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Repressing Piracy off the Nigerian Waters: Lessons from Korea

Kalu Kinglsey ANELE*

Abstract

Literature on piracy in Nigeria abound. However, limited insights have been suggested on how to effectively enforce antipiracy legislation through an enhanced institutional regime, from a comparative perspective. This study interrogates the significance of well-equipped and well-trained maritime regulatory and security institutions in enforcing antipiracy instruments in Nigeria. Thus, the study comparatively analyses Nigeria and Korea's counterpiracy frameworks. The results of the study provide significant support to the author's thesis that corrupt and inefficient maritime institutions, an inefficient criminal justice system, bad governance, poverty, unemployment, and absence of political will by the government of Nigeria to curb piracy impede the suppression of piratical acts in the country. It is argued that the existence of well-trained and well-equipped maritime regulatory and security agencies is pivotal in enforcing the provisions of antipiracy instruments and prosecuting pirates in Nigerian courts. Above all, the Nigerian government must cultivate the political will to suppress piracy off its coast. The findings of this study have significant implications for the judiciary, maritime regulatory and security agencies, and shipping companies in Nigeria.

Keywords: piracy, Nigeria, Korea, legal regime, institutional framework, UNCLOS, SUA Convention

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1. Introduction

As the biggest economy in Africa¹, maritime transportation is crucial to the economy of Nigeria. Given that Nigeria is a riparian state that depends on the exportation of raw materials, like crude oil, and the importation of finished goods, it is imperative to enhance the country's maritime domain awareness. According to recent International Maritime Bureau's (IMB) piracy reports, Nigerian coast has become risky and dangerous for navigation due to piracy and shipping companies are warned to be vigilant while traversing this sea route². The implication is that shipping companies may not use Nigerian ports for

* Cultural Heritage Preservation Research Institute, Pusan National University, South Korea

1 Prinesha Naidoo, 'Nigeria tops South Africa as the Continent's Biggest Economy' *Bloomberg* (New York, 4 March 2020) <<https://www.bloomberg.com/news/articles/2020-03-03/nigeria-now-tops-south-africa-as-the-continent-s-biggest-economy>> accessed 4 April 2020.

2 See the ICC IMB, 'Piracy and Armed Robbery against Ships: Report for the Period 1 January – 31 December 2020' January 2021 (IMB Piracy Report 2020) 23 and the ICC IMB, 'Piracy and Armed Robbery against Ships: Report for the Period 1 January – 31 December 2019' January 2020 (IMB Piracy Report 2019) 21.



transhipments or convey cargo from Nigeria to other countries. Also, shipping companies may reroute Nigerian cargo to other neighbouring countries due to insecurity in the country's waters. Fishing is another subsector that contributes to the Nigerian economy³ and it has been hampered as a result of incessant piratical acts off the country's waters.

In light of the significant role the maritime industry plays in Nigeria's social, economic, security and political development, it is imperative to suggest measures that will enhance antipiracy activities off the country's waters. In spite of Nigeria's efforts to curb piracy in its waters, including the introduction of a private security company to assist the Nigerian maritime regulatory and security agencies to police the country's coastline⁴, pirates have continued to attack vessels off the country's coast. Also, Nigeria has enacted antipiracy legislation, the Suppression of Piracy and Other Maritime Offences (SPOMO) Act, and prosecuted pirates in its court⁵. However, it is observed that the implementation of the antipiracy law in Nigeria may be fraught with institutional challenges as the courts may have limited experience and facilities to properly and promptly adjudicate piracy cases. In addition, the criminal justice system in Nigeria is rife with many challenges, such as corruption. It could be argued that maritime regulatory and security agencies in Nigeria may not possess the requisite competence to combat piracy owing to lack of modern equipment and inadequate training of their officers to conduct forensic investigations considering the nature of piracy, the mobility of vessels and seafarers, and the *locus* of the crime.

Consequently, this paper comparatively analyses the antipiracy regimes of Nigeria and South Korea (hereafter Korea) in order to suggest measures to prevent piratical acts in Nigerian waters. This paper argues that unlike Nigeria, the Korean government has used its domestic legislation to prosecute pirates despite the absence of piracy in Korean waters. The government of Korea was able to achieve this by cultivating and exhibiting a strong political will to combat piracy both in its waters and on the high seas. Furthermore, the Korean government provides sophisticated surveillance and communication equipment to its maritime regulatory and security agencies to maintain effective maritime domain awareness over its maritime zone. The government of Korea routinely sends its navy to patrol navigational routes that are affected by piracy and

3 Theophilus Nwokedi, *et al*, 'Frustration-aggression-theory Approach Assessment of Sea Piracy and Armed Robbery in Nigerian Industrial Trawler Fishery Sub-sector of the Blue Economy' (2020) 8(2) *Journal of ETA Maritime Science* <https://dx.doi.org/10.5505/jems.2020.29053>, 114, 114-132 and Abdullahi S. Usman, *et al*, 'Impact of Piracy and Sea Robberies on Fishing Business in Nigeria: A Focus on Lagos Coastal Area' (2019) 20(4) *Review of International Comparative Management*, DOI: 10.24818/RMCI.2019.4.396, 396, 397.

4 See Kalu K. Anele, 'Addressing the Issue of Piracy off Indonesia and Nigeria: The Need for a Paradigm Change' (2020) VII *Indon. J. Int'l & Comp. L.*, 245, 263 and William Clowes, 'Drones, Choppers to Police Pirate-infested Waters off Nigeria' *Bloomberg* (22 February 2021) <<https://www.bloomberg.com/news/articles/2021-02-22/drones-choppers-to-police-pirate-infested-waters-off-nigeria>> accessed 11 April 2021.

5 See the SPOMO Act 2019 Nigeria. The SPOMO Act incorporated the definition of piracy contained in the United Nations Convention on the Law of the Sea (UNCLOS), adopted 10 December 1982, (entered into force 16th November 1994) 1833 UNTS 3, art 101. See the case of *Federal Republic of Nigeria v Binaebi Johnson & Co*, Suit No.FHC/PH/62c/2020 (Unreported).



other maritime threats⁶. Besides, Korea has strengthened its piracy legal regime and institutional framework, cooperated with regional antipiracy groups and other relevant institutions, installed communication and surveillance facilities, and promoted good governance and economic prosperity in the country. These factors have been instrumental in maintaining maritime domain awareness in Korea, the rescue of the Korean seafarers and vessels hijacked by pirates on the high seas and the waters of other countries, and the subsequent arrest and prosecution of these pirates in Korean courts⁷.

This paper argues that comprehensive antipiracy efforts similar to those of Korea could be adopted by Nigeria to prevent piracy and combat, arrest, and prosecute pirates in Nigerian courts. This will enhance the repression of the crime in Nigeria. Though the countries have different legal systems - Nigeria is a common law country while Korea is a civil law nation - both countries are riparian states that engage in fishing, participate in international trade, and shipping plays a key role in their respective economies. These factors engender the need for this research, as Nigeria will benefit from the antipiracy regime in Korea. Thus, to suppress piracy using the Korean model, Nigeria should effectively enforce the SPOMO Act, adequately equip and fund its maritime regulatory and security agencies, and introduce an effective criminal justice system. Also, Nigeria should provide modern surveillance and communication equipment to its maritime regulatory and security agencies to maintain an effective maritime domain awareness of its waters, regularly cooperate with regional countries, maritime organisations and the shipping industry, address the onshore causes of piracy through good governance, and cultivate the political will to curb piracy.

The paper is divided into six parts. Part one is the introduction. Part two reviews the nature, legal regime, and institutional framework of piracy in Korea. Thereafter, Part three addresses the nature, legal regime, and institutional framework of piracy in Nigeria. Part four undertakes a comparative analysis of piracy regimes in Korea and Nigeria. The essence of this section is to highlight the differences in the antipiracy efforts of both countries, with a view to identifying the factors that impede piracy suppression in Nigeria. In light of that, Part five assesses the lessons Nigeria could learn from Korea's antipiracy framework. It is submitted that the introduction of these measures will enhance the repression of piracy in Nigeria. Part six concludes the paper by reiterating the effectiveness of Korea's antipiracy regime and reemphasising the importance of adopting and implementing the Korean counterpiracy stratagem in Nigeria.

2. Nature and Legal Regime of Piracy in Korea

The paper observes that because of Korea's effective antipiracy framework, piratical acts do not occur off its coast. Piracy only affects Korea through attacks on the country's vessels or vessels with

⁶ It is common knowledge that Korean navy participated in the global antipiracy efforts to suppress Somali pirates in the Gulf of Aden and Indian Ocean by joining the United States (US)-led Combined Task Force (CTF) - 151 in 2009. Recently, the Korean government has also continued its contribution in maintaining a secured sea route by sending its navy to the Gulf of Aden. See Oh Seok-min, '(2ndLD) New Batch of S. Korean Troops Departs for Somali Waters Amid Speculation over Hormuz Strait Mission' *Yonhap News Agency* (Seoul, 13 August 2019) <<https://en.yna.co.kr/view/AEN20190813002252325>> accessed 2 April 2020.

