A selective study on effectiveness of the international legislation on maritime security: Gulf of Guinea a case study

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A SELECTIVE STUDY ON EFFECTIVENESS OF THE INTERNATIONAL LEGISLATION ON MARITIME SECURITY: GULF OF GUINEA A CASE STUDY

By

STANLEY CHUKA IGWE
Nigeria

A dissertation submitted to the World Maritime University in partial Fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

In

MARITIME AFFAIRS
(Maritime Administration)

2009

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **A Selective Study on Effectiveness of International Legislation on Maritime Security: Gulf of Guinea A Case Study**

Degree: MSc

The dissertation is a selective study on effective international legislation to enhance maritime security globally. It compares the effectiveness of the international legal regimes among member States and the Gulf of Guinea countries in combating piracy, armed robbery and terrorism against ships.

A brief look is taken at the present maritime security rules and regulations as well as their evolvement over the years. The definition of maritime security and the role of the ISPS Code 2002 in the global war on terror are examined, while considering the state of the economy and maritime domain awareness in the Gulf of Guinea.

The effectiveness of international legislation and its impacts on enhancing maritime security are investigated. Concerns from IMO member States on achieving uniform standards in enforcing the security regimes are explored with a view to ascertaining the manner in which the regulations can best be used to combat acts of piracy, armed robbery and terrorism. Particular reference is made to the USA maritime security initiatives, CMI Model Law and multinational coalition naval forces in maritime security operations.

Implementation of the range of provisions in the UNCLOS, SUA Convention and ISPS Code on enhancing maritime security in developed and developing countries, together with their constraints are explored. Several factors are identified as hindering the effectiveness of the Code in the countries in the Gulf of Guinea, particularly in Nigeria. These constraints are analyzed, to find a way forward in the effective implementation of the ISPS Code and other regulatory regimes in the region.
Additionally, the current trend in the increase of acts of piracy and terrorism globally, as reported by the IMB, the maritime security assessment and responses by member States were noted for comparison. The provisions in the regulatory regimes were collated and evaluated on enhancing maritime security in the Gulf of Guinea.

The concluding chapters examine the results of the assessment of ISPS Code in the Gulf of Guinea and discuss the strategies for effectiveness of the Code in the region, particularly in Nigeria. Conclusions are drawn and recommendations are made concerning the need for domestication of the ISPS Code and other international legal regimes for effective maritime security in Nigeria.

KEYWORDS: Effectiveness, international Legislation, UNCLOS, SUA Convention, SOLAS Convention, ISPS Code, Maritime Security, Gulf of Guinea, Nigeria.
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<td>AIS</td>
<td>Automatic Identification System</td>
</tr>
<tr>
<td>ASG</td>
<td>Abu Sayyal Group</td>
</tr>
<tr>
<td>BIMCO</td>
<td>Baltic and International Maritime Council</td>
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<tr>
<td>CCTV</td>
<td>Closed Circuit Television</td>
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<td>CMI</td>
<td>Comité Maritime International</td>
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<td>CSI</td>
<td>Container Security Initiatives</td>
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<td>CSO</td>
<td>Company Security Officer</td>
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<tr>
<td>CSR</td>
<td>Continuous Synopsis Record</td>
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<tr>
<td>CTF</td>
<td>Combined Task Force</td>
</tr>
<tr>
<td>C-TPAT</td>
<td>Custom-Trade Partnership Against Terrorism</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Homeland Security</td>
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<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GAM</td>
<td>Gerakam Aceh Merdeka</td>
</tr>
<tr>
<td>GGC</td>
<td>Gulf of Guinea Commission</td>
</tr>
<tr>
<td>GGG</td>
<td>Gulf of Guinea Guards</td>
</tr>
<tr>
<td>GWOT</td>
<td>Global War on Terrorism</td>
</tr>
<tr>
<td>HOS</td>
<td>Head of State</td>
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<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<td>ISPS</td>
<td>International Ship and Port Facility</td>
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<td>ISSC</td>
<td>International Ship Security Certificate</td>
</tr>
<tr>
<td>LFN</td>
<td>Law of the Federation of Nigeria</td>
</tr>
<tr>
<td>LRIT</td>
<td>Long Range Identification and Tracking</td>
</tr>
<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Ealam</td>
</tr>
<tr>
<td>MALSINDO</td>
<td>Malaysia, Singapore and Indonesia</td>
</tr>
<tr>
<td>MEND</td>
<td>Movement for Emancipation of Niger Delta</td>
</tr>
<tr>
<td>MDA</td>
<td>Maritime Domain Awareness</td>
</tr>
<tr>
<td>MODU</td>
<td>Mobile Offshore Drilling Units</td>
</tr>
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<td>MSC</td>
<td>Maritime Safety Committee</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>MT</td>
<td>Merchant Tanker</td>
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<td>MTSA</td>
<td>Maritime Transport Security Act</td>
</tr>
<tr>
<td>MV</td>
<td>Merchant Vessel</td>
</tr>
<tr>
<td>NDPSF</td>
<td>Niger Delta Peoples Salvation Front</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>NN</td>
<td>Nigerian Navy</td>
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<tr>
<td>NPT</td>
<td>Non Proliferation Treaty</td>
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<td>NSC</td>
<td>Nigerian Shippers Council</td>
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<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>ORBAT</td>
<td>Order of Battle</td>
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<tr>
<td>PFLP</td>
<td>Popular Front for the Liberation of Palestine</td>
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<td>PFSA</td>
<td>Port Facility Security Assessment</td>
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<td>PFSO</td>
<td>Port Facility Security Officer</td>
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<tr>
<td>PFSP</td>
<td>Port Facility Security Plan</td>
</tr>
<tr>
<td>ReCAAP</td>
<td>Regional Cooperation Agreement on Anti-Piracy</td>
</tr>
<tr>
<td>RMAC</td>
<td>Regional Maritime Awareness Capability</td>
</tr>
<tr>
<td>RN</td>
<td>Royal Navy</td>
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<tr>
<td>RO-RO</td>
<td>Roll-on Roll-off</td>
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<tr>
<td>RPG</td>
<td>Rocket Propelled Grenade Launcher</td>
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<td>RSO</td>
<td>Recognized Security Organization</td>
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<tr>
<td>SLOC</td>
<td>Sea Lines of Communication</td>
</tr>
<tr>
<td>SMG</td>
<td>Sub-Machine Gun</td>
</tr>
<tr>
<td>SOLAS</td>
<td>International Convention on Safety of Life at Sea</td>
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<tr>
<td>SER</td>
<td>Serial</td>
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<tr>
<td>SSA</td>
<td>Ship Security Assessment</td>
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<tr>
<td>SSO</td>
<td>Ship Security Officer</td>
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<tr>
<td>SSP</td>
<td>Ship Security Plan</td>
</tr>
<tr>
<td>SUA</td>
<td>International Convention for the Suppression of Unlawful Acts Against Safety of Marine Navigation</td>
</tr>
<tr>
<td>TNT</td>
<td>Tri-Nitro-Toluene</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>US, USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>USCG</td>
<td>United States Coast Guard</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollar</td>
</tr>
<tr>
<td>USS</td>
<td>United States Ship</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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</tr>
<tr>
<td>VTS</td>
<td>Vessel Traffic Services</td>
</tr>
<tr>
<td>WBIEED</td>
<td>Water-Borne Improvised Explosive Device</td>
</tr>
<tr>
<td>WMD</td>
<td>Weapon of Mass Destruction</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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CHAPTER 1
INTRODUCTION

1.1. Background

The success of maritime security depends largely on the ability of nations to provide adequate legal regimes in support of the shipping industry. Sea transportation is as old as civilization itself and commercial shipping probably began in the Mediterranean Sea where the Merchants of Phoenicia owned ships and traded widely. Progressively, the design of ships has moved from those rowed and sailed to the diesel, steam and gas turbines as well as nuclear-powered vessels of today. Not only has the propulsion engine power increased, but also the total carrying capacity. According to the World Trade Organization (WTO, 2005, P.271), about 90 per cent of the annual global trade by volume is moved by ships.

Being a complex system with very high technological architecture, the ship is one of the most ingenious inventions of man. A modern design is an integration of complex systems in separated and modular forms which include the components of propulsion, communication, navigation equipment as well as accommodation systems among others. The use of them for transporting of passengers and bulk goods is one of the cheapest modes of transportation. Despite the economic benefits derived from their use for transportation of goods and services, there are also some challenges, the most significant of which are maritime safety and security.

Recent events in the world have raised the concern of the international community regarding the safety and security of ships at sea. Piracy, armed robbery and terrorism and insurgency have constituted the greatest threat to maritime security. According to the report of International maritime Organization (IMO, 2009), the surge on the act of piracy globally is attributable to the increase in piratical attacks in the Gulf of Aden in the Indian Ocean. The report shows also there has been an increase in piratical attacks in the Gulf of Guinea since 1982. Resulting from the effort of Japan in the newly-formed Regional Cooperation Agreement on Anti-Piracy
(ReCAAP) in the Southeast Asia and Malasia, Singapore and Indonesia in the MALSINDO Initiatives in Straits of Malacca; there is a remarkable reduction of piracy and armed robbery against ships in the waters within this region of the South China Sea and Indian Ocean.

Similar reports indicate an increase in the acts of terrorism in the world, starting from the incident in 1985 which involved the passenger ship Achillo Lauro that was hijacked by terrorist in the Mediterranean. Thereafter, there have been terrorist attacks on US Navy Ship (USS) Cole at Aden Yemen on October 2000, Merchant Tanker (MT) Limburg off the coast of Yemen on October 2002 and Super ferry 14 in Philippine waters on February 2004. The uppermost concern for maritime security was expressed over the incident of terrorism in the United States (US) on 11 September 2001 (9/11), which involved the use of passenger airlines. In its wake was the incident in Madrid on 11 March 2004 in which commercial trains were also the target of terrorism. The global concern with maritime security is based on the premise that terrorists, having already targeted air and rail successfully, would exploit the use of commercial ships. If this were to be the case, the consequences of such an act would be enormous considering the population density at the seaports and the global economic reach of the sea.


1.2. Statement of the Problem

Shipping and its socio-economic effect on global trade are under increasing threats. The report of the International Maritime Bureau (IMB, 2009), a specialized division of the International Chamber of Commerce (ICC), states that the rate of crimes is increasing in the maritime industry. Specifically, the number of piratical attacks on ships has recently risen tremendously in the Gulf of Aden off the coasts of Somalia and Yemen. From the IMB report, the number of piratical attacks increased from 48
in 2007 to 111 in 2008, which is over 100 per cent increase. This is despite the existence of the international community legislation and coalition armed forces to combat crimes at sea. It is in the light of this global increase in maritime crimes such as terrorism and piracy that this study is being conducted, to establish the effectiveness of the international legal regimes in enhancing maritime security.

1.3. Objectives of the Study

The broad aim of this study is to examine the effectiveness of international legal framework on maritime security. The specific objectives will be to:

- Identify the threats to maritime security and its relationship with the international legislation.
- Examine the impact of maritime security threats on the shipping industry.
- Critically analyze the international legal regimes for enhancing maritime security.
- Evaluate the effects of the international legal regimes using data and trend analyses.
- Identify the constraints of the international legal regimes that have militated against ensuring maritime security in the Gulf of Guinea.
- Proffer strategies for the effective implementation of the maritime security legislation the Gulf of Guinea.

1.4. Significance of the Study

In examining data on breaches of maritime security, the study seeks to bring to light the trends that can be associated with security legislation and the ISPS Code in particular. It is intended that such data analyses and critical evaluation of the legal instruments will assist in improving policy-making for maritime security at the international, regional and local levels.

1.5. Scope

The dissertation will highlight the trend in the international regime for providing security at sea in the past 15 years. This period is divided into 2 phases. The first phase is the period between 1994 and 2001 during which the UNCLOS and SUA Convention came into force. The second phase is the period between 2002
and 2009 when the SOLAS Chapter XI As Amended and ISPS Code 2002 came also into force. This development in the legislation is to adequately address the differences on the issues of maritime security and safety.

1.6. Methodology

The international legislative regimes which have been developed over the years to enhance maritime security will be critically analyzed using statistical approach. Among the legal regimes to be analyzed are UNCLOS, SUA Convention and Protocol, SOLAS Convention and the ISPS Code.

Data on threats to maritime security will be gathered from both primary and secondary sources. The primary data will be predominantly gathered from the IMB, a non-profit making organization established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. The data from this organization seem therefore to be reasonably unbiased and is arguably the entity with the most significant data collection of unlawful acts at sea. Other data are from the Nigerian Shippers Council (NSC) as well as information and literature review sources including the Internet. Furthermore, the study will adopt quantitative methods and statistical approaches in analyzing the data.

