CRITICAL EXAMINATION OF THE INSTITUTIONAL AND LEGAL FRAMEWORK OF THE NIGERIAN MARITIME CABOTAGE LAWS

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ABSTRACT

The introduction of the Nigerian Maritime Cabotage Laws as a product of the desire to encourage Nigerians involvement in shipping trade was planked on a framework. This framework had two arms, the institutional and statutory or legal. A combination of the institutional and enactment gave rise to a body of laws regulating Nigeria's coastal trade or inland water trade. The said law was enacted in 2003 and called Coastal and Inland Shipping (Cabotage) Act, No. 5 of 2003, Laws of the Federation of Nigeria, as revised in 2007. The coming of the Act brought a new dimension to the business of shipping in Nigeria, with particular emphasis on the four pillars of the Act; that is to say that, ships employed in cabotage business must be built in Nigeria, owned by Nigerians, crewed by Nigerians and registered in Nigeria. But since the implementation of this enactment the objective of this policy has not been attained. Critical examination of the institutions and laws that regulate the cabotage policy is therefore necessary and timely to forestall those factors apprehended before its enactment. It is evident that the institutions are weak and ineffective; the laws are not up to date to fill lacunae existing while implementing the policy. This article is looking at the defects thrown up by the agencies of government given the responsibility of regulating and promoting maritime cabotage in Nigeria. The laws are being examined to see how the lacunae created can be filled while extensively looking at measures necessary for its proper redesigning of the entire legal framework such that the purpose of enacting the cabotage policy for Nigeria can be conveniently attained.

Keywords: Legal Framework, Nigerian Maritime, Cabotage Laws.

INTRODUCTION

The major legal instruments administering the Nigerian Maritime Cabotage Laws include: the Cabotage Act and other extant laws (Law, 2004). There are equally laws which are applicable as long as they are not inconsistent with the cabotage Act. These include, the Merchant Shipping Act, Admiralty Jurisdiction Act, Admiralty Jurisdiction Procedure Rules, Companies and Allied Matters Act (CAMA), Nigerian Enterprises Promotion Act, any other existing laws. There are also government departments in charge of the implementation of cabotage. They include, Federal Ministry of Transport (FMOT), Nigerian Maritime Administration and Safety Agency (NIMASA), Registrar of Ships, Cabotage Enforcement Unit, Collecting Agency for Cabotage Vessel Fund, Seafarers Training and Certification Department, Nigerian Inland Waterways Authority (NIWA), Nigerian Ports Authority (NPA), Nigerian Customs, Police and Navy. This article intends to critically examine and evaluate some of the

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above institutions, instruments and enforcement agencies to see how adequate and effective the policy reforms in the Nigerian maritime sector are being driven by them and gaps created in the process, and how the gaps can be filled to afford and accord the cabotage regime a sound leverage for effective and beneficial implementation for indigenous shipping operators.

Federal Ministry of Transport (FMOT)

Federal Ministry of Transport is the apex body in the transport sector which has a department of maritime services. A correct evaluation of maritime services is only possible through the examination of different departments regulated by this Ministry. It is responsible for the duty of creating and enforcing government policies targeting the improvement of maritime procedures and practical effectiveness through the help of the many maritime parastatals. Various maritime agencies that are responsible to the Minister of Transport via the Director of Maritime Services include: "*Nigerdock, which has been sold out, Nigerian Port Authority (NPA), Nigerian Maritime Administration and Safety Agency (NIMASA), Maritime Academy of Nigeria (MAN), Nigeria Shippers' Council (NSC) and National Inland Waterways Authority (NIWA)*". (Nweze, 2006).

These parastatals generally take charge of the maritime services industry. NIMASA's rule-making and promotional duties including the overseeing of the country's thrust for fleet expansion, NPA provision of critical connectional services to vessels and goods, NSC responsibility of vessels' security and MAN's training of seafarers. There exists a general intersperse of giving help to the country's maritime necessities. Supporting this function is the Nigerdock's duty of ship construction and ship mending. In a bid to appraise the type of improvement needed for these facilities and programmers, a more articulated responsibility and practical reappraisal is needed to help the Ministry and the Minister as a formidable watchdog and umpire in the maritime sector, given that there are other heavy responsibilities to be executed by this body vis-à-vis the railways, the aviation and road transportation.

