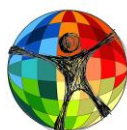


The Development of Piracy Law in West Africa & the Institutions Underpinning Counter-Piracy Efforts



International Human Rights Internships Working Paper Series



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Table of Contents

INTRODUCTION	3
SECTION I: COUNTER-PIRACY LEGISLATION IN WEST AFRICA:	5
A. THE NATURE OF MARITIME CRIME IN WEST AFRICA.....	5
I. <i>THE HUMAN & ECONOMIC COSTS OF PIRACY</i>	5
II. <i>WEST AFRICAN PIRACY MODELS:</i>	6
III. <i>THE ABSENCE OF SECURITY STRUCTURES:</i>	7
IV. <i>GEOGRAPHICAL TRENDS & JURISDICTIONAL ISSUES</i>	8
B. THE INTERNATIONAL LEGAL FRAMEWORK SURROUNDING PIRACY.....	9
I. <i>EXPANDING THE SCOPE OF MARITIME CRIME</i>	11
C. EXISTING PIRACY LEGISLATION IN EAST AND WEST AFRICA	12
D. PIRACY LAW INSIGHTS & RECOMMENDATIONS.....	14
SECTION II: COUNTER-PIRACY INSTITUTIONS IN WEST AFRICA	16
A. LAW ENFORCEMENT INSTITUTIONS SUPPRESSING WEST AFRICAN PIRACY	17
I. <i>RECOMMENDATIONS: STRENGTHENING CAPACITY AND RESOLVING CONFLICT</i>	18
B. ECONOMIC & POLITICAL INSTITUTIONS SUPPRESSING WEST AFRICAN PIRACY	20
I. <i>POLITICAL TENSIONS & CORRUPTION</i>	21
II. <i>RECOMMENDATIONS: WORKING TOWARDS LONG-TERM SOLUTIONS</i>	23
SECTION III: CONCLUSIONS ON WEST AFRICAN PIRACY, INSTITUTIONS & HUMAN RIGHTS	25
BIBLIOGRAPHY	27

ABSTRACT: Maritime Crime in West Africa has become a recent focus of the counter-piracy community, and the complex nature of this crime has raised many questions as to how this issue can be resolved. The following paper will address two of these questions: (1) what is an ideal model for piracy law in West Africa? (2) what is the connection between institutions and the development of piracy law in West Africa? It will be contended that piracy laws must be tailored to address the specific nature of maritime crime in West Africa, and drafted in accordance with the international law surrounding piracy. It will further be argued that, beyond the development of effective legislation, fully addressing the problem of piracy requires strengthening of regional institutions that facilitate good governance.

“Stick-slim and still, Captain Lube sits in Lagos’s commercial fishing harbour, watching his crew clean a rusting shrimp trawler. He used to look forward to guiding them out to the rough Atlantic waters. But nowadays he has grown too afraid to venture far from the coast. Pirates infest West Africa’s seas, and he has seen many fellow captains kidnapped and sometimes killed. He has become jumpy; every approaching vessel might pose a danger. The trawling company for which he works says that attacks last year were ‘too many to count’.”¹

-The Economist, November 29th 2014

Introduction

In recent years, the problem of piracy in Somalia has received extensive international attention, and for good reason. At its height, an estimated 3,863 seafarers travelling the Indian Ocean were involved in an incident of maritime crime, resulting in widespread outcry from the

¹ “Piracy in Africa: The ungoverned seas”, *The Economist* (November 29th 2014) 43.

international community.² This outcry was responded to in great force, and an insurgence of international aid resulted in a 78% decrease of pirate attacks in 2012,³ a downward trend that remains largely intact.⁴ This development was viewed as a major improvement for the region, and was widely celebrated as a significant step towards ending maritime crime. However, these downward trends in piracy are not consistent on a global scale. In the same year that pirate attacks in East Africa decreased by 78%, the number of ships and seafarers attacked in the Gulf of Guinea surpassed numbers in the Gulf of Aden and Western Indian Ocean combined.⁵ These growing figures are troubling, and West African piracy has now emerged as a new focus in the counter-piracy community.

Efforts to quell piracy in West Africa are ongoing, and one of the issues identified by the international community is the need to develop counter-piracy legislation (hereafter “piracy law”) at the national level. This was expressed by the UN Security Council in resolutions 2018⁶ and 2039⁷ both identifying the “development of domestic laws and regulations... criminalizing piracy and armed robbery at sea” as a crucial step towards the repression of maritime crime in West Africa. However, as rates of maritime crime persist, with the Gulf of Guinea being the most active area,⁸ the need to develop and modernize piracy law remains largely unaddressed. The following paper will explore two questions related to the development of piracy law in West Africa.

The first section of the paper will explore the question: “what is an ideal model for piracy law in West Africa?” There is no single response to this enquiry, however the international legal framework surrounding piracy, as well as the nature of maritime crime in West Africa, can inform how these laws should be crafted. Further, an examination of piracy law in similar jurisdictions provides insight into existing mechanisms of piracy law. It will be contended that West African piracy legislation should be developed in accordance with international law, and in such a way that responds to the unique nature of maritime crime in the region.

² Oceans Beyond Piracy, *Human Cost of Piracy Report*, (Colorado, 2012) 4 [*Human Cost Report*].

³ *Ibid.*

⁴ Oceans Beyond Piracy, *State of Piracy Report*, (Colorado, 2013) p. 44 [*State of Piracy Report*].

⁵ *Human Cost Report*, *supra* note 2 at 12.

⁶ *Acts of Piracy and Armed Robbery at Sea Off the Coast of the States of the Gulf of Guinea*, SC Res 2018, UNSC, 2011.

⁷ *Acts of Piracy and Armed Robbery at Sea Off the Coast of the States of the Gulf of Guinea*, SC Res 2039, UNSC, 2012.

⁸ Theo Neethling, "Piracy around Africa's West and East Coasts: A Comparative Political Perspective" 38 *South African Journal of Military Studies*.

The second section will explore the question: “what is the connection between institutions and the development of piracy law in West Africa?” The establishment of a legal framework is an important preliminary step to addressing maritime crime, however, fully addressing piracy requires reform of institutions that have eroded as a result of corruption and lack of resources. The quality of governance that institutions provide can be greatly improved upon by both strengthening these institutions and fostering the relationships that exist between them, with a mind towards cooperation and coordination.

SECTION I: Counter-Piracy Legislation in West Africa:

The following section seeks to clarify ideal features to be pursued in the development of piracy law in West Africa. Three topics will be explored. Firstly, the unique nature of maritime crime in West Africa will be discussed. Second, the existing international legal framework surrounding piracy will be examined. Finally, Kenya’s recently implemented piracy laws will be examined.

A. The Nature of Maritime Crime in West Africa

Although they are often compared and spoken of in the same context, the nature of maritime crime in West Africa is significantly different from East Africa.⁹ Differences in terms of piracy models, geographical trends, establishing jurisdiction, and security structures are not to be overlooked.

i. The human & economic costs of piracy

The incidence of maritime crime off the coast of West Africa has resulted in significant human costs. In 2013, an estimated 1,871 seafarers were involved in an attack by pirates in West Africa. Of those incidents, two persons lost their lives, and a further 279 were held hostage.¹⁰ Because the majority of these crimes occur at gunpoint,¹¹ the level of violence is often severe. Consider for example the 2013 hijacking of the MT Adour, where seafarers were held captive, cruelly beaten, and intimidated by the firing of weaponry.¹² Crimes of such a violent nature have long-term effects

⁹ Theo Neethling, "Piracy around Africa's West and East Coasts: A Comparative Political Perspective" 38 South African Journal of Military Studies.

