

# MARITIME SURVEILLANCE AND ENFORCEMENT PRIVITISATION GALORE IN NIGERIA: A COMPROMISE OF STATE SOVEREIGNTY

By

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## **Abstract**

*The freedom to participate in seaborne trade is one of the most vital engines motivating global economic progress and development in recent times. Coastlines, territorial waters, high seas and ports depend, to a large extent, on security in the world maritime domain. However, the serious threats posed to global order by the international terrorism, piracy, oil theft and bunkering, to mention but a few, have given rise to overriding and all important national security concerns among the port states. In response to these challenges, some states have increased their strategies with the establishment of maritime security enforcement forces such as the United States Coast Guard (USCG) in the United States, Nigerian Maritime Administration and Safety Agency (NIMASA) in Nigeria, Malaysian Maritime Enforcement Agency (MMEA) in Malaysia, etc. to address the problem. Conversely, Nigerian government has changed the policy and firmed out enforcement and surveillance activities in the entire Nigerian maritime domain to a private security company. This aim of this paper is to investigate the issue of privatising enforcement and surveillance mechanisms in maritime sector with a view to determining the appropriateness or otherwise of such privatisation. It has been found that privatization of the enforcement and surveillance mechanisms in maritime sector is ill-intentioned and inherently inimical to good governance and likely to do the nation more harms than good. The paper concluded that the issue of maritime enforcement and surveillance goes beyond the activities of private security company, and besides, the policy usurps the constitutional powers of the legislature which established maritime security forces through the legislature. It therefore recommended that concession of maritime enforcement and surveillance to private security company should be revisited to ensure partial privatization rather than total privatization.*

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## Introduction

Maritime commerce is, no doubt, significant in the world's economic development. The international shipping industry, for a very long time in the world's history, has always been playing major roles in the world trade and economy. In fact, it has been asserted that 95% of the world's cargo is being transported through maritime trade. In the United States of America, for example, more than half of all importations of six million containers are through sea with over two billion dollars' worth of cargo entering ports daily. The above estimation almost represents the impact of shipping business in all the countries with advantage of the seas like Nigeria, U.S.A, Malaysia, Indonesia, Australia, Brazil, to mention but a few. No doubt, world trade is largely depended on maritime transport;<sup>1</sup>hence maritime industries contribute in no small measure to the world's economy. As could be expected of any other business enterprises, the issue of Asymmetric security threats has been a serious challenge to the world's fleet.<sup>2</sup> These range from high sea robbery, piracy, terrorism, oil theft,<sup>3</sup> etc. which at long-run affects the progress of the international economy. Importantly, apart from the provision of security personnel designated to maintain peace and order as well as the enforcement and surveillance on the high seas by various governments of coastal states, shippers have also been engaging the services of the private security companies as guards to their ships in the cause of navigating through seas. The services often render by private security companies to shippers include tracking of ships, safeguarding the ships and crew, recovery of hijacked ships, negotiation for shippers in case of hostage, etc.

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<sup>1</sup>Hong, N, "Maritime Trade Development in Asia: A Need for Regional Maritime Security Cooperation in the South China Sea", in W. Shicun and Z. Keyuan (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, (Ashgate Publishing Ltd, England, 2009) 39.

<sup>2</sup>Xu, K, Myth and Reality: The Rise and Fall of Contemporary Maritime Piracy in the South China Sea, in W. Shicun and Z. Keyuan (eds), *Maritime Security in the South China Sea: Regional Implications and International Cooperation*, (Ashgate Publishing Ltd, England, 2009) 84-85.

<sup>3</sup> Ibid at 41.

Although, countries like Australia, Malaysia, Indonesia, Singapore and even U.S are averse to the strategy on the strength that the policy would aggravate the volatile ocean like straits of Malacca<sup>4</sup>and bring about proliferation of weapons.<sup>5</sup>The strait of Malacca is considered volatile because of series of unrest which have been recorded in the realm. In its supposed bid to follow suit of the practice that is mainly adopted by shippers, Nigeria government engages the services of a private security company for the purpose of maritime enforcement and surveillance - the move that is antithetical to the spirit of the establishment of navy and probably the first world ever.

