

# MARITIME SECURITY IN THE GULF OF GUINEA: ESTABLISHING LAW, GENERATING ORDER

LISA OTTO<sup>1</sup>

## EXECUTIVE SUMMARY

Maritime security has become a buzzword in recent years as criminal activities at sea threaten a wide range of geostrategic, security and economic imperatives. In few other places in the world is this problem more pointed than in the Gulf of Guinea on Africa's western coast. While countries in the region are receptive to mechanisms promoting co-operation in tackling maritime insecurity, problems are posed by inadequate information around the nature and extent of maritime crime, as well as a dearth of legal instruments to address this activity. This presents an important challenge to evidence-based policymaking, and prevents capacity-constrained countries from using their resources in the most effective way. The impending AU summit on maritime security and safety to be convened in October 2016 in Lomé, Togo, however, provides a unique opportunity to address these obstacles.

## INTRODUCTION

Following the decline of maritime piracy in the Gulf of Aden, attention slowly began shifting towards Africa's other hotspot for maritime crime,<sup>2</sup> the Gulf of Guinea, an area historically troubled by maritime insecurity. Insecurity on land in Nigeria's Niger Delta region has extended into the sea, gradually spilling over into neighbouring countries' maritime zones, which are now considered among the world's most dangerous waters.

## RECOMMENDATIONS

**1** Policymakers at Lomé should legally define the range of maritime crimes in their waters, and subsequently require the criminalisation of these incidents through the development of appropriate national legislation.

**2** The reporting of all incidents should be required of shippers under the charter, so that better data may be available on the extent and nature of maritime crime. This may necessitate an undertaking from states to ease the burden implied by reporting, through swift evidence collection and modern means of involvement, such as testifying via video link.

**3** A more detailed template for reporting should be adopted by the IMB/IMO and reporting bodies at regional and national level.<sup>19</sup> This will improve capacity for generating data that is accurate and statistically significant, in turn allowing for evidence-based policymaking.

The genesis of the commercial exploitation of oil in the region during the 1970s is closely linked to the rise in maritime criminal activity, as the expansion of trade led to an increase in shipping traffic. This in turn meant higher demand for berthing facilities, which regional ports found hard to meet, thus creating opportunities for maritime crime as vessels waited weeks to berth.<sup>3</sup> With illegal oil bunkering on land in Nigeria being a \$7 billion annual industry at current oil prices,<sup>4</sup> it is not surprising that the problem of oil theft occurs at sea too. This has contributed to the prevailing notion that criminal activity in the Gulf of Guinea is predominantly that of 'petro-piracy'. However, available data on maritime criminal incidents does not support this supposition. In fact, 48% of actual incidents in the period 2009 to 2013 can be classified as petty theft from vessels at berth or awaiting berth, while a further 29% of reported crime constituted armed robbery at sea, and 8% involved kidnap for ransom. This data indicates that only 2% of incidents reported over this five-year period could be considered petro-piracy.<sup>5</sup> Meanwhile, reports indicate that kidnap for ransom is on the rise in the Gulf of Guinea, displacing to some degree oil theft activity on the back of lower global oil prices.<sup>6</sup>

This gives some indication that the profile of maritime insecurity in the Gulf of Guinea is more complex than just piracy; indeed, the Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa (more commonly known as the Yaoundé Code of Conduct)<sup>7</sup> indicates that maritime security should be more broadly defined. Those figures also show the dynamism of the criminals themselves – shifting their activities in response to the challenges and opportunities that they face. This raises the question, what is the profile and model of maritime criminal activity in the Gulf of Guinea? Further, how can stakeholders contribute to the achievement of maritime security without a clear understanding of the extent and contours of the problem? These are the questions that this policy briefing aims to address.

## REPORTING AND ITS IMPACT

The greatest challenge to drawing an accurate picture of maritime criminal activity in the Gulf of Guinea is the phenomenon of underreporting. Industry experts and naval officials estimate that anywhere between 30%

and 80% of all incidents may go unreported.<sup>8</sup> Neither shipping companies nor private maritime security companies are required to report incidents, and there is also inconsistency in reporting to international bodies such as the International Maritime Bureau (IMB) and the International Maritime Organisation (IMO), and local authorities. The infrequency of reporting to local authorities, aside from indicating a poor view of their ability and willingness to respond, reduces opportunities for states to develop independent data. Another challenge is the time and cost associated with having to provide evidence if a reported incident is prosecuted.<sup>9</sup>

