

## Nigerian Cabotage: Its Policy, Prospects and Challenges

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### Abstract

The purpose of this study is to critically examine the Nigerian Cabotage Law and its policy. It will look at what Nigeria stand to benefit by enacting the Law. It is a fact that some countries attempt certain policies in order to experiment, as to whether it will work for them and then they tap into its exploits. Others venture into specific policies because some have successfully experimented and they believe they can do it too. Whatever category Nigeria falls into, the study will attempt to analyze the policy upon which the Nigerian Cabotage law is anchored. It will examine the issue of Ministerial waiver in the event that there are no indigenous capacities to carry out the objectives as spelt out in the Act. It will also examine the various challenges encountered at different stages of implementation. The study contends that what Nigeria stand to gain by Cabotage transcends what she will lose if the law is not given birth to. It concludes that if the implementation guidelines are jealously adhered to and the enforcements are strictly followed, Cabotage has the potentials of becoming a great rivalry to Oil and Gas Industry in Nigeria.

**Keywords:** Nigeria, Cabotage, Maritime, NIMASA, Shipping

### 1.0 Introduction

The geographical space called Nigeria is made up of 36 states including the Federal Capital Territory, 774 Local Government Areas, with a total land area of 923,768sq km and an estimated population of about 167 million (National Population Commission, 2012). The Nigeria Maritime neighbours include Benin Republic, Niger Republic, Chad Republic, Republic of Cameroon, Republic of Equatorial Guinea, Democratic Republic of Sao Tome and Principe and Ghana. The topography ranges from mangrove swampland along the coast to tropical rain forest and savannah to the north (National Planning Commission, 2004).

Nigeria is blessed with a coastline of about 870km and about 3,000 kilometers of inland waterways with varieties of natural resources which includes: petroleum, natural gas, tin, columbite, iron ore, coal, zinc, limestone, lead and in reserve, the country had about 22.5 billion Cubic Meters of crude oil, 3.5 trillion cubic meters of gas and 42.7billion Cubic Meters of Bitumen (Cabotage Implementation Guidelines, 2007). A cursory look at this statistics would depict that Nigeria should have a whole lots of trade opportunities across the globe. With a GDP of about 45 billion, 32.953billion and 55.5billion dollars in 2001, 2002 and 2003 respectively and per capita income of about \$300 a year, Nigeria has become one of the poorest countries in the world. Having earned about \$300 billion from oil exports between the mid-1970s and 2000, its per capita income was disappointingly 20 per cent lower than that of 1975. Inability to tap much of the abundant human and material resources can therefore put the attainment of the Millennium Development Goals by 2015 in jeopardy (Muhammed-Lawal et al, 2006: 1).

However, the significant impacts these natural endowments would add to the earnings of Nigeria in the international market is directly proportional to the activities in the maritime industry. For instance, Okeke et al (2012: 12) noted that the oil and gas industry as the leading sector in Nigeria coastwise trade is made of approximately 95 per cent of coastal and inland shipping while freighters, fishing trawlers, chandlers, chatters and other carriers are made of the remaining 5 per cent which signify a massive business opportunities for the shipping industry as well as creating a lot of employment opportunities for a lot of jobless Seafarers and the Nigerian youths which in a way will reduce the rates of unemployment and poverty, by so doing, it would encourage Nigeria in the achievement of the MDGs in 2015.

### 1.1 Literature Review

According to Black's Law Dictionary (1999: 230) Cabotage is the carrying on of trade along a country's coast, the transport of goods or passengers from one Port or place to another in the same Country. It is also a term from the French word *caboter* meaning to sail along the coast. Cabotage has however, come to be known as "coastal trade" or "coasting trade" or "coastwise shipping" meaning carriage of goods and persons by ships between ports along the same coast or between Ports within the same country and the exclusive rights of a country to operate sea traffic or rail traffic. Usoro (2003: 3-4) observes that the Coastal and Inland Shipping (Cabotage) Act, 2003 in section 2, has a very wide definition of the word cabotage which is used interchangeably with coastal trade. For the purposes of this study, cabotage under the Act covers:

- ◆ Carriage by sea of goods and passengers from one coastal or inland point which could be ports, jetties, piers etc, to another point located within Nigeria;

- ◆ Carriage of goods and passengers by sea in relation to the exploration, exploitation or transportation of natural resources whether offshore or within the inland and coastal waters;
- ◆ Carriage of goods and passengers on water or underwater (sub-sea) installations;
- ◆ Carriage of goods and passengers originating from a point in Nigeria intended for Nigeria but transiting through another country then back to Nigeria for discharge;
- ◆ Operation by vessel of any other marine transportation activity of a commercial nature in Nigerian waters includes, towage, pilotage, dredging, salvage, bunkering etc. within its territory.

