



THE LEGAL REGIME OF PORT SECURITY: THE  
POSITION IN NIGERIA AND MALAYSIA

BY

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## ABSTRACT

By the 1923 Convention and Statute on International Maritime Ports, foreign flagged ships have the right to navigate waters and enter port states but the port states enjoy the power to set conditions for the accessibility of its ports. The issue of access to ports of other states by foreign flagged vessels has been a subject of controversy. Although, the right of access is usually granted by treaty between states. A more accepted view is that the states are entitled to prescribe and enforce circumstances for port entry. This research investigates the general principles of international law and the availability of the Nigerian and Malaysian legal regulations concerning the right of foreign ships access to their ports. The research was carried out through quantitative and qualitative research methodologies as data were obtained from existing literature and the scheduled interviews, representing the primary and secondary sources. At the end of this research, it was discovered that the international instruments which granted right of access to foreign flagged vessels is ineffective because port states grant access to foreign vessels that meet their conditions. However, Nigeria and Malaysia as port states lack specific laws stipulating conditions for their right to deny the right of access to ships. A responsible and responsive nation monitors the movement of people, goods, substances, etc through its ports, airports and road to forestall ingress of substances that can disturb peace and order of its territory. In order to achieve this objective, states have joined the committee of nations and have ratified and domesticated conventions to fight unlawful ingress or importation of arms. An example of the convention so ratified is the 1923 Convention and Statute on International Regime of Maritime Ports which addresses the issue of access to port states. The International Maritime Organisation (IMO) also addressed the issue of maritime security under the umbrella of its Maritime Safety Committee since 1980s. Despite the ratification of the IMO conventions in Nigeria and Malaysia, the problems of importation of arms and unlawful and deliberate attack still persist at ports and seas thereby threatening the economic fortune, peace, good order and security of the nations. Indeed, the rate of trans-boundary maritime security threats confronting Nigeria today raises legal issues, starting with the most fundamental question as to what law applies, inefficiency of maritime security enforcement agencies, corruption which paves ways for non-implementation of the legal framework, privatisation of maritime security surveillance to cronies to mention but a few. This research is significant because it identifies and argues that states' responsibility is more than ratifying or incorporating international conventions into national law, hence implementation of the legal regulations on access to ports of foreign flagged vessels by port states will be a strong panacea to combating the perpetrators of trans-boundary maritime crimes, as after all the perpetrators of maritime crimes usually find their ways through the ports. The privileges of the sea which culminated into ports should be a blessing and not a curse.

