



# UDUS LAW JOURNAL

This Journal may be cited as  
UDUS LAW JOURNAL, Vol. 1, No. 1, 2019

**A PUBLICATION OF THE FACULTY OF LAW,  
USMANU DANFODIYO UNIVERSITY,  
SOKOTO**

**Edited By:**

Ibrahim Abdullahi, FRHD, FIMC, CMC, PhD

K. G. Muhammad, PhD

Safiyyah U. Mohammed, LLB, BL, LLM

## EDITORIAL BOARD

<b>Dr. Ibrahim Abdullahi (FRHD)</b>	-	<b>Editor – in – Chief and Chairman</b>
<b>Dr. K. G. Muhammad</b>	-	<b>Secretary/ Member</b>
<b>Safiyyah Ummu Mohammed Esq</b>	-	<b>Member</b>

## EDITORIAL ADVISORY BOARD

**Prof. Muftau Rufai,**  
Dean of Law,  
Usmanu Danfodiyo University,  
Sokoto.

**Prof. O. V. C. Okene,**  
*Rivers State University.*

**Prof M. T. Ladan,**  
Ahmadu Bello University,  
Zaria.

**Prof. Mamman Lawan SAN,**  
Bayero University,  
Kano.

**Prof. F. C. Nwoke,**  
University of Jos.

**Prof. F. A. R. Adeleke,**  
Lagos State University.

**Prof. M. L. Ahmadu**  
Usmanu Danfodiyo University,  
Sokoto.

## TABLE OF CONTENTS

Title .....	i
Copyright Page .....	ii
Dedication .....	iii
Editorial and Advisory Board .....	iv
Guidelines for Authors .....	v
Editorial .....	vi
Table of Contents .....	vii
 1. A Legal Assessment of the Mechanisms for the Protection of Internally Displaced Persons (IDPs) in Armed Conflict Situations in Nigeria <i>Iya, Mohammed Alhaji</i> .....	 1
2. The Child's Rights Act (2003) of Nigeria: Impediments to its Implementation and Suggestions for Reforms <i>Prof. Rufai Muftau</i> .....	17
3. The Role of the International Court of Justice in the Maintenance of International Peace and Security <i>Daniel T. Achi, Sarah Benjamin Inesu Avoh &amp; Sonia Iyayi Akinyelu</i> .....	35
4. A Critique of the Human Rights Protection in the Fight against Sex Trafficking in Nigeria <i>Dr. Ahmed Mohammed Bachaka</i> & <i>Dr. A. A. Isiaka</i> .....	52
5. Factors Inhibiting the Rights of Internally Displaced Persons In Nigeria <i>Inori Comfort Oga</i> .....	65
6. Female Rights to Property Inheritance under Customary Law: In an Expose of Judicial Activism <i>Dr. Iloba-aninye, Okechukwu</i> .....	85
7. Implementation of the Child Rights Act 2003 – The Position in Sokoto State of Nigeria <i>Safiyyah Ummu Mohammed Esq</i> .....	105
8. Fundamental and Judicial Guarantees under International Humanitarian Law: The Law and Practice <i>Ibrahim Abdullahi, FRHD, FIMC, CMC, PhD</i> .....	119
9. A Critique of the Limitations of Human Rights Protection during Emergency Periods in Nigeria <i>Hussaiya Muhammad Julde, LL.B, BL</i> .....	139

19. **Compulsory Land Acquisition and Compensation in Nigeria: Challenges and Way Forward**  
*Nneoma Iroaganachi Ph.D, BL* ... 309
  
20. **Dumping, Countervailing Measures and the Public Interest Debate; A Development Paradox.**  
*Maiyaki Theodore Bala Ph.D, BL*  
 &  
*Prof. Josephine Aladi Achor Agbonika* ... 325
  
21. **An Examination of the Legal Framework for the Protection of Environmental Rights in Nigeria**  
*Iya, Mohammed Alhaji, LLB, BL, LL.M, Msc, FIFIA, FEC, PFC*  
 &  
*ARDO Hamidu, LLB, BL, LL.M, PhD Fellow* ... 343
  
22. **Analysis of Institutional Framework for Implementation of Tourism Regulation in Nigeria**  
*L.A. Bello OND, HND Sc. Lab Tech (Chem/Biochemistry), LL.B. BL, LL.M, Ph.D.* ... 363
  
23. **The Emerging Concept of Climate Change in the Light of Contemporary International Economic Law**  
*Nnawulezi Uche, Ph.D* ... 378
  
24. **Maritime Interception and Operation: A Review of Interface between Multimissioned Maritime Services In Nigeria and Malaysia**  
*Abdulrazaq O. Abdulkadir, PhD*  
 &  
*Abdulraheem Taofeeq Abolaji, PhD* ... 390
  
25. **Exploring the Arsenal of the ICPC Act 2000 in the Corruption Combat in Nigeria**  
*Barr. Mashkur Salisu* ... 406
  
26. **Inadequate Funding of the Judiciary in Nigeria: A Challenge to Effective Justice Administration**  
*Nduchebe Ikechukwu Michael, LLB, BL, LLM in View*  
 &  
*Usman Attahiru Ibrahim Wala, LLB, BL* ... 413
  
27. **Enhancing Revenue Generation in Nigeria: The Role Of The Legislature**  
*Kwaghkehe Ierkwagh* ... 432

28. **Right to Fair Hearings: A Reflection on the Procedure For Proscription of Terrorist Organization Under the Terrorism Prevention Act, 2011 (As Amended)**  
*Saleh MG Kanam, Phd, Assoc. Prof. of Law*  
&  
*Abdussalam Idris Waziri Esq. LLB. (Unimaid), LLM. (UDUS), BL..... 448*
29. **Assessment of the Right to Interpretation of Court Proceedings in Nigeria**  
*Muhammad Rabiu Musa, LLB, BL, LLM.....458*
30. **The Desideratum of Written Address as a Catalyst for Quick Dispensation of Justice in Nigeria**  
*V.A. Shima PhD & Bem Aboho, Esq.....465*

## **MARITIME INTERCEPTION AND OPERATION: A REVIEW OF INTERFACE BETWEEN MULTIMISSIIONED MARITIME SERVICES IN NIGERIA AND MALAYSIA**

