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EDITOR'S NOTE

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NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY: AN EXPLICATION OF ITS POWERS OF ENFORCEMENT IN NIGERIAN MARITIME DOMAIN

BY Abdulrazaq O. Abdulkadir, PhD¹

ABSTRACT

The Nigerian Maritime Administration and Safety Agency is an agency of the Federal government under the Ministry of Transportation. It has the responsibility of ensuring maritime security and safety among others. The agency is bestowed with powers of enforcement against ships that flout any of the provisions of NIMASA Act. This paper examines the power of appointing authority to the position of Director-General of the agency and argues that the appointments had been marred with controversy and insincerity in recent times as the requirement of the Act were not taken into cognisance. This paper also considers the general responsibilities of the agency as well as enforcement paradigm against erring ships towards prevention of marine pollution, efforts by NIMASA to actualising its mandate and the challenges facing the agency. It evaluates the constitutional roles of the Nigerian Navy in respect of national and international maritime law, conventions, practices and customs which the country acceded. It concludes that NIMASA is imbued with the power to board, inspect, arrest and take appropriate judicial proceedings in consonance with NIMASA Act 2007 and UNCLOS 1982 but the functions are rarely utilised.

INTRODUCTION

The Nigerian Maritime Administration and Safety Agency was established in 2007 to regulate and promote maritime safety and security, marine pollution and maritime labour.² The Nigerian Maritime Administration and Safety Authority (NIMASA) is an offshoot of the Nigerian Maritime Authority and other maritime agencies. NIMASA was established vide the NIMASA Act, 2007 by the Nigerian government to replace the National Maritime Authority and Joint Maritime Labour Industrial Council and all the assets of the former were vested in NIMASA.³

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² Section 1, NIMASA Act, Cap. NI61, Laws of the Federation of Nigeria, 2007.

³ Ibid, see, section 1(2)(b) and (c).

NIMASA is a parastatal under the Ministry of Transportation and it is the highest regulatory and promotional maritime agency with the main objective of promoting maritime safety and security.⁴ The powers of this important agency in the maritime domain are derived from the Nigerian Maritime Administration and Safety Agency Act 2007, Coastal and Inland Shipping (Cabotage) Act 2003 and Merchant Shipping Act 2007.

This paper looks at the Nigerian Maritime Administration and Safety Agency (NIMASA) Act and considers various powers given to the agency at ensuring safety and security in Nigerian waters. To this end, the paper appraised the enforcement responsibility of the agency by taken into cognisance power to detain erring ships upon suspicious of constituting insecurity in Nigerian maritime domain. It also takes into account, the power of NIMASA on the pollution of marine environment by ships.

APPOINTMENT AND QUALIFICATION OF THE DIRECTOR GENERAL OF NIMASA: DOES IT EXEMPLIFY GOALS OF NIMASA ACT?

NIMASA is headed by a Director General who is appointed by the President of the Federal Republic of Nigeria on the recommendation of the Minister.⁵ 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 affairs⁶ and the holder is expected to hold office for a period of four years in the first instance and may still be re-appointed for another four years and no more.⁷ The appointment of the Director General may be terminated by the President where he/she has demonstrated inability to effectively discharge the duties of the office, is guilty of serious misconduct, is guilty of conflict of interest or is disqualified from practicing his profession by the competent authority.⁸

⁴ Ibid, section 1 (1) (ii).

⁵ The Minister refers to is the Minister of Transport. See generally, section 64 of the NIMASA Act 2004, Cap. N161, Laws of the Federation of Nigeria.

⁶ See section 11(1), NIMASA Act.

⁷ Ibid, sub-section (2).

⁸ Ibid, sub-section (4), (a), (b), (c) and (d). Competent authority as far as this provision is concerned relates to authority saddle with the responsibility of sanctioning erring members for misconduct in relation to the profession. For example, where an Engineer is appointed the Director General of NIMASA, the Nigerian Society of Engineers would be a competent authority to sanction him for misconduct. In the same token, where a Lawyer is so appointed, the Legal Practitioners Disciplinary Committee of the Body of Benchers would be a competent authority.