⁷ See the case of *Republic of Korea v Araye* (2011 Do 12927 Verdict, issued December 22, 2011 [Supreme Court]).



Korean crewmembers or vessels conveying Korean cargo in other countries' waters or on the high seas as witnessed in the attacks of *Samho Dream* and *Samho Jewelry* off the coast of Somalia⁸.

2.1 Nature of Piracy in Korea

Korea plays a significant role in the global maritime industry.⁹ First and foremost, Koreans own some of the biggest shipbuilding companies in the world, like Samsung Heavy Industries, Daewoo Shipbuilding and Marine Engineering, and Hyundai Heavy Industries.¹⁰ Also, Korea's Hyundai Merchant Marine and Korea Marine Transport Company (KMTC) are among the top 30 international shipping companies in the world.¹¹ As an industrialised country that engages in international trade, Korea's economy depends on the importation of raw materials and the exportation of finished goods. Data from World Trade Organisation reveals that Korea is ranked 5th in the global top ten exporters of manufactured goods in 2018¹². Due to Korea's well-established strides in shipbuilding, shipping lines, and international trade, it is necessary to protect its maritime domain and safeguard its flagged vessels and vessels trading with Korean-ports.

While piracy attacks do not take place off the coast of Korea, Korean owned or flagged vessels, Korean seafarers aboard vessels, and Korea-bound ships are hijacked during their navigation through international shipping lanes, especially shipping routes that are risky for navigation. Thus, tankers transporting Korea's oil and gas purchased from the Middle East and Africa may pass through maritime security hotspots, such as the Strait of Hormuz, the Gulf of Guinea, the Indian Ocean, the Gulf of Aden and the Strait of Malacca before calling at Korean ports. Though piracy may not be an existential threat to Korea's national security, piracy routines impact Koreans and Korea's economic activities¹³. Lending credence to the fact that piracy does not pose a threat to the security of Korea rather to the economic

8 For detailed reading on the attacks against *Samho Dream* and *Samho Jewelry*, see generally Terence Roehrig, 'South Korea's Counterpiracy Operations in the Gulf of Aden' <https://www.belfercenter.org/sites/default/files/legacy/files/globalkorea_report_roehrig.pdf> accessed 2 April 2020.

9 According to data from Clarkson Research Services, Korea won shipbuilding orders worth 1.29 million compensated gross tons in October, overtaking China to reclaim its number one spot in global shipbuilding orders in October 2019. 'Korean Shipbuilding Industry' *GlobalSecurity.org* (Alexandria) <<https://www.globalsecurity.org/military/world/rok/industry-shipbuilding.htm>> accessed 24 January 2020.

10 As at 2018, Korea was the second largest shipbuilding country in the world due to its 63.8m dwt orderbook (a 27.5% market share) and for its 30.4m dwt of newbuilding orders (26% market share). 'Shipbuilding' BRS Group Annual Review, 2019, 20 <https://www.brsbrokers.com/assets/review_splits/BRS-Review2019-01-SHIPBUILDING.pdf> accessed 13 April 2020. See also Kalu K. Anele, 'A Comparative Analysis of the Arrest of Ship Procedures in Nigeria and Korea' (2020) 19 *Journal of Korean Law*, 191, 197.

11 Matt Woodley, 'Top 30 International Shipping Companies' *MoverFocus.com*, (Copenhagen, 27 September 2019 <<https://moverfocus.com/shipping-companies/>> accessed 14 April 2020.

12 'World Trade Statistical Review 2019' World Trade Organisation, 33 <https://www.wto.org/english/res_e/statis_e/wts2019_e/wts2019_e.pdf> accessed 25 January 2020. See also K.K. Anele, 'A Comparative Analysis of the Arrest of Ship Procedures in Nigeria and Korea' (n 10) 197-198.

13 Bridget L. Coggins & James J. Kim, 'How Korea can Better Manage Maritime Piracy and Terror' *The Asian Institute for Policy Studies*, Issue Brief, 10 March 2014, 1-2.



activities in the country, including fishing,¹⁴ Coggins and Kim aptly observe that:

*‘The hijacking of any tanker, or even a handful of tankers, does not pose an acute security threat to Korea. Rather, the threat is primarily economic. The costs of transporting energy rise with the threat of piracy, and not only due to increased time and distances from rerouting; due to larger crews to stand watch; due to delays from incident reporting and investigation; and occasionally due to increased salaries for at risk crewmembers. These costs are passed on to the government, business and industry, and ultimately, to the consumer’.*¹⁵

2.2 Piracy Legal Regime in Korea

Like many countries,¹⁶ Korean domestic laws recognise and criminalise piracy. According to article 340 (1) of the Criminal Act (CA),¹⁷ piracy means ‘the threat of collective force in the sea, forcibly seizes a ship or forcibly takes another’s property after intruding upon a ship.’¹⁸ In terms of punishment for piracy offence, the Act further stipulates a punishment ‘by imprisonment for life or for not less than seven years.’¹⁹ It could be argued that the Korean piracy definition could cover the nature of contemporary piracy, like piracy off the Nigerian coast, as there are no apparent limitations in the text with regards to geographical location of the crime. However, it is observed that the absence of private ends principle (as opposed to public ends), the lack of two ship requirement, and the need for several attackers in the CA definition of piracy differ from the United Nations Convention on the Law of the Sea (UNCLOS) definition.

Article 101 of UNCLOS defines piracy as a violent attack against a vessel on the high seas by another vessel for private ends. It is significant to note that this definition has generated a lot of debates among legal scholars because of its inherent limitations.²⁰ Wallner and Kokoszkiewicz argue that since article 101 was promulgated by compromise, the provision is tautologous and lacks coherence.²¹

14 It has been suggested that the hijack of the fishing boats owned by Korean companies, Dongwon Fisheries and Daechand Fisheries, was one of the reasons Korea became part of the global antipiracy naval task force. T. Roehrig, ‘South Korea’s Counterpiracy Operations in the Gulf of Aden’ (n 8) 28-29.

15 B.L. Coggins & J.J. Kim (n 13) 5.

16 See Merchant Shipping Act (MSA) 2009 Kenya, s 371; the Penal Code (Kitab Undang-Undang Hukum Pidana/KUHP), Indonesia, art 438 and the Criminal Code, the Netherlands, art 381 (1)(1).

17 No. 15982, 18 December 2018.

18 The Act on Punishment for Damaging Ship and Sea Structures (APDS Act), Act No15155, 12 December 2017, which domesticated the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted 10 March 1988, (entered into force 1 March 1992) 1678 UNTS 221, (SUA Convention), is another Korean domestic law that criminalises piracy.

19 The CA, art 340 (1).

20 K.K. Anele, ‘Addressing the Issue of Piracy off Indonesia and Nigeria’ (n 4) 259; Osatohanmwun A. Eruaga & Maximo Q. Mejia Jr., ‘Piracy and Armed Robbery against Ships: Revisiting International Law Definitions and Requirements in the Context of the Gulf of Guinea’ in Aldo Chircop, *et al.*, (eds.) *Ocean Yearbook* 33 (Brill Nijhoff 2019) 435-441 and Ilja V. Hespden, ‘Developing the Concept of Maritime Piracy: A Comparative Legal Analysis of International Law and Domestic Criminal Legislation’ (2016) 31 *Int’l J. of Mar. & Coast. L.* DOI: 10.1163/15718085-12341395, 279, 287-288.

21 Michal Wallner & Artur Kokoszkiewicz, ‘Maritime Piracy and Limitations of the International Law of the Sea’ (2019) 28(35) *Historia i Polityka*, 25, 29



Gottlieb suggests that the high seas limitation of the definition of piracy is a geographical conundrum that seems to ignore the impact of contemporary technology, the mobility of pirates, “dry land” facilitators, and “failed states” on combating piracy.²² Further, the high seas limitation of the definition of piracy implicates on the nature of contemporary piracy, which occurs mostly in the territorial waters of riparian states. It potentially limits the enforcement of antipiracy measures in piracy hotspots. As Fuchs observes, the definition of piracy is unsatisfactory since it contains many missing links.²³ The import of these limitations is far-reaching given that most piracy hotspots, exemplified by the coast of Nigeria, are within the territorial waters of coastal states and these coastal states lack the necessary legal regime and institutional framework to monitor their maritime domain and combat piracy *suo motu*. In all, terrorist attacks may be for a political reason, nonetheless, it does not mean that they are not for private ends,²⁴ which reveals another gap in the global piracy legal regime.

Further, the use of piracy definition that includes attacks that occur in the territorial waters of coastal states (armed robbery against ships) to support piracy data²⁵ lends credence to the argument that the Korean piracy legal framework used in prosecuting the Somali pirates²⁶ is in line with the need to curb piracy through prosecution. Besides, the CA and UNCLOS have a common denominator: the provision of the legal regime to prosecute pirates. More importantly, the enforcement of the CA is in line with the provision of article 105 of UNCLOS authorising the arresting states to prosecute pirates in their local courts. The fact that the Korean piracy legal framework did not capture extensively the provisions of article 101 of UNCLOS had no impact on the prosecution of the Somali pirates in Korean courts.

