THE POTENTIAL EFFECTS OF PIRACY ON THE ART-CRAFT INDUSTRY: A COMPARATIVE ANALYSIS OF NIGERIA AND INDONESIA

Kalu Kingsley Anele
Cultural Heritage Preservation Research Institute, Pusan National University, Busan, South Korea, kkanele@gmail.com

Follow this and additional works at: https://scholarhub.ui.ac.id/ilrev

Recommended Citation
Available at: https://scholarhub.ui.ac.id/ilrev/vol10/iss2/6

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesia Law Review by an authorized editor of UI Scholars Hub.
THE POTENTIAL EFFECTS OF PIRACY ON THE ART-CRAFT INDUSTRY: A COMPARATIVE ANALYSIS OF NIGERIA AND INDONESIA

Kalu Kingsley Anele

Cultural Heritage Preservation Research Institute, Pusan National University, Busan, South Korea

Article Info
Received : 6 January 2020 | Received in revised form : 30 July 2020 | Accepted : 17 August 2020
Corresponding author’s e mail : kkanele@gmail.com

Abstract
Nigeria and Indonesia are not only made up of a plethora of ethnic groups, which presupposes the availability of art-crafts, cultural heritage, and cultures but also coastal states that rely heavily on shipping for their economic development. The existence of art-crafts and cultural heritage also means that there are thriving tourism sectors and creative industries in both countries. Nonetheless, the spate of piratical attacks off the waters of Nigeria and Indonesia potentially threatens the economic and sociopolitical significance of art-craft, particularly in the exportation of art-craft items and the importation of materials for art-craft production, in both countries. Moreover, piracy threatens logistics in tourism in both countries, which depends on the art-craft industry for its sustenance. Also, piratical acts threaten the transportation of foreign tourists visiting tourist destinations in Nigeria and Indonesia. Thus, it becomes imperative to secure the transportation of people and art-craft items and materials through the sea to Nigeria and Indonesia. The paper argues that similar antipiracy measures can contribute to preventing piracy from affecting the art-craft industries in Nigeria and Indonesia, like strengthening piracy legal and institutional regime and cooperation among relevant stakeholders, especially neighboring countries, maritime organizations, and the shipping industry. The paper concludes by reiterating that though piratical attacks against vessels transporting art-craft items and materials have not been recorded, the incessant piratical acts off the waters of Nigeria and Indonesia suggest that attacks on vessels involved in the art-craft industry are imminent, and therefore, should be nipped in the bud.

Keywords: piracy, Nigeria, Indonesia, art-craft, Spomo Act, KUHP, tourism, LOSC, SUA convention

Abstrak
Nigeria dan Indonesia memiliki kesamaan, yakni tidak hanya terdiri dari kelompok etnis yang berjumlah besar yang mengandakan ketersediaan seni kerajinan, warisan budaya, dan budaya, tetapi juga kedua negara tersebut merupakan negara pantai yang sangat bergantung pada perkapalan untuk pembangunan ekonomi mereka. Keberadaan seni kerajinan dan warisan budaya juga berarti bahwa sektor pariwisata dan industri kreatif berkembang pesat di kedua negara. Meski demikian, serentetan serangan perompakan di perairan Nigeria dan Indonesia berpotensi mengancam signifikansi ekonomi dan sosial politik seni kriya, khususnya dalam ekspor barang-barang kerajinan seni dan impor bahan-bahan untuk produksi kriya seni, di kedua negara tersebut. Apalagi, perompakan mengancam logistik dalam pariwisata di kedua negara, yang keberlangsungannya bergantung pada industri kerajinan tangan. Selain itu, tindakan perompakan mengancam transportasi wisatawan asing yang mengunjungi destinasi wisata di Nigeria dan Indonesia. Oleh karena itu, pengangkutan orang dan barang-barang kerajinan seni serta material melalui laut ke Nigeria dan Indonesia menjadi penting. Tulisan ini menyimpulkan dengan menegaskan kembali bahwa meskipun serangan perompakan terhadap kapal yang mengangkut barang dan bahan kerajinan seni belum tercatat, tindakan perompakan yang tak henti-hentinya di perairan Nigeria dan Indonesia menunjukkan bahwa serangan terhadap kapal yang terlibat dalam industri kerajinan seni merupakan ancaman nyata, dan oleh karena itu, harus ditangani sejak awal.

Kata kunci: perompakan, Nigeria, Indonesia, seni kriya, spomo act, KUHP, turisme, LOSC, SUA Convention

DOI : http://dx.doi.org/10.15742/ilrev.v10n2.652
I. INTRODUCTION

Nigeria and Indonesia have multicultural, multireligious, and multilingual societies. The import of this is that there is a tsunami of art-crafts, cultures and cultural heritage in both countries. For example, while Nigerian textile crafts include adire, which is common among the Yoruba ethnic group in the country, the Javanese batik is synonymous with the Indonesian textile craft. Moreover, these factors are the drivers of the tourism sector, and both countries rely on tourism in their economic development. Due to the significant role the art-craft industry plays in the sociopolitical and economic development of both countries, the industry is supported by both the governments of Nigeria and Indonesia through the establishment of cottage industries and art-craft small and medium enterprises (SMEs). Again, the

---


existence of art-crafts creates opportunities for the training of artisans that adapt to the contemporary and globalized art-craft industry, and also support the need for the governments of Nigeria and Indonesia to introduce policies and programs for the development of art-craft in both countries.