From the above definitions, one can conveniently summarize Cabotage Law as the law that restricts the coastal and inland water trade in a country to vessels flying its national flag. It is basically a protective law that safeguards the interests of local shipping in the carriage of locally generated cargo. Glanson et al (2008: 1) observed that “cabotage” has a Spanish root called “cabo” or “cab” which means maritime circulation at a short coastal distances or maritime trade along the coastal lines. Akabogu and Onyuike (2004: 2) opined that Cabotage is the carrying on of trade along a country’s coast; the transport of goods or passengers from one port or place to another in the same Country. Onyearu (2003: 1) determined Cabotage as the carriage of goods by Vessel from one place in Nigeria or above Nigerian waters, either directly or by way of a place outside Nigeria and includes the carriage of goods in relation to the exploration and exploitation or transportation of mineral or non-natural resources whether in or under Nigerian waters.

Ugbokwe (2004: 1) opined that Cabotage Law is a law that was produced by the vision of the maritime industry, legislature and the government and everybody played one role or the other to make the law. He projected that the sector can fetch the nation approximately \$500 million annually. That Cabotage will create opportunities but demands that NIMASA will not condone sub-standard shipping services on Nigerian waters under the Cabotage regime. He noted that an estimated 60 per cent of the nation’s proven reserves of Oil and Gas are marine based. As a result, the basis of the export of hydrocarbons to the national income stream cannot be over emphasized, he added that it accounted for over 90 per cent of the export and about \$50 billion in the last three years. Usoro (2004: 12) in her contribution asserted that Cabotage has anticipated benefits in Nigeria. It is her opinion that Cabotage came in form of revenue generation for the government by way of fees for registration, approvals, licenses and fines. Agbakoba (2004: 14) in his learned opinion stated that the challenge of Cabotage Law in Nigeria is to create an enabling environment for effective take off. He opined that if Cabotage is properly handled, it would generate four million jobs a year since one of the nation’s problems is massive unemployment and poverty eradication. He concluded that it is a new economic system that needs to be developed with our vast manpower, finding skills, etc.

For Bollinger (1998: 1) he observed that the Jones Act more than any other law, protects the economic well being of American shipyards and ensures the Country’s national security by preserving their ship building and repair infrastructure which is achieved at no cost to the federal government. He further stated that almost Fifty Thousand (50,000) Americans in Thirty Three (33) States are directly employed in building, repairing, and maintaining the Jones Act’s fleets. American shipyards employing these workers generates over \$1 Billion (One Billion Dollars) in annual payrolls for shipyards employees, who in turn contributes over \$250,000,000.00 (Two Hundred and Fifty Million Dollars) to federal and state taxes every year.

Akabogu and Onyuike (2004: 41) espoused the benefits of Cabotage to accrue to Nigerians if Cabotage Law is effectively implemented and enforced. These benefits are grouped under Nigeria as oil producing country, ship ownership, chartering, insurance, brokerage, shipbuilding, trading and fishing. Nigeria as the 6<sup>th</sup> oil producing country in the world has 21 Ports on the over 800-Nautical Miles stretch of coastline in addition to rivers, ports, and private jetties. The EEZ stretches up to 200 nautical miles from the coastline. This provides good opportunity for a well – implemented Cabotage regime. Activities in the marine operation will usher in carriage of cargo passengers in the inland and coastal waters to the Off-shore Exploration and Production (E&P) activities by the oil and gas companies. In ship ownership, most of the cargo movement in Nigerian waters would be by vessel owned by Nigerians. It will boost indigenous participation and the economy. In chartering, the Chatterer can either charter the vessel under a time or a trip voyage charter. Preference will be offered to indigenous vessels before the foreigners are allowed to participate. Nigerian marine insurance market will have a boost. Ship, insurance and cargo brokerage will benefit under the Cabotage regime. In ship building, not only employment, but also most of the requirements for off-shore platform installations and rigs are fabricated from steel. Agu (2004: 13) contended that Nigerian operators will enjoy protection and security of their investment under the Cabotage administration. He stated that any Nigerian who identifies a market place, may be in the supply of vessels, tug-boats, ship repairs, yard maintenance or any place a Nigerian identifies a market and has what it takes to provide that service when there are several Nigerians with the same capacity, then they will compete and if there is none and a foreigner has the capacity, then the waiver will be granted to allow the foreigner to do business. He concluded that Cabotage is a continuing basket of opportunities, a wonderful achievement; because it shows that we are better as a nation when we are united and strongest as a people when

