

Right of Ship Access to Port State Under International Law: All Bark with No Bite

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Abstract: By the International Maritime Organization regulations, foreign flagged vessels have the right to navigate waters and enter port states but the port states enjoy the power to set conditions for the accessibility of its ports. Sometimes, however, a memorandum of understanding between the state whose flag a ship is carrying and the port state is required before a foreign flagged vessel is able to navigate the waters and enter the port. The issue of access to ports of other states by foreign flagged vessels has been a subject of controversy among scholars. Although, the right of access is usually granted by treaty between the states concerned, the general view is that there is no such separate customary right. A more accepted view is that the states are entitled to prescribe and enforce circumstances for port entry. The paper takes into account the general principles of international law concerning foreign flagged vessels' rights of access to port states. The paper concludes by arguing that the international instrument which grants the right of access to foreign flagged vessels is ineffective because port states grant access to foreign vessels that meet their conditions.

Key words: International law, Port state, Ship and Security.

INTRODUCTION

In order to examine the law regulating ports under international law as well as foreign flagged vessels' rights of access to port states, one must also consider the principle of freedom of the high seas in relation to right of access to ports as well as the several attempts at establishing a right of access of foreign flagged vessels to ports. One must also look at the right of states under international law with regard to right of denial of foreign vessels' access to port on the ground of a security threat and this is done with specific reference to the sovereign rights of a state. A port state may deny access to its ports where a ship has failed to meet the requirement of such entry, hence the international instrument which gives right of access to ship becomes worthless and this is why the paper argues that the instrument only barks and does not bite. The regulation cannot also avail the ship in the circumstance under consideration as the port state considers its interest, particularly where entry would affect the security and peace of the state. The issue of security or security interest in the maritime sector deserves great attention in the light of changing dynamics it is assuming in ports and the high seas. Security issues or interests remain significant particularly having regard to the interest of different states, inter-state relations and indeed the internal decision-making of a state. The protection of sovereignty and national interest remain fundamental to maritime security as there is increasing acceptance of common interests that exists among states when seeking to respond to a variety of maritime threats (Natalie Klein, 2011). This is why states view access to port as part of international and domestic interest and will not deny access except for good cause.

What Is Ship Right of Access to Ports?

The right of access to ports is the corollary of a foreign flagged vessel to enter into the ports of another state known as port state control. Apparently, the principle of freedom of the high seas under Article 87 of UNCLOS does not apply to ports, hence the several attempts to establish a right of access of foreign flagged vessels to ports. The 1923 Convention on the International Regime of Marine Ports was the first treaty that dealing with this issue and it provides for reciprocity by states to the convention allowing access to vessels of all member states.

By the principle of public international law, states must open their ports to foreign vessels except in circumstances where the interest of the states will be jeopardized (Connell, 1984). The issue of access to ports of other states by foreign flagged vessels has been a subject of controversy among scholars (Vasilos, 2007). Although, the right of access is usually granted by treaty between the states concerned, the general view is that there is no such separate customary right. A more accepted view is that the states are entitled to prescribe and enforce circumstances for port entry (Louise, 1996). It has been observed that the coastal state enjoys power to regulate access to its ports by virtue of its sovereignty notwithstanding the rule of international law that ports of a state must be open to foreign vessels. While some authors agree that the right of access to port exists in favour

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of a foreign vessel, others believe that rationalizing that states are legally obligated to maintain open ports, due to the general right and interest is based on free trade and navigation existing between states concerned. However, this view is far from certain as the legal position and argument of scholars opined given above were expressed in opposition to each other. Consequently, scholars have refuted the argument or notion that ports of a state are presumed open under international law (Vasilos, 2007). They however maintain that customary international law does not advocate a general notion of a right of port state access that establishes no basis for a right of entry into maritime ports.

