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The Impact of the Suppression of Piracy and other Maritime Offences Act 2019 in the Fight against Piracy in Nigeria

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Abstract

Nigerian waters are touted as 'perilous' and 'hotspot of piracy' in the world. The impact of this notorious tag on the sociopolitical and economic objectives of Nigeria is devastating. The absence of a standalone legislation outlawing piracy and other maritime crimes in Nigeria was seen as the reason for the rise in piracy and maritime insecurity within the maritime domain. The National Assembly of Nigeria enacted the Suppression of Piracy and Other Maritime Offences Act 2019 to give effect to the United Nations *Convention on the Law of the Sea 1982 provisions and the Convention for the Suppression of Unlawful Act against the Safety of Maritime Navigation 1988. The Suppression of Piracy and Other Maritime Offences Act 2019 is designed to punish and deter piracy and other maritime crimes in Nigeria. This paper assessed the impact of the Suppression of Piracy and Other Maritime Offences Act 2019 three years after its enactment. The paper adopted the doctrinal research methodology and is structured to answer the question whether the enactment of the standalone antipiracy legislation is an end in the search to suppress piracy and other maritime offences in Nigeria. The paper is divided seven parts covering introductory issues, advocacy, overview and assessment of the Suppression of the Piracy and other Maritime Offences Act 2019 three years after and concluding remarks. The paper recommended the establishment of National Coast Guard to combat the menace of piracy and other maritime offences in Nigeria.*

Key words: Maritime Piracy, Maritime Offences, Nigeria.

1. Introduction

Maritime Piracy and associated crimes like illicit trade and smuggling in persons and goods such as arms and nuclear weaponry have become a source of danger to international commerce and economy, especially the shipping industry at the risk of imminent loss of ships, vessels, crews, seafarers, cargoes and business prospects. This menace formed part of the considerations of nations under international law in the formulation of the Geneva Convention on the High Seas 1958[1] and the United Nations Convention on the Law of the Sea 1982 (UNCLOS),[2] UNCLOS divides the seas into various legal zones, defines the legal status and extent of zones and establishes rules governing the rights and jurisdictions of the coastal and flag states.[3]It is piracy, when the attack is done outside the 12nm and armed robbery at sea when the attack is within the 12nm and the internal waters of Nigeria.

The rising acts of criminality, especially piracy on the high seas, propelled the International Maritime Organization (IMO) to prepare the Suppression of Unlawful Acts against the Safety of

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[1]Geneva Convention on the High Seas 1958, arts. 15 – 21.

[2]UNCLOS, arts. 99 – 108.

[3]Z Adangor & O W Arugu, 'An Evaluation of the Rights and Duties of the Coastal States under the United Nations Convention on the Law of the Sea 1982', [2018](8)(1) *African Journal of Law & Criminology*, 65-84

Maritime Navigation Convention 1988 (SUA)which created offences against shipping, including the seizure of ship and acts endangering navigation on the seas.[4]The Suppression of Piracy and Other Maritime Offences Act 2019 (SPOMOA) enacted by the National Assembly (NASS) gives effect to the provisions of UNCLOS and SUA.

Nigeria is located in the Gulf of Guinea (GoG) on Africa's western coast covering an area of 924 thousand square kilometers with a coastline of about 853 kilometres and about 3,000 kilometres of inland waters.[5] Piracy and armed robbery at sea are among the key crimes unsettling the maritime industry in Nigeria and the larger GoG. Maritime piracy and unrest in the Niger Delta region has led to high cost of cargo importation because of the war risk insurance premium placed on vessels calling at ports in Nigeria by underwriting firms. In 2020, the total cost of additional war risk area premiums incurred by Nigeria bound ships transiting the GoG was $55.5 million and 35 per cent of ships transiting the GoG also carried additional kidnap and ransom insurance totaling $100.7 million.[6] Piracy is a universal problem even though the Nigerian Maritime Domain remains the hotspot of piracy with a total of 38 cases, the waters off the coast of West Africa had the most number of reported acts of claimed piracy and robbery attacks against ships in Africa in 2021. Most of those occurrences happened in international seas.[7]The maritime potentials of Nigeria as a coastal state are yet to be realized because of a combination of many factors including maritime insecurity within Nigerian maritime domain.

2. The Advocacy for Standalone Anti-Piracy Act in Nigeria

The United Nations Office on Drugs and Crime (UNODC) report on the total economic cost of piracy in West Africa is estimated as $777.1 million annually between 2015 and 2017.[8] The GoG remains the world's most dangerous for piracy. The International Chamber of Commerce - International Maritime Bureau (ICC-IMB) report reveals 73% of all kidnappings at sea, and 92% of hostage-takings, took place in the GoG in the first half of 2019.[9] "In the last three months of 2018, 41 kidnappings were recorded in waters off Nigeria alone."[10] These incidents not only took a huge toll on the security and safety of seafarers, and impacted negatively on the economic fortunes of Nigeria by stalling maritime trade, fishing and other forms of exploitation of the abundant natural resources deposited within Nigeria's maritime boundaries but also, gave Nigeria an awfully negative publicity in the comity of nations.

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[4]SUA Convention, arts. 1 – 6.

[5] Second Schedule, National Inland Waterways Act, Cap N47, LFN 2004

[6]P Kyanet, 'Jamoh Launches Campaign to End War Risk Insurance on Nigerian Bound Cargoes, Nigeria Maritime Administration and Safety Agency', June 18, 2021 < https://nimasa.gov.ng/jamoh-launches-campaign-to-end-war-risk-insurance-on-nigerian-bound-cargoes/> Accessed 18 February 2024

[7] M Placek, 'Number of Reported Piracy and Robbery Attacks in Africa by Location of Incident 2021', Statista, 9 March 2023 < https://www.statista.com/statistics/1122157/piracy-attacks-africa-by-location/> Accessed 18 February 2024

[8]United Nations Office and Drugs and Crime, West Africa loses $2.3 billion to Maritime Crime in Three Years as Nigeria, UNODC rally multi-national efforts to thwart Piracy in the Gulf of Guinea, 17 May 2019 < https://www.unodc.org/nigeria/en/press/west-africa-loses-2-3-billion-to-maritime-crime-in-three-years-as-nigeria--unodc-rally-multi-national-efforts-to-thwart-piracy-in-the-gulf-of-guinea.html> Accessed 18 February 2024