By

**Abdulrazaq O. Abdulkadir, PhD<sup>1</sup>  
Abdulraheem Taofeeq Abolaji, PhD<sup>2</sup>**

### **Abstract**

*Nigeria and Malaysia are two countries endowed with seas and the two countries have enacted legal frameworks and established agencies to address the menace of insecurity in ports and the maritime domains. Interestingly, the two countries are also members of the International Maritime Organisation (IMO). Both countries among other benefits charge fees on cargoes loaded or unloaded at ports and this significantly serves as a source of income, which no doubt enhances economic development. In this paper, it was observed that economic gains from the ports and maritime domain are not without their attendant risks inhibiting the fortunes derived from the seas despite legal and administrative machineries to surmount the challenges. This article considers some areas of interface, benefits and shortcomings in the legal and administrative agencies of maritime security in Nigeria and Malaysia. This article concludes by demonstrating that the legal framework in Nigeria and Malaysia on port and maritime security are virtually the same with little differences but there are a lot to be learnt from the implementation strategies of the Malaysian port and maritime security agencies especially in the areas operational strategies and provisions of basic amenities like stable electricity which is one of the panaceas to tame stowaway passengers among other insecurity in the port and maritime domain.*

**Keywords:** Maritime, Operation, Interception, Interface, Malaysia

### **1. INTRODUCTION**

The legal regulations and administrative agencies of port security are virtually *ad idem* in Nigeria and Malaysia. Differences are though, noticeable in some of the provisions of the various enactments of the two jurisdictions in the cause of their

<sup>1</sup> PhD (IIUM, Malaysia), LL.M (Ile-Ife, Nigeria), LL.B (Ilorin, Nigeria), BL., Lecturer, Department of Private & Property Law, Faculty of Law, University of Ilorin. Email-kor181law@gmail.com. Phone No. +2348032415849.

<sup>2</sup> PhD (IIUM, Malaysia), LL.M (Ile-Ife, Nigeria), LL.B (Ilorin, Nigeria), BL., Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin.

analyses, the laws are enacted to achieve the same purposes. In making a comparative analysis of the legal regulations and administrative agencies of port security in Nigeria and Malaysia, a micro comparison is adopted to deal with the issue of ports and maritime security. Micro comparison is a system of comparative law which makes use of a strategy adopted in other jurisdictions of concern to deal with specific problems or legal institutions to solve a given problem.<sup>1</sup> This paper seeks to identify the benefit from the effective implementation or enforcement of the legislation and institutional framework of the two countries under consideration, this is why micro comparison method of comparative law is deemed apt. Importantly, scholars have observed that there is a tendency of the inability of the legislature to produce good laws without the assistance of comparative law,<sup>2</sup> hence the justification for the adoption of the micro comparison method in this thesis. Nigeria and Malaysia are countries with a natural endowment of seas which culminate in maritime commerce that perhaps increase the economic fortunes of the two nations. This follows by the loading and unloading of cargoes, crude oil, containers, etc. by vessels from different parts of the world to and from Nigeria or Malaysia. The two countries among other advantages charge fees on cargoes through their customs officers at ports and this greatly serves as sources of income and thereby enhances economic development. Expectedly, economic gains from the ports and maritime domain are not without their attendant risks inhibiting the fortunes, that is why the need for a legal regime and enforcement frameworks that will check the menace.

Accordingly, regulators have been established for the purpose of conducting surveillance and enforcement in maritime domains. Understandably, the issue of importation of harms and ammunition through ports is capable of threatening national security while the pollution of the marine environment by foreign flagged ships in the course of enjoying the right of access to ports granted under the 1923 Convention is also capable of depriving a country of its marine resources. Therefore, where a vessel breaches any of the conditions stated under the national laws, the right to decline right of access to ports should be provided under a local enactment.

## **2 POLITICAL AND LEGISLATIVE PROCESS**

### **2.1 Nigeria**

The political arrangement of Nigeria is federal in nature that is based on a written constitution whereby the federal, states and local government tiers are in operation. Powers in Nigeria are distributed among these various systems of government within their political territories and each tier with its separate allocation coming directly from the federation account as stated under the 1999 Constitution of the Federal Republic of Nigeria. Generally speaking, an individual, through the political party he belongs assumes office as president, governor or local government chairman after election must have been conducted by the electoral body known as

<sup>1</sup> Zweigert K. and Kotz H. *Introduction to Comparative Law*, (Oxford: Clarendon Press, 1987), p.5.  
<sup>2</sup> *Ibid.* at 15.

the Independent National Electoral Commission (INEC) or States Independent Electoral Commission, as the case may be. Political office holders hold their respective office for a period of four years<sup>5</sup> and may be re-appointed by the electorate for another term of four years and no more.

Nigeria as presently constituted, has 36 states, 774 local government areas and a Federal Capital Territory (FCT, Abuja).<sup>6</sup> The law-makers are elected from the various constituencies as members of the State Houses of Assembly and National Assembly to make laws for good governance of each state and the country respectively. These representatives (law makers) in the National Assembly have enacted laws relating to port and maritime security examined in .By this political arrangement, there are matters which are within the exclusive legislative power of the National Assembly to make law, and these are issues within the control of federal government of Nigeria. Among these are the issues of ports and maritime security<sup>7</sup> which are the subject matter of this thesis. Any law relating to establishment, control and management of ports is made by the National Assembly through an Act of National Assembly. It is on the basis of this that the Federal Government of Nigeria exercises absolute or exclusive powers on Nigerian ports and maritime security as well as its regulatory agencies.

## **2.2 Malaysia**

Malaysia on the other hand operates a written constitution modeled in line with the Indian Constitution with basic principles of the British system of government.<sup>8</sup> Like Nigeria, the Federal Constitution is supreme and any law inconsistent with the Federal constitution shall to the extent of its inconsistency, be void.<sup>9</sup> The issue of supremacy of the constitution came before the court in the case of *Public Prosecutor v. Dato' Yap Peng*.<sup>10</sup> In this case, the court while interpreting section 418A of the Criminal Procedure Code held that it was inconsistent with Article 121(1) of the Federal constitution (as it was). According to the court, Article 145(3) does not empower the parliament to confer power of transfer of a case from the subordinate court to the High Court on the Public Prosecutor. Therefore section 418A is void to the extent of its inconsistency with the Federal Constitution.<sup>11</sup>

<sup>5</sup> Note that this is subject to power of impeachment exercisable by the National or state Assembly under sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>6</sup> See part 1, first schedule, section 3, 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>7</sup> See generally, part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999.