The polemical definition of piracy in article 101 of UNCLOS aside, a review of Korean laws reveals that piracy is adequately criminalised. In view of the international instruments that criminalise piracy and armed robbery at sea, the Korean Constitution provides that “[t]reaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the effect as the domestic laws of the Republic of Korea.”²⁷ The logical interpretation that could be ascribed to the above provision is ‘that article 105 of UNCLOS is part of the laws of Korea, giving Korea jurisdiction over acts of piracy on the high seas.’²⁸ In other words, in the absence of the CA, the Criminal Procedure Act (CPA),²⁹ and the Act on Punishment for Damaging Ship and Sea

22 Y. Gottlieb, ‘International Cooperation in Combating Modern Forms of Maritime Piracy: Legal and Policy Dimensions’ University of Amsterdam UvA-DARE (Digital Academic Repository), 2017, 38-55.

23 Ilan Fuchs, ‘Piracy in the 21st Century: A Proposed Model of International Governance’ (2020) 51(1) *Journal of Maritime Law & Commerce* 1, 4.

24 I.V. Hespén (n 20) 288.

25 See generally the IMB Piracy Report for 2019 (n 2).

26 *Araye* (n 7).

27 The Constitution of the Republic of Korea, No. 10, 29 October 1987, art 6 (1).

28 Robert C. Beckham & Ashley J. Roach, ‘Ratification and Implementation of Global Conventions on Piracy and Maritime Crimes’ in Robert C. Beckham & Ashley J. Roach (eds.) *Piracy and International Maritime Crimes in ASEAN: Prospects for Cooperation* (Edward Elgar Publishing Limited 2012) 181-182.

29 No. 16924, 4 February 2020.



Structures Act (APDS Act); Korean courts may have jurisdiction to prosecute pirates on account of the provision of article 6(1) of the Korean Constitution.

Notwithstanding the above, a review of the provisions of the CPA reveals that the Act applies extraterritorially only if the offenders were Korean nationals or if the crime was committed on a Korean vessel.³⁰ A practical example of the application of Korea's piracy statutory provisions was aptly demonstrated in the *Araye's case*,³¹ in which several Somali pirates operating in the Gulf of Aden were arrested by the Korean Forces on 21st January 2011 for attacking a Korean vessel, *Samho Jewelry*. The arrested pirates were taken to Korea where they were charged, prosecuted, and were found guilty of engaging in piratical acts by the Korean courts under the country's legislation and constitution.³² Among other charges,³³ the pirates were charged with maritime robbery and attempted murder, obstruction of justice, infliction of injury, and violation of articles 5 and 6 of the APDS Act. The pirates were sentenced to 13 years, 15 years, and life imprisonment accordingly.³⁴

In its decision, the court ruled that it had territorial jurisdiction over the case due to the current location of the defendants.³⁵ Article 4(1) of the CPA states that '[t]he territorial jurisdiction of the court shall be determined by the place of offense, the place of domicile, the residence of the defendant, or the place where the defendant is presently located'. Also, the Korean court assumed jurisdiction to prosecute these Somali pirates due to the ship that was attacked by the pirates was flying a Korean flag. Lastly, Beckham and Roach conclude that if the vessel that was attacked 'had been flying a foreign flag, Korea would not have had jurisdiction under Korean law unless article 6(1) of the Constitution were interpreted to make the UNCLOS provisions part of Korean law'.³⁶

However, Lee and Lee suggest that the prosecution of the Somali pirates in Korea was problematic and exhibited some procedural limitations, especially in view of the rights and liberties of the accused persons.³⁷ Nevertheless, the existence of these domestic laws criminalising piracy and providing jurisdiction for the Korean courts significantly contributed to the prosecution of the Somali pirates. In addition, the liberal interpretation of the relevant laws and the constitution by the Korean courts and the efficiency of the Korean criminal justice system that led to an expeditious hearing of the case³⁸ - which should be commended - are some of the major factors that could contribute to the repression of piracy off the Nigerian coast.

30 The CPA, arts 4 (1-3).

31 For detailed analysis of the case, see Seokwoo Lee & Hee Eun Lee *The Making of International Law in Korea: From Colony to Asian Power* (Brill Nijhoff 2016) 274-280 and Seokwoo Lee & Young K. Park, 'Republic of Korea v. Araye' (2012) 106(3) *The American Journal of International Law*, 630, 630-636.

32 See *Araye* (n 7).

33 S. Lee & H.E. Lee (n 31) 264.

34 See *Araye* (n 7).

35 S. Lee & H.E. Lee (n 31) 264.

36 R.C. Beckham & A. J. Roach (n 28) 182.

37 S. Lee & H.E. Lee (n 31) 268-269.

38 *ibid* 265.



2.3 Institutional Regime for Curbing Piracy in Korea

The existence of piracy legal regime without an efficient institutional framework would not necessarily and effectively curb piracy. Thus, the antipiracy law and other relevant maritime security instruments in Korea are enforced by maritime regulatory and security agencies: the Korean Coast Guard (KCG) and the Korean Navy (KN) respectively. The KCG has continued to maintain adequate maritime domain awareness, leading to the prevention of maritime crimes - particularly piracy - off the Korean coast. Additionally, the KN, especially the Cheonghae Unit, engages in antipiracy operations in piracy-infested sea routes around the world. For example, the Korean antipiracy naval unit participated in the United States (US)-led Combined Task Force (CTF) 151 and the Shared Information and Deconfliction (SHADE) Group in curbing piracy in the Gulf of Aden,³⁹ strengthening the significant role regional cooperation plays in repressing piracy.

The government of Korea has continued to provide modern facilities⁴⁰ and regularly train officials of these agencies. For instance, the Cheonghae Unit has continued to engage in counterpiracy drills with other related maritime agencies in Korea to enhance the Unit's preparedness for piracy situations.⁴¹ The import of this is that the Korean maritime regulatory and security agencies are not only well-equipped but also well-trained in the use of surveillance and communication facilities and in conducting antipiracy operations overseas.

In view of using regional cooperation to curb piracy, Korea has continued to play a key role in antipiracy activities in Asia and around the world. Aside from its counterpiracy efforts in the Gulf of Aden, the Strait of Hormuz, and the Indian Ocean, Korea plays a significant role in the antipiracy activities in Asia through funding and manpower development.⁴² These efforts contribute to curbing piracy in Asian waters. Lastly, the efficiency and effectiveness of the Korean criminal justice system significantly contributed to the expeditious conclusion of *Araye's* case in the country, unlike Nigeria where cases last for years due to, *inter alia*, limited infrastructure and procedural bottlenecks.⁴³

39 Daewon Ohn & Mason Richey, 'Cooperation on Counter-piracy in the Gulf of Aden among China, Korea, and Japan: Implications for Trilateral Security Cooperation in Northeast Asia' (2014) 26(1) *The Korean Journal of Defense Analysis* DOI: 10.22883/kjda.2014.26.1.006, 81, 84-86.

40 It has been reported that since 2001, Korea has added 3 classes of destroyers, 3 Aegis ships, and 2 large-deck helicopter amphibious assault ships (LPH). Currently, Korea government plans to build 3 more Aegis destroyers, another LPH, patrol ships, frigates, and submarines. Terrence Roehrig, 'South Korea: The Challenges of a Maritime Nations' *The National Bureau of Asian Research* (NBR), 23 December 2019 <<https://www.nbr.org/publication/south-korea-the-challenges-of-a-maritime-nation/>> accessed 10 April 2020.

41 'Gov't to Carry out Counter-piracy Drill' *Yonhap News Agency*, (Seoul, 14 March 2019) <<https://en.yna.co.kr/view/AEN20190314001400320>> accessed 10 April 2020.

42 'Executive Director's Report' ReCAAP/Information Sharing Centre, 2016, 4.

43 For detailed analysis of the factors that lead to delay in the dispensation of justice in Nigeria, see generally Adedoyin Akinsulore, 'The Nigeria Police Philosophy and Administration of Criminal Justice Post 2015: Interrogating the Dissonance' (2020) 4(2) *Sriwijaya Law Review*, DOI:10.28946/slrev.Vol4.Iss2.432.pp136-153, 136, 136-153; Oladimeji Ramon, 'Justice Suffers Delay in Nigerian Courts amidst Plenty IT Solutions' *Punch* (Lagos, 27 December 2019) <<https://punchng.com/justice-suffers-delay-in-nigerian-courts-amidst-plenty-it-solutions-2/>> accessed 12 April 2020 and Jude Cocodia, 'Identifying Causes for Congestion in Nigeria's Courts via Non-participation Observation: A Case Study of Brass High Court Bayelsa State, Nigeria' (2010) 1(1) *International Journal of Politics and Good Governance* 1, 1-16.



