

MGBOLU & AMAH: *Flag State Control And Port State Control: Conflicting Or Complementary Bed-Fellows In The Maintenance Of Standard Shipping Business?*

FLAG STATE CONTROL AND PORT STATE CONTROL: CONFLICTING OR COMPLEMENTARY BED-FELLOWS IN THE MAINTENANCE OF STANDARD SHIPPING BUSINESS?^{1*}

Abstract

The sea has always been an indispensable potentially hazardous and dangerous working environment subjecting mariners to all sorts of perils like storm, fog, ice and heat. The unpredictability of sea voyage with the imprecise and mechanical nature of ships had made maritime navigation across the globe a herculean task. Prior to the days of aircraft, sea trade by ship constituted the only means of conveyance of persons and goods between the colonialist and the colony. Today, with industrial revolution; population explosion and urbanization including technological advancement has increasingly affected trade and commerce in a greater dimension. It is no longer an activity that the British organized largely for their own benefit for the shipping of produce out of Nigeria and shipping of finished products back to Nigeria. Shipping business is of enormous importance to the economic wellbeing of the shipping nations. Maritime transport can be perceived as all initiatives and activities put together to ensure the ease of movement of goods and people from land to water through the ports. Flag state control and port state control has therefore emerged to ensure the protection of ships from the vagaries of nature or from acts that are inimical to the safety of maritime navigation. The doctrinal method was adopted, while primary and secondary materials complemented the research. It was discovered that port state control plays vital roles as well as flag states, but does not in any way conflict or impinge on the functions of duties of the flag states on their ships of origin.

Keywords: Flag-state, Port state, Control, Conflicting, Complementary-Bed fellows, standard, shipping, Business.

1. Introduction

The subject of shipping is of enormous economic importance to the economic wellbeing of Nigeria and other shipping nations. Nigeria is an enthusiastic importer of goods and also an exporter of certain goods. This work tries to find out whether the conventions and protocols which Nigeria has ratified protect Nigeria's interest in shipping. Protection is a complex issue in the carriage of goods by sea business. It embraces laws and regulations on ownership of vessels by Nigerians or other nations, proper registration of ships of other nations, safety of ships, safety of construction, equipment, navigation, loading and management of ships. Protection includes the welfare of the crew and the dock workers as well as passengers, the health of the sea farers, the sanitation of ships and ports, safety and adequacy of ports and port facilities. In Nigeria, the government has taken a more dynamic position in protecting and promoting the shipping industry through flag state control and port state control mechanism, as provided by law. There are also National Shipping Policies as set out by the National Shipping Policy Decree (NMA) which set up the National Maritime Authority (NMA) with powers of protecting the interest of ship owners. There are also, the Shippers Council which protects Nigerian shippers of goods. There are also, international Conventions, United Nations organs such as the IMO, ILO, UNCTAD, UNCITRAL LOSC UNCLOS, SOLAS and the Geneva Convention on the High Sea (1958) which are made for reasons of the protection of the shipping nations interest, but all these conventions are complemented with full implementation of the duties of the flag state and port state control as a matter of necessity. The role and responsibility of flag states as provided for under UNCLOS III is very important because flag states play a major role in maintaining sanctity in maritime industry by ensuring seaworthiness of ships. There have always been controversies surrounding the role of flag state and port state's functions due to the shallow provisions laid down by the UNCLOS. The controversy as to whether they are conflicting or complementary to each other or the existing legislations and the statutory provisions is what this essay is out to resolve.

2. Promotion of Sea Borne Trade and Commerce in Nigeria

Maritime transportation also known as water or sea borne transportation is one of the modes of transportation among others, which are rail, air and pipeline. It developed in the 18th century to bridge the gap created by land transport in order to cope with the growth of industrial revolution. Maritime transportation or maritime navigation can also be perceived as all activities and the initiatives put together to ensure easy movement and safety of goods, cargo and persons from land to water and vice versa. It is also the means of carrying or the affreightment of goods and persons

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by water, whether by inland water ways, rivers or oceans. It could be domestic (inland) and coastal, supported with boats, ferries and coastal vessels of less than 50 (GT) and those which are used for international trade activities. It is believed that maritime transport is the engine that drives globalization.² It is clear that around 80 percent of global trade by volume and over 70 percent by value is carried out by sea and is handled by ports world-wide. For some commodities, there is no direct substitute for water-borne commerce which makes it an essential tool for developing all sectors of any economy and aids the achievements of greater functionalities particularly when natural resources are not together in one location.