Argument in Favour of Right of Access to Port:

Some scholars of international law have contended that foreign vessels have a right of access to ports of other states. The advocates of this regime, beginning with Hugo Grotius who was considered the founding father of the law of the sea pronounced the legal doctrine of the freedom of the sea and perhaps the ocean as incapable of being occupied by a state or a state cannot claim sovereignty to the ocean, hence the oceans and seas are free to all nations (Grotius, 1916). This argument was further fortified by the notion that no sovereign could deny port access to a foreign merchant vessel and that any state who denies foreign vessels access to its ports neglects the advancement of international interaction, navigation and trade which customary international law imposed on it (Grotius, 1916). It is on the basis of this that a scholar posited that no state appears to be an island itself from outside the world or refuse to relate with other states in terms of economic and commercial advancement. Expectedly, a state that is willing to achieve this development must be willing to allow access of foreign vessels to its ports. Therefore, the freedom of navigation will be of no meaning if the states do not have the right to the sea and ships cannot traverse the territorial sea of another state to trade with them and improve their economy. Perhaps the circumstances where states would deny the right of access to foreign vessels except on the ground of quarantine or time of war is almost unthinkable. In a nutshell, the reasons for the supposition of the view that there should be a right of access of foreign flagged vessels to state ports control could be summarized as follows:

- i. Every nation is free to travel to every other and trade with it;
- ii. Preventing a foreign flagged vessel access to a port state is tantamount to neglect of the duties of the promotion of international relationship and economic development;
- iii. States are bound to build ports for the sake of maritime commerce and security must be furnished to the merchants ;
- iv. The circumstances under which a state can deny right of access to ports is during the time of war, quarantine etc; and
- v. Customary international allows the right of access to ports.

Argument Opposing the Right of Access to Ports:

Contrary to the view expressed by the proponents of the right of access of the foreign flagged vessels to the ports of other states, scholars have expressed reservation that port states reserve the right to deny access. The proponents made use of the principle that access to port was deemed customary international law as stated in the case of *Saudi Arabia v ARAMCO*, where the issue involves the interpretation of a contractual disagreement between the parties. The Tribunal announced a general responsibility of all littoral states to allow port access to foreign flagged vessels. According to the Tribunal, the ports of every state must be open to all vessels except where the circumstances demand especially the vital interest of the state. What informed the Tribunal decision is the fact that it recognised a sovereign interest of a state in controlling its ports and denying access to its ports during specific situations as provided under the 1923 Ports Convention which permits a contracting state to depart from the principle of equal treatment among sea-going vessels where emergency affecting the safety of the state or the vital interests of the country has occurred. Thus, the circumstances under which a foreign flagged vessel will be denied access must be a temporary one as the state ports control is under obligation to respect and observe the bilateral relationship among them.

In a sharp disagreement with the position stated, scholars have observed that the states are not under obligation to open their ports to foreign flagged vessels and their position was supported by the decision of the International Court of Justice in the case of *Germany v Denmark* ((1969) where the court reflected on the drafters' intent in adopting Article 6 of the 1923 convention to the effect of whether the equidistance principle was to be codified as an existing international customary rule. The court noted that international custom develops based on the significant participation of the state actors and action by a few states cannot constitute customary norms.

Therefore, in exercising the right of denial of access to ports by port states control, it is expected that such will be done in accordance with the customary international law, the treaties which the states have ratified as well as the undertaking it has assumed. The right of access cannot be denied to a foreign vessel where there is a bilateral agreement between the states but in a situation where there is no such agreement the state's sovereign right extends over its internal waters, including ports and a foreign flagged vessel does not have an inherent

right under international law to access a port of another state without prior permission. Indeed, the decision of the ICJ in the case concerning the military and paramilitary activities in *Nicaragua v. United States of America* is of paramount importance in this circumstance as the court stated emphatically that it does not recognise a customary right of maritime port entry for foreign ships. Actually, the decision of the court was informed by the fact that the United States entered into a bilateral agreement with Nicaragua to allow access to her ships which presupposes the rights of navigation and trade. The notion was that the United States could terminate the agreement as specified in the treaty between the parties, however, notice of termination needs to be given to Nicaragua and the United States could not deny access during the period of notice.

