

THE LEGAL FRAMEWORK FOR MARITIME TERRORISM AND CRIMINALITY IN NIGERIAN COASTAL WATERS

Oladipo, Alaka*

Abstract

The paper focuses on the legal framework for maritime terrorism and criminality in Nigerian coastal waters. The Nigerian waterways are strategic for global commerce and international security. The bulk of international trade is through maritime transportation. This vital waterway has remained the world's most dangerous hotspot for maritime criminality and terrorism. The paper used doctrinal research method in examining the causes and effects of maritime terrorism and criminality. It examined the provisions of the International Safety Management (ISM) Code and the domesticated international conventions and protocols put in place to ensure maritime safety and security at sea. It also evaluated the effectiveness of the safety measures to combat maritime terrorism; and proffered pragmatic solutions to maritime terrorism in Nigeria.

Keywords: Maritime; Terrorism; Criminality; Coastal Waters; Nigeria.

1. Introduction

The focal point of this paper is on the legal framework for maritime terrorism and criminality in Nigerian coastal waters. The maritime industry is responsible for about 90 per cent of world trade. The maritime domain is a very important sector upon which, the smooth functioning of the Nigerian economy is clearly and firmly anchored. Maritime transport provides a dependable low-cost means of transporting goods globally, facilitating commerce and helping to create prosperity among nations.

The coastal states of Nigeria have several strategic national assets. The assets include the refineries, Calabar Export Processing Zone, about 10 crude oil loading terminals and seaports in Lagos, Warri, Port Harcourt and Calabar. Others are Nigerian National Petroleum Corporation (NNPC) tank farm at Atlas Cove, several other private tanks farms and dockyards for ship repairs. The seaports are not only gate way to the nation's economy they also serve as transit nodes for some neighbouring land locked countries like Niger and Delta. According to Paul Usoro, "about 2 billion US Dollars was realised from shipping activities within the companies operating in the oil industry in Nigeria."¹ With vast amounts of capital in

* Alaka Oladipupo, LL.B, B.L., LL.M (UNILAG), LL.M (LASU), M.S.c., M.Phil (OAU), Ph.D. (OAU), Lecturer, Faculty of Law, Lagos State University, Ojo, Lagos, Tel: 08023114560, E-mail: alakaoladipo@gmail.com.

maritime assets and cargoes, the security of the maritime industry is important and as such, the security and safety of maritime industry is paramount to the international community.

Act of maritime terrorism has continuing threatening maritime security by endangering, in particular, the welfare of seafarers and the security of navigation and commerce. These criminal acts result in the loss of life, physical harm or hostage-taking of seafarers, significant disruptions to commerce and navigation, financial losses to ship owners, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment. The maritime terrorists' threats are possible attacks on a port facility, oil installation facility or a ship at sea or in a port. It also addresses the supply chain issues or the use of the maritime transportation system to carry terrorists or their materials (a weapon of mass destruction (WMD) possibly through the use of shipping containers).²

The shipping industry – merchant and naval vessels alike – has not escaped the devastation brought on by terrorists and terrorism. The maritime world has had its share of infamous events such as the hijacking of the *Achille Lauro* (1985), the *Petro Ranger* (1998), and the *Han Wei* (2002), as well as the attacks on the *USS Cole* (2000) and the *Limberg* (2002).

2. Concept of Security

The word security is defined as the degree of resistance to, or protection from harm and it applies to any vulnerable valuable asset such as a person, dwelling, community, items nation or organisation. It is also defined as the state of being protected or safe from harm, the freedom from danger, fear or anxiety, and the measures taken to guard against espionage or sabotage, crime, attack or escape. The concept of security as normally understood must be expanded to “the state of a shipping company/vessel/crew/port, being or feeling secure” or “the safety of a shipping company/ vessel/crew/port against such threat as terrorism, piracy and other criminal activities”.³ Security is an inherently blurred concept but the crucial difference between security and safety is that security has to take into account the actions of active malicious agents attempting to cause destruction.⁴

2.1 Definitions of Maritime Security

-
1. Journal of Maritime Law & Commerce ‘*Historical and Legal Aspects of Piracy and Armed Robbery Against Shipping*’ July, 2012 available at <http://oosspm;ome.net/historical-and-legal-aspects-of-piracy-and-armed-robbery-against-shipping/> accessed 11/12/2014.
 2. Radio Netherlands Worldwide: Africa. “Nigeria says latest arms shipment from Belgium”. 25 November 2010 <http://www.rnw.nl/africa/bulletin/nigeriasays-latest-arms-shipment-belgium> Accessed on 15 December, 2014.
 3. Jones, S. “Maritime security – A practical guide”. 2nd Ed. The Nautical Institute, 1.
 4. *Ibid*.

Maritime security is a buzzword and no consensual definition has emerged on the concept. The absence of a universal definition is not necessarily a problem given the political character of the term, and the need for having country and region specific understandings of what challenges maritime security poses. In outlining situation specific working definition, it is important to avoid two approaches. Firstly, the laundry list approach, in which the concept is defined as the prevention of a threat, which is not further prioritised. Secondly, the normative approach, which equates maritime security with an idealised understanding of “good order at sea” without specifying what this order is supposed to be or whose order it will be.

A relational definition proposed by Bueger, an alternative approach, which concentrates on identifying the relations of maritime security to other concepts that deal with the governance of maritime space. As he argued, in particular, the relation to four concepts is vital: sea power, marine safety, the blue economy and the human security of coastal populations. These four concepts are established and point to different challenges of maritime governance which may or may not be integrated into maritime security. Sea power concerns the role of military force and the maritime dimension of inter-state war and threats to national survival. Marine safety concerns the regulation of shipping, port security, the safety of seafarers, search and rescue provision, but also the protection of the marine environment. Blue economy concerns the economic opportunities that are offered by the maritime, ranging from resource extraction to tourism. Finally, human security considers the living conditions of coastal communities dependent on the sea; in particular, their food security and the risk of their marginalisation in land focused governments. Linking the concepts to each other, whether and how the tasks associated with these four concepts are integrated into maritime security is a question of national and regional political priorities. It is also a question of capabilities and resources.