¹⁰ *State of Piracy Report*, *supra* note 4 at 70.

¹¹ *Ibid.*

¹² *Ibid* at 71.

on the victim, thus the human cost of piracy extends beyond the incident itself. The testimonial of Captain Wren Thomas III, whose ship was attacked in the Gulf of Guinea in 2013, demonstrates the lasting psychological effects of such violent maritime crime:

“Up until I got help and put on the proper meds I wanted to end my life. Every time I was alone in my house, [I] was trying to figure out which gun I was going to use... I would get so engrossed in wanting to kill myself that I would get dizzy.”¹³

Beyond these troubling human costs, the economic costs of piracy in West Africa have been staggering. Estimates place state spending on counter-piracy military operations between \$348 and \$370 million USD.¹⁴ The cost to industry has been correspondingly substantial, with spending on security alone ranging between \$150 and \$225 million USD, with millions more being lost in additional labour, insurance, and cargo stolen during pirate attacks.¹⁵

ii. West African piracy models

The models of piracy in West Africa have demonstrated striking levels of complexity and organization. Oil theft has emerged as one of the predominant forms of maritime crime. This is unsurprising given the predominance of oil in the regional economy. For example, oil is the source of “95% of Nigeria’s foreign exchange earnings and up to 80% of budgetary revenues.”¹⁶ Oil theft can often be linked to larger organized crime operations in the region, and the most sophisticated incidents involve the hijacking of ships with the intent to steal the vessel and unload its cargo. Because ships will carry extensive amounts of oil, a single theft can be worth millions of dollars. Lloyd’s estimates that losses range between \$2 and \$6 million USD per incident in West Africa.¹⁷ For example, \$5 million USD worth of oil was siphoned in the 2013 hijacking of a vessel at the port of Abidjan, Côte d’Ivoire.¹⁸ Criminals are further incentivized to engage in oil theft because of the “booming black market for fuel in West Africa.”¹⁹ It is also worth noting that this organized crime has been linked to political conflict and insurgency, and groups such as the Movement for the

¹³ Rob Almeida, “Kidnapped off Nigeria – An American Ship Captain Unveils the Truth” online: gCaptain <<http://gcaptain.com/captain-wren-thomas-kidnapped-off-nigeria-c-retriever>>.

¹⁴ *State of Piracy Report*, *supra* note 4 at 55.

¹⁵ *State of Piracy Report*, *supra* note 4 at 57-61.

¹⁶ United Nations Office on Drugs and Crime, *Transnational Organized Crime in West Africa: A Threat Assessment*, (Vienna, 2013) 45. [*Transnational Crime Report*]

¹⁷ *Ibid.*

¹⁸ Freedom C. Onuoha, *Oil Piracy in the Gulf of Guinea*, (2013) 31 [*Oil Piracy Report*].

¹⁹ *Transnational Crime Report*, *supra* note 16.

Emancipation of the Niger Delta (hereafter “MEND”) have acknowledged their involvement in oil theft operations.²⁰

Kidnap for ransom is a second piracy model occurring in West Africa, where pirates hijack a vessel and take the crew of the ship hostage. These hostages are often taken to an undisclosed location ashore while negotiations are undertaken.²¹ Hostages from kidnappings in West Africa were held for an average of 22 days in 2013, and payments for hostages have been as high as \$2 million USD.²² Further, these attacks have been notably violent, are undertaken by armed criminals, and have been known to occur in tandem with organized oil theft.²³ Trends suggest that pirates may be specifically targeting ships with international seafarers in order to negotiate a more lucrative ransom.²⁴ A third model of piracy is simple robbery of a ship’s cargo. As with the kidnap and ransom model, there have been noted levels of violence and use of weaponry during these incidents.²⁵

iii. The absence of security structures

Many West African states prohibit the use of private security within their territorial waters.²⁶ Nigeria has taken a particularly aggressive stance against any use of private security, going so far as to apprehend ships making use of private security within their Exclusive Economic Zone (hereafter “EEZ”).²⁷ This limits the way in which industry can respond to maritime crime through its own investment. The only legal options available to shipping companies seeking to bolster their defenses are security companies sanctioned by the state or national forces such as the navy or marine police.²⁸ Considering the extent to which industry has depended upon private security structures in East Africa, this is a noteworthy difference, as it has impacted the way in which the crimes are conducted. Attempted attacks are often dissuaded by armed security in the east, something that has been recognized by the shipping industry, which spent between \$767,144,000 and \$876,736,000 USD on armed guards aboard ships in 2013.²⁹ Because the use of private

²⁰ *Ibid.*

²¹ *State of Piracy Report*, *supra* note 4 at 57.

²² *Ibid* at 68.

²³ *Transnational Crime Report*, *supra* note 16 at 47.

²⁴ *State of Piracy Report*, *supra* note 4 at 73-74.

²⁵ *Human Cost Report*, *supra* note 2 at 23.

²⁶ Al Jazeera Centre for Studies, *Piracy and Maritime Security in the Gulf of Guinea: Nigeria as a Microcosm*, (2012) 10.

²⁷ Baltic and International Maritime Council, “Security Alert - Nigeria” online: BIMCO <https://www.bimco.org/News/2014/06/16_Security_Alert_-_Nigeria.aspx>.

²⁸ Dirk Steffen, “Troubled Waters? The Use of Nigerian Navy and Police in Private Maritime Security Roles” online: CIMSEC <<http://cimsec.org/troubled-waters-use-nigerian-navy-police-private-maritime-security-roles>>.

²⁹ *State of Piracy Report*, *supra* note 4 at 18.

security is relatively non-existent in the west, attempted attacks are not likely to be dissuaded in the same manner. Drafters of piracy law in West Africa must be wary of this when modeling piracy law upon laws recently adopted in the East.

iv. Geographical trends & jurisdictional issues

It has been notably difficult to track the geographical trends of piracy attacks in West Africa, largely because of reporting issues.³⁰ However, the area that poses the greatest threat is the Gulf of Guinea, and estimates place the majority of maritime crime occurring in this gulf within twelve nautical of West African states.³¹ As per international law, the “armed robbery” category therefore applies to a majority of attacks within the Gulf of Guinea, thus most maritime crime will be subject to the national law of the state in which the attack took place.³² However, a 2014 report by The United Nations Institute for Training and Research reveals a widening of this geographic scope,³³ suggesting that the geographical trends of pirate attacks remain in flux.

The geographical scope becomes relevant when states are establishing jurisdiction over the crime of piracy. Naval resources are often limited, and many West African states lack the ability to prove that the crime indeed occurred within their boundaries.³⁴ States must be wary of this limitation in the drafting and implementation of piracy laws.