we are one.

Nekasil (1996: 2) stated that without the critical mass represented by the domestic fleet, the United States would not be able to sustain the maritime infrastructure essential to its national and economic security. He maintained that Cabotage Laws are essential to the U.S. national security because only that can ensure American ownership and control over domestic fleet; competitive balance in the domestic trades in which that fleet operates, without government subsidies; and a stable investment climate for American ship building and ship operators. He pointed out that it helps preserve the availability of skilled, experienced Seafarers for manning sealift ships in time of war or national emergency. The importance of the U.S. domestic fleet in maintaining the Country's Seafarers base is reflected in the fact that 87 per cent of all afloat jobs in the U.S. flag merchant fleet are found in the domestic fleet. The building opportunity preserves the shipyard industrial base upon which U.S. naval and commercial maritime powers depends. Also, Cabotage trade container ships, tankers and roll-on/roll-off vessels help meet the logistic needs of the Allied forces in time of crisis that U.S. international trading and Naval-owned fleets cannot satisfy. In peacetime; the U.S. military relies on the domestic shipping and marine services industry to keep deep-water ports open to deliver supplies to defense installations in non-contiguous states.

Davis (2004: 2) professed that the pentagon maintains a large fleet of military cargo ships in reserve. These vessels sit idle in the dock most of the time and are maintained specially for the purpose of rapid activation and deployment in time of national emergency. The Jones Act came as a national security concern because there is the availability of these ships and readiness of trained crews to operate the ships at a moment notice. In the event of 2003 in Iraq, the U.S. had to rely on its own fighting forces when disserted by many traditional allies. Following the September 11, 2003 event in America, the security of the nation's maritime transportation system became an issue of great concern in the circle of commerce and leadership. Be that as it may, the registries of vessels entering the U.S. are under tremendous scrutiny particularly after the revelation that the international terrorist network *al-Qaeda* controlled a fleet of International Vessels, many registered under Flags of Convenience (Ibid).

## **1.2 Nigerian Maritime Administration and Safety Agency (NIMASA)**

NIMASA as the agency is popularly called is the new name for Nigerian Maritime Authority (NMA) which is the regulatory authority for the implementation and enforcement of Cabotage in Nigeria. Section 22 and 29 of Cabotage Act 2003 requires Cabotage Vessels to be registered by the Registrar of Ships in the Special Cabotage Register, domiciled in NIMASA. The Minister in compliance with Section 30 of Cabotage Act created an enforcement unit for the regime with the Agency. Section 44 also mandates NIMASA to collect monies for and operation of the Cabotage Vessel Financial Fund. The Minister may request the secondment of any officer to NIMASA from government enforcement agencies such as Nigerian Port Authority (NPA), Nigerian Inland Waterway Authority (NIWA), Joint Maritime Labour Industrial Council (JOMALIC), Nigerian Navy, Nigerian Immigration Service and the Nigerian Customs Service to the Cabotage Enforcement Unit.

## **2.1 The Coastal and Inland Shipping (Cabotage) Act 2003**

The purpose of the Act is to restrict the use of foreign vessels in domestic coastal trade and promote the development of indigenous tonnage. The provisions include restrictions, waivers to meet lack of capacity, enforcement, Cabotage Vessel Financing Fund amongst others. The Act is a legislative apparatus for restricting access or reserving maritime trade within the geographical space of a country to indigenous capacities. The government's consciousness of the need to develop the local shipping industry attempted different policies and projects at different stages of our maritime development to encourage indigenous vessel acquisition, ensure the participation of Nigerians in the maritime industry, restrict foreign domination and develop indigenous shipping industry. Amongst the efforts in this regard is the acquisition of 24 vessels by the now defunct Nigerian National Shipping Line (NNSL) in the 1970s and the establishment of the Ship Acquisition and Ship Building Fund (SASBF) by Decree No. 10 of 1987, later subsumed under National Shipping Policy Act 1987 Cap. 44 LFN 1990.

