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cargo. Furthermore, there are concerns about those suffering from improper carriage of dangerous cargo even if they are not entirely directly connected with it. Moreover, there exist security worries as dangerous goods could be instruments for terrorist activities or attacks as witnessed recently when an Iranian, Azim Aghajani and a Nigerian, Ali Jega who claimed to be importing building materials where caught at the Tin-Can Port, Lagos with a 13 by 20 feet container loaded with arms and explosives into Nigeria. The two accused persons are presently standing trial before the Federal High Court, Lagos, Nigeria.²

Accordingly, the legal framework in which the maritime industry must work includes the area of public and private international law of flag, coastal and port states as they are concerned with the security, safety, environment as well as individual liability. It is on the above background that the IMO, an organ of the United Nations made regulations concerning the importation of dangerous cargoes. Notwithstanding the role of the IMO with regard to its regulation on the control the menace of importation of dangerous cargo, state parties have powers to make domestic legislation in relation thereto. In any nation where security at ports are given adequate attention, there must have been laws which focus on prevention of illegal entry of vessels, cargoes and persons, yet ensuring free flow of lawful commerce, citizens and visitors. For example, the United States has laws and institutions dealing with the protection and strengthening of ports³ of entry and the need for technologies that could prescreen all high-risk entities coming into her ports as well as exit tracking

² See "Nigerian and Iranian Charged with Import of Firearms and Explosives"

<http://www.spyghana.com/nigerian-and-iranian-charged-with-import-of-firearms-and-explosives/> (accessed on 8/4/13)

³ For instance, *Safe Port Act 2002* and *US Trade Act 2002*

capabilities.⁴ Dangerous cargo on board are subject to scrutiny by port officials and whenever there is improper documentation, detention of ship, penalty and other implications for the ship follows. Accordingly, there is a need to identify and explain what we mean by dangerous goods.

20 What are dangerous goods and the implications of their importation by the MV Mareva?

It is essential to identify goods that are considered dangerous for transportation for the purpose of classifying them in the cause of voyage. The term goods include every species of personal property which an individual can exercise absolute possessive right upon. On the hand, it may be given a very restrictive meaning, items of merchandise and supplies that has element of physicality of the goods being referred to, is a condition precedent to the classification of an item as good.⁵ Sometimes the meaning of tangibility is contemplated in the context. It is however unlikely that the term 'goods' is extended or contemplated to include all tangible items as in the phrase 'goods and services'. All things (whether specially manufactured goods) which are movable at any time in contemplation of the contract of sale other than the money

⁴ See for example, in the United States, the Directorate for Science and Technology which Department of Directorate for Science and Technology who is the primary research and development arm of the Department of Homeland Security is organised into six divisions, namely: (i) explosive, chemical/biological, (ii.) borders and maritime security, (iii) infrastructure protection, (iv) geophysical science, (v) command, control and interoperability; and (vi) human factors. This Department is also responsible for the Department of Homeland office of University programs wherein maritime security research is to be conducted in addition to the existing University-based Centres of Excellence. See generally, Jon S. Helmick, Helmick, J S, "Port and Maritime Security: A Research Perspective," *Journal of Transport Security*, (2008) 19

⁵ M D Guner-Ozbek, note 2 supra

which is given as consideration for the goods, investment securities and things in action is regarded as goods.⁶

In the case of *Islamic Investment Co.1 S.A. v. Transorient Shipping Ltd. (The "Nour")*,⁷ a cargo of bagged fishmeal in the cause of carriage became hot and eventually caused damage to cargo. This incident was also responsible for the delay in the discharge of the fish meal. By the provisions of Clause 27 of the Charterparty, fishmeal based on the IMO rules must be shipped under deck, loaded and stowed. It was argued in this case that carriage of dangerous cargo by vessels is being regulated in order to avert injury to passengers and ships. Hence, the provision is silent on damage to other goods contained in the same ship or the dangerous goods themselves. It needs be emphasized that as at the time this proceedings came up, the International Maritime Dangerous Goods (IMDG) Code of 1992 had stated that transport by sea of dangerous goods is regulated "in order reasonably to prevent injury to persons or damage to the ship." For this reason, it was maintained that there was nothing suggestive of risks of damage to other goods or goods themselves in the provisions. The court accordingly held that the commutative effect of the provisions of clause 27 is to ensure compliance with the regulations as a contractual undertaking and indeed not necessarily restricted to the reasons why the regulations were adopted by the IMO.