The geographical location of Nigeria with her geo-physical features facilitates the development of maritime transportation whether inland or ocean going. Nigeria has inland transportation route with Rivers Niger, Benue and other smaller rivers providing great avenues for transportation by ships. The Atlantic Ocean which borders Nigeria at the southern axis provides international transportation to and from Nigeria. Nigeria relies heavily on external trade and depends mainly on the export of oil and gas for her earnings used for capital and infrastructural development. These commodities can only be exported through pipeline or ships. Sea borne transportation provides cheaper costs thus help to bring down the selling prices of the commodities.³ Because of the lucrative nature of Nigeria's foreign trade with neighbouring states,⁴ Nigeria has developed export processing zones to enhance her economy.⁵ Such zones attract manufacturing companies which provide employment opportunities for Nigerian unemployed youths.

Nigeria has a long and proud maritime heritage which has played an integral role in the development of the entire West African sub region.⁶ The establishment of a bank (RMDB) in Nigeria, enhanced the provision of an efficient and cost effective sea borne trade into the western and central Africa and beyond. Nigeria's sea borne trade remains the focal point of West African traffic and makes Nigeria a country of diverse economic capability with large investment opportunity from its sea borne trade, for example, the cargo through put to and from Nigeria accounts for more than 70 percent of the total volume of cargo generated by the entire west African sub-region. Without Nigeria as a foremost market, international sea borne trading activity in West Africa region would be affected due to her major commodities such as, crude oil, cocoa, palm kernel, rubber, coffee among others. All these underscore the need for an effective statutory provisions flag state and port state control logistics and rules for effective policing and routine inspection of ships to ensure safety and standards.

3.Nigerian Sea Ports

Generally, all over the world, sea ports are classified in many ways,⁷ as passenger ports, commercial ports, transship ports, Entrepots, Tool and service operating ports. In Nigeria mostly what we have is service operating ports where the port authority provides services and facilities for ships, cargoes and land carriers. These ports are located in Apapa Lagos at Tin-can Island, Onne in Port Harcourt and Calabar. Commercial ports handle import and export traffic. Most commercial ports have very rich and productive hinterlands articulatively served by efficient transport routes by rail, road, canal for inland waterways. An example is the Apapa Tin-can Island Port in Lagos, Nigeria. Many of such ports control the economy of their hinterlands eg. The Liverpool Port serving the North West of England. Transshipment ports perform the transfer of cargo from ships in large ports to ships going to smaller ports. Cargoes meant for Nigerian ports from many countries are commonly transshipped at London docks, Rotterdam or Hamburg in Germany which have ships that call at Nigeria ports regularly. Entrepots are ports that handle or carry out the functions of collecting and assembling cargoes meant for several other small ports and ship them to their respective designated ports. In Europe, we have as Entrepots, Amsterdam, Copenhagen, Rotterdam, Antwerp and Marseille. In South East Asia, there are Bangkok, Singapore, Hong Kong entre ports. In Africa there are entreports located at Mozambique, Malawi, Zambia, and Zaire. Tool ports do not engage in cargo handling but supply tools needed for cargo handling to private enterprises. Nigerian ports have great potentials to exploit their strategic

² See (unpublished) lecture notes, on Maritime and Shipping Law (2012).

³ Commodities are oil, gas and its derivatives such as, wax, kerosene, tar-sands, etc. though due to the global economy today, the prices are no longer cheap as it is used to be.

⁴Cameroon, Togo, Cote d' Ivoire and sub-regions of Africa.

⁵ Export processing zones located at Calabar, Lagos and Port Harcourt.

⁶ The Federal Government of Nigeria in 2007 in this respect established a Regional Maritime Development Bank (RMDB) in the country due to a feasibility report prepared by a teach of experts from Nigeria and Angola. *This day Newspaper*, Friday, July 17, 2009 p.29.