However, with the advent of democracy in 1999, stakeholders and professionals in the shipping industry made a clarion call for the restructuring of the maritime industry as it affects domestic trade for the benefit of the citizenry and the economic well being of Nigerians. Hence, the reform proposal is the enactment of the Coastal and Inland Shipping (Cabotage) Act, 2003 to be enforced by the National Maritime Authority (NMA) now Nigerian Maritime Administration and Safety Agency (NIMASA). On this premise, Nigeria became the first country in the West and Central African sub-region to enact Cabotage Law which was signed into law on the 30<sup>th</sup> day of April, 2003. This eventually catapulted Nigeria into limelight as the 41<sup>st</sup> country in the world to operate Cabotage Law. It is important to note that major maritime nations have a long history of devising laws and regulations to promote and protect their domestic water transportation. For most developed Countries, 90 per cent of their national resources *vis à vis* transportation, trade, economy, national security are dependent on the maritime sector. In developing countries, there is the danger of losing their regional control, competitions and

Africa has demonstrated the slowest progress in developing maritime industry in spite of the United Nations Conference on Trade and Development (UNCTAD) which sought to promote regional and co-operation arrangements.

## 2.2 The Cabotage Regime

The Cabotage Regime under the Cabotage Act 2003 is spelt out in section 2 (a) - (d). The parameters of the Nigerian Cabotage regime are stated in Sections 3 of the Cabotage Act as follows:

- (a) Cabotage Vessel must be wholly owned by Nigerian Citizens;
- (b) Cabotage Vessel must be manned by Nigeria Citizens;
- (c) Cabotage Vessels must be registered by Nigerians;
- (d) Cabotage Vessels must be built by Nigerian shipyards.

It follows that in the event of non availability of certain local capacity, the Act introduced a liberal Cabotage policy in which three of the four parameters can be waived. The Act insists that the shipping companies must be incorporated by the Corporate Affairs Commission under CAMA, LFN, 2004. The Cabotage Act went ahead to preserve the rights of foreign investors under the Nigerian Investment Promotion Commission Act, Cap N17, LFN 2004 by establishing a Special Register for Cabotage (Fully Foreign Owned Vessel) for Foreign owned Vessels engaged in Cabotage trade (Implementation Guidelines, 2007).

## 2.3 The Restrictions

A vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria shall not engage in the domestic coastal carriage or cargo and passengers within the coastal territorial, inland waters, island or any point within the waters of the Exclusive Economic Zone of Nigeria. This general restriction order is of general application as it affects Nigerian ownership, manning, building and registration of vessels and applicable to the carriage of all manner of cargo and to passengers but not absolutely applicable to towage or salvage services. The Act further provides in section 3 that a tug or vessel not wholly owned by a Nigerian citizen shall not tow any vessel from or into any port or point in Nigerian waters or tow any vessel carrying any substance whatsoever, whether of value or not or any dredge material whether or not it has commercial value from a port or point within Nigerian waters. Therefore, any vessel that may be used for towage must be owned by Nigerians and need not be built or registered in Nigeria, or manned by Nigerians. The restriction does not preclude a foreign vessel from rendering assistance to persons, vessels or aircraft in danger or distress in Nigerian waters thereby acknowledging the Salvage Convention and International Customary Laws for vessels under distress.

## 3.1 The Nigerian Cabotage Policy

The significant role played by shipping in the economic development of any nation is not in doubt. As a result, maritime transportation has been adjudged an absolute mercenary of world trade. The Nigerian Cabotage Policy is in two folds: Protectionist and Liberalization Policy.