Dangerous goods include materials and substances that are capable of posing an unreasonable risk to health, property or safety when transported in maritime commerce to port states. It also means any goods being transported through the sea which

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IMDG Code is expressly applied.⁸ This includes Alcohol based perfumes, Solvent based paints, Gasoline, Lithiumion batteries, Acetone, Acids, etc. Hazardous materials need special handling. There are numerous regulations and requirements outlining proper care for dangerous goods while on site and also in transit. Therefore, it could be safely concluded that MV Marevia ship that brought in two containers of toxic materials into the Nigerian port of Lagos carried dangerous goods. The question that arises is whether MV Marevia was given any clearance by the Nigerian Ports Authority (NPA) and other relevant agencies to transport the goods to Nigeria? This is because carriage of dangerous goods to a port state requires disclosure of type of dangerous goods being carried as well as clearance from the port state before embarking, otherwise penalty will be imposed. In the case of MV Marevia, there is no evidence of information or clearance from the government agencies, hence imposition of fine. However, the imposition of the fine of USD 1,000,000 on the ship appears outrageous, the legality or otherwise of the amount imposed viz-a-viz the extant law has been addressed in the later part of this paper.

Transportation of dangerous cargo requires or makes a charter party imperative. A charter party bill of lading refers to a document which is issued by the charterer of a ship outlining or indicating certain information like the quantity, types of goods and conditions upon which the goods are to be transported. A charter party bill of lading is issued under different circumstances to a liner bill of lading and the bill of lading generally represent the proof or evidence that the cargo in question has been loaded onto

⁶ P. Bates, "Cryptography Export Controls - Canada's Dichotomous Cryptography Policy", *Canadian Journal of Law and Technology*, p.204 available at http://cilt.ual.ac.uk/vol4_no3/pdf/articles/batesnew.pdf accessed on 5/3/13

⁷ [1999] 1 Lloyd's Rep. 1,

⁸ See the Marine Order - Part 41: Carriage of Dangerous Goods, Issue 10 (Order No 11 of 2009) section 2. It contains amendment up to 2011 (No 1) (Carriage of Dangerous Goods) (Order No 5 of 2011).

a ship, the cost of the cargo, the quantity of the cargo and of course under what conditions the cargo is to be transported.⁹

Furthermore, to fortify the position that the importation of dangerous cargo on 5 January 2013 by MV Marevia into Berth 4 of Tin-Can Island Container Terminal (TICT), Lagos is hazardous to human health, investigation reveals that the ship carried expired electronics and electrical equipment. Most of the imported items were used electrical and electronic equipment that were not functional, the electrical cords of those substances were already cut, the equipment was not well packaged and was only moved to Nigeria for the purpose of dumping. The provision of the Nigerian extant law, specifically, the Human Waste (Special Criminal Provision) Act,¹⁰ prohibits the carrying, depositing and dumping of harmful waste on any land or territorial waters or contiguous, exclusive economic zone of Nigeria or its inland waterways.

The term hazardous, dangerous, harmful and noxious are variously used to describe such cargoes; in the United States, the equivalent of the IMDG Code 2010¹¹ is entitled 'Hazardous Materials Regulations'. One may wonder the essence of importation of dangerous cargoes, considering the risk involved but dangerous goods have their benefits when looked at critically.

⁹ For more on charterparties, see N. Machel, *Wbr, Tenor and Carriage by Sea* (London: LLP, 2004) 637. See also the cases of *Louis Dreyfus Negoce S.A. v Blystad Shipping & Trading Inc.* Docket No. 00-7382 decided on June 07, 2001 and *Federal Marine Terminals Inc v Wisconsin Port Company Inc* No. 00-2004.

¹⁰ Cap HI LFN 2004

¹¹ The 2010 edition of the IMDG Code contains amendment 35-10 and it is set out in IMO Resolution MSC.294 (87). Essentially, the two terms dangerous and hazardous have been used in a similar and comparable way in international agreements and national legislations.

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2.01 What is the value of dangerous goods to economy?

Hazardous substances or materials are essential to the world's economy. These materials include everything from paints and batteries to explosives and caustic chemicals to infectious substances. Even some of the cosmetics and perfumes sitting on your counter and wardrobe at home can be classified as dangerous goods. No matter the use, hazardous materials must be handled with care. There are special regulations and procedures which must be complied with when these goods are shipped by air, land, rail, and sea. There are numerous regulations and requirements outlining proper care for dangerous goods while on site and also in transit. Non-compliance with hazardous material shipping regulations can be costly. Recently, the Federal Airport Aviation (FAA) proposed USD140,000 fine against a major retailer due to improper shipping-paper declarations for the hazardous materials in their three oz bottles of nail color and five oz containers of sun block; the nail color should have been classified as a flammable liquid and the sun block as a flammable gas. Also, a leading pharmaceutical distribution company received a USD 91,000 fine because they made an undeclared shipment of skin care products containing alcohol.¹²

Dangerous goods according to classification could be solid, liquid or article which have been assessed and tested through the internationally accepted mechanism and discovered to be potentially risky in the cause of their carriage. In essence, the predominant hazard of a particular cargo is one of the considerations for its classification. There are also regulations stipulating the responsibilities/duties of everyone that is involved or who might become involved in the carriage of dangerous cargo.