⁷ J.H.O. Maduka: *Port, Shipping, Safety and Environmental Management* (Concept Publications, Lagos, Nigeria, 2006) p.28.

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position for serving both rapidly developing national economy and the wider west and central African sub-regions. According to the Nigerian ports Authority Reports, Nigeria ports handled about 45 million tons of cargo alone in 2015, and about 3,700 vessels with gross registered tonnage of about 60 million tons enters Nigeria's harbours. Imported cargo, which is made up of about 29 million tons or 64 percent of the total comes from about one hundred and fourteen different countries with the United State of America, Taiwan and Brazil on top of the list.⁸ It is worthy to state that in line with the Federal Government of Nigeria's contribution to maritime or sea-borne trade, that the Apapa, Tin-can Island port in Lagos is poised to handle about half of the total sea-borne trade of the country and some cargo in transit to and from Niger, Chad, Burkina Faso and Cameroon. Nigeria Sea borne trade has immensely contributed in the following areas in recent years: Improvement of the means of transportation, Promotion of trade and commerce, Revenue Generation, Creation of employment and job opportunities, Institutional development, and Promotion of tourism.

4. Security on the Waterways and Relevance of Flag State Control and Port State Control

Without regulations or statutory provisions safeguarding all maritime navigational activities, life or safety of lives at sea will be seriously endangered. Without laws or regulations guiding conduct of seafarers and ship owners, there is bound to be reckless and unwanton destruction of lives and properties, inefficiency, carelessness and abuse of fundamental human rights on the sea. Regulations, rules and statutes are therefore indispensable to ensure maritime security. All over the world, security of the oceans is of paramount importance to humanity and maritime trade. Oceans are not only the platform on which is performed, the transportation of about 90 percent of goods,⁹ that sustain the world economy, they also provide resources of various types that supports the livelihood of people on land today and for the future generation. Several activity that guarantee life on land are performed at sea. Order and security at sea, are therefore of immense importance as the seas are considered as an indirect wealth generator, and one of the core pillars for the oceans sustainable wealth creation¹⁰; but unfortunately, in recent years, order and security at sea have been threatened by illegal and criminal activities among which are piracy and armed robbery on ships at sea. This development is considered as a plague which has adversely affected sea-borne trade and several commentators have agitated that it is linked to the appearance of stateless ships at sea and not as a result of failure of the flag states or port state control functions.

The freedom of the high seas is one of the fundamental principles of public international law and the 1958 Geneva Convention on the High Seas, provides that the High seas is open to all nations and that no state may validly assert or purport to subject any part of it to its sovereignty.¹¹ Such freedom means unrestricted access of vessels belonging to all nations, including land locked states, to all parts of the sea that are not included in the territorial waters or internal waters of a state.¹² However, in order that the principle of unrestricted access to the high sea should not lead to a situation of anarchy and abuse, international law has laid down rules providing framework for the exercise of that universal freedom and one of such rules is the concept of flag states.¹³

5. Concept of Flag States and Duty of Flag States on Ships Registered in the Country

Although merchant ships spend most of their time outside the territorial waters of any state, the current international maritime legal regime is paradoxically ordered around a system of vessel nationality.¹⁴ According to International law, and the admiralty law of most states, every vessel engaged in international trade must register in a country and is subject to the regulatory control of the country whose flag it flies.¹⁵ Furthermore, any country consistent with international law has the right to allow a vessel to fly its flag and to have the right to bestow its nationality upon that

⁸NMA Reports, 2009.

⁹ International Maritime Organization, International Shipping facts and figures-information Resources on trade, safety, security, environment: (London Maritime Knowledge centre 2012 @ p. 17).

¹⁰ F.N. Bailet, F.W. Crickard and G.J. Herbet, *Integrated Maritime Enforcement: A Handbook* (Halifax: Dalhousie University, 1999) @ p.6.

¹¹Article 2.

¹² R. Coles and E. Watt, *Ship Registration: Law and Practice*, (2nded.) (London), 2009 <<http://www.1-law.com/doc/view.htm?id=169432>?accessed, Mach 6, 2018 (at 1.13pm).