<sup>8</sup> Ahmad Ibrahim, "Malaysia as a Federation", *Journal of Malaysia and Comparative Law*, (1974), 7. See also Sharifah Suhana Ahmad, *Malaysian Legal System*, (Kuala Lumpur: Butterworth, 1999), 69. See also Tun Mohammad Suffian Bin Hasim, *An Introduction to the Constitution of Malaysia*, 2<sup>nd</sup> Edition (Kuala Lumpur: Malayan Law Journal, 1976), 18-19.

<sup>9</sup> The Federal Constitution of Malaysia, Article 4(1).

<sup>10</sup> (1987) 2 MLJ 311.

<sup>11</sup> *Ibid*, p.313. See also *Surinder Singh v The Government of the Federation of Malaya* (1962) MLJ 169.

## *Maritime Interception And Operation: A Review of Interface Between Multimissioned Maritime Services In Nigeria And Malaysia*

Malaysia operates a parliamentary system of government with head of government and ceremonial head. The Yang-di-Pertuan Agong is the ceremonial head or head of state who acts in accordance with the advice of the Cabinet.<sup>12</sup> The Prime Minister on the other hand is the head of government appointed among the Cabinet members.<sup>13</sup> The practice in Malaysia is similar to that of the British government except in certain instances where some distinguishable approaches appear.<sup>14</sup> Presently, Malaysia is made up of 13<sup>15</sup> states and 3 federal territories and each state having separate constitution and a Ruler or governor acting upon the advice of the State Executive Council.

The issue of control and management of ports in Malaysia unlike Nigeria is under the Concurrent List whereby states and the federal government have powers to manage and control. This informed the reason for some ports and jetties being under the control of some state governments. This marks one of the distinguishable areas when compared with the position in Nigeria where all ports are deemed federal ports.

### **3. THE BEQUEATH OF SEAS**

#### **3.1 Nigeria**

Nigeria as a country is endowed with sea and it has maritime zones over where it is exercising sovereign rights to all living and non-living resources comprising of an Exclusive Economic Zone (EEZ) from 22-370kms, a contiguous zone of 22-44kms and a territorial sea of 22 kms.<sup>16</sup> This maritime domain constitutes more than 30 % of the total land mass of Nigeria and it includes the sea area known as the Gulf of Guinea (GOG).<sup>17</sup> Accordingly, the domain's socio-economic advantage and the strategic significance of the entire area are enormous to Nigeria.<sup>18</sup> However, there is a need for consistent efforts at strengthening the port and maritime domains with respect to capability of security agencies in the enforcement of the legal regulations in terms of surveillance activities.

The territorial waters of Nigeria extend to 12 (nm) of the coast of Nigeria and the base lines, low tide along the coast and the straight lines join the most advanced points of the coast including the mooring places, hydro technical works, islands and other permanent harbour installations. The waters situated between the sea coast and the base lines constitute the internal waters of Nigeria. Nigeria as a nation, has been said to have about 870 km and 3,000 kms of coastline and inland waterways

<sup>12</sup> Sharifah Suhana Ahmad, *Malaysian Legal System*, at 74.

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

<sup>14</sup> For example, the ceremonial head is rotational in Malaysia among the Yang di-Pertuan Agong for a specified period while in Britain, the Queen is the permanent ceremonial head.

<sup>15</sup> See the Federal Constitution of Malaysia 1957, Article 71. See also Ahmad Ibrahim, *Family Law in Malaysia*, 3<sup>rd</sup> Edition, (Malaysia: Butterworth, 1997), 1 and Mohammad Suffian Bin Hasim.

<sup>16</sup> Oga P. "Law and Security in Nigeria: The Role of the Military." Available at [http://1.BrigadierGeneralOgaPdf](#) (accessed on 15<sup>th</sup> September, 2012).

<sup>17</sup> *Ibid*.

<sup>18</sup> See Abdulkadir, A.O. "Maritime Pirates: The Criminal Underworld of the Nigerian Maritime Domain." *The Gravitas Review of Business and Property Law*, Vol. 6 No. 2 (2015). p 77.

respectively, and also 913, 075 square metres in land mass.<sup>19</sup> Nigeria's natural resources include natural gas, coal, zinc, limestone, crude oil, columbite, tin, iron ore, lead, etc. with a population of over 150, 000 million. It has been observed that Nigeria has a cubic feet reserve of gas of about 600 trillion which is estimated at 40 billion barrels of crude oil with 3-5 cubic metres of another natural resource known as Bitumen.<sup>20</sup> All these resources have economic value to Nigeria with respect to the foreign earnings and they are also directly interrelated to the maritime part of the respective industries. For instance, the oil and gas sector of the economy is predominant in Nigeria's short sea commerce and it constitutes approximately about 95% coastal and inland shipping.

### **3.2 Malaysia**

The Malaysian Maritime Zone consists of the Territorial Sea 12 (nm)<sup>21</sup> where all ships enjoy right of innocent passage, a Contiguous Zone (24 nm) with the power to enforce customs, immigration, fiscal and sanitary laws,<sup>22</sup> an Exclusive Economic Zone (EEZ) (200 nm)<sup>23</sup> with the right to exercise control and management of living resources<sup>24</sup> and a Continental Shelf (200 nm).<sup>25</sup>

The Malays have always regarded the seas bordering their country as natural appurtenances and therefore under its absolute sovereignty. This concept which emphasises the unity of the country's land and water is reflected in the Malay term for native "land-water".<sup>26</sup> Malaysia signed the 1982 United Nations Convention on the Law of the Sea on 10<sup>th</sup> December, 1982 and ratified it fourteen years later, specifically on 14<sup>th</sup> October, 1996.<sup>27</sup> Historically, peoples of the South East Asia region have in general organised their lives within the context of surrounding land and seas. The coastal Malays in particular, regarded the sea as a natural appurtenance to the land they occupy.<sup>28</sup> Sovereign states exercised absolute sovereignty and jurisdiction in seas such as the Straits of Malacca, the Celebes Sea,

<sup>19</sup> See Okeke V.O.S and Aniche E.T., "An Evaluation of the Effectiveness of the Cabotage Act, 2003 on Maritime Administration", *Sacha Journal of Policy and Strategic Studies*, Vol.2 No.1 (2012), 12-13.

