



JOSEPH AYO BABALOLA UNIVERSITY LAW JOURNAL

VOL. 3 NO. 2 2016

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CURBING PIRACY IN THE GULF OF GUINEA: EXPLORING THE SRI LANKA STRATEGY

Abstract

The International Maritime Bureau (IMB) puts the cost of pirate attacks in the Gulf of Guinea to the global economy between \$ 740 million and \$950 million in 2012 above and this figure is expected to escalate this year. A separate study by Oceans Beyond Piracy (OBP) confirmed that the cost of Somali piracy fell by 12.5 percent in 2012 to \$5.7 billion from \$6.1 billion in 2011 as a result of target driven navy action, deployment of private armed security guards and defensive measure on ships. The paper looked at piracy as a threat to international trade and investment and the surging cost of insurance on freight. The effect of this menace on the growth and development of marine related business is discussed. The role of the security agencies involved in stemming this tide and their effectiveness is also examined. The absence of clear cut local legislation that criminalized the activities of pirates is equally pointed out. The paper is concluded by recommending public private partnership as was done in Sri Lanka to check the excesses of these pirates along the Gulf of Guinea. They could as well collaborate and set up a joint monitoring team to police their areas with a view to sustaining the profitability of import and export businesses in the sub-region.

Meaning of Piracy

Etimologically, piracy is defined as the crime of attacking and stealing from ships at sea¹ while, pirates is described as someone who sails on the seas¹, attacking other boats and stealing from them.² Piracy is typically, an act of robbery or criminal violence at sea. The term can include acts committed on land, in the air or in the other major bodies of water or on a shore.³ It does not normally include crimes committed against persons travelling on the same vessel (as the perpetrator, one passenger stealing from others on the same vessel)⁴. The term has been used throughout history to refer to raids across land borders by non state agents. Piracy is also described as acts or robbery and depredation upon the high seas which if committed on land would have amounted to a felony. Brigandage committed on the sea or from the sea⁵.

Piracy is the name of a specific crime under customary international law and also the name of a number of crimes under the municipal laws of a state. It is distinguishable from privateering which is authorized by national authorities and therefore a legitimate form of war-like activities by non state actors. Privateering is considered commerce raiding and was outlawed by the Peace of West Phadia in

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¹ A.S. Hornby Oxford Advanced Learner's Dictionary of English 7th edition Oxford University Press (2006) P1102

² A.S Hornby Op. cit P. 1102

³ A.S Hornby Op. cit P. 1102

⁴ A.S Hornby Op. cit P. 1102

⁵ C.H. Black Black's law Dictionary 5th Edition St Paul Minnesota (1999)

⁶ B.A Garner Black's Law Dictionary 9th Edition Thomson West Publishing Company Minnesota (2009) P 1266

The above definitions follows that an act of piracy may be committed only by private vessels or aircraft. A public vessel or aircraft may be considered pirate if it is intended by the person in dominant control to be used for the purpose committing one of the acts as mentioned under Article 101 are committed by a warship, whose crew has mutinied and taken control of the ship or aircraft, may be treated as pirate ship⁹.

The object of piracy is any public or private vessel or aircraft, or the persons or the goods thereon, whilst on the high seas. In the regular case of piracy the pirate wants to make booty; it is the cargo of the attacked vessel or aircraft which is the center of his interest, and he might indeed free the vessel and the crew after having appropriated the cargo. But he remains a pirate, whether he does that only or whether he kills the crew and appropriates the ship or sinks her. On the other hand, the cargo need not be the object of his act of violence. If he stops a vessel or aircraft and takes a passenger off with the intention of keeping him to ransom, that is piracy; It is likewise piracy if he stops a craft merely to kill a person on board, although he may afterwards free vessel, crew, and cargo. In fact, provided it be directed against another vessel or aircraft, 'any illegal act of violence, detention or any act of deprivation, committed for private ends, will suffice. Further, piracy may be prompted by hatred or revenge as well as for gain'¹⁰.

Every State has a right to arrest, try and punish the pirate. The vessels involved in the act of piracy may be seized. The above right has been given as the act of piracy is deemed as the enemy of mankind. The above customary law has been transformed into treaty rules¹¹. Article 19 of the Geneva Convention on the High Seas that every State may seize pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons or seize the property on board, Similar provision has been made under Article 105 of the Convention on the Law of the Sea of 1982.

Piracy Off The Coast Of Somalia

In the year 2008 there was a tremendous increase in acts of piracy and armed robbery at sea against vessels off the coast of Somalia. The pirates have mounted at least 84 attacks in 2008 and collected millions of dollars in ransom. They held hostage to at least 12 foreign ships in the water off Eyl in the Nagul region (300 miles south of Africa's horn)¹².

Permanent representative to the United Nations of the Transitional Federal Government (TFG) of Somalia sent a letter to the president of the security Council on February 27, 2008 for providing urgent assistance in securing the territorial and international waters off the coast of Somalia for the safe conduct of shipping and navigation. In the letter, TFG gave its consent to the Council to provide such assistance. The Council on June 2, 2008 adapted a resolution wherein it condemned

⁹ R.M.M Wallace International Law 5th edition Sweet & Maxwell London (2005) P 165

¹⁰ M. Akehurst A Modern Introduction to International Law 3rd edition George Allen and Unwin London (1978) P. 174

¹² H.O. Agarwal Op.cit P 152

¹³ H.O. Agarwal Op.cit P 152

patrol areas such that by 2011, the activities of Somalia pirates has dropped significantly. The activities of these pirates includes hijacking of ships, kidnapping of ships and crew for ransom. After ceasing hostilities about 97 Seamen are still in their custody. Some of the pirates have now turned to terrorists. The terrorists that attacked Kenya shopping mall are somalians¹⁷. The IMB global survey of piracy puts it at 239 in 2006, 263 in 2007 and 293 in 2008.