¹³ Article 91(1) UNCLOS, and Article 92. UNCLOS.

¹⁴ H.E. Anderson, The Nationality of Ships and Flags of Convenience: Economics, Politics and Alternatives". Tulane Maritime Law Journal, vol. 2, No. 139, 196.

¹⁵Restatement (Third) on Foreign Relations Law of the united States 1987, 501.

vessel.¹⁶ ‘When a vessel owner register a vessel with a nation, the owner agrees to abide by that nation’s law and regulations, the flag state, in return for protection and the right of its vessel to be of that sovereign state’.¹⁷ International law imposes on all states certain rights and duties with respect to the environment in the world’s common spaces. Generally, customary international law requires that all states behave in a manner so as not to cause harm to the environment of areas beyond the jurisdiction of any state including the high seas, outer space and the Antarctic.¹⁸ There is an important principle of international law which refers to the freedom of the high seas. This principle as expressed by Kayode Oyende,¹⁹ was first articulated by a Dutche Philosopher Hugo Grocius,²⁰ who advocated that the High Sea is so vast that it cannot be seized by any one and is not subject to ownership of any body. It is part of the *res communis or res nullius*.²¹ It therefore follows that vessels on the high seas are subject to no authority except that of the state whose flag they fly. This general principle as submitted by Oyende,²² has been widely accepted and embodied in Article 6 of the Geneva Convention on the High Seas, as follows: ‘ships shall sail under the flag of one state only and, save in exceptional cases expressly provide for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas’.²³

The High Seas are those parts of the seas not included in the exclusive economic zone, the territorial sea or internal waters.²⁴ Ships flying the flag of a state have exclusive jurisdiction of the flag state on the high seas, but in exceptional cases, however such as piracy, slave trade, collisions, or acts inimical to safety of lives at sea and in a bid to exercise the principle of Hot Pursuit, other states may interfere with this exclusive jurisdiction.²⁵ Also, Articles 192-195 of the UNCLOS III²⁶ declared: ‘State have obligation to protect and preserve the marine environment, by regional treaties and by other multi-lateral agreements negotiated progressively since 1954’.²⁷

Flag state control therefore can be described as the sovereign control in administrative, technical and social matters that states have in international law over and are entitled to exercise over those ships registered in their ports of registry by virtue of the fact that those ships fly or are entitled to fly their national flag on account of being registered with those states. The control means, that by virtue of registration of a ship and the grant of national flag to the ship, there is a direct responsibility of the state towards the ship to protect its flag. It is also the responsibility of the flag state to enforce laws of the state on the ship and to apply relevant International Conventions to which the state is a signatory and the state’s municipal laws.²⁸ A ship without nationality therefore lacks protection in international law and all the privileges and benefits enjoyed by registered ships from their states.

¹⁶ See, Art 91 of the United Nations Convention on the Law of the Sea, 1982 (entered into force, Nov. 16, 1994) hereinafter UNCLOS, stating that ships possess the Nationality of the state in which they are registered and are subsequently subject to the laws of that jurisdiction.

¹⁷Op. cit, Note, 13, H.E. Anderson.

¹⁸ See generally E. Weiss, and S. McCaffrey and D. McGraw, (ed.s) *International Environmental Law and Policy* (1998) 529.

¹⁹ K. Oyende. *Oil Pollution Law and Governance in Nigeria* (Stirling-Holden Publishers Ltd. Ibadan, 2007) pp. 111-112.

²⁰ (1583-1645) Acclaimed to be the father of International Law, wrote a monumental treaties, *De juri belli ac pacislibritres*. (Kelseys Translation 1925) 7thed. His *Mare Liberum*, advocated that the High Sea cannot be seized by anybody or owned by any person and therefore no state can exercise jurisdiction over it.

²¹i.e. a property owned by the general community and not subject to individual ownership, or, in Latin maxim, property owned by no person but God himself.

²² K. Oyende, Op. cit. Note 18.

²³450 UNTS 82; (1958) AJIL 842.

²⁴ Art. 86 Geneva Convention on the High Sea.

