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ASYMMETRIC MARITIME SECURITY THREATS: A FACTOR IN THE NIGERIAN TERRORISM ECCENTRICITY

By

Abdulrazaq O. Abdulkadir, (Ph.D.)*

Abstract

A distinct development in international security with respect to the post-Cold War era is the problem and phenomenal rise of Asymmetric threat. Asymmetric security threat has been identified as the most pervasive challenge to international stability because it is a kind of security threat posed by radical non-state armed groups. With the development towards globalisation and increasing interconnection between nations of the world, these threats go beyond state systems. The devastating effects of the terrorist attack on the United States (US) on 9 September, 2001 (colloquially referred to as '9/11'), the shocking attacks of Madrid, London, Delhi, Mumbai, amongst others have greatly underscored terrorism's global connection and its potential to infringe upon the sovereignty and integrity of states. Terrorist activities have exposed innocent citizens to series of attack thereby causing loss of lives and property. The attacks are being made possible majorly through the importation of arms and

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dangerous weapons in the Nigerian maritime borders as exemplified in the bombing of Army Barracks, Jaji in Kaduna State, where it was alleged that those weapons were imported from Brazil and the US. This article argues that the Nigerian upheavals and insecurity in the hands of terrorist groups in recent times have interconnection with international armed groups on one hand and porous maritime borders on the other hand. The article suggests proactive security measures in the Nigerian maritime borders to curtail the excesses of Asymmetric insurgents.

Key Words- Asymmetric, Maritime, Security, Factor, Terrorism

Introduction

Maritime insecurity in every nation is a problem that should not be taken lightly. This is why the 1923 International Regime of Maritime Ports (herein after 'the 1923 Convention) addresses the right of access of foreign flagged vessels to port states. Although, a number of states including Nigeria have ratified the 1923 Convention, some states have failed to integrate it into their national law.[1] By the Convention, equal

1. It needs to be emphasised that no international obligation which the country has ratified will be binding on Nigeria unless the same has been domesticated and incorporated as municipal law by the National Assembly. This has been expressly captured in the Nigerian Constitution that:"(1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty." The above has been given judicial pronouncement in the case of *General Sani Abacha v Chief Gani Fawehinmin*

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treatment should be accorded foreign flagged vessels but where the right of access would pose danger to the security of the port state, the port state reserves the right to deny access through the instrument of its domestic law.[2]

The issue of security in the Nigerian maritime sector is timely, especially as the country is experiencing serious security challenges, allegedly attributable to acts of terrorism. The activities of the terrorists are carried out through the use of various weapons supposedly imported through our Ports. Port security is one area of increasing national concern and threat in Nigeria. There are various security measures put in place in the attempt to reduce perceived security threats.[3] In order to fully enjoy the privileges of the sea, legislation has been enacted to ensure that terrorists do not use Nigerian ports to import arms into the country. There is no doubt that the ports play an important role in the economic development of coastal states, hence, there is a need for adequate security in maritime borders.[4] In Nigeria today, there is a proliferation of behavior which were previously conceived by the society as

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(2000) ALL FWLR (Pt. 4), at 533 where the Court that: "It is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be, it remains unenforceable, if it is not enacted into law of the country by the National Assembly."

2. See Article 2 of the 1923 convention which provides that every contracting state undertakes to grant access to the vessels of every other contracting state equality of treatment with its own vessels or those of any other states whatsoever in the maritime ports situated under its sovereignty or authority as regards freedom of access to the ports, the use of ports and fully enjoyment of the benefit as regards navigation and commercial operation which it affords to vessels, their cargoes and passengers.
3. These measures have the possibility and potential to radically change port operations and indeed may lead to considerably increased shipping cost and time.
4. For example, employment opportunity, sources of revenue to government to mention but few.

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antisocial and unacceptable. Incidents such as bombing, militancy, piracy, kidnapping and other forms of violence have become so rampant with the perpetrators walking shoulders high like "heroes" of social disorder. Even more appalling is that they are bold to claim responsibilities for every iniquity. All these are characteristics of asymmetric maritime security threat.

This article discusses asymmetric maritime security threat in Nigeria, the impact of transnational crimes and how the asymmetric maritime security threat impacts on security in Nigeria. The article offers suggestions to curtail trans-border crimes in order to reduce insecurity in the country.

What Is Asymmetric Maritime Security Threat?

Asymmetric maritime security threat is a kind of security threat posed by radical non-state armed groups[5] through maritime borders. Asymmetric security threat has been identified as the most pervasive challenge to international stability.[6]A distinct development in international security with respect to the post-Cold War era is the problem and phenomenal rise of asymmetric threat.[7]With the development towards globalisation and increasingly interconnection between states, these threats go beyond state systems. Terrorist activities have exposed innocent citizens to series of attacks thereby causing of loss lives and property.

In order to accomplish their mission, the perpetrators of insecurity in Nigeria import arms, usually through containers which pass through our ports with little or no inspection. The

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5. Nirmala, J, "Responses to Non-Traditional Threats & Challenges", *Reconnecting India and Central Asia,* Traditional security *challenges.pdf* accessed on 12 July, 2012), p.82.
6. *Ibid.*
7. The traditional security threat involves combatants like navy, air force etc. of a particular country against the other state.

