

# ASSESSMENT OF EXISTING NATIONAL LEGISLATION AND REGULATIONS RELATED TO POLLUTION PREVENTION<sup>1</sup>

By Michael I. Igbokwe Esq.<sup>2</sup>

Pollution may be defined as the release or introduction of substances including energy into the environment in such a way that harm results or may result. However, the pollution of the marine environment is broadly defined as the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.<sup>3</sup> It is the ability to cause harm that differentiates pollution from contamination. The prevention of pollution is simply its preclusion or avoidance. The prevention of marine pollution and protection or safeguard or security of marine living resources make up the two aspects of the protection of the marine environment.

Marine pollution is trans-boundary and not limited to national territorial waters alone but extends to the high seas used by all states and it is mainly regulated by United Nations Convention of the Law of the Sea, 1982 [“UNCLOS”], and the conventions and regulations of a competent international organisation known as International Maritime Organisation [IMO]. As a signatory to the UNCLOS, Nigeria is enjoined to adopt laws and regulations to prevent, reduce and control pollution of the marine environment<sup>4</sup> from the five different sources of marine pollution namely, pollution from land-based sources, sea-bed [namely, exploration and exploitation of sea-bed resources] activities within its national jurisdiction including activities in the Area, pollution by dumping of wastes, pollution from its flagged vessels [shipping] and pollution from or through the atmosphere<sup>5</sup>. The degree of regulation of each source of pollution differs. Thus, land sourced pollution are within the sovereign rights of states to use their natural resources while exploration and exploitation of the seabed within national jurisdiction like exclusive economic zone and continental shelf, is within the coastal state. Due to the fact that such activities can pollute other states, minimal international standards of pollution prevention obtain there, whereas in respect of seabed activities beyond national jurisdiction say in the Area, international standards of pollution prevention obtain there. It is noteworthy however that only monetary penalties are imposed for the infringements of the national laws and regulations and that rules of international standards for pollution prevention, are imposed on foreign vessels.<sup>6</sup>

UNCLOS and other treaties impose some duties on Nigeria [as a coastal and flag state] and on its ports [as a port state] in respect of the pollution of the marine environment from sea-bed and land-based and vessels’ activities and the disposition of shipboard waste, oil and garbage through reception facilities<sup>7</sup> and under Article 192 of UNCLOS, Nigeria has the obligation to protect and preserve the marine environment.

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<sup>1</sup> An update of the paper presented at the National Workshop for the Ratification, Implementation and Enforcement of MARPOL 73/78 organised by IMO in conjunction with the Federal Ministry of Transport and National Maritime Authority in Lagos between 27<sup>th</sup> to 29<sup>th</sup> August, 2001.

<sup>2</sup> LLB. [Hons]. BL, PG Dip. [Maritime Law], Managing Counsel, Mike Igbokwe & Co, corporate commercial and maritime lawyers, Lagos, Nigeria. Mobile phone:0803-607-7777

<sup>3</sup> Article 1(4) United Nations Convention on the Law of the Sea, 1982. This definition was adopted by the 1972 Stockholm Conference on Human Environment

<sup>4</sup> It could be said that international environmental law evolved from the United Nations Conference on the Human Environment 1972 where one of the principles [of Stockholm Declaration on Human Environment, 1972] was that States shall take all possible steps to prevent pollution of the seas by hazardous substances, followed by the United Nations Conference On Environment and Development [UNCED] or the Earth Summit or Rio Conference in 1992, which made declarations on matters including the responsibility of states to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage and the role of indigenous communities in environmental management and development.

<sup>5</sup> See, Articles 194, 207, 208, 210, 211 and 212 of UNCLOS.

<sup>6</sup> Article 230 of UNCLOS.

<sup>7</sup> Part XII, UN Convention on the Law of the Sea, 1982.

In preventing pollution there are the *main* standards calculated to directly prevent pollution such as standards that prohibit or restrict certain types of activities or dumping of highly radioactive wastes, conducting of nuclear weapon tests in the sea and the design and maintenance of ships. But national laws prescribing sanctions for infringements of principal standards and increased liability for damage, are the auxiliary standards which, complement the main standards and make them more effective. However, it is either Nigeria has not ratified the relevant Conventions for marine pollution prevention or has ratified them but has not domesticated or implemented them, or has domesticated them but has not been adequately enforcing the domesticated Conventions.

In any event, an assessment of the existing national legislations and regulations relating to pollution prevention in Nigeria will show that Nigeria is still lagging behind in the adoption of adequate laws and regulations to prevent, reduce and control the pollution of the marine environment. It is noteworthy that Nigeria is a coastal and a major oil producing and exporting country. Nigerian ports are also at a great risk of facilitating pollution of the Nigerian marine environment through the toxic and noxious harmful substances or energy from oil/chemicals, oil exploration and exploitation because of the fact that Nigeria is a major oil producing country some of whose ports are used or involved in the process of loading, transportation and unloading of crude and refined oil cargoes and so exposed to accidental discharges associated with tankers' collisions.

The existing national legislations and regulations relating to marine pollution in Nigeria include: Merchant Shipping Act<sup>8</sup>, Oil in Navigable Waters Act<sup>9</sup>, Oil Terminal Dues Act and Piers Regulations, Nigerian Ports Authority Act, Regulations and Bye-laws, Petroleum Act and the regulations made under it namely, Mineral Oils (Safety) Regulations, Petroleum Regulations and Petroleum (Drilling and Production) Regulations<sup>10</sup>; Harmful Waste (Special Criminal Provisions, etc) Act<sup>11</sup>, Federal Environmental Protection Agency Act<sup>12</sup>, National Shipping Policy Act<sup>13</sup> and Merchant Shipping [safe manning, hours of work and Watchkeeping] Regulations and Merchant Shipping [Training and Certification of Seafarers] Regulations of 2001. This means the national legislations and regulations on pollution prevention in Nigeria are not in one but in different legislations and regulations.

### **1. Merchant Shipping Act**

This is a major legislation on merchant shipping and matters incidental to it. Yet the only major provision it has on marine pollution prevention is as follows:

*The Minister [of Transport] may make regulations generally for carrying this Act into effect, and in particular and without prejudice to the generality of the forgoing, such regulations may provide for-*

*(s) the prevention of pollution, by oil, of navigable waters<sup>14</sup>.*

It may properly be argued that these regulations for prevention of pollution of navigable waters by oil were subsequently made by the Minister in 1968 and named Oil in Navigable Waters Regulations, (the salient provisions of which are considered below) and the Merchant Shipping [Dangerous Goods] Rules, 1963 which regulate inter alia the loading or discharging of cargo or fuel within Nigerian ports and territorial waters.