<sup>20</sup> Ibid.

<sup>21</sup> Emergency (Essential Powers) Ordinance, No. 7 1969, section 3 (1).

<sup>22</sup> UNCLOS Article 33.

<sup>23</sup> Exclusive Economic Zone Act 1984 (660), section 3(1).

<sup>24</sup> EEZ Act, *ibid*, section 4. But this is subject to the right of other states on the right navigation under the Article 87 (1), UNCLOS.

<sup>25</sup> Continental Shelf Act 1966 (83), section 2.

<sup>26</sup> "Tanah-air" which is literally translated to mean "Land-water". It was presumably not a surprise to Sir Stamford Raffles who founded Singapore in 1819 to find in the course of his many fir Eastern exploits, the existence of Malaysia's first law of the sea in a codified form which first made its appurtenance as far back as the year 1276 during the reign of Sultan Muhammad Shah, the first sovereign of Malacca.

<sup>27</sup> After the ratification of the LOSC, the Malaysian Ministry of Foreign Affairs issued a Declaration concerning Malaysia's position with regard to certain provisions in the LOSC.

<sup>28</sup> Tunika Sofiah Jawa "Law of the Sea in Public International Law: A Malaysian Perspective". Volume II, (Pacifica publications, Kuala Lumpur, (1996), 634.

## *Maritime Interception And Operation: A Review of Interface Between Multimissioned Maritime Services In Nigeria And Malaysia*

the Sulu Sea and the South China Sea which encompass the Malay Peninsula and the Malay Archipelagos. The seas surrounding the land played a significant role in the defence, economic and political matters of Malaysia. Malaysia presently has a plethora of port and maritime laws. Malaysia's participation in 20<sup>th</sup> century international trading and the influence accorded by the development of world-wide laws of the sea since the advent of Western European dominance in ocean-related matters<sup>29</sup> precipitated the establishment of a rather irregular mix of national and international legislation in Malaysia. Malaysia's earliest recorded 20<sup>th</sup> century national law, which considered remotely the management of internal waters, is the Waters Act 1920, enacted to provide for the control of rivers and streams. In addition to being a party to the 1982 UNCLOS, Malaysia is a party to many other port and maritime related treaties that influence the use and management of Malaysia's maritime domain. The Malaysian membership of the International Maritime Organisation and subsequent ratification of the 1923 Convention and Statute on the International Regime of Maritime Ports are testimony.<sup>30</sup> Malaysia has also been involved directly in pursuing national interests at the international level regarding expansion of maritime jurisdiction for the purposes of security and self-preservation, resource exploration and exploitation and political well-being.<sup>31</sup> Flowing from the above background, it is deductible or can safely be concluded that comparative analysis of the legal framework and regulatory agencies of the two countries in relation to port security is reasonable. It will enhance performance through their various experiences in the application, enforcement and efficacy in the management of the port and maritime security.

### **4. INTERFACE OF THE LEGAL REGULATIONS**

#### **4.1 Port Authority Acts**

##### **4.1.1 Managing Security Forces**

A critical examination of the provisions of the Malaysian Ports Authority Act indicates that the port authorities have the power to establish a security force (though subject to the approval of the Minister) for keeping order and security within the premises of the port.<sup>32</sup> This is to ensure that the free flow of commercial activities are not in any way disturbed by external agents whose agenda is to disrupt the economic fortunes of the nation throughports. Where the port security personnel

<sup>29</sup> Gold E., *Maritime Transport - The Evolution of International Marine Policy and Shipping Law*, (Toronto: D.C Heath and Company, 1981).

<sup>30</sup> Other examples in this category include Safety of Life at Sea Convention (SOLAS), 1974, Load Lines Convention, 1996, Civil Liability Convention, 1969, Standards of Training, Certification and Watch Keeping Convention (STCW) 1978, Agreement on the International Association of Lighthouse Authorities Maritime Bouyage system, 1982 etc.

<sup>31</sup> For example, regional cooperation like FPDA earlier discussed in chapter 6.

<sup>32</sup> Ibid, section 13a (1)

discovers any security gap, the provisions of the Act empowers them to arrest and handover the suspect to the police.<sup>33</sup>

Contrary to the above, the Nigerian Ports Authority Act is silent and makes no provision for the management of the authority to have a security outfit than those created by other statutes like the Navy, Customs, Immigration, Marine Police, etc. for the purpose of maintaining law and order in ports. The Nigerian Ports Authority would benefit immensely if a security force, different from the regular one, is established in ports to protect the port environment from gangsters. For example, if this kind of arrangement is in place, it would prevent the issue of an unauthorised person impersonating as a pilot in ports for the purpose of pilotage which is likely to expose vessels, passengers and cargoes to danger. Alternatively, the Nigerian ports authority can make use of members of the Nigerian Security and Civil Defence Corps (NSCDC)<sup>34</sup> in order to save costs.

#### *i. Merits*

It is posited that where Ports Authorities Management have a security outfit under its control, the following benefits are realisable:

- a. It gives the management of the port authority the power to appoint guards at ports to protect port facilities;
- b. It enables the port authority to identify a specific officer who is not efficient in the case of a security gap and damage to port facilities; and
- c. It prevents some minor crimes that are often committed in ports.

#### *ii. Demerit*

The arrangement of keeping a security outfit by port authorities involves extra expenses on the part of the management of the port authority. Nonetheless, where the agency makes use of security officers like the Nigerian Security and Civil Defence Corps, the issue of cost implications will not arise. This is because the corps are established and being paid for by the Federal Government of Nigeria.