1.7. Limitations

The limitation of this research was the dearth of up-to-date on maritime security in the countries of West Africa, particularly in Nigeria. This is to a large extent due to the low level of maritime domain awareness in the region. However, information obtained from senior officers in the maritime industry and the data from the IMB are crucial to this study, so this limitation did not significantly affect the outcome of the study.
CHAPTER 2

CONCEPT OF MARITIME SECURITY

This section will undertake the review of the literature relevant to the study and will provide a theoretical framework on which the work is based. The concept of maritime security will be discussed to establish a common definition that will be adopted throughout the study. It looks at concepts on the threats to security such as piracy, armed robbery, terrorism, insurgency and other organized crimes at sea as well as the concept of maritime zones delimitation. It will also examine the literature in law to define the term code which will be appropriate for the understanding of the ISPS Code in the context of maritime security.

2.1. Maritime Security

The Marine Encyclopaedic Dictionary (2005) defines “maritime” as pertaining to the sea, to navigation, to shipping commerce and bordering on the sea. Ma (2008) states broadly that maritime covers many aspects related to the sea often beyond purely transportation. Also, the USA Department of Homeland Security (DHS, 2005) defines maritime as a domain covering all the areas and things bordering on a sea and other navigational waterways including all sea-related activities, infrastructure, people, cargo, vessels and other conveyances. These definitions of maritime will suffice in this paper, but it will include all human and commercial activities carried out in harbours and at sea which would require a secure environment.

The definition of security is as wide and complex as its concept. Some scholars maintain that safety and security are synonymous, since both refer to a state of being safe from fear, danger, anxiety and uncertainty. Other scholars insist that the words are distinct from each other. It is to underline the distinction between safety and security that Mejia (2003, p.154) opined that from a linguistic perspective, both words as expressed in some languages may lead to terminological confusion. For example in French, the words safety and security are expressed in a word “securite”, while in
Spanish both words are expressed in the word “seguridad”. Both of these languages are among the 6 official languages within the UN system. On the other hand in English, the 2 words are expressed literally in different as well as distinct terms.

In order to resolve the confusion arising from the meaning of safety and security, due to differences in the languages of the world, the international community has agreed to distinguish between their meanings. This is to ensure a global uniformity in the definitions. Mejia et al (2005, p.34) define maritime safety as those measures employed by maritime administrations, vessel owners and operators, port facilities, offshore installations and other maritime organizations to prevent as well as minimize the occurrence of accidents at sea. However, the term “maritime safety” is in contrast with the term “maritime security” being used at IMO, indicating the terms are quite distinct in meaning. Therefore, Mejia et al define maritime security as those measures employed by administrations, vessel owners and operators, port facilities, offshore installations and other maritime organizations to protect against unlawful acts such as piracy, armed robbery, terrorism as well as other maritime crimes.

In addition to these definitions, therefore, by maritime safety this paper implies all the measures taken to protect the ship and its crew from accidents occurring within the operational activities onboard ships due to propulsion control machinery failure and navigational error among others. Similarly, maritime security would imply all measures taken to protect the ship and its crew from attacks from external agents during the ship’s operations.

2.2. Maritime Security Threats

The list of threats to maritime security is long and new trends keep evolving globally. From the foregoing definitions, the threats are human illegal activities employed to militate against the measures taken to ensure maritime security. Among these threats are piracy and armed robbery against ships, terrorism, insurgency and smuggling. Others are human and drug trafficking, arms running, stowaways, counterfeit and fraud.

---

1 The accidents could result from substandard ships, unqualified crew and operator error.
2.3. Piracy

Over the years, the oceans of the world have a long history of maritime piracy. People have been romanticising piracy as the Robin Hoods of the Sea. Pirates are seen as likeable bearded characters who steal from the rich to give to the poor. In reality, it is quite different: piracy is a violent and bloody attack targeted on defenceless people onboard merchant vessels. Currently, the acts of piracy are been carried out with sophisticated weapons and at coastal waters, making them to deviate from their original meaning as acts being carried out for personal financial gains at high sea. According to Article 101 of UNCLOS 1982, piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passenger of a private ship or a private aircraft and directed:
   (i) on the high seas, against another ship or aircraft, or against persons or property onboard such ship or aircraft;
   (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
(b) any 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;
(c) any act of inciting or intentionally facilitating an act described in subparagraph (a) and (b).

This Article goes further to state the five elements of an act of piracy which are as follows: (1) an act of violence crime resulting to assault, rape and murder among others; (2) an act committed on the high seas or places outside the jurisdiction of any State; (3) an act involving the use of a ship to attack another ship, excluding mutiny and barratry; (4) an act committed for private ends, which excludes the acts of terrorism and environmental damage activities. (5) an act by the crew or passengers of a privately owned ship which excludes attack from a naval ship. This UNCLOS definition of acts of piracy is narrow considering that it fails to cover some of the current acts of piracy. When one considers the piratical attacks in the region of the Gulf of Guinea, it is clear that most of these attacks occur within the 12 nautical miles which is in the territorial waters limit. This is in contrast to the high seas limit. Another contrasting aspect is that the definition regards the act of piracy as being
carried out for “private ends”. In some incidents, the intentions of the pirates may not be easy to differentiate between being for “private ends” and “public ends”.  

According to Murphy (2007, p.159), the requirement that a pirate act had to be committed for “private ends” had its origin in the distinction between piracy and privateering. Actually, privateers were pirates under license by the States. During piratical attacks, the privateers were not engaged in unwarranted brutality and lack of witnesses. This is because they would have to justify the piratical attacks before a Prize Court to establish a rightful claim to the stolen goods. States authorized privateering in as much as it is used against foreign and local ships perceived as enemies, in which case it substitutes for the navy.

On the other hand, piracy was not under license and its acts were always against States. The pirates attack their victims with outermost brutality and eliminate all signs of witnesses as they did not owe any justification of their piracy acts to the State. As a matter of fact, it was because of these reasons that the act of piracy was described as being for “private ends”. This meant that the acts of piracy were for the selfishness of the pirates, unlike in the acts of privateering, which was in the interest of both the privateers and the States.

Furthermore, the intention of the pirates for financial gain in the acts of piracy is difficult to be separated from socio-political gains. In this regard, IMB defines, broadly, piracy as an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act. This definition is wider and covers any illegal boarding of the ship both in harbour and at sea, but it has no international legal standing. However, this paper will expand the “private ends” requirement to mean “without authorization from any State”, in the act of piracy.

2.4. Armed Robbery

In order to expand the narrow definition of piracy as defined in the UNCLOS 1982, the IMO has adopted the term “piracy and armed robbery against ships” in its non-treaty IMO documents. Accordingly, IMO defines armed robbery against ships as “any unlawful act of violence or detention or any act of depredation, or threat thereof,

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2 To the victims of piratical attacks, the well organized groups of pirates are public enemies and their intentions are for public ends and not for private ends.
other than an act of ‘piracy’, directed against a ship or against persons or property onboard such a ship, within a State’s jurisdiction over such offences”. Also, in this broad definition, armed robbery against ships can occur in both the territorial waters and on the high seas. It is noteworthy that armed robbery is an act of violence and is, therefore, categorized as another act of piracy. Hence, in this paper the two concepts will be used in combination with one another as piracy and armed robbery against ships.

2.5. Terrorism

Unlike piracy and other maritime crimes, maritime terrorism was a new phenomenon to the shipping industry. Though the act of maritime terrorism is new, its occurrence has not been uniformly reported globally. As Raymond (2005a, p.182) observed, there was a high profile maritime terrorist attack which involved the hijacking of a Greek freighter in Karachi in 1974. However, it was the hijacking of the cruise Liner Achille Lauro by a terrorist group in 1985, off the coast of Egypt that attracted the attention of the international community to this phenomenon of maritime terrorism.

According to Snoddon (2007, p.228), maritime terrorism can be defined as “any unlawful use or threatened use of force or violence against people or property to coerce or intimidate governments or societies, often to achieve political, religious or ideological objectives”. Raymond (2005, p.181) defines maritime terrorism as any illegal act directed against ships, their passengers, cargo or crew, or against sea ports with the intent of directly or indirectly influencing, for political purposes, a government or groups of individuals”. From these definitions, it can be clearly seen that not only is piracy distinguishable from maritime terrorism but also the two phenomena are linked together. Maritime terrorism is differentiated from piracy; while the former acts with the intent for political gains, the latter acts with the intent for private gains. On the other hand, they are linked by the fact that a terrorist group could employ the act of piracy for financial gain to support the acts of terror.

2.6. Insurgency

Hansen (2009, p.77) defines insurgency as a protracted political-military activity directed towards completely or partially controlling the resources of a country through the use of irregular military forces and illegal political organizations. As irregular military forces, the insurgents engage in guerrilla combat against the regular armed forces of a country. In this unconventional armed conflict, the insurgency groups
could employ the use of piracy and terrorist attacks for the advancement of their cause. For the purpose of this paper, therefore, insurgency is defined as an organized movement aimed at obtaining autonomy for certain geographical areas from a constituted government through the use of subversion and armed conflict.

2.7. Organized Crime

There are many criminal activities which are conducted in the marine environment. Included in the organized crimes are smuggling, thefts, human and drug trafficking, arms running and fraud among others. Although the organized crimes are as important as other unlawful acts in breach of maritime security, the analysis of the impacts of organized crimes on the shipping industry as regards the ISPS Code will be excluded in this paper. This is to provide enough time to analyze adequately the impacts of piracy and armed robbery against ships, terrorism and insurgency on the shipping industry, since these attacks usually inflict serious injury or death to persons within the maritime domain.

2.8. Maritime Zones

Earlier, the international community has attempted to draw lines that could define the boundary limits of coastal States in the oceans of the world. The delimitation of maritime zones has been disputed among nations as a result of probable infringement on sovereignty, economy and off-shore resources control among others. In order to resolve some of these issues, the UNCLOS 1982 has demarcated a nation’s maritime domain into four zones. These zones are high seas, exclusive economic zone (EEZ), contiguous zone and territorial waters which are shown in Figure 1.
The territorial water is the zone consisting of 12 nautical miles from the baseline of the coastal State. This zone is considered part of the territorial integrity of the coastal State and therefore its national law supersedes any other international law. The contiguous zone is defined as the zone extending from the edge of the territorial water at a distance of 24 nautical miles from the baseline. Within this zone, the coastal State has jurisdiction in enforcing its national law in the areas of pollution, taxation, custom and immigration. Also, the EEZ is the zone extending beyond the contiguous zone, at a distance of 200 nautical miles from the coastal baseline. In this zone, the coastal State has the sole rights for the exploitation of the natural resources such as fishing and oil exploration as well as production. Furthermore, the high sea is defined as the zone measured seaward beyond the EEZ. This zone of the sea is the international waters which are under universal jurisdiction.

2.9. Legal Code

From history, the code is probably the earliest form of legislation. For example, between 2200 and 1600 B.C., there was the Babylonian Code of Hammurabi. This Code was a compilation of the Sumerian customs and practices in the Tigris-Euphrates basin. Mukherjee (2002, p.47) points out that a code is the vehicle through which custom transforms into law. However, it was seen that this may not always be the case, as with the Hindu Code or Law of Manu which dictated, rather,

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3 Edgar Gold, in his treatise on ‘maritime transport’, observed that Tigris-Euphrates was the cradle of western law and civilization.
what the law should be. Therefore, it is understood that codes could transform customs and practices into law as well as prescribe what the law should be, depending on the instances.

The code plays a vital role in civil law jurisdictions, similar to the role legislation plays in the common law jurisdiction. According to Mukherjee (2002), the word “code” is defined in common law jurisdiction as the legislation that confirms through legislation, as the will and intent of the legislature, what was hitherto simply within the domain of the common law. It was in this context that IMO codified SOLAS Chapter XI which resulted to the ISPS Code the effectiveness of which this paper is to examine.
Admittedly, maritime security is one the most significant factors in the new world order considering that the sea covers over 70 per cent of the earth surface. The success of transportation by sea has made the nations of the world interdependent. Easily, people, goods and services are moved by ships from one place to another within a country and from one country to another globally, in what has resulted to be known as world globalization. In the globalization of the world through the sea, the safety of the sea lines of communications (SLOCs) for international trade need to be sustained. This is because these SLOCs are vulnerable to threats from acts of terrorism as well as piracy and armed robbery against ships among others.