But the challenges related to maritime security in this region are more complex than just reporting. This is illustrated by shipping companies bemoaning how theft of items as inconsequential as rope from their vessels is categorised as piracy or armed robbery at sea under the IMB's reporting model. This in turn affects insurance premiums that shipping companies must pay to traverse waters, a clear disincentive to reporting which has clear implications for the accuracy of data on maritime security incidents.<sup>10</sup>

Meanwhile, local government authorities also express frustration at how current reporting models provide a skewed view of maritime criminal activity in the subregion. Ziakede Patrick Akpobolokemi, director general of the Nigerian Maritime Administration and Safety Authority, notes that the tendency for attacks to be classified as piracy misrepresents the actual nature of maritime crime in Nigerian waters.<sup>11</sup>

Dissatisfaction with the implications of the status quo is clear for shipping companies and state institutions alike, and certainly has financial consequences for the local economies and the profit margins of shippers. According to the US Naval Institute, 'whatever one's view may be on the state of maritime security in Nigeria, what is clear is that there are considerable commercial stakes tied to how maritime crime is reported and how stakeholders interpret and act on it'.<sup>12</sup> Indeed, more systematic and consistent reporting could result in more reliable and accurate data, in turn allowing insurance premiums to more accurately reflect reality, and for states to have reliable data on the nature and scale of the challenges they face. With benefits for all stakeholders, this should surely provide a good reason to generate buy-in and give an incentive for consistent incident reporting.

## MARITIME CRIME AND THE LAW

The lack of clarity around maritime criminal activity in this region is compounded by a lack of legal instruments that categorise and criminalise maritime incidents. Currently these crimes can be prosecuted using existing legislation, for example those penalising theft and kidnapping, but there is a need to develop legislation that can deal with the very specific problem of maritime criminal activity. This would support more consistent and more effective prosecution of maritime crimes. This is a concern that was recognised in principle by the Yaoundé Code of Conduct, which in article 4 calls on signatories to develop national legislation to address maritime security.<sup>13</sup> Indeed, Best highlights that legal instruments dealing with piracy in West Africa are either ‘underdeveloped, outdated, or non-existent’.<sup>14</sup> He cites the examples of Togo and Nigeria, the former having a code that uses a definition not fully applicable to the criminal phenomena and with vague penalty clauses, although ‘specific laws on piracy are absent’.<sup>15</sup> Such legislation should also address the challenge of jurisdictional boundaries and co-operation. Competing jurisdictions could potentially pose challenges to prosecution, given the wide range of states that may claim jurisdiction based on the location of the incident, flag state and so on; but this challenge need not be insurmountable, as has been demonstrated by the regional approach taken to prosecution in East Africa.

## OPPORTUNITIES FOR CHANGE

Thankfully, willingness and opportunities for regional co-operation in West Africa abound, with several mechanisms having been established through regional economic groupings, including integrated maritime strategies and a regional co-ordination centre, as well as the above-mentioned Yaoundé Code of Conduct. Further, support for tackling maritime security issues also exists at a continental level through the African Integrated Maritime Strategy 2050 (AIMS 2050).<sup>16</sup> These mechanisms, along with cooperation at a bilateral level,<sup>17</sup> evidence a co-operative approach in the subregion, but this needs to be further developed.

In October 2016 an extraordinary summit of the AU will be held in Lomé, Togo, to develop and adopt a charter on maritime security and safety, building on special summits on maritime security held in Yaoundé

and the Seychelles in previous years.<sup>18</sup> It is envisioned that this charter will act as a roadmap to achieving maritime security across the continent, and is therefore intended to be legally binding upon all signatories, at least theoretically, providing impetus for states to act decisively and collectively. This could build on the work at Yaoundé by, for example, achieving agreement among African states on legal definitions of the spectrum of maritime criminal challenges they face (which should then be domesticated), and by discussing methods for encouraging incident reporting.

Crucially, the summit at Lomé provides African states with a unique opportunity to shape the way in which the battle against maritime criminality will go forward. There is room now to set an agenda that will be realistic and evidence based, as well as encouraging measures that are responsive to the specific context and challenges faced by African states in promoting maritime security in the region. It is therefore incumbent upon West African states to drive forward a charter that recognises the need to better understand the extent and nature of the various maritime crimes that occur in their waters, as well as to define and criminalise these activities. Better yet, Lomé provides a chance for such definitions and legal instruments to be streamlined, and to better facilitate the co-operative approach that states in the Gulf of Guinea have already coalesced around, while also allowing common policies around reporting requirements to be made. Indeed, beyond fostering regional maritime mechanisms, such steps would also give local authorities the tools they need to respond to and successfully prosecute incidents of maritime crime.