¹² See "Dangerous Goods Berlin Packaging European Summary available at <http://berlingroupsgoods.com/en/berl-pkg-eu-sum>, accessed on 4 March 2013.

for example, *contaminants, criteria, the public and other members of emergency services.*¹³

Reading the aforementioned in mind, it needs be emphasized that environment-related dangers like the carriage of electronic waste have been considered as both threats to purely ecological terms and a leading elements in the overall conception of security. It has been perceived by some to be more at risk from environmental problems than from conventional war.¹⁴ This is the proposition of the proponents of environmental security.¹⁵

Development of IMDG

The International Maritime Dangerous Goods (IMDG) Code was developed as a uniform international code for the transport of dangerous goods by sea covering such matters as packing, container traffic and stowage, with particular reference to the segregation of incompatible substances. The development of the IMDG Code dates back to the 1960 Safety of Life at Sea Conference, which recommended that governments should adopt a uniform international code for the transport of dangerous goods by sea to supplement the regulations contained in the 1960 International Convention for the Safety of Life at Sea (SOLAS). A resolution adopted by the 1960 Conference said that the proposed code should cover such matters as packing, container traffic and

¹³ See M.S. Notice No 06 of 2010. See also "Introduction to the Carriage of Dangerous Goods", available at www.lse.gov.uk/dg/introduction.htm accessed on 6 March 2013.

¹⁴ See, for example, J.T. Matthews, "Redefining Security," *Foreign Affairs*, Vol. 68, No. 2.

¹⁵ Spring 1989, Guyon Prins, ed. *Threats without Enemies: Facing Environmental Insecurity*, (Earthscan, London, 1993) and Guyon Prins and Robbie Stamp, *Top Guns and Toxic Whales: The Environment and*

Global Security, (Earthscan, London, 1991).

¹⁶ *Ibid.*

stowage, with particular reference to the segregation of incompatible substances. Since the adoption by the Fourth IMO Assembly in 1965, the IMDG Code has undergone many changes, both in appearance and content to keep pace with the dynamic needs of the industry. Amendments which do not affect the principles upon which the Code is based may be adopted by the MSC, allowing IMO to respond to transport developments in reasonable time. Thus, the Toxic and Infectious substances are positioned in Class 6 and many of the substances designated from class 1 to 9 are considered as capable of polluting marine environment. Therefore, because of the fact that some toxic and infectious substances have extreme pollution potential, they are classified and identified as severe marine pollutants.¹⁶

2.02 IMO pivotal roles on dangerous cargoes

International sea transport is controlled and regulated by the IMO through its IMDG Code. The IMDG Code is incorporated into the Nigerian Maritime Administration and Safety Agency (NIMASA) Act.¹⁷ Shipping is no doubt one of the most international and dangerous industries to carry on business in the world considering the different types of peril involved.¹⁸ It has always been recognized that the best mechanism for improving safety at sea is to formulate international regulations which should be followed

¹⁶ See Francesco Bertlingieri, "The Unctral Draft Convention on the Carriage of Goods (Wholly or Partly by Sea)", (2008) 58, (1-2) 47-76, Zbornik PF, p 47. See the IMO available at <http://www.imo.org/ourwork/safety/cargoes/pages/dangerousgoods.aspx> accessed on 4 March 2013.

¹⁷ See section 64 of the Act.

¹⁸ K. Michel (n 7) 119. See also M.D. Guner-Orzbek, *Carriage of Dangerous Goods* (Heidelberg: Springer, 2007) 6.

by all shipping nations.¹⁹ To this end, Article 1 of the IMO Convention provides that:

Machinery for cooperation among governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purpose set out in this Article.

Thus, in order to achieve its objectives, IMO has promoted the adoption of about 40 conventions and protocols to regulate shipping activities *vis-à-vis* carriage of dangerous cargoes. In addition to conventions, protocols and other treaty instruments, IMO has also been involved in the adoption of numerous non-treaty instruments such as codes and recommendations by the Assembly through the instrument of its Marine Environment Protection Committee and the Maritime Safety Committee. Interestingly, the IMO first task after it came into existence in 1959 was the adoption of a new version of the International Convention for the Safety of Life at Sea (SOLAS).²⁰ The SOLAS contains provisions on the carriage of dangerous goods by sea. Thus, it is pertinent to examine these relevant provisions in what follows.