[9] IMB, Seas off West Africa world's worst for pirate attacks, IMB reports, 8 July 2019 <https://www.icc-ccs.org/index.php/1279-seas-off-west-africa-world-s-worst-for-pirate-attacks-imb-reports> Accessed 18 Feb. 2022

[10] IMB piracy report 2018: Attacks Multiply in the Gulf of Guinea, 16 January 2019 < https://www.icc-ccs.org/index.php/1259-imb-piracy-report-2018-attacks-multiply-in-the-gulf-of-guinea > Accessed 18 February 2024

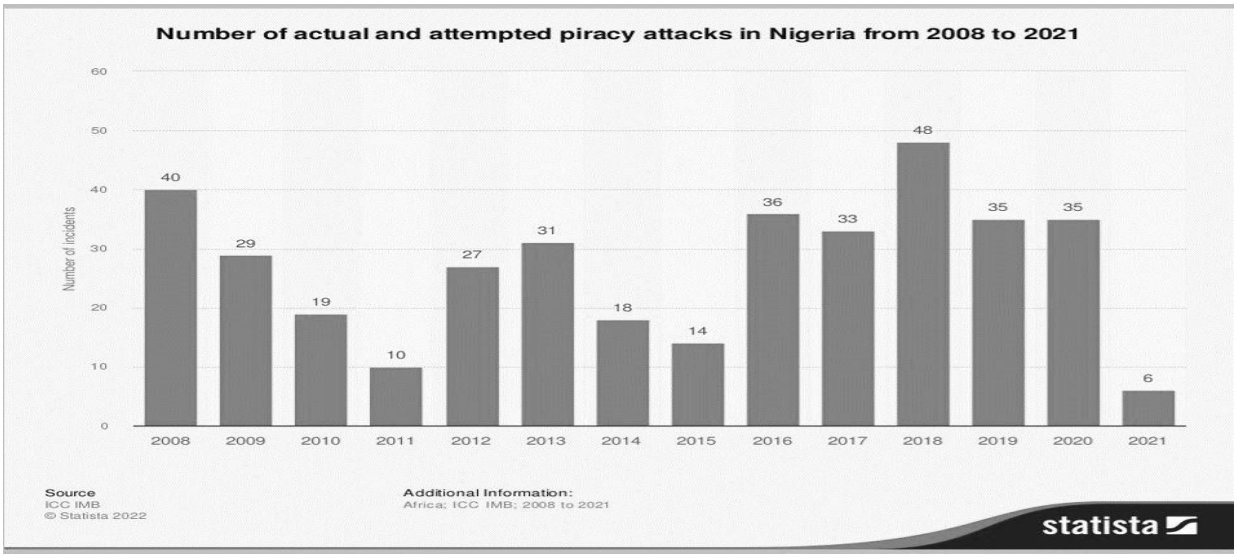


Figure 2: Number of actual and attempted piracy attacks in Nigeria 2008-2021[11]

Nigeria had no national legislation against piracy and other maritime crimes before 2019, with the exception of being a signatory to the UNCLOS and the SUA. However, the criminal aspects of these crimes were covered by its internal laws, such as the Penal Code of 1959 (applicable in Northern Nigeria) and the Criminal Code Act (applicable to Southern Nigeria), which dealt with robbery, kidnapping, and the sale of slaves.[12] The rise in agitation for resource control in the Niger Delta and its attendant formation of militia groups and local gangs seem to be the foundation of acts of piracy at sea, kidnapping, armed robbery, illegal bunkering, oil theft and other violent crimes in the internal and international waters of Nigeria. It is trite that if there is no peace on land, there cannot be peace at sea.[13] These acts of criminality have so flourished in the face of failure of government's legal and institutional framework to curb it, as well as corruption instigated by the profiteering that accrues from the pyramid of these criminal enterprises in Nigeria. One of the gaps identified by stakeholders in the fight against maritime crimes was the absence of a legal framework for prosecuting offenders. The situation changed when the President assented to SPOMOA on the 24th June 2019.

Again, the prosecution of maritime offences was difficult as there was no domestic legislation criminalizing such acts even though UNCLOS 1982 and SUA 1988 to which Nigeria has been a signatory to curb piratical activities internationally and treat ocean piracy as a crime. The Constitution of the Federal Republic Nigeria (CFRN) 1999[14] provides that an international treaty

[11] 'Number of Actual and Attempted Piracy Attacks in Nigeria 2008-2021', Statista Research Department, 2 March2022 <https://www.statista.com/statistics/250868/number-of-actual-and-attempted-piracy-attacks-in-nigeria/> Accessed 18 February 2024.

[12] O W Arugu and C E Halliday, 'Strengthening the Legal and Institutional Framework for Combating Piracy and Armed Robbery against Ships in Nigeria', in Chijioke, C.O., Issues and Responses in Maritime Law Volume 1, (Rhyce Kerex Publishers, Enugu, 2018), pp. 63-84.

[13] United Nations, Piracy off Somali Coast Not Only Criminal, but Very Successful, Security Council Hears, Cautioned There Could Be No Peace at Sea without Stability on Land, Security Council SC/9793, 18 November 2009 <https://www.un.org/press/en/2009/sc9793.doc.htm> Accessed 18 February 2024

[14] CFRN 1999, s. 12

entered into by the Federal Government of Nigeria (FGN) does not become binding until enacted into law by the National Assembly (NASS).[15]In the ***MT Maximus incident,*** alleged pirates were arrested by Nigerian authorities but the lack of a specific piracy law in Nigeria meant that they could not be prosecuted for piracy but tried for money laundering and unlawful possession of firearms. The gap created by the unavailability of anti-sea-robbery legislation in Nigeria was such that suspects could not be adequately punished since 'a person shall not be convicted of a criminal offence unless the offence is contained in a written law'.[16] SPOMOA came to cure that defect by domesticating UNCLOS and SUA and a culmination of concerted efforts by stakeholders in the maritime industry since 2008 especially the Nigerian Maritime Administration and Safety Agency (NIMASA), IMO, UNODC, European Union (EU) and the United States of America (USA).

