} Art 2(1) of the Code.
  \item\textsuperscript{41} Art 8(1) of the Code.
  \item\textsuperscript{42} Art 4(3) of the Code.
  \item\textsuperscript{43} Baker, above n 32, 161.
\end{itemize}
conduct of investigations and prosecution of piracy suspects. The Code also expects that signatories will conduct combined maritime security operations, including exchanging law enforcement officials to embark on the patrol ships of other signatories. However, unlike ReCAAP, the Code is neither a formal agreement nor a legally binding treaty.

Like ReCAAP, the Code has its own limitations. As the Code was not the result of initiatives by East African nations, the level of political support for the Code has been weak.\footnote{Christian Bueger and Mohanvir Singh Saran, ‘Finding a Regional Solution to Piracy: Is the Djibouti Process the Answer?’ in Christian Bueger and Mohanvir Singh Saran (eds), Piracy Studies (18 August 2012) <http://piracy-studies.org/author/christian-bueger-and-mohanvir-singh-saran/>.} This has led the IMO to become the central forum for debating the future of the instrument. The Code has also been criticised as overly ambitious, as it tries to bring a host of countries in the region together in a common forum that does not have a successful legacy of political cooperation. This is reinforced by the fact that the states could not agree on one single information sharing centre under the Code.\footnote{Ibid.} Despite these limitations, the framework for information sharing between states under the Code is seen as an important development in promoting cooperation in the region.\footnote{Natelie Klein, Maritime Security and the Law of the Sea (Oxford University Press, 2011) 244.} Thus far, much has been achieved under the Code in the field of information sharing. The three regional counter-piracy ISCs established under the Code have been fully operational since the first half of 2011. These centres have been serving as a network of national focal points in all signatory states. In addition, the information-sharing arrangement under the Code has been considerably enhanced with the signing of an agreement between the three ISCs and the Singapore-based ReCAAP ISC on 11 November 2011. The training of coastguards and staff through the Djibouti Regional Training Centre has also been a major achievement of the Code.

**E Conclusion**

Strengthening regional cooperation is crucial to defeat piracy. To date, various regional maritime cooperation efforts have proven successful and efficient in countering piracy. Among these regional anti-piracy efforts, the development of regional agreements has proven the most effective arrangement to counter piracy. This is evidenced by the increasing strength of ReCAAP in preventing and monitoring acts of piracy in the Southeast Asian region. Its arrangement for improved cooperation and information sharing between the regional countries has contributed to lessening the number of piracy incidents in the region. The Djibouti Code of Conduct is also making steady progress in building successful cooperation and communication on piracy in the East Africa region.
In light of the positive Southeast Asian and East African experiences, the Gulf of Guinea countries may equally counter the threat of piracy in their maritime domain through effective counter-piracy agreements and arrangements. Thus far, the regional leaders have been successful in adopting a Code of Conduct (non-binding agreement) that covers a full range of maritime security threats including piracy. However, effective implementation of the Code will depend to a great extent on how it takes into account the nature of the region’s piracy problem.

The next chapter discusses the nature of piracy in the Gulf of Guinea and assesses the scope of the threat. It further evaluates the existing arrangements to combat piracy in the region.
V Piracy in Gulf of Guinea and Current Arrangements to Combat Piracy in the Region

A Chapter Introduction

This chapter begins by attempting to delimit the Gulf of Guinea region for the purpose of the thesis and then addresses the historical background of piracy in the region. The chapter further analyses the contributory factors leading to piratical acts, the impact of piracy in the region, the response to piracy by regional and extra-regional states and the ultimate result of their actions.

B The Gulf of Guinea Region

The Gulf of Guinea is a part of the Atlantic Ocean. However, there are different views as to the area encompassed by the region. In the general sense, the area is understood to cover the entire West African coastal region. Sometimes, it is used to refer to an area that includes several West and Central African countries. This research confines the area to the 10 coastal countries of West and Central Africa that lie between Ghana and Angola. These 10 countries, commonly called the ‘Gulf’ states, are Angola, Benin, Cameroon, Côte d’Ivoire, Equatorial Guinea, Gabon, Ghana, Nigeria, Sao Tomé and Principe and Togo.

Figure 1: The Gulf of Guinea (SocialistWorker, 2011)
In terms of natural resources, the Gulf of Guinea is one of the richest regions in the world. It contains vast reserves of mineral resources such as diamonds and gold, and more recently has assumed great importance for its proven oil and gas reserves. It is supposed that the region now possesses more deep-sea oil reserves than the Persian Gulf. The majority of West African countries, including Nigeria, Angola, Equatorial Guinea, Cameroon, Republic of Congo and Gabon, are oil-producing nations and are likely to become the leading suppliers of energy in the near future. These states collectively produce around five million barrels of oil a day and are believed to hold a tenth of the world’s total oil reserves.

The Gulf of Guinea is also one of the most important international shipping lanes in the world. The port facilities of the regional countries form an integral part of the global maritime transportation system. The shipping route and facilities together serve the free transit of international and regional trade and commerce. It is important to note that the region served as an alternative transport route during the closure of the Suez Canal. The geographical location of the Gulf marks it as an important transit route for the supply of oil to the main markets of Europe and America. However, its enormous potential is challenged by the incidence of maritime piracy.

Piracy in the Gulf of Guinea has increased in scope and violence over the past years. Although not all piracy incidents are systematically recorded, according to the IMO, piracy attack intensity increased from 45 reported in 2010 to 64 reported in 2011. The growing trend in piracy attack has turned the Gulf into a region of increasing international concern for maritime security considerations. The region is currently at the forefront of piracy concerns, with some of the most concerning states being Nigeria, Benin, Togo, Gabon and Angola. The severity of the problem has become so alarming that the waters of the Gulf of Guinea are considered by many experts to be as dangerous as those off the Somali coast.

C History of Piracy in the Gulf of Guinea

Maritime piracy in the Gulf of Guinea cannot be termed as a recent phenomenon, as acts of piracy have been a persistent feature of the region for decades. In 1979, Nigeria

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experienced a deadly pirate attack when a Danish cargo ship, the MV *Lindinga Ivory*, was hijacked within the port area of Lagos. The master was killed in the incident and all 14 crew members were wounded. The cargo of the vessel was also robbed. However, a worrying trend in piracy emerged during the late 1990s, when pirates focused on targeting high-value assets at sea, especially shipments of crude oil. Since then, the subregion has been one of the top piracy hot spots in the world.

Over the years, piracy in the area has intensified from less severe armed robberies to more violent hijackings and cargo thefts. Over time, the behaviour and strategies of pirates have changed significantly, developing to armed attack on commercial cargo ships. Vessels are hijacked by armed pirates, forcing it to sail to an unknown area, where the oil is siphoned into their own small tanker vessels. Thereafter, the original vessel is returned to its previous location and released. This new wave of piracy has been on the rise since mid-2009 and increased alarmingly over the course of 2011. According to data from Dryad Maritime, this form of piracy, termed Extended Duration Robbery, first emerged in August 2009, when pirates attacked a chemical tanker, the MT *Trine Theresa*, in Nigerian waters while at dock. The pirates bound the crew to siphon around 5000 metric tons of oil into their own vessel before fleeing.

The year 2011, saw a change in the force and frequency of pirate attacks in Nigeria with the targeting of tanker vessels. According to the 2011 Annual Report of the IMB, there were 10 piracy-related attacks in that year. An even more significant year for piracy was 2012, which witnessed a steady increase in the operational sophistication and range of the pirates. The attacks also changed in both scale and ferocity. During 2012, the area of attacks expanded westwards, in a zone stretching from Nigeria to the coasts of Benin and Togo. In terms of numbers, the IMB reported a total of 27 incidents for the region in 2012. The trend continued in 2013, with 31 incidents of pirate attacks on vessels in

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6 Letter Dated 19 January 2012 from the Secretary-General addressed to the President of the Security Council, UN SCOR, 6723rd mtg, UN Doc SC/10558 (27 February 2012) and S/2012/45 (19 January 2012).
7 Dryad Maritime is a UK-based specialist maritime intelligence company helping seafarers to quantify, mitigate and manage the threats from piracy, terrorism and other waterborne threats and crimes.
10 Ibid.
Nigeria alone. Table 1 tabulates the incidents of piracy over the period 2006–2012 across the Gulf of Guinea countries.

Table 1: Recent Piracy Trends in the Gulf of Guinea, 2006–2012

<table>
<thead>
<tr>
<th>Country</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Total</th>
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<tbody>
<tr>
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<td>42</td>
<td>40</td>
<td>29</td>
<td>19</td>
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<td>27</td>
<td>31</td>
<td>210</td>
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<td>1</td>
<td>2</td>
<td>6</td>
<td>15</td>
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<td>32</td>
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<tr>
<td>Cameroon</td>
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<td>5</td>
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<td></td>
<td>12</td>
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<td>Côte d’Ivoire</td>
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<td>3</td>
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<td>5</td>
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<td>Total</td>
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<td>40</td>
<td>52</td>
<td>45</td>
<td>325</td>
</tr>
</tbody>
</table>

Source: Adapted from the ICC IMB, Piracy and Armed Robbery against Ships Annual Reports, 2006–2013.

Alarming as the figures shown in Table 1 are, the statistics on piracy are considered by many security and shipping analysts to be underestimations. It is argued that the actual number of piratical attacks each year is significantly higher than those reported. There are concerns that many incidents of piracy in the region go unreported and the figure ‘reflects just a fraction of the total’. The IMB estimates that the actual number of pirate attacks in the region is at least twice as high as the official figures because of underreporting. Underreporting may be due to several reasons. For example, the shipping industry may fear that reporting could lead to delayed shipments for official investigation and to increased insurance premiums. Another reason would be if ships were carrying illegal cargo. This underreporting tends to obscure the full extent of the problem.

Contemporary piracy in the Gulf owes its origin to Nigerian piracy, which has gradually spread to the neighbouring waters of the region. Experts believe most of the

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11 Ibid.
Pirates are from Nigeria, where corrupt law enforcement allows criminality to flourish.\textsuperscript{15} Nigeria has a history of widespread and frequent criminal activity around the Niger Delta. Militias in the Delta region have long engaged in ‘illegal bunkering’, whereby they attack land-based oil pipelines and siphon off crude oil.\textsuperscript{16} In recent years, these attacks have been extended and directed towards commercial shipping. Nigeria’s established criminal networks are believed to lie at the centre of this relatively sophisticated violent crime. As the navy of Nigeria expands to counter hijackings and armed robberies in the Niger Delta, pirates have gradually moved westward into the less-patrolled waters of neighbouring states. Over the years, the pattern of piracy has intensified in frequency and range.

Energy infrastructure (EI) is a common target of attack in Nigeria. These attacks are primarily conducted in the Niger Delta, either for criminal or political purposes.\textsuperscript{17} Initially, these attacks, whether sabotaging pipelines or kidnapping, were solely criminal in nature; however, during Nigeria’s Parliamentary and Presidential Election of 1999, many of the armed attacks were politically motivated.\textsuperscript{18} This was mainly due to the strong link established by the contending political actors with the armed groups of the region. With the formation of the umbrella militant group, the Movement for the Emancipation of the People of the Niger Delta (MEND) in 2005, the attacks further intensified as the group adopted a strategy to carry out frequent attacks on Nigeria’s EI to address its political and economic grievances. While these EI attacks declined significantly after the government introduced an amnesty scheme in June 2009 aimed at disarming the gangs and militias of the Niger Delta, criminal attacks in the form of onshore oil theft and sabotage, as well as offshore maritime criminality and piracy, have been on the rise.\textsuperscript{19} Notably, the militants of MEND have not been directly linked with the piracy networks operating in the region. However, in recent years, there have been concerns that the militants are willing to take unfair advantage of Gulf of Guinea piracy to increase the stakes for compelling Nigeria’s

president to meet their revenue demands. For example, in 2012, MEND was linked with the attack on the Dutch Cargo ship MV Breeze Clipper in the Port Harcourt region and the kidnapping of its three foreign crew members. In 2013, the group allegedly kidnapped two American seafarers from an oil platform supply ship off the coast of Nigeria. More recently, in January 2014, the group claimed responsibility for launching an attack on a tugboat near the Brass River crude oil export terminal in the Niger Delta and the kidnapping of its captain and engineer.