¹⁹ *Ganer-Ozbek, ibid.* The Convention establishing the IMO was adopted on the 6th day of March 1948 by the United Nations Maritime Conference and it came into force on the 17th day March 1958.

²⁰ *M.D. Ganer-Ozbek, note 7, supra*, p.5

2.03 SOLAS Convention and Carriage of Dangerous Goods

A critical appraisal of the first Convention for the Safety of Life at Sea (SOLAS 1914).²¹ It shows that the carriage of dangerous cargoes which by reason of their nature, mode of stowage and quantity were considered likely to endanger the lives of the passengers and or the safety of the ship was prohibited in principle. However, the decision as to which goods were deemed dangerous was left to the contracting governments.²² Also, the contracting governments have been advised on the precautionary measures which should be adopted in the cause of carriage and separation of dangerous goods. All this measures are to ensure safety while in transit and where they (measures) are adopted, a port state or contracting government is likely to permit the transport of the goods because it could be regarded as being safe. But where a shipper fails to comply with the regulations of a port state or a contracting government on the importation of dangerous goods to its maritime port, liability might follow in accordance with the national regulation.

Although, the SOLAS of 1914 never came into fruition, some of its principles have been relied upon which culminated in the national administrations and relevant authorities taking in accordance with SOLAS 1914. The position taken under the 1914 Convention was also demonstrated in the SOLAS Convention of 1929 wherein dangerous goods are mentioned as well as life-saving appliances.²³ In the latter convention, it was still prohibited to carry cargoes which by their characteristics, quantity and method of shipment were probable to endanger the lives of the

²¹ This convention never saw the light of the day as it never came into force.

²² States that acceded and ratified the SOLAS Convention had the option to state cargoes considered by them to be dangerous. In other words, where a state party to this convention forbids a particular good from being imported to its country, a shipper who contravenes the law would be sanctioned.

²³ See Article 24.

passengers on board a ship or the safety of the ship. Importantly, it was still left to each state concerned to determine which goods were to be considered hazardous or dangerous and to indicate the precautionary measures which had to be taken in their packing and mode of shipment. The 1929 Convention came into force in 1933 and by 1948, a new attempt was made to formulate safety standards for the carriage of dangerous cargo.

The carriage of dangerous cargo, substances or explosives, is a highly regulated legal regime. International conventions such as the SOLAS, MARPO and the IMDG Code have been, for a long time, the subject of comprehensive national legislation (ratification) by state parties including Nigeria as seen in the NPA Act, NIMASA Act, among others. Importantly, the 2004 version of the IMDG Code consists of the changes as contained on the amendment 32 which becomes mandatory as from 1 January 2006.²⁴ The application of the IMDG Code has become mandatory under the SOLAS, especially Chapter III, Regulation 3.²⁵ The carriage of dangerous cargo in bulk is being regulated by Chapter VII of SOLAS.

The terrorist attacks on the US on 9 September 2001 (colloquially referred to as '9/11') forever changed the regulatory regime for shipping. Suddenly, all forms of transportation were deemed to be at risk from terrorist attack, but the maritime transportation sector was deemed to be particularly vulnerable because of its unregulated nature. The IMO's Maritime Safety Committee was almost immediately pushed into action by the US and those other

²⁴ L. Railas, "Carriage of Dangerous Goods and Land: The Case of Finland" *Baltic Sea Region* (DAGOB Publications), 2006, vol.3, p.6. See also International Transportation Guidelines: Carriage by Sea (IMDG) Vol. 1(1999).

²⁵ See the "Information Sheet - Carriage of Dangerous Goods by Sea", (Australian Maritime Authority, 2012) available at

[www.amsa.gov.au/shipping_safety/cargoes_and_dangerous_goods/carriage_of_dg_sea\(intro\).pdf](http://www.amsa.gov.au/shipping_safety/cargoes_and_dangerous_goods/carriage_of_dg_sea(intro).pdf), accessed 6 March 2012.

IMO members most concerned with preventing maritime terrorism and the globalised maritime transportation system from being exploited by terrorist groups. The most notable new maritime security measure passed by the IMO include the International Ship and Port Facility Security (ISPS) Code, added as an annex to the maritime security provisions of the SOLAS Convention; significant new Protocols to the Convention for Suppression of Unlawful Acts Against the Safety of Life (SUA Convention)²⁶ and its Protocol; and provisions for the satellite based long range identification and tracking (LRIT) of SOLAS regulated ships.²⁷ From the time that the ISPS Code entered into force (1 July 2004), therefore, maritime safety and security became increasingly interconnected. This connection also began to be applied to offshore installations in regions that were not already conflict zones. As an indicative illustration, in Australia prior to 9/11, worker safety rather than platform security had been the focus of measures to safeguard offshore installations of the oil and gas industry. However, post-9/11 risk assessments led to the national implementing legislation²⁸ for the ISPS Code being amended to take into account the vulnerabilities of the offshore oil and gas industry, adding new protective security measures.²⁹ Accordingly, flag states have major roles to play to prevent

²⁶ The Convention is a multi-lateral treaty by which states agree to prohibit and punish behavior which may threaten the safety of maritime navigation.

