AN EXAMINATION OF CABOTAGE LAWS AND IMPLICATIONS FOR NIGERIAN MARITIME INDUSTRY

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FEBUARY, 2021

DECLARATION

I declare that the work in this dissertation entitled *An Examination of Cabotage Laws ana implications for Nigerian Maritime Industry* has been carried out by me in the Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

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CERTIFICATION

This dissertation entitled *An Examination of Cabotage Laws and Implications for Nigerian Maritime Industry* meets the regulations governing the award of the degree of Master of Laws (LL.M) of the Ahmadu Bello University, Zaria and is approved for its contribution to the knowledge and literary presentation.

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DEDICATION

This dissertation is dedicated to the Almighty God, Jehovah and to my Late father Surv. Monday Saaro Nwineewii.

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ABSTRACT

The Coastal and Inland Shipping (Cabotage) Act[1] was enacted on 30th April 2003 to reform maritime business within the coast of Nigerian. With its coastline measuring over 800kilometers and a wealth of natural resources including rich hydrocarbon deposits, zinc and iron ore, Nigeria has numerous global trade opportunities[2]. I have always been intrigued by the Maritime Sector of the Nigerian economy, particularly Cabotage and its activities and this prompted my choosing a dissertation topic in this area of law. The main objective of this Act is to reserve the commercial transportation of goods, services and persons within Nigeria's coastal and inland waters to vessels flying the Nigerian flag and owned by persons of Nigerian citizenship, in other words, to promote development of indigenous man power in the Nigerian Maritime industry. Given the financial challenges associated with the acquisition of vessels, the Act established the Cabotage Vessel Financing Fund (CVFF) to provide credit facilities to interested Nigerians[3] thus facilitating indigenous ship acquisition. The Act restricts foreign participation in Nigeria's internal water as such foreign vessels are restricted within Nigerian's waters except when rendering assistance to persons, vessels, or aircraft in danger or distress. Nigerian waters include coastal, territorial and inland waters and islands or waters within the Exclusive Economic Zone of Nigeria. This work examined the implications of the Coastal and Inland Shipping (Cabotage) Act, how it affects in particular, inter-state trade, the capacity of local traders to meet with the provisions of the Act, making funding accessible to indigenous participants for vessel acquisition and the restrictions placed on foreign ships and proffered suitable policy options and recommendations for reform. But despite its laudable provisions, they are still plagued with a lot of problems amongst which are the inability of indigenous shipping company to draw from the Cabotage Vessel and Financing Fund (CVFF) and the nagging challenge of indiscriminate granting of licenses to foreign vessels and waivers. The objectives of this study was achieved using the doctrinal research methodology, relying on primary sources such as Statutes, Case Laws, Rules and Regulations and Secondary sources such as textbooks, journals and internet sources. This research recommended that the Federal government of Nigeria through the regulatory agency Nigerian Maritime and Security Agency (NIMASA) should as a matter of urgent National security and importance unlock the funds in the Cabotage Vessel and Financing Fund (CVFF). The work further recommended that a

[1] Usually referred to as Cabotage Act

[2] www.internationallawoffice.com. Notable amendments to Cabotage Act. Accessed 22/01/18 at 11:30a.m.

[3] Section 42(1) of the Cabotage Act

designated reputable indigenous accounting firm or a Commercial Bank be put in place as the one-stop shop for accessing the fund.

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LIST OF ABBREVIATION

ASA	**Appropriate Superior Authority**
CISG	**United Nations Convention on Contracts for the International Sale of Goods**
CO	**Commanding Officer**
COD	**Certificates of Disbursement**
CSU	**Corporate Services Unit**
CVFF	**Cabotage Vessel Financing Fund**
DPR	**Department of Petroleum Resources**
EEZs	**Exclusive Economic Zones**
E&P	**Exploration and Production**
HSOP	**Harmonised Standard Operating Procedures**
IMO	**International Maritime Organization**
JOMALIC	**Joint Maritime Labour Industrial Council**
MIA	**Marine Insurance Act**
MPR	**Ministry of Petroleum Resources**
NAPIMS	**National Petroleum Investment and Management Services**
NCDMB	**Nigerian Content Development and Monitoring Board**
NDP	**National Defence Policy**
NIMASA	**Nigeria Maritime Administration and Safety Agency**
NIWA	**Nigerian Inland Waterways Authority**

NMA	**National Maritime Authority**
NN	**Nigerian Navy**
NNOC	**Nigerian National Oil Company**
NNPC	**Nigerian National Petroleum Commission**
NNSL	**Nigerian National Shipping Line**
NOCs	**National Oil Companies**
NPA	**Nigerian Ports Authority**
NSPA	**National Shipping Policy Act**
NUL	**Nigeria Unity Line**
OEL	**Oil Exploration Licence**
OIC	**Officer in Charge**
OML	**Oil Mining Lease**
OPEC	**Organisation of Petroleum Exporting Countries**
OPL	**Oil Prospecting Licence**
OPTS	**Oil Producers Trade Sector**
PLIs	**Primary Lending Institutions**
PPMC	**Petroleum Products Marketing Company**
PPP	**Private – Public Sector Partnership**
SASBF	**Ship Acquisition and Ship Building Fund**
SDGS	**Sustainable Development goals**
UAC	**United Africa Company**
UNCLOS	**United Nations Convention on the Law of the Sea**

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Nigeria enjoys about 853km coastline and also has about 3,000km of inland waterways[4]. Oil and other natural resources can be moved through and out of these waterways making Nigeria a maritime hub not only in West Africa but also globally. This opens floodgates of opportunities for Nigerians to utilise from especially in coastal trade, ship building, employment and security. The government mindful of the need to develop indigenous merchant marine fleet or shipping industry has at various times enacted laws, initiated policies and projects. The Cabotage laws foremost amongst such innovations by the government includes but not limited to the Coastal and Inland Shipping (Cabotage) Act 2003[5], Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007, Coastal and Inland Shipping Cabotage (Detention of Ships) Regulations 2006, Cabotage Vessel Financing Fund (CVFF) Guidelines, 2006, Bareboat Charter Regulations 2006, Merchant Shipping Act 2007[6] which seeks amongst other things to boost indigenous vessels, reserve the commercial transportation of goods, services and persons within Nigeria's coastal and inland waters to vessels flying the Nigerian flag and owned by persons of Nigerian citizenship, in other words, to promote development of indigenous man power in the Nigerian Maritime industry. Successful implementation of the Cabotage laws in Nigeria is critical to the success or otherwise of being amongst the largest economies because of the important role shipping plays in not just the movement of goods

[4] Magashi, S.B.(2018) "NIMASA and Indigenous Capacity Building in Nigeria", Being a Seminar Paper Presented at the Annual Maritime Seminar of the Nigerian Navy held on May 13 and 14, 2018
[5] C51, Laws of the Federation of Nigeria, 2004
[6] M11, Laws of the Federation of Nigeria, 2004

and services around the country but also the revenue collected as tax from companies in the sector[7]. Despites these regional laws, there are also international laws that have been ratified by Nigeria that also regulates our Cabotage which includes United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Convention of the Sale of Goods.

The concept of Cabotage is neither a new fangled idea nor is its industrial application particularly unique to the operation of the Nigerian economy alone. It has been noted that the word "cabotage" is derived from the Spanish root word "cabo" or "cab" simply meaning maritime circulation at short coastal distances or maritime trade along the coastal lines[8]. It is alsoa nautical term from the Spanish, denoting strictly navigation from cape to cape along the coast without going into the open sea[9].

In International Law, Cabotage is identified with coastal trading, so that it means navigating and trading along the coast between the ports thereof[10].Cabotage simply refers to transit of a vessel[11]along the coast of a nation for the purpose of trade from one port to another within the territorial limits of that nation. Such coastal trading is regulated by the laws of that nation. Cabotage laws, thus, are exclusive reservation of the coasting trade of a country to ships operating under the flag of that country. In the words of Walter[12], the market reservation provisions of the law is intended to achieve the reservation of a significant part of the Nigerian coastal shipping business opportunity, particularly those existing in respect of the

[7] Foranimifera Market Research, Cabotage Law and its benefit to the economy in Nigeria. www.http://foramfera.com/2016/03/24. Accessed 11/06/18 at 7:54pm

[8] Usoro. (2012) In: Okeke V.O.S. An Evaluation of the Effectiveness of the Cabotage Act 2003 on Nigerian Maritime Administration, London England, Vol.2, No. 1, p. 14

[9] Black's Law Dictionary with Pronunciations, St. Paul, Minn. West Publishing Co., Sixth Edition (1990) p. 202.

[10] Ibid

[11] Section 2 (d) of the Coastal and Inland Shipping (Cabotage) Act 2003, "vessel" includes any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on, through or under water of persons or property without regard to method or lack of propulsion.

[12] Walter C. (2010) Cabotage Act and Development in Nigerian Maritime. http://www.thetidenewsonline.com. Accessed 19/06/18 at 10:42am.

local carriage of goods, the coastal transport of men and materials, the supply of offshore vessels of differing operational and market role description, the supply of all manner of shipping services between all Nigerian coastwise and offshore locations for Nigerian operators only. It is indeed the case that most maritime Nations of the world maintain one form of Cabotage regime or the other in the support of the development and growth of their maritime industry.

The United States of America which is regarded as the world's foremost of the free trade concepts, has for over a hundred years, operated, and enforced the provisions of the Jones's Act[13] which is one of the strictest form of Cabotage legislation in existence anywhere[14]. A successful Cabotage regime in Nigeria would essentially be conditioned on the availability of Nigerian owned registered vessels of appropriate market size and description. Nigeria's shipping interest would invariably develop on indigenous shipping fleet of the appropriate market role description and capacity in other to be properly positioned to take full advantage of the Cabotage Laws.

Ships, shipping services and production however, are capital intensive and the source of funding[15]through the Cabotage Vessel Financing Fund (CVFF) has been put in place to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping. In the quest to optimize our Cabotage potential, there is need to provide adequate and feasible funding support for asset acquisition if the expected results are to be achieved. This lack of participatory capacity was attributed to the inability of indigenes to invest in the maritime transportation sector. The

[13] The Merchant Marine Act of 1920 is known as the Jones Act. It is a Federal Law that regulates maritime commerce in the United States. The Jones Act requires goods shipped between U.S ports to be transported on ships that are built, owned and operated by United States citizens or permanent residents. https://en.wikipedia.org/wiki and http://www.investopedia.com. Accessed 14/06/18 at 2:28pm.

[14] Okoroji Lazarus (2013). Assessment on the Impact of the Implementation of the Cabotage in Maritime Industry. www.http://lazokoroji.worldpress.com. Accessed 13/06/18 at 1:21pm

[15] Section 42-45 of the Coastal Inland Shipping and (Cabotage) Act 2003

situation is quite critical to the extent that transport services for the personnel and equipment for oil exploration in the deep sea were being rendered by foreigner, which has caused the country dearly.

It is the opinion of the ship operators and maritime stakeholders that with the advent of the Cabotage Law and the local content policy of the government, which should be supported by proper implementation, it is hoped that better days lies ahead for Nigerian businessmen who could key into the merit of the Act. The local operators should be prepared to tap into the multipliers effect of the Cabotage Laws[16].

The law gives room for ship building, shore to rig services, green field development and manning. In turn, Nigeria would as well make its system attractive to foreign investors given the legislative backing by moving local content from 40-70% in the near future. It is conceived that there would be more shipping services such as ship chandelling, agencies and haulage for Nigerians[17]. Cabotage guidelines specified the procedure of implementing the Act however, currently it has been receiving a lot of criticism from the public and stakeholders.

It is imperative to state at this juncture that the maritime industry is old and an expensive industry which gives room for monopoly by developed economies. Except it is regulated to the advantage of indigenous people very little benefit will be realised by them. The maritime industry occupies a very prominent position in the economy of nations all over the world. The industry in its strict sense embraces all the maritime related business activities which take place within the country's maritime environment. These include offshore economic activities such as fishing, salvage, towage, underwater resources and on-shore economic activities such as port activities, maritime transport (shipping), ship construction, repairs and maintenance

[16] Ozioruva A. (2004) Nigeria Loses $4 Billion Yearly to Foreign Ship Owners. Guardian, p. 53

[17] Agbakoba O & Associates. Guild for the Cabotage Financing for the Financial Sector in Nigeria. Paper presented to NIMASA on Economic Potentials of Maritime Industry in Nigeria. 17th and 19th of May 2002.

activities. Of all these activities, shipping stands out as the greatest boost to a nation's economic growth and development. This is so because all other maritime activities revolve around shipping.

The process of navigating or engaging in commerce through various types of navigable waters introduces the related concept of shipping. Shipping involves the art of transporting goods, often termed cargo, from one point to another on any stretch of water[18]. Shipping could therefore be on land also. Historically, it constitutes a major source of political power and territorial influence for "he who rules the sea, rules the world"[19], a fact underscored by the various conquests of the Egyptians, Turkish, Roman, and Spanish, Greek, Portuguese and British empires. The story of the shipping industry since the Second World War has been one of ingenuity, professionalism, fabulous profits and some miscalculations[20].

Adam Smith, the father of modern economics, viewed shipping as one of the principal stepping stones to economic development. As ships traverse from one country to another, they have to ensure that they comply with two sets of law- those applicable in their states of origin and those applicable in their states of destination. They have to be identified as belonging to a particular country- this requires that they are registered in that country. To be safe at sea they need to comply with regulations governing boat constructions, equipments, and communications. They require a competent crew, and this makes it necessary to comply with regulations on the training and certification of seafarers, their conditions of service and welfare. Since all ships must carry goods or passengers, there must also be rules on the safety

[18] Ekpo Imoh Ekpo (2012). Impact of Shipping on Nigerian Economy: Implications for Sustainable Development. Journal of Educational and Social Research. School of Maritime studies, Akwa Ibom State, Vol.2 (7) October, p. 108.

[19] Mukherjee, H. (2010), Maritime Commercial Law, Unpublished lecture handout, World Maritime University Malmo, Sweden. In: Ekpo Imoh Ekpo. Impact of Shipping on Nigerian Economy: Implications for Sustainable Development. Journal of Educational and Social Research. School of Maritime Studies, Akwa Ibom State, Vol.2(7) October 2012, p. 108

[20] Ma, S. (2012) Lecture notes, handout, slides on logistics, Malmo World Maritime University. In: Ekpo Imoh Ekpo. Impact of Shipping on Nigerian Economy: Implications for Sustainable Development. Journal of Educational and Social Research. School of Maritime studies, Akwa Ibom State, Vol.2(7) October, p. 108

and welfare of passengers and on the storage and safe carriage of goods. The owners of the ships have to be readily ascertainable and their right to lease or charter their ships to other parties protected by law. Where inevitably disputes arise between persons claiming title to or the right to use a ship or expenses relating to the use of a ship, a machinery must exist for the resolution of such dispute. Similarly, a machinery must exist to facilitate the resolution of problems arising between the owners of ship and the owners of cargo, or between the owners of two vessels which collide, or indeed between ship owners and those who render assistance to them in times of trouble or difficulty. Maritime life as well as the environment has to be protected from pollution, hazardous or unnatural substances carried in ships and likely to be discharged into the seas in times of emergencies- or indeed deliberately. We can now understand why this seemingly simple process of ships traversing the oceans from one country to another or more often to a succession of countries is fraught with potential conflict and problems- especially legal problems. This is what maritime law is all about[21].