Additionally, both countries are coastal states, though Indonesia is an archipelago, which means that shipping is an essential economic activity in both countries. Given the fact that both countries are riparian states, coastal and marine tourism becomes a significant aspect of tourism in Nigeria and Indonesia, which requires secured maritime zones for its sustenance. In other words, aside from being instrumental in the exportation and importation of art-craft items, materials and facilities, the maritime industry plays a significant role in both countries’ tourism sectors, especially coastal and marine tourism.

In light of the foregoing, it becomes pertinent to analyze the issue of piracy and its potential effect on the art-craft industries in Nigeria and Indonesia. This is significant because piratical attacks in both countries have been high compared to other regional countries, with its attendant effect on their economies, especially in the oil and gas sector. According to the International Maritime Bureau (IMB) piracy report, the actual and attempted attacks against ships off both countries’ waters from 2015 to 2019 are: 14 (2015), 36 (2016), 33 (2017), 48 (2018) and 35 (2019) in Nigeria and 108 (2015), 49 (2016), 43 (2017), 36 (2018) and 25 (2019) in Indonesia. A cursory look at these statistics clearly shows that the number of piratical attacks off the waters of Nigeria and Indonesia is high; hence, the need to effectively curb the crime and prevent its potential implications on the art craft industries in both countries.

There is limited literature addressing the effect of piracy on the art-craft industry, including the tourism sector. Nonetheless, such piratical acts could potentially occur through attacks on vessels carrying art-craft items, art-craft materials, facilities for creating art-craft products, coastal and marine tourism and cruise ships. Because of that, piratical attacks off the waters of Nigeria and Indonesia pose a threat to the
art-craft industries in both countries as pirates may attack vessels carrying art-craft items and materials, including yachts and cruise ships engaged in conveying tourists to their tourist destinations. While incidences of piratical attacks on tankers carrying oil, gas and chemicals, container vessels and fishing trawlers abound, the frequency of piratical attacks in the world, especially in the Gulf of Guinea and Strait of Malacca, suggests that a vessel carrying art-craft items and materials or cruise ship transporting tourists to tourist destinations may be attacked by pirates. As a consequence, it is important to intensify the monitoring of the Nigerian and Indonesian waters by both countries’ regulatory and security agencies.

Lending credence to the above point, some pirates attack vessels to take the crewmembers hostage. More importantly, Kiourktsoglou & Coutroubis opine that “pirates attack all kinds of vessels: general cargo, bulk carriers, tankers, ro-ro, liners, fishing vessels, sailing yachts and tugboats”. This submission implies that art-craft items in general cargo vessels or materials for making art-craft products in bulk carriers or sailing yachts or cruise ships with tourists visiting tourist locations in Nigeria and Indonesia may be targeted by pirates in both countries’ waters. More so, vessels carrying art-craft items, materials and equipment could be attacked if the content of the cargo and the vessels’ manifest were given to pirates by the crew or port officials. In such a situation, it becomes apposite to proffer measures to prevent the attack of such art-craft related vessels.

The objective of this paper is to comparatively assess the potential threat posed by piracy in the art-craft industries in Nigeria and Indonesia to suggest measures to curb the crime to safeguard these industries and other related sectors. This paper observes that though many research papers have been devoted to piracy in Nigeria and Indonesia, there seems to be a dearth of scholarly papers on the effect of piracy.

---


14 While global piracy attacks are reducing, the number of attacks off the waters of Nigeria in the Gulf of Guinea and archipelagic waters of Indonesia, including the Strait of Malacca, is still high compared to the attacks in the waters of their neighboring countries. See “Piracy and Armed Robbery against Ships: Report for the Period 1 January – 31 December 2019”, *op cit.*, p. 5.


20 See generally K.K. Anele, “Addressing the issue of piracy off Indonesia and Nigeria: the need for a paradigm change”, *op cit.;* Adam J. Fenton & Ioannis Chapos, “Prosecuting pirates: maritime piracy and In-
on the art-craft industry, particularly in Nigeria and Indonesia. While the paper observes that the limited maritime domain awareness of Nigeria and Indonesia may expose vessels carrying art-craft items and materials and coastal and marine tourism to the threat of piracy off the waters of both countries, there is a need to recommend similar measures to curb piracy off their waters. To buttress this point, it is pertinent to strengthen both countries’ piracy legal and institutional regimes. The paper also notes that the art-craft industry plays a significant role in preventing piracy attacks against vessels involved in art-craft activities.

To achieve the above, the paper will comparatively address the issues of art-craft and piracy in Nigeria and Indonesia to identify possible linkages between the two concepts. Further, in determining the impact of piracy on the art-craft industries in Nigeria and Indonesia, tourism in both countries are examined, including marine and coastal tourism. A critical analysis of the potential effects of piracy on the art-craft industries in Nigeria and Indonesia is undertaken and the paper argues that it may have economic, sociopolitical and humanitarian effects on the industries. Subsequently, the paper suggests measures to suppress piracy off the waters of Nigeria and Indonesia to prevent its potential threat to the art-craft industries in both countries. Lastly, the paper reiterates that though there is no recorded piracy attack on vessels carrying art-craft items and materials, among others, the random attacks on vessels off the coasts of Nigeria and Indonesia and the fact that pirates attack all types of ships may compromise the safety of the transportation aspect of logistics in the art-craft industries and other related sectors in both countries.