²⁷ R. Herbert-Burns, S. Bateman and P. Leht (eds), *Lloyd's MIIU Handbook of Maritime Security* (USA: CRC Press, 2009) p. xxi.

²⁸ At the request of Dutch Ministry of Justice, Rand Europe performed a quick scan of counter-terrorism policymaking and implementation following the 9/11 attacks. The quick scan covered, the Netherlands, Finland, Belgium, Germany, France, United Kingdom and Spain.

²⁹ L. Cordier, "Offshore Oil and Gas Industry Security Risk Assessment: An Australian Case Study" in Herbert-Burns et al., *Lloyd's MIIU Handbook of Maritime Security* (USA: CRC Press, 2009), p. 177.

importation of dangerous or ensure approval before such importation.

3.0 Poor Performance by flag states

The obligation of maintaining ship safety and environmental protection by flag states is essential in a climate of increased maritime scrutiny and indeed a greater environmental awareness. The importance of rigorous assessment services by flag states is essential to avert littering the maritime domain and nations generally with goods that are harmful to health. The introduction of a ban system by the US for vessels which repeatedly violate international regulations is apt towards ensuring the ideal of the IMO regulations. Recently, three ships were reportedly banned in 2010 on account of maritime violation by the US Coast Guard.³⁰

The unwillingness and inability of flag states to exercise effective control on ships carrying their flag and the implementation of the international obligations on carriage of dangerous goods or toxic waste, dumping of oil, among others are responsible for the threats and maritime disasters which continue till date.³¹ It has been asserted that most of the weaknesses on the part of the flag states have been linked with dearth of experience and expertise to comply with the best practices and standards laid

down by the IMO.³² The use of Flag of Convenience³³ is also not helping the matter as shipowners considered their use as cheaper and profitable and this creates an opportunity for non-complying with the IMO regulations at the expense of the well-performing ships. Unfortunately, the IMO has no enforcement powers and binding mechanisms to compel flag states to comply with its rules.

The implications of non-compliance with the IMO regulations by flag states include but are not limited to the issue of carriage of toxic waste to port state by ships (carrying the flag of flag states) as witnessed in the MV Mareva incident of 30 January, 2013 which carried toxic waste to the Nigerian port of Lagos which is the crux of this paper. Although new efforts have been undertaken by the United Nations (UN) and IMO at enhancing the control of flag states to ensure compliance with their international obligations on maritime environmental protection and safety even when a ship is carrying a flag of convenience, these mechanisms are not legally binding on the flag states. In other words, the effectiveness of these mechanisms by the UN and IMO largely depends on the willingness of the flag states to comply. For this reason, it is suggested that IMO member states device an enforcement strategy that will compel member states to comply with its regulations. Regrettably, some flag states who are flouting the IMO regulations on maritime safety and protection are states with largest fleet and states that are Flags of Convenience carrying the Flag of Convenience, perhaps because they are the foremost

³⁰ See "GL Ships Top USCG Port Safety List" available at <http://gcaplain.com/ships-uscg-port-safety-list/> (accessed on 8/4/13)

³¹ Frank V. The European Community and Marine Environmental Protection in the International Law of the Sea: Implementing Global Obligations at the Regional Level, (The Netherlands: Martinus Nijhoff Publishers, 2007), p.225

³² See the Flag State Implementation Report by Consultative Group set up UNISG to explore all the issues raised by the Prestige Accident pertaining to flag states. See also IMO Comprehensive Analysis of Difficulties Encountered in the Implementation of the IMO Instruments (IMO doc. FSI 12/4/1, 19 12 2003) and the 2004 UNISG Report (paragraph 307)

³³ Flag of convenience is the business practice of registering a merchant vessel in a sovereign state different from that of ship's owner and flying the flag of a state ensign on the ship. Vessel owners adopt the strategy to reduce cost of avoiding stringent regulation of owners' country.

contributors (the top contributors in this perspective are Bahamas, Panama and Liberia) IMO. Based on this, it is argued that the IMO is not capable of adequately safeguarding the interests of coastal and port states as it might not have the requisite will to adopt policies that might be unfavourable or seen to be unfavourable to flags of convenience which are its major benefactors. Having discussed the relevant international regulations on the carriage of dangerous goods, it is relevant to examine the legality or otherwise of the fine imposed on the owners of the MV Marevia in view of the extant Nigerian legislation. This discussion is what follows