### **2. Oil in Navigable Waters Act.**

This is an Act to implement the terms of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 which, Nigeria acceded to in 1968 and to make provisions for the prevention of such pollution in the navigable waters of Nigeria. It has been described as the only law in Nigeria's statute books by which an international Convention on maritime pollution prevention has been domesticated. The Act inter alia

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<sup>8</sup> Chapter [Cap.] 224 Laws of the Federation of Nigeria [LFN].

<sup>9</sup> Cap 337 LFN, 1990.

<sup>10</sup> Cap. 350 LFN, 1990.

<sup>11</sup> Cap. 165 LFN, 1990.

<sup>12</sup> Cap. 131 LFN, 1990.

<sup>13</sup> Cap. 279 LFN, 1990.

<sup>14</sup> Section 408(s), *ibid.*

prohibits the discharge of crude oil, fuel oil, lubricating oil and heavy diesel oil and any other description of oil prescribed by the Minister following any subsequent Convention, from vessels into “prohibited areas” although such discharges will be excused if done to safeguard any vessel or prevent damage to any vessel or cargo or to save life. Every harbour in Nigeria is required by Section 8 thereof to have oil reception facilities to enable vessels using the harbour to discharge or deposit oil residues and the failure of any harbour to perform its duties concerning oil reception facilities, attracts a fine of *N20* per day! The owner or master of an erring ship will on conviction be liable to a fine not exceeding *N2,000.00* !

The Act has regulations<sup>15</sup> which inter alia prescribe that every Nigerian ship other than a tanker of 80grt or more which uses her bunker fuel tanks for carrying ballast water must be fitted with an oily-water separator of certain specifications, its Master shall keep records of oil discharged for the safety or prevention of damage to the vessel, escape or escaping of oil, operations of ballasting of oil tanks and discharge of ballast from such tanks. The master must also keep records of oil transfers from the vessel and take certain precautions in loading and discharging or bunkering oil.

As can be seen from the above provisions, the penalties prescribed by the Act are too lenient to deter ship operators and harbours from violating its provisions and apart from ineffective enforcements, offenders find it cheaper to violate its provisions and pay the ridiculously low fines than avoid its violation thereby polluting the environment. Besides, the Act does not decisively deal with and penalize *accidental* oil discharges from ships in addition to the intentional discharges of certain oils into the sea which it deals with. What is more, the OILPOL 1954 which it domesticated, has been superseded by MARPOL 73/78 which, Nigeria has not yet ratified. The Act could in the circumstance be said to be outdated and of little usefulness in current international legal framework for pollution prevention.

### **3. Oil Terminal Dues Act & Piers Regulations.**

This Act has adopted by way of incorporation by reference<sup>16</sup>, the liability and penalty regimes of the Oil in Navigable Waters Act as relates to the discharging of oil in the territorial waters of Nigeria from any vessel or apparatus used for transferring oil. Piers Regulation 9 also prohibits dirt, rubbish, ballast from being thrown into the water from any pier.

### **4. Nigerian Ports Authority Act, 1999 , Regulations and Bye-Laws.**

The Nigerian Ports Authority has powers to make regulations “whether by prohibition or otherwise, [for] the ...depositing of any dead body, ballast, rubbish, or other thing into the port or in the approach to any port in contravention of this [Act]...”<sup>17</sup> However, under Regulation 43 of the Nigerian Ports Authority [Port] Regulations made under the Ports Act, the discharging or depositing of any ballast, dirt, ashes, bottles, baskets, rubbish, oil, animal or vegetable matter or any dangerous or offensive liquid into the waters of a port from a ship or a place on land is prohibited<sup>18</sup>. Under the Nigerian Ports Authority Docks and Premises Bye-Laws<sup>19</sup>, the loading, landing, storage and handling of dangerous, hazardous, or poisonous goods or substances on the Authority’s quays, docks or premises, are controlled and regulated. Oil leakage, oil spillage and the loading and discharging of liquefied petroleum gas cargo are controlled in such a way as to prevent or control pollution of the marine environment.<sup>20</sup> Whenever there is oil spillage on the

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<sup>15</sup> Oil in Navigable Waters Regulations.

<sup>16</sup> Section 6 of Oil Terminal Dues Act cap 361, LFN, 1990.

<sup>17</sup> Section 32(n) Nigerian Ports Authority Act, 1999. Section 126 of the same Act also allows the Authority with the approval of the Minister to make regulations in addition to those specified in the Act generally for the purposes of giving full effect to the Act. Piers Regulations 9 also prohibits dirt, rubbish, ballast from being thrown into the water from any pier.

<sup>18</sup> Regulation 23 requires the master of a ship entering the port in a ballast to give a written record of the quantity and prevents him from discharging it without the permission of the harbour master.

<sup>19</sup> Section 6.

<sup>20</sup> Sections 17, 18 and 21 of the Nigerian Ports Authority Docks and Premises Bye-Laws.

wharf, immediate action must be taken by the person loading or discharging it onshore to recover the oil and prevent its escape onto the harbour waters<sup>21</sup>. However, the penalties prescribed for violators of these regulations either in terms of fines or imprisonment are too lenient and ridiculously low as to have any meaningful effect of marine pollution prevention and they are hardly enforced.

It has been argued that the Nigerian Ports Authority (NPA) and terminal operators are yet to develop plans for rapidly responding to likely oil spillages considering all emergency incidents like collisions, groundings, fire and personnel casualties based on which priorities would be determined and response mechanisms set up. Well-trained search and rescue personnel backed by necessary equipment to execute the port plan, are also yet to be established to effectively fight marine pollution at the ports and protect and preserve the Nigerian marine environment.

However, from a discussion this writer had with the Head, Crude Oil Monitoring/Pollution Control [Marine] of the Nigerian Ports Authority, Nigeria has through the Nigerian Ports Authority provided oil reception facilities at its various ports in compliance with the provisions of the Oil in Navigable Waters Act and other conventions not yet signed or domesticated by Nigeria and has been enforcing the provisions of the Act on ships using Nigerian ports although they may not have fully complied with the provisions of MARPOL 73/78<sup>22</sup>. It is my view however, that the enforcement of the provisions of treaties [whether or not signed by Nigeria] but which are not yet enacted into law by the Nigerian Federal Legislature, raises serious constitutional and legal issues since only ratified conventions that are domesticated by the National Assembly can be enforced.