Maritime security can also be defined as “those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and their marine organisations or establishments to *protect against seizure, sabotage, piracy, pilferage, annoyance, or surprise*”.⁵

2.2 Maritime Safety

Maritime safety are those measures employed by owners, operators, and administrators of vessels, port facilities, offshore installations, and other marine organisations or

5. Kenneth Gale Hawkes, “Maritime Security” (Centerville, Md: Cornell Maritime Press, 1989).

establishments to *prevent or minimise the occurrence of mishaps or incidents at sea that may be caused by substandard ships, unqualified crew, or operator error.*⁶

Maritime security is therefore defined as the state of being protected or safe from harm, the freedom from danger, fear or anxiety, and the measures taken to guard against espionage or sabotage, crime, or attack in connection with the sea or any navigable water body, especially in relation to seaborne trade, river commerce or naval matters.

3. The Components of Maritime Security at Port

3.1 Port Security

The port security requires security measures at ports in order to reduce the risks and to mitigate the results of an act that threatens the security of personnel, facilities, vessels, and the public. The regulations draw together assets within port boundaries to provide a framework to communicate, identify risks and coordinate resources to mitigate threats, and its consequences. The port security must ensure that the total port security posture is accurately assessed, and that security resources are appropriate to meet these programmes. The port security must identify critical assets within a port, develop a prioritised list of those most susceptible to acts of sabotage, and plan for adequate security measures to meet specific needs.

3.2 Vessel Security

The ISPS Code regulates vessel security. The regulations require the owners or operators of vessels to designate security officers for vessels, develop security plans based on security assessments, implement security measures specific to the vessel's operation, and comply with Marine Security levels.

3.3 Facility Security

A facility is defined as any structure or facility of any kind located in, on, any waters and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation. Some examples of facilities are:

- i. Barge fleeting facilities.
- ii. Container terminals.
- iii. Oil storage facilities.
- iv. Passenger vessel terminals.

6. Mukherjee, P. K. (eds.) "Maritime Violence and other Security Issues at Sea". The proceedings of the symposium on Maritime Violence and other Security Issues at Sea 26-30 August 2002 jointly organised by World Maritime University Malmo, Sweden and University of Wales Swansea, WMU Publication 2002, 28.

3.4 Importance of Maritime Security

Some of the importance of maritime security and safety in Nigeria are:

- i. Reduction in the high level of illegal, unreported and unregulated fishing (officially known as IUU fishing) which had initially led to the depletion of fish stocks, damage to coral reefs, stress on mammals, and near extinction of some fish species.
- ii. Combating the menace of illegal offshore oil exploration.
- iii. Maritime security is important in the area of helping to combat and reduce the scourge of illegal human trafficking on the seas.
- iv. Maritime security is important in the area of combating terrorism on the seas.
- v. Maritime security is important in helping to curb the numerous incidences of sea robbery, piracy on the seas, and hijacking of ships and other ocean going vessels.
- vi. Adequate maritime security reduces the incidence of illegal dumping of toxic or radioactive waste into water bodies.
- vii. Adequate maritime security helps in the reduction of large scale water pollution problems.

4. Maritime Security and International Legal Instrument: The International Ship and Port Facility Security (ISPS) Code

The ISPS Code set the tone for promoting security awareness or a security culture aboard ship. The objective of the ISPS Code is “to establish the respective roles and responsibilities of the contracting government, government agencies, local administrations and the shipping and port industries, at the national and international levels for ensuring maritime security”.⁷ In addition, the Code provides detailed procedures relating to documentary requirements such as the declaration of security ship security assessments, ship security plans, port facility security assessments, port facility security plans and a number of records relating to various activities concerned with security preparedness. Together with stringent control provisions that threaten non-compliant vessels with detention or exclusion from ports.⁸

The International Ship and Port Facility Security (ISPS) Code is a mandatory instrument against maritime terrorism. The Code was developed to protect the international community

7. Section 1.2 of the ISPS Code.

8. Contemporary Issues in Maritime Security. A selection of papers and presentations from the workshop – symposium on the practical implementation and critical evaluation of the ISPS Code 11-15 August 2003 and the international symposium on contemporary issues in Maritime Security 30 August to 1 September 2004. Organised and held in Malmo, Sweden by the World Maritime University. WMU Publication, 51.

against terrorism.⁹ ISPS Code is an amendment to the 1974/1988 Safety of Life at Sea (SOLAS) Convention on the minimum security arrangements for ships, ports and government agencies. Initially, the ISPS Code was met with some scepticism from seafarers. However, the Code is now an accepted part of shipping and port safety.

In reaction to the 9/11 attacks¹⁰ and the bombing of the French oil tanker *MV Limburg*. The development and implementation of ISPS Code were sped up drastically. The ISPS Code was agreed upon at a meeting of the 108 signatories to the SOLAS convention in London in December 2002. The measures agreed upon under the Code were brought into force on 1st July 2004. The time period between adoption and enforcement was 18 months. Within that time, about 50,000 ships were certified. Hundreds of thousands of seafarers and personnel were educated for their new roles as ship security officers and company security officers. ISPS Code is labelled as the comprehensive security regime for international shipping with deliberate guidance on maritime security for ships and ports.