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non-traditional security threats thrive because of lack of coordination among the maritime agencies and lack of facilities to checkmate the importation of dangerous cargoes.[8] Extremism has been said not to be a new phenomenon and the goals of extremists appear to be limited ranging from drawing attention to themselves and specific issues such as showing grievances.[9] It is on record that a radical shift in the character of extremism happened during the time of the Soviet military involvement in Afghanistan from 1979-1989, where the act of terrorism and extremism that arose in the course of this military intervention were of a serious and new magnitude, largely because it was premised on religion.[10] What was responsible for the Afghan crisis was the fight against 'godless Communists' which generated religious acrimony and a strong Afghan resistance.[11] In fact, it has been stated that the present day 'gun culture and gun running' in the region and beyond is a product of this development. But it remains uncertain till date whether the aims and objectives of the extremists are religious or political or a combination of the two.[12] It is certain that insecurity challenges facing Nigeria today is non-

8. Nirmala, J, (n 5).
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. Note both India and the Central Asian states have faced substantial problems with insurgencies and cross-border terrorist activities for over a decade. Presently, the problem is most pronounced in India, while the Central Asian states are affected to a lesser but still notable extent. After the end of the Soviet occupation of Afghanistan in 1989, military supplies to the Mujahideen ended in 1991, and United States Agency for International Development's (USAID) humanitarian assistance program came to an end in early 1993. But the forces of religious extremism flourished. The Mujahideen overthrew President Mohammed Najibullah and assumed power in Afghanistan in 1992. Several factors provided sustenance to these forces, the most important among them being the proliferation and availability of arms, especially small arms. See generally, Nirmala, J, note 6 *supra*.

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traditional in nature as is evident from gun running and explosive devises culture which have become order of the day in Nigeria. So, it could safely be concluded that the non-traditional security threats such as asymmetric maritime security threats are the challenges that the country needs to combat in order to minimise the insurgence of trans-boundary arms through our border ports.

Fight against Transnational Crimes

Nigerian waters have become amongst the least safe in the world. A significant proportion of Nigeria's wealth is within her territorial waters,[13] meaning that maritime security has a direct bearing on Nigeria's ability to secure its national assets, which is a vital interest for the country. The quality of Nigeria's maritime security capabilities also has serious implications for fighting transnational crime; which is no doubt inimical to Nigeria's vital interest in maintaining peace and security in its borders. The limited capacity of the Nigeria Port Authority (NPA) to monitor security at the nation's ports and what comes in and out of them further compounds the problem. Nigerian ports lack meaningful access control and surveillance and the NPA security department and Ports Authority Police Command are not able to adequately secure their area of operations. The Nigerian Navy and Air Force have been brought in to assist with arrangements to improve security in Nigeria's coastal areas.[14] A vivid example of the possibility of transnational extremism was the case of an Iranian by name Azin Agahajani and a Nigerian, Ali Jega who claimed to be importing wool, glass and pellets of stones in

13. For example, oil and some other mineral resources are derived from water. See generally, Stephen Starr, "Maritime Piracy on the Rise in West Africa", *Combating Terrorism Centre*, April, 2014.
14. A National Security Strategy for the Federal Republic of Nigeria, available at www.a_national_security_strategy_for_nigeria (accessed on 2/5/14).

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their Bill of Lading, they were caught importing consignment of a 13 by 20 feet container laden with ammunition such as bombs, rocket and grenades.[15]

Having underscored the fact that asymmetric maritime security threat often takes dimension of transnational crimes or international element, it is important to emphasis international measures which have been applied in other jurisdictions to address the menace and possibly understand its possibility or application in the light of the Nigeria's security challenges.



Part of the Nigerian maritime domain showing propensity to people's abode. Adapted from www.a_National_Security_Strategy_for_Nigeria (access on 2/5/14).

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International Response to Asymmetric Maritime Security Threat

The security insurgency confronting Nigeria appears to be multifaceted. They include kidnapping, bombing, militancy, to mention but a few. The question that arises is whether international response to these challenges would be a panacea to the insurgence. It would be recalled that during a serious unrest in the Straits of Malacca, there were attempts by the US to send troops to the troubled region.[16] After the media's disclosure of the US plan to deploy troops in the Straits of Malacca, Indonesia's Ministry of Foreign Affairs issued a statement on the official position of the country in its opposition to the plan. Indonesia's Ministry of Foreign Affairs argued that Indonesia and Malaysia, in accordance with the 1982 United Nation Convention on the Law of the Sea (UNCLOS), were solely responsible for guarding the Straits of Malacca.[17] While responding to the US attempt, Nugroho Wisnumurti, a former Director General for Political Affairs of Indonesia's Ministry of Foreign Affairs, pointed out that "fighting terrorism through regional cooperation in Southeast Asia, or any part of the globe for that matter, is to be applauded. However, fighting terrorism in the Malacca and Singapore Straits by allowing the use of military force by any

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16. Irwin U.J. Ooi, "The Malaysian Maritime Enforcement Agency Act 2004: Malaysia's Legal Response to the Threat of Maritime Terrorism", 21 *Australian and New Zealand Maritime Law Journal,* (2007), 73. See also Shipping News: US Mends Fences with Malaysia over Strait. KL Assures Admiral Fargo of Help to Fight Terrorism, but Rejects Joint Patrol and US to offer Data, Know-how to Boost Strait Security. Available at http://www.scoop.agonist.org/story/2004/6/22/55619/4527 (accessed on 04/07/15).
17. Song .Y, "Regional Maritime Security Initiative (RMSI) and Enchasing Security in the Straits of Malacca: Littoral States' and Regional Responses", Shicun W and Keyuan Z, (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation,* (England: Ashgate Publishing Ltd, 2009), p. 112.

