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**ENFORCEMENT OF INTERNATIONAL ANTI-PIRACY LAWS  
– MARITIME PIRACY IN THE GULF OF GUINEA AND THE  
LESSONS FROM GULF OF ADEN**

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## TABLE OF CONTENTS

ABSTRACT .....	4
INTRODUCTION .....	5
1. INTERNATIONAL LAW .....	7
1.1. HISTORY OF ANTI-PIRACY LEGISLATION.....	7
1.2. INTERNATIONAL ANTI-PIRACY LAWS .....	9
2. CIRCUMSTANCES IN GULF OF GUINEA.....	14
2.1. IMPACT OF STATE STRUCTURE.....	14
2.2. DOMESTIC LAWS.....	16
2.3. COMBINE EFFORT OF GULF OF GUINEA COUNTRIES .....	18
2.4. EFFORTS FROM UN AND OTHER INTERNATIONAL ACTORS.....	20
3. SUCCESSFUL ANTI-PIRACY INITIATIVES .....	23
3.1. ARMED RESOLUTION .....	24
3.2. CAPACITY BUILDING .....	26
3.2.1 Rethinking the International anti-piracy legislation and Jurisdiction.....	27
3.2.2 Addressing motivation behind piracy.....	29
CONCLUSION .....	31
LIST OF REFERENCES.....	34
APPENDICES .....	39
APPENDIX 1. NON-EXCLUSIVE LICENCE .....	39

## **ABSTRACT**

Increasing maritime piracy in the Gulf of Guinea is a growing issue concerning maritime safety in the region. The purpose of this research is to analyse from the international law standpoint reasonings for the lack of enforcement of international laws in the Gulf of Guinea region. The research answers the following question “Are the international- and domestic laws used against piracy in the Gulf of Guinea sufficient enough and if not, how could they be improved? Could anti-piracy methods used in the Gulf of Aden also provide solution in some extent to the Gulf guinea”

By using qualitative research methods and jurisprudential analyse, this study analysis efforts initiated against the Gulf of Guinea piracy from the International, domestic and interstate level and analyses their effectiveness in the region. This research also uses the methods initiated against the Gulf of Aden piracy as a reference point to identify, if the methods used in Gulf of Aden could be applicable against increasing piracy phenomena in the Gulf of Guinea. Study finds that lack of implementation of international conventions, combined with weak regional enforcement capacity, are the most important factors leading to the failure of suppression of piracy and armed robberies in the Gulf of Guinea. The research takes into consideration the challenges these factors have produced, and as a result, propose amendments into international jurisdiction and legislation.

*Keywords:* UNCLOS, Piracy, Enforcement, Gulf of Guinea

## INTRODUCTION

Piracy and armed robberies in seas have become major universal concern in the last 15 years in Gulf of Guinea, where piracy attacks have skyrocketed in the time period. This research will look at the emerging piracy issue in Gulf of Guinea through international laws, domestic laws and intergovernmental initiatives to identified and determinate their effectiveness to suppress the piracy phenomenon in the region.

The Gulf of Guinea consists of 13 countries bordering the Atlantic Ocean - Benin, Togo, Ghana, Nigeria, Equatorial Guinea, São Tome and Prince, Cameroon, Angola, Republic of Congo, Democratic republic of Congo, Gabon, Ivory Coast, and Liberia. Despite the recognition and attempts to reduce piracy from international community, Gulf of Guinea countries had 66 piracy attacks combine in 2019,<sup>1</sup> attacks have increased in the last four years from 2015 numbers of 30 attacks,<sup>2</sup> making the piracy and armed robberies emerging issue in the region. Adding on the severity to matter is that as many as 60% of the piracy activities in the region go unreported, due to shipping companies attempt to prevent an increase to insurance premiums.<sup>3</sup>

Dated international laws alongside with Gulf of Guineas countries' shortcomings at the domestic laws and efforts to implement SUA- and UNCLOS convection have created a jurisdiction vacuum to Maritime region of Gulf of Guinea, allowing pirates and armed robbers to exercise their crimes without major interference from law-enforcements. Gulf of Guinea became the new piracy hotspot in 2018 when its yearly piracy and armed robberies attacks exceeded the number of incidents at south China ocean.<sup>4</sup>

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<sup>1</sup> International Maritime Bureau (2019) piracy and armed robberies against ships Annual Report. Retrieved from [https://www.icc-ccs.org/reports/2019\\_Annual\\_Piracy\\_Report.pdf](https://www.icc-ccs.org/reports/2019_Annual_Piracy_Report.pdf) , 5 April 2020.

<sup>2</sup> *Ibid.*

<sup>3</sup> De Luce, D. (2016) *Why Is It So Hard to Stop West Africa's Vicious Pirates?* Retrieved from <https://foreignpolicy.com/2016/09/23/the-world-beat-somali-pirates-why-cant-it-stop-west-african-piracy/>, 15 March 2020.

<sup>4</sup> International Maritime Organization (2018) Reports of acts of piracy and armed robberies against ships Annual report. Retrieved from <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Documents/MSC.4-Circ.263%20Annual%202018.pdf> ,5 February 2020.

Questions arise, why the juridical system in these countries have not been able to enforce international laws to contain the issue in the region and why the international community has not interfered as was done in the case of Gulf of Aden. To get the answer to these questions this research will analyse, are the methods employed in the region sufficient enough and could methods used against piracy in the Gulf of Aden be implemented also in the Gulf of Guinea.

The Aim of this research is to determine are the current International laws, domestic laws and interstate initiatives true contributions against piracy phenomena in the Gulf of Guinea or are they simply inadequate to suppress piracy in the region. The research question is following: “Are the international- and domestic laws used against piracy in the Gulf of Guinea sufficient enough and if not, how could they be improved? Could anti-piracy methods used in the Gulf of Aden also provide solution in some extent to the Gulf guinea” The research will perform a jurisprudential analysis by using qualitative research methods. The research will also determine, whether usage of methods proven in other regions can be from the law standpoint apply to the Gulf of Guinea.

In the First chapter, Author will go through briefly the history of anti-piracy laws and analyse its origin and evolution from the 16<sup>th</sup> century to the current day, in order to understand the differences compared to modern piracy. After which author will describe current anti-piracy laws and their effectiveness against modern piracy by using Gulf of Guinea piracy and armed robberies as a reference point for the analyse.

In the second chapter, Author will display the common characteristic of piracy in the Gulf of Guinea and analyse the state structure alongside law initiatives created in the region to suppress the emerging piracy matter. Author will also describe the interstate and international initiatives to determine what are their main strengths and weaknesses against the piracy in Gulf of Guinea. Also due to characteristic invisible maritime borders of territorial- and international water, this research will include the act of armed robbery into the analyse.

In the third chapter author will give brief description of piracy in Gulf of Aden and how it was overcome, and analyses could the same methods used there be implemented in some scope to Gulf of Guinea and evaluate the capacity building initiatives. Chapter will also demonstrate the complexity of international anti-piracy law and examines the possibilities of re-evaluating jurisdiction in this matter.

# 1. INTERNATIONAL LAW

In the phenomenal of current day piracy, the Gulf of Guinea has become the most dangerous region for maritime commerce.<sup>5</sup> Due to this United Nation alongside with International community have initiated and ratified various conventions and resolutions to reduce piracy activity in the region. In 2012 United Nation security council (UNSC) adopted the resolution 2039, which main objective was to acknowledge piracy and armed robberies as a major threat to international navigation, economic development of the region, and security for the crew members of the ships.<sup>6</sup> However, before these resolutions international anti-piracy legislation have gone through various changes which has enable usage of these methods.

The definition of piracy has been implemented by the UN in its Law of the Sea Convention (UNCLOS). This convention ratified in 1982 respectively is the most recent update to international legislation on the subject of maritime affairs.<sup>7</sup> The International community has recognized piracy as an emerging issue, and UNCLOS insufficiency as its current state to give states adequate legal ground to act against modern-day piracy has become evident in past years. Characteristic of piracy has changed in the last decades which has introduced several holes emerging from UNCLOS article 100-105. In this chapter, the author will go through the evolution of anti-piracy legislation from its earliest definitions to current day piracy in the Gulf of Guinea, after which we will analyses effectiveness of these laws.