The ISPS Code consists of two components. Part A provides the minimum mandatory requirements that ships (represented by their respective firms) and ports (represented by the contracting government) must follow. Part B provides more detailed but not compulsory guidelines and recommendations in the implementation assessments and plans. Part A illustrates the principles maritime stakeholders need to follow while Part B discusses how such principles should be put into practice. In theory, compliance with the ISPS Code should reduce the vulnerability of port facilities and ships to maritime attacks by terrorists and pirates.

Three parts of the ISPS Code directly related to port security are:

- i. Changing security levels (L1, L2 and L3).¹¹
- ii. Responsibilities of the contracting government which includes the appointment of a designated authority dedicated for port security affairs. Also establishing an administrative structure in supporting the DA to carry out its duties and local support.
- iii. Port security which includes the procedures of undertaking Port Facility Security Assessment (PFSA), preparing Port Facility Security Plans (PFSP) and appointing Port Facility Security Officer (PFSO).¹²

9. Lars Bergqvist – *The ISPS Code and Maritime Terrorism*, Centre for International Maritime Security. www.cimsec.org/isps-code-maritime-terrorism/12098.

10. 11th September 2001 when hijacked aircrafts flew into the twin towers of the World Trade Centre, destroyed part of Pentagon and crashed on a field in Pennsylvania in United States of America.

11. Similar to the Maritime Security Level (MARSEC) system.

In compliance with the ISPS Code, all ships over 500 gross tonnage and critical facilities within the port's domain are obliged to conduct vulnerability assessments and develop security plans to deter potential terrorist attacks. Such assessments and security plans include:

- i. passenger, vehicle and baggage screening procedures,
- ii. security patrol,
- iii. the establishment of restricted areas and its execution,
- iv. procedures for personal identification,
- v. access control,
- vi. installation of surveillance equipment, etc.

Objectives of the ISPS Code

- i. The implementation of security measures.
- ii. The detection of security threats.
- iii. The collation and promulgation of information related to maritime security.
- iv. The provision of reliable methodologies in assessing maritime security risks.
- v. The development of detailed security plans and procedures in reacting to changing security levels
- vi. The establishment of security-related roles and responsibilities for contracting governments (and their administrations), shipping companies and port operators at national and international levels and provision of professional training.

5. Maritime Security in Nigeria

Maritime security of Nigerian coastal waters is provided by governmental agency, the Nigerian Navy, international bodies and special organisations and bodies. They include Nigerian Maritime Administration and Safety Agency, International Maritime Organisation, Nigeria Navy, Recognised Security Organisation, amongst others.

5.1 Nigerian Maritime Administration and Safety Agency

Nigerian Maritime Administration and Safety Agency (NIMASA) by virtue of Section 22(1) and Section 22(4) of the NIMASA Act 2007 and Section 2(1) of the Merchant Shipping Act 2007, all maritime safety functions are to be performed by this Agency. This makes them the designated authority responsible for maritime security. As part of the Agency responsibilities, the Agency carries out its Maritime Safety, Maritime Security operations and Seafarers Standard Training and Certification functions through these outlets:

12. Hong Kong and Adolf, Y. Ng – The International Legal Instruments in addressing Piracy and Maritime T Terrorism: A Critical Review.

- i. Maritime Survey and Certification
- ii. Seafarers Standard and Training
- iii. Emergency Services
- iv. Hydrographic Services
- v. Casualty Investigation
- vi. Flag Survey Services (at principal operation areas)¹³

5.2 Nigerian Navy

Alongside NIMASA, the Nigerian Navy protects maritime security of Nigerian coastal waters. The Nigerian Navy is the maritime branch of Nigerian Armed Forces. The 1964 Navy Act assigned it with the task of defending territorial waters among other tasks. The roles of the Nigerian Navy were derived from the Constitution of the Federal Republic of Nigeria 1999, Nigeria's Defence Policy, and the Armed Forces Act Cap A20 Laws of the Federation of Nigeria 2004. The roles assigned to the Nigerian Navy by these documents could be classified into three. These are military, policing and diplomatic roles.

5.2.1 Military Roles

The military roles include:

- i. Force projection functions
- ii. Balance of power functions.

5.2.2 Policing Role

The policing role of the Nigerian Navy deals with the maintenance of law and order within the internal waters, territorial waters, contiguous zone and Exclusive Economic Zone (EEZ).

5.2.3 Diplomatic Roles

Diplomatic roles include:

- i. Negotiation from position of strength.
- ii. Manipulation.
- iii. Prestige.

It is incumbent on the Nigerian Navy to maintain law and order within the exclusive economic zone since a coastal state has exclusive access to the living and non-living resource within this zone. The functions of the Nigerian Navy under this role are in the areas of coast guard duties and nation building. The Coastguard duties are mainly in the enforcement of Customs exploration while the national duties roles involve military aid to civil power authority. All these roles and tasks maintain maritime security.

13. <http://www.nimasa.gov.ng/services/maritime-safety-security>.

5.3 International Maritime Organisation

The International Maritime Organisation (IMO) is the sole United Nation's specialised agency exclusively devoted to maritime affairs. IMO has been providing a forum for cooperation among governments in the field of government regulations and practices relating to all kinds of shipping engaged in international trade. It has facilitated the adoption of comprehensive multilateral treaties for a wide range of technical measures. IMO has adopted the highest practicable standards designed to enhance safety, security and efficiency in shipping engaged in international trade. The International Maritime Organisation mandate is to make trade and travel by sea as safe and secure as possible.¹⁴ Also, the organisation is to mitigate and manage any potential threat to maritime security. Maritime Safety Committee of the IMO develops suitable regulations and guidance.

6. Maritime Terrorism

Terrorism is not new maritime security threats; the terrorist attacks on the United States on September 11, 2001 highlighted the potential for terrorists to use other means of transport to wreak death, destruction, and economic havoc.

