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**RECENT DEVELOPMENTS IN NIGERIAN MARITIME LAW AND  
PRACTICE: Piracy & Unlawful Acts at Sea.**

**Being the text of a paper presented by:**

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**RECENT DEVELOPMENTS IN NIGERIAN MARITIME LAW AND  
PRACTICE: Piracy & Unlawful Acts at Sea.**

1.1 Due to the fact that by the letter of invitation given the writer to speak at this Seminar, its organizers gave him the topic “**Recent Developments in Maritime Law (Maritime Offences)**” subject to any modification he might wish to effect, he has taken the liberty to modify the topic to enable him speak on one recent development on the front burner in maritime law in the area of Piracy and unlawful acts at Sea, the menace of which had occasioned both local and international adverse consequences.

1.2 In recent times Nigerian newspapers and the Internet had been awash with reports of attacks by pirates and violent and armed unlawful attackers or armed robbers off and within Congolese, Nigerian, Beninois, Togolese and Ghanaian coasts and in the Gulf of Guinea in alarming proportions. They have posed serious threats and dangers to the safety of ships, crew and officers, maritime infrastructure and navigation and the Nigerian economy which depends on oil exports for revenue and imported raw materials and goods, which are carried by ships. Some of the newspaper reports are below. The violent attack on **the M/V Forces** is at page 40 of **the Guardian newspaper of 22/2/12** headed ‘**Pirates kill captain, engineer offshore Nigeria**’, which reported that:-

*“Sea robbers have fired on a cargo vessel off the coast of Nigeria killing the captain and chief engineer, a maritime watchdog body said as it warned shipping to say clear of the area. According to the International Maritime Bureau (IMB) Piracy Reporting Centre said in a statement, armed pirates chased and fired upon a drifting bulk carrier. Vessel raised alarm and headed toward Lagos. All crew except the bridge team took shelter in the citadel. Cyrus Mody, a manager at the IMB, said the vessel’s captain and chief engineer ‘were killed in the shooting. IMB said that the attack, which took place 110 nautical miles off the coast, is one of the three to have occurred in the area over a week. The attackers are believed to be Nigerian pirates according to Noel Choong.”*

At page 12 of the **This Day newspaper of 1/3/12** captioned ‘**Pirates Kidnap Cargo Ship Crew**’ it was reported as follows:

*‘Pirates have attacked a cargo ship off Nigerian coast, kidnapping two crew members, and injuring another, an international maritime watchdog has said.*

*Another member of the crew, it was gathered, was missing following the attack in which the pirates looted the ship. The Dutch-owned ship was anchored near the Nigerian coast when it was targeted by the eight armed men.*

*The United Nations this week warned that pirate attacks in the Gulf of Guinea were becoming more violent.*

*In this latest attack eight armed pirates in speedboats fired at the ship on Tuesday afternoon, Noel Choong, of the International Bureau (IMB) said.*

*This came two weeks after gunmen fired a cargo vessel killing the captain in another attack in Nigerian waters.*

*The West African coast is becoming a major centre for pirate attacks and is now placed by maritime insurers in the same risk category as Somalia’.*

The human and material losses are gargantuan. At page 26 of the ‘**This Day**’ newspaper of **23/2/12** with the headline ‘**Nigeria, Others Lose US\$2b to Maritime Crimes**’ is a report

that *'Nigeria and other countries in the Gulf of Guinea are losing \$2 billion annually to maritime crime, with smuggling, piracy and bunkering top on the list of this economic sabotage, the Nigerian Navy, Eastern Command has said'*.

According to the United Nations News Centre on 27/2/12, the Secretary General of the UN, Ban Ki-Moon sent a team to assess the scope of the piracy threat in the Gulf of Guinea and make recommendations for possible UN support in tackling the scourge. The mission was reported to have found that piracy in the region had become more systematic with pirates resorting to sophisticated modes of operations and utilizing heavy weapons. It was also found that whilst piracy was largely an unknown phenomenon in the Gulf of Guinea 10 years ago, the number of recent attacks and the damage they caused had reached worrisome proportions and that in the 1<sup>st</sup> two months of 2012, the IMO had recorded 20 incidents off coasts of Benin, Congo, Cote d'Ivoire, Ghana and Nigeria, and those were the reported cases. So, this maritime crime has assumed serious international concerns.