## 1.1. History of anti-piracy legislation

The first systematically developed formal framework for piracy under international law was developed by Italian jurist Alberico Gentilini in 1588-89.<sup>8</sup> Before this piracy was defined as a

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<sup>5</sup> Kamal-Deen, A. (2015). *The anatomy of Gulf of Guinea piracy*. *Naval War College Review*, vol 68: (1), p.93.

<sup>6</sup> United Nation Security Resolution 2039 (2012). Adopted Security Council at its 6727<sup>th</sup> meeting, on 29 February 2012.

<sup>7</sup> Struett M J (2018). Maritime piracy and Global Security. In Reichel, P, Randa, R (ed.) *Transnational Crime and Global Security* vol.2 (23-41). Santa Barbara: Praeger publishing. p. 24.

<sup>8</sup> Kempe, M. (2010). 'Even in the remotest corners of the world': Globalized piracy and international law, 1500 1900, *Journal of Global History*, ed.5, vol.3, p.355.

common enemy of the nation's according to Henry VIII's offense at the sea act, and the efforts to punish pirates generally treated them as domestic criminals.<sup>9</sup> Gentilini expanded the definition by referring piracy being "against the law of nations and the community of human society", from that moment onwards Gentilini's definition became the concept that dominated European juridical thinking, by establishing piracy being international matter rather than state-related.<sup>10</sup> In fact, to this day most historians and Lawyers present piracy being the first widely recognized crime against humanity.<sup>11</sup>

Piracy in the 20<sup>th</sup> century was essentially entirely perished until the 1980s. During this time even the historically active pirates in southeast Asia where composed.<sup>12</sup> A partial explanation for this came from a legislative effort from the international community to implement first international treaties against piracy. In the early 1930s, the earliest formal attempt to provide definition under treaty law was made by Harvard Researchers Committee which sought to define jurisdiction under which pirates could be prosecuted.<sup>13</sup> The approach for this draft convention was to give states extraordinary jurisdiction to seize and punish pirates for the crimes they have committed outside of their countries' jurisdictional waters, including punishing offenses that the particular state does not have any peculiar interest towards.<sup>14</sup> The draft convention gave the states the jurisdictional abilities to take an action against piracy, but it did not oblige them, rather it gave them the option to implement and use the rights provided by this draft convention as they prefer and saw appropriate.<sup>15</sup>

The Harvard draft convention had a considerable role when the next generation of International anti-piracy legislation was prepared. In 1958 United nation drafted the Geneva High Seas Convention, where General provision of international maritime laws where declared.<sup>16</sup> It consisted of articles design to push the cooperation of anti-piracy laws to the fullest possible extent to

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Benton, L. (2011). Toward a New Legal History of Piracy: Maritime Legalities and the Myth of Universal Jurisdiction. *International Journal of Maritime History*, vol.23(1), p.225.

<sup>12</sup> Jeong K, (2018). Diverse patterns of world and regional piracy: implications of the recurrent characteristics, *Australian Journal of Maritime & Ocean Affairs*, Taylor and Francis.

<sup>13</sup> Geneva Academy (2012). Counterpiracy under international Law. Geneva academy of international humanitarian law and human rights. Geneva P.11, Retrieved from <https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Counterpiracy%20Briefing%201.pdf> , 3 march 2020.

<sup>14</sup> Bingham, J.P. (1932). Part IV-Piracy: The American Journal of International Law, *Cambridge University Press*, Vol.26, p.760.

<sup>15</sup> *Ibid.*

<sup>16</sup> United Nation Convention on the Law of the Sea (UNCLOS). 10 December 1982 Entered into force 16 November 1994. Accessible: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).



suppress piracy and clear defining factors of piracy activity in the high seas. Articles related to piracy in the High Seas Convention were later on almost verbatim copied into United Nations Convention on the Law of the Sea, where today's definition of piracy is found.<sup>17</sup>

## 1.2. International anti-Piracy laws

Present-day international anti-piracy law is based primarily on definitions laid down by UNCLOS. It was founded in 1982, and currently has been ratified by 168 members.<sup>18</sup> The provisions related to piracy are in fact a codification of customary international law, due to the similar wording used in the provision concerning piracy in Geneva High Seas Convention.<sup>19</sup> The convention as itself was not exclusively created to regulate piracy, in fact, it is only a small component of the full convention. UNCLOS includes 320 articles that govern all aspects of sea-related laws from the provision that governs limitations of territorial water all the way to fishing rights, apparently when UNCLOS was drafted piracy was not seen as an emerging international issue and it is illustrated by the amount of the articles in the convention. The convention was created to balance the goal of navigation of the seas and ensure states' rights to regulate and use their territorial waters as they saw appropriate while ensuring the coordination on the use of natural resources.<sup>20</sup> This was achieved by giving seaside states exclusive right under their jurisdiction to govern their territorial water while establishing free passage right for ships in international water. Other important determination concerning piracy in UNCLOS was the flag-state system, which created the norm that extends a state's legal jurisdiction to the ships that are cruising under their flag, these ships are obligated to follow the legal norms of the country under which they are cruising in international waters. This is important because as ships have to follow countries' jurisdiction, in the upside they also benefit from the legal coverage of that particular country.<sup>21</sup>

The relevant articles of UNCLOS which govern the jurisdictional powers of states and define piracy are articles 100-105 and article 107. The convention requires that (Article 100) "All States

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<sup>17</sup> Geveva academy (2012) *Supra nota 13*.

<sup>18</sup> United Nations Convention on the Law of the Sea (UNCLOS) *Supra nota 16*.

<sup>19</sup> Ugboma, Z (2019), Challenges of piracy in the twenty-first century and Treaty Provision Relating Thereto under the United Nations Convention on Law of the Sea 1982, *International review of law and jurisprudence* vol.1 (3) p. 170.

<sup>20</sup> Struett, M., Nance, M., & Armstrong, D. (2013). Navigating the Maritime Piracy Regime Complex. In Lyon A.J, Stiller K, Edgar A, Mills K, Romaniuks P (ed.) *Global Governance: A Review of Multilateralism and International Organizations*, vol 19. Leiden: Brill P. 93.

<sup>21</sup> United Nations Convention on the Law of the Sea (UNCLOS) *Supra nota 16*. Art.94

shall cooperate to the fullest extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state.”<sup>22</sup> also it enables any state to seize pirate ship, ships taken or controlled by pirates and arrest the pirates as well as to assess effective punishment under the domestic laws of the seizing country (Article 105).<sup>23</sup> UNCLOS defined in the (article 101) that “piracy consists of 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, and directed on high seas, against another ship, or against person or property on board such ship, when the act is committed outside the jurisdiction of any state”.<sup>24</sup> As evident from these articles only the acts that accrue outside of the territorial waters of any state are considered as piracy and are governed by the UNCLOS

Concerned at the increasing acts of terrorism threatening the safety of maritime navigation, International maritime organization (IMO) prepared the Convention for the suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA convention) in 1988.<sup>25</sup> Convention was ratified and enter into force in 1992. The convention became promptly the other main component of the international maritime legal regime that governs piracy and armed robberies in both high seas and territorial waters. While the UNCLOS focuses on the determination of the piracy and urges states to suppress piracy in international water, SUA convention takes more direct statement on the issue, the provision for state cooperation at prosecutions under SUA crimes are far more demanding than on the parallel language used in UNCLOS.<sup>26</sup> The convention concentrates on the aggression against boats in international water as well as in territorial waters, which is evident in article 4 of the convention. SUA convention makes it an offense when a person unlawfully and intentionally “seizes or exercises control over a ship by force of threat thereof or any other form of intimidation, or performs an act of violence against a person on board a ship if that act is likely or endanger the safe navigation of that ship”.<sup>27</sup> The convention obligates signature states to interevent persons that have committed these crimes, take them to custody and prosecute them under the laws of that state or to extradite the alleged offender to the state which the offence has taken place.

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<sup>22</sup> UN Convention on the Law of the Sea (1982) *Supra nota 16*.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid*.

<sup>25</sup> Churchill, R. R., & Lowe, A. V. (1999). *The law of the sea* (5th ed.). Manchester, UK: *Manchester University Press*. P.210-211.

<sup>26</sup> *Ibid*.

<sup>27</sup> Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). 10 March 1988 Entered into force 1 March 1992. Accessible: [http://oceansbeyondpiracy.org/sites/default/files/SUA\\_Convention\\_and\\_Protocol.pdf](http://oceansbeyondpiracy.org/sites/default/files/SUA_Convention_and_Protocol.pdf).