Another possible reason for the increase in hijackings is the decision of the Nigerian government to remove state oil subsidies in January 2012. Despite the subsidy subsequently being reduced rather than removed, the initial removal of the subsidy is believed to have hindered the smuggling of oil products from Nigeria by land borders, provoking hijacking at sea.

The increase in piracy off the Nigerian coast coincides with an increase in activity of the militant Islamic group, Boko Haram, in the north of Nigeria. There are concerns that the insurgent group is strengthening its military wing through the exchange of stolen crude oil for arms and ammunitions. The US also recognises that the Gulf of Guinea piracy could be funding the Boko Haram violence.

**D Types of Piracy in the Gulf of Guinea**

Piracy in the gulf has its own features. The phenomenon is distinct from other regions for numerous regions. First, the targets of attack are generally oil tankers and offshore oil facilities. Unlike the Somali business model of hijacking a ship, Gulf of Guinea pirates are not driven by ransom payments for the captured crew members and goods they hold hostage. Rather, they focus on stealing refined fuel cargoes to sell at

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24 Ibid.
higher prices on the black market.\textsuperscript{28} However, kidnapping for ransom is not uncommon, and may be becoming more appealing for pirates in the region. There were several incidents at the beginning of 2013 that highlighted an increasing shift from cargo theft to kidnapping for ransom.

A second distinct feature of piracy in the Gulf of Guinea is that the pirates act with increased confidence and are deploying new and more sophisticated tactics and weaponry, including AK-47s. Vessels are often sprayed with automatic weapons fire during attack. These pirate groups are well resourced and organised, and many have improved military skills. They often wear military costume and ‘pride themselves on having something of a military flair’.\textsuperscript{29} For example, the pirates that seized the Singapore-flagged chemical tanker MT Abu Dhabi Star near the port of Lagos in September 2012 exhibited military-style organisation. According to BBC news, they were heavily armed and in full combat dress while attacking the vessel from both sides.\textsuperscript{30} Demonstrating advanced operational capability and intelligence, the pirates used four high-powered boats in the operation and disabled the attacked ship’s communications equipment immediately upon boarding.

Third, piracy in the region is more violent than in any other pirate-prone area. Most of the attacks carried out are severe in nature and have increasingly involved violence and abuse against crews. As Gulf of Guinea pirates are more interested in the cargo than in collecting ransoms for ships and their crews, they often do not hesitate to use open fire in their robberies. In some cases, this has led to seafarers being injured or killed during attacks. Recent years have seen several incidents in which a number of seafarers have been killed. For example, on 13 February 2012, pirates killed the captain and chief engineer of a Panamanian Bulk Carrier (MV Four Seas SAW) off the coast of Lagos, Nigeria.\textsuperscript{31} In addition to using violence, pirates often damage communications and navigation equipment on board the targeted vessels to cover their attack.

Fourth, in most cases, piracy takes place close to the coastline. The activities of pirates centre on specific ports, principally in and around Nigeria, with the primary targets of pirates being those vessels waiting for entry into port or those engaged in transferring oil from one vessel to another. However, the problem now extends beyond the port limits

\textsuperscript{31} ICC International Maritime Bureau, above n 9, 28.
or territorial waters of Nigeria only, as pirates take advantage of the limited maritime capabilities of other nations in the region to expand their range of operation into the territorial waters of neighbouring coastal states such as Benin, Togo, Cameroon, Ivory Coast, Angola and Gabon.

E Causes of Piracy in the Gulf of Guinea

The Gulf of Guinea piracy owes its origin to the conflict in the Niger Delta. In the early stages, piracy in the region was primarily concentrated in the waters adjacent to the Niger Delta. Frequent violent conflict between local groups against oil service companies and the Nigerian government created an environment of lawlessness in the Niger Basin that contributed significantly to the growth and development of piracy-related activity off the Nigerian coast. It is often alleged that the escalation of violence in the Niger Delta has been primarily due to the failure of successive Nigerian administrations to attend to the welfare and interests of the people of the region.\(^{32}\) Despite these governments having earned significant revenues from the extraction of oil, the region remains typified by abject poverty and underdevelopment. In addition to unfavourable state policies and laws relating to oil exploration and land ownership, decades of false promises from governments, along with deficient socio-economic development programs in the region, have created a deep-rooted sense of suspicion towards government on the part of the local community that has directed many discontent youths and adults to engage in widespread violence and organised crime.\(^{33}\) The militants of the Niger Delta have often used these grievances as a tool to advance their political or personal agendas. In this sense, the factors contributing to the conflict in the Niger Delta have also affected piracy in the region. Originating as a form of economic protest, piratical activity gradually developed into the lucrative robbing and reselling of the cargo of tanker vessels, eventually spreading to other areas in the region.

Causes and motivations for contemporary piracy are several in the Gulf. The problem has its roots onshore, where the conditions of widespread poverty, high unemployment, rampant corruption and free access to weapons provide incentives to launch attacks on commercial vessels offshore. Many of the countries of the Gulf of


Guinea coastline are fragile, with weak law enforcement capacity. Thus, piracy in the region is ‘motivated by a combination of economic opportunism by existing criminal gangs along with the lack of governmental capacity to challenge those criminal gangs on shore’. The regional navies in the area are also ill-equipped to fight piracy far out at sea. The growth of piracy in a particular region requires the existence of several factors, although these are not conclusive in nature. Martin N Murphy evaluates seven major factors that enable piracy to flourish: 1) legal and jurisdictional weakness, 2) favourable geography, 3) underfunded law enforcement/inadequate security, 4) conflict and disorder, 5) the promise of reward, 6) permissive political environments and 7) cultural acceptability. In the Gulf of Guinea, these factors may be argued to exist to some degree along with several other factors, including the prevalence of illegal fishing, environmental degradation and free access to weapons. It is useful to discuss these contributing factors that provide a favourable background for piracy.

1 Legal and Jurisdictional Weakness

The legal and jurisdictional weakness in the region mainly follows from the international law regarding piracy. The established international definition of piracy is contained in Article 101 of UNCLOS. As stated previously, the definition has many shortcomings, the most notable being the delimitation of the geographical location of acts to be considered as piracy. The UNCLOS definition of piracy limits piracy to an act occurring on the high seas and is silent on the legality of such acts occurring within territorial waters. This gap in the definition suggests that such acts are jurisdictionally the problem of the state in whose territorial waters they occur. To date, piracy in the Gulf of Guinea has largely been confined to territorial waters. In this sense, very few of the attacks satisfy the definition of piracy. Further, law enforcement officials face jurisdictional complications in chasing pirates into the territorial waters of neighbouring states. Despite piracy being a common threat to the coastal countries of the region, states are reluctant to allow external coastguards and navy to operate in their waters. UNCLOS fails to provide a mechanism to enable hot pursuit into another state’s territorial waters.

35 Scott Baldauf, above n 16.
37 See ch II 2(b).
The high seas limitation of UNCLOS was remedied in the SUA. The Convention broadens the geographical limit and allows states to prosecute violent attacks on ships even when they occur in another state’s territorial waters. However, it does not create any enforcement jurisdiction for parties to intervene in such area of waters. The shortcoming of SUA is that it can only be invoked when violence is sufficient to endanger maritime safety. Further, in practice, the Convention is rarely invoked despite most of the countries in the Gulf having acceded to it. Poor maritime border demarcation between the countries of the Gulf of Guinea creates additional jurisdictional problems that fuel piracy in the region. A recent investigative report revealed that the poorly defined maritime areas between Nigeria and its neighbours contributed to the development of maritime crime in the country’s waters. In addition to affecting the right of states to extract mineral resources, improper demarcation is also likely to make piracy suppression difficult.

2 Favourable Geography

The geographical condition of the Gulf of Guinea plays an important role in allowing pirates to execute attacks for various reasons. First, the region occupies a vast area of largely unsecured coastline, giving pirates a wide area to exploit. This provides pirates the flexibility to conduct attacks without fear of naval retribution. Second, the maritime area occupies a strategic location of high economic importance for its large reserves of natural resources, notably oil and gas. The major economic powers have invested heavily in the oil sector, making the region one of absolute economic and strategic necessity for the global community. Third, the transport requirement of moving this oil necessitates that ships, particularly tankers, come nearer to the coast. For example, in Nigeria, the bulk of oil is produced in the Niger Delta region and is thereafter pumped to stations and oil platforms at various navigable river mouths. Here, the supply ships and tugboats must travel in narrow waters, making them vulnerable to pirate attacks.

38 Among the 10 ‘Gulf’ states, only Cameroon and Côte d’Ivoire have not acceded to the Convention yet. Nigeria ratified the Convention in 2004.
42 Ibid.
3 Underfunded Law Enforcement and Inadequate Security

Piracy is a continuing struggle between the maritime community and naval forces on the one hand and pirate enterprises on the other. In the Gulf of Guinea, law enforcement and security operations are critical in the fight against piracy because of its vast reach. Unfortunately, the limited maritime security capability of the coastal states has contributed significantly to the steady rise and growth of piracy, as most of the countries of the Gulf of Guinea have little or no resources to fight piracy.

In Nigeria, the statutory mandate for protecting Nigerian territorial waters lies with the Nigerian Maritime Administration and Safety Agency (NIMASA) and Nigerian Navy. Through a Memorandum of Understanding (MoU) signed on 12 April 2007, the two agencies agreed to work together for the efficient and safe administration of Nigeria’s maritime domain. The MoU also established the Maritime Guard Command (MGC), which allows operatives to carry heavy arms and ammunitions on board its platforms. President Goodluck Jonathan, while appointing Chief of Naval Staff, Vice Admiral Dele Joseph Ezeoba, gave a fresh mandate to the Nigerian Navy to eradicate maritime piracy and all forms of illegalities in the Nigerian maritime domain in the shortest time possible. Following this development, the Nigerian Navy and NIMASA, in a joint news conference at the NIMASA headquarters in Lagos on 23 October 2010, pledged to strengthen their existing MoU on security in the country’s territorial waters. They further stated that the capacity of the MGC would be raised by providing it with more personnel and equipment (that is, military hardware).

4 Conflict and Disorder

Piracy is a product of failed or weak states. It usually flourishes in areas with either a fragile or non-existent governing authority. For example, the collapse of the Somali state in 1991 and the civil war thereafter led to the spread of chaos in the country that eventually contributed to the development of piracy in the Gulf of Aden. Likewise, the decade-long oil insurgency in the Niger Delta region, followed by violence, conflict and political disorder, created a breeding ground for piracy in the Gulf of Guinea. The peaceful

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social movements of the local communities that started in the early 1990s opposing environmental degradation in the Niger delta have gradually evolved into a violent and unlawful armed insurgency due to the forceful approach of the Nigerian government and multinational oil companies to bring the movement to submission.\textsuperscript{46} To contain the legitimate protest, the Nigerian state resorted to the deployment of military troops in the region, while the oil industry began to supply weapons to security operatives and mercenaries.\textsuperscript{47} This process of militarising the Niger Delta contributed to the emergence of a number of militant groups arguing legitimate grievances such as poverty, environmental degradation and government corruption to defend their attacks against government and foreign oil industry targets. The birth of MEND in 2006 further intensified armed conflict in the region. The proliferation of piracy in the Gulf of Guinea region has been attributed to the rise of this militant group, as the pirates are veterans of the MEND insurgency. The Nigerian government offered amnesty to the Delta militants in 2009 and almost all senior commanders of the rebel group and their respective followers laid down their arms and embraced the amnesty process. However, despite initial success, there remain concerns as to whether the amnesty has managed to settle the issue of militancy in the Niger Delta. There were reports of sporadic attacks conducted by factions of the rebel group refusing the amnesty in 2011 and 2012. In April 2013, the militant group threatened in an e-mail statement to resume assaults on the nation’s oil industry as a response to the jailing of its leader Henry Okah by a South African Court.\textsuperscript{48} The current resurgence of the militant group is likely to increase piracy in the Gulf of Guinea region.