### 3.1.1 Protectionist Policy

The protectionist policy in the Cabotage Act is provided for in Sections 15 – 21, which provided for rules, terms, regulations, duration, guidelines and for every other thing regarding license to foreign vessels, the Nigerian Investment Promotion Commission Act 1995, which allows a Non – Nigerian to invest and participate in the operation of any enterprise in Nigeria is not at variance with the Cabotage Act. The Cabotage trade when operated by non – Nigerians, are with some restrictions which are clearly stated in both the Act and the policy documents contained in the Guidelines. For instance, the Cabotage Act (2003) in Section 23(2) provides for registration and stipulates that a vessel shall not be registered for use in the domestic trade unless the controlling interest in the company is owned by Nigerian citizens. The establishment of the Cabotage Vessels Financing Fund in Section 42(2) of the Act is for the purpose of promoting the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic Coastal Shipping. This policy is not only practiced, it is the *modus operandi* of all the One Hundred and Sixty Nine (169) and Three (3) Associate Maritime Countries all over the world (International Maritime Organization).

Attack and Bassell (1994: 4) observes that as early as 1789 in the United States of America, the U.S. Congress passed a legislation requiring foreign Vessels entering U.S. ports to pay a tonnage tax each time they entered. By contrast, the U.S. built and owned vessels were required to pay tax only once each year. In 1793, an addendum required all vessels in domestic coastal trade to be owned by Americans. The US Cabotage Laws requires a vessel engaging in Cabotage activities in the US to be U.S. built, U.S. documented, U.S. owned and in concert with U.S. documentation, navigation and shipping laws that such vessels be American controlled and American crewed (Jones Act, 1920). Igbokwe (2001: 6) writes that in Australia where Cabotage is based on the Navigation Act of 1972, Customs Requirements and Immigration Laws, 90% of its coastal trade is by Australian crewed ships and all foreign vessels operating along its coast are licensed or permitted under certain conditions. Where



further observed that the Australian Cabotage Laws allow only Australian flagged and crewed ships on its domestic shipping and where there are no Australian ships available, foreign vessels are granted single voyage permit. The Maritime Union of Australia usually argued that shippers are manipulating the system by waiting until an Australian – manned vessel sails out and then rush to contract a foreign – flagged ship with third world low – paid crew and substandard ships to participate in its coastal shipping thereby putting off work, Australian ships and Seafarers(Ibid: 7).

### **3.1.2 Liberalization Policy**

The liberal application of the Cabotage Law is stated in sections 15 – 21 of the Act, which clarifies the grant of license to foreign vessels, terms and conditions and vessels eligible for registration in the Cabotage trade. Nigeria is a developing country with its shortcomings in the shipping industry. Though, an oil producing nation, large quantities of oil and gas are transported in vessels not owned, manned and built by Nigerians. Unfortunately, we cannot in a twinkle of an eye stop the transportation when we do not have the wherewithal to do it. Usoro (2003: 16) writes that the EU has liberalized cabotage to the extent that *EU Council Regulation (EEC) No. 3577/92 of December 1992* opened the provision of cabotage services within the Union to other member states. She opined that the beneficiaries of this freedom should be community ship-owners operating vessels registered in and flying the flag of a member State. In essence, coastal trade in EU countries are restricted to EU citizens. She further pointed out that the United Kingdom does not have a national cabotage law but the stringent domestic regulations and requirements effectively bars participation from non-EU member States owned vessels. Norway for example operates a Norwegian Ordinary Register (NOR), which is governed by Maritime Transportation Act 1994. Their liberalized Maritime Cabotage is in form of refunding shipping companies 12 per cent of the wages paid to the Norwegian Seafarers if a certain number of nationals are employed.

### **3.2 Waivers**

Section 9 – 14 of the Cabotage Act deals on waivers. The Minister of Transport is required to grant the following waivers:

- (1) Waiver on the requirement for Vessel to be wholly Nigerian owned;
- (2) Waiver on the requirement for Vessel to be wholly manned by Nigerian Citizens;
- (3) Waiver on the requirement for the Vessel to be built in Nigeria.

The Minister is given powers under the Act to grant waivers to foreign vessels to partake in Cabotage trade where he is satisfied that there is no capacity on the part of Nigerians with respect to satisfying the requirements as contained in Sections 3-6 of the Act on Nigerian capacities that can carry the volume of business associated with the Cabotage.