#### **4. Petroleum Act.**

This Act provides inter alia for the exploration of petroleum from the territorial waters and continental shelf of Nigeria and matters incidental thereto. Section 9(1)[a](iii) of the Act empowers the Minister of Petroleum Resources to make regulations providing generally for matters relating to oil exploration and oil prospecting licences and oil mining leases granted under the Act and operations carried on under the licences and leases, including *the prevention of pollution of water courses and the atmosphere*. Pursuant to Section 8[1][c], the Minister may visit and inspect the areas and installations covered by the licences and leases and enforce the provisions of the Act and regulations and may arrest and hand over to the police without much delay, any violator.

Under *Petroleum Regulation 13* of the Act, “*no petroleum shall be discharged or allowed to escape into the waters of the port*”. By *Petroleum Regulation 14* of the Act, among other requirements, before any loading or discharging of petroleum or ballast water, or any gas-freeing or tank cleaning is carried out, the owner shall give due notice to the harbour master of the time and place of such loading, discharging, gas-freeing or tank cleaning, and the loading and discharging of petroleum spirit or ballast water and the rigging and disconnecting of hoses shall not be carried out in the dark except under certain conditions, and loading and discharging shall be carried out with due diligence. Under *Regulation 26* of the same Act, *the bilges of any small craft shall not be pumped out while it is alongside any vessel or wharf or in confined waters*.

*Regulation 9* of the *Mineral Oils [Safety] Regulations* under the Act, provides that all drilling, production and other operations necessary for the production and subsequent handling of crude oil and natural gas *shall conform with good oilfield practice* which for the purpose of these regulations shall be considered to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute Codes or the American Society of Mechanical Engineers Codes.

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<sup>21</sup> See also Ports Regulations 23 and 25 prohibiting oil leakage into water from any pier and penalty of 3 months or fine of N100 for violation.

<sup>22</sup> In fact, one of the recommendations adopted at the MARPOL workshop on 29/8/2001 was that the Nigerian Ports Authority should be designated as the national agency for the upgrading of existing and/or the establishment of new reception facilities as required by MARPOL 73/78 under the supervision of the Federal Ministry of Transport.

By Regulation 25 of the *Petroleum [Drilling and Production] Regulations* of the Act, the oil exploration or oil prospecting licensee or oil mining lessee shall adopt all practicable precautions including the provision of approved up-to-date equipment, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it. Whilst under Regulation 38, such persons must use approved methods and practices for producing crude oil or natural gas from any pools or reservoir, under Regulation 40, they must drain all waste oil, brine and sludge or refuse from all storage vessels, boreholes and wells into proper receptacles constructed in compliance with safety regulations under the Act or other applicable regulations and dispose of them according to an approved manner or applicable regulations.

The above regulations can be said to be the best national regulations adopted by Nigeria so far to prevent, reduce and control the pollution of the marine environment from seabed activities involved in oil prospecting and exploration as enjoined by UNCLOS.

However, there is noteworthy recent development, namely that, since the present civilian regime came into power, Nigerian President Obasanjo chose not to have and appoint a Minister of Petroleum Resources but chose instead to have the Petroleum Resources under the Presidency and a Presidential Adviser on Petroleum Resources. Until recently, it was not clear who would be or has been exercising the powers of the Minister under the Petroleum Act. It is now clear from the Petroleum (Drilling and Production) (Amendment) Regulations 2001<sup>23</sup>, that the President is also the Minister of Petroleum Resources and exercises the powers of the Minister of Petroleum Resources under the Act, without an amendment having been made to the Act or its modification by the appropriate authority to reflect the new development. It is arguable that without an amendment of the Act by the Federal Legislature or modification of the Petroleum Act [an existing law] by the President, the exercise of the powers of the Minister of Petroleum by the President is illegal and unconstitutional.

#### **5. Harmful Waste [Special Criminal Provisions, etc] Act.**

The Act inter alia prohibits the *carrying, depositing or dumping* or possession of any harmful waste on any land or in any territorial waters or contiguous zone or exclusive economic zone or inland waterways of Nigeria and punishes both the offender and his conspirators with life imprisonment or forfeiture of the carrier to the government. Under certain conditions, the offender could be liable for the damage [death or personal injury] suffered by victims of the harmful waste. Owners of vessels carrying or dumping harmful wastes are bound by the provisions of the Act. As stringent as the provisions are, there are no known cases of enforcement or prosecution or punishment of violators because of a lack of the manpower and equipment to do so.

#### **6. Federal Environmental Protection Agency Act.**

The Act among other things, established the Federal Environmental Protection Agency [FEPA] which, it charged with functions including the *protection and development of the environment in general, the prevention and the combating of various forms of atmospheric pollution*. By a combined reading of its Sections 20 and 21, owners or operators of any vessel or onshore or offshore facility from which hazardous substances are discharged into the air, land or waters of Nigeria, shall in addition to paying a fine of N100,000.00 or N500,000 in the case of an individual or company respectively, be responsible for the cost of the removal, reparation to third parties and for mitigating the damage caused including immediate clean-up operations.

The Federal Environmental Protection Agency Act and Harmful Waste [Special Criminal Provisions, etc] Act were promulgated as a result of the dumping of toxic waste at Koko,

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<sup>23</sup> Statutory Instrument 3 of 2001 commencing from 1<sup>st</sup> February, 2001.

Delta State by an Italian company in 1988, but the FEPA created by the Act, is vested with powers to protect the environment and is concerned with *all forms of pollution* which of course include marine pollution. Subsequently, by virtue of the Environmental Impact Assessment Decree no 86 1992<sup>24</sup> FEPA was empowered to inter alia receive applications on proposed projects and examine the information provided on the environmental impact assessment of such projects before decisions are taken on them and before the projects are commenced and given powers to facilitate environmental assessment. One of the objectives of the environmental impact assessment is to establish before a decision is taken by any person or authority or government intending to undertake any activity, the likely or significant extent of the environmental effects of such activity. Activities in respect of which there are mandatory impact assessment or study activities<sup>25</sup> include oil and gas filed development, construction of off-shore pipelines in excess of 50 kilometres in length, oil refineries and oil and gas separation, processing, handling and storage facilities, toxic and hazardous waste treatment and disposal. The procedures and methods set out in the Act are to enable the prior consideration of environmental impact assessment on certain private and public projects in order to inter alia control, reduce or prevent pollution. Penalties for the violation of the provisions of the Act are N100,000 fine or 5 years imprisonment in the case of an individual and a fine of between N50,000 and N100,000 in the case of a company<sup>26</sup>.