5 The Promise of Reward

The oil industry in the Niger Delta has created poverty, conflict and despair for the majority of people in the oil-producing areas.\textsuperscript{49} According to a recent Amnesty International Report, oil pollution and environmental damage caused by the activities of oil industries continue to destroy the lives and livelihoods of the local community of the region.\textsuperscript{50} Piracy in this regard is a rewarding illegal venture for the deprived, impoverished and unemployed people of the Niger Delta region. Poverty and high unemployment have

\textsuperscript{47} Amina Laraba Wali, Oil Wealth and Local Poverty: Exploitation and Neglect in Niger Delta’ (ProQuest, 2008) 40.
lured many young men into piracy,\(^5\) which for many has become an essential source of income. The insurgency across the Niger Delta has also allowed for the conduct of piratical acts under the cover of political militancy.

In practical terms, piracy in the Gulf of Guinea has become a lucrative business with a high opportunity of reward. Unlike in the Gulf of Aden, the pirates of the region face less risk in attacking vessels, as they are not confronted by the most powerful navies of the world. Pirates easily loot anything that is valuable from hijacked ships in a quick splash and grab operation. The business is further driven by cargo theft and ransom. In recent times, pirates lured by the profitable returns on piracy have resorted to theft of oil cargoes. Kidnapping for ransom has also been common. For example, when the *Bourbon Liberty 249* was hijacked off the coast of Nigeria in October 2012, seven European sailors were held to ransom. The abducted sailors were later released upon alleged payment of ransom.

### 6 Permissive Political and Legal Environment

Piracy in the Gulf of Guinea is a result of the internal conflict, poor law enforcement and widespread corruption in Nigeria. Piracy in the Gulf is closely linked to events in the Niger Delta and many of the pirates operating in the region are believed to be of Nigerian origin. Experts believe that corrupt law enforcement is to blame for the expansion of piracy in the region. In Nigeria, corruption is embedded in all major institutions, allowing maritime criminality to flourish. The country loses 600,000 barrels of crude oil daily to illegal oil bunkering. There have been allegations that NIMASA and Nigerian National Petroleum Corporation officials conspire with the oil thieves. According to Murphy, ‘the piracy problem has its origins in the political corruption in Nigeria that feeds off the nation’s oil wealth’.\(^5\) It is believed that highly placed individuals are part of the organised syndicate involved in oil thefts and piracy in the Niger Delta region. The arrest of the former Minister of Interior, Captain Emmanuel Iheanacho, for alleged theft of petroleum products is evidence of ongoing corruption. It has been reported that security operatives traced some stolen petroleum products and vessels hijacked by pirates to his company premises, Integrated Oil and Gas Limited.\(^5\)

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7 Cultural Acceptability

Piracy has a tendency to flourish in areas where it is culturally accepted. The trading practices of a region are considered to be one of the factors that help to define what becomes culturally acceptable.\(^\text{54}\) The involvement of major ports of the Gulf of Guinea region in the Atlantic slave trade (1450–1800) may have created opportunities for piracy in the local environment. By the end of the seventeenth century, the region had developed into an important source of slaves, with approximately 80,000 slaves exported annually.\(^\text{55}\)

Regions having previous traditions of piracy also render the crime a socially acceptable phenomenon, and the practice is treated as legitimate in areas where the level of violence is high and people are frustrated with employment opportunities. In such conditions, piracy is justified as an alternative source of livelihood. In the case of the Gulf of Guinea, in the late nineteenth century, the ethnic Ijaws were infamous as ‘pirates’ in the western Niger Delta.\(^\text{56}\) Although Nigeria does not have a maritime tradition of piracy, the crime seems to have gained tacit acceptance and popularity among the riverine communities of the Niger Delta. The marginalisation of this region by successive governments of Nigeria has forced the coastal community to resort to piracy for survival. The local disappointment leading to piracy has thus secured its approval by the population of the Niger Delta.

8 Illegal Fishing

The origin and history of piracy off the coast of Somalia is partly connected with the illegal fishing in its waters.\(^\text{57}\) There is a widespread belief that unlawful fishing operations by foreign vessels pushed many of the local Somali fishers towards piracy and various other forms of criminal activities. Alarmingly, there are indications of similar developments in the Gulf of Guinea. The International Crisis Group has reported that the looting of fisheries in the waters off Nigeria and several other countries in the region creates a favourable environment for piracy.\(^\text{58}\) Piracy may also be linked to illegal fishing


\(^{57}\) Jasmine Hughes, ‘The Piracy–Illegal Fishing Nexus in the Western Indian Ocean’ (Strategic Analysis Paper, Future Directions International, 2011) 3.

in the sense that such activities erode the livelihoods of coastal communities and increase the possibility of fishers turning to crime.\textsuperscript{59}

\textbf{9 Environmental Degradation}

The environmental damage caused by oil extraction in the Niger Delta has also influenced the growth of piracy in the region. There are several ways in which activities related to oil production contribute to the environmental problems in the Niger Delta. For example, the mechanism of oil drilling creates environmental abuse when hazardous chemicals are used, and oil spills from corroded pipelines lead to poisoning of the soil and water. It is estimated that up to 1.5 million tons of oil has been spilled within the Niger Delta region over the last several decades.\textsuperscript{60} Additional damage to the environment and human health has been caused by the high level of gas flaring. This contributes to acid rain, which in turn affects soil fertility and causes damage to local agriculture.\textsuperscript{61}

Over the last four decades, oil exploration and exploitation have impacted devastatingly on the Niger Delta populations by threatening the environment and thus the livelihood of the people.\textsuperscript{62} One of the key motivations behind militant groups such as MEND is to protest the oil industry’s practices of environmental degradation and pollution. However, over time, these groups began exploiting this legitimate grievance to pursue the less noble agenda of wealth through piracy.

\textbf{10 Access to Weapons}

There is an increasing nexus between the growth of piracy and the proliferation of illegal arms in the Niger Delta. Since the 1990s, inter-communal and ethnic conflicts over resources have fuelled an arms race across the region that has indirectly led to an increase in piratical activities.\textsuperscript{63} This has mainly arisen out of militants’ need to fund their inter-ethnic conflict.\textsuperscript{64} At the same time, the military intervention to suppress Niger Delta militants has further contributed to the spread of weapons in the region. Militants’ efforts to gain equal weapons to respond to the Nigerian security forces’ attacks have stimulated


\textsuperscript{60} Adati Ayuba Kadafa, ‘Oil Exploration and Spillage in the Niger Delta of Nigeria’ (2012) 2 Civil and Environmental Research 50.


\textsuperscript{64} Ibid.
an arms trading network throughout the region. In response to a 2009 Nigerian Government amnesty deal, many militants surrendered their weapons; however, the failure of the amnesty package inevitably led them to rearm. 65

**F Effects of Piracy**

The effects of piracy are widespread and felt throughout the Gulf of Guinea. The growing threat of piracy in the region imposes a substantial burden on regional governments and the maritime industry, which have to take steps to protect against pirate attacks. This has had direct costs on maritime-related activities such as oil production, shipping costs, insurance and fishing. There are also implications for the regional economy and stability, regional security and the global economy.

*1 Impact on Regional Economy and Stability*

The expansion of piracy in the Gulf poses a serious threat to the local economies of the region. It is estimated that the economies of the countries in the region lose approximately $2 billion in annual revenue due to piracy. 66 The impact on the state economies of the Gulf is clear as port revenue forms a major part of their national income. For example, the fees raised from the port of Cotonou of Republic of Benin generate 80 per cent of the income for that country’s national budget. Since the first pirate attack off Benin’s coast, the country has experienced a catastrophic drop in activity in the port of Cotonou. The number of vessels availing the port facility has decreased by 70 per cent, causing revenue to fall. Further, since piracy increases insurance premiums for international shipping companies, the price of imported goods in the region is bound to spike, further imperilling local economies.

The adverse effect on the local economy may affect stability in the region. Pirates have been reported to use the profits accruing from piracy to arm rebel groups (for example, in the Niger Delta of Nigeria). 67 If true, this practice would directly impact the stability of affected countries. Uncontrolled piracy may also hamper development in the sense that trading companies will search for safer alternative trading routes, avoiding the territorial waters and ports of affected countries. This will disrupt the flow of foreign investment and trade.

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2 Impact on Oil Production

The countries of the Gulf of Guinea region—namely, Nigeria, Angola, Equatorial Guinea, Gabon and Cameroon—are significant oil producers and rely heavily on budgetary revenue from oil export earnings. However, the growing incidence of piracy in the region is creating a negative impact on the region’s oil industry.  

Since 2006, oil production in Nigeria alone has reportedly dropped by 20 per cent due to piracy, costing the Nigerian economy millions of dollars. A recent report of Royal Dutch Shell estimates that between 150,000 and 180,000 barrels of oil are stolen daily from Nigeria’s pipelines. The International Oil Company estimates that 6 per cent of total production is lost to oil theft. In 2010, the National Hydrocarbons Corporation of Cameroon labelled piracy as a significant factor in its 13 per cent drop in oil production. In 2012, the Gulf of Guinea pirates were reported to have stolen refined petroleum products valued at between $14 million and $42 million.

3 Impact on Security

Gulf of Guinea piracy also affects local and regional security. The coastal states have to devote significant sums as military expenditure for countering piracy. To improve maritime security, regional military forces spend money on piracy in the form of procuring vessels and conducting patrols, training and military exercises. For example, the Nigerian government had to increase its defence budget for strengthening its navy and maritime patrol capabilities. In June 2012, the Federal Executive Council approved $19.7 million for the purchase of six security vessels. Regional governments also incur extra costs to keep vessels operational at sea to curb piracy. As the Chief of Naval Staff of Nigeria illustrated, engaging eight ships at sea for one week of exercises costs about $3.8 million. Piracy-related naval expenditures are likely to grow for the regional countries while the threat persists.

69 Ibid.
70 John Donovan, ‘Nigeria Leaks Billions from Rampant Oil Theft’, Aljazeera (online), 3 August 2012.
73 Ibid.
4 Impact on Seafarers

As the risks of piracy and armed robbery continue to intensify in the Gulf of Guinea, a growing number of seafarers are affected by violence in the region. One Earth Foundation has recently revealed that Gulf of Guinea piracy directly affects more seafarers than Somali-based piracy.\(^76\) Seafarers in the waters of the Gulf of Guinea face more stress and fear than do seafarers transiting through the Gulf of Aden and the Indian Ocean. The report found that, compared to the Somali piracy case, although the captivity period is much shorter for seafarers taken hostage in the Gulf of Guinea, they are more often subjected to extreme abuse. IMB reports indicate that in 2012, a total of 966 seafarers were attacked by pirates with either guns or knives in the Gulf of Guinea region. Among them, 206 people were taken captive and 18 seafarers were injured. This involved two seafarers who received non-fatal gunshot wounds when their vessel was shot by pirates, 14 seafarers who were beaten or shot at by pirates while on board and two seafarers who were beaten or shot at during a hijacking. In addition, two seafarers and three security guards were killed in 2012. In 2013, 11 seafarers were injured and one was killed.\(^77\)

All seafarers transiting through the Gulf of Guinea have to deal with increased fear and uncertainty. The anticipatory concern over the high rate of violence used in pirate attacks makes these seafarers worried about working in the region. For those seafarers held captive or attacked by pirates, there is the potential for long-term physical and psychological trauma. This could lead to ‘clinically significant consequences’\(^78\) and have serious negative implications for seafarers and their families.

5 Impact on Fishing Sector

Piracy negatively affects the local fishing sector. The impacts of piracy have been strong on fishing practices and exploitation. Given the dependency of many of the coastal states on fisheries, piracy affects the livelihoods of the fishing communities of the region. Among the non-oil sectors, fishing is regarded as the second highest export industry in Nigeria. While attacks are grossly underreported, the hijacking of local fishing vessels and the capture of fishers within Nigerian waters by pirates is common. These attacks have

\(^{76}\) Hurlburt et al., above n 72, 12.
\(^{77}\) ICC International Maritime Bureau, above n 9, 11.
significantly reduced the number of trawlers engaged in fishing in Nigeria’s waters, resulting in rising seafood prices. This problem is common to coastal states in the region.