4.0 Implementing statute on prohibition of importation dangerous cargo in Nigeria

In order to appreciate and determine the legality or otherwise of the penalty imposed by the Federal Government of Nigeria, the reference to the legal framework on the importation of the dangerous goods/harms substances into Nigeria is pertinent for an understanding of the author's position in this paper. The NIMASA Act 2004 prohibits the importation harmful substances except in accordance with the provisions of the Act. The Act provides that all ships to which the Act applies are 'prohibited from carrying harmful substances in packaged form except in accordance with this part'.³⁴ For ships to be under the category allowable for the purpose of carrying harmful substances, the following must be complied with:

- i. There must be a special list stating the harmful substances on board and their location;
- ii. There must be a detailed stowage plan enumerating the location of all the harmful substances on board ship; and
- iii. The copies of the documents referred to above must be retained by the ship owner or his representative on

³⁴ NIMASA Act, Cap N161, *Laws of the Federation of Nigeria 2004*, section 45 (1) (a).

shore until the harmful substances are unloaded on board the ship.³⁵

It is noteworthy that NIMASA Act applies to small ships, ships and crafts that are registered in Nigeria. It also includes small ships, ships and crafts carrying a foreign flag in the Nigerian inland waterways, ports, territorial and inland seas and exclusive economic zone.³⁶ However, military patrol ships and war ships are not under the scope of the Act, hence the requirements exemplified in paragraphs (i)-(iii) above are not applicable to them. From the above provisions, it is clear that the importation of dangerous or harmful substances into Nigeria is not wholly prohibited. However, the ship owners are under obligation to fulfill the requirements of section 45 (5) (a) of the NIMASA Act.

Furthermore, it is also part of the requirement of the Act under consideration that each ship that is carrying harmful substances must be in possession of a manifest indicating the harmful substances on board the ship as well as their location.³⁷ To ensure full compliance with the provision of this Act, a copy of the manifest must be retained on shore by the ship owner or his representative and such should be made available to the Director General of NIMASA before departure.³⁸ The penalty for the breach of the provisions relating to marine pollution is commendable in that the defaulters of marine pollution or ship owners who carry harmful substances without the requisite manifest delivered to the appropriate authority will be made to forfeit the substances in addition to a fine of #1,000,000.00 (an equivalent of USD 6,369.00). This is apart from the sum of #200,000.00 (equivalent of

³⁵ *Ibid.*

³⁶ *Ibid.*, section 2 (1).

³⁷ *Ibid.*, sub-section (5) (a) and (b).

³⁸ *Ibid.*, paragraph (c).

USD\$1,274) penalty payable for everyday of the continuation of the offence.³⁹

In the same token, in order to guide against importation of harmful substances into Nigeria, every ship coming or approaching a Nigerian port is expected to obtain permission for entry duly issued by the NPA.⁴⁰ The NPA is the regulatory agency for the purpose of maintaining, improving and regulating the use of the Nigerian ports.⁴¹

4.01 Roles of security agencies

The Nigerian government security agencies have roles to play at ensuring maximum security of lives and property and guide against any maritime insurgence. Criminal activities in the country are on the rise as if enforcement agencies are no longer carrying out surveillance activities. It is on this premise that the Consul General of the US Embassy in Nigeria, Mr Jeff Hawkins recently said:

Many criminal groups operating in the Gulf of Guinea have become more brazen partly because they often wield heavier weapons than in the past. As one maritime sector insider said to us recently: "It's not hard to get a ship to stop when you're pointing a rocket propelled grenade at it. The zone is characterized both by tremendous opportunities as well as tremendous challenges. It presents opportunities for enhanced economic growth in Nigeria by leveraging the shipping and commercial fishing industries. It presents opportunities for increased and badly-needed employment in ports, onboard ships and in companies that provide goods

³⁹ Ibid. Note that the USD is approximately calculated based on #150.00 per 1USD which is the official exchange rate.

⁴⁰ Nigerian Ports Authority (NPA) Act, cap. N126 Laws of the Federation of Nigeria 2004, section 116

⁴¹ Ibid, section 7.

and services needed by those industries. And it presents opportunities for foreign investors, who look at this massive, natural-resource endowed country with strong, macroeconomic fundamentals and a rapidly growing population of over 170 million and see dollar signs.⁴²