The history of the Nigerian Shipping fleet dates back to the pre-colonial era when the colonial masters dominated almost every aspect of the country's economic activities. Shipping was not spared as it was totally dominated by foreign shipping lines amongst which were Elder Dempster Lines Ltd and Palm Line Ltd. However, in order to reduce the dominant role by the foreign shipping lines the establishment of the Nigerian National Shipping Line (NNSL) was conceived.[22]

Shipping has immensely contributed to the economic growth of Nigeria by providing efficient shipping multinational enterprises with global network of production and distribution, though plagued with challenges such as restructuring of the transport industry,

[21] Louis N. Mbanefo. (1998) Maritime Law and Admiralty Jurisdiction in Nigeria. In: Ayua, I. A et al. The New Law of the Sea and The Nigerian Maritime Sector, Issues and Prospects for the Next Millennium, Nigerian Institute of Advanced Legal Studies, Lagos, pp. 86, 87

[22] Ogbaje D. E. A Flashback on the Early Shipping and its Fall in Nigeria. www.nimasa.gov.ng. Accessed 13/06/18 at 2:11pm

shipping company competiveness, workforce training and development, promotion of coastal trades and development of river tourism. Nigeria has attempted to invest in marine transportation by establishing Nigeria National Shipping Line (NNSL), which sadly ran into troubled waters due to several factors. This amongst other reasons informed Governments decisions to establish a special regulatory body for maritime activities in Nigeria, thus the National Maritime Authority was established by Decree No. 10 of 1987. This sector has undergone a lot of developmental stages which lately led to the emergence of Nigerian Maritime Administration and Safety Agency (NIMASA) as a result of the merger between Joint Maritime Labour Industrial Council (JOMALIC) and National Maritime Authority (NMA) both parastatals under the Ministry of transport, regulatory bodies in the Maritime, dock labour and seafaring. The current NIMASA is saddled with the arduous task of implementing the Cabotage Laws. However, the impact of the Cabotage Laws cannot be over emphasized in that agency to see to it that ships within the zone comply with international conventions, and National Safety Regulations. In addition, NIMASA is responsible for promoting indigenous maritime capacity, especially in the area of ship ownership, greater tonnage[23]and an enlarged professional workforce. Within the Cabotage regime, there is no doubt that the business and economy opportunity, has been enhanced. These economic potentials are fully actualized due to the determination of the Regulatory Agency, (NIMASA) to effectively implement compliance to the later[24].In the maritime sector, it is trite that NIMASA partners with other relevant government agencies such as Nigerian Navy, Nigerian Ports Authority (NPA), National Petroleum Investment and Management Services (NAPIMS), Nigerian National Petroleum Commission (NNPC) in the administration,

[23] Tonnage can be defined as the capacity of a merchant vessel expressed either in unit of weight or of volume, carrying capacity of a ship, or a duty on ships or boats. Collins English Dictionary, Complete and Unabridged, William Collins Sons & Co. Ltd., HarperCollins Publishers (2012)

[24] Dauda O. NIMASA to Enforce Cabotage Act. http://thenationonlineng.net/web3/business/maritime/28684. Accessed 19/06/18 at 10:53am.

development and enforcement of the Nigerian content policy in shipping. These institutions despite their good intentions have been unable to implement the Cabotage Laws. The regulatory agencies that formulate laws and policies in the maritime industry do not understand the operation in the industry, and thus, tend to disregard the necessary conditions needed to ensure these policies attain their set out aims and objectives. As a result most of the huge contracts in the maritime sector are being awarded to foreign firms due to "incompetence" of indigenous firms leading to huge capital outflow[25]. It is appalling that NIMASA and other regulatory agencies do not conduct a good diligence on the level of competency of local firms and even if there is a competency gap, it is still the duty of these agencies to close or bridge such gap as their responsibility for implementing policies and laws in the sector[26]. The impact of the Cabotage Laws cannot be overemphasized in that the agencies are to see to it that ships within the zone comply with the international conventions and National Safety Regulations.

To objectively examine, or assess the effectiveness and impact of the Cabotage Laws on Nigerian Maritime Industry, this research work has been divided into five chapters. While Chapter one gives a general introduction, Chapter two discusses the historical development of the Cabotage Laws. In Chapter three, the work examines the various regulations on Cabotage, taking into consideration the regional and international laws. After considering these laws the work identifies issues affecting the Nigerian Maritime Industry as discussed in Chapter four, while in Chapter five, the summary, findings and recommendations are contained for the purpose of proffering suitable policy options and recommendations for reformof a viable Cabotage regime in Nigeria.

[25] Iroegbu, C.A. (2010) "Weaknesses of the Ongoing Reforms in the Maritime Industry" The Fronteria Post May 27

[26] Okeke V.O.S. (2012) "An Evaluation of the Effectiveness of the Cabotage Act 2003 on Nigerian Maritime Administration", London England, Vol.2, No. 1, p. 19

The next chapter will now consider the historical development of Cabotage Law in Nigeriawith recourse to several regimes.

1.2 Statement of the Research Problem

Many nations of the world especially coastal states reap huge economic gains through Cabotage. It was this realization and the strategic location of Nigeria as a coastal state, that the Federal Government of Nigeria through the National Assembly enacted the Cabotage Act. The Act was intended to encourage local participation in Cabotage, make funding accessible to indigenous participants for vessel acquisition. Despite the laudable provisions contained in various laws regulating Cabotage, they are still plagued with a lot of problems such asThe Coastal Inland Shipping (Cabotage) Act, 2003 which established the CVFF that is under the custody of the Nigerian Maritime Administration and Safety Agency (NIMASA). Section 42(1) of the Act establishes the Cabotage Vessel Financing Fund (CVFF), which targets domestic vessel acquisition. Its primary objective is to facilitate indigenous ship acquisition through the CVFF, providing credit facilities to interested Nigerian citizens. Section 43 of the Act further provides that the CVFF is financed through "a surcharge of 2% of the contract sum performed by any vessel engaged in the coastal trade" and "monies generated from the Act including the tariffs, fines and fees for the licenses and waivers", as well as any sum that may be stipulated by the legislature.

A major problem of the Cabotage Act is the inability of indigenous shipping companies to assess the Cabotage Vessel financing fund. With its robust sources of financing, the CVFF arguably bolsters the Acts objective of strengthening indigenous participation in Nigerian shipping. As at 5th February 2020, the fund has reached $200million[27] approximately ₦82.6 Billion at today's exchange rate, however, it has failed to live to its billing as no indigenous

[27] Sampson Etchenim, (2020) "Five things to know about the ₦72.4billion CVFF". http://www.businessamlive.com/5-things-to-know-about-the-₦72-4bn-CVFF/. Accessed 27th May, 2021.

shipping company has yet drawn from it despite the process of disbursement kicking off in February 2012[28]. Meanwhile, an Ad-Hoc Committee has been set up by the House of Representatives to probe the fund.

Secondly, there has also been the nagging challenge of indiscriminate granting of licenses to foreign vessels and waivers. The conditions prescribed for obtaining a waiver or license[29] by the foreign firms are so simplistic that it is likely that more foreign ships will be granted license and waivers to engage in Cabotage in Nigeria. This is because there is presently insufficient Nigerian fleet to cater for the Nigerian Cabotage. Thus, with the inclusion of waiver, the bulk of the responsibilities of the indigenous vessels holders have been shifted to the foreigners making the Cabotage Act to be ineffective and at the same time defeats the objectives of the Act or the purpose the Act is meant for. The Nigerian vessels that would have been employed in carrying these cargoes have to suffer at the expense of these foreign vessels resulting in foreign domination of the maritime industry[30].

The Minister is given powers to grant waivers to foreign vessel to partake in Cabotage trade where he is satisfied that there is no capacity on the parts of Nigerians with respects to satisfying the requirements as contained in section 3-6 of the Act on Nigerians capacity that can carry the volume of business associated with the Cabotage. This research would critically examine these problems with a view to recommending solutions to these nagging challenges.

1.3 Aim and Objectives of the Study

The aim of the study is to examine the Cabotage Laws as it affects Nigerian's maritime industry with particular reference to registration, waivers, licenses to foreign vessels and

[28] Excerpts from the Former Minister of Transport, Mr. Idris Umar.
[29] A permission given by one man to another to do an act which without permission it would be unlawful to do. Dictionary of English Law, Earl (ed.), London Sweet and Maxwell Ltd. (1959) Vol. 2
[30] Op cit. Iroegbu, C.A.

restriction on foreign ship for purposes of proffering suitable policy options and recommendations for reform where desirable.

In line with the above aims, the study seeks to achieve the following objectives:

i. To critically examine the Cabotage vessel financing fund (CVFF)

ii. To examine the basis for the waivers granted to foreign companies vis – a – vis the intent of the legislation.

iii. To examine the offences provided under the Cabotage Act as it outweighs the benefits.

iv. To make recommendation with a view to addressing the gaps in the legal and institutional framework of Cabotage laws in Nigeria.

1.4 Scope of Study

The scope of study is intended to provide insight and understanding into Cabotage, the various Laws regulating Cabotage in Nigeria, the reforms made by it such as the Cabotage Vessel Financing Fund, protection of Nigerian Shipping Companies and the restrictions on Foreign Ship, the various regimes of Cabotage and Maritime Industry in Nigeria, the legal and institutional framework for Cabotage and the issues affecting Cabotage administration in the Nigerian Maritime Industry.

This study also include the examination of the shortcomings of the Laws such as the issue of licences to foreign ship vessels, registration, waivers, offences and how it affects the Maritime sector. Brief and necessary explanations of some issues may be made for the purpose of clarity for the achievement of the main objective of the study.

1.5 Research Methodology

This study employed the use of the doctrinal research methodology in information gathering. The doctrinal research methodology is a research method which involves relying on primary sources such as Statutes, Case Law, Rules and Regulations made pursuant to Statutes. The secondary sources like textbooks, periodicals, journals and internet sources were also utilized in order to facilitate the completion of this study and the achievement of the objective of this study.

1.6 Literature Review

This research work focuses on the examination of Cabotage Laws and implications for Nigerian Maritime industry, by extension, Nigeria's economy. In that garb, this segment examines the available or related literature on Cabotage law, Maritime Law and their relationship with other concepts.

One of the works on Cabotage Law in Nigeria is that of Animi Awah[31]. The author gives a general overview of the Coastal and Inland Shipping (Cabotage) Act. The author's work examines the Cabotage Act principally on waiver, towage and registration. The writer further stated that many nations have Cabotage Law which dictates the terms which carriers must follow when transporting people or materials within their borders. Many of these Laws are designed to promote the development of domestic transport companies, and some Cabotage Laws have been criticized because they restrict free trade. Cabotage Law however is reserved exclusively for domestic trade and practices therefore does not breach the free trade regime.[32]

Animi Awah's work no doubt provides the needed foundation upon which to build. It is pertinent to point out the work did not give an analysis on the issues affecting the maritime

[31] Animi Awah (2012), "General Overview of the Coastal Inland Shipping Act". In: Cabotage Law in Nigeria NAILS press, Abuja, p.58
[32] Ibid p. 84

industry in addition to other factors such restriction on foreign ship. This represents a major difference between this present research and Animi Awah's work.

Usoro[33]states 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. Yet in the year 2000, only 139 indigenous marine vessels less than 6%, were involved in this traffic. 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, in 2002, Nigeria has 98 tankers more and 26 cargo vessels just about 32 tankers more and 6 cargo vessels more. This research goes a step further stating that on 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 is undoubtedly dominated by foreign owned and foreign crew vessels.

Another work on the Cabotage Law is that of Omuinu Ohio[34]. This work sets out principally to address the restrictions of vessels for Domestic trade under the Nigerian Cabotage Act. The author in the cause of the work did not address the issue of inter State trade, local traders and foreign ship. This differentiates Omuinu Ohio's work from this work as this work addresses these issues.

[33] Usoro, M.E. (2003)"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

[34] Omuinu Ohio (2012), General Overview of the Coastal Inland Shipping Act. In: Cabotage Law in Nigeria, NAILS press, Abuja, p. 86

Ezem[35] stated in his work that even the Federal Government has admitted that for more than seven years of the enactment of the Cabotage Act 2003, the Act is defective in structure and content which makes its enforcement difficult. While admitting that these defect places a lot problems, this work proffered policy options to remedy the situation.

Also, Bernard[36] has noted that many of the Director-Generals of the Nigerian Maritime Administration and Safety Agency (NIMASA) have been removed as a result of the inability to monitor and enforce compliance of the Cabotage Act 2003. There is the need to examine the interface between the institutional incapacity to monitor compliance and enforcement of the Cabotage Act 2003 by NIMASA and to explore the nexus between capacity gap and poor compliance with the Cabotage Act. This work therefore contends that, one, the Nigerian Maritime Administration and Safety Agency (NIMASA) institutional incapacity to monitor compliance affects adversely the enforcement of the Cabotage Act 2003 in the Nigerian coastal and inland shipping, and two, the inability of the Nigerian Maritime Administration and Safety Agency (NIMASA) to bridge capacity gap results in poor compliance with the Cabotage Act 2003 in the Nigerian coastal and inland shipping.

For S. O. Ajiye[37], the waiver system adopted by the Act is based on grounds of non-availability. Other internationally accepted principle of waiver includes reciprocity or bilateral agreements. In Germany for instance, waivers are granted to Non – EU vessels only on the basis of non – availability or if they are available but at very unfavourable conditions. All applicants wishing to renew their waivers on vessels for Cabotage trade must produce evidence of their improved level of compliance with requirements of the Cabotage Act on manning, ownership and ship building requirements such as evidence of contribution to

[35] Ezem, F. (2011)"Cabotage Act is Defective Admits Federal Government" National Mirror, March 14, p. 12
[36] Bernard, B. (2010)"Cabotage: Still in the Woods", Vol. 26, No. 1, January 25, p. 10
[37] S. O. Ajiye, (2013) "Nigerian Cabotage: Its Policy, Prospects and Challenges", Journal of Economics and Social Development , Vol.4, No.14. https://core.ac.uk/download/pdf/234646057.pdf. ccessed

training of Nigerian cadets on board the vessel during year of waiver, evidence of sponsorship of training for Nigerian Seafarers/Cadets and evidence of dry – docking and ship repairs in Nigeria. The waiver certificate shall be renewed every year. Nonetheless, any applicant found to have made false declaration in respect of the registration shall be sanctioned by the Minister and in addition, be liable to penalties prescribed under the Act. This research agrees with S.O. Ajiye on grounds of non-availability as a condition for the grant of waiver but went further to state other conditions and procedures for the grants of such waivers.