3. An Overview of the Suppression of Piracy and other Maritime Offences Act

SPOMOA is divided into four parts and twenty-five sections and applies *mutatis mutandis* to every piratical activity in, on or over Nigerian internal and territorial waters in the GoG as well as international waters. The entrance of SPOMOA has ensured, to a greater extent, safety of life and cargoes in the maritime domain as reports of piracy and armed robbery at sea have been on the downward spiral from six recorded attacks on pirate ships in 2021 to zero real and attempted attacks in 2022 in Nigeria.[17] The goal of SPOMOA is to prevent and suppress piracy, armed robbery, and other unlawful acts against a ship, aircraft, and any other maritime craft, however propelled, including fixed or floating platform, in order to ensure that moveable or immovable vessels for maritime purposes are safe and secured from being attacked, apprehended, or hijacked by pirates in Nigerian territorial waters and international waters. Anyone on board a ship or aircraft traveling through or above Nigeria's territory and internal seas, as well as any fixed or floating platforms traveling through or above Nigeria's territorial and internal waters, is subject to SPOMOA.[18]A person, ship, or aircraft in, on, or above international waters may be subject to SPOMOA when:

> *(a) in relation to piracy; and (b) the case of any other offence under the Act where- (i) the offender or alleged offender is found outside Nigeria but is in the territory of a State Party to the SUA Convention or any other similar Convention to which Nigeria is a party, and (ii) Offence has been committed on board a ship or vessel flying the flag of a party to the SUA Convention.*[19]

SPOMOA also applies in situations of armed conflict and provides that where a situation of armed conflict exists to which Nigeria is either a neutral party or an involved party and the armed conflict has maritime considerations affecting Nigeria, the Law of Armed Conflict would apply in addition to SPOMOA.[20] However, the *proviso* to the foregoing provision creates an exception whereby in the event of any provisions of the SPOMOA becoming inconsistent with the Law of Armed Conflict the latter takes precedence over the application of SPOMOA and applied in a manner to

[6]*Abacha v Fawehinmi*(2002) 6 NWLR (Pt. 660) 228
[16]CFRN 1999, s. 36(12).
[17] Number of actual and attempted piracy attacks in Nigeria 2008-2022, Statista Research Department, 1 August 2023 < https://www.statista.com/statistics/250868/number-of-actual-and-attempted-piracy-attacks-in-nigeria/> Accessed 16 February 2024
[18]SPOMOA, s. 2 (1) (a-b).
[19]Ibid, s. 2 (2).
[20]Ibid, s. 3.

make them compliant with the Law of Armed Conflict.[21]The definition of piracy is provided in UNCLOS 1982[22] provides that only acts with the elements committed between two ships or two aircrafts in 'international waters' will amount to piracy now domesticated in SPOMOA:-

> *(i) An illegal act of violence, detention or depredation committed for private ends (ii) The above acts must be directed against another ship or aircraft or against a person or property on board the ship or aircraft. (iii) The ship or aircraft or person or property on board such ship or aircraft must be in international waters or a place outside the jurisdiction of any state. (iv) Act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft. (v) An act of inciting or facilitating any of the acts described above.*[23]

SPOMOA creates the offence of armed robbery at sea and other maritime offences, with their place of commission confined to the territorial waters of Nigeria, which means that where the elements of the crime as provided in s. 3 SPOMOA are complete, it would not amount to piracy where the incident occurs within the national territorial jurisdiction of Nigeria.[24] Another type of offence specified in SPOMOA is conspiracy or attempt to commit conspiracy. SPOMOA provides that notwithstanding anything contained in any other Act, a person who conspires with others, aids and abets or participates in (a) an act of piracy, or (b) any maritime offence or unlawful act under the Act would be liable on conviction to punishment.[25] SPOMOA provides for punishment of willful destruction of evidence with at least 12 years imprisonment and restitution.[26] Under SPOMOA any person who obstructs a law enforcement in the discharge of his official duties would be liable on conviction to a fine of ₦5, 000,000.00 (Five Million Naira) and 10 years imprisonment.[27]It is an offence under the Act for a person to fail to disclose relevant information for preventing the commission of an offence or for aiding the arrest and prosecution of a suspected offender.[28]

For purposes of prosecution of offences under SPOMOA, the Attorney-General of the Federation (AGF) has the power to prosecute all offences under SPOMOA subject to the provisions of the CFRN 1999 and the Administration of Criminal Justice Act.[29]The powers to prosecute offences under SPOMOA could be exercised not only by the AGF but also by any law officer designated from the office of the AGF[30]or an agency of the FGN, like NIMASA with the consent of the AGF. Jurisdiction defines the power of the court to inquire into facts, apply the law, make decisions and

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[21] Ibid, s. 5(1)(a).

[22]UNCLOS, art.101, a codification of art.15 Geneva Convention on the High Seas 1958. A H Ansari, *et al*,'Combating Piracy Under the United Nations Convention on the Law of the Sea 1982', [2014] (56)(3) *Journal of the Indian Law Institute*, 320–347.

[23]SPOMOA, s. 3

[24]Ibid, s. 4

[25] Ibid, s 16(5)

[26] Ibid, s 14

[27] Ibid, s 15(1)

[28] Ibid, s 16(5)

[29] Ibid, s. 5(1); Sections 174 & 211 CFRN 1999 which relate to the powers of the AGF and of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria and may exercise these powers either personally or through any officer of his department. Section 106 of ACJA 2015 provides that only the AGF or a law officer in his office or a legal practitioner authorized by the AGF or Act of the NASS.