From the foregoing, the argument against right of access can be summarized as follows;

- i. The port states reserve the right to deny foreign vessels access to its ports;
- ii. Where there is an agreement between states on the right of access to ports, the states are under obligation to honour the agreement;
- iii. The right of access cannot be denied where the agreement is in existence and will not be denied during the pendency of the notice to terminate;
- iv. Right of entry or access to ports is tantamount to sovereign right of a state

Bearing the argument on the pros and the cons above, it can be deduced that the right of access to ports is from customary international law. Essentially, foreign flagged vessels would only have right of access to state ports provided that three conditions are met. First, there is a bilateral agreement on the right of access to ports between the two countries in question;

In the case of *Khedivial Line v Seafarers' International Union* (278 F.2d 49, (2d Cir. 1960) a United Arab owned merchant vessel was denied access to the port of New York, wherein the plaintiff sought *inter alia*, an injunctive relief and damages based on international right of access. The court in deciding the case stated as follows;

“Plaintiff concedes that there is no treaty between the United States and the United Arab Republic granting the latter’s vessels free access to United States ports. Plaintiff has presented no precedents or argument to show either that the law of nations accords an unrestricted right of access to harbors by vessels of all nations or that, if it does, this is a right of the foreign national rather than solely of the nation. In any event the law of nations would not require more than comity to the ships of a foreign nation, and here they are cause of the picketing is a harassment of American shipping and seaman by the United Arab Republic that is not denied.”

It is apparent from the decision of the court that the United States has the sovereign right to deny access to foreign vessels, but preserves the principle of equality of treatment of foreign vessels, hence denial of port access should not be done random or unjustifiably (Vasilos, 2007).

The two other conditions are;

1. The foreign flagged vessels have met the requirements for ports entry as laid down by the port state. These requirements are often found in the laws and regulations of the port state. (*Patterson v Bank Eudora*, 190 U.S (1903);
2. The port state may publish regulations guiding port entry (Vasilos, 2007).

Ports and United Nations Convention on The Law of The Sea (UNCLOS) 1982:

The United Nations Law of the Sea Convention (UNCLOS) 1982 is one of the most remarkable and innovative multi-lateral treaties in world history. In its quest to create a new and all-inclusive legal regime of the world’s sea, the UNCLOS encompasses nearly every use of the oceans resources. Indeed, not only does the UNCLOS codify existing concepts of the ocean law, such as the territorial sea and contiguous zone, it also creates fundamentally new maritime zones; such as the exclusive economic zone, archipelagic waters and international straits. Thus, the UNCLOS provides exhaustive articles on both the rights and duties of the coastal state, as well as the freedoms and limitations of ocean-going vessels in each respective maritime zone, the latter being the subject of discourse in this heading.

Consequently, in the face of its innovative work, the UNCLOS only ostensibly deals with the issue of right of access to ports. It is evidenced from the provision of the UNCLOS that apart from one narrow provision concerning the right of innocent passage in internal waters which has been considered as part of a coastal State's territorial sea, the UNCLOS provides only definitional articles. The UNCLOS defines ports as outermost permanent harbour works which form an integral part of the harbour system, regarded as forming part of the coast. Hence, the scope of the UNCLOS with respect to ports is to merely delineate internal waters and ports from the territorial sea. A cursory look at the provisions of the UNCLOS reflects as if the legal regime of ports access is not within the scope of international law of the sea but comes instead under the sovereignty of a state which includes both its territory and inland waters. It is logical therefore to infer that ports will be governed by a legal regime similar to the national law of a state quite different from the international law of the sea.

The UNCLOS covers all areas of four Geneva Conventions of 1958 and a lot more. It focuses *inter-alia* on the rights and duties of states in the territorial sea and the exclusive economic zone, the right of transit passage in international straits, environmental protection (Abdul Ghafur, 2011). The UNCLOS (Article 218 (1) makes

provisions regulating ports and allows state to institute proceedings for violation of its national laws and regulations to enhance port state jurisdiction as a possible concession between the maritime and coastal state interests. It allows for the port state's enforcement jurisdiction of appropriate international rules and standards for violations taking place on the high seas but does not make allusion for the port state to exercise jurisdiction over violations occurring in the state's EEZ outside the territorial sea. In essence, Article 218 (1) of the UNCLOS does not confer power on port states more than the coastal state to take national measures exceeding those international rules and standards. However, dissimilarity could perhaps be drawn between offending ships that are port-bound and those that are simply transiting. It has been argued that the limitation of generally accepted international rules and standards is germane only if the rules are to be implemented against transiting ships, but not so where the ships have willingly entered port and any national laws envisaged under the UNCLOS that go beyond the applicable international rules and standard must relate either to discharge violations in the territorial sea or discharge violation in the EEZ (Alan Khee-Jin, 2010).