1.3 In a paper titled **'Maritime Security Issues in Nigeria'** presented by me at an international Maritime Conference in Connecticut, USA<sup>1</sup>, I had constructed a table based on the information I obtained from the IMO website on 30<sup>th</sup> January, 2010<sup>2</sup> on the reported activities of armed robbery and piracy in Nigerian and international waters from July to December, 2009 and I wrote:-

*"From the above table, there were 15 acts of piracy and armed robbery against ships and crew members and cargo between July and December 2009. This may not be the highest number of such incidents in Africa or in the world but it was high enough to be a cause of concern requiring preventions and suppressions. In the period under consideration, the nature of maritime security issues included maritime violence and theft, ship hijacking and crew kidnapping in port areas, territorial waters and international waters around Nigerian waters by pirates and robbers (armed with guns and knives) who threatened, shot, injured crew members, stole ship's cash, provisions, crew's cash and belongings and in some cases damaged ship's navigational equipment. Some of these were reported to the Nigerian Navy, Nigerian port control, harbor master, port security, Nigerian High Commissioner, but the writer is not aware of the actions taken by these persons during or after the incidents.*

*Other aspects of maritime security issues in Nigeria concern the security of oil installations, pipelines for transporting crude oil the vandalization and explosion of by those termed as 'Niger Delta militants' or 'saboteurs'<sup>3</sup> or criminal thugs and community bounty hunters which had crippled crude exports and also the 3 refineries depending on these pipelines for crude oil supplies for refining, has become a major problem to maritime navigation and facilities. This was also often accompanied by hostage taking or abduction of and threats to kill the workers or crew members on the offshore installations and ships in return for huge ransom. There has been series and continuous agitation by the oil rich Niger-Delta States either for their control of the resources in that region or protests in form of Youths' restiveness and militancy demonstrated through pipelines vandalization, illegal oil*

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<sup>1</sup> At the International Maritime Law Conference: Shipping in the new financial era organized by the International Bar Association under its Maritime Committee between 25-26 March, 2010.

<sup>2</sup> [www.imo.org/includes/blastdataonly.asp/data](http://www.imo.org/includes/blastdataonly.asp/data)

<sup>3</sup> Some of the major Militant Groups are the Movement for Emancipation of the Niger – Delta (MEND), the Joint Revolutionary Council and the Niger Delta Volunteer Force.

*bunkering, piracy and armed robbery against ships, cargo and crew members due to the degradation of their fishing and farming occupations by oil pollution from oil exploration and underdevelopment and unemployment due to neglect. In some cases the pipeline vandalization are caused by communities as a means of showing their dissatisfaction with the non-payment and non implementation under or of the memoranda of understanding signed by the international oil companies with the host communities. In 2009, about 225 armed militants in 15 boats blew up with dynamites, the Atlas Cove in Lagos, a major oil installation and major petroleum product distribution to Mosinmi and Ejigbo depots.<sup>4</sup> In a newspaper report<sup>5</sup>, the Group Managing Director of Nigerian National Petroleum Corporation, Dr. Sanusi Barkindo, was quoted to have said that N11b was spent in 2009 on the pipeline repairs being N6.3b on the trans-forcados pipelines and the Escravos-Warri crude lines while N4b was spent on the repairs of the ELP gas pipelines, which has adversely affected Nigerian economy.*

*In a paper titled ‘Piracy and armed Robbery at sea in Nigeria: Industry Perspective’ presented by Nigerian Trawler Owners Association (NITOA)<sup>6</sup>, NITOA stated that in 2003, 2004, 2005, 2006,2007 and 2008 their members’ vessels that were attacked by pirates and armed robbers in Nigerian waters from Badagry to Bakassi were 4, 11, 34, 57, 107, and 60 respectively. It also stated that before 2000 such attacks were few, subdued and the fatality was rare, but after the series of skirmishes between the neighboring Ijaws, Itsekiris, and the Ilajes in the last 90s, caused by a militarization of the Niger Delta zone through the purchases of large arms and ammunitions, these resulted into piracy and armed robbery against ships and crew. Consequently, the Nigerian fishing industry lost lives, valuable equipment, vessels, fish products valued over N2b in less than 4 years to the pirates who had progressed to hijacking vessels with demands of huge ransoms and threats of blowing up the vessels with explosives if the owners failed to pay as demanded. In 2008, 2 vessels were attacked off Calabar, hijacked under gun fire, expatriates were kidnapped and ransom demanded. NITOA has also alleged that even after the Amnesty Proclamation by the Federal Government, it is now more difficult to trace and retrieve vessels that are hijacked and crew members that are abducted or taken hostage by the militants because in the stead of the previous three major ‘warlords’, there are now multiple ‘small warlords’ littered in the Niger Delta.”*

- 1.4 In order to capture the current pulse of maritime stakeholders, I sent questionnaires on recent developments in maritime offences in Nigeria, to some of the key maritime stakeholders namely, Nigerian Maritime Administration and Safety Agency (‘NIMASA’), Nigerian Ports Authority (‘NPA’), Indigenous Shipowners Association of Nigeria (‘ISAN’) and the Association of Nigerian Licensed Customs Agents (‘ANLCA’), in order to know their experiences with a view to helping me to sensitize and enlighten this audience on recent maritime crimes in Nigeria. With the exception of ANLCA (which referred to only the crimes of improperly imported and concealed goods), all of them were united in mentioning the crimes of piracy and armed robbery at sea including vessels’ hijacking and seafarers’

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<sup>4</sup> See page 41 of the Guardian of 3<sup>rd</sup> February, 2010.