²⁵ (The Intervention Convention) made in Brussels in 1969 and which entered into force in 1975.

²⁶ Otherwise referred to as Law of the Sea Convention (LOS) 1982; the two acronyms are used interchangeably by writers.

²⁷See International Convention for the Prevention of Pollution of the Sea by Oil, 1954, made in Condon on 12 May, 1954.

²⁸ A.K. Mgbolu unpublished lecture notes on Maritime and Shipping Law, 2015, Ebonyi State University, Abakaliki, Nigeria.

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Generally speaking, it belongs to every sovereign state to decide to whom he will accord the right to fly its flag and to prescribe rules governing such rights. In the case of *MuscalD'how's (Great Britain v. France)*,²⁹ it was held that in the interest of order and safety on the open sea, a vessel not sailing under the maritime flag of a state enjoys no protection whatsoever, for the freedom of navigation on the open sea is a freedom for such vessels only, that sail under the flag of a state. Also, in the case of *Naim v. A.G. Palestine*,³⁰ it was held that vessels which are stateless are unable to rely on the protection of international law and may be liable to seizure. Similarly, in the *Lotus case*,³¹ it was held that vessels on high seas are subject to no authority except that of the state whose flag they fly. Ozeayir in his Article, Liability for Oil Pollution and Collisions summed up the meaning of flag state control when he stated that registration is the administrative act by which nationality and the collateral rights and duties are conferred on a ship, and that the term is used to describe the attribution of national character to a vessel. Oyende³² stated that the primary basis for the registration of ships is the jurisdiction enjoyed by the state in which the vessel is registered or whose flag it is entitled to fly. It is for the flag state which is responsible for instance, to regulating safety at sea and the prevention of collisions, the manning of ships and the competence of their crews for setting standards of construction, design, equipment and seaworthiness.³³ Under MARPOL 73/78, these duties are imposed on the flag states.³⁴ Accordingly, coastal states have the responsibility under UNCLOS to regulate shipping and other activities taking place on their coasts. It is also the duty of the coastal state to ensure that all vessels calling on its ports comply with the standards of the coastal state. However, the duties of the flag states as outlined under Art. 94 of the LOSC,³⁵ include:

- (a) The maintenance of a register, the exercise of jurisdiction over its vessels and their masters, officers and the crew in respect of administrative, technical and social matters.
- (b) Ensuring compliance in relation to construction, equipment, seaworthiness, manning of the ship, labour condition, the use of signals and the avoidance of collisions.
- (c) Other duties as contained under UNCLOS and as provided in Art. 217 of the LOSC.
- (d) The application of relevant laws to the vessels, the naval and diplomatic protection of the vessels.
- (e) The allocation of jurisdiction; investment, designation of rights to vessels.
- (f) The protection of title and security interests and other priorities of the vessels, including the welfare of the sea farers.
- (g) Article 105 of the UNCLOS provides powers to states to arrest or seize private ships within the high sea and outside the jurisdiction of any other state and deal with the violation of state laws and rules decisively according to the laws.

6. Port State Control

In 1978, a good number of coastal shipping nations met in The Hague and agreed on a memorandum to ensure that the safety and labour conditions on vessels on board were in accordance with the rules of the International Labour Organization (ILO). This development led to the agreement made in 1982, called the Paris Memorandum of Understanding where it was agreed to establish Port State Control. As a result of the need for a port state control requirements, the International Maritime Organization (IMO) encouraged the establishment of regional Port State Control Organizations with the result that today MOU'S have been endorsed by nation's covering the world oceans.³⁶ This was to ensure that as many ships as possible are inspected and at the same time ensure that ships are not unnecessarily delayed by routine inspections. It is important to state that the primary responsibility for ships standards rests with the flag state, but port state control provide a "safety-net", to catch substandard ships.³⁷ Underpinning the global need for port stated control. Port State Control (PSC) can be defined as the inspection of foreign ships in other national ports by PSC officers called (inspectors) for the purpose of verifying that the competence of the master and officers on board and the condition of the ship and its equipment comply with the

²⁹Hague Reports, 1916.

³⁰(1948) A.C. 351.

³¹ (1927) PCIJ series A, No. 10 at p. 25.