Indeed during the early period of the United States Convention on the Law of the Sea negotiations, maritime interests had expressed concerns over the recognition of port state enforcement jurisdiction regardless of the *locus* of the violation. As a sequel to this, a series of draft versions of Article 220(1) at that time showed the emerging idea that the port state's enforcement jurisdiction must be somehow curtailed, either by restricting its enforcement of national measures to the territorial sea alone or permitting the enforcement of only international measures in areas outside the territorial sea (Alan Khee-Jin, 2010 and Renate 1974). Therefore, it was crystal clear that there were already doubts whether to accord enforcement powers to the coastal state if the *locus delicti* was outside the territorial sea, notwithstanding the fact that the offending ships were to later come into port.

Consequent upon the above, the general opinion at the UNCLOS negotiations was for national actions to be allowed in internal waters and the territorial sea only, with international measures being pertinent outside the territorial sea. So, any divergence from this general principle would have to be unequivocally provided for and at the same time these national measures which have been specifically provided are subject to the important safeguards laid out in section 7, Part XII (Alan Khee-Jin, 2010).

Although freedom of navigation is allowed, the coastal states have the rights to protect their internal waters. International law assumes that every port of a state is open to all vessels as this constitutes an essential engine that drives the global economic progress and development (John, 2009). Hence, uninterrupted access of vessels to ports is considered as an important component of the seaborne trade's success story. It has been asserted that port states achieved their economic progress and development by allowing ships access to their ports, albeit international terrorists activities which pose danger to port states that hinder the free flow of vessels access to ports as the state port restrict access owing to national security.

The foregoing is not to say that the port state is powerful over violations occurring in its EEZ, but is only restricted to enforcing the applicable international rules and standards. Hence, the port state could look for alternative forms of remedy where it finds the international rules to be insufficient. It was observed that to avert the strictures of the Article 220 enforcement regime, the following remedies could be useful;

- i. *Resources Protection Measure*- One remedy would be to seek to characterize any national measure within the EEZ as strictly a resources protection measure, as opposed to merely for pollution control. Thus, an attempt at resource protection would be predicated upon the port or coastal state's aspiration to guard its resources within the EEZ from being damaged by ship pollution, steady with its sovereign rights over these resources (Bodansky, 1991).
- ii. *Prescriptive Jurisdiction outside of UNCLOS*- Another remedy suggested was to look for prescriptive jurisdiction outside the United Nations Convention on the Law of the Sea in the form of alternative bases of jurisdiction under general international law such as an effects jurisdiction over extra-territorial conduct. Where this proposition is accepted, it could justify port state jurisdiction over ships' conduct in all the EEZs of states and the whole of high seas. On this score, port states authority need no longer be restricted, as long as an effects link can be made known to exist between the port state and the offence. Interestingly, this extra-territorial line of argument is highly contentious and has received little support, either in state practice or in academic writing (Noyes, 2000). The fact that UNCLOS had sought to provide expressly for Article 218(1) is strong evidence in itself that the parameters identified within that provision must govern port state jurisdiction for extra-territorial events, at least in as far as state parties to UNCLOS are concerned (McDorman, 1997).
- iii. *Territorializing the offence*- The port or coastal state may possibly adopt the approach of re-characterizing the offence by making the entry into port or the territorial sea itself the relevant offence where the ship has not complied with national requirements on discharge or operational measures. Conversely, this approach of territorializing the offence is no less a controversial strategy to get around the accord reached by UNCLOS. It is fundamentally a premeditated avoidance of the restrictions imposed on jurisdiction that should not be permitted or encouraged (Alan Khee-Jin, 2010). Despite the fact that the approach may continue to be advocated by some to be technically legal, it is, at best, jurisdiction with a feeble and contested prescriptive foundation.

It is however argued that despite the omission of inland transit rights by UNCLOS, a great body of international law on the scope does exist.