### **4.2 Merchant Shipping Acts**

The new amended Merchant Shipping Act<sup>35</sup> of Malaysia which replaced the Merchant Shipping Ordinance of 1952 contains provisions for compliance and issuance of the International Ship Security and Safety Certificate of a designated marine facility. This arrangement would enable a vessel to put in place certain security and safety measures which the master or crew must implement<sup>36</sup> and failure

<sup>33</sup> Ibid, sections 13(3)&(4) which provides that "a member of the security force shall have the power to arrest without warrant any person found on any premises of the authority or in premises in the possession or under the control of the authority, or any part thereof, without lawful excuse." "Every person arrested pursuant to subsection (3) shall be taken to the nearest Police Station as soon as possible"

<sup>34</sup> The agency is a relatively new security agent established by the federal government for civil defence activities.

<sup>35</sup> Merchant Shipping (Amendment and Extension) Act 2007(Act A1316).

<sup>36</sup> Ibid, 249A. Part of the safety arrangement which a vessel is to make includes an area of land, water or other supporting surface used, designed, prepared, equipped or set apart for use, either in whole or in part, for the arrival, departure, movement or servicing of vessels. See section 249k (4) (a).

## *Maritime Interception And Operation: A Review of Interface Between Multimissioned Maritime Services In Nigeria And Malaysia*

to implement may, by implication, deny a vessel the right of access to Malaysian ports. The Merchant Shipping Act of Nigeria 2007 also provides for the registration of ships in Nigeria or evidence of registration in the flag state of the foreign ships before operation in Nigerian waters.<sup>37</sup> This is for the purpose of identifying ships traversing and transacting business in Nigerian waters. The registration of ships under the Nigerian Act also prevents threat to the port and maritime domain connected with discharge of waste that affects the maritime environment. Unlike the Malaysian Shipping Act, there is no provision in the Nigerian Shipping Act which empowers the agencies like NIMASA to issue the ISPS Compliance Certificate to deserving ships. The provision is a good innovation and could be harnessed or incorporated into the Nigerian law. The two Acts under consideration are virtually aimed at achieving the same goals with little variation.

It is also interesting to mention that in the event of the release of diseases at border ports through the act of bio-terrorism activities, there is no specific legislation in Malaysia to address the issue. The Shipping Act, MMEA Act, etc. can be amended or a new legislation be enacted to cater for this lacuna. The Malaysian government is yet to have a domestic legislation incorporating the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC) of 1972 which it had ratified since September 6, 1991. Although, a bill to this effect has been drafted, the bill is yet to see the light of the day.<sup>38</sup> However, in the case of Nigeria, apart from the fact that the Nigerian Terrorism Act mentions that bio-terrorism is prohibited,<sup>39</sup> there are no provisions of the law which address the occurrence and what more of penalty thereto. Therefore, there is a need for legal regulation projected and precautionary measures provided that should reduce the calamity of the release of the diseases among the populace. It is humbly suggested that the Nigerian and Malaysian governments should improve on the lapses identified and bridge the gap of legal regime.

### **4.3 NIMASA and MMEA Acts**

These two enactments established the Nigerian Maritime Administration and Safety Agency (NIMASA) and Malaysian Maritime Enforcement Agency (MMEA) respectively. The essence of the two laws is for the establishment of the agencies that will be carrying out maritime enforcement activities in their respective sovereign state. The agencies are headed each by a Director General appointed by the President on the advice of the Minister in the case of Nigeria, and by the Yang Di Pertuan Agong on the advice of the Prime Minister in the case of Malaysia.

<sup>37</sup> See section 5(1).

<sup>38</sup> See "Malaysia to Prepare Law on Biological Warfare" available on <http://www.klpos.com/analysis/6831-keeping-biological-weapons-in-check-in-malaysia> (accessed on 10/4/13). See also "Malaysia Prepare Biological Conventions Implementation Legislation", available at <http://www.nti.org/gsn/article/malaysia-prepares-biological-weapons-convention-implementation-legislation/> (accessed on 10/4/13).

<sup>39</sup> See Terrorism Act 2011, section 1 (2) (c) (v). The act merely defines terrorism to include biological weapons.

The issue of qualifications of the Director General of these agencies calls for concern. For a person to be appointed as a Director General of the Nigerian Maritime Administration and Safety Agency, he/she must have extensive knowledge of maritime affairs.<sup>40</sup> However, in the case of Malaysia, it is observed that the Act is silent on the qualifications of a civil servant to be appointed as the Director General of the MMEA. This gap needs to be addressed by inserting a provision in the Act that will make only a civil servant with requisite knowledge of port and maritime security to be appointed as the Director General, otherwise the agency may not achieve its mandate if a non-technocrat is put at the helm of affairs. Where a Director General who is not a technocrat in port and maritime security is appointed to manage maritime affairs, obviously he/she would lack the sense of directing, controlling and managing all the security agencies involved in the struggle to build national security at border ports. The adoption of the NIMASA Act provisions on this position is apt.

#### **4.4 Cabotage and Fisheries Acts**

On the fisheries regulation and enforcement regime, Malaysia has developed a strategy to monitor fishing vessel activities within the Malaysian EEZ. The strategy is that a license issued to vessel owners is only valid for 12 calendar months from the date of issuance<sup>41</sup> and foreign vessels are not allowed to engage in fishing activities in Malaysian waters unless authorised to do so by the International Fisheries Agreement between the government of Malaysia and the government of the country of the fishing vessel.<sup>42</sup> Therefore, where there is any contravention of the provisions of the Fisheries Act or any subsidiary legislation in relation thereto, the master, owner and members of the foreign vessel shall be guilty of an offence<sup>43</sup> and the offence shall be deemed to have been committed in Malaysia for the purpose of conferring jurisdiction on the court. The court of competent jurisdiction in this regard includes a Sessions court and Magistrates court of first class grade.<sup>44</sup> Where it is established that the vessel so arrested has breached the provision of the Act, the court has the discretion to order forfeiture of the vessel that is arrested.<sup>45</sup> In Nigeria, the situation is different. In order to promote indigenous tonnage, fishing in Nigerian waters is restricted to vessels that are manned and wholly owned by Nigerian citizens and it is an attempt to encourage and develop the sector through the participation of citizens,<sup>46</sup> and thus, no opportunity is accorded to foreign vessels.

<sup>40</sup> See section 11(1), NIMASA Act.

<sup>41</sup> Fisheries Act, section 14.

