

## TO WHAT EXTENT DOES MARITIME PIRACY IN THE GULF OF GUINEA AFFECT THE LIABILITY OF CARRIERS UNDER CONTRACTS OF CARRIAGE OF GOODS BY SEA?

### Abstract

*Maritime piracy remains a persistent threat to commercial shipping in the Gulf of Guinea, posing significant legal challenges to the allocation of risk and liability under contracts of carriage of goods by sea. This paper examines the extent to which maritime piracy in the Gulf of Guinea affects the liability of carriers for loss of or damage to cargo. It critically analyses whether piracy constitutes an excepted peril capable of exonerating carriers from liability, or whether carriers remain legally accountable due to failures in seaworthiness, due diligence, or contractual risk management. The paper is grounded in a doctrinal analysis of relevant international legal regimes, particularly the Hague–Visby Rules, the Hamburg Rules, and the Rotterdam Rules, as well as applicable principles of Common Law and Nigerian maritime legislation. Judicial decisions and standard form contracts, including bills of lading and charterparty clauses, were also examined to assess how piracy-related losses are treated in practice. The paper concludes that while international carriage of goods regimes provides certain defences to carriers, the effectiveness of such defences is significantly constrained by evolving standards of due diligence and risk prevention. The paper recommends strengthened contractual clarity, enhanced compliance with security obligations, and legal reforms to better reflect contemporary piracy risks in the Gulf of Guinea.*

**Keywords:** Maritime Piracy, Gulf of Guinea, Hague, Rotterdam, Charterparty, Carrier, Hamburg.

### 1. Introduction

The Gulf of Guinea has become one of the world's most piracy-prone marine locations, and maritime piracy has reappeared as a significant menace to international shipping.<sup>1</sup> Due to the Gulf of Guinea's strategic significance to worldwide trade, especially in the transit of gas, oil, and other commercial items, it has become a focal point for violent attacks on ships that move goods internationally by water.<sup>2</sup> The distribution of risk and the degree of obligation assumed by carriers under contracts for the carriage of commodities by sea have become complicated legal issues as a result of these ongoing piracy episodes. Carriers are typically required by contracts of carriage to take reasonable steps to ensure that the ship is seaworthy, adequately manned, fitted, and supplied and to safely carry, keep, and deliver cargo.<sup>3</sup> The framework defining these obligations is provided by international legal regimes including the Hague-Visby Rules, the Hamburg Rules, and the Rotterdam Rules, which also acknowledge some exceptions that may release carriers from duty. Piracy has always been classified as a peril of the sea or an expected risk. However, the evolving nature of piracy in the Gulf of Guinea characterized by organized criminal networks, heightened violence, and frequent attacks within territorial seas has raised doubts about the classification's continued applicability.<sup>4</sup> Courts, cargo interests, and insurers have been forced to reevaluate whether carriers can lawfully rely on piracy as a defense to liability due to the rising frequency of piracy incidents in the Gulf of Guinea, especially when concerns about due diligence and security obligations are raised. Determining carrier liability for piracy-related losses now heavily relies on factors including route planning, the implementation of anti-piracy measures, contractual risk allocation, and the inclusion of protective clauses in bills of lading and charter parties. In light of this, this paper investigates how much maritime piracy in the Gulf of Guinea impacts carriers' obligation

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<sup>1</sup>Maritime Piracy in the Gulf of Guinea available at <https://amaniafrica-et.org/maritime-piracy-in-the-gulf-of-guinea/> and accessed on 3<sup>rd</sup> January, 2025

<sup>2</sup>A Onyenucheya, Gulf of Guinea sees 25% Rise in Piracy Attacks in 2025, *The Guardian*, 16<sup>th</sup> October, 2025 available at <https://guardian.ng/business-services/gulf-of-guinea-sees-25-rise-in-piracy-attacks-in-2025/>

<sup>3</sup> GB Inyang & IO Nkasi, The Carrier Strict Liability in the Carriage of Goods by Sea: Instituting the Carrier Liability Regime under Hague and Hague-Visby rules, *International Journal of Law*, 2019, 5 (5) 73.

<sup>4</sup> VO Anyika, V Ajakorotu and K Ani, Piracy in the Gulf of Guinea - Trends, Causes, Effects and Way Forward, *African Journal of Development Studies (AJDS)*, Special Issue, January 2022, p 5.

under contracts for the transportation of products by sea. In order to determine whether current legal frameworks sufficiently balance the interests of carriers and cargo owners in the face of contemporary pirate risks, it critically examines pertinent international conventions and applicable local legislation.