<sup>5</sup> The Guardian Newspapers of 26/2/10 page 15.

<sup>6</sup> At the International Conference on piracy at sea and armed robbery at sea 28 to 30 April, 2008 in Abuja.

kidnapping and cargo theft at sea, which are carried out by sea pirates and unlawful actors. In answers to various questions in the said questionnaire, **ISAN** stated:

*“Effects (of piracy and armed robbery at sea) are quite serious as they have increased cost of doing business. Owners have to spend more securing their vessels and crews, Insurance premiums have more than doubled, collusion between the crew and undesirables to pilfer with cargo has led to charterers requesting for all types of bonds/undertakings (sic).*

*We have met with Hon. Minister of Transport, NIMASA and also F.O.C West on the need to improve Maritime Security in our waterways. This has led to the establishment of a Naval observation post at the Lagos anchorage region where about 80% of the attacks take place.*

*To safeguard cargo, we have asked charterers to put on board super cargoes to protect their cargo, on the ship owners part, we have advised our members to install flow meters to reduce causes of discharge discrepancies.*

*Policy of 50% payment before loading and balance of 50% before break of bulk to be fully carried out to avoid cases of underpayment by charterers.*

*The Association has also directed members to enlighten their crew on the need to be above board in all transactions. A black book has been opened by the Association where members are encouraged to report crews who aid or abet cargo theft. Once a case is reported and investigated, such crew will be listed and upon being listed in the black book, he/she will not be engaged by any member company....ISAN is also working with NIMASA to improve response and tracking, so that vessels are monitored more efficiently. This will ensure that the agencies know which vessels should be in what area at any particular time. It is also necessary that we continue the process of policing ourselves, especially at the Lagos breakwater, which has become a ‘vessel park’ of sorts for vessels...’*

On its part, **NIMASA** suggested that solutions to piracy and armed robbery at sea are the enactment of a stand-alone legislation to address the issue, provision of adequate platforms for the Nigerian Navy (‘NN’) and continued implementation of the NIMASA/NN MOU. **NPA**’s position was that *‘in order to stem the tide of the Maritime crimes, Management of the Nigerian Ports Authority is improving in the provision of hi-tech security gadgets at its access points, common user areas and for use by its security personnel who are being trained to meet the challenges on hand. While common user security is the responsibility of the Authority, the concessionaires provide terminal security with restricted access to the respective terminals.*

*Other positive steps include*

*Sensitization of port users and other stakeholders.*

*Enabling environment and legal frame work*

*Constant liaison with relevant security Agencies to combat these crimes’.*

I am deeply grateful to the above key stakeholders for their useful answers to my questionnaires which have assisted in making this paper not to lack proof of the claim of the menace of, the adverse effects of and the proffered solutions to, piracy and unlawful acts at sea.

- 1.5 However, the good news is that the Federal Government had not folded its arms but had over the years taken positive steps with a view to stemming the tide of the scourge of piracy and

armed robbery at sea. The steps<sup>7</sup> include the domestication of the ISPS Code was domesticated vide the **International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004** for the implementation of the provision of SOLAS Chapter XI – 2 and the ISPS Code in Nigeria; enactment of the **Nigerian Maritime Administration and Safety Agency ('NIMASA') Act, No 17, 2007**. By a combined reading of sections 1(ii), 1(2), 2(4) and 3 of the Act, NIMASA was established as a body corporate with perpetual succession that can inter alia enter into contracts and incur obligations and has the objective of inter alia regulating and promoting **maritime safety and maritime security**, to be responsible for executing the provisions of the Act and other Acts on **maritime safety and maritime security** under the supervision of the Federal Ministry of Transport. The Federal Government also inter alia updated its **Merchant Shipping Act** by enacting the **Merchant Shipping Act, 2007** by which in its **section 215(h)**, the IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988) and its related Protocol on Fixed Platforms. Another measure was the establishment of a **Joint Task Force (JTF)** of the Military, Navy and Air Force at the height of the militant and criminal activities in the Niger Delta in order to curb if not eliminate, criminal activities including armed robbery and piracy against ships, crew members and cargo in Nigerian waters and to complement the roles of the Nigerian Navy and Marine police in maritime security in Nigerian waters. In order to establish coastal surveillance systems (Radars and Automatic Identification Systems (AIS)<sup>8</sup> stations) covering the entire Nigerian coastline and be in a position to monitor the activities of ships and seamen and make necessary arrangements for receiving and dealing with ship security alerts transmitted by Nigerian-flagged ships or others transiting Nigerian coasts, the Federal Government also embarked through NIMASA on a Long Range Identification and Tracking<sup>9</sup> system in compliance with the Maritime Safety Committee (MSC) of the IMO Regulation V/19-1 of the 1974 SOLAS Convention relating to Long Range Identification and Tracking of ships (LRIT) which entered into force on 1<sup>st</sup> January, 2010. The need to improve maritime domain awareness (MDA) in Nigeria towards enhancing maritime security and safety and meeting its obligations as signatories to the international conventions, informed the establishment of the Regional Maritime Awareness Capability (RMAC) between the Nigerian Navy (NN) and the US-led African Partnership Station in Western Naval Command Apapa, Lagos Nigeria. Further to this, the long-standing collaboration between the NN and NIMASA enabled the establishment of the RMAC Substation to enhance the operations/activities of NIMASA. The NIMASA RMAC Substation is situated at the Regional Maritime Rescue Coordination Centre (RMRCC) Kirikiri, Lagos and it is an Automatic Identification System (AIS) Monitoring Workstation with Day-and-Night Surveillance Camera having a range up to 5nm (upgraded version with

