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THE MARITIME CRIMINAL JURISDICTION OF STATES OVER MARITIME OFFENCES IN THE GULF OF GUINEA: CHALLENGES AND PROSPECTS FOR REGIONAL COOPERATION

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Abstract:

The Gulf of Guinea has become one of the world's most vulnerable maritime regions, facing persistent threats from piracy, armed robbery at sea, illegal, unreported and unregulated fishing, trafficking in persons, drug trafficking, illicit arms smuggling, and other forms of transnational organized crime. These offences undermine maritime security, disrupt international trade, threaten the sustainable exploitation of marine resources, and impede regional economic integration. Although international legal instruments, particularly the United Nations Convention on the Law of the Sea (UNCLOS), establish the legal framework governing maritime jurisdiction, the effective exercise of maritime criminal jurisdiction by Gulf of Guinea States remains constrained by fragmented domestic legislation, overlapping jurisdictional claims, limited institutional capacity, weak enforcement mechanisms, and insufficient regional cooperation. This article critically examines the maritime criminal jurisdiction of States over maritime offences in the Gulf of Guinea. Using a doctrinal research methodology complemented by an analysis of relevant international and regional legal instruments, judicial practice, and scholarly literature, the article argues that effective maritime criminal jurisdiction requires harmonised domestic legislation, strengthened judicial cooperation, enhanced maritime law enforcement capacity, and greater political commitment to regional collaboration. It concludes that a coherent and integrated regional approach to maritime criminal jurisdiction is indispensable for combating maritime crime, safeguarding maritime commerce, promoting the rule of law, and advancing peace, security, and sustainable regional integration within the Gulf of Guinea.

1.0. INTRODUCTION

The Gulf of Guinea has emerged as one of the world's most strategically important maritime regions, serving as a vital artery for international trade, energy transportation, fisheries, and regional economic development. Stretching along the West and Central African coastline, the region is endowed with abundant natural resources, including significant offshore oil and gas reserves, making it indispensable to both regional economies and global markets. However, its strategic importance has also rendered it increasingly vulnerable to a broad spectrum of maritime crimes, including piracy, armed robbery at sea, illegal, unreported and unregulated fishing, trafficking in persons, drug trafficking, illicit arms smuggling, marine environmental offences, and other transnational organized crimes. These threats undermine maritime security, weaken state authority, disrupt commercial shipping, and impede the sustainable development of the blue economy.

Against this backdrop, this article examines the maritime criminal jurisdiction of States over maritime offences in the Gulf of Guinea, with particular emphasis on the legal, and operational challenges confronting the exercise of such jurisdiction. It further evaluates the extent to which enhanced regional cooperation and legal harmonization can strengthen maritime law enforcement and promote regional integration. The article argues that an effective and coordinated framework for exercising maritime criminal jurisdiction is indispensable not only for combating maritime crime but also for fostering maritime governance, economic integration, the rule of law, and sustainable peace and security across the Gulf of Guinea. By proposing reforms aimed at harmonizing legal

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frameworks, strengthening institutional cooperation, and enhancing regional judicial collaboration, the article contributes to ongoing scholarly and policy debates on maritime security and regional integration in Africa.

1.1. THE CONCEPT OF JURISDICTION IN INTERNATIONAL LAW OF THE SEA

This concept presupposes that a state has legal authority over people, vessels and activities at sea. It balances coastal state sovereignty with the freedom of the high sea, largely codified in the 1982 United Nations Convention of the Laws of the Sea. UNCLOS divides the ocean into maritime zones. In the territorial sea, up to 12 nautical miles from the baselines, coastal states exercise full sovereignty, subject to the right of innocent passage for foreign ships. Jurisdiction here is both territorial and prescriptive; the coastal state can legislate and enforce its criminal, customs and environmental laws.

Beyond that, in the contiguous zone to 24 nautical miles and the Exclusive Economic Zone 200 Nautical Miles jurisdiction is functional. Coastal states have sovereign right over resources but not sovereignty. Flag state jurisdiction dominates on the high sea; a ship is generally subject only to the laws of the state whose flag it flies, ensuring order where no state has territory.

1.1.1. The Criminal Jurisdiction of the Coastal State

The notion of Criminal jurisdiction refers to the conducting of criminal investigation and arresting of persons with the intention of investigating and prosecuting them before the competent law court. International law permits a state to invoke its jurisdiction and apply its domestic laws and enforce sanction for criminal conduct in a plethora of circumstances. We have instances like when a criminal conduct occurs within the state, another instance is where one of their citizens is involved in the crime, or where the conduct is so heinous and so widely condemned that all nations proscribe and punish its occurrence and finally where the criminal conduct has a significantly adverse impact on its national security.

UNCLOS prescribes circumstances where criminal jurisdiction should be exercised to include: 1. if the crime was committed on board the ship during its passage in the territorial waters and if it is of a nature to disturb the peace and good order of the coastal State; 2. if the assistance of the local authorities has been requested by the master of the vessel or a diplomatic agent of the flag State; or 3. if the crime is the illicit trafficking of narcotic drugs or psychotropic substances.[1] However, the coastal State is not permitted to take actions if the vessel is only passing through the territorial sea without entering internal waters and the crime was committed before the vessel entered its territorial sea.

But the coastal state can assume jurisdiction if the master of the vessel so request. It shall equally have jurisdiction if she notifies a diplomatic agent or consular officer of the flag state before taking any step. The coastal State has the same criminal jurisdiction over government vessels operating for commercial purposes. Under UNCLOS[2], the coastal State can arrest a foreign vessel that has infringed upon its local laws. While under the same Article, the coastal State cannot take conservatory or executionary measures against a foreign vessel in passage in its territorial sea, it could do so "in respect of obligations or liabilities assumed or incurred by the ship itself in the course of or for the purpose of its voyage through the waters of the coastal State," or against a foreign ship lying in the territorial sea or passing through it after leaving the internal waters of the coastal State.

The right to arrest a vessel in its territorial sea also gives the coastal State the right of hot pursuit of a vessel that flees toward the high seas if the pursuit started in the territorial sea. A good example of the coastal State asserting criminal jurisdiction can be found in the case of *Sissou V. Ruby*[3] otherwise known as the *Mc Ruby* case. In that case, nine stowaways who boarded the Mc Ruby vessel registered in the Bahamas during a stop in Ghana were discovered while on the high seas by the crew members of the Mc Ruby. Not wanting to bring the stowaways back to Ghana, the Ukrainian crew decided to make them disappear by savagely killing them and throwing their bodies overboard. However, one of the stowaways succeeded in hiding and was able to go to the police upon arrival in Le Havre, France. The French court based its finding of jurisdiction on two grounds. First, part of the crime had been committed in the territorial waters of France. Indeed, when the Mc Ruby entered the French territorial sea, the crew members were still searching for the last survivor. The court found that these searches were subsequent to the sequestrations and executions, and all the facts constituted an indivisible whole. It is common practice in France for the courts to hear matters concerning acts committed outside the country by foreigners if the acts are indivisible and part of them are undertaken on French territory. The second ground used by the French court was Article 101 of the UNCLOS regarding the universal competence in cases of piracy, which seems to be an erroneous qualification.