II. A COMPARATIVE ANALYSIS OF THE ART-CRAFT INDUSTRIES IN NIGERIA AND INDONESIA

The purpose of this subheading is to briefly compare the art-craft industries in Nigeria and Indonesia. This is done by analyzing art-craft and tourism, thereby highlighting their socioeconomic contributions to the development of both countries. The paper observes that while art-craft and tourism in Nigeria and Indonesia have more commonalities than differences, it is argued that both countries’ economies benefit from art-craft and tourism.

A. Art-craft industry

The art-craft industry plays a significant role in the economic development of a country, especially through tourism. It has been argued that art-craft not only generates foreign exchange to countries but also creates employment opportunities as well as promotes artisanship. For instance, due to the sociopolitical and economic importance of the art-craft industry in Nigeria, it has been observed that art-craft items, like mask carving, are sold as souvenirs to tourists, which stimulates local

21 This author has written a scholarly paper on the effect of piracy on the craft industry in Indonesia. See generally K.K. Anele, “Piracy off the coast of Indonesia: potential implications on the craft industry”, op cit.
24 Other art-craft items in Nigeria include basketry, mats, ceramics, beads, pottery, hand textiles,
infrastructure development that benefits the host communities in the country. Moreover, the Nigerian government established the Ministry of Information and Culture to oversee the activities in the art-craft industry and also to promote the tourism sector in Nigeria.

As a corollary to the above, though the art-craft industry is neglected by the Nigerian government due to the oil and gas sector and lack of comprehensive data on the export value of the industry, research conducted under the creative industry, which covers almost all aspects of art-craft, shows that art-craft contributed about 4.5 percent to the country’s gross domestic product (GDP) in 2017. More importantly, given the Nigerian government’s policy to diversify the country’s economy, the creative cultural industries, which include the art-craft industry, in the country are estimated “to generate $1 billion in export revenue this year and bring in crucial foreign currency.” Consequently, a safe and secured maritime sector is imperative in achieving this economic calculus in Nigeria, which will bolster job creation and revenue generation in the country.

Similarly, the art-craft industry plays a crucial role in the economic development of Indonesia. In light of job creation, there are “over 700,000 handicraft business units that employ 1.32 million workers in Indonesia.” Moreover, the export value of Indonesian art-craft products in 2017 was US$153.3 million. It is significant to note that the art-craft industry in the country has been strengthened through laws and policies. For example, the Indonesian government, through the Presidential Instruction No. 6 of 2009, created the creative economy, which craft is part of, to, among other things, contribute to the economic development of the country. Additionally, the Presidential Regulation No. 92 of 2011 was enacted to create the Ministry of Tourism and Creative Economy to further give impetus to the art-craft industry in the country. It is submitted that these regulations contribute to the development of art-craft and tourism in Indonesia.

Besides, similar to Nigeria, the Indonesian government policy to diversify its economy led to the establishment of the Indonesian Agency for Creative Economy -


29 K.K. Anele, “Piracy off the coast of Indonesia: potential implications on the craft industry”, op cit., p. 2.


32 Ibid, p. 11.
(BERKRAF)\textsuperscript{33} to, \textit{inter alia}, explore the potentials of craft and to maximize the opportunities in the creative economy in Indonesia.\textsuperscript{34} More pointedly, the government of Indonesia created the art-craft SMEs to promote the art-craft industry in the country.\textsuperscript{35} On account of the contributions of the art-craft industry to the economic development of Indonesia in terms of foreign exchange earnings, job creation, and revenue generation due to the exportation of art-craft products; it becomes imperative to have a secured maritime sector in the country.

### B. Tourism sector

From the foregoing, tourism is a critical aspect of the art-craft industry, as tourist destinations are part of the platforms through which artisans are employed or sell their items to eke out a living. Aside from sightseeing, tourists buy art-craft products as souvenirs at tourist destinations.\textsuperscript{36} Consequently, the “[t]ourism industry is known to be one of the major industries of world economies, as the sector generates about 18 percent of the economic activities.”\textsuperscript{37} The tourism sector plays a significant role in the economic development of Indonesia,\textsuperscript{38} and aside from generating employment in the country,\textsuperscript{39} it has been projected that the sector would generate about 483.4 billion naira (US$ 1,232,618,752.02) in 2022.\textsuperscript{40} The import of this projection is that more jobs and revenues would be generated in Nigeria due to tourism.

Comparable to the situation in Nigeria, tourism plays a significant role in the economic development of Indonesia. Tourism is one of the sources of foreign exchange earnings to the Indonesian economy; as the sector has become one of the top priorities of the government of Indonesia. This has culminated in the creation of the National Medium-Term Development Plan from 2015-2019 and the Destination and Tourism Industry Development (\textit{Pengembangan Destinasi dan Industri Pariwisata}) policy.\textsuperscript{41} Additionally, the inauguration of the Indonesian Tourism Development Priority Program (ITDPP) to move towards a broad and inclusive approach to the development of tourism in Indonesia is another laudable policy initiative\textsuperscript{42} to bolster the tourism sector with its attendant effect on the economy of Indonesia. These policies that enhance the economic importance of tourism to Indonesia may be jeopardized by the threat of piracy off the waters of the country.

\begin{footnotesize}
\textsuperscript{33} See Presidential Regulation No. 6 of 2015.