6 Impact on Global Economy

The negative implications of piracy in the Gulf could well spread far beyond Africa, with probable complications for the wider global economy, and the US in particular. The nations off the coast of the Gulf of Guinea—namely, Angola, Nigeria, Ghana, Ivory Coast, Democratic Republic of Congo and Gabon—produce over 3 million barrels of oil daily, largely for North American and European markets. Nigeria alone is America’s fifth largest supplier of oil. However, the increasing trend of attacks on oil tankers casts doubt as to the ability of these nations to reliably provide oil to the international market. In addition, the security threats to offshore oil infrastructure endanger investment in the region’s energy sector. In this sense, the proliferation of piracy in the gulf affects not only the key source of income of the coastal states of the region, but also the international fuel market.

G The Response to Piracy in the Gulf of Guinea

Recognising the growing nature of the threat posed by piracy, a variety of international, regional and local actors have begun efforts to address piracy in the Gulf of Guinea through training and capacity-building exercises for maritime security forces of regional states.

1 National Efforts

The primary responsibility for eradicating piracy rests with the states concerned. The building of national capacities—that is, enacting anti-piracy legislation, prosecuting and imprisoning pirates and enhancing naval, judicial and law enforcement capacities—is of crucial importance for combating piracy. Considering the adverse effects of piracy, the countries in the region have followed state-centric policies, such as tightening border security and deploying Special Forces to piracy prone areas. Countries in the region have also responded to the threat by strengthening national initiatives by entering into

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79 Oluwakemi Dauda, Interview with Margaret Orakwusi, Ex-president of Nigerian Trawler Operators Association (Newspaper Interview, 5 December 2011)
80 Alic, above n 20.
partnerships with a view to promote a regional approach to maritime security through joint efforts to patrol the waters.

(a) Nigeria

The maritime domain of Nigeria has been the most infamous part of the Gulf of Guinea region for piracy and oil theft. According to IMB, in 2013, 31 piracy incidents were recorded in Nigerian waters, including two hijackings and 13 vessels being boarded.\(^8^3\) This is the highest figure of piracy incidents for the region in the last five years.

Nigeria is considered to have a comparatively strong navy. However, it has conventionally been deficient in countering piracy. The Navy suffers from a lack of capacity and sound operational platforms (ships) for effectively patrolling the country’s territorial waters. In 2012, members of the Nigerian Senate Committee on Navy expressed grave concerns regarding the state of affairs of the Nigerian Navy. The fact-finding mission of the Committee identified inadequate funding, equipment shortages and maintenance of fleets as specific naval problems.\(^8^4\) In recent times, Nigeria has made good progress in boosting the strength of its navy and pursuing expanded operations. In June 2012, the Nigerian Navy launched its first locally made coastal patrol ship, the NNS Andoni.\(^8^5\) Later that same year, a joint military fleet evaluation exercise including the Nigerian Army and Maritime Patrol Aircraft of the Nigerian Air Force, titled ‘Exercise Farauta’ (Hunting), was launched, in which eight war vessels, six gunboats and three helicopters raided the Gulf of Guinea and its environs.\(^8^6\) However, military experts believe that Nigeria will have to invest more in the near future to enhance the capacity of its navy through the acquisition of more functional vessels.

(b) Togo

Piracy attacks off Togo rose to 15 in 2012 from only 6 in 2011. Among these attacks, three were hijackings, the first ever reported in Togolese waters. In 2013, there were seven incidents of pirate attacks on vessels.\(^8^7\) Togo has struggled to address the piracy threat due to lack of appropriate vessels. Togo’s navy (Marine du Togo) previously

\(^8^3\) ICC International Maritime Bureau, above n 9, 8.
\(^8^7\) ICC International Maritime Bureau, above n 9, 5.
had only two French-built patrol craft, which were more than 30 years old. However, naval capabilities were increased in January 2010 with the donation of two Defender Class speedboats by the US government, similar to those used by the US Coastguard.88 The National Navy of Togo has also received skills training to counter piracy from the French and American Armed Forces. In addition, France dispatched the patrol frigate, ‘The Germinal’, in August 2012 to the region, where it patrolled the coasts of Benin, Togo and Ghana with the objective of countering piracy and training naval personnel from all three countries. In February 2011, as part of the US Military Cooperation Programme, Africa Partnership Station (APS), the Oliver Hazard Perry class frigate, USS Robert G Bradley, spent two weeks in Togo to conduct professional exchanges and assist the naval forces of Togo, Ghana and Benin Republic to address piracy in their territorial waters. A US Navy vessel, HSV Swift, was also in the Gulf of Guinea training Beninois, Togolese and Ghanaian sailors as part of the program. Following the pirate attacks, the government of Togo introduced new anti-piracy measures on July 2012. The government also entered an agreement with security companies for providing armed guards, if required, for vessels at anchorage in the Port of Lome.

(c) Benin

In 2011, there were 35 reported pirate attacks in Benin’s waters, following no single attack reported between 2006 and 2010. National authorities in Benin have employed several initiatives to address the threat of piracy. In July 2011, President Boni Yayi sent a letter to the UN Secretary-General expressing his concern about the negative consequences of piracy on the economy of Benin and appealed for international assistance to fight piracy in his country and throughout the Gulf of Guinea. In addition, the Beninese government has been in focus for enhancing its maritime security capabilities. It has purchased three new patrol boats and two new surveillance aircraft and installed two coastal radar systems.89 The country has also initiated joint naval patrols in an effort to counter the threat of pirates. As part of ‘Operation Prosperity’, joint sea patrols were launched with Nigeria on 30 September 2011 to prevent pirate attacks on ships. The government has also been trying to improve its national and maritime security strategy with help from the US and France. The US has been helping to train Benin’s navy since 2006. In August 2012, the US navy provided training for Benin in a bid to boost its

capacity. The French military has also been assisting Benin in training and coastal monitoring. In September 2011, Benin received a grant of four million euros from China for the purchase of a patrol boat.

(d) Ghana

Ghana has not experienced any serious pirate attacks over the years. Rather, in many cases, the Ghanaian waters have been a place of refuge for vessels that were attacked off other countries. However, there are risks that pirates may target vessels in the waters off Ghana. The increase in the number of attacks on ships in the Gulf of Guinea prompted Ghana to equip its navy to combat piracy and provide security to its maritime domain. The Ghana Navy received three speedboats in 2008 and four speedboats in 2010 from the US government under its African Partnership Program. The Navy also acquired two former German Navy fast attack crafts in July 2012, and commissioned four new Chinese patrol boats in February of that same year. According to President John Dramani Mahama, ‘Ghana will put its newly acquired naval patrol vessels and vessel tracking devices at the disposal of all countries to prevent cases of piracy in the Gulf of Guinea’.

(e) Cameroon

In recent years, the coastal waters off Cameroon have become increasingly vulnerable to piracy. On several occasions, pirates have managed to successfully hijack cargo vessels. In February 2013, pirates seized a British-owned ship, the MV Esther C, and abducted three of its crew members as hostages. In mid-2010, a Greek-owned vessel, ‘North Spirit’, and a Lithuanian-owned ship, ‘Argo’, were seized by pirates off Cameroon’s major port of Douala. In June 2009, a British tanker, MV Anuket Ivory, was boarded by pirates as it anchored off the port.

Being conscious of the threat to national territory, the Cameroon Navy upgraded its maritime security strategies. In September 2013, the Navy made an effort to neutralise the threat of pirates by launching a one-week military exercise, codenamed ‘Octopus 2013’. However, the Navy of Cameroon lacks the naval assets to fight piracy. It has approximately 44 smaller coastal, inshore and riverine patrol craft. These are not suitable

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for chasing pirates at sea. In 2012, Cameroon purchased three new Boston Whalers from the US to boost their efforts in the fight against piracy.\(^{93}\)

(f) \textit{Côte d’Ivoire}

Côte d’Ivoire has been confronted by a rise in piracy incidents over the last few years. The country experienced just one attack in 2011 but had five in 2012.\(^{94}\) The first recorded vessel hijacking off the Ivory Coast took place on 6 October 2012, when a Greek-owned Panamax tanker carrying more than 30,000 tons of gasoline was hijacked by alleged Nigerian pirates. In the context of Gulf of Guinea piracy, this was the furthest reported attack away from Nigeria. The incident occurred while the vessel was halfway through a ship-to-ship operation off Abidjan. The pirates took the vessel to Nigerian waters and stole nearly 2,500 tons of gasoline.\(^{95}\) On 9 October 2012, the pirates released the vessel without injuring any of the crew; however, they partially damaged the communication system of the vessel.\(^{96}\)

The country continued to experience pirate attacks in 2013. On 16 January 2013, armed pirates hijacked a Panamanian-flagged vessel, the ‘Itri’, which was anchored in the port limit of Ivory Coast’s economic capital, Abidjan.\(^{97}\) The tanker was seized as it was preparing to discharge 5,000 tonnes of oil at the port. The vessel was released on 22 January 2013 after the entire cargo on board had been discharged by pirates. On 4 February 2013, suspected Nigerian pirates hijacked another Gascogne tanker ship off the Ivory Coast.\(^{98}\) The French-owned tanker, along with its 17 crew members, went missing while sailing 70 nm south of Abidjan. The tanker was reported to have 3,000 tonnes of diesel fuel on board; however, it had managed to offload some onto another ship before being seized by pirates. On 6 February 2013, the vessel was released after the remaining cargo was stolen by pirates.

Côte d’Ivoire has a relatively small and lightly equipped navy with only a few patrol craft. Following the Ivorian Civil War, the operational capability of the Navy


\(^{94}\) ICC International Maritime Bureau, above n 9, 5.

\(^{95}\) ICC Commercial Crimes Services, ‘Nigerian Pirates Demonstrate Range with Attack off Ivory Coast’ (Media release, 15 October 2012).

\(^{96}\) Ibid.


(Marine Côte d’Ivoire) had degraded such that it could not carry out its mission beyond the area of Abidjan. Recently, the country has agreed to work jointly with Nigeria to confront pirate activities in the region.

(g) Equatorial Guinea

In February 2009, a Nigerian-based pirate group attacked the presidential palace in Malabo, the coastal capital of Equatorial Guinea. Though there has not been any single report of vessels being attacked by pirates off the coast of Equatorial Guinea, the country could face increased pressure from pirates in the coming years. The navy of Equatorial Guinea is small in size. However, its naval power is being rapidly expanded. Until recently, it only had five small patrol boats, mostly of Soviet (Russian) and Israeli production. In January 2012, the Navy officially added to its ranks a 2,500-ton frigate, named ‘Bata’ after the littoral province of the country. In October 2011, a new regional naval school supported by French cooperation was inaugurated in the province of Bata.

(h) Angola

Angola is a leading producer of crude oil in the Gulf of Guinea region. It accounts for 34 per cent of the total region’s oil supply. As regards piracy, the waters off Angola remain vulnerable to pirate attacks. Although there was only one reported incident of pirate attack in 2011, the issue remains a subject of serious concern for the country, as the Angolan Navy lacks the skill and capacity to protect its coastline. Recognising this fact, the country has initiated a 10-year project for modernising its navy.

Angola is well positioned to contribute in developing an integrated and comprehensive maritime security strategy for the Gulf of Guinea region. It is a part of the executive management of the Gulf of Guinea Commission (GGC), the regional body formed with an aim to promote peace and security in the region. At present, Angola holds

the post of Deputy Executive Secretary of Natural Resources of the Commission. In addition, the country is working in cooperative partnership with the US Navy to strengthen security in the region.

(i) Gabon

On 15 July 2013, Gabon experienced its first reported pirate attack in five years. The attack took place near its port of Gentil, where pirates armed with sophisticated weapons boarded and hijacked a Maltese-flagged oil product tanker owned by a Turkish company. The vessel, MV Cotton, had 24 crew members on board. The tanker was later released in Nigerian waters on 22 July 2013 with no injury to crew after the pirates had stolen the ship’s crude oil and oil products.