³²Oil Pollution Law and Governance in Nigeria (StirlingHorden publishing Co. ltd. Ibadan, 2017) p. 133.

³³ Art. 92 211 (2) of UNCLOS 1982.

³⁴73/78.

³⁵ 1982.

³⁶see, the AbiyaMou, Paris Mou of 1982. The AbiyaMou is known as the west and central Africa Mou on Port state control. Member states including Angola, Benin, Cameron, Congo, Nigeria, Senegal Etc.

³⁷ A.K. Mgbolu. Unpublished (LLM) seminar paper, 2012.

requirements of some international conventions, i.e. SOLAS, MARPOL, STEW, etc) and that vessels are manned and operated in compliance with applicable international law standards. It is also the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the international regulations and that the ship is manned and operated in compliance with the rules. These inspections were originally intended to be back up to the duties of the flag states particularly on inspections and were limited to verifying ships particulars but were recently enlarged to include ensuring that technical operational requirements are met as contained in the IMO requirements. The IMO guidelines for port state control procedures are set out in the IMO resolutions and it apply to all inspections carried out under the auspices of the IMO Conventions; for example (a) inspections relating to ships condition and maintenance of vessels are provided for, under regulations 19 of chapter one of SOLAS, as amended.³⁸ (b) Inspection relating to oil tankers may be exercised pursuant to Article 5 and 6 of the convention. (c) Inspection relating to operational requirements on vessels are provided for under the regulations of the convention.³⁹

7. Coastal State Duties and Contribution to the Safety of Marine Navigation through Port State Control

Coastal state contribution to the safety of navigation across the globe includes:

Provision of navigational Aids

Article 24(2) of the convention,⁴⁰ stipulates that the coastal state must give appropriate publicity of dangers to navigation found in their territorial sea. Also, Article 60 (3) of same Convention,⁴¹ states that due notice must be given by the state in relation to the construction of artificial islands, installations or structures within the exclusive economic zone,⁴² of a state. In relation to international standards, states which border such waters must co-operate in the establishment and maintenance of navigational aids according to the increase in traffic volume and the degree of risk relating to aids should be made public to all seafarers. In addition, these aids should be placed in visible or accessible areas and states may be held liable for non-maintenance of navigable aids as was decided in the case of, *Gilbert v The Corporation of Trinity House*.⁴³

Designation of sea routes and traffic separation Schemes

The designation and placement of traffic separation schemes and provision of accessible sea route is a very important provision and aid to reduce traffic collisions. In the North West European waters, the introduction of sea route has immensely contributed to the reduction in collisions or maritime accident involving ships or between ships and objects. The IMO is the only international body recognized to prescribe routing schemes, to states enacting routing scheme regulations in relation to their territorial waters in line with Articles 21 and 22 of the convention⁴⁴ and relevant IMO provisions. The convention also provide that coastal states may take necessary action against any vessel who failed to observe designated sea lane,⁴⁵ even though the said port state might not have ratified the provisions of MARPOL, it can take enforcement actions under the provisions of UNCLOS,⁴⁶ to which virtually every nation is a party, except the United States.⁴⁷ In addition to the provision of navigational aids states must give vital information and sufficient publicity to hazards such as wrecks within its territorial waters. In recent years very few wrecks have been recorded on Nigeria's territorial waters due to the advantages of port state control even though Nigeria has not enacted into law the provisions of MARPOL pertaining to criminal offences.⁴⁸ In Nigeria, the authority responsible for ensuring compliance with the provision of MARPOL is the Nigerian Maritime Administration and Safety Agency (NIMASA). Oyende reported that in a publication in the online edition of This

³⁸ SOLAS, 1974 as amended.

³⁹ Regulation 6(2) of Chapter 9 of SOLAS 1974, as amended.

⁴⁰ Art. 24(2) LOSC 1982.

⁴¹ Ibid.

⁴² (EE £)

⁴³ (1886) B.D. 775.

⁴⁴ (1982) UNCLOS.

⁴⁵ Art. 41, UNCLOS.

⁴⁶ Ibid.