In December 2000 only 52 states had ratified the first 1988 SUA convention, even that the convention offered useful tools combating piracy.<sup>28</sup> The reasoning for this was clear, aggression against maritime navigation was not seen at the time globally severe phenomena, this changed after the terrorist attack on the world trade center in 2001, afterwards IMO urged its members to become members of its 1988 SUA treaty.<sup>29</sup> The countries that became parties of the treaty grew significantly, and currently, 166 countries have ratified the treaty.<sup>30</sup> According to the IMO database, all the countries on the piracy and armed robbery prone areas in the Gulf of Guinea are part of the convention, except Cameroon and Gabon.<sup>31</sup>

Although the underlying objective for joining the convention was to prevent terrorism, rather than suppressing present-day piracy, SUA became a useful juridical tool to combat maritime piracy across the globe. The convention covers the most serious types of attack on ships from planned activities of international criminal organizations, to individual offenses to hijack merchant ships, to steal the boat or the cargo it is carrying.<sup>32</sup>

The Effectiveness of international anti-piracy laws in the Gulf of Guinea has two distinctive reasons for lack of greater success. First is the fact that given the definition of piracy established by UNCLOS, most activities identified as piracy around the world are actually closer to the definition of armed robbery.<sup>33</sup> UNCLOS has only jurisdictional powers in high seas, not in territorial waters, which creates obstacles to international laws to work efficiently in the Gulf of Guinea. The convention categorizes the coastal states govern sea areas into three zones, territorial waters, contiguous zone, and the exclusive economic zone (EEZ).<sup>34</sup> According to UNCLOS all events that happens in these zones fall under the jurisdiction of the state. It should, however be noted that article 58(2) UNCLOS states that the high seas regime of criminal law can be applied to EEZ therefor suggesting that acts of piracy in this particular zone can be accountable under

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<sup>28</sup> Beckman R.C (2009), the 1988 SUA and 2005 SUA protocol: Tools to combat piracy, armed robberies and Maritime Terrorism. In: Herbert- Burns R, Bateman S (ed.) Handbook of Maritime security (187-198) 1st ed. Boca Raton: Auerbach publication, CRC Press. p.190.

<sup>29</sup> *Ibid.*

<sup>30</sup> Qureshi, W. (2017). The prosecution of pirates and the enforcement of counter-piracy laws are virtually incapacitated by law itself. *San Diego International Law Journal*, 19(1), p. 95.

<sup>31</sup> International maritime organization (2020). Status of IMO treaties. Retrieved from <http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202020.pdf>. 11.04.2020. p.436-439

<sup>32</sup> Beckman R.C (2009) *Supra nota 28 p.190.*

<sup>33</sup> Elleman B.A. Forbes A. Rosenberg D (2011); Piracy and Maritime Crime: Historical and Modern Case Studies, No. 35, Rhode Newport: Newport Naval War College Press. Retrieved from <https://apps.dtic.mil/dtic/tr/fulltext/u2/a518439.pdf> p. 213.

<sup>34</sup> UN Convention on the Law of the Sea (1982) *Supra nota 16.*

international law.<sup>35</sup> The high seas also in the context of piracy includes contiguous zone, which essentially leaves only the territorial water under the jurisdiction of the coastline state.<sup>36</sup> The issue comes evident when looked through the incident reports, according to IMO 2018 yearly report, only 35 out of 81 incidents reported from the Gulf of Guinea happened outside of the territorial waters, which makes the reduction of piracy using only international methods insufficient.<sup>37</sup> Pirates are not limited by this invisible border that separate piracy from armed robberies, essentially both crimes are made by the same group of criminals using the same methods, making the crimes interchangeable. Because of this reality this research will also include armed robberies as a part of the research, while critically inspecting efforts of the Gulf of Guinea states to suppress both types of offences.

Another limitation for the UNCLOS comes from the definition of “private end”. Article 101(A) states that only the acts committed for private ends are defined as piracy.<sup>38</sup> The legal history of this provision is complicated and there are many schools of thought of what kind of pirate activities this article covers. One of the main principles for “private ends” requirements was to separate the politically sponsored privateering which was heavily used in the 17th-century by various states, from the piracy incidents that were financially and individually motivated.<sup>39</sup> Piracy attempts in the Gulf of Guinea are mostly a mix of these both, abundant of the piracy attempt in the area are made by Movement for the Emancipation of the Niger Delta (MEND), which is driven by political motives, such as to Oil production and the uneven distribution of the revenue it creates in Niger Delta.<sup>40</sup> This raises the question of the applicability of UNCLOS against a great portion of the offenses in the Gulf Of Guinea.

SUA convention is widely regarded as the more specific and effective anti-piracy convention of the two, but it does not come without disadvantages. Under SUA convention nothing is a crime before the actual seizure of the ship, because of this attempt to commit piracy or armed robbery are not taken into account and are not punishable under SUA protocols.<sup>41</sup> For example, according to the IMO 2018 annual report, of the 81 piracy and armed robbery reports in the Gulf of Guinea,

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<sup>35</sup> Ugboma, Z (2019) *Supra nota 19* p. 175.

<sup>36</sup> Kamal-Deen, A. (2015) *Supra nota 5* P.94.

<sup>37</sup> International Maritime Organization (2018), *Supra nota 4* p.11.

<sup>38</sup> UN Convention on the Law of the Sea (1982) *Supra nota 16* § 101 (a).

<sup>39</sup> Ugboma, Z (2019) *Supra nota 19* p. 171.

<sup>40</sup> Duffield, C (2010) *Who are Nigeria's Mend oil militants?* Retrieved from <https://www.bbc.com/news/world-africa-11467394>. 02 March 2020.

<sup>41</sup> Struett M J (2018) *Supra nota 7*. P.29.

28 did not lead to seizure of the ship,<sup>42</sup> making SUA convention ineffective against a huge portion of the act facing emerging piracy phenomena.

To make the implementation of anti-piracy methods in the Gulf of Guinea even more challenging, the definition of piracy from the international organizations and commercial enterprises diverse extensively, which often causes confusion about the scale and types of aggressions.<sup>43</sup> IMO being sub-organization of United Nation follows the framework that has been established by the UNCLOS, nonetheless more extensively used data source for international piracy and armed robberies comes from the International Maritime Bureau, which is a division of International Chamber of Commerce.<sup>44</sup> These two organizations have a different standpoint on defining the act, due to their motives to emphasize particular aspects concerning piracy and armed robberies. IMO defines piracy as an act committed in high seas outside of the territorial water, unlike IMB which does not separate armed robberies from piracy.<sup>45</sup> Also, the aspect of the “private end” is not recognized under the IMB definition of piracy.<sup>46</sup> This creates the confusion and misconception of the severity of piracy in the Gulf of Guinea, due to the sizable variation between the two databases. The difference becomes evident when compared the piracy reports of the two organizations, in 2018 IMO reported only 35 piracy acts in the Gulf of Guinea,<sup>47</sup> compared to 81 reported by IMB.<sup>48</sup>

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<sup>42</sup> International Maritime Organization (2018), *Supra nota 4 p.13*.

<sup>43</sup> Elleman B.A. Forbes A. Rosenberg D (2011) *Supra nota 33 p. 10*.

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*.

<sup>46</sup> *Ibid*

<sup>47</sup> International Maritime Organization (2018), *Supra nota 4 p.11*.

<sup>48</sup> International Maritime Bureau (2018) piracy and armed robberies against ships Annual Report. Retrieved from [https://www.icc-ccs.org/reports/2018\\_Annual\\_IMB\\_Piracy\\_Report.pdf](https://www.icc-ccs.org/reports/2018_Annual_IMB_Piracy_Report.pdf), 5 February 2020.

## 2. CIRCUMSTANCES IN GULF OF GUINEA

While the general number of piracy incidents has declined in Africa and around the world, piracy and armed robberies attempts in the Gulf of Guinea have instead inclined. Evolving at the shadows of piracy in Gulf of Aden, the arising armed robberies and piracy of Gulf of Guinea did not create as much international attention in the last decades allowing it to expand to its current stage. In 2018 Gulf of Guinea became the new hot spot for the piracy and armed robberies, by reporting the highest piracy and armed robbery attempts in the world.<sup>49</sup>

Financially measured cost of maritime piracy and armed robberies combine in the area in 2017 was 818.1 million US dollars, showing the severity and extent of the issue.<sup>50</sup> Even bigger sign of severity was witnessed in June 2019 when Indian Directorate General of shipping issued a restriction to Indian citizens to work on vessels which uses Gulf of Guinea waters.<sup>51</sup> The ban became one of the biggest acknowledgments of the piracy issue in recent years in the region. In this chapter, we are going to look through the main factors behind piracy and armed robberies in the region and analyse the current domestic laws and inter-governmental initiatives inserted to the region.