## **2. Analysis of the Definition of Piracy under the Suppression of Piracy and Other Maritime Offences Act, 2019 (SPOMO) vis-à-vis Provisions of the UNCLOS**

Given the definition of piracy under the SPOMO Act, it can be gleaned from its wording that the said section includes the meaning of other maritime offences, which not only captures the provision of the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA Convention) but also covers the field in terms of geographical location of the crime, among others. A combined reading of sections 3 and 4 of the Act implies that any act of violence on a ship on the high seas or armed robbery against a vessel in territorial waters of a coastal state can be prosecuted in Nigeria. It is also pertinent to point out that one of the primary jurisdictional issues in ocean governance stems from the definitional distinction between piracy and armed robbery at sea. UNCLOS<sup>5</sup> restricts ‘piracy’ to acts committed outside the territorial waters of any state.<sup>6</sup> Conversely, incidents within Nigeria’s 12-nautical-mile territorial sea are categorised as ‘armed robbery at sea’ and fall exclusively under Nigerian jurisdiction.<sup>7</sup> This distinction has significant prosecutorial consequences: piracy under international law attracts universal jurisdiction, allowing for multinational enforcement, whereas armed robbery requires Nigeria to rely solely on its domestic criminal justice system. The SPOMO attempts to bridge this gap by extending Nigeria’s jurisdiction to cover offences committed in its exclusive economic zone (EEZ) and even beyond, in accordance with UNCLOS provisions.<sup>8</sup> Nevertheless, challenges arise when piracy incidents involve multiple jurisdictions such as attacks originating in the waters of neighbouring states like Benin or Cameroon but culminating in Nigerian territory. The absence of binding bilateral extradition and mutual legal assistance treaties with several Gulf of Guinea states often leads to jurisdictional deadlocks, allowing suspects to evade prosecution.<sup>9</sup>

## **3. Piracy and Armed Robbery against Ships in the Gulf of Guinea (GoG)**

Piracy as a phenomenon is not recent. There is no disputing the fact that no maritime nation has not at one point in history suffered from piracy. In the 16th and 17th centuries it flourished with a significant record of the capture of Julius Caesar.<sup>10</sup> The Gulf of Guinea (GoG) is no exception, but only that these nefarious activities have taken a dimension highly detrimental to the prosperity not just of its coastal states but also pose a threat to global trade and security. The increase in piracy in GoG and Nigeria in particular was occasioned with the 1970s and 1980s oil boom where export of oil and import of others goods were at all-time high. This was met with lack of capacity of the port regimes to clear products on time, as vessels stay longer in the harbor and local gangs saw in it as an opportunity to perpetrate criminal acts on vessels.<sup>11</sup> However, the fundamental question remains; what are the factor(s) responsible for the development of piracy in the Gulf of Guinea? Why has all effort towards curbing piracy proven abortive? Within this paradigm, piracy is argued to be a symptom or manifestation of unattended conundrums. To answer these questions, it is pertinent to note that Pirates are not born at sea but a product of onshore issues. Bizouras was of the view that similar to the case of Somalia, overfishing by European fleets in the West African coast stimulated the evolution of piracy in the Gulf of Guinea.<sup>12</sup> As a result of this phenomenon occasioned by underreporting, the depletion of fishing stock

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<sup>5</sup> United Nations Convention on the Law of the Sea (UNCLOS).

<sup>6</sup> UNCLOS (1982), Art 101.

<sup>7</sup> International Maritime Organisation, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships* (IMO 2009), para 2.2.

<sup>8</sup> SPOMO Act 2019, S. 2(1)-(2).

<sup>9</sup> D V Agbakwuru, ‘Jurisdictional Conflicts in Prosecuting Maritime Piracy in the Gulf of Guinea’ (2021) *Journal of Maritime Law*, 112.

<sup>10</sup> E Tepp, *The Gulf of Guinea: Military and Non-Military Ways of Combatting Piracy* (2012) available from <http://mercury.ethz.ch/serviceengine/Files/ISN/146424/...a7f1.../7.pdf> accessed on 21 July 2024.

<sup>11</sup> *Ibid.*

<sup>12</sup> B Nikolaos, *Piracy, State Capacity and Root Causes: Lessons from the Somali Experience and Policy Choices in the Gulf of Guinea* (December 3, 2012).

within the region impoverished local fishermen. Subsequently the local fishermen started attacking and robbing vessel in return. However, it should be noted that the act of fishing itself by the European fleets was in agreement with coastal states of the Gulf of Guinea. Though the overfishing made it illegal and was occasioned by lack of effective monitoring, compliance and surveillance system. Biziouras further argues that the high rate of unemployment among youths in the region has made the economic mobility of piracy especially in the Niger delta and Bakassi peninsula prosperous. Also, the lack of subsidies as well as support from the states couple with environmental degradation occasioned by oil exploration have made a breeding ground for the recruitment of youths to these criminal networks.<sup>13</sup>

