1. **Introduction**

Nigeria has been a significant beneficiary of maritime trade, with the shipping sector responsible for supplying various goods and services to the country. Seaports are critical infrastructures that connect producers and consumers across different regions of the world. They serve as a gateway for international trade and provide access to markets around the globe.[[1]](#footnote-1) Seaports have long been recognised as important drivers of economic growth, and their development has been a key priority for governments and businesses all over the world.[[2]](#footnote-2) However, this has also made it the target of individuals with bad intentions and negative trade issues. 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. 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 is carried out on the basis of sovereign rights of a state. A port state may deny access to its ports where a ship has failed to meet its requirement of such entry. However, international instrument gives right of access to ship may become worthless premised on the fact that international ships in the course of carriage of goods by sea must comply with national or domestic conditions as regards to entry into ports. 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 in coastal states ports. 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.[[3]](#footnote-3) This is why states view access to port as part of international and domestic interest and will not deny access except for good cause.[[4]](#footnote-4)

1. **Conceptual Frameworks on Access Right of Ship in Foreign Ports**

In common parlance, ports are defined by synonyms or common features, such as a harbour, wharf, or seaport. Fishing ports are more diverse, sometimes lacking any port facilities particularly associated with shipping. For instance, fishing ports would include beach landing areas. The United Nations Convention on the Law of the Sea[[5]](#footnote-5)refers to ‘ports’ without definition*.[[6]](#footnote-6)* TheAgreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishingdefines ports as including analogous “offshore terminals and other installations where port services are available. Ports are thus simply locations equipped to enable vessels to visit a state and/or access port services. This definition is without prejudice to the existence of any specific infrastructure or port services.

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 law of sea does not apply to ports, consequently, the several attempts to establish a right of access of foreign flagged vessels to ports.[[7]](#footnote-7) The issue of access to ports of other states by foreign flagged vessels has been a subject of controversy among scholars, apparently predicated on the principle of public international law requiring states to open their ports to foreign vessels except in circumstances where the interest of the states will be jeopardized.

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. It has been observed that coastal states enjoy powers 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 of a foreign vessel, others maintain 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.[[8]](#footnote-8) This view is uncertain as the legal position and argument of some scholars are in opposition to each other. Consequently, scholars have refuted the argument that ‘ports of a state are presumed open under international law.’[[9]](#footnote-9) Furthermore, they assert 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.

1. Do foreign ships have Right of Access to Ports?

Ship right of access to ports is the corollary of a foreign flagged vessel to enter into the ports of a third party state known as port state control. Significantly, the principle of freedom of the high seas provided in Article 87 of UNCLOS does not apply to ports, hence the need to establish the proper right of access of foreign flagged vessels to ports.

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.[[10]](#footnote-10) 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.’ This is premised on the fact 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.[[11]](#footnote-11)

Significantly, any 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 effect 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. The reasons for the supposition of the view that there should be a right of access of foreign flagged vessels to state ports control is premised on the following:

1. Every state is free to travel to every other state 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, and *et cetera*; and

v. Customary international law allows the right of access to ports.

1. Foreign Ships should be opposed to 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 involved 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.

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.*[[12]](#footnote-12) The author aligned with position of scholars and the decision of ICJ that ports states are not bound to open their ports to foreign vessels.

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. But note that 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. The case of *Nicaragua v United States of America*[[13]](#footnote-13) is fundamental. 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.

Drawing attention from the above, there are other regimes appertaining to foreign ship access to ports.

1. International Regime of Maritime Ports Convention 1923

The 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. 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.[[14]](#footnote-14)

The 1923 Convention on ports makes a general provision to the effect that Most Favoured Nations Standard or principle should apply to all vessels however there are exceptions to the equality of treatment of vessels. 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*[[15]](#footnote-15)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.

1. The Regime of the Law of the Sea 1982

The United Nations Law of the Sea Convention 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 ocean 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.[[16]](#footnote-16)

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.