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country other than the coastal states (Malaysia, Indonesia and Singapore) is another matter and is purely the affairs of the littoral states. Notwithstanding the fact that the littoral states rejected the move, the littoral states were further encouraged to be more proactive in the security of the important sea lane of Straits of Malacca.[18] Borrowing from the experience of Indonesia and Malaysia in the Strait of Malacca, Nigeria may consider it expedient to seek aid from international community to tackle the menace of asymmetric in the nation's maritime domain.

The Response of International Maritime Organisation (IMO) to Asymmetric Maritime Security

The problem of maritime security and terrorism generally is as old as human's willingness to use violence to effect politics.[19]

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18 *Ibid.* Borrowing from aviation security, recently when the Malaysian Flight MH370 got missing with 239 passengers including crew members, on 8 March, 2014 on its way to Beijing, China, international communities (U.S.A, Australia, China, among others.) sprang into action to carry out rescue mission to search the missing flight. Although their efforts are yet to materialise as of the time of this research, there appears to be hope of finding the missing plane. It is shocking that the kidnapping of over 200 female students of Government Secondary School, Chibok, Borno State, Nigeria has not received expected international aid almost three weeks now. Could the failure of international communities to respond by sending troops or other aid is as a result of self-absorption on the part of the Nigerian government? Or there are cabals undermining any external aid in this perspective? There have been reports that Aircraft supplies food to the members of the insurgence, therefore, there is need for the Nigeria security agents to be provided with the necessary wherewithal to combat the menace and or seek international aid to suppress it.

19 See Yahaya O. I, "Political Dimension to Faith-Based Terrorism: The Nigerian Experience", being a lead paper presented at the *6th Annual Conference of Muslim Lawyers Association of Nigeria (MULAN),* Banquet Hall, Government House, Ilorin, Kwara State on the 30th June, 2012, p. 3. See also Isaac O. Albert, "Religion, Terrorism and National Security: Untying the Unholy Knot", presented at the *6th Annual Conference of Muslim Lawyers Association*

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The IMO is an agency of the United Nations and is, among other functions, responsible for designing strategy to improve the security and safety of international shipping and to prevent ships from causing marine pollution.[20] The International Maritime Organization (IMO) Safety Committee has proposed certain security information which should be provided by ships prior to their entry into port with the aim of harmonizing the data set that may be required from each port.[21] But the contracting states are clearly left with the option to seek supplementary and additional information as a condition precedent for entry into their ports. The failure of any master of ship to provide the information entitles the port state to deny access to such ship.[22] The World Customs Organisation (WCO) and IMO signed a Memorandum of Understanding in July 2002 for the purpose of examining security measures for containers loaded into vessels.[23] Because the IMO was set up

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of Nigeria (MULAN), Banquet Hall, Government House, Ilorin, Kwara State on the 30th June, 2012, p. 1. For example, the Sicarii were reported to be the first century Jewish group who murdered enemies and collaborators in their effort to oust the Roman ruler from Judea and were reported also to have killed Roman soldiers and destroyed properties. A secretive Islamic sect known as Hashhashin, (assassins) active in Iran and Syria between 11th-13thcentury were known to spread terror in the form of murder of many people including children and women. It was stated that the problem of terrorism is not peculiar to Muslim alone as gleaned from the Northern Ireland where the Catholics and Protestants used terror tactics against each other.

20. Committees on marine environmental protection, law, technical co-operation, and facilitation, as well as numerous sub-committees are responsible for the main technical work of the IMO.
21. Klein. N, *Maritime Security and the Law of the Sea*, (New York, Oxford University Press, 2011), pp. 239-240. See also, IMO, 'Guidance to Masters, Companies and Duly Authorized Officers on the Requirements Relating to the Submission of Security-Related Information Prior to the Entry of a Ship into Port' (14 December, 2004) IMO Doc MSC/Circ.1130, Annex.
22. *Ibid.*
23. Hartmut, H & Charalambous N.L, "New Security Measures for the International Shipping Community," 3 *World Maritime University Journal of Maritime Affairs*. 123, 128.

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to adopt legislation only, the organisation has no implementing agency.[24] Therefore, the task for implementing legislation with respect to port security remains with each state that ratifies the conventions and makes them part of their respective domestic laws.[25]

The implication of the above is that the IMO notwithstanding its 170 member states could only bark and not bite.[26] The IMO adopted a new edition of the International Convention for the Safety of Life at Sea (SOLAS) in 1960[27] and this convention has been generally regarded as the most significant international pact dealing with maritime safety and security of individual merchant ships.[28] The IMO contracting states account for over 98% of the world shipping industry[29] and the responsibilities of these contracting states include dealing with the carriage of dangerous goods and facilitating international maritime traffic.[30] The SOLAS was amended on

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24 *Ibid.* Note that IMO is responsible for designing strategy to improve the security and safety of international shipping and to prevent ships from causing marine pollution.

25 Hartmut, H & Charalambous N. L, *op.cit.*

26 Abdulkadir O.A and Abdulkader S.Z, "Right of Ship Access to Port State under International Law: All Bark with No Bite",*Australian Journal of Basic and Applied Sciences,* 6(11), (2012), 214.See also Brailer R.B, "Protecting U.S Port with Layered Security Measures for Container Ships," *Military Law Review,* Vol.185, Fall (2005) p.22.

27 *Ibid.* See also International Ship and Port Facility Security Code, SOLAS/CONF.5/34, annex 1 (Dec. 12, 2002) [hereinafter ISPS Code] (providing Resolution 2 of the Dec. 2002 conference containing the ISPS Code). The ISPS Code is implemented through chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS). See International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 276 [hereinafter SOLAS].