Appointment of a person with requisite sound knowledge to control and manage maritime administration in Nigeria is a move towards achieving the set objectives of the agency. However, the appointment of the Directors General of the agency in recent times has been marred with political gimmick as appointment is being made to satisfy political cohorts.⁹ Often times the agency changes Directors General at the point of facing challenges confronting the agency, thereby inhibiting its drive to have focus and concrete agreement with other agencies.¹⁰ No wonder it was observed that many of the Directors-General of NIMASA have been removed from the office because of their inability to monitor compliance and enforcement of the provisions of the Act against defaulting vessels.¹¹ A good record of efficiency in a given assignment is only possible where a technocrat is appointed to manage a task but definitely nothing significant would be recorded in a case where a wrong peg is put in a wrong hole. The idea of appointing or removing the Director-General of NIMASA based on political affiliation will spell doom on the enforcement power of the agency and it is not surprising that the agency lacks the regulatory and institutional capacity to manage other agencies in the maritime sector.¹²

REFLECTION ON NIMASA ACT 2007 VIS-À-VIS POWERS OF ENFORCEMENT

The Nigerian Maritime Administration and Safety Act (NIMASA) 2007 was enacted, among others, to provide for maritime security, safety and protection of the maritime environment. The Act merged the National Maritime Authority and Joint Maritime Labour Industrial Council which were hitherto in operation and all their assets were vested on the Nigerian Maritime Administration and Safety Agency (NIMASA).¹³ It repealed the Nigerian Shipping and Instruments Act,¹⁴ Nigerian Maritime Labour Act,¹⁵ section 288 of the Merchant Shipping Act,¹⁶ and Merchant Shipping (Delegation of Powers) Notice.¹⁷

⁹ This position is evidenced by previous appointments of Directors-General of the agency. It is no doubt that this has actually affected the operations of the agency in terms of achieving its objectives. See also Abdul Kader S. Z. and Abdulkadir, A.O. "Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty" *Journal of Law, Policy and Globalization*, Vol.9, 2013, p. 21.

¹⁰ Esther Komolafe, "Air Force Blames Changes at NIMASA for Failed MOU, *PM News*, available at <http://pmnewsnigeria.com/2012/08/17/air-force-blames-changes-at-nimasa-for-failed-mou/> visited on 3/12/12.

¹¹ Okeke, V.O.S and Aniche, E. T., "An Evaluation of the Effectiveness of the Cabotage Act 2003 on Nigerian Maritime Administration," *Sacha Journal of Policy and Strategic Policy*, vol. 2 No. 1, 2012, p. 14. See also Bernard, B. "Cabotage: Still in the Woods", *Source*, Vol. 26, No. 1, January 25, 2010.

¹² Okeke, V.O.S. and Aniche, E. T at p.1. Sharifah Zubaidah Syed Abdul Kader and Abdulkadir A.O.

¹³ See NIMASA Act, Cap. N161, Laws of the Federation of Nigeria, 2007, section 1(2)(b) and (c).

¹⁴ Cap, 279, LFN, 2004.

¹⁵ 2003.

¹⁶ Cap. M11, LFN, 2004.

¹⁷ This is contained in section 395 of the Merchant Shipping Act, Cap. M11, LFN, 2004.

The Act also established the Nigerian Maritime Administration and Safety Agency.

a. NIMASA and Maritime Enforcement in Nigeria

The Nigerian Maritime Administration and Safety Authority (NIMASA) is an offshoot of Nigerian Maritime Authority and other maritime agencies. NIMASA was established by the Nigeria government to replace the National Maritime Authority and Joint Maritime Labour Industrial Council and all the assets of the former were vested on NIMASA.¹⁸ NIMASA is a parastatal under the Ministry of Transportation and it is the highest regulatory and promotional maritime agency with main objective of promoting maritime safety and security.¹⁹ The powers of this important agency in maritime domain are derived from the Nigerian Maritime Administration and Safety Agency Act 2007, Coastal and Inland Shipping (Cabotage) Act 2003 and Merchant Shipping Act 2007. NIMASA was established inter-alia to:

- i. Provide maritime security;²⁰
- ii. Provide directions and ensure compliance with vessel security measures;²¹
- iii. Provide National Maritime Search and Rescue Service;²²
- iv. Perform port and flag state duties;²³
- v. Inspect ships for the purposes of maritime security,²⁴ maritime safety, maritime labour and prevention of maritime pollution;
- vi. Carry out air and coastal surveillance; and²⁵

Establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organisation, the

- i. implementation of codes, resolutions and circulars of the organisations and other international conventions to which Federal Republic of Nigeria is a party.²⁶

¹⁸ See NIMASA Act, Cap. NI61, Laws of the Federation of Nigeria, 2007, section 1(2)(b) and (c).