\textsuperscript{34} K. K. Anele, "A comprehensive review of policies for the marketing of Indonesian art-crafts", \textit{op. cit.}, p. 17.

\textsuperscript{35} K. K. Anele, "A critical analysis of the impact of enhanced infrastructure in art-craft development in North Sumatra", \textit{op. cit.}, p. 139.

\textsuperscript{36} K. K. Anele, "A comprehensive review of policies for the marketing of Indonesian art-crafts", \textit{op. cit.}, p. 10.

\textsuperscript{37} O. A. Matthew, \textit{et al}, \textit{op cit.}, p. 2.


\textsuperscript{39} See O.A. Matthew, \textit{et al}, \textit{op cit.}, p. 6.


\textsuperscript{41} K. K. Anele, "A comprehensive review of policies for the marketing of Indonesian art-crafts", \textit{op cit.}, p. 12.

\textsuperscript{42} \textit{Ibid.}, pp. 12-13.
\end{footnotesize}
C. The linkages between piracy and the art-craft industry

In light of the above, it is important to briefly examine the linkages between the art-craft industry, including other related sectors, and piracy. As discussed above, the activities of the art-craft industry and the creative economy include the exportation of art-craft products, the importation of materials required for art-craft production as well as the importation of equipment needed to produce art-craft items through shipping. Put differently, vessels carrying art-craft items for exportation and materials for art-craft production require safe navigational routes to operate. Additionally, foreign tourists, including domestic tourists, that travel from one country to another, or move from one island to another within a country, using international cruise ships, yachts, and ferries need ports in safe waters where these vessels could safely call at.

Above all, the existence of coastal and marine tourism in Nigeria and Indonesia lends credence to the need to secure the waters of both countries; especially in light of the existence of policies to utilize the blue economy in the development of both countries. Consequently, the incessant piratical attacks off the waters of Nigeria and Indonesia may pose a threat to these economic activities. Lending credence to the possibility of pirates targeting vessels related to the art-craft industry is the dwindling impact of oil and gas to the world economy. This arises due to the transition from fossil fuel to renewable energy and the rising use of eco-friendly and efficient energy sources by countries, which implies that oil may not be a viable commodity in the black market. Since many countries are diversifying their economies, the shift towards the art-craft industry and the tourism sector could trigger attacks against vessels carrying exquisite and expensive art-craft items and materials off the risky waters of Nigeria and Indonesia.

III. A COMPARATIVE ANALYSIS OF PIRACY LEGAL REGIMES IN NIGERIA AND INDONESIA

Having addressed the art-craft industries and related sectors in Nigeria and Indonesia, this subheading examines piracy to highlight the manifest insecurity in maritime transportation and its potential threat to the art-craft industries in both countries. It is argued that the frequency and the random attacks against vessels off the waters of Nigeria and Indonesia potentially threaten the art-craft industries in both countries.

A. Piracy definition and legal regime

Piracy, simpliciter, means a violent attack or hijack of a vessel on the high seas by another ship for private ends. A cursory look at this international law definition of piracy.

47 It has been noted that "Indonesia continues to be weighed down by piracy and armed robberies at sea. Navigating and securing sea-lanes for shipping and transshipment remain a crucial part of the blue economy." D. Dinarto, op cit.
piracy reveals that it is limited in scope, especially when considered from the nature of attacks off the coasts of Nigeria and Indonesia, which implicates on the arrest and prosecution of pirates. For illustrative purposes, a critical analysis of the private end principle prevents violent acts against a ship from becoming piracy if it was for a public end. For example, terrorist attacks on vessels are not treated as piratical acts because such acts are committed for ‘political ends.’ Due to the limitations of the LOSC, the SUA Convention, including its Protocol, was enacted to complement the LOSC in curbing piracy. It is noted that though the SUA Convention has many advantages, like including violent attacks against ships in the territorial waters of a coastal state, and the provision for the implementation of extradition treaties, it does not prevent the occurrence of piracy because it is an ex-post remedy for piratical acts. Nevertheless, both conventions form the legal regime for combating piracy, and their implementation is also vital to the arrest and prosecution of pirates by coastal states.

More pointedly, both countries have domestic legislation criminalizing piracy. However, while both countries’ domestic anti-piracy laws are limited in scope, the SPOMO Act, in section 4, also incorporates the provisions of the SUA Convention, which complements the provisions of the LOSC. Also, in section 12, the SPOMO Act stipulates that a person that commits an act of piracy is liable to life imprisonment and a fine of not more than 50 million naira (about US$130,893) among other things. On its part, the KUHP, in article 438, outlines acts of piracy, like a person serving on a vessel knowing that it would be used to commit violent acts in the open sea against other vessels, etc., and in article 439, the Code went further to provide a maximum sentence of 15 years for piratical acts committed in the territorial waters of Indonesia. It is argued that the provisions of the Nigerian SPOMO Act are more expansive, contain more deterrent provisions, and in compliant with the piracy legal regime under international law than those of the Indonesian KUHP. This stems from the fact that the SPOMO Act incorporates both the piracy stipulations of the LOSC and the SUA Convention in its provisions, thereby covering the field with regards to piracy legal framework. This also means that unlike the KUHP, the SPOMO Act wears the toga of uniformity in terms of the application of the LOSC by other countries as envisaged under the customary international law.