[1] *Article 27 of* UNCLOS.
[2] Article 28
[3] (1990) 497 U.S 358

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According to the UNCLOS[4], the general freedom of the high seas include, *inter alia,* the freedom of navigation and over flight, as well as the freedom to lay submarine cables and pipelines, to construct artificial islands and other installations permitted under international law, to fish, and to engage in marine scientific research. After stating that all States should exercise these freedoms with due regard to the rights of others, UNCLOS reminds us that the high seas shall be reserved for peaceful purposes and under no circumstances should a state subject the high seas to its sovereignty and ownership[5]. This is a clear indication that when it comes to ownership over the high seas, no States have the exclusive right to claim sovereignty over the activities of the high seas as the high seas will never be owned by any States, so in this regard, no State has that right in restricting another States in carrying out activities on the high seas.

Exercising exclusive jurisdiction by a State on the activities of the High Seas will constitutes a gross violation of the law of the seas which frowns on such activities. But the question one need to be posing here is in questioning the situation of navigation of State flag on the territorial waters, whether this principle of universal jurisdiction is still of relevant application. If by the application of the principle of universal jurisdiction every state has the power to amend any offender within its jurisdiction for trial, why is it that the offence of piracy is still on the rise despite the fact that all the states have the powers to arrest this unpleasantness.

1.1.2. The Flag State Criminal Jurisdiction

The freedom of navigation in the high sea is as old as age itself and cannot be compromised under any circumstances when issues of the territorial waters is of necessity. Truly as stated under the UNCLOS and international law that, every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas [6].The fundamental principle remains that a flag State has exclusive jurisdiction over the vessels flying its flag. This is really a great and wonderful principle of the waters, but the situation remains cumbersome and frustrating as we can still question the nationality of the States carrying the flag.

This rule will always remain as provided in the provision of Section 90 to 92 that a State can only claim jurisdiction over the territorial waters, when each vessel is having just one nationality, and each State has to determine how it will determine its nationality to a vessel.[7] For example, a State must effectively exercise jurisdiction and control over vessels flying its flag; it must maintain a register of ships containing all particulars; it shall assume jurisdiction under its internal law over each vessel and its Master, officers and crew members; it must take measures to ensure safety at sea with regard to the construction, equipment and seaworthiness of the ship, the manning of the vessel and labour conditions, the use of signals, the maintenance of communication and the prevention of collision. In doing so, the State must conform to generally accept international regulations, procedures, and practices.[8]

The condition to fly the flag of a state are well catalogued in the International Tribunal for the Laws of the Sea (ITLOS) confirmed in the judgment in *Saint Vincent and the Grenadines V. Guinea*[9] where it was held that it is a matter for each state to determine, UNCLOS gives each state the exclusive jurisdiction over the granting of its nationality to ship.

1.2. THE LEGAL FRAMEWORK FOR THE PROSECUTION OF MARITIME OFFENCES

Maritime offences are a continuing international problem and hence disrupt shipping lanes, the world economy and the safety and security of crewmen and ship owners. It is reported that in the first nine months of 2009, there were 294 reported pirate attacks from all over the world. These attacks included 39 successful hijacking and 559 hostages. [10]Threats emanating from the maritime domain affect all nations and require collective efforts to counter them effectively. It is worth to note that all nations have an interest in the development and maintenance of global security, stability, and collective economic prosperity, and these depend on maintaining order throughout the vast ocean space. States are thus duty bound to collaborate to better protect sea lines of communication, facilitate and protect global commerce and global supply chain security, ensure the safety of commercial mariners and cruise ships, address illegal, unreported and unregulated fishing[11], and maintain a lawful order of the oceans.

As the world's national economies become ever more closely integrated, nations are bound to collaborate with the sole intention to secure the sea for the harmonious use by all. There exist a number of international treaties

[4]Article 87
[5] UNCLOS, article 89.
[6]Article 90 of the UNCLOS
[7]Article 91 of the UNCLOS
[8]Article 94 of the UNCLOS
[9]Saint Vincent and the Grenadines V. Guinea [1 July 1999] 36,[63]
[10]D. Chang, "Piracy Laws and the Effective Prosecution of Pirates" *Boston College International and Comparative Law Review*, vol. 33 issue 2 (2010), 273- 288 @ 273
[11] Herein refer to as IUU in maritime understanding

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and entities that promote and enhanced maritime security cooperation, and foremost among these are the United Nations Convention on the Law of the Sea[12] and the International Maritime Organization[13].

The Convention has contributed directly to international peace and security by replacing abundant conflicting claims with globally agreed limits on the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf.

The interest of the world community in freedom of navigation and over flight has been preserved by the delicate compromises reflected in the convention, including on the status of the exclusive economic zone, the regime of innocent passage through the territorial sea, the regime of transit passage through straits used for international navigation, and the regime of archipelagic sea lanes passage. The convention also contributes to the peaceful settlement of disputes between states by offering a system of dispute settlement.

It is worth to note that some of the rules applicable are universal and hence apply to all states, while some are regional and in consequence apply to a particular geographical region, some are bilateral and apply to the 2 states that have agreed to the rules.[14] It is of particular necessity for states to know how to regulate their activities at sea with one another, control the resources of the ocean as well as manage crimes committed at sea. In this section we are going to examine the legal and institutional framework put in place by the Gulf of Guinea states for the prosecution of maritime crimes.

As to the international conventions, we are going to start by examining amongst others two most important conventions relating to the subject matter. The two conventions to be examined are the United Nations Convention of the laws of the sea as well as the convention for the suppression of unlawful acts against the safety of maritime navigation.

1.2.1. International Conventions

Within international law, there is a sacrosanct principle that each state has universal jurisdiction to prosecute pirates in particular, however, we see pirates being released shortly after their capture due to the lax domestic laws that do not adequately punish the offenders or due to a state unwillingness to prosecute the offender for various political reasons.[15]The international conventions if properly applicable will assuage the loopholes raised. The international conventions will be examined at how relevant they are for the prosecution of maritime crimes. We shall dwell on the relevant jurisdictional bases, substantive criminal norm as well the duties of state parties to prosecute persons involved in the commission of maritime crimes.

1.2.1.1. United Nations Convention of the Law of the Sea

This convention is otherwise referred to as the UNCLOS, some regard same as the constitution of the ocean. It touches essentially on the rules governing relationship at sea as well as the jurisdictional aspect. This convention was entered into force on the 16 November 1994 and has a total of above 169 state parties. it is imperative to equally mention that amongst the state parties to the said convention, all the member states of the Gulf of Guinea are signatories to the said convention.[16]The convention pays specific attention to the offence of piracy due to its universal jurisdiction characteristics. All states are bound to prosecute the offence of piracy whenever and wherever it occurs.[17]The question now may arise, what becomes of states that have not ratified the said convention? The UNCLOS codified the customary international law on piracy in articles 100-107 and bearing in mind that the UNCLOS is a codification of customary international law, it is binding on every state including non-parties to the convention. Any attempt to prosecute the offence of piracy means the prosecuting state must ensure that the actus reus and mens rea. The actus reus of the offence are well captured in the UNCLOS in section 101.[18]The same position applies to other offences

[12] The UNCLOS is considered as the main governing maritime issues on the international law. Some regard it as the constitution of the sea.

