A Panoramic Definition of Piracy under the SPOMO Act: Matters Arising

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I. Introduction

The economic, security, social, and humanitarian effects of piracy in Nigeria have been sufficiently interrogated. Among other implications, the Nigerian coast has become the most dangerous sea lane in the world as ships are advised to be vigilant while traversing Nigerian waters. Aside from kidnappings, assaults, and killings of seafarers, some shipping companies have refused to carry cargo to Nigerian ports and the attendant increase in insurance premium due to the increasing spate of piracy in Nigerian waters. The focus of this paper is to dialectically analyse the definition of piracy under the Nigeria's Suppression of Piracy and Other Maritime Offences Act 2019 (the SPOMO Act). An inquiry into the definition of piracy is key in directing policy, law, and practice in preventing, combating, and prosecuting pirates. It also reaffirms Nigeria's commitment to comply with international law.

Beyond the prosecution of pirates, a comprehensive definition of piracy is desirable to capture the ever-evolving nature of the crime and also in resolving commercial litigations that may arise because of the crime, such as carriage contract and marine insurance cases. Gliha suggests that piracy implicates "criminal, over international to civil law". Consequently, this paper argues that the SPOMO Act contains a comprehensive definition of piracy, including other maritime offences, which means it is flexible enough to cover both the criminal and commercial cases in Nigeria. The paper further submits that the existence of a comprehensive antipiracy law devoid of proper interpretation and application will not culminate in the suppression of piracy. Therefore, the creation of a special maritime court and adequate training of judges are key in properly interpreting and applying the definition of piracy contained in the SPOMO Act to facilitate piracy suppression in Nigeria.

II. A Panoramic Definition of Piracy

Though pirates have been regarded as plunderers of coastal villages and towns, countries with strong naval capabilities that attack vessels of weak countries, privateers, and criminals that board vessels in port areas and attack vessels, the meaning of piracy has been defined under customary international law. According to article 101 of the Law of the Sea Convention 1982 (the LOSC), which is similar to section 3 of the SPOMO Act, piracy means

> (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).

The above definition of piracy is controversial due to its perceived limitations. For instance, the issue of private ends has been criticised for limiting potential acts of piracy due to the so-called private ends requirement. The two ship

principle means that criminals that plunder and kidnap seafarers in the same vessels are not pirates. The geographical limitation of the locus of the crime is another bone of contention in defining piracy, as attacks that occur in territorial waters of coastal states are deemed not to be piracy. While the LOSC limits piratical acts to the high seas, it is argued that such limitation does not recognise, among other things, the implication of the land-based causes of piracy, the use of modern technology, and the inability of riparian countries to maintain maritime domain awareness. More importantly, the LOSC does not mandate states to enact antipiracy legislation, outline the legal framework for prosecuting pirates, and guide sentencing. Despite the limitations of piracy definition under international law, some countries have, in prosecuting pirates, adopted the LOSC, other countries used their extant domestic legislation, while some countries have modified the LOSC.

Given the definition of piracy under the SPOMO Act, it is observed that section 4 of the Act includes the meaning of other maritime offences, which not only captures the provision of the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention) but also covers the field in terms of geographical location of the crime, among others. A combined reading of sections 3 and 4 of the Act implies that any act of violence on a ship on the high seas or armed robbery against a vessel in territorial waters of a coastal state can be prosecuted in Nigeria.

III. Importance of a Comprehensive Definition of Piracy

Kao has argued that having multiple definitions of piracy is a significant factor in suppressing piracy and tackling its attendant legal issues, as it serves multiple purposes. Having a comprehensive definition of piracy that goes beyond the definition contained in the LOSC, as exemplified by the SPOMO, is coterminous with Kao's position in terms of being able to be applied in multiple cases. Such extended definition is important and justified as long as the parties are in agreement, especially in the determination of private interests and the allocation of liability in the aftermath of piratical attacks. Though some scholars advocate for a uniform definition of piracy, other scholars note that due to the fluid nature of modern piracy, delimiting the definition of the crime will be unproductive. Thus, the existing definitions of piracy, which complement each other, can be contained in domestic antipiracy laws to suppress piracy. An

expansive definition of piracy is significant in curbing piracy as it covers the field in terms of modern piracy, unlike a uniform or narrow definition exemplified by the LOSC.

The nature of piracy in Nigeria, which is similar to attacks in Southeast Asia, hinges on armed robbery and theft of cargo, especially oil. The Nigerian economy depends on oil exploitation and the importation of finished goods, which means that shipping is key to its development. Given the commercial nature of piracy in Nigeria, theft of cargo, and its implications on the country's economy, it becomes imperative to apportion liability amongst "private parties in the aftermath of pirate attacks". Consequently, an expansive definition of piracy should be able to accommodate carriage contracts, such as charter parties and bills of lading, to allocate the rights and responsibilities of commercial parties (charterers, shipowners and cargo owners) in cases of loss due to piratical acts.