However, FEPA has been criticised on the basis of lacking independence, conflicts in the FEPA Act and Petroleum Act as to which of FEPA and the Department of Petroleum should inspect petroleum installations and the fact that the seeming strict penalty in section 20 of the Act appears to have been eroded by section 4 of the Oil in Navigable Waters Act.<sup>27</sup> It is noteworthy that the present civilian government abolished the FEPA and transferred its functions to the Federal Ministry of Environment without abrogating the Act that set FEPA up. In effect, whilst the FEPA Act and the Environmental Impact Assessment Act are still in existence because the Federal Legislature [National Assembly] has not formally repealed them, the FEPA that is the statutory machinery stipulated for the continued enforcement of their provisions, is non-existent. This creates a conflict between policy and law and leaves a gap in enforcement mechanism that the Federal Ministry of Environment has not been able to grapple with in ensuring efficient and effective pollution prevention.

Since the UN Conference on Environment and Development, 1992 recommended assessment of environmental impact in project planning, port reception facilities, contingency plans for oil and chemical spills and systematic recording of the state of the marine environment, the prevention of pollution is not therefore a crucial national but has become critically a global matter related to sustainable development.

## **7. National Shipping Policy Act.**

This Act created the National Maritime Authority [NMA] and empowered it to among other things, coordinate the implementation of the national shipping policy as may be formulated from time to time by the Federal Government and perform such other functions as may be required to achieve the aims and objectives of the Act or national shipping policy as may be formulated by the Federal Government pursuant to the Act.<sup>28</sup> It has been argued that Sections 3[g] and 3[j] of the Act sufficiently empower the NMA to be recognised as an important stakeholder in matters of marine pollution from oil transportation at sea and should play the role of a leader in collaboration with other agencies of government, in pollution prevention. It was further argued that from the provisions which empower NMA to “offer protection to Nigerian vessels flying the nation’s flag on the high seas and world ports” and “to achieve a systematic control of the mechanics of sea transportation” which includes oil transportation, NMA should be pronounced as the sole authority to look after all oil pollution at sea in Nigeria, especially

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<sup>24</sup> Sections 2[4], 6 and 60 of the Environmental Impact Assessment Act, 1992.

<sup>25</sup> See, Schedule to the Act supra

<sup>26</sup> Section 62, *ibid*.

<sup>27</sup> Ogba U. Ndukwe, “Elements of Nigerian Environmental Laws” published by the University of Calabar Press, in 2000 at pages 176 to 177.

<sup>28</sup> Sections 4[a] and 4[g].

if resulting from oil transportation<sup>29</sup> and be designated the Nigerian focal point for IMO activities on marine pollution, all matters relating to MARPOL<sup>30</sup> and all IMO activities on marine safety, for ensuring their implementation and enforcement for safer navigation and cleaner waters in and on Nigerian waters.

The recent assignment to the National Maritime Authority [NMA] of the role of maritime safety administration and marine pollution control in Nigeria and its purchase of 6 boats to patrol Nigerian coastline and carry out search and rescue and enforce anti-marine pollution regulations, are steps in the right direction, but NMA can only enforce Nigerian laws on pollution prevention within the territorial waters and jurisdiction of Nigeria.

It is submitted that if NMA starts playing the above role, it will facilitate the ratification, implementation and enforcement of many IMO conventions on pollution prevention by Nigeria.<sup>31</sup>

#### **8. Merchant Shipping [Safe Manning, Hours of Work and Watchkeeping] Regulations S.I. 11 of 2001 and Merchant Shipping [Training and Certification of Seafarers] Regulations S.I. 12 of 2001.**

In July, 2001, some regulations which relate to pollution prevention were made by the Minister of Transport under statutory powers conferred on him by Section 408 of the Merchant Shipping Act. A shipping company operating a Nigerian ship shall now furnish the master of its ship with written policies and procedures to be followed to ensure that before a newly employed seafarer is assigned his duties, he is given a reasonable time to familiarise himself with safety, environmental protection and emergency procedures, which he needs to properly perform the duties assigned to him<sup>32</sup>. The master may exceed or call on a seafarer to exceed the schedule's work or duty periods when the master thinks that such step is necessary to meet an emergency threatening damage to the environment.<sup>33</sup> Among other things, a shipping company owner of a Nigerian registered ship shall in accordance with Section A-1/14 of Standard of Training, Certification and Watchkeeping for Seafarers [STCWS] be responsible for the assignment of seafarers for service in its ships in accordance with the STCWS and ensure that the ship's complement can effectively co-ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution. There are also manning and training requirements which seafarers on vessels carrying dangerous cargo including petroleum products, chemicals and liquefied gas must meet and the Minister may allow a seafarer to work for not more than six months in a capacity for which he does not have the appropriate certificate if it does not cause danger to persons, property or the environment<sup>34</sup>.

The International Maritime Organisation [IMO]<sup>35</sup> is a United Nations specialised agency that is mainly dedicated to making rules and monitoring and enforcement of regulations

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<sup>29</sup> This is quite understandable because operational discharges and accidents during transportation are major causes of marine pollution from vessels.

<sup>30</sup> See paper titled, 'Oil Transportation and the Effects on Marine Environment.' by Prof. Babajide Alo presented at a recent Seminar organised by the NMA.

<sup>31</sup> In fact, one of the recommendations made at the national workshop on MARPOL 73/78 dated 29/8/2001 was that the National Maritime Authority should be confirmed as the focal national agency to develop the administrative, financial, legal and technical framework for the domestication of the MARPOL 73/78 under the supervision of the Federal Ministry of Transport. It was also recommended that the Federal Ministry of Environment in collaboration with the National Maritime Authority should take the responsibility for monitoring, controlling and auditing in order to ensure that national facilities for the reception of ships generated operational and cargo wastes comply with appropriate environmental standards for the safe waste handling treatment, re-cycling and/or final disposal at appropriate dumping sites in an acceptable environmentally-friendly manner.

<sup>32</sup> Section 1(5)[a](ii) of S.I. 11 of 2001.

<sup>33</sup> Section 7(3)[a] *ibid*.

<sup>34</sup> Regulations 21(e) and 23 of S.I. 12, 2001.