In Nigeria, a militant warlord, Government Ekpemupolo, notoriously know for insurgency and malicious businesses at sea was, after the amnesty programme, his company 'Global West Specialist Vessels Limited was awarded a contract of \$326 million for countering maritime crime.<sup>14</sup> This scenario explains the last factor as argued by Biziouras as the persistence of corruption among state officials in these countries has crippled the credibility of state enforcement as a deterrence to piracy. Murphy proposed a number of causes ranging from legal and jurisdictional weakness, favorable geography, conflict and disorder, underfunded law enforcement/ inadequate security, permissive political environments, cultural acceptability and promise of reward.<sup>15</sup> On their part, Jacobsen and Nordby identified sea blindness, youth unemployment, poverty, political disputes, corruption and weak Governance as causes of maritime piracy.<sup>16</sup> The above enumerated causes of piracy as pointed out by the authors, are evident in almost all the countries within the Gulf, most especially Nigeria the country that account for over 90% of piracy in the GoG. This obviously points to the fact that against extant arguments, piracy is clearly a land-based crime manifesting in the sea. Hence it is difficult to disentangle the inextricable link between piracy within the coastal areas of these countries and in-land socio-politics and governance conundrums.

The presence of piracy and armed robbery in the Gulf of Guinea has brought a ruinous impact on the economic and social development of the area. To curb this ugly trend, huge amounts of money have been spent on the fight against piracy and armed robbery in the region. The amount spent by naval and counter-piracy forces of countries in the region is estimated to be between \$348 and 370 million dollars while the estimated amount spent on security equipment and guards is estimated to be between \$150.9 and 225.4 million dollars.<sup>17</sup> These disturbing increases in piracy and armed robbery activities in the Gulf of Guinea have also increased insurance premiums.<sup>18</sup> This high-cost premium is the major reason some ship owners chose not to report the incidents because of the fear of an increase in insurance cover. These ship owners also refrain from reporting these illegal activities because in some cases their ships might be detained for investigations.<sup>19</sup> Apart from the high premium incurred by ship owners, there is

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<sup>13</sup> *Ibid.*

<sup>14</sup> AB Abohi and ND Ahmed, Understanding West Africa Maritime Security Threats: A Critical Appraisal of the Development of Piracy and Armed Robbery at Sea in the Gulf of Guinea) *Socialscientia Journal of Social Sciences and Humanities* (2018) 3 (2).

<sup>15</sup> MN Murphy Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World. *Columbia/Hurst* (2010)

<sup>16</sup> KL Jacobsen, J Nordby Maritime security in the Gulf of Guinea. Copenhagen: *Forsvarsakademiet*, 2015. 72.

<sup>17</sup> Oceans Beyond Piracy Report, The State of Maritime Piracy 2013 54, available at: [www.oceanbeyondpiracy.org](http://www.oceanbeyondpiracy.org) Cited in DE Madanda, The Gulf of Guinea Piracy: Impact and Effectiveness of Control Measures *Journal of Law, Policy and Globalization* 2016 (25), 109.

<sup>18</sup> The biggest concern for the countries of the region is not the direct losses to the pirates, but the way these losses impact international insurance rates. In Benin, a country whose lifeblood flows through a 121-kilometer sliver of coastline, taxes on trade account for half of Benin's government revenues, and 80% of these are derived from the port of Cotonou. The wave of attacks in 2011 led international maritime insurance adjustors to place Benin's waters in the same category as Nigeria's, greatly increasing the costs of shipping to the country. According to the navy chief in Cotonou, there was a 70% decrease in maritime traffic in the third quarter of 2011 due to these increased costs. 132 This implies a possible 28% loss in government revenue.

<sup>19</sup> A. Younevitich et al, 'Analysis: West Africa Piracy issue to stay long term, may affect Regional Trade' edited by Jonathan Fox. Available at: [Platts.com/latest-news/shipping/London/analysis-west-africa-piracy-issue-to-stay-](http://Platts.com/latest-news/shipping/London/analysis-west-africa-piracy-issue-to-stay-)