Convention on the International Regime of Maritime Ports 1923:

This 1923 Convention on ports came into force on July 26, 1926 and has remained in force till now. However, there are moves to amend the provision of the convention and as of December 31, 2002, accession, ratification or notification of succession had been deposited by 42 states, but United States was not included in the list. Treaties are not a new phenomenon and a number of attempts have been made to guarantee access of foreign flagged vessels to ports through bilateral agreement, such was the Convention on the International Regime of Maritime Ports, 1923. This convention points to a principle of free access to ports to member states' maritime ports and guaranteeing long- standing relationships among the members. However, this Convention has a limited number of signatories and in all likelihood does not represent the position of existing customary law.

It has been argued that the convention on ports does not state unequivocally that

1. all merchant ships have right of access to port with a lawful purpose, notwithstanding their nationality or ownership and prior or following the port of call.
2. the type of ports for which the right of access is granted;
3. the type of ships for which right of access is granted;
4. the circumstances in which the right of access can be denied; and
5. the procedures governing the right of access to ports (Justin, 2002).

Although, the 1923 Convention on ports makes a general provision to the effect that equal treatment is accorded to all vessels, there are exceptions to the equality of treatment of vessels. In essence, there would not be equal treatment to all vessels where a particular vessel constitutes a security threat to a state. Therefore, the convention allows each contracting state to take necessary protective measures in respect of the transport of hazardous goods or goods of a related character, as well as general police measures, including the control of ingress or egress on its territory as long as all these do not result in discrimination which is contrary to the principles of the statute.

The issue of right of access to ports of foreign flagged vessels as enshrined in the 1923 convention on ports enjoys limited support even from court decisions. This position could be gleaned from the approach of the Arbitration Tribunal in *Saudi Arabia v. ARAMCO* when it held that a great principle of public international law recognizes that ports of every state must be open to foreign merchant ships and can only be closed when the vital interests of the state so demand. However, with regard to the arbitration, it can certainly be argued that the fundamental interests of a state would comprise the necessity to keep its country free of the threat of terrorist attacks (Justin, 2002).

From the provisions of the convention under consideration, the following emerged;

1. *Restricted Access to Strategic Ports.* The port convention of 1923 gives the right of access to ports for foreign trade and this principle is not applicable to military or other strategic ports.
2. *Access to Ports and Multilateral Treaties.* The ports convention allows right of access to ports through multilateral treaties. The UNCLOS does not expressly provide for access to ports but merely makes provision for a right of innocent passage though the territorial sea for the purpose of entering or leaving internal waters (Sohn and Noyes, 2004).
3. *Access to Ports and Bilateral Treaties.* The convention gives room for bilateral arrangement between states and indeed there are several agreements between states which incorporate and confirm the principle of freedom of access to ports.
4. *Reciprocity and Access to Ports.* The right of access of a foreign flagged vessel to ports of states is subjected the principle of reciprocity and some national laws like in the United States and reflect this provision of the convention (Sohn and Noyes, 2004). It is important to mention here that a land-locked or doubly land-locked states may not be denied right of access to ports on the ground of reciprocity. This is because in the first place states that are not naturally endowed with sea talk more of ports, hence reciprocity is not possible.

Ports and Maritime Security:

The term 'maritime security' has been accorded different meanings depending on who is using the term or what context a writer is directing its interest. A defense perspective on maritime security for example encompasses a great range of threats than traditional notions of sea power. Maritime security has its goal at ensuring the freedom of navigation, the flow of commerce and the protection of ocean resources, as well as securing the maritime domain from nation-state threats, terrorism, drug trafficking and other forms of transnational crime, piracy, environmental destruction and illegal seaborne immigration (Natalie Klein, 2010 and Bateman, 2010). For a threat to constitute maritime threat, it must give reason for action on behalf of the states(s) perceiving the threat (Natalie Klein, 2010).

Interestingly, the operators of the maritime shipping industry while given their exposition and exegesis of the phenomenon have focused more on the maritime transport system. According to them, the safe arrival of

cargo at its destination without interference or being subjected to criminal activity is synonymous to maritime security and safety (Raymond and Morrien, 2008). However, it is essential to mention that those measures employed by owners, operators and administrators of vessels, port facilities, offshore installations and other maritime organization to protect against seizure, sabotage, piracy, pilferage, are surprising (Mejia, 2003 and Hawkes, 1989). The IMO maintained that any act of protection against unlawful and deliberate interference with peace and harmony of the sea is maritime security but however draws a clear distinction between maritime security and safety. Maritime safety involves any act of preventing or minimizing the occurrence of accident at sea that may be caused by substandard ships, unqualified crew or operator error.