<sup>35</sup> The IMO, an international organisation of 158 member states and 2 associate members, was set up pursuant to the Convention on the Inter-Governmental Maritime Consultative Organisation adopted on 6/3/48 by the UN Maritime Conference that entered into force on 17/3/58 and became known as IMO in 1982, is *inter alia* to provide machinery for cooperation among Governments in governmental regulation and practices relating to all technical matters affecting international shipping, to encourage and facilitate the general adoption of the highest practicable standards in maritime safety, efficiency of navigation and

for maritime safety and pollution and goes by the slogan, *Safer Shipping, Cleaner Seas*. Happily, Nigeria is a member of the United Nations and IMO<sup>36</sup> and is a signatory to the UNCLOS and IMO Convention, but the extent to which Nigeria has ratified or acceded to, domesticated and implemented the provisions of UNCLOS and IMO Conventions on marine pollution is not substantial. IMO's conventions on pollution prevention mainly revolve around ships. It is not debatable that the international nature of maritime navigation makes it imperative to adopt global standards to prevent marine pollution by ships. However, it has been argued that various provisions of UNCLOS making references to "applicable international rules and standards established through the competent international organisation or general diplomatic conference" is a recognition that the provisions of UNCLOS were intended to operate as merely a framework treaty and that many of the details had already been in or would be picked up in other international regimes which could be established through specific treaties or resolutions or decisions of organisations such as IMO, or UNEP.

It has been argued that it appears that out of 82 international conventions on pollution applicable to Nigeria, it has signed only 30, which is about 36% of the conventions<sup>37</sup>. Some international conventions touching on pollution prevention which Nigeria has ratified but which are not considered in this paper include, Protocol concerning Cooperation in Combating Pollution in cases of emergency [1981], Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region [1981], Vienna Convention for the Protection of the Ozone Layer [1985], Montreal Protocol on Substances that Deplete the Ozone Layer [1985], The Convention on the Control of Transboundary Movements of Hazardous Wastes [1989], Framework Convention on Climate Change [1992], Convention on Biological Diversity [1992], Convention on Desertification. This paper will only consider the status of Nigeria in respect of the IMO conventions on pollution prevention in the process of assessing its existing national legislations and regulations on it in order to truly see the inadequacy or otherwise of its legislations and regulations on pollution prevention because they touch directly on marine pollution.

**a. CONVENTION FOR THE PREVENTION OF POLLUTION OF THE SEA BY OIL [OILPOL] 1954.**

This International Convention for the Prevention of the Pollution of the Sea by Oil, 1954 as amended in 1962, 1969 and 1971 has now been superseded by MARPOL 73/78. As stated earlier, until date it is the only IMO convention on marine pollution which, Nigeria has ratified and enacted as a part of its municipal law by its Legislature by virtue of the Oil in Navigable Waters Act<sup>38</sup>. OILPOL 1954 is therefore applicable in Nigeria only to the extent to which it has been enacted into Nigerian law. Its drawbacks like its not adequately controlling accidental oil pollution and inability of states to know to what extent foreign vessels outside the limits of their national jurisdictions, contributed to the adoption of MARPOL 73/78.

**b. INTERVENTION CONVENTION.**

The 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties was brought about by the Torrey Canyon incident of 1967 after which there was a general consensus for a new regime which while recognising the right of states to intervene on the high seas in cases of grave emergency, should restrict that right to the protection of other legitimate interests.

It is to protect States against the consequences of maritime casualties which result in oil pollution of the sea and the coast. States Parties are to take such measures on the high seas as may be necessary to prevent, reduce or eliminate grave and imminent danger to

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prevention and control of marine pollution from ships and to deal with administrative and legal matters relating to them.

<sup>36</sup> Nigeria's instrument of acceptance of the IMO Convention was delivered on 15th March, 1962.

<sup>37</sup> Ogba U. Ndukwe "Elements of Nigerian Environmental Laws" published by University of Calabar Press, [2000] at page 214.

<sup>38</sup> Ibid,

their coastline or related interests from pollution or threat of pollution of the sea by oil due to a maritime casualty or acts related to it. Coastal states are to consult with other states affected by the maritime casualty including the flag states or shipowners, or the IMO in exercising the right of intervention. Although they have discretion as to what kind of measures to take, the measures taken must be proportionate to the actual or threatened damage and if the taken measures are contrary to the Convention, compensation must be paid by the intervener although the Convention has a conciliation and arbitration process. The Convention does not apply to warships.

Nigeria is not a signatory to this Convention and does not have any municipal law on the matters dealt with by the Convention.

**c. INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978.**

This is a Convention adopted for promoting safety of life and property at sea and the protection of the marine environment by establishing in common agreement international standards of training, certification and watchkeeping for seafarers. The Convention imposes certain responsibilities on seafarers for the prevention of marine pollution. The master and officer in charge of the watch are to be aware of the serious effects of operational or accidental pollution of the marine environment and shall take all possible precautions to prevent such pollution within the framework of relevant international and port regulations.<sup>39</sup> Moreover, the knowledge of prevention of pollution of the marine environment is a part of the minimum knowledge required for certification of officers in charge of a navigational watch and certification of masters of ships of not less than 200 gross registered tons.<sup>40</sup>

Moreover, mandatory minimum requirements for training and qualifications include in the case of masters, engineers, and chief mates of chemical tankers, completed specialized training in pollution prevention and control, and in the case of officers and ratings of chemical tankers, they include courses in basic safety and pollution prevention precautions and procedures. The aforesaid seafarers involved in liquefied gas tankers are to undergo mandatory minimum training and qualifications including similar requirements<sup>41</sup>.

Every candidate for certification shall have knowledge of the precautions to be observed to prevent pollution of the marine environment by oil, cargo residue, sewage, smoke or other pollutants and the use of pollution prevention equipment including oil separators, sludge tanks systems and sewage disposal plant<sup>42</sup>, conventions on safety and protection of the marine environment.

Nigeria acceded to this Convention in 2001 recently<sup>43</sup> and appears to have domesticated its provisions by virtue of Statutory Instrument 12 of 2001 called Merchant Shipping [Training and Certification of Seafarers] Regulations, 2001 made by the Minister of Transport<sup>44</sup> under the powers conferred on him by Section 408 of the Merchant Shipping Act. In November, 2001 Nigeria regained a position on the White List showing that it has been assessed to be properly implementing the completely revised provisions of the STCW.

**d. MARPOL 73/78.**

This is the International Convention for the Prevention of Pollution from Ships, 1973 and its protocols adopted in 1978 and which entered into force in 1981 with initially five but now, six annexes. It supersedes OILPOL because OILPOL did not satisfactorily deal with marine pollution. Its objective was to provide for comprehensive ways of preventing

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<sup>39</sup> Regulation II/1 11 of STCWS, 1978.