The potential for competing jurisdictions further complicates the issue. Consider the multitude of states that can be affected when a single vessel is attacked. A vessel may be flying the flag of one state, owned by a company incorporated in another state, and at the same time be transporting property of a company incorporated in yet another state.³⁵ Complicated incidents such as these are not uncommon in the Gulf of Guinea, which is host to numerous active ports of international and regional maritime trade. In such a situation, multiples states affected by a single piracy attack would have motivation, often political or financial motivation, to claim their own jurisdiction despite the crime not occurring within their territory.³⁶ In terms of drafting piracy law,

³⁰ *Ibid* at 73.

³¹ Barker, *supra* note 8.

³² *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships*, IMO Res A.1025, IMO, 2009, at 4. [*Code of Practice*].

³³ United Nations Institute for Training and Research, *UNITAR & UNOSAT Global Report On Maritime Piracy: A Geospatial Analysis 1995-2013*, (2014) at 33-34. [*UNITAR & UNOSAT Report*].

³⁴ Andrew Tan, *The Global Arms Trade: A Handbook* (Routledge, 2010) at 186.

³⁵ Anna Petrig & Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford Scholarship Online, 2011) at 3. [*Piracy Legal Framework*].

³⁶ *Ibid* at 2.

legislators must remain cognizant of affected states' ability to impose their own sovereignty following an incident of maritime crime involving actors from multiple states. While there is no clear hierarchy of jurisdiction for cases of competing claims, the territoriality principle seems to prevail on a practical level.³⁷ West African states concerned with losing jurisdiction over acts of piracy may follow a trend seen in other states, who have "extended their piracy laws to include 'found-in jurisdiction,' covering suspected pirates located in their territory even though the relevant crimes were committed outside their land territory or territorial sea."³⁸

B. The International Legal Framework Surrounding Piracy

Because it has existed for centuries, the law surrounding piracy has undergone many developments. Academic debates surrounding the international or municipal aspects of the crime continue, raising important questions as to a state's ability to impose jurisdiction on a foreign actor.³⁹ Despite these ongoing concerns, article 101 of the UN Convention of the Law of the Sea (UNCLOS) has emerged as a customary international norm.⁴⁰ It defines piracy as:

- (a) "Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - i. On the high seas, against another ship or aircraft, or against persons or property on board 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 of intentionally facilitating an act described in subparagraph (a) or (b)."⁴¹

In the West African context, one important feature of the UNCLOS definition is its emphasis on "private" ships. The Harvard Research Draft, upon which UNCLOS was based, created this

³⁷ Noora Arajari, "Looking Back from Nowhere: Is There a Future for Universal Jurisdiction over International Crimes?" (2011) 16 *Tilburg Law Review* 7.

³⁸ Ashley Roach, "Countering Piracy off Somalia: International Law and International Institutions" (2010) 104:3 *American Society of International Law* 414.

³⁹ Alfred Rubin, *The Law of Piracy* (New York: Transnational Publishers, 1998) at 52.

⁴⁰ Roach, *supra* note 38 at 405.

⁴¹ *The United Nations Convention on the Law of the Sea*, 10 December 1982 [UNCLOS]

limitation for the sake of “expediency.”⁴² This draft shifted the focus away from crimes of a political nature, thus “setting aside problems of insurgency versus belligerency as well as various acts of terrorism.”⁴³ This emphasis on “private” attacks may have significant consequences in West Africa given the recent criminal and terrorist activities of groups such as MEND. Although much of MEND’s activities are conducted ashore, the group has been engaging in piracy in order to increase their influence and funding.⁴⁴ For example, pirates who kidnapped two American seafarers in Nigerian waters were found to have connections with MEND.⁴⁵ The IMO has further noted that MEND’s activities have not been limited to Nigerian waters, and they have expanded their politically motivated attacks to Benin and Togo.⁴⁶ These findings are consistent with the fact that piracy in the Gulf of Guinea is connected to criminal organizations ashore.⁴⁷ As piracy law is developed at a national level, the growing incidence of these political attacks must be taken into account, as such crimes may be shielded from a provision that follows the UNCLOS focus on “private” crime.

A second important feature of the UNCLOS definition when applied to a West African context is the limitations it places on jurisdiction. UNCLOS restricts piracy to illegal acts occurring on the “high seas”. The high seas include all waters beyond the “territorial sea” of a state, which is measured 12 nautical miles from that state’s baseline.⁴⁸ A pirate attack occurring within these 12 nautical miles falls under the sovereignty of a state.⁴⁹ International custom has evolved to classify crime within the territorial sea as “armed robbery”, which is defined in IMO Resolution A.1025 as:

1. “Any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal water, archipelagic waters and territorial sea;
- .2. Any act of inciting or of intentionally facilitating an act described above”⁵⁰

⁴² Barry Hart Dubner, “Human rights and environmental disaster - two problems that defy the “norms” of the international law of sea piracy.” (1997) 23 Syracuse Journal of International Law and Commerce 38.

⁴³ *Ibid* at 19.

⁴⁴ Christos Kaade, “The Gulf of Guinea: Maritime Piracy’s New Global Nerve Center” online: Fair Observer <http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429>.

⁴⁵ USA Today, Nigeria rebels in touch with U.S. mariner kidnappers, online: USA Today <<http://www.usatoday.com/story/news/world/2013/10/25/kidnappers-contact-nigerian-rebels/3188215/>>.

⁴⁶ Irin Humanitarian News and Analysis, “Benin Togo: Joining forces to fight piracy in the Gulf of Guinea” online: IRIN <<http://www.irinnews.org/report/94333/benin-togo-joining-forces-to-fight-piracy-in-the-gulf-of-guinea>>.

⁴⁷ *State of Piracy*, *supra* note 4.

⁴⁸ UNCLOS, *supra* note 41, arts 2, 3.

⁴⁹ *Ibid*.

⁵⁰ *Code of Practice*, *supra* note 32.

It should be noted that, as in UNCLOS, this definition specifies “private” attacks, thus sharing the same concern of precluding politically motivated acts of piracy. Beyond this, the armed robbery definition is important in the context of West Africa because of the high incidence of maritime crime that occurs within territorial waters of littoral states. While statistics have varied over the years, attacks within the territorial sea have remained notably consistent.⁵¹ Some estimates suggest that the majority of maritime crime occurring in the Gulf of Guinea can be classified as armed robbery.⁵² The development of legislation at the national level in West Africa is thus crucial, as such a legal framework would facilitate a state’s ability to respond to crime occurring within its territorial waters.

i. Expanding the scope of maritime crime

The limited scope of “piracy” and “armed robbery” has led to the creation of international instruments expanding upon acts of maritime crime. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereafter “SUA Convention”) is the most expansive source of these developments. Article 2 of the SUA Convention criminalizes, the “seizure and control of ships”, “acts of violence against persons on board ships”, and various levels of damage to a ship or its cargo.⁵³ A 2005 addition to this convention further criminalizes terrorism offenses on board or against ships.⁵⁴ One important feature to note for drafters of piracy law is that the SUA Convention focuses on pure acts of violence and terrorism. This broader definition suggests an ability to capture criminal acts of a political nature, such as those conducted by MEND. Thus, the SUA Convention demonstrates a method to account for the shortcomings of UNCLOS and Resolution 1025. Further, the convention obliges states to criminalize the offenses listed in article 3.⁵⁵

However, despite its broader scope, the SUA Convention does not classify these crimes as acts of “piracy”, and thus “do[es] not give rise of universal enforcement jurisdiction at sea.”⁵⁶ This demonstrates the limitation imposed by invoking a classification of “piracy”, as opposed to maritime

⁵¹ UNITAR & UNOSAT Report, *supra* note 33 at 35.