also an increase in crewing costs. Obviously, crew members would not be interested in working in such a dangerous environment and to entice them, ship owners in most cases are left with no other alternative than to pay exorbitant crew wages. According to a report<sup>20</sup> by the International Maritime Bureau,<sup>21</sup> concerning piracy and armed robbery activities going on in the Gulf of Guinea, incidents of robberies at the anchorages were reported in Angola (Luanda), Ghana (Takoradi) and Guinea (Conakry). The report also revealed that the incidence of robbery was reduced in Equatorial Guinea, Cameroon (Ideano and Douala) and Ivory Coast (Abidjan). Regrettably, the report shows that Gabon, Nigeria, Togo, Sao Tome & Principe and Benin remain areas of high risk. While the kidnapping of crew occurred more than 70 nautical miles<sup>22</sup> offshore of Gabon, in Togo (Lome) there were reports of attacks in anchorages— vessels were robbed and the crews kidnapped. In Nigeria (Lagos/Apapa, Bayelsa/Brass/Bonny Island/Port Harcourt), the report showed that pirates/robbers who were well armed attacked, hijacked and robbed ships far from the coast, rivers, anchorages, ports and surrounding waters.<sup>23</sup> In 2011, 22 piracy attacks occurred off the coast of Benin, a country that had previously remained largely unaffected by the persistent piracy near Lagos, just a few kilometers away. These attacks quickly ceased, with only two reported in 2012 by that time. However, in Togo, there were 18 similar attacks by mid-September 2012.<sup>24</sup> These petroleum-related piracies sparked a rise in robberies in previously safe waters, likely fueled by failed hijack attempts or by other groups inspired by the success of the petro-pirates. In either case, the rise in robbery is closely tied to the momentum generated by oil theft, and most piracy in the Gulf of Guinea can be traced back to the Niger Delta.<sup>25</sup> Pirate activity in the Gulf of Guinea differs from that in the Indian Ocean. While Somali pirates concentrate on kidnap for ransom and extortion of money from ship-owners, in the Gulf of Guinea pirates launch attacks primarily from Nigeria, to steal cargo, equipment or valuables from a vessel and its crew. Although the kidnapping of crew members happens in the Gulf of Guinea, it is rarer than in the Indian Ocean.<sup>26</sup>

Thus, acts of piracy and armed robbery against ships along the coastal waters of West African countries are largely characterized by the stealing of cargo, cash and other valuable things in the ships. The vastness of the GoG and the low naval capacity of the states therein have contributed immensely to the growth of piracy and intensified the menace it poses to voyagers traversing the Gulf. Consequently, the region in the first half of 2020 for instance, pirates and armed robbers operated off at least eight countries in the Gulf of Guinea (Nigeria, Benin, Cameroon, Equatorial Guinea, Ivory Coast, Ghana, Togo, and Gabon) targeting a variety of vessels to include tankers, container ships, general cargo vessels, fishing vessels, passenger vessels, and numerous vessels supporting oil drilling/production.

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<sup>20</sup>ICC International Maritime Bureau (IMB), *Piracy and Armed Robbery Against Ships, Report for the Period 1<sup>st</sup> January – 31<sup>st</sup> March 2021*, 20.

<sup>21</sup>The ICC International Maritime Bureau (IMB) is a specialized division of the International Chamber of Commerce (ICC). The IMB is a non-profit making organization established in 1981 to act as a focal point in the crime against all types of maritime crimes and malpractice. The International Maritime Organization (IMO) in its resolution A 504 (xii) (5) and (9) adopted on 20<sup>th</sup> November 1981 as Inter alia urged governments, interest groups and organizations to cooperate and exchange information with each other and the IMB with a view of maintaining and developing a coordinated action in combating maritime fraud. Outrage in the shipping industry and the alarming growth in piracy prompted the creation of the IMB Piracy Reporting Center (IMB PRC) in Kuala Lumpur Malaysia in October 1992.

<sup>22</sup>Nautical miles are used to measure the distance travelled through the water. A nautical mile is slightly longer than a mile on land, equaling 1.1508 land-measured (or statute) miles. Nautical miles are based on the earth's longitude and latitude coordinates with one nautical mile equaling one minute of latitude.

<sup>23</sup>IMB Report (n.2), P 20.

<sup>24</sup>Maritime Piracy in the Gulf of Guinea' (UNODC) [https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West\\_Africa\\_TOC\\_PIRACY.pdf](https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West_Africa_TOC_PIRACY.pdf)> accessed 1 September 2025

<sup>25</sup>CC Ani, *An Appraisal of the Regional Efforts of the Gulf of Guinea Commission in Curbing Maritime Crimes and Insecurity, Esut Public Law Journal*, (2023) 4 (1).

<sup>26</sup>MF Mohammed, *Piracy in the Gulf of Guinea, Causes, Efforts and Solutions*, Regional Maritime Security Institute.