¹⁹ Section 1(1)(ii).

²⁰ Section 22(1)(p).

²¹ Section 22(1)(g).

²² Section 22(1)(o).

²³ Section 22(1)(m).

²⁴ Section 22(2)(a).

²⁵ Section 22(1)(h).

²⁶ Section 22(1)(q).

Apart from the powers of enforcement, the National Maritime Administration and Safety Agency also engages in the registration of vessels operating in Nigerian inland waterways,²⁷ provision of training for officers of the agency,²⁸ certification of seafarers,²⁹ setting of technical and safety standards as well as general development of commercial shipping.³⁰ Indeed the Nigerian maritime sector needs to braze-up in order to surmount the challenges facing it and to meet the objectives. The germane functions of NIMASA with regard to the issue of trans-boundary harms or dangerous substances into Nigeria is that the agency is empowered to examine and seize any device, goods, fish, vessel, article, etc. which it considers to endanger the Nigerian Maritime Zone.³¹ In the process of exercising the power of enforcement, the agency reserve the right to dispose device, goods, fish, vessel, article, etc. to which offence has been committed in the Nigerian Maritime Zone.

Furthermore, in order to promote the indigenous carriers, the agency also has the duty of ensuring that National carriers have the privilege to partake with respect to the carriage of bulk dry and liquid cargo to and fro the Nigerian seas.³² The national carrier enjoys the privilege of carrying cargo not less than 50 per cent of such cargo in the carriage of bulk cargo to and from Nigeria.³³ Hence, all other cargo imported and exported outside Nigeria and outside the jurisdiction of liner conferences is subject to the same system of cargo sharing. International law recognizes the principle that a port state can enforce its domestic laws to foreign vessels,³⁴ therefore there is urgent need for the enforcement of the domestic law with respect to the importation of harms and substance that constitute hazard to the country.

²⁷ Section 22 (1) (b).

²⁸ Section 22 (2) (e).

²⁹ Section 22 (1) (c).

³⁰ Section 22 (2) (c).

³¹ Section 23 (3) (g) & (i).

³² Section 37 (1). It is important to note that for a ship to attain the status of national carrier 60% of such a ship must have owned by Nigerian individual or enterprises, the head office of the ship company must be in Nigeria, the terms and conditions of the employment of seafarers engaged by the company must be in conformity with the Nigerian laws and accepted international rules and standards, 100 % of the crew and at least 75% of the ship board officers including the captain and the chief officer wherever possible, the chief engineers are Nigerians. See generally, NIMASA Act, Cap. NI6I, Laws of the Federation of Nigeria, 2007 section 35.

³³ Section 37 (2).

³⁴ The responsibility of performing port state function for Nigeria rests on the NIMASA as stated under section 22(1) (m) of NIMASA Act.

Nigeria as a port state has regulation prohibiting importation of harms thorough the port. NIMASA no doubt is expected to work in concert with agency like the Nigerian Customs, it is however crystal that custom officers saddled with the responsibility of ensuring that no dangerous cargo or substances are imported appeared helpless or find it extremely difficult to carry out the onerous task on one hand and compromised their duty on the other hand. The reason for the assertion is based on corruption and dearth of necessary equipment to detect dangerous containers. It is worrisome that manual inspection of cargo and substances is still applicable in our maritime boarders.

In clear and unambiguous terms, the provision of NIMASA Act which make provision for the establishment of the agency enshrines some of the functions of NIMASA to include implementation of the International Shipping and Ports Facility Security (ISPS) code, regulation of shipping and maritime business, registration of shipping companies, certification of seafarers and regulation of dockworkers, among others.³⁵ It is not in doubt from the provision of the NIMASA Act that the agency is saddled with many functions in the maritime and shipping industry, the issue of enforcement and prevention of port and maritime security threat appeared to have taken the lead as shipping industry could only thrive in an environment that is safe. In order to achieve its main objectives, the Nigerian government needs to ensure that technocrat or professional are put at the scheme affairs of the NIMASA.