On the issue of ratification of the LOSC, it could be argued that Nigeria has ratified the convention through its domestication in the SPOMO Act in line with the provision of the 1999 Constitution of the Federal Republic of Nigeria (1999 Constitution of 1833 No. 31363, (LOSC), art. 101.

49 Attacks on vessels off the waters of Nigeria and Indonesia mainly occur in the territorial (archipelagic) waters of both countries.


53 See SUA Convention arts. 3 and 11.


55 See the Nigerian Suppression of Piracy and Other Maritime Offences Act, 2019 (SPOMO Act), s. 3 and the Indonesian Penal Code (Kitab Undang-undang Hukum Pidana) (KUHP), art. 438.

56 For example, while the SPOMO Act, in section 3, limits piracy to acts committed on the high seas, the universal jurisdiction principle is absent in the Indonesian KUHP, in article 438.
Nigeria). Section 12 (1) of the 1999 Constitution of Nigeria states that “[n]o 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.” In other words, having domesticated the LOSC in the SPOMO Act 2019, it could be deemed that Nigeria has ratified the LOSC. In view of Indonesia, Pulungan argues that Indonesia has ratified the LOSC in Law No. 17 of 1985, and has subsequently enacted a range of laws and regulations to implement the convention, for example, Law No. 6 of 1996 concerning Indonesian Waters.\(^57\)

From the foregoing, piracy “is the original crime of universal jurisdiction”\(^58\) due to the \textit{locus} where the criminal act is committed is beyond the jurisdiction of any state. Besides, article 105 of the LOSC codified the universal jurisdiction principle of piracy by stating that on the high seas, outside the jurisdiction of any state, a state may seize a pirate vessel and prosecute and decide the penalties to be imposed on the pirates in the arresting state’s court. A strict interpretation of article 105 of the LOSC reveals that it specifically empowers the arresting state to prosecute arrested pirates.\(^59\) Nonetheless, it has been argued that Article 105 does not expressly prohibit third states from prosecuting pirates arrested on the high seas by another state.\(^60\)

Lending credence to the above point, article 100 of the LOSC enjoins countries to cooperate in curbing piracy, which implies that a state that arrests a pirate vessel on the high seas may transfer these pirates to a third state for prosecution, especially where there is an agreement between the two states specifying such arrangement.\(^61\) In all, this paper argues that a combined reading of articles 100 and 105 of the LOSC empowers Nigeria and Indonesia as third states to prosecute pirates arrested on the high seas by other countries. This will facilitate the prevention of the occurrence of piracy off the waters of Nigeria and Indonesia, thereby obviating the effect of piracy on both countries’ art-craft industries. Additionally, such transfer by arresting countries to Nigeria and Indonesia can be strengthened if there was an existing agreement between Nigeria or Indonesia and the arresting country.

In closing this subheading, it is imperative to clarify the term piracy. Given that most attacks against ships off the coasts of Nigeria and Indonesia occur in their territorial (archipelagic) waters (armed robbery against vessels), data containing piracy incidents do not distinguish between piracy on the high seas and armed robbery against a ship in the territorial waters.\(^62\) Moreover, attacks against vessels

\(^{57}\) Rheny W. Pulungan, “The limitations of the international law on piracy and maritime terrorism: options for strengthening maritime security in the Malacca Straits”, submitted in total fulfillment of the requirements of the degree of Doctor of Philosophy, Melbourne Law School, the University of Melbourne, June 2014, p. 123, https://pdfs.semanticscholar.org/7fb2/47f61ae9a8bf1b8e63e6a1ae944020e5be5.pdf, accessed 14 July 2020.


\(^{62}\) See generally the various ICC/IMB piracy reports.
on the high seas and in the territorial waters of a coastal state potentially threaten the art-craft industry and other related activities. Consequently, this paper uses piracy to represent both attacks against vessels on the high seas and in the territorial (archipelagic) waters of a coastal state. Besides, aside from the fact that a country has jurisdiction to arrest pirates in its territorial waters and on the high seas, it has been argued that “regardless of the location in which piracy occurs, action needs to be taken and appropriate punishment must be imposed” on pirates. This means that Nigeria and Indonesia should focus on introducing measures to curb piracy off their waters by arresting and prosecuting pirates rather than expending efforts in determining where the violent act occurred.

B. Piracy institutional regime

The existence of maritime security and regulatory institutions is vital in anti-piracy operations and efforts. This is because while the maritime regulatory agencies enforce maritime security instruments, especially anti-piracy conventions, and maintain maritime domain awareness; the maritime security agencies are saddled with the overall maritime security and participation in counter-piracy operations within and outside the territorial waters of a riparian state. Consequent to that, it is argued that NIMASA and BAKAMLA are the maritime regulatory agencies that enforce all maritime security instruments in Nigeria and Indonesia, respectively. Despite the significant roles these agencies play in their respective countries, corruption, inter-agency conflicts, misappropriation of funds, among other things, are rife in their operations. Besides, it is observed that the navies of Nigeria and Indonesia are corrupt, ill-equipped, ill-trained, largely lacks transparency and accountability in conducting their affairs, and also poorly funded to engage in maritime security activities in their respective countries. These factors prevent the navies of Nigeria and Indonesia from effectively discharging their duties in terms of maritime domain awareness and monitoring of both countries’ coastlines; thereby creating an enabling environment for piracy to thrive. The paper submits that these challenges in the anti-piracy institutional regime in Nigeria and Indonesia implicate the effectiveness of counter-piracy operations and efforts, which may implicate the art-craft industries in both countries.