Thus, this crime has posed as a severe impediment to the huge contributions that the blue economy of the region should have made to the development of each of the states within the region.<sup>27</sup>

#### **4. Piracy/Armed Robbery against Ships and the Liability of a Carrier**

Suppose a shipping company X owns a large container vessel, called Y, which is contracted to transport cargo from the Port of Southampton to the Port of Dakar. The ship is registered in Liberia, and the shipping company has a contract with an exporter who needs to ship goods from Europe to West Africa. During the voyage through the Gulf of Guinea, an area notorious for piracy, Y is attacked by Somali pirates. The pirates board the vessel, overpower the crew, and take control of the ship. The pirates hold the crew hostage and demand a ransom for their release. Meanwhile, the cargo is held hostage as well. In such a case, who bears the liability for the cargo? Every form of transportation has an international framework or regime that exposes the obligations and constraints of each and every party. A 'carrier' is the organization in charge of shipping passengers or cargo by water in the context of armed robberies and piracy against ships. This could be a shipping firm, ship owner, or operator that enters into a bill of lading or other type of shipping contract to transport people or commodities. Because it establishes who is in charge of the cargo, passengers, and their safety throughout the trip, the carrier plays a critical role. The Hague Rules were created in 1921 as a result of the first international convention for the unified, worldwide regulation of carrier responsibility.<sup>28</sup> Initially, carriers were supposed to voluntarily adopt the Hague Rules. But the carriers refused to comply.

The International Convention for the Unification of Certain Rules Relating to Bills of Lading, which was adopted by an international conference in 1924, made the Hague Rules mandatory international law. The majority of the world's cargo is being transported in accordance with these regulations, which were universally accepted by the international community. The Visby Rules, a Protocol negotiated in Brussels in 1968, modified the regulations. However, the Hague Rules were not drafted with input from developing nations. Thus, the United Nations, via its Commission on International Trade Law (UNCITRAL) and Conference for Trade and Development (UNCTAD), took the lead in reviewing the practice relating to bills of lading. Developing countries felt that the existing international rules largely benefited the industrialized countries and ship-owners. So, in 1978 a United Nations Conference on the Carriage of Goods by Sea held at Hamburg adopted the United Nations Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules). These rules were intended to replace the international regime embodied in the Hague-Visby rules.

The Hague rules apply to every contract for the carriage of goods by sea about the loading, handling, storage, carriage, custody and discharge of such goods.<sup>29</sup> The original Hague Rules apply to all bills of lading issued in any of the contracting states. The Hague rules apply to both national and international contracts. The Hague and Hague-Visby rules do not differ much in application. The latter applies to every bill of lading relating to the carriage of goods between ports in two different states: if the bill of lading is issued in a contracting state; or the carriage is from a port in a contracting state, or the contract contained in the bill of lading provides for their application. The Hamburg Rules, on the other hand, apply to contracts of carriage by sea between different states if the port of loading or discharge is in a contracting state or if the bill of lading is issued in a contracting state or provides for their application.<sup>30</sup> The rules apply to all contracts of carriage which means that they apply whether a bill of lading has been issued or not. Generally, the Hague and Roman law rules share a common basis. The carrier is presumed to be liable for damage and loss to cargo but can escape liability by proving the existence of numerous exceptions. However, contrary to Roman law, the Hague rules base the liability of the carrier on fault. It is a negligence system with a reversal of the burden of proof. If the carrier can prove it was

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<sup>27</sup>OP Adesanya, 'Maritime crimes and the Gulf of Guinea', *Cogent Social Sciences*, (2023) 9(1).

<sup>28</sup>MF Sturley, The Centenary of the Hague Rules: Celebrating a Century of International Conventions Governing the Carriage of Goods by Sea available at <https://comitemaritime.org/wp-content/uploads/2024/12/2024-LMCLQ-565-Hague-Rules-centenary.pdf> accessed on 4th February, 2026.

<sup>29</sup> Art 2, Hague Rules.

<sup>30</sup> Art 2, Hamburg Rules

not negligent, it can escape liability.<sup>31</sup> This conclusion is based on the so-called ‘catchall exemption’ which provides that neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from any other cause arising without the actual fault or privities of the carrier, or without the fault or negligence of its agents or servants.<sup>32</sup> Irrespective of the exemption of disproving negligence, the Hague Rules also allow the carrier the opportunity to escape liability by proving one of sixteen exemptions, such as fire, an act of God, an act of war, an act or omission of the shipper, strikes, riots, inadequacy of packing or marks, latent defects, or an act of the master or servants of the carrier in the navigation or management of the ship.<sup>33</sup> In *Trafigura Beheer v Navigazione Montanari SPA*,<sup>34</sup> commonly known as *The Valle Di Cordoba Case*, the crux of the appeal was whether a loss by piracy falls within an In-Transit-Loss (ITL) in a voyage charter-party. The M/v ‘VALLE DI CORDOBA’ was chartered by Trafigura Beheer BV for the carriage of a consignment of premium motor oil (PMS). The vessel was attacked by armed pirates while she was off Lagos (Nigeria). The pirates took control of the vessel, forced the crew to transfer a part of the cargo to a lightering ship and stole it. The charters claimed against the owners for the value of the stolen cargo on the basis that the charter party provided the following ‘*in--transit loss*’ clause:

In addition to any other rights which Charterers may have, Owners will be responsible for the full amount of any in--transit loss if in--transit loss exceeds 0.5% and Charterers shall have the right to claim an amount equal to the FOB port of loading value of such lost cargo plus freight and insurance due with respect thereto. In--transit loss is defined as the difference between net vessel volumes after loading at the loading port and before unloading at the discharge port.

The Charterers argued that there was a difference between the net vessel volume after loading at the loading port and the net vessel volume before unloading at the discharge port and that therefore such difference should be considered an *in--transit loss* pursuant to the clause quoted above. Owners replied that the clause could not apply to such cargo, which was discharged prior to the vessel’s arrival at the port of discharge and that the clause covered only incidental losses occurred during the ordinary course of transit. In addition, the Owners pointed out that the charter-party incorporated the Hague Visby Rules, which exclude the Owners’ liability in case of loss due to acts of piracy. The Court of Appeal -- upholding the High Court decision -- stated that an ‘*in--transit loss*’ is an incidental loss that occurred during the carriage of the cargo for reasons inherent to the transportation itself, and does not extend to losses caused by external factors such as acts of piracy. According to the Court, a different interpretation of the expression ‘*in--transit loss*’ and thus of the relevant clause, would have *de facto* made the owners the insurers of the cargo.

Moreover, the Court deemed that even if the clause were construed in such a way as to cover, in theory, any kind of loss, the owners would have been anyway able to invoke the provisions set out by the Hague Visby Rules to exclude their liability. This decision gives the meaning of the expression ‘*in--transit loss*’ and it is quite important because if the owners had been held liable for the loss, they would have lost their P&I cover. Indeed, Club’s rules provide that the cover is lost if the owners agreed in the contract of carriage to a liability system which is more burdensome than the one provided for by the Hague Visby Rules. It is also pertinent to point out that liability is not excluded if the carrier's negligence occurred together with an exempted peril and resulted in damage or loss. The advantage of the Hague Rules is that the carrier cannot contract out of liability for negligence or lessen his liability contrary to the provisions of the rules. Such a contract will be null and void. The Hague Rules also replace the common law absolute warranty of seaworthiness, with the duty to use due diligence.<sup>35</sup> Consequently, if the cargo owner can prove that the loss or damage resulted from unseaworthiness, the carrier must prove the absence of negligence.<sup>36</sup> The Hague rules further limit the carrier's liability to a specific - albeit a

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<sup>31</sup> Art 4, Hague Rules.

<sup>32</sup> Art 4(2)(q), Hague Rules

<sup>33</sup> Art 4(2) (a)-(p), Hague Rules

<sup>34</sup> [2015] EWCA Civ 91.

<sup>35</sup> Art 3(1), Hague Rules.

<sup>36</sup> Art 4(1), Hague Rules.

moderate - amount unless the nature and value of the goods have been declared by the shipper before shipment and entered in the bill of lading.<sup>37</sup> This amount can be increased by agreement between the shipper and carrier but cannot be decreased.<sup>38</sup> As far as the liability of the carrier is concerned, the provisions of the Hague-Visby Rules are the same as those in the Hague Rules.<sup>39</sup> The Hague-Visby rules also contain a container clause in terms of which the limitation of liability applies to each package in a container if the number of packages in the container is specified in the bill of lading.<sup>40</sup> Under these rules, the limitation of liability is forfeited if the shipper proves that the damage resulted from an act or omission of the carrier—not of his servants—performed either with intent to cause damage or recklessly and with the knowledge that damage would probably result.<sup>41</sup> The Hague-Visby Rules expressly state that the defences to and limits of liability apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage irrespective of whether such action is founded in contract or tort.<sup>42</sup> If the action is brought against a servant or agent of the carrier, he is entitled to the same defences and limits of liability as the carrier.<sup>43</sup>

The aggregate of the amounts recoverable from the carrier and its servants and agents may not exceed the liability limits of the rules.<sup>44</sup> This prevents the shipper from obtaining greater compensation than that prescribed by the liability limits by instituting separate actions against the carrier and its servants. As in the case of the carrier, the servant or agent forfeits the defence and the limits of liability if the damage or loss was caused intentionally or recklessly.<sup>45</sup> The carrier forfeits the limitations only if it causes damage or loss intentionally or recklessly. The same is true of its servants. Forfeiture of the limitations is not based on vicarious responsibility and the carrier or servant does not forfeit the benefits because of the fault of the other. The Hamburg Rules follow the general historical trend of a carrier presumed to be liable for loss or damage to goods carried. In terms of these rules, the carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss took place while the goods were in its charge unless the carrier proves that it or its servants took all measures that could reasonably be required to avoid the occurrence and its consequences.<sup>46</sup> The carrier's liability is, therefore, based on negligence. It must prove the absence of negligence to avoid liability. The rules are also more by general principles in ensuring that the carrier will also be vicariously responsible for the negligence of its servants; a welcome change from the legal regime of the Hague-Visby Rules.