⁵² Barker, *supra* note 8.

⁵³ *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 10 March 1988, art 3. [SUA Convention].

⁵⁴ *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 14 October 2005, art 3 bis.

⁵⁵ *SUA Convention*, *supra* note 53 at art 5.

⁵⁶ *Piracy Legal Framework*, *supra* note 35 at 4.

crime more generally. A second issue is lack of signatories. While the 1988 convention applies to 164 states, Cameroon is not a signatory, and the 2005 amendment applies to only 31 states.⁵⁷

Universal Jurisdiction:

Universal jurisdiction is the right of a state to exercise jurisdiction where the perpetrators are *hostes humani generis* ("enemies of humankind"). Piracy was the first crime to which universal jurisdiction was applied, and it remains the definitive standard. As articulated by the International Court of Justice in the *Democratic Republic of the Congo v. Belgium*, "international law knows only one true case of universal jurisdiction: piracy."⁵⁸ In terms of developing piracy law in West Africa, it is important to note that universal jurisdiction is limited to acts of piracy *as defined by international law*. The consequence of this is that universal jurisdiction cannot be invoked for "acts defined as piracy under [national] law which go beyond the definition of piracy under international law."⁵⁹ This limitation on universal jurisdiction will be discussed further in the following section.

C. Existing Piracy Legislation in East and West Africa

The extent to which piracy law is underdeveloped, outdated, or non-existent, in West Africa becomes clear when examining the UN database on piracy law around the world.⁶⁰ Consider for example Togo's *Code de la Marine Marchande* (1971). This Code defines acts of piracy quite broadly, with section 147 focusing on armed groups aboard ships who are not part of a legitimate operation.⁶¹ Such expansive language may fail to capture the extensive and complicated models of piracy seen in West Africa today, particularly considering the extent to which piracy is linked to organized crime ashore.⁶² The sentencing for maritime crime is similarly vague, and includes undefined and difficult to enforce terms of perpetual forced labour.⁶³ In other states, notably Nigeria, specific laws on piracy are absent, and naval forces of the state lack the ability to properly respond

⁵⁷ Michael Bahar, "Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations" (2013) 40 Vanderbilt Journal of Transnational Law 24.

⁵⁸ Richard Schaffer, *International Business Law and Its Environment* (Cengage Learning, 2011) at 30.

⁵⁹ *Piracy Legal Framework*, *supra* note 35 at 6.

⁶⁰ "National Legislation on Piracy", online: UN < http://www.un.org/depts/los/piracy/piracy_national_legislation.htm>. [*UN Piracy Database*].

⁶¹ *Ibid.*

⁶² Ken Scott, *Prosecuting Pirates: Lessons Learned and Continuing Challenges: A Research Report*, (Colorado, 2013) at 32. [*Prosecuting Piracy Report*].

⁶³ *UN Piracy Database*, *supra* note 60.

to threats at sea. Indeed, the Nigerian Navy has raised concerns regarding their inability to respond to acts of piracy, as well as facilitate prosecution, because they lack the legal capacity.⁶⁴

In Kenya, the implementation of piracy law has facilitated extensive counter-piracy efforts, particularly in the realm of prosecution. Following the implementation of the *Merchant Shipping Act* (hereafter “MSA”), Kenya held and tried “the largest number of suspected pirates... in any one state at any given time in modern history.”⁶⁵ This is a significant development given the criticism that modern piracy is a crime that has gone largely unpunished,⁶⁶ and it raises the question as to how this was accomplished through legal reform. Part of the answer to this question lies in a key feature of the *MSA*: its comprehensive domestication of the international agreements surrounding piracy. The *MSA* incorporates elements from regional conventions, including the Djibouti Code of Conduct and the African Maritime Transport Charter.⁶⁷ Further, section 369 adopts the UNCLOS definition of piracy. However, one important distinction is that it defines piracy as *not* being confined to the high seas.⁶⁸ Because it defines the act beyond the international definition, Kenya would be unable to invoke universal jurisdiction for piracy.⁶⁹ In terms of developing piracy law in West Africa, this is an important factor to consider. The preclusion of universal jurisdiction may limit a country’s ability to prosecute, as it compels them to base criminal jurisdiction “on other grounds such as territoriality, nationality, or flag principle.”⁷⁰

Section 370 of the *MSA* incorporates the SUA Convention’s offenses related to the hijacking of a vessel.⁷¹ As with section 369, this section takes an aggressive stance in terms of conferring jurisdiction to courts. It applies “whether the offences were committed in Kenya or elsewhere” regardless of the nationality of the person committing the act.⁷² This aggressive claim of jurisdiction is “wider than that in the SUA Convention” and thus “the legality of provisions of Section 370 of the *MSA* ... remains doubtful under international law.”⁷³

⁶⁴ Daily Trust, “Nigeria: Navy and the Law on Piracy” online: All Africa <<http://allafrica.com/stories/201303181680.html>>.

⁶⁵ Paul Musili Wambua, “The jurisdictional challenges to the prosecution of piracy cases in Kenya: mixed fortunes for a perfect model in the global war against piracy” (2012) 11 J Marit Affairs 95.

⁶⁶ *Prosecuting Pirates Report*, *supra* note 62 at 3.

⁶⁷ Wambua, *supra* note 65 at 102.

⁶⁸ *Ibid.*

⁶⁹ *Piracy Legal Framework*, *supra* note 35 at 7.

⁷⁰ *Ibid.*

⁷¹ Wambua, *supra* note 65 at 102.

⁷² *Ibid* at 103.

⁷³ *Ibid.*

Through this legislative framework, Kenya has not only been able to prosecute pirates captured by their own state, but also pirates who have been transferred for prosecution from other states. While Kenya's aggressive claims have facilitated prosecution efforts, this overly broad jurisdiction is problematic in terms of human rights. Critics have noted that in Kenya "the relevant human rights norms and principles including prohibition on torture or inhuman treatment and rights to a fair trial and liberty and security are not rigorously observed."⁷⁴ Conferring such strong jurisdiction to Kenyan courts for maritime crime is thus rightly questioned. This concern applies equally to West Africa, where similar concerns regarding violation of human rights norms have been raised. In particular, criticism has been waged against Nigeria regarding the transferring of pirates to third states, "where they might experience inhuman or degrading treatment."⁷⁵ While the existence of a legal response to piracy is central to assuaging maritime crime, this response must not be conducted at the behest of human rights norms.

D. Piracy Law Insights & Recommendations

The above analysis has revealed some key insights that should guide the development of piracy law in West Africa. The nature of maritime crime in the region is appreciably distinctive from that seen in other piracy hotspots, and the alarming human and economic costs associated with maritime crime suggest that pirates are acting with a certain degree of impunity. The high levels of violence and weaponry used throughout these attacks further confirms this. One response to the severity of piracy is to institute harsh penalties that match the brutality of the crime.⁷⁶ Indeed, the existing piracy law in Togo has a sentence of death for acts of piracy that result in violence or homicide.⁷⁷ This severe sentencing is problematic when considered in the wider context of international law.