28 Brailer, R.B at p.23.

29 *Ibid.*

30 *Ibid.* Interestingly, owing to the fact that the SOLAS was designed to be reviewed periodically, a new Convention came into force on the 1st November, 1974 and entered into force on 25th May, 1980.

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series of occasions and it is usually referred to as "SOLAS 1974 Convention, as amended".[31] Nigeria is a state party to virtually all these international conventions with some of them integrated into the gamut of her laws.[32] However, it must be pointed out that implementation problem is the major problem confronting Nigeria. Security agents at our borders are more interested in personal gains and consequently, goods are imported to the country with little or no inspection. This may explain the importation of bombs and other ammunitions used in destroying Army Barrack, Jaji in Kaduna State. It was alleged that those weapons were imported from Brazil and USA through a Nigerian border.[33]This justifies the continuous assertion that Nigerian borders (Seaports, Airports and Roads) are porous, thereby giving room for importation of arms and ammunition. This is due to the fact that major Nigerian ports are located in densely populated areas which make them extremely difficult to be secured effectively. In Nigeria, foreigners with no right of entry into the country are everywhere. This is unlike other parts of the world where there are thorough security checks at borders.

In addressing the problem of importation of dangerous weapons into the country, the IMO has strongly recommended

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31. Note that the mandatory security measures in respect thereof were adopted in December 2002 and they include number of amendments to SOLAS. The most far-reaching of these amendments contains the International Ship and Port Facility Security Code (ISPS Code), which details security-related requirements for Governments, port authorities, and shipping companies.
32. For example, International Convention for the Safety of Life at Sea is one of the laws which have been domesticated. Nigeria accession to SOLAS 1974 was on 13th November, 1984 but Nigeria is yet to be a signatory to its Protocol.
33. See Kingsley Omonobi and Luka Binniyat, "Jaji Bombings: Military Removes two Generals", *The Guardian,* 2nd December, 2012 available at *http://www.vanguardngr.com/2012/12/jaji-bombings-military-removes-two-generals/* (accessed on 2/2/14).

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the implementation of the International Ship and Port Facility Security (ISPS) and Container Security Initiative (CSI).

a) **ISPS Code**: ISPS code represents a comprehensive wide-range of the anti-terrorism measures dealing with vessels, ports and related facilities. It operates within the framework of International Convention for the Safety of Life at Sea (SOLAS) under the auspices of IMO and this indeed was designed to improve the security of offshore facilities, vessels, ports and related facilities.[34] This code provides security plans and establishes an internationally recognized identification for vessels and the related industries. This code has important implications for port security and ship.[35]Up till date, Nigeria is still dilly-dallying on the full implementation of this important security plan.[36]Although, Nigerian ports are urged to comply with the provision of the code under the Nigerian Ports Authority Act,[37] research has shown that the degree of compliance in tracking down ships and containers appear to be negligible.[38] In a way, this eases the importation of arms and dangerous substances into Nigeria as there are no devices to detect the contents of containers without necessarily opening the whole containers.

Prior to the attack on the World Trade Centre and Pentagon on September 11, 2011, the IMO had taken into account, ways of improving security of ships at ports and sea via the adoption of a circular in 1986 with a view to measure

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34. Kaye. S and Bautista. L, *The Protection of Shipping in the 21st Century: An Australian Perspective*, (Australia, Sea Power Centre, 2011) p.38.
35. *Ibid.*
36. See generally, Abdulkadir A.O, "Preventing Armageddon: Implementation of the International Ship and Port Facility Security (ISPS) Code in Nigeria": *Ife Juris Review, (Journal of Contemporary Legal and Allied Issues), IFJR.* (2013), Part 2 (July-December), p. 349.
37. Cap. N126, LFN, 2004.
38. *Ibid.*

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and enhance maritime security.[39] The ISPS Code is intended to identify and allow for prevention of terrorist attacks on ship and it applies to passenger and cargo ships. The Code also accorded series of roles to flag, coastal and port states as well as Port Security Officer, Ship Security Officer and Company Security Officer to improve security both at on board ship and ashore.[40] ISPS Code involves dissemination of information to ports regarding ships seeking to enter ports and the information includes the security level of the ship at the last 10 ports visit.

Under the provision of the SOLAS regulation,[41] contracting states are required to communicate particular maritime security related information to the IMO. In an attempt to gather all such information and supervise the status of compliance with ISPS Code and SOLAS, IMO has established what is called GISIS (Global Integrated Shipping Information System)[42]. Up to 94% of the contracting states to the SOLAS Convention have agreed and approved security plans for 97% of the declared port facilities.[43] In the same vein, a high degree of compliance has been achieved for ships with almost no record of disturbance of the world trade[44]hence, the ISPS Code takes the approach that ensuring the security of ships and the port facilities is basically a risk management activity to determine what security measures are appropriate in

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39. Klein. N, at p.157-158. This was done through the Convention for Measure to Prevent Unlawful Acts against Passengers and Crew on Board Ships.
40. *Ibid*, p.159.
41. See Regulation XI-2/13 of the SOLAS.
42. GISIS is a database fed regularly by government communications. See generally, *http://www2.imo.org/ISPSCode/ISPSInformation.aspx* (Viewed on 9/7/12). See also Ted L. Madorman, "Regional Port State Control Agreements: Some Issues of International Law", *Ocean Coastal Law Journal*, Vol.5:207 (2000) 214.
43. Ted L. Madorman *op.cit.*
44. IMO, 2005, *Maritime Security on Agenda as USCG Commandant visits IMO*, IMO Newsroom, 17 February, 2005.