1. Entry into port under Force Majeure

The concept of force majeure originated in French [civil law](https://www.britannica.com/topic/civil-law-Romano-Germanic) as part of the [Napoleonic Code](https://www.britannica.com/topic/Napoleonic-Code) and has been incorporated into the [common law](https://www.britannica.com/topic/common-law) and [civil law](https://www.britannica.com/topic/civil-law-Romano-Germanic) of many countries. A force majeure clause is commonly written into commercial [contracts](https://www.britannica.com/topic/contract-law) and international [treaties](https://www.britannica.com/topic/treaty). **Force majeure**, also known as superior force, in [commercial](https://www.britannica.com/topic/business-law) and [international law](https://www.britannica.com/topic/international-law), is an extraordinary and unforeseen event whose occurrence would free the parties in an agreement from certain obligations to one another. An example of force majeure events will include natural disasters (fire, storms, floods), governmental or societal actions war, invasion, civil unrest, labour strikes), and infrastructure failures (transportation, energy.[[17]](#footnote-17) Some other examples include the following:

1. There is a clear customary law right of entry into ports by ships in distress in order to preserve human life.
2. A ship does not have an absolute right to enter foreign ports or internal waters in order to save its cargo, where human life is not at risk, if the gravity of the ship’s situation is outweighed by the probability, degree and kind of harm to the coastal State that would arise were the ship allowed to enter.
3. It appears to be a well settled rule of customary international law that a ship entering a foreign port by reason *of force majeure* or distress is not subject to the jurisdiction of the port State in connection with actions to relieve the distress.

In Diplomatic practice,if a vessel be driven by weather into the ports of another nation, it would hardly be alleged by anyone, that, by the mere force of such arrival within the waters of the state, the law of that state would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man.

1. The Right of Entry in Distress

The right of ships in distress to seek refuge in ports has been long recognized in customary international law. This right has been explicitly recognized in respect of preservation of human life, but there has been no legal consensus as regards its conflict with the interests of the coastal State. The debate on the right of ships in distress to enter a port of refuge or the right of a coastal State to refuse entry is of great importance in both public and private maritime law. While this debate has been on-going, it was the aftermath of maritime disasters such as the Erika and Prestige that brought it into limelight. This has given birth to certain developments, including the International Maritime Organization's Guidelines on Places of Refuge and the EU legal regime contained in the Erika I package in addition to the contribution from various other sources.[[18]](#footnote-18)

All merchant ships in distress therefore, have a right to enter the ports of a foreign State. This right is grounded upon humanitarian considerations. It therefore attaches to the distress boat rather than to its flag State and is not affected by questions of recognition.[[19]](#footnote-19) The 1982 Convention Law of the Sea on the other hand is silent on the right of ships in distress to enter foreign ports. This customary right is universally accepted and arises from the humanitarian obligation to admit vessels seeking refuge in port by reasons of weather, fire on board, engine trouble or other disaster endangering persons on board.

1. Maritime Security in Sea Port

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 defence 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[[20]](#footnote-20). For a threat to constitute maritime threat, it must give reason for action on behalf of the state perceiving the threat.

1. **Other Regimes**

International law, in general, does not grant a right of entry into ports for foreign ships unless there is a treaty conferring such right to the ships of the flag state concerned. The customary right of ships in distress to enter any port or place of refuge is an exception to this general rule. This customary right has not been codified in any international convention but has been widely acknowledged and defended by maritime States and jurists alike. According to this exception, ships are entitled to certain “humanitarian considerations and jurisdictional exemptions when they are forced into a foreign jurisdiction as a result of force majeure. Although the substantive law on the right of refuge is to be found in customary law, it has to be treated from the conventional law perspective as well for both are intertwined. While the origin of this customary right is not evident, its early appearance in treaty law can be traced to the Jay Treaty of 1794 and since then it has found a place in various maritime treaties. This right is also implied in the LOSC provisions on the duty to render assistance to persons at sea, the privileges and immunities granted to foreign ships in case of force majeure. This is further confirmed by the provisions which make the exercise of the authority by coastal or port States over foreign ships conditional upon the fact that the ships must have entered their waters voluntarily. LOSC also provides that passage in the territorial sea includes stopping and anchoring when they are rendered necessary by force majeure or distress.[[21]](#footnote-21) Thus, distress or force majeure continues to be an exception to the absence of a right of entry into ports. Therefore, the recognition of the right of a ship in distress to enter a place of refuge is not in question. What is in question, however, is the absolute or conditional nature of this right. At the outset, there has been no formulation of the right of refuge for ships in distress which has gained universal recognition. The only situation where the right has been universally accepted is in respect of humanitarian conditions.[[22]](#footnote-22) Thus, supporters of the ‘conditional right of access' state that right of refuge is fundamentally based upon humanitarian concerns and even here, if the master/crew abandon the ship, the ship itself does not have a right of refuge. On the other hand, supporters of the ‘absolute right of access' state that while the right of refuge does have humanitarian underpinnings, it cannot be said to apply to humanitarian considerations alone. This argument is sought to be supported by the fact that assistance must also be given to the ships themselves, the jurisdiction and financial immunities which such ships enjoy. The theory of absolute right of access has not enjoyed much support, either in literature or in State practice.