In his empirical analysis of penalties for piracy, Kontorovich recognizes a international trend towards particularly harsh penalties. A major rationale for such harsh punishment is retribution, and indeed it is clear that the victims of these crimes deserve some form of justice. However, it must

⁷⁴ Tom Obokata, "Maritime piracy as a violation of human rights: a way forward for its effective prevention and suppression?" (2013) 17:1 The International Journal of Human Rights 22.

⁷⁵ *Ibid* at 26.

⁷⁶ Chris Mark, "To Arm or Not to Arm: A Rational Analysis of Deterrence Theory in Modern Piracy" (2010) online: Sagebrook Research, <http://maritimerisk.files.wordpress.com/2011/12/to-arm-or-not-to-arm_deterrence-theory-in-maritime-security.pdf>.

⁷⁷ *UN Piracy Database*, *supra* note 60.

also be recognized that retributive norms “only make sense within the context of some legal system – in comparison to other offenses.”⁷⁸ Because retributive norms vary widely across nations, international law provides a useful benchmark to rank crimes in terms of their gravity. The benchmark of international law reveals how piracy should not be punished in line with severe violations such as those listed in the Geneva Conventions.⁷⁹ In many cases, this would simply not reflect the actual gravity of the offense.⁸⁰ Furthermore, pirate defendants are often low-level actors within larger criminal organizations; drafters of piracy law must also be mindful of the fact that those facing prosecution may only represent a small piece of a larger criminal organization.

Piracy law must also be developed with a mind towards tackling the complex organized nature of maritime crime. The level of sophistication involved in oil theft and kidnap for ransom suggest that the degree of organization is high, thus many high-level criminals will have taken active measures to shield themselves from culpability.⁸¹ Drafters of piracy law must be cognizant of this fact, not only in their efforts to assure that high-level criminals will be punished, but further to ensure that lower-level criminals are not receiving harsh sentences in place of their leaders. In order to meet longer-term counter-piracy goals, the dilapidated economic conditions faced by lower-level pirates must be recognized, as these conditions ensure that there will always be willing replacements for pirates apprehended at sea.⁸² International law provides some guidance as to how piracy law can be directed towards higher-level offenders. The SUA Convention is well-suited to tackling organized crime, and the Security Council has urged states to implement this and related conventions “in order to effectively investigate and prosecute piracy and armed robbery at sea.”⁸³

Simply planting down piracy laws from other jurisdictions, as advocated by some,⁸⁴ may be blind to these and other significant differences in West African piracy. Beyond this, drafters of piracy law must also be mindful of the ability of their state to *enforce* the law. If political institutions are corrupt, or the judiciary lacks the necessary resources to prosecute piracy, enforcement of these laws seems doubtful. It is essential to further inquire into whether states have the capacity to enforce

⁷⁸ Eugene Kontorovich, "The Penalties for Piracy: An Empirical Study of National Prosecution of International Crime" (2012) online: North Western University Law <<http://scholarlycommons.law.northWestern.edu/cgi/viewcontent.cgi?article=1210&context=facultyworkingpapers>> at 16.

⁷⁹ *Ibid* at 17.

⁸⁰ *Ibid*.

⁸¹ *Prosecuting Piracy Report*, *supra* note 62.

⁸² *Ibid* at 2.

⁸³ *Piracy Legal Framework*, *supra* note 35 at 20.

⁸⁴ Wambua, *supra* note 65.

piracy law. Section two will now shift its focus to the institutions underpinning counter-piracy efforts in West Africa. While it is true that piracy law in the region should certainly be improved upon, such a law does not create long-term change in the fight against maritime crime on its own. Acemoglu & Robinson aptly recognize the central role that institutions play in influencing the growth of a country or culture.⁸⁵ Beyond establishing a proper legal framework, it must be recognized that long-term counter-piracy efforts will not be fully realized without maintaining some quality of governance through institutions.

SECTION II: Counter-Piracy Institutions in West Africa

The development of piracy law is an important preliminary step in counter-piracy efforts; however, the existence of law is meaningless when there is no regional capacity to enforce it. Indeed, even without laws specifically crafted towards the crime of piracy, states can nonetheless apply their criminal codes to crimes at sea.⁸⁶ While the development of piracy law would provide states with a framework that is better suited to address this emerging and sophisticated crime, the central problem lies not in the absence of piracy law, but rather in a weakness in the rule of law more generally. Simply implementing the perfect model of piracy law would nonetheless fail to address the “gap between the law’s ideals and the realities of legal enforcement and action.”⁸⁷ Institutions play a central role in addressing the gap that exists between legal ideals and enforcement.

The following section will begin by examining law enforcement institutions suppressing piracy in West Africa, with a focus on Nigeria. This analysis reveals how institutions that exist in a competitive environment lack the capacity to respond to maritime crime. Following this, three important regional organizations involved in the mobilization of political and economic institutions will be examined. Considering the link that exists between economic development and suppressing maritime crime,⁸⁸ it is particularly important to enable economic institutions in the region. Acemoglu & Robinson highlight the fact that achieving sustainable economic growth will ultimately require

⁸⁵ Daron Acemoglu & James A. Robinson, *Why Nations Fail: the Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012).

⁸⁶ *Prosecuting Pirates Report*, *supra* note 63 at 57.

⁸⁷ Jonathan Ocko & David Gilmartin, “State, Sovereignty, and the People: A Comparison of the “Rule of Law” in China and India” 68 *Journal of Asian Studies* 88.

⁸⁸ Anja Shortland & Federico Varese, “The Protector’s Choices: An Application of Protection Theory to Somali Piracy” (2014) *British Journal of Criminology* 2.

political change,⁸⁹ something that is particularly true in the context of West Africa. It will be contended that effectively addressing maritime crime requires reform of institutions that have eroded as a result of corruption and lack of resources. Strengthening these institutions, and fostering cooperation and coordination between them, will facilitate counter-piracy efforts by improving the quality of governance in the region.

A. Law Enforcement Institutions Suppressing West African Piracy

Until fundamental issues underlying piracy like unemployment and corruption are addressed, much of the burden of suppressing maritime crime has been left to law enforcement institutions.⁹⁰ In Nigeria, two key law enforcement institutions engaged in counter-piracy are the Nigerian Marine Police (hereafter “NMP”) and Nigerian Navy (hereafter “NN”). Despite some notable progresses in suppressing maritime crime to date, it is clear that these forces are vastly underfunded.⁹¹ Indeed, despite the fact that the NN is the strongest navy in the region, its inability to deal with the deeply rooted crime of piracy in the region remains; the NMP have a similarly limited capacity to investigate and prosecute illicit organizations involved in maritime crime.⁹² Part of the reason for this is corruption. Even when arrests are made, “bribes are common and many suspects [are] released without a legal process.” This suggests that pirates have a strong influence over law enforcement institutions.⁹³

Beyond issues of corruption and lack of resources, the relationship between the NN and NMP is also problematic. This is demonstrated by recent “blue on blue”, or friendly fire, incidents that have occurred in Nigerian waters. In one 2013 incident, the NMP opened fire on a NN ship that it mistakenly believed to be engaging in maritime crime.⁹⁴ Blue on blue incidents are demonstrative of the severe lack of coordination that exists between law enforcement institutions in the region. This lack of coordination is compounded by the competing interpretations over where each agency

⁸⁹ Acemoglu & Robinson, *supra* note 85 at 123.