[13] This is the main maritime body in the world with a universal jurisdiction in handling disputes that arises from maritime prosecution

[14] United Nations office of Drugs and Crime, Maritime Crime: A manual for Criminal Justice Practitioners, (Vienna) (2019)

[15] D. Chang, "Piracy Laws and the Effective Prosecution of Pirates" *Boston College International and Comparative Law Review*, vol. 33 issue 2 (2010), 273- 288 @ 274

[16] United Nations, Treaty Collection report, (August 2023)

[17] S.L. Hodgkinson, "The governing International Law on Piracy in Prosecuting Maritime Piracy: Domestic Solutions to International Crimes", *Cambridge University Press*, (2015), 17

[18] "(a) Any illegal act 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 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

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associated with crime at sea. The UNCLOS[19] goes by allowing any state to visit, search, seize and arrest suspected pirates' ships or a ship taken over by pirates including the pirates. The convention further allows the court of the arresting state to decide on the penalty to be imposed. Hence the arresting state is bound to apply its domestic laws with the intention of prosecuting the said offender.

1.2.1.2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

This convention came in fill the lacunae identified in the UNCLOS concerning the 1985 hijacking of the Achille Lauro by extremist in the Mediterranean Sea.[20] One of the most dramatic acts of maritime terrorism to instigate an international legal response was the 1985 hijacking of the Achille Lauro.Austria, Egypt and Italy proposed the adoption of a treaty under the auspices of the IMO to set forth a comprehensive requirements for the suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives; jeopardize the safety of persons and property; seriously affect the operation of maritime services and thus are a great concern to the international community as a whole.[21]These efforts led to the adoption of the 1988 SUA Convention. This convention, otherwise known as the SUA convention was adopted on 10 March 1988 and entered into force on 1 March 1992. The convention does not reflect customary international law, thus a state must be a party to this convention to apply same.[22] The convention has above 176 member states of which 14 of the GoG states are state parties.[23] The convention has as objective to ensure that appropriate action is taken against persons committing unlawful acts against ships; such as seizure of ships by force, act of violence against person onboard a ship as well as the placing of devices onboard a ship that is likely to damage or destroy it. This convention was later on the 14 October 2005 subject to an amendment otherwise referred to as the SUA protocol. This protocol extended the list of offences in the SUA convention by including maritime terrorism, nonproliferation offences, and the offence of transporting a person evading criminal prosecution for breaching the SUA convention. The SUA convention extended the scope of prosecution of piratical activities. Under the UNCLOS piracy can only take place in the high sea and the EEZ, such limitation are not found in the SUA convention, it applies to all cases of navigation in any water as much as it is not limited to the territorial waters or internal water of a single state. According to article 4(2) of the SUA convention, it expanded the geographical scope of the UNCLOS by allowing any state party in whose territorial water an offender is found to assume jurisdiction over a SUA offence.

Attempt or complicity of the offences found under the aforementioned section was also identified as offences within the 1988 SUA Convention.[24] State parties were required to take the necessary measures to be able to exercise jurisdiction over these offences.[25]A glean perusal at the provision of article 6 (1)(2) of the SUA Convention allows state parties that have a connection with the crime committed to assume jurisdiction. States equally have to mandate to assume jurisdiction irrespective of whether it has any link with the crime committed or not, this could be a scenario where the allege offender is present in its territory and is not extradited. This is the preview of article 6 (4) of the SUA Convention. Thus all states that have establish jurisdiction have an obligation to prosecute the allege offender while the capturing state that cannot assume jurisdiction has the duty to extradite the allege offender to a state that has successfully established jurisdiction.[26]From the above one issue stands out very clear that states have the obligation and duty to prosecute offenders as per the SUA Convention, this would help to attenuate any lousy imagination from a third party state

aircraft; any act of inciting or of intentionally facilitating an act described in sub paragraph a or b "

[19]Articles 105, 107 and 110 of the UNCLOS

[20]The Achille Lauro was an Italian flag cruise that was operating in Egypt territorial water when it was attacked by members of the Palestine Liberation organization who boarded the ship as tourist and later hijacked the ship with demands for Israel to release 50 Palestinians that were being held in jails in Israel. They took hostages from the Achille Lauro as leverage and sailed to Syria. When Syria refused them entry, they killed one of the passengers. They were eventually captured and brought to trial in Italy where they were convicted of terrorism offences. The event was considered to fall outside the international law definition of piracy necessitating the need for the development of an instrument that could address unlawful acts that threatened navigation and activities at sea.

[21]N. Klein, *Maritime Security and the Law of the Sea*, Oxford University Press, 2010, 140-158 at 152

[22]S.L. Hodgkinson, "The governing International Law on Piracy in Prosecuting Maritime Piracy: Domestic Solutions to International Crimes", *Cambridge University Press*, (2015), 31

[23]IMO publication, status of conventions https://www.imo.org/en/About/Convention/pages/SUA-Treaties.aspx lastly visited on the 28th July 2024

[24]Article 3(2) of the 1988 SUA Convention

[25]Article 6 of the SUA Convention

[26] D. Chang, "Piracy Laws and the Effective Prosecution of Pirates" *Boston College International and Comparative Law Review*, 33 No.2 (2010), 275

to release the allege offender.

One of the primary limitations of the SUA Convention was that it failed to grant states any right to exercise enforcement jurisdiction in the prevention and suppression of the offences mentioned in the convention. Article 9 of the SUA Convention is to the effect that no state has the right of visit and search of vessels exercising free passage on the high seas in a situation of non-belligerency. This in essence means that the prevention and suppression of the offences mentioned in the convention are limited to requirements to cooperate in the prevention of potential offences and the exchange of information.[27] Article 14 of the SUA Convention merely calls on states to use all practical measures to prevent the preparation for or commission of an offence without providing any clarity as to what these measures should entail. It has been suggested that the requirement to take preventive measures and to prosecute or extradite offenders imply an obligation to respond to terrorist acts as they take place.[28]States do hold a duty to each other to prevent any terrorist attack, but this duty extends only as far as the state means practically allows.[29]

1.2.2. Regional Legal Framework

At the regional level we are going to examine principally two instruments, the Yaoundé code of conduct as well as the CEMAC Merchant Shipping Code. While the former is applicable within the entire GoG sub region, the latter is not applicable to all the countries that make up the GoG. For instance, Nigeria being a member of the GoG is not subject to the Cemac Merchant Shipping Code.

1.2.2.1. Code of Conduct Concerning the Repression of Piracy, Armed Robbery against the Ships and Illicit Maritime Activities in West and Central Africa.

In the recent years it is a normalcy for states within a particular region to enter into arrangement to deal with related maritime issues in a way that would be particularly useful to the entire sub region. A glean perusal at the provisions of article 100 of the UNCLOS and article 13 of the SUA Convention, it encourages state parties to cooperate in repressing offences. This cooperation was equally reechoed by the United Nations Security Council (UNSC) in its resolution 2018 and 2039 of October 2011 and February 2012 respectively. The resolution encouraged state of the Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS) and GoG states to cooperate in coordinating efforts at the regional level to counter piracy and armed robbery against ships and to ensure that persons involved in the crime are prosecuted and convicted if found guilty in strict compliance with the principles of international laws.