It is worrisome and indeed doubtful that NIMASA and other law enforcement agents in Nigerian ports will be able to track down dangerous cargo or containers with Weapon of Mass Destruction (WMD) where the ISPS Code is not in existence or working, such is the Nigerian situation. The ISPS code is an internationally recognised code for the purpose of security for a ship-laden cargo in a port. Surprisingly, the ISPS code is still epileptics in Nigerian ports, therefore there is bound to be importation of harms and dangerous substances through the port.³⁶

³⁵ See generally, sections 22, 23 and 32 of the NIMASA Act, 2007.

³⁶ See generally, <http://maritimesecurity.asia/free-2/piracy-2/we-want-professionals-in-nimasa-stakeholders-tell-jonathan/> visited on 18/6/15). See also Neptune Maritime Security via vanguardngr.com. Maritime Security. Asia in cooperation with www.neptunemaritimesecurity.com visited on 18/6/15.

b. Power to Detain Ships

In order to provide for ship security and safety, NIMASA Act empowers the agency to detain any ship where there is a reason to believe that such ship's presence in any port, maritime domain or place in Nigeria, constitutes a security risk.³⁷ This power to detain a ship is exercisable upon the service of a "Detention Order" duly issued by a principal officer of the Nigerian Maritime Administration and Safety Agency in a prescribed form against the ship in question.³⁸ Although, arrest or detention of ship is a recognized principle of maritime commerce,³⁹ NIMASA lacks prosecutorial powers and it is only the office of Attorney-General of the Federation or private legal practitioner engaged by it through fiat can prosecute.⁴⁰ It is suggested that a legal practitioner in the office of Attorney-General of the Federation be assigned to NIMASA to enable it effectively perform its role of securing Nigeria's waters.

Thus, where suggestion above is given consideration, NIMASA would be able to exercise the power envisaged under section 40 of the NIMASA Act through a legal practitioner assigned to it from the office of Attorney-General of the Federation without breaching the principle of hearing. To this end, it is further suggested that application (Ex parte) for Detention Order should be made to the Federal High Court and not a principal officer of NIMASA. This will no doubt foster the principle of fair hearing enjoined in the Constitution⁴¹, and prevent the NIMASA from being the "Accuser and the Judge" or "a judge in its own cause." The procedure would also make the owner of the ship to be detained to appreciate that justice has been transparently done in the circumstance. Therefore, it is posited that section 40 of the NIMASA Act be amended to reflect an order of court.

It merits mentioning that coastal states⁴² reserve the right to enforce their laws and regulations within the EEZ which are in conformity with UNCLOS by measures including, boarding, inspection, arrest, and judicial proceedings.⁴³

³⁷ NIMASA Act, id, section 40.

³⁸ Ibid, section 48.

³⁹ See Olawoyin A. A., "Contemporary Developments in Nigerian Maritime Law", NIALS Maritime Law Journal, vol. 2 (2014), p. 23. See also Michael Woodford, "Damages for Wrongful Arrest: Section 34, Admiralty Act 1988" MLAANZ Journal, Vol. 19, 2005, p. 115.

⁴⁰ See generally, Piracy Bill submitted before the National Assembly and Adedoyin, A. "Tackling Piracy and Other Illegalities in Nigerian Waters", NIALS Maritime Law Journal, Vol. 2, 2014, p. 108.

⁴¹ Section 36 of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).
(Nigeria inclusive)

⁴² See Article 73(1), UNCLOS.

In exercising the right of enforcement (especially where an offence has been committed under section 40 of the NIMASA Act), a coastal state is obliged to release arrested vessels and their crew promptly upon posting of a reasonable bond or other security.⁴⁴ However, where the flag state of the detained vessel has failed to comply with the provisions for prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the issue of detention may be submitted before the court or tribunal⁴⁵ within 10 days from the time of detention. The application may be made by or on behalf of the flag state of the vessel. The issue of prompt procedure was brought to fore before the International Tribunal for the Law of the Sea (ITLOS) in accordance with the provisions of Article 292 of the UNCLOS in the case of *Saint Vincent and the Grenadines v. Guinea*,⁴⁶ where the Tribunal held as follows:

Pursuant to article 110 of the Rules of the Tribunal, an application for prompt release of a vessel and its crew may be made by or on behalf of the flag State of the vessel. In this regard, the Tribunal notes that on 18 November 1997 a certified copy of the authorization of the Attorney General of Saint Vincent and the Grenadines on behalf of the Government of Saint Vincent and the Grenadines to the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines and the original of the authorization of the Commissioner for Maritime Affairs to the Agent were submitted to the Registrar and form part of the record. The Tribunal therefore dismisses the objection of Guinea. As far as the ownership of the vessel is concerned, the Tribunal notes that this question is not a matter for its deliberation under article 292 of the Convention and that Guinea did not contest that Saint Vincent and the Grenadines is the flag State of the vessel.