Notably, the attack demonstrates an extension of the geographical range of Gulf of Guinea piracy. On 19 August 2013, the US Secretary of the Navy, Ray Mabus, visited Gabon with a specific mission to discuss maritime piracy with the Gabonese government. While in Gabon, he focused on strengthening the prevailing relationship between the naval forces of the two countries. The Gabonese Navy has been receiving active training services from the US Naval Forces to tackle the problems of maritime security. In 2008, Gabon received a visit from the US Navy vessel ‘Fort McHenry’ as part of the APS initiative.

National efforts of the concerned countries have been deficient to combat piracy mainly due to inadequate naval resources and lack of effective multilateral naval cooperation. Absence of coordination between the Nigerian Navy and its counterparts in the region has allowed Nigerian-based pirates to exploit the security shortcomings and stage attacks far beyond Nigerian waters.

2 Bilateral Efforts

In addition to national arrangements, the coastal states have made some efforts to work together to combat piracy. On 28 September 2011, Benin and Nigeria commenced a six-month joint patrol program codenamed ‘Operation Prosperity’ along Benin’s coast to deter pirate attacks. Under the operation, the navy ships and helicopters of both countries patrol the waterways up to their EEZ boundaries. The joint program was scheduled to be

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reviewed by both countries at the end of its six-month term; however, there is little information regarding its extension.

In February 2012, Nigeria, Benin and Togo signed an agreement to harmonise actions against pirates in the Gulf of Guinea.\textsuperscript{107} In September 2012, Ghana signed a Joint Cooperation Agreement with Benin in which they agreed to work together against the rising threat of piracy in the territorial waters of the West African Countries.\textsuperscript{108}

Bilateral maritime cooperative arrangements between regional governments in the Gulf of Guinea have been largely ineffective in combating piracy due to their unsatisfactory levels of cooperation and resources. The legal agreements between some of the countries in the region have provided a short-term solution concerning legal and jurisdictional weakness in their respective territorial waters, but these do not address the root causes of piracy on land. The joint maritime patrols by Nigeria and Benin can also be considered a temporary solution, as long-term arrangement in this regard would require substantial assistance from the international community, in particular as regards logistical assets for surveillance and patrol purposes.

3 Regional Efforts

The increasing trend of piracy in the Gulf of Guinea highlighted the need for a coordinated and comprehensive regional approach. The geographic expansion of pirate activity further necessitated collaboration between regional countries and related organisations. The sense of urgency prompted regional governments to develop a comprehensive and integrated regional anti-piracy strategy in accordance with Security Council Resolution 2039 (2012).

The members of the Security Council, through the statement of 30 August 2011, underscored ‘the need for regional coordination and leadership in developing a comprehensive strategy to address the threat of piracy’.\textsuperscript{109} Through its Resolution 2018 (2011), the Council encouraged ECOWAS, the Economic Community of Central African States (ECCAS) and the GGC to develop a comprehensive maritime strategy. Efforts have been made to that effect by the regional organisations, particularly ECOWAS. Through


ECOWAS, the states initiated the process of building a joint maritime security approach. The ECOWAS Committee of Chiefs of Defence Staff discussed the issue of piracy in April 2010 and at its January 2011 meeting made a recommendation to the ECOWAS Commission to develop a regional maritime security governance concept. At its October 2011 meeting, the Committee assigned its subcommittee on maritime security to prepare a recommendation for the development of an integrated maritime security strategy and an integrated maritime plan. These draft documents were reviewed by experts on maritime security from the ECOWAS member states before being submitted to the ECOWAS Mediation and Security Council.

On February 2012, the Heads of State and Government of ECOWAS at their fortieth Ordinary Session underscored the significance of the ‘political leadership and coordinating role of ECOWAS’\(^{110}\) in combating piracy. The Summit assigned the ECOWAS Commission to strengthen collaboration with other regional bodies such as ECCAS and the GGC to confront the challenge of piracy. On 19 March 2013, an Inter-ministerial Conference of ECOWAS and the ECCAS on maritime security in the Gulf of Guinea was held in Cotonou, Benin Republic. The conference focused on collective efforts to curb piracy in the region and adopted three key documents to address piracy and organised crime. The documents include the Memorandum of Agreement among ECOWAS, ECCAS and the GGC on maritime safety and security in West and Central Africa, the policy statement of the Heads of State and Government on the maritime safety and security in West and Central Africa and the Code of Conduct concerning the fight against piracy, armed robbery and illegal maritime activities in West and Central Africa. In June 2013, these documents were endorsed by the Heads of State and governments of Central and West Africa at a Summit on maritime piracy and armed robbery in the Gulf of Guinea in Yaoundé, Cameroon.

The international community has lent its support to improve the regional initiatives. France and the EU are helping the concerned states to enhance their capacities and maritime cooperation. France is implementing a regional support program aimed at training in the area of maritime security, its Navy is using its port of call in the region to conduct training activities and it has sent a frigate to help with surveillance and the interception of pirates. On 11 October 2011, the authorities of Equatorial Guinea opened a

\(^{110}\) ‘Final Communique’, 40\(^{th}\) Ordinary Session of the Authority of the Heads of State and Government, Abuja, 16–17 February 2012.
new national naval academy in Bata. The academy has a regional focus and is supported by French cooperation. Finally, in September, France launched a priority solidarity fund project for maritime security reform in the countries of the Gulf of Guinea. Among other undertakings, France is financing an ECOWAS expert mission to boost efforts to establish maritime structures and enhance cooperation.

The EU funds a project aimed at establishing a regional training and information-sharing framework and at bolstering coastguard activities in the states of the Gulf of Guinea. The strategic Sealift Contingency Planning System is focused on strengthening efforts to fight maritime trafficking and ensuring the safety of ports and goods. On 10 January 2013, the EU announced a new project to combat piracy in the Gulf of Guinea. The project, titled ‘The Critical Maritime Routes in the Gulf of Guinea Programme’, is designed to improve maritime governance in seven African countries: Benin, Cameroon, Equatorial Guinea, Gabon, Nigeria, Sao Tome and Principe and Togo. The project is expected to improve the security and safety of maritime routes across the seven African countries in the Gulf of Guinea by ‘providing training for coastguards and establishing a network of sharing information between countries and agencies across the region’.  

Since 2007, the US has provided $35 million to build national maritime security capacity in the Gulf of Guinea, including in the form of radars, boats and associated training. The US is also working with these states through military cooperation programs like the APS and the Africa Maritime Law Enforcement Partnership (AMLEP). Under APS, the US has sent a warship to help to train personnel in Ghana, Togo and Benin in combating pirates. Until now, APS has donated boats valued at US$800,000 each to the navies of Togo, Nigeria, Benin and Ghana to help them in fighting pirates. Additional efforts have been made by the US military to enhance operational coordination between the navies in the Gulf of Guinea through multinational maritime interdiction exercises. Obangame Express 2012, which aimed to improve cooperation among participating nations, was hosted by Nigeria in February 2012 to increase maritime safety and security in the Gulf of Guinea. Cameroon hosted the planned Obangame Express 2013 exercises over 15–17 January. These exercises included several African, European and Atlantic partner maritime services and had the goal to increase the counter-piracy capabilities of

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nations in the Gulf of Guinea. The exercises were opened by the Minister for Defence of Cameroon, Mebe Nogo’o Edgar d’Alain, at the Cameroonian military base in Doula and successfully ended on 28 February 2013. Additionally, through the AMLEP program, the US Navy and Coastguard have been assisting the Gulf of Guinea partners to build their maritime law enforcement capacity and improve the management of their maritime environment.

To promote the security of the energy supply in the region, Angola, Cameroon, Equatorial Guinea and Nigeria established the Gulf of Guinea Energy Security Strategy (GGESS) in 2005. The forum grew to build partnerships with a number of foreign governments including the US, UK, Netherlands, Norway, Switzerland, Canada and France. Focusing on the security of Nigerian oil exports, the GGESS established joint working groups on the Niger Delta. However, this group has since collapsed, having failed to hold any meetings since the beginning of 2008.

The cooperative efforts of regional governments on matters of piracy as defined in the Yaoundé Code of Conduct are encouraging but inadequate to combat piracy. Many of the signatory states have persistent political and economic problems that affect their ability to address some of the fundamental causal factors of piracy. In addition, the Code of Conduct urges but does not strongly require the governments to act in the repression of piracy, which provides little incentive for enhancing cooperation on the issue.

4 International Efforts

The international community considers piracy in the Gulf of Guinea as an alarming issue due to the growing threat this activity represents to both the regional and the global economy. In September 2011, several West African officials raised the subject of piracy in the Gulf of Guinea at the sixty-sixth UN General Assembly annual general debate. The officials urged greater UN involvement in the matter and pressed for extended international support to combat piracy in the region.

The Security Council has been central to the international community’s response to piracy in the Gulf of Guinea. For the past few years, this issue has been on the agenda of the Security Council. Piracy in the Gulf of Guinea was first brought to the Security Council’s attention on 23 August 2011, when the Under-Secretary-General for Political Affairs B Lynn Pascoe briefed the Council on the issue. The council held an open debate on the issue on 19 October 2011 and on 31 October unanimously adopted Resolution 2018,\textsuperscript{118} which condemned acts of piracy and armed robbery in the region and encouraged enhanced regional counter-piracy cooperation. The Resolution also welcomed the Secretary-General’s plan to send an assessment mission to the region to examine the problem.

In a report (S/2012/45) submitted to the Council on 18 January 2012,\textsuperscript{119} the assessment mission concluded that the growing incidence of piracy in the Gulf of Guinea constituted a major threat to security in the region and warned that the consequences of inaction could be catastrophic. It also called for the development of a regional strategy. In response, on 29 February 2012, the Council unanimously adopted Resolution 2039\textsuperscript{120} welcoming the report and encouraging the implementation of its recommendation. The Security Council called for implementing of a region-wide strategy and urged the international partners to provide support to regional patrol initiatives and coordination centres.

In pursuance of these two Resolutions, two meetings of the Steering Committee established by ECOWAS, ECCAS and the GGC were held on 22 and 23 October 2012 in Libreville and on 17 and 18 December 2012 in Abidjan. The Committee recommended that a Summit of Heads of State and Government take place in Yaoundé, Cameroon to finalise a strategic framework for the fight against piracy. In preparation for these meetings, the Committee endorsed a draft MoU between ECCAS, ECOWAS and the GGC on maritime security in West and Central Africa, a draft political declaration and a Code of Conduct concerning the fight against piracy, armed robbery and illegal maritime activities in West and Central Africa. The documents were formally adopted on 25 June 2013 at the Yaoundé Summit of the Gulf of Guinea Heads of State and Government on maritime safety and security.

\textsuperscript{118} SC Res 2018, UN SCOR, 6645\textsuperscript{th} mtg, UN DOC S/RES/2018 (31 October 2011).
\textsuperscript{120} SC Res 2039, UN SCOR, 6727\textsuperscript{th} mtg, UN DOC S/RES/2039 (29 February 2012).
The international response to piracy has so far been unsuccessful in preventing pirates from attacking ships in the Gulf of Guinea region because it has been excessively focused on security concerns rather than on addressing the root causes of piracy on land, such as poor governance, poverty and lawlessness. In addition, the lack of resources available to regional states in the Gulf of Guinea has contributed to the failure of international efforts to address piracy.

**Evaluation of the Response**

Despite various national, regional and international initiatives taken by the Gulf of Guinea countries to combat piracy, there are clear indications of increased pirate activity in the region. Given the financial, legal and logistical limitations, the national responses to piracy by countries in the region have met with mixed success. The efforts have proved insufficient to deter piracy because of the limited naval capacity of individual states within the region. Most of the states have limited maritime capacity and seriously lack in infrastructure, equipment and legal framework. In many cases, pirates have been found to be better equipped than naval patrols. Pirates have been able to exploit this weakness and stage attacks without fear of government intervention. The lack of effective maritime policies among the Gulf of Guinea states has also allowed pirates to operate successfully. Most of these states have inadequate policies on maritime security and lack adequate anti-piracy legislation authorising the enforcement of legal actions against piracy and the prosecution of pirates. At the bilateral level, efforts have primarily focused on improving security in the region. However, these security cooperation efforts have been short lived, with no planned continuance.121

Despite enhanced national and bilateral efforts to address the scourge, it is evident that ongoing regional initiatives are critical to comprehensively address piracy. If piracy is to be reduced, a region-wide strategy should be put in place. Efforts so far by regional governments to mitigate piracy are commendable but insufficient. Until recently, there has been a comparatively low level of cooperation between regional institutions. As the regional institution responsible for peace and security in the region, ECOWAS has made little progress in formulating any regional response to maritime insecurity.