While the Baltic International Maritime Council (BIMCO) and the International Association of Independent tanker Owners (INTERTANKO) introduced specific piracy model clauses for time and voyage charters in 2009, the BIMCO clauses define piracy as including "acts of violent robbery", which is similar to the definition of other maritime offences contained in section 4 of the SPOMO Act, to capture "politically-motivated acts occurring in Nigerian waters." Case law does not strictly define piracy in carriage contracts, as courts have not explicitly defined piracy. However, in a recent case, *Osmium Shipping Corporation v Cargill International SA (The Captain Stefanos)*, involving charterparty, the court observed that the parties considered a seizure or forcible possession that is not undertaken by an authority as piracy.

Additionally, the definition of piracy is relevant in marine insurance in determining whether an event can be construed as piracy. This is pivotal in the determination of whether a loss suffered by the insured (cargo or ship) is covered under the insurance policy, including life insurance policy for seafarers. Thus, an expansive definition of piracy is significant in marine insurance cases. Arguably, it has been established that seafarers mutinies and attacks from the shore, in contradiction to the definition of piracy in article 101 of the LOSC, are acts of piracy under marine insurance law. Though a New York State court, in the case of *Britannia Shipping Corp. v Globe Rutgers F. Ins. Co.*, held that a

tugboat stolen from the pier is not piracy due to its location in a harbour, many cases, such as *Bayswater Carriers v QBE Insurance*, show that there is no high seas requirement in the determination of piracy, "as long as the vessel can be said to be at sea". Hence, a comprehensive definition that combines many definitions of piracy, like the SPOMO Act, is flexible enough to be applied in carriage contracts and marine insurance cases. According to Aydin, a broader piracy definition is used by courts for contractual purposes because a narrow definition of the crime is not accepted in the private law context.

IV. Measures to Facilitate the Proper Definition of Piracy

Proper interpretation and application of piracy definition are germane in the use of the SPOMO Act to suppress piracy in Nigeria. The decision of the court in the unreported case of Binaebi Johnson, where the court's prescribed sentences fall short of the statutory punishment for piracy under the SPOMO Act, shows that proper interpretation and application of the Act is crucial in accurately adjudicating piracy cases, especially in terms of punishment and its deterrent effect. Thus, the creation of a special maritime court to hear piracy cases is a step in the right direction. While existing courts like the International Criminal Court (ICC) and the International Tribunal for the Law of the Sea (ITLOS), the creation of special regional anti-piracy tribunal or global anti-piracy tribunal or hybrid tribunals are models that could be used in prosecuting pirates, the creation of a special maritime court in Nigeria should be considered in suppressing piracy in the country.

Thus, one of the limitations of the SPOMO Act is the absence of the creation of a specialised court in Nigeria. It is arguable that the omission to include the creation of a special maritime court in the SPOMO Act will hamper the proper interpretation of the Act in curbing piracy in Nigeria. This is because piracy is a complex crime that requires special training and dexterity by judges to properly understand the use of modern surveillance and communication equipment as well as conducting forensic investigations by maritime enforcement agencies. Again, piracy involves other transnational crimes, like money laundering, and, given that piracy essentially emanates onshore due to, inter alia, corrupt government officials, bad governance, and economic privation violence, there is a need to have a specialised maritime court to systematically adjudicate piracy cases.

Additionally, it is imperative to regularly train judges that adjudicate piracy cases in Nigeria. It is a trite fact that a well-trained judge is necessary in comprehensively and properly interpreting legislation and giving it its purposive meaning. The need to train judges that would adjudicate piracy cases, whether in a specialised maritime court or traditional court, has become necessary due to the decision of the court in Binaebi Johnson case. In that case, the judge failed to prescribe the maximum punishment (life imprisonment and a fine of not more than ₦50 million) contained in the SPOMO Act in sentencing the 3 pirates. The pirates were fined the sum of ₦20 million each, which may not deter other pirates from hijacking vessel off the Nigerian waters. The failure to prescribe the maximum punishment contained in the SPOMO Act shows that the existence of legislation requires proper interpretation.

V. Conclusion

This paper has shown that having a comprehensive definition of piracy, as exemplified by the SPOMO Act, is significant in curbing piracy because piracy is a complex crime that requires a fluid definition. Thus, piracy definition must be adjustable to the specific nature of different areas of law. Due to the commercial nature of piracy in Nigeria, an expansive definition of the crime becomes necessary. However, the paper observed that having a comprehensive definition of piracy without a specialised maritime court and regular training programmes for judges may not culminate in piracy suppression. This means that despite covering the field in terms of violent attacks on the high seas and in the territorial waters of Nigeria, the SPOMO Act may not be properly interpreted and applied in cases. The paper, therefore, suggested the creation of a specialised maritime court and regular training of judges to navigate the complexities of piracy cases in Nigeria. This will promote sustainable adherence to international law regime for suppressing piracy in Nigeria. Also, it will create a conducive environment to coordinate antipiracy programmes and measures among the Gulf of Guinea countries since Nigeria is the only county in the region that has domesticated the LOSC Convention.

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