It is against the above background that this paper examines the concept of privatisation and its goals in economic drive of a given country. The paper also considers the suitability of privatisation in maritime sector especially in the light of restless realm<sup>6</sup> which maritime domain has been classified in recent times. The paper takes into account the constitutional responsibility of the Nigerian navy and concludes that privatising enforcement surveillance of the country maritime domain usurp the functions of the navy. It argues that the practice has no semblance in maritime practice and depicts a weak state.

### **Position of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) on Maritime Surveillance**

Broadly speaking, a coastal state like Nigeria is jurisdictionally competent, and has the exclusive right, to undertake surveillance and enforcement activities within its

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<sup>4</sup>Liss, C, "The Privatisation of Maritime Security- Maritime Security in Southeast Asia: Between a Rock and a Hard Place?" *Working Paper No.141* February 2007 <[www.arc.murdoch.edu.au/publications/wp/wp141.pdf](http://www.arc.murdoch.edu.au/publications/wp/wp141.pdf)> accessed on 6 July, 2014.

<sup>5</sup> Pines, D. L, "Maritime Piracy: Changes in U.S. Law Needed to Combat This Exceptional Threat to National Security" <[http://www.orks.bepress.com/daniel\\_pines/2](http://www.orks.bepress.com/daniel_pines/2)> accessed on 12 February 2014.

<sup>6</sup> Murphy, M.N, "Lifeline or Pipedream? Origins, Purposes, and Benefits of Automatic Identification System, Long-Range Identification and Tracking, and Maritime Domain Awareness", in Herbert-Burns .R, Bateman S, Lehr P, *Lloyd's MIU Handbook of Maritime Security*, (United States of America: CRC Press, 2009), 13. See also Shicun .W and Keyuan .Z, "Maritime Security in the Southern China Sea: Cooperation and Implications", in Shicun .W and Keyuan .Z, (ed), *Maritime Security in the South China Sea: Regional Implications and the International Cooperation* (Ashgate Publishing Ltd, England, 2010) 3.

maritime domain pursuant to the Law of the Sea Convention.<sup>7</sup>This right to undertake surveillance and enforcement activities may extend up to twelve Nautical Miles from the baseline. In the exercise of such sovereign right, a coastal state enjoys the following exclusive rights with regard to undertaking monitoring and surveillance activities:

- i. the economic exploitation and exploration of its Exclusive Economic Zone (EEZ); and<sup>8</sup>
- ii. the exploitation of the sea bed and indeed sedentary species on the continental shelf.<sup>9</sup>

It needs be emphasised that all states, by implication, have rights to undertake surveillance and monitoring in the high seas which the coastal state must give due regard.<sup>10</sup> However, other states must not interfere with the exercise of the freedom of the high seas by vessels flying a foreign flag. The above supposition and exercise of power of sovereignty gives coastal state jurisdiction to legislate domestic law for the purpose of carrying out surveillance, monitoring and enforcement activities within its maritime domain.

It is generally observed that since the end of World War, the issue of traditional maritime threats which is a major role of navy has greatly reduced the world over, but non-traditional or asymmetric threats are on the rise yearly. Asymmetric threats often use methods, technologies and perspectives that are significantly different from those common with regular forces and their target is to exploit weakness of the state against which they fight.<sup>11</sup> On the strength of asymmetric threats arising from maritime waters which are affecting shippers, states like United States, Singapore, Malaysia, Nigeria, Australia, etc. have established a sort of coast guard for surveillance and monitoring

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<sup>7</sup> See the United Nations Convention on the Law of the Sea (UNCLOS), 1982, Article 2.

<sup>8</sup> *Ibid*, Article 56. These activities include exploitation and exploration of living and non-living marine resources which may extend up to 200 nm from the baseline.

<sup>9</sup>*Ibid*, Article 56. This may possibly extend beyond 200 nm from the baseline in certain circumstances.

<sup>10</sup> *Ibid*.