[30] SPOMOA, s. 5(1)(b).

declare judgment. The issue of jurisdiction which can be raised at any stage by either the parties, or the court, is decided when the point is taken and whenever an issue of jurisdiction is raised, a court should deal with it first or promptly or expeditiously, as it has jurisdiction, to decide whether or not it has jurisdiction.[31] Therefore a court is competent to entertain a case when:

> *(a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another, and (b) The subject-matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction (c) The case comes before the court initiated by due process of the law and upon fulfillment of any condition precedent to the exercise of jurisdiction*.[32]

The Federal High Court (FHC) is the only court in Nigeria exclusively vested with the jurisdiction to hear and determine maritime claims and other admiralty causes or matters, whether civil or criminal by virtue of section 251(1)(G) 1999 CFRN 1999 and SPOMOA gives the FHC original and exclusive jurisdiction to hear and determine any matter under it.[33]The FHC may try any of the offences under SPOMOA where it is committed:

> *(a) against or on board a ship registered in Nigeria or flying the Nigerian flag at the time the offence was committed; (b) against or onboard a fixed or floating platform located on the continental shelf of Nigeria; (c) against a citizen of Nigeria; (d) in Nigeria territory including its territorial waters; (e) by a Nigerian citizen; or (f) in the case of piracy, against any ship or aircraft outside.[34]*

In addition, the FHC may commence proceedings where the alleged crime was committed on board of a ship scheduled to engage in an international voyage, or in international sea or internal waters of foreign country and had a Nigerian element or UNCLOS or SUA Convention element.[35] From a careful study of the some of the provisions of SPOMOA[36] it is safe to conclude that the SPOMOA is consistent with the principle of universal jurisdiction established by UNCLOS 1982 in relation to piracy.[37]SPOMOA permits relevant authorities to seize pirate-controlled ships or aircrafts or ships/aircrafts connected with an offence under it. This seizure may be effected in Nigeria, in, on or above international waters or in, on or above a place beyond the jurisdiction of any country. However, the right to arrest and prosecute pirates and maritime offenders arrested in territorial waters or in any place outside the jurisdiction of Nigeria's territorial waters is subject to the rights of third parties acting in good faith.[38]

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[31]*NALSA & Team Associates v NNPC* (1996) 3 NWLR (Pt. 439) 637; *Messrs. N V Scheep&Anor.v The M/V "S. Araz" &Anor.*(2000) 15 NWLR (Pt. 691) 622.
[32] *Rear Admiral Francis EchieAgbiti v Nigerian Navy* (2011) 4 NWLR (Pt. 1236) 175; *Madukolu vNkemdilim* (1962) 2 SCNLR 341 @ 348
[33] SPOMOA, s. 5(2); O. W. Arugu, 'Admiralty Jurisdiction and Practice in Nigeria' in Wigwe, C.C., Readings in Law and Contemporary Issues (Zubic Infinity Concepts, Owerri, 2018), pp. 322 – 343.
[34] SPOMOA, s. 5(3)
[35]Ibid,s. 6(1).
[36]Ibid, ss. 2, 5, 6 & 7.
[37]UNCLOS, art. 105
[38] SPOMOA, s. 7

SPOMOA provides for custody and preliminary inquiry into the facts of an offence whereby a person arrested could be detained in custody for a reasonable period or measures to ensure his presence when needed could be taken to enable any criminal or extradition proceedings to be instituted against him. SPOMOA mandates that preliminary inquiry should be made into the facts of the offence. This is to be conducted in accordance with the CFRN 1999 and other relevant laws. The alleged offender must be permitted to communicate with and be visited by the representative of his country or if he is a Stateless person,[39]the representative of the country he habitually resides. The FHC can grant an order made pursuant to an ex-parte application for the detention of a detainee for a period not exceeding 90 days. The order can be renewed for a similar period until the investigation and detention is dispensed with.[40]

SPOMOA provides for the exception of certain acts from the offences created under section 11 related to transportation of special fissionable materials and technology related to biological radiological chemical nuclear weapons.[41] Section 12 of the Act provides various punishments for piracy, armed robbery at sea, or other unlawful acts under SPOMOA ranging from life imprisonment, fine, restitution and forfeiture. SPOMOA also ensures that corporate bodies may be found liable to criminal conviction, fines and various terms of imprisonment for offences of piracy other maritime offences or unlawful acts in addition to restitution to the owner or forfeiture of the booty of the crime to the FGN.[42] SPOMOA provides punishment for erring officers and crew member of a Government ship or aircraft, or any officer of a relevant authority who may aid, abet or counsel the commission of an offence under SPOMOA or threaten to commit such an offence or acts as an accessory after the fact. Interestingly, SPOMOA provides for 12 years imprisonment and the fine of ₦100,000,000.00 (One hundred million Naira) for the offence of attempted piracy,[43] thus a much higher fine for the unsuccessful commission of the offence.

4. SPOMOA Institutional Framework

The Minister of Transportation (MoT) who is the head of the Federal Ministry of Transportation (FMoT) is tasked with the duty to provide support for the coordination of maritime activities, supervise NIMASA [44] and make regulations and guidelines for the smooth operation of SPOMOA.[45] Enormous responsibility is placed on the MoT to provide support to NIMASA to prevent and combat piracy, maritime offences and other unlawful acts.[46] NIMASA is the apex regulatory and promotional maritime agency created from the merger of National Maritime Authority and Joint Maritime Labour Industrial Council under the Nigerian Maritime

[39]Convention Relating to the Status of Stateless Persons 1954, art 1(1) defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law'. <https://emergency.unhcr.org/entry/52865/stateless-person-definition> accessed 18 February 2023.
[40]SPOMOA, s. 9(1).
[41] OAlao, 'Combatting the Threat of Piracy in the Nigerian Maritime Industry: the Pith and Potentials of the Suppression of Piracy and Other Maritime Offences Act 2019' [2021] (4) (2) *UNILAG Law Review*, 214.
[42] SPOMOA, s 12(3)
[43] SPOMOA, s 12(5)
[44] Ibid, s. 17(1)(2)
[45] Ibid, s. 20(1)
[46] Ibid, s 17(1)

Administration and Safety Agency Act.[47]NIMASA provides air and coastal surveillance, port and flag state duties, national maritime search and rescue Service, provide maritime security, etc. [48] NIMASA is responsible for the gathering of intelligence, patrolling of waters and investigating offences provided for under SPOMOA.[49] While ensuring effective formulation and implementation of a wide-ranging maritime strategy, NIMASA is to collaborate with the Nigerian Navy (NN) to build capacity for the effective discharge of all relevant security, intelligence and law enforcement under SPOMOA or any other law on maritime offences in Nigeria and do any other act as may be necessary for the implementation of SPOMOA.[50] NIMASA can enter into agreements with other national or international bodies to facilitate the discharge of its duties under SPOMOA.[51] SPOMOA empowers NIMASA to establish and maintain the Piracy and Maritime Offences Fund (PMOF) whose sources of funding includes monies appropriated by the FGN for the implementation of SPOMOA, 35% of the proceeds of the sales of seized or forfeited assets under the SPOMOA and contributions from the Cabotage Vessel Financing Fund (CVFF) as provided for under the Coastal and Inland Shipping (Cabotage) Act.[52] NIMASA with the consent of the AGF can prosecute all offences under SPOMOA subject to the provisions of the CFRN and the ACJA.[53]