3.1. Terrorism

The new phenomenon on terrorism started in 1968 when a terrorist group, the Popular Front for the Liberation of Palestine (PFLP) hijacked an EIAL airliner en route from Tel Aviv to Rome. Since then, the number of terrorist groups has increased and today there are some 36 terrorist groups dispersed across Europe, Central and South America, the Middle East, Africa as well as the Sub-continent and Southeast Asia (Herbert-Burns, 2005, p.157). The list of various organizations involved acts of terrorism and piracy is shown at the Table 1. These groups have carried out extremely violent acts for alleged social, economic, political and religious reasons among others. In 2000, the terrorist attack on USS Cole, in the port of Yemen seemed to be socio-politically motivated. Prior to this attack, Bateman (2007, p.242) stated that Al Qaeda had claimed that it would attack vital economic centres and strategic enterprises of the “Jewish-Christian alliance”, including operations on land, at sea and in the air.
### Table 1 - List of various Terrorist and Pirate Organizations

<table>
<thead>
<tr>
<th>Serial</th>
<th>Terrorist/Pirate Organization</th>
<th>Geographical Location</th>
<th>Publicity Level</th>
<th>Tactics Employed/ Motivation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Abu Sayyaf Group</td>
<td>Philippines</td>
<td>Low</td>
<td>Political/ Financial</td>
</tr>
<tr>
<td>2.</td>
<td>Al Qaeda</td>
<td>Worldwide</td>
<td>High</td>
<td>Political</td>
</tr>
<tr>
<td>3.</td>
<td>Egyptian Islamic Jihad</td>
<td>Egypt</td>
<td>Medium</td>
<td>Political</td>
</tr>
<tr>
<td>4.</td>
<td>Euskadi ta Askatasuna</td>
<td>Spain/ France</td>
<td>Medium</td>
<td>Political</td>
</tr>
<tr>
<td>5.</td>
<td>Gerakan Aceh Merdeka</td>
<td>Indonesia</td>
<td>Medium</td>
<td>Political/ Financial</td>
</tr>
<tr>
<td>6.</td>
<td>Hamas</td>
<td>Palestine</td>
<td>Medium</td>
<td>Political</td>
</tr>
<tr>
<td>7.</td>
<td>Jemaah Islamiyah</td>
<td>Southeast Asia</td>
<td>High</td>
<td>Political</td>
</tr>
<tr>
<td>8.</td>
<td>LTTE</td>
<td>Sri Lakan</td>
<td>Medium</td>
<td>Political/ Financial</td>
</tr>
<tr>
<td>9.</td>
<td>MEND</td>
<td>Nigeria</td>
<td>Medium</td>
<td>Political/ Financial</td>
</tr>
<tr>
<td>10.</td>
<td>PFLP</td>
<td>Palestine</td>
<td>High</td>
<td>Political</td>
</tr>
<tr>
<td>11.</td>
<td>Revolutionary Armed Force of Colombia</td>
<td>Colombia</td>
<td>Medium</td>
<td>Political/ Financial</td>
</tr>
<tr>
<td>12.</td>
<td>Somali Marines</td>
<td>Somalia</td>
<td>None</td>
<td>Financial</td>
</tr>
</tbody>
</table>


Whitaker (2002, October) opined that the terrorist attack on the Merchant Tanker (MT) *Limburg* in Yemen waters was economically motivated. This was implied by Al Qaeda’s stated intention to attack Western oil interests:

> … By exploding the oil tanker in Yemen, the holy warriors hit the umbilical cord and lifeline of the crusader community, reminding the enemy of the heavy cost of blood and gravity of losses they will pay as a price for their continued aggression on our community and looting of our wealth.⁴

In both attacks, Al Qaeda has used small and fast dinghy boats as vectors to carry Tri-Nitro-Toluene (TNT) explosives estimated to be 100-200 kg. These boats were rammed into the target ships causing massive explosions and damage to the ships structure as well as death of some crew members. These incidents underscore the international community concern that terrorist groups could employ the use of ships as weapons of mass destruction (WMD) to carry out attacks on coastal states.

⁴ Statement purportedly from Osama bin Ladan and his cohorts congratulating “the Islamic Community” on the attack on tanker *Limburg*. 
The attack on the *USS Cole* was intended to kill human beings onboard the vessel. It resulted in the death of 19 crew members while 37 others were injured and the ship damaged severely. In the case of MT *Limburg*, the attack was conducted to inflict huge financial loss to the country as a result of the oil spill of about 90,000 gross tons, although a member of the crew was also killed. It could be concluded therefore that the impact of terrorists attacks result not only in loss of life, economic and damage to the social system, but also to the degradation of the maritime environment.

Acts of maritime terrorism have continued to occur in the regions of the world, especially in the South East Asia and the Indian Sub-continent. Examples of such acts are the sinking of *Super ferry 14* in the Philippines and the several attacks on merchant ships and Sri Lankan Navy ships by the Liberation Tigers of Tamil Ealam (LTTE). However, events have shown that maritime targets would not be the preferred choice for acts of terrorism. Terrorists would prefer targets on land where success is most likely such as in the attacks on mass urban transport in London and Madrid as well as in Mumbai, which has recently included attacks on hotels and hospitals.

3.2. Piracy and Armed Robbery against Ships

Banlaoi (2005, p.61) asserted in his study that acts of piracy occur in ports, anchorages and at high seas. Also, he opined that pirates range from opportunistic fishermen and common criminals to members of sophisticated Asian crime syndicates. In these situations, the acts of piracy range from the classic boarding and hijacking of a merchant vessel on the high seas to the more common act of stealing from the ship while it is anchored. From this study, four types of piracy acts were identified. They are piratical attacks on vessels at anchorage, attacks against vessels at territorial waters, hijacking of commercial vessels on high seas and kidnapping of crew for ransom.

According to IMB Reports for the past 15 years, an extract of which is at Appendix A, there has been drastic increase in the number of piracy and armed robbery against ships globally, since 1994. Appendix B shows the trend analysis of the statistical data, within the period from 1994 to 2008. From the statistics, the highest number of piratical attacks recorded was 469 and it occurred in 2000 prior to the 9/11. Having dropped to 335 in 2001, the number peaked again to 445 in 2003 in the aftermath of 9/11 and subsequent entering into of stricter ISPS Code; although the Code has
been a security measure primarily for counter-terrorism, it can also counter acts of piracy and other maritime crimes. Therefore, the initial drop was temporary; resulting more from the global sympathetic mood during the period of 9/11 than the effectiveness of existing and new maritime security regimes.

The number of the incidents has skyrocketed in some geographical areas such as the Gulf of Aden and off the coast of Somalia; in other areas such as the Straits of Malacca and Singapore they have decreased significantly. During this period, the Report also indicated an increasing number of piracy incidents in the Gulf of Guinea and off the coast of Nigeria in particular. One of the factors that contributed to the reduction of the acts of piracy in the Straits of Malacca is the introduction regional cooperation in ensuring maritime security in the region spearheaded by Japan. The Japan’s ReCAAP Initiative has improved the maritime security in Southeast Asia tremendously. Another regional agreement, the MALSINDO, which is a joint naval patrolling cooperation between the countries of Indonesia, Malaysia and Singapore, has also contributed to the reduction of piratical attacks in the Straits of Malacca. Globally, within the last 2 years, the number of attacks increased from 263, in 2007 to 293, in 2008 which represents about 11 per cent increase.

Lowry (2009) believes that the cost of piracy acts has increased globally as ransoms paid increased from an average of USD 1.2 million in 2007 to USD 1.7 million in 2008. This is attributable to the recent increase in acts of piracy off the coast of Somalia. In a statement by Kemp⁵, it seems the duration of ordeals from piracy acts have doubled from an average of 40 days in 2007 to 80 days in 2008. Obviously, the increase in the ransoms paid to pirates has resulted in prolonging the ordeals of their victims. Pirates could care less for the ordeals of their victims during negotiations as long as the ransoms paid are high. Therefore, the increase in the number of piratical attacks has not only placed a huge financial burden on the world’s economy but also prolonged the ordeals of victims.

3.3. The Link between Piracy and Terrorism

Though the acts of piracy and terrorism are distinct from one another, there is a link between them. Recent developments and incidents around the world suggest that this link has been shortened tremendously. As a result, some experts and policy

⁵ Alex Kemp is operations manager for NYA International, a specialist subsidiary of Group 4 Security, G4S.
makers are unsure at what point piracy becomes terrorism. Banlaoi (2005, p.68) states that the Singapore Home Minister asserted that in a crime conducted at sea, it is difficult to determine whether it is pirates or terrorists who occupy the ship.\textsuperscript{6} Therefore he is of the opinion that the two acts will be treated alike.

According to Hansen (2009, p.77), an organization could employ a number of tactics such as piracy and terrorism acts as distinct ways of achieving their overall strategic objectives. For example, an insurgency organization engages in a guerrilla campaign against the military force of a country. At the same time, it is mounting terrorist attacks on public targets as well as conducting a range of illegal activities to finance the operations. The terrorist group, Abu Sayyal Group (ASG), based in the Southern Philippines, has followed this type of pattern in its operations in Southeast Asia. It has been linked to hijacking and kidnapping for ransom, including raids from the sea on holiday resorts.\textsuperscript{7} Furthermore, the Movement for the Emancipation of the Niger Delta (MEND) and Niger Delta Peoples Salvation Front (NDPSF) in Nigeria employ similar tactics of piracy as well as terrorism to achieve its goals.

There are some terrorist groups which have maintained particular tactics of terrorism. These groups include Al Qaeda and Gerakan Aceh Merdeka (GAM). Although Al Qaeda’s attack on the USS Cole was a pure act of terrorism, nevertheless, the terrorist group employed the tactics of pirates in using a small boat for transportation towards its target ships. However, in this case, the Al Qaeda not only used the boat for transportation, but also as a weapon that rammed itself into the USS Cole in the Port of Yemen. The link in this case is that some terrorists groups could employ the tactics of piracy to carry out acts of terrorism as well as to raise funds for their illegal groups. Therefore, there is a link between piracy and terrorism as long as the pirates collude with terrorists while in some cases terrorists adopt the tactics of pirates in their operations.

3.4. Weapons at Sea

The acts of piracy and maritime terrorism are closely related activities involving armed violence at sea. Earlier, pirates used weapons less dangerous such as dagger, long knives, machetes, axes, crowbars, clubs and swords. Today, however,
they use more sophisticated and lethal weapons varying from pistol to rocket propelled grenade launcher (RPG) as shown at Table 2.

Table 2 - Weapons Used in Acts of Piracy and Armed Robbery Against Ships

<table>
<thead>
<tr>
<th>Serial</th>
<th>Name of Weapon</th>
<th>Weapon Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>(b)</td>
<td>(c)</td>
</tr>
<tr>
<td>1.</td>
<td>Pistol</td>
<td>Calibre – 9mm; Muzzle velocity – approx 375 m/s; Magazine capacity – 10 to 15 rounds.</td>
</tr>
<tr>
<td>2.</td>
<td>SMGs</td>
<td>Calibre – 9 mm; Muzzle velocity – approx 400 m/s; Cyclic rate – approx 800 rpm; Magazine capacity – 20 to 30 rounds.</td>
</tr>
<tr>
<td>3.</td>
<td>AK-47 Assault Rifle (Russian)</td>
<td>Calibre – 7.62 mm; Muzzle velocity – approx 700 m/s; Cyclic rate – approx 600 rpm; Magazine capacity – 30 rounds. Effective range – max 400 m.</td>
</tr>
<tr>
<td>4.</td>
<td>AK-47 Assault Rifle (Russian)</td>
<td>Calibre – 5.45 mm; Muzzle velocity – approx 900 m/s; Cyclic rate – approx 600/650 rpm; Magazine capacity – 30 rounds. Effective range – max 500 m.</td>
</tr>
<tr>
<td>5.</td>
<td>56-1 Assault Rifle (Chinese)</td>
<td>Calibre – 7.62 mm; Muzzle velocity – approx 710 m/s; Cyclic rate – approx 600 rpm; Magazine capacity – 30 rounds. Effective range – max 400 m.</td>
</tr>
<tr>
<td>6.</td>
<td>M-16 A1/A2/A3 Assault Rifle (USA)</td>
<td>Calibre – 5.56 mm; Muzzle velocity – approx 945 m/s; Cyclic rate – approx 650/750 rpm; Magazine capacity – 20 to 30 rounds. Effective range – max 460/550 m.</td>
</tr>
<tr>
<td>7.</td>
<td>RPG -7 Launcher</td>
<td>Warhead – Fin stabilized 40 mm armour piercing, anti armour, high explosives and anti personnel grenade; Effective range – max 300/920 m (single mobile/area target)</td>
</tr>
</tbody>
</table>


Burnet (2002) reveals that officers from the Royal Malaysian Marine Police (RMMP) have encountered pirates in the shipping lanes in the Malacca Straits having same tactical competence and weapons similar to the ones used by members of the Indonesian Navy. This was based on the fact that some M-16 assault rifles recovered were in common use by the Indonesian Navy. However is this case, the fact remains that these weapons are readily available anywhere in the world and can be purchased accordingly. Also, the weapons have been proliferated to the extent that organized criminals could acquire them from the black market with relative ease. Furthermore, the use of assault rifles, sub-machine guns (SMG), rocket-propelled grenade launchers (RPGs) and water-borne improvised explosive devices (WBIEDs) has made acts of pirates to be indistinguishable from those of terrorism. This sophistication in use of weapons contrasted the earlier ones, when pirates used weapons less dangerous such as dagger and crowbars among others.
In addition to mastery of weapons, the pirates and terrorists are also skilful and experienced in ship handling. This is an indication that the perpetrators of these crimes could also belong to families of fishermen from where they have gained the sea experience. For example, it has been stated that the LTTE attacks on merchant vessels and Sri Lankan warships were possible because many Tamil Tigers were formally fishermen. Consequent upon these facts, the acts of terrorism and piracy have become sophisticated globally. Therefore, there is need for the proliferation of these weapons to be checked and controlled at sea to ensure maritime security.