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each particular case. The purpose of the Code is to provide a consistent framework for evaluating risk, standardized and enabling governments to counter balance changes in threat with changes in vulnerability for ships and port facilities.[45]

In Europe, a survey[46] conducted by the European Sea Ports Organization (ESPO) shows that most European Union port facilities are in compliance with ISPS Code at security level.[47] The United States Coast Guard had declared seven countries as failing to comply with ISPS Code with respect to port facility arrangement and warned that ships that have navigated one of these countries in the course of their last five port calls are required to implement the security code to enter US ports.[48]

A recent report[49] by the United States Government Accountability Office (GAO) showed that as at November 2004 the figure of C-TPAT members was 7,312 of which 4,153 and 409 are validated and certified respectively.[50] However, the degree of compliance by the maritime operator

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45. See Klein, K, p.159.
46. Lloyd's List, (London) *"On the lookout of countries whose port security does not measure up"*, 15 March, 2005. See SOLAS convention status at *http://www.imo.org/includes/blastDataOnly.asp/data_id per cent3D11666/status.xls*. See also compliance status of Taiwan Province of China available at *(http://www.khb.gov.tw/www/service/ISPS per cent20information/ISPSINFO.pdf)*. (accessed on 9/7/13).
47. *Ibid.*
48. USCG, 2005, *Port Security Advisory: 1-05*, USGG (DHS), 28 February, 2005.
49. The United States Government Accountability Office (GAO), IN 2005 and Cargo security partnership programme granted importers reduced scrutiny with limited assurance of improved security. Report to Congressional Requesters, GAO-05-404, Washington DC. Regarding the US-led initiatives, the 2004 financial report by the CBP indicates that C-TPAT and ISA participants account for 37 per cent of all import lines, while active CSI-ports account for 46 per cent of all entry lines for sea container traffic. These figures are due to rise given the increasing number of active CSI ports. As of 31 May 2005, CSI coverage based on listed ports by CBP accounted for 65 per cent of total US waterborne containerized imports.
50. *Ibid.*

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is somewhat difficult to ascertain on a global scale owing to the numerous parties involved in the maritime transport system on one hand and different approaches of contracting member states to control compliance measures on the other.[51] This inability to ascertain the level of compliance is worrisome, considering the various strategies in force between contracting states[52] to the ISPS Code.

b) Container Security Initiative: Container means a container as defined by the International Maritime Organization (IMO) in the International Convention for Safe Containers.[53]Containers are rectangular, rigid, reusable cargo units intended for the intermodal rail, sea transport or road of packaged or bulk cargo that is capable remaining therein for a period of time without necessarily reloading the goods.[54] Containers can be general cargo containers, like open top, general purpose containers and platform-based containers. The specific purpose containers include thermal containers, dry bulk (also known as containers tank containers) and named cargo-type containers.[55] The term container does not include a swap body, vehicles, containers usually designed for transport by air, the packaging of cargo or cargo in a container, but it includes container when it is conveyed on a trailer or chassis.[56]

The issue of container security concerns not only port security but also national security. Nigerian ports receive

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51. *Ibid.*
52. See for instance, the different approaches to ship detention, control access, boarding procedures and certain crew- member nationals.
53. See the International Convention for Safe Containers (CSC), 1972.
54. *Ibid.*
55. ILO, Safety and Health in Ports, International Labour Office, (Switzerland, 2005) pp.8-9.
56. *Ibid.* Note that most containers now in use are ISO series 1 freight containers. Requirements for their specification and testing are contained in the ISO 1496 Series 1 freight containers – Specification and Testing family of standards.

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millions of containers every year from foreign countries. There is no doubt that containers can be used to move Weapons of Mass Destruction (WMDs) such as dirty bombs or nukes.[57] Containerisation is a technological innovation that is intuitively easy to understand[58]and its effects have been enormous. This has revolutionised international trade, hence, a fully loaded container could possibly be sent from Nigeria to the United States to arrive at the designated destination, for example Chicago with a sum that is less than $5,000. However, the containers drama has changed the rules[59] and it has now become the poor man's missiles which brings about a catastrophic effect on big powerful government and a nation at large.[60]

Security is precious to any society and for each society security offers or brings about stability in the light of vulnerability. This without any iota of doubt brings about a

57. Stephen S. Cohen, "Boom Boxes: Containers and Terrorism," in Jon D. Haveman and Howard J. Shatz (ed), *Protecting the Nation's Seaports: Balancing Security and Cost*, (California, Public Policy Institute of California, 2006), pp. 91-92.
58. *Ibid.* Unlike semiconductors or genetic engineering, it is easy to understand.
59. An example of a container drama was evidenced from the case of an Egyptian-born Canadian citizen by name Amid Farid Rizk who was arrested by Italian authorities in 2001 after they discovered that he was hiding himself at Maersk Sealand in a container that had been loaded at Port Said in Egypt which was set to board for Toronto. The said Amid Farid Rizk was notoriously called "Container Bob". Amid Farid Rizk in the above incident, never explained the reason behind his travelling in a vessel container equipped with a heater,toilet, water supply, a laptop computer, a satellite phone, cameras, series of passports and security passes for airports in Egypt, Canada and Thailand and an airline ticket that will take him back from Montreal to Cairo. The arrest of this "Container Bob" later spurred to arraignment before an Italian court. He was later granted bail and ever since the granting of the bail in November 2001, "Container Bob" has vanished.
60. It is against this backdrop that the U.S. Commissioner of Customs and Border Protection Robert Bonner called containers "the potential Trojan horse of the 21st century" (Lipton, 2005b).