## ملخص البحث

إنَّ من موجب اتفاقية عام 1923، والنظام الأساسي للموانئ البحرية الدولية، أن تتمتع السفن التي ترفع أعلاما أجنبية (أي، السفن الأجنبية) بحق التنقل والدخول إلى مياه و ميناء الدول الأخرى، ولكن للدول التي تمتلك تلك الميناء حق وضع شروط الدخول إلى موانئها. ومع ذلك، فإنه مازالت مسألة حق دخول السفن الأجنبية إلى موانئ الدول الأخرى موضع جدل إلى الآونة الراهنة. و برغم من أن الحق الدخول إنما لا تتم منحها إلا عن طريق المعاهدة أو الاتفاقية بين الدول، عادة، ولكن الرأي السائد تنضد بأنه ليس لهذا الحق وجود في العرف الدولي، استقلالا. وأم وجهة النظر الأكثرية هي بأنه من حق كل دولة أن تقوم بوضع الموصفات والشروط للظروف التي تسمح فيه للدخول إلى مينائها. وبناء على ذلك، فإن هذا البحث يهدف إلى تحقيق المبادئ العامة المتعلقة بمهذ السألة في القانون الدولي، وفيما إذا كانت موجودة في اللوائح القانونية النيجيرية والماليزية الموضوعة لحق دخول السفن الأجنبية إلى موانئها. وقد تم حصول على معلومات البحث عن طريق منهجي الكمي النوعي، وتم الحصول على المعلومات والبيانات من الكتب المتوفرة والمقابلات المقررة، وهذه مراجع هي التي تمثل المصادر الأولية والثانوية للبحث. وفي النهاية اكتشف الباحث بأن القوانين الدولية التي تمنح حق دخول الميناء الأجنبي للسفن الأجنبية كانت غير متأثرة ولا فعالة، وذلك لأن الموانئ لا تمنح حق الدخول فيها إلا للسفن الأجنبية التي وفرت شروطها الموضوعة. ومن العجب، الاكتشاف بأن دولتي نيجيريا وماليزيا تفتقران إلى القوانين المحددة لشروط لحيتهما لانكار ورفض دخول السفن الأجنبية إلى مينائهما. فيري الباحث بأنه من واجب الدولة التكلف بمسؤولية ومهمة مراقبة تحركات الناس والسلع والمواد، الخ، في موانئها ومطاراتها وطرقها البرية للسد عن ادخال المواد التي يمكن أن تعكر صفو السلام والنظام من أراضيها. و تحقيقا هذا الهدف، انضمت دول العالم إلى لجنة الأمم المتحدة ووافقت على الاتفاقية واستأنست بها محليا لمحاربة ادخال المواد غير الشرعي فيها أو استيراد الأسلحة. ومن التفقيات التي تمت الموافقة عليها هي الاتفاقية عام 1923، والنظام الأساسي الدولي عن الموانئ البحرية الذي تناول مسألة دخول السفن الأجنبية إلى ميناء الدول الأخرى. وقد حاولت منظمة البحرية الدولية (IMO) كذلك حل مشكلة قضية الأمن البحري، وذلك تحت مظلة لجنتها للأمن والسلامة البحرية منذ عام 1980. ولكن برغم من موافقة كل من دولتي نيجيريا وماليزيا على اتفاقيات المنظمة البحرية الدولية، فإن مشكلة استيراد الأسلحة وهجوم معتمد غير قانوني ما زالت مستمرة في موانئها وبحارهما، وتهدد نمو الثروة الاقتصادية لديهما، وكذلك تهدد السلام، حسن النظام والأمن الوطني في دولتين. وفي الواقع، فإن معدل التهديدات العابرة للحدود التي تواجه الأمن البحري النيجيري اليوم يثير قضايا وتسؤلات قانونية، وذلك بدءا من السؤل الأكثر جوهرية، وذلك عن القانون المطبق في هذا المجال، وعدم كفاءة وكالات الأمن البحري المكلفة بتنفيذ الأنظمة، والفساد الذي يمهد السبل لعدم تنفيذ الإطار القانوني الموضوع لذلك، وكذلك خصخصة مسؤولية مراقبة الأمن البحري لأصدقاء وأقرباء المسؤولين، وهلم جرى، على سبيل المثال. وتكمن أهمية هذا البحث في تحديده لهذه المشكلة وتوصيته بأن مسؤولية الدول تتجاوز حد موافقة أو دمج الاتفاقيات الدولية مع القانون الوطني، فحسب، بل يرى بأن تعزيز تنفيذ اللوائح القانونية المتعلقة بحق السفن الأجنبية للدخول إلى موانئ الدول الأخرى ستمثل حلا سحريا قويا لمكافحة تحركات مرتكبي الجرائم عبر الحدود البحرية، وذلك لأن مرتكبي الجرائم البحرية بعد مزاوله إجرامهم يجدون لأنفسهم السبل للفرار من خلال الموانئ عادة. وفي أخير، يتختم الباحث اختراعاته بأن الامتيازات البحرية التي أدت إيجاد الموانئ ينبغي أن تكون نعمة وليس بنقمة.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Abdulkadir Owolabi Abdulrazaq

Signature.....Date.....

**INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA**

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**THE LEGAL REGIME OF PORT SECURITY: THE POSITION  
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Date

**To**

*Allah, subhannahu wa ta'ala*

*“Verily, my prayer and my service of sacrifice, my life and my death, are All for Allah,  
the Cherisher of the world...” (Quran 6:163).*