It is apparent from the foregoing that the issue of a long-winded definition for the term maritime security has been eschewed by various discussants and they concentrate essentially on what constitute maritime threats (Nordquist, 2008). Notwithstanding the seemingly in-concise definition of the term maritime security, one can safely maintain that maritime security is a precautionary measure put in place at sea or port, the omission of which may cause death or apprehension of death by person(s) whose intention is to gain a targeted goal (Halberstam, 1998).

Port security is important to international commercial development but the continuing development in genuine international commerce in the maritime sphere has been accompanied by rising criminal threats. This threat to maritime security comes in many varieties to wit; smuggling of people, drugs, weapons, including Weapon of Mass Destructions (WMD's), and other contraband, as well as armed robbery and piracy and against vessels. Incidents of maritime crime are likely to be concentrated in areas of serious commercial maritime activities and this could be seen where there is major political and economic volatility, or in regions that have little or no maritime law enforcement capacity. In recent times, criminals are usually well prepared and equipped with sophisticated communication gadgets, destructive weapons and high-speed craft. The capabilities to board and hijack large ongoing vessels, confirmed the series of tactics and intelligence the terrorists could adopt in carrying out this heinous crime.

While attempting to face the challenges of maritime security, the International Maritime Organization has put in place a Convention on maritime security. The convention on maritime security is a unique convention in that it tries to suppress any unlawful act on board vessels and sustains /promotes commercial activities via the sea. It is not in doubt that person(s), in order to achieve ulterior motives tend to undermine the machinery in place at ensuring security of life and property at sea. However, a lot of issues are associated with the provisions of the IMO on security challenges ranging from applicability of the convention to the offender who is not a national of a state who has ratified or subscribed to the convention, jurisdiction of state to try an offender on board a vessel and indeed the implementation of the provisions of the IMO on maritime security. Activities often regarded as constituting maritime threats include the movement of terrorists, terrorist attacks, raising funds for terrorist activities through shipping activities, shipping of sophisticated weapons, drug trafficking, unlawful ingress and egress of people, piracy and armed robbery at sea (Natalie Klein, 2011 and Roah, 2004).

Ports security has a significant impact on the number of vessels that call at a particular port, typically, maritime port operations are within the jurisdiction of port state control but under customary international law and United States Convention on the Law of the Sea (UNCLOS), 1982, foreign flagged vessels have the right of innocent passage. Innocent passage does not guarantee access to ports, nevertheless, the commercial interest of states demands that world's maritime ports open to international trade as a reflection of consensus among the sovereign states and not a product of any customary international responsibilities or obligations (Kirongosi, 2007). Therefore, ports security plays a central role in maritime security and this is why UNCLOS made it clear that coastal states have power to issue regulations on ports security and matters relating to safety at ports.

There are several lacunas in the existing international law in respect of maritime terrorism. The problem is multifaceted because of different rights and obligations as it involves a wide array of parties such as flag, coastal and port states as well as the 'shippers and manufacturers' claims of existing rights. The intricacy of the problem demands that any new approach would entail international cooperation. It has been argued that one of the most apparent solutions to the problem of maritime terrorism is to establish regional anti-terrorism conventions as this could involve creating homogeneous standards for the sharing of intelligence information among port states, reciprocal enforcement inspection of ships and cargo and inspection rights in the region's maritime zones (Menefee, 1988). However, a suggestion of this nature would certainly involve states conceding a certain degree of national sovereignty and could contravene some sections of UNCLOS (Article 2 of UNCLOS). Although, arrangement by two or more states to suspend operation of the provision of UNCLOS is permitted among the contracting states parties, the states parties in making such arrangement can deviate from the general principles applicable under the UNCLOS (Article 311 (3)). Despite this, UNCLOS may in fact permit this type of agreement between states.