IV. A DIALECTICAL ANALYSIS OF THE POTENTIAL EFFECTS OF PIRACY ON THE ART-CRAFT INDUSTRIES IN NIGERIA AND INDONESIA

In the previous subheadings, it was discovered that piracy could, indeed, implicate art-craft, including tourism, as there are existing linkages between the two concepts. Thus, the essence of this subheading is to interrogate the potential implications of

---

64 NIMASA means the Nigerian Maritime Administration and Safety Agency.
65 BAKAMLA means Badan Koordinasi Keamanan Laut (Indonesian Maritime Security Coordinating Agency).
66 For a detailed analysis of corruption and embezzlement by officials of Nigerian and Indonesian maritime regulatory agencies, see generally K.K. Anele, "Addressing the issue of piracy off Indonesia and Nigeria: the need for a paradigm change", *op cit.*, pp. 261-263 and Xiaodon Liang & Sam Perlo-Freeman, "corruption in the Indonesian arms business: tentative steps towards an end to impunity", World Peace Foundation, December 2017, pp. 4-7, respectively.
Piracy on the art-craft industries in Nigeria and Indonesia. It is noted that piracy poses a threat to the transportation aspect of logistics in art-craft and tourism, especially coastal and marine tourism,\(^68\) in both countries.

### A. Economic effect

One of the most significant consequences of piracy on the art-craft industry is the impediments piratical acts may have on the economic activities related to art-craft. For example, the foreign exchange earning capabilities of the art-craft industry through the exportation of art-craft products and importation of art-craft materials and art-craft equipment are threatened.\(^69\) Additionally, piracy may affect tourism generally as piratical acts may implicate not only on coastal and marine tourism but also foreign tourists who are visiting tourist destinations by sea through cruise ships, ferries and yachts.\(^70\) The import of this is that the revenue accruable to the governments of Nigeria and Indonesia, and the profits derivable from the sale of art-craft products by artisans in both countries would be lost.

### B. Humanitarian effect

One of the ways piracy may implicate the art-craft industry is through the kidnapping, torturing, and sometimes, killing of seafarers.\(^71\) In this case, such an incident may affect the art-craft industry if the hijacked vessel had art-craft products or materials needed to produce art-craft items as its cargo. On the other hand, where pirates attack a tourist cruise ship, ferry or yacht, tourists may be injured, kidnapped, or even killed in the process.\(^72\) From this standpoint, it is argued that such an attack on a tourist cruise ship off the coast of Nigeria or Indonesia may lead to psychological trauma and subsequent death of tourists.

### C. Security effect

The security of a country, especially where the tourist destinations are located, is crucial in the development of the tourism sector, which plays a significant role in the art-craft industry. In particular, the security of maritime zones of a country is pivotal in sustaining coastal and marine tourism. It has been noted that insecurity off the coasts of Nigeria\(^73\) and Indonesia\(^74\) due to piracy grossly implicates on the development of both countries’ blue economy with its attendant effect on their economies and the art-craft industries. The fact that pirates attack all vessels\(^75\) implies that the insecurity prevalent in the waters of Nigeria and Indonesia potentially threatens both countries’ art-craft industries.

---


\(^69\) See generally, K.K. Anele, ‘Piracy off the coast of Indonesia: potential implications on the craft industry’, \textit{op cit.}

\(^70\) \textit{Ibid.}

\(^71\) K.K.L. Panjabi, \textit{op cit.}

\(^72\) N. Nikolic & E. Missoni, \textit{op cit.}, pp. 314-315.

\(^73\) O.D. Elisha, \textit{op cit.}

\(^74\) D. Dinarto, \textit{op cit.}

\(^75\) G. Klourktsoglou & A.D. Coutroubis, \textit{op cit.}
V. MEASURES TO CURB PIRACY IN NIGERIA AND INDONESIA

It is submitted that similar counter-piracy steps can be taken in suppressing piracy off the coasts of Nigeria and Indonesia. Further, this paper argues that the existing anti-piracy measures contribute to the prevention of piracy attacks against vessels involved in the art-craft industry. The existing counter-piracy measures also ensure that tourism, especially coastal and marine tourism, is protected from the menace of piracy. Thus, this paper discusses some of the existing anti-piracy measures that could be vigorously enforced to protect the art-craft industries in Nigeria and Indonesia. Besides, it is argued that the art-craft industries in both countries also play a critical role in preventing piratical acts against vessels carrying art-craft items, materials and equipment for producing art-craft items off the waters of Nigeria and Indonesia.