It is part of the responsibilities of the Nigerian Navy in the Lagos area where the MV Marevia the electronic waste to ensure a conducive maritime environment in order to promote legitimate maritime business at any time. Accordingly, whenever there is infringement on that mandate given to the Nigerian Navy and other government agencies such as NESREA, prudence demands that they should strive to see how best to avert or contain the consequences of such infringement it. This was why the interception of another ship, the MV Myre Seadiver (by Navy) on the suspicion that it was carrying arms was made. The vessel was said to have a mixed 15 member crew but most of the crew members were Russians. Investigations showed that the ship in question belongs to Moran Group, Moscow but it was flying a Dutch Island flag. The ship came into the Nigerian waters without due notification as required by the law and on further enquiry, it was realized that it had weapons inside which is a flagrant breach on the law.⁴³ Thus, items uncovered from the ship includes, 14 AK47 rifles and 22 benelli rifles. The ship which was classified with Det Norske Veritas (DNV) marked E5U2529 is from Cook Islands and information concerning the ship on the internet⁴⁴ indicated that its IMO number is 6505662. Before navigating to

⁴² The US Consular General stated this at the West African Maritime Security Conference organised by Chatham House on 20 April, 2013. See F Ezem 'US Blames the Nigerian Worsening Sea Piracy on Poor Enforcement of the Laws' National Mirror, 24 April, 2013 available at <http://nationalmirroronline.net/news/us-blames-nigerias-worsening-sea-piracy-on-poor-enforcement-of-laws/> accessed on 5 June, 2013

⁴³ NPA Act, Cap. N126, LPN, 2004, Section 114

⁴⁴ See emeliezeobi.blog.com accessed 17 July, 2014

Nigeria, investigation showed that the ship was last received at the Atlantic South and its operation had been suspended following the arrest. The ship was built in 1965 with official number 1618 and operates at a speed of 7.5/6.4 knots.⁴⁵ Accordingly, since it has been established that MV Mareva breached the provisions of the law, we now consider whether the penalty of USD 1,000,000.00 imposed by the Nigerian government is in accordance with the extant law.

4.02 Penalties for Non-compliance

By the provisions of the NIMASA Act, here a master of a ship or ship owner has committed an offence created under the Act such as importation of harmful substances without due regard to the provisions of the law, the NIMASA through its officer(s) reserve the power to detain such a ship. The power is exercisable upon the service of a Detention Order duly signed by a principal officer of the agency on the ship.⁴⁶ Apart from this, the law imposes a fine not exceeding N1,000,000.00 (one million naira) only on conviction; in addition to the forfeiture of the dangerous goods or harmful substances. Based on this, it is argued that in the MV Mareva incident, NIMASA was right to have detained the vessel in the first instance. Having stated this, the question that arises is about the legality or otherwise of the sum imposed.

4.03 Legality of the fine imposed on MV Mareva.

It has been established above that in the MV Mareva incident, the detention of the vessel was justified and reasonable having regard to the extant Nigerian legislation. Consequently, the question that rises is what is the basis for the imposition of a fine of USD

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1,000,000 on the owners of the vessel, an amount that is far above the one imposed under the law? It is noteworthy that the equivalent of the sum of USD 1,000,000 in naira is about N157,000,000.00 (One Hundred and Fifty Seven Million Naira) only.⁴⁷ Though this article is not in support of the activities of the MV Mareva in the Nigerian waters on 5 January 2013, there is a need to abide by provisions of the extant laws and regulations. The law is sacrosanct and it prescribes a specific sum as fine for the unlawful carriage of harmful substances into Nigerian waters.

Similarly, a vivid examination of the law also indicates that the imposition of a fine against the ship owner is not done unilaterally by NIMASA or any other agencies. The sum of N1,000,000.00 is the maximum fine and it can only be imposed on a ship-owner on conviction and not otherwise. This presupposes that the offender(s) must have been tried and convicted by a court of competent jurisdiction. A conviction envisaged under the law in the MV Mareva incident means a verdict, by a court of competent jurisdiction based on a criminal prosecution of the MV Mareva and its owners, that they are guilty of the crime of importation of harmful substances as may be charged. The conviction of an accused is a result of a criminal proceeding during which the issue or question of guilt is determined by a court of competent jurisdiction and the accused has been adjudged guilty and accordingly sentenced.⁴⁸ For the purpose of emphasis, the law in question provides thus:

A person who ... fails to comply with any provision of this Act or any regulation made under this Act, commits an offence and unless another penalty is established for such offence in this Act, is, in addition to the forfeiture of any article seized, is liable on conviction, to a fine not exceeding

⁴⁵ See P. Ighomuelundu, "Natty Arrests Merchant Vessel with Arms", *The Nation*, 23 October, 2012. See also E. Akinluolu, "Natty Seizes Russian Ship", *Punch*, 23 October, 2012.

⁴⁶ NIMASA Act, section 48.

⁴⁷ The sum is a rough estimate based on #150 per USD1 which is the official exchange rate at the time of writing this paper.