The Nigerian Maritime Administration and Safety Agency (NIMASA)

This agency is the product of the merger of Joint Maritime Labor and Industrial Council (JOMALIC) and the Nigerian Maritime Authority (NMA). The Nigerian Maritime Authority was earlier merged with Maritime Inspectorate Division (MID) and the Government Inspector of Ships (GIS) and this merger harmonizes safety regulations.

The Nigerian National Shipping Policy supposed to include the Cabotage Policy or the Cabotage Act. It is a huge responsibility which the drafters of the National Shipping Policy Act expected to help NIMASA superintend, supervise, conduct, handle or coordinate the implementation of the National Shipping Policy put in place by the Nigerian Government.

ROLE OF NIMASA IN CARGO SUPPORT/LOCAL VESSELS EXPANSION AND PROCUREMENT

Going back, some earlier maritime legislation are still relevant in the cabotage regime as an enactment of NIMASA:

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Any enactment, instrument or other documents passed or made which refers to the National Maritime Authority and the Joint Maritime Labour Industrial Council shall be effective, in as much as it is necessary for the reason of, or as a result of anything being transferred, as though any mention is made to the National Maritime Authority and the Joint Maritime Labour Industrial Council were a mention made to the National Maritime Administration and Safety Agency instituted by this Act.

In view of this provision, the law applies as an enactment transferred to the NIMASA's Act regime. Indeed, in performing its statutory function of utilizing the "*UNCTAD code of conduct for liner conference*" and boosting the investment of domestic Nigerian shipping companies in deep-sea shipping, the provisions of the "*UNCTAD code on General Cargo*", the NIMASA would be giving cargo support to local Nigerian shipping companies. The proportion of 40:40:20 in the NMA Act applies to the domain of international ocean shipping; an improved involvement of local Nigerian shipping companies in deep sea-sea shipping is expected. Coastal and inland waterways trade which cabotage is primarily concerned, is not included in the plan of "*cargo support programme"* or the aims intended by the Act to be attained by the NIMASA. Expectedly, in spite of the special duty of the Agency to examine, decide, custody the records of the coastal trade, and their relationship with the land and aviation transportation inclusive, the Act is depleted of any well-defined and accurate cargo support aspirations to be accomplished by NIMASA relating to cabotage business or policy.

Moreover, although the provision of the Act on cargo sharing and cargo reservation are only for shipping outfits having national carrier ranking in international trade but not regarding coastal or inland water trade, the law does not prevent foreign vessels from participation in inland and coastal water shipping as necessary for a cabotage jurisdiction, and similarly, the Act cannot be said to be of much help in the enforcement of an ideal cabotage administration in Nigeria through the NIMASA.

Nevertheless, bordering on local vessels augmentation and procurement plans, the NIMASA Act is replete with provisions that will one way or the other actualize the objectives of the NIMASA. According to the Act, NIMASA's objective of furthering the growth of local shipping commerce in international and inland shipping business accords it the essential foundation for cabotage vessel augmentation and procurement Programme. Through the institution and encouragement of such ship augmentation and procurement programme, the NIMASA will actually be enhancing/upgrading Nigeria's balance of payments situation while improving the foreign exchange earnings and conservation arising from the operations of the shipping industry. This could be attained due to the fact that cabotage vessels would be made and/or refurbished locally without recourse to buying or repairing outside Nigeria with dollars, sterling or Euro which drains Nigeria's foreign reserves and causes balance of payment problems.

Furthermore, by reason of Cabotage, the NIMASA could actualize its aims of a systematized check on the operations of shipping transactions due to the acquisition of proficiency, expertise and control from coastwise commerce. "*NIMASA's indigenous maritime capacity enhancement can stand on its statutory objectives of regulating and promoting maritime labour through the stimulation and protection of indigenous shipping companies and the promotion of the training of Nigerians in maritime transport technology and as seafarers*." However, in the case of enhancing the local fleet capacity, ship expansion and procurement, the

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Act provides for the ships and shipping concerns (be it national carriers or not), participating in both ocean shipping and coastal shipment of cargo to be supported by the NIMASA because national carrier vessels are to be employed in the ocean shipping and not on coastal or inland waters meant for cabotage business; hence, the stipulations in the Act are not adequate for an ideal cabotage policy.