<sup>42</sup> Ibid, section 15(1).

<sup>43</sup> Ibid, section 24.

<sup>44</sup> Ibid, section 32(1).

<sup>45</sup> Ibid, section 34. Note that any authorized officer has power of enforcement to ensuring compliance with the provision of the Act. This, the officer can exhibit by board, stopping and searching any vessel within Malaysian Fisheries waters and conduct examination and inspection on a vessel. See also section 46, *ibid*.

<sup>46</sup> See generally, section 3-6 of the Cabotage Act, 2003.

## Maritime Interception And Operation: A Review of Interface Between Multimissioned Maritime Services In Nigeria And Malaysia

The penalties imposed in the case of illegal fishing in the two jurisdictions are in *pari-materia* except for inadequate enforcement and surveillance equipment that are obtainable in the case of Nigeria coupled with prosecution bureaucracy.<sup>47</sup> It is suggested that the security measure needs to be improved in Nigeria in order to actualise the aims and objectives of the Act to benefit indigenous shippers. Importantly, where a vessel is within the Exclusive Economic Zone of Malaysia any offence committed on board by a passenger against another passenger which ordinarily affects the peace and order of the country, the Malaysian government has unfettered discretion to punish the offender in accordance with the appropriate domestic law.<sup>48</sup> The adoption of this provision of the law in Nigeria will also be apt. In the same token, adoption or incorporation of the principle enunciated in the case of the *Mali, Consul of His Majesty, the King of the Belgian v. Keeper of the Common Jail of Hudson County, New Jersey*<sup>49</sup> which empowered port states to punish an offender into the Nigerian and Malaysian Ports Acts will be a synergy to bring the offence to the attention of the people engaging in fishing activities. Besides the above legal regulations, other Acts that deal with port security problems in both Nigeria and Malaysia are virtually the same, although their implementations are different based on political will and efficiency of the regulatory agencies concerned. The figure below shows the areas of distinctions between the legal regulations in Nigeria and Malaysia:

**Figure 1- Showing areas of differences in Nigerian and Malaysian Laws**

Description	Nigeria	Malaysia
	<b>Ports Act</b>	
Managing security forces	Nil	Section 13 a (1)
Power of Arrest	Nil	Section 13(3) & (4)
	<b>Merchant Shipping Act</b>	
Issuance of ISPS Code Compliance Certificate	Nil	Section 249 A
	<b>NIMASA Act and MMEA Act</b>	
Appointment of D.G. based on knowledge of maritime security	Section 11	Nil
	<b>Cabotage Act and Fisheries Act</b>	
Validity of Licence for Fishing	Nil	Section 14 provides for 12 months

<sup>47</sup> See Ganapathiraju Pramod and Tony J Pitcher, "An Estimation of Compliance of the Fisheries of Nigeria with Article 7 (Fisheries Management) of the UN Code of Conduct for Responsible Fishing." Available at <ftp://ftp.fisheries.ubc.ca/CodeConduct/.../Nigeria-CCRF.pdf> (accessed on 25/10/12).

<sup>48</sup> Penal Code (Act 574), section 4.

<sup>49</sup> (1887) 120 U.S. 1. See also the cases of *United States v. Fores*, 289 U.S. 137, 155-159 and *Cunard Steamship Co. v. Mellon*, 262 U.S. 100, 124.

## **5. REGULATORY CONTROL OF PORTS**

Apart from the above identified areas of interface in the two jurisdictions under consideration, there are other areas of distinction in the operational system of ports which could be gleaned from the following:

### **5.1 Ownership of Ports**

#### **5.1.1 Nigeria**

In Nigeria, ownership, control and management of ports are vested in the federal government of Nigeria. The establishment of ports as contained under the Nigerian Constitution is within the exclusive legislative lists which presuppose that only the federal government of Nigeria is vested with the power to establish, control and manage ports.<sup>50</sup> Unlike Malaysia, states lack the power to establish or designate a port as a state port. Therefore, establishment, ownership, control, appointment of the Chief Executive and Directors of the authority, etc. are all under the power of the federal government<sup>51</sup> and any legislative power on the Nigerian Ports Authority is vested on the National Assembly.

The NPA Act 2004 provided that all ports in Nigeria are deemed federal ports.<sup>52</sup> This can also be gleaned from the fact that any action instituted against the Nigerian Ports Authority particularly those that relate to the establishment of ports, admiralty and maritime issues are filed before the Federal High Court.<sup>53</sup> This is why the Federal High Court is vested with original jurisdiction on the aforementioned related issues of the Nigerian ports. But where the issue involved does not concern with those mentioned under the constitution,<sup>54</sup> the Federal High Court will be divested of the jurisdictional competence to hear and determine the case. This position was

<sup>50</sup> See generally, item 36 of part 1 of the Exclusive Legislative List of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides that the Federal government shall have exclusive legislative power to make law in respect of Maritime shipping and navigation, including - (a) shipping and navigation on tidal waters; (b) shipping and navigation on the River Niger and its affluent and on any such other inland waterway as may be designated by the National Assembly to be an international waterway or to be an inter-State waterway; (c) lighthouses, lightships, beacons and other provisions for the safety of shipping and navigation.

<sup>51</sup> See the Nigerian Ports Authority Act, 2004, section 10 which provides; 10 (1) There shall be, for the Authority, a managing director to be appointed by the President and; 10 (4) (4) The President shall appoint for the Authority, three executive directors to assist the managing director in the performance of his functions under this Act.

<sup>52</sup> NPA Act, section 123.

<sup>53</sup> See section 251(1) (g) of the 1999 Constitution which provides; "any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designate by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea."