The Hamburg rules do away with the long list of archaic and often illogical exceptions to the carrier's liability. As far as loss or damage caused by fire is concerned, the carrier is still liable for its negligence but the burden of proof is shifted to the claimant.<sup>47</sup> The only real exception to the carrier's liability is where loss or damage results from measures to save life at sea.<sup>48</sup> Because of the principle of vicarious liability for servants, and the scrapping of the multitude of exemptions found in the Hague-Visby rules, the conclusion seems warranted that the Hamburg rules place a greater liability on the carrier than the Hague-Visby rules. The Hamburg Rules also limit the liability of the carrier.<sup>49</sup> By agreement, these limits may be exceeded but may not be reduced.<sup>50</sup> As in the Hague-Visby rules these limits fall away for the carrier if it caused the damage intentionally or recklessly.<sup>51</sup> The same holds for the carrier's

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<sup>37</sup> Art 4(5), Hague Rules

<sup>38</sup> *Ibid.*

<sup>39</sup> Art IV (5), Hague-Visby Rules.

<sup>40</sup> Art IV(5)(c), Hague-Visby Rules.

<sup>41</sup> Art IV(5)(e), Hague-Visby Rules.

<sup>42</sup> Art IV (1), Hague-Visby Rules.

<sup>43</sup> Art IV (2), Hague-Visby Rules.

<sup>44</sup> Art IV (3), Hague-Visby Rules.

<sup>45</sup> Art IV (4), Hague-Visby Rules.

<sup>46</sup> Art 5(1), Hamburg Rules.

<sup>47</sup> Art 5(4), Hamburg Rules.

<sup>48</sup> Art 5(6), Hamburg Rules.

<sup>49</sup> Art 6(1)(a), Hamburg Rules.

<sup>50</sup> Art 6(4), Hamburg Rules.

<sup>51</sup> Art 8(1), Hamburg Rules.

servants who are then personally liable for unlimited damages.<sup>52</sup> As contained in the Hague-Visby Rules, the reckless or intentional acts of the servants cannot nullify the limitations enjoyed by the carrier and the same applies to the carrier which cannot nullify the limitations applicable to the servants. In normal circumstances the rules allow an action to be brought against the carrier's servants but they are entitled to the same defences and limitations as the carrier and the aggregate amount recoverable from them and the carrier may not exceed the prescribed limitations.<sup>53</sup> From the foregoing, where a piracy incident occurs, the carrier's liability depends on the terms of the contract of carriage, as well as international maritime law, such as the Hague-Visby Rules. These conventions address the carrier's responsibility regarding the safety of the vessel, crew, and cargo. Generally, under these rules, the carrier is not liable for damage caused by external factors beyond its control, such as piracy. However, the carrier must still ensure the vessel is seaworthy, properly manned, and has the necessary equipment to mitigate potential threats. In cases where the carrier is negligent in fulfilling its duties (e.g., failing to provide adequate security or ignoring warning signs of piracy), they could be held liable for damages or losses resulting from the piracy. Hence, the liability of the carrier depends on the following:

### **Seaworthiness and Security Measures**

The first question is whether the carrier took reasonable steps to ensure the safety of the vessel. Did the company take into account the increased risk of piracy in the piracy prone area and implement adequate security measures? This includes hiring armed guards, installing anti-piracy technologies, or following recommended best practices for operating in high-risk waters. If the shipping company failed to follow international recommendations, such as not following the best practices outlined by the IMO for high-risk areas, they might be seen as being negligent in ensuring the safety of the vessel and its crew. In this case, they could be held liable for the losses suffered by the cargo owner.