### 2.1. Impact of state structure

To understand why Piracy and armed robberies appear in areas such as Niger Delta, analysing the state structure cannot be disregarded. Institutional literature suggests that weak states are more likely to experience piracy acts than stable ones, as the weaker states generally do not have sufficient infrastructure to monitor their territorial water not to mention extending their

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<sup>49</sup> International Maritime Organization (2018), *Supra nota 4*.

<sup>50</sup> Egbejule, E. (2019) *Maritime piracy increases business coast in the Gulf of Guinea*. Retrieved from <https://www.aljazeera.com/ajimpact/maritime-piracy-increases-business-costs-gulf-guinea-191226201749040.html>, 12 February 2020.

<sup>51</sup> *Ibid.*

surveillance to international waters.<sup>52</sup> States such as Nigeria and Guinea are safe havens to pirate organizations to recruit, train and sell the stolen goods in the underground marketplace, as a result of lack of resources and widely common corruption in the region.<sup>53</sup> Piracy in the region thus can be identified as being the result of failed governmental stability, rather than a stand-alone issue.

While the weakness of state structure can be linked to increasing maritime piracy and armed robberies, argumentation can be made that when states exceed the threshold of failed states definition piracy activities are less likely to appear in the area.<sup>54</sup> Gulf of Guinea's piracy has characteristics that need sufficient infrastructure to work, Pirates often steal the cargo such as petroleum and sell them in the black market.<sup>55</sup> For this scheme to work pirates need working infrastructure in the land, this is something that failed states are not able to maintain. A great example of piracy in a failed state can be found at the other side of the continent in the Gulf of Aden, where the characteristic of the piracy differs extensively, making piracy unique and erratic depending on the structure and stability of the region.

In the last couple of years phenomenon of violent robberies and kidnapping of crews has increased dramatically in the Gulf of Guinea, in 2019 alone 121 crew members were kidnapped in the region compared to the 78 taken in the previous year.<sup>56</sup> The change in the characteristic of operation can be seen as a development of state structure and succession to decrease pirate organizations' inland functions of smuggling and selling the good and forced the pirates to seek alternative revenue streams. The author will not get into the detail of governmental stability, due to it falling out of the scope of this research, but to identify the reasoning behind the phenomena, understanding that most of the Gulf of Guinea countries fit under weak state description is essential, and while these countries have in recent years made effort to reduce piracy and armed robberies in the Gulf, the issues will remain in the area until the political infrastructure is fixed.

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<sup>52</sup> Denton, G.N & Harris J.R (2019) *Maritime Piracy, Military Capacity, and Institutions in the Gulf of Guinea*, *Journal of Terrorism and Political Violence*, p.4

<sup>53</sup> *Ibid*, p.5

<sup>54</sup> *Ibid*. p.19

<sup>55</sup> *Ibid*

<sup>56</sup> International Maritime Bureau (2019) *Supra nota 1* p.27.

## 2.2. Domestic Laws

Under the UNCLOS article 100 signature countries are obligated to obtain two significant measures in the fight against piracy. First, to contain piracy at the domestic level and secondly to communicate between other signature countries to decrease piracy at the international level.<sup>57</sup> To achieve this goal the signature countries in the Gulf of Guinea are obligated to obtain up to date anti-piracy legislation and create cooperative measures with other signatures. However, only Nigeria has managed to create stand-alone legislation against piracy.

The lack of legislative structure in the Gulf of Guinea countries has created a situation in which states that have theoretically ability to catch pirates, and armed robbers, are not able to prosecute or punish the offenders, due to non- existence domestic laws.<sup>58</sup> Lack of implementation of the SUA Convention is also evident in most of the Gulf of Guinea signature countries, despite its relevancy in the depression of piracy. For example, Benin, Cote d'Ivoire, and Ghana have all parties of the 1988 SUA Convention, but none of them have implemented it to their domestic laws in any form.<sup>59</sup>

Maritime insecurity in the region affects the states of the region disproportionately, Nigeria as the leading regional producer of oil has been the focal point of piracy attacks and arguably the most affected by maritime insecurity in the region.<sup>60</sup> As evident from the European Union Council of Foreign Affairs report, more than half of the attacks and attempted attacks by armed robbers and pirates in the Gulf of Guinea occurs off the coast Nigeria.<sup>61</sup> To combat this issue, Nigeria has been active in creating maritime legislation to secure its territorial waters and EEZ.

In June 2019 Nigerian President Muhammadu Buhari signed the first stand-alone anti-piracy law in the Gulf of Guinea region “suppression of piracy, and other maritime offenses act”

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<sup>57</sup> Kamal-Deen, A. (2015) *Supra nota* 5 P.108.

<sup>58</sup> *Ibid.*

<sup>59</sup> Kamal-Deen, A. (2015) *Supra nota* 5 P.108-109.

<sup>60</sup> Adibe R, Nwangwu C, Ezirim G.E, Egonu N. (2019) Energy hegemony and maritime security in the Gulf of Guinea: rethinking the regional trans-border cooperation approach, *Review of African Political Economy*, vol. 46, (160) p. 338

<sup>61</sup> Council of European Union (2014). EU Strategy on the Gulf of Guinea. Retrieved from [https://eeas.europa.eu/sites/eeas/files/eu\\_strategy\\_on\\_the\\_gulf\\_of\\_guinea\\_7.pdf](https://eeas.europa.eu/sites/eeas/files/eu_strategy_on_the_gulf_of_guinea_7.pdf) 03 March 2020.



(SUPMOA).<sup>62</sup> The act was aimed to ensure the safe and secure shipping on the sea.<sup>63</sup> The act replaced the bill of maritime operation as the jurisdictional tool to prosecute and criminalizes acts of piracy and armed robberies, due to the former bill's ineffectiveness to suppress piracy.<sup>64</sup> SUPMOA was created to give effect to United Nation UNCLOS 1982 convention and International maritime operations SUA 1988 conventions, by essentially defining piracy similarly as in UNCLOS art.101 and armed robbery as defined in art.3 of SUA convention.

SUPMOA is a significant progression in Nigeria's jurisdiction to fight against piracy and armed robberies in territorial waters and surrounding EEZ. The bill is a combination of acts classified as offenses and clarification of procedural justice systems surrounding the issue, by stating, that federal high court of the country will have the exclusive powers to hear and determine any matter under the act, therefor reducing the red tape and streamlining the prosecution procedure.<sup>65</sup> Act also created a framework of minimum sentences for each aspect of piracy and armed robberies, from financing to committing the acts. Most importantly SUPMOA accomplished an implementation policy in which piracy and maritime offenses Fund was created to allocate funds and intelligence to law enforcement and to security agencies.<sup>66</sup>

In February 2020 Nigerian Federal government embarked on measures to ensure enforcement of the SUPMOA at the annual strategic Admiralty Law Seminar. In the seminar director-general of Nigerian Maritime Administration and Safety Agency, Dr. Dakuku Peterside urged all the parties of enforcement agencies to cooperate and implement the SUPMOA.<sup>67</sup> Currently, the new law has had very little effect on suppressing Nigerian piracy. According to IMB the acts of piracy and armed robberies in Nigeria have reduced from 2018 48 incidents to 35 incidents in 2019, but due

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<sup>62</sup> Loock, J. (2020) *Nigerian Government Moves to Enforce Anti-Piracy Law as Proposed Stiff Penalties Await Offenders*. Retrieved from <http://www.marsecreview.com/2020/02/nigerian-government-moves-to-enforce-anti-piracy-law-as-proposed-stiff-penalties-await-offenders/> , 28 February 2020.

<sup>63</sup> Bisson, L. (2019) *Nigeria signs first standalone anti-piracy law in the Gulf of Guinea*. Retrieved from <https://criticalmaritimeroutes.eu/2019/07/11/nigeria-signs-first-standalone-anti-piracy-law-in-the-gulf-of-guinea/> , 11 June 2019.