### **3.3 Minister's Powers to Grant Waivers**

The Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement for a vessel under the Act to be wholly owned by Nigerian citizens where the Minister is satisfied that there is no wholly Nigerian owned vessel that is suitable and available to provide the services or perform the activities described in the application. Also where there are no qualified Nigerian Seafarers in an application which has been made, the Minister may grant a waiver to a duly registered vessel where he is satisfied that there is no qualified Nigerian officer or crew for the position specified in the application. Where the Minister is satisfied that no Nigerian Shipbuilding Company has the capacity to construct the particular type, size of vessel specified in an application, the Minister may grant a waiver to a duly registered vessel on the requirement for a vessel under the Act to be built in Nigeria. The granting of waivers by the Minister is discretionary and he may not be compelled to do so. But where an applicant feels strongly about the Minister's refusal, he may seek judicial review of the Minister's exercise of his discretion.

The waiver system adopted by the Act is based on grounds of non-availability. Other internationally accepted principles of waivers include 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 unfavorable 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 as follows:

- (i) Evidence of contribution to training of Nigerian cadets on board the vessel during year of waiver;
- (ii) Evidence of sponsorship of training for Nigerian Seafarers/Cadets;
- (iii) 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.

### **3.4 Capacity Building**

Igbokwe (2006: 7) maintained that the government must give time to human development as it often takes more

than 20 years to master the art of ship building and not restrict itself to oil and gas at the expense of commercial shipping; it is a very small fraction of the maritime industry that the oil and gas sector utilizes for its logistics. Nkoro (2012: 13) went on to observe that the call by government to continue to encourage foreign shipping companies in Nigeria and the carefree attitude towards the country's self sufficiency in the maritime industry is not of any good to the realization of the aims of the Act. Based on this irregular behaviour from the government, foreign shipping companies believes that foreign owned ships are needed to run Nigerian economy. It is a fact that as the country begins to take decisive steps to develop its capacities, the presence of foreign owned, built and crewed ships will be a thing of the past in the maritime history of Nigeria.

Patrick Akpobolokemi, the Director-General of NIMASA observes that indigenous ship owners have over 200 ocean-going vessels, 700 offshore supply vessels, and about 90 per cent of these vessels are not contractually engaged while the remaining 10 per cent secure contracts usually on a short term basis, which makes it difficult for indigenous investors to make up for their lost investment. The Director-General of NIMASA further noted that there is a shortfall in indigenous capacity in the industry. He stated that Nigeria needs to train over 50,000 Seafarers to man vessels operating in coastwise trade in order to bridge the capacity gap created by available opportunities as well create job opportunities for the unemployed youths (Daily Independent: 2011).

Olukoju (2004: 17) stated that following the enactment of Cabotage Act in 2003, Nigerian government provided only \$25 million for shipping development, a very meagre amount compared to the population of Nigeria. This means that indigenous entrepreneurs and the NMA only played the role of rent collectors. Instead of using the resources of NMA meaningfully to develop the industry, the funds are being diverted and/or embezzled by successive governments and their agents. Under the Act establishing NIMASA, 5 per cent of annual income would support the Maritime Academy of Nigeria (MAN) and 35% of income would be go for the development of maritime infrastructure. The agency provided funding to MAN for a jetty and boat project (Ibid).

### **3.5 Prospects of Nigerian Cabotage Law**

When the Cabotage Law was passed into law on the 1<sup>st</sup> day of April 2003, it attracted a lot of media accolades, especially from stake holders, which signifies a renewed aspiration and assured hope that the problems of foreign domination in Nigerian coastal trade will soon be a thing of the past. Nkoro (2012: 6) opined that the commencement of the Cabotage Law in May 1, 2004 signposts a new vista of shipping business and market opportunities for indigenous Nigerian ship owners and management interests. Although, there are no provisions in the Cabotage Act that represents the prospects or what Nigeria stands to benefit if the Cabotage regime in Nigeria is successful. The entire Act is for the benefits of Nigerians. According to the former Minister of State for Transport, Alhaji Inua Musa Mohammed, the Cabotage Law was enacted to encourage indigenous company's participation in shipping, increase capacity building and provide employment for Nigerian Seafarers, adding that it was in line with the Federal Government and Development Scheme (NEEDS) strategy (Vanguard, 2003: 21). In another report in Guardian Newspaper (2004: 35) on a letter written by former Chairman of House of Representatives Committee on Transport, Dr. Okey Ude to the former President Olusegun Obasanjo, he urged the former President to support the Cabotage Bill that the enactment of Cabotage in Nigeria would lay a solid foundation for the domestic maritime industry, stimulate and contribute significantly to the Nigerian economy. He further stressed that it would help to develop 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 optional exploitations of the currently under-utilized facilities at the Niger dock, and encourage the development of the required infrastructure and technical know-how in the inland waterways, transport and haulage.