<sup>40</sup> Appendix to Regulation II/3, 1(xv) STCWS, 1978.

<sup>41</sup> Regulations V/2 and V/3 of STCWS, 1978.

<sup>42</sup> Regulation III/4 3(f) STCWS

<sup>43</sup> IMO Status of Conventions as at 31<sup>st</sup> August, 2001.

<sup>44</sup> See page 7 supra.

deliberate marine pollution by ships during operations. It also empowers port states to exercise certain controls and inspections over foreign ships. Its Annexes I and II are compulsory and its Annexes IV to V are optional. State parties are to take appropriate measures to prevent and punish breaches of the treaty provisions.

I have decided not to discuss MARPOL 73/78 in great detail so that it will not become over-flogged since this workshop being on MARPOL 73/78 itself has been dealing with different areas of the Convention.

However, contrary to often widely held views, Nigeria is not yet a signatory to MARPOL for reasons which are difficult to understand since it is an oil producing country through whose territorial waters crude oil or refined oil products are transported by oil tankers. One of the dangers of Nigeria not being a signatory to and MARPOL not being in force in Nigeria is that Nigerian vessels on which its provisions are not being enforced stand the risk of being detained when without the requisite conventional documents on board, they sail to foreign ports or off-shore terminals where the provisions of MARPOL are being enforced<sup>45</sup> and Nigeria will not have the facilities to enforce the provisions of MARPOL 73/78 on foreign vessels that visit its ports.

**e. CLC/I.O.P.C FUND.**

These are the International Convention on Civil Liability for Oil Pollution Damage [CLC] and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage [I.O.P.C. FUND] both of which were amended in 1984 and 1992<sup>46</sup>.

They take care of both liability and compensation for oil pollution damage which MARPOL 73/78 did not address. The CLC/FUND regime covers only damage caused by oil spill at sea but following the diplomatic conference held in April 1996 under the auspices of IMO, a new International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances [HNS e.g. chemicals] by Sea was adopted. Its adoption was to fill the noticeable vacuum in the liability conventions which dealt only with oil pollution and not pollution from substances other than oil. Having a two-tier system like the CLC/FUND convention, it provides compensation up to a total of 75,000 of around US\$250m, HNS also covers not only pollution damage as in the former but also risks of fire and explosion including loss of life or personal injury and loss and damage to property. It is yet to enter into force

The CLC determines the liability of the shipowner for oil pollution damage based on *strict liability* rendering unnecessary the need for the claimant to prove that the shipowner was negligent. The shipowner must have a compulsory liability insurance in return for which the shipowner's liability is limited to an amount linked to the ship's tonnage but the right to limit the liability will be lost if the owner was at fault. It has been argued that in the event of an action filed against the shipowner, the shipowner will be entitled to limit his liability if the oil spillage from his tanker did not result from his actual fault or privity. Under section 383 of Nigerian Merchant Shipping Act the shipowner's liability to compensate for oil spillage is N47 per ton but it is US\$ 168 per ton under the CLC.<sup>47</sup>

However, the two-tier system of compensation recognised by the CLC is such that victims of oil pollution damage can claim from the shipowners whose ship caused the oil pollution damage but where the sum to which the liability of the ship owners is limited is insufficient to compensate the victims because of the enormity of the damage, the victims

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<sup>45</sup> Article 5[4] MARPOL 73/78.

<sup>46</sup> The 1992 Convention was to take over and take care of the regimes of compensation of national governments by oil tankers owners in respect of oil pollution from ships which were not covered by the 1969 CLC at the time when both TOVALOP [Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution] and the CRISTAL[ Contract regarding an interim supplement to tanker liability for oil pollution] had ceased in February, 1997.

<sup>47</sup> L.N.Mbanefo SAN, "Oil Spillages, Disputes and Compensation: an International Outlook in his book "Essays on Shipping Law Vol 1", p.83

can recover from the FUND which therefore supplements the CLC. The liability of the shipowner to pay compensation which is limited to US\$14.6 m or US\$140m per tanker or US\$89m respectively in the 1971 and 1992 FUND, is to make it possible for the shipowner to get insurance cover since no insurance company will want to cover a risk that is unlimited. The FUND which is also predicated on strict liability, is funded by levies on all persons who have received in a calendar year, more than 150,000 tonnes of crude oil and heavy fuel oil in a state party to the FUND Convention based on reports of the oil receipts of individual contributors.

The compensation under the CLC/FUND is comprehensive and as amended by the 1992 Protocol, it is available when damage is caused in the territory or territorial sea including the EEZ of a contracting party by laden or unladen oil tankers. Compensation is available for damage to property including contaminated fishing boats, fishing gear, yachts, beaches, piers and embankments, cost of cleaning polluted property or its replacement, loss of earnings by those in coastal or sea-related activities like fishermen and hoteliers and restaurateurs at seaside resorts, expenses for clean-up operations at sea or on shore.

Suffice it to say that there is not in the above Act and its regulations, the conventional provisions for the compensation of victims of pollution damage resulting from the activities of the oil explorers or carriers<sup>48</sup> and without provisions for penalties or causing oil companies to take great responsibility for oil pollution of the sea and damage, the Act and Regulations are not far-reaching when compared with the provisions of relevant conventions. Even though oil exploitation in the sea-bed and subsoil is a major source of marine pollution, the Petroleum Act, has not adopted environmental considerations as part of its control theme and its provisions on pollution prevention, are ineffective. There is now in Nigeria among oil companies, a common practice of compensation of victims of oil pollution damage on the basis of ‘fair and reasonable’ quantum. It is my view that this cannot be a substitute for the compensation regime for victims of oil pollution damage in the relevant conventions and not having any legal or binding force, it is weak, ineffective and unsatisfactory.