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social environment where individual citizens as well as other dwellers can grow.[61] This means that security offers to citizens and non-citizens a stable framework and atmospheric condition for the pursuit of the developmental goals which they seek to attain for themselves.[62]

It is indisputable fact that the event of September 11 was a result of serious security failure[63] at various US airports. However, this is not restricted to security procedures but also the larger federal security processes directed towards curbing terrorism and threats to security of a nation.[64] These security failures naturally raised questions concerning the adequacy of security at both local and federal levels.[65] It would be recalled

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61. *Ibid.* This is possible at least in theory.
62. Kleinig, J, *(et'al), Security and Privacy,* (Australia, The Australian National University E Press, 2011), p.7. See also Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), p. 1. Henry Shue speaks of individual security as a basic right – indeed, as a right that underwrites all other rights, including, in his view, other basic rights such as subsistence and liberty It might be argued that although the security measures already in place could have been utilized to prevent the particular attacks from occurring they occurred as a result of technical or human failings. No more was needed except for what already existed to have worked better than it did.2 Although this position was taken by some, and might indeed have much to be said for it, it was not a politically popular one.3 In part, dissatisfaction with such a position was associated with the view that the magnitude of the threat had been underestimated and that for such threats heightened measures need to be in place.
63. See Rabasa, A, and Chalk, P, *Non-Traditional Threats and Maritime Domain Awareness in the Tri-Border Area of Southeast Asia : The Coast Watch System of the Philippines,* (Pittsburgh, RAND Corporation, 2012) p. 5.
64. *Ibid.*
65. In October 1985, the hijacking of the Italian cruise ship *Achille Lauro* marked one of the first actual terrorist acts recorded in modern maritime history. Following that incident, the International Maritime Organization (IMO) issued measures to prevent unlawful acts against passengers and crew on board ships. The IMO, headquartered in London, is a specialized agency of the United Nations which is responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships. IMO is also involved in legal matters, including liability and compensation issues, and

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that on 28th April, 1994, there was container explosion at Apapa port. The container involved in the explosion was mislabeled as a Raw Materials container in contravention of the provision of Merchant Shipping Act[66] and other Safety Conventions. The penalty stipulated by for the offence was a paltry sum of #1,000[67] thereby reducing the law into a toothless bulldog and encouraging the use of port as avenue for the importation of dangerous arms.[68]

In order to address container/cargo security concerns, in January 2002, the United States of American's Customs Service[69] established the Container Security Initiative[70] whose primary purpose is to protect the global trading scheme and the trade routes among CSI ports. [71]CSI rests squarely on four elements and these include the following:

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the facilitation of international maritime traffic. IMO was established under the auspices of the United Nations in Geneva on March 17, 1948 and met for the first time in January 1959. After the *Achille Lauro*, the IMO Convention with 165 signatory countries ensures that appropriate action is taken against persons committing unlawful acts against ships. Such illegal acts include the seizure of ships by force, acts of violence against persons on board ships etc.

66. Merchant Shipping Act 1962, section 248.
67. This sum was an equivalent of twenty dollars during the time in question.
68. Olisa Agbakoba at p.10.
69. Now CBP
70. Gregory W. Bowman, "Thinking Outside the Border: Homeland Security and The Forward Deployment of the U.S. Border", *Houston Law Review*, vol. 44:2 (2007), pp.203-204. See also U.S. Customs & Border Protection., Container Security Initiative Fact Sheet (Sept. 30, 2006) [hereinafter CSI Fact Sheet], at available *http://www.cbp.gov/linkhandler/cgov/border_security/international_activities/csi/csi_fact_sheet.ctt/csi_fact_sheet.doc.* (Viewed on 10/7/12).
71. CSI was modeled on an earlier U.S.Canada pilot program called the Joint Targeting Initiative, which was established on a limited basis in 1999 between the United States and Canada to improve intergovernmental cooperation and prevent unlawful activities such as smuggling. Scholtens, *Customs Cooperation Results in a Major Hashish Seizure*, U.S. Customs Today, May 2000, http://www.cbp.gov/custoday/may2000/anticoun.htm (Viewed on 10/7/12) (celebrating the seizure of one of the largest hashish shipments ever

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i. The use of intelligence and data with respect to shipments to target and identify containers which pose a possible risk for terrorism or security threat in the like of trans-boundary arms;

ii. The prescreening of suspicious containers prior to departure from foreign ports to Nigerian ports;

iii. The use of technology like radiation detection devices to prescreen containers, in order to minimize delays usually cause by screening; and

iv. The use of tamper-resistant containers to ensure that dangerous cargo or weapons of mass destruction is not included into shipping containers in the cause of transit. Although government officials have explicitly stated that CSI is a means of extending the traditional border of Customs beyond the port of entry thereby helping in the protection against terrorist attacks.[72]

It has been argued that in order to effectuate CSI, the government needs to enter into bilateral agreements with foreign countries involved in trading with port state and pursuant to such agreements, the port state's custom will have the right and permission to stage personnel at these foreign

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by border inspectors); See also SAFE Port Act, Pub. L. No. 109-347, § 205(a), 120 Stat. 1884, 1906 (2006) (to be codified at 6 U.S.C. § 945) (establishing that the CSI program will .identify and examine or search maritime containers that pose a security risk. prior to lading and shipment from foreign ports); Browning, *supra* note 1, at 151 (commenting on the economic relationship between Canada and the U.S.). The CSI was initially undertaken in accordance with the pre-existing statutory authority, but the scheme was enshrined in 2006 in United States pursuant to the SAFE Port Act of 2006. See generally, SAFE Port Act, Pub. L. No. 109-347, § 205(a), 120 Stat. 1884, 1906 (2006).