As a result of the adoption of the two UNSC resolutions 25 west and central African countries came together in 2013 to sign the code of conduct concerning the repression of piracy, armed robbery against ship and the illicit maritime activities in west and central Africa. It is otherwise known as the Yaoundé Code of Conduct.

The Yaoundé code of conduct covers a wide range of transnational organized crimes including piracy and armed robbery at sea.[30] The code of conduct went ahead to define piracy and armed robbery at sea. The definition of piracy is found in its article 3 and a glance as it shows that it is a replication of what is inscribed in the UNCLOS. insofar as the definition of armed robbery at sea is concerned, the Yaoundé Code of Conduct adopted its own definition by drawing inspiration from the IMO code of practice for the investigation of crimes and armed robbery against the ship. Article 1 (4) of the Yaoundé Code of conduct define same.[31]

By that definition, it encompasses acts against ships committed within the jurisdiction of a state thereby ensuring that signatories exercise jurisdiction over such acts in their territories. The Yaoundé code of conduct equally provides measures to repress piracy and armed robbery at sea. Article 6 of the Yaoundé Code of Code provides that signatories states have to cooperate to the fullest to arrest, investigate and prosecute persons that have committed piracy or are suspected of haven committed the offence of piracy.[32] The code further accorded specific provision relating to the sovereignty of

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[27]Articles 13 and 14 of the SUA Convention

[28] N. Klein, *Maritime Security and the Law of the Sea*, Oxford University Press, 2010, 140-158 at 154

[29]J.S.Mellor, "Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism",*American University International Law Review 18 No.2* (2002) 341-397, 373

[30]Article 5 of the Yaounde Code of Conduct.

[31]The Yaounde Code of Conduct defines armed robbery at sea

a) any unlawful act of violence and detention or any act of depredation or threat thereof, other than any 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 internal water, archipelagic water or territorial sea
b) any act of inciting or of intentionally facilitating an act described in sub paragraph (a)

[32]Article 6 (1) a of the Yaounde Code of Coduct

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states and the extent within which signatory's state may exercise jurisdiction on piracy. The afore, cited provision empowers signatory states to rescue ships, persons and property that are subject to piracy.[33] It empowers signatory states to seize pirate ships beyond the outer limit of any state territorial waters, arrest the person and seize the property onboard the ship.[34] It is important to note that in the event of pursuit of a ship suspected to be involved in piracy, such pursuit shall not proceed into the territorial water of any coastal state without the permission of that state.[35] It is our contention that article 6 (3) of the Yaoundé Code of Conduct provides a condition sine qua non for a signatory state to go beyond its territorial limit and arrest and seize property on board the ship, it is that of obtaining permission for the coastal state before entering the coastal state to effect the said arrest. The question that comes to mind is how is such permission sought? This issue of permission rather helps to make the fight against maritime offences practically impossible because before such permission is sought the pirates must have safely escape arrest.

The Yaoundé Code of Conduct equally recognizes the principle of universal jurisdiction and courts of signatory states are empowered to carry out seizure of pirate ships and decide on that appropriate penalty and action to be taken in respect of the property seized.[36] The punishment to be meted is left at the discretion of the signatory state to decide but such punishment must be consistent with international law standard. Apart from piracy, article 7 of the Yaoundé Code of Conduct provides measures to repress armed robbery at sea.
A glean perusal at article 13(b)[37] of the Yaoundé Code of Conduct permits the signatory state to obtain leave from another signatory state to help in the arrest of a pirate ship or persons if they have reasonable ground to believe that the vessel is involved in either piracy or armed robbery at sea. This provision of the Yaoundé code of conduct should be applauded because there are situation where an offending vessel can be pursued and it escapes to another jurisdiction; the pursing vessel has no jurisdiction to violate the territorial space of another jurisdiction to effect the said arrest. But with this law it permits the signatory state where the vessel escapes into to arrest and prosecute the persons involved. It thus behooves on state parties to develop guidelines that will assist them in the exercise of jurisdiction, investigation and even prosecution of offenders, this explains why the code recommended that signatory states should domesticate same into their national law to ensure effective prosecution of maritime offenders, but again the code has some short coming as it does not impose any duty of compliance by the parties. This is clearly set out in Article 19[38]of the Yaoundé Code of Conduct. Despite the fact that some states have not domesticated same thus making its implementation difficult, this is not the situation in a monist state such as Cameroon who under its constitutional requirement[39]clearly states that duly ratified treaties takes precedence over national legislation. Per the provision of article 45 of the constitution, all treaties and conventions are incorporated automatically into the domestic laws of the state without the need for the promulgation of any specific national legislation to implement them.[40] But this becomes quite challenging for signatory states that operate a dualist system where the domestication of the treaty is required in their national law. It is worth to note that Nigeria operates but a dualist system and the constitution of the country provides that "no treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the national assembly".[41]

1.2.2.2. CEMAC Merchant Shipping Code 2012

Maritime transportation plays a major role to actualize the objective of any investor and intends contribute immensely to economic growth. There was thus the need to put in place rules and regulation to govern this sector of human activity and to protect their common interest within the sub Region. Thus, countries of the Central African sub Region came together under the umbrella of Communaute Economique et Monetaire des Etats de L'Afrique Central (CEMAC) to put in place laws to enhance maritime transport.[42] The regional integration process in Central Africa began in 1964 with the creation of the Customs and Economic Union of Central Africa (UDEAC),[43] four years after independence of many African states. By creating UDEAC in 1964, the head of state and

[33]Article 6 (1) c of the Yaoundé Code of Conduct
[34]Article 6(2) of the Yaoundé Code of Conduct
[35]Article 6(3) of the Yaoundé Code of Conduct
[36]Article 6 (4) of the Yaoundé Code of Conduct
[37]Article 13(b) of the Yaounde Code of Conduct
[38]Article 19 of the Yaounde Code of Conduct
[39]Article 45 of the 1996 constitution as amended
[40]E. Egede, "Gulf of Guinea and Maritime Security: Musing on some implications of applicable legal instruments" *Brooklyn Journal of International Law,* (2021), 396-397, 398
[41]Section 12(1) of the constitution of the Federal Republic of Nigeria 1999
[42]M.L. Formbasso, "The Law and Practice of Maritime Transportation with the CEMAC Zone: The Case of Cameroon", unpublished Ph.D. Thesis, University of Buea, 2015, p. 1
[43] Treaty establishing a central African economic and customs union, 8 December 1964, (1965) 4 ILM 699 (entered into force on January 1, 1966)(UDEAC Treaty)

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government committed themselves in establishing a closer union between their people to strengthen regional solidarity and promote the gradual creation of common market for Africa.[44]

As a result, the principal goal of UDEAC was the diminution of tariffs. According to article 30 of the UDEAC Treaty the common customs and fiscal import tariffs should have been put into place simultaneously in the five UDEAC states no later than 1st January 1966. After thirty years of existence that is from 1964 to 1994 the UDEAC could not achieve these goals. For this reason, it was replaced in March 1994 by the CEMAC, which had the objective of completing the process of economic and monetary integration of Central Africa in the CEMAC zone. Mindful of this approach of integration proposed by the UDEAC, and determined to continue the work accomplished within the framework of the treaty of 16 March 1994 instituting the CEMAC, the CEMAC head of states set a number of objectives to be achieved within the framework of the revised treaty of the CEMAC of 2008 and its subsequent texts.[45]