1.7 Justification

This study is beneficial to all those whether local or foreign who come into contact with the Maritime sector with regards to Cabotage.

It is expected that the scholarly examination and recommendations of this study will be beneficial to those in Maritime Law or Public International Law whether as Legal Practitioners, Legal Academics, Students of Law. It would go a long way in ensuring that readers of all age and assimilation are carried along in the discovery of opportunities unravelled by proper implementation of Cabotage Law in Nigeria. Furthermore, this research will be an additional reference material in Cabotage Law under the Nigerian Law.

1.8 Organization Layout

This study is structured as follows:

Chapter One introduces the study and deals with general introduction which covers the background to the study, statement of problem, aim and objectives of the study, scope of the

study, research methodology, literature review, justification of the study, and organization layout.

Chapter Two deals with the historical development of Cabotage Laws in Nigeria. It begins with an introduction followed by the historical development of Cabotage Laws in Nigeria, looking at various Cabotage regimes.

Chapter Three provides an overview of the Legal and Institutional Framework for Cabotage in Nigeria which covers the Coastal and Inland Shipping (Cabotage) Act 2003, Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007, Coastal and Inland Shipping Cabotage (Detention of Ships) Regulations 2006, Cabotage Vessel Financing Fund (CVFF) Guidelines, 2006, Bareboat Charter Regulations 2006, Merchant Shipping Act 2017, United Nations Convention on the Law of the Sea and the United Nations Convention of the Sale of Goods. Taking into consideration the institutional framework such as the Nigerian Maritime Administration and Safety Agency (NIMASA), Nigerian Navy, Nigerian Ports Authority (NPA), National Petroleum Investment and Management Services (NAPIMS), and the Nigerian National Petroleum Commission (NNPC)

Chapter Four provides a critical examination of the issues affecting Cabotage Administration in the Nigerian Maritime Industry which includes but not limited to licenses to foreign vessels, registration, waivers, and Cabotage Vessel Financing Fund.

Chapter Five provides a summary of the entire dissertation. It also contains summary, findings, recommendations and conclusion.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF CABOTAGE LAWS IN NIGERIA

2.1 Introduction

The opportunities provided by the Cabotage regime are obviously not in doubt. The government mindful of the need to develop indigenous merchant marine fleet or shipping industry has at various times enacted laws, initiated policies and projects and administrative initiatives to evolve relevant strategic framework in order to develop the Maritime sector making Nigeria a maritime hub not only in West Africa but also globally. This chapter gives the historical development of Cabotage and its Laws in Nigeria taking cognizance of the various Cabotage regimes. The Cabotage regimes are intended to leverage local interests, contents and participation to optimize the national threshold in the domestic trade, while preserving free enterprise through creative partnership with foreign interests. It will promote the development of indigenous tonnage and restrict the participation of foreigners in domestic maritime business.

2.2 Historical Development of Cabotage Laws in Nigeria

There is the belief that Cabotage was first enacted in the 16th century by the French. The navigation between ports on French coast was restricted to French ships. This principle was later extended to apply to navigation between a metropolitan country and its overseas colonies. However the American Marine Act of 1920 also known as the Jones Act seems to be the first formal enactment on Cabotage[38]. This Act serves amongst other things to regulate maritime commerce in the United States waters and between United States ports. The Act

[38] Agama & Alisigwe (2018), "Cabotage Regimes and their Effect on States Economy". Nnamdi Azikiwe University Journal of International Law and Jurisprudence, vol. 9(1), p. 727

mandates that all goods transported by water between United States ports be carried on United States flag ship, constructed in the United States, owned by United States citizens and crewed by United States citizens and United States permanent residents[39]. Nations have protected their domestic trade and commerce from foreign competition through the aid of Cabotage principles such as the Jones Act in the United States and Cabotage Laws in Japan and Australia.[40]

The Cabotage regimes can be classified into the strict regime or the liberal regime depending on which the nations practices. Strict Cabotage regime is employed by countries for security purposes. Strict Cabotage a times operates as a country's defence mechanism against terrorism. A good example is found in the American Marine Act of 1920 discussed earlier. A country is said to practise relaxed or liberalized Cabotage if its Cabotage law does not strictly enforce or require strict compliance with those elements of restrictions mentioned in strict Cabotage.

In a relaxed Cabotage regime, foreigners are granted some measure of participation in the ownership or building of vessels and their operations in the State's maritime industry. Such Cabotage regime allows to a certain measure, foreign-flagged vessels' participation in a State's coastal trading. This has been the trend for a decade now as several, especially Asian countries, with the objective of making their Cabotage laws more relaxed to accommodate foreign involvement in their coastal trade, have carried out certain reforms of their Cabotage policies to reflect this objective. The first instance here is China's ease of its Cabotage regulations in 2003 to allow foreign lines to ship empty containers between ports in its coast.

[39] Section 27 of the Jones Act

[40] Asrofi, M. Cabotage Full Implementation vs. Cabotage Relaxation. http://www.frost.com/prod/servlet/market-insight-print.pag?docid=236707803. Accessed 21/06/18 at 6:20pm

While almost fifty nations have laws restricting foreign access to domestic maritime transportation Nigeria is not one of them. For Nigeria, it practices what has been described as a compromise between strict and relaxed Cabotage. This belief must have come from the fact that foreigners are allowed certain level of freedom of involvement in Nigerian coastal trade due mainly to non-availability of required sophisticated vessels and skilled manpower in the Nigerian maritime industry. However, from the provisions of sections 3 to 6 of the Nigerian Coastal and Inland Shipping (Cabotage Act) 2003, one can safely argue that the country practices strict Cabotage. Different nations therefore enact Cabotage law principally as a protective device to safeguard local shipping interests in the carriage of locally generated cargo. The law restricts or entirely excludes foreign vessels and shipping companies from participating in the carriage of cargo and passengers between two ports belonging to the concerned country. A nation's Cabotage law is therefore designed to favour its citizens and domestic shipping companies as against foreigners within the coastal waters of that country. Cabotage principle whether in strict or relaxed form is also designed for the purpose of economic protectionism and national security of the concerned State.

In the past, there was absolutely no legal provision reserving the maritime transport services to Nigerians or to Nigerian owned or registered vessels. Foreigners dominated coastal and inland water transportation and they owned the bulk of the fleet operating in Nigeria waters. Foreigners featured significantly as service providers and intermediaries such as pilots, crewmen, engineers, freight forwarders, and bunkers. Nigerian judges and legal practitioners in the past depended on English Courts to determine disputes on Maritime law. There were only few cases on Maritime law to warrant paying any special attention to the area. However, the Cement Amanda of 1975[41] affected the volume of shipping litigation and Maritime

[41] http://www.nairaland.com/221572/cement-amanda-1975. Accessed 28/06/18 at 8:28pm

activities in Nigeria as a result of the fraud associated with shipping in Nigeria[42].At the peak of the infamous Cement Amanda, daily demurrage of 4000 US dollars were charged per vessel on over six hundred vessels waiting for months in berth, a development that created unpleasant consequences for the economy. As the huge foreign currency outflows arising from the carriage of Nigeria's sea-borne, trade in foreign lines continued to impoverish the Nigerian economy. The tremendous rise in Nigeria's trade with other countries not only brought with it the presence of super-tankers but also gave rise to highly complex shipping cases which became subject of litigation at the Federal High Court.

Any visible attempt by the Federal Government to ameliorate the situation was the promulgation of the National Shipping Policy Decree No. 10 of 1987. This Decree established the National Maritime Authority (NMA).Section13(2) of the Decree states that the NMA shall "establish a fund which shall assist Nigerians in the development and expansion of National fleet". The NMA was primarily responsible in developing the local shipping industry by assisting Nigerians to acquire ships, ocean vessels and training seafarers for the industry, through the Ship Acquisition and Ship Building Fund (SASBF) and access goods for the lifting via the Cargo Allocation. However, due to mismanagement, ineptitude and corruption, the NMA derailed from its set goals leading to the scrapping of the Cargo Allocation Policy and the SASBF[43].

Historically, the Nigerian shipping industry can properly be traced to the early 20th Century with the activities of Colonial British Companies like Elder Dempster Agencies, John Holt, Liver Pool Limited and United Africa Company (UAC) who are primarily involved in merchant shipping. Credit for commercial freight services was attributable to UAC when in early 1950's it floated Palm Line Limited to provide shipping services to the public on

[42] Lilian Uche. (2012), "History of Cabotage Law in Nigeria". In: Ephiphany Azinge et al. *Cabotage Law in Nigeria*, NIALS press, Abuja, p. 11
[43] Ibid., p.7

commercial basis. The foreign colonial powers enjoyed a monopoly and kept their shipping business doors shut on indigenous entrepreneurs. At independence in 1960, Nigeria inherited a Maritime trade system dominated and controlled by foreigners. However the Nigerian National Shipping Line (NNSL) had earlier in 1959 signalled the birth of an indigenous shipping line. There is no record to show that any Nigerian individual other than NNSL, owned any ocean going vessel until 1972 when Late Chief Henry Fajemirokun's Nigeria Far East Company blazed the trail, followed by Wahab Folawiyo's Nigeria Green Lines and Alhaji Mahmud Waziri's African Ocean Line[44].

It is significant to note that before the introduction of the National Shipping Policy Act (NSPA) in 1987, there was a Marine Insurance Act (MIA) enacted in 1961 that governed marine and by extension, cargo insurance in Nigeria. The MIA reproduced in extension the English Marine Insurance Act, 1906 which codified case law and common law principles relating to marine insurance. The Marine Insurance Act did not stipulate any cargo insurance policy for Nigeria until 1987 when a national cargo insurance policy was formulated for Nigeria under Section 14(3) of the National Shipping Policy Act. In 1978, the Nigerian Shippers Council[45] was established by Decree 13 to regulate Cabotage in Nigeria. It was vested with the responsibility of protecting the interest of Nigerian Shippers due to the deterioration in the quality of shipping services and unmitigated increases in the ocean freight by foreign ship owners who operated scheduled liner services to Nigerian ports.[46]

It was the dire necessity to assist Nigerians acquire and own their own ships and make a break through, in the Nigerian Maritime Industry that Nigeria promulgated the Nigeria National Shipping Policy known as Decree 10 of 1987 which established the Nigerian

[44] Emma, O.O., Nigerian Cabotage: Its Policy, Problems and Prospects; In: https://www.scribd.com/doc/24383693/Nigerian-Cabotage-It-s-Policy-Problems-Prospects. Accessed 30/06/18 at 11:21am

[45] Nigerian Shippers Council Act now CapN133 Laws of the Federation of Nigeria 2004

[46] http://www.shipperscouncil.com/history_council. Accessed 29/06/19 at 2:28pm

Maritime Authority (NMA).Also the Nigerian National Shipping Line (NNSL), the one time national carrier, which at its peak owned about 27 ocean liners, had by 1995, gone moribund without a single vessel to its name. Its successor the Nigeria Unity Line (NUL), which owned and operated only one dry bulk ship MV Abuja, bought in 1995 after series of vicissitudes, was finally sold in 2003[47].

Stakeholders and professionals in the shipping industry have made a clarion call for the reordering and restructuring of the maritime industry as it affects domestic trade for the benefit of the citizenry and the Nigerian economy one of the major fall – out of the reform proposal is the Cabotage Law. The former chairman of the House of Representatives Committee on Transport Dr. Okey Udeh, urged former President Olusegun Obasanjo, to support the Cabotage Bill and enunciated the benefits thus:

> We believe that the enactment of Cabotage in Nigeria would lay a solid foundation for the domestic maritime industry, and stimulate and contribute significantly to the Nigerian economy. It would help to develop the domestic maritime fleet, create employment opportunities for over 30,000 trained but unemployed seafarers, boost training requirements at the Maritime Academy of Nigeria, lead to optimal exploitation of the currently under-utilized facilities at Niger dock, and encourage the development of required infrastructure and technical know-how in the inland waterways, transport and haulage system.[48]

[47] Ibid., p.9
[48] Guardian Newspaper, 9/12/2014, p.13

According to the then Minister of State for Transport, Alhaji Inua Musa Mohammed, the Cabotage Law was enacted to encourage indigenous Companies participation in shipping, increase capacity building and provide employment for Nigerian seafarers. He added that it was in line with the Federal Government and Development scheme (NEEDS) strategy.[49]

The maritime practice in Nigeria was guided not only by domestic law but also by international maritime laws and conventions such as the African Economic treaty of 1991, the Constitutive Act of African Union of 2000, and the 1952 Convention on the Arrest of Seagoing Ships (The Arrest Convention) all of which have bearing on Nigerians regional Cabotage. There is also the International Maritime Organization (IMO) convention on maritime search and rescue of 1979 which helped to facilitate cooperation between government and those participating in search and rescue operations at sea and the International Convention on Standards of Training Certification and Watch keeping of Seafarers (STCW) of 1978.

If advanced State like the United States could feel the negative impacts of strict Cabotage policy on its economy, then, developing nations like Nigeria should not venture it. From study, we can conclude that the best form of Cabotage even for developed entity like the United States is a relaxed/liberalized Cabotage regime although the level of such liberalization may vary. Several States actually have restrictions on the involvement of foreigners on the domestic shipping. This historical development of the Cabotage laws forms the foundation for the legal and institutional framework of the Cabotage regimes as the next chapter will now consider.

[49] Ibid.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CABOTAGE IN NIGERIA

3.1 Introduction

Appropriate legal and institutional frameworks are of paramount importance to the realization of an effective Cabotage regime in Nigeria. Legal and institutional frameworks are also essential for establishing the roles and responsibilities of different stakeholders involved in the administration, implementation and enforcement of the Cabotage laws. This chapter focuses on the following legal and institutional framework for Cabotage in Nigeria; Coastal and Inland Shipping (Cabotage) Act 2003, Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007, Coastal and Inland Shipping Cabotage (Detention of Ships) Regulations 2006, Cabotage Vessel Financing Fund (CVFF) Guidelines, 2006, Bareboat Charter Regulations 2006, Merchant Shipping Act 2007, United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Convention of the Sale of Goods. Nigerian Maritime Administration and Safety Agency (NIMASA), Nigerian Navy, Nigerian Ports Authority (NPA), National Petroleum Investment and Management Services (NAPIMS), Nigerian National Petroleum Commission (NNPC).

3.2 Legal Framework

3.2.1 Coastal and Inland Shipping (Cabotage) Act 2003

The Coastal and Inland Shipping (Cabotage) Act also known as the Cabotage Act was enacted to give local shipping companies a comparative advantage over their foreign counterparts that engage in the country's waters in order to develop local capacity and indigenous shipping industry. Despite the provision of the law, Nigeria continues to lose

billions of naira annually to foreign vessels and their seafarers due to non-implementation of the Cabotage Act.

The Nigerian Maritime sector needed a law that will build up the nation's vast potential as such the law was clamoured for with nationalistic zeal. In May 2003, it was enacted with enforcement starting in November same year. It was called the Coastal and Inland Shipping (Cabotage) Act No. 5 of 2003, Laws of the Federal Republic of Nigeria. The Act, simply put was structured to stop foreign vessels from transporting crude oil or other cargoes within the country's territorial waters, while making jobs available for vessels owned and managed by Nigerians and Nigerians indigenous shipping companies.