<sup>11</sup> Carrillo, J. A, *etal*, "Changing Asymmetric Threats Require New Responses", Taylor, P.D, (ed), *Perspective on Maritime Strategy: Essays from the Americas*" (United States of America, Naval War College, 2008) 16.

activities. Specifically, Malaysia established Malaysian Maritime Enforcement Agency<sup>12</sup> while Nigeria on its part established Nigerian Maritime Administration and Maritime Agency.<sup>13</sup> These two agencies are empowered under the respective Acts that establish them to carry out surveillance and enforcement of law activities at their respective maritime domain with the assistance of other security forces, but the changing dimension in the case of Nigeria with regard to privatisation of same has been a major concern which is threatening the administration and security in the maritime domain.

### **Navy and Security of Maritime Commerce**

The transportation of over fifty thousand large ships to cross the oceans with 60 percent of all petroleum produced, almost 80 percent of world commerce and more than eleven million passengers every year, makes the sea a means and scene of new threats.<sup>14</sup> It has been stated that the function of navies the world over is the protection of maritime commerce and foreign policy.<sup>15</sup> Hence, in spite of the deployment of navies from the protection of maritime domain, coupled with the increasing interdependence of economies, indicates that maritime realm is now more complex than ever. For this reason, it becomes expedient that emerging countries like Nigeria strengthen their navies in order to count on them in the event of aggression from asymmetric threats and offering freedom and security at seas. It is important to stress that equipping the Nigerian navy with necessary machineries rather than assigning its roles to a private security outfit will defeat the purpose and intendment of the provision of the Constitution of the Federal Republic of Nigeria 1999 (as amended). For the avoidance of doubt, the Constitution provides that:

*The Federation shall, subject to an Act of the National Assembly made in that behalf, equip and maintain the armed forces as may be considered adequate and effective for the purpose of;*

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<sup>12</sup> Malaysian Maritime Enforcement Agency Act (MMEA) 2004, Section 6.

<sup>13</sup> Nigerian Maritime Administration and Safety Agency Act (NIMASA) 2007, Section 1.

<sup>14</sup> Carrillo, J. A, *etal*, "Changing Asymmetric Threats Require New Responses", Taylor, P.D, (ed), *Perspective on Maritime Strategy: Essays from the Americas*", (United States of America, Naval War College, 2008) 16.

<sup>15</sup> *Ibid* at 15.

- a. *defending Nigeria from external aggression;*
- b. *maintaining its territorial integrity and securing its borders from violation on land, sea and air.*<sup>16</sup>

## **A Brief Chronological Account of Privatisation in Global Perspective**

Historically, privatisation appears to have emerged as a counter action or movement against the development of government in the Western world on the one hand, and dissatisfaction with public service delivery strategy, on the other.<sup>17</sup> This postulation is a move that has mainly given rise to two different meanings of privatization. First, privatization is said to connote ‘any shift of the production of goods and services from public to private’ or a ‘shifting into non-governmental hand, good and services that are being produced by the government.’<sup>18</sup> Secondly, privatization is conceptualized as a paragon shift of activities or control from the government to the private sector.<sup>19</sup> Hence, the government is divested of the control and ownership, thereby making the investors to assume control and management of such enterprises.

Interestingly, it has been asserted that privatization is a nebulous and incomprehensible idea that evokes serious political reactions. Little wonder then, the furious response often expressed over the concept is largely due to both the political and ideological foundations of the concept. Sometimes, response to the idea of privatization in a given jurisdiction is determined by economic and political position in the world’s economy. This is because where, in the world view, privatisation would affect economic development; the response will likely be against such arrangement by a state government.<sup>20</sup> It is against this backdrop that a scholar

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<sup>16</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended), Ssection 217 (2) (a) and (b).

<sup>17</sup>Eteyibo, E, “Privatization in Nigeria, Social Welfare, and the Obligation of Social Justice”, *Journal of Economics*, 2(1): 37-44 (2011), p.37. See also R. K. Kevin, *Privatization and the Federal Government: An Introduction*, (December 28, 2006) <[www.fas.org/sgp/crs/misc/RL33777.pdf](http://www.fas.org/sgp/crs/misc/RL33777.pdf)> accessed on 17 December 2013.

<sup>18</sup>Bendick, M. Jr., "Privatizing the Delivery of Social Welfare Services: An Idea to be Taken Seriously," in S. B. Kamerman and A. J. Kahn (eds), *Privatization and the Welfare State* (Princeton University Press, Princeton, 1989) 98.