<sup>64</sup> *Ibid.*

<sup>65</sup> Suppression of piracy, and other Maritime Offences act (2019), Article 5(2), Retrieved from. <http://placbillstrack.org/8th/upload/Suppression%20of%20Piracy%20and%20Other%20Maritime%20Offences%20Act%202019.pdf>.

<sup>66</sup> *Ibid.*, Article 17.

<sup>67</sup> Nigeria Federal Government (2020), *Nigeria: FG moves to enforce Anti-Piracy Law as stiff penalty awaits offenders*, Retrieved from <https://www.worldstagegroup.com/nigeria-fg-moves-to-enforce-anti-piracy-law-as-stiff-penalty-awaits-offenders/>, 27. February 2020.

to lack of proper implementation, this reduction of piracy and armed robberies cannot be without reserve awarded to SUPMOA alone.<sup>68</sup>

Nigerian navy is underfunded and limited by its capacity. It has manpower of 8000 personnel's, making it the biggest navy in the region, but in contrast to the Nigeria Army which has 62 000 personnel, prioritization and lack of resources become evident.<sup>69</sup> This is not only the concern of Nigeria but for every country in the Gulf of Guinea. To Understand the lack of naval power in these countries, we have to understand the history of the region. After the colonial time in Africa, many of the countries in the region went through various revolutions of regimes. Too much support from governments to military might supply the military with enough manpower, weaponry, and capital to overthrow the current regime.<sup>70</sup> To avoid this, leaders of the countries in the regime typically prefer to keep the size of the military and other armed forces reasonably small, unwanted by-products for this can be seen to be liberty for pirates and armed robbers to operate without major resistance in the area. To combat the sizable power vacuum in the regions, countries have started to introduce inter-governmental initiatives to combine with lack of domestic enforcement capacity.

### **2.3. Combine Effort of Gulf of Guinea Countries**

The Absence of juridical structure and naval power in the Gulf of Guinea has underscored the demand for effective maritime security cooperation.<sup>71</sup> To achieve this, countries have launched various interstate efforts to reduce piracy and armed robberies in the region.<sup>72</sup> Operation prosperity was launched in 2011 as a combined effort against piracy and armed robberies by Benin and Nigeria.<sup>73</sup> In the operation, which primarily was executed in Benin territorial water, Benin had the operational command, while Nigeria supplied tactical knowledge and execution.<sup>74</sup> United Nation report indicated that operation had resulted in a decrease of piracy in the territorial and EEZ waters of Benin and Nigeria, illustrating that operation was successful,<sup>75</sup> however at parallel time piracy

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<sup>68</sup> International Maritime Bureau (2019) *Supra nota 1* p. 5.

<sup>69</sup> Kamal-Deen, A. (2015). *Maritime security cooperation in the Gulf of Guinea: prospects and challenges*. Leiden: Brill Nijhoff. P.245

<sup>70</sup> Denton, G.N & Harris J.R (2019) *Supra nota 52*, p.5

<sup>71</sup> Kamal-Deen, A. (2015). *Supra nota 69* p.225.

<sup>72</sup> Duarte E, Barros M.C (2018) *Maritime Security Challenges in the South Atlantic: Facing the transnational criminal organizations in the South Atlantic*. New York: Springer.

<sup>73</sup> Kamal-Deen, A. (2015) *Supra nota 5*. P.102.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

and armed robberies in Togo's territorial and EEZ increased from five attacks in 2011 to 15 attacks in 2012.<sup>76</sup> This increase shows that operation prosperity only pushed piracy further to the west, rather than suppressed it, and illustrated the increased range of Nigerian Pirates.<sup>77</sup> Eventually, the operation was discontinued after only one year, to make way to more collective interstate initiative.

First unilateral agreement between all of the Gulf of Guinea countries was achieved in 2013, when members of Economic Community of East Africa States (ECOWAS), The Economic Community of Central Africa (ECCAS) and Gulf of Guinea Commission (GGC) alongside with IMO developed a comprehensive strategy and implementation measures to repress piracy, armed robberies against ships, and illicit maritime activity in west and central Africa.<sup>78</sup> Otherwise known as Yaoundé code of conduct.

The Code of conduct was borne out of a need to create unilateral strategies on approach towards maritime security and safety.<sup>79</sup> In article 2 the signature countries intent to co-operate as the fullest possible extent to repress piracy, by sharing relevant information, indicating suspected ships and ensuring that people who commit piracy or armed robberies are apprehended and prosecuted, alongside with facilitating proper care to people and ships that are traveling through the maritime regime.<sup>80</sup> Article 6 and 7 define the methods to repress piracy and armed robberies against ships. In these articles focus point is intended towards the creation of a framework in which states are obligated to inform and support each other's effort to suppress piracy in their territorial and surrounding EEZ. Although the Yaoundé Code of Conducts' beneficial content on suppressing piracy is undisputable, the lack of proper devotion to the code of conduct undermines its efficiency. Article 19(a) established that nothing in the code of conduct intends to create or establish a binding agreement except article 13 "Assistance between signatures". Evidently making the Yaoundé code of conduct limited by practical impact in the region.

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<sup>76</sup> ICC: *Piracy falls in 2012, but seas off East and West Africa remain dangerous, says IMB*. Retrieved from <https://www.icc-ccs.org/news/836-piracy-falls-in-2012-but-seas-off-east-and-west-africa-remain-dangerous-says-imb>, 29 February 2020.

<sup>77</sup> *Ibid*.

<sup>78</sup> Yaoundé code of conduct, Signed 25 June 2013, retrieved from [http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code\\_of\\_conduct%20signed%20from%20ECOWAS%20site.pdf](http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf), 02 March 2020.

<sup>79</sup> Chikodiri. N. (2015). Implementation of the Yaounde Code of Conduct and Maritime Insecurity in the Gulf of Guinea. *Research on Humanities and Social Sciences*. Vol.5 p. 57.

<sup>80</sup> Yaoundé code of conduct (2013) *Supra nota* 78.

Both of these formerly introduced anti-piracy tools and operations have proven to be inefficient to solve the piracy issue in the region. They have had admirable ambitions, but lack of funding, knowledge, and unwillingness to properly commit to the combined efforts have become the reason for failing at the reduction of piracy and armed robbery. Also, the overlapping of responsibilities between different organizations in the region has not helped the efforts, GGC, for example, has been nothing more than a reproduction of the same obligation that are already covered by ECOWAS and ECCAS, and as a result, the organization has not made any objective progress since it was established in 2001.<sup>81</sup> The creation of several multi-lateral soft law treaties between countries, which do not possess sufficient navies and have large corruption problem has become detrimental for the enforcement of UNCLOS and SUA conventions relevant articles, which most of the countries at the region are part of. For these reasons' efforts from International actor such as United Nation, European Union, and the United States are highly needed to aid the countries in the region to enforce the anti-piracy legislation and possibly even interevent the issues their self. In the next chapter, the author will look through the main efforts these international actors are providing to the region, and their effectiveness.

#### **2.4. Efforts from UN and other international actors**

The threat of maritime piracy and armed robberies in the Gulf of Guinea has attracted growingly the attention of the international community in the last decade.<sup>82</sup> United Nation security council (UNSC) has acknowledged this by issuing resolution 2018 and 2039, adopted by 2011 and 2012 respectively, from the initiative from Benin and Togo.<sup>83</sup> Regarding the increasing concern of piracy in the region, the resolutions were designed to criminalize armed robberies and piracy, while providing a legal framework for these offenses.<sup>84</sup> In these efforts from the United Nations, alongside the resolution A1025(26) given by IMO, the International community has committed to the efforts to secure the waters of the Gulf of Guinea region, by providing education, capacity building, and monitorization.

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<sup>81</sup> *Ibid.*

<sup>82</sup> Oyewole. S (2016) Suppressing maritime piracy in the Gulf of Guinea: the prospects and challenges of the regional players, *Australian Journal of Maritime & Ocean Affairs*, vol 8, ed.2.