### **4.1 Challenges of Cabotage Law in Nigeria**

Since the coming into force of Cabotage Law in Nigeria on the 1<sup>st</sup> day of May 2004, numerous challenges have bedeviled the effective implementation and enforcement of the law. Okeke et al (2012: 19) points out the pitfalls, defects and weaknesses of the cabotage regime in Nigeria. He noted that the conditions prescribed for obtaining a waiver by foreign firms are less challenging, that it is likely that more foreign ships will be granted waivers to engage in cabotage in Nigeria. This is because there is presently insufficient Nigerian fleet to cater for the Nigerian Cabotage shipping. Thus, with the inclusion of waiver, the bulk of the responsibilities of the indigenous vessel holders have been shifted to the foreigners making the Cabotage Act to be ineffective and at the same time defeats the purpose the Act from the onset. Igbokwe (2003: 13) writes that the exclusion of Indigenous Ship-owners Association of Nigeria (ISAN) from ministerial consultation process is a big challenge. He observed that one of the flaws of the Guidelines is that an umbrella of the Nigerian Ship-Owners/Operators like ISAN which the Minister ought to consult to satisfy himself that there is no wholly-owned Nigerian vessel suitable and available to perform the activity(s) or service(s) stated in the application, is excluded according the Chairman of ISAN. He averred that high cost of enforcement and monitoring is a big challenge. Facilities and equipments for monitoring the enforcement of the Act are expensive. For example, amphibious aircrafts, patrol boats especially

for the off-shore traffic areas which NIMASA need are very expensive. Although, some patrol boats were purchased by NIMASA, they are grossly inadequate.

Lack of political will and determination is an issue. Some stake holders have argued that the Minister and NIMASA have shown lack of political will and determination needed to implement the Act and cause NNPC/NAPIMS/DPR to implement the Act because of vested interests that they want the *status quo* to remain. It was argued that none of the many foreign violators of the Act have been fined or sanctioned to deter others thereby causing the Act to be taken for granted. Godfrey Bivbere (2008: A8) observed that barely five years after the Cabotage Law came into effect meant to guarantee local ship-owners a stake in the shipping business, it is business as usual again as foreign ship-owners took over the nation's coastal waters. Okeke et al (Op. cit. 19) further noted that another setback that has beset the Cabotage Act is the unionization of the major European countries under the International Association of Classification Societies (IACS). The IACS in concert with other ten classification societies controls ships in Europe and possess about 95% of the world's fleet. It is argued that vessels of the members of IACS operate locally in Nigeria due to their strength, capacity and influence irrespective of the Cabotage Act. The IACS has thus taken advantage of the problem of draft restrictions in the ports of Nigeria. The IACS refuses to class the indigenous vessels because provisions for safety, insurance and fire prevention are deficient due to poor financing. These local vessels find it unfavourable to compete with other foreign vessels, thus, efforts in upholding and increasing local participation in the industry are sabotaged.

Piracy is another big challenge of Cabotage. In Nigeria, there has been a report of armed gang terrorizing vessels and maiming crew members on the nation's territorial waters. Mukundan (2008: A11) observed that there were 60 piracy attacks in 2008, down from 263 in 2007. There were 236 attacks in 2006; 276 cases in 2005; 329 incidents in 2004 and 444 attacks in 2003. He further said that piracy attacks raised three folds in Nigeria in 2007, with the attacks mainly targeted at oil vessels by militants in the Niger Delta. Adekeye (Ibid.) the former Chief of Naval Staff observed that the recent upsurge in piracy and armed robbery in the nation's territorial waters bothers the Navy. Aminero (2008: 1) the President of the National Council of Managing Directors of licensed Customs Agents (NCMDLCA) also expressed worries on the exclusion of the Freight sector from the Cabotage Act. Mr. Lucky Aminero expressed worries about the non inclusion of freight forwarding sector in the Cabotage Act, warning that it would have adverse effect on the sector. Aghanenu (2008: A8) the President of Nigerian Ship Chandelling Association (NSCA) lamented on the exclusion of the Chandelling business in the Cabotage Act.