3.5. Threats to Ships

According to Chalk (2009, p.118), security threats to ships affects approximately 112,000 merchant vessels which are parts of the contemporary international maritime transport system. In this system, these ships are the link to about 225 coastal nations, dependent territories and island states, while the transport system wide-ranging network caters for about 80 per cent of commercial freight. Among the ships vulnerable to pirates’ and terrorists’ attacks in the transport system are container ships, cruise liners and passenger ferries. However, ships using the international maritime transport system would be incomplete without including naval ships. It is therefore important that warships are included in the network of international maritime transport system susceptible to attack.

Bateman (2007, p.243) stated that the sinking of Super ferry 14 in February 2004, near Manila in the Philippines, which resulted in the death of 116 people, has been the most serious act of maritime terrorism. This attack was carried out by the terrorist group, ASG. Undoubtedly, pirates and terrorists target both merchant ships and warships among which are the MT Limburg and USS Cole. In the case of MT Limburg, one crew member was killed while that of USS Cole resulted in the death of nineteen crew members. It is noteworthy that the number of human lives lost in the incident of Super ferry 14 is far greater than the number lost in the combined incidents of USS Cole and MT Limburg. Globally, however, the incidents of USS Cole and MT Limburg have attracted more attention than that of Super ferry 14. This is because both were initiated by Al Qaeda and occurred in the context of 9/11.

In addition, the likelihood of attacks on a passenger ferry is higher than on a cruise liner, tanker and warship. This is because of the large number of people who would employ the services of ferries which are cheap and highly accessible.
Chalk (2007, p.123) insists that the mode of transport by ferry is quite reliable and is also a cost-effective alternative to flying. This has made many people use it as a principal means of transportation both internationally and nationally. Additionally, in some designs, the roll-on roll-off (ro-ro) ships could carry cars, tourist coaches, buses, minivans and freight trucks. Chalk (2009, p.124) stresses that the high number of passengers and large volume of embarking traffic would make it practically difficult to take extant security measures at the terminals without the impact of disruption, unlike the situation of cruise liners. Nevertheless, as with cruise liners, terrorist attacks on ferries could result in mass casualties which are likely to have acute political ramifications. Furthermore, it could elicit strong domestic pressure for the initiation of mitigation measures extending far beyond the maritime realm. Therefore, it would impact on the economy as the ship-owners would be exposed to large-scale compensation. This is seen from the point of view of the liability paid when major ferry accidents have occurred, which although were not due to acts of piracy and terrorism. For example, the 1994 sinking of *Estonia* in the Baltic Sea resulted in 852 deaths and attracted victims’ claims of about USD 110 million. Also, the 1987 capsizing of the *Herald of Free Enterprise* which resulted in 193 deaths attracted claims of about USD 70 million. Undoubtedly, the liability payments would most likely have been much higher had terrorism figured as the cause of these incidents.

3.6. Threats to Ports

From the IMB Report, there is increase in the threats from acts of piracy and terrorism on about 6,500 ports and harbour facilities, as well as 45,000 shipping bureaus in the global maritime transport system. Bateman (2007, p.248) observed that ports by their nature are vulnerable to criminal attacks. Ports vary greatly with regards to their physical features such as geography, topography, surroundings and population. Some ports are isolated and remotely located while others are located at the centre of a crowded city. Also, separate facilities may not be large in a given port area while the geographical extent of a port may be very wide. Therefore, to ensure port security involves ensuring the security of maritime environments which comprise of land, air, sea surface and subsurface. Definitely, it would be difficult to achieve maritime security in all the environments and this would make the ports susceptible to piratical and terrorist attacks.

In the busy areas of ports with access by land and sea, it could be practically impossible to secure the waterside physically. This is in contrast to airports which
have well defined perimeters and usually some form of buffer zone between the airport and other activities. As a result, access to an airport is more easily controlled than to a seaport. In this regards, Banlaoi (2005, p.66) opined that terrorist groups regard seaports and commercial ships, in particular cruise liners as very attractive targets. Similarly, experts have assessed that a more sinister scenario is the threat that a small but lethal biological weapon could be smuggled into a harbour onboard a ship and released into a crowded port. Therefore, the incident of the terrorist attack on USS Cole at Aden Port in Yemen seems to suggest to an initial planning stage by the Al Qaeda in the exploitation of the vulnerability of ports to carry out acts of terrorism.

Recently, the world-wide increase in acts of piracy and armed robbery against ships, which is spearheaded by the unprecedented surge in piratical attacks in the Gulf of Aden off the coast of Somalia, has attracted the attention of the international community. This is because the acts of piracy and armed robbery against ships seem to flourish despite the presence of international legal regimes to combat the crimes. Subsequently, this paper will explore the international legislative framework designed to ensure maritime security.
INTERNATIONAL LEGAL REGIMES ON ENHANCING MARITIME SECURITY

Over the years, the international legal regime has been developed and modified to adapt to prevailing unlawful acts which threaten maritime safety and security. According to Mukherjee (2002, p.55) the legal regimes set out the general principles and framework of the law which often represent a codification of prevalent international custom and practice. This is in response to evolving threats to maritime security that the international community undertakes to amend existing legislation and where necessary enact new conventions. Included in these public international law conventions are LOSC 1982, SUA 1988 Protocol and SOLAS 1974 As Amended. This chapter will look at the rationale of the conventions in combating piracy, armed robbery against ships and terrorism.


In the past, piracy and armed robbery against ships were the major threats to the security of commercial shipping; the pirates attacking and forcefully gaining control of ships to rob the crew of their valuables and cargo. Accordingly, coastal States took certain measures to protect ships and their crews from piratical attacks by persons operating from other ship. Over time, these measures transformed into customs which were used to formulate customary international law. The traditional law of piracy was codified in the 1958 first United Nations Conference on the Law of the Sea (UNCLOS I) and the subsequent Conferences. It is contained in Articles 15 and 22 of the Convention on High Seas (UNCLOS I). Subsequent Conferences are UNCLOS II in 1960 and UNCLOS III between 1973 and 1982.

According to UNCLOS (1982), acts of piracy are universal crimes and therefore punishable under the law of a State. However, the UNCLOS defined the act of piracy in a narrow sense which makes it difficult for member States to have a common concept of the piracy act. For example, one of the elements of piracy acts is that
they should be committed at high seas. There is no particular State that has jurisdiction on these high seas. However, the provision of “high seas” in the UNCLOS definition of piracy is hardly fulfilled in the new phenomenon of piracy whereby such acts occur mostly within the territorial waters of the coastal States. Banlaoi (2005, p.61) observed that piratical attacks occur mostly in ports and anchorages globally. Also, a large number of piracy incidents occur in straits, choke points and archipelagic waters. Among these are the Malacca and Singapore Straits and the surrounding waters of Malaysia and Indonesia archipelagic waters. By the existing definition, these violent attacks are clearly not acts of piracy, since they occur within the territorial waters of the coastal States. Therefore, the UNCLOS definition of piracy as an illegal act occurring on the high seas would need to be conceptualized to include incidents of armed robbery against ships and maritime terrorism within the territorial waters.

Another difficulty encountered with UNCLOS is in the implementation of the “two ships” requirement in the act of piracy by member States. In addition to the piracy acts being carried out on high seas, the pirates are required to board the target ship from another ship or aircraft. However, there have been some incidents whereby the crew or passengers attack the ship illegally from within, such as the case of passenger ships *Achille Lauro* and *Santa Maria*. In January 1961, a Portuguese passenger liner *Santa Maria* was hijacked by a team of insurgents, led by Enrique Galvao, who disguised as passengers onboard the ship. According to Menefee (1990, p.57), the Portuguese Authority reaction was to brand the *Santa Maria’s* insurgents as “pirates”, while requesting the assistance of recognised friendly governments of countries such as the USA and the United Kingdom (UK) among others in recovering the vessel. Though the USA and the UK agreed to assist, there was no doubt that they had reservations on the labelling of the incident as an act of piracy. This is evident from the instruction to the British Senior Naval Officer in the West Indies whereby he was instructed to arrest the *Santa Maria* without the use of force, through peaceful means.

In the case of *Achille Lauro*, an Italian cruise liner, four armed Palestinians belonging to the PFLP boarded as passengers. The ship with 400 passengers and crew was hijacked off the coast of Egypt and the hijackers demanded the release of 50

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9 On 23 January, 1961, a party led by Captain Galvao seized the Santa Maria, while it was cruising in the Caribbean. Galvao and his companions, who embarked as ordinary passengers, seized the ship in order to call the attention of world opinion to the dictatorship then ruling Portugal.
Palestinians prisoners held in Israel. In demonstration of their seriousness, the hijackers killed one of the American tourists onboard and threw his body together with his wheel chair overboard. Again there is division among some countries on how to handle this phenomenon of violent and criminal acts onboard ships which is not covered by the provisions of UNCLOS. The USA whose citizen was murdered, considered the incident as a piratical attack in which case the perpetrators should be brought to justice. Egypt, as the port State, maintained that it was an act of insurgency and that insurgents could be negotiated with to resolve the issue peacefully. Italy, whose flag the liner *Achille Lauro* was flying, was undecided on how to characterise the incident as a piratical attack. After long tortuous negotiations, a settlement was reached by which the remaining hostages were freed and the hijackers allowed to flee.

Obviously, these incidents against commercial shipping present more serious threats to global maritime security than the ones posed by the traditional pirates. Unlike the provisions in UNCLOS, the attackers operated on the same ship where they were passengers and did not board the ship from another ship. Also they acted without concern for their private gains, as they were seeking political and religious gains among others as well as calling the attention of the international community to address their grievances. It is arguable that the existing legal regime is sufficient to tackle this evolving security threat since for the victims, the intentions of the attackers are irrelevant. However, the events on the *Santa Maria* and *Achille Lauro* have shown that the traditional law of piracy could not effectively address the issues of maritime security in the present time. In response to the incident onboard the *Achille Lauro*, the international community noted, with great concern, the danger to passengers and cargoes resulting from the increasing number of incidents involving piracy, armed robbery and other unlawful acts against or onboard ships, including small craft at anchor and underway. Therefore in one of its resolutions, the IMO called for measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew.

4.2. SUA Convention 1988 As Amended

The international community has resolved that a new legal instrument, the SUA Convention 1988 and Protocol 2005, would be needed to supplement the existing regimes in dealing with the current trends on unlawful acts against commercial shipping. While the SUA Convention 1988 was adopted on 10 March 1988 and
entered into force on 1 March 1992, the SUA Protocol 2005 was adopted on 14
October 2005, with the provision that it would enter into force 90 days after the date
on which 12 States formally ratify or accept it. This is to be done through an official
notification to the IMO secretary general of the States’ consent, to be bound by the
Protocol’s provisions. According to IMO Report (2009b) only 8 States have ratified
the SUA Convention 2005 amendments as of 31 July 2009.

In drafting the SUA Convention 1988, the models existing in the aviation industry
were used. Among these models were the Hague Convention for the Suppression of
Unlawful Seizure of Aircraft (Hague Convention), 1970 and the Montreal Convention
for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal
Convention), 1971. It is worth noting that the Hague Convention 1970 and Montreal
Convention 1971 were the first UN terrorism conventions. The SUA Convention
states that it is an offence for any person to seize and exercise control over a ship by
force, threat of force and any other form of intimidation. Mensah (2004, p.2)
observed that this position of the Convention is suggested in its preamble where it
states to provide effective and practical measures for the prevention of all unlawful
acts against the safety of maritime navigation as well as the prosecution and
punishment of the perpetrators.

According to Beckman (2009, p.189), the scheme of the SUA Convention 1988 has
five features. Among these are the definitions of some specific criminal offenses for
states parties to criminalize under their domestic law punishable by serious
penalties\textsuperscript{10} and establishment of jurisdiction over these criminal offenses within their
territory\textsuperscript{11}. Others are the obligation to “extradite or prosecute”\textsuperscript{12} offenders who are in
custody of another state party accordingly\textsuperscript{13} and the Convention substituting as the
legal basis for states parties to extradite alleged offenders to another state regardless
of any existing extradition treaty.\textsuperscript{14} Also, it includes the obligations of states parties
to afford one another the greatest measures of cooperation in connection with
criminal proceedings to prosecute the offenders.\textsuperscript{15}

\textsuperscript{10} Article 3 of the SUA Convention 1988 has the list of all the offenses
\textsuperscript{11} Article 6 of the SUA Convention 1988.
\textsuperscript{12} Article 7 of the SUA Convention 1988.
\textsuperscript{13} Article 10 of the SUA Convention 1988.
\textsuperscript{14} Article 11 of the SUA Convention 1988.
\textsuperscript{15} Article 12 of the SUA Convention 1988.
Clearly, the SUA Convention was the real first attempt to broaden the provisions of piracy acts in the UNCLOS to include armed robbery against ships and acts of terrorism among others. But some member States were slow in rectifying the Convention. According to Beckman (2009, p.190), only 52 member States had ratified the Convention as at 31 December 2000. However, after the event of 9/11 at the World Trade Centre, the USA changed this slow attitude and subsequently the number of member States who ratified the Convention increased to 142, which is significant. Since being enforced, the Convention has been a very useful instrument in combating unlawful acts in commercial shipping. It should be emphasized here that the usefulness of this Convention was not utilized in the incident of merchant vessel Petro Range in April 1999.