A. The enforcement of anti-piracy legislation

The existence of an anti-piracy legal framework is pivotal in curbing piracy. Nonetheless, without proper and regular enforcement of these laws, piracy attacks will continue unabated. It is instructive to note that before 2019, there was no anti-piracy legislation in Nigeria, which means that arrested pirates were not prosecuted for acts of piracy in the country. Nevertheless, with the enactment of the SPOMO Act, it is argued that the relevant agencies, like NIMASA and the judiciary, should properly and effectively enforce and apply the anti-piracy law to curb piracy off the coast of Nigeria. In light of that, Justice I.M. Sani of the Federal High Court sitting in Port Harcourt, River State, for the first time in Nigeria, convicted three pirates for hijacking a vessel, MV Elobey VI, off the coast of Equatorial Guinea in March and securing a ransom of US$200,000 for the release of its crew. The pirates were fined the sum of 20 million naira (US$52,000) each for the crime.76 This author argues that though this is a laudable development in the fight against piracy in Nigeria, the lenient sentencing, which is contrary to the provision of section 12 (1) of the SPOMO Act that stipulates life imprisonment and a fine of not more than 50 million naira (US$130,893), will encourage other pirates to continue attacking vessels in Nigerian waters.

Similarly, the existence of the KUHP means that pirates can be prosecuted in Indonesia. However, the enforcement of the provisions of the KUHP in the prosecution of pirates has not been uniform, as different lenient sentences have been imposed on pirates in different cases, in contradiction to the maximum sentence of 15 years prescribed by law (article 439 of the KUHP).77 Consequently, after summarising a series of decided cases on piracy in Indonesia, Fenton and Chapsos argue “that the length of sentences handed down is insufficient to achieve the criminal sentencing goals of general and specific deterrence, retribution or rehabilitation.”78 In other words, the courts in both countries should effectively apply their existing legislation and impose the maximum sentences provided by their laws to deter future pirates from engaging in piracy.

B. Strengthening the maritime institutional framework

Maritime regulatory and security agencies play a significant role in counter-piracy.

---

77 The Indonesian courts in the following cases imposed light sentences to pirates. See the cases of District Court Decision No 600/Pid.B/2015/PN Sgl. 3 December 2015; District Court Decision No 524/Pid.B/2014/PN.BTM, 4 November 2015; and District Court Decision No 160/Pid.B/2012/PN.TBK, 27 November 2012, cited in A. J. Fenton & I. Chapos, op cit., pp. 5-11.
78 A.F. Fenton & I. Chapos, Ibid., p. 11.
efforts by enforcing anti-piracy legislation, which contributes to preventing the threat posed by piracy to the art-craft industry. More importantly, maritime regulatory and security agencies, like the coast guards, navy and maritime police, regularly ensure the security of the waters of coastal states. In line with that, NIMASA and BAKAMLA enforce both international and domestic maritime security instruments by ensuring that vessels that call at their countries’ ports comply with International Maritime Organisation’s (IMO) regulations and guidelines on crew competence and vessels’ seaworthiness and equipment. Given their pivotal role in suppressing piracy, it becomes imperative to fund, equip, and adequately train officials of these maritime agencies in in Nigeria and Indonesia. For instance, adequate funding and enhanced remuneration would reduce the incidence of corruption and misappropriation of funds by officials of these agencies.

Moreover, officials of these maritime institutions who engage in corrupt practices and embezzlement of public funds should be prosecuted to deter others from such illicit acts. It is submitted that well-equipped and well-trained maritime security and regulatory agencies would immensely contribute to the suppression of piracy and its potential consequences on the art-craft industries in Nigeria and Indonesia. Therefore, the governments of Nigeria and Indonesia should provide funds for the training of officials and the procurement of modern surveillance and communication facilities and state of the art ships and speedboats for these maritime regulatory and security agencies.

C. The implementation of soft laws

As a corollary to the above, soft laws complement maritime security instruments by strengthening the competence of seafarers and the seaworthiness of vessels, which ultimately reduces the vulnerability of vessels, especially vessels engaged in art-craft and related activities, to piratical attacks. While the competence of seafarers is determined by complying with the provisions of maritime instruments on training and certification, the vessels’ seaworthiness is determined by the availability of modern communication and security equipment, among other things. The implication is that a well-equipped vessel manned by competent and well-trained crew may avoid being attacked by pirates. Hence, soft laws create a mechanism where the crew and their vessels are inspected by officials of maritime regulatory agencies, like NIMASA and BAKAMLA, to determine whether they complied with the extant maritime security instruments. This is done under the aegis of Port State Control (PSC). Consequently, the cooperation between NIMASA and BAKAMLA, on the one hand, and the maritime regulatory agencies in their respective regions, international maritime organizations, and the shipping industry, on the other hand, will go a long way in strengthening the

79 For more information on corruption and embezzlement in the maritime security and regulatory institutions in Nigeria and Indonesia, see K.K. Anele, “Addressing the issue of piracy off Indonesia and Nigeria: the need for a paradigm change”, op cit., pp. 261-263. See also Chioma Unini, “Ex-NIMASA Executive Director jailed 7 years for fraud”, The Nigerian Lawyer, 15 July 2020, https://thenigerialawyer.com/ex-nimasa-executive-director-jailed-7-years-for-fraud/?fbclid=IwAR1KyCrc1aw0Kcp20XgZi-sNdH31MO-ngLldJDCxkqrg1YerBvQOKAHE, accessed 15 July 2020.

80 See generally, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), adopted 7 July 1978.


82 For PSC in Nigeria and Indonesia, see generally the Memorandum of Understanding on Port State Control for West and Central African Region, 1999 and Memorandum of Understanding on Port State Control in the Asia-Pacific Region, 1 December 1993, respectively.
implementation of soft laws that enhance maritime security off the coasts of Nigeria and Indonesia.