Akinjide – Balogun (2008: 2) also take into account the fact that the Nigerian ports are termed to be below international standards and commercially unfriendly, charging high tariffs and delivering poor service. She further lamented that the challenges are myriad and includes inadequate supply of crafts and plants, a cumbersome documentation system, dilapidated port infrastructure, low labour productivity and volatile dock labour, corruption, vandalism, criminal damaged multiplicity of government and security agencies. Uya (2004: 1) identified finance as a major challenge. He observes that shipping business involves huge capital. A cursory look at the symbolic significant roles shipping plays in the economy Nigeria, it becomes imperative for the government to motivate or assist in the process by providing funds for stake holders in the industry to acquire ships and out of their earnings, they will become self sufficient and reliant.

#### **4.2 Conclusion**

Cabotage Law in Nigeria is beyond experimentation. If you are not a good swimmer but wish to dive into a river that you are not sure how deep it is, all you need to do is apply wisdom and thread gently to ascertain the depth of the river so that you can be guided on how to go. Nigeria is a nation with big heart and I love her. The protagonist of the Act has done their home work and has travelled around the world to under study countries where Cabotage has worked, especially in the United States of America and came to the conclusion that Nigeria can do it too. It is a statement of fact that the Coastal and Inland Shipping (Cabotage) Act, 2003 is welcome in the affairs of not only the shipping or maritime industry, but to the nation. The Federal Government, NIMASA and the Federal Ministry of Transport are working seriously to ensure that Nigeria is catapulted into the maritime world affairs. Concerted efforts are geared towards ensuring that Nigeria ratifies and implement all International Maritime Organization (IMO) Conventions dealing with maritime affairs such as security, pollution, prevention and compensation. It is our firm belief that it is better to attempt and fail than failing to attempt. If you attempt and fail, u will understand and know a million and one way to do it and at least, one way not to do it. The idea of cabotage and its commencement in Nigeria is a beautiful one. The benefits that will accrue to the economic development of Nigeria from an efficient enforcement of the Act far outweigh the challenges faced by its implementation and monitoring. With strong synergy and commitment among all government institutions and stakeholders, with all paraphernalia of office made to perform their mandated duties, we are optimistic that the sky will be a stepping stone for Nigeria.

### 4.3 Recommendations

- ◆ The various implementing Agencies should be well funded and equipped to enforce the Act since finance has been a major challenge. Maritime Bank should be created with aim to provide funds to indigenous ship-owners and players in the maritime industry.
- ◆ On the problem of piracy and armed robbery, the formation of an integrated Coast Guard in the sub-region will go a long way to address the problem.
- ◆ It is recommended that the Minister consults with Indigenous Ship-owners Association of Nigeria (ISAN) because ISAN is in the best position to know whether a suitable ship owned by its members is available for the activity or service before granting a waiver. Alternatively, the particulars of the ships owned by Nigerians and their capabilities should be collected by the Minister from ISAN and be used by the Minister in consultation with ISAN, before deciding whether or not waivers should be granted.
- ◆ Also, the different relevant agencies in the implementation of the Act especially NIMASA, JOMALIC, NIWA, NNPC/PPMC, Navy, Customs, Immigration etc. should freely have access to each other's information/documents on their activities and on the vessels ownership, seamen's nationality, qualification, employment and shipyards capability.
- ◆ Violators of the Act, whether foreign or indigenous should be sanctioned. The Minister and the Director – General of NIMASA should wake up from their slumber, change their attitude and favoritism towards foreigners who violates the Act. Their ships should be confiscated and forfeited to the Federal Republic of Nigeria. This of course will send signals of serious enforcement to the industry and the violators of the Act.
- ◆ The indigenous shipping companies at both local and federal levels should act as watchdog to the maritime industry, ensuring that the safety of and security's standards are not toyed with. There is need to jealously guard the Cabotage regime so as not to allow the infiltration of "Flags of Convenience Vessels".
- ◆ There should be a National Maritime Resources Center, as a focal point for research development for the shipping sector. This center will cater for the manpower and capacity building for the Maritime Industry.
- ◆ The chandelling business needs to be included in the Cabotage Act, to give legality to the Chandlers who serve as vital link in the maritime sector.

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