The suspension or annulment of the right of a ship in distress to seek a place of refuge has been provided for in the 1989 Salvage Convention, the International Statute of Maritime Ports and by a logical extension of the 1969 Intervention Convention, that is, if a coastal State is permitted to intervene on the high seas to prevent environmental pollution, it can refuse entry into its ports for a ship which poses such a threat. Recent State practice, including domestic case law, indicates several cases where refuge was denied, especially on environmental grounds. A compilation of rejections alone does not indicate that the right of refuge is no longer existent, but merely indicated that it is not an absolute right. It is surprising to note that the opposite of the theory of absolute access, has been limited to the theory of absolute right of refusal by the coastal State or the theory of balancing of interests. While the former is not very popular as most States acknowledge a right of refuge for ships in distress, the latter theory has been gaining global support. According to this theory, coastal States may decide whether to grant or refuse refuge, balancing all interests involved in every case. Coastal states have the right to protect their marine environment and other related interests from ships posing a serious threat to such interests.

The balancing of interests’ theory is the most preferred of all the above mentioned approaches, as it recognizes the right of access and takes into account environmental and other relevant interests. It must, however, be noted that this theory is easily susceptible to abuse and too broad interpretations in favour of either the coastal state or the ship, neither of which may yield the desired result. The problem lies in the fact that the act of balancing of interests is done by the coastal state in question, not an independent authority or not even subject to any consultation with such an authority, and without any parameters for an objective technical evaluation of the situation. In essence, it does not provide for a concrete solution, not even on a case-by-case basis. While this theory is similar to the balancing of interests’ theory in approach, in principle it assumes the existence of a right of access.

This theory presumes the existence of a right of access and provides that the right can be refused only when certain conditions exists. According to this theory, right of refuge for ships in distress is the norm and refusal the exception. This is in accordance with the general agreement that granting a place of refuge to a ship in distress in an early stage may help in preventing or minimizing environmental pollution. At the same time, it accommodates the arguments of the coastal states that providing a place of refuge to ships which pose a grave and imminent danger to their coasts would result in environmental consequences. This theory accommodates the right of a coastal state to self-protection and its duties under customary or conventional international law. Coastal states have a duty to protect and preserve the marine environment, to ensure that pollution arising from incidents or activities under their jurisdiction does not spread beyond areas under their jurisdiction and not to transfer, directly or indirectly, pollution from one part of the environment to another. Nonetheless the European Traffic Monitoring Directive takes this approach and the Guidelines do so too.

The paper is of the view that theory of conditional refusal would be a preferable approach with respect to offering places of refuge to ships in distress. However its acceptance, especially among coastal states, is a question which involves political and economic repercussions.

**4. Foreign Ship Right of Access in Major Nigerian Seaports**

Nigerian sea ports are currently confronted with a lot of insecurity challenges, particularly, the uncontrolled human traffic in and out of the seaports. This is one of the main reasons that the US imposed conditions of Entry on Nigerian Seaport originating from all the facilities tagged non-compliant to International maritime Organisation Standard, International Ships and Ports Security code to stem out the activities of terrorists. The main Nigerian seaports are as follows:

Apapa Quays. Established in 1913, the Apapa Quays is Nigeria's first and largest Port. The Nigerian Ports Authority oversaw its construction and has since been the country's main seaport. The Port is accessible to all types of transportation and is reputable for its impressive handling of heavy goods.