3. Nature and Legal Regime of Piracy in Nigeria

This section discusses the nature of piracy in Nigeria and the extant national legal and institutional regimes for curbing the crime. Unlike Korea, piracy occurs off the coast of Nigeria with humanitarian, socio-political, and economic impacts on the country. For instance, in the 2020 IMB piracy report, the highest number of actual and attempted piracy attacks in the world (35) occurred off the coast of Nigeria and the highest number of direct attacks on seafarers also took place in the country (6 seafarers were taken hostage and 62 were kidnapped).⁴⁴ Economically, piratical acts and the theft of crude oil off the Nigerian waters culminated in the loss of about US \$750 million by the country.⁴⁵ Beyond its adverse effect on the fishing industry,⁴⁶ piracy has led to the payment of over US\$2.74 billion over a period of four years, from 2015 to 2018, as ‘insurance surcharges and other sundry surcharges imposed on Nigerian shipments simply because the country’s territorial waters is not safe for navigation.’⁴⁷ And unlike Korea, piracy potentially affects Nigeria’s implementation of regional agreements⁴⁸ and Nigeria’s tourism sector.⁴⁹

3.1 Nature of Piracy in Nigeria

In contrariety to the regime in Korea, piracy in Nigeria has a historical flavour. Piracy in Nigeria emerged as a statute during the colonial era.⁵⁰ The exploitation and sale of natural resources, other maritime activities, onshore violent activities, and transnational organised criminal activities sustained piracy off the country’s coast.⁵¹ Again, contrary to the Korean regime, piracy off the coast of Nigeria is largely

44 IMB Piracy Report 2020 (n 2) 6/12.

45 See Kalu K. Anele, ‘The Potential Impact of Piracy on the ACFTA: A Nigerian Perspective’ (2021) 8(1) *Journal of Territorial and Maritime Studies* DOI:10.2307/JTMS.8.1.5, 5, 16.

46 See *ibid* and Idowu Johnson, ‘Piracy as Threat to Africa’s Security and Economic Development’ (2018) 6(1) *Covenant University Journal of Politics & International Affairs*, 30, 36.

47 ‘Maritime Piracy: Nigeria Loses U2.74bn in Four Years’ *Hellenic Shipping News Worldwide* (Cyprus, 26 November 2018) <<https://www.hellenicshippingnews.com/maritime-piracy-nigeria-loses-us2-74bn-in-four-years/>> accessed 13 April 2020. Also, Nigeria loses US\$2.8 billion annually to piracy and other maritime crimes. Charles A. Adeogun-Phillips, ‘The Investigation of Crimes in Nigeria under the Suppression of Piracy and Other Maritime Offences Act: Challenges and Potential’ a paper presented at NIMASA-NIALS 9th Admiralty Law Seminar for Judges, 19-21 February 2020 at Raddisson Blu Anchorage Hotel, Ozumba Mbadiwe Avenue, Victoria Island, Lagos State (a copy of the paper is on file with this author).

48 See generally K.K. Anele ‘The Potential Impact of Piracy on the ACFTA: A Nigerian Perspective’ (n 45) 5-26.

49 See Kalu K. Anele, ‘The Potential Effects of Piracy on the Art-craft Industry: A Comparative Analysis of Nigeria and Indonesia’ (2020) 10(2) *Indonesian Law Review*, DOI: <http://dx.doi.org/10.15742/ilrev.v10n2.652>, 217, 217-237 and Toakodi Adongoi, *et al*, ‘Sea Robbery and its Implication on Tourism Development in Niger Delta region of Nigeria’ (2019) 2(1) *International Journal of Social & Management Sciences* 1, 1-13.

50 During the colonial era in Nigeria, the British government introduced a law, the Slave Trade Act of 1825, which stipulated that any British subject that uses his vessel in slave trade activities is guilty of piracy.

51 For further reading on the history of piracy in Nigeria, see K.K. Anele, ‘Addressing the issue of piracy off Indonesia and Nigeria’ (n 4) 250. See also Akinsola Jimoh, ‘Maritime Piracy and Lethal Violence Offshore in Nigeria’ IFRA-Nigeria Working Papers Series, 51, 2015, 5.



linked to onshore insecurity⁵² as a result of bad governance and socioeconomic deprivation. In light of that, the resource control agitation that culminated in the kidnapping of foreign expatriates that work for the multinational oil companies, the pollution of the Niger Delta communities, bad governance, corrupt government officials, and political violence also contributed to the emergence of modern piracy in Nigeria. Summarily, the existence of extreme poverty, high rate of unemployment, corruption in the maritime sector, insecurity and political violence are some of the major causes of piracy offshore the country.⁵³

Many scholars have linked modern piracy in Nigeria to the petroleum industry, which is the bastion of the country's economy.⁵⁴ It is common knowledge that the Nigerian economy depends on the exploitation of natural resources, especially crude oil, in the Niger Delta region of the country.⁵⁵ Though there are a few petty stealing and kidnapping for ransom of seafarers in, *inter alia*, trawlers, container vessels, bulk carriers and service vessels,⁵⁶ the *modus operandi* of Nigerian pirates is to attack oil and gas tankers, steal their cargo and sell them at the black market.⁵⁷ Consequently, a major feature of the Nigerian piracy is the target of the attacks, which is the cargo of oil and gas tankers: crude oil or refined petroleum products. Another characteristic of piracy off the coast of Nigeria is its impact on shipping and international trade in the country since Nigeria's economy depends on the importation of finished goods and the exportation of raw materials.⁵⁸

52 Poverty, unemployment, insecurity, among others, has led to acute food insecurity in Nigeria. This has lured many young Nigerians, especially Niger Delta youths, to criminal acts, like piracy. See 'Global Report on Food Crisis: Joint Analysis for Better Decisions' FSIN, 2020, 144-148. According to Nigeria's National Bureau of Statistics poverty report for 2019, 40.1 percent of the total population of the country is poor, which means that 'on average 4 out of 10 individuals in Nigeria has real per capita expenditures below 137,430 naira (US\$ 362.186) per year'. 2019 Poverty and Inequality in Nigeria: Executive Summary, National Bureau of Statistics (NBS), May 2020, 6. See Katja L. Jacobsen 'Maritime Security and Capacity Building in the Gulf of Guinea: On Comprehensiveness, Gaps, and Security Priorities' (2017) African Security Review, DOI:10.1080/10246029.2017.1291441, 1, 5 and Marc-Antoine P. De Montclos, 'Maritime Piracy in Nigeria: Old Wine in New Bottles?' (2012) 35 Studies in Conflict & Terrorism DOI: 1080/1057619X.2012.684651, 531-541.

53 See generally, Chijioko J. Nwalozie, 'Exploring Contemporary Sea Piracy in Nigeria, the Niger Delta and the Gulf of Guinea' (2020) Journal of Transportation Security, <https://doi.org/10.1007/s12198-020-00218-y> and M.P. De Montclos, *ibid*.

54 See Kamal-Deen Ali, 'Maritime Crimes in the Gulf of Guinea: The Role of International Law' a paper presented at NI-MASA/NIALS 9th Admiralty Law Seminar for Judges, 19-21 February 2020 at Raddisson Blu Anchorage Hotel, Ozumba Mbadiwe Avenue, Victoria Island, Lagos State (a copy of the paper is on file with this author); O.A. Eruaga & M. Q. Mejia Jr. (n 20) 427 and Kalu K. Anele 'A Study of the Role of Seafarers in Combating Piracy off the Coast of Nigeria' (2016) WMU J Marit Affairs, DOI 10.1007/s13437-016-0111-y.

55 'Jumpstarting Inclusive Growth: Unlocking the Productive Potential of Nigeria's People and Resource Endowments' World Bank Group, 2019, 16-17 <<https://elibrary.worldbank.org/doi/pdf/10.1596/32795>> accessed 9 April 2020.

56 For attacks on trawlers, see T. Nwokedi, *et al* (n 3) and A.S. Usman, *et al* (n 3). For attacks on container vessels, see Libby George, 'Pirates are Attacking Ships in Gulf of Guinea. Here's Why and the Impact' *Insurance Journal*, (San Diego, CA, 26 January 2021 <<https://www.insurancejournal.com/news/international/2021/01/26/598824.htm>> accessed 25 March 2021. For attacks on bulk carriers and other types of vessels, see Kamal-Deen Ali & Yussif Benning, 'Gulf of Guinea Piracy: The Old, the New and the Dark Shade' Maritime Governance Brief, 2(1) 2020, 5. And for attacks on service vessels, see 'Pirates Abduct Six Julius Berger Workers in Nigeria, Demands N600million' *Sahara Reporters* (New York, 24 March 2021) <http://saharareporters.com/2021/03/24/pirates-abduct-six-julius-berger-workers-nigeria-demand-n600million?fbclid=IwAR03DqDTsbabTB-qNnsMNHps1J8jb5nuHTPgYL1oSFu6pmBnBTMXTf_6UJA> accessed 25 March 2021.