<sup>83</sup> Adibe R, Nwangwu C, Ezirim G.E, Egonu N. (2019) *Supra nota* 60 p. 337

<sup>84</sup> *Ibid.*

Most notably EU has been the biggest contributor on the mission to implement UNCLOS and SUA convention to the Gulf of Guinea region. In 2019 EU initiated a “Strengthening Criminal Justice Systems in West and Central Africa” project (SWAIMS) in ECOWAS countries. The project received a funding of 6 million Euros for the next four years, with the mission statement to improve maritime security and safety in the Gulf of Guinea region.<sup>85</sup> This project became the latest European Union’s efforts to implements its strategy in the Gulf of Guinea, which was design to assist with proper implementation of the Yaoundé Code of Conduct.<sup>86</sup> Accordingly, most EU initiatives on the region have been focusing on capacity building, rather armed intervention,<sup>87</sup> the guiding principle with this approach has been, that by developing the governmental and intra-regional stability, the threat of piracy and other maritime crimes are more efficiently solved.<sup>88</sup>

While the United Nation and the European Union have been focused on aiding the implementation of the governmental and juridical structure of the region, the United States has taken a different route. In 2007 United State launched “African Partnership Station” with the deployment of two warships, the HSC-2 Swift and USS fort McHenry, after which there have been consistent presents of the United States in the region, mostly by port visits and joint exercises training to the local navies.<sup>89</sup> The USA alongside China have also aided by donating vessels to countries of Gulf of the Guinea. In the last decade, Benin received two patrol boats from China, while the United States donated three boats to Ghana,<sup>90</sup> and Hamilton-class patrol vessel NNS- thunder to Nigeria.<sup>91</sup>

While not undermining the efforts of the International community and countries of Gulf of Guinea, the fact remains that even with increase anti-piracy measures taken in the region, armed robberies and Piracy are still thriving in Niger delta and surrounding area. From 2015 and 2019, piracy and armed robberies in the area between Guinea and the Democratic Republic of Congo have spiked from 30 incidents to 66.<sup>92</sup> This raises the question of should the United Nation Security Council

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<sup>85</sup> UNODC (2019), *Strengthening Criminal Justice Systems in West and Central Africa (SWAIMS)*, Retrieved from <https://www.unodc.org/brussels/en/swaims.html>, 03 March 2020.

<sup>86</sup> Council of European Union (2014). *Supra nota 61*.

<sup>87</sup> Jacobsen, K. L., (2017) Maritime security and capacity building in the Gulf of Guinea: On comprehensiveness, gaps, and security priorities, *African Security Review*, vol. 26, p. 237- 256.

<sup>88</sup> *Ibid*.

<sup>89</sup> *Ibid p.242*

<sup>90</sup> Bizours, N., (2013). Piracy, state capacity and root causes - Lessons from the Somali experience and policy choice in the Gulf of Guinea. *Journal of African security review*. Vol. 22, (3), p. 117

<sup>91</sup> Ross, W. (2012). *Nigeria celebrates first home-made warship*. Retrieved from <https://www.bbc.com/news/world-africa-18300358>, 05 March 2020.

<sup>92</sup> International Maritime Bureau (2019) *Supra nota 1 p.5*.

or other international organizations take more drastic methods. for instance, utilize constant maritime patrolling as was done in the Gulf of Aden.

### 3. SUCCESSFUL ANTI-PIRACY INITIATIVES

Current international anti-piracy -and domestic laws have not produced desired outcomes in the Gulf of Guinea region, while the interstate initiatives have suffered from a lack of commitment. Piracy and armed robberies are not a new phenomenon in the recent global maritime regime, and while a comprehensive solution for Gulf of Guinea piracy has not been established, former piracy hotspots such as the Gulf of Aden have been defeated with the usage of more severe methods. In Somalia, piracy attempts have dropped from their 2010 peak numbers of 182 incidents to zero in 2014.<sup>93</sup> The methods used to achieve these results have been unique to the region and while these approaches may not be directly applicable to emerging piracy and armed robberies in the Gulf of Guinea, it begs the question, could they be implemented at least in some level.

As in the Gulf of Guinea, piracy in the Gulf of Aden has a modest backstory. It started in 1990 after the central government of Somalia collapsed, opening a market for illegal fishing and toxic waste disposal for foreign companies.<sup>94</sup> To counter this, the Somali fisherman, whose livelihood were endangered stated to protect their waters by attacking foreign vessels, that where fishing illegally or dumping toxic waste to Somali waters essentially worked as ad-hog coast guard, due to non-functional governments ability to secure its waters.<sup>95</sup> Despite the piracy arguably rightful beginnings, piracy in the Gulf of Aden transform from individual attempts of self-defence to a criminal enterprise that caught the attention of the international community.<sup>96</sup> The same characteristics were evident in the early days of piracy in the Gulf of Guinea region, where piracy was heavily influenced on the premises of being the rightful act to fight against the unequal division of oil profits. In this chapter the author will describe the methods used in the Gulf of Aden and analyses could these methods be implemented to the Gulf of Guinea to suppress armed robberies and Piracy.

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<sup>93</sup> McCarthy, N. (2014) *Somali Piracy Has Almost Been Eradicated*. Retrieved from <https://www.statista.com/chart/1752/somali-piracy-has-almost-been-eradicated/> , 5 March 2020.

<sup>94</sup> Daniels C. L (2012) *Somali piracy and terrorism in the horn of Africa*. 1<sup>st</sup> ed. United Kingdom: Scarecrow press p. 35.

<sup>95</sup> *Ibid*

<sup>96</sup> *Ibid*.

### 3.1. Armed resolution

Under article 42, of chapter VII of the UN charter, the United Nations Security Council can authorize military actions with the objective to restore or maintain international peace and security.<sup>97</sup> This article became applicable in 2008 after increasing piracy phenomena in Somali waters. Somali pirates committed various acts, for example, the highjacking of supertanker *Sirius Star*, carrying more than 100 million dollars' worth of Oil.<sup>98</sup> This act alongside other successful piracy attempts triggered a response from the United Nations Security Council in the form of unprecedented resolutions 1816 and 1851 which authorized member nations of UN to enter the territorial waters of Somalia.<sup>99</sup> The resolutions were seen as a necessary measure to contain widespread piracy issues in Somalia and secure the Gulf of Aden's commerce shipping routes. It provided states and regional organizations to have operational jurisdiction to use Somalia territory to plan, facilitate, and undertake any acts which provide a reduction in piracy.<sup>100</sup> Resolution 1851 created an operational response in Somali territorial waters from the Combined Maritime Force (CMF) which contained more than 20 countries including the United States.<sup>101</sup> The EU also initiated its own anti-piracy task force in the form of Operation Atalanta in 2008. The result that United Nations resolutions have provided to the maritime region of the Gulf of Aden are unquestionable. Although the Gulf of Aden still has the reputation of piracy hotspot in the peoples' minds, it has had only five reported piracy attempts since 2015.<sup>102</sup> This is mostly a result of the successful intervention from the international community. The same approach from the international community to solve the Gulf of Guinea maritime security issues are anyhow hardly feasible.

Comparing the emerging piracy situation of the Gulf of Guinea to piracy and armed robberies in the Gulf of Aden is fairly problematic. Unlike in the Gulf of Aden where the Somali Federal Government gave its consent to resolution 1816 and for the help provided by the international community, the Gulf of Guinea countries have shown very little interest toward assist from foreign navies. While the issues at sea fulfil the same criminal definitions under UNCLOS and SUA conventions, it is worthwhile to recognize the states' enforcement capacity to fight against piracy

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<sup>97</sup> Khanna, T (2019) The normative role of the International Maritime Organization in countering Somali-based piracy, *Maritime Affairs: Journal of the National Maritime Foundation of India*, p.51-64.

<sup>98</sup> Adetunji, J. (2009) *Hijacked Saudi oil tanker Sirius Star on the move*, retrieved from <https://www.theguardian.com/world/2009/jan/09/somalia-pirates-supertanker-ransom> , 7 March 2020.

<sup>99</sup> Terry, J,P (2009). *Eliminating High Seas Piracy: Legal and Policy Considerations*. Joint Force Quarterly. p.117.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> International Maritime Bureau (2019) *Supra nota 1* p.5.



differs extensively. Somali naval forces have been de facto non-operational since the collapse of central Government in 1991, while Gulf of Guinea countries naval forces possess functional structure, although being underfunded and corrupted.<sup>103</sup> Additionally, the jurisprudence systems between the two areas have significant differences in their capacity and willingness to prosecute offenders.

Somali Piracy had also another significant factor that constituted for a vigorous response from the international community - its strategic location in world trade. Approximately 13 percent of world trade goes through the Gulf of Aden or down East Africa coastline.<sup>104</sup> Piracy in the region increased the insurance premiums of shipping companies by 10-fold in a single year between 2007-2008, which reflected into consumer prices around the world.<sup>105</sup> This combined with the emerging financial crises in 2008 resulted, the international community to react more strongly to fight against piracy in the Gulf of Aden. Although the Gulf of Guinea piracy has had huge effects on the local economy, its effects on a global scale have not reached the same levels as was the case in the Gulf of Aden.