### **Piracy Clause in the Contract of Carriage**

The contract between carrier and the exporter may contain a clause addressing piracy. Some contracts explicitly limit the carrier's liability in cases of piracy, stating that the carrier is not responsible for any damages or delays caused by piracy. In these cases, the carrier would typically not be liable for the ransom or any damage to the cargo or vessel caused by the hijacking. However, if the contract does not contain a piracy clause or if the carrier is found to have been negligent (for instance, failing to provide adequate security), they could be held liable for the ransom and other damages. In *Suez Fortune Investments Ltd & Anor v. Talbot Underwriting Ltd & Ors (The M/V 'Brillante Virtuoso')*,<sup>54</sup> the Insurers argued that the Owners were in breach of warranty since they failed to apply the Best Management Practices to Deter Piracy and the vessel had delayed the transit through the Gulf of Aden (breaching the Talbot Gulf of Aden warranty, which prevented vessels to delay the transit through the Gulf).

### **Insurance and Liability for Cargo**

The cargo owner (exporter) typically has insurance to cover the risks of loss or damage to the goods during transit. If the cargo is delayed or held for ransom, the exporter may be compensated by their insurance policy. However, in cases where the carrier is found liable due to negligence, the insurer may pursue a claim against the carrier to recover the losses.

### **Force Majeure**

Piracy is often considered a 'force majeure' event, meaning it is an unforeseeable event that prevents the carrier from fulfilling its obligations. This could provide the carrier with an argument that they should not be held responsible for the ransom or any subsequent losses caused by the hijacking. However, the carrier would still be expected to show that they took reasonable precautions to prevent piracy and protect the cargo.

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<sup>52</sup> Art 8(2), Hamburg Rules.

<sup>53</sup> Art 7(2) & (3), Hamburg Rules.

<sup>54</sup>[2015] 1 Lloyd's Rep 651 Queen's Bench.

## **5. Conclusion and Recommendations**

The paper examined the extent to which maritime piracy in the Gulf of Guinea affects the liability of carriers under contracts of carriage of goods by sea. It showed that while international carriage of goods regimes traditionally recognize piracy as an excepted peril capable of relieving carriers from liability, the practical application of this defence has become increasingly limited in the context of modern piracy in the Gulf of Guinea. The violent and organized nature of piracy in the region, coupled with its frequent occurrence within territorial waters, has blurred the distinction between unforeseeable maritime risks and preventable security failures. The analysis reveals that carrier liability in piracy-related cargo losses is now largely contingent upon compliance with due diligence and seaworthiness obligations. Where carriers fail to adopt reasonable preventive measures, comply with recommended security practices, or adequately manage known piracy risks through contractual provisions, reliance on piracy as a defence is unlikely to succeed. Conversely, carriers who can demonstrate adherence to international standards, proper voyage planning, and effective risk mitigation measures may still benefit from limited liability protections under applicable conventions. Ultimately, the study concludes that maritime piracy in the Gulf of Guinea has significantly reshaped the legal assessment of carrier liability under contracts of carriage of goods by sea. In light of the findings of this paper, several measures are recommended to enhance legal certainty and effectively address the impact of maritime piracy on carrier liability in the Gulf of Guinea.

First, carriers operating in the Gulf of Guinea should adopt enhanced due diligence and risk-mitigation measures that reflect the persistent and foreseeable nature of piracy in the region. Compliance with internationally recognized security standards, such as the International Ship and Port Facility Security (ISPS) Code and industry best management practices, should be treated not merely as optional guidelines but as integral components of seaworthiness obligations. Demonstrable adherence to such measures would reduce disputes over liability and strengthen legitimate reliance on piracy-related defences.

Second, greater contractual clarity is required in contracts of carriage, particularly in bills of lading and charterparties. Parties should expressly address piracy risks through clearly drafted clauses allocating responsibility for security measures, route deviations, ransom payments, delays, and cargo loss. Standard form contracts should be reviewed and adapted to reflect the unique piracy risks of the Gulf of Guinea, thereby minimizing ambiguity and litigation.

Third, states within the Gulf of Guinea, including Nigeria, should strengthen the domestic implementation and enforcement of international maritime conventions governing carriage of goods by sea. Legislative reforms aimed at harmonizing national laws with contemporary international standards would enhance predictability in the adjudication of piracy-related cargo claims and promote confidence among commercial shipping stakeholders.

Fourth, regional cooperation among Gulf of Guinea states should be intensified to address piracy as a shared maritime security challenge. Improved information sharing, joint naval patrols, and coordinated legal frameworks for the prosecution of piracy offences would contribute to reducing piracy incidents and, by extension, the legal and commercial risks borne by carriers and cargo interests.

Finally, judicial and arbitral bodies should adopt a contextual and progressive approach when interpreting piracy-related liability disputes. Courts should consider the evolving nature of piracy and the reasonable expectations placed on carriers operating in high-risk waters, while ensuring that liability exemptions do not undermine cargo owners' rights. Such an approach would foster a balanced legal regime that reflects both commercial realities and contemporary maritime security challenges.