NIMASA is empowered to adopt any measure to prevent and combat maritime crime within Nigeria's territory, facilitate the detection and investigation of maritime offences and other unlawful acts.[54]The Integrated National Security and Waterways Protection Infrastructure code-named Deep Blue Project (DBP) is a $195,300,000 million contract awarded to an Israeli security firm - HLSI Security Systems and Technologies and additional sum of $19,530,000 paid as Management Training Consideration.[55] DBP is an initiative of the FMoT and Federal Ministry of Defence (FMoD), which is being implemented by NIMASA, commissioned on 10 June 2021 in Lagos to secure Nigerian waters and the GoG. DBP provides for three categories of platforms to tackle maritime security on land, sea, and air consisting of the Command, Control, Communication, Computers, and Intelligence Centre (C4I Centre), armoured vehicles, special mission vessels, aircrafts, helicopters, unmanned aerial vehicles. NIMASA has five Global Maritime Distress Safety System centres to coordinate search and rescue activities, assist craft or persons in distress within the waters in the region.[56]The Maritime Security Unit of the DBP comprises of 600 specially trained troops for interdiction from the Armed Forces, Nigerian Police

[47] NIMASA Act, ss. 1(2) & 3(1); O W Arugu and B I Oyagiri, "Appraisal of the Regulatory Functions of the Nigerian Maritime Administration and Safety Agency in the Implementation of Maritime Cabotage Policy in Nigeria," [2018] Issues and Responses in Maritime Law, 85 – 108.
[48] NIMASA Act, s. 22 (1) & (2)
[49] SPOMOA, s 17 (3)
[50] SPOMOA, s. 17 (2)(a)(b)(c).
[51]Ibid, s. 18
[52] Ibid, s. 19(1)
[53]Ibid, s. 19 (5).
[54]Ibid, s. 17(4).
[55]AAkinwale, 'House Investigates $195m Deep Blue Contract Involving Israeli Firm', Thisday, 22 November 2019 <https://www.thisdaylive.com/index.php/2019/11/22/house-investigates-195m-deep-blue-contract-involving-israeli-firm/> Accessed 18 February 2024.
[56] V. Obia, Bashir Jamoh: A Burning Passion for Service, thisday, 26 July 2020 <Bashir Jamoh: A Burning Passion for Service> Accessed 18 February 2024

Force (NPF), Department of State Services (DSS) and other security agencies.[57]These institutions are responsible for the gathering of intelligence, patrolling the waters and investigating offences.[58]

Law enforcement and security agencies are also mandated under SPOMOA to carry out several roles aimed at enforcing SPOMOA as already stated in this paper.[59] SPOMOA does not expressly state what law enforcement and security agencies would be involved in its enforcement. However, **s. 2(1)** SPOMOA which provides for its applicability and a community reading of all provisions of SPOMOA will lead to the conclusion that the Armed Forces, NPF, DSS and other security agencies in Nigeria are contemplated. The Nigerian Navy (NN) Falcon Eye Maritime Domain Awareness System designed by the United Arab Emirates Technologies is an initiative of the Office of the National Security Adviser (ONSA) borne out of the necessity to combat the myriad of security challenges within the maritime sector in Nigeria. It is designed to share information with other stakeholders in the maritime sector like NIMASA, Nigerian Ports Authority (NPA) and NPF.[60]A quick look at the Falcon Eye System indicates that not much difference can be spotted with regards to the objectives and modus operandi of the DBP domiciled with NIMASA. [61] NIMASA credits the success of the antipiracy crusade to the interagency collaboration,[62]but there seems to be lack of interagency synergy and unnecessary competition amongst the ministries, departments and agencies of the FGN in the fight against piracy. The NN, NIMASA and NPA have all deplored different platforms to solve a problem that can be solved by one agency.

Maritime crimes are transnational and therefore require support from international institutions like the ECOWAS, GoG Commission and Maritime Organization of West and Central Africa (MOWCA), IMO, UNODC and ICC – IMB Piracy Reporting Centre. IMO is specialized agency of the UN responsible for regulating shipping in the world. SPOMOAprovides that a report of incidents which may constitute an offence under SPOMOA reported to NIMASA shall be forwarded to the Secretary-General of IMO by NIMASA.[63] NIMASA may enter into cooperation agreements or arrangements with any international body which in its opinion, will facilitate the discharge of its functions.[64]

Though no express mention is made of the UNODC in SPOMOA, it is no less an important institution in the fight against maritime piracy in Nigeria. UNODC advocated for the prompt

[57] PKyanet, 'President Buhari Launches Deep Blue Project in Lagos, NIMASA,' 10 June 2021 <https://nimasa.gov.ng/president-buhari-launches-deep-blue-project-in-lagos/> accessed 18 February 2024.
[58]SPOMOA, s. 17(3)
[59] Ibid, s. 17(3),(4),(5)&(6)
[60] C Bell *et al*, Pirates of the Gulf of Guinea: A Cost Analysis for Coastal States, UNODC, November 2021, 27 <https://www.unodc.org/documents/Maritime_crime/UNODC_Pirates_GoG_A_Cost_Analysis_for_Coastal_States.pdf> Accessed 18 February 2024
[61]O Sunday, 'FG moves to curb maritime terrorism, piracy with navy's Falcon Eye system', Guardian, 14 July 2021 <FG moves to curb maritime terrorism, piracy with navy's Falcon Eye system> Accessed 18 February 2024
[62] O Edwards, Collaboration Responsible for Decline in Piracy on Nigerian Waters – NIMASA DG, NIMASA, 22 March 2022 <https://nimasa.gov.ng/collaboration-responsible-for-decline-in-piracy-on-nigerian-waters-nimasa-dg/> Accessed 18 February 2024
[63] SPOMOA, s. 16
[64] Ibid, s. 18

passage of the SPOMA[65]and trained participants consisting of FHC Judges, federal prosecutors, NIMASA legal officers and NN on international legal framework on piracy and maritime crime.[66] The Global Maritime Crime Programme of the UNODC provides technical support to tackle the full range of transnational maritime crime and foster international cooperation among states.[67] The ICC-IMB is a specialized division of the ICC established in 1981 to combat all categories of maritime crime and malpractice. The IMB Piracy Reporting Centre in Kuala Lumpur, Malaysia has supported the shipping industry, authorities and navies for 30 years and is the world's only independent centre, working around the clock to receive reports of piracy, armed robbery or stowaway incidents from around the world.[68]