Tin-Can Port. Located in Lagos and 7 kilometres northwest of Apapa Quays, the Tin Can Port facilitates international goods' movement. The current Tin Can Port is a merger of what used to be the Roro and Tin Can Island Ports. It is the second largest Port in Nigeria after Apapa Quays.

Lekki Deep Sea Port. Lekki Port is a recently completed a multi-purpose, deep-sea port in the Lagos Free Zone. It is the largest seaport in Nigeria and one of the biggest in West Africa, with double the depth of the Apapa port. It can take 2.5 million TEUs twenty-foot equivalent units, that is, 20-foot long containers compared to Apapa port’s 650,000 TEUs.

Onne Port. Onne Port is another major seaport in Nigeria. In addition, it is in one of the world's largest oil and gas-free zones, making it the go-to Port for supporting oil and gas production and operations in Nigeria.

Port-Harcourt port. The Port Harcourt seaport has a quay length of 1259 metres. The Port Harcourt port makes it to the list as another centre port in Nigeria. It is located in the Niger Delta and has 16 mass oil storage tanks with a capacity of 3,048 tonnes. The Port Harcourt Port is unique because it is in one of the world's largest unrefined petroleum locations. Also, it serves multiple ports, providing pilotage and towage services, and acting as the 'mother port' to a few jetties.

Calabar Port Complex. Before the Nigerian government took over its operations in 1969, the Calabar Port functioned as a historic trade centre for the Eastern and Northern Nigerian states with foreign countries, before and during the colonial years. The Port is mainly used for transporting petroleum products from Calabar and Akwa-Ibom. It should be noted that no ship is to enter or leave the port without the permission of the Harbour master.

Flowing from 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 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 the on international right of access.

1. **International Effort to Accommodate Ships in Distress**

The right of a foreign ship in distress to seek a place of refuge is not explicitly governed by any international regime, including the law of the sea. As discussed in the previous section, foreign ships do not have a right of access to ports and the customary right of access in distress situations is an exception to this general rule.[[23]](#footnote-23) The UNCLOS does not explicitly deal with this but merely provides for a duty of the coastal states to render assistance to persons at sea, that port state jurisdiction can be exercised only when foreign ships enter a port or internal water of the coastal state voluntarily and grants certain privileges and immunities to foreign ships entering a coastal state's waters owing to distress or force majeure. Much of the UNCLOS's provisions is concerned with what happens after a ship in distress enters port but not directly on the question of whether there is a right of such ships to seek a place of refuge and if yes, on what criteria or conditions. The absence of a clear legal framework governing this issue has triggered various interpretations leading to rejections of requests to safe haven. This in turn may amount to a violation of the coastal state's duty to protect and preserve the marine environment, especially when such a rejection leads to the spread of pollution over a much wider area.

1. **International Legal regime on Places of Refuge**

The IMO has been considering places of refuge for ships since the year 2000. It was triggered by the incidents of the Erika' and Castor. The Prestige disaster brought this issue to the top of IMO's agenda and the Guidelines on Places of Refuge for Ships in Need of Assistance were adopted in December 2003. The document does not address rights and obligations, but merely ‘the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal state to protect is coastline.[[24]](#footnote-24) The Guidelines are applicable where the ship is in need of assistance but safety of life is not involved and provide that the best way of preventing/minimizing damage or pollution would be to lighten its cargo and repair the damage in a place of refuge. However, to bring such a ship into a place of refuge may endanger the coastal State's environmental, economic and security interests. The Guidelines do not, therefore, create a legal duty for coastal States to provide a place of refuge for ships in need of assistance. The coastal states have to decide whether to grant or refuse access and the guidelines provide a framework for assessing the situation of ships in need of assistance to arrive at this decision.