The Petro Range was owned by a Singapore national, flying the flag of Malaysia and hijacked by Indonesians off the coast of Malaysia. The hijacked ship was used for smuggling in China where the Indonesian “pirates” were arrested and charged accordingly. They were convicted and served only a few months in jail as specified for the smuggling offenses. Though China is a party to the Convention, Indonesia and Malaysia were not party States at time of the hijacking. As a result, the two States could not demand from China the obligation to extradite or prosecute the alleged offenders in their custody as provided in the Convention. However, in the case of the MV Alondra Rainbow, the ship was owned by a Japanese and was flying the flag of Panama. The IMB reported the ship, having being hijacked in the Malacca Strait off the coast of Indonesia. The Indian Navy interdicted and boarded the ship in the Indian Ocean within its EEZ to arrest the pirates. This was purely on the provisions of the Convention, since there was no provision for this type of arrest in Indian domestic maritime law which was an offshoot from their colonial past.

The SUA Convention 1988 gives enforcement power to coastal states to the extent that an offense under the Convention also constitutes a piracy act as defined in Article 101 of the UNCLOS, whereby any state could arrest and seize the pirates on the high seas, EEZ and territorial waters. However, the SUA Convention (1988) dealt only with acts that threaten safety of maritime navigation. Also, in the Convention’s definitions of criminal offenses, it falls short of terrorism, despite the fact that it was modelled along the lines of other terrorism conventions. Furthermore, the Convention did not make additional provision for states to interdict, board ships and arrest offenders. Therefore the effectiveness of this Convention in combating maritime crimes is limited.
The SUA Protocol 2005 is an improvement on the SUA Convention 1988 which was revised. The provisions in the SUA Protocol are far reaching and three categories of new offenses were added to the list, while defining acts of terrorism in its annex containing the UN terrorism conventions, as follows:

- The first category of new offenses concerns acts of maritime terrorism such as using a ship as a vector and means to carry out terrorist attacks.
- The second category deals with non-proliferation offenses that are intended to strengthen the international legal basis to impede and prosecute the trafficking in commercial ships of WMD on the high seas.
- Further, the third category establishes a new tool for dealing with persons who commit offenses under the other UN terrorism conventions.

Undoubtedly, the provision for acts of terrorism in the SUA Protocol 2005 could sufficiently address the issue of the menace of terrorism in commercial shipping. However, the member States were reluctant to rectify the Protocol. There are provisions in the SUA Protocol 2005 that member States and some international shipping organizations would need to agree on. The new offenses listed in the Protocol require a specific “knowledge and intent” as well as “terrorist motive”, which must be to intimidate a population and compel a government to do or not doing an act. The Baltic and International Maritime Council (BIMCO, 2004) is among the international organizations that submitted comments on the draft SUA Protocol which led to modifications.

Following these comments, it was suggested that the provisions of knowledge and intent in the final draft of the new offenses be incorporated to protect the interest of innocent seafarers and carriers. Among other provisions provoking debate by member States are issues of proliferation in the scope of nuclear material offense, “dual-use” items in the transport offense. The “saving clause” in the new offenses for States party to the Non Proliferation Treaty (NPT) was rejected by India and Pakistan among others. Furthermore, though there was provision for interdiction and boarding of suspected ships in the SUA Protocol 2005, the “tacit authorization” provision for the boarding of ships at high seas was rejected by member States. In this way, the Protocol retains the provision in the UNCLOS for the boarding of ships on the high seas, which is solely on the authority of the flag States. However, recent events in Somalia are indication that the authority of a flag State does not exist where there is no functional Government. Nevertheless, the effectiveness of the SUA
Convention 1988 and Protocol 2005 would depend upon all the member States becoming parties to it.

4.3. SOLAS Convention 1974 As Amended

From the aftermath of the 9/11 attacks in the USA, in addition with the attacks on *USS Cole* and *MT Limburg*, some amendments in the provisions SOLAS Convention became necessary. These amendments are for the effective detection and deterrence of acts of terrorism to enhance maritime security. There is no doubt that the existing legal regimes such as UNCLOS, SUA Convention and Protocol among others could not adequately combat the menace of terrorism. The use of the modes of transport by air, land and sea to conduct terrorists attacks have evolved globally. For example, the hijacked aircraft used for the 9/11 attacks fulfilled the safety conditions as prescribed in the existing international conventions and were actually safe to fly. However, it has been demonstrated that there is a distinction between safety and security. Therefore, the issue of acts of terrorism among other maritime crimes could not be effectively addressed with safety but rather through security measures. Hence, the international community agreed that a new regulatory regime would be needed for combating this trend of acts of terrorism on commercial shipping.

At its diplomatic conference in December 2002, the IMO adopted SOLAS 1974 As Amended to enhance the maritime security measures for ships and port facilities. The Convention as amended entered into force on 1 July 2004. The amendments to the SOLAS 1974 consist essentially of the changes in the existing Chapters XI, which resulted to Chapter XI-1 and the addition of a new Chapter XI-2. The renamed Chapter XI-1 deals with special measures to enhance maritime safety while Chapter XI-2 deals with special measures to enhance maritime security which in principle incorporates new regulations on definitions and the requirements for ships and port facilities. These regulations are supported by the ISPS Code which has a mandatory section Part A and a recommendatory section Part B.

The overall objective of the ISPS Code was to establish a form of international framework involving cooperation between all stakeholders in the maritime industry to detect and deter acts of terrorism which threaten maritime security. The stakeholders include the Governments of member States, agencies, ship owners, shipping companies and port authorities among others. However, like in the other existing conventions, member States could not agree to some proposals for
improving the security of ships in the new Code. For example, some States expressed concerns about the proposals for the development of requirements on seafarer identification and background checks. This was considered to be an issue that was more appropriate for the International Labour Organization (ILO) to handle.

Another concern in the proposals was the extent to which the new Code could be applied to ports. The reason was that the SOLAS Convention 1974 As Amended, which is a regulatory regime for the Code, had hitherto been applicable to ships only. Extending the Convention to regulate issues within ports might not go down well with some member States. To deal with these concerns, it was decided, therefore, that the term “port facilities”, should be used in the final draft to relate solely to the ship/port interface. According to Mensah (2004, p.7), although the ISPS Code was adopted within what is referred to as the “technical” aspects of the work of IMO, it plays a major role in the overall international regulatory regime for promoting and enhancing maritime security. However, effective implementation of this Code in conjunction with other international, regional and national regulations is pivotal for the prevention of all types of unlawful acts, including those directed against ships as well as those that would seek to use ships and persons among others.
CHAPTER 5

MARITIME SECURITY INSTRUMENTS

This chapter evaluates the legal instruments used in ensuring maritime security globally since the incident of 9/11. The instruments will include the ISPS Code 2002, USA maritime initiatives, Comité Maritime International (CMI) model national law and maritime security operations.

5.1. International Ship and Port Facility Security Code

The ISPS Code 2002 was formulated for international shipping by the IMO as a comprehensive regime to strengthen maritime security and specifically to prevent and suppress acts of terrorism against the maritime realm. A number of measures were adopted in July 2004 in the SOLAS Convention 1974 As Amended, which aimed at enhancing maritime security onboard ships and at the ship-port interface. These amendments created a new SOLAS Chapter XI-2, which contains special measures to enhance maritime security. Specifically, it deals with maritime security containing the mandatory requirement for member States' ships and port facilities to comply with the ISPS Code. The Code came into force on 1 July 2004.

Fundamentally, the ISPS Code takes the approach that ensuring the security of ships and port facilities is basically a risk management activity. Also, it demands that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability, for ships and port facilities.

Furthermore, in its preamble the ISPS Code states that the increase in maritime threats would only be counteracted logically with a reduction in vulnerability. Obviously, this seems to be the case in order to minimise the security risk level which is a combination of the threat and vulnerability associated with it. The Code provides
several ways in which vulnerability could be reduced. One of the ways is that the ship will be subjected to a system of survey, verification and control to ensure that the security measures are implemented. This system of survey is based on a considerably expanded control system as stipulated in the SOLAS 1974 Convention As Amended.

The SOLAS XI and the ISPS Code prescribe the measures to be taken in addressing the issues of maritime security in the light of the 9/11 incident. These measures could be broadly divided into five major categories according to their focus. They are measures targeting contracting governments, ships, shipping companies' certification and ports.

5.1.1. Measures Targeting Contracting Government

To begin the process of security measures, each Contracting Government will conduct Port Facility Security Assessments (PFSAs) in its area of responsibility. These assessments have three essential components which include the identification and evaluation of important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged could cause significant loss of life and among others. Also, the security assessment must identify the actual threats to focus on critical assets and infrastructures in order to prioritize security measures. Furthermore, the assessment must address the vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities and other areas within a port facility that may be a likely target. These security assessments are essential for the Contracting Governments to accurately evaluate risk.

The principal responsibilities of Contracting Governments under the IMO security regulations are to enforce the relevant provisions in SOLAS and the ISPS Code and make rules accordingly. It is also the responsibility of the Contracting Government to designate an Authority for the implementation of the ISPS Code to determine and set the appropriate security levels 1, 2 and 3 which correspond to normal, heightened and exceptional threat situations respectively. Other responsibilities of the Governments are as follows:
• Determination of which port facilities are required to designate a Port Facility Security Officer (PFSO).
• Ensuring completion and approval of a PFSA and the Port Facility Security Plan (PFSP) for each port facility that serves ships engaged on international voyages.
• Approving the Ship Security Plan (SSP) and amendments to previously approved plans.
• Verifying the compliance of ships and issuing the International Ship Security Certificate (ISSC) and any subsequent amendments.
• Exercising control and compliance measures in capacity as Port State.
• Communicating information to the IMO, shipping companies and port industries.

Considering the “Security Level 1 Normal”, it gives the minimum appropriate protective security measures which shall be maintained at all times onboard ships and port facilities. These minimum measures shall ensure that all ship security duties are performed; access as well as the embarkation of persons and their effects controlled among others. At “Security Level 2 Heighten”, the additional protective measures as specified in the SSP shall be implemented. Also, at “Security Level 3 Exceptional”, the further specific protective measures in the SSP shall be maintained. Practically, the implementation of these provisions in the Code is rarely carried out. Jones (2009, p.104) observed that some member States seem to be taking a relaxed view even in the wake of terrorist attacks. The reason being deduced is that the higher security level would result in an increase in the provision of resources and change in the operating conditions onboard the ship. However, this would raise one of the major issues of the security management system’s inability to increase security when a rise of level is imposed, thereby weakening the global security regime.

5.1.2. Measures Targeting Ships

Some ship-related provisions were modified in the SOLAS Convention 1974 Chapter XI. These include the acceleration of the implementation of the requirements to fit Automatic Identification Systems (AIS), marking of Ship’s Identification Number, installation of Ship’s Security Alert System and the carriage of a Continuous Synopsis Record (CSR) among others. According to Murphy (2009, p.14), AIS could enhance maritime safety by providing all ship and shore stations with details of the position, course and speed of all the other AIS-
equipped vessels within range. In addition, it would facilitate more rapid and precise communication between stations in cases of emergency. However, the AIS is an insecure means of communication, since the signal is broadcast and open to any appropriate receiver. Furthermore, the low cost of AIS equipment and its wide availability constitutes a risk as pirates and terrorists could easily acquire the equipment for their nefarious use. Additionally, the recent incident of piratical attack on Malta-flagged Russian cargo ship Artic Sea in the Baltic Sea in July 2009 has shown that pirates, once onboard, can render the AIS ineffective by switching off the responders.

5.1.3. Measures Targeting Shipping Companies

The IMO rules outlined some steps required for the issuance of a ISSC. Therefore, it is the principal responsibility for ship-owners and shipping companies to ensure that their ships obtain ISSC. The ISSC is to be issued by the Administration or by a Recognized Security Organization (RSO), such as a classification society, on behalf of the Flag State. These are designating a Company Security Officer (CSO), Ship Security Officer (SSO), undertaking a Ship Security Assessment (SSA) and developing a Flag-State approved SSP which incorporates all of the elements included in part “A” of the ISPS Code. Also, it includes providing adequate training for the CSO, SSO and the Crew, ensuring adequate drills and exercises are carried out, proper equipment of the ships for security matters as outlined in the SSP and adequate keeping of security-related records outlined in part “A” of the ISPS Code.