<sup>19</sup>Eteyibo, E, “Privatization in Nigeria, Social Welfare, and the Obligation of Social Justice”, *Journal of Economics*, 2(1): 37-44 (2011) 12.

<sup>20</sup> Ibid.

observed that the ‘more dependent a nation is on foreign investment, the greater the probability that privatization will raise the prospect of diminished sovereignty and excite the passions of nationalism’.<sup>21</sup> It is opined that such passions in certain instances are mixed with issues of national security. Privatisation of maritime monitoring and enforcement to a private individual through his company calls for many questions than answer.

### *i. Privatisation in Nigeria*

As it is the case with most developing countries, Nigeria as a country began its privatization programme in the late 1980s with the main objectives of attracting more investment, opening up the country’s economy to international market forces, attaining macro-economic stability, promotion of economic growth, building a broader tax base system, reducing the nation’s fiscal deficits, subsidies and public sector borrowing, to mention but a few. The committee for the implementation of the privatisation process was inaugurated on the 27<sup>th</sup> August, 1988<sup>22</sup> and was vested with powers to supervise and monitor the implementation of the privatization and commercialisation programme. This committee was mandated to privatize 111 public enterprises while 34 were to be commercialized. Although the activities of the committee were later truncated, it had succeeded in privatising 88 enterprises.<sup>23</sup>

The above process of privatisation regime continued in its wax when President Olusegun Obasanjo announced the desire of

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<sup>21</sup> Starr, P, *The Meaning of Privatization*, (Princeton University Press, Princeton, 1989).37.

<sup>22</sup> Note that the Committee commenced actual privatization early in 1989 with the shares of Flour Mills of Nigeria, African Petroleum, National Oil and Chemical Company, and United Nigeria Insurance Company being issued in the market.

<sup>23</sup> See Eteyibo, E, “Privatization in Nigeria, Social Welfare, and the Obligation of Social Justice”, *Journal of Economics*, 2(1): 37-44 (2011) 37. In the scheme of things, there are two chapters in Nigeria’s privatization program. The legal framework for the first chapter was provided by the Privatization and Commercialization Decree No. 25 of 1988, which was introduced by the then head of state, Ibrahim Badamosi Babangida (1985 – 1993) as part of the Structural Adjustment Program. The Decree established the Technical Committee on Privatization of Public Companies (TCPC), which was made up of eleven members drawn from both the public and private sectors, and had as its first chairman Hamzad Zayyad. The second chapter, which was more or less an extension of the economic policy initiated and vigorously pursued by the Babangida administration (in the first chapter) began on the 20th of July 1998 with the signing of the Public Enterprises Privatization and Commercialization Act of 1999.

the Federal Government of Nigeria to divest through privatisation and commercialisation concerning almost 100 state-owned enterprises in the area of manufacturing, production, infrastructure, financial sectors, etc. which include sectors like cement, machine tools, vehicle, sugar mills, telecommunications, ports, power, airways, etc. While one cannot deny the obvious that some of the privatised enterprises like telecommunications, hotels, etc. were successful, substantial number of them, like power supply, oil marketing and refinery, air transport and vehicle assemblage could not make it as their privatisation have been realistic thereby subjecting the populace to a situation of helplessness. Up till the recent time, apart from buying at exorbitant price, petrol is still unavailable in Nigeria and majority of Nigerians cannot boast of two hours uninterrupted power supply in a day. All these have greatly affected economic well-being of average Nigerian citizens. Although, throughout the gamut of privatisation process as exemplified above, port security monitoring and surveillance was never part of the arrangement and in fact the government, in its effort to ensure adequate maritime security and safety, established the Nigerian Maritime Administration and Safety Agency through an Act of National Assembly.<sup>24</sup> However, in what appears self-serving and ways of satisfying political cohorts, government has, in recent time, privatized monitoring and surveillance in maritime domain to a private security company.