The International Maritime Organisation made an international standard a step forward, though it did contain the final solution to the problem. Both instruments leave the decision to grant or refuse refuge to coastal states and have not brought any change to the fundamental framework.[[25]](#footnote-25) They do not establish mechanisms to ensure that the decision-making process remains technical and not political. It has been suggested by some flag States and several writers that the best alternative would be a Convention on the issue. This idea has been strongly opposed by States in general and coastal States in particular. Certain States which face a high number of distress situations owing to their location are not ready to bind themselves, unless there are financial securities and risk-sharing mechanisms. Above all, it may not be possible to lay down a mandatory rule, regarding such a highly political and practical issue, which is acceptable to coastal States.[[26]](#footnote-26) However, the CMI's Draft Instrument offers a fresh look on the issue and may be worth being pursued. It lays down the right of refuge as the general norm, which can be refused for reasonable causes, the reasonableness of which shall be determined on the basis of objective criteria. It balances the interests of coastal States by calling for sufficient financial security up to a certain limit for the provision of refuge.

The possibility of an international instrument on places of refuge looking remote, what is essential now is the need for States to uphold their duties and responsibilities under existing customary and conventional international law. It is essential for States to understand that offering a place of refuge to ships in distress may serve their interests better than pushing them away into the open ocean. Coastal States have to realize that in doing so they will be violating their duty to protect the marine environment and may incur responsibility.

1. **Conclusion**

The law concerning the entry of foreign merchant ships into maritime ports must be considered in the light of comments on matters peripheral to the right of entry, that ports of a State which are designated for international trade are, in the absence of express provisions to the contrary made by a port State be, presumed to be open to the merchant ships of all States.[[27]](#footnote-27) Moreover, such ports should not be closed to foreign merchant ships except when the peace, good order, or security of the coastal State necessitates closure.

Although port States reserve the right to deny foreign vessels access to its ports such as practiced in Nigeria as a major maritime State. However, where there is an agreement between states on the right of access to ports, the states are under obligation to honour the agreement and apply the most favoured Nations principle to all ships irrespective of nationality. 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.

The right of entry or access to ports though a sovereign right of a state, however, 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, and vessels may traverse waters of various states and of course call at different ports before getting to the final destination. No ship can enter or leave port without permission of the harbour master in all the seaports in Nigeria only in accordance with proper order as permitted by the conditions laid down under Nigerian law. Therefore, cooperation at both regional and international levels will be useful as a key response to combating maritime security threat. 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. However states must ensure the safety of their ports and foreign vessels legitimately permitted anchoring in ports.

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

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18. See the Guidelines on places of refuge for ships in need of assistance, IMO resolution A. 949(23), December 5, 2003. [↑](#footnote-ref-18)
19. Ships in Distress, Encyclopaedia of Public International Law, Pp. 287, 289-1989 [↑](#footnote-ref-19)
20. The Nuestra Senora de Regla, 17 Wall 29 (1873) quoted by Kate A. Hoff Claim (United States v Mexico (1929) 4 R. Int’l Arb. Awards 444 (1951) [↑](#footnote-ref-20)
21. E. van Hooydonk, ‘The Obligation to Offer a Place of Refuge to a Ship in Distress', CMI Yearbook 2003 - A.V. Lowe, 1977, ‘The Right of Entry into Maritime Ports in International Law', 14 San Diego Law Review 597. [↑](#footnote-ref-21)
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24. R. Shaw, 2003, ‘Places of Refuge- International Law in the Making?', 9 Journal of International Maritime Law p. 159 [↑](#footnote-ref-24)
25. IMO Guidelines on Places of Refuge, Resolution A.949(23), 5.12.2003, reproduced in IMO Doc A 23/Res.949 5.03.2004 - Information Resources on Places of Refuge [↑](#footnote-ref-25)
26. R.R. Churchill and A.V. Lowe, The Law of the Sea, Manchester, 1999 p.125 [↑](#footnote-ref-26)
27. A precedent for the inclusion of a rule of comity in a convention will be found in Art. 19(1) of the 1958 [↑](#footnote-ref-27)