In connection with resolution 1816 many states, especially Indonesia made it clear that they would not normally accept this level of involvement in the affairs of coastal state, and that this was considered an exception due to the ineffective central government of Somalia.<sup>106</sup> Indonesia agreed to vote in favour of resolution 1816, only if three conditions were to be accepted. Firstly, UNCLOS 1982 would not be replaced, secondly “no additional customary international law would be created to repressing piracy”, and lastly that this kind of involvement would only be applicable in the case of Somalia.<sup>107</sup> The reasoning for these demands from the Indonesian side was fairly apparent, as the country itself was fighting against Malacca strait piracy in its territorial waters. By effectively adding the clauses to the resolution Indonesia made sure that UNSC could not use the same methods to enter its territorial waters after its departure from the Security Council in 2008.<sup>108</sup> Unintentionally these clauses are one of the main reasons why these approaches used to fight against Somali based piracy cannot be utilized in resolving currently thriving Gulf of Guinea piracy.

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<sup>103</sup> Daniels C. L (2012) *Supra nota* 94 p.44.

<sup>104</sup> *Ibid.*

<sup>105</sup> Struett M J (2018). *Supra nota* 7. P.30.

<sup>106</sup> *Ibid.*

<sup>107</sup> Khanna, T (2019) *Supra nota* 97.

<sup>108</sup> United Nations news, *Five non-permanent members of Security Council elected today*, Retrieved from <https://news.un.org/en/story/2008/10/278382> , 10 March 2020.

### 3.2. Capacity building

Reducing piracy without implementing proper capacity building initiatives is pointless.

This became evident in the early days of resolutions 1816 and 1851 in Somalia when western navies recognize the fact that they could not just send their costly warships to monitor and catch pirates if the jurisdictional structure in the region was not capable to prosecute the offenders.<sup>109</sup> Western countries themselves are typically reluctant to prosecute pirates, mainly due to difficulties to conduct trials according to European human rights standards,<sup>110</sup> but also because countries lack proper up to date national legislation to prosecute individual pirates for the crime that was thought to be obsolete.<sup>111</sup> Limiting the Gulf of Guinea's possibility to receive prosecution assistance from western countries.

It is also worthwhile to understand the temporality of foreign military intervention and recognize the reality that possible military operations deployed in the region will not be a sustainable method for the reductions of piracy in the long term. Operation Atalanta, for example, is funded till the end of 2020, after which European troops are scheduled to retrieve from the Gulf of Aden.<sup>112</sup> Even that military presents have technically remove piracy and armed robberies from Somalia, there is no guarantee that naval involvement from international organizations has actually brought desired results to the region before the actual retrieve of troops happens. Ultimately the piracy can only be beaten onshore by rebuilding the institutions, social policies and administer justice systems.<sup>113</sup> For this reason, efficient state Capacity building might be the only viable option to fight against piracy also in the Gulf of Guinea.

United Nations alongside with European Union has recognized the criticality of competent capacity building in the Gulf of Guinea from the previous experience from Gulf of Aden. Unlike in Somalia where prosecution authority was given to Kenya and Seychelles, due to Somalia's

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<sup>109</sup> Achibugi, D. Chiarugi, M (2011). Looking for a Jurisdiction for Somali Pirates. - *Political Quarterly*, Wiley publishing. volume 82, issue 2 p.233.

<sup>110</sup> Struett M J (2018) *Supra nota 7 P. 37.*

<sup>111</sup> Achibugi, D. Chiarugi, M (2011) *Supra nota 109 p. 234.*

<sup>112</sup> European Union Navfor, *counter piracy off the coast of Somalia*, retrieved from <https://eunavfor.eu/> , 10 March 2020.

<sup>113</sup> Achibugi, D. Chiarugi, M (2011). *Supra nota 109 p.238.*

incapability to prosecute the pirates.<sup>114</sup> The Gulf of Guinea countries have more capable court system and with the capacity building initiatives from the European Union and United Nations Office of Drugs and Crimes (UNODC), they have in fact been able to take steps forwards at the prosecution and enforcement sector.<sup>115</sup>

An assessment made by UNODC illustrated that none of the countries in the Gulf of Guinea however possessed all three fundamental components of juridical capacity, jurisdictional provisions and strong legislation to prosecute pirates.<sup>116</sup> New domestic anti-piracy laws such as the suppression of piracy, and other maritime offenses act which was added into Nigerian legislation in 2019 have been crucial step from a capacity-building standpoint, but as learn from Operation Prosperity, Pirates of Gulf of Guinea are not limited by territorial borders. For this reason, efforts to develop binding interstate initiatives in the future are in a substantial role in the fight against piracy in long term. In fact, UNODC has named that its priority in the Gulf of Guinea is to support member states of ECOWAS and ECCAS in the process of implementing an international maritime legal framework to their domestic laws and encourage regional and international cooperation.<sup>117</sup> While numerous aspects support the capacity building to enhance regional safety and state-building, it can be very time consuming and expensive, while requiring considerable commitment from political actors, all without any assurance.<sup>118</sup> As most of the Gulf of Guinea countries are still missing proper legislation, suppressing piracy solely by capacity building methods could take years or even centuries before having a sizable impact in the Gulf of Guinea.

### **3.2.1 Rethinking the International anti-piracy legislation and Jurisdiction**

In the 5902 meeting of the Security council in 2008 United Nation made concessions to enforce the resolution 1816. Especially with the acceptance of the conditions laid down by Indonesia. Still rethinking international anti-piracy legislation, jurisdiction, and the enforcement aspects could be the considerable option to suppress the Gulf of Guinea based piracy or any other future piracy

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<sup>114</sup> Murdoch A (2011). Recent legal issues and problems relating to Acts of piracy of Somalia. In: Symmons C.R (ed.) Selected Contemporary Issues in the Law of the Sea (139-168). Leiden: Brill Nijhoff.

<sup>115</sup> UNODC (2020) Global maritime crime programme: Annual report 2019. Retrieved from [https://www.unodc.org/res/piracy/index\\_html/Annual\\_Report\\_2019-Web.pdf](https://www.unodc.org/res/piracy/index_html/Annual_Report_2019-Web.pdf) , 15. April 2020.

<sup>116</sup> UNODC, Maritime crime and piracy, Retrieved from <https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TOC/maritime-crime-and-unodc.html>, 02.05.2020

<sup>117</sup> UNODC (2020) *Supra nota 115*.

<sup>118</sup> Scott, K. (2014). Prosecuting pirates: Lesson learned and continuing challenges. Ocean beyond piracy Retrieved from <http://oceansbeyondpiracy.org/sites/default/files/attachments/ProsecutingPiratesReportDigital.pdf>, 3 May 2020.

hotspot. Phillip Allot described UNCLOS as a “mixture of old-fashioned international law based on a conception of property and a move towards governance to achieve social objective”<sup>119</sup> this summarize the fundamental issue of the UNCLOS while being fairly successful convention from the signatures standpoint, it has some concepts that are quite frankly outdated. This becomes especially evident at the articles relating to piracy, as explained in the First chapter, articles 100-105, 107 are essentially drafted in 1958 as a part of Geneva High seas convention, making the legislation more than 60 years old, in which time piracy has experienced a major transformation.

The requirement of “Private ends” is a good example of the outdated aspect of the UNCLOS. The days when states used privateers against other competing nations are long gone.<sup>120</sup> For several centuries the act of piracy has returned back to being a private criminal activity, still, UNCLOS article 101 (A) obtains the term “private ends” essentially excluding all politically motivated attacks in the high seas from the definition of piracy. Political and social conditions of the Gulf of Guinea have enabled strong direct involvement between pirates and radical groups such as MEND, which has complicated the application of UNCLOS against piracy in the region. Applying changes to this particular requirement could provide bigger efficiency when prosecuting pirates and ease with the interpretation of UNCLOS. The 2005 SUA convention goes step forward by actually including the politically motivated attacks as being a piracy, but with only 11 contracting party its effect against piracy is marginal.<sup>121</sup>

With regards to maritime piracy, whether in the Gulf of Guinea or the Gulf of Aden, serious consideration to implementing the international criminal justice system to the fight against piracy is in place.<sup>122</sup> An International tribunal to prosecute pirates was suggested during the early days of the Gulf of Aden piracy by many experts on the field. Eventually, various arguments were made against it and the suggestion was never utilized, UN secretary-general for instance stated in July 2010 that piracy did not exceed the threshold of being serious enough crime to warrant an international mechanism.<sup>123</sup> This statement is in contrary to various resolutions and declarations made by the UN and other international organizations that modern-day piracy is a huge

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<sup>119</sup> Allott, P. (1992). *Mare Nostrum: A New International Law of the Sea*. The American Journal of International Law, 86(4), p. 764-787.