5. Challenges in the Implementation of SPOMOA in Nigeria

There is never a perfect legislation that is why there is always room for amendment or an outright repeal of any legislation when necessary. The punishment for the crime of armed robbery at sea under SPOMOA is lighter than the punishment prescribed in other subsisting laws on armed robbery in Nigeria. Armed robbery in Nigeria is prohibited and criminalized in Nigeria under the Criminal Code Act,[69] Penal Code[70]and the Robbery and Firearms (Special Provisions) Act.[71]The punishment for armed robbery in Nigeria is death[72]except the Penal Code Act which prescribes a lighter punishment of life imprisonment or less and fine for armed robbery.[73] The disparity in the punishment of the crime of armed robbery and piracy is unnecessary and should be revisited.MV ELOBEY VI was taken hostage off the coast of Equatorial Guinea on March 21, 2020, and nine people were subsequently detained by the NN on suspicion of being members of the kidnapping ring, according to the Port Harcourt Division of the FHC's ruling. The kidnappers demanded a $2 million ransom out of which $200,000 was finally paid and the suspects charged under s. 16(4) SPOMOA. Three of the accused persons pleaded guilty and Justice M. Sani delivering the judgment of the FHC summarily ordered a fine of N20 million each under SPOMOA.[74] Dr. Bashir Jamoh, NIMASA Director-General stated: *"This will serve as a deterrent to other criminal*

[65] UNODC collaborates with Nigeria to counter piracy in the Gulf of Guinea < https://www.unodc.org/nigeria/en/unodc--interpol--us-africom-collaborate-with-nigeria-to-fight-piracy.html > Accessed 18 February 2024

[66] UNODC supports Nigeria on piracy and maritime crime <https://www.unodc.org/westandcentralafrica/en/nigeria-maritime-crime-training.html > Accessed 18 February 2024

[67] UNODC, Maritime Crime: A Manual for Criminal Justice Practitioners, 2019 <unodc.org/documents/Maritime_crime/19-02087_Maritime_Crime_Manual_Second_Edition_ebook.pdf> Accessed 18 February 2024

[68] ICC, IMB Piracy Reporting Centre < https://www.icc-ccs.org/piracy-reporting-centre> Accessed 18 February 2024

[69] Cap. C 38 LFN, 2004 is the governing law as far as substantive criminal law is concerned for the Southern States of Nigeria and several States of Nigeria have enacted their own State Criminal Code Laws, which is basically an adoption of the Criminal Code Act.

[70] Cap. 89, 1963 Laws of Northern Nigeria applies to the Northern States of Nigeria and Abuja.

[71] Cap. R11 LFN, 2004 applies to all states of the Federation and Abuja.

[72] Robbery and Firearms (Special Provisions) Act, s. 1(2); Criminal Code Act s. 402 (2) (a) & (b)

[73] Criminal Code Act, s. 298

[74] SSalau, 'Court convicts three for hijacking Equatorial Guinean ship', The Guardian, 13 August 2020 <https://guardian.ng/news/court-convicts-three-for-hijacking-equatorial-guinean-ship/> Accessed 18 February 2024

elements who are still engaged in the nefarious activities on our waterways." [75] It is pertinent to point that s. 12 (1) SPOMOA provides a punishment of life imprisonment or a fine of N50 million. With respect, setting the accused persons free in exchange for a paltry fine of N20 million each for the three persons is never a deterrent to a criminal gang who went away with $200,000 which is approximately N200,000,000 today.[76]SPOMOA covers waters beyond the territorial waters only, thereby connoting a lack of rights in waters such as the EEZ.

A key challenge to the implementation of SPOMOA is the technical nature of subject matter and the dearth of judges and maritime stakeholders knowledgeable in maritime law. Maritime Law was not considered to be a course of study in Nigerian universities in the past and the lacuna created by the low penetration level in maritime law together with the fast pace of development in international trade, exerted a lot of strain on judges and maritime stakeholders called to dispense justice on complex maritime issues. Nigerians interested in pursuing a career in admiralty practice had to undertake at huge personal cost such course abroad. To obviate this lacuna, the Nigerian Shippers' Council (NSC) and National Judicial Institute (NJI) introduced the Maritime Seminar in 1995 to provide judges and maritime stakeholders with the requisite knowledge in the speedy dispensation of justice.[77]The NSC and National Universities Commission (NUC) in 2016 agreed to collaborate on introducing maritime law as a course of study in Nigerian universities.[78] It is safe to conclude that virtually all the judges and senior maritime practitioners never had the opportunity of studying maritime law in school so had to rely on seminars and courses abroad to develop the much needed skills in this very sector of our economy. The environment most of these judicial officers work are in a deplorable state.[79]

NIMASA may not achieve the function as apex regulatory institutional in the maritime sector because the appointments to the Board and Executive Management are based on primordial reasons like ethnicity and politics at the expense of professionals and the growth and development of the maritime industry. The law establishing the agency is not respected by the politicians. The NIMASA Act of 2007 was obviously broken when the agency heads were appointed. Meaningful advancement for the maritime industry may still be far off until the intrigues and power struggles that marked previous nominations and terminations of NIMASA top executives are reversed.[80]

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[75] PKyanet, Antipiracy War: Nigeria Secures Premier Conviction under SPOMO Act, NIMASA, 12 August 2020 <https://nimasa.gov.ng/antipiracy-war-nigeria-secures-premier-conviction-under-spomo-act/ >Accessed 18 Feb. 2024