The concept of maritime terrorism was initially understood within the context of piracy whereby an unauthorised act of violence on the high seas would be characterised as piracy.¹⁵ However, as the formal definition of piracy under international law came to be understood as limited to acts of violence perpetrated for financial purposes, there were still acts of violence at sea undertaken for political or other 'public' reasons. These violent acts, if performed outside the territorial sea, were not recognised as crimes over which all states could exercise jurisdiction, as is the case with piracy.¹⁶ Instead, these acts came to be branded as maritime terrorism. Joyner describes maritime terrorism as 'the systematic use or threat to use act of violence against international shipping and maritime services by an individual or group to

14. www.imo.org/en/OurWork/Security/Pages/MaritimeSecurity.aspx.

15. Jose Luis Jesus, 'Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects' (2003). 18 IJMCL 363, 378, Malvina Halbertam, "Terrorism on the High Seas: The *Achille Lauro*, Piracy and the IMO Convention on Maritime Safety (1988) 82 AJIL 269, 273.

16. Halberstam argued that universal jurisdiction should apply to terrorism: "Terrorists today, like pirates of old, are a threat to all states and no state is willing to assume responsibility for their acts. Since they do not confine their attacks to the vessels of a particular state, but attack vessels and nationals of many states indiscriminately, they are *hostis humani generis* in the truest sense. Since no state has accepted responsibility for their acts, there is no state against which claims for redress can be made. Halberstam, "Terrorism on the High Seas" 289.

induce fear and intimidation in a civilian population in order to achieve political ambitions or objectives.¹⁷

The issues surrounding maritime terrorism and the rights of states to prescribe and enforce jurisdiction over these acts of violence outside the territorial sea came most strongly to the fore in contemporary international law with the hijacking of an Italian vessel, the *Achille Lauro*, and murder of a US national on board by Palestinian Liberation Forces in 1985.¹⁸

7. Terrorism Defined

The United Nations defines terrorism as “any action ... that is intended to cause death or serious bodily harm to civilians or non-combatants when the purpose of such an act is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing any act”.¹⁹

The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Cynics have often commented that one state’s terrorist is another’s freedom fighter. A consistent lesson of crime and terrorism is that the perpetrators increasingly aim at what they perceive as soft targets.²⁰ The nature of shipping means that attacking maritime targets has never been particularly easy, requiring a greater sophistication in planning, training and coordination. This is why maritime terrorism is relatively rare, and why terrorists have looked at more obvious objectives, but there are likely scenarios for maritime terrorist attack capabilities – instances like using explosives – laden suicide boats and light aircraft, using merchant and cruise ships as kinetic weapons to ram another vessel, warship, port facility or offshore platform, commercial vessels as launch platforms for missile attacks; swimmers to infiltrate port and unmanned underwater explosive delivery vehicles.

-
17. Christopher C. Joyner, “Suppression of Terrorism on the High Seas: The 1988 IMO Convention on the Safety of Maritime Navigation (1989) 19 *Israel Yearbook on Human Rights* 341, 348. Menefee defines maritime terrorism as ‘any illegal act directed against ships, their passengers, cargo or crew, or against sea ports with the intent of directly or indirectly influencing a government or group of individuals’. Samuel Pyeatt Menefee, “Terrorism at sea: The Historical Development of an International Legal Response” in Brian A. H. Parritt (ed), *violence at sea* (Paris, 1986) cited in Donna J. Nincis, “The Challenge of Maritime Terrorism: Threat Identification, WMD and Regime Response” (2005) 28 *Journal of Strategic Studies* 619, 620. In crafting his definition, Joyner acknowledges that the definition of terrorism have been ‘Woefully unsatisfactory’ *ibid*, 348. For a comprehensive analysis of this issue, see Ben Saul, *Defining Terrorism in International Law* (OUP, Oxford 2006).
 18. Natalie Klein, “Maritime Security and the Law of the Sea”. Oxford Monographs in International Law. Oxford University Press, 2011 p. 148.
 19. A more Secure World: Our Shared Responsibility Report of the High-Level Panel on Threats, Challenges and Change. United Nations 2004.
 20. Post-Sept 11, terrorists increasingly take aim at ‘soft targets’ by Jonathan S. Landay. <http://www.globalsecurity.org/news/2005/050708-soft-targets.htm> July 2005.

Terrorists could also take advantage of a vessel's legitimate cargo, such as chemicals, petroleum or LNG, as the explosive component of an attack. Vessels could be used to transport powerful conventional explosives or weapons of mass destruction (WMD) for detonation in a port or alongside an offshore facility.²¹

The 1985 attack on *Achille Lauro* is perhaps the most well-known concrete case of maritime terrorism in modern times.²² In 1985, this Italian-flagged cruise ship was seized while travelling on the high seas from Alexandria to Port Said, Egypt, allegedly by a Palestinian guerrilla group. They threatened to kill the British and American passengers unless Israel was to liberate 50 Palestinian prisoners. When their demands were not met, they killed an American passenger. This *Achille Lauro* hijacking was qualified by some states, including the United States,²³ as piracy. However, this was not really an act of piracy under the international sea piracy law since there was not private end being pursued here. In addition, the seizure did not meet the two-vessel requirement, essential for the characterisation of piracy. The terrorists were acting for sheer political goals,²⁴ and the motivation being political, it would not have fallen in the definition of piracy under the law of nations. It was felt that in order to deal effectively with future cases of maritime terrorism from a judicial point of view; a specific international regulation was needed to secure the prosecution and punishment of the offenders, since the piracy laws seemed to be inadequate to that end. This was the position of the *Achille Lauro* flag state, Italy, which soon after the conclusion of the *Achille Lauro* affair, called for the international community's attention to the requirement for a Convention on maritime terrorism, in order to fill a lacuna in the legal framework of the fight against international terrorism.