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<sup>7</sup> See the paper titled 'Maritime Security Issues in Nigeria' supra for more details on the steps taken by the Federal Government of Nigeria.

<sup>8</sup> AIS are designed to be capable of providing information about the ship to other ships and to coastal authorities automatically. They were adopted in 2000 by IMO as a revision of SOLAS new chapter V by which information including the ship's identity, type, position, course, speed, navigational status and other safety-related information, automatically to appropriately equipped shore stations, other ships and aircraft; receive automatically such information from similarly fitted ships; monitor and track ships and exchange data with shore-based facilities.

<sup>9</sup> The Maritime Safety Committee of IMO adopted LRIT in 2006 as a SOLAS chapter V safety of Navigation requirement establishing a multilateral agreement for sharing LRIT information for security and search and rescue purposes, amongst SOLAS contracting Governments in order to meet the maritime security needs and other concerns of such Governments. It maintains the rights of flag States to protect information about ships entitled to fly their flag, where appropriate, while allowing coastal States access to information about ships navigating off their coasts. The LRIT information ships are required to transmit include the ship's identity, location and date and time of the position but there will be no interface between LRIT and AIS. Apart from the difference in range between AIS and LRIT, AIS is a broadcast system and data derived through LRIT will be available only to the recipients who are entitled to receive such information and safeguards concerning the confidentiality of those data have been built into the regulatory provisions. SOLAS contracting parties will be entitled to receive information about ships navigating within a distance not exceeding 1000 nautical miles of their coast.

longer range available), the Radar Tracking System with Sector surveillance radius of about 38nm, Internet Service, Point-to-Point Microwave Link and GPS/DGPS Interface.

1.6 Moreover, in order to specially handle the issues of sustainable socio-economic development in the Niger Delta States and reduce if not eliminate, the restiveness of youths in its oil producing region, and provide electricity, schools, roads, portable water, health care, hospitals and jobs and reduce the maritime crimes, the **Federal Ministry of Niger Delta** was created in 2007 by the Federal Government of Nigeria. This is apart from the Niger Delta Development Commission charged with similar functions. The creation of this Ministry marked the beginning of a seeming peaceful means of resolving the Niger Delta crisis which contributed to armed robbery and piracy at sea and a departure from the mainly military solution by the JTF. By an **Amnesty Proclamation dated 26<sup>th</sup> June, 2009** made by the Federal Government pursuant to **section 175 of 1999 Constitution**, amnesty and unconditional pardon were granted up to 4<sup>th</sup> October, 2009 to all persons who had directly or indirectly participated in the commission of offences associated with militant activities in the Niger Delta upon their surrender and handing over of all equipment, weapons, arms and ammunition and execution of the Renunciation of Militancy forms specified in the schedule to the Proclamation. Due to this, the militants proclaimed ceasefire, surrendered their arms and ammunitions in return also for cash gifts and overseas and local vocational education and training to enable them engage in legitimate sources of livelihood and take their eyes and minds away from militancy, piracy and armed robbery at sea. By the **Post-Amnesty Programme of the Federal Government**, a rapid infrastructural development of the Niger Delta States and creation of relevant jobs opportunities for the Youths of the Niger-Delta especially those that had been pardoned so that they do not have reasons to go back to militant activities, breaking of pipelines, and maritime violence and kidnapping in order to survive, is being pursued by the Federal Government and the Governors of the 9 States within the Niger Delta. The Federal Government set up a Presidential Sub-Committee on Disarmament, Rehabilitation and Reintegration of the Repentant Militants for training, demobilization, 3 rehabilitation camps and reintegration of the former militants. In this regard, the Acting President directed a release of the sum of N56.2 bn for the accomplishment of these goals<sup>10</sup> with a view to ensuring that the ex-militants were lawfully engaged and prevented from going back to militant activities. In March, 2010, the 9 Governors held a meeting to discuss the modalities of developing one new city in each of the 9 States (apart from their capitals) to grow business and employment opportunities and eliminate militancy, armed robbery and piracy against ships and maritime infrastructure. This is again because it is argued that the problems of piracy and armed robbery would not be prevented or eliminated if militancy continues to thrive. Based on the understanding between the Federal Government and the Republic of Benin and because of the international or cross-border nature of the maritime crimes, the Navies of the 2 countries set up a joint naval task force to patrol their maritime waters and borders with platforms provided by NIMASA, in order to fight piracy and unlawful acts at sea.