It is noteworthy that the SSP could be one of the best allies of ships and their crew. However, it could be a snare for the shipping company, far more damaging than the act of piracy and terrorism. It has been said that the key to maritime security is making the SSP work through the development of a security system that is capable of working. Jones (2009, p.96) states that there are some SSPs which are unfortunately not fit for the purpose of ensuring security. Therefore, there is a need for the CSO, SSO, master and Flag State to work together in ensuring that the ship would comply and realistically respond to any eventuality of criminal attacks. However, the Port State having clear grounds to believe that the ship is not in compliance with the requirements of the ISPS Code can review the relevant requirements of the SSP with the consent of the master or Flag State. It is well understood that security threats are based on maritime domain intelligence, which is
changing continuously. The implication of this is that the SSP would need to be a living document which is maintained and updated regularly.

5.1.4. Measures Targeting Ports

The ISPS Code sets out broadly analogous requirements for ports as it does for ships. Port facilities that are involved in international shipping are required to carry out an approved PFSA, develop PFSP and designate a PFSO with skills and training similar to the CSO. Other requirements for the port facilities are to ensure that the PFSO and other personnel receive adequate training and that the port facilities are sufficiently equipped as well as manned to operate under the three levels of security alert.

It is observed that the Code deals with issues concerning port facilities and not ports. A port facility is conceptualized as the ship-port interface, which is the point of interaction between the ship and the port. It is at this point that the ship comes in contact with the land, including private berthing quays and independent terminals among others. The Organization for Economic Cooperation and Development (OECD, 2003, p.39)\textsuperscript{16} posited that the list of port facilities globally are innumerable and vary significantly when compared with that of the port. This implies that security assessment of the ports would not adequately cover port facilities which outnumber it by far.

5.2. Drawbacks of the ISPS Code

Despite the overwhelming enthusiasm with which the international community accepted the ISPS Code in 2004 when it came into force with over 90 per cent of States party to it, the maritime crimes continued to rise (IMB, 2009). Acts of piracy and armed robbery against ships have increased tremendously globally, largely due to the high rate of pirate attacks in the Gulf of Aden, off the coast of Somalia and along the Horn of Africa region. Although the Code is primarily a measure for counter-terrorism onboard ships and port facilities; it can also be an effective measure for counter-piracy and armed robbery against ships among others, which presently portend maritime insecurity. However, the ISPS Code seems to have its limitation in ensuring maritime security.

\textsuperscript{16} The OECD comprised of 30 developed countries and was formed in 1961 as a forum for discussion of social, economic and development matters globally.
Similar to the other international legal regimes existing before it, the ISPS Code has some grey areas from the onset. The Code deals with security issues relating to only shipping which include passenger ships, cargo ships of above 500 gross tonnage and high speed craft. However, it excluded some ships of less tonnage which constitute a serious threat to maritime security. It may be recalled that the terrorist attacks on *MT Limburg* and *USS Cole* were carried out using a boat as a vector in each case. Other drawbacks of the Code include its restriction to deal with mobile offshore drilling units (MODUs) and port facilities serving ships engaged in international voyages. There are several offshore and port facilities which are excluded by this restriction, but are prone to maritime terrorist activities. This is one of the drawbacks in the provisions of the ISPS Code.

Another drawback is that the Code provides a framework of requirements without stipulating specific standards for satisfying those requirements. For example, the Code has provisions for ships and port facilities to have security plans, security officers and certain security equipment; but the Code leaves it up to individual Contracting Governments to provide specific details. As a result, there is not a set of minimum standards for the measures to be taken in ensuring maritime security from acts of terrorism, piracy and illegal activities. The standards vary from one country to another depending on how each country perceives its own maritime security risk. Therefore, there are no established minimum standards for training to become a “qualified” security officer, access and perimeter control, electronic surveillance, guards and communication among others. What these drawbacks have done is to underline the fact that the ISPS Code needs the maximum support from the national law to be effective in combating terrorism and other maritime crimes. In fact it is arguable, as the USA has demonstrated that the ISPS Code is a small but vital part of a larger logistic chain in international trade.

5.3. The United States Maritime Security Initiatives

In the aftermath of 9/11, the USA Coast Guard (USCG) was placed under the newly created Department of Homeland Security (DHS), which consequently, developed policies that cover an extensive range of activities in the maritime transport system. According to Pallis et al (2008, p.236), these policies focus on ships, containers and port facilities among others. Initially, it was seen that the USA adopted measures largely supplementary to the ISPS Code and the emphasis was as far as possible on the most extended application of the Code. Included in the new mandatory maritime
security initiatives are the Maritime Transport Security Act 2002 (MTSA, 2002) and the 24-hour Advance Manifest Rule. Other voluntary security programmes include Container Security Initiative (CSI) and the Custom-Trade Partnership Against Terrorism (C-TPAT).

The MTSA authorized the development and implementation of port security and vessel tracking measures. It is in response to this that the IMO proposed the Long Range Identification and Tracking (LRIT) which was adopted in May 2006 as an amendment to the SOLAS Convention. Looking at the USA maritime security initiatives, they are similar to the international legal regimes. They are not a stand-alone system of initiatives, but they work in tandem and supplement one another. In fact, the MTSA is seen as the USA version of the ISPS Code. In addition, the CSI and C-TPAT are a further extension of the Code in the international trade supply chain as shown at Figure 2.

Figure 2 - Scope of IMO and USA Security Initiatives in Container Logistics Chain
Maritime Transport Committee

5.4. Comité Maritime International Model National Law

The CMI (2008) is an international Non-governmental Organization (NGO) which assists in modelling international maritime law to ensure uniform application in
national law. As mentioned earlier, the international community seems to have experienced difficulty in uniformly interpreting acts of piracy and other maritime crimes in terms of jurisdiction of the act, person and place. The traditional definition of the act of piracy by UNCLOS could not ensure uniform understanding of the act in member States; the definition is inadequate in addressing all issues of current incidents of piracy and armed robbery against ships.

For example, the provisions of the high seas and two ships requirements in the act of piracy could not help on this issue. Most of the acts of piracy and armed robbery against ships are carried out within territorial waters and EEZ about 200 miles from the coastline. Furthermore, in the implementation of the SUA Convention and ISPS Code subsequently, references are made to the definitions of acts of piracy and other maritime crimes among others in the provisions in UNCLOS, despite their inadequacy. As result the traditional jurisdiction of the flag States in boarding ships and arresting suspects in international shipping is maintained, regardless whether a flag State is capable and willing to carry out this responsibility. However, the CMI Model Law tries to define the act of piracy and other maritime crimes to cover all issues raised by member States and to ensure that the content of the admiralty law is adequately reflected in the national law. The Model Law is a private international law from the CMI, which is a NGO and therefore it is not binding on member States.

5.5. Maritime Security Operations

Inevitably, the inadequacy of the international regulatory regimes has resulted in naval counter-terrorism and piracy campaigns. Over the years, the navies and coast guards of the nations have carried out operations to secure SLOCs as well as ensure maritime security in international and territorial waters. For instance, during the Cold War era, warships from the USA-led-Western Bloc and Russian-led-Eastern Bloc were frequently patrolling the seas respectively. This resulted in reducing the acts of piracy and other maritime crimes to a minimum level.

However, at the end of the Cold war in the late 1980s, many nations withdraw the presence of their navies from international waters as one of the dividends of the new world order in peacetime and to reduce the cost of naval operations. This development seems to have ushered in an increase in acts of terrorism and piracy, which were hitherto controlled adequately. Recently, the increase in acts of piracy and armed robbery against ships as reported by IMB has provided a new challenge
to the navies of the world. Furthermore, the incident of 9/11 has witnessed the formation of USA-led Naval Coalition Forces, as a Maritime Component Force, in the Global War on Terrorism (GWOT).

This is asymmetric warfare whereby the navies are more involved in constabulary work. Some of the naval operations being conducted in the ongoing GWOT include the USA-led Operation Active Endeavour (OAE) in the Mediterranean Sea and Multi-national Combined Task Force (CTF) in the Gulfs of Hormuz and Aden as well as the European Union-led (EU) Operation Atalanta off the Horn of Africa. Undoubtedly, the navies of the world would remain one of the vital instruments for enhancing maritime security globally, but this could be hindered by the provisions in the Constitutions of some member States which prohibit the use of military power for law enforcement missions.

In discussing the requirements for the effective implementation of the ISPS Code globally, some of the USA maritime security initiatives and the use of maritime component Forces on enhancement of maritime security were also looked into. As has always been the case, most international legislation is regulatory in nature and therefore requires supporting domestic law for enforcement. Admittedly the USA is a leading member of the developed nations and the country could easily overcome the burden imposed by the requirements of the Code. Despite all these efforts from international and national legislation, acts of piracy continue unabated globally as shown in the chart at Appendix B on trends in acts of piracy. The navies of the world and other law enforcement agencies are involved in combating piracy and maritime terrorism in the Gulf of Aden, off the coasts of Yemen and Somalia as well as along the Horn of Africa. Yet piracy attacks are increasing in this region as well as the Gulf of Guinea according to the IMB Report of 2009. It seems there is some constraints to the effectiveness of the ISPS Code and other legal regimes in these regions as will be discussed subsequently.
CHAPTER 6

CONSTRAINTS OF IMPLEMENTATION OF THE ISPS CODE IN NIGERIA

Since January 2004, there have been some international events which have focused on various aspects of maritime security in Africa and the Gulf of Guinea. Undoubtedly, the acts of piracy and armed robbery against ships off the coast of Somalia and along the Horn of Africa are on top the List of IMB’s Reports. Previously, the top position used to be taken by the Southeast Asian countries along the Malacca Strait. Also, the Gulf of Guinea was ranked as one of the most troubled waterways, while occupying the second position as shown in the chart at Appendix C.

The Gulf of Guinea comprises of eleven coastal countries along the West and Central African countries, with a total coastline of about 5500 kilometres. These countries include Angola, Benin, Congo, Ghana and Nigeria among others. Recent increase in acts of piracy and armed robbery against ships as indicated in Table 3, and the deplorable state of maritime security in some of these countries has become a major concern to the international community. Some researchers have estimated that the Gulf of Guinea region would attract an investment of over USD10 billion in the petroleum sector from 2005 to 2015 (Gilpin, 2007). This will include an investment in the region whereby the USA will imports about 20 per cent of the petroleum oil from the region. Additionally, with the new discovery of oil off the coast of Ghana, the per cent of oil from the region would increase significantly. However, this increase would depend on how the countries of this region, particularly Nigeria would overcome the constraints in implementing the international legal regimes in its’ geographical area of responsibility, to ensure maritime security.

17 Currently, USA imports about 17 per cent of oil from the West and Central African countries and it accounts to 80 per cent of USA total investment in the African continent.
Table 3 - Hotspot Areas in the Gulf of Guinea for Acts of Piracy and Armed Robbery Against Ships

<table>
<thead>
<tr>
<th>Ser</th>
<th>Gulf of Guinea Country</th>
<th>Number of Actual and Attempted Attacks Annually</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1999 (a)</td>
</tr>
<tr>
<td>1.</td>
<td>Angola</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>Cameroon</td>
<td>3</td>
</tr>
<tr>
<td>3.</td>
<td>Ghana</td>
<td>2</td>
</tr>
<tr>
<td>4.</td>
<td>Guinea</td>
<td>6</td>
</tr>
<tr>
<td>5.</td>
<td>Ivory Coast</td>
<td>5</td>
</tr>
<tr>
<td>6.</td>
<td>Nigeria</td>
<td>12</td>
</tr>
<tr>
<td>7.</td>
<td>Senegal</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: IMB Yearly Reports from January 1999 to January 2009.

Though many of these countries are signatories to most relevant international conventions on maritime security, very few have taken concrete measures to ratify and domesticate these conventions. For example, in Nigeria none of the international regulatory legislation has been supported with national enforcing legislation. Studies have shown that the international instruments for enhancing maritime security such as SOLAS 1974 As Amended, SUA Convention 2005 and ISPS Code are invoked by the Administration in Nigeria in-situ without their domestication. This is in contrary to the IMO recommendation that member States nationalize existing international legislation. As a result, the provisions in the legal instruments for ensuring maritime security are difficult to implement in the Gulf of Guinea region. In carrying out this Study, there are many constraints which have been identified to hinder effective implementation of the maritime rules and regulations in Nigeria. These constraints include high cost of implementing the ISPS Code, high level of corruption in Government and poor governance, lack of resources, insufficient security personnel, inadequate personnel training, substandard flag of convenience and high sensitivity of territorial water sovereignty. Others are insufficient maritime domain awareness, lack of regional cooperation and poor equipment of the Naval Force.

6.1. High Cost

The ISPS Code imposes significant additional costs on the Contracting Governments and ship-owners to implement, which includes the purchase of equipment and having...
to employ more personnel as security officers.\textsuperscript{18} According to the OECD Report (2003, p.2), the initial burden on all ship operators worldwide is estimated to be at least USD1,279 million and USD 730 million per year thereafter, for additional manpower and security-related equipment.

The countries of the Gulf of Guinea are among the developing countries of the world. Some of the countries do not have the financial capability to spend a large amount of money on the security of merchant shipping annually. Consequently, the effort of Nigeria to implement the provisions of the ISPS Code in her geographical area of responsibility is being hindered by the high cost of compliance.