The Act has Fifty-Five (55) Sections divided into Nine (9) parts. Part 1 & 2 deals with the definition of cabotage, its scope and the legislative focus which shows a new dimension for the regulation of the oil and gas industry in Nigeria by covering all the aspects of exploration, production and development activities[50]. While part II deals with restrictions of foreign vessels in domestic coastal trade.

Part III highlights the issue of waivers for wholly owned Nigerian ship, manning requirements and waivers for Nigerian built vessels etc.Part IV, outlines the procedure for the granting of licenses to foreign vessels, duration of the license, suspension, cancellation, the powers of the Minister for transport etc.

Part V, deals with the requirements of registration, while Part VI deals with enforcement procedures of the Cabotage Act. Notable amongst this part is the establishment of the

[50]Charlie Nwekeaku, *Cabotage Act and the Challenges of Nigerian Shipping Lines in Sub-Sahara Africa*, Advances in Social Sciences Research Journal (2016) vol.3, No.5, p. 42

Nigerian Maritime Administration and Safety Agency (NIMASA) which ensures that the Cabotage Act is implemented and regulated with powers to arrest and detain any defaulter.

Part VII, creates offenses under the Cabotage Act taking into consideration the criminal activities and commensurate penalties related to Cabotage. Part VIII, which is this research identifies as a key area of concern (Cabotage Vessels Financing Fund), shall be considered extensively in this research.Part IXcontains the miscellaneous provisions namely; waivers on board, requisition of Vessels by Minister, powers of delegation, Section 50 on Units of Account, transitional Provisions, repeals and amendments, etc.

This research, while commending the laudable provisions of the Cabotage Act highlighted in the paragraphs above, finds that the Act is bedevilled by monsters of its own creation and the unwillingness or lack of the political will to encourage indigenous participation in cabotage. This research frowns at the refusal of the political class and NIMASA to back words with actions, which is what is actually needed for Nigeria to reap from its vast cabotage potentials.

In line with the above, Section 2 of the Cabotage Act 2003 defines Coastal trade or Cabotage as;

a. “the carriage of goods by vessel, or any other mode of transportation, from one place in Nigeria or above Nigeria waters to any other place in Nigeria or above Nigeria waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living resources of Nigeria whether in or under Nigerian waters;

b. “the carriage of passengers by vessels from any place in Nigeria situated on lake of river to the same place, or to any other place in Nigeria either directly or a place outside Nigeria in

the same place without any call at any port outside Nigeria, other than as an in-transit or emergency call, either directly or via a place outside Nigeria.

c. “the carrier of passengers by vessels from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and

d. “the engaging, by vessel, in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria’’

From the above statutory definition, the Cabotage Law restricts the Coastal and Inland waters trade in Nigeria to vessels flying its flag. In other words, all these activities enumerated in this definition are supposed to be solely undertaken by indigenous shipping companies.

The law restricts its applicability to:

a. Vessels wholly owned by Nigerian citizens

b. Vessels wholly manned by Nigerian citizens

c. Vessels registered by Nigerian citizens, and

d. Vessels built by Nigerian shipbuilders

On what constitutes a vessel as provided in Section 2 of the Act, The Federal High Court Lagos Division was able to put to rest the growing concern in the oil and gas industry on the applicability of the Cabotage regime to drilling rigs in the case of *Noble Drilling Nigeria Limited v. Nigerian Maritime Administration and Safety Agency and Anor.*[51]

The Plaintiff, an offshore drilling contractor operating in the Nigerian oil and gas industry, was of the opinion that its activities within Nigerian territorial waters (drilling operations) did not amount to "coastal trade" or "Cabotage" as defined under the Cabotage Act. The Plaintiff sought a determination from the Court on the questions of whether drilling operations falls within the definition of the coastal trade or Cabotage under Section 2 of the Cabotage Act, whether upon a proper interpretation of the Cabotage Act, drilling rigs fall within the definition of "vessel" and whether the Minister of Transportation acted *ultra vires* his powers under the Cabotage Act to make regulations by including "Rigs" under the classification of vessels to be subject to waiver fees in the Guidelines on the Implementation of the Coastal and Inland Shipping (Cabotage) Act 2003, revised and issued in April 2007.

The Defendants on the other hand contended inter alia that the definition of the word "ship" or "vessel" includes a drilling rig and so the use of a drilling rig in the coastal trade or Cabotage is as defined in Section 2 of the Cabotage Act. They also contended that since drilling rigs carry oil, mud and other substances from the sea bed to the surface, they are vessels within the definition.

The Court was greatly influenced by the definition given to the word "vessel" in the Cabotage Act. Under Section 2 of the Cabotage Act, a vessel is said to include air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or

[51] Suit No. FHC/L/CS/78/2008

partly for marine navigation and used for the carriage on, through or under water of persons or property without regard to method or lack of propulsion. The Court held that, the Defendants failed to show that a drilling rig is "designed, used or capable of being used solely or partly for marine navigation for the carriage of persons or property through, on and under the water" and so a drilling rig could not be a vessel. The Court further held that drilling rigs were not expressly mentioned as one of the vessels eligible for registration under Section 22(5) of the Cabotage Act and that the phrase "marine navigation" is crucial to the definition of a vessel under Section 2 of the Cabotage Act.

In reaching its conclusion, the learned judge went on to state that the process of navigation was a horizontal movement and so a drilling rig that exist solely to move crude oil from the well to the surface of the sea cannot be termed a vessel within the purview of the Cabotage Act as its operation amounts to a vertical movement of goods (crude oil). In addition, the Court held that the listing of rigs under the caption "Foreign vessels" in clause 9.1.1 of the Guidelines issued by the Minister of Transportation in April 2007 was wrongful on the ground that a drilling rig did not fall within the definition of a "vessel" under Section 2 of the Cabotage Act.

The Court however held that the Minister of Transportation did not act outside his powers to make regulations under Section 46 of the Cabotage Act with regards to the provisions on "rigs" in the Guidelines.

The Act provides guidelines on regulating the participation of foreign vessels in Nigeria subject to stringent requirements. For example, Section 15 necessitates the grant of a licence by the Minister of Transport before a foreign vessel can operate in Nigerian waters. Section 42(1) of the Act establishes the Cabotage Vessel Financing Fund (CVFF), which targets

domestic vessel acquisition. Its primary objective is to facilitate indigenous ship acquisition through the CVFF, providing credit facilities to interested Nigerian citizens. Section 43 of the Act further provides that the CVFF is financed through "a surcharge of 2% of the contract sum performed by any vessel engaged in the coastal trade" and "monies generated from the Act including the tariffs, fines and fees for the licenses and waivers", as well as any sum that may be stipulated by the legislature. With its robust sources of financing, the CVFF arguably bolsters the Acts objective of strengthening indigenous participation in Nigerian shipping. Unfortunately, the Act is yet to achieve its purpose decade after enactment.

3.2.2 Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007.

In compliance with the provisions of the Act, the Minister of Transport issued the guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act. The guidelines have proved a useful tool for the operation and enforcement of the Cabotage Act. However, the Nigerian Maritime Administration and Safety Agency (NIMASA) has experienced several challenges in the enforcement of the Act. Such challenges thus prompted a review of the enforcement procedures. This revised Guideline is the product of intense interaction with stakeholders and it is intended to introduce clarity and simplify the enforcement and monitoring processes.

The guidelines should be read and implemented in conjunction with two important subsidiary legislations: the Coastal and Inland Shipping Cabotage (Bareboat Charter) Regulations and the Coastal and Inland Shipping Cabotage (Detention of ships) regulations 2006, issued by the Honourable Minister of Transportation in August 2006, in accordance with the provisions of the Act. The objectives and general principles of the Guidelines are as follows;

1. The guidelines seek to facilitate the establishment and development of national capacities to implement, manage, monitor, establish adequate information systems, develop expert human resources in Cabotage administration and enforcement and generally promote the efficient operation of the Cabotage regime. These would be achieved by the:

a. Development of guidelines, standards, codes of practice, and monitoring capabilities for the operators, enforcement agencies, and financial institutions;

b. Establishment of a comprehensive and up-to-date database, infrastructure for information exchanges upon which Cabotage administration and enforcement can be processed;

c. Promotion of regular review of administrative and policy measures on Cabotage and encouraging the enforcement of such regulations and policies;

d. Establishment and strengthening of national and institutional Cabotage implementation mechanisms;

e. Assessment and identification of priorities in human resources development and the implementation of national capacity building programmes for domestic

f. Promotion of the use of regular monitoring to verify the enforcement strategies and to evaluate whether the recommended measures and procedures are appropriate and effective;

g. Establishment of collective mechanisms with other relevant government agencies; and

h. Promotion of public awareness on the benefits and enforcement measures of Cabotage regime through initiatives involving the community, policy makers, legislators, administrators, partner agencies, the private sector and the shipping industry[52].

The guidelines recognise and address the concern of operators in the domestic coastal trade in line with the provisions of the Act. The need for cooperation, exchange and supply of

[52] Money Management Series Plus, Guidelines on the Implementation of the Cabotage Act, 2003. http://mmsplusng.com/blog/guidelines-on-implementation-of-cabotage-act-2003/ Accessed 21/08/18 at 10:31pm

information among the relevant government Ministries and Agencies is emphasised as the key to the successful implementation and achievement of the objectives of the Cabotage Act.

2. The guidelines also extensively provide for the following:

a. Preliminary issues in the Cabotage regime

b. Registration of Cabotage vessels

c. Eligibility criteria for registration of Cabotage vessels

d. Waiver provisions

e. Enforcement procedures

f. Required statutory forms[53]

3.2.3 Merchant Shipping Act 2007

The Merchant Shipping Act has its commencement date on the 28th day of May 2007. The Act, simply put was structured to provide for merchant shipping and related matters.Under this Act, ships owned by Non-Nigerians and companies of the British Common wealth were registered and allowed to trade in or from Nigerian waters as Nigerian ships and as such fly Nigerian flags and entitled to all protection, benefits and privileges of a Nigerian ship and qualify to participate in coastal trade as Nigerian-flag or Nigerian-owned ships even though they are not owned by Nigerians.

This Act also governed the issue of competency certificates issued to masters and crew members. Section 7 of the Act empowers the minister to grant certificates of competency and/ or proficiency in the discharge of their duties to crew members who possess the requisite technical know-how required for such duties. This must be done in accordance with relevant provisions of the Act as they relate to the various grades of crewmen, master, and boatman.

[53] ibid

The minister is also empowered to impose and/or issue to any person who in his opinion is suitably qualified, a permit to serve in any capacity in relation to the ship.[54]

It is a requirement that certain ships have in their crew certified officers. By the rules contained in the certification of Able Seamen Convention 74 of 1974[55], noperson shall be employed on board any vessel as an able seaman unless he is a person who by the relevant provisions of our national laws or regulations is deemed to be competent to perform any duty which may be required of crew members. Section 2 of the Certificate of Competency (Able Seamen) Regulation of 1963 stated that no person shall be signed in the Article of a Nigerian Ship in the rating of an able seaman unless he is a holder of a certificate of competence granted under this regulation. The basis of these legislations on competency were to ensure that only competent hands man any ship as was enunciated in the case of *Niger/Benue Transport Co. Ltd v. Narumal and Sons Nig. Ltd*[56] that "a seaworthy ship must be sufficiently strong and staunched and equipped with appropriate appurtenances and necessary manpower to enable it safely engage in any trade or voyage it has intended".

Section 102 (1) of the Merchant Shipping Act provides that every foreign going ship which proceeds from Nigeria having one hundred persons or more on board, shall carry, as part of her complement, some duly qualified medical practitioners. Section 214 of the Act empowers the minister to make rules (called Collision Rules) with respects to ships and aircrafts when water borne or air borne for the prevention of collision and those rules shall contain such requirement that appear to the minister to be necessary to implement the provisions of such

[54] Idowu, E. A.O. (1995), "Introduction to Maritime Law and Admiralty Jurisdiction" In: Lilian Uche (2012), History of Cabotage Law in Nigeria, Nigerian Institute of Advanced Legal Studies, NIALS press, Abuja, pp. 22, 23
[55] Lilian Uche (2012), History of Cabotage Law in Nigeria, Nigerian Institute of Advanced Legal Studies, NIALS press, Abuja, p. 23
[56] Mbanefo's Nigerian Shipping Cases (1986), Vol. 2, p.491. In: Lilian Uche (2012), History of Cabotage Law in Nigeria, Nigerian Institute of Advanced Legal Studies, NIALS press, Abuja, p. 23

international treaties, agreements, and regulations for the prevention of collision at sea. These rules were enacted as the Merchant Shipping Collision Rules 1974 which became operative in 1976.

Section 282 of the Merchant Shipping Act empowers the Nigerian Maritime Administration Safety Agency (NIMASA) to detain any vessel within Nigerian waters that:

a. is unsafe;

b. poses a security risk; or

c. is a serious danger to human life with regard to the service for which the vessel is intended.

It is noteworthy that unseaworthiness concerns not only the physical condition of a vessel, but also the size and competence of its crew. A ship may be considered to be unsafe or unseaworthy where, for example:

a. there is a defect in any part of the vessel or its machinery or equipment;

b. the vessel is being insufficiently ballasted or, in the case of a mechanically propelled vessel, has insufficient fuel on board for the intended voyage when proceeding at ordinary full speed;

c. the vessel is undermanned;

d. the vessel is overloaded or improperly loaded; or

e. the vessel contravenes safety standards[57].

[57] Akagbogu & Associates, Avoiding Vessel Detention in Nigeria. https://www.lexology.com/library/detail.aspx?g=546888cd-c5ad-426f-aafe-f9468a4be9b4. Accessed 21/08/18 at 11:05pm.

Subsidiary legislations were made especially to govern the inland water ways which were largely drawn from International Regulation and was adopted to suit local circumstances such as The Merchant Shipping (Navigation of Inland Water Regulation 1993) also in terms of navigation we had the Merchant Shipping (Navigation Warning) Rules 1967.

3.2.4 United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) also called the Law of the Sea Convention or the Law of the Sea treaty is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. UNCLOS, came into operation and became effective from 16th November 1982[58]. The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the protection of the maritime environment [59], and the management of marine natural resources[60]. There are 17 parts, 320 articles and nine annexes to UNCLOS.

The convention introduced a number of provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes[61], exclusive economic zones (EEZs)[62], continental shelf jurisdiction[63], deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes. The convention set the limit of various areas, measured from a carefully defined baseline. (Normally, a sea baseline follows the low-water line, but when the coastline is deeply

[58]Nautical Law: What is UNhttps://www.marineinsight.com/maritime-law/nautical-law-what-is-unclos/CLOS? Accessed 28/08/18

[59]Article 145, United Nations Convention on the Law of the Sea 1982

[60] Articles 116, 117, 118, 119 and 120, ibid.