This same point was made clear during the proceedings of the Conference that negotiated the SUA Convention by the UN Secretary General Representative. The mere fact of the adoption of the SUA Convention stands testimony that the international sea piracy rules cannot handle terrorist activities at sea.²⁵

21. The National Strategy for Maritime Security President George W. Bush November, 2004.

22. There are other less publicised cases of maritime terrorism, such as the 1997 attack on a cargo ship and a passenger ferry in the Philippines, carried out by the Moro Islamic Liberation Front. Also, many Tamil rebels perpetrated attacks in Sri Lanka against ships, including the 1977 attack against the bulk carrier *Panana* by the same group, which ended up in the killing of 35 people (Gottschalk and Flanagan, note above, p. 131) See also the case of the 1985 seizure of a Japanese freighter, *Sheiro Maru*, in the Philippines by a Philippine revolutionary group.

23. See statement made by the President of the USA, *NY Times*, 12 October 1985.

24. Ronzitti.

25. Some writer have suggested that even if the Law of the Sea Conventions provisions on piracy exclude acts of terrorism, such acts could be covered by customary international law which, in their view, has a

Theorist acts aimed at seizing and hijacking ships for political ends, like the seizure of *Achille Lauro*, therefore do not fall under the international sea piracy rules codified in the 1958 HSC and later absorbed “*in integra*” by the LOSC.²⁶ Faced with a situation of international law vacuum, as it were, to handle the offenders of the *Achille Lauro* hijacking, Italy, supported by other countries involved in the incident, proposed the adoption of the SUA Convention.²⁷

8. Response of the International Community to Increased Concern over Sea Terrorism

In the aftermath of the terrorist attack on 11 September 2001 in New York City, serious concern was raised in the shipping community in respect of the prospect of terrorist attacks against ships or against targets such as port facilities by using ships as terrorist weapons, pretty much in the same way the planes were used as weapons against the Twin Towers.

Since then, a number of initiatives have been taken to address this concern. In this context, IMO has been very active. It has lent much support to and displayed a strong leadership in helping to bring about technical, administrative and legal measures with a view to reinforcing maritime security. It took in this regard the following two sets of important initiatives:

- i. the holding of a Conference on Maritime Security in December 2002 to adopt far-reaching security measures;
- ii. the starting of preparatory work for the convening of a States Party Review Conference of the SUA Convention to update its object and purpose in the light of events.

9. IMO 2002 Conference on Maritime Security and Review of the SUA Convention

Within IMO’s framework, a Conference on Maritime Security was held in December 2002 in London which took, among others, the following measures, as mentioned before:

- i. amendment of Chapter XI of the SOLAS Convention, creating a new Chapter XI-2 totally dedicated to maritime security, and adoption of a Code on International Ship

much wider definition of piracy, including the acts of terrorism. The *travaux pre Aparatoires* of the codification of this matter by the 1958 High Seas Convention as well as the excellent work done in this regard by the Harvard Draft Convention on Piracy shows clearly that there was a great deal of confusion in the “traditional wisdom” as to which acts should be considered piracy. In such case it would seem difficult to draw help from such an approach. Besides, once the codification of rules of customary international law is made, those rules will have the understanding given to it by the Convention formulation, which in a way, in codifying customary international law crystallises its content.

26. A statement made during the SUA Conference by the Special Representative of the UN Secretary General, made it clear that the two-vessel requirement and the private ends criterion made rules on piracy inapplicable to maritime terrorism, IMO Doc. SUA/CONF/RD 13.
27. As of this date, there are 83 contracting parties to the SUA Convention.

and Port Security (ISPS Code); this new Chapter XI-2 and the ISPS Code, introduced far reaching measures to prop up the security of ships and port facilities;

- ii. imposition of strict requirements on shipping companies, ships and port facilities which, if implemented properly, will have a strong impact on curbing the possibilities of terrorist attacks against ships and their crews and cargo and will “ensure of chain custody for containers, from their port of origin to their destination”;²⁸
- iii. the various requirements now being imposed on shipping companies, ships and port facilities, personnel movement control in and access to ports and ships, and on ship and cargo information before arrival at port of destination, for increased maritime security, both against piracy or armed robbery attacks and acts of terrorism;
- iv. likewise, the ship-to-shore automatic communication through an alert system to be installed on board will significantly strengthen the maritime security apparatus, which will make it far more difficult for maritime terrorism to strike.

10. Distinguishing Maritime Terrorism from Piracy

As it is the case with many other threats facing the international community, what defines piracy and terrorism often lies in the eye of the beholder. How one state perceives these threats may be vastly different from how another state perceives them. This lack of definitional consensus has significant implications and impedes sound policy development. Maritime terrorism and piracy are two distinct phenomena that exist for different reasons; many of their characteristics tend to overlap.²⁹ This overlap has led to misperceptions about these concepts and the dangers they pose to the expansive and largely ungoverned maritime domain.

There are two organisations however, the International Maritime Bureau (IMB) and the Council for Security Cooperation in the Asia Pacific (CSCAP), that offer noteworthy definitions for piracy and maritime terrorism. The 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 furtherance of that act*”.³⁰

28. www.imo.org/Newsroom/Mainframe.asp?topic_id=67&doc_id=1746.

29. “The Challenges of Modern Piracy”. In *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st Century*, edited by M. R. Haberfeld and Agostino von Hassell, 177-203. Dubuque, IA: Kendall Hunt.

30. “The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States”. *RAND Corporation*. http://www.rand.org/pubs/monographs/2008/RAND_MG697.pdf. Cheloukhine, Serguei and Charles A. Lieberman, 2009. “Russia, Pirates, and Maritime Terrorism”. In *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st century*, edited by M. R. Haberfeld and Agostino von Hassell, 177-293. Dubuque, IA: Kendall Hunt.