6.2. High Level of Corruption in the Governments

According to the reports of the Transparency International (2008), there is high level of corruption of officials of the Governments in the Gulf of Guinea. Nigeria is among the countries in the region that are worse affected in corrupt practices according to the report. Definitely, it would be difficult to ensure effective implementation of maritime security regimes in a corrupt environment. However, the issue of corruption is being addressed in the Gulf of Guinea countries. For example, the Independent Corrupt Practice and other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) have been established in Nigeria for the purpose of eradicating corruption.

A direct consequence of corruption is the poor governance in the West and Central African countries. As a result of this, some of countries have tended towards fail States status, which is a trademark for a lawless society and haven for criminal activities. For example, petroleum and gas resources have been discovered in large quantity off-shore in the Gulf of Guinea and Nigeria ranks the sixth largest exporter of crude oil in the world (Rilwanu, 2009). Most of the facilities for the oil production are off-shore and the countries in this region lack sufficient maritime security operatives, which has significantly facilitated illegal bunkering. As a result, the money realized from the illegal bunkering and other maritime crimes is being used by militant groups in Niger-Delta such as MEND and Niger Delta Peoples Salvation Front (NDPSF) to finance terrorism as well as piracy and armed robbery against ships.

\textsuperscript{18}Katrin Berkenkopf also reflected this view as that of a German tramp owner in the Lloyd’s List online, 28 October 2004.
6.3. Lack of Resources

According to IMO Reports (2008), the countries of Gulf of the Guinea are yet to fully comply with the standards for port safety and security provisions in ISPS Code and the other regimes due to lack of resources. For example, there are some resources needed in the ports for the effective implementation of the ISPS Code. These include ships, security personnel, vessel traffic services (VTS) centre, AIS, LRIT and other surveillance equipment. In some countries in the Gulf of Guinea, the existing infrastructure is weak while in others the infrastructure is lacking. As a result, the implementation of the existing international legal regimes in this sub-region is hindered. However, in these countries such as Angola, Ghana and Nigeria where the infrastructure is weak, efforts are being made to repair, upgrade and replace them appropriately.

6.4. Inadequate Training of Personnel

Adequate training of personnel is essential for effective and efficient maritime security planning as well as operation. However, the training of personnel in maritime security is inadequate in the countries of the Gulf of Guinea. The Governments of these countries do not have the political will and financial resources for the training of personnel in the security of international shipping. It results from the fact that the ISPS Code does not specify the minimum standard of training that would be required for the security operators. In this analysis, the personnel training not only includes the security officers, but also the crew members, as experience has shown that it is often crew members of a fairly low rank and limited training that will attempt to implement the Code (Raymond, 2005, p.200).

6.5. Substandard Flags of Convenience

Some of the ships involved in the breach of maritime security are registered in developing countries globally and this includes countries in the Gulf of Guinea. Recently, the situation is that a ship-owner residing in Europe could fly the flag of convenience of Liberia in West Africa, resulting from an inability of the ship to fulfil the stringent requirements in the provisions of the ISPS Code in Europe and other developed nations. However, this has made the countries of West Africa register and own substandard ships. It is on record that about 85 per cent of the vessels
registered in the Gulf of Guinea countries are above 20 years, making them susceptible to accidents and insecurity.

6.6. High Sensitivity of Territorial Water Sovereignty

Enduring disputes over maritime boundaries could impair maritime security globally. This has been the case with some countries in the Gulf of Guinea. It was observed that as a result of the disputes, some countries in the sub-region have difficulties to address shared security concerns in a collaborative manner. Among the major maritime disputes in the Gulf of Guinea are those between Cameroon and Nigeria over the Bakassi Peninsular as well as between Cameroon and Equatorial Guinea over an island at the mouth of the Ntem River. Another dispute is also between Equatorial Guinea and Gabon over the Mbane Island and Corisco Bay boundaries. Murphy (2007, p.166) have observed that pirates have shown no propensity to respect national boundaries that are disputed, as is the case with the countries in the Gulf of Guinea.

Furthermore, one of the consequences of the boundary disputes is the lack of cooperation among neighbouring coastal States in the region which tends to hinder effective maritime security. For example, some countries would find it difficult to address shared security concerns in partnership with the other countries in the region. This tends to impair the effectiveness of the international legislation in this region.

6.7. Insufficient Maritime Domain Awareness

The need for “maritime domain awareness” (MDA) has been a central focus in the GWOT. The MDA provides early knowledge of what is happening in the maritime environment, including details of cargoes and people heading inward towards to ports. This is very useful in the conduct of naval operations as well as in the provision of maritime and port security. However, there is evidence that criminal organizations are resorting to deception to circumvent the usefulness of the MDA approach to maritime security. In this case, it is essential that the MDA combines with intelligence gathering from military intelligence, national intelligence and other recognized intelligence agencies.

Undoubtedly, there is insufficient awareness in the maritime domain of the Gulf of Guinea countries. Some of the old ships in this region are SOLAS Convention non-
compliance and therefore could not supply sufficient information regarding their identification. Also, the military and national intelligence of these countries have insufficient data concerning the security information of the old ships as well as from deceptions by criminal ships in the Gulf of Guinea.

6.8. Poorly Equipped Naval Force

Modern naval forces in definitional terms should be able to upgrade equipment and existing platforms as well as introduce new platforms into the inventory. This also includes the adoption of new operational concepts for navies to aid civil authorities in peacetime and in conducting war. A well-equipped naval force is a vital component in the operational plan for the enforcement of maritime security in some geographical areas such as the Gulf of Guinea.

Nigeria has the largest navy with an air arm as well as an Order of Battle (ORBAT) covering large percentage of the entire sub-region. Although the Nigerian Navy (NN) and the other navies in the region are employed for Coast Guard duties by the National Law, however, these navies are poorly equipped. As a result of this, there has been insufficient patrolling of the territorial waters by the coastal States in performing of the port States control duties (Gilpin, 2007). The Gulf of Guinea is experiencing shortage of basic functioning surveillance systems, material and trained personnel for the navies, coast guards and other law enforcement agencies. Obviously, poorly equipped navies and enforcement agencies have made the implementation of maritime security regimes ineffective in the region. Having looked at the constraints in the implementation of the ISPS Code and the other legal regimes in the Gulf of Guinea and particularly in Nigeria, the subsequent section would consider strategic measures being taken for effective implementation of the Code to enhance maritime security.
CHAPTER 7

STRATEGIES FOR EFFECTIVE MARITIME SECURITY IN THE GULF OF GUINEA

An effective ISPS Code is a requirement in ensuring maritime security globally. In the Gulf of Guinea, neighbouring coastal countries should take measures to ensure that the provisions in the Code are effectively carried out. As was discussed earlier, some of the provisions in the ISPS Code do not specify the standards of the requirements for its implementation. Instead, they are being left to individual Contracting Governments to determine and apply accordingly. For example, although the Code and other legal regimes criminalize the acts of terrorism and piracy, the legislation did not specify standard courts of jurisdiction or punishments to be awarded to the perpetrators.

Another example is the provision in the Code specifying the need for security officers to be onboard ships and port facilities. Again the Code does not specify the standard qualifications and training for security officers. However, it specifies that security officers should receive training through seminars, drills and exercises. Nevertheless, it was left on individual shipping companies to decide the extent and standard of the training for ships’ security officer. Currently, the incident of pirate attacks on USA-flagged *MV Maersk Alabama* on April 2009 underlined the importance of strategic training in security issues for ship crew. It is worth noting that after the pirates had attacked and boarded the ship on the high seas in the Indian Ocean, the efforts of the crew-members of the *Maersk Alabama* that helped to retake control of the ship in the Horn of Africa waters.

All the requirements in the ISPS Code that are not specified were left for the Contracting Countries to work out in detail and implement accordingly. Early on, the degree of each State concerned with matters of terrorism and piracy have varied from one State to another. In fact some, like the countries in the Gulf of Guinea, do not make terrorism and piracy a priority as a threat to maritime security. In fact, in Nigeria, there is no National Law against acts of terrorism and piracy. However, the
perpetrators of these criminal acts could be tried with other Penal Code of the National Laws bordering on murder, armed robbery and possession of illegal firearms among others. Faced with the difficulties in enforcing the ISPS Code in Nigeria, some strategies have been identified which may make the Code effective within the region. However, in the absent of corruption, these strategies include the domestication of international legislation, maritime security tax collection, a maritime domain awareness initiative and a regional maritime security initiative. Others are ships-port facilities security initiatives, manpower training developments, the use of armed escorts onboard ships and the deployment of a rapid reaction Naval Force.

7.1. Domestication of International Legislation

Most of the countries in the Gulf of Guinea are party signatory to the international legislation such as UNCLOS, SUA Convention and ISPS Code. The ISPS Code is a vital instrument for ensuring the security of ships and port facilities from acts of terrorism, piracy and other maritime crimes. Despite their importance to maritime security, certain provisions in these international legal regimes have not been domesticated in the National Laws of the countries in the Gulf of Guinea. This implies that the Criminal Code of these countries could not treat acts of terrorism and piracy as criminal offences in itself.

For example in Nigeria, acts of terrorism and piracy are not defined by the Laws of the Federation of Nigeria (LFN); therefore these acts could not be prosecuted in any of the law courts in Nigeria. However, LFN declares it a criminal offence for murder, arson, illegal possession of firearms and explosives which are punishable by the law courts in Nigeria. This implies that terrorists and pirates could be prosecuted by these complementary acts to their criminal offences. With the increase in acts of terrorism and piracy in this region, with Nigerian waters having the second highest number of attacks in 2008, second only to Somalia waters (IMB, 2009); there is a need for the codification of these offences in the National Laws. This strategy will directly treat acts of terrorism and piracy as criminal offences; thereby ensure effective implementation of ISPS Code in the Gulf of Guinea.

7.2. Provision for Special Maritime Security Tax

The Governments of coastal countries have proposed a special tax on International shipping to ensure maritime security in the Gulf of Guinea. As earlier stated the
OECD (2003) has estimated the combined capital cost of implementing the ISPS Code by ship operators is about US$1,279 million, while the combined running cost is about $730 million annually. These amounts are by far more than the annual budgetary expenditure of some of the countries in the Gulf of Guinea. For example, the Togo and Benin total budget expenditures for the year 2008 are about $554 million and $1,226 million respectively (CIA, 2008). This implies that some of the countries do not have the funds to off-set the financial burden for fulfilling the requirements of effective ISPS Code implementation in the region.

However, it is worthwhile that the countries in the Gulf of Guinea raise the required funds through special maritime security tax arrangements from shipping activities. From experience, the cost benefit of taking measures in the form of having effective ISPS Code implementation, by far outweighs the one of not taking adequate measures which would result in ineffective ISPS Code. According to Rilwanu (2009), Nigeria, the sixth largest oil producer in the world, presently loses about 1.0 million oil barrels per day (mbpd) from her estimated target of 2.2 mbpd due to terrorist attacks from militant groups in the Niger Delta. Since about 95 per cent of the country’s revenue is from crude oil exportation, it follows that the Nigerian annual income has been halved as a result of the insecurity in her territorial waters in the region. Therefore, the proposed special tax on shipping activities for maritime security in the Gulf of Guinea is a strategic measure to ensure the availability of funding for effective ISPS Code implementation.

7.3. Maritime Domain Awareness Initiative

The USA is introducing the MDA Initiative in the Gulf of Guinea through bilateral and multilateral agreements. As mentioned earlier, the Gulf of Guinea is one of the regions in the world where shipping activities are mostly ungovernable and unregulated. This has been attributed to insufficient MDA in the region, which is making the area prone to maritime crimes. However, with American strategic interest in the oil from this region, coastal States in the Gulf of Guinea are being engaged in the MDA programmes organized by the USA Navy and USCG.

For example, the USA Navy is in partnership with Nigeria Navy (NN) in establishing Regional Maritime Awareness capability (RMAC) centre in Nigeria. This RMAC centre has LRIT systems covering over 45 nm area of the sea, within the range of which all shipping activities in the Nigerian Waters could be monitored and controlled.
to enhance maritime security. For this strategy to succeed, there is a need for appropriate sharing of information between the NN and law enforcement agencies on illegal shipping activities in the MDA.

7.4. Regional Maritime Cooperation

Given the trans-national character of maritime security threats, there is a need for the establishment of regional maritime cooperation agreements to check the menace of the acts terrorism and piracy in the Gulf of Guinea. Though, the USA in the aftermath of 9/11 introduced a series of unilateral security measures to combat maritime terrorism within its geographical area of responsibility, these were ad-hoc measures in ensuring maritime security. However, these measures are more stringent than the ones provided by the existing maritime regulations. The international community in adopting some of these security initiatives has stated that the best result is achieved when the measures are taken through bilateral, multilateral and regional cooperation.