Due to the inherent lacunae in the Act, it is apparent that its ommibus provision was inserted by the drafters of the Act to cure the position of the Act to fill gaps touching on NIMASA's accomplishment of its laid down functions, "*without limiting the generality of the foregoing, the Agency shall, generally perform any other duty for ensuring maritime safety and security or do all matters incidental thereto; and perform any other prescribed functions relating to or incidental to any of the matters referred to in this subsection*."

The above section comprises of two parts: The first permits the NIMASA to carry out specific functions which generally seeks to attain, not merely the goals and aspirations of the Act, but equally for the attainment of the aims and objectives of the Act holistically. The other part permits the NIMASA to carry out any other function outside those expressly provided for aiming at actualizing any national shipping policy created by the Federal Government in accordance to the provisions of the Act.

Accordingly, each of the duties of the NIMASA in the law which allot cargo support to local shipping companies, or any federal shipping laws on cargo support for Nigerian shipping lines in inland or coastwise navigation in the form of cabotage regulation created by the government could be carried out by the NIMASA as part of the Agency's statutory responsibility. Accordingly, as enshrined in the Act, the apparent lacuna in NIMASA's mandatory ways of actualizing cargo support for Nigerian shipping lines in inland water trade can be adequately filled. A further challenge in the content of the Act concerning cargo support programme of the NIMASA on and in respect of cabotage, is that, according to the Act, the NIMASA has a statutory will and aim to assist in the economic cooperation of the West African sub-region.

The important regional arrangement to which Nigeria is a member is the ECOWAS Treaty and its different Agreements of Heads of States. Nigeria is equally an affiliate of the Maritime Organization of West and Central Africa (MOWCA) which includes ECOWAS States. Maritime matters of ECOWAS are concluded under the aegis of MOWCA. Observation has been made that the enactment of a sabotage policy in Nigeria would endanger the inception and hinders the enforcement of a cabotage regime for West Africa. Accordingly, should the NIMASA starts to support or help the idea of 'West African regional economic integration' based on the regional cabotage perspective as anticipated by the Act, then NIMASA would be seen to be counteracting all that was expected from maritime cabotage and indigenous fleet programme, most importantly, as it concerns cargo support, purchase of ships and fleet expansion scheme.

Also, the availability of the Act for NIMASA to harmonize the carrying into effect of the national shipping policy established by the Federal Government is expressly hindered by legislation. These enactments were made for the benefit of the NNPC and the Nigerian Liquefied Natural Gas Project. This legislation that expressly hinders the cabotage policy provides (Law, 2007);

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Subject to the provision of this Act, the corporation shall be charged with the duty of: (d) providing and operating pipeline, tank ships or other facilities for the carriage or conveyance of crude oil, natural gas and their products and derivatives, water and other liquids or commodities related to the Corporation's operation.

If the Nigerian National Petroleum Corporation discharges its mandatory function by procuring and using its own tank ships (instead of hiring (chartering) such vessels from local Nigerian shipping lines and other non-indigenous ship-owners as is currently the case, there will be scarcity or no cargo at all accessible for transportation in Nigeria's inland water trade by local shipping operators (Law, 2007).

It is provided in the Act that the "*Minister of Petroleum shall grant a license to any person before he could import, store, sell or distribute any petroleum products in Nigeria*." He is also "*entitled to make regulations relating the importation, storage and distribution of petroleum products, petroleum and other inflammable oils and liquids*."

The allocation of petroleum products across Nigeria as published in a data by the NNPC/PPMC discloses that the shipment of such cargo should be by means of tanker vessels on the inland waters of Nigeria. As an aspect of cabotage business, it is necessary to consolidate the laws to avoid frictions. It is provided that the principal Act, be amended to exclude the NNPC and the Nigerian LNG Limited.

Therefore, none of NIMASA's aims, duties or functions under the law, can be utilized or employed for the benefit of the Nigerian LNG Ltd. (not minding its status as a limited liability outfit validly enacted in Nigeria) or its vessels. Specially, the NIMASA is unable to consider in the exercise of its "*cargo control and support programme*" or "*cargo control and allocation programme*" "*Nigerian LNG Limited"* or the "*Liquified Natural Gas"* it generates or its shipping companies, neither can it collect information from it or its associates for the aims of investigation, examination and inquiry, although the company, its ships and other vessels run their business within the country's ports and coastal waters and such companies generate "*Liquified Natural Gas cargo*" which the Nigerian shipping outfits supposed to carry.