The regional attempts at controlling terrorism posited above would be similar to the attempts by the United States and Caribbean states to control drug trafficking. In about 15 years ago, the United States has entered into what is called 'Ship Rider Agreements' with some states (Davis-Mattis, 2000). These agreements empower the U.S. Coast Guard with extensive rights to conduct interdiction operations to wit; boarding and searching vessels

inside other states' territorial waters, but with caveat that a member of that coastal state's defense force is on the team of the U.S. vessel carrying out such operation (Davis-Mattis, 2000). The most accomplished aspect of these agreements are the facts that those agreements allowed the U.S. Coast Guard to board foreign flag vessels, who perhaps not the suspecting vessel, trail suspect vessels into another country's territorial sea; and detain suspect vessels notwithstanding the fact that the detained vessel and the port state where the vessel is landing are signatory to the Ship Rider Agreements (Davis-Mattis, 2000 and Kathy-Ann, 1997).

Furthermore, it was observed that there are several problems with the type of regional approach posited and applied by the United States. The argument against the approach could be gleaned from the following summary.

1. *Intrusion on the sovereignty of other states*- The act of pursuing, arresting and directing a suspect vessel to another port state intrudes the sovereign right of a state. For political reasons not all states are happy or comfortable with invasion of even limited aspects of their sovereignty or allowing another state to wield jurisdiction on the high seas on vessels flying their flag (Kathy-Ann, 1997). Admittedly, the Ship Rider Agreements are flourishing in part because United States' arrangements with many Caribbean states are regarded as a patron-client nature, which makes the intrusion of sovereignty of another state less of an issue that can be a subject of legal tussle (Kathy-Ann, 1997).

2. *Inadequacies of the Regional Approach*- Undertaking a regional approach to maritime insecurity could in fact prove to be an inadequate response to the problem. It has been argued that modern security threats are international and not just regional. Moreover, owing to sophisticated equipments, threats may surface from any angle of the world, which means that a new approach or regime must not be confined to a solitary geographical area. The exigency of security threat has extended in recent times and goes beyond what was posited or suggested about decades ago that a regional approach be adopted (Menefee, 1988).

Having underscored the problems associated with the regional approach in tackling the menace of maritime security, it needs be stated that involvement of coastal states and affected flag states could prove useful, taking into consideration local conditions (Menefee, 1988). It was also suggested that a better solution to dealing with the new threats associated with maritime terrorism may lie in the establishment of a new multilateral mechanism. The establishment of port state control regimes granted national maritime authorities the inherent power both under international convention and national legislations, to board a vessel, inspect and probably arrest merchant vessels that fly a foreign flag. The goal of port state control strategy is to make sub-standard shipping out of the viable marketplace through expensive detentions for not adhering to international regulations (Menefee, 1988). The port state would not close its port except on a good cause. The good cause that may constitute good policy for port closure by a state include national security, public health, political reprisal etc (John, 2009). Therefore, the above backdrop prompted a number of legal initiatives undertaken with the intention of improving maritime security aboard ships, at ports and sea. These initiatives include the ISPS Code, Container Security Initiative, etc. Islamic law recognises a thorough search of all the passengers and the crew and assesses them carefully in order to discover any evil in them (Khalilie, 1998).

Conclusion:

Maritime security has been redefined in the twenty first century and the ultimate effect of the new initiatives upon world trade and maritime commerce remains uncertain. It merits mentioning that the September 11, 2001 hijacking and bombing of the World Trade Centre and Pentagon has dramatically increased the protective measure in maritime ports. A state has exclusive interest with regard to maritime security, yet there are a range of characteristics relating to maritime security that reveal a shared interest of states in finding suitable responses to maritime security threats. It is suggested that more than one state needs to tackle transnational crimes if efforts to reduce its episode is to succeed. Criminal activity has gone beyond imagination in maritime ports to such extent that certain numbers of states would be affected during the enterprise of this heinous crime. This is because the perpetrators may be nationals of different states, the vessels involved may be flagged to another state, possibly more than one vessel may be utilised to carry out the mission, vessels may traverse waters of various states and of course call at different ports before getting to the final destination. Cooperation of both regional and international level will be useful as a key response to combating maritime security threat. Therefore, states in their efforts to control the maritime domain have set conditions for accessibility of its ports by foreign flagged vessels notwithstanding the international instrument which allows such right. It means essentially that international regulations regarding right of access to port state is ineffective.

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*This paper contains some parts of the on-going research at Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Malaysia.

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