D. The role of the art-craft industry

The art-craft industry could play a significant role in curbing piracy given the fact that piratical acts pose a threat to the industry. To achieve that, the art-craft industry should contract shipping companies that have vessels that are well-equipped with modern communication and navigation facilities, well-trained crew, and can proceed at full speed or at least 18 knots[^1] to transport art-craft products, materials, and facilities. Additionally, the art-craft industry should regularly liaise with anti-piracy joint naval task forces operating in their regions whenever some exquisite art-craft items or materials are being exported or imported.[^2] More importantly, the art-craft industries in Nigeria and Indonesia should also lobby their respective governments to change their policies banning vessel owners and operators from the use of privately contracted armed security personnel (PCASP) in their vessels.[^3] By allowing the use of PCASP by the governments of Nigeria and Indonesia, the rising spate of piratical acts off their waters would be reduced and the threat posed by piracy to both countries' art-craft industries will be eliminated.

E. The political will to curb piracy

Above all, it is argued that the governments of Nigeria and Indonesia can significantly influence counter-piracy operations in their countries. Aside from ensuring that the above anti-piracy measures are simultaneously implemented, both the Nigerian and Indonesian governments should inculcate the political will to curb piracy off their waters in their counter-piracy efforts.[^4] This author has argued elsewhere that the Nigerian government should cultivate the political will to concomitantly implement measures to curb piracy in Nigeria.[^5] Concerning Indonesia, it has been argued that “Indonesia must demonstrate a strong political will to secure its jurisdiction, particularly at sea, because as an archipelagic state, Indonesia has a larger sea territory...compared to its land territory.”[^6] Lending credence to the importance of a robust political will in suppressing piracy, it has been suggested that the absence


[^2]: Ibid., p. 71.


of political will in curbing piracy would affect the effective implementation of other anti-piracy measures.\textsuperscript{89} Moreover, supporting the political will to suppress piracy is in the long term interest of almost all the parties involved in combating piracy.\textsuperscript{90} In closing this subheading, the implementation of these measures by the governments of Nigeria and Indonesia would lead to the suppression of piracy off their waters, thereby eliminating the threat posed by piracy to both countries’ art-craft industries.

VI. CONCLUSION

This paper has shown that Nigeria and Indonesia are made up of many ethnic groups, cultures, cultural heritage, art-crafts, and tourist locations (including coastal and marine tourism destinations). The implication is that art-craft and tourism are important in the economic development of both countries. Though Nigeria and Indonesia are endowed with enormous natural resources, like crude oil, which is the mainstay of both countries’ economies; the art-craft industry, including tourism, has become the non-natural resource of foreign exchange-earners in both countries. Furthermore, it was revealed that piracy is rife in the waters of Nigeria and Indonesia due to, inter alia, inefficient maritime regulatory and security agencies and the absence of political will to curb piracy by both countries’ governments. Given the economic importance of art-craft and the implications of piracy to the art-craft industries in Nigeria and Indonesia, it becomes imperative to suppress piracy off the coasts of both countries. This is imperative since piracy poses a threat to art-craft, especially the revenue derivable from the exportation of art-craft items. More so, the likely implications of piracy on the art-craft industry in terms of the safety of foreign tourists are motivating factors towards the introduction of anti-piracy regimes in Nigeria and Indonesia. Despite the absence of recorded piratical attacks on vessels transporting exquisite art-craft products and materials, such attacks are imminent due to the uptick in the piratical attacks off the coasts of Nigeria and Indonesia. Therefore, piracy should be nipped at the bud by effectively implementing the ex-ante and ex-post measures measures listed and analyzed above rather than relying solely on reactionary efforts, especially both governments should cultivate the political will to curb piracy off their waters.


BIBLIOGRAPHY

Legal documents


Indonesian Penal Code.


Law No. 6 of 1996 concerning Indonesian Waters.


Memorandum of Understanding on Port State Control in the Asia-Pacific Region, 1 December 1993.


Books


Articles


**Report/Policy Paper**


**Conference paper/Thesis**


Liang X. & Perlo-Freeman S., “corruption in the Indonesian arms business: tentative steps towards an end to impunity”, World Peace Foundation, December 2017, 4-7.


Ollivaud P. & Haxton P., “Making the most of tourism in Indonesia to promote sustainable regional development”, Organisation for Economic Co-operation and Development (OECD), Economic Department, Economics Department Working Papers No. 1535, 7 February 2019, 1-41.


**Websites**

Adeoye M., “2 industries that can create wealth in Nigeria”, Private Equity and Venture Capital Association, Nigeria (PEVCA) 27 January 2020


Bellish J., “The systematic prosecution of Somali pirate leadership and the primacy of multi-level cooperation”, June 2014, 39,


“Best management practices for the protection against Somalia based piracy”, BMP 4 (Version 4-August 2011) 7/13-15,


Pulungan R.W., “The limitations of the international law on piracy and maritime terrorism: options for strengthening maritime security in the Malacca Straits”, submitted in total fulfillment of the requirements of the degree of Doctor of Philosophy, Melbourne Law School, the University of Melbourne, June 2014, 123, https://pdfs.semanticscholar.org/7fb2/47f61ae9a8bf1b86e3e6a1aed944020e5be5.pdf, accessed 14 July 2020.