The drawback this has on the country's defenced, economy, social and political entity particularly in the absence of fixed period for the immunity on the company in the law, and this works contrary to the country's commerce and corporate concerns in shipping. So much has been wasted, such as cargo, insurance profits and the percentage of the shipping outfit's profits due for the national government as provided for in the law (Law, 2007).

Even the National Content Guideline released about twelve years ago; and presented by the NNPC to Investors on Gas Master Plan (GMP), has not been able to sufficiently fill this lacuna. Under its summary of 23–Point Local Content Guideline where cabotage law is considered as one of the activity or service area, the compliance is pointing to limited capacity of Nigerians under cabotage to change the face of the NNPC/LNG statutory obligation.

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NIMASA has both institutional incapacity and is unable to close the capacity gap and poor compliance with cabotage Act, 2003. It is the character of the Nigerian state that adversely affects the capacity of the NIMASA to monitor and enforce the cabotage Act, 2003 as well as its ability to bridge the capacity gap in the maritime sector leading to poor compliance. This is so because the commercial operations of carriage of goods, service and passengers in the inland and coastal waters of Nigeria are still almost exclusively dominated by foreign owned and foreign crewed vessels (Okeke & Aniche, 2021).

Some of the problems or challenges of enforcing the cabotage can be said to include:
The exclusion of Indigenous Shippers Association of Nigeria (ISAN) from ministerial consultation process in granting waivers;

1. The adequate implementation and monitoring of inter-ministerial, inter-agency, inter-unit wrangling and uncooperative attitudes;
2. High cost of enforcement and monitoring;
3. Lack of political will and determination;
4. Lack of confidence;
5. Local/foreign operators' dichotomy;
6. Resolution of cabotage disputes/differences by the court (Iheduru, 2007).

In fact, in 2011, the Nigerian government acknowledged the fact that over seven years after the institution of the cabotage policy, the Cabotage Act was faulty both in construction and substance rendering its beneficial implementation cumbersome. The frequent removal of a number of former Chief Executive Officers of NIMASA in view of their failure to effectively 'monitor' and 'enforce' obedience to the Cabotage Act (Ezem, 2011):

Neither the examination of this boundary between the "*institutional incapacity*" to observe "*compliance and enforcement of the Cabotage Act"* (as amended in 2007) by NIMASA, nor the ability to "*explore the nexus between capacity gap and poor compliance with Cabotage Act*" have been properly done. It is therefore contended that:

1. The NIMASA institutional incapacity to monitor compliance affects adversely the enforcement of the Cabotage Act, 2003 in the Nigerian coastal and inland shipping.
2. The inability of NIMASA to bridge capacity gap results in poor compliance with the Cabotage Act, 2003 in the Nigerian coastal and inland shipping.

Some other negative features that affect the Cabotage Act are the coming together of the majority of European nations under the aegis of the International Association of Classification Societies (IACS). The IACS in agreement with various other classification societies regulate ships in Europe and owns about 95 per cent of the world's fleet. It is argued that ships belonging to IACS members abound locally in Nigeria because they are strong, capable and influential even with Nigeria's cabotage policy. This group has, therefore, advantageously hidden under the challenge of restriction at Nigerian ports. The IACS has declined to classify Nigerian ships due to poor conditions of safety, insurance, fire prevention as a result of poor financing. Nigerian

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ships cannot favourably compete with other foreign ships, making all attempts at supporting and boosting indigenous involvement to be sabotaged (Iroegbu, 2010).

The government departments that enact legislation and policies for the maritime sector appeared not to have actually understood how the sector operates. They paid no attention to important requirements necessary for guaranteeing these policies to achieve their intended goals and purposes. This resulted in majority of the big maritime contracts being taken by non-Nigerian companies owing to the ineptitude of Nigerian companies which leads to capital flight. It is sad that "*NIMASA*" with other constituted authorities cannot carry out adequate inspection duties about the balance of effectiveness of indigenous companies, not minding the 'competency gap', it remains the responsibility of the agencies to close such yawning gaps for effective enforcement of maritime rules and regulations in the maritime sector.