## ***ii. Maritime Security and Privatisation Galore in Nigeria***

It is not an understatement to state that it is counter-productive for a nation to be pursuing or embark on 'privatisation for the sake of privatisation'. Undisputedly, developed nations might adopt privatisation as a matter of policy but same is dicey for developing nations whose teeming population is wallowing in abject poverty. Privatisation as a policy may prove to be a tremendously effective mechanism for growth economically, it is imperative that other non-market variables like national security (maritime security in this instance), enforcement and surveillance are considered in evaluating whether a given nation should privatise its public utilities and indeed the extent of such privatisation. The principles and characterisation of maritime

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<sup>24</sup> Nigerian Maritime Administration and Safety Agency Act, 2007.

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security's privatization must not assume away dimension of the peculiar political and social problems confronting developing economies like Nigeria. For this reason, as a matter of urgency, Nigerian government needs not to throw caution into the winds in divesting its public enterprises like maritime security. It has been argued that privatisation generally may be a good policy; conversely, there is a strong case that it could be made inappropriately as in the case of moral inappropriateness<sup>25</sup> of privatising maritime security to ex-militants. Therefore, it is submitted that privatising a public enterprise which may eventually offer employment opportunities to thousands of the citizens without considering the security implications is socially unjust.

The principle of social justice makes it an obligation on the government to promote a level playing ground for every citizen to maintain a minimum social standard for his living. The government should pursue economic and social policies that promote the quality of life which makes life to be meaningful and worthy of living to every member of the society. These obligations almost have no limitation because it places enormous responsibilities on the government and limits what the government could do with public resources. Hence, the idea of giving huge amount to a crony in the name of security surveillance in maritime domain is baseless. It goes without saying that government is under obligation to use public resources and funds justly, fairly and judiciously. This means that the principle of social justice prohibits government from divesting state-owned enterprises as long as this will undermine the general interest of its citizens.

### ***iii. Privatising Maritime Security: A Compromise of State Sovereignty***

The level of insecurity in maritime domain is on the rise despite high deployment of navy. For example, Arabian Peninsula and Somali remain problematic, regardless of unprecedented presence of navy force. Of all 439 attacks that occurred at the high seas in 2011 alone, 236 was reportedly happened in African vicinity and this represents 53% the world over.<sup>26</sup> Also, there was

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<sup>25</sup> Ibid.

<sup>26</sup> See the International Maritime Bureau, *Piracy and Armed Robbery at Sea: Annual Report, 2011* (London: International Chamber of Commerce, 2012). See *The Economic Cost of Somali Piracy, 2011*, One Earth Future Foundation Working

economic loss to shippers in 2011 as a total of US\$159.62 million was paid as ransom to secure the release of 31 ships hijacked by attackers.<sup>27</sup> This is apart from US\$12 million which was paid for the release of M/V Zirku (a Kuwait oil vessel) that was held for 73 days.<sup>28</sup> Notwithstanding the record and economic loss, privatisation of maritime surveillance poses a lot of danger.

It is observed that the role of private security companies does not involve enforcement of the law and surveillance activities as is the case in the Nigerian situation. Despite the engagement of these private security companies by shippers, South-East Asia government, International Maritime Organization (IMO), etc. are strongly opposed to the activities of the private security companies in their maritime domain as this was considered likely to escalate the already volatile region<sup>29</sup> and the same thing is applicable in the United States on the fear of proliferation of weapons.<sup>30</sup> According to them, private security companies carry weapons in the course of safeguarding the ships of their hirer based on the agreement between them and where shot out ensues between them and pirates, it could be disastrous.

More so, the exigency of weapons being carried by private companies brings about infiltration of the region with weapons thereby threatening their sovereignty over the straits.<sup>31</sup> In fact, the dimension of the Federal Government of Nigeria on the issue is worrisome. Maritime surveillance and enforcement have been firmed out to Global West Vessel Specialist Agency (GWVSA), a private security company. The perspective of engaging private security company on maritime security has been misunderstood and misapplied in Nigeria. Although, private security companies

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Paper, 2012,  
<[http://oceansbeyondpiracy.org/sites/default/files/economic\\_cost\\_of\\_piracy\\_2011.pdf](http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf)> accessed on 17 December 2012)10-11.

<sup>27</sup>The vessels hijacked include Irene SL, a Greek flagged vessel and Samho Dream, a South Korean oil tanker.