<sup>120</sup> Achibugi, D. Chiarugi, M (2011). *Supra nota 109 p.231*.

<sup>121</sup> Convention for The Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (1988) *Supra nota 26 art.11bis*.

<sup>122</sup> Scott, K. (2014) *Supra nota 118 p.32*.

<sup>123</sup> *Ibid p. 41*.

international pest with an enormous commercial and humanitarian cost.<sup>124</sup> Other significant argumentations were that unlike other international tribunals piracy would produce huge caseload, it would be expensive and time-consuming, Kenneth Scott argued that all of these argumentations considered in opposition to an international tribunal were heavily overstated or did not contemplate with sufficient range of options.<sup>125</sup>

Alternative usage international criminal court (ICC) or international ad-hoc tribunals as a juridical tool should not be neglected. Due to piracy international dimension combine with its seriousness, it has received the recognition of being a crime against humanity.<sup>126</sup> ICC works at referral bases and it is under article 17 of the Roma statute obligated to prosecute offenders of crimes against humanity if the state that has jurisdiction over the case is unwilling or unable to carry the prosecution.<sup>127</sup> Taking into account the Gulf of Guineas currently underdeveloped juridical capacity, maritime surveillance, and thriving corruption, international tribunal to prosecute pirates could bring more instant result to the ongoing fight against piracy.

### **3.2.2 Addressing motivation behind piracy.**

When looked through simple risk-reward ratio from the pirate's standpoint, capacity building alongside other acts analysed on this research has concentrated on maximizing the risk for the offenders, but as an important factor is to minimize the reward. While the Gulf of Guinea countries have increased their state-building capacity, they have not focused on the fundamental cause of piracy: youth employment, corruption and income inequality.<sup>128</sup> Tackling the issue of piracy successfully cannot only be done by creating obstacles for piracy, it is also important to understanding the motivation behind piracy and take it into account when solving the concern.

The emerge of piracy as a possible economic activity have led the unemployed young man in Nigerian Delta, to seek income revenue from piracy.<sup>129</sup> In both Gulf of Guinea and Somalia, piracy would not have occurred without significant financial benefit for poor and desperate individuals.<sup>130</sup> Typical successful voyage by Somali pirates can benefit each pirate from 10.000 to 15.000 Dollars,

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<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> Benton, L. (2011) *Supra nota 11 p. 225.*

<sup>127</sup> United Nation General Assembly (1998). Rome Statute of International Criminal Court. Entered into force 1 July 2002.

<sup>128</sup> Biziours, N, (2013). *Supra nota 90. p. 119*

<sup>129</sup> *Ibid, p.118*

<sup>130</sup> *Ibid*

compared to per capita income of US\$300 in Somalia.<sup>131</sup> This potential financial upside combine with a lack of job opportunities and weak juridical structure illustrated in previous chapters have made and will make piracy tempting for individuals who remain poor and without alternative choices.<sup>132</sup>

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<sup>131</sup> Bizours. N, (2013). *Supra nota 90. p.116*

<sup>132</sup> *ibid*

## CONCLUSION

Aim of this research was to determine are the current International laws, domestic laws, and interstate initiatives truly effective against the Gulf of Guinea piracy, and to assess their enforcement capacity in the region to get a comprehensive picture of the reasoning behind the emerging piracy phenomena in the Gulf of Guinea. The research question was the following “Are the international- and domestic laws used against piracy in the Gulf of Guinea sufficient enough and if not, how could they be improved? Could anti-piracy methods used in the Gulf of Aden also provide solution in some extent to the Gulf guinea”. The research also analysed the possibility of using alternative methods in the fight against piracy in the region. The research identified the main drawbacks with the current approach and propose solutions for improving the enforcement of the United Nations Law of the Sea and the 1988 SUA convention.

Gulf of Guinea piracy is a result of multiple variables that have made it not only extremely challenging to suppress, but also reliable for interstate cooperation. As a result of this research, the author has demonstrated, that the efforts to suppress piracy in the region can be considered to be insufficient from both the international and at the local level, which has resulted a steady incline of piracy and armed robbery in the past decade. The international anti-piracy legislation, which has been defined by UNCLOS has supply legal framework to the fight against piracy, but as in any effective legislation, defining the act accordantly is fundamental for the usage of the law. UNCLOS does not take into consideration the modern-day piracy, essentially leaving crucial gaps to be exploded by the Pirates. Outdated requirements such as “private ends” which excludes all the politically motivated attacks in high seas have increasingly complicated the usage of the relevant articles of the UNCLOS. This combine with the SUA conventions inapplicability against piracy attempts has made the international legislation ineffective against a huge proportion of the Gulf of Guinea piracy.

Both SUA convention and UNCLOS require all the signature states to implement the relevant anti-piracy articles into their domestic legislation and contain piracy on the domestic level, however,

all the countries in the Gulf of Guinea except Nigeria have failed to do so creating difficulties at the prosecution of the pirates. The lack of implementation of the UNCLOS and SUA conventions has allowed pirates to operate without major interference making piracy alluring to young unemployed men in the region. Intergovernmental initiatives such as the Yaoundé code of conduct have tried to fill the void with the creation of unilateral strategy on the approach to maritime safety and suppression of piracy, however, its non-binding character has left the code of conduct without major success. Nigeria as the only country with stand-alone anti-piracy legislation in the region, signed in June 2019 has managed to implement the UNCLOS and SUA conventions into its legislation, however, given the novelty of this legislation and the lack of implementation from the Nigeria enforcement agencies its effect is still ambiguous.

Efforts from the United Nations and other international organizations have also lacked succession in the Gulf of Guinea region. Although the threat of piracy being widely recognized illustrated in the resolutions 2018 and 2039, the international community has not taken the same measures to suppress piracy in the Gulf of Guinea as was previously taken in the Gulf of Aden. While the methods such as armed intervention have been suggested in the past, the international community has mostly focused its efforts on capacity building by initiating enforcement initiatives and training prosecutors, judges, and law enforcements. Even though the capacity building is vital for the region in the long run, it takes a very long time to capitalize on the fight against piracy.

Enforcement of international antipiracy laws in the Gulf of Guinea needs much improvement, in order to achieve suppression of maritime piracy in the Gulf of Guinea. Firstly, relevant articles UNCLOS should be redrafted, or otherwise updated in order to be better suited for 21<sup>st</sup>-century piracy. requirements such as the “private end” reflect 17<sup>th</sup> century piracy, and unintentionally gives legal coverage for a huge portion of the piracy attacks in the Gulf of Guinea.

Secondly, Other Gulf of Guinea countries should follow the example given by Nigeria by implementing stand-alone legislation against piracy in order to collectively suppress piracy in the region. Operation prosperity illustrated that pirates in the region are not limited by their range and effectively suppressing piracy on the coast of one country only increase piracy in neighbouring countries. Also, interstate initiatives such as the Yaoundé code of conduct are doomed not to work as long as they are in the form of soft law, attempts to create a more binding agreement between the countries is highly recommendable in the efforts to suppress piracy.



Thirdly, a rethinking of the prosecution aspect of the pirates should be considered. Due to the slowness of capacity building, alternative prosecution methods should use meanwhile. There is no easy way to reduce piracy in the region, but given the social, political, and enforcement capacity of the Gulf of Guinea countries, proposals such as international tribunal should not be overlooked. In fact, piracy as recognized “crime against humanity” and as a crime happening in the international territory is a model example of the cases organizations such as ICC was created for.

With the current approach to the Gulf of Guinea piracy, regional maritime safety will be endangered for the foreseeable future, Implementing proposals from this research would assist international community to fight against piracy and armed robberies in the Gulf of Guinea and in other future piracy hotspots around the world, by taking a major but necessary change on the approach in the international jurisdiction, legislation, and enforcement.

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