Sole source for capital accretion by which the technocrats perpetrate their domination in Nigeria is the government's treasury. In this kind of situation, the government and its managerial or "*bureaucratic*" or "*coercive*" machinery turn out to be incompetent or unfit to monitor, supervise, implement or enforce regulations or even to ensure obedience or compliance. In a similar vein, parastatals of the state such as NIMASA fail to raise capacity enough to bridge the "*capacity gap*" or close the disparity between indigenous capacity and the abundant benefits brought about by the introduction of the cabotage policy.

EXAMINATION OF SOME STATUTES TO UNDERSCORE THE INADEQUACY OF THE LEGAL FRAMEWORK FOR NIGERIAN CABOTAGE POLICY

Merchant Shipping Act: It is provided for in this Act that:

1. Whenever a ship is owned wholly by persons qualified to own a registered Nigerian ship that ship shall be registered either in Nigeria in the manner provided in this Act or in some other commonwealth country in accordance with the law of that country unless:
2. The ship is recognized by the law of a commonwealth country other than Nigeria as a ship of that country and is by law of that country exempted from registration; or the ship exempted from registration under this Act.
3. The ship exempted from registration under this Act. Ships not exceeding fifteen tons employed solely on the coasts or inland waters of Nigeria may, if the Minister thinks fit, by notice in the Federal Gazette, be generally or specially exempted from registration under this Act.
4. If any ship, other than Nigerian Licensed Ship, does not comply with the requirements of this section, that ship shall be recognized as a Nigerian ship.

It is also provided in this Act that a ship shall not be registered in Nigeria under the Merchant Shipping Act unless she is owned wholly by persons qualified to own a registered Nigerian ship, namely: Commonwealth citizens and corporate bodies established under and subject to the law of a Commonwealth country, and has its principal place of business in a Commonwealth country; and empowers the Minister of Transport to make rules for the manner of registering Nigerian ships under the Act.

It can be gleaned from the above provision that the Nigerian ship register is partly open because what qualifies a ship for registration in Nigeria is not solely based on the owner being in any way significantly connected with Nigeria, but has to do with his affiliation with any of the Commonwealth countries. This implies that, "*ships owned by non-Nigerian (foreign) citizens*

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and companies of the British Commonwealth can be registered as Nigerian ships and as such fly Nigerian flags and be entitled to all the protections, benefits and privileges of a Nigerian ship." This ships are qualified to take part in the coastwise trade as Nigerian flag/owned ships, not minding that they are not really owned by "*Nigerian- British Commonwealth"* but "*non-Nigerian British Commonwealth citizens and/or companies*".

Some sections of the Merchant Shipping Act relating to "*regulated cabotage policy*", that is, "*Coastwise trading*" with "*vessels built or owned, crewed and operated by Nigerians*" are equally relevant. Another provision of the Merchant Shipping Act states as follows:

No ship shall trade in or from waters of Nigeria unless the ship:

1. Is a Nigerian ship; or
2. Is a commonwealth ship; or
3. Is provided with a certificate of foreign registry or other documents similar or equivalent to that required by this Act.

The Merchant Shipping Act also limits the maximum age of any non-Nigerian ship that wants to trade in or from Nigerian waters to 15 years from the date of the first registration. It is clear that this section not only limits trading in Nigerian waters (which coastal waters are part of) to ships built/owned, crewed and operated by Nigerians, but also extends it to non-Nigerian Commonwealth ships irrespective of where they are built and the nationality (ies) of their crews. It does not reflect or provide for the implementation of a true regulated cabotage policy.

It is noteworthy that the Merchant Shipping Act, describes a 'coastal trade ship' as a ship other than an inland waters ship which does not leave Nigeria. It describes "*inland waters ship' as 'a ship which is authorized only to ply within inland waters*". In another part of the Act, special stipulations are made for coastal trade and inland waters ship, the Act "*does not limit these ships to Nigerian-owned or built and crewed ships.*"

The Act, further states that the Minister of Transport may make construction rules prescribing requirements of the hull, equipment and machinery of any Nigerian ship or class of coastal or inland water ship, and that in respect of every ship over 25 tons gross tonnage to be built in Nigeria, its plans and specifications must be approved by the Minister prior to the commencement of its construction.

Concisely, the Merchant Shipping Act, as presently constituted and being that it is replete with colonial colorations, is not actually imposing a cobotage policy on Nigeria but its implementation will not accord Nigeria the much expected results of which cabotage laws are known to have.