*Nigeria is a signatory to the CLC 1969 but it is not a signatory to its protocols of 1972 and 1992. Nigeria is a signatory to the FUND Convention of 1971 but has not yet acceded to the FUND Protocol of 1992<sup>49</sup>. Nigeria is however not a signatory to the HNS Convention of 1996 or OPRC/HNS 2000. The regime of liability and compensation presently running in Nigeria is the Petroleum Regulation 36 which provides that the holder of an oil exploration licence, oil prospecting licence or oil mining lease shall in addition to any liability for compensation to which he may be subject under any other provision of the Petroleum Act, be liable to pay fair and adequate compensation<sup>50</sup> for the disturbance of surface or other rights to any person who was or is in lawful occupation of the licensed or leased lands and Regulation 23 of the Petroleum [Drilling and Production] which imposes on the licensee or lessee, the duty of paying adequate compensation to any person whose fishing rights are injured by unreasonable interference through the exercise of the rights conferred by the licence or lease, Section 11(5) of the Oil Pipelines Act<sup>51</sup> and Section 21 of Federal Environmental Protection Agency Act [FEPA]. Under Section 11(5) Oil Pipelines Act, the holder of a licence shall pay compensation to any persons whose land or interest in land is injuriously affected by the exercise of the rights conferred by the licence; or to any person suffering damage as a result of any negligence by the holder or his agent or servant, or to any person suffering damage due to any breakage of or leakage from the pipeline or ancillary installation whereas Section 21 of FEPA empowers an oil pollution victim to sue for compensation for a breach of Section 20(1) of FEPA banning discharge of hazardous substance into the*

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<sup>48</sup> In Part IV of Oil Pipelines Act, cap 338, there are provisions for determining the compensation payable to those who suffered damage from builders and operators of oil pipelines incidental or supplementary to oilfields and oil mining, but such compensations are inadequate.

<sup>49</sup> However, it had been revealed at the National Workshop on Ratification, Implementation and Enforcement of MARPOL 73/78 held in Lagos between 27<sup>th</sup> to 29<sup>th</sup> August, 2001 that the Nigerian Government has decided to ratify MARPOL 73/78, Fund Convention 92, CLC 92, SAR and the African Maritime Charter.

<sup>50</sup> Sections 77 and 78 of the Minerals Act also base ‘quantum of compensation on “fair and reasonable compensation”.

<sup>51</sup> Cap. 338 Laws of the Federation of Nigeria, 1990.

air, on land or water of Nigeria. The beauty of the provision in the Oil Pipelines Act is that of strict liability of the licensee [akin to the CLC], allowed by it in its Section 11(5) thereby relieving the claimant of the burden of proving the negligence of the licensee, although the provisions of the above regulations and laws are still a far cry from the expectations of international conventions in the areas of pollution liability and compensation.

Regrettably, none of the conventions on liability and compensation ratified by Nigeria has been domesticated nor does Nigeria have national laws adopting the compensation regimes in them even though their provisions are of immense benefits to Nigerians because many persons/oil companies receive or import more than 150,000 tonnes of crude oil and heavy fuel oil from Nigeria every calendar year and the recipients pay levies on the receipts every year which Nigeria can benefit from in the event of maritime casualty within its territory. Nigeria is not a major importer of oil and so it costs it little in terms of levies on ratifying and implementing the CLC/FUND. Since the oil companies pay the contributions on exported crude or refined oil, it does not place any substantial direct financial burdens on the Nigerian Government. Moreover, since CLC obliges the shipowners to obtain liability insurance policies against damage arising from an oil spillage in the event of any oil disaster, the insurance companies can be sued directly for compensation.<sup>52</sup>

It is noteworthy that the Minister of Environment was quoted on 14<sup>th</sup> August, 2001 to have stated at an international seminar on oil pollution and environmental management held in Abuja that, the Nigerian Federal Government has finished work on a document titled "*Response Compensation and Liability for Environmental Damage*" in Nigeria [RECLEDE] to be soon enacted into law. How soon this will become law after the usual debates in the National Assembly and the usual bureaucracy, is unknown.

**f. INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, [OPRC] 1990.**

This is a treaty known as the International Convention on Oil Pollution Preparedness, Response and Co-operation that was adopted in 1990 but came into force in 1995. Some of its provisions were the basis of IMO's response to the major oil pollution in the Persian Gulf resulting from the Gulf Wars of 1991. It is designed to facilitate international cooperation and mutual assistance in preparing for and responding to a major oil pollution incident and to encourage states to develop and maintain an adequate capacity to deal with oil pollution emergencies such as tanker accidents. IMO has established a centre in Malta to coordinate anti-pollution activities in the Mediterranean regional marine pollution emergency information and training centre for the Caribbeans. IMO has also published a *Manual on Oil Pollution* which comprises five sections, Prevention, Contingency Planning, Salvage, Combating Oil Spills and Administrative Aspects of Oil Pollution Response.

Nigeria recently became a party to this Convention but it has not yet domesticated it.<sup>53</sup>

**f. LONDON CONVENTION.**

This Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972 held in London bans the dumping of certain hazardous materials, and imposes [prior] special permits for the dumping of certain materials. Its definition of the word "dumping" was adopted in the definition of dumping by Article 1 of UNCLOS although it excludes wastes from exploration and exploitation of sea-bed mineral resources and recognises regional arrangements and agreements to prevent and control dumping of wastes.

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<sup>52</sup> It seems that under Section 16[3] of the Admiralty Jurisdiction Act, 1991 the agents in Nigeria of the shipowners, charterers, managers or operators of ships violating pollution regulations or polluting the marine environment, may be personally liable irrespective of the liability of their principals for the acts, defaults, omission or commission of the ship in respect of anything done or failed to be done in Nigeria.

<sup>53</sup> IMO's Status of Conventions as at 31<sup>st</sup> August, 2001 culled from the IMO Website.

A protocol to the Convention was adopted in 1996 which is more restrictive and makes the polluter to pay and bear the cost of pollution and it contains a “blacklist” of materials which may not be dumped at all. Dumping is allowed in the case of force majeure or where life or the vessel is endangered.

*Nigeria is a signatory to the Convention.* To some extent, its provisions were adopted in the Federal Environmental Protection Agency Act.<sup>54</sup>

#### **g. SOLAS**

The International Convention on the Safety of Life at Sea *indirectly* concerns prevention of pollution of the marine environment due to its copious regulations of minimum standards for the design, construction, equipment and operation of ships compatible with their safety including fire-safety measures, life-saving appliances, carriage of navigational equipment and other aspects of safety of navigation, carriage of dangerous goods and special rules for nuclear ships which contracting States must prescribe for their vessels<sup>55</sup>.

Primarily, the flag state enforces the provisions of SOLAS by surveying their flagged ships and issuing some certificates to their flagged ships as evidence of compliance with the Convention, but Contracting port states have control through inspection in their ports of the foreign ships and their documents. The port states also have the power to prevent foreign ships in their ports from sailing to sea until they can do so without danger to passengers and crew if there are discrepancies between the conditions and equipment of the ships and the particulars of any of their certificates or where the certificates have expired or are invalid or there is non-compliance with Chapter 1, Regulation 19 of SOLAS.