[61]Articles 47 to 54, ibid.

[62]Articles 55 to 75, ibid.

[63]Articles 76 to 85, ibid.

indented, has fringing islands or is highly unstable, straight baselines may be used.) The areas are as follows:

Internal waters

This covers all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate use, and use any resource. Foreign vessels have no right of passage within internal waters.

Territorial waters

The Coastal State is free to set laws, regulate use, and use any resources out to 12 nautical miles (22 kilometres; 14 miles) from the baseline[64]. Vessels were given the right of innocent passage through any territorial waters[65], with strategic straits allowing the passage of military craft as transit passage. "Innocent passage" is defined by the convention as passing through waters in an expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal state. Fishing, polluting, weapons practice, and spying are not "innocent", and submarines and other underwater vehicles are required to navigate on the surface and to show their flag. Nations can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of their security[66].

Archipelagic waters

The convention set the definition of Archipelagic States in Part IV, which also defines how the state can draw its territorial borders. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated *Archipelagic Waters*. The state has sovereignty

[64]Article 2 United Nations Convention on Law of the Sea, 1982.
[65]Article 17, ibid.
[66]Article 25, ibid.

over these waters (like internal waters), but subject to existing rights including traditional fishing rights of immediately adjacent states[67]. Foreign vessels have right of innocent passage through archipelagic waters (like territorial waters).

Contiguous Zone

Beyond the 12-nautical-mile (22 km) limit, there is a further 12 nautical miles (22 km) from the territorial sea baseline limit, the contiguous zone, in which a state can continue to enforce laws in four specific areas: customs, taxation, immigration and pollution, if the infringement started within the state's territory or territorial waters, or if this infringement is about to occur within the state's territory or territorial waters[68]. This makes the contiguous zone a hot pursuit area[69].

Exclusive Economic Zones (EEZs)

These extend 200 nautical miles (370 kilometres; 230 miles) from the baseline. Within this area, the coastal nation has sole exploitation rights over all natural resources. In casual use, the term may include the territorial sea and even the continental shelf. The EEZs were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The success of an offshore oil platform in the Gulf of Mexico in 1947 was soon repeated elsewhere in the world, and by 1970 it was technically feasible to operate in waters 4,000 metres deep. Foreign nations have the freedom of navigation and overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables.

Continental Shelf[70]

[67] UNCLOS 3 Article 51. http://www.un.org/dept/los/convention_agreements/texts/unclos/closindx.htm. Accessed 28/08/18

[68] Section 4, Article 33 UNCLOS Part II- Territorial Sea and Contiguous Zone. http://www.un.org/dept/los/convention_agreements/texts/unclos/part2.htm. Accessed 28/08/18

[69] Op cit p.12

[70] Articles 76 to 85, United Nations Convention on Law of the Sea, 1982.

The continental shelf is defined as the natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles (370 km) from the coastal state's baseline, whichever is greater. A state's continental shelf may exceed 200 nautical miles (370 km) until the natural prolongation ends. However, it may never exceed 350 nautical miles (650 kilometres; 400 miles) from the baseline; or it may never exceed 100 nautical miles (190 kilometres; 120 miles) beyond the 2,500-meter isobath (the line connecting the depth of 2,500 meters). Coastal states have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources "attached" to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone.

Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority and the Common heritage of mankind principle[71].

Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states. With the help of **UNCLOS**, it can be said that marine resources can be protected and safeguarded, especially in contemporary times where the need for marine resources' protection has increased.

[71]Jennifer Frakes, The Common Heritage of Mankind Principle and the Deep Seabed, Outer Space, and Antarctica: Will Developed and Developing Nations Reach a Compromise? In: United Nations Convention on the Law of the Sea. https://en.wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea. Accessed 28/08/18

3.2.5 United Nations Convention on Contracts for the International Sale of Goods (CISG)

The CISG was adopted on 11 April 1980 and came into force 1 January 1988[72]. The purpose of the CISG is to provide a modern, uniform and fair regime for contracts for the international sale of goods. Thus, the CISG contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs. The contract of sale is the backbone of international trade in all countries, irrespective of their legal tradition or level of economic development. The CISG is therefore considered one of the core international trade law conventions whose universal adoption is desirable.

The CISG is the result of a legislative effort that started at the beginning of the twentieth century. The resulting text provides a careful balance between the interests of the buyer and of the seller. It has also inspired contract law reform at the national level.

The adoption of the CISG provides modern, uniform legislation for the international sale of goods that would apply whenever contracts for the sale of goods are concluded between parties with a place of business in Contracting States. In these cases, the CISG would apply directly, avoiding recourse to rules of private international law to determine the law applicable to the contract, adding significantly to the certainty and predictability of international sales contracts.

Moreover, the CISG may apply to a contract for international sale of goods when the rules of private international law point at the law of a Contracting State as the applicable one, or by virtue of the choice of the contractual parties, regardless of whether their places of business are located in a Contracting State. In this latter case, the CISG provides a neutral body of rules that can be easily accepted in light of its transnational nature and of the wide availability of interpretative materials.

[72]United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

Finally, small and medium-sized enterprises as well as traders located in developing countries typically have reduced access to legal advice when negotiating a contract. Thus, they are more vulnerable to problems caused by inadequate treatment in the contract of issues relating to applicable law. The same enterprises and traders may also be the weaker contractual parties and could have difficulties in ensuring that the contractual balance is kept. Those merchants would therefore derive particular benefit from the default application of the fair and uniform regime of the CISG to contracts falling under its scope.

3.3 Institutional Framework

3.3.1 Nigerian Maritime Administration and Safety Agency (NIMASA)

The Nigerian Maritime Administration and Safety Agency (NIMASA) is a key player in the maritime industry. It is the result of the merger of the now defunct National Maritime Authority (NMA) and the then Joint Maritime Labour Industrial Council (JOMALIC) and the passage of the Nigerian Maritime Administration and Safety Agency Bill into an Act of Parliament by the National Assembly in April 2007. The NIMASA Act, 2007 thus provided the legal instrument formalizing the merger of the then NMA and JOMALIC and alongside with this, transferred the aims and objectives as well as the functions of the defunct organizations to NIMASA. However, before the merger, the two organizations were performing their respective functions separately.

The economic reform agenda introduced by the Obasanjo administration, with the advent of the 4th Republic, was anchored on the deregulation and liberalisation of key sectors of the Nigerian economy to increase private sector participation in the management and operation of the economy. Institutional restructuring was another strategy enunciated in the reform programme. The principal philosophy underlying the reform programme was to increase the level of efficiency with which the Nigerian economy is operated and managed and thus,

accelerate economic growth and development through improved competitiveness. The maritime sector was one of such key economic sectors mapped out for reform and the port industry was considered most crucial and thus, needed urgent reform. To complement the reform of the operational arm of the maritime sector, institutional reform became imperative to streamline, strengthen and energise the regulatory environment to be able to respond effectively to the emerging challenges posed by changes at the operational level. In this regard, the Federal Government, in the implementation of an expert report and a ministerial recommendation initiated an executive bill to the National Assembly in the year 2006, seeking a Legislative Act to establish the Nigerian Maritime Administration and Safety Agency through the merger of the then National Maritime Authority and the Joint Maritime Industrial Labour Council. While the legislative process was in progress, the Government in its determination to hasten the integration of the two agencies completed the administrative merger of the organizations under a convenient nomenclature- National Maritime Administration.

The NIMASA Act, 2007 in Part IV, Section 22, specifically spelt out the functions and duties of the Agency as follows: the development of shipping and regulate matters relating to merchant shipping and seafarers; administering the registration and licensing of ships; regulate and administer the certification of seafarers; establish maritime training and safety standards; regulate the safety of shipping as regards the construction of ships and navigation; provide search and rescue services; provide directions and ensure compliance with vessel security measures; carry out air and coastal surveillance; control and prevent marine pollution; provide direction on qualification, certification, employment and welfare of maritime labour.

Other functions include; develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and

other maritime infrastructure; enforce and administer the provisions of the Cabotage Act 2003; perform port and flag state duties; receive and remove wrecks; provide maritime security; and establish the procedure for the implementation of conventions of the International Maritime Organisation and International Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on maritime safety and security, maritime labour, commercial shipping and for the implementation of codes, resolutions and circulars arising therefrom.

The Coastal and Inland (Cabotage) Act also designated NIMASA as the implementing Agency. This therefore led to the establishment of a Cabotage Services Department in NIMASA to oversee and coordinate the Agency's programmes and activities in the implementation of the law. The Cabotage Services Department is one of the nine departments in NIMASA.

The department is headed by a Director, who is ably assisted by a Deputy Director. Under him are three units:

1. Trade and Development

2. Cabotage Vessel Financing Fund (CVFF)

3. Regulatory

The Trade and Development unit is in charge of registration of vessels for Cabotage operation. This is done in collaboration with the Ship Registry Unit of the Agency under the Registrar of Ships. It is also responsible for waiver processing. Waiver administration is one of the key instruments for transitional administration of the Cabotage policy. It is meant to qualify non-Nigerian interests in operating services where Nigerians are in the main, lacking the capacity or the capability to provide it. The unit processes waiver applications and where

applicable, recommends a waiver to the Honourable Minister of Transport for approval. It also issues debit notes to shipping companies for the payment of applicable waiver fees.

The Cabotage Vessel Financing Fund (CVFF) unit is responsible for the administration of the Cabotage Vessel Financing Fund (CVFF), which is a special funding scheme conceived in the Cabotage law to provide soft funding to Nigerians for the acquisition of trading assets and operational infrastructure and facilities necessary to facilitate their reasonable participation in Nigeria's domestic shipping trade. The CVFF is funded through the collection of a 2% surcharge on the contract sum from every vessel engaged in Cabotage trade. Hence, the unit is responsible for working out the 2% surcharge payable from the contract sum. It also issues a Demand Note to the affected shipping company for the payment of the surcharge.

The Regulatory unit is in charge of enforcement. This is to ensure operators compliance with the provisions of the Cabotage regime. In carrying out this activity, NIMASA maintains well-trained and equipped staff (Enforcement Officers) whose duty is to ensure full compliance of operators with the law by regular visits to terminals and jetties as well as on board vessels, where necessary. They check compliance as to waiver requirements as well as compliance as to the payment of the CVFF 2% surcharge. Aside the enforcement officers at the headquarters of the Agency, there are also officers at the three zonal offices of the Agency, which oversee all Nigerian ports, terminals and jetties. The zonal offices are:

1. Western zone

2. Central zone

3. Eastern zone

The Western zone covers Lagos ports, including Apapa port, Tin Can Island port, Atlas Cove jetty and other terminals and jetties within its jurisdiction. The central zone comprises Warri

port, Sapele port, Forcados oil terminal, Escravos oil terminal and other designated oil terminals and jetties. The Eastern zone covers the Port Harcourt port, Onne port, Calabar port, Bonny, Brass, Okrika jetty and many other oil terminals and jetties.

Vessel registration

In compliance with Section 22 of the Cabotage Act, vessels intended for use for Cabotage operation are registered by the Agency, through the Ship Registry unit, in collaboration with the Trade and Development unit of the Cabotage department. For instance, in the year 2010, about 368 vessels registered for Cabotage operation. Further analysis shows that of this figure, 160 of them were indigenous vessels, 2 of them on bareboat charter, and 112 of them in joint venture partnership while 94 of them were foreign vessels[73].

In addition to the above, other activities carried out by NIMASA in pursuit of the goals and objectives of the Cabotage law include the following:

1. Collaborating with stakeholders in the Local Content Policy: for example, the Nigerian Navy, NNPC, PPMC, NAPIMS, etc. in ensuring effective implementation of Cabotage operations and the CVFF.

2. Monitoring: As part of its implementation activities, NIMASA monitors shipping/maritime operations at all the nation's jetties and terminals as well as keeps records of same and the nature and scope of their activities. The Agency also maintains regular surveillance to identify new and upcoming Cabotage infrastructure and facilities.

3. National Sensitisation: NIMASA regularly carries out the sensitisation of the Nigerian public on the economic opportunities inherent in Nigeria's domestic shipping trade. This is

[73]Ganiyu Babatunde et al, The Effects of Cabotage Regime on Indigenous Shipping in Nigeria, LL.M. Dissertation (Unpublished), World Maritime University, Malmo, Sweden, (2011) p. 4.8

meant to mobilize the investing public to take advantage of the Cabotage regime in the country to create wealth and improve the overall socio-economic well-being of the citizens. The sensitisation is usually carried out through workshops and seminars.

4. Infrastructural Development: Some of the principal ideals of the Nigerian Cabotage law are that a Cabotage vessel should be built and maintained in Nigeria. In pursuit of these ideals, NIMASA has intensified efforts toward the expansion of existing shipbuilding and maintenance facilities in the country as well as the development of new shipyards in order to enhance the capacity and building of vessels in Nigeria

The law establishing Cabotage in Nigeria invokes Section 30 of Part 6 of the Act which authorize and empowers the Nigerian Maritime Administration and Safety Agency to regulate, enforce and implement the compliance of the Cabotage in Nigeria. Section 31 grants enforcement officers powers to arrest and detain defaulter vessel in the conduct of his duties. Also, registration procedures as outlined in Part 5 are to be enforced by guidelines in Part 6 by NIMASA. Still, NIMASA should enforce Section 3 which spells out vessels manning, ownership, building etc. Sections 22 and 29 specify the roles NIMASA plays in registration procedures. Collection of monies for and operation of the Cabotage Vessels Financing Fund are vital mandate of the NIMASA.

The Minister may request the secondment of any officer to NIMASA from government enforcement agencies such as, Nigerian Ports Authority (NPA), Nigerian Inland Waterways Authority (NIWA), Joint Maritime Labour Industrial Council (JOMALIC), Nigerian Navy, Nigerian Immigration Services and the Nigerian Customs Services to the Cabotage Enforcement Unit. In fact, the NIMASA enforces compliance of the entire Cabotage Act in alliance with cognate bodies listed above. NIMASA is germane to the successful enforcement of the Cabotage Act and the development of the Cabotage policy in Nigeria. The measure of

the impact of the Cabotage Act implementation in the Maritime Industry has revealed the significant role of the NIMASA and inter-agencies interactions. The above roles qualify NIMASA as an administrative organ of the Cabotage regime.

This research agrees that NIMASA is living up to expectation and to some extent has tried to implement the Cabotage Act, save for areas like the CVFF and the granting of licences and waiver to foreign vessels that suffocate indigenous participation in cabotage.

Aside NIMASA, there are other government agencies playing crucial roles and collaborating with NIMASA in the implementation of the Cabotage Act as will be discussed.

3.3.2 Nigerian Navy

The role of the Nigerian Navy in securing the maritime environment is very critical to the economic stability of the country and thus assisting in nation building through her sustained presence at sea despite all odds. The maritime environment has been defined as the coastal sea areas and that portion of the land, which is susceptible to influence or support from the sea, generally recognized as the region which horizontally encompasses the land- water mass interface from 100km ashore to 200nm at sea, and extending vertically into space from the bottom of the ocean and from the land surface. This area is often referred to as the littoral. The increased interests and activities in this area most often leads to several unwholesome activities which threatens the unhindered harvesting of the resources in the area. Consequently this area needs to be secured and protected for the continuous harnessing of the resources for economic development.