⁹⁰ Bruce Elleman, *Piracy and Maritime Crime: Historical and Modern Case Studies* (Newport: Naval War College Press, 2010) 200.

⁹¹ *Ibid.*

⁹² Henrik Persson, “Nigeria - An Overview of Challenges to Peace and Security” (2014) online: FOI-R <<http://www.foi.se/Documents/Persson,%20Nigeria%20-%20An%20Overview%20of%20Challenges%20to%20Peace%20and%20Security,%202014.pdf>> at 40.

⁹³ *Ibid.*

⁹⁴ Dirk Steffen, “Troubled Waters? The Use of Nigerian Navy and Police in Private Maritime Security Roles” online: CIMSEC <<http://cimsec.org/troubled-waters-use-nigerian-navy-police-private-maritime-security-roles>>.

has jurisdiction to enforce the law.⁹⁵ Considering both the conflicting relationship that exists between the NMP and NN, as well as the strong forces of corruption within them, appealing to outside international aid could serve to strengthen these institutions.

i. Recommendations: strengthening capacity and resolving conflict

In order to address the conflicts that exist between law enforcement institutions in West Africa, as well as the outside influence of corruption, these institutions must be examined from a structural point of view. Consider the following statement by Douglass North:

“[W]hen organizations with different interests emerge (typically as a result of dissatisfaction with the performance of existing organizations) the fundamental conflict between organizations over institutional change cannot be mediated within the existing institutional framework.”⁹⁶

In order to address the shortcomings of these institutions, a force outside of the corrupt and competing institutional framework must be engaged. In East Africa, where similar issues of corruption and capacity were faced, this outside force came in the form of international aid. Following the sharp rise of Somali piracy, the international community responded by deploying naval forces, something that played a central role in the decrease of pirate attacks in 2013, and further facilitated capacity building.⁹⁷

The international response to piracy in West Africa has not been as pronounced as in the East, however, some level of international collaboration is present. The U.S. Navy, through its Africa Partnership Programme, has fostered relationships with many West African navies, and they have a notably strong working relationship with the NN.⁹⁸ China has also been involved in capacity building efforts, facilitating the building of offshore patrol vessels for use by the NN. Non-governmental actors like the International Maritime Bureau (hereafter “IMB”) have collaborated with regional law enforcement agencies as well, aiding in the establishment of a comprehensive strategy to protect its large coastline.⁹⁹ Considering the large amount of oil that Nigeria represents, it is unsurprising that outside actors have taken an interest in strengthening these institutions. However, while these collaborative efforts may not be selfless, they serve the important function of creating

⁹⁵ *Ibid.*

⁹⁶ Douglass North, “Institutions, Organizations and Market Competition” online: Washington University <<http://core.kmi.open.ac.uk/download/pdf/9312453.pdf>> at 7

⁹⁷ *State of Piracy*, *supra* note 4 at 11.

⁹⁸ Neethling, *supra* note 9 at 100.

⁹⁹ *Ibid.*

institutional change when it “cannot be mediated within the existing institutional framework.”¹⁰⁰ International aid addresses some of the structural shortcomings faced by the NN and NMP by acting as a force from outside of the existing corrupt and conflicting institutional framework. These efforts must continue to be encouraged, as they strengthen the relationships that exist between law enforcement institutions, allowing them to actively pursue their shared goal of combatting piracy.

Despite these collaborative efforts, regional law enforcement institutions have also come into conflict with international actors. Consider the relationship that exists between members of the Baltic and International Maritime Council (hereafter “BIMCO”) and the NN. BIMCO has alleged that the NN has been enforcing its laws against its industry members outside of Nigerian territorial waters, but inside of its EEZ.¹⁰¹ If these allegations are to be believed, the NN is operating outside of its sovereign territory, and thus infringing international law. Unsurprisingly, this has created a vast amount of uncertainty in the region. Douglass North notes that “[i]nstitutions are formed to reduce uncertainty in human exchange”, something that is not being accomplished here. Because international actors play an important role in addressing the structural problems faced by these institutions, continued efforts should be made to foster more harmonious relationships between them. Such efforts would serve to reduce uncertainty and strengthen capacity.

Law enforcement institutions outside of Nigeria must also be included in the efforts to increase collaboration and coordination. Despite tensions that exist between states, there is substantial crossover between the aspirations and goals of these institutions. Successful practices in East Africa provide some guidance as to how relationships between institutions in the west can be strengthened. Article 7 of the Djibouti Code of Conduct “provides for the embarkation of authorized law enforcement officials of one State on the patrol ships... of another participating state.”¹⁰² This facilitates cooperation between law enforcement institutions by establishing formal rules of compliance for them to follow.¹⁰³ Though preliminary, measures such as this would begin to address the substantial “legal and jurisdictional challenges [faced by] law enforcement institutions.”¹⁰⁴

¹⁰⁰ North, *supra* note 96.

¹⁰¹ Baltic International Maritime Organization, *supra* note 27.

¹⁰² *Piracy Legal Framework*, *supra* note 35 at 9.

¹⁰³ *Ibid.*

¹⁰⁴ Lucas Bento, “Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish” (2011) 29:2 Berkeley Journal of International Law 422.

B. Economic & Political Institutions Suppressing West African Piracy

One of the central causes of the sharp rise of piracy off the coast of Somalia was the result of weaknesses in its political and economic institutions. Indeed, “the devastating lack of political centralization” is still prevalent in Somalia, where “the state cannot play its role as enforcer of law and order, let alone provide public services and encourage economic activity.”¹⁰⁵ The political situation in West Africa is not as dire as in Somalia, however, considerable improvements remains to be seen in terms of conflicts between and within institutions.

Three regional organizations have played a central role in coordination and mobilizing individual political and economic institutions combatting piracy: the Economic Community Of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC). These three organizations represent important political actors from across West Africa, and focus on promoting economic integration in the region.¹⁰⁶ UN Security Council Resolutions 2018¹⁰⁷ and 2039¹⁰⁸ call upon ECOWAS, ECCAS and the GGC to develop a comprehensive strategy to combat maritime crime in the region. In response, they have collectively have taken some progressive initial steps towards addressing maritime crime. All three recognize the link between the economy and maritime crime,¹⁰⁹ and their counter-piracy activities have largely been a collaborative effort.

The most significant recent effort by these organizations occurred in June of 2013 at the Summit of Heads of State and Government on Maritime Safety, held in Yaoundé. This summit was held under the auspices of the United Nations, and government leaders from ECOWAS, ECCAS and the GGC brought many influential stakeholders together, demonstrating a high level of coordination.¹¹⁰ The regional actors involved included 25 Heads of State or their representatives from West and Central African countries, as well as the International Maritime Organization (IMO) and the Maritime Organization of West and Central Africa (MOWCA)¹¹¹ Together, they established a memorandum of understanding on maritime safety and security.¹¹² Additionally, a plan was

¹⁰⁵ Acemoglu & Robinson, *supra* note 85 at 123.

¹⁰⁶ ECOWAS, “Homepage” online: ECOWAS <<http://www.ecowas.int/>>.