National Shipping Policy Act (NSPA)

This law also governs maritime business in Nigeria, whose provisions require ample evaluation in adjudging the sufficiency of the Nigerian maritime laws, concerning cabotage.

The law which establishes the NIMASA, as well, enables it to accomplish particular objectives bestowed on it by the Act. These include:

1. To promote the development of indigenous commercial shipping in international and coastal shipping trade;
2. To regulate and promote maritime safety, security, marine pollution and maritime labour.

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Flowing from the aforementioned provisions, the NSPA is full of logical aims for using NIMASA to ginger and safeguard Nigerian shipping companies and expanding Nigerian citizens ownership of ships (and advance the skills of Nigerians in 'maritime transport technology' as 'seafarers' which are incidentally the expected attendant benefits of cabotage laws. Nevertheless, the Act has not done enough to target such goals as coastal (and inland water) trade (which cabotage is all about). Instead, most of its provisions target international trade or deep sea shipping. Though, the erstwhile NMA's functions involve the giving of national carrier status to Nigerian shipping concerns, *"(assistance of indigenous companies for fleet expansion and ship ownership)*" for suitability as 'national carriers' "*at least, 60 percent of the equity of a shipping company must be fully owned by Nigerian individuals and enterprises and 100 percent of the crew must be Nigerians*." Whereas "*national carrier' 'ships are to run on the deep sea and not on the Nigerian coasts or inland waters*," which cabotage laws are concerned with, the law is insufficient to sustain an ideal cabotage policy.

Besides, and notwithstanding the provisions of the Act that National carrier ships/ ships flying Nigerian flags. Shall be inspected, mended and serviced if possible within the country, it is not, as expected under an ideal cabotage regime, stipulating that every non-national carrier Nigerian ships must be Nigerian built or Nigerian owned.

Ultimately, since the provisions of the Act concerning cargo and cargo reservation are meant for National carrier vessels involved in international trade and not as it affects coastal or inland water trade, the Act is not excluding foreign vessels from participating in coastal/ inland water trade as expected in a true cabotage policy, so, the Act is not conducive for the take-off of a good cabotage policy in Nigeria (Law, 2004).

Admiralty Jurisdiction Act, Cap A5, LFN, 2004

While the "*Federal High Court has exclusive jurisdiction to hear civil cases on matters in any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterways designated as international waterways by any enactment, Federal Ports and carriage by sea*", the "*Admiralty Jurisdiction Act provides that, its admiralty jurisdiction includes any matter arising from shipping and navigation on any inland water declared as national waterways*." In fact the "*Admiralty Jurisdiction Act, 2004", "Admiralty Jurisdiction Procedure Rules Cap M11 LFN, 2004" and to some extent, "Federal High Court Rules, 2011" "created express rules for their operations and mode of implementing shipping disputes emanating from inland or coastal waters trade, ranging from seafarers"* emoluments, ships injuries, death or physical harm, or destruction of cargoes or cargo damage. It defines a vessel so wide to involve 'coastal ship and inland water ships; and it stipulates for the apprehension of vessels or other belongings anywhere within the precincts of Nigerian coastal waters. This statute affects the proper implementation of the Cabotage Act because its provisions do not exclude foreign vessels from Nigerian coastal waters.

Carriage of Goods by Sea Act, Cap. C2 Laws of the Federation, 2004 (COGSA)

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The schedule to this Nigerian statute has the Hague Rules. "*Subject to the provisions of this Act, the (Hague) Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Nigeria."*

The implementation of this is that "*the Hague Rules shall apply to Nigerian coastal shipping because it has effect in relation and in connection to the Carriage of Goods from one port to another in Nigeria, which includes what cabotage is all about*." The Nigerian COGSA does not represent the trade on carriage of goods. There is need to overhaul the legislation in Nigeria as regards the carriage of goods by sea to embrace the current trends in international trade.

Navigable Waterways (Declaration) Act Cap 06, LFN, 2004

Under this Act: Certain rivers, creeks, lagoons and inter-coastal waterways specified in the Schedule of the Act were declared as Federal Navigable waterways. They include the River Niger through the River Nun and Forcados to the Atlantic Ocean, River Benue to Lokoja, the Cross River, River Sokoto, Anambra, Ogun, inter-coastal routes along Badagry to Lagos canal from Araromi to Benue River, waterway from Warri along Forcados River, waterway from Port Harcourt down Bonny River.