While CSCAP defines maritime terrorism as:

“The undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities.”³¹ Combining these definitions with the motivations, methods, and targets of terrorists and pirates operating at sea it will allow for a distinction between maritime terrorism and maritime piracy.

The targets and methods used by pirates will vary from those chosen by terrorists. Unlike pirates, maritime terrorists target vessels that will have some effect on the political objective they are trying to achieve. Thus, targets that are chosen by terrorists fall into four categories

- i. Ships as iconic targets;
- ii. Ships as economic targets;
- iii. Ships as mass casualty targets;
- iv. Ships as weapons”.³²

As iconic targets, terrorists attack ships that are symbolic to the target-state, the attack is directed toward ships that serve as economic targets, that when attacked may disrupt the economic activity of the adversarial state, such as oil tankers and oil platforms. Any ship that is carrying a large amount of passengers (e.g. cruise ships and ferries) is a potential mass casualty target of terrorism. As a potential weapon, terrorists may place explosives on board a ship and detonate it on or offshore.³³ Additionally, terrorists can use ships as weapons by driving them into another ship, potentially one that has volatile cargo. An attack on either of these targets has the potential to cause chaos and spread fear among the population.

Terrorists often use small boats to carry out attacks against unsuspecting ships. Similar to pirates, terrorists prefer small boats because of their speed and acceleration, manoeuvrability, and ability to evade radar detection. In addition, they are less expensive and less conspicuous.³⁴ Unlike pirates however, terrorists are less likely to board the ship. Considering that terrorists are politically rather than economically driven, they are more likely to destroy

-
31. “The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States”. *RAND Corporation*. http://www.rand.org/pubs/monographs/2008/RAND_MG697.pdf. Cheloukhine, Serguei and Charles A. Lieberman, 2009. “Russia, Pirates, and Maritime Terrorism”. In *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st century*, edited by M. R. Haberfeld and Agostino von Hassell, 177-293. Dubuque, IA: Kendall Hunt.
 32. *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World*. New York: Columbia UP.
 33. Ibid.
 34. Ibid.

the ship to send a political message to their adversaries.³⁵ The targets and methods of attack for pirates and terrorists are different, because of different motivations of pirates and terrorists.

Also, piracy confers on any state a common jurisdiction to board, search, seize ship and cargo and arrest (police or enforcement jurisdiction, prosecute in its own court system and punish offenders (judicial jurisdiction), in the case of maritime terrorism, states parties to the SUA Convention enjoy only a judicial jurisdiction by default, that is, if the state party in whose territory a terrorist offender is found does not prosecute such offender, then the jurisdiction to prosecute is devolved to a state party that under the said Convention can assert jurisdiction in the case.

It is suggested that there is no reason why a similar jurisdiction treatment, recognise for centuries to piracy, should not also be extended to maritime terrorism. They are both deadly illegal activities affecting ships, persons and property and to fight both in more effective way states should be able not only to prosecute the offenders but also to exercise police jurisdiction allowing them to take preventive actions to search and arrest ship and terrorist offenders, before attacks occur.

On the “Prosecute or Extradite” Clause, the fundamental purpose of the international regulations applicable to acts of terrorism at sea, as contained in the SUA Convention, is the consecration of the “prosecute or extradite” requirement. Conversely, in the case of the international legal regime on piracy as contained in the LOSC, or in the case of armed robbery against ships, there is no obligation to prosecute or extradite piratical offenders for prosecution in other states. As a result, some offenders go unpunished for vicious crimes of piracy. The effectiveness of measures to suppress and control piracy would become much stronger if the “prosecute or extradite” clause were also to be applied to the piracy regime.

The provision of Article 5 of the SUA Convention imposes a legal obligation on states parties to contemplate penalties in their domestic legislation commensurate to the gravity of the terrorist act. Such an obligation does not exist in the case of piracy. Indeed, some states might not even have these criminal frames in their domestic legislation. Such obligations should also be imposed on states in the case of piracy to make sure that offenders of armed robbery

35. “Countering Maritime Terrorism in the Caribbean Sea and the Atlantic Ocean: Implications of Possible Maritime Terrorism in the Caribbean”. In *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st Century*, edited by M. R. Haberfeld and Agostino von Hassell, 155-175. Dubuque, IA: Kendall Hunt.

against ships will not go unpunished just because the domestic legislation does not qualify as crimes the acts of piracy or armed robbery of which the offender are accused.

The international sea piracy law, in contrast with the SUA Convention, seems to be handicapped by the fact that its geographical scope of application excludes territorial waters, a maritime zone where the majority of piratical acts, better known as armed robbery against ships in the IMO definition, take place nowadays. If these acts are to be seriously confronted and suppressed then it is imperative that the international legal regime on piracy applies also to territorial waters, as established in the international regulations on maritime terrorism.

10.1 Instances of Terrorism against Shipping

Prior to September 11, all anti-terrorism legislation reflected major responses to terrorist attacks. The first two statutes came, following the 1985 hijacking of the Mediterranean cruiser ship, *Achille Lauro*, by terrorists connected with the Palestine Liberation Organisation (PLO), which resulted in the murder of Leon Klinghoffer, a disabled American citizen and Jew.³⁶ To protect the American citizens outside the jurisdiction of the USA from terrorist attacks, the Congress passed the Omnibus Diplomatic Security and Antiterrorism Act of 1986.³⁷

Later, the American government acted to identify and to broaden the scope of terrorism in its subsequent legislation after the Anti-Terrorism Act of 1986 and the Federal Court Administration Act of 1992, which defined the scope of international terrorism. Following the events of the World Trade Centre bombing and the Oklahoma bombing, the Congress passed the Anti-terrorism and Effective Death Penalty Act of 1996. This legislation was primarily a source of prevention and suppression of terrorism by US authorities. Another maritime terrorism on America was the attack on a US Warship *Cole*, on October 12, 2000. While it was anchored in the port of Aden, terrorists attacked the *Cole* using suicide bomb on a supply raft, killing 17 US sailors.