For the avoidance of doubt Article 292 (1), (3), and (4) provides:

(1) "Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

⁴⁴ Ibid. Article 73(2).

⁴⁵ Note that the court or tribunal is that which is accepted by the detaining state or International Tribunal for the Law of the Sea (ITLOS). See generally Article 287 and 292 of the UNCLOS and in the instant discussion, the Federal High Court.

⁴⁶ (1997) ITLOS (Case No 1).

(3) The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

(4) Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew."

Interestingly, Article 292 introduced a totally new procedure which was hitherto unknown in international law. It confers extended jurisdiction on coastal states and safeguards the interests of the shipping nations.⁴⁷ The 1982 Convention does not give any further indication as to how the idea of reasonable bond is to be applied in practice; hence the only provision in the Rules of the Tribunal is that where the Tribunal decides that the contention is well founded, it shall determine the following:

- i. The amount of the bond imposed by the detaining state and its form;
- ii. The penalties imposed or imposable under the law of the detaining state;
- iii. The gravity of the alleged offences; and
- iv. The value of the detained vessel and of the cargo seized.⁴⁸

⁴⁷ H. Abdulghafur: *Public International Law: A Practical Approach*, 3rd edition, Malaysia Sweet and Maxwell Asia, 2011, p. 270.

⁴⁸ Ibid. See generally the case of *Panama v French*, Prompt Release (2000) ITLOS (Case No 5).

a. Power to Prevent Marine Pollution

It is saying the obvious that the primary duty of monitoring pollution from ships rests with the flag state which is the country of origin of ships, however, some flag states have shown unwillingness to discharge this onerous duty.⁴⁹ This unwillingness is due to lack of infrastructure and the flag of convenience which has now become the practice of ship owners.⁵⁰ Therefore, the exercise of powers of control and jurisdiction by the port state like Nigeria over the vessel-source pollution has become imperative due to the lackadaisical attitude of flag states. It is not an overstatement to state that some toxic and infectious substances have extreme pollution potential, they are classified and identified as severe marine pollutants,⁵¹ hence, NIMASA proactive measure is essential to achieve its enforcement goals.

The power of NIMASA to prevent activities of ships on marine pollution is an effort geared towards averting maritime insecurity. One may wonder how pollution comes to play on the issue of maritime security. Marine pollution constitute maritime security where pollution by a ship is severe or intentional, hence where a discharge by ship is not severe or unintentional, it may not constitute maritime security. Article 3 of the 2005 Protocol SUA Convention prohibits:

“uses against or on a ship or discharging from a ship any explosive, radioactive materials or BCN (biological, chemical, nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage: discharge from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage.....”

The NIMASA Act makes provision with respect to marine pollution as it prohibits shipment, carriage and jettisoning of harmful substances from any Nigerian port⁵² except:

⁴⁹ Abdulkadir A.O and Sharifah Zubaidah Syed Abdul Kader: “Vessel-Sourced Pollution: A Security Threat in Malaysian Waters”, *Journal of Sustainable Development Law and Policy*, Vol. 3:1, 2014, p.27.

⁵⁰ See Ho-Sam, B; “Port State Jurisdiction and Article 218 of the U.N Convention on the Law of the Sea”, *Journal of Maritime Law & Commerce*, Vol.40, No.2, April, 2009, pp.291-292. See also Hare J. “Port State Control: Strong Medicine to Cure a Sick Industry” *Journal of International and Comparative Law*, vol. 26, 1996-1997, pp. 571-572, Odeke .A, “Port State Control and U.K Law”, *Journal of Maritime Law and Commerce*, Vol. 28, 1997 pp. 657 & 659.

⁵¹ See Berlingieri F, “The Uncitral Draft Convention on the Carriage of Goods (Wholly Or Partly By Sea)”, *ZbornikPfe.* 28 Vol. 58, (1-2), 2008, p.47. See the International Maritime Organization. Available at <http://www.imo.org/ourwork/safety/cargoes/pages/dangerousgoods.aspx> visited on 4/3/15.