The creation of the CEMAC brought about the need for its members states to abolish discrimination of trade and coordinate monetary and economic policies as a means of promoting economic growth, increasing trade, foreign investments and political and socio-economic development. Its ultimate aim was to create an economic union like the European Union (E.U), with a free trade area, a customs union and a common market and the success of this integration is highly dependent on the convergence of macroeconomic policies between members' states.[46]

The code was adopted in Brazzaville (Congo) on the 22nd July 2012 through Act No. 08/12-UEAC O88-23. This code then repeals the 2001 code. The code became applicable immediately by virtue of article 798(3). It is directly applicable and binding on all member states not withstanding any conflicting provision of national laws. A glean perusal at the CEMAC Marine Merchant Code, its Article 798 forms part of the domestic law, whose provisions on the prosecution of maritime offenders. Unlike the other legal instrument aforementioned wherein the implementation of same is limited to the signatory states. Article 736[47] of the Cemac Merchant Shipping Code 2012, person subjected to the code are all persons of whatever nationality, registered on the crew role of the ship of a member state and from their day of boarding to their day of landing. The code goes further through article 736(c) to subject persons of all nationality who though not present on board but have committed one of the offences provided in the code.

Article 755 goes further to categorize the offences that would automatically fall under the maritime criminal jurisdiction. They include infringement of rules relating to the safety of navigation and safeguarding the human life at sea, breaches of maritime labour rules, infringement of the rules for the prevention of maritime pollution, infringement of the rules of lodging and hygiene on board ships, the illicit transportation of minor children, piracy and other illegal acts at sea. Article 758 comes in to refer to domesticated laws or national legislation as far as the penalties is concerned. This would definitely vary from state to state. Unlike the other code which prescribe the substantive aspect, the Cemac Merchant Shipping Code goes ahead to provide the procedure aspect. A point of reference is article 759 which gives the persons identified to initiate complaint. It could either be the judicial police officer, by administrators of maritime affairs, officers, and naval officers in charge of vessels or boats of each state, maritime and labor navigation inspectors, gendarmes, custom officers, and other duly authorized officials. Captains of ships have the mandate to lodge complaint.

The captain of the vessel who conducts a preliminary investigation to ascertain if it's an offences or a disciplinary issue, in the case of the former is bound to seize the public prosecutor.[48]Where the offender is less than 18 years of age, the competent maritime authority has to seize the public prosecutor of the court of where the minor is resident who will take the appropriate measures as to the law applicable to juvenile offenders.[49] If the maritime vessel is berth in a port of a member state whose flag it flies, the captain is duty bound to keep the suspect on board and subsequently hand him to the

[44] J.M Kobila and L.D. Sokeng, « La CEMAC : à la Recherche d'une Nouvelle Dynamique de L'intégration en Afrique Centrale », *African Year book of international Law (1998) 69*

[45]G.M. Nono, "Integration efforts in Central Africa: The case of CEMAC", *United Nations University- Institute of Comparative Integration Studies*, (2014) 1-15, at P. 8

[46]According to the UNECA, the misalignment of tariffs, inflation rates, exchange rates, debt to GDP ratios, rate of money growth and other vital macroeconomic variables between members' countries would be disruptive to economic integration. In addition, this misalignment could lead to rent-seeking activities by governments and private individuals that could stifle legitimate investment opportunities. See UNECA (2008) Assessing Regional Integration in Africa III: Towards Monetary and Financial Integration in Africa, Addis Ababa: African Union P.2 (accessed on January 4, 2024), (available at: http//www.uneca.org)

[47]Article 736 of the Cemac Merchant Shipping Code 2012

[48]Article 762(1) of the Cemac Merchant Shipping Code

[49]Article 762(2) of the Cemac Merchant Shipping Code

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competent maritime authority.[50] But where the ship is not berth in a port of a member state whose flag it flies, the consul operating in the first berthed port may after provisional confinement takes measures to ensure his repatriation to the port of his country.[51]

It is the responsibility of every competent state counsel to initiate criminal proceedings. If the offence is either a simple offence or a misdemeanor, the legal department shall initiate proceeding based on the report made by the competent maritime authority within a period of 10 days. The code goes as far as defining as to what constitutes a maritime offence.

Apart from the international and regional legislation, they also include local legislation such as the penal code, criminal procedure code of member state.

This CEMAC Merchant Shipping code gives effect to the relevant provisions to the United Nations Convention of the Laws of the Sea as well as the SUA Convention and its protocol. The code definition of piracy is quite similar to article 101 of the UNCLOS. just like the SUA Convention, the Cemac code makes it possible to prosecute armed robbery at sea committed within the state jurisdiction.

1.2.2.3. The African Charter on Maritime Security and Safety and Development in Africa (Lome Charter)

Despite the fact that there has been extensive development in the road and air transportation sector, the sea still play an active part in international trade. According to the United NationConference on Trade and Development (UNCTAD), 80% of goods traded worldwide are carried by sea and as per the UNCTAD review on Maritime Transport 2020, the volume of seaborne trade for 2019 reached 11.08 billion tons.[52] Maritime piracy and other crimes associated to the sea became a threat to the peaceful enjoyment of the sea. In order to fight against this mayhem, the international community took steps to attenuate same. The international Community began by setting up the IMO, the UNCLOS, the SOLAS and the SUA Convention, despite the putting into place of this legal and institutional framework the number of illegal activities has been on the rise.[53]

On the 5 February 2019, discussion was held in the United Nations Security Council (UNSC) which focused on the illegal maritime activities in the GoG and how they posed a danger on the region.[54] As a result of this security threat, in 2016, the African Union (A.U) adopted the African Charter on Maritime Security and Safety and Development in Africa. The charter has as objective to create a serene maritime environment which would be beneficial to the maritime community. The Lomé charter is made up of 56 articles. This charter begins by defining some maritime offences such as armed robbery at sea as 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, in an area falling within the jurisdiction of a state.[55]The Lomé Charter has as objective to prevent and suppress national and transnational crimes including terrorism, piracy, armed robbery against ships, drug trafficking, smuggling of migrants, trafficking in persons and all other kinds of trafficking transiting the sea and Illegal, Unreported, and Unregulated (IUU) fishing. Apart from the above the charter has as objective to protect the environment in general and the marine environment, it promotes a flourishing and sustainable blue/ocean economy, it promotes and enhance cooperation in the field of maritime domain awareness, prevention by early warning and fight against piracy, armed robbery against ships, illicit trafficking of all kinds, the pollution of the seas, cross border crime, international terrorism and the proliferation of small arms and light weapons. It establishes appropriate national, regional and continental institutions and ensures the implementation of appropriate policies likely to promote safety and security at sea.[56]

One thing that is so peculiar with the Lomé Charter is that unlike the other conventions which attaches more weight to activities on the high sea, the Lomé Charter recognizes that the source of maritime insecurity emanate not from the sea but on land and proposes that states should adopt measures on land that will counter illegal activities at sea.[57]

Article 6 of the Lomé Charter urges states to organize its action at sea and to develop its capacity to protect its maritime area and provide assistance to other states parties, they equally have the duty to strengthen law enforcement at sea, through the training and professionalization of navies, coast guard and agencies responsible for maritime safety and security, custom