It is true and obvious that some other useful 'navigable waterways in Nigeria' might have been excluded from this declaration. For example, the Calabar–Oron waterway, Qua Iboe River from Ibeno to Uta-Ewa (Ikot Abasi) through Port Harcourt, intercoastal routes along Nwaniba to Adadia – Atabong – Oron to Ibaka – Tom Shot island and other coastal routes spreading through the entire stretch of the Niger Delta region. Consequently, this Act is inconclusive and only functional to the extent that the few declared 'Federal navigable waterways' are known and utilized by the Act while those not declared but useful are not known and not utilized by the Act, hence, not cabotage compliant.

The National Inland Waterways Authority Act, Cap N47, LFN, 2004

It empowers the National Inland Waterways Authority (NIWA) to, "*inter alia, ensure the development of infrastructural facilities for national inland waterways network connecting the creeks and rivers with the economic centres using modal points for inter-modal exchanges and to provide alternative transportation for the evacuation of economic goods and persons domestically*."

These enactments, (Navigable Waterways (Declaration) Act Cap. 06, 2004, and the National Inland Waterways Authority Act, Cap N47 are 'non-cabotage-compliant', because non-Nigerian vessels are allowed by their inconclusive provisions to trade in the Nigeria inland water trade (Law, 2004). Having copiously viewed the content of the aforementioned Nigerian shipping laws and some others, like the Nigerian Ports Decree, the Ports Act, the Piers Act it is arguable that, non of the current Nigerian shipping laws has holistically considered a true and efficient regulated cabotage policy or regime. By implication, and interestingly, a beneficial cabotage policy cannot be 'implemented and enforced' by any means, through the kind of current and existing Nigerian maritime laws. These laws are however relevant to cabotage law in so far as they are consistent with the cabotage Act. Truly so, but there is a need to do much more

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than scanty repeals of some provisions of the Merchant Shipping Act, see the First schedule to the NIMASA Act. Another surface amendment can be seen in the NIMASA Act where the *"Merchant Shipping (Delegation of Powers) Notice, Merchant Shipping Act is amended by deleting all references in the third column of the schedule to 'Government Inspector of Shipping and inserting the words, Nigerian Maritime Administration and Safety Agency.*" This is not sufficient, moreso, when some of the legislation still have colonial parameters and inadequate to sustain a formidable cabotage regime.

CONCLUSION

The greatest problem of cabotage policy is the inadequacy or the enactment of a befitting legal instrument, and deficient legal administration for its proper administration and enforcement. Shipping policy should be understood to be all encompassing economic, legal and management procedures through which the government affects the state of it national fleet; vis-à-vis, its task in maritime business.

A good government policy should therefore be able to: identify policy issue or issues, specify the objectives, develop the options, choose the preferred options, enter into the stage of policy diagnosis, propose the implementation plan and undertake policy re-appraisal and implementation plans. A shipping policy cannot be evolved independent of policies created at the ports, infrastructure and subsidiary services, road network and railways and other interactive industry sectors. An all-inclusive maritime policy which the government should institute must embrace ports infrastructure, maritime services, broad shipping programmes for commerce, evolution of the country's shipping capacities, protection of life and safety of maritime space, and development of professional shipping personnel.

Successful cabotage policies the world over have specific objectives which are pursued vigorously within the context of their peculiar circumstance. An example is the Malaysian shipping policy which is focused on a twin issue of:

1. Fleet expansion
2. Port development

The purpose of fleet supplementation being the reduction of reliance on foreign ships for the carriage of Malaysian cargo and reducing the economic susceptibility occasioned by overdependence on foreign ships for shipment of goods. The aims for its port development is to make its ports transshipments berths for South East Asia, stimulating indigenous operators to transport through its ports to avert capital flight and guarantee development of diverse related shipping services, like building of ships, manning of ships, banking and insurance services.

In Nigeria, there is so much dependence on the policy drive of the federal government. Earnest arrangement should be put in place for the procurement of the needed tonnage and placing same in the country's ships register. Lack of Federal Government's monetary, credit and fiscal policies militates against indigenous ship acquisition. Because there are institutional/regulatory imperfections or inadequacies, the following institutions/legislation need be reviewed to create room for an efficient coastal water trade.

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