¹⁰⁷ *Acts of Piracy and Armed Robbery at Sea Off the Coast of the States of the Gulf of Guinea*, SC Res 2018, UNSC, 2011.

¹⁰⁸ *Acts of Piracy and Armed Robbery at Sea Off the Coast of the States of the Gulf of Guinea*, SC Res 2039, UNSC, 2012.

¹⁰⁹ Shortland, *supra* note 88.

¹¹⁰ UNITAR & UNOSAT Report, *supra* note 33 at 35.

¹¹¹ *Ibid.*

¹¹² *Ibid* at 36.

approved for the creation of an Inter-Regional Coordination Centre to coordinate the fight against maritime insecurity.¹¹³

Perhaps the most noteworthy product of the Yaoundé summit was the creation of a Code of Conduct concerning the repression of maritime crime (hereafter “Yaoundé Code”).¹¹⁴ Signed by 22 states,¹¹⁵ this code establishes basic aspirations and agreements between West African countries concerning maritime crime. In terms of practical effects, the inter-regional cooperation between ECCAS, ECOWAS and GGC “allow[s] regional patrols to exercise the right of pursuit beyond maritime borders.”¹¹⁶ Considering the aforementioned broadening of geographic trends in West Africa,¹¹⁷ this would significantly empower navies or maritime police in their pursuit of pirates following recent attacks, particularly those who were previously constrained by their national borders. The Yaoundé Code also includes provisions related to the development of piracy law. Article 15 identifies the development of piracy law as central to ensuring “effective indictment, prosecution and conviction in the territory of the Signatories”, and article 1 provides basic definitional models that follow international standards.¹¹⁸

i. Political tensions & corruption

Taken together, the efforts on behalf of the ECOWAS, ECCAS, and the GGC have demonstrated a potential to coordinate efforts in the region and facilitate cooperation. Indeed, progress thus far has received praise from the international community.¹¹⁹ However, because these are recent developments, it is still too early to judge whether they will be successfully implemented. Criticisms have emerged regarding the extent to which states will comply with the Yaoundé Code.¹²⁰ The Code’s scope is geographically limited, does not create an international body of piracy law, and

¹¹³ *Ibid* at 35.

¹¹⁴ *Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa*, 2013, available online: <<http://www.cfr.org/piracy/code-conduct-concerning-repression-piracy-armed-robbery-against-ships-illicit-maritime-activity-West-central-africa/p31200>>.

¹¹⁵ International Maritime Organization, “*IMO Secretary-General welcomes adoption of new West and central Africa piracy and maritime law enforcement code by Heads of State*” online: IMO <<http://www.imo.org/MediaCentre/PressBriefings/Pages/23-Westandcentralafriacode.aspx#.VGvN9NYI6ag>>.

¹¹⁶ PK Ghosh, “Waiting to Explode: Piracy in the Gulf of Guinea” online: (2013) Observer Research Foundation at 26 <http://orfonline.org/cms/export/orfonline/modules/occasionalpaper/attachments/occasionalpaper46_1381300389613.pdf>.

¹¹⁷ UNITAR & UNOSAT Report, *supra* note 33 at 35.

¹¹⁸ *Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa*, 2013, arts 1 & 15, available online: <http://www.imo.org/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf>.

¹¹⁹ Persson, *supra* note 92 at 42.

¹²⁰ *Ibid*.

only carries persuasive force.¹²¹ As Roland aptly notes, institutions have no meaning unless the constraints they impose are enforced.¹²²

Furthermore, concerns have been expressed that political tensions will hinder efforts to promote practical cooperation.¹²³ Indeed, ECOWAS has itself acknowledged the need to remedy the often-violent conflicts that arise within and between its member States.¹²⁴ This points towards a lack of capacity for political and economic institutions to meet their regional agreements. Despite the progress that has been achieved, it is clear that these institutions must continue “to entrench consistent dialogue, good governance and investment in human capital development.”¹²⁵

The ability of political and economic institutions to promote good governance is further hindered by the strong presence of corruption in the region. Consider for example Nigeria, one of the strongest members of the GGC and ECOWAS. Political patronage is common in Nigeria, as is financial backing of political parties by various economic interests.”¹²⁶ Allegations have arisen that some Nigerian politicians are closely associated with organized piracy operations, some going so far as to say that local politicians engage in covering up maritime crime and providing pirates with protection in exchange for a portion of their profits.¹²⁷ Political will to enact counter-piracy action is undermined in such a corrupt environment, hindering the ability of state actors to encourage good governance.¹²⁸ This corruption may not only impede political will to suppress piracy, but further lead to an *increase* in pirate attacks. Experts in the counter-piracy community have expressed concerns that oil theft at sea is being used as a funding mechanism for campaigning.¹²⁹ These critics predict that the link between politicians and piracy is so strong that there will be an increase in piracy attacks throughout Nigeria’s upcoming 2015 elections.¹³⁰ This corruption is not limited to Nigeria,¹³¹

¹²¹ Bento, *supra* note 103 at 427.

¹²² Gerard Roland, “Understanding Institutional Change: Fast-Moving and Slow-Moving Institutions” (2004) 38:4 *Studies in Comparative International Development* 111.

¹²³ Ghosh, *supra* note 116 at 26.

¹²⁴ *The ECOWAS Conflict Prevention Framework*, Reg.1/01, 2008, section 2.5.

¹²⁵ FC Onohuna, “The Geo-strategy of Oil in the Gulf of Guinea: Implications for Regional Stability” (2010) 45:3 *Journal of Asian and African Studies* 369.

¹²⁶ Persson, *supra* note 92 at 19.

¹²⁷ Ole Mikkelsen, “Piracy expected to increase ahead of Nigeria’s election” online: Reuters <<http://www.reuters.com/article/2014/10/07/us-shipping-piracy-idUSKCN0HW1DO20141007>>.

¹²⁸ Neethling, *supra* note 9 at 22-23.

¹²⁹ Rick Noack, “Why Nigeria’s election year may see a spike in pirate attacks” online: The Washington Post <<http://www.washingtonpost.com/blogs/worldviews/wp/2014/10/14/why-nigerias-election-year-may-see-a-spike-in-pirate-attacks/>>.

¹³⁰ *Ibid.*

¹³¹ Timothy Walker, “Maritime security in West Africa” (2013) 22:2 *African Security Review* 87.

and it is clear that “piracy can play a pivotal role in undermining and weakening governing legitimacy by encouraging corruption among elected officials and bureaucrats.”¹³²

ii. Recommendations: working towards long-term solutions

Maritime piracy is a complex crime “that has its roots on land and arises due to social deprivation, injustice and weak governance.”¹³³ Short-term solutions to this problem are essential in order to address the immediate human costs that are being suffered in the region. The region appears to be cognizant of this, and the collaborative efforts exhibited between significant organizations like ECOWAS ECCAS and the GGC are encouraging. However, concerns regarding enforcement, corruption, and lack of resources stand as significant barriers to progress, and these barriers can only be overcome in the long-term. Interim solutions must not be pursued at the behest of long-term measures that aim at encouraging sustainable economic growth. Arriving at sustainable economic growth ultimately requires political change,¹³⁴ and as counter-piracy efforts proceed, it is essential to consider practicable solutions to the deficiencies observed in regional political and economic institutions.