⁵² Section 45 (1) (a) and (b) of the NIMASA Act.

- i. The correct technical name of all the substances are named in all the documents relating to the carriage of harmful substances by sea.⁵³
- ii. The documents relating to the carriage of harmful substances is accompanied by a declaration or certificate indicating that the shipment of the harmful substance is properly marked, packaged and labeled in order to minimise the likely hazard to the marine environment.⁵⁴

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.⁵⁵ To ensure full compliance with the provision of the NIMASA 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 the Nigerian Maritime Administration and Safety Agency before departure.⁵⁶ The penalty for the breach of the provisions relating to marine pollution is commendable in that 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 5,000.00).⁵⁷ This penalty is apart from the sum of #200,000.00 (equivalent of USD\$ 1,000.00)⁵⁸ penalty payable for everyday of the continuation of the offence.

There is a need to improve on the provisions of this Act on the issue of the manifest where a ship is carrying harmful substance to the Nigerian maritime domain. In this regard, where a master of a ship fails to retain a copy of the manifest or fails to deliver the same to the Director General of the NIMASA, the Act should have provided further by granting power to the NIMASA as an agency of the government to deny access to such ship. This in a way, will save the country from the security implications of weapons of mass destruction or other harmful substances to be imported through ports. Nigeria as a country has in recent times experienced importation of harmful substances through her broader ports.

⁵³ Ibid, sub-section (3).

⁵⁴ Ibid, sub-section (4).

⁵⁵ Ibid, sub-section (5)(a) and (b).

⁵⁶ Ibid, paragraph (c).

⁵⁷ The price of dollars is put at N200 per a dollar, bearing in mind that official price of dollars is not static in Nigeria as of the time of this research.

⁵⁸ Ibid.

For example, M.V Marevia on 5th January, 2013 sailed through the sea from the United Kingdom to the Nigerian Maritime domain to unload certain cargoes specifically, two containers of toxic materials into the Nigerian port of Lagos.⁵⁹

NIGERIAN NAVY COMPLIMENTARY EFFORTS IN NIGERIAN MARITIME DOMAIN

Nigerian Navy has major roles to play towards ensuring maritime security and safety. The Armed Forces Act empowers the Nigerian Navy to coordinate the enforcement activities of the Nigerian Immigration, Customs, etc. in respect of the national and international maritime law, conventions, practices and customs which the country acceded.⁶⁰ The mandate also includes enforcing safety regulations in the territorial waters of the Nigerian Exclusive Economic Zone. The grundnorm of the Nigerian law (Constitution) also saddles the Nigerian Navy with the responsibility of maintaining law and order at the Nigerian sea border against external aggression and the violation of the sea.⁶¹ The phrase "defending Nigeria against external aggression" has been observed to include the prevention and denial of access to any foreign flagged vessel whose accessibility to the Nigerian domain would constitute a security and environmental threat to the maritime zone, and this, the Nigerian Navy will enforce through the instrumentality of its apparatus.

It has been argued that the provision of section 1 (4) of the Armed Forces Act is problematic having regard to the definition of the statutory powers of the Nigerian Navy. The reason for this assertion is premised on the fact that the Act does not state the nature of support the Nigerian Navy⁶² is required to give on the enforcement activities.

⁵⁹ See Abdulkadir A. O., "M.V Marevia Ship Carriage of Electronic and Toxic Waste: (IL.) Legality of Penalty and its Implications on Maritime Commerce", *BIU Law Journal*, Vol. 2 No. 1, 2015, p. 152.

⁶⁰ See section 1 (4) (a) and (b) of the Armed Forces Act, Cap. A20, Law of the Federation of Nigeria, 2004.

⁶¹ See the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 271 (1) which provides "There shall be an armed forces for the Federation which shall consist of an Army, a Navy, an Air Force and such other branches of the armed forces of the Federation as may be established by an Act of the National Assembly. (2) The Federation shall, subject to an Act of the National Assembly made in that behalf, equip and maintain the armed forces as may be considered adequate and effective for the purpose of - (a) defending Nigeria from external aggression; (b) maintaining its territorial integrity and securing its borders from violation on land, sea or air; (c) suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of the National Assembly."

⁶² Ogunusi M.A. "The Nigerian Navy and Enforcement of Anti-Bunkering Law," available at www.themixoilandwater.com/2012/nigerian-navy-and-enforcement-of-anti.html visited on 10/10/15.