[50]Article 762(3) of the Cemac Merchant Shipping Code
[51]Article 762(4) of the Cemac Merchant Shipping Code
[52]M.V. Uppiah, "An examination of the Lomé Charter" *5 Strathmore Law Journal*, (2021), 181-188, 181
[53]ibid
[54]United Nations, "High seas crimes becomes more sophisticated, endangering lives, international security, speakers tell security council " security council 8457th meeting , 5 February 2019
[55]Article 1 of the Lome Charter
[56]Article 3 of the Lomé Charter
[57]Article 5 of the Lomé Charter

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authorities and port authorities. They have the duty to maintain patrols and surveillance. States parties are equally called upon to harmonize its national laws to conform with relevant international legal instruments including UNCLOS, SOLAS and the protocol of the 2005 convention for the suppression of unlawful acts against the safety of maritime navigation of 1 November 2005 and train staff responsible for their implementation, in particular personnel within the justice system.[58]

Despite the steps taken, the charter faces numerous challenges in its implementation, it is a truism that some states are making efforts to implement same but there seems to be roadblocks such as for the charter to be fully implemented across the continent more states have to sign and ratify it, for now only 35 states out of the 55 have signed the Lomé Charter, Cameroon signed same on the 24/01/2017, Angola, Cape Verde, Chad, Ivory Coast, Congo, Democratic Republic of Congo, Gabon, Ghana, Liberia, Nigeria, Sierra Leon on the 15/10/2016 yet only Benin and Togo have ratified same.

1.2.3. National Legal Frameworks

As to the issue of the national framework, the researcher is going to pick two countries that make up the Gulf of Guinea and expound on their national framework. The two countries chosen shall be Nigeria and Cameroon.

Starting with Nigeria, we have the Suppression of Piracy and Other Maritime Offences Act (SPOMO) 2019. This act was enacted by the Nigerian National Assembly in 2019 and signed into law by the president of the Federal Republic of Nigeria on the 24 June 2019.[59] Before the enactment of this law, the Nigerian courts had jurisdiction only to acts committed in its territorial waters and not the high sea. The jurisdiction had its base under the Territorial Waters Act 1998[60] and the Exclusive Economic Zone Act 1998.[61] This is essence means that any act of piracy committed then was not amenable before any court in Nigeria considering the fact that neither did the Territorial Waters Act 1998 nor the Exclusive Economic Zone Act 1998 or any domestic law in Nigeria did define and criminalized piracy and armed robbery at sea.

The coming into place of the Suppression of Piracy and Other Maritime Offences Act 2019 drew inspiration from the United Nations Convention of the Laws of the Sea as well as the SUA Convention and its protocols. The act definition of piracy is quite similar to that provided by section 101 of the laws of the sea convention. The act went further to define maritime offences and unlawful act at sea by incorporating the SUA Convention and its protocols. The act makes it possible to prosecute armed robbery at sea committed within the Nigerian Maritime Zone or Nigerian jurisdiction.[62] The act in its section 22 defines armed robbery at sea to include acts committed with the Nigerian internal waters and territorial waters.
That SPOMO Act goes ahead to grant exclusive jurisdiction to the Federal High Court of Nigeria to hear and determine all matters under the act.[63] The court jurisdiction is limited to try offences that are committed in Nigerian territory including its territorial waters, against a Nigerian flagged vessel, against or onboard a fixed or floating platform in Nigerian continental shelf, against a citizen or by a citizen of Nigeria and in case of piracy against any ship or aircraft outside Nigeria's jurisdiction.[64]

As to the Cameroonian setup, it is worth to note that by virtue of the provision of article 45 of the constitution[65] provides that duly approved or ratified treaties and international agreement shall, following their publication override national laws provided that the other party implements the said treaty. Per the above and unlike the Nigerian setup which would require a legislature to enact appropriate domestic law to provide the legislative framework for the implementation of the treaty. This is not the situation in Cameroon which operates a monist system. There is no need for any domestication for same to be implemented.

It is worth to note that there are two basic theories on the relationship between international law and domestic law. The first doctrine is called the dualist view and assumes that international law and municipal law are two separate legal systems which exist independently of each other. The second doctrine is called the monist view which has a unitary perception of the law and regard both international law and municipal law as forming part of one and the same legal order. This monist approach was formulated by Kelsen[66] who postulated that the ultimate source of validity of all laws derived from the basic rule of international law. Kelsen theory led to the conclusion that all rules of international law were supreme over municipal law, that a municipal law inconsistent with international

[58]Article 8 of the Lomé Charter
[59]Anna Okon, "Buhari signs anti-piracy bill into law," Punch Newspaper, 4 July 2019
[60]Section 2 of the Territorial Waters Act 1998
[61]Section 4 of the Exclusive Economic Zone Act 1998
[62]Section 4 of the SPOMO Act
[63]Section 5 of the SPOMO Act
[64]Section 5(30) of the SPOMO Act
[65]Law No. 96/06 of 18 January 1996 as amended
[66]H. Kelsen, *Principles of international Law,* 2nd edition, New York, Rinhart &Company. Inc, 1952, 1-553,88

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law was automatically null and void and that rules of international law were directly applicable in the domestic spheres of states.[67]

To begin with, we have Decree No. 2016/7 of 12 July 2016 relating to the Cameroonian Penal Code. A glean perusal at the provisions of section 2(1) ascribes that every provision of the criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published. Section 11 of the penal code is to the effect that the criminal law of the republic shall apply to piracy, human trafficking, slave trade or drug trafficking.[68]

Per the monist approach this explains why any international treaty ratified by Cameroon does not need any further domestication or endorsement by parliament for it to be implemented. This is further invigorated by the fact that a duly ratified treaty takes precedence over any domesticated law. Magistrate Akongnda Valery Samandi in the case of The People of Cameroon V. Ashu Lifu Roland Choh[69]presided over in the Court of First Instance Limbe had no difficulty in discharging the accused person on the grounds that the accused person was brought to court under a repealed law. The learned Magistrate based his reason on the fact that CEMAC regulation No. 02/03/CEMAC/UMAC/CM relating to systems, means and incidents of payments is an international treaty and hence repealed the provisions of section 253 of the Penal Code. The learned Magistrate further relied on the case between Mbi Egbe Martin V. The People of Cameroon and Khan Elroy Moses[70] where the learned justices of the North West Court of Appeal held that the republic of Cameroon signed and ratified the CEMAC Treaty which takes precedence over our national laws, consequently section 253 of our penal code is superseded by article 237 of the CEMAC Regulation No. 02/03/CEMA/UMAC/CM relating to systems, means and incident of payment. The aforementioned fact has been clearly stated in article 41 paragraph 2 of the CEMAC revised treaty that CEMAC regulations are obligatory in all their elements and are directly applicable in all member states, and also in article 44 of the said treaty that CEMAC regulations and other adopted texts are applicable in all member states notwithstanding any contrary provision or future national legislation.

As per the provisions of section 11 of the penal code, the criminal law of the republic shall be applicable to mercenary, racial discrimination, piracy, trafficking in persons, slave trade, slavery, trafficking in narcotics, trafficking in toxic waste, money laundering, cyber criminality, corruption and misappropriation of public property committed even outside the territory of the republic.[71] It is glaring that for some of the maritime offences listed above it falls squarely within the jurisdiction and applicability of our Cameroon penal law even if the offence is committed wholly abroad provided he was arrested within the republic of Cameroon and has not been extradited.