<sup>28</sup>See the International Maritime Bureau, *Piracy and Armed Robbery at Sea: Annual Report, 2011* (London: International Chamber of Commerce, 2012)..

<sup>31</sup> Liss, C, "The Privatisation of Maritime Security- Maritime Security in Southeast Asia: Between a Rock and a Hard Place?" *Working Paper No.141* February 2007 <[www.arc.murdoch.edu.au/publications/wp/wp141.pdf](http://www.arc.murdoch.edu.au/publications/wp/wp141.pdf)> accessed on 6 July, 2014.

<sup>30</sup>Pines, D. L, "Maritime Piracy: Changes in U.S. Law Needed to Combat This Exceptional Threat to National Security" <[http://www.orks.bepress.com/daniel\\_pines/2](http://www.orks.bepress.com/daniel_pines/2)> accessed on 12 February 2014.

<sup>31</sup>Ibid. See also Hong, N, note 2 above at 43.

in maritime domain is not a new phenomenon because private company like Glenn Defense Marine (Asia) was established as far back as 1946.<sup>32</sup> The emergence of private security companies in recent time in the region was sequel to the September 11 2001 attack. Even still, what is obtainable in some part of Asia and other jurisdictions like Australia could not be regarded as privatisation of surveillance and enforcement of maritime security. It is on record that South-East Asia homes important sea-lane like the straits of Malacca and criminal activities like piracy, hijacking, kidnapping, etc and these have brought about security concern to governments and shippers. For this reason, shippers who wish to increase their security in the cause of traversing seas engage the services of private security companies to avert any ensuing fraud and other maritime insecurity. For example, Exxon Mobil was attacked in 2001 and the company was forced to close down business for four months. The same thing goes for Supper Ferry 40 in which more than 100 people lost their lives to an attack.<sup>33</sup> Some private security companies, like Hart, are based in U.S and U.K and some of them do not even have permanent staff; hence shippers' client-based agreement is the fulcrum of its operation. Some of the companies are owned by ex-military personnel unlike Nigerian ex-militant. The private security companies render services like tracking of their clients' ships, training of crew, provision of security personnel to escort ships, investigation and recovery of missing or hijacked ship, negotiation with attackers in the case of kidnapping and hostage of crews, etc.

The privatization of maritime surveillance and enforcement to a private security company is not the solution to maritime and port insecurity. Rather, government needs to exhibit some kind of expansion and modernization of its maritime agencies. It was maintained that Navy as a government agency would have essential roles to play in safeguarding the nation's maritime zones and should therefore device a strategy to increase security, especially with regard to traditional security threats,

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<sup>32</sup>Liss, C, "The Privatisation of Maritime Security- Maritime Security in Southeast Asia: Between a Rock and a Hard Place?" *Working Paper No.141* February 2007 <[www.arc.murdoch.edu.au/publications/wp/wp141.pdf](http://www.arc.murdoch.edu.au/publications/wp/wp141.pdf)> accessed on 6 July, 2014.

<sup>33</sup> Ibid.

while internal security should be the business of the police.<sup>34</sup>The questions that need to be asked with respect to privatisation of maritime and port security in Nigeria are captured as follows:

- Since the government has privatised port and maritime surveillance and enforcement, what would now constitute the constitutional roles of the Nigerian Navy and the likes in that regard?
- In the case of traditional maritime security threat from other state, what roles can private outfit play to subvert the threat?
- Does a private security outfit capable of protecting national security arising from port and maritime borders?
- Is it wise and reasonable for a government to concede its national security to private individual?
- Would privatising maritime security in the hand of private individual not amount to the country compromising its sovereignty to such individual?

The scheme of private security company controlling the entire maritime domain is a compromise of state sovereignty and would worsen the instability being witnessed in the maritime domain. If the policy embarked upon by the Nigerian government is allowed to continue, it would not only have adverse effect on the shipping business in Nigeria as the spate of asymmetric threats is likely to increase. It will also affect the economy of the nation as well as aggravating international instability. Expectedly, private security company will not be able to withstand the exigency of maritime security thereby making the domain to become centre for trade of illicit drugs and arms, safe havens for terrorist organizations and breeding grounds for bio-terrorism activities.<sup>35</sup>The Nigerian government needs to share the

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<sup>34</sup>Bateman, S, "Naval Balance in South-East Asia- Search for Stability", *Jane Defense Weekly*, (11<sup>th</sup> May, 2005). Malaysia, Philippine and Singapore have long established maritime agencies with the navy responsible for the sea.