72. Bowman G.W, *op.cit.*

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ports who would inspect containers due for importation to the port state.[73] However, it is submitted that this kind of arrangement could still create security threat to port states particularly when the port state considers such inspection as invasion of their sovereignty by the foreign state. The custom personnel can access information about containers and offer advice with regards to container(s) that pose danger, but the foreign host states have the final say as to when and how to examine potentially problematic containers.[74]

It needs be emphasized that new security measures like CSI have been perceived and even implemented in some jurisdictions but the Nigeria situation is different as the container security initiative is yet to be implemented in Nigerian ports. Therefore, for agencies such as Nigerian Maritime and Safety Agency (NIMASA), Nigerian Customs Service etc. to be able to carry out their responsibilities of preventing importation of dangerous arms and other Weapons of Mass Destruction (WMD) as well as the enforcement of the provisions of Nigerian Maritime Administration and Safety Act 2007 Customs and Excise Management Act 2004, which have great impact on the economic development of Nigeria, implementation of the IMO Container Security Initiative is a vital tool towards achieving the goals. These measures despite

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73. Conrad, S, *(et'al)*, "How Do We Increase Port Security without Imperiling Maritime Commerce? Using Flight Simulators and Workshops to Begin the Discussion," Unpublished Paper.

74. In case of U. S, for countries that station CSI customs personnel in the United States, a mirror image of these processes is supposed to take place for shipments from the United States to those countries. Despite its bilateral and reciprocal form, to date the implementation of CSI has been heavily skewed in favor of U.S. interests. In fact, so far only Canada and Japan have stationed customs personnel in the United States under the CSI program. Container shipments through US ports are believed to be a potential pathway for introduction of Weapons of Mass Destruction (WMDs) into the United States. Currently only about 2% of all cargo containers are inspected.

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its effectiveness still call for additional processes hence, equipment should be put in place in container delivery in an attempt to address the problems which characterize the control of container cargo. Implementation of the CSI security measures is capable of changing important productive performance characteristics of the Nigerian ports like the cost and time required for importation and exportation of goods. These performance changes of the CSI can change the belief and attract importers to ports business and thereby improving the economic development of the shipping industry in Nigeria. The current inspection process that is contained under the Custom Act is mainly designed to intercept illicit drugs and enforce tariffs including other contrabands therefore, this might be somewhat difficult and not suited for the interdiction of WMD of the container cargo.[75] It has been suggested that CSI should consider the following additional measures, the application of which will prevent importation of arms and dangerous cargo through the use of containers into Nigeria:

a. Identifying high-risk containers which pose danger through the use of advance information before containers are loaded onto board ships designated for Nigeria;

b. Pre-screening the potential risk containers at the foreign port that is CSI compliant. This measure should be applied before the containers are shipped to the Nigeria;

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75. Conrad, S, *(et'al)*, "How Do We Increase Port Security Without Imperiling Maritime Commerce? Using Flight Simulators and Workshops to Begin the Discussion," Unpublished Paper.

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c. Using detection technology to pre-screen high-risk containers, including radiation detectors and large-scale x-ray imaging equipment so that security inspections can be done quickly, without slowing down the flow of legitimate cargo.

d. Using smarter, "tamper-evident" containers at the port of arrival that indicate to U.S. Customs and Border Protection officers whether cargo has been tampered with after security screening overseas.[76]

Meanwhile, there are a lot of short comings with respect to surveillance technologies in Nigeria's ports of entry and borders, hence, the need to bolster the nation's homeland security capabilities.[77] To do this, technologies that could be put in place include:

i. Biometrics Scanners—These include thumb, fingerprint and facial identification systems;

ii. Nano crystals- Nano crystals and other detecting sensors like those being developed at Public Protection Technology Application Center, University of Albany. The centre had hosted Nano Tech research that works with local high-tech companies to invent biological, chemical and surveillance sensors which have enhanced intruder detection, border surveillance, and bio/chem weapons detection;

76. Zallen B.S, "Preventing Armagedon I: Enhancing American's Boarder and Port Security After 9/11, *Strategic Insight*, vol.III, Issue 11(November, 2004).
77. *Ibid.*

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iii. Machine Intelligence & Automated Surveillance-There is need to engage researchers that will integrate and synchronize image-processing and machine perception in Nigeria to bolster our port security intelligence. This will also include the traditional video surveillance methods that provide faster and more accurate/perfect examination of surveillance with regards to multiple video cameras.[78] All these are lacking in Nigeria border ports thereby giving room for importation of arms and dangerous cargo that threaten the security of the country.