There is also evidence of a lack of effective cooperation and information sharing at the regional level. One major impediment to increased cooperation is the issue of national

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sovereignty. Many regional states view regional cooperation measures as an opportunity to enhance their national sovereignty or as a risk to the same. The relations between regional neighbours are also affected by political problems such as international territorial disputes (such as between Nigeria and Cameroon) and maritime border disputes (such as between Ghana and Côte d’Ivoire). Such tense relationships hamper the exchange of information. In many cases, regional responses have been uncoordinated, thereby limiting the intended outcomes.

Conclusion

The Gulf of Guinea is currently one of the world’s most problematic regions for piracy. Incidents of piracy have dramatically increased over the last few years, and the problem is having a devastating effect on the region’s oil industry and the financial security of the affected countries. Despite the various national, regional and international responses designed to combat piracy, piratical acts are continuing with increased frequency and violence. As these attacks largely occur within regional boundaries, a logical response to the threat would be to strengthen law enforcement and enhance regional cooperation. By building an effective regional capacity, the Gulf of Guinea countries can cooperate on responses to the threat to effectively suppress piracy.

The next chapter presents an appraisal of the existing measures aimed at combating piracy in the Gulf of Guinea region and describes some potential options moving forward.
VI EVALUATION OF THE CURRENT ARRANGEMENTS TO COMBAT PIRACY IN THE GULF OF GUINEA

A Chapter Introduction

The aim of this chapter is to assess the effectiveness of the current arrangements addressing the problem of piracy in the Gulf of Guinea. In doing so, the chapter presents the possible means of combating piracy in the region and provides an analysis of the international-, regional- and national-level counter-piracy responses that have been employed. Analysis includes an evaluation of the steps taken by the governments of the region and the effectiveness of the implemented strategies to counter the threat posed by piracy in the region.

B Methods of Fighting Piracy in the Gulf of Guinea

Developments in piracy over the last 20 years have been alarming for a number of regions. Among these, increased piracy has seriously disrupted the free flow of international commerce on the sea. As yet, no collective response has been forthcoming to prevent or effectively eliminate the threat. In spite of various international efforts, the strategic plan to combat piracy has been inadequate, as it has failed to acknowledge fully the causes contributing to piracy. For this reason, to fight piracy in the Gulf of Guinea, it is essential to apply an integrated multidimensional approach that strengthens maritime security while also effectively addressing the principal causes of piracy embedded in the economic, social and political conditions of the region, including poor governance, corruption, unemployment and poverty. Additionally, there is an urgent requirement for cooperation and coordination at the regional and international levels.

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

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piracy in the Gulf of Guinea. This has resulted in a range of military and non-military activities to fight piracy in the region.

1 Military Means to Suppress Piracy

Fighting piracy is essentially a law enforcement operation at sea.\(^2\) However, the problem cannot be solved by exclusively relying on a military-based approach. Seeking such a solution may render piracy purely as a security problem rather than as a symptom of more serious governance problems onshore.

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

(a) Build Regional Maritime Capacity

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

It is important to note that the introduction of an international naval force in the coastal waters of the Gulf of Guinea as has occurred off the coast of Somalia may be problematic. While the majority of pirate attacks in Somalia take place on the high seas, most of the attacks in the Gulf of Guinea occur within territorial waters. Given the broad regional sensitivities concerning external interference, the presence of foreign vessels in jurisdictional waters is likely to be considered by many states as unwarranted. Further, the

possibility of foreign warships being a target of attack by pirates may undermine the usefulness of any such deployment.³

(b) Improve Collective Military Cooperation

One possible option for a systemic solution to piracy could be the creation of a regional cooperative maritime security approach. Such an approach would make maritime safety and security a shared responsibility and enable regional states to conduct cross-border patrols and share law enforcement intelligence. Implementation of the approach would require building a regional maritime security partnership among the regional countries. To this end, the Gulf of Guinea’s countries could establish a task force consisting of the naval forces in the region.⁴ This would significantly improve the efficient coordination of information and assets among all the naval forces of the region. The objective of such a task force would be to create a centre for law enforcement cooperation to facilitate in building a sustainable regional capacity and capability.

(c) Enhance Maritime Domain Surveillance

Successful suppression of piracy can be accomplished by the collective vigilance of the maritime domain of regional countries.⁵ Progress in this regard can be achieved through a joint anti-piracy operation with all the navies of the region. The countries of the region can establish a common surveillance procedure and develop joint operational coordination capabilities in this regard. This would facilitate an effective maritime security intervention through a regional security system. It is expected that coordinated anti-piracy patrols would have deterrent effects on piracy.

(d) Consider the Use of Private Military Security Companies

Ship owners operating in the region may consider the use of privately contracted armed guards. The presence of armed players in the Indian Ocean has been effective in reducing the number of successful hijackings in the region.⁶ While this solution may create new problems, the perceived success of private armed guards in protecting ships against Somali-based piracy may encourage the coastal states in the Gulf of Guinea and ship

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⁴ The effort to set up a joint regional naval force among the members of the Gulf of Guinea Commission was initiated by the President of Nigeria under the codename ‘Gulf of Guinea Guard Force’. Regrettably, this force is yet to materialise.
owners to consider this option. States willing to permit the use of Privately Contracted Armed Security Personnel need to establish a suitable national framework governing this. At present, privately contracted armed guards are not permitted by law to operate within the territorial waters of Gulf of Guinea countries. Ship owners and operators wishing to engage armed personnel have to pay the national military forces of the state in question to provide escort vessels or personnel to travel on board vessels. Nevertheless, privately contracted armed guards may act as security advisors to the Master of the vessel or serve as supervisors on escort vessels.

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

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

For the greater benefit of the region, the gulf of Guinea governments should aim to adopt a unified stand on the issue of armed guards. The governments need to clarify the positions and policies of states to avoid uncertainty. Differing positions on whether armed

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guards are to be allowed within territorial waters are likely to complicate further the security challenges of the region.

### 2 Non-Military Means to Suppress Piracy

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

(a) *Improve Economic Governance*

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

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

(b) *Increase Development on the Coast*

Piracy is largely driven by poor economic opportunities. Lack of sources of livelihood may compel coastal communities to resort to maritime crimes, including piracy. This is very much true in the Niger Delta, where the local residents lost their fishing-

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related livelihood structures to environmental pollution caused by the oil industry.\textsuperscript{10} The majority of piracy incidents occurring in the Gulf of Guinea can be explained in terms of the extreme level of poverty and high unemployment resulting from the environmental abuses and subsequent loss of livelihood.\textsuperscript{11}

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

\textit{(c) Establish Special Courts within the National Jurisdiction of Regional States}

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

\textit{(d) Harmonise the Regional Legislative Framework}

Lack of harmonisation in piracy laws among states impedes the process of deterring piracy. To facilitate effective prosecution, the Gulf of Guinea states should favour a uniform legislative framework that comprehensively domesticates the relevant key provisions of UNCLOS and SUA. States should adopt legislation that criminalises piracy and impose universal jurisdiction for it so that suspected pirates can be tried irrespective of their nationality and the geographical location of the piratical incident.

\textsuperscript{11} Kekong Bisong, Restorative Justice for Niger Delta (Maklu Publishers, 2009) 90.
(e) Conclude Agreements to Formalise Custody and Prosecution Arrangements

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

(f) Enhance Regional Cooperation

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

(g) Ensure Compliance with the Best Management Practices by the Shipping Industry to Deter Piracy

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

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protection against Somalia-based piracy (BMP4)\textsuperscript{13} and the present situation in the Gulf of Guinea. On 25 May 2012, the IMO developed its ‘Interim Guidance to Private Maritime Security Companies providing Privately Contracted Armed Security Personnel on board Ships in the High Risk Area’\textsuperscript{14} for the east coast of Africa. The objective of the guidelines was to ‘assist policy development at the national level and facilitate greater harmonisation of policies at the international level to the issue of private armed security on board ships’.\textsuperscript{15} The IMO, in consultation with the shipping industry and naval forces of the region, should agree on similar guidelines to deter and prevent piracy in the Gulf of Guinea. Until then, the shipping industry should act in accordance with the best management practices for Somalia-based piracy and the interim guidelines.

\textit{(h) Coordinate International Efforts to Combat Piracy}

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

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

\textit{C Assessment of National Arrangements to Combat Piracy}

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

\textsuperscript{13} See Best Management Practices for Protection against Somalia Based Piracy, (Witherby Publishing Group Ltd, 2011).
\textsuperscript{14} International Maritime Organisation, MSC.1/Circ.1443 (25 May 2012).
\textsuperscript{15} Ibid.
largely confined to Nigerian waters, the crime has now spread to the whole region. Attacks have become more frequent and violent, with more ships and sailors falling prey to pirates.

The nature of piracy in the Gulf of Guinea, which largely occurs in territorial waters, means the coastal states are the most relevant entities to fight piracy. External actors cannot intervene in domestic jurisdictions; therefore, the coastal states must take the responsibility for imposing enforcement measures to suppress piracy.\(^\text{16}\) However, the limited national capacities of the individual countries have seriously undermined their ability to prevent and effectively manage the threat in their coastal waters.

Much of the piracy in the Gulf of Guinea originates from the proliferation of insurgency and instability in Nigeria. The upsurge in pirate attacks in the region is also due to the ‘peculiarities of the Nigerian economy and widespread corruption’.\(^\text{17}\) The piracy issue in the Gulf of Guinea is therefore purely a Nigerian problem.

\textit{1 The Niger Delta Insurgency}

For decades, piracy has been an issue of concern off the coast of Nigeria. The number of piracy attacks rose significantly during the MEND phase of the Niger Delta Insurgency (2006–2009). The conflict began in the early 1990s when the federal government allotted the region to foreign companies for oil exploration.\(^\text{18}\) The oil industry, by polluting the area, destroyed the traditional livelihoods of fishing and farming and caused high-level community crises in the region. These crises have led to violent conflict between local communities and oil companies in the Niger Delta.

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


neighbouring countries. In this way, the criminal activity around the Niger Delta led to the development of piracy in the Gulf of Guinea.

To manage the developing problems in the Niger Delta, the government offered an unconditional amnesty for militants on 25 June 2009. This was part of the late President Umaru Musa Yar’Adua’s strategy to pacify the insurgents.\(^9\) The amnesty program included monthly allowances and vocational training for militants who surrendered their arms. Following the introduction of the amnesty, there were clear signs of a decline in the number of attacks against the oil industry and the kidnapping of expatriate oil company workers. The production of crude oil subsequently rose to 2.6 million barrels per day.\(^20\)

However, soon after the death of Yar’Adua on 5 May 2010, progress on rehabilitation and reintegration slowed. Complaints from ex-militants began to emerge as to the promised allowances and training. Some aggrieved militants even threatened to exclude themselves from the amnesty program and return to their criminal activities. Fresh tension arose when the federal government failed to provide jobs for former militants trained by the presidential amnesty office. The federal government has now decided to terminate the presidential amnesty program as of 2015.\(^21\)

Analysts argue that the amnesty process failed to restore peace, security and development in the region.\(^22\) In particular, they argue that the amnesty program failed to address the causes of the grievances that led to armed struggle.\(^23\) Despite the amnesty program, oil-producing communities continued to suffer from severe poverty and underdevelopment. As such, the program failed to reduce the long-term potential for violence in the region.\(^24\)

2 Corrupt Oil Sector

Piracy in Nigeria is closely linked to the criminal practices of the oil sector. Years of corruption and maladministration by successive Nigerian regimes has given rise to a

number of illegal practices within the industry. The stealing of crude oil from Nigeria’s pipelines and its sale to vessels offshore has become a thriving business. The International Energy Agency estimated that Nigeria was losing about $7 billion annually to oil theft.\(^{25}\) While part of the stolen crude oil is processed at illegal refineries in Nigeria, most is exported to other oil-refining nations. Proceeds from the illegal exporting of oil are used by criminal organisations to launch pirate attacks on oil-carrying vessels.