<sup>35</sup>Ottaway, M. and Mair, S, "State at Risk and Failed States: Putting Security First", *Policy Outlook, Carnegie Endowment for International Peace: Democracy and Rule of Law Project* (2004). See also S. Patrick, "Weak States and Global Threats: Fact or Fiction"? , *The Washington Quarterly*, Volume 29 (2) 2006.

experience from countries like Australia, United States of America, Malaysia, etc. which appeared more bounded with seas and whose maritime domain is much higher. The government must also avert seeing security and surveillance in port and maritime domain as a way of compensating political cronies as this will spell a doom for the entire country, because it is a matter of national security that must not be compromised.

### **Engaging Private Security Company in Maritime Domain: A Depiction of Weak State?**

A state has been said to be a political association that establishes sovereign jurisdiction within a given territorial boarders and thus exercises authority through agencies and institutions.<sup>36</sup>States are established for the common good of the people and benefit of the community. Hence, this value of the state is reinforced by its capacity to provide essential service that will promote common good for the people.<sup>37</sup> However, the question that comes to mind is: Does Nigeria state has the capacity to render all these services for the common good of the people? This paper analyses the issue of privatization of maritime security enforcement *vis-à-vis* state's responsibility. On the main responsibilities of state, a scholar observed as follows:

*Nation-states exist to provide a decentralized method of delivering political (public) goods to persons living within designated parameters (boarders). They organize and channel interests of their people, often but not exclusively in furtherance of national goals and values. They buffer or manipulate external forces and influences, champion the local or particular concerns of their adherents, and mediate between the constraints and challenges of their international arena and the dynamism of their own internal economic, political, and social realities.*<sup>38</sup>

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<sup>36</sup> See Akume, A.T. and Dahida, D.P., "External Intrusion and the Failed State Question: Is Nigeria Really a Failed State?" *Centre Point Journal*, Vol.16 (1) 2013, p.124.

<sup>37</sup> Ibid.

<sup>38</sup> See Rotberg, R.I., "Failed States, Collapsed States, Weak States: Causes and Indicators", Rotberg, R.I., (ed), *When States Fail: Causes and Consequences*, (Princeton University Press, New Jersey, 2004). See also See Akume, A.T. and Dahida, D.P., "External Intrusion and the Failed State Question: Is Nigeria Really a Failed State?" *Centre Point Journal*, Vol.16 (1) 2013, p 125.

Therefore, the inability of a state to provide certain essential means of livelihood is the highest show or act of irresponsiveness and indeed a depiction of weak state. Transition from orderliness to disorderliness and stability to chaos are depictions of weak state. Rotberg was right when he demonstrated the characteristics of weak states as follows:

*Tensely, deeply conflicted, dangerous, and contested bitterly by warring factions; civil wars that afflict failed states are rooted in ethnics, religious, linguistic, or other inter-communal enmity; failed states cannot control their borders; regimes prey on their own constituents; there is the growth of criminal violence that tends to weaken state authority to control; other essential political goods are provided only in limited quantities; flawed institutions; deteriorating or destroyed infrastructures. Equally, when a state has failed or is in the process failing, the public facilities become increasingly decrepit and neglected; corruption flourishes; such failed states offer unpatrolled economic opportunity only for a privileged few with access to state power; there is declining real national and per capital levels of annual GDP; the state cannot shelter its own from or during climate challenges resulting in disasters, food shortages and widespread hunger; A state loses legitimacy.*<sup>39</sup>

It is on record that at the end of the Cold War, securitisation of Africa continent took new dimension that was characterised by large number of specialised private companies rendering police and military services that were hitherto the preservation of the state.<sup>40</sup> This development represents the existence of a terrain of African weak regimes thereby changing the focus of state leaders *vis-à-vis* their responsibilities.<sup>41</sup> Customarily, the means to violence and recourses are within the exclusiveness of the state and this differentiates it from other social formations. What is even more worrisome is that privatization of security happened in accordance with traditional mercenary activities taking a corporate form and fishing in the troubled waters of Africa. The 9/11 terrorist

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<sup>39</sup>Ibid at p. 127-128.