57 See Kalu K. Anele, 'Harvest of arrest but no prosecution: ideation toward strengthening the legal regime for prosecuting pirates in Nigeria' (2020) 46(4) Common Law Bulletin, DOI:10.1080/03050718.2020.1774402, 611, 619.

58 Nana R.L. Ofori-Boateng, 'Piracy in the Gulf of Guinea: Impacts to Maritime Transportation and Maritime Security' (2018) 4(2) Journal of Asian Development, doi:10.5296/jad.v4i2.13124, 1, 38.



In furtherance of the above, piracy in Nigerian waters is also linked to violent agitation on land. Evidence suggests that piracy in Nigeria includes resource control agitators, armed political thugs, transnational organised criminals, and militant groups in the Niger Delta region of the country.⁵⁹ Take, for example, it was observed that corrupt politicians in the Niger Delta area manipulate resource control agitators, militants, and gangsters against their political opponents, particularly during elections⁶⁰ and these criminals subsequently became pirates. On the other hand, the resource control agitators, who also morphed into militant groups, attack both onshore and offshore oil facilities, including oil and gas tankers, to express their misgivings to the exploitation of the resources and the pollution that arises from this economic activity in their communities.⁶¹

One of the peculiarities of piracy off the waters of Nigeria is that Nigerian pirates also attack vessels in the waters of other Gulf of Guinea countries. Thus, piracy stemming from Nigeria directly impacts neighbouring countries.⁶² Moreover, the existence of transnational organised crimes, such as arms trafficking, also contribute to piracy off the waters of Nigeria and its attendant effect on the waters of other Gulf of Guinea countries.⁶³ It is apposite to summarise the nature of piracy off the coast of Nigeria as involving violent attacks on land which have been extended to the sea, essentially targeting oil and gas tankers for the purposes of stealing the cargo and selling them at the black market.

3.2 Piracy Legal Regime in Nigeria

Prior to 2019, there was no antipiracy legislation in Nigeria. This means that there was no piracy prosecution in the country during that aeon of time. It contributed to the escalation of the crime off the country's coast and indeed the Gulf of Guinea.⁶⁴ However, like Kenya⁶⁵, the SPOMO Act enacted by Nigeria in 2019 incorporated UNCLOS and the SUA Convention into the Nigerian domestic law. Thus, while section 3 of the SPOMO Act defined piracy in accordance with article 101 of UNCLOS, section 4 outlines the meaning of maritime offences as contained in article 3 of the SUA Convention. Specifically, section 3 of the SPOMO Act defines piracy as a violent attack on a ship by another ship on the high seas for personal gain. The enactment of the SPOMO Act, which is in contrast with the provision of article 340 (1) of the Korean CA, is a laudable step towards suppressing piracy in Nigeria as it covers the field regarding piracy attacks on ships on the high seas and armed robbery against ships in the territorial waters. Schneider suggests that the definition of piracy that includes armed robbery against a ship in the territorial waters of a coastal state could be more useful in

59 M.P. De Montclos (n 52) 534-536.

60 *ibid.*

61 *ibid.*

62 See A.S. Usman, *et al* (n 3) 398 and O.A. Eruaga & M.Q. Mejia Jr. (n 20).

63 M.P. De Montclos (n 52).

64 O.A. Eruaga & M.Q. Mejia Jr. (n 20) 449.

65 See MSA 2009, s 371.



understanding piracy, specifically, through data analysis.⁶⁶ It could be argued that Nigeria has a more comprehensive piracy legal regime compared to Korea since the SPOMO Act conforms with the international law regime of the crime. However, while Bueger argues that the existence of antipiracy legislation may not lead to its proper enforcement,⁶⁷ Adeogun-Philips opines that weak institutions, prolonged judicial procedure, lack of administrative willpower for implementation and corruption would adversely implicate on the enforcement of the SPOMO Act in Nigeria.⁶⁸

A cursory look at the SPOMO Act reveals that aside from criminalising piracy in section 3, section 12 (1) prescribes the punishment of life imprisonment and a fine of not more than 50,000,000 million naira (US \$ 130,893), including restitution to the owner or forfeiture to the Federal Government of Nigeria whatever the person has obtained or gained from the commission of the crime in Nigeria. Though there is a legitimate expectation by the international community that Nigeria should robustly enforce the SPOMO Act, it is observed that the enforcement of the Act may be a challenge due to corruption and inefficient maritime regulatory and security agencies. Also, the interpretation of the antipiracy legislation by Nigerian courts may be unsatisfactory and limited. This has been exemplified by the recent decision of a Federal High Court sitting in Port Harcourt, River State, in the first piracy case in Nigeria.⁶⁹ In that case, 3 pirates were convicted of piracy for hijacking a vessel, *MV Elobey VI*, off the coast of Equatorial Guinea and securing a ransom of US \$ 200,000 for the release of its crew. The pirates were fined the sum of 20 million naira (US \$ 52,000) each for the crime. This is a laudable development in the fight against piracy in Nigeria. Nonetheless, the lenient sentencing, which contradicts the provision of section 12 (1) of the SPOMO Act that stipulates life imprisonment and a fine of not more than 50 million naira will not deter other pirates from engaging in piracy in the country.

It is significant to note that the Federal High Court has exclusive jurisdiction to adjudicate piracy cases in Nigeria.⁷⁰ In a bid to strengthen the investigation and collation of evidence, section 17 (5) (a-d) of the SPOMO Act enjoins law enforcement agencies to investigate, execute search warrants, arrest, and provide evidence for the prosecution of pirates in Nigeria. Though these are commendable provisions, they do not specify the particular regulatory and enforcement agency saddled with the responsibility of implementing them. Moreover, the lack of forensic facilities and trained human resources in Nigeria would limit the efficacy of these statutory provisions in suppressing piracy in the country's waters. In view of cooperation with regional countries in suppressing piracy in Nigeria, section 17 (4) (f) of the SPOMO Act states that Nigerian law enforcement and security agencies should cooperate with

66 Patricia Schneider, 'When Protest goes to Sea: Theorizing Maritime Violence by Applying Social Movement Theory to Terrorism and Piracy in the Cases of Nigeria and Somalia' (2020) *Ocean Development & International Law*, <https://doi.org/10.1080/00908320.2020.1781383>, 1, 2. Moreover, the use of piracy definition that includes both the high seas and the territorial waters stems from the safety and security threat posed by the crime. Ginger L. Denton & Jonathan R. Harris, 'The Impact of Illegal Fishing on Maritime Piracy: Evidence from West Africa' (2019) *Studies in Conflict & Terrorism*, DOI:10.1080/1057610X.2019.1594660, 1, 3.

67 Christian Bueger, 'Learning from Piracy: Future Challenges of Maritime Security Governance' (2015) 1 *Global Affairs*, 33, 40.

68 C. A. Adeogun-Phillips, (n 47).

69 See *Binaebi Johnson* (n 5).

70 The SPOMO Act, s 5(2).



West African neighbours to provide the necessary education, support, information, awareness and satisfaction towards the prevention as well as the elimination of maritime offences and other unlawful acts. In all, it is submitted that Nigeria has a comprehensive legal regime to curb piracy off its waters and it requires effective enforcement of its provisions by relevant institutions to realise its objective of taming piracy in Nigeria.

3.3 Institutional Regime for Curbing Piracy in Nigeria

Similar to Korea, Nigeria has both maritime regulatory and security agencies saddled with the responsibility of curbing piracy off the country's waters. The Nigerian Maritime Administration and Safety Agency (NIMASA)⁷¹ and the Nigerian Navy (NN) are the main agencies responsible for the enforcement of maritime safety and security instruments, especially policing the coastline of Nigeria. Nevertheless, contrary to the regime in Korea, NIMASA and the NN lack modern equipment to maintain effective maritime domain awareness to curb piracy off the Nigerian waters.⁷² Even allocated funds are misappropriated and embezzled by officials of the agencies.⁷³ Also, NIMASA and the NN rely on private security companies to patrol Nigerian waters and it has led to complications in terms of oversight and proper control of these private security entities.⁷⁴ This creates room for corruption and embezzlement of funds allocated for maintaining adequate maritime domain awareness in Nigerian waters. More pointedly, the disappearance of the Russian oil tanker, *MT African Pride*, from custody further exposed the level of corruption in the Nigerian maritime sector.⁷⁵

The prosecution of pirates requires the existence of an efficient criminal justice system. Contrary to the system in Korea, the criminal justice system in Nigeria is inefficient to handle piracy prosecution due to procedural delays and the dearth of infrastructure. Lending credence to this point, the dispensation of justice in Nigeria is tardy, encourages incarceration without bail, limits access to court, engenders torture during interrogation,⁷⁶ overburdens correctional facilities and lacks necessary resources for collating and organising evidence for the effective and timely prosecution of pirates.⁷⁷

⁷¹ See Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007, s 3.

⁷² Ase G. Ostensen, *et al* 'Capacity Building for the Nigerian Navy: Eyes Wide Shut on Corruption' U4 Anti-Corruption Resource Centre, U4 Issue 2018:4, CMI, 16-20.