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

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

Pirates are also believed to have a strong link with members of law enforcement. It is commonly believed that national security officials are regularly either involved in oil theft or bribed to overlook the activity. This suspicion was confirmed in 2005 when some of Nigeria’s top military commanders were penalised by the Nigerian Navy for having personal involvement in oil theft and illicit trading.\(^{26}\) In 2009, Olabode George, a former chair of the Board of the Nigerian Ports Authority, was convicted by the Lagos High Court for charges that included contract splitting and inflation.\(^{27}\) The conviction was subsequently affirmed by the Court of Appeal.

3 **Onshore Crime**

Most of the piracy incidents in Nigeria are linked to organised crime on land. It is in reality an extension of the rampant illegal oil bunkering onshore. Pirates are often

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associated with criminal gangs involved in the illegal fuel trade. Their hijacking of vessels is part of the local criminal activities, wherein the stolen oil is sold on the black market. This form of piracy originally began during the Niger Delta insurgency and has intensified in recent years.

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

4 Insufficient Government Response

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

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

The Nigerian Government has also renewed its efforts to strengthen security in the maritime domain. The capacity of the Coastguard and Navy has been increased to prevent

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pirate attacks. To implement the International Ship and Port Facility Security code, the Presidential Implementation Committee on Maritime Safety and Security was set up in 2004. To ensure effective search and rescue, a regional Maritime Rescue Coordination Centre was established on 27 May 2008 in Lagos and the government signed multilateral agreements with neighbouring countries to coordinate the maritime search and rescue services in areas adjacent to their coasts. Concrete efforts have also been taken by anti-crime agencies to tackle piracy. For example, in 2011, the Navy and NIMASA intensified their efforts to combat piracy within the country’s territorial waters by increasing patrols.

As regards developing the legal framework for fighting piracy, the government appointed a Lagos-based lawyer as a consultant for preparing a bill that would domesticate major international conventions relating to the suppression of unlawful acts and piracy at sea.

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

Assessment of Regional Arrangements to Combat Piracy

The nature of piracy in the Gulf of Guinea suggests the need for a constructive role for regional actors in any effort to combat piracy. Although piracy manifests as regional criminal activity, there has not been any integrated regional approach to address the problem. The existing regional organisations for peace and stability have also played a limited role in forging a regional solution to piracy. In this context, effective regional maritime cooperation is perhaps the only means through which the Gulf of Guinea states can reduce piracy.

Problems and Issues of Maritime Cooperation in the Gulf of Guinea

Despite continued efforts to foster maritime cooperation, the formulation of a successful maritime regime in West Africa is limited by the sensitive issue of national

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sovereignty. Many states in the region are strongly protective of their sovereignty and are usually unwilling to approve any cooperative activities that might compromise their sovereign rights. This emphasis on sovereignty makes regional integration in security matters particularly difficult. Weaker countries are particularly cautious about their stronger neighbours’ (especially Nigeria’s) ability to project influence in the region.

Sharing of information related to maritime security is affected by some tense relationships between neighbouring countries. The continuing maritime border dispute between Ghana and Côte d’Ivoire, the sovereignty dispute between Equatorial Guinea and Gabon over islands in Corisco Bay and the tensions between Cameroon and Equatorial Guinea over an island at the mouth of Ntem River make maritime security cooperation more difficult within the subregion. In addition, the region’s naval forces have different types of communication systems and cultures of confidentiality, hampering the exchange of information.31

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

(a) Unequal Development of Regional Cooperation

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

ECCAS has created its own maritime security efforts to tackle piracy in the Central African subregion. In 2008, the member states developed a comprehensive joint maritime security strategy focusing on six objectives, including (i) information sharing and management, (ii) joint surveillance of maritime space through the sharing of assets, (iii)

31 International Crisis Group, above n 9.
coordination of states’ actions at sea, (iv) self-financing through a regional maritime tax, (v) procurement of logistics and (vi) the institutionalisation of maritime conferences for Central Africa. In October 2009, the ECCAS member states adopted a protocol establishing a Regional Centre for Maritime Security in Central Africa (CRESMAC) in Pointe Noire in the Republic of Congo with the intent to promote information sharing and combined naval operations.

To ensure effective implementation of the maritime security strategy, ECCAS has divided its maritime space into three geographical zones, A, B and D, extending from Angola to the maritime borders of Cameroon. Each of the zones is managed by a multinational coordination centre and all three centres are controlled by CRESMAC. Zone D, which covers Cameroon, Equatorial Guinea, Gabon and São Tomé and Principe, was the first to be activated, in response to significant acts of piracy in that area. In May 2009, the member states of the concerned Zones signed an agreement on the modalities for conducting maritime security operations and surveillance. The agreement was followed by the adoption of a joint operational plan for maritime security known as SECMAR 2.32

The West African bloc ECOWAS lags far behind ECCAS in promoting maritime cooperation among its members. The upsurge in piracy within the ECOWAS region has proven that maritime security is a serious problem for its member states. Considering the intensity of the problem, in August 2011, the ECOWAS Council of Ministers, at its sixty-sixth session, directed the ECOWAS Commission to address the issue of piracy promptly.33 In February 2012, the fortieth summit of the Heads of State and Government of ECOWAS acknowledged the significance of political leadership and the coordinating role of ECOWAS in addressing piracy and tasked the ECOWAS Commission with the urgent task to develop a maritime policy framework.

In accordance with the mandate, the Commission started the development of an ECOWAS Integrated Maritime Strategy to address the threat to maritime security and safety in the region. The strategy is expected to provide guidelines for security of the waters off the coast of the ECOWAS member countries. The strategic framework plans to replicate the ECCAS model of maritime strategy by demarcating three geographical zones, each with its own coordination centre. The Commission has also been trying to

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32 Ibid 19.
operationalise a Model Zone (Zone E) to enable the countries of the Zone to ensure maritime security in the area. In July 2013, the forty-third summit of the Heads of State and Government of ECOWAS directed the ECOWAS Commission to expedite the urgent adoption of the ECOWAS Integrated Maritime Strategy and establish a Pilot Model Zone E.

(b) *Uncoordinated Inter-regional Cooperation*

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

MOWCA was established in 1975 as the Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR) and afterwards institutionalised as such in 1999. The organisation was initially established with a view to develop the maritime infrastructure of the region. In 2008, the organisation, in conjunction with IMO, designed a framework for a ‘sub-regional integrated coastguard function network’ for Central and West Africa and agreed to a MoU with the IMO. The objective was to assist in promoting inter-regional and national cooperation on the issues of maritime security. However, the effort is yet to materialise, as six out of 20 coastal states have not signed the MoU. Moreover, the effort of MOWCA to establish a Regional Maritime Development Bank in Nigeria has also slowed due to lack of financial commitment on the part of the Nigerian Government.
Meanwhile, the GGC was established in response to the necessity for a permanent framework for collective action on maritime issues in the West and Central regions of Africa. The treaty creating the new regional institution was signed by the heads of states of the concerned countries in February 2001. Having its headquarters in Angola, the Commission comprises Nigeria, Cameroon, Angola, the Republic of Congo, Gabon, Equatorial Guinea, the Democratic Republic of Congo and Sao Tome and Principe. The Commission became functional after its summit of Heads of States and Governments was held on August 2006.34 Among all the regional institutions operating in the region, the Commission has the largest authority for dealing specifically with maritime issues. The treaty of the organisation describes the Commission as ‘a framework … for cooperation and development as well as for prevention, management and resolution of conflicts relating to the economic and commercial exploitation on natural resources within territorial borders and in the exclusive economic zones of member states’35 However, the Commission has been struggling to cope with the security challenges. The formation of the Commission was delayed due to boundary disputes among the members and since then its institutional development has been hampered by political tension. For example, Cameroon suspected the institution would be used by Nigeria to settle the Bakassi Peninsula dispute in its favour and therefore postponed ratification of the treaty until its settlement by the International Court of Justice. The Commission also faces resistance from other treaty member states unwilling to accept Nigeria’s lead role.36 Most recently, in November 2012, the Commission adopted the Lunada Declaration on Peace and Security in the Gulf of Guinea region.37 The Declaration urges the GGC member states to work together to develop and implement a comprehensive strategy for peace, security and development in the region. The Council of Ministers of the Commission ratified the Declaration in May 2013.

The overlapping institutional and operational mandates of the various regional institutions with regard to maritime security in the region argue for better integration and coordination of maritime efforts. It is imperative that the regional institutions develop mutual arrangements to implement their own maritime strategies effectively. Such a mechanism would contribute to the integration effort of the region and expedite the

process of formulating an integrated maritime policy for the Gulf of Guinea region. The first ever regional summit of the Heads of States and Governments of ECCAS, ECOWAS and the GGC on Maritime Safety and Security in the Gulf of Guinea, held in Cameroon in June 2013, is a step in the right direction.

(c) Limited Joint Maritime Surveillance Operations

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

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

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

E Assessment of the Regional Agreement to Combat Piracy

In an effort to establish an effective framework to combat piracy and other illegal maritime activities in West and Central Africa, a new regional anti-piracy agreement was adopted on 19 March 2013 in Cotonou, at the Inter-Ministerial Conference of ECCAS and the ECOWAS on ‘Maritime Security in the Gulf of Guinea’. The agreement titled ‘Code of Conduct Concerning the Prevention and Repression of Piracy, Armed Robbery against Ships, and Illegal Maritime Activities in West and Central Africa’ aims to prevent piracy,
armed robbery against ships and illicit maritime activity in West and Central Africa. In addition to the Code, the Conference adopted another two documents; namely, the ECCAS/ECOWAS Political Declaration on Illegal Maritime Activities in the Gulf of Guinea and the MoU between ECOWAS, ECCAS and GGC on Maritime Security in West and Central Africa. On 25 June 2013, the Heads of State and Government of ECCAS, ECOWAS and the GGC endorsed the three documents at the summit on Maritime Safety and Security in the Gulf of Guinea, held in Yaoundé, Cameroon.

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

1 General Features of the Code

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

(a) Definition of Piracy and Armed Robbery

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

of the crime as expounded by UNCLOS and the Djibouti Code of Conduct.\textsuperscript{39} Thus, according to the code, an act constitutes piracy if it is (a) an illegal act of violence or detention, (b) committed for private ends, (c) against another ship, persons or property in a place outside the jurisdiction of any state, and (d) committed on the high seas. The definition also includes facilitation and incitement of any acts as mentioned above.\textsuperscript{40} The Code accepts the same definition of ‘armed robbery at sea’ as contained in the IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.\textsuperscript{41} This follows that acts that constitute piracy under the Code would be armed robbery at sea if committed within the territorial waters of a state.