**And to**

*My parents, Mallam B. A. Abdulkadir and Hajia Humul-Kulthum Abbass-Abdulkadir*

*My wife, Hajia Rukayat Taiye Abdulkadir*

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## LIST OF ABBREVIATIONS

AC	Appeal Cases
AIS	Automatic Identification System
AJBAS	Australian Journal of Basic and Applied Sciences
AJCL	American Journal of Comparative Law
ALL ER	All England Law Report
ALL FWLR	All Federation Weekly Law Report
ANZLJ	Australian and New Zealand Maritime Law Journal
APEC	Asia-Pacific Cooperation
APJEL	Asian Pacific Journal of Environmental Law
ARAMCO	Arabian American Oil Company
AUILR	American University International Law Review
AUILR	American University International Law Review
CA	Court of Appeal
CLJ	Current Law Journal
CPSR	Canadian Political Science Review
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership Against Terrorism
DELPF	Duke Environmental Law & Policy Forum
DRC	Democratic Republic of Congo
DSC	Digital Selective Calling
EEZ	Exclusive Economic Zones
EJB	Electronic Journal of Biotechnology
EQA	Environmental Quality Act
FCT	Federal Capital Territory
FOC	Flag Officer Commanding
FPDA	Five Power Defense Arrangement
GATT	General Agreement on Tariffs and Trade
HAQ	Harvard Asia Quarterly
HLR	Houston Law Review
HSA	Homeland Security Act
ICJ	International Court of Justice
IJMCL	International Journal of Marine and Coastal Law
IMB	International Maritime Bureau
IMO	International Maritime Organisation
INCSEA	Prevention of Incidents at Sea Agreement
INEC	Independent National Electoral Commission
INMARSAT	International Maritime Mobile Satellite Organization
ISPS	International Ship and Port Facility Security
ITLOS	International Tribunal for the Law of the Sea
JICL	Journal of International Commercial Law
JLPG	Journal of Law, Policy and Globalization
JMLC	Journal of Maritime Law and Commerce
JRS	Journal of Regional Science
JTEP	Journal of Transport Economics and Policy
LFN	Laws of the Federation of Nigeria



LMCLQ	Lloyd's Maritime and Commercial Law Quarterly
LMLJ	Loyola Maritime Law Journal
MAN	Maritime Academy of Nigeria
MIMA	Maritime Institute of Malaysia
MIU	Marine Intelligent Unit
MJAFI	Medical Journal of Armed Forces India
MJIL	Melbourne Journal of International Law
MLJ	Malaysian Law Journal Article
MLR	Military Law Review
MMEA	Malaysian Maritime Enforcement Agency
MOU	Memorandum of Association
MTSA	Maritime Transportation Security Act
MULAN	Muslim Lawyers Association of Nigeria
MV	Merchant Vessel
NIMASA	Nigerian Maritime Administration and Safety Agency
NIS	Nigerian Immigration Service
NJAS	Nordic Journal of African Studies
NMECC	National Maritime Enforcement and Coordination Centre
NPA	Nigerian Ports Authority
NSCQR	Nigerian Supreme Court Quarterly Report
NWLR	Nigerian Weekly Law Report
NZLR	New Zealand Law Report
OCLJ	Ocean and Coastal Law Journal
PFSA	Port Facility Security Assessments
PSO	Port Security Officer
QB	Queen's Bench
RMN	Royal Malaysian Navy
RSO	Recognised Security Organisation
SC	Supreme Court
SCJILB	South Carolina Journal of International Law and Business
SDLR	San Diego Law Review
SOLAS	Safety of Life at Sea Convention
SSAS	Ship Security Alert System
SSO	Ship Security Officer
SUA	Suppression of Unlawful Acts against the Safety of Maritime Navigation
TLR	Tulane Law Review
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
USCG	United States Coast Guard
WCO	World Customs Organisation
WMD	Weapon of Mass Destructions
WMU	World Maritime University
WMUJMA	World Maritime University Journal of Maritime Affairs
WTO	World Trade Organization

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Strategic Trade Act 2010  
Terrorism (Prevention) Act 2011  
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The U.S Maritime Transportation Security Act 2002  
United Kingdom Standard Towage Conditions of 1986  
United Nations Convention on the Law of the Sea, 1982  
Waters Act 1920

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# CHAPTER ONE

## INTRODUCTION

### 1.1 GENERAL BACKGROUND

It is not in doubt that the United Nations Convention on the Law of the Sea, 1982 makes provisions for maritime jurisdiction but the coastal states reserve the right to make legislations and rules to govern persons and properties<sup>1</sup> as well as to enforce powers within their territory.<sup>2</sup> However, it appears that the state power beyond its territorial limits is justifiable by permissible rules.<sup>3</sup> In the same token, maritime security influences what activities are addressed and what interests are at stake in responding to any problem.<sup>4</sup> It is argued that maritime security should be viewed as an inclusive interest, given the common interest in combating an array of maritime security threats.<sup>5</sup> Thus, it may be said that laws are in place to tackle all these problems under international law but the question that readily comes to mind is the application or implementation of the laws.

Obviously, the most common mode of transport in international trade is sea transport because of the large amount of cargo that is usually involved. In order to appreciate the contribution of ports in international trade, suffice to note that there are 4,571 ports in 196 countries around the world.<sup>6</sup> Globalisation of trade and expansion

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<sup>1</sup>This includes passengers, crews and vessels.

<sup>2</sup>Guilfoyle D., *Shipping Interdiction and the Law of the Sea* (United Kingdom: Cambridge University Press, 2009), 7.