⁷³ For illustrative purposes, while a former acting Director General (DG) of NIMASA has been convicted for stealing NIMASA funds, another former DG of NIMASA has been indicted for corruption. K.K. Anele, 'Addressing the Issue of Piracy off Indonesia and Nigeria' (n 4) 262-263.

⁷⁴ A.G. Ostensen, *et al* (n 72) 19.

⁷⁵ See the case of *Rear Admiral Francis Echie Agbiti v The Nigerian Navy* (2007) LPELR-CA/L/361/2005, (2011) 4NWLR 175. For detailed analysis of the case, see Obugheni W. Arugu & Chidi E. Halliday, 'Strengthening the Legal and Institutional Framework for Combating Piracy and Armed Robbery against Ships in Nigeria' 2018, 80 <https://www.academia.edu/39993652/STRENGTHENING_THE_LEGAL_AND_INSTITUTIONAL_FRAMEWORK_FOR_COMBATING_PIRACY_AND_ARMED_ROBBERY_AGAINST_SHIPS_IN_NIGERIA> accessed 4 January 2021.

⁷⁶ For details of the fundamental rights of pirates, see the 1999 Constitution of the Federal Republic of Nigeria, Part IV.

⁷⁷ Osogo Ambani, 'Prosecuting Piracy in the Horn of Africa: The Case of Kenya' in Chacha Murungu & Japhet Biegon (eds.) *Prosecuting International Crimes in Africa* (Pretoria University Law Press 2011) 244.



Though new laws, the Nigerian Correctional Service Act (NCSA) 2019⁷⁸ and the Administration of Justice Criminal Act (AJCA),⁷⁹ have been enacted to improve the capacity and efficiency of the administration of criminal justice in Nigeria, especially the protection of the rights of inmates, the implementation of some of their provisions remains a big challenge. Given the limitations in the criminal justice system in Nigeria, it is difficult to effectively prosecute pirates in Nigerian courts.

In light of regional cooperation, Nigeria remains the only country in West Africa that has incorporated the UNCLOS piracy legal framework in its domestic system.⁸⁰ Although several attempts have been made to tackle piracy at the regional level,⁸¹ these attempts seem to be inadequate to tame the tide of piracy in the Gulf of Guinea, as efforts to suppress the maritime crime do not occur in all Gulf of Guinea countries.⁸² Consequently, the region is the most piracy-infested route in the world.⁸³ More pointedly, given that Nigeria cannot adequately fund antipiracy efforts in the region, there is funding and development assistance from the international community.⁸⁴ Nevertheless, the continued piracy attacks in the Gulf of Guinea, especially off the waters of Nigeria, shows that systemic corruption, lack of infrastructure, among other things, has rendered the antipiracy assistance to the West African countries ineffectual.⁸⁵

4. Comparative Analysis of Antipiracy Regimes in Nigeria and Korea

In determining the antipiracy model in Nigeria, the existence as well as the effective enforcement of legislation criminalising piracy is key in curbing piracy. It has been observed ‘that only fixed laws regulate crime and punishment.’⁸⁶ In light of that, Korea, unlike Nigeria, has not formally incorporated antipiracy provisions of UNCLOS into its domestic law, albeit the fact that Korea’s domestic law criminalises piracy.⁸⁷ Nonetheless, it is argued that the existence of legislation may not lead to its effective enforcement. Consequently, while both Korea and Nigeria have implemented the provision of article 105 of UNCLOS in prosecuting pirates,⁸⁸ the lenient sentencing prescribed by the Nigerian court would fail to deter pirates from hijacking vessels off the Nigerian coast. Also, it is observed that though

78 The NCSA, which empowers administrators to provide correctional services (custodial and non-custodial services) to inmates, repeals the Nigerian Prisons Act CAP, P29 Laws of the Federation of Nigeria (LFN) 2004 (Repeal and Re-Enactment) Act 2015 Nigeria.

79 See generally the AJCA 2015, Nigeria.

80 See the SPOMO Act. See also O.A. Eruaga & M.Q. Mejia Jnr. (n 20) 448.

81 The establishment of “Operation Pulo Shield” and “Operation Prosperity” are examples of counterpiracy initiative at the regional level in the Gulf of Guinea. More so, the adoption of the Code of Conduct for the Suppression of Piracy, Armed Robbery Against Ships and Illicit maritime Activity in West and Central Africa (Yaounde Code), among other regional security frameworks, is to repress piracy in West Africa. See O.A. Eruaga & M.Q. Mejia Jnr. *ibid* 432-434.

82 *ibid* 449.

83 See IMB Piracy Report for 2019 (n 2) 5/21.

84 See generally, A.G. Ostensen, *et al* (n 72) 1-34.

85 See *ibid*.

86 O.A. Eruaga & M.Q. Mejia Jnr. (n 20) 448.

87 See the CA, art 340 (1).

88 See the cases of *Araye* (n 7) and *Binaebi Johnson* (n 5) respectively.



the antipiracy legislation has been enacted in Nigeria, its enforcement will be impeded by, *inter alia*, delay in the criminal justice system, inefficient and corrupt maritime regulatory and security agencies and inadequate holding and correctional facilities.

In addition to the above, the availability of well-equipped, well-trained, and well-motivated maritime regulatory and security agencies is a significant factor in curbing piracy off the waters of Nigeria. The import of this is that adequate patrol vessels with modern communication and surveillance equipment and regular training of officials of these agencies will culminate in the enhancement of their antipiracy capabilities. Thus, Korea manufactures and purchases advanced facilities to maintain and strengthen its maritime domain awareness. This has been buttressed by the recent delivery of two KUH-1 helicopters by Korea Aerospace Industries (KAI) to KCG⁸⁹ and the acquisition of the Republic of Korea's Navy 4th Yangyang-class minesweeper *ROKS Namhae* (MSH-575) by the KN built by Kangnam Corporation shipyard.⁹⁰ In contrast to Korea, Nigeria depends on developed countries for the provision of modern surveillance equipment needed to monitor activities in the country's waters. This means that Nigeria can neither manufacture nor afford to purchase some of these facilities, in spite of its abundant natural resources. Nonetheless, Nigeria has provided automated camera-equipped surveillance towers off its coast and purchased four patrol vessels - *NNS Centenary*, *NNS Prosperity*, *NNS Okpabana* and *NNS Sagbama* - for the NN to strengthen the country's maritime domain awareness.⁹¹ It is argued that in spite of these measures, piracy remains a thriving venture off the Nigerian coast.

Aside from having modern maritime surveillance facilities and well-equipped and well-trained coast guard and navy, Korea has also deployed its special antipiracy unit to work independently and to cooperate with the US-led multinational coalition to defend the Strait of Hormuz.⁹² The implication of this is that the Korean government is keen to protect Korean vessels and seafarers who work on board vessels that ply international waters. In addition, unlike the Nigerian antipiracy efforts, the Korean antipiracy naval unit is known not only for their successes in rescue operations but also their capacity to act professionally and efficiently.⁹³ It is submitted that while the KN has the capability to engage in counterpiracy activities beyond the shores of Korea, the NN do not have the capacity to monitor the Nigerian waters. This has been exemplified by the extension of piracy activities by Nigerian pirates to the waters of other Gulf of Guinea countries.

89 The availability of these surion helicopters added to the variety of advanced mission equipment to maintain maritime security in Korean waters. Shin Ji-hye, 'KAI Delivers Two Surion Helicopters to Coast Guard' *The Korea Herald*, (Seoul, 20 December 2019) <<http://www.koreaherald.com/view.php?ud=20191220000535&fbclid=IwAR3gyq2sItnQUmNa8A00B-nYDnBfmjAZMOQsJ013KLUodAIFMZnpnTiqESXA>> accessed 20 December 2019.

90 'Navy of South Korea has Launched 4th Yangyang-class Minesweeper Ship Namhae MSH - 575' *Navy Recognition* (Ramil-lies, 15 April 2020) <https://www.navyrecognition.com/index.php/news/defence-news/2020/april-2020/8280-navy-of-south-korea-has-launched-4th-yangyang-class-minesweeper-ship-namhae-msh-575.html?fbclid=IwAR03Rh9Pvd6x1TXyEBiK-ZYRl8fd2UUzUVAcMV-eISroLrz_kFcZo38j9ak> accessed 16 April 2020.

91 See C.J. Nwalozie (n 53).

92 'South Korea to Deploy Anti-piracy Unit to the Strait of Hormuz' *Haaretz* (Tel Aviv, 21 January 2020 <<https://www.haaretz.com/middle-east-news/south-korea-to-deploy-anti-piracy-unit-to-the-strait-of-hormuz-1.8431835>> accessed 27 January 2020. See also Kim So-hyun, 'Seoul Likely to Send Troops to Strait of Hormuz' *The Korea Herald*, (Seoul, 18 December 2019) <http://www.koreaherald.com/view.php?ud=20191218000642&fbclid=IwAR1WIU_fog_SS7K-r53MpAf71_AXGKNX2r5ff-4PUNc11g0mH-lfCmjY92xl> accessed 20 December 2019.