[76] K. K. Anele, The Potential Impact of Piracy on the ACFTA: A Nigerian Perspective. [2021] (8)(1), Journal of Territorial and Maritime Studies, 5–26 @14

[77] J Onyekwere, 'Shippers' Council pledges to educate stakeholders, holds training for judges', Guardian, 21 June 2022 <https://guardian.ng/features/law/shippers-council-pledges-to-educate-stakeholders-holds-training-for-judges/> Accessed 18 February 2024

[78] L Akinboade-Oriere, FG to introduce Maritime Law as course in Nigerian varsities, Vanguard, 21 July 2016 < https://www.vanguardngr.com/2016/07/%E2%80%8Efg-introduce-maritime-law-course-nigerian-varsities/> Accessed 19 February 2024

[79] T IOgowewo, 'Self-Inflicted Constraints on Judicial Government in Nigeria'. [2005] (49)(1) *Journal of African Law*, 39–53.

[80] BAkinola, 'NIMASA: 10 DGs in 16 years, Ships & Ports', 21 March 2016 < https://shipsandports.com.ng/nimasa-10-dgs-in-16-years/ > Accessed 18 February 2024

SPOMOA is confronted with the issue of poor funding and weak institutions in Nigeria.[81]The NPF tasked with the enforcing law and order is grossly under-funded and poorly remunerated resulting to low morale and indiscipline. Nigeria is under-policed and under-secured because of the poor recruitment policy in Nigeria. Considering the weighty functions placed on the shoulders of the 'law enforcement and security agencies under *s. 17(3),(4),(5)&(6)* SPOMOA, it is quite unclear where they will get funds to carry out their duties, while NIMASA takes charge of the PMOF which is for the implementation of SPOMOA is certainly a fertile ground for a conflict. The CVFF is "to promote the development of indigenous ship acquisition capacity",[82] making the CVFF as a source of funding for the SPOMOA which is not even adequate to support indigenous ship acquisition capacity is a source of concern. The sum of $350 million has accrued into the CVFF account but has not been disbursed by NIMASA 18 years since the CVFF was set up.[83]

The main thrust of SPOMOA is the unnecessary militarization in the fight against piracy and armed robbery at sea. The Niger Delta of Nigeria is home to vast deposits of crude oil and natural gas. The Multinational Oil Companies (MNOCs) and indigenous oil firms are making billions out of the region while the region is underdeveloped and majority of the youths unemployed or underemployed. The Niger Delta is a place for the survival of the fittest as many youths have taken laws into their hands under the guise of fighting for the freedom of the region from neglect, injustice and oppression. The Niger Delta is notorious for armed gangs rivalry, kidnappings and inter-communal conflicts fueled by the amount of small arms in the hands of non-state actors nationwide.[84] The Niger Delta region is polluted and the no real attempt has been made by the FGN to address these environmental issues.[85] The FGN is only looking for solutions to the symptoms without addressing the causative factors that have fueled the increase in crime at sea. The deployment of gunboats, helicopter gunships, armed drones and vessels alone may not eradicate the problem of maritime insecurity in Nigeria. This is because the entire rivers used for fishing and lands used for agriculture have been polluted by crude oil. A report by the Socio-Economic Rights and Accountability Project (SERAP) captured the situation in the Niger Delta succinctly:

> *The right of the people to a clean, safe and healthy environment is routinely violated and abused by the government and oil companies. Extensive social, economic, and*

[81]Arugu, O. W. and Oyagiri, B. I., 'A Comparative Study of the Role of the Nigerian National Petroleum Corporation and the Petroliam Nasional Berhad in the Implementation of Maritime Cabotage', in Chijioke, C.O., Issues and Responses in Maritime Law Volume 1, (Rhyce Kerex Publishers, Enugu, 2018), 108 – 129.

[82] Cabotage Act, s. 42 (2)

[83]T.Aribisala, 'FG Allays Fears over Disbursement of $350m Cabotage Vessel Financing Fund, Ships and Ports', 27 June 2022 <https://shipsandports.com.ng/fg-allays-fears-over-disbursement-of-350m-cabotage-vessel-financing-fund/>Accessed 19 February 2024.

[84] J BAsuni, 'Understanding the Armed Groups of the Niger Delta, Council on Foreign Relations', September 2009 <https://www.cfr.org/sites/default/files/pdf/2009/09/CFR_WorkingPaper_2_NigerDelta.pdf> Accessed 28 Sept. 2022.

[85] O. W. Arugu, Oil and Gas Exploration and the Right to a Healthy and Safe Environment in the Niger Delta, in Okene, O.V.C., Excellence in Governance and Creativity: Legal Essays in Honour of His Excellency Nyesom Ezenwo Wike (Princeton Publishing Co. Ltd, Lagos, 2018), pp. 504 – 523.

environmental degeneration has largely affected the lifestyles and wellbeing of the people of the Niger Delta[86]

6. SPOMOA: An End or Means to an End to Piracy in Nigeria

Nigeria has exited the piracy hotspot list and the progress is steady and sustainable if all the agencies continue to play their own part. It is on record that no case of vessel hijack took place in Nigerian waters in the first half of 2022[87] an improvement on 2021 were six actual and attempted piracy attacks in Nigeria were reported. The waters off the Singaporean straits had the thirty-five actual and attempted piracy attacks, the highest globally in 2021. The Philippines and Indonesia recorded nine attacks each making Southeast Asia the most targeted region by piracy.[88] The downward spiral of piracy attacks in Nigeria shows that the measures put in place in by the FGN by the massive naval expenditures, counter piracy operations and vessels acquisition, NIMASA DBP and legal reforms are yielding the desired results. The stabilizing role of international partners in the fight against maritime crimes is another factor.

See figure 3 below.