<sup>54</sup> See the Constitution of the Federal Republic of Nigeria, section 251(1).

given judicial flavour by the Nigerian Supreme Court in the recent case of *Ports and Cargo Handlings Service Company Limited & ors v. Migfo Nigeria Limited*.<sup>55</sup>

#### 5.1.2 Malaysia

Contrary to the position in Nigeria as stated above, ports are either established as state or federal ports in Malaysia and each port is under the control of their respective governments (state or federal). This is adequately provided for under the Federal Constitution of Malaysia.<sup>56</sup> The parliament in Malaysia has exclusive power to make laws in respect of matters contained under the federal list as well as the concurrent list of the Federal Constitution. On matters under the federal list, the states legislature cannot make law in respect thereof while in the case of matters stated under the concurrent list, both the federal and state have powers to make legislation. An example of a matter in Malaysia wherein both the Federal and State legislatures can make legislation is 'port', that is the states' legislative assemblies will have power to make laws on ports designated as state ports and parliament makes law on ports designated as federal ports.<sup>57</sup> Also, there are ports and jetties which are under the jurisdiction of the Marine Department; fishing ports and jetties are under the jurisdiction of the Fisheries Development Authority and oil majors man their own special ports.<sup>58</sup> All these are quite different from what is obtainable in Nigeria.

#### *I. Security Implications*

The idea of ownership and control of certain ports by states might have its desirability, the security implications of the initiative worth consideration. Ports and maritime commerce play major roles in economic advancement of coastal states and so also its attendant security challenges which require effective legal frameworks and efficient security personnel to combat any attempt to deny coastal states their economic fortunes. In order to face challenges of port and maritime security, various countries have their armed forces like the Navy, Army, Marine police, etc. to ensure the safe sea for their country to enjoy the benefit of the maritime zones. These security outfits are under the control and management of the federal government (Nigeria and Malaysia in the instant case), and therefore allowing some states to own, control and manage ports are likely to provide a security gap which may give rise to external aggression of non-traditional security threats. The point here is that, states lack necessary power to assert control and/or authority on the regulatory agencies of maritime security, and the first priority of state governments that own

<sup>55</sup> SC.42/2009, delivered on 8<sup>th</sup> June, 2012. See also *S.O. Ntaka v NPA*, SC.190/2003, delivered on 11<sup>th</sup> May, 2007.

<sup>56</sup> See Article 73-75, Federal Constitution of Malaysia.

<sup>57</sup> Ibid.

<sup>58</sup> Malaysia Ports available at  
[http://www.mima.gov.my/index.php?option=com\\_content&view=article&id=119&Itemid=112](http://www.mima.gov.my/index.php?option=com_content&view=article&id=119&Itemid=112)  
(accessed 22/4/12).

ports would be to foster or generate revenue for the states, thereby putting the issue of security as secondary, which should be avoided as much as possible. The control and management of ports under a centralised management as in Nigeria's case is desirable for there to be partnerships with private enterprises that act as concessionaires for public installations or advancement of ports with a series of sophisticated equipment for the port to have a world class outlook. The concept of public value, protection of public property, and maintenance or satisfaction of collective public needs is germane for the development of infrastructure of port facilities. In any event, the government will incur expenses in carrying out the development, thus the government will attempt to realise interests from its investment in addition to the allocation accruable to the state from the central government. The decentralisation of ports wherein state participation is allowed to manage might be problematic if the state concerned is left to handle external security concerns. The issue whether a port is under the control and management of state or federal, the cardinal responsibility of the government concerned is the need to safeguard the port against security threats that is capable of devastating the peace and orderliness of a nation. However the best tier of government to handle it, is the federal government. The security arrangement to be put in place in ports often rests under the control of federal government and it is safer that the ownership of ports rests on the central government since it is an issue that involves ratification of international treaties and conventions coupled with the fact that control of security personnel is a sacred responsibility of the federal government in order to assert sovereignty and national security of its territory.

#### **6. DISTINCTIONS BETWEEN THE ENFORCEMENT STRATEGIES OF THE REGULATORY AGENCIES IN NIGERIA AND MALAYSIA**

##### **Administrative Agencies**

The regulatory agencies of port and maritime security are virtually the same if compared and these include the navy, marine police, immigration, customs, etc. It is not deniable that the existence of good laws without viable institutions to implement them is akin to no law at all being in existence.<sup>59</sup> This is because a legal instrument only becomes effective if properly implemented.<sup>60</sup> Implementation by its enforcer determines its efficacy. Accordingly, administrative and institutional agencies are contributors to the development of port and maritime security. The implication of this is that a well-designed law that is not well implemented by the institutional or administrative agencies can affect national security, thereby hindering development in the state concerned (Nigeria and Malaysia).

The presence of the seas which has culminated in the establishment of the ports in Malaysia and Nigeria has given rise to the protection of ports and the maritime zones. Generally, the protection of the ports is against unscrupulous elements among

<sup>59</sup>See Abdulkadir O. A., *The Legal Regime of Port Security: The Position in Nigeria and Malaysia* (Ph.D. Thesis, IIUM Malaysia, 2014).p. 351.

<sup>60</sup> Ibid.

## Maritime Interception And Operation: A Review of Interface Between Multimissioned Maritime Services In Nigeria And Malaysia

humans who derive pleasure in the destruction of the port facilities and importation of destructive weapons through ports in order to achieve material gain<sup>61</sup> or political popularity.<sup>62</sup> Therefore, where a ship engages in carriage of weapons of mass destruction, port security agencies can deny access to such ship. These challenges have called for the introduction of personnel with requisite skills to combat the threats posed by these dastard activities. The threats of port or maritime security have prompted the government of various nations, including Nigeria and Malaysia, to establish agencies to tackle the issue of port security.

It merits mentioning that both Nigeria and Malaysia established regulatory agencies to implement and enforce the legal framework on ports and maritime security as the law would only be effective if there are agents saddled with the responsibility of ensuring compliance with the provisions of the law. The regulatory agencies of port security in Nigeria and Malaysia are identical with similarity of purpose ranging from the ports authorities, the navy, customs, immigrations, marine police, maritime institutes, etc. The obvious distinction among the agencies majorly is in the area of effectiveness of their operations as well as compliance with International Maritime Organisation (IMO) regulation with Codes like ISPS (NIMASA has not been effectively proactive on the implementation of the Code,<sup>63</sup> CSI and the likes.

Considering the number of containers and other cargoes that a single ship might import at a particular time in the Nigerian ports, manual inspection on board a ship is not capable of yielding the desired results of preventing importation of harms into the country. Therefore, compliance with the ISPS Code arrangement by the IMO is a panacea at reducing the CSI problem.