93 T. Roehrig, 'South Korea's Counterpiracy Operations in the Gulf of Aden' (n 8) 33-38.



More so, unlike Nigeria, Korea has made significant contributions to counterpiracy activities in the world notwithstanding that piracy indirectly affects Korea through attacks against Korean owned and flagged vessels, Korean cargo or seafarers in vessels flying other countries' flags and vessels trading with Korean ports. This arises due to the existence of competent maritime security agency, availability of naval ships with modern communication and surveillance equipment, and the support of the Korean government. For example, Korea participated in the US-led CTF-151 to conduct antipiracy operations in the Indian Ocean and the Gulf of Aden. The implication is that Korea has a well-trained, well-equipped and well-motivated navy capable of adequately protecting the country's coast, in addition to being competent to participate in joint naval operations in piracy hotspots in the world. Although Nigeria has participated in both regional and global antipiracy training programmes,⁹⁴ the NN is still ill-equipped and ill-trained to monitor the activities of pirates in the country's expansive territorial waters. More importantly, despite the economic and strategic importance of the maritime sector in Nigeria and the Gulf of Guinea,⁹⁵ Nigeria cannot, *suo motu*, organise counterpiracy activities in West Africa.

In furtherance of the above, the government of Korea has implemented the International Maritime Organisation's (IMO) e-navigation initiative and other relevant guidelines⁹⁶ in the country's shipping industry.⁹⁷ Using the existing shore-based resources with broad connections between ship and shore in Korea, the Korean maritime industry remotely monitors the movement of vessels in Korean waters and beyond by using broadband communication.⁹⁸ The e-navigation strategy enhances maritime domain awareness of Korea, helps to monitor the position of vessels and contributes to reducing piratical acts through swift response to piracy threat. Though Nigeria installed automated camera-equipped surveillance towers in its littoral zone, infrastructure limitations remain significant in the country's maritime sector. Thus, it is concluded that Nigeria is yet to adequately implement the e-navigation initiative of IMO in its maritime sector.

It is incontrovertible that funding plays a significant role in counterpiracy operations. Funds are needed to procure modern communication and surveillance facilities and patrol vessels, to train officials of maritime regulatory and security agencies, to support antipiracy operations, and send the navy to monitor the country's waters. Thus, aside from being one of the biggest contributors to the Multi-Donor

94 See generally, A.G. Ostensen, *et al* (n 72). See also See O.A. Eruaga & M.Q. Mejia Jnr. (n 20) 432-434.

95 Nigeria imports finished products and exports raw materials and these activities make the maritime industry very crucial to the economy of the country. More so, fishing is a very important maritime activity in the country.

96 For example, the Voluntary IMO Member State Audit Scheme (VIMSAS) is a mechanism in which a Member State audits itself in relation to the implementation of IMO regulations and guidelines, especially in view of the safety and security of vessels. Korea successfully complied with VIMSAS in 2007 and the country was expected to be audited again in 2020. Sang Ho Kim, 'Development of Key Performance Indicators (KPIs) for IMO Member States in the Context of the IMO Member State Audit Scheme' a dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of Master of Science in Maritime Affairs (Maritime Safety and Environment Administration) 2017, 27.

97 'The Korean E-navigation Project "SMART-Navigation": For Wider Connections between Ship and Shore in Korean Waters' SMART-Navigation Project Office, 29th November 2017, 22 <[https://cdn2.hubspot.net/hubfs/3476751/Smart%20Operations%20Asia/Speaker%20Presentations/Jin%20Hyoung%20Park,%20Korean%20Ministry%20of%20Oceans%20SMART%20Nav%20Project%20\(Smart%20Port%20session\).pdf?t=1513357851904](https://cdn2.hubspot.net/hubfs/3476751/Smart%20Operations%20Asia/Speaker%20Presentations/Jin%20Hyoung%20Park,%20Korean%20Ministry%20of%20Oceans%20SMART%20Nav%20Project%20(Smart%20Port%20session).pdf?t=1513357851904)> accessed 4 April 2020.

98 *ibid*.



Anti-Piracy Trust Fund, which focused on land-based counterpiracy strategies in Somalia, Korea is a key participant and contributor to the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP).⁹⁹ By contrast, Nigeria still depends on external funding for its counterpiracy efforts both at the domestic and regional levels and these streams of support have been marred by corruption and inadequate facilities.¹⁰⁰ Even when the government of Nigeria, through its maritime agencies, funds antipiracy activities, corruption, among others, may affect such initiatives. For instance, the Integrated National Security and Waterways Protection Infrastructure Project (Deep Blue Project) initiated by NIMASA, which is designed to enhance effective maritime domain awareness in Nigeria,¹⁰¹ has played little or no role in curbing piracy off the country's coast, as the country's coast remains risky for navigation.

The prosecution of pirates in both countries demonstrates the stark difference between the antipiracy efforts of Korea and Nigeria. Despite the fact that Nigeria has a more comprehensive piracy legal regime compared to Korea, Korea has been able to use its extant laws to prosecute pirates by simply applying the provisions of its laws. In *Araye's* case,¹⁰² the Korean Supreme Court affirmed the decision of the lower court prescribing maximum punishments contained in the legislation: life imprisonment or not less than 7 years imprisonment.¹⁰³ In contradistinction to the experience in Korea, the Federal High Court in Nigeria prescribed a very lenient punishment of 20 million naira fine to each of the three pirates¹⁰⁴ instead of life imprisonment and a fine of not more than 50 million naira stipulated by law. While this sentence will not deter the Nigerian pirates, it also supports the argument that the enactment of antipiracy law does not lead to its proper implementation. Moreover, it has been alleged that the purported prosecution of pirates in Nigeria only targeted employees of a private company engaged in handing over the ransom money to pirates.¹⁰⁵

Above all, unlike Korea, a democratic government that has cultivated the political will to curb piracy, Nigeria may be regarded as a weak and corrupt state that practices anocracy which contributes to the country's inability to effectively combat piracy, particularly in addressing the onshore causes of the crime. Buttressing this point, Denton and Harris argue that 'while democracies are less likely to encounter pirates attack than autocracies, anocracies experience more maritime piracy.'¹⁰⁶ More so, despite the acquisition of modern surveillance facilities and combat vessels by the Nigerian regulatory

99 B.L. Coggins & J.J. Kim (n 13) 2.

100 See A.G. Ostensen, *et al* (n 72).

101 'Navy's Support for the Maritime DEEP Blue Project' *Dryad Global* (London, 23 November 2020) <<https://channel16.dryadglobal.com/navys-support-for-the-maritime-deep-blue-project>> accessed 13 January 2021.

102 *Araye* (n 7).

103 See CA, art 340 (1).

104 See *Binaebi Johnson* (n 5).

105 Godwin Oritse, "Nigeria needs Private Security on Vessels to Tackle Piracy-Report", *Vanguard* (Lagos, 26 February 2021) <<https://www.vanguardngr.com/2021/02/nigeria-needs-private-security-on-vessels-to-tackle-piracy-report>> accessed 8 April 2021.

106 Ginger L. Denton & Jonathan R. Harris 'Maritime Piracy, Military Capacity, and Institutions in the Gulf of Guinea' (2019) *Terrorism and Political Violence* DOI:10.1080/09546553.2019.1659783, 1, 2.



and enforcement agencies, piracy has continued to thrive off the waters of the country. These agencies cannot repress piracy because they may be loyal to the leader in power rather than the institution and they also lack professionalism as they engage in corrupt practices in their operations.¹⁰⁷

5. Curbing Piracy off the Coast of Nigeria: Lessons from Korea

Enacting domestic legislation that incorporates the antipiracy provisions of UNCLOS is one of the steps towards curbing piracy. While the incorporation of antipiracy provisions of UNCLOS into Korean local law is yet to be done,¹⁰⁸ Korea has appropriately used its domestic legislation to prosecute pirates, which is commendable. In view of that, it is imperative for Nigeria to go beyond enacting an antipiracy law by robustly enforcing the SPOMO Act in suppressing piracy off its waters. This can be achieved by training Nigerian judges on how to adjudicate piracy cases brought before them.¹⁰⁹ Such training would be necessary to interpret the provisions of the Act that are inchoate, like section 17 (5) that did not specify the law enforcement agencies to enforce the Act, and obviate prescribing lenient punishment for pirates as witnessed in the first piracy case in Nigeria.¹¹⁰ In addition, it is imperative for the criminal justice system in Nigeria to be efficient and effective to accommodate piracy cases, particularly in terms of reduction in delays before and during hearings, adequate court and holding facilities, and training of the officials.