1.7 Nevertheless, one of the most pertinent and pungent of the steps taken by the Federal Government was its setting in motion through NIMASA, of the machinery for the drafting and enactment of the **Piracy and Other Unlawful Acts at Sea (and other related offences)**

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<sup>10</sup> See page 9 of the Punch newspapers of 12<sup>th</sup> March, 2010.

**Bill** to fully implement the Piracy provisions of the United Nations Conventions on the Law of the Sea 1958 and 1982 ('UNCLOS') and the treaty on the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 it had ratified ('SUA') in line with one of the recommendations of the maritime stakeholders at the **International Conference on Piracy and Armed Robbery at Sea** jointly organized by NIMASA and the Nigerian Navy at Sheraton Hotel and Towers, Abuja, 28<sup>th</sup> to 30<sup>th</sup> April, 2008, to sensitize and create awareness about the menace of piracy and armed robbery at sea in which IMO participated. Incidentally, I was its Consultant appointed by NIMASA to draft the said Bill. Upon request, IMO provided technical assistance by an Advisory Mission on the national legislation through one of its consultants (Dr. Agustin Blanco-Bazan) with whom in May, 2010 NIMASA's officials and I brainstormed for several days inter alia on existing Nigerian laws and their adequacy or otherwise, whether to amend the Criminal Code or draft a stand-alone Bill for the implementation of the above UNCLOS and SUA Convention on piracy and unlawful acts. With the inputs made by the IMO's consultant in his Report subsequently sent in and the other materials I had obtained during research, I prepared a draft of the Bill which NIMASA had approved. Even though Nigeria is a contracting state/party to only the SUA Convention 1988, the general consensus was to draft the proposed Bill to incorporate not just only the SUA Convention 1988 that Nigeria has ratified but also other related offences as in the other 3 SUA treaties<sup>11</sup> that Nigeria is yet to ratify so as to be up to date with the available current international provisions for fighting the menace of piracy and unlawful acts at sea<sup>12</sup> and also to ensure the peace, order and good government of the Federation which all Acts of the National Assembly are to ensure by section 4(2) of the 1999 Constitution. At a Maritime Stakeholders Forum held by NIMASA at its Resource Centre in Kirikiri on 22/3/12, the I introduced the said Bill to them and their suggestions were collated with a view to incorporating in the final Bill, any of their suggestions that would improve the current Bill and better achieve the goals of the Bill.

1.8 The Bill has seven Parts. *Part I comprises the Short title and Interpretation sections; Part II is on the Establishment of Jurisdiction over and Prosecution of offences created under the Bill, Part III is on Offences, Punishment, Forfeiture and Restitution; Part IV is on Enforcements and Safeguards, Part V is on Requests, Inter-Agency and Regional Cooperation, Assistance, Dispute Resolution Methods; Part VI is on Reporting of Incidents whilst Part VII is on Repeals and Modifications.*

1.9 Some of the important terms and words defined in Part I are as follows:

**'Armed Robbery at Sea'** includes any illegal act of violence or detention or any act of deprecation committed in the Nigerian territorial waters for private ends by the crew or the passengers of a private ship or a private aircraft and directed against another ship or aircraft, or against persons or property on board such ship or aircraft and for the purpose of

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<sup>11</sup> Protocol for the suppression of unlawful acts against the safety of Fixed platforms located on the continental shelf, 1988; Protocol 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005

<sup>12</sup> A search carried out on 6/4/12 on the International Maritime Organization's website ([www.imo.org](http://www.imo.org)) revealed from the Summary status of IMO's Conventions that 160 and 148 countries are contracting States/Parties to the SUA Convention 1988 and SUA Convention Protocol 1988 respectively both of which came into force on 1/3/92, whereas 22 and 18 countries are Contracting States/Parties to the SUA Convention 2005 and SUA Convention Protocol 2005 respectively which came into force on 28/7/10.

criminalization and punishment, all acts of armed robbery are considered to be included within the meaning of 'unlawful act' in this Act.