The roles of the Nigerian Navy are stipulated in the Constitution of the Federal Republic of Nigeria 1999, Armed Forces Act [74] and the National Defence Policy (NDP). These instruments charged the Nigerian Navy in particular with the following responsibilities:

a. Enforcing and assisting in co-coordinating the enforcement of all custom laws, including anti-bunkering, fishery and immigration laws of Nigeria at sea.

b. Enforcing and assisting in co-coordinating the enforcement of national and international maritime laws ascribed or acceded to by Nigeria.

c. Making of charts and co-coordinating all national and hydrographic surveys

d. Promoting, coordinating and enforcing safety regulations in the territorial waters and the EEZ of Nigeria.

e. Any other duties that will be assigned to her by an act of the national assembly[75].

Furthermore, Sections 1 and 2 of Schedule 1 Part 1 HSOP[76] provides the responsibilities of the Nigerian Navy as follows;

1. (1) Pursuant to the provision of Section 1 (4) of the Armed Forces Act Cap A20 LFN 2004, the NN is to work closely with other agencies in the discharge of its duties. Commanders and OICs of ships/boats shall ensure that appropriate procedures for arrest of vessels are complied with.

[74]Cap A20, Laws of the Federation of Nigeria, 2004.
[75] Dick T., The Role of the Nigerian Navy in Nation Building, Nigerian Navy Today <http://nigerian-navy.blogspot.com/2010/09/role-of-nigerian-nay-in-nation.html.Accessed 21//08/18 at 2:27pm

[76] Harmonised Standard Operating Procedures on Arrest, Detention and Prosecution of Vessels and Persons in Nigeria's Maritime Environment, 2016

(2) The COs/OICs of ships/boats shall be notified of the arrest of ship(s), as a critical task that must be conducted observing due diligence. Also, the NN shall strictly ensure compliance with IMO guidelines on the procedures for arrest.

2. (1) The Commander or OIC of any Base, Unit or Establishment shall be responsible for the safe custody of any arrested vessel unless otherwise directed by the ASA.

(2) All vessels detained must have a detailed report from the boat/ship that made the arrest. The arrested vessels could be detained under berth, anchored or moored amid stream. It may also be detained in harbour where it shall be secured alongside any jetty.

The limited presence of the Nigerian Navy platforms at sea to protect the resources therein has led to businessmen cashing in on the opportunity. As a way of ameliorating the Nigerian Navy shortcoming, private companies have provided dedicated security boats in naval colours to protect some designated oil and gas installations of some companies operating in the maritime sector. The security companies employ the services of the Nigerian Navy personnel to man and operate the boats. There are over 12 of such vessels operating in the Niger Delta region. The operations of these boats seem to have increased the presence of the Nigerian Navy in policing the Maritime Environment. The issue is why employ private security companies when the same resources could have been used to acquire boats for the Nigerian Navy. While the security company's effort appears harmless on face value, it is a clear demonstration of lack of national interest by both the security companies and the oil companies employing their services. But for pecuniary interest, the affected oil companies could have purchased and donated such assets to the Nigerian Navy as is commonly observed with the Nigeria Police[77].

[77] Id.

Though the use of private security vessels is assisting to stem the tide of unwholesome acts in the maritime environment however, it has indirectly exposed the lapses in the ability, capability and the willingness of the Nigeria Navy and the nation to secure the Maritime Environment. National security is a function that is always left for government except in circumstances of extreme anarchy that private enterprises can participate as players.

The role of the Nigeria Navy in the enforcement of the provisions of the Cabotage Act is commendable. Despite its limited resources, it has cooperated with NIMASA in ensuring strict compliance on the issue of generation of revenue from foreign vessels and keeping our sea relatively safe from pirates.

3.3.3 Nigerian Ports Authority (NPA)

The Nigerian Ports Authority came into existence as an autonomous Public Corporation, with the promulgation of the Ports Act 1954[78]. The Authority commenced operations on 1st of April 1955, having assumed responsibility for certain ports and harbour activities previously performed by eight departments of the Government of Nigeria. Its duties include regulation of ports, piers and jetties, provision of pilotage services, berthing, discharging and loading of cargo from ships to other transport modes. Before the commencement of reforms of the ports, NPA was operating 8 major ports (excluding oil terminals) with a cargo handling capacity of 35 million tonnes per annum through its Apapa, Tin Can Island, RoRo, Container Terminal, Port Harcourt, Warri, Calabar and Federal Lighter Terminal at Onne.

However, the port reforms process changed everything and led to the adoption of a Landlord model of port ownership, incorporating Private – Public Sector Partnership [PPP], infusion of private capital and separation of the regulatory from the operational role. Hence, the reforms ensured that NPA only played the role of a nautical authority, land manager, property

[78]Cap.155, Laws of the Federation of Nigeria

developer and technical regulator while the private sector would be involved in cargo operation, port labour, investment in equipment, investment in terminal maintenance and insurance of concession assets[79]. The importance of the ports to the Cabotage administration is fundamental, as there can be no regulated loading or discharging under the Cabotage trade without proper systems for controls. Hence, the NPA should have regulatory control over all harbours, piers and jetties used in the Cabotage trade.[80]

3.3.4 Nigerian Shippers Council

The Nigerian Shippers Council is an organisation responsible for the protection of the interests of importers and exporters on matters affecting the shipment of their goods to and from Nigeria. It was established by the Federal Government through Decree 13 of 1978. One of the functions of the Council is to consider problems faced by shippers with regards to coastal transport, inland waterways transport and matters relating generally to the transport of goods by water and to advise government on possible solutions thereto[81]. The Council is involved in the implementation of the Cabotage Act, showcasing its relevance as an advocacy body for protection of shippers' interests. It has expressed concern about the Cabotage law with respect to capacity, costs of Cabotage services and concept definitions.

3.3.5 The National Inland Waterways Authority (NIWA)

The National Inland Waterways Authority was formerly known as the Inland Waterways Department in the Federal Ministry of Transport. However, in 1997, it was elevated to a full Authority by the National Inland Waterways Decree of 1997. Its objectives are-

[79]Ganiyu Babatunde et al, The Effects of Cabotage Regime on Indigenous Shipping in Nigeria, LL.M. Dissertation (Unpublished), World Maritime University, Malmo, Sweden, (2011) p. 43.

[80](Akabogu, 2004, p. 72). 3.6.3

[81]Nigeria Institute of Shipping, 1989, p. 66

a. To improve and develop inland waterways for navigation;

b. To provide an alternative mode of transportation for the evacuation of economic goods and persons; and

c. To execute the objectives of the national transport policy as they concern inland waterways (National Inland Waterways Decree, 1997)[82]

Some of the services provided by the National Inland Waterways Authority in accordance with the law setting it up include regulatory services, transport services, engineering services, marine services and survey services.

Section 22 (2) of the Cabotage Act acknowledges and reserves the rights of Government agencies like National Inland Waterways Authority to continue the issuance of applicable permits to vessels and crafts, which operate along the inland waterways. Hence, vessels intended for use in Cabotage trade within the inland waters shall continue to obtain applicable permits as prescribed under the NIWA Act of 1997.

3.3.6 Nigerian National Petroleum Commission (NNPC)

The Nigerian National Petroleum Commission (NNPC) is a statutory corporation through which the Federal Government of Nigeria participates in the oil and gas industry. The NNPC's primary function is to oversee the regulation of the oil industry, with secondary responsibilities for upstream and downstream development. In 1971, Nigeria became a member of the Organisation of Petroleum Exporting Countries (OPEC) which encouraged members to take control of their petroleum industry by increased state participation through National Oil Companies (NOCs). This led to the incorporation of the Nigerian National Oil Company (NNOC) in 1971, followed by the creation of the Ministry of Petroleum Resources

[82] Ganiyu Babatunde et al, op cit, p.46

(MPR) in 1975. The merger of NNOC and MPR in 1977 resulted in the Nigerian National Petroleum Corporation (NNPC). Production has since continued especially in the Niger Delta which encompasses about 78 of the 159 oil fields, with its high quality of light and sweet crude distinguishing Nigerian oil from most other OPEC countries, and comparable only to the North Sea oil (Khan, 1994). The Petroleum Act Cap 350 provides for three classes of grants for petroleum rights in Nigeria. These are Oil Exploration Licence (OEL), Oil Prospecting Licence (OPL), and Oil Mining Lease (OML). An OEL authorizes the licensee to carry out aerial, surface, geological and geophysical surveys excluding drilling below 300 ft. No exclusive right is granted but may be renewed for one year if licensee fulfils the terms and conditions of the licence. On the other hand, OPL grants exclusive right to conduct all exploration work and drilling to any depth and if petroleum is discovered in the area of the licence, to produce and dispose of the same. If the discovery is in commercial quantities the licensee must convert his OPL by making an application to the Department of Petroleum Resources (DPR) for an OML. An OML grants the right to exploration and production, transportation and disposal of production[83].

The National Petroleum Investment Management Services (NAPIMS), a subsidiary of NNPC, supervises FGN's investments in the oil industry.

3.3.7 National Petroleum Investment and Management Services (NAPIMS)

The National Petroleum Investment Management Services (NAPIMS) is a Corporate Services Unit (CSU) in the Exploration and Production (E&P) Directorate of the NNPC charged with the responsibility of managing Nigeria Government's investment in the UpStream sector of the Oil and Gas industry. The upstream sector is characterized by exploration and production of crude oil and gas (petroleum operations). The income of companies engaged in these

[83] Stotos, N.G. "Classes of Grants for Petroleum Rights – OEL, OPL, OML", Oil and Gas Briefs, April 19, 2010. http://oilandgasbriefs.com/knowledge-base). Accessed 28/08/2018

activities is subject to tax under the Petroleum Profits Tax Act, 2004 (PPTA), as amended. The upstream oil sector is the single most important sector in the economy, accounting for over 90% of the country's exports and about 80% of the Federal Government (FG's) revenue.

3.3.8 The International Maritime Organisation (IMO)

A key regulator for the maritime shipping industry is the International Maritime Organisation (IMO), a United Nations body whose only purpose is to help increase and maintain worldwide maritime safety.The IMO was established in Geneva in 1948 and its headquarters is located in London. As a specialized agency of the United Nations, the IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a legal structure for the shipping industry that is fair and effective, which is implemented around the globe.

In order to safeguard those that work within the shipping industry and those that might be affected by an accident, more than 30 conventions (rules) control the shipping industry worldwide. These conventions cover all aspects of international shipping like ship registration, design, construction, equipment, manning, operation and the prevention of pollution. These international regulations are set by the International Maritime Organisation (IMO)[84]. National governments, which are and form the membership of IMO, are required to implement and enforce these international conventions rules, and ensure that the ships which are registered under their national flags comply with the international rules or regulations.

The principal responsibility for enforcing IMO regulations concerning ship and crew safety and environmental protection rests with the flag states (i.e. the countries in which merchant ships are registered - and may also own ships carrying out both local and international business). Flag states enforce IMO regulation and requirements through inspections of ships

[84]The Maritime Industry Knowledge Centre, https://www.maritimeinfo.org/en/Maritime-Directory/regulators. Accessed 21/08/18 at 10:36pm

conducted by marine surveyors. Flag state enforcement is carried out by what is known as Port State Control, whereby regulatory officials in any country which a ship may visit can inspect foreign flag ships to ensure that they comply with IMO international requirements[85].

Its role is to create a level playing-field so that ship operators cannot address their financial issues by simply cutting corners and compromising on safety, security and environmental performance. This approach also encourages innovation and efficiency. As part of the United Nations family, IMO is actively working towards the 2030 Agenda for Sustainable Development and the associated SDGs. Indeed, most of the elements of the 2030 Agenda will only be realized with a sustainable transport sector supporting world trade and facilitating global economy[86]. The world relies on a safe, secure and efficient international shipping industry – and this is provided by the regulatory framework developed and maintained by IMO.

[85] Regulation of International Shipping, Global Maritime Academy Nigeria, http://www.gmaan.com/regulation.html. Accessed 21/08/18 at 10:46pm.
[86] Introduction to IMO, http://www.imo.org/en/About/Pages/Default.aspx. Accessed 21/08/18 at 10:37pm

CHAPTER FOUR

ISSUES AFFECTING CABOTAGE ADMINISTRATION IN THE NIGERIAN MARITIME INDUSTRY

4.1 Introduction

The maritime industry occupies a very prominent position in the economy of Nigeria and all over the world. The industry in its strict sense embraces all the maritime related business activities which take place within the country's maritime environment. These include offshore economic activities such as fishing, salvage, towage, underwater resources and on-shore economic activities such as port activities, maritime transport (shipping), ship construction, repairs and maintenance activities. Of all these activities, shipping stands out as the greatest boost to a nation's economic growth and development. This is so because all other maritime activities revolve around shipping.

Due to linkage between shipping activities and economic development, most nations cannot afford to treat it with levity. Therefore a conscious intervention was needed to ensure that the national interest is protected, through the effort of the Cabotage administration. Despite the seminal role played by Cabotage laws notwithstanding, Nigeria's national shipping industry is in crises. This is caused by investment difficulties, management inefficiency and organizational problems among others.

The impact of the Cabotage administration can be positive or negative, but the positive impact far outweighs the negative impact. In spite of the enormous positive impact created, negative impacts also surface. This chapter would focus on the issues affecting Cabotage administration vis-a-vis licenses to foreign vessels, registration, waivers, the vessel financing fund, and offences.

4.2 Licences to Foreign Vessels

Section 15 (1) - (4) of the Act[87] provides as follows:

(1) Upon application for a licence by a person resident in Nigeria acting on behalf of a foreign owned vessel, the Minister may issue a restricted licence for the foreign owned vessel to be registered for participation in the Coastal Trade, where the Minister is satisfied that:

a) Any of the circumstances in sections 9-12 is applicable
b) The foreign owned vessel is eligible to be registered in Nigeria
c) The owning company of the foreign vessel has a representative office in Nigeria
d) All applicable duties, levies and tariffs imposed by the relevant authorities applicable to foreign vessels with respect to its participation in the Coastal Trade have been paid
e) The foreign vessel possess all certificates and documents in compliance with International and regional maritime conventions whether or not Nigeria is a party to the conventions and that such certificates and documents are current and valid; and
f) The foreign vessel meets all safety and pollution requirements imposed by Nigerian law and any International Conventions in force.

(2) In making a determination referred to in subsection (1), the Minister may request from the applicant for the licence to which the determination relates, and from the owner of any Nigerian vessel to which the determination relates, such as information and documentation as the Minister may deem necessary.

(3) The issuance of a licence pursuant to subsection (1) does not affect the application to such foreign vessel of any Nigerian law that imposes safety or pollution prevention requirements in respect of vessels.