Another attempt was committed against a French oil tanker two years later in the same place.³⁸ This time they were more successful, causing damage and distraction from the enormously huge explosion. These two events alarmed U.S. officials, but not enough until the destructive events on 9/11. Though USA legislation was already advanced in terms of

36. David Jenkins, "In support of Canada's anti-Terrorism Act: A comparison of Canadian, British and American Anti-Terrorism Law" (2003) 66 Sask L. Rev. 419.

37. (22 USC. 4831 et seq.)

38. Al Mukalla, "Evidence Points to Yemen Terror Attack" CBC News (March 16, 2006), online: CBC News <<http://www.cbcnews.com/stories/2002/10/06/world/main524488.shtm>>

combating terrorism, they had to add regulations in life of the new events. In addition to the existing laws prior to the events of 9/11, the USA Patriot Act became a more powerful instrument to combat domestic and international terrorism.³⁹ The main provisions, though quite comprehensive in terms of terrorism, were aimed at adapting necessary measures to prevent and suppress acts of terrorism. The USA Patriot Act Provisions⁴⁰ include the term “maritime terrorism”. This Act dealt primarily on the operational level, deploying military and naval resources to strengthen the border at the sea.

The U.S Congress also institute maritime security legislation.

Maritime Transportation Security Act of 2002 (MTSA),⁴¹ some of the provisions of this legislation are:

- i. The Secretary of Transportation conducts a risk assessment of all vessels and facilities on or near the water to identify those at high risk of attack or accident.
- ii. Local port security committees be set up to better coordinate the efforts of federal, state, local, and private law enforcement bodies, including intelligence agencies, the FBI, Customs, Immigration, and the U.S Coast Guard.
- iii. The Transportation Department develop regulations for secure areas in ports, including identification cards.
- iv. A maritime intelligence system be developed and reporting of crew, passengers, and cargo be improved.
- v. Commercial vessels be equipped with an automatic identification system so that vessels are able to be tracked in U.S. waters.

10.2 Factors Fuelling Maritime Terrorism in Nigeria

i. The Nigerian Navy (NN)

One of the main missions of the Navy is to protect sea commerce. For this reason, fighting piracy and maritime criminality has become a priority of the Nigerian Navy. Section 1 of the Armed Force Act establishes the Armed forces where it provides:

-
39. The *Antiterrorism and Effective Death Penalty Act of 1996* (also known as *AEDPA*) is a series of laws in the US signed into law on April, 24, 1996 to “deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes; on-line: Wikipedia, the free encyclopedia <http://en.wikipedia.org/wiki/Antiterrorism_and_Effective_Death_Penalty_Act_of_1996>.
 40. The *USA PATRIOT Act*, H.R. 3162, incorporated provisions of two earlier anti-terrorism bills: H.R. 2975, which passed the House on 10/12/2001; and S. 1510, which passed the Senate on 10/11/2001. Provisions of H.R. 3004, the Financial Anti-Terrorism Act, were incorporated as Title III in H.R. 3162, online: Electronic Privacy Information Center <<http://www.epic.org/privacy/terrorism/hr3162.html>>
 41. Maritime Transportation Security Act of 2002, online: G-MP U.S. Coast Guard Port Security Directorate <<http://www.uscg.mil/hq/g-m/mp/pdf/MTSA.pdf>>

There is hereby established for the Federation an Armed Forces which shall be maintained and administered as set out in this Act and comprise the Nigerian Army, the Nigerian Navy and the Nigerian Air Force (in this Act referred to as the “Army”, “Navy” and “Air Force”) respectively.

It further confers on the Armed Forces the responsibility of the defence of the Federal Republic of Nigeria by land, sea and air and with such other duties as the National Assembly may, from time to time, prescribe or direct by an Act.⁴²

Specifically, Section 4(a) charged the navy with the following duties:

- i. enforcing and assisting in coordinating the enforcement of all customs, laws, including anti-bunkering, fishery and immigration laws of Nigeria at sea;
- ii. enforcing and assisting in coordinating the enforcement of national and international maritime laws ascribed or acceded to by Nigeria;
- iii. making of charts and coordinating of all national hydrographic surveys; and
- iv. promoting, coordinating and enforcing safety regulations in the territorial waters and the Exclusive Economic Zone of Nigeria.

It is therefore clear from all indications that the Nigerian Navy is basically responsible for the safety of life and property on the sea and the responsibility to protect Nigeria’s territorial waters against foreign attacks as well as other criminal activities perpetrated within the maritime area. It could deploy force, if necessary, to accomplish this mission. But presently, anti-smuggling patrols on the waterways, anti-piracy operations of the Nigerian Navy are gradually going into extinction. Also, the marine section of the Nigerian Police enforcement of ports, harbour and shipping Acts, guards among others is also going into extinction. This is owing to the absence of its men on patrol at the waterways, particularly in Lagos.