**'Court'** means the Federal High Court of Nigeria or any court having jurisdiction over the matters and offences prescribed under this Act.

**'Piracy'** includes any of the following acts by any person or group of persons namely:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) beyond the Nigerian territorial waters, against another ship or aircraft, or against persons or property on board such ship or aircraft; or,

(ii) against a ship, aircraft, persons or property in a place beyond the Nigerian territorial waters;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) above.

**'Pirate ship' or 'Pirate aircraft'** includes a ship or aircraft intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in the meaning of piracy or if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons who have committed that act and the acts of piracy committed by a warship, Government ship or government aircraft whose crew has mutinied and have taken control of the ship or aircraft, are assimilated to acts committed by a private ship or aircraft.

**'Unlawful act'** includes an act (other than an act of piracy under this Act) committed by any person or group of persons if that person or group of persons unlawfully and intentionally:

(a) seizes or exercises control over any ship or a fixed platform by force or threat thereof or any other form of intimidation; or

(b) performs an act of violence against a person on board a ship or a fixed platform if that act is likely to endanger the safe navigation of that ship; or

(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship or destroys a fixed platform or causes damage to it which is likely to endanger its safety; or

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

(e) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or

(f) destroys or strongly damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

(g) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or

(h) falsely pretends to have suffered or become a victim of any of the acts stated in (a), (b), (c) and (d) above whether or not the false pretence is for the purpose of demanding or receiving ransom or other monetary payment; or

- (i) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government in Nigeria or an international organization to do or abstain from doing any act:
- (a) uses against or on a ship or on a fixed platform or discharges from a ship or a fixed platform any explosive, radioactive material or BNC weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a ship or a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (h)(i) herein, in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) uses a ship in a manner that causes death or serious injury or damage; or
- (d) threatens, with or without a condition (whether as to ransom or otherwise), aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the unlawful acts set forth herein if that threat is likely to endanger the safe navigation of the ship in question or the safety of a ship or a fixed platform; or
- j) transports on board a ship:
  - (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition (whether as to ransom or otherwise) death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or abstain from doing any act; or
  - (ii) any BCN weapon, knowing it to be a BCN weapon as defined in this Act; or
  - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or any other nuclear activity not under safeguards to an International Atomic Energy Agency comprehensive safeguards agreement; or
  - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose; Provided that it shall not be an offence under this Act if any item in j(ii) or j(iii) is transported to and from the territory of or under the control of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where the resulting transfer or receipt or the holding of such items is not contrary to the State Party's obligations under that Treaty; or
- (k) transports another person on board a ship knowing that the person committed an act that constitutes an offence defined as unlawful act under this Act or intending to assist that person to evade criminal prosecution; or
- (l) injures or kills any person in connection with the commission of any of the offences set forth above or;
- (m) attempts to commit, or participates as an accomplice in, or organizes or directs others to commit an act set forth herein or contributes to the commission of one or more of the offences set forth herein by a group of persons acting with a common purpose intentionally and either (i) with the aim of furthering the criminal activity or criminal purpose of the group where such activity or purpose involves the commission of an offence set forth herein or in the knowledge of the intention of the group to commit an offence set forth herein.

1.10 Under Part II, the Federal High Court is, pursuant to **section 251(1) of the 1999 Constitution**, conferred with the jurisdiction to hear and determine all matters including criminal and extradition proceedings wherever applicable under the Bill and to try offenders under the Bill and shall ensure that all cases brought before it against any person, authority or ship or applicable person or property shall be conducted and determined with dispatch and given accelerated hearing. The offences shall be prosecuted by the Attorney-General of the Federation (by himself or any of his legal officers or a legal practitioner engaged by him) or by the Ministry or the Agency or through a legal practitioner engaged by it and based on a fiat granted by the Attorney-General of the Federation. Nothing in any Act of the National Assembly shall prevent the trial in absentia by the Court of an alleged offender or offender under the Bill. Part III of the Bill provides for different punishments or penalties for the different offences under the Bill including forfeiture, restitution, death penalty (if death resulted from the crime), life imprisonment and fines, depending on the gravity of each offence. It also has provisions on extradition of offenders and the inclusion of the offence of unlawful act as extraditable offences in certain cases and the procedure for extradition. Part IV of the Bill is about enforcements by enforcement or authorized officials boarding ships to search on reasonable suspicious grounds, the procedure for such searches and the stringent measures of safeguards against abuse of the powers. Among other safeguards, the enforcement/authorized officers must take due account of the need not to endanger the safety of life at sea; the safety and security of the ship and its cargo; need not to prejudice the commercial or legal interests of the flag State; ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law, Nigerian Constitution and laws; take reasonable efforts to avoid a ship being unduly detained or delayed; provided that authorization to board by a flag State shall not per se give rise to liability, the Ministry and or the Agency shall be liable for any damage, harm or loss attributable to them arising from measures taken when the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or such measures are unlawful or exceed those reasonably required in light of available information. They are also to avoid the ship, its passengers, crew or cargo being unduly delayed or delayed.

