



APPRAISAL OF THE LEGAL FRAMEWORK FOR THE CONTROL OF OCEAN AND COASTAL MANAGEMENT IN NIGERIA

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ABSTRACT

The need to develop a coordinated and integrated approach for the governance of coastal and ocean resources and the protection of the marine environment from further degradation caused by natural and anthropogenic activities, particularly climate change, pollution from oil exploration and exploitation, sand mining, agricultural and industrial development has become imperative in Nigeria. Nigeria has a land area of 923,768.64 square kilometres, with a coastline of over 823 kilometres and navigable inland waterways of about 4,000 kilometres. These confer on Nigeria great potentials. To what extent these potentials have been tapped for productivity and nation building would be appraised considering the attendant issues and challenges faced by the co-ordinating and regulating bodies. The research discusses the development of maritime industry in Nigeria with focus towards development, structural formation, legal framework, capacity building and cabotage. The aim of this paper is to examine the legal framework for the protection and control of the ocean and coastal management in Nigeria. The paper adopted the doctrinal research method as previous studies of other scholars will be examined. The paper finds that the laws governing the ocean and coastal management in Nigeria is quite adequate only that some of the sections needs amendment as they are archaic and doesn't cover the current challenges bedevilling the oceans. The paper recommended that there is need for an over-haul of the legislative framework due to its inadequacies in meeting up to the challenges confronting the safety of the nation's ocean and coastal areas.

KEYWORDS: *Ocean management, Legal Framework, Coastal management, Cabotage*

1. INTRODUCTION

The Maritime Law or Admiralty is that body of legal principles which govern in particular, marine, commerce and navigation, business transacted at sea or relating to navigation, ships and shipping, seamen, transportation of person and property at sea and to marine affairs generally.¹ The principles of maritime law which governs ship and the operation of ships are often closely related and interwoven. Principles dealing with maritime liens and ship mortgages are two of Such Principles which remain central to the operation of ships and security documentation relating to ships.

In Nigeria today, maritime law is governed essentially by both the provisions of the Merchant Shipping Act (MSA) 1990 and the Admiralty Jurisdiction Act (AJA) 1991.² The process of

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¹ Black's Law Dictionary (9th edition) p. 969

² L.C. Ilogu, 'Essays on Maritime Law and Practice' (2006) ELCSAM Integrated Services Ltd. Lagos, Nigeria, P. 125.



navigating or engaging in commerce through various types of navigable waters introduces the related concept of shipping. Black's Law Dictionary defines "Shipping" as "relating to ships; as shipping interests, shipping affairs, shipping business, shipping concerns. Putting on board a ship or vessel, or receiving on board a ship or vessel."³ Shipping involves the art of transporting goods often termed "cargo" from one point to another on any stretch of water. Shipping could therefore be on inland, coastal or international waters and is at all times central to the activities in the maritime industry. The maritime business can be said to be one of the oldest businesses and profession in the world. It also constitutes a major source of political power and territorial influence for "he who rules the seas rules the world," a fact underscored by the various conquests of the Egyptian, Turkish, Roman, Spanish, Greek and British Empires over the centuries. The following legal framework will be discussed hereunder;

i. National Shipping Policy Act⁴

This Act created the National Maritime Authority (NMA) and empowers it among other things to, coordinate the implementation of the national shipping policy as may be formulated from time to time by the federal government and perform such other functions as may be required to achieve the aims and objectives of the act or national shipping policy as may be formulated by the federal government pursuant to the act.⁵ It has been argued that S.3 (g) and (j) empowers the National Maritime Authority to be recognised as an important stakeholder in matters of marine pollution from oil transportation at sea and should play the role of a leader in collaboration with other agencies of government in pollution prevention. It was further argued that from the provision which empowers the NMA to "offer protection to Nigerian vessel flying the nation's flag on the high sea and world ports" and to "achieve a systematic control of the mechanics of sea transportation", which includes oil transportation, NMA should be pronounced as the sole authority to look after all oil pollution at sea in Nigeria, especially if resulting from oil transportation⁶ and be designated the Nigerian focal point for IMO activities on marine pollution, all matters relating to MARPOL⁷ and all IMO activities on marine safety, for ensuring their implementation and enforcement for safer navigation and cleaner waters in and on Nigerian waters.⁸

The recent assignment to the National Maritime Authority on the role of Marine safety Administrators and marine pollution control in Nigeria and its purchase of 6 boats to patrol Nigerian coastlines and conduct search and rescue and enforce anti marine pollutions regulations, are steps in the right direction but NMA can only enforce Nigerian laws on pollution within the territorial waters and jurisdiction of Nigeria. It is submitted that if NMA starts playing the above role, it will

³ L.C. Ilogu, 'Essays on Maritime Law and Practice' (2006) ELCSAM Integrated Services Ltd. Lagos, Nigeria, P. 125.