Because corruption in Nigeria is widespread, responses to this issue have already been instituted that challenge the impunity of politicians in the region. The Economic and Financial Crimes Commission (hereafter “EFCC”), founded in 2002, has arraigned 30 prominent politicians involved in corruption, including 15 former state governors.¹³⁵ However, while billions of dollars in corrupt funds have been recovered, very few actual convictions have been instituted.¹³⁶ Additional concrete measures must be put into place in order to effectively address corruption. Institutions such as the EFCC must be further empowered to tackle corruption, and expanding their operations in the region will work towards increasing accountability. This must be achieved through collaborative and cooperative efforts. Remedying corruption requires West African states to

¹³² Peter Chalk, “Maritime Piracy: Reasons Dangers and Solutions” (2009) online: RAND Corporation <<http://www.rand.org/pubs/testimonies/CT317.html>> at 4.

¹³³ Ghosh, *supra* note 116 at 26.

¹³⁴ Rule of Law and Economic Development Research Group, “Rule of Law and Economic Development: A Comparative Analysis of Approaches to Economic Development across the BRIC Countries” (2012) online: McGill University <https://www.mcgill.ca/roled/files/roled/mcgill_roled_report_2012.pdf> at ix.

¹³⁵ Persson, *supra* note 92 at 17.

¹³⁶ *Ibid* at 18.

“facilitate cooperation between law enforcement and the judicial system between and within nations.”¹³⁷

The coordination efforts exhibited between the ECOWAS, ECCAS and the GGC have led to improved cooperation in the entire region. However, there is room for substantial improvements, particularly given the corrupt political environment. Cooperation and coordination must continue to be strengthened, on both a regional and international level.¹³⁸ Regionally, this requires political institutions to take further actions on the ground, and meeting the obligations of their various international agreements. For example, states can ensure that the agreed upon Inter-Regional Coordination Centre is both established in Cameroon and funded as per the stated plan.¹³⁹ In order to assure that counter-piracy measures do not wane over time, continued communication between both individual political institutions and larger regional groups is necessary. This can be accomplished through Contact Groups, summits, and other formal and informal meetings that occur on a regular basis.

It is also worth noting that ECOWAS and ECCAS have broad mandates concerning a wide range of economic issues, while the GGC “has the largest mandate for dealing specifically with maritime issues.”¹⁴⁰ While it is clear that all West African states feel the economic and human costs of piracy, providing the GGC with either more resources or a greater leadership role in counter-piracy efforts may be appropriate. The GGC has to date demonstrated its aptitude to address maritime crime, facilitating its member states to sign the Luanda Declaration on Peace and Security in the Gulf of Guinea Region, which takes steps towards “regional cooperation and inter-state dialogue in response to increasing maritime insecurity in the region.”¹⁴¹ The fact that the Gulf Guinea remains the most active area of attacks in the region¹⁴² gives further credence to this recommendation.

¹³⁷ *Ibid* at 47.

¹³⁸ Persson, *supra* note 92 at 40.

¹³⁹ *Ibid*.

¹⁴⁰ Ghosh, *supra* note 116 at 25.

¹⁴¹ *Ibid* at 26.

¹⁴² Barker, *supra* note 8.

SECTION III: Conclusions on West African Piracy, Institutions & Human Rights

The above analysis has revealed that, in order to fully address the problem of piracy in West Africa, the region must not only develop an effective legislative scheme, but further institute significant reform of counter-piracy institutions that have eroded as a result of corruption and lack of resources. Relationships between institutions manifest themselves differently in different contexts, and the prevalence of opposing institutions in the region has revealed a need to encourage and facilitate relationships that are more complementary than competing. Strengthening institutions, and facilitating cooperation and coordination between them, will vastly improve the quality of governance in the region. Without strong institutions working towards shared objectives, the long-term goal of repressing piracy shared by the 22 signatories to the Yaoundé Code will not be realized.

Piracy in West Africa is a problem with a significant human cost, and it is clear that many lives (victims *and* pirates) have been deeply affected by the rise of maritime crime. Loss of “basic human rights such as access to healthcare, food, clean water and—above all—a livelihood” is common in areas impacted by maritime crime.¹⁴³ Indeed, these dilapidated economic conditions are fundamental to the rise and subsistence of piracy.¹⁴⁴ How can human rights law respond to the extensive human costs associated with piracy? Institutions play a vital role here as well, as they are central to ensuring the good governance necessary to enforce human rights. Indeed, it is difficult to imagine a world where human rights violations are enforced without the governance provided for by institutions, as their implementation relies largely on these formal and informal structures.

Major social, economic, and cultural events impact the way in which institutions develop,¹⁴⁵ and these events must not be ignored in the quest to realize effective implementation of human rights. Acemoglu & Robinson demonstrate how the inequalities of various institutions and political bodies around the world manifest themselves. They believe that a critical juncture, defined as “a major event or confluence of factors disrupting the existing economic or political balance in society,”¹⁴⁶ can break or strengthen the extractive institutions that already exist. One such critical

¹⁴³ Ghosh, *supra* note 116.

¹⁴⁴ Shortland, *supra* note 88.

¹⁴⁵ Acemoglu & Robinson, *supra* note 85.

¹⁴⁶ *Ibid* at 101.

juncture is the Industrial Revolution, which is key to understanding how inequality around the world emerged due to the vicious and virtuous cycles that exist both historically and currently. Acemoglu & Robinson believe that the Industrial Revolution has not occurred in Africa even today because it has long experienced a vicious cycle of both economic and political institutions. Remedying this issue requires movement away from institutions that lead to economic stagnation, and towards “inclusive economic institutions [that] ignite rapid economic growth.”¹⁴⁷ A full realization of human rights will require West African countries to find a way towards such inclusive institutions that reinforce the growth of all of its citizens.

Through my own experiences working within the counter-piracy community, I have come to recognize the strengths and weaknesses of both human rights law and the institutions that serve to enforce it. In recognizing both the potential and limits inherent in human rights, one can find strategies to work around its weaknesses and play towards its strengths. Imagine that we exist in a world where the perfect piracy law has been put into place, a law that not only responds to the crime of piracy, but further addresses the human rights violations involved in this crime. Imagine also that, based upon this law, we have brought a case of clear human rights violation to an international court. As lawyers hoping to achieve justice for human rights violations, it must be recognized that both the piracy law and the judicial institutions enforcing it do not exist in a vacuum. Speaking about courts specifically, Alston aptly notes:

“To be seen as legitimate and to aspire to effectiveness they must be an integral part of a broader and deeper system of values, expectations, mobilizations, and institutions. They do not float above the societies that they seek to shape, and they cannot meaningfully be imposed from on high and be expected to work.”¹⁴⁸

It is clear that the current system of human rights law is far from ideal. Even in a country with judicial institutions and procedures that have developed to address violations, we still see a great inability to deliver on the promises of human rights. Considering the significant human costs of piracy, this inability must not be accepted with fatalistic helplessness, but continually questioned and challenged in the meaningful quest to realize human rights.

¹⁴⁷ *Ibid* at 119.

¹⁴⁸ Philip Alston, “Against a World Court for Human Rights” (2014) online: SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2344333>.

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