1.11 Part V of the Bill is about requests, Inter-Agency and Regional Cooperation, Assistance and Dispute Resolution Methods. Under it, the Transport Ministry, the law enforcement or authorized officials can cooperate with other States Parties to the Convention especially in the West and Central African Sub-region and their relevant Agencies and authorities to prevent and suppress piracy and unlawful acts in conformity with international law. The law enforcement or authorized officials shall respond as expeditiously as possible to requests made under the Convention for the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination and other relevant information and acknowledge the receipt of any written or oral request made. If there are reasonable grounds to suspect that an unlawful act under this Act had been, is being or is about to be committed involving a ship flying Nigerian flag, the assistance of other State Parties to the Convention may be requested in preventing or suppressing that offence and if when faced with similar circumstances the assistance of the law enforcement or authorized officials is

sought by State Parties, best endeavours shall be used to render similar assistance within available means to the State Parties. The cooperation also includes harmonizing operational standards, assistance in connection with criminal proceedings brought in respect of unlawful acts including assistance in obtaining evidence at their disposal necessary for the proceedings either in accordance with any treaties existing between them or in the absence of treaties, in accordance with their national law; cooperation in the prevention of piracy and unlawful act particularly by taking all practicable measures to prevent preparation in Nigerian territory for the commission of those offences within or outside Nigeria and exchanging information in accordance with Nigerian law and coordinating administrative and other measures taken as appropriate to prevent the commission of those offences. The current cooperation between Nigerian Navy and Beninois Navy is in this direction. Any dispute with any other State Party concerning the interpretation or application of any of the provisions of the Bill that cannot be settled by negotiation within a reasonable time shall on request be submitted to arbitration and if within 6 months of the request for arbitration there is no agreement on the organization of the arbitration, the dispute may be referred to the International Court of Justice in conformity with the Statute of the Court. The Transport Ministry may by itself or through the law enforcement or authorized officials initiate, facilitate, or coordinate national and or regional fora and cooperation for agreements, understanding, developments of strategies and also implement strategies in Nigeria and West and Central African States to suppress and combat piracy and unlawful act within Nigerian and the South and West African subregion. This is akin to cooperative agreements for fighting such offences in East Africa and also South East Asia where initiatives have been taken to organize various meetings within the region to enhance international cooperation and coordination to suppress piracy.<sup>13</sup>

1.12 Part VI of the Bill is about the Reporting of Incidents. Under this Part, any incident which may constitute any offence under the Bill shall be promptly reported to NIMASA by either (a) the Master, or (b) the shipowner or manager, or (c) the crew representative or (d) the cargo representative, or (e) the insurers, or (f) the law enforcement or authorized officials or authorities, or (g) other persons having knowledge of the incident. NIMASA shall thereafter send the reports of the circumstances concerning each incident or offence, the action taken and measures taken in relation to the offender or alleged offender and the result of extradition proceedings or other legal proceedings or prosecution of the offender or alleged offender without delay and in the required formats, to the Secretary-General of IMO and the International Criminal Police Organization (INTERPOL). Part VII provides for the repeal of inconsistent and overlapping or conflicting existing laws or their modifications in line with the Bill.

1.13 It must be stated here that although ‘piracy’ and ‘unlawful acts at sea’ are maritime crimes governed by international conventions, the major distinction between them is that whilst the former can only rightly occur on the high sea and outside the territorial waters, the latter can only occur within the territorial waters of a State. Due to the fact that in international law a treaty binds only State parties to it and have no effect upon the rights and duties of citizens either at common law or statute, by virtue of **section 12 of the 1999 Constitution**, any treaty signed by the Federation can only have the force of law to the extent

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<sup>13</sup> See ‘Combatting Piracy and Armed Robbery Against Ships in Southeast Asia: The way forward’ by Robert C. Beckman, Faculty of Law, National University of Singapore, 2001.

to which it has been enacted into law by the National Assembly and so unless domesticated by being enacted into law by the National Assembly, the SUA Convention signed by Nigeria cannot have force of law or be enforceable in Nigerian courts. It is observed that some of the treaties which **Section 215(h) of the Merchant Shipping Act, 2007 ('MSA')** provides that they, their protocols and their amendments relating to maritime safety and security shall apply are, the 'Convention for the suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol thereto'. However, in **The Registered Trustees of National Association of Community Health Practitioners of Nigeria & Ors v. Medical and Health Workers Union of Nigeria**<sup>14</sup>, the Supreme Court held in respect of **section 12 of the 1999 Constitution** and domestication of treaties that:-