The above proffered solutions are just a tip of an iceberg of the emerging technologies designed to bolster border port surveillance in other part of the world.[79] The Nigerian government needs to be proactive by commissioning researchers and not politicians to conduct serious academic exercise to find lasting solution to port border security, especially importation of arms and dangerous goods into Nigeria.[80] The nature of the weapons being used by attackers like Boko Haram in Nigeria speaks volume of the security lapses in the country board port. The officers of the various security personnel at ports are not also helping the matter because of their sinister motives. Likewise, the volumes of

78. *Ibid.*
79. Countries like United State of American and United Kingdom have adopted this system.
80. Nigeria can achieve the goal of extended surveillance and better meet the challenges of the post 9/11 world. Like the Manhattan Project a generation ago, the best and the brightest from academia, the military and industry are applying their skills and their imagination in number of research labs and technology centers all over the world to this global effort to extend our surveillance capabilities further than ever before, innovating new sensors, platforms, and management systems.

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containers coming into the country are making containers and container vessels easy targets for those who trade in arms and dangerous cargo. These vulnerabilities pose real security threats.[81]

The Immigration Act, Cap. 11 Laws of the Federation of Nigeria 2004 as a legal framework is not helping matters because it merely provides that the officer of the agency may board ship for the purpose of inspection,[82] hence, the issue of container security goes beyond this boarding routine. Although, the Act attempts to regulate the entry of immigrants whereby the officer of the agency shall carry out vivid examination on the person of immigrant,[83] the inspection is not sufficient to curb importation of arms.

The Problem of Asymmetric Maritime Security and its Impact on Nigeria's Sovereignty

Like other coastal countries, the seas surrounding the land in Nigeria plays an important role in the economic, defence and political matters of the state. The level of insecurity in maritime domain remains on the rise despite high deployment of navy[84] and engagement of private security agents by the government. For example, Arabian Peninsula and Somali-sourced piracy off the Horn of Africa, Gulf of Aden remain problematic regardless of unprecedented presence of navy force. This because of all 439 attacks that occurred at the high seas in 2011 alone, 236 was reportedly happened in African

81. Rachael B. Brailer, "Protecting U.S Port with Layered Security Measures for Container Ships," *Military Law Review,* vol.185, Fall (2005) p.10.
82. See Immigration Act, Cap. 11 Laws of the Federation of Nigeria 2004, section 13.
83. *Ibid,* section 16.
84. Abdul Kader S.Z and Abdulkadir. A.O, "Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty", *Journal of Law, Policy and Globalization,* vol.9 (2013), p. 22.

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waters and this represents 53% the world over.[85] All these incidents go to show that insecurity in maritime domain is real and it affects sovereignty of Nigeria. Government activities should not be paralysed because of the insurgence as the attackers would feel that they have triumphed and bring down sovereign power of the government. In some other jurisdictions (e.g. Algeria, Libya, Yemen, Pakistan, Afghanistan, etc.) where Asymmetric security has crept into their countries, government activities are/were never suspended. One of the major problems of Asymmetric security challenges is that members of the group live around the community and very difficult to identify.

A vivid indication of absolute sovereignty of Malaysia in Sulu Sea was demonstrated recently when Malaysia through her military troops resisted invasion through its maritime waters by Mindiano insurgence at Laha Datu. The attempt by the Moro Islamic Liberation Front (MILF) at Laha Datu was made towards realization of Bangsamoro nation and thereby claiming sovereignty over Sabah which is part of Malaysia. Malaysia as a sovereign state has absolute right to protect its sovereign and territorial integrity.[86] However, it has been stated that the manifestations of sovereignty by states are not in any way absolute because sovereignty can be compromised one way or another. Thus, despite a state being an independent and sovereign entity, part of its territories could be a subject to overlapping claims as it is the situation with Mindanao over

85. See the International Maritime Bureau, *Piracy and Armed Robbery at Sea: Annual Report, 2011* (London: International Chamber of Commerce, 2012). See *The Economic Cost of Somali Piracy, 2011*, One Earth Future Foundation Working Paper, 2012, available online at *http://oceansbeyondpiracy.org/sites/default/files/economic*_cost_of_piracy_2011.pdf (Viewed on 17/12/12), pp.10-11.

86. Abdulkadir O.A and Sharifah S.Z, "Port Security v Economic Gain: An Exposition of the Malaysian Port and Maritime Security Practice", *IIUM Law Journal*, Vol.21 No.2 (2013), p. 259.

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Sabah.[87] The Moro Islamic Liberation Front (MILF) troops sneaked into part of Malaysia through water, although its activities were curtailed, about twelve (12) Malaysian police men were killed in the confrontation.[88]

Conclusion

This article has taken into consideration some steps that the Nigerian government need to consider to strengthen the war against Asymmetric security. The biggest threats to Nigeria in recent time is the proliferation of arms and how they get into the country and this article has identified the maritime supply chain from containers as a contributory factor to reckon with in tackling the menace of trans-boundary arms. It is saying the obvious that security is precious to any society and for each society security offers or brings about stability in the light of vulnerability because adequate security brings about a social environment where individual citizens as well as other dwellers can grow. The article also emphasizes the need to revamp maritime security agencies in order to be more efficient and proactive in the discharge of their mandates. Tackling security challenges in Nigerian ports go beyond having army of security personnel at port, there must be political will in addition to compliance with IMO regulations. It could be safely concluded that the non-traditional security threats such as asymmetric maritime security threats are the challenges that the country needs to combat in order to minimise the incidence of trans-boundary arms through our border ports.

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87. See Haniff .A, "The Mindanao Conflict and its Impact on Malaysia: Between National Sovereignty and Regional Cooperation", being a paper presented at a symposium on, *Bangsamoro Framework Agreement and the Role of Malaysia*, organised by Ahmad Ibrahim Kulliyyah of Laws, IIUM on 23rd May, 2013.
88. This incident started in the first week of March, 2013.

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