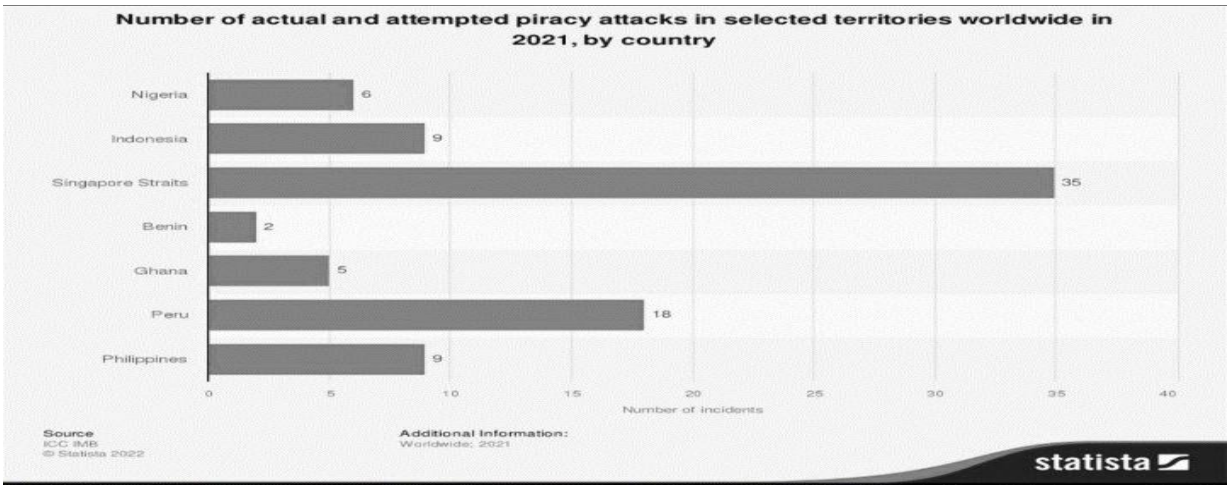


Figure 3: Actual and Attempted Piracy Attacks Worldwide by Country 2021[89]

The enactment of SPOMOA is applauded as a step in the right direction but absolutely not an end in itself. The enactment of legislation to curb any particular crime does not automatically lead to end of that crime. There are laws against terrorism in Nigeria[90] yet Nigeria is the sixth most

[86] Communities in Niger Delta live in depressing conditions, Socio-Economic Rights and Accountability Project, 28 September 2022 <https://serap-nigeria.org/2022/09/28/communities-in-niger-delta-live-in-depressing-conditions-serap/> Accessed 18 February 2024.

[87] ICC- IMB Piracy and Armed Robbery Against Ships Report, 1 January – 30 June 2022 <https://www.icc-ccs.org/reports/2022%20-%20Jan%20to%20June%20IMB%20Piracy%20Report.pdf> Accessed 18 February 2024

[88] ICC-IMB, Piracy and armed Robbery Against Ships, 1 January – 31 December 2021 < https://www.icc-ccs.org/reports/2021_Annual_IMB_Piracy_Report.pdf> Accessed 18 February 2924

[89] Number of actual and attempted piracy attacks in selected territories worldwide in 2021 by country, Statista, 2 March 2022 <https://www.statista.com/statistics/250870/number-of-actual-and-attempted-piracy-attacks-worldwide-by-country/> Accessed 18 February 2024

[90] Terrorism (Prevention and Prohibition) Act, 2022 which repealed the Terrorism (Prevention) Act, No. 10, 2011.

impacted state in the 2022 Global Terrorism Index.[91] Nigeria is not in short supply of anti-corruption laws and commissions,[92] yet one of the most corrupt nations according to the 2021 Corruption Perception Index which ranked Nigeria 154 out of 180 countries.[93] The laws are there on ground but institutions to enforce these laws are rendered ineffective by corruption.[94] It is therefore not surprising that with the technologies deployed by NIMASA, NPA and NN, foreign vessels can enter into Nigerian waters and load stolen crude without any arrest. A combination of weak and corrupt institutions, poor leadership, incompetence and nepotism can make the best technology in the world look outdated.

7. Conclusion and Recommendations

SPOMOA is certainly a most welcome development in the fight against piracy and maritime crimes in the Nigerian maritime domain and enforcement of SPOMOA will serve as a stimulus for further modifications to fill up the gaps and offer improvements to conform to current trends. The establishment of a Coast Guard to exclusively protect Nigerian maritime domain and limit NIMASA to focus exclusively on shipping policy formulation and implementation. The FGN must do more than spending millions of dollars to treat the symptoms of the problem and do more to address the root causes of insecurity like corruption, illiteracy, unemployment, poverty, leadership failure and many more. The FGN should adopt the carrot and stick formula to address the Niger Delta question. SPOMOA must go with FGN's holistic steps targeted at skills acquisition, quality education, rapid development, job opportunities and environmental justice. This is the recipe for sustainable peace in the Niger Delta and security Nigerian maritime domain since peace on land will bring peace at sea. The deployment of gunboats, helicopter gunships, armed drones and vessels alone may not eradicate the problem of maritime insecurity in the GoG. The NSC and NIMASA should do more in ensuring that the study of maritime law in the various faculties of law is encouraged through sponsorship of maritime law lecturers to international maritime conferences, interfaculty mooting competitions on maritime law and endowment of professorial chair in faculties of law in Nigeria. Cooperation and with other international organizations and countries could provide much-needed synergy for coordination efforts in the fight against maritime piracy in the GoG. The Imo, EU and USA must encourage other West African countries to enact their anti-piracy laws. Enacting anti-piracy laws will show the pirates that the GoG countries are serious about fighting piracy.

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[91] Institute for Economics & Peace, Global Terrorism Index 2022: Measuring the Impact of Terrorism, Sydney, March 2022 <https://www.economicsandpeace.org/wp-content/uploads/2022/03/GTI-2022-web-09062022.pdf> Accessed 19 February 2024

[92] Economic And Financial Crimes Commission (Establishment) Act 2004; Independent Corrupt Practices & Other Related Offences Act 2000, Advance Fee Fraud and Other Related Offences Act, 2006; Money Laundering (Prevention and Prohibition) Act, 2022; etc.

[93] Transparency International, Corruption Perception Index 2021 < transparency.org/en/cpi/2021/index/nga> Accessed 19 February 2024

[94] Police Most Corrupt Institution in Nigeria, Reveals SERAP Survey, Socio-Economic Rights and Accountability Project, 26 March 2019 < http://serap-nigeria.org/2019/03/26/police-most-corrupt-institution-in-nigeria-reveals-serap-survey/> Accessed 18 February 2024