*'In essence, what the legislature meant or intended is that for a Treaty to be valid and enforceable, it must have the force of law behind it, albeit it must be supported by a law enacted by the National Assembly, not bits and pieces of provisions found here and there in the other laws of the land, but not specifically so enacted to domesticate it, to make it a part of our law. To interpret similar provisions as being part of the International Labour Organization Conventions just because they form parts of some other enactments like the African Charter, and Peoples Rights etc will not be tolerated'*.<sup>15</sup>

Also in **Abacha v. Fawehinmi**<sup>16</sup>, the Supreme Court held:

*"Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts...Domestic courts had no jurisdiction to construe or apply a treaty, nor could unincorporated treaties change the law of the land. They had no effect upon citizen's rights and duties in common law or statute."*

1.14 So, it is my humble opinion that from the above position of the law stated by the Supreme Court, the procedure in **Section 215(h)MSA** of implementing by 'enacting' by incorporating by reference, the SUA 1988 and its protocol and amendments, is not the proper way of domesticating treaties in Nigeria. Moreover, another argument against the Section 215(h) of MSA procedure of purporting to domesticate the 1988 Convention and its protocols, is that it does not contain any specific provision on the implementation of the SUA or features of punishment for the SUA offences.<sup>17</sup> It is also submitted that (assuming without conceding that section 215(h) MSA is a proper way of domesticating SUA and its protocols, as couched, only the 1988 SUA Convention and its Protocol would have been incorporated by reference whereas, the SUA Convention 2005 and its Protocol 2005 would have been left out and based on section 12 of the 1999 Constitution, it would incompetent and unconstitutional for the National Assembly to enact into law, treaties which the Federation has not signed or ratified. Since by **section 4(2) of the 1999 Constitution**, the National Assembly has powers to make laws for the peace, order and good government of the Federation, the currently followed procedure in the Bill of enacting both the un-ratified SUA Conventions along with the ratified SUA Convention to update our laws on maritime piracy and unlawful acts, is in consonance with laws that will achieve peace, order and good government in Nigeria and will solve the defects in **section 215(h) MSA** and partially the non-ratification of the other 3

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<sup>14</sup> (2008)2NWLR (Pt.1072) 575 at 623.

<sup>15</sup> See also MHWUN v. Min of Labour & Prod (2005)17NWLR (Pt.953)120 at 156/7CA.

<sup>16</sup> (2000)6NWLR (Pt.660)228 at 288.

<sup>17</sup> Dr. Agustin Blanco-Bazan in his IMO Advisory Mission Report on Anti-Piracy National Legislation for Nigeria, May, 2010 page 14.

SUA Conventions. The Supreme Court has held in the **Abacha v. Fawehinmi case supra at 288/289** that unincorporated or undomesticated treaties might have an indirect effect upon the construction of statutes or might give rise to a legitimate expectation by citizens that the government, in its acts affecting them, would observe the terms of the treaty and so, it is submitted that even without being ratified by Nigeria, Nigerians have a legitimate expectation that the Federal Government in its acts affecting them, would observe the terms of the SUA Convention 1988 it has ratified. There is however, an urgent need for the Federal Government to ratify the remaining 3 SUA Conventions so that both IMO and the international community would take its determination to fight piracy and unlawful acts at sea with all seriousness. The writer hereby calls on the Federal Government to ratify them without further delay. Under **section 1 of the Terrorism Act, 2011**, kidnapping of a person, seizure of an aircraft, ship, their diversion or use for some crimes, supply or use of weapons, explosives or nuclear, biological or chemical weapons without lawful authority, are offences. **Section 15 of the Money Laundering Act 2011** makes piracy an offence punishable with 5 to 10 years imprisonment but the meaning of piracy is not stated in the Act contrary to **Section 36(12) of the 1999 Constitution** stating that none shall be convicted of a criminal offence unless inter alia the crime is defined.

- 1.15 When enacted, the Bill will not only remove the inadequacies in the current laws and fill the gaps, but it will also provide modern ways of prosecuting and penalizing arrested pirates and unlawful actors at sea who cannot be so prosecuted and penalized currently because of the absence of the needed exhaustive legal framework even though Nigeria is a party to SUA 1988. Until the Bill is enacted into law, pirates and unlawful actors at sea would not be deterred but would continue to cause havoc and even when arrested, cannot be successfully prosecuted and convicted and penalized under the current inadequate and archaic laws. There is therefore an urgent need to have the Bill submitted to and quickly passed by the National Assembly in order to fill the vacuum.

I thank you for listening.

Mike Igbokwe, SAN.

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