The International Safety Management Code for Safe Operation and for Pollution Prevention [a.k.a. ISM-Code] which is Part IX of SOLAS is of immense importance to all parties to SOLAS. The Code places responsibilities on ship owners, operators, managers, bareboat charterers to establish and implement a policy for achieving stipulated safety management objectives. It provides an international standard for the safe management and operation of ships and for pollution prevention.

Nigeria is a signatory to the International Convention on the Safety of Life at Sea [SOLAS Convention] 1974 and its Protocol of 1978 but Nigeria is not a signatory to its Protocol of 1988.

#### **h. THE SALVAGE CONVENTION 1989.**

Although it is not directly concerned with the prevention or control of marine pollution, it is relevant to the regulation of marine pollution because in regulating salvage operations, its Article 8 requires the salvor, owner or master of the vessel or of the property in danger, in carrying out salvage operations to exercise due care to prevent or minimise damage to the environment. Whilst its Article 9 preserves the right of the coastal state to take measures and give directions to protect its coastline against expected harmful consequences of pollution or its threat due to a maritime casualty, its Article 13 makes room for rewarding a salvor who uses his skill in preventing or minimising damage to the environment.

Its Article 14 encourages salvors to carry out salvage operations in a way that will cause minimal damage to the environment in respect of a vessel which itself or its cargo threatens damage to the environment by providing for a special compensation in the event of failure to earn or receive compensation under Article 13.

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<sup>54</sup> Supra.

<sup>55</sup> Another IMO Convention on safety that indirectly concerns marine pollution is the Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978/95 for the basic training, certification and watchkeeping of seafarers because of the importance of crew standards to safety and pollution prevention. Nigeria is a signatory to the 1978 Convention but is about to make the White List of.

*Nigeria recently became a signatory to the 1989 Convention<sup>56</sup> but has not implemented it by way of domesticating it as a part of its municipal laws.*

#### **i. INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS, 2001.**

This Convention was adopted on 5<sup>th</sup> October, 2001 at the end of a Diplomatic Conference at the IMO Headquarters. It has not yet been ratified by Nigeria.

#### **j. Regional Memorandum of Understanding on Port State Control.**

Since 1982, the need had felt by flag states and port states in regions to enter into cooperative agreements by way of **Memoranda of Understanding on Port State Control [MOU]** and encouraged by the fact that experience showed that port state controls work best when they are organised on a regional basis. The MOUs are to inter alia exchange information about merchant ships, their records and results of inspections carried out on them and their certificates and documents, to monitor substandard vessels identified through such inspections, carry out port states inspections in uniform and harmonised manners with similar standards for detention of ships and training of port state control inspectors in order to ensure compliance with relevant conventions on safety and pollution. There was also the realisation that some flag states have for some reasons been unable to meet all their obligations on safety and pollution in all the IMO conventions they signed<sup>57</sup>.

Nigeria is a signatory to the MOU on port state control in the West and Central African sub-region signed in Abuja in October, 1999<sup>58</sup> although the MOU has been ineffective to reduce, control and prevent marine pollution in Nigeria because being a regional treaty, it cannot have a force of law in Nigeria without being passed into law by the Nigerian Federal Legislature.<sup>59</sup>

One of the consequences of the regrettable situation where many of the relevant pollution prevention conventions have not been implemented by Nigeria, is that although as a state party to the Conventions that Nigeria has ratified it is bound by their provisions, yet Nigeria cannot benefit or suffer from their provisions and their provisions cannot have any force of law in Nigeria when they are not yet domesticated or enacted into laws in Nigeria. Even though by Section 20 of the 1999 Constitution, the Nigerian “*State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria*”, because the section is a part of the fundamental objectives and directive principles of state policy<sup>60</sup> which are not enforceable in the law courts, it is an indication of the lame attitude of Nigeria towards marine pollution prevention, control and reduction. As an oil exploration/exploitation and crude and refined oil transportation and maritime nation, Nigeria should be in the forefront of States anxious to prevent marine pollution especially from sea-bed and vessel activities, because its marine environment stands to suffer more from any marine casualty but its attitude towards same had been that of indifference or inertia and the non-updating of its existing ineffective anti-pollution laws.

#### **CONCLUSION.**

From the foregoing, one can safely conclude that the existing national legislations and regulations in Nigeria are grossly inadequate and that unless drastic measures are taken to

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<sup>56</sup> IMO Status of Conventions as at 31<sup>st</sup> August, 2001 and culled from the IMO website.

<sup>57</sup> It was also thought that States [especially developing states], which are yet to ratify or domesticate the SOLAS or MARPOL or other relevant IMO Conventions would indirectly be made or bound to implement and enforce port state control measures in those conventions by being signatories to the respective MOUs thereby ensuring that substandard and un-seaworthy vessels are not diverted to the regions.

<sup>58</sup> Other regional MOUs on port state control include: Paris MOU [1982], Latin-American MOU [1992], Tokyo MOU [1993], Caribbean MOU [1996], Mediterranean MOU [1997], Indian Ocean MOU [1998] and the Black Sea MOU [2000].

<sup>59</sup> Section 12 of the 1999 Constitution.

<sup>60</sup> The judicial powers of courts cannot be exercised in respect of them: Section 6[6][c] 1999 Constitution.

ratify and domesticate and start enforcing the relevant conventions, Nigeria and its ships and citizens will continue to be the losers. It is also obvious that from the number of Conventions on pollution prevention which Nigeria has not ratified or implemented, its existing national legislation and regulations relating to pollution prevention are outdated and cannot meet the challenges of current global pollution control, prevention, liability and compensation.

Michael Igbokwe Esq.  
[mi.lawoffice@nova.net.ng](mailto:mi.lawoffice@nova.net.ng)

XXXXXXXXXXUPDATESXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
1999 Mining Act on pollution, new chapter XI-2 of SOLAS 1974 as amended and ISPS Code, Cabotage Act on unratified pollution conventions, the ratified and acceded conventions MARPOL, CLS, OPRC, Search and Rescue May, 2002.  
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1.1 Regrettably, Nigeria does not have a good reputation for and a good record of quickly consenting to, implementing and enforcing maritime or other treaties, which are in its national interest.<sup>61</sup>

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<sup>61</sup> For example, The Civil Liability Convention 1992 Protocol [acceded to on 13/5/02], Protocol '92 to amend the FUND Protocol 1971 [acceded to on 13/5/02], MARPOL 73/78 [acceded to on 13/5/02], Search and Rescue Convention 1979 [ratified on 13/5/02], UNIDROIT Convention on International Financial Leasing, 1988 [ratified in 1994], Nigeria implemented the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 only shortly before it took effect in 2001.