Aside from the extant antipiracy legal regime, it is imperative to have efficient, well-equipped, well-trained and well-motivated maritime regulatory and security agencies to suppress piracy. Lending credence to the significant role regulatory and security agencies play in counterpiracy activities, the existing institutional framework in Korea - which has culminated in maritime domain awareness in the country - shows the positive impact a well-trained, well-equipped, well-motivated and efficient coast guard and navy has for piracy prevention. Moreover, the Nigerian government should learn from its Korean counterpart¹¹¹ the importance of introducing and rigorously implementing policies and programmes designed to create effective and efficient naval capabilities. In light of that, the ongoing collaboration between NIMASA and the NN, through the Command, Control, Communication, Computer, and Intelligence Centre (C4I) of the Deep Blue Project, including the NN's "Falcon Eyes" that trails pirates in operation, should be strengthened and sustained.¹¹²

107 *ibid.* See the case of *Agbiti* (n 75).

108 The court, in the case of *Araye* (n 7), held that article 6 of the Korean Constitution permits the application of universal jurisdiction contained in article 105 of UNCLOS.

109 In view of that, the NIMSAS-NIALS 9th Admiralty Law Seminar for Judges, which took place on the 19th-21st February 2020 at Raddisson Blu Anchorage Hotel, Ozumba Mbadiwe Avenue, Victoria Island, Lagos State, is a step in the right direction. It behooves the judges to implement the recommendations maritime security experts proffered in their presentations.

110 See the case of *Binaebi Johnson* (n 5).

111 In March 2001, President Kim Dae-jung declared that the country would pursue the development of a blue-water navy with a "strategic mobile fleet that protects state interests in the five big oceans and plays a role of keeping peace in the world". This programme was continued by subsequent administrations in Korea, which led to the building and commissioning of the fleet of DDH-II destroyers, the Chungmugong Yi Sunshin-class ships. T. Roehrig, 'South Korea's Counterpiracy Operations in the Gulf of Aden' (n 8) 31-33.

112 C.J. Nwalozie (n 53).



Given the fact that antipiracy activities require extensive logistics, in terms of, *inter alia*, procurement of modern surveillance and communication facilities, and training of judicial officers and officials of maritime regulatory and security agencies, adequate funding becomes inevitable. Consequently, the government of Nigeria should, like its Korean counterpart, adequately fund counterpiracy activities off the Nigerian coast. Particularly, sufficient funds should be allocated to procuring communication and surveillance equipment and patrol vessels for the regulatory and security agencies and training of judicial officers, among other things. It is common knowledge that Nigeria has abundant natural resources and the proceeds of the exploitation and sale of these resources should be used to procure some of these modern facilities needed in the maritime sector. Beyond procuring these facilities, it is important that the officials of these maritime regulatory and security agencies are regularly trained to use them.

Though piratical acts do not occur off the coast of Korea, the government of Korea has continued to play a key role in establishing regional antipiracy operations, soft laws, and funds to curb piracy in Asia. On the other hand, despite Nigerian pirates' extension of their attacks to the waters of other Gulf of Guinea countries, Nigeria has no capability to monitor its coastline and lacks the capacity to support regional antipiracy operations. Consequently, Nigeria should procure sophisticated communication and surveillance equipment and patrol vessels for NIMASA and the NN and train their officials to use the equipment. Also, Nigeria should contribute to funding of regional antipiracy programmes. Such funding will be used to acquire sufficient patrol vessels, helicopters, and modern combat ships for regional patrol teams to be able to monitor activities in Nigerian waters and the Gulf of Guinea. The significance of having a well-trained regional antipiracy naval group with modern patrol boats and combat vessels in West Africa as part of the region's antipiracy drive has been given a fillip by the recent attack of a Portuguese flagged container ship, *Tommi Ritscher*, in the Gulf of Guinea.¹¹³ Though the deployment of Nigerian Naval Special Boat with personnel to arrest the situation is laudable,¹¹⁴ this piracy incident would not have occurred if West African countries had adequate maritime domain awareness strengthened by well-equipped navies.

More importantly, since Nigerian piracy is largely linked to land-based activities, it is imperative that these onshore root causes of piracy in the country should be adequately addressed. Among other onshore causes of piracy in Nigeria, Hastings observes that pirates that hijack oil tankers in the Gulf of Guinea rely on 'access to formal economic infrastructure associated with the oil industry, and acquiescence or buy-in from elites with ties to that infrastructure.'¹¹⁵ These corrupt elites should be arrested and prosecuted. It is important to note that aside from adequate maritime domain awareness in its coastline, Korea has reduced unemployment, curbed poverty, maintained hitch-free political activities and reined in on corruption in the country. This implies that while piratical acts may not occur off its coast due to its adequate surveillance, there are no onshore factors that could encourage Koreans to be pirates.

113 '8 Crew Members Kidnapped by Pirates on Board Container Ship in Gulf of Guinea' *Marine Insight*, (Bangalore, 20 April 2020) <<https://www.marineinsight.com/shipping-news/8-crew-members-kidnapped-by-pirates-on-board-container-ship-in-gulf-of-guinea/>> accessed 21 April 2020.

114 *ibid*.

115 Justin V. Hastings, 'The Return of Sophisticated Maritime Piracy to Southeast Asia' (2020) 93(1) *Pacific Affairs DOI: 10.5509/20209315*, 5, 12. See also C.J. Nwalozie (n 53).



In view of that, it is imperative for Nigeria to address the onshore causes of piracy in the country. For instance, poverty, violent political activities, unemployment, resource control agitation, pollution of the environment due to oil exploration, and corruption should be rooted out of the country.¹¹⁶

Thus, it is imperative for the Nigerian government to engender good governance in the country. This implies introducing economic policies that will create employment opportunities, continuing the ongoing policy to educate and engage the Niger Delta people, adequately protecting oil facilities, especially oil and gas pipelines, and implementing measures to reduce pollution of the communities in the Niger Delta. More pointedly, like Korea, it is equally imperative for the government of Nigeria to cultivate the political will to prosecute pirates and their enablers (those that finance piracy as well as corrupt government officials and officials of maritime regulatory and security agencies) in its local courts to signal the end of the tolerance of piracy off the waters of the country.

Due to the lack of capacity by Nigeria to suppress piracy off its waters, it is imperative for the international community and maritime organisations to continue their support in providing funds and training of the officials of NIMASA and the NN in curbing piracy in the country. To strengthen these supports, it has been suggested that measures, like assessing corruption risks and developing mitigation plans, providing integrated antipiracy training to partners, and monitoring the assistance and safeguarding against abuse should be adopted by the government of Nigeria to curb corruption in the antipiracy efforts in the country.¹¹⁷ The shipping industry should cooperate with Nigeria in combating piracy by using well-equipped vessels, engaging well trained seafarers, regularly complying with IMO security regulations and guidelines, always utilising seaworthy vessels, regularly communicating and exchanging information with NIMASA in its operations, and supporting antipiracy law enforcement by maritime regulatory and security agencies in Nigeria.¹¹⁸ More pointedly, there should be regular cooperation among the maritime regulatory and security agencies in the Gulf of Guinea, especially in the purview of information sharing, to decisively repress piracy off the coast of Nigeria.

6. Conclusion

This research has shown that piracy has continued to be a big challenge to Nigeria, as the country's coastline has become the most dangerous navigational route in the world. Piracy has economic, socio-political and humanitarian effects on Nigeria. Therefore, it is imperative to suggest ways to curb piracy off the country's coast. Nigeria has taken laudable steps in its counterpiracy efforts by enacting antipiracy legislation and prosecuting pirates in its court. Nonetheless, piracy has continued unabated off the country's waters. This paper comparatively analysed piracy regimes in Nigeria and Korea and

116 It has been argued that institutionally strong and democratic regimes are less likely to experience piracy as many of the onshore causes of the crime, like political violence, do not arise. See G.L. Denton & J.R. Harris 'Maritime Piracy, Military Capacity, and Institutions in the Gulf of Guinea' (n 106) 2.

117 A.G. Ostensen, *et al* (n 72) 31-33.

118 For more information on ways the shipping industry and other relevant stakeholders can support the antipiracy regime in Nigeria, see generally, "The Gulf of Guinea Declaration on Suppression of Piracy" <<https://www.bimco.org/GoGDeclaration>> accessed 19 May 2021.



argued that similar to Korea, Nigeria should, *inter alia*, effectively enforce its antipiracy legislation, adequately fund its maritime regulatory and security agencies, and address the onshore causes of piracy and prosecute government officials, employees of shipping companies and clearing agents that aid and abet pirates. Besides, it is important for the government of Nigeria to address the issue of land-based causes of piracy in the country, such as unemployment, poverty, corruption and political violence. Given the significant role the maritime industry plays in the development of Nigeria in terms of the economy, security and lives of seafarers, it becomes imperative for the Nigerian government to introduce and implement the recommendations suggested above, like training and equipping the officials of the maritime regulatory and security agencies, enforcing antipiracy instruments and prosecuting pirates in the country's courts. In addition, an efficient criminal justice system is a *conditio sine qua non* in the quest to curb piracy in Nigeria, particularly through the prosecution of pirates and their enablers. In light of that, the Nigerian government must cultivate the political will to suppress piracy in the country.