⁴⁸ See *Ogunbayo v The State*, SC 272/2005, judgment delivered on 9th March, 2007.

N1000,000.00, or to imprisonment⁴⁹ (Underlined for emphasis)

Essentially, throughout the gamut of the law in question, there is no other penalty that is above the sum of N1, 000,000.00. Thus, the question is why did NIMSA impose a fine of USD 1,000,000.00 on the owners of MV Marevia? This is surely not encouraging for the development of maritime commerce in Nigeria, as this will depict Nigeria as a maritime hub where extant laws regulating the maritime industry are not obeyed by the relevant agencies, particularly NIMSA (an agency that should be at the vanguard of ensuring compliance with Nigeria's maritime laws). Therefore, the hurried announcement of the imposition of a fine of N1, 000,000.00 on the MV Marevia by the Federal government is not in accordance with the spirit of the law and is inimical to maritime commerce and the development of our maritime industry. If the government thinks that the amount imposed by the law is paltry considering the impact such an importation would have on the nation where the importation is successful (which is not the case in the instant case), it behooves the government to amend the law and increase the sum as presently stated. The penalty of N1,000,000.00 as presently contained in the law represents the law and any sum so imposed outside that is not in accordance with the extant law.

4.04 The NPA Act

The NPA as a regulatory agency of government is a creation of the law.⁵⁰ Though, the NPA with no specific power to decline entry of a ship into Nigeria, no ship is allowed to enter Nigerian ports

⁴⁹ NIMSA Act, section 58(1).

⁵⁰ NPA Act 2004, *id.*, section 1.

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without prior approval of the NPA. The NPA Act, 2004 provides that:

Except with the prior approval of the Authority, no ship shall enter a port or an approach to a port in Nigeria, except as may be permitted by and in accordance with the terms of an entry issued by the Authority in respect of that ship.⁵¹

The NPA carries out its enforcement functions with regard to compliance, mechanism of foreign flagged ships entering the Nigerian waters through the instrumentality of the Nigerian Navy.⁵² Where a ship that is entering a Nigerian port fails to give notice or information as was the case with the case with the MV Marevia, it may be denied entry to a Nigerian port.⁵³ It is argued that part of security reasons to give notice of information was to avoid the situations such as the MV Marevia incident.

6.0 Who bears liability for carriage of dangerous goods?

Generally, with respect to maritime carriage of dangerous goods, the shipper has the obligation to notify the carrier that the goods involved in the contract of carriage are dangerous goods. Where a shipper fails in this onerous responsibility, he will be liable A contract for the carriage of goods which is not subject to the Hague Rules, it is governed by the common law. By this, the parties are free to include whatever terms that please them in their contract and such terms are binding on them as long as each of the parties has adequate knowledge of terms. However, where terms or clauses that are contained in the agreement between the parties are

⁵¹ *Ibid.*, section 116.

⁵² Armed Forces Act, *Laws of the Federation of Nigeria, 2004*, section 1 (4).

⁵³ NPA Act, section 116.

not clear or are imprecise, such will not be enforced against any of the parties as held by the court in the case of *Meeker Log & Timber v The Sea Imp VIII*.⁵⁴ The implication of the above in relation to the MV Marevia incident is that the liability of the shipper and carrier will be determined by the terms of the contract between them. Although, the Federal Government of Nigeria has imposed a fine of USD1,000,000 on the owner of the ship (which fine has been shown in this paper to be illegal),⁵⁵ the owner of the ship could institute an action against the shipper of the electronic waste provided the owner was never notified or had no prior knowledge that the goods to be carried are dangerous goods.

7.0 Conclusion

The proposition of the proponents of environmental security environment related dangers such as the carriage of electronic waste have been considered as both threats in purely ecological terms and a leading element in the overall conception of security globally. Incidents such as the MV Marevia incident of 5 January 2013 are hazardous to human health. It has been established in this research that the ship in question carried expired electronics and electrical equipment. The provisions of extant Nigerian laws, and specifically, the Human Waste (Special Criminal Provision) Act, prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters, contiguous zone or exclusive economic zone of Nigeria or its inland waterways. In summary, this article maintains that the law is sacrosanct and prescribes a specific sum as fine for carriage of harmful substance into the Nigerian waters without complying with the provisions of the law, hence the sum imposed on the M.V Marevia ship is above the amount prescribed. If the government relevant agencies are of the

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opinion that the sum prescribed by the law is a paltry sum, the appropriate measure is to make representation to the National Assembly for an amendment of the law as imposition of outrageous amount could have negative impact on maritime commerce.

⁵⁴ (1994) 1 BCLR (3d) 320 affd. See also *Elderslie Steamship Company Limited v Borthwick* [1905] AC 93.

⁵⁵ Cf 4.03.