Despite the enumeration of these criminal offences, Cameroon is limited to the applicability of the law provided its criminal law is applicable.[72] We know as a matter of law that no foreign criminal law shall have effect in courts of the republic of Cameroon. A glean perusal at the provision of section 11 of the penal code which enumerates a good number of offences such as mercenary, racial discrimination, piracy, trafficking in persons, slave trade, slavery, trafficking in narcotics, trafficking in toxic waste, money laundering, cyber criminality, corruption and offences of misappropriation of public property, yet just a handful of same are mentioned in the penal code. One would have expected the legislator to outline all these offences in the penal code by clearing enumerating the material element for the consummation of the offence, yet just a handful of same is mentioned in the penal code. Majority of the offences which touches on maritime criminal offences are not found in the penal code but in separate legislations which provides a section for penal sanction.

Apart from the penal code which clearly outlines the offences as encapsulated in section 11 of the Cameroonian penal code, there is equally the criminal procedure code which came into force in 2005 following the abrogation of the Criminal Procedure Ordinance which was applicable in Anglophone Cameroon alongside the evidence ordinance cap 62. While in the French Cameroon, what was applicable is the Code d'instruction Criminelle and a host of other legislations. The Criminal Procedure Code thus serve as a uniform applicability within the whole national territory with no exception. This criminal procedure code is a bilingual and a bi jurial one and consists of 747 sections and divided into 6 books,

[67]P. Malanczuk, *Akehurst's Modern Introduction to International Law,* 7th Edition, New York, Routledge, 1997, 1-428, 63
[68]Section 11 of the penal code
[69]The People of Cameroon V. Ashu Lifu Roland Choh, CFIL/308/177DS/MISS/2024 (unreported) delivered on the 26 December 2024
[70]Mbi Egbe Martin V. The People of Cameroon & Khan Elroy Moses in Suit No.BCA/MS/55C/2011 cited at the Sowemac Law Report Vol. 1 at pages 73-87
[71]Section 11 of the Cameroonian penal code.
[72]Section 12 of the Cameroonian penal code

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book 1 deals with the general provisions, book 2 deals with investigation and prosecution of offences, book 3 deals with the trial court, book 4 deals with setting aside of judgment obtained in default of appearance of the accused person, book 5 deals with execution of judgments while book 6 touches on special procedures such as habeas corpus, privileged proceedings and extradition.

The code seeks at encapsulating rules of criminal procedure within the national territory by guaranteeing human rights at all stages of the proceedings, curb judicial delays, speed up execution of judgments and recover fines as soon as judgment is delivered.[73] Despite the fact that this code has being hailed for supporting human rights, there seems to be some violations especially as regard its applicability. A few of such lapses can be examined. One of such is the interpretation that some courts accord to the provision of section 336 of the criminal procedure code. The said section is instructive to the fact that "Notwithstanding the provisions of section 335 the following shall be admissible in evidence (a) any statement made in the course of judicial proceedings by a person who cannot be heard at subsequent proceedings either because he is deceased or because of insufficient time to get him to appear before the court, the excessive expenditure involved or the possibility of finding him (b) statements made in the course of judicial police investigation" with such types of provision in the code, it violates the right of the accused person to cross examination. By failing to cross examine it denies the accused person the opportunity to challenge all the averments found in the statements. Some courts have even gone further to interpret "statements recorded in the course of judicial proceedings to include the entire case file". The above assertion was adopted by Magistrate Mafany Manyi Enanga Epse. Gebah in the case between the People of Cameroon V. Ewi Chi Moses & 2 ors[74] wherein she did not only limit herself to admitting statement recorded in the course of police investigation but went ahead to admit the entire case file in evidence. The Fako High Court in the case of The People of Cameroon & Keagha Gladys V. Wilson Abah Awoh[75]went head to admit a police report of the investigating police officer who was not present during the trial.

The South West Court of Appeal in the case of The People of Cameroon V. Nyuykongi Gilbert Ntasin[76] held that the operative word in section 336 is "statements" and hence only statements recorded in the course of police investigation should be tendered under section 336 of the Criminal Procedure code. The learned Justices in the Fako High Court did not hesitate to tow that line in the case of The People of Cameroon & Camwater V. Nkoa Bidima & 3 others[77] when she admitted just statements recorded in the course of judicial investigation.

Regarding the procedure to be followed, it should be borne in mind that with the exception of minors who are subject to the jurisdiction of the Court of First Instance, the offences contained in the aforementioned law falls squarely under the jurisdiction of the Military Tribunals by virtue of the provisions of section 8 of Law No. 2017/012 of 12 July 2017 to lay down the Code of Military Justice. For close to three hours, the Minister Delegate in charge of defense Joseph Beti Asomo impressed on members of parliament why the said bill should be enacted into law.

Worthy to note that some maritime offences are punishable by that law. The offences include piracy, offences against the safety of navigation and platforms, terrorism at sea, illegal transportation of minors and pollution of water bodies and other water ways. The penalties provided include in principle life imprisonment as well as other accessories provided in the penal code.
As to the procedure involved, per the provisions of section 19 of the Code of Military Justice, matters before the Military Tribunal shall have four modes of commencement.

a) by direct summon of the state prosecutor
b) By committal order of the Examining Magistrate
c) By committal order of the inquiry control chambers of the Supreme Court
d) By interrogation report of the legal department in cases of flagrante delicto

Though it is clearly stated in the Military Code of Justice that appeals against the order of the Examining Magistrate shall be those provided for by the Criminal Procedure Code, there seems to be a travesty of the law as it seems to be completely silence on decisions of the inquiry control chambers of the court of appeal. The inference to be drawn is that appeals from the Examining

[73]S.A. Ewang, *Reading in the Cameroon Criminal Procedure Code*, Yaounde, Presses Universitaires d'afrique, 2007, 1-30 @ 28
[74]The People of Cameroon V. Ewi Chi Moses & 2 ors CFIL/331C/2023 (Unreported)
[75]The People of Cameroon & Keagha Gladys V. Wilson Abah Awoh in HCF/080/CF/2023 (Unreported)
[76]The People of Cameroon V. Nyuykongi Gilbert Ntasin CASWR/57CR/2017 reported in the Sowemac Law Report Vol. 8 at pages 130- 154
[77]The People of Cameroon & Camwater V. Nkoa Bidima & 3 ors in HCF/007C/2020 (Unreported)

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Magistrate are amendable directly to the Supreme Court thereby by passing the inquiry control chambers of the court of appeal.

Despite the fact that some maritime offences fall within the jurisdiction of the Military Tribunal, the said code seems to be silence on the definition of the crimes as well as the material elements of the offences. The code rather concentrates on the definition of military offences, such as desertion within the country in peacetime, desertion abroad in peace time, desertion in wartime, incitement to desertion, abandonment of duty, falling asleep on sentry duty, failure to appear before military court, insubordination, breach of rules, revolt, misconduct towards a superior officer, flag desecration, desecration of a sick or injured serviceman, assault on a superior, misconduct towards a sentry, violence against subordinate, misconduct toward subordinate, sexual harassment, unlawful command etc.