\textit{(b) Duty to Cooperate}

The signatories to the Code declare their intention to cooperate ‘to the fullest possible extent’ in the repression of piracy and armed robbery against ships; transnational organised crime in the maritime domain; maritime terrorism; illegal, unreported and unregulated fishing; and other illegal activities at sea, ‘consistent with their available resources and related priorities, their respective national laws and regulations, and applicable rules of international law’.\textsuperscript{42} For the above purpose, the Code shares the principles of the Djibouti Code of Conduct; namely, the sharing and reporting of relevant information, interdicting ships engaged in transnational organised crime, the arrest and prosecution of those committing such crime and the care and treatment of the victims.\textsuperscript{43} At the same time, the principles of sovereign equality and territorial integrity of states and of non-intervention in other states’ domestic affairs have also been recognised.\textsuperscript{44}

\textit{(c) Establishment of Information Sharing Network}

Like the Djibouti Code, the Code of Conduct sets forth the commitment of each signatory to share information regarding piracy incidents in the region. The Code intends to establish an effective information-sharing network through a system of national focal points and piracy ISCs. Each signatory is required to designate a national focal point and to declare and communicate it to other signatories, either at the time of signing the Code or

\textsuperscript{39} Code of Conduct Concerning the Prevention and Repression of Piracy, Armed Robbery Against Ships, and Illegal Maritime Activities in West and Central Africa, signed 25 June 2013 (entered into force 25 June 2013) art 1(3). (‘Code of Conduct’). This definition is quite similar to ReCAAP’s definition of piracy.
\textsuperscript{40} Code of Conduct art 1(4)(C).
\textsuperscript{41} Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, Res. A.922(22) (22 January 2002).
\textsuperscript{42} Code of Conduct art 2(1).
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid art 2(3).
as soon as possible after signing.\textsuperscript{45} Further, the Code allows for using the piracy ISCs for ensuring effective communication between the focal points of signatories. However, no ISCs have been established under the new Code. It is expected that the Inter-regional Coordination Centre on Maritime Safety and Security for Central and West Africa might serve as an ISC. The Coordination Centre, to be based in Yaoundé, Cameroon, is provided for in the MoU between ECCAS, ECOWAS and the GGC on Safety and Security in the Maritime Region of West and Central Africa. The development of uniform reporting criteria, according to Article 12 of the Code, is expected to ‘ensure an accurate assessment of the threat of piracy and armed robbery in the West and Central Africa’.

\textit{(d) Non-binding Legal Instrument}

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

\textit{(e) Scope of Enforcement Powers}

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

\textit{(f) Prosecution of Pirates}

The Code of Conduct aims to ensure that persons committing or attempting to commit piracy or armed robbery at sea are apprehended and prosecuted in their domestic courts.\textsuperscript{46} To this end, the Code encourages signatories to criminalise piracy and armed robbery at sea under their national law to ensure effective indictment, prosecution and

\textsuperscript{45} Ibid art 11(3).
\textsuperscript{46} Ibid arts 2(c) and 4(4).
The Code further encourages signatories to develop adequate guidelines for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders. However, unlike the Djibouti Code, the Code of Conduct omits to mention incorporating extradition provisions in the national legislation.

(g) Maritime Security Cooperation

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

(h) Adoption of Certain National Strategies

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

(i) Seizure of Pirate Ship

The Code provides that any signatory may seize a pirate ship in areas outside the territorial sea of any state and arrest the persons and seize the property on board. According to the language of Article 3, such seizure can be carried out only by warships or other ships clearly marked and identifiable as being in government service. Article 1(14) defines a pirate ship as ‘a vessel effectively controlled by people who intend to use it to
commit an act of piracy, or used it to commit such an act, as long as it remains under the control of such persons’. Article 6(4) of the Code recognises the principle of universal jurisdiction and authorises the courts of the seizing signatory to adjudicate pirates. The court has also been given the power to decide the action to be taken with regard to the ship or property. Article 6(5) of the Code states that the seizing state may decide to waive its primary right to exercise jurisdiction. The appropriate action to be taken in such a case would be to allow any other signatory to enforce its law against the ship and persons on board. However, in case of any seizure made in the territorial sea, the jurisdiction of the signatory has been made exclusive.51

(j) Saving Clauses

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

2 Evaluation of the Code of Conduct

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

51 Ibid art 6(6).
the national armed forces are allowed to carry arms inside the territorial waters of the signatories.

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

F Assessment of International Cooperation to Combat Piracy

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

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

the engagement of the US Navy in the Maritime Security Cooperation program through APS.

Since its creation in 2007, the APS has been assisting the Gulf of Guinea maritime community to develop maritime governance in the region.\textsuperscript{53} The aim of the program has been to strengthen the defence capabilities of the maritime nations through training and collaborative activities. Among its various activities, APS has conducted a series of regional training activities for the naval forces of the region and coordinated a number of maritime security exercises along the coastline. More recently, APS is coordinating the Regional Maritime Awareness Capability in West Africa. Under this program, surveillance systems are being installed along the coast of the countries to improve situational awareness in their maritime domain.\textsuperscript{54}

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

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

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

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

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

G Conclusion

As noted earlier in the chapter, the roots of piracy in the Gulf of Guinea centre on Nigeria. Originally limited to the waterways and estuaries of the Niger Delta region, piracy has now increased in both frequency and scope. The inability of the Nigerian Government to adequately address the issue in the Niger Delta has allowed piracy to grow and flourish in the region. Given that the majority of the region’s pirates are of Nigerian origin, Nigeria should take the leading role in improving maritime security against piracy and armed robbery in the Gulf of Guinea. However, Nigeria cannot be held solely responsible in this regard. The issue of maritime security is largely a regional problem. As such, it is a collective responsibility of the coastal states of the region to address piracy emanating from Nigeria.

The experience in combating piracy shows that the best solutions in this respect are those based on addressing root causes on land. Developing coastal infrastructure by
creating legitimate employment opportunities for local residents could be a decisive step in this regard. Tackling corruption and poor governance is also crucial. However, this can only be achieved through the coordination of regional strategies with international support. Collective efforts intended to curb piracy, although commendable, remain largely inadequate to address the full extent of the problem due to the current lack of coordination. A number of maritime stakeholders are actively engaged in the Gulf of Guinea region to fight piracy; however, there has been no effort to avoid the duplication of processes and initiatives. Long-term suppression of piracy in the region requires a coordinated approach by the various stakeholders.
The Gulf of Guinea is one of the most strategic maritime areas of the world. Due to its proven reserves of oil and natural gas, the region is regarded as a major future supplier of global energy. In recent years, the worrying surge in acts of piracy and attacks against shipping in the Gulf of Guinea has seriously threatened oil supplies from the region. That these attacks are increasing in terms of both number and frequency has established the region as the world’s new piracy hot spot. Despite various measures taken to prevent piracy, the problem has shown no signs of abating. Most recently, piracy has revealed itself to be a thriving business. The gradual expansion of Nigerian pirate groups into the waters of neighbouring states is further destabilising peace and security in the region.

The thesis aimed to analyse the strengths and weaknesses of the piracy regime in the Gulf of Guinea. Chapter I offered the necessary background to the issue, justified the topic and outlined the research method. Chapter II addressed the evolution of piracy from a historical perspective and focused on the lessons to be learned and applied to curb modern-day piracy. Chapter III showed that the existing international legal regime governing piracy is deficient in dealing with piracy. Chapter IV argued that regional approaches to combat piracy can be more effective in addressing the problem, and established the reasons and incentives for adopting a regional strategy. Chapter V identified the nature and forms of piracy in the Gulf of Guinea region, and discussed the nature and outcomes of national, bilateral, regional and international anti-piracy measures in the region up to now. Chapter VI considered whether the current legal and institutional arrangements for addressing piracy in the region are adequate to deter piracy, particularly in the territorial waters of the coastal states. As the current state of literature on this issue is inconclusive, the thesis has sought to answer some of these questions:

1. What are the present legal and policy arrangements to combat piracy in the Gulf of Guinea?
2. How effective are the present arrangements to combat piracy in the region?
3. What are the barriers and practices to combat piracy in the Gulf of Guinea and how could the present arrangement be improved?

The Gulf of Guinea countries have been actively involved in expanding efforts to counter piracy. At the national level, various governments have attempted to promote
security within their national waters by strengthening the powers of their naval forces. With the help of the US Navy’s APS program, the countries have sought to improve their national and regional capacities for maritime law enforcement. However, intergovernmental initiatives have been largely limited to joint naval patrols. As regards regional efforts to combat piracy, ECCAS, ECOWAS and GGC have focused on developing a regional anti-piracy strategy. These efforts have led to the adoption of a Code of Conduct by regional leaders to prevent piracy in the region. In addition, the ECOWAS Commission is working on a separate ‘Integrated Maritime Strategy’ for its member countries.

The nature of Gulf of Guinea piracy raises some legal and practical difficulties under the existing international framework. The first problem is that the vast majority of the pirate attacks against ships in the region take place within the territorial waters of coastal states. Therefore, the international piracy rules do not apply. To qualify as piracy under international law, an attack against ships should occur in areas outside the territorial sovereignty of any state. The second problem is that international piracy rules do not allow states to pursue and apprehend pirates within the territorial waters of another state. The pirates operating in the Gulf of Guinea are mainly of Nigerian origin. These pirates have in many cases escaped arrest by moving from Nigerian waters to the territorial seas of neighbouring jurisdictions that are unequipped to fight maritime crime, thereby placing themselves beyond the reach of international and domestic law.

The specific deficiencies of the international piracy regime have prompted states to develop a regional approach to combat the threat of piracy. The perceived success of regional cooperation in Southeast Asia and the Western Indian Ocean region has encouraged states along the Gulf of Guinea to create a regional framework to prevent and combat piracy. One example of a regional piracy initiative is the adoption of a Code of Conduct concerning the prevention and repression of piracy, armed robbery against ships, and illegal maritime activities in West and Central Africa. Inspired by ReCAAP and the Djibouti Code of Conduct, the Code of Conduct incorporates the principles of the sharing and reporting of piracy information, interdiction of suspicious vessels, apprehension and prosecution of persons committing illegal acts and care and treatment of the victims.

Unfortunately, the effectiveness of regional arrangements has been limited due to the sovereignty concerns of the Gulf of Guinea countries. Unresolved maritime boundary disputes in relation to areas rich in oil have also been responsible for creating mistrust.
among the region’s disputing states, further hindering the process of collaboratively addressing shared security challenges. The implementation of the Code is therefore expected to be a challenging task, as many of the anti-piracy measures are dependent on the political will of the states concerned.

The various measures to combat piracy in the Gulf of Guinea are faced with significant challenges. Firstly, the uncoordinated nature of the international and regional initiatives has resulted in a sense of confusion regarding the plethora of organisations engaged in the maritime domain and their areas of responsibility. ECCAS, ECOWAS, MOWCA and the GGC all have maritime security interests. This has resulted in too much intergovernmental duplication without tangible results. Second, there has been a lack of legislative and judicial arrangements. Although the Gulf of Guinea countries are parties to most of the international conventions concerning maritime safety and security, very few of them have ratified the conventions domestically. The conflicting maritime laws and regulations of various countries also create difficulty in taking a collective stand against the threat of piracy.

It is interesting to note that piracy in the Gulf of Guinea has deep roots in the weak governance of regional states and their inadequate legal infrastructure and law enforcement capacity. The thriving local black market for crude oil represents a grim picture of the overall structural problems within the Gulf of Guinea states. This leads to the proposition that a practical solution to the problem will depend on the political will of regional governments to take the required steps to curtail the criminal activity.

In recent times, piracy in the Gulf of Guinea has developed into an organised criminal enterprise. Despite various efforts to suppress piracy, there appears to be no limit to its growth. The numerous actions in practice have only offered some solution to the prevailing and persistent threat. While some of these efforts have had positive results to contain the problem, most have failed to offer any definitive solution. These measures have largely proven to be neither comprehensive nor sustainable in the long term. In most cases, much effort has been narrowly focused on military solutions. However, combating piracy in the Gulf of Guinea requires a more comprehensive and multilateral approach. First, the capacity of all agencies (military and civilian) engaged in maritime governance has to be strengthened. Second, the regional countries, particularly Nigeria, should enforce a zero tolerance policy towards corruption in the various sectors of its governance. Third, a subregional agreement on the right of hot pursuit has to be developed to allow the navy of
one country to arrest pirates in the territorial water of neighbouring countries. Fourth, piracy has to be deterred by ensuring effective apprehension, prosecution and incarceration of pirates and their networks. Lastly, the most durable long-term solution to piracy has to be through improvement of oil sector governance. The successful reduction of piracy in the Gulf of Guinea will not only be attributable to the solutions outlined, but will require a combination of several other factors, including joint maritime surveillance, self-protection of commercial vessels and capacity-building efforts onshore.

For the fight against piracy in the Gulf of Guinea to be effective, it is also recommended that regional states expedite the process of fully implementing the Yaounde Code of Conduct. This would help in developing a regional anti-piracy architecture to combat the growing threat. To ensure the practical application of the Code, the IMO can play a significant role in encouraging states to act, and can mobilise international support for the required regional activities such as information sharing and capacity building.
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