However, this has been said to include surveillance at ensuring arrest, detention of ships, handing over of the offenders to the police for investigation and consequential prosecution by the Attorney General of the Federation.⁶³ The arrest of ships of the offender by the Nigerian Navy would not constitute deprivation of property as envisaged under the constitution⁶⁴ same having been done in accordance with the manner prescribed by the law.⁶⁵ The efforts of the Navy have yielded the desired results when the Nigerian Navy arrested over 150 vessels and barges in the wake of the Niger-Delta crisis.⁶⁶

Protection of Seized Ships

The Armed Forces Act makes it obligatory on the Nigerian Navy officers while carrying out enforcement processes in preventing access to vessels that are vulnerable to Nigeria to ensure that any ship so detained is adequately protected against any act of destruction and stolen in their custody while the detention order is subsisting. Where a theft or destruction of a ship in detention occurs, it would be considered as neglect or abdication of duty on the part of the officers involved and they will be liable to a term which shall not exceed 2 years.⁶⁷ A disappearance of a detained ship occurred in respect of a ship known as MT African Pride in recent time. In this case a ship known as MT African Pride was carrying out illegal activities in Nigerian waters and was arrested by the Navy. The arrest later spurred into detention of the ship with named officers to superintend the detention. At a later date, MT African Pride disappeared from detention without any trace. As a result of this development, a neglect of duty was levied against ex-Naval officer and two other officers who are still in service now on the disappearance of ship MT African Pride which was arrested for stolen of crude oil. The officers failed or neglected in their duty which resulted in the stolen of the ship and they were arraigned before the court martial which convicted them. The decision was affirmed by the Court of Appeal but was upturned by the Supreme Court of Nigeria on technical ground.

⁶³ Ibid.

⁶⁴ Section 44 (1) which states "(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law"

⁶⁵ Section 44(2) (k) which makes provisions relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry."

⁶⁶ The Niger-Delta crisis was caused by the militants especially the youths among which are the secretive armed group operating like a rebel known as Movement for the Emancipation of the Niger Delta (MEND). These youths in Niger Delta embarked on the crisis because of political marginalisation of successive governments of Nigeria of the inhabitants of the Niger Delta area where crude oil was discovered in 1957. It has been the argument for the crisis that oil has been more of a curse than a blessing to the people who have been feeling the impact of a series of oil pollution and environmental degradation occurrences coupled with brutality and horrendous government oppression that are causing the people to remain without the basic amenities such as water and electricity and living in abject poverty. See Ogunusi, M.A.

⁶⁷ Armed Forces Act, see section 103. It states that "Conduct to the prejudice of service discipline (1) A person subject to service law under this Act who is guilty of a conduct or neglect to the prejudice of good order and service discipline is guilty of an offence under this section and liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act."

NIMASA STRATEGIES IN CURBING MARITIME INSECURITY IN NIGERIA

A. Adoption of International Ships and Ports Facility Security (ISPS) Code

The adoption of International Ships and Ports Facility Security (ISPS) Code by the maritime community under International Maritime Organisation is an effort geared towards ensuring maritime security and safety. The ISPS Code is a device reporting system which focuses on relevant security-related developments, assessing security potential and their effects on the trading systems. The device also focuses international transport and expounding the application of the innovative security measures. Essentially, most existing regulatory security policies utilise a standard set of apparatus and various stages to determine the scope of potential risks and the effect of threats vis-à-vis the security of the maritime network. The management of NIMASA has been making efforts towards implementation of the ISPS Code, having been appointed the designated Authority for its implementation on May 21, 2013. This attempt follows the United States government's ultimatum for Nigeria to improve or face sanctions, after a report by the US Coast Guard, which conducted an inspection of ports facilities in the country sometimes in 2012. The inspection by the US Coast Guard revealed gaps in Nigeria's implementation of the ISPS code.

b. Cooperation with other Security Agencies

There is need for concerted efforts by NIMASA with other security agencies to curb escalation and banditry which has become the other of the day in the Nigerian Maritime domain. In recent times, NIMASA has collaborated with other security agencies like the Nigeria Police, Navy etc. with a strategic alliance.

C. A24-hour Radio/telephone/fax Watch-keeping Capability for the Nigerian Maritime Industry

NIMASA has been maintaining a 24 hours radio/ telephone/fax watch keeping of the Nigerian Maritime domain. This strategy enables the agency aware of any eventuality and alerts the relevant unit for appropriate action to quell insecurity in the maritime domain.

