APPRAISING MARITIME LAWS AND REGULATIONS: A CRITIQUE

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Abstract
Nigeria continues to be a pivot of West Africa's shipping activities owing to its strategic location on the coast. Shipping is a vital part of most economies, especially Nigeria, as Nigeria imports and exports many items and the most critical ones are oil and gas. The oil and gas sector are the stronghold of Nigeria's economic, socio-political and infrastructural development; thus, it is undeniable that shipping is critical to the economic development of Nigeria. This has led to the active participation of Nigerians in the nap sub-sector culminating in the enactment of several laws to regulate the activities of the maritime sector. This article takes a look at the legal and regulatory institutions that protect the nation's maritime sector. It further examined the institutions saddled with the responsibility of overseeing the maritime industry, their functions and duties, comparative analysis of other jurisdictions. Some recommendations were proffered. The research methodology employed in this paper is the doctrinal research methodology which includes internet essays, journals consulting of primary and secondary sources of information.

Key words: Maritime, shipping, laws, cabotage

INTRODUCTION

Maritime law is a fundamental branch of law that regulates trade and navigation.[1] According to the Black's law Dictionary is the body of law governing marine commerce and navigation, the carriage at sea of persons and property and marine affairs in general: the rules governing contract, tort, and workers 'compensation claims or relating to commerce on or over water.[2] 'Rhodian law' of 800 B.C observed that maritime law is a complete system of law, both public and private, substantive and procedural, national and international, with its own court and jurisdiction which dates back to and predates both the civil and common laws.[3]

Consequently, in Maritime law a commonly used term is cabotage. The word 'cabotage' is derived from the French word *'caboter'* which means to sail coastwise or by the capes. According to Webster Dictionary, it is a trade or transport in coastal waters or airspace or between two points within a country.[4] The privilege to carry on this trade is usually limited to vessels or a vessel flying the flag

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[1] Almadi Kunal, 'Maritime Law' Open Access Journal (The Law Brigade Publishing Group, India)(2018)59
[2] Garner B.A, Black's Law Dictionary, Thomson West, USA, Eightieth ED (2004)988
[3] 800 B.C -https://www.britannica.com/event/Rhodian-Sea-Law- Accessed 8/04/2020
[4] Federick C. Mish 'Merriam – Webster's Collegiate Dictionary' 11th Edition, Webster Incorporated, USA (2003)171

of that country.[5] This method of transportation was and still is fundamental for global exchange since ships are fit for conveying massive goods which generally would not be conveyed.

Maritime trade has played an important role in the international trade of ancient time and in the era of rapid development of the globalized economy the need for transport, gradually expanding larger cargo volumes in the least imaginable amount of time, this led to development of supposed supper ships, with the ability to carry huge quantities of cargo in thousand of sea containers at a time. This dynamic offers benefits of economics of scale and external trade, import and delivery of wide variety of supplies and raw material.[6] It is worthy of note that Nigeria is blessed with vast inland waterways resources estimated at nearly 3000 kilometres and comprising more than 50 rivers both large and small that can support a vibrant inter-regional trade.[7] The development of this sector would help ease the pressure on the Nigerian roads and provide an alternative to the movement of large cargos. This would further improve the economy of the country.

SHIPPING LAWS AND REGULATIONS IN NIGERIA

The Maritime sector faces a myriad of challenges, such as sea piracy, changing political climate and security, Etc. This sector would definitely require a legal regime to regulate the activities that are carried out in this space. To this end, the legal framework of the Nigerian shipping industry loosely mirrors the entire gamut of Nigerian Maritime law. In this legal sphere, several laws and Regulations have been enacted by the National Assembly and various regulatory bodies. Some of the relevant regulatory bodies in the Nigerian Shipping industry include, Nigerian Maritime Administration and Safety Agency (NIMASA), the Nigerian Shippers Council (NSC), the Nigerian Ports Authority (NPA), the Nigerian Inland Waterways Authority (NIWA), and the Maritime Academy of Nigeria (MAN).[8]These regulatory bodies are saddled with the running of the day-to-day administration and regulation of the Nigerian shipping industry. The functions of these aforementioned administrative bodies do tend to overlap,[9] but their various regulatory functions remain potent and vital for the sustainability and growth of shipping industry.

On the other hand, there are some regulatory laws enacted with respect to the Nigerian shipping industry and it is vital to first examine and analyse some of these laws and Regulations governing the shipping sector in Nigeria.

The Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

The 1999 Constitution[10] is the grund norm of all laws in the country by virtue of being the highest law of the land and therefore any Act or law contrary to the Constitution is rendered null and void and of no effect. The overriding effect of the constitution is what placed it on the first spot on the

[5] Ferdinand O. Agama & Henry C.Alisigwe: Cabotage Regimes and their Effects on States' Economy- NAUJILJ 9 (1) (2018)71
[6] Almadi (n)4
[7] http://thelawreviews.co.uk 'the shipping law review: Nigeria' by AdedoyinAfun Accessed 5/04/2022
[8] Hellenic Shippings News Worldwide, "Nigeria: Agencies Collaborate for Improved Maritime Sector Regulation" (13th July, 2020), <https://www.hellenicshippingnews.com/nigeria-agencies-collaborate-for-improved-maritime-sectorRegulation - Accessed on 6 March, 2022.
[9] Ibid
[10] Constitution of the Federal Republic of Nigeria 1999 (As Amended)

 ISSN: 2736-0342

list of relevant laws in the maritime sector. The Constitution as a whole may not have birthed every Act or law relevant to this article but vested powers on the National and State House of Assemblies to make such laws particularly ones that bother on the maritime sector.

Suppression of Piracy and Other Maritime Offences Act, 2019 (SPOMO ACT, 2019)–

The SPOMO ACT is one of the newest bills signed into Law by President Muhammadu Buhari in 2019 in regards to the maritime sector, which was a major stride in Nigeria's quest in ensuring prosecution of criminals in the Nigerian maritime domain.[11] This makes Nigeria, the first country in West and Central Africa to have a distinct anti-piracy legislation and gives exclusive jurisdiction to hear and determine matters of armed robbery and other unlawful acts at sea to the Federal High Court.[12] The Act does not only criminalize armed robbery at sea but also prohibits the hijacking of a ship, aircraft or fixed or floating platform; the destruction or vandalism of a ship, installation or navigation facility; and/or interference with the operation of a ship, installation or navigation facility.[13]

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n a bid to bridge the gap in the legal system militating against the effective prosecution of maritime related crimes in Nigeria, the SPOMO Act is divided into four parts and contains 23 Sections. Prior to the enactment of the SPOMO Act, the prosecution of the persons suspected of maritime piracy posed a challenge in Nigeria. This was understandable as there was no clear-cut municipal law proscribing the act in Nigeria. Given the principle of no punishment without law,[14] prosecution of piracy was impossible prior to the enactment of the SPOMO Act.

With the advent of the SPOMO Act, there is firm and concise legal framework for the prosecution of piracy related offences as it is noteworthy that other laws such as the Money Laundering Act of 2012 provided for piracy as an offence,[15] there is no provision which defined it let alone prosecute offenders.

Admiralty Jurisdiction Act, Cap A5, LFN, 2004

The Admiralty Jurisdiction Decree No. 59 of 1991 (now the Admiralty Jurisdiction Act, Cap A5, LFN 2004) was enacted, repealing Admiralty Jurisdiction Decree 1962, giving the State High Courts jurisdiction over admiralty matters, which finally ended the controversy over admiralty jurisdiction. Thus, the only court that can exercise admiralty jurisdiction in Nigeria today is now the Federal Court, thanks to the Constitution[16] which affords exclusive Jurisdiction to the Federal High Court to entertain matters regarding admiralty as conferred upon by the National Assembly

[11] Abiodun Eromosele, "Nigeria: SPOMO Act - Ten Pirates Bags 48 Years Imprisonment" *allAfrica.com (*July 26, 2021) <https://allafrica.com/stories - Accessed February 9, 2023

[12] Chinedu Kema, and Salford U. Mba, "Nigeria to Prosecute First Set of Pirates under the Suppression of Piracy and Other Maritime Offences Act 2019" *Law (*May 22, 2022) <https://www.dentonsacaslaw.com/en/insights/alerts/2020/may/22/nigeria-to-prosecute-first-set-of-pirates-under-the-suppression-of-piracy> Accessed February 9, 2023

[13] "Nigeria to Prosecute First Set of Pirates under the Suppression of Piracy and Other Maritime Offences Act 2019" (May 22, 2020) <https://www.dentonsacaslaw.com/en/insights/alerts/2020/may/22/nigeria-to-prosecute-first-set-of-pirates-under-the-suppression-of-piracy> Accessed November 17, 2022

[14] Section 36 (12), 1999 Constitution (as amended)

[15] Section 15 Money Laundering Act, 2021

[16] Section 251 of the Constitution of the Federal Republic of Nigeria,1999 (As Amended)

to make laws at the pleasure of the Nigerian citizens. While the Federal High Court has exclusive jurisdiction to hear civil cases in any matter within any jurisdiction of Admiralty, including navigation on the River Niger or the River Benue and their tributaries and on all other waterways inland which may be regulated by ordinance such as international inland waterways, federal ports and carriage by sea". The Admiralty Jurisdiction Act provides that its admiralty jurisdiction covers all matters arising out of navigation on inland waterways designated as national waterways. Admiralty Jurisdiction Procedure Rules Cap M11 LFN, 2004 and to some extent the Federal High Court Rules, 2011 "created explicit rules for their operation and the conduct of maritime disputes, which resulted in trade in inland or coastal waters, from compensation to seafarers, injury to vessel, death or bodily injury to destruction or damage to cargo. It defines a vessel broadly to include coastal vessels and inland vessels; and it provides for the arrest of vessels or other property anywhere in Nigerian coastal waters. This Act affects the proper implementation of the Cabotage Act as its provisions do not exclude foreign vessels from Nigerian coastal waters.[17]

This law expanded the jurisdiction of the Admiralty of the Federal High Court, including bank or letter of credit transactions related to Importing or exporting goods to and from Nigeria by sea or air.[18] This Act further strengthens the legal framework of the shipping or maritime sector in Nigeria.

Merchant Shipping Act

The extant Merchant Shipping Act of 1962 was repealed and replaced with the current Merchant Shipping Act of 2007. The Act was enacted in order to regulate merchant shipping in Nigerian waters. A salient provision in the Act is to the effect that any ship operating as a merchant ship in Nigerian waters must provide a license which has been issued by Nigerian authorities.[19] Interestingly, the Act is not rigid with respect to licenses as the Act provides for the acceptance of licenses from foreign authorities which are recognized by Nigeria.[20] The Act further provides that any Merchant ship registered in Nigerian must hoist the Nigerian flag, failure of which is an offence punishable under the Act.[21] In order to keep proper record of the registration of ships in Nigeria, the act provides for the creation of a register of ships in which the names and ownership of ships in Nigeria are documented.[22] The Act also provides for the qualifications for the ownership of Nigerian Ships by Nigerian citizens and entities.[23] However, the Act also provides for persons and entities which/who are not Nigerians to own ships in Nigeria subject to the sanction of the Minister.[24] A very important provision of the Act is to the effect that a two (2) year life span is given to any claim whatsoever against a Nigerian ship having caused some form of damage,

[17] Gabriel Inyang EB and Stephen Odey A, "Critical Examination of the Institutional and Legal Framework of the Nigerian Maritime Cabotage Laws" (Journal of Legal, Ethical and Regulatory Issues (February 17, 2022) <https://www.abacademies.org/articles/critical-examination-of-the-institutional-and-legal-framework-of-the-nigerian-maritime-cabotage-laws-14436.html> Accessed February 15, 2023

[18] Tiwalade Aderoju, "Legal Framework for Maritime Law in Nigeria" International Bar Association (June 14, 2022) <https://www.ibanet.org/legal-framework-nigeria-maritime-law> Accessed February 15, 2023

[19] Section 5 (1), Merchant Shipping Act, 2007

[20] Section 5 (1) (b), Supra

[21] Section 6, Supra

[22] Section 16, Supra

[23] Section 18, Supra

[24] Section 18 (1) (c)

 ISSN: 2736-0342

destruction or loss of life with respect to another ship under the jurisdiction of Nigeria.[25] Therefore, any action not maintained within a period of 2 (two) years from the occurrence of the cause of action will be subject to statute of limitation as prescribed of the law.

Comprehensively, the Act is a major regulator of the registration of merchant ships in Nigeria while also providing for the Regulation and monitoring of various merchant ships coming in and out of Nigerian waters.

Waterways (Declaration) Act, 2004

By virtue of this Act,[26] some rivers, creeks, lagoons, and intercostal waterways specified in the Act's schedule are declared federal waterways. These include the coastal roads along the Badagry Canal to Lagos through the Niger, Nun and Forcados rivers to the Atlantic Ocean, the River Benue, Cross River, River Sokoto, Anambra, Ogun to the Benue, Warri Waterway along the Forcados River, Port Harcourt Waterway to Bonny River. It is true and clear that other useful navigation routes in Nigeria may have been excluded from this declaration. For example, the Calabar-Ollon Channel, the Qua iboe River from Ibeno via Port Harcourt to Uta Ewa (Ikot Abasi), the Nuwaniva River along the Adadia Atavon-Ollon, and inter-coastal to Ibaki Tom Shot Island Route, Other coastal routes across the Niger Delta. The law though not definitive but remains valid only to the extent that the few declared "federal water routes" are known and used under the law. Therefore, it does not meet the requirements for cabotage[27] but on its still subsisting in playing its role in the shipping industry.

Nigerian Maritime Administration and Safety Agency Act (2007) (NIMASA)

Essentially, this Act provides for the administration, Regulation and security of ships and crafts be it Nigerian or foreign ships within the exclusive economic zones, territorial and inland seas, inland waterways, and the ports in Nigeria.[28] Noticeably, the Act is in tandem with the Merchant shipping Act on registration of Ships and crafts in Nigeria.

In order to ensure the smooth administration of the Act, the Nigerian Maritime and Safety Agency was established by virtue of section 3 of the Act.[29] The functions of NIMASA include:

1. To administer the registration and licensing of ships.
2. To pursue the development of shipping and regulatory matters relating to merchant shipping and seafarers.
3. To regulate, and administer the certification of seafarers.
4. To establish maritime training and safety standards.
5. To regulate the safety of shipping as regards the construction of ships and navigation.
6. To provide search and rescue services.

[25] Section 343, Supra.
[26] Waterways (Declaration) Act Cap 06, LFN, 2004
[27] Gabriel Inyang EB and Stephen Odey A, "Critical Examination of the Institutional and Legal Framework of the Nigerian Maritime Cabotage Laws" Journal of Legal, Ethical and Regulatory Issues (February 17, 2022) <https://www.abacademies.org/articles/critical-examination-of-the-institutional-and-legal-framework-of-the-nigerian-maritime-cabotage-laws-14436.html> Accessed February 15, 2023
[28] Section 2, Nigerian Maritime Administration and Safety Agency Act (2007)
[29] Nigerian Maritime Administration and Safety Agency Act (2007)

7. Provide directions and ensure compliance with vessel security measures.
8. Carry out air and coastal surveillance.
9. Control and prevent marine pollution and,
10. Provide the direction on qualification, certification, employment and welfare of maritime labour, etc

Coastal and Inland Shipping Act[30]

The Coastal shipping Act was created to limit and restrict the operations of foreign vessels and crafts within the territorial waters of Nigeria. Essentially, the purpose of this act is to ensure that Nigerian indigenous ships and ships owned by Nigerian citizens and entities ultimately have access to Nigerian exclusive territorial waters for the purpose of conducting their businesses. The reason for the enactment of this is to protect indigenous ship owners so as to ensure that foreign ships do not dominate the Nigerian territorial waters at the economic expense of indigenous ships. The Act[31] however, provides an exception in section 15 to the effect that a foreign ship can be involved in cabotage if such ship is registered by a Nigerian who is its representative subject to the approval of the minister.[32] In effect, the Coastal and Inland Shipping Act, 2003 is one of paramount importance to the interest and growth of the economy.

Merchant Shipping Pilot Ladder Regulations, 2010

This Regulation was made in order to ensure the safety of the ships for users. The Regulation provides that a pilot ladder must be provided on every ship in Nigeria to ensure the safe embarking and disembarking of pilots and persons authorized by them at every port. Marine pilots play an important role in the safe operations of any harbour, where the guild almost every vessel that comes in and out of the port.[33] However, the importance of these pilots has made this regulation[34] essential for the proper use of a pilot ladder. This regulation plays a safety card in the shipping sector as it provides safety guidelines and other recommendations needed in saving of lives and protection of vital shipping equipment.

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

This Act empowers the National Inland Waterways Authority (NIWA) to ensure the development of infrastructural facilities for national inland waterways network linking the creeks and rivers with the economic hubs 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, 2018). 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, none of the current Nigerian shipping laws has holistically considered a true and efficient regulated cabotage

[30]Coastal and Inland Shipping Act, 2003
[31] Ibid
[32]Minister of Transportation
[33] Mark Glover " Maritime Safety: The Importance of Pilot Ladder" InformaMarkets (2023)1
[34] Merchant Shipping Pilot Ladder Regulations, 2010

 ISSN: 2736-0342

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 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, more so, when some of the legislation still have colonial parameters and inadequate to sustain a formidable cabotage regime.[35]

The United Nations Convention on the Law of the Sea

The United Nations Convention on the law of Sea regulates shipping all over the world. The convention ensures that both landlocked and littoral states enjoy safe navigation through the sea with equal rights and responsibilities.[36] For the purpose of shipping, the convention divided the seas into 4(four)[37] different parts as follows;

- Internal waters
- Territorial Sea and Contiguous Zone
- Other Zones in which states have special interests
- The High Seas

Due to the provisions of section 12 of the 1999 Constitution[38] of the Federal Republic of Nigeria, no treaty gains the force of law in Nigeria without it being ratified by the National Assembly. Hence, Nigeria has ratified the convention in order to allow the provisions of the convention become binding and become a major part of the Nigerian shipping law.

In summary of the above, Nigerian maritime laws encompass various statutory laws and regulations that regulate maritime activities and trade in Nigeria. The maritime laws are not limited to some of those summarized above. Various national and international laws of the maritime law apply in Nigeria, including the United Nations Convention on the Law of the Sea, The Hague Rules of Visby, Carriage of goods by sea Act, and several others.

In addition, numerous judicial precedents have had enormous implications on maritime administration and its operations in Nigeria. One of which is the issue of which court has jurisdiction to decide on certain classes of maritime claims, for example, the case of **The Vessel MT Sam Purpose (Ex Mt. Tapti) & Anor v. Amarjeet Singh Bains & 6 Ors**, Appeal No.: CA/LAG/CV/419, delivered on the 5th of March, 2021, the Court of Appeal sitting at Lagos ruled that the National Industrial Court (NIC) has exclusive jurisdiction in any dispute concerning unpaid crew wages as this is a labour-related matter. The decision of the Court came to this

[35] Gabriel Inyang EB and Stephen Odey A, (n)30

[36] U.O. Umozuruike, *Introduction to International Law,* International Humanitarian Law, 3rd Ed, Spectrum, Ibadan, (2010) 102

[37] Ibid

[38] Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

conclusion upon a review of Section 254(C) of the Constitution of the Federal Republic of Nigeria (as amended), 1999 (CFRN) and the provisions of Section 7 of the National Industrial Court (NIC) Act, 2006.[39] This decision has however laid to rest the discrepancies or confusion on which Court to lay certain grievances on and in turn has contributed to the organisation and improvement of the maritime sector.

APPLICABILITY OF SHIPPING LAWS AND REGULATIONS IN NIGERIA

It is clear from the above that Nigeria has a wide range of laws and Regulations regarding shipping in Nigeria. It is a common knowledge that Nigeria does not have much of a problem with no laws but the implementation of the available laws and Regulations.

Shipping is one of the lifelines of the Nigerian economy as it is the medium through which import and export activities are carried out. It further serves as the main backbone for the transportation of crude oil which is the main support of the Nigerian economy. It is the main backbone for the transportation of crude oil which is the main stay of the Nigerian economy. However, it is saddening that there exists an implementation problem regarding the Nigerian shipping laws. For example, safety measures are abandoned, license extortion is endemic while systemic corruption is prevalent.[40] It is to this end, we wish to examine the compliance and implementation mechanisms of the Maritime laws in Nigeria.

CHALLENGES WITH RESPECT TO THE COMPLIANCE AND IMPLEMENTATION OF MARITIME LAWS IN NIGERIA

Dearth of Funds-

The lack of access to funding in the maritime sector of the Nigerian economy appears to hinder the implementation of various shipping laws in the country. This can be evidenced in the unavailability of federal government owned ships/vessels for the purpose of transporting of goods within the Nigerian ports.[41] The Cabotage Act[42] provides for the establishment of a Cabotage vessel finance fund to be derived from 2% of surcharge contract sums,[43] however, individuals and entities continue to under trade and evade this obligation to the federal government of Nigeria.

Grant of waivers by the Minister[44]

The discretion in several shipping laws which provide for the grant of waivers with respect to obtaining shipping licenses tends to encourage corruption and the influx of illegal vessels into Nigerian waters. These in turn greatly sabotage the economic turnover of the government and damage the fabric of trust in the shipping sector.[45]

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[39] Adedoyin Afun, "The Shipping Law Review: Nigeria" Bloomfield Law Publications (2022)

[40] Godwin Oritse, Vanguard Newspaper (March 25, 2022)19

[41] Omolola O, "Cabottage Act: An Appraisal of its Implementation and Compliance" Law Axis 360, October 21, 2019, <https://lawaxis360degree.com/2019/10/21/cabotage-act-an-appraisal-of-its-implementation-and-compliance-omolola-oyewole/> Accessed on 6th April, 2022

[42] Section 5, Cabotage Vessel Financing Fund (Cvff) Guidelines, 2006.

[43] Omolola Oyewole, (n)45

[44] "Minister" means the head of the ministry for the time being charged with the responsibility for matters relating shipping "ministry" has a corresponding meaning - Coastal and Inland Shipping (Cabotage) Act, 2003

[45] Ibid

 ISSN: 2736-0342

Lack of experienced and properly trained seafarers

The inexperience and lack of training of most seafarers in Nigerian contribute to the complicated implementation of the various shipping laws in Nigeria. Where the seafarers do not know their job description and the proper way of going about their obligations, it is given that the cogent provisions of some of the shipping laws and regulations will be flagrantly disregarded.[46]

REGULATORY SHIPPING AGENCIES IN NIGERIA

This agency oversees shipment and cargo and the general interests of its customers at ports and harbours worldwide on behalf of ship owners, managers and charterers.[47] These Regulatory shipping agencies include the following:

Nigerian Maritime Administration and Safety Agency (NIMASA):

This shipping agency was known formerly as the **National Maritime Authority** (NMA) and was created on 1st August, 2006 when the National Maritime Authority was merged with the Joint Maritime Labour Industrial Council and were both formerly parastatals of the Federal Ministry of Transport.[48] It is considered as the top promotional and regulatory maritime agency with the primary objective to achieve and sustain secure and safe shipping, cleaner oceans and enhanced maritime capacity in line with the best global practices.[49]It is responsible for Regulations related to Nigerian shipping, maritime labor and coastal waters and further undertakes the inspection, search and rescue services of ships.[50] The governing board includes representatives of the Ministry of Labour, the Ministry of Transport and the Navy. NIMASA is in charge of enforcing directives on all ship operators both in Nigeria or foreign ships on the criteria required to engaging in cabotage trade in Nigeria. NIMASA over the years have been prominent in

Nigerian Ports Authority (NPA):

This regulatory shipping agency was established in 1954 for the purpose of regulating the activities of users/operators within the jurisdictions of the Nigerian Ports Authority. The Nigerian Ports Authority was created to govern and oversee all operations within its Ports, from the Apapa Port, Tin Can Island Port in Lagos, Calabar Port, and Delta Port among others. Functions of the Nigerian Ports Authority are stated in section 7 of the Nigerian Ports Authority Act 2004,

In an attempt to improve the nationwide economy, the Federal Government embarked on a variety of reorganization initiatives in the public sector, which includes the maritime sub-sector. This initiative was to promote an economy that is friendly, in line with the global best practices and private sector oriented. Under this new arrangement, the Authority conceded some of her functions and responsibilities.

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[46] Ibid

[47] Shipping Agency in UAE: Maritime Shipping Agencies in UAE (*Shipping Agency in UAE | logistics in UAE | Marine Services in UAE (*November 2, 2021) <https://www.almasa-shipping.com/agency/> Accessed February 10, 2023

[48] Mwalimu Charles, *The Nigerian Legal System* (P Lang 2007)548.

[49] Nigerian Maritime Administration and Safety Agency (2020) <https://ng.linkedin.com/company/nigerian-maritime-administration-and-safety-agency> Accessed February 10, 2023

[50] Bassey Celestine, "*Defence Policy of Nigeria: Capability and Contex,"* Author House (2011)584

Nigerian Shippers' Council (NSC):

The Nigerian Shippers Council is a federal government agency formed in 1978 by the law of Nigerian Shippers' Council Act[51] and charged with the responsibility of protecting exporter and importers in Nigeria as well as its goods. It serves as an agent for economic development through intervening in cost moderation and transportation of cargo issue.[52] It aim to achieve positive impact on inflationary trends in Nigeria. For a more detailed information on the function of this agency, its functions are provided for in Section 3 of the Nigerian Shippers' Council Act.

Maritime Academy of Nigeria (MAN):

Formerly known as the Nautical Maritime College, the Nigerian Maritime Academy was established in 1977 by the Nigerian Federal Executive Council with the support of the International Maritime Organization (IMO). Established as an educational institution under the Research and Statistics Office of the Federal Ministry of Transport.[53] The Academy was originally conceived as an integrated institution for ship and assessment, and for the education and training of coastal management personnel.[54] Initially, the Nautical College consisted of the three departments: Nautical Science, Marine Engineering and General Studies. Following its expansion of responsibilities, its name was changed to the Nigerian Maritime Academy. [55] This academy was created exclusively for the training of those who work as cargo loaders and its functions set out in Section 3 of the Nigerian Maritime Academy Act. [56]

COMPARATIVE ANALYSIS

Shipping Laws and Regulations in Japan

Japan is the world's second-largest ship-owning country whereby it boast of more than 2,500 ocean-going vessels under its control and one of the top three shipbuilding countries in terms of tonnage. Japan also has three large shipping companies (NYK, MOL and Kline), several prominent and high-quality shipbuilding companies and individual ship owners, which are mainly, located in Tokyo and Imabari, with the remainder in the Shikoku, Chugoku and Kyushu regions. Approximately, 50,000 ocean-going commercial vessels in the world, roughly 2,500 vessels with more than 180 million deadweight tonnages are owned or operated by Japanese companies or special-purpose companies established in Japan or elsewhere, such as Panama, Liberia, Singapore or the Marshall Islands.[57]

Japan in recent time ratified most of the basic maritime conventions, such as Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules);the latest version of the Convention on Limitation of

[51] Nigerian Shippers Council Act, Cap N 133 LFN 2004.

[52] Nigerian Shippers Council , "Nigerian Shippers' Council official web page" *(*2022) <https://www.shipperscouncil.gov.ng/> Accessed February 10, 2023

[53] Color-lib, "We educate for an improved maritime industry" *(Maritime Academy of Nigeria :About us)* <https://maritimeacademy.gov.ng/about.php> Accessed February 10, 2023

[54] Transport day, " Maritime Academy Of Nigeria (MAN) Act" Transport day Newspaper Publications (2020)1

[55] Color-lib (n)57

[56] Maritime Academy of Nigeria Act, 2006

[57]Jumpei Osada, Sasaki Masaaki and Takuto Kobayashi, "A General Introduction to Shipping Law and Practice in Japan" TMI Associates, Lexology online library (2020)

 ISSN: 2736-0342

Liability for Maritime Claims 1976 (the LLMC Convention 1976) with its 1996 Protocol; the International Convention on Civil Liability for Oil Pollution Damage 1969, replaced by 1992 Protocol (the CLC Convention);the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention);the International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL (73/78)) with its Annexes; the International Convention for the Safety of Life at Sea 1974 (SOLAS); and relevant rules and Regulations that are incorporated or codified by local laws and Regulations.[58] Domestication and application of the laws in Japan has given it the pride and place it occupied in the world. This is against what is tenable in Nigeria.

Shipping Laws and Regulations in United State of America (USA)

The United States has an Automated Reporting System (AMS) and a 10+2 Importer Security Registration System (ISF), introduced in 2004 and 2009 respectively. These processing systems are designed to eliminate US security threats. The former concerns the process of declaring cargo to US customers before the ship sets sail. The latter is to be submitted alongside AMS, requiring details of where and who to ship the shipment to. Both processing systems requires information about the sender, consignee, manufacturer, and ultimate consignee. It also relies on the details of the cargo, such as the exact number of pieces (pallets are not counted as pieces) and weight, as well as the breakdown of the ports the ship calls, especially the last port and the first US port. All of the above information is held by various parties including the shipper, carrier and consignee. This can be challenging especially when the shipper and consignee do not anticipate this before the cargo goes to the port.[59] Importation of goods can be challenging as many people are simply not aware of the AMS and ISF systems and because it's the importer's responsibility to file the ISF alongside the AMS, it's easy to slip up when preparing for a shipment. Failing to go through the correct channels results in fines and even blacklisting – meaning shipping to this part of the world may be difficult.[60] The advantage of this system is that the laws and regulations makes the USA shipping line one of the safest in the world. With this above policies obtainable in US, shipping activities contribute 26 percent Gross Domestic Products (GDP) as opposed to Nigeria's 1.6 percent Gross Domestic Products (GDP).[61]

A CRITIQUE OF SOME MARITIME LAWS AND AGENCIES IN NIGERIA

The Nigerian maritime law is not without pitfalls as there are a number of challenges associated with the maritime laws. Nigeria has no legal procedure in prosecuting criminal acts or offences committed on the maritime front.[62] The most recent Act on this line is the SPOMO Act[63] but that too is plagued with limitations which stern from lack of specialized courts in Nigeria. It can be argued that the SPOMO Act's failure to include the establishment of a dedicated maritime court hinders the correct interpretation of the law in combating piracy in Nigeria. This is because piracy is a complex crime and it takes special training and dexterity for judges to properly understand the

[58] Ibid

[59] Tim, "The Rules & Regulations of Shipping to the USA" Forwarder Magazine Publishers (2019) <https://forwardermagazine.com/the-rules-regulations-of-shipping-to-the-usa/> Accessed February 18, 2023

[60] Ibid

[61] Wright Roberts, "Nigeria's Maritime Industry: Going for Growth" Stears Business (2020)

[62] Ogbonnaya Maurice, "Is Nigeria's New Anti-Piracy Law Enough to Combat Maritime Piracy?" Enact Africa (2020)

[63] Suppression of Piracy and Other Maritime Offences Act, 2019

use of modern surveillance and communications equipment, as well as the conduct of forensic investigations by maritime law enforcement agencies. Because you need it. Again, piracy is related to other transnational crimes such as money laundering, and piracy occurs on land primarily due to violence from corrupt government officials, mismanagement and economic deprivation. Having a professional maritime court is essential given the nature of maritime cases.[64] The shortfall of relevant laws in this area in Nigeria has undermined security drastically. Nigeria has attempted to pass numerous legislations in the maritime sector but most have failed to solve the challenges and efforts have proved still unsuccessful till date.[65]

Currently, some of the relevant laws relied upon in regulating maritime activities in Nigeria are the Coastal and Inland Shipping (CABOTAGE) Act 2003, Merchant Shipping Act 2007, NIMASA ACT 2007, International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004 and Nigerian Territorial Waters Act 1967. The major challenges with these laws are that most of their provisions are archaic, obsolete and do not contain provisions criminalizing or punishing acts of Piracy or the related offences of armed robbery at sea, or other illicit activities at sea.[66] Nigeria was labelled one of the hot-spots for maritime piracy in 2010.[67]

The unavailability of modern dynamic laws in the fight against of Maritime crimes has posed a great challenge towards legally addressing the scourge. There are several international laws available to help curb maritime unlawful activities such as International Convention for the Safety of Life at Sea, 1974 (SOLAS), Protocol Relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto, International Convention on Maritime Search and Rescue, 1979 (SAR), International Labour Organization Convention (No. 32 of 1932) on Protection against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932) but due its lack of domestication in Nigeria, such laws have no effect.[68] Section 12 of the 1999 Constitution[69](as amended) provides that "No treaty between the Federation and any other country shall have the force of law unless to the extent to which any such treaty has been enacted into law by the National Assembly". In support of this stance, the Supreme Court of Nigeria held in **Registered Trustee of the National Association of Community Health Practitioners of Nigeria & Ors V. Medical and Health Workers Union of Nigeria,**[70] Thus:

> "In essence, what the legislature meant or intended is that for a treaty to be valid, and enforceable, it must have the force of law behind it, i.e. it must be supported by a law enacted by the National assembly, not bits and pieces of provisions found here and there in the other laws of the land, and not specifically so enacted to domesticate it, to make it a part of our law, to interpret similar provisions, as being

[64] Kalu Kingsley Anele, "A Panoramic Definition of Piracy under the SPOMO Act: Matters Arising," Afronomics Law (2021).
[65] Ibid
[66] Margaret Odanwuchizoba, "Evaluation of Nigerian Legal Framework for Effective Prosecution of Maritime Crimes and Proposals for Reform" United Nations-Nippon Foundation Fellow (2016)5
[67] Lhuillery, Jacques, "Nigeria becomes world piracy hot spot," Mail & Guardian Online. (2008) < http://www.mg.co.za/article/2008-05-20-nigeria-becomes-world-piracy-hot-spot>Accessed 18 February, 2023
[68] Margaret Odanwuchizoba, (n)68
[69] Constitution of the Federal Republic of Nigeria, 1999 (As Amended)
[70] (2008) 2 NWLR (Pt.1072)575 at 623

> part of International Labour Organization Conventions just because they form parts of some other enactments like the African charter of Peoples Rights etc. will not be tolerated."

Therefore, the need for Nigeria to domesticate any international treaty is paramount in rejuvenating its laws and Regulations against maritime crimes as this can only be done by first enacting same by an Act of the National assembly into the laws of the land.

Similarly, in terms of agency roles in the improvement of the Maritime sector, one of the biggest limitations is that there is little to no synergy among the heads of all agencies in the maritime industry, therefore resulting in poor operational performance due to poor communication and information sharing. There have also been various aspects of overlapping functions in areas such as wreck removal, where the Nigerian Maritime Safety Authority (NIMASA), the National Inland Waterways Authority (NIWA) and the Nigerian Ports Authority (NPA) are responsible due functions prescribed by their various acts. The supervisory Ministry and National Assembly committees in charge of supervising the maritime sector do little control or overseeing the activities in the maritime industry. It is clear that if these issues continue, the impact of this will adversely affect the growth of the maritime sector and ultimately the development of the nation.[71]

CONCLUSION

From the above, we simply have analysed some of the maritime laws of Nigeria. It is therefore safe to say that Nigeria, as a giant of Africa, there is need to ameliorate the current decline of the maritime sector and more is required to improve regulations of maritime activities in the country as this will inevitably contribute significantly to the gross domestic product of the country. As observed in other regions such as the United States of America (USA) and Japan, where maritime activities contribute a sufficient percentage to the economy of the country and boost bilateral trade with other countries that have maritime activities with them, and high time Nigeria lag the line of these prosperous countries in maritime activities to reduce its dependence on oil and gas to maintain its economic viability, which would have a domino effect by creating more job opportunities for its abundant population.

RECOMMENDATION

1. Funding being a major issue, various regulatory agencies should be adequately funded and equipped to effectively enforce and brought to global standard in fighting Maritime crimes.
2. Formation or collaboration of different agencies for the purpose of addressing the issue piracy and armed robbery in Nigerian waterways.
3. Proper and effective shipping record keeping and shipping activities by the relevant agencies.
4. Unlimited access and Information sharing on activities, vessel ownership, shipyard capabilities etc. between the different relevant agencies especially NIMASA, NNPC/PPMC, Navy, Customs, Immigration etc.

[71] Hellenic shipping news. "Nigeria: Agencies collaborate for Improved Maritime Sector Regulation," Hellenic Shipping News Worldwide (2020) < https://www.hellenicshippingnews.com/nigeria-agencies-collaborate-for-improved-maritime-sector-regulation>Accessed February 18, 2023.

5. Increase in employment for more manpower and capacity building for the Maritime Industry.
6. The chandelling business should be included in the Cabotage Act, to give legality to the Chandlers who serve as vital link in the maritime sector.
7. There is need to share diverse initiatives amongst the agencies to have improved operational opportunities within the maritime industry.
8. More efforts by competent ministries and National Assembly Committees to monitor the maritime industry.
9. Establishment of a Maritime Bank whose sole purpose is to provide financial support to local ship owners under stricter conditions.
10. Local shipping companies should act as watchdogs to protect local ship owners and prevent foreign vessels from entering without refusal.

 ISSN: 2736-0342