Investigations reveal that marine police section is faced with challenges such as lack of adequate equipment to patrol the canals through which robbers gain easy access during and after any operation.⁴³

ii. Political Instability and Unrest

Political instability and unrest is another factor that has been identified as one of the root causes of maritime terrorism in Nigeria. In many of the hotspots, political instability has been identified which sometimes leads to unrest and protests by the citizenry. The crisis generated by the demand of the Niger-Delta people of the southern region of the country over the

42. Section 3, Armed Forces Act.

43. Vanguard, Friday, October 16, 2015, 48.

exploration of the natural resource – petroleum and natural gas later led to attacks on ships and crews in that area. Before the escalation of violence, there has been a subtle demand by the people for the control of their own resources, but the Nigerian constitution only allowed a centrally controlled system whereby all powers concerning finance, fiscal allocation and control of mineral resources are vested in the Federal Government, leaving the states to depend solely on the centre.

iii. Poverty

Maritime terrorism is largely driven by poor economic conditions. The vast majority of maritime terrorists are motivated by poverty and disenfranchisement that afflicts vulnerable targets like fishermen and local traders. Sudden and severe impoverishment, especially among marginal coastal seafaring communities, makes maritime terrorism a viable way to meet basic needs.

11. Recommendations

This paper looks in details at maritime terrorism, maritime security and the safety measures employed to curb maritime criminality. It is discovered that maritime terrorism on the sea poses as a great threat to sea business operation, fishing and international sea born trade.

To this end, this paper recommends the government providing employment opportunities and capacity for self-sustenance, recruitment of ex-servicemen into the joint taskforce and surveillance team of maritime security network, strenuous efforts to check the proliferation and illegal possession of fire arms and persons guilty should be sanctioned and punished, the introduction of radar technology in monitoring the sea and the establishment of Nigeria Maritime Awareness Centres, and equipping the security agencies particularly the Naval officers with modern surveillance gadgets and combatant firearms and warships.

Efforts must be made through training and logistic procurement to develop the capacity of the Nigerian Navy to protect the country's maritime interests within a clearly defined holistic maritime security strategy. Also, there is a need for collaborative networks and strengthen mechanisms to control the proliferation and circulation of illegal small arms in the country.

Achieving sustainable maritime security in Nigeria demands that the root causes of maritime terrorism in Nigeria is effectively tackled. Most security challenges confronting Nigeria have their origin in the progressive failure of governance that serves to undermine human development and generate conflicts within the state. The factors are legion, but corruption, leadership questions and injustice figure as the most prominent causes of insecurity onshore,

which have now been extended offshore. Good governance is therefore absolutely fundamental to achieving sustainable maritime security and development in Nigeria.

The solution certainly rests in the improvement of government accountability. Hence, efforts must be made to address bad governance in Nigeria. The importance of policies designed to curb corruption in Nigeria states, ensure transparency and accountability in the management of national resources, greater investment in human development, and the strengthening of the democratic (especially the electoral) processes to ensure the emergence of credible leaders cannot be over-emphasised.

On the future of the freedom of the seas, every aspect of human life on earth tends to become global, so the crimes of maritime terrorism. Likewise, approaches to combating maritime terrorism should appeal to a better cooperation at global level. States inaction in this respect may be translated into a spiralling increase of terrorist attacks against shipping and persons on board and lead to unprecedented maritime insecurity in modern time. One should not be so resistant to change certain aspects of legal regimes of the international sea piracy provisions or the SUA regulations. For instance, while piracy confers on any state a common jurisdiction to board, search, seize ship and cargo and arrest (police or enforcement jurisdiction) prosecute in its own court system and punish offenders (judicial jurisdiction), in the case of maritime terrorism, states parties to the SUA Convention enjoy only a judicial jurisdiction a terrorist offender is found does not prosecute such offender, then the jurisdiction to prosecute is devolved to a state party that under the said convention can assert jurisdiction in the case.

There is no reason why a similar jurisdiction treatment, recognised for centuries to piracy, should not also be extended to maritime terrorism. They are both deadly illegal activities affecting ships, persons and property and to fight both in a more effective way, states should be able not only to prosecute the offenders but also to exercise police jurisdiction allowing them to take preventive actions to search and arrest ship and terrorist offenders, before attacks occur.

On qualified extension of jurisdiction over territorial waters, the international sea piracy law, in contrast with the SUA Convention, seems to be handicapped by the fact that its geographical scope of application excludes territorial waters, a maritime zone where the majority of piratical acts, better known as armed robbery against ships in the IMO definition, takes place nowadays. If these acts are to be seriously confronted and suppressed, then it is imperative that the international legal regime on piracy applies also to territorial waters, as established in the international regulations on maritime terrorism.

12. Conclusion

This paper focuses on introducing the subject matter. It gives a broad introduction of concepts and ideas as they relate to the maritime sector, maritime piracy and terrorism, effect of terrorists and terrorism on maritime transportation sector, the dimension maritime terrorism seems to be taking in Nigeria and an insight into the thin line of difference between maritime piracy and terrorism. The aims and objectives of this work are examined; in the same vein, the scope and focus of the study were also explained.

Nigeria is no doubt richly endowed in terms of maritime resources which can translate to real economic fortunes if properly tapped; unfortunately, maritime criminality has paralysed the development of the maritime industry.

We must realise that our position as the leading economy in African places some heavy responsibilities on the country thus, the government and every individual must rise to kick against the evil of maritime terrorism lest we head towards an economic doom. The Nigeria maritime industry can sustain the economy if properly developed and maintained and can contribute positively to the Nigerian economy.

What is happening out in the ocean is really an extension of the insecurity and weak law enforcement also taking place on land. Focusing on sea-based solutions alone to deal with maritime terrorism on the Nigerian coast will not be enough. The government needs to take more concrete steps in dealing with on-shore issues such as stronger law enforcement, better community-law enforcement relations, good governance, committed leadership and improved socio-economic conditions in the country.

As every aspect of human life on earth tends to become global, so do the crimes of maritime terrorism. Likewise, approaches to combating maritime terrorism should appeal to a better cooperation at global level. States inaction in this respect may be translated into a spiralling increase of terrorist attacks against shipping and persons on board and lead to unprecedented maritime insecurity.