<sup>40</sup> S.J. Ndlovu-Gatsheni S.J and Ojajorotu,V, "Surveillance Over a Zone of Conflict: Africom and the Politics of Securitisation of Africa", *The Journal of Pan African Studies*, Vol .3 (6) 2010, p.95. See also R.K Kevin Kosar, R, "Privatization and the Federal Government: An Introduction December 28, 2006.<at[www.fas.org/sgp/crs/misc/RL33777.pdf](http://www.fas.org/sgp/crs/misc/RL33777.pdf)>accessed on 17 December 2013.

<sup>41</sup> Ibid.

insurgence specifically had far reaching impact on global security architecture and shaping of global politics. Rita Abrahamsen and Michael C. Williams while making their report in Sierra Leone noted that:

*While the recent conflict (1991-2002) provides the immediate context for the expansion of private security provision, the use of private security has a long history in Sierra Leone. As early as 1936 the Sierra Leone Selection Trust, a De Beers subsidiary, was allowed to field a private 'security force' of 35 armed men to patrol its diamond concession in the Kono area. Much later, in April 1995, the Strasser government hired the South African Executive Outcomes to fight the Revolutionary United Front (RUF), an arrangement that was continued by President Kabbah until January 1997. Both the extraction of Sierra Leone's mineral wealth and the survival of its elite have thus historically been crucially dependent on the involvement of international private security actors, a relationship which continues, albeit in different ways, in the current post-conflict situation.<sup>42</sup>*

Ironically, the issue of maritime monitoring and surveillance by private security company appears to be an extreme display of weak Nigerian state, but what its weakness requires is not enforcement and surveillance of maritime sovereignty by political crony; hence the humanitarian rehabilitation in this regard will spell doom for the country. This kind of arrangement has been said to be a dangerous phenomenon if conceptualised from a security perspective. Therefore, the idea of private security company carrying on enforcement activities in maritime is not more than survival technique.

Taking a cue from the United States, much of the debate in recent time over law enforcement privatisation has been centred on prisons and from the information available from the Department of Justice, approximately 1.5 million prisoners or 7% of total prison population is serving different sentences.<sup>43</sup> The supporters of Rick Scott, the Florida governor, believed that

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<sup>42</sup>Bendick, M, Jr., "Privatisation the Delivery of Social Welfare Services: An Idea to be Taken Seriously", in *Privatising and the Welfare State*, Sheila B. Kamerman and Alfred J. Khan, (eds), (Princeton University Press, Princeton) 98.

<sup>43</sup> See Neighborhood watch programs, security services, and police privatization <<http://www.policeone.com/Officer-Safety/articles/5634628-Neighbourhood-watch-programs-security-services-and-police-privatisation/>> accessed on 25 September 2014.

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privatisation has the benefits of reported cost savings outweighing the possible limitations, but critics have pointed out that privately run prisons reduce essential services to inmates so that they can maximise profits and in some occasions similar to “a historically racist practice” of the old Confederate South.<sup>44</sup>

### **Conclusion**

It has been established in this paper that privatisation as a policy might be good for developed nations but concession of the entire maritime domain to the control and monitoring of a private security company poses danger and it is a compromise of state sovereignty. It has been established also that the Nigerian situation is informed as a way of satisfying political cohorts because it has not been done in the best interest of the public. It has also been shown that privatization does not always lead to cost savings or better service. In some cases, private firms have had significantly higher cost overruns than government agencies in the performance of services. In other instances, private firms have performed work that has been criticized as being grossly inadequate. Privatization of the Nigerian maritime domain has been shown as ill-intentioned and inherently inimical to good governance and likely to do the nation more harms than good. Privatisation of maritime surveillance and enforcement should therefore be discouraged and even if such privatization is inevitable, then the government should control it by ensuring partial privatisation rather than total privatization.

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<sup>44</sup> Ibid.