In the Gulf of Guinea, the littoral States high sensitivity of territorial waters sovereignty will have to be de-emphasized for the sake of more effective regional cooperation in combating maritime security threats. For example, in the current protocol, it would be difficult for a naval ship, being the only asset available on-scene, to continue its hot pursuit of a pirate or suspected terrorist, once the suspect enters another State’s territorial waters. Furthermore, the Gulf of Guinea has multiple bordering countries and joining sovereign littoral States, therefore there is the need for regional cooperation among these countries on ensuring maritime security within the region.

Hence, the countries in the Gulf of Guinea have established regional organizations such as the maritime Organization for West and Central African States (MOWCA) and the Gulf of Guinea Commission (GGC), to promote regional cooperation among the countries. Additionally, there is an on-going bilateral agreement between Equatorial Guinea and Nigeria in the sharing of their maritime assets to ensure security in the Gulf of Guinea. Definitely, the strategy of regional cooperation would enhance maritime security and impact on effective ISPS Code implementation and other security instruments within the region.
7.5. Ship-Port Facilities Security Initiatives

The increasing acts of terrorism as well as piracy and armed robbery against ships have necessitated the stakeholders in the shipping industry to adopt some strategies in securing ships and port facilities. Among these strategies are perimeter fencing, the provision of closed circuit television (CCTV) and armed guards onboard. In perimeter fencing, the situation at seaports is quite different from that in airports. An airport is surrounded by land and can easily be fenced-in for security purposes.

On the other hand, a seaport is surrounded by land and water; the land side of the port can easily be fenced-in while it is practically impossible to fence-in the waterside of the port. Also, in the use of wire fenced ships to deter unlawful boarding of the ship, these fences should not obstruct safety escape passages onboard. CCTV no doubt would increase the surveillance capability of the security zone in the vicinity. However, when borne on ships, adequate care has to be taken to ensure that it does not interfere with the ship’s navigation system or cause distraction to the watch keepers onboard.

7.6. Weapons Control onboard Ships

In some countries with restrictive gun laws such as Indonesia and Malaysia in Southeast Asia, firearms and armed guards are permitted onboard merchant ships and ports in the Straits of Malacca. It is worth noting that this is a limited strategic approach in ensuring security of ships and port facilities. In the Gulf of Guinea, the countries prohibit the carriage and use of firearms for security of shipping activities unconditionally. Therefore, it is unlikely that these countries would allow ships with unlawful possession of firearms into their ports. Furthermore, the IMO and the EU strictly discourage the use of firearms onboard merchant vessels on the premise that it could escalate armed conflict with the pirates and terrorists.

7.7. Manpower Development Training

Personnel recruitment, retention, development and training are vital for the successful implementation of the provisions in the ISPS Code on enhancing maritime security. As mentioned above, the ISPS Code does not specify a uniform standard of training for security personnel. This is being left for individual countries to decide upon the level of training based on their own risk evaluation. Recently, the Gulf of
Guinea is reported to be a very high risk zone in international shipping (IMB, 2009). The region is ranking second to the Gulf of Aden off Somalia and along the Horn of Africa, having displaced the Strait of Malacca in Southeast Asia to the third place on the list. In the light of this development, there is a need for capacity building in the recruiting, retaining and training of security personnel in the Gulf of Guinea.

Countries in the Gulf of Guinea have entered into bilateral and multilateral agreements with the USA, EU and the international community on ways developing capacity building for the security personnel in the region. The capacity building would involve recruitment, training and retention of the ship security personnel in accordance with the provisions in the ISPS Code. As a result of the agreements, several workshops such as “train the trainers” workshops on maritime security are being conducted in Gabon, Ghana and Nigeria. Furthermore, the USCG and the US Naval Forces in Europe have been instrumental in the capacity building by conducting regular sea training exercises for the security personnel in this region. Therefore, the strategy of manpower training would enhance the skill and expertise of security operators in the region, thereby ensuring effective implementation of the ISPS Code and other regimes.

7.8. Deployment of Naval Task Forces

High-risk waters around the world would necessitate the use of naval forces in the support of civil authorities to ensure maritime security. This has been the situation with the GWOT in “hotspot areas” such as the Gulf of Aden, Gulf of Hormuz, Gulf of Persia, Mediterranean Sea and Strait of Malacca. Presently, there are multinational coalition forces with the mandate of the UN and led by the US Navy in “Operation Active Endeavour” and regional forces led by EU in “Operation Atalanta” which are to enhance the maritime security in the “hot spot” areas worldwide. However, it is worth noting that these formidable Naval Forces were primarily deployed as a counter-terrorism measure in GWOT, but the counter-piracy measure has been included secondarily due to the worsened situation in the Gulf of Aden off the coast of Somali. This seems to have secured SLOCs in the region from piratical attacks on international shipping.

However, the situation in the Gulf of Guinea does not warrant similar multinational naval force for patrolling the waters in the region. Nevertheless, the presence of regional navies is needed to detect and deter maritime crimes. These naval forces
are to have capability of interdicting and boarding vessels suspected of illegal activities. Currently, the patrolling of the Gulf of Guinea by the regional navies has been inadequate. As a result their waters are improperly governed and secured, thereby making the areas susceptible for maritime crimes. On realization of this weakness in the region among other considerations, the USA has proposed the establishment of African Command Force (AFRICOM). Undoubtedly, well integrated navies in the region into the AFRICOM, such as the proposed Gulf of Guinea Guards (GGG) will ensure improved infrastructure for these navies which would increase their effectiveness in patrolling their territorial waters to enhance maritime security.
CHAPTER 8

CONCLUSION AND RECOMMENDATIONS

8.1. Conclusion

The non-uniformity in the implementation of the international regulatory regimes by member States is attributed to the weaknesses in the definitions provided by the international regulations. Thus, there have been different interpretations of these provisions in the national legislations of member States. The significant variation in the standard of maritime security globally, has resulted in the increase of global acts of terrorism and piracy in the last fifteen years.

This study identifies the motives of acts of terrorism and piracy as being political and financial gains respectively. Furthermore, it establishes the human and economic impacts of these criminal acts on ships and ports. Today’s use of sophisticated and lethal small arms as different from the traditional knives, crowbars and daggers used in the past has made pirates adamant during negotiations. In addition, the pirates have demanded high ransoms for the release of their victims. The money raised from acts of piracy has been linked with the funding of terrorism in some cases.

The existing maritime security regimes include the UNCLOS, SOLAS and SUA Conventions and the ISPS Code; all these have been ineffective in combating acts of terrorism and piracy. Furthermore, the ineffectiveness was contributed from the fact that their risk assessment has been based on safety measures. This dissertation concludes that in combating terrorism, the risk assessment should be based on security measures instead of safety measures.

The ISPS Code is based on maritime security assessment which is seen as appropriate for combating terrorism. Nevertheless, the high cost of implementing the Code has made it difficult for developing countries to adopt it. In the other cases examined, the ineffectiveness of the international regulations has resulted in the
development of the USA Maritime Security Initiatives, CMI Model Law and establishment of Maritime Component Force for the GWOT.

Furthermore, this study identifies contributing factors for the lack of effectiveness of the ISPS Code on enhancing maritime security in the Gulf of Guinea over a period of 10 years to be that of corruption in government and failure of nationalizing international law. This has resulted in the inadequacy of national law to address the issues of terrorism and piracy as well as a lack of maritime security infrastructure in the Gulf of Guinea countries. Others are the lack of regional cooperation between the countries and the poor equipment of the Navies and Coast Guards in the region. The presence of the regional Navies at sea for the purposes of patrolling has been rare, thus making the territorial waters of this region unregulated and ungovernable.

With the establishment of good governance in the countries of the Gulf of Guinea, this study suggests therefore that the proper domestication of the international regimes on maritime security is needed for the effective implementation of maritime law in the region. Furthermore, with appropriate maritime tax collection, adequate funds are to be raised in off-setting the high cost of implementing maritime security regulations within the region.

In partnership with Nigeria, the USA has played an important role in introducing RMAC to the Gulf of Guinea region. This system provides the LRIT units which has a wider coverage area than the AIS units, however it was stated that effective utilization of them would enhance maritime security in the region. Furthermore, the international community recommendation on the need for regional cooperation in ensuring effective implementation of security regimes has been adopted within the region. As a result, the region has established MOWCA and GGC which have been promoting regional cooperation initiatives among the countries in the region to enhance maritime security.

This study has indicated that ships and port facilities security initiatives contributed in combating the menace of acts of piracy and armed robbery against ships. The initiatives included the measures on perimeter fencing, provisions of CCTV and armed guards for merchant ships. However, it was indicated that the international community has discouraged the use of firearms and armed guards in combating piracy.
Training and retention of security personnel are vital measures taken in adequate capacity building to ensure effective implementation of maritime security regimes. Some training initiatives in the region by the US Naval Forces in Europe, USCG, RN and EU have been identified to involve workshops and sea exercises in the Gulf of Guinea. In addition, this study stresses the important of a viable Naval Force in ensuring maritime security and the Force has been identified to be lacking in the Gulf of Guinea countries. Furthermore, the lack of any presence of a regional Naval Force which has resulted in the irregular patrolling of the Gulf of Guinea waters, has made it unregulated as well as ungovernable and therefore a breach of maritime security.

8.2. Recommendations

To combat acts of terrorism, piracy and armed robbery against ships thereby ensuring maritime security in the Gulf of Guinea, it is recommended that:

- The international community should define sufficiently, the provisions of the acts of piracy and terrorism in the UNCLOS, SUA Convention and ISPS Code.
- Gulf of Guinea countries should eliminate corrupt practices to enthrone good governance within the region.
- International regimes on maritime security should be domesticated in the Gulf of Guinea.
- CMI Model Law should be used for uniformly standardising domestic maritime security law in the Gulf of Guinea.
- A special maritime security tax should be collected from international shipping in the Gulf of Guinea to off-set cost of implementing maritime law.
- Regional cooperation for maritime security should be adhered to by the countries in the Gulf of Guinea.
- Sovereignty of a nation in the Gulf of Guinea should not be a breach of maritime security in the region.
- Adequate LRIT and AIS systems should be provided in the Gulf of Guinea.
- Gulf of Guinea countries should embark on manpower training as well as the development of security personnel.
- Regional Navies in the Gulf of Guinea should be patrolling the waters in the region regularly.
REFERENCES


# APPENDIX A

## GEOGRAPHIC LOCATION OF ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS ATTACKS FROM 1994 TO 2008

<table>
<thead>
<tr>
<th>Ser</th>
<th>Regional Location</th>
<th>Number of actual and attempted attacks annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td>(c)</td>
</tr>
<tr>
<td>1.</td>
<td>Africa/Gulf of Guinea</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Horn of Africa</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Indian Sub-continent</td>
<td>3</td>
</tr>
<tr>
<td>4.</td>
<td>Middle East/Red Sea</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Gulf of Aden/Yemen</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Southeast Asia/</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>Far East</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Rest of the World</td>
<td>-</td>
</tr>
<tr>
<td>7.</td>
<td>Total Annual Attacks</td>
<td>90</td>
</tr>
</tbody>
</table>

Source: Extract from IMB Annual reports from January 1994 to December 2008
Annual Trends in Overall Actual and Attempted Piratical Attacks from 1994 to 2008 Worldwide

APPENDIX B

REGIONAL TRENDS IN ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS FROM 1994 TO 2008

Legend:
- Africa/Gulf of Guinea
- Americas
- Indian Sub-continent
- Middle East/Gulf of Aden/Somalia
- Southeast Asia
- Rest of the World

### HOTSPOT AREAS CONTRIBUTING OVER 70 PER CENT OF GLOBAL PIRATICAL ATTACKS FROM 1994 TO 2008

<table>
<thead>
<tr>
<th>Ser</th>
<th>Hotspot Areas</th>
<th>Number of actual and attempted attacks annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
<td>(c)</td>
</tr>
<tr>
<td>1.</td>
<td>Bangladesh</td>
<td>2</td>
</tr>
<tr>
<td>2.</td>
<td>Gulf of Aden/Yemen</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Indonesia</td>
<td>22</td>
</tr>
<tr>
<td>4.</td>
<td>Gulf of Guinea/Nigeria</td>
<td>-</td>
</tr>
<tr>
<td>5.</td>
<td>Somalia</td>
<td>1</td>
</tr>
<tr>
<td>6.</td>
<td>Tanzania</td>
<td>1</td>
</tr>
<tr>
<td>7.</td>
<td>Vietnam</td>
<td>2</td>
</tr>
<tr>
<td>8.</td>
<td>Total Annual Attacks</td>
<td>28</td>
</tr>
<tr>
<td>9.</td>
<td>Per cent Overall</td>
<td>31</td>
</tr>
</tbody>
</table>

**Source:** IMB Annual reports from January 1994 to December 2008

Source: IMB Annual Reports from 2004 to 2009
Chart Showing the Distribution of the Incidents of Piracy and Armed Robbery Against Ships in Selected Hotspots Region/Country Contributing 70 Per cent Overall

Bangladesh, 12
Vietnam, 11
Tanzania, 18
Somalia, 19
Nigeria, 40
Indonesia, 28
Gulf of Aden, 92