<sup>3</sup>Ibid.

<sup>4</sup>Klein N., *Maritime Security and the Law of the Sea* (New York: Oxford University Press, 2011), 2. See also Herbert-Burns .R., *Lloyd's MIU Handbook of Maritime Security* (United States of America: CRC Press, 2009), p.xxi and Jones, M. S, "Implications and Effects of Maritime Security on the Operation and Management of Merchant Vessels" in Herbert-Burns .R. Bateman S. and Lehr P.(ed), *Lloyd's MIU Handbook of Maritime Security* (United States of America: CRC Press, 2009), 98-99.

<sup>5</sup>Guilfoyle .D, at p.3

<sup>6</sup>World Port Source, available at <http://www.worldportsources.com> (accessed on 10/3/12).

of import –export activities in Africa places many African countries like Democratic Republic of Congo (DRC),<sup>7</sup> Nigeria, etc at an advantage. This is particularly important to the DRC<sup>8</sup> because it increases trade, opens access to new markets and opportunities, thus fostering export-led economic growth which is crucial to alleviating poverty.<sup>9</sup>The same thing goes for Asian countries like Malaysia, Indonesia, Singapore, etc.

In order to combat the challenges of security in ports, states or nations have put in place legal regulations and administrative agencies, apart from treaties/conventions that have been ratified at the international level. Examples of the treaties so ratified at the international level are the 1923 Convention and Statute on the International Regime of Maritime Ports (came into force in 1926), the 1988 Convention for Suppression of Unlawful Act against the Safety of Maritime Navigation (came into force on 1<sup>st</sup> March 1992), etc. Also, there is what is known as “Port State Control” at states’ level. Port State control is the control of foreign flagged ships in national ports. Virtually, all the literature about port state control are *ad idem* that in an ideal world, port state control would not be necessary for the purpose of combating port and maritime security. Nevertheless, since the control systems used by the other partners in the shipping world have proven ineffective in eradicating all substandard vessels from the seas and taming vessels engaging in importation of goods likely to affect national security, port state control is still in practice and recognised. Therefore, control by the port state is not, and can never be a substitute for the proper exercise of flag state responsibility. The primary

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<sup>7</sup> Ichalanga K., “Congolese Maritime Ports: Suggestions for Reform” *Ocean and Coastal Law Journal*, Vol.14 (2) (2009), 242.

<sup>8</sup> Nigeria is equally benefitting immensely from her ports. In fact, in Lagos State alone, there are two ports, namely Apapa Port and Tin Can Island port. Other ports in Nigeria are in Portharcourt, Onne, Warri, etc.

<sup>9</sup> Ibid.

responsibility to safeguard against substandard ships lies with the flag states and it is when flag states fail to meet their obligations that the port state comes into play.<sup>10</sup> When one reads the literature about port state, one comes across statements to the effect that control by the port state is the last safety net and in an ideal world, port state control would not be necessary. Accordingly, this is not to say that the jurisdiction of port states vis-à-vis national legislation is extended to the high seas. In the case of *Shellers v Maritime Security Inspector*,<sup>11</sup> the court held that the domestic legislation of coastal or port states cannot impose conditions on foreign flagged vessels on the high seas.

Freedom of navigation has been identified as a priority for economic development and it is against this background that states like the United States (U.S) has designed a comprehensive body of law regulating maritime shipping, transportation, navigation as well as provisions relating to port and maritime security.<sup>12</sup> The Homeland Security Act of 2002 addressed port security, both in foreign and domestic ports of the U.S and for this reason; the U.S Coast Guard is saddled with the responsibility of defending the United States Exclusive Economic Zones. In addition, the U.S Coast Guard (USCG) is empowered with the authority to control foreign flagged vessels intending to enter the U.S. Ports or any other place subject to the jurisdiction of the U.S. The USCG is also working in conjunction with

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<sup>10</sup> Oya-Ozycayir Z, "The Impact of Caspian on Oil and Gas Development on Turkey and the Challenges Facing the Turkey Strait," A paper presented at Marmara Hotel, Istanbul (2001, November).

<sup>11</sup> (1999) CA 2 NZLR 44.

<sup>12</sup> Salcido .R.A., "Law Applicable on the Outer Continental Shelf and in the Exclusive Economic Zone," *The American Journal of Comparative Law*, Vol.58 (2010), 416-417. See also Thirlway. H, "The Sources of International Law", in Malcolm Evans (ed), *International Law* (New York: Oxford University Press, 2010), 103.