⁴⁷ See, M. Igbokwe, *The Law of the Seas and the Regulation of Marine Pollution* (2001). A Seminar Presentation at the Lagos State University (LASU) Ojo, Lagos in partial fulfillment of the Award of LLM in Maritime and Commercial Law.

⁴⁸ Art. 4(1) of MARPOL 73/78.

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Day Newspaper, the management of NIMASA issued a statement to the effect that NIMASA promises to implement IMO resolutions. We advise that the Federal Ministry of Transport and the stakeholders in liaison with the Federal Government and the parliament should put hands together to enact and domesticate the provisions of MARPOL into the Nigerian law. The Director General of NIMASA led a delegation of its management to inspect a waste reception facility constructed by a private firm,⁴⁹ in Lagos. We gather from this event that the Nigerian authority is yet to officially provide its own standard port reception facility as mandated by MARPOL, and we state unequivocally that the Federal Government should as a matter of urgency provide a bigger port reception at Nigerian ports at least to enhance the status of the maritime industry in Nigeria.

8. Conclusion

One of the most important functions exercised by states through port control which contribute to the safety of shipping is the inspection of vessels which enter their ports in order to ensure that they are sea worthy. This function has in the recent twenty years developed in scope and complexity. We have stated in this work that it is the duty of states, (flag states) to ensure that every vessel flying its flag complies with the technical standards as set by MARPOL. This includes the inspection of the vessel at regular intervals and the issuance of an international oil pollution prevention certificate. This certificate provides prima-facie evidence that a ship complies with the requirement of MARPOL on flag state control, but it is discovered as provided by law that where there is no compliance to the necessary requirements and control to the flag state duties as recognized by MARPOL, it then becomes the duty of the port state to prevent the ship from sailing, unless, it can do so without presenting an unreasonable threat of harm to the marine environment. In furtherance of the duty of port state control there is an option to the port state to detain the ship in port until it can show evidence of compliance, but a port state will not unduly delay the ship. The option of detaining a ship by port state is open, even though the detaining state not a signatory to MARPOL, and provided that the ship is within the territorial waters of the detaining state, in which case the port state will be exercising its powers as a coastal state under Article 211 of UNCLOS III.⁵⁰ Article 227 of UNCLOS,⁵¹ provides that port states must not discriminate against vessels of other states. In Nigeria, the Nigerian Shipper's Council has the responsibility of ship inspection, security or safety and control to further ensure maritime stability and protection in Nigeria as contained in the Cabotage Act of Nigeria.⁵² It is worthy to express here that the Mou is not a convention but an administrative arrangement which is anchored on specific provisions of law, and states are not under any legal obligation to carryout inspection duties beyond that which is stipulated by the IMO convention. It is also to be noted that despite periodic inspections, disasters still occur, like "the ERIKA of 1999. This shows that in view of the adequate inspection by the flag states, port states and even the Shippers' Council of Nigeria, substandard shipping has not been completely eliminated. It is submitted that having clearly looked at the duties of the flag states as well as that of the port states, it was observed that the duties run along parallel lines. This is to say that the inspections by the port states which were originally intended to be a back-up to the flag states duties has excessively enlarged as complementing the functions of the flag states.

Therefore, the contention that the establishment of the port state control by the various Mou's and the IMO was a reaction to the failure of the flag state especially the flags of convenience (FOC) can no longer hold any weight. The functions or duties exercised by the flag states are essentially separate and different compared to the functions or duties of the port states control. The duties of port states control as discussed in this essay are purely complementary and in any way cannot be said to conflict with the legal duties of the flag state control. This is because a ship going to a port in one country will normally visit other countries in the region before embarking on its return journey and it is to every body's advantage if the inspections are more closely coordinated. We have already stated in the foregoing paragraphs of this essay that the primary responsibility for ships standard rests with the flag states, but port state control provides a safety net to catch substandard ships. Their duties has further strengthened and complemented the flag state control function to a larger dimension both in Nigeria and in the diaspora.

⁴⁹African Circle Pollution Management Limited, Snake Island, Apapa, Lagos.

⁵⁰ UNCLOS III.

⁵¹ 1982.

⁵² Act of 2003, now, LFN Cap C51 LFN 2010.