⁴ Cap. N 35 LFN 2004

⁵ S. 4(a) and (g) of the National Shipping Policy Act Cap N LFN 2004

⁶ This is quite understandable because operational discharges and accidents during transportation are major causes of marine pollution from vessels.

⁷ A. Babajide, 'Oil Transportation and the Effects on Marine Environment' Paper presented at the NMA Conference

⁸ Awosika, L. F. 'Sustainable Management of the Nigeria Coastal and Marine Environment: Important Ingredient for Achieving Millennium Goals by 2015. [2008] First National Summit on the Environment. Abuja, Nigeria.



facilitate the ratification, implementation and enforcement of many IMO conventions on pollution prevention by Nigeria.

ii. Merchant Shipping Act⁹

This Act grounds the major stake of the Ministry of Transport in environmental protection in the Petroleum sector especially with regard to the marine environment. The extant Laws of the Federation through Section 336 of the Merchant Shipping Act¹⁰ domesticated many International Maritime Conventions and Agreements for the Prevention of pollution from ship, etc. In fact, it tied their applicability in Nigeria with the commencement of the Merchant Shipping Act.¹¹

iii. Coastal and Inland Shipping (Cabotage) Act (No. 5) 2003

Wilson¹² writes that Nigeria made a bold step to change the face or transform the maritime business within its coast when it enacted the Coastal and Inland Shipping (Cabotage) Act of 2003. The guidelines on implementation of Coastal and Inland Shipping (Cabotage) Act 2003 were issued in April 2004 to facilitate implementation of Cabotage regime.¹³ The Act became enforceable or effective on May 2004. Although, designed to restrict foreign participation in Nigeria's domestic coastal trade, a lot of opportunities exist for foreign involvement or investment. The consideration in arriving at the tariff and fees for registration, waivers and licences are basically to cover administrative costs of the entire process from application stage to issuance of respective certificates. Fees and tariffs are subject to annual review by the Minister of Transport and the figures may be reviewed to introduce punitive and deterrent parameters as may be found necessary.¹⁴

The Cabotage Act was enacted primarily to restrict the use of Foreign Vessels in Domestic Coastal Trade to promote the development of Indigenous Tonnage and to establish a Cabotage Vessel Financing Fund and for Related Matters. This Act provides, among other things, in sections 3 to 6 that a vessel other than a vessel wholly owned and manned by a Nigerian citizens, built and registered in Nigeria shall not engage in the domestic coastal carriage of cargo and passengers within the coastal territorial inland waters, or any point within the waters of the exclusive economic zone of Nigeria and that a vessel of whatever type or size shall not engage in domestic trading in the inland waters of Nigeria except as a vessel that is wholly owned by Nigerian citizens. In section

⁹ Merchant Shipping Act, CAP M11, LFN, 2004.

¹⁰ *ibid*, the attention of the reader is drawn to the fact that the majority of the laws on environmental control especially in the marine environment are tied to the Minister and Ministry of Transport or its parastatal - NIMASA Act, NPA Act, ONWA Act and Merchant Shipping Act; and not to the Ministry of Environment.

¹¹ Section 336(1), *ibid*.

¹² I. Wilson, 'Nigeria Opportunities in Nigeria's Cabotage' Daily Independent (2005) July 22.

¹³ Awosika, L. F., Osuntogun, N.C., Oyewo, E. O., Awobamise, A. (2002). Development and Protection of the Coastal and Marine Environment in Sub Sahara Africa: Report of the Nigeria Integrated Problem Analysis.

¹⁴ Agbakoba, O. Oceans Governance in Africa. (2006). Retrieved from <http://olisaagbakobalegal.law/wp-content/uploads/2014/10/Olisa-Agbakoba-Oceans Governance-in-Africa.pdf>



22 the Act requires specified types of vessels, including fishing trawlers, to register in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage.

The objective of the Cabotage Act is primarily to reserve the commercial transportation of goods and services within coastal and inland waters to vessels flying the Nigerian flag and owned by persons of Nigerian citizenship. The Cabotage regime is therefore an Act that reserves the commercial transportation of goods and services within the Nigeria coastal and inland waters to vessels flying Nigeria flays, that is, vessels owned and crewed by Nigerians. Yet for about eight years, that is, since 2003, the Cabotage Act was enacted, the foreign owned and foreign crewed vessels still dominate the commercial operations of carriage, goods, services and passengers in the inland and coastal waters of Nigeria.¹⁵

Usoro¹⁶ and Biu¹⁷ state that despite the fact that Nigeria has about 3,000 kilometres of inland waters, six major ports and ten crude oil terminals, and several inland ports in Onitsha, Oguta, Opobo, Lokoja, Baro, Jebba, etc.¹⁸ Yet in the year 2000, only 139 indigenous marine vessels less than 6%, were involved in this traffic with a cargo throughput of 441, 031 tons about 1%. Indigenous shipping companies do not own any vessel for deep-sea trade and a few that participate operate the vessels on charter. A study carried out by the International Maritime Organization (IMO) on Nigeria's maritime industry in April 1999 reported that only 97 vessels excluding fishing vessels were registered under the Nigerian flag. Out of the 97 vessels, 66 vessels were tankers, 200 vessels were cargo vessels and one passenger vessel.

According to Office of the Registrar of Ships,¹⁹ in 2002, Nigeria has 98 tankers more and 26 cargo vessels just about 32 tankers more and 6 cargo vessels more. A closer examination of the Nigerian flagged vessels would show that most of these vessels are actually owned by foreigners. From the foregoing, Nigerian maritime sector including cabotage Subsector is undoubtedly dominated by foreign owned and foreign crewed vessels. Biu²⁰ notes that, a subsequent survey conducted in 2004 by National Maritime Authority showed that only 11 out of 245 coastal vessels that operated in the Onne oil and gas free zone axis in 2003 were owned by Nigerians. During the same period out of 266 tankers that were engaged in coastal trading in the Apapa port only 44 tankers about 16.5%

¹⁵ Okoroji, L. and Ukpere, W.I "A Strategic Reposition of the Maritime Industry for Economic Recovery and Sustainability: The Cabotage Act", [2011] African Journal of Business Management 5 (14): 5658-5663.

¹⁶ Usoro, M.E. "Cabotage Policy and International Maritime Politics: The Nigerian Coastal and Inland Shipping (Cabotage) Act 2003" a paper presented at the annual maritime seminar of the Nigerian Maritime Law Association held on May 13 and 14, (2003).

¹⁷ Biu, A.A. "Development of Opportunities in the Gulf of Guinea through Duty Free Zones, Cabotage and Common Maritime Regimes" a presented at Abuja petroleum roundtable on Oil and the Future of Nigeria: Challenges, Opportunities, Road Map to Development on March 8 and 9, (2007) at Transcorp Hilton Hotel Abuja.

¹⁸ Okeke V.O.S and Aniche E.T. 'An Evaluation of the Cabotage Act 2003 on Nigerian Maritime Administration' [2012] 2(1) Sacha Journal of Policy and Strategic Studies, 12.

¹⁹ Ajayi (1996), The Management of Nigerian by Diversity: The Legal Perspective in Ayua and Ajayi, Implementing the Biodiversity Convention: The Nigerian Perspective NIALS

²⁰ Agbakoba (n 14)



were Nigerian owned while 222 about 83.5% were foreign-owned. The total metric tonnage of petroleum products carried by the Nigerian owned tankers were 97,041 tons amounting 3.4% while the foreign owned tankers carried 2,745,365 metric tons amounting to 96.6% of the entire volume of cargo.

This confirms the reality of foreign domination in the coastal trade. The survey also showed that West African Offshore (WAOS) chartered 16 vessels, all of which were foreign flagged, except one; and out of 183 crews, only 45 crews about 24.5% were Nigerians. Consequently, Igbokwe²¹ identifies some of the challenges and problems of enforcing the Cabotage Act which include; one, exclusion of Indigenous Shippers Association of Nigeria (ISAN) from ministerial consultation process in granting waivers; two, inadequate implementation and monitoring of inter-ministerial and inter-agency/ inter-unit wrangling and uncooperative attitudes; three, high cost of enforcement and monitoring; four, lack of political will and determination; five, lack of confidence; six, local/foreign operators' dichotomy; and seven, resolution of Cabotage disputes/differences by the court.

iv. Nigerian Ports Authority (NPA) Act²²

By virtue of the provisions of the Nigerian Ports Authority Act, the functions of the Nigerian Ports Authority shall be, *inter alia*, to control pollution arising from oil or any other substances from ships using the ports limits or their approaches.²³ It is equally provided that during loading or discharging, any leakage of oil developing in the shore piping system shall be reported immediately to the Chief Fire Officer. If the leakage is of such a character that in the opinion of the Chief Fire Officer it constitutes a hazard, the loading or discharge shall be suspended until repairs have been affected.²⁴

It further went on to provide that in the event of any spillage of oil on the wharf, immediate action shall be taken by the person on shore who is loading or discharging oil to recover the oil and to prevent its escape onto the harbour waters; and the harbour master and the Chief Fire Officer shall be notified immediately any spillage takes place.²⁵ The penalty for contravention of any of the Regulations is provided²⁶ though so paltry, showing the passivity exhibited in the review of our

²¹ Igbokwe, M. "An Appraisal of the Cabotage Act: Three Years After", a paper presented at the maritime seminar for judges organized by the Nigerian Shippers' Council at the Eko Le Meridien Hotel, Victoria Island, Lagos in July, (2006).

²² Cap N 126 LFN 2004

²³ Nigerian Ports Authority (NPA) Act, CAP N126, LFN 2004.

²⁴ Section 7(i), *ibid*.

²⁵ Regulation 17, Nigerian Ports Authority Petroleum Wharf (Apapa) Bye-Laws, a subsidiary legislation to the NPA Act CAP N126, LFN 2004.

²⁶ Regulation 18, *ibid*, see also Regulations 43& 74, Nigerian Ports Authority (Port) Regulations, a subsidiary legislation to the NPA Act CAP N126, LFN 2004 – which expressly prohibits the discharge or escape from a ship or a place on land of oil or any dangerous or offensive liquid into the waters of a port; see also Section 3(3) of the ONWA– which authorizes the harbour Authority to appoint a place and conditions within its jurisdiction where the ballast water of vessels in which cargo of dangerous petroleum has been carried may be discharged legitimately and without constituting an offence.



laws by the legislature, as out dated penalties are retained *ad nauseam*. Accordingly, therefore, the NPA under these provisions are legitimately involved in environmental protection in the petroleum sector.

Furthermore, the National Oil Spill Contingency Plan included the NPA in the Agencies to be co-opted and mandatorily engaged by NOSDRA in the event of major or disastrous oil spill, wherein it shall in conjunction with NIMASA perform the following functions: (1) mobilize all nearby port facilities to assist in the response effort (2) provide barges and storage for recovered oil (3) facilitate berthing for vessels involved in the spill combat and (4) provide advice on the navigability of shipping lanes, creeks and other inland waterways.²⁷

v. United Nations Convention on the Law of the Sea (UNCLOS)

The regime for oceans and seas established by UNCLOS deals with a wide range of issues on ocean affairs and recognizes that the problems of ocean space are closely interrelated and need to be considered as a whole. Participation in UNCLOS is open to all States, including States that are not Members of the United Nations, such as the Holy See, the Cook Islands, and Niue, as well as to entities such as the European Union. The opening for signature of UNCLOS marked the culmination of many years of intense negotiations, particularly dating from 1958 when the First United Nations Conference on the Law of the Sea was convened.

Under the Convention, a coastal State is entitled to a territorial sea not exceeding 12 nautical miles measured from its baselines. Within its territorial sea, the coastal State exercises sovereignty, including over its resources. Subject to the provisions of the Convention, ships of all States enjoy the right of innocent passage through the territorial sea. The Convention also grants a coastal State the right to establish a contiguous zone not extending beyond 24 nautical miles from the baselines. Within its contiguous zone, the coastal State may exercise the control necessary to prevent and punish infringement of customs, fiscal, immigration or sanitary laws and regulations that have occurred within its territory or territorial waters and to control, in specified circumstances, the trafficking of archaeological and historical objects.

In addition, a coastal State may establish an exclusive economic zone not extending beyond 200 nautical miles from its baselines, where the coastal State has sovereign rights for the purposes of exploring and exploiting, conserving and managing natural living or non-living resources of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. In the exclusive economic zone, the coastal State has jurisdiction with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and protection and preservation of the marine environment.

²⁷ Regulations 34; Nigerian Ports Authority Petroleum Wharf (Apapa) Bye-laws, *ibid* (n 26)



Furthermore, under the Convention a coastal State exercises sovereign rights over its continental shelf for the purpose of exploring and exploiting its mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. These rights are inherent and do not depend on occupation, effective or notional, or on any express proclamation. The Convention also gives coastal States jurisdiction over their continental shelf with regard to the establishment and use of artificial islands, installations and structures; drilling of the continental shelf; cables and pipelines constructed or used in connection with exploration of the continental shelf and exploitation of its natural resources or to the operations of artificial islands, installations and structures; marine scientific research; and the prevention, reduction and control of pollution of the marine environment arising from or in connection with seabed activities.

Pursuant to the Convention, the continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea of coastal States up to 200 nautical miles from the baselines. In the cases in which the continental shelf extends beyond 200 nautical miles from the baselines, coastal States are required by the Convention to submit information on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf for its consideration. The Commission makes recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the continental shelf established by a coastal State on the basis of the recommendations adopted by the Commission are final and binding.

Part XII of the Law of the Sea Convention includes a number of framework provisions designed to safeguard the marine environment from pollution caused by “seabed activities subject to national jurisdiction”.²⁸ Article 235 of the Law of the Sea Convention incorporates corresponding provisions on “Responsibility and Liability”. Like the rules governing prevention and enforcement, those dealing with the responsibility and liability are drafted in very general terms and simply provide a framework for more detailed development in other more specialized treaties.

Article 235 (1) confirms the responsibility of States for the fulfilment their international obligations concerning the protection and preservation of the marine environment. Paragraph 2 requires States to ensure that the recourse is available in accordance with their legal systems for compensation for pollution damage caused by natural or juridical persons under their jurisdiction. Finally, Paragraph 3 provides a general safeguard provision to accommodate later development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of the related disputes, as well as, development of the criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds. These provisions should be considered in connection with the conventions adopted by IMO prior to, and

²⁸ Anna Mihneva – Natova, ‘The Relationship Between United Nations Convention on the Law of the Sea and the IMO Conventions’ (2005) available at <<https://www.scholar.google.com>> accessed 12 February, 2019.



after the adoption of, the Law of the Sea Convention in the field of liability and compensation for damage related to the carriage of oil and other hazardous and noxious substances by sea.²⁹

On the high seas and in the EEZ, as appropriate and in accordance with Article 98 of the Law of the Sea Convention, every State must require the master of a ship flying its flag, in so far as he can do so without danger to the ship, the crew, or the passengers, to: -

- a. Render assistance to any person found at sea in danger of being lost (paragraph 1(a));
- b. Proceed to the rescue of persons in distress, when necessary (paragraph 1(b)); and
- c. After a collision, render assistance to the other ship, its crew and its passengers (paragraph 1(c)).

The obligations to render assistance and to proceed to the rescue of persons in distress are contained in two IMO Conventions. SOLAS stipulates the general obligation of the master of a ship to proceed, where necessary, with all speed to the assistance of a ship, aircraft, or survival craft in distress (regulation V/10, re-numbered as V/33 in the amendments adopted in 2000). The 1989 International Convention on Salvage lays down in Article 10 the duty of a ship's master to render assistance to any person at sea in danger of being lost. It further requires States Parties to adopt the necessary measures to enforce this duty.

Under Articles 18(2), 45 and 52 of the Law of the Sea Convention a ship may stop and anchor in the territorial sea of another State if it is necessary for the purpose of rendering assistance to persons or aircraft in danger or distress. Ships in transit passage through straits used for international navigation or in passage through archipelagic sea lanes are allowed to stop in cases of distress.³⁰

CONCLUSION

This research has tried to highlight the important of ocean law in the development of and evolution of marine policy. Generally, the politics and global legislation on the sea much depends on the struggle for share of the mass of resources endowed on man by the opportunities and challenges provided in the oceans. Nations simply acknowledge this and their commitment to it at the multilateral level is total. Having reviewed the historical evolution of the law of the sea and the salient features of the new ocean regime of the LOS, the opportunities and challenges provided by this legal regime of the sea suggest that national efforts at evolving strategies in order to enhance optimum utilization of ocean space and its resources must be a necessary part of national planning. The review of Nigeria's marine sector which we have treated here indicate a high degree of political consciousness as regards the multifaceted uses of the sea. Nigeria, like most developing states, is constrained not only by lack of marine technology but also inadequate funding of the marine sector. Indeed, the problems, experiences and challenges confronting nations in developing policy

²⁹ UNCLOS at 30: A Comprehensive Legal Regime for all Activities in the Ocean and Sea. (United Nations Publications, New York 2012) available at <<http://www.un.org/Depts/los/>> accessed 23 April 2019.

³⁰ UNCLOS (1982), Articles 39(1)(c) and 54



mechanisms and institutions for ocean management illustrate the complexity of the ocean itself. Marine policy therefore requires integrative structures of various dimensions. Its local rooting starts first from its integration in national development planning to harness and maximize participation of all levels of government. There is also the integrative aspect of policy at the regional, and global levels. The necessary links provided by ocean law should form a basic part of ocean policy at the national level. However, the challenge of ocean development involves not only national efforts, but more significantly, it involves conscientious efforts at in-depth research in ocean governance, marine science and technology.