This silence identified above was later cured through a separate instrument which came in specifically to address maritime related offences. Law No. 2022/017 of 27 December 2022 relating to the Suppression of Piracy, Terrorism, and Offences against the Safety of Maritime Navigation and Platforms. This law came in to fill the gap and provides the country with a legal framework for punishing any illegal act perpetrated against the safety of maritime navigation and platforms. This law implemented the relevant provisions of the UNCLOS, including its definition and provisions on piracy, the convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its protocols and the International Convention for the Suppression of the Financing of Terrorism.[78]The law goes as far as to define a ship, piracy and platforms. Section 3 of the said law brings out the material elements as well as the punishment for the offence of piracy. The same scenario applies for offences against the safety of maritime navigation, offences against safety of platforms, acts of terrorism on board ships and platforms, illegal transportation of minors, pollution of water bodies and water ways, unauthorized broadcast and financing.

1.3. THE CHALLENGES FACED BY GULF OF GUINEA STATES IN THE PROSECUTION OF MARITIME CRIMES

1.3.1. Jurisdictional Challenges

It is apparent that crimes that occur in the high sea are susceptible to being reprimanded within the context of being prosecuted within a competent jurisdiction. Be that as it may, the mechanism used in seizing some of these jurisdictions faces some challenges ranging from issues of territorial jurisdiction to flag state jurisdiction and issues of conflict of jurisdiction.

As to the aspect of territorial jurisdiction, there are crimes which are committed in certain areas of the international waters and this may occur in areas where the maritime zones overlap as well as within the EEZ, this thus poses some difficulty to establish which state actually have jurisdiction to investigate and prosecute the offender. This would definitely lead to conflict of jurisdiction wherein there would be conflicting claims between states. This is usually common in offences committed across maritime boundaries or in disputed zones. This conflict as to which state can assert jurisdiction to investigate and prosecute the offender has far reaching consequences on the effectiveness of prosecuting maritime crimes as the offender may end up benefitting from this conflict by escaping from prosecution.

1.3.2. Inadequate training of personnel

States have the sole responsibility of prosecuting maritime crimes based on their municipal laws, it is even shocking that some states do not have any specific legislation as they failed to domesticate same when called upon to do so by the international community. For instance Nigeria only domesticated hers in 2019 through Suppression of Piracy and other Maritime Offences Act 2019 and Cameroon in 2022 with Law No. 2022/017 of 27 December 2022 relating to the Suppression of Piracy, Terrorism and Offences against the Safety of Maritime Navigation and Platforms. As a result of this, there are some technical issues that the judges are not trained for the unique characteristics of these cases and thus lack the experience as many of the presiding magistrates have never faced the prosecution of these crimes before. The 2022 law on piracy and Terrorism in Cameroon gives exclusive jurisdiction to the military tribunal while this local legislation contradicts the provision of article 794 of the Cemac Merchant Shipping Code 2012 which states that offences relating to transmission from the high sea falls within the jurisdiction of the ordinary courts of member states. Offences of such nature falls within the jurisdiction of the military tribunal in Cameroon.

1.3.3. Inadequate prosecutorial capacity and Human Rights Challenges.

The practice of prosecuting alleges pirates and detaining those convicted raises questions of human rights and

[78]Cameroon ratified the international convention for the Suppression of the Financing of Terrorism 1999 on the 6 February 2006.

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humanitarian law issues. When it comes to using force to apprehend the pirates as it has to be proportional to respect due process of law. When apprehended pirates are usually let free instead of being brought to land to be tried and detained. Some countries are avoiding the burden of prosecuting these allege pirates. Many countries still need to implement or update their laws in the context of avoiding human rights breaches. These domestic courts maybe lacking in resources, capacity and laws.

1.3.4. Lack of International and Regional Jurisdiction

There is no specialized regional or international court that has been established for piracy as opposed to international war crimes. In so far as international war crimes exist there is the International Criminal Court (ICC) as well as the specialized regional courts such as the International Criminal Tribunal for Rwanda. The defense that some proponents may raise is that according to article 19 of the Convention on the High Seas 1958 and article 105 of the UNCLOS, every state has the mandate to seize a pirate ship and arrest anyone found therein as well as property in their custody. The argument may go a little but further that by ascribing a universal jurisdiction to pirate offences gives any state the jurisdiction to prosecute offenders. However, it would have been more effective to prosecute piracy in a specialized court which would be established specifically for this purpose. The mere mention of ICC to anyone drives home some degree of fear which automatically serves as a deterrent. This would have been the same situation in piracy related offence and other offences associated to the sea.

1.4. RECOMMENDATIONS

The increasing complexity and transnational character of maritime offences in the Gulf of Guinea require a coordinated legal and institutional response that transcends individual State action. To strengthen the exercise of maritime criminal jurisdiction and promote regional integration, the following recommendations are proposed:

Harmonisation of National Maritime Laws: Gulf of Guinea States should harmonise their domestic maritime and criminal legislation with international legal instruments, particularly the United Nations Convention on the Law of the Sea (UNCLOS), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), and relevant African Union and regional instruments. Uniform legal standards would reduce jurisdictional inconsistencies and facilitate cross-border prosecutions.

Strengthening Regional Judicial Cooperation: States should establish more effective mechanisms for mutual legal assistance, extradition, transfer of criminal proceedings, and recognition of judicial decisions in maritime crime cases. This would prevent offenders from exploiting jurisdictional loopholes and enhance accountability.

Establishment of a Regional Maritime Criminal Tribunal or Specialised Prosecutorial Mechanism: Consideration should be given to creating a specialised regional institution with jurisdiction over serious transnational maritime offences that affect multiple States. Such a mechanism would complement national courts where domestic jurisdiction proves ineffective.

Capacity Building for Maritime Institutions: Governments should invest in continuous training for judges, prosecutors, naval personnel, coast guards, customs officials, and maritime law enforcement agencies on contemporary maritime criminal law, digital evidence, international cooperation, and prosecution of transnational maritime crimes.

Addressing Root Causes of Maritime Crime: Long-term maritime security requires addressing socio-economic drivers of maritime criminality, including unemployment, poverty, youth marginalisation, environmental degradation, illegal exploitation of marine resources, and weak coastal governance. Sustainable development initiatives should therefore complement law enforcement strategies.

Strengthening Regional Integration: ECOWAS, ECCAS, and the Gulf of Guinea Commission should deepen institutional cooperation by developing common maritime security policies, standard operating procedures, and regional prosecution frameworks that facilitate collective responses to maritime offences.

Encouraging Continuous Research and Policy Development: Universities, research institutions, and policy think tanks should undertake interdisciplinary research on emerging maritime threats, evolving jurisdictional challenges, and best practices from other maritime regions. Evidence-based policymaking will enhance the effectiveness of legal and institutional reforms.

In conclusion, strengthening maritime criminal jurisdiction in the Gulf of Guinea requires more than legislative reform; it demands sustained political commitment, institutional capacity, regional solidarity, and effective implementation of international legal standards. A harmonised and cooperative regional framework will not only improve the prosecution of maritime offences but also contribute significantly to maritime governance, economic development, sustainable peace, and regional integration across the Gulf of Guinea.

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