Therefore, implementation of the IMO Container Security Initiative, which is patently lacking in Nigeria, is a vital tool towards achieving the goals of thwarting the menace of trans-boundary harms through the border ports. The idea of inspecting containers one after the other is archaic and gives room for importation of harms because a substantial number of containers would be left without inspection.

It goes without saying from the above exposition that the Nigerian port security agencies are experiencing difficulties which perhaps are responsible for the importation of harms through the Nigerian border ports. It is therefore suggested that facilities be put in place in Nigeria to enable the port and maritime security agencies to perform their functions like their Malaysian counterparts. Where facilities are in place, ships that fail to meet conditions for entry to port can be denied the right of

<sup>61</sup>See section 101 of the 1982 UNCLOS. Pirates whose aims are to unleash terror and deprive the seafarers their belonging falls under this category.

<sup>62</sup>Terrorists whose objective is to hold certain groups of people in hostage in order for the government to accede to a particular request or demand is an instance which falls under this category. The insurgency of Achille Lauro that held an Italian ship hostage for political gimmick, which was the imprisonment of some Palestinians in Israel's prison falls under this category.

<sup>63</sup>See 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, Part 2 (July-December) (2013); p. 349.

access. The following figure shows the areas of differences between administrative control and strategy of port security in Nigeria and Malaysia:

**Figure 2- Showing areas of differences between administrative control and strategy of port security in and Malaysia**

Description	Nigeria	Malaysia
	<b>Administrative/Constitutional Control</b>	
Ownership of ports	Federal Government	State and Federal Governments
	<b>Maritime Monitoring Agencies</b>	
Privatisation of Port and Maritime Security	Surveillance activities of NIMASA is firmed out to a private company	MMEA exercises the power of surveillance
Implementation of the ISPS Code	Saddles NIMASA with the responsibility, but not effective	MMEA not concerned with the implementation of the code
	<b>Customs and Immigration</b>	
Manual inspection of containers	Manual inspection of containers is still in practice	Electronic inspection is in practice
Basic Amenities	Basic amenities like electricity remains ineffective and affects the their efficiency	Its availability is aiding their efficiency

## 7. REGIONAL COOPERATION

Regional cooperation happens to be one of Malaysia's defense of its port and maritime security. Regional cooperation has given rise to the formation of the Five Power Defense Arrangement (FPDA) between the member states to wit Australia, Malaysia, Singapore, United Kingdom and New Zealand. The FPDA is the highest military expert forum and it serves as an imperative platform for exchange of ideas among the defence chiefs.<sup>64</sup> Bearing in mind the non-traditional threats to port and maritime security, especially the prominent role which the defence forces have undertaken in rendering humanitarian assistance, this regional cooperation's ability to develop and adapt to this varying environment over the years has made it possible for it to remain relevant.<sup>65</sup> This kind of arrangement is important to preserve regional peace and stability, sustain economic viability, and improve training of the maritime enforcement personnel for the benefit of all countries.

Nigeria and some other neighbouring countries are also enjoying cooperation to combat maritime insecurity. Countries like Congo, Ghana, Sierra Leone, etc. are

<sup>64</sup> See Lt Faliq, Malaysia Hosts 14th FPDA Defence Chiefs' Conference (FDCC) available at [http://www.mafhq.mil.my/index.php?option=com\\_content&view=article&id=300%3Amalaysia-hosts-14th-fpda-defence-chiefs-conference-fdcc&lang=en](http://www.mafhq.mil.my/index.php?option=com_content&view=article&id=300%3Amalaysia-hosts-14th-fpda-defence-chiefs-conference-fdcc&lang=en) (accessed on 20/6/15).

<sup>65</sup> Ibid.

coming up in this regard. But there appears to be lack of commitment unlike what is obtainable in South-east Asia. Although, few days ago, the Nigerian navy seemingly encouraging regional cooperation in the Cameroonian waters. It is not in doubt that no state can be an island in itself to combat transnational crimes alone without the aid of other states. Enforcement operations between different states require solid international cooperation.<sup>66</sup> Regional cooperation to fight ports and maritime security transcends different states borders and to this end, there is a need to develop the following strategies:

- i. Information sharing mechanism between the states;
- ii. Establishment of a decision-making regime and strategy for responses to eventualities;
- i. Identification of weakness in the states' enforcement mechanism, either institution or regulatory;
- ii. Smart intelligence needs to be collected, interpreted, analysed, shared, recorded, used and acted upon efficiently and effectively among the maritime security stakeholders; and
- iii. Adequate resources need to be provided to procure equipment.<sup>67</sup>

## 8. CONCLUSION

A critical study of the legal framework and regulatory agencies of both Nigeria and Malaysia indicate that there are areas of interface between Nigeria and Malaysia which could benefit both countries if harnessed. One of the areas of distinction identified in this paper is the issue of qualifications of the Director General of NIMASA and MMEA. It is established that for a person to be appointed as Director General of the Nigerian Maritime Administration and Safety Agency, he/she must have extensive knowledge of maritime affairs. But in the case of Malaysia, it is observed that the Act is silent on the qualifications of a civil servant to be appointed as the Director General of the MMEA. This paper posits that the gap needs to be addressed by inserting a provision in the Act that will make only a civil servant with requisite knowledge of port and maritime security to be appointed as the Director General, otherwise the agency may not achieve its mandate if a non-technocrat is put at the helm of affairs. The paper demonstrated that the legal regimes of Nigeria and Malaysia on port security are virtually the same with little differences. However, there are a lot to be learnt from the implementation strategies of the Malaysian port and maritime security agencies.

<sup>66</sup> There have been measures to combat counter-terrorism cooperatives between the Five Power Defence Arrangements (FPDA) which consists of Australia, Britain, Malaysia, Singapore and New-Zealand. The concern over maritime security has attracted the attention of external powers, thereby bringing about rivalry within the region. The U.S tried to improve security in the Straits of Malacca with the aid of regional allies but China has expressed concern over the U.S ability to disrupt its access. See Andrew TH Tan, "The Asian Countries' Interest in Asian Energy Security", in Andrew Forbes(ed.), at 47.

<sup>67</sup> See generally, Nazery Khalid, "In Port We Port Trust: The Economic Consequence of Attacks on Ports" in Andrew Forbes (ed.), at 89.