D. Inventory of three SAR and Four Pollution Control Boats

The agency has introduced the Search and Rescue Unit in the event of accident at sea.

E. Aerial surveillance of maritime domain as provided in Carry out air and coastal surveillance; and Section 22 (1) (h) of the Act.

CHALLENGES OF NIMASA ON MARITIME SECURITY**i. Non-traditional/asymmetric Threat**

It has been asserted that the sea is a restless realm and its restless nature makes attack on it unexpected and timeless.⁶⁸ Maritime borders have also been said to be notoriously difficult to control⁶⁹ as it involves around the clock alert of the security agents particularly having regard to the sudden tendency of the attackers who might want to take advantage of any security lapses in the maritime domain to actualize their illicit desires of gaining access to the country without observing both the IMO and domestic legislation in respect thereof. Where a case of threat to the maritime domain involves armed agents of another state, the state concerned would be aware of the possible attack or war. This will give the threatened state opportunity to prepare by mobilising troops to suppress the war. This type of security threat is regarded as traditional/symmetric maritime security. However, a non-traditional/asymmetric dimension exhibited by attackers in recent times appears to be more dangerous as it is done devoid of any possible rule.

ii. Incessant release without trial of pirates

Incessant release without trial of pirates has also been identified as cause of the series of robberies and attack being witnessed at seas. NIMASA needs to be empowered by the enabling statute to directly prosecute those arrested for the commission of port and maritime offences as suggested above⁷⁰ rather than handing over those arrested to the police for prosecution. The police appears to encountering problem and find it extremely difficult to prosecute pirates because of lack of evidence.

⁶⁸ M.N Murphy: "Lifeline or Pipedream? Origins, Purposes, and Benefits of Automatic Identification System, Long-Range Identification and Tracking, and Maritime Domain Awareness" in Herbert-Burns .R, Bateman. S. Lehr. P (eds.), *Lloyd's MIU Handbook of Maritime Security*, United States of America: CRC Press, 2009, p. 13.

⁶⁹ See Rabasa .A. and Chalk. P., *Non-Traditional Threats and Maritime Domain Awareness in the Tri-Border Area of Southeast Asia*, Santa Monica: RAND Corporation, 2012, p. 18.

⁷⁰ *Op.cit.*

It is observed that most of the police prosecutors are not enjoying the cooperation of some of these agencies particularly on the issue of calling of witnesses and procurement of exhibits to be used against the accused persons. This is why the majority of the accused are discharged by the court even on a 'no case submission'.⁷¹ It is therefore argued that vesting NIMASA with the power to prosecute offenders of maritime security will reduce the spate of discharge of suspects by courts on the ground of lack of evidence.

CONCLUSION

The Nigeria Maritime Security and Safety Agency has onerous task at ensuring maximum safety and security in Nigerian waters. To achieve its various objectives, this paper considers it expedient to strictly adhere to the provisions of the NIMASA Act in the appointment of the Director-General of the agency. This is because, in recent times the appointments have been made to satisfy political cohorts as could be gleaned from changes of Directors-General at the point of facing challenges confronting the agency. It is shown in this paper that for NIMASA and other law enforcement agents in Nigerian ports to be able to track down dangerous cargo or containers with Weapon of Mass Destruction (WMD), the ISPS Code must be adequately functioning and should not be in epileptic situation. The power of Detention Order granted to NIMASA against erring ships should be revisited in order to give room for the principle of fair hearing. It is suggested that such an order should be made by a court of competent jurisdiction. Although, NIMASA has its many challenges as explicated in this paper, the challenges are not insurmountable and indeed the agency has established synergy at ensuring maritime security and safety.

⁷¹ A no case submission is an application by a defence counsel in a criminal prosecution that the prosecution has failed woefully to establish the ingredients constituting the allegation or offence against the accused before the court thereby necessitating accused not to open and or call witness(s) in his favour. See the cases of *Ilyasu Suberu v. The State* (2010) NSCQR 1169 at 1186, *Shata v. State* (2009) 4 NCC 529 and *Audu Aruna & 1 anor v. The State*, SC121/1989 delivered on 4th day of October 1990. file:///C:/Users/User/Downloads/Prof.Oche2.jpg