[87] Coastal Inland Shipping (Cabotage) Act

(4) The licence issued under subsection (1) shall be carried on board the vessel at all times.

Licence can be defined as a permission given by one man to another to do some act which without such permission it would be unlawful for him to do.[88] It is also a permission usually, revocable, to commit some act that would otherwise be unlawful.[89]

The Minister is empowered to issue licence to foreign owned vessels prior to registration in the Special Cabotage Register. This is done by completing a form (FMOT Cabotage Trade Form 3) which will be submitted to the Minister of Transport with the applicants' corporate documents, certificate of waiver and ship documents as specified in the guidelines. The validity of the licence is one year, subject to renewal. On renewal, applicants are *inter alia*, required to show evidence of improved level of compliance with the provisions of the Cabotage Act on manning, ownership and building requirements.[90]

The Minister also has power to suspend, cancel or vary the terms and conditions of a licence as provided in Section 18 of the Cabotage Act, 2003. Section 18 states:

a. The owner or master of the licence is convicted of an offence under this or any other Act of the National Assembly relating to navigation or shipping
b. There has been a contravention of or failure to comply with any term or condition to which the licence is subject to
c. It is expedient to cancel, suspend or vary the licence or permit for reasons of national or public interest.

[88] Dictionary of English Law (1959). Earl Jowitt (ed.) London Sweet and Maxwell Ltd, vol. 2 I-Z
[89] Blacks Law Dictionary (2004) Bryan A. Garner (ed.) St. Paul MN, West publishing Co., 8th edition
[90] Kalu, K. A. (2012). Guidelines on the Issuance of Licence by the Minister; A Statutory Requirement? In: Ephiphany Azinge, et al. (eds.) Cabotage Law in Nigeria, NIALS press, Abuja, p.261.

Without the licence and authorization required by this Act, no foreign owned ship and foreign crewed vessels shall participate in the domestic coastal trade in Nigeria.[91]

4.3 Registration

The requirement for registration is provided for in Section 22 (1) – (5) of the Act[92].

(1) Notwithstanding the provisions of any other laws and subject to section 47 every vessel intended for use under this Act shall be duly registered by the Registrar of Ships in the Special Register for Vessels and Ship Owning Companies engaged in Cabotage and shall meet all the requirement for eligibility as set forth under this Act and the Merchant Shipping Act and its amendments to the extent that the said Merchant Act is not inconsistent with the provisions of this Act.

(2) A vessel intended for use in the domestic trade whether for coastal or inland waters shall obtain all the applicable licences and permits as shall from time to time be determined by the Minister and the relevant Agencies of the Government.

(3) In order to carry out its functions under this Act, the Minister shall on continuous basis collect information and keep records in the Special Register concerning the availability, characteristics and uses of Nigerian vessels.

(4) The Minister shall immediately after the commencement of this Act issue appropriate guidelines and criteria for the registration of bareboat vessel in the Cabotage Register.

(5) Vessels eligible for registration under this Act includes:

a) Passenger vessels

b) Crew boats

[91] Section 21 of the Coastal Inland Shipping (Cabotage) Act, 2003
[92] Ibid

c) Bunkering vessels

d) Fishing trawlers

e) Barges

f) Off-shore service vessels

g) Tugs

h) Anchor handling tugs and supply vessels

i) Floating petroleum storage

j) Dredgers

k) Tankers

l) Carriers, and

m) Any other craft or vessel used for carriage on, through underwater of persons, property or any substance whatsoever.

As discussed earlier in case of *Noble Drilling Nigeria Limited v. Nigerian Maritime Administration and Safety Agency and Anor.*,[93]seems to suggest that the list of vessels above is exhaustive of vessels eligible for registration under the Act. The Court held that the listing of rigs under the caption "Foreign Vessels" in Clause 9.1.1 of the Guidelines issued by the Minister of Transportation in April 2007 was wrongful on the ground that a drilling rig did not fall within the definition of a "vessel" under Section 2 of the Cabotage Act.

The registration of vessels for Cabotage Trade is different from the registration of vessels under the Merchant Shipping Act (MSA). The MSA exempts small vessels from the registration by the provision of Section 16 (5) of the MSA that self propelled vessels which are less than fifteen (15) gross tons are exempted from registration. There is however no such exemption for small vessels under the Cabotage Act as every vessel intended to be used for Cabotage must be registered. It is noteworthy that the requirement for registration under the

[93] Op cit, pp. 42, 43

Cabotage Act does not detract from the registration requirements of Nigerian vessels under the Merchant Shipping Act but rather seeks to complement it.[94]

Section 23 of the Cabotage Act makes provisions where the Minister shall not register a vessel. The Revised Guidelines on the Implementation of the Cabotage Act issued by the Minister of Transport on June 7, 2004 provides for five categories of registration. They are as follows:

a. Registration of Wholly Owned Nigerian vessels
b. Registration of Joint-Venture Owned vessels
c. Registration of Bareboat Chartered vessels
d. Registration of Foreign-Owned vessels
e. Temporary registration of Cabotage vessels

The requirements for registration are as follows:

i. Certificate of Nigerian Ship Registry
ii. Cabotage Affidavit Form
iii. Crew list Declaration
iv. Applicable Waiver Certificate
v. Evidence of payment of fees
vi. Certificate of incorporation
vii. Memorandum and Articles of Association'
viii. Certified True Copy of Form CAC 7 and CAC 2
ix. Current Tax Clearance Certificate
x. Evidence of registration of shipping company with NIMASA

[94] Adedoyin Afun (2012). Registration of Vessels under the Act: Practice and Procedure. In: Ephiphany Azinge, et al. (eds.) Cabotage Law in Nigeria, NIALS press, Abuja, p.145.

The registration requirements for all the five categories are similar except that in the case of a Bareboat Chartered Vessel, a copy of the Bareboat Charter Agreement is required and in the case of a Foreign-owned Vessel, a licence from the Federal Ministry of Transport is required prior to registration. The duly completed application form is required to be submitted to the registrar of ships with the applicant's corporate documents and the statutory certificates for the vessel as specified in the guidelines. Special Cabotage registers exists at NIMASA in respect of each of the above listed categories. It is also mandatory for every vessel and shipping company engaged in Cabotage to be registered in one of the Special Cabotage Registers before engaging in coastal trade.It is noteworthy that the registration of vessels under these categories is to be carried out annually and all the certificate(s) and licence(s) must be carried on board the vessel at all times.

Applications for registration of Nigerian Ships are made to the Registrar of Shipping in Lagos. Nigeria does not operate an open registry and therefore a Nigerian Consul is not permitted to accept registration documents and cannot issue certificates. However, the Registrar may temporarily accept facsimile copies of documents supporting an application for registration but it is assumed that the originals will follow shortly thereafter in order for the vessel to be registered[95].The Nigerian Registry of Ships makes a distinction between provisional and permanent registration. Provisional registration may be granted to a ship to enable it to sail and operate within territorial waters, pending the issuance of a permanent certificate of registration[96].

The following documents are required by the Registrar of Ships to support an application for registration.

[95] Animi Awah, (2012). "General Overview of the Coastal Inland Shipping (Cabotage) Act, In: Epiphany A. et al, (eds.) Cabotage Law in Nigeria, NIALS press, Abuja, pp. 10, 11
[96] Ibid

Where it is a corporate applicant, the following are required;

1. A letter of application on its company letter headed paper
2. Completed Ministry of Transport Registry Forms
3. Certificate of Incorporation
4. Memorandum and Articles of Association
5. Current list of Directors of the company (Form CAC 7)
6. Current Tax Certificate of the company and its directors respectively
7. Deletion Certificate from last registry (that is if the ship was previously registered in another country)
8. Tonnage Measurement Certificate issued by a Nigerian registered surveyor
9. Builders Certificate if it is a new ship
10. Bill of Sale if the ship is purchased second hand
11. Application for the Allotment of International Code Signal in Form Registry 19
12. Declaration of the ship's name
13. Payment of Registration fees (Depending on the size of the ship)
14. Present location of the ship
15. Copy of the last Radius Safety Certificate, Load Line Certificate and Safety Construction Certificate.

Where the application is made by an individual:

1. Declaration of an individual owner or transferee
2. Particulars of citizenship
3. Personal Income Tax Clearance Certificate

4.4 Waivers

Waivers are granted in situations where the requirement of the law is either unavailable or cannot be met or through corporation between States usually involving transfer of knowledge or technology, or the entering into agreement so as to allow free and unrestricted movement of goods, services and vessels within coastal waters.[97] The waiver system adopted in the Nigerian Cabotage Act is based on the principle of non-availability as the Minister is allowed to grant waivers where the manning, ownership or building requirements of the Act cannot be met. The system was adopted by the lawmakers in recognition of the fact that Nigerian capacity in those areas may be insufficient to carry the volume of business trip generally associated with Cabotage trade.

Part III of the Cabotage Act contains the provisions for the grant of waivers by the Minister of Transportation to duly registered foreign vessels to partake in Cabotage trade in Nigeria. Section 9 of the Cabotage Act provides that the Minister may on the receipt of an application grant a waiver on the requirement that vessels be wholly owned, where he is satisfied that there is no wholly Nigerian owned vessel suitable and available to provide the services or perform the activities.

The Minister may also grant waivers to a duly registered vessel on the requirement for vessel under this Act to be wholly manned by Nigerian citizens where he is satisfied that there is no qualified Nigerian officer or crew for the position specified in the application. The Minister is also empowered to grant waivers on the requirement for a vessel to be built in Nigeria so long as he is satisfied that no Nigerian shipbuilding company has the capacity to construct the particular type and size of vessel specified in the application.[98] The procurement of waivers is

[97] Augustine, Nweze (2012). The Impact of Cabotage Act on Entrepreneurial Opportunities and Nigerians Economic Growth. In: Anwuli I.O.,(2012)Waivers and the Grant of Waivers under the Cabotage Act: An Overview of the Procedure, Practice and Challenges, NIALS press, Abuja, pp. 128,129

[98] Section 11(1) Coastal Inland Shipping (Cabotage) Act, 2003

applicable not only to foreign vessels but also to Nigerian owned vessels and joint venture owned vessels which are built abroad and or manned by foreigners.

Section 12 of the Act provides that the order of granting waivers is firstly to shipping companies and vessels owned by a joint venture arrangement between Nigerian citizens and non-Nigerians with the equity shareholding of the Nigerian(s) joint venture partner not less than 60% and held free from any trust or obligation in favour of non-Nigerians and secondly, vessels registered in Nigeria and owned by a shipping company registered in Nigeria. This means that priority will be given to shipping companies and vessels owned by a joint venture arrangement between Nigerian citizens and non-Nigerians before vessels registered in Nigeria and owned by a shipping company registered in Nigeria.

The procedure for the grant of waivers is provided for in Section 5 of the Implementation Guidelines of the Coastal and Inland (Cabotage) Act.

The major challenge facing the waiver system is the lack of capacity with regards to the requirements of the Act especially in the areas of ownership, manning or crewing and shipbuilding. Nigeria lacks sufficient manpower to meet the manning requirement nor does it have functional training institutions. Since the liquidation of the Nigeria National Shipping Line (NNSL) in September 1995, the training of seafarers practically stopped and most of the qualified seafarers are past their prime and are too old to man ships.[99]

Another challenge militating against the functioning of the waiver system is the indiscriminate grant of waivers without recourse to the requirements and procedures laid down in the Cabotage Act and the Implementation Guidelines. There is also the lack of enforcement of the laid down procedure for the grant of waivers by NIMASA. For example,it

[99] Temisan, O. (2012) Key note Address on Cabotage Compliance Guidelines, Stakeholders Sensitization Workshop. In: Anwuli, I.O (2012). Waivers and the Grant of Waivers under the Cabotage Act: An Overview of the Procedure, Practice and Challenges, NIALS press, Abuja, p. 136

is a prerequisite for the renewal of the waiver that an applicant must submit evidence of contribution to training of the Nigerian cadets onboard the vessel during the year of the waiver as well as evidence of sponsorship of training for Nigerian seafarers and cadets.[100] Despite this provision, statistics show that there is no evidence that Nigerian seafarers or cadets are offered the training and sponsorship provided by the guidelines despite the fact that 80% of Nigerian Coastal trade is dominated by foreigners.[101]

It is worthy of note that the Federal Government has decided to end waivers under the Cabotage Act to oil firms. This directive was made known by the former Director General of the Nigerian Maritime Administration and Safety Agency (NIMASA), Dr. Dakuku Peterside during a meeting with the Oil Producers Trade Sector (OPTS) in Lagos in 2018. He maintained that the Federal Government will no longer accept applications of any form of waiver under the Cabotage Act, particularly from oil firm operations[102]. The DG explained that the continuous granting of waivers to oil companies would not help the growth of the Nigerian maritime sector and economy at large. He urged industry players to draw up a five-year strategic plan for the cessation of applications for Cabotage waiver and also pursue the utilization of Nigerian-owned vessels for marine contracts. He stated thus;

> "Our laws forbid foreign vessels from operating in our territorial waters save for compliance with the Cabotage Act. We also want to increase the number of Nigerians who participate in the maritime business and we are working closely with the Nigerian Content Development and Monitoring Board (NCDMB) to have a joint categorization of vessels operating under the Cabotage Act in order to ensure the full implementation of the Act"

[100] Section 5.1 of the Implementation Guidelines of the Coastal and Inland (Cabotage) Act
[101] http;//naijakini.wordpress.com/page/2
[102] Kayode Ekundayo et al, "Cabotage: FG ends Waivers to Oil Firms". In: Daily Trust, p. 17, Friday, October 12, 2018.

4.5 Cabotage Vessels Financing Fund (CVFF)

Section 42 (1) of the Act[103] provides that there is established a fund to be known as the Cabotage Vessel Financing Fund. The purpose of the fund is to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping[104].

Section 43 of the Act[105] provides, there shall be paid into the Fund

a) A surcharge of 2 percent of the contract sum performed by any vessel engaged in the coastal trade.
b) A sum as shall from time to time be determined and approved by the National Assembly.
c) Monies generated under this Act including the tariffs, fines and fees for licenses and waivers.
d) Such further sums accruable to the fund by way of interests paid on and repayment of the principal sum of any loan granted from the Fund.

Section 44 of the Act provides that the fund shall be collected by the National Maritime Authority and deposited in commercial banks and administered under guideline that shall be proposed by the Minister and approved by the National Assembly. Section 45 of the Act further provides that the beneficiaries of the fund shall be Nigerian citizens and shipping companies wholly owned by Nigerians. However, according to Iwori[106], the Director-General of NIMASA, Mr. Patrick Akpobolokemi recently disclosed that a lot of progress has been made on the implementation of the CVFF. According to him, the agency has appointed some commercial banks as primary lending institutions (PLIs), adding that six organisations have

[103] Op cit, p.75
[104] Section 42 (2) ibid
[105] Ibid
[106] Iwori, J. (2011). NIMASA partners ISAN on local content development. In: Ganiyu Babatunde et al, ibid p. 54

been recommended to NIMASA for issuance of certificates of disbursement (COD). But this will only be done after both the NIMASA Board and the Minister of Transport have granted the agency all necessary approvals.