Historically, pirates have always been apprehended by military personnel and tried by military tribunals. Piracy is said to have existed for as long as the oceans have plied for commerce. The earliest in history the Mediterranean pirates in the 14th century, BC, later the Caribbean pirates, French pirates, were also visible, the spinards, Portuguese, Chinese and south east Asia pirates had time or the other held the merchantile community to ransom. And as far back as 8th century piracy in Europe had seen of serious concern to the British merchants which around 1870, ocean piracy was rampant the North America. Indonesia has the highest incidence of piracy globally. In 2004 according to International Maritime Bureau. It has over taken somalia. But Nigeria is now rated high in the Gulf of Guinea. There are also a lot of pirate activities along the Indian ocean¹⁸.

The Gulf of Guinea

The Gulf of Guinea consist of the major West African Countries namely: Nigeria, Ghana, Equitorial Guinea, Republic of Benin, Togo, Cote d'Ivoire, Democratic Republic of Congo, Cameroun and Burkina faso. Some of these countries are rich in oil and Gas deposits while others are rich in solid minerals deposit. Water transport is also central to these flourishing mining and drilling industries. However, piracy has constituted a serious menace to the booming mining and oil and gas industries

Piracy in the Gulf of Guinea

Piracy in the Gulf of Guinea affects a number of countries in West Africa as well as the international community. Piracy in the Gulf of Guinea has evolved over the first decade of the century. For some time, smaller ships shuttling employees and materials belonging to the oil companies with any involvement in oil exploration has been at risk in Nigeria. Overtime, pirates became more aggressive and better armed. By 2010, 45 and by 2011, 64, incidents were reported to the United Nations International maritime organization, however many events go unreported. Vessels are primarily captured for their valuable cargo rather than hostages. Thus, seized oil tankers are redirected to chartered tankers that received the stolen oil. Piracy acts interfere with the legitimate trading interests of the affected countries that include Benin, Togo, cote d'Ivoire, Ghana, Nigeria, and Democratic Republic of Congo. The cost of piracy in the Gulf of Guinea due to stolen goods, security and insurance has

¹⁷ www.icc-ccs.org/piracy-reporting--ce

¹⁸ Curbing maritime crimes in Nigeria Sunnews online/news/curbing mari...

²⁰ B.A Shemaag Curbing Insecurity in the Gulf of Guinea [www.voice of America.org/commentary/cu---](http://www.voiceofamerica.org/commentary/cu---)

regulations made by the Minister and with the concurrence of Sri Lanka Ports Authority and Director of Merchant Shipping. The power also extend to stop and board any ship, motor vehicle or other mode of conveyance, enter premises, search any person or property found on any such ship, motor vehicle, mode of conveyance or premises⁶⁷. The Attorney General of Sri Lanka is granted the general power of persecution under the Act. And he shall ensure that all the processes of trial are served on the offenders before trial commences⁶⁸. The Evidence Ordinance of Sri Lanka will apply to the trial,⁶⁹ obstructing authorized officer from performing his duties is a crime under the Act and such a person is liable to a term of imprisonment not exceeding three years.⁷⁰ An authorized officer is protected from civil or criminal liability when in lawful performance of his duties. This offence is triable by a magistrate⁷¹.

The minister is empowered by the Act to make regulations on preventive strategy, investigations, determination of zones, issues of permit to enter any zone coordination and monitoring functions of Sri Lanka ports Authority, establishment of reward scheme for informants leading to detection of offenders etc⁷². These laws operate alongside with the United Nations Conventions on the Law of the Sea 1982 (UNCLOS) convention for the suppression unlawful Act Against safety of maritime Navigation of 1988 and protocols on the suppression of unlawful Act Against Safety of fixe platform the continental shelf of 1988. From the provisions of these laws, it could be concluded that Sri Lanka is serious in combating piracy along its maritime borders.

Other security measures to combat piracy in Sri Lanka

The Democratic socialist Republic of Sri Lanka, in addition to the various laws put in place has also developed a public private partnership security arrangement in patrolling its maritime borders. Under this arrangement, former members of the Armed forces are engaged as private security to complement the efforts of the police Armed Forces, Immigration and Emigration officers, customs officers and Sri Lanka ports Authority Officers to fight piracy in addition to organizing amourey in the high sea. Sea Marshals were also engaged. Private maritime security companies hired by ship owners to protect their ships are vetted and approved by the Defence ministry and are required to provide serial numbers of weapons taken aboard and log ammunition expenditure. There are about 50 of such companies in operation in Sri Lanka now⁷³. The entire South East Asia region is also collaborating to counter regional piracy⁷⁴. This joint effort is expected to reduce piracy, ship hijacking, kidnapping of crew men and passengers, for ransome, maritime terrorism, armed robbery and brigandage.

⁶¹ Section 7(2)

⁶² Section 8

⁶³ Section 9

⁶⁴ Section 10

⁶⁵ Section 11

⁶⁶ Section 12 & 16

⁶⁷ Section 13

⁶⁸ Section 14

⁶⁹ Section 15

⁷⁰ Section 17

⁷¹ Section 18

⁷² Section 19