## CONCLUSION

Maritime criminal activity will most likely continue in Nigerian waters and the Gulf of Guinea at large until the conditions that allow these crimes to flourish are addressed. Broadly, these include poverty and the challenges brought by environmental degradation linked to the exploitation of oil, and widespread corruption. However, states can seize on the existing appetite for co-operation, and use the opportunity presented at Lomé to design, sign and domesticate a charter that deals with the realities of maritime insecurity in the region, and that empowers states with the tools needed to make sense of and respond to the challenges of maritime insecurity in their waters.

## ENDNOTES

- 1 Lisa Otto is a Research Associate at Coventry University's Centre for Trust, Peace and Social Relations, where she conducts research and teaches in a Masters programme on Maritime Security. She holds a PhD in Political Studies from the University of Johannesburg.
- 2 Maritime crime, broadly defined, includes a range of criminal activity at sea, including illegal fishing, marine pollution, trafficking, smuggling, unauthorised entry into territorial waters, armed robbery at sea, theft, hijacking, kidnapping and piracy. However, the use of the term 'piracy' in the West African context is inaccurate given that international law defines piracy as a crime that occurs on the high seas, while the acts referred to as piracy in the Gulf of Guinea take place almost exclusively in territorial waters. By law, such acts within territorial waters constitute armed robbery at sea.
- 3 Villar R, *Piracy Today: Robbery and Violence at Sea Since 1980*. London: Conway Maritime Press, 1985, p. 16.
- 4 Danfulani Y, 'Oil bunkerers steal \$7bn annually – Buhari', *Today* (Nigeria), 12 May 2016, <https://www.today.ng/news/national/121170/oil-bunkerers-steal-7bn-annually-buhari>, accessed 23 May 2016.
- 5 Otto L, 'Maritime Crime in Nigeria and Waters Beyond: Analysing the Period 2009 to 2013', *Africa Insight*, 45, 1, 2015, pp. 15–29.
- 6 Bearak M, 'Falling oil prices spark a rise in kidnappings by West African pirates', *The Washington Post*, 10 May 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/05/10/falling-oil-prices-spark-a-rise-in-kidnappings-by-west-african-pirates/>, accessed 23 May 2016.
- 7 IMO (International Maritime Organization), Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa, [http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code\\_of\\_conduct%20signed%20from%20ECOWAS%20site.pdf](http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf), accessed 13 July 2016.
- 8 Otto L, 'The Gulf of Guinea's Troubled Waters: The Evolution of Piracy and other Maritime Crimes in Nigeria', unpublished PhD thesis, University of Johannesburg, Johannesburg, 2016, 33.
- 9 This could keep vessels and crew in port for months with an obvious cost implication for shipping companies.
- 10 Relayed in conversations during a workshop on 'The private/public dimension of maritime security' held in Stellenbosch on 5 and 6 May 2016.
- 11 *The Daily Independent* (Lagos), 'Nigeria: Is Nigeria's Territorial Water Safe?', 27 February 2015, <http://allafrica.com/stories/201502270895.html>, accessed 23 May 2016.
- 12 Steffen D, 'Essay: Quantifying Piracy Trends in the Gulf of Guinea: Who's Right and Who's Wrong?', *USNI* (US Naval Institute), *USNI News*, 19 June 2015, <https://news.usni.org/2015/06/19/essay-quantifying-piracy-trends-in-the-gulf-of-guinea-whos-right-and-whos-wrong>, accessed 23 May 2016.
- 13 IMO, *op. cit.*
- 14 Best K, 'The Development of Piracy Law in West Africa & the Institutions Underpinning Counter-Piracy Efforts', International Human Rights Internship Working Paper Series, 3, 10, McGill Faculty of Law, 2015, p. 12.
- 15 *Ibid.*, 12.
- 16 AU, '2050 Africa's Integrated Maritime Strategy', 2013, <http://pages.au.int/maritime>, accessed 23 July 2016.
- 17 Such as co-operation between Nigeria and Benin through Operation Prosperity, for example.
- 18 AU, 'Protect our Oceans', <http://www.african-union-togo2015.com/en/accueil>, accessed 27 May 2016.
- 19 Otto L, *op. cit.*, p. 248.

The Governance of Africa's Resources Programme is funded by the Norwegian Ministry of Foreign Affairs