The CVFF is an intervention fund established by the Cabotage Act, with the objective of assisting indigenous shipping operators to acquire new vessels in order to enhance indigenous capacity building. As at 5th February, 2020, the fund has amounted to $200million[107] approximately ₦82.502 Billion using the exchange rate of N 412.51K on 28th May, 2021.

However, to date, nobody has benefited from the fund. Hence, the failure of the indigenous ship-owners to access the Fund is seen as a failure of the Act. This is due to the cumbersome procedure of accessing the fund and lack of political will by the ruling class to back up their words with actions.

The procedure is as follows;

i. An indigenous shipping company is to provide evidence of payment of Cabotage dues of 2% surcharge, licence and waiver fees.
ii. The company must have an existing contract with an International oil company
iii. The documents in nos. i and ii above will be sent to the primary lending institutions(PLI's) who will then analyze;
    a. Positive cash flow of the company
    b. Bankable feasibility report etc
iv. All the documents above will be sent to Nigerian Maritime and Security Agency (NIMASA) for independent verification.

[107] Sampson Etchenim, (2020) "Five things to know about the ₦72.4billion CVFF". http://www.businessamlive.com/5-things-to-know-about-the-₦72-4bn-CVFF/. Accessed 27th May, 2021.

v. After its independent verification, NIMASA will make a recommendation to the Minister of Transport based on the guidelines approved by the National Assembly.[108]

To put this procedure in context, please imagine the Federal government of Nigeria announcing that there is ₦82.502 Billion in the CVFF ready for all indigenous cabotage players to access. "Mr. A" jumps at this invitation because of his love for the Cabotage and his expertise only to be told that he needs to bring evidence of payment of surcharge of 2 years when he has not started the business in the first place. Bear in mind that most Nigerians do not have the resources to embark in this capital intensive business which is why the fund was created in the first place.

The second requirement creates more obstacles. It makes it compulsory to have an existing contract with an International oil company - not even a Nigerian oil company. It is an Olympian Obstacle. Assuming Mr. A stated above was able to climb to the peak of mountain Olympus to meet these conditions, he needs to climb even higher because his application will be subjected to the whims and caprices of the civil servants in NIMASA, politicians like the Honourable Minister for Transport and members of the National Assembly.

There may be no better way to illustrate these daunting challenges a single business man is expected to overcome, than to look at the frosty relationship between the Federal Government of Nigeria and one of the strongest trade unions in Nigeria with thousands of members - the Academic Staff Union of Universities (ASUU).

Despite its numerical strength and relevance to the development of Nigeria, for nearly one decade, the Federal Government has blatantly refused to fully implement its obligations under the agreement reached with ASUU. One can only imagine the difficulty a single business man (with no capacity to force the hands of the government) would experience in

[108] Schedule 44 Part VIII of the Coastal Inland (Cabotage) Act, 2003

getting a loan from the CVFF, when an organization like ASUU, with thousands of members and the ability to cripple tertiary education through strike actions cannot get a single agreement fully implemented.

Consequently, local ship-owners and operators have either been resorting to banks for short term funds at high interest rates or foreign loans with stringent conditions. Many have been suffocated out of business by their foreign counterparts, who actively participate in Nigerian Cabotage trade with foreign ships, financed long-term at favourable interest rates and backed by their home Government guarantees.[109]

It is difficult to state that these incentives are yielding desired results. Thus, far major activities are being financed by foreign firms in collaboration with the Federal government and small input from local entrepreneurs[110].

4.6 Offences

The offences are divided into sub-section.

Offences against this Act[111]are provided in Section 35.

S. 35 (1) A vessel commits an offence if the Vessel contravenes;

a) Sections 3-6[112] and is liable on conviction to a fine of not less than ₦10,000,000.00 and of forfeiture of the vessel involved in the offence or such higher sum as the court may deem fit

[109] Igbokwe, M. (2006). Nigerian Maritime Cabotage Policy and Law: The Case and Advocacy. Lagos: One United Thursday Company Limited, p. 317. In: Ganiyu Babatunde et al, The Effects of Cabotage Regime on Indigenous Shipping in Nigeria, LL.M. Dissertation (Unpublished), World Maritime University, Malmo, Sweden, (2011) p. 54

[110] Animi Awah, op cit p.73

[111] Ibid

[112] Deals with restriction of vessels in Cabotage trade

b) Section 21[113] and is liable on conviction to a fine of not less than ₦15,000,000.00 and or forfeiture of the vessel or such higher sum as the Court may deem fit, and

c) Section 22[114] and is liable on conviction to a fine of not less than ₦5,000,000.00.

Failure to comply with a requirement the Act or of an enforcement officer is provided in Section 36

S.36. Any person who without reasonable excuse, fails to comply with a requirement made, or direction given, by an enforcement officer under this Act commit an offence and shall on conviction if it is an individual, be liable to a fine not less than ₦100,000.00 and if the offence is committed by a body corporate, be liable to fine of not less than ₦5,000,000.00.

False or misleading statements are provided in Section 37

S.37 (1) A person shall not, in purported compliance with a requirement under this Act or for any other reason provide to the relevant governmental authorities or an enforcement officer:

a) Information that is, to the person's knowledge false or misleading in a material particular;

b) Any document containing information that is, to the person's knowledge false or misleading in a material particular;

(2) Any person who contravenes subsection (1) shall be guilty of an offence and on conviction, if it is an individual be liable to a fine not less than 500,000.00 and if it is a body corporate to a fine not less than 15,000,000.00 and or forfeiture of the vessel involved with the offence.

Deemed separate offence is provided in Section 38

[113] Deals with operating without licence
[114] On the issue of registration

S. 38 Where an offence is committed by a vessel under sections 3,4,5,6 and 21 on more than one day or is committed by the vessel for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

Liability of ship owners companies and officers is provided in Section 39

S. 39 (1) Where an offence is committed under this Act or regulations made under it by a vessel, a ship owning company or a body of persons

a) In the case of a vessel, the shipping company responsible for the vessel or the captain of the vessel shall be deemed to have committed the offence.
b) In the case of a ship owning company or a body corporate other than a partnership, every director or an officer of the company or body shall also be deemed to have committed the offence.
c) In the case of a partnership, every partner or officer of that body shall also be deemed to have committed that offence.

From the above provisions, the persons liable are as follows:

Vessel – captain

Ship owning company/ corporate body – directors/officers

Partnership – each partner

S. 39 (2) Any activity engaged in or on behalf of a body corporate or a natural person by a director, officer, or agent of the body, or an officer or an agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence under this Act, to have been engaged in also by the body or person.

(3) An officer may be prosecuted and convicted of an offence under subsection (1) whether or not the body corporate has been prosecuted for or convicted of the offence.

(4) In this section an officer in relation to an offence committed by a body corporate means,

a) A director of the body corporate or other person however described, responsible for the direction, management and control of the body corporate, or
b) Any other person who is concerned in, or takes part in the management of the body corporate and whose responsibilities include duties with respect to the matters giving rise to the offence.

(5) A reference in this section to director of a body corporate is to be read as including a reference to a member of a body corporate incorporated under the laws of the Federal Republic of Nigeria.

(6) A reference in this section to engage in an activity is to be read as including a reference to failing or refusing to engage in the activity.

Strict liability and general penalty is provide for in Section 40

S. 40 Any person who contravenes any provision of this Act or any regulations made there under commits an offence and shall on conviction where no specific penalty is prescribed thereof, be liable to a fine not less than ₦500,000.00.

A balanced regime of enforcement mechanism, offences and punishment is imperative for Cabotage not only to encourage a boost to the economy and indigenous marine business but also to forestall abuse and corruption resulting in an effective enforcement of provisions.

The Federal High Court is vested with the jurisdiction to entertain these matters as provided for in Section 41[115].

[115] Op cit

CHAPTER 5

CONCLUSION

5.1 Summary

Nigeria is blessed with an amazing 853km of coastline and about 3,000km of inland waterways. This vital natural resource puts Nigeria at an economic advantage in relation to generating much needed revenue from maritime trade. Oil and other natural resources can be moved through and out of these waterways making Nigeria a maritime hub not only in West Africa but also globally. This competitive advantage creates a window of opportunities for Nigerians to key into coastal trade, ship building, employment and maritime security. The government mindful of the need to develop indigenous merchant marine fleet or shipping industry has at various times enacted laws, initiated policies and projects. Laws were also enacted to regulate the very lucrative but complex industry. Among the legislations enacted and subsidiary legislations are the Coastal and Inland Shipping (Cabotage) Act 2003, Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007, Coastal and Inland Shipping Cabotage (Detention of Ships) Regulations 2006, Cabotage Vessel Financing Fund (CVFF) Guidelines, 2006, Bareboat Charter Regulations 2006, Merchant Shipping Act 2007. These legislations amongst other objectives seeks to boost production of indigenous vessels, reserve the commercial transportation of goods, services and persons within Nigeria's coastal and inland waters to vessels flying the Nigerian flag and owned by persons of Nigerian citizenship, in other words, to promote development of indigenous man power in the Nigerian Maritime industry.

The aspiration of Nigeria to be among the top 20 largest economies by the year 2020 (according to the economic policy of Vision 2020 – though the realization is gravely in doubt) depends among other key indices on the successful implementation of the Cabotage

laws in Nigeria. This research strongly believes that the successful implementation of the Cabotage laws is critical in Nigeria's economic recovery plan because of the important role shipping plays in not just the movement of goods and services around the country but also the revenue collected as tax from companies in the sector.

In other to key into the international maritime industry and reap from its vast potentials, some international maritime laws have been ratified by Nigeria. They include the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Convention of the Sale of Goods. The UNCLOS lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It enshrines the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole. The Convention comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters.

Some of the key features of the Convention include the following:
1. Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;

2. Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;

3. Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands; the waters between the islands are declared

archipelagic waters where States may establish sea lanes and air routes in which all other States enjoy the right of archipelagic passage through such designated sea lanes;

4. Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;

Other objectives of the UNCLOS include that, all other States have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines; land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZ's of coastal States of the same region or sub-region; highly migratory species of fish and marine mammals are accorded special protection; Coastal States have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances; Coastal States share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 miles etc.

Also the purpose of the United Nations Convention on the Sale of Goods is to provide a modern, uniform and fair text of law for contracts for the international sale of goods, reduce barriers in international trade and promote the use and development of international trade. The Convention thus, contributes significantly to introducing certainty in commercial exchanges, decreasing transaction costs and facilitates the ease of trading across borders. The Convention governs the international sale of goods between private businesses, excluding sales to consumers, sales of services and sales of specified types of goods.

The historical development of Cabotage and its regimes in Nigeria was also discussed. The Cabotage regimes are intended to leverage local interests, contents and participation to

optimize the national threshold in the domestic trade, while preserving free enterprise through creative partnership with foreign interests. It was intended to promote the development of indigenous tonnage and restrict the participation of foreigners in domestic maritime business. From the provisions of Sections 3 to 6 of the Nigerian Coastal and Inland Shipping (Cabotage Act) 2003, one can safely argue that the country practices strict Cabotage where all the vessels licensed to take part in Cabotage must be built in Nigeria.

This research also shed light on the legal and institutional framework for Cabotage in Nigeria namely; Coastal and Inland Shipping (Cabotage) Act 2003, Guidelines on implementation of the Coastal and Inland Shipping (Cabotage) Act 2003 and revised in 2007, Coastal and Inland Shipping Cabotage (Detention of Ships) Regulations 2006, Cabotage Vessel Financing Fund (CVFF) Guidelines, 2006, Bareboat Charter Regulations 2006, Merchant Shipping Act 2007, United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Convention of the Sale of Goods. Nigerian Maritime Administration and Safety Agency (NIMASA), Nigerian Navy, Nigerian Ports Authority (NPA), National Petroleum Investment and Management Services (NAPIMS), Nigerian National Petroleum Commission (NNPC).

While recognizing the progress made in terms of existing legislations and the regulatory framework, this research identified some key issues affecting Cabotage administration vis-a-vis the granting of licenses to foreign vessels, duplicity in registration, waivers, the vessel financing fund, and the offences prescribed under the Cabotage Act.

The research examined the Cabotage Laws as it affects the Nigerian's maritime industry with particular reference to registration, waivers, licenses to foreign vessels and restriction on foreign ship for purposes of proffering suitable policy options and recommendations for reform where desirable. It also examined the issues affecting the implementation of the various Cabotage regimes and its implication in Nigerian's Maritime Industry.

The scope of the research was limited to the various laws regulating Cabotage in Nigeria, the reforms made by it such as the Cabotage Vessel Financing Fund, protection of Nigerian Shipping Companies and the restrictions on Foreign Ship and the legal and institutional framework for Cabotage in Nigeria.

This research recognizes Nigeria's vast maritime potentials in terms of revenue generation, employment and wealth creation, foreign direct investment, developing Nigerian content in ship building etc, but is equally concerned that the country is yet to reap the benefits flowing from it. It is submitted that a holistic approach and the political will is urgently need to confront the obvious challenges facing the Nigerian maritime industry as discussed in chapter four of this research. Until that is done, very little progress would be made and this very lucrative sector may continue to be dormant.

5.2 Findings

The following are the findings of this research;

1. Despite their robust source of finance, the Cabotage Vessel Financing Fund (CVFF) has failed to assist indigenous maritime companies acquire vessels, thereby creating a large window for foreign participation which is against the letters and spirit of the Cabotage Act.

2. The simplistic granting of licences and waivers to foreign vessels has in practical terms shut the doors on indigenous participations in the Cabotage industry.

3. The penalties provided in Sections 36, 37(2) and 40 are so light that Cabotage operators will prefer to violate the provisions of the Act if it fits their purpose.

5.3 Recommendations

1. The Federal Government of Nigeria through the regulatory agency (NIMASA) should as a matter of urgent national security and importance unlock the funds in the CVFF and make

same available to indigenous Cabotage companies to encourage indigenous participation and develop local content. Additionally, the Federal government should designate reputable indigenous accounting firm or a commercial bank to be the one-stop shop for accessing the fund. The Federal government of Nigeria through the Central Bank of Nigeria has in similar vain designated the NIRSAL Microfinance Bank to be solely responsible for receiving loan applications from new entrepreneurs, small and medium scale enterprises, processing these loan applications and administering loan application. This solved a major problem because most of the social intervention funds made available by the Federal government were not getting to the beneficiaries and was not stimulating the economy as a result the NIRSAL Microfinance bank was created. This is the same fate that the Cabotage Vessel Financing Fund is currently facing.

2. The National Assembly should amend the Cabotage Act with a view to terminating the granting of licences and waivers to foreign vessels thereby banning foreign vessels from engaging in Cabotage in Nigerians territorial waters. This will force investments into the sector and compel the political class to immediately disburse the funds in the CVFF.

3. There should be an upward review by the National Assembly of the penalty which